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(Public)

Sponsors:

Referred to:

April 3, 2019

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE STANDARD DEDUCTION, TO EXPAND THE DEFINITION OF HOLDING COMPANY FOR FRANCHISE TAX PURPOSES, TO IMPLEMENT MARKET-BASED SOURCING FOR MULTISTATE INCOME TAX APPORTIONMENT, TO REQUIRE CERTAIN MARKETPLACE FACILITATORS TO COLLECT SALES TAX, TO DIRECT REVENUE LAWS TO STUDY CERTAIN TAX SUNSET PROVISIONS, AND TO MAKE TECHNICAL CORRECTIONS.

The General Assembly of North Carolina enacts:

INCREASE STANDARD DEDUCTION

SECTION 1.(a) G.S. 105-153.5(a)(1) reads as rewritten:

"(1) Standard deduction amount. – The standard deduction amount is zero for a person who is not eligible for a standard deduction under section 63 of the Code. For all other taxpayers, the standard deduction amount is equal to the amount listed in the table below based on the taxpayer's filing status:

Filing Status	Standard Deduction
Married, filing jointly/surviving spouse	\$20,000 <u>\$21,500</u>
Head of Household	15,000 <u>16,125</u>
Single	10,000 <u>10,750</u>
Married, filing separately	10,000 <u>10,750.</u> "

SECTION 1.(b) This section is effective for taxable years beginning on or after January 1, 2020.

EXPAND DEFINITION OF HOLDING COMPANY

SECTION 2.(a) G.S. 105-120.2(c) reads as rewritten:

"(c) For purposes of this section, a "holding company" is a corporation that satisfies at least one of the following conditions:

- (1) It has no assets other than ownership interests in corporations in which it owns, directly or indirectly, more than fifty percent (50%) of the outstanding voting stock or voting capital interests.
- (2) It receives during its taxable year more than eighty percent (80%) of its gross income from corporations in which it owns directly or indirectly more than



fifty percent (50%) of the outstanding voting stock, voting capital interests, or ownership interests.

(3) It owns copyrights, patents, or trademarks that represent more than eighty percent (80%) of its total assets, or receives royalties and license fees that represent more than eighty percent (80%) of its gross income, and it is one hundred percent (100%) directly owned by a corporation that meets all of the following conditions:

- a. Is a manufacturer, as defined by NAICS codes 31 through 33.
- b. Generates revenues in excess of five billion dollars (\$5,000,000,000) for income tax purposes from goods that it manufactures.
- c. Includes in its net worth, as determined under G.S. 105-122(b), an investment in a subsidiary that owns copyrights, patents, or trademarks."

SECTION 2.(b) This section is effective for taxable years beginning on or after January 1, 2020, and applicable to the calculation of franchise tax reported on the 2019 and later corporate income tax returns.

USE MARKET-BASED SOURCING FOR MULTISTATE INCOME TAX APPORTIONMENT

SECTION 3.(a) G.S. 105-130.4 reads as rewritten:

"§ 105-130.4. Allocation and apportionment of income for corporations.

...

(l) ~~(l) Sales Factor.~~ – The sales factor is a fraction, the numerator of which is the total sales of the corporation in this State during the income year, and the denominator of which is the total sales of the corporation everywhere during the income year. Notwithstanding any other provision under this Part, the receipts from any casual sale of property shall be excluded from both the numerator and the denominator of the sales factor. Where a corporation is not taxable in another state on its apportionable income but is taxable in another state only because of nonapportionable income, all sales shall be treated as having been made in this State.

Receipts are in this State if the taxpayer's market for the receipts is in this State. If the market for a receipt cannot be determined, the state or states of assignment shall be reasonably approximated. In a case in which a taxpayer cannot ascertain the state or states to which receipts of a sale are to be assigned through the use of a method of reasonable approximation, the receipts must be excluded from the denominator of a taxpayer's sales factor. Except as otherwise provided by this section, a taxpayer's market for receipts is in this State as provided below:

- (1) In the case of sale, rental, lease, or license of real property, if and to the extent the property is located in this State.
- (2) ~~Sales of tangible personal property are in this State if the property is received in this State by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State shall constitute delivery to the purchaser in this State.~~ In the case of rental, lease, or license of tangible personal property, if and to the extent the property is located in this State.
- (3) ~~Other sales are in this State if any of the following occur:~~ In the case of sale of tangible personal property, if and to the extent the property is received in this State by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser,

1 the place at which the goods are ultimately received after all transportation
2 has been completed is considered the place at which the goods are received
3 by the purchaser. Direct delivery into this State by the taxpayer to a person or
4 firm designated by a purchaser from within or without the State constitutes
5 delivery to the purchaser in this State.

6 a. ~~The receipts are from real or tangible personal property located in this~~
7 ~~State, and includes receipts from incidental services sold as part of, or~~
8 ~~in connection with, the sale of tangible personal property in this State.~~
9 b. ~~The receipts are from intangible property and are received from~~
10 ~~sources within this State.~~
11 e. ~~The receipts are from services and the income producing activities are~~
12 ~~in this State. For the purposes of this subdivision, an~~
13 ~~"income producing activity" means an activity directly performed by~~
14 ~~the taxpayer or its agents for the ultimate purpose of generating the~~
15 ~~sale of the service. Receipts from income producing activities~~
16 ~~performed within and without this State are attributed to this State in~~
17 ~~proportion to the income producing activities performed in this State~~
18 ~~to total income producing activities performed everywhere that~~
19 ~~generate the sale of service.~~

20 (4) In the case of sale of a service, if and to the extent the service is delivered to
21 a location in this State.

22 (5) In the case of intangible property that is rented, leased, or licensed, if and to
23 the extent the property is used in this State. Intangible property utilized in
24 marketing a good or service to a consumer is "used in this State" if that good
25 or service is purchased by a consumer who is in this State.

26 (6) In the case of intangible property that is sold, if and to the extent the property
27 is used in this State. A contract right, government license, or similar intangible
28 property that authorized the holder to conduct a business activity in a specific
29 geographic area is "used in this State" if the geographic area includes all or
30 part of this State. Receipts from a sale of intangible property that is contingent
31 on the productivity, use, or disposition of the intangible property shall be
32 treated as receipts from the rental, lease, or licensing of the intangible property
33 as provided under subdivision (5) of this subsection. All other receipts from a
34 sale of intangible property shall be excluded from the numerator and
35 denominator of the sales factor.

36 (l1) Wholesale Content Distributors. – A wholesale content distributor's market for
37 receipts is in this State as provided in G.S. 105-130.4A. In no event may the amount of income
38 apportioned to this State be less than the amount determined under this subsection. The amount
39 determined under this subsection is the total domestic gross receipts of the wholesale content
40 distributor from advertising and licensing activities multiplied by two percent (2%). For purposes
41 of this section, the term "wholesale content distributor" has the same meaning as defined in
42 G.S. 105-130.4A.

43 (l2) Banks. – A bank's market for receipts is in this State as provided in G.S. 105-130.4B.
44 For purposes of this section, the term "bank" has the same meaning as defined in
45 G.S. 105-130.4B.

46 ...

47 (s2) Pipeline Company. – Receipts from the transportation or transmission of a
48 petroleum-based liquids pipeline or natural gas by a company subject to rate regulation by the
49 Federal Energy Regulatory Commission shall be apportioned by multiplying the income by a
50 fraction, the numerator of which is the number of barrel miles traffic units in this State during
51 the tax year and the denominator of which is the total number of barrel miles traffic units

1 everywhere during the tax year. For purposes of this section, the term "~~barrel mile~~" means ~~one~~
2 ~~barrel of liquid property transported one mile.~~"traffic unit" means one or more of the following:

3 (1) Barrel mile. – One barrel of liquid property transported one mile.

4 (2) Cubic foot mile. – One cubic foot of gaseous property transported one mile.

5 (s3) Electric Power Company. – All apportionable income of an electric power company
6 shall be apportioned by a fraction, the numerator of which is the average value of the real and
7 tangible personal property owned or rented and used in this State by the electric power company
8 during the income year and the denominator of which is the average value of all the real and
9 tangible personal property owned or rented and used by the electric power company during the
10 income year. For purposes of this subsection, the term "electric power company" is a company,
11 including any of its wholly owned noncorporate limited liability companies, primarily engaged
12 in the business of supplying electricity for light, heat, current, or power to persons in this State
13 and that is subject to control of one or more of the following entities: the North Carolina Utilities
14 Commission or the Federal Energy Regulatory Commission.

15 For purposes of this subsection, the average value of real and tangible personal property
16 owned or rented by an electric power company is determined as follows:

17 (1) The average value of property shall be determined by averaging the values at
18 the beginning and end of the income year, but in all cases the Secretary may
19 require the averaging of monthly or other periodic values during the income
20 year if reasonably required to reflect properly the average value of the
21 corporation's property.

22 (2) An electric power company that ceases its operations in this State before the
23 end of its income year because of its intention to dissolve or to relinquish its
24 certificate of authority, or because of a merger, conversion, or consolidation,
25 or for any other reason whatsoever shall use the real estate and tangible
26 personal property values as of the first day of the income year and the last day
27 of its operations in this State in determining the average value of property, but
28 the Secretary may require averaging of monthly or other periodic values
29 during the income year if reasonably required to reflect properly the average
30 value of the electric power company's property.

31 (3) Property owned by an electric power company is valued at its original cost.

32 (4) Property rented by an electric power company is valued at eight times the net
33 annual rental rate.

34 (5) Net annual rental rate is the annual rental rate paid by an electric power
35 company less any annual rental rate received by the electric power company
36 from sub-rentals except that sub-rentals shall not be deducted when they
37 constitute apportionable income.

38 (6) Any property under construction and any property the income from which
39 constitutes nonapportionable income shall be excluded from the computation
40 of the average value of an electric power company's real and tangible personal
41 property.

42 ...

43 (t3) State Net Loss Apportionment Election. – Notwithstanding subdivision (l)(4) of this
44 section, a taxpayer with a State net loss balance as of the end of its 2019 taxable year may elect
45 to apportion receipts from services based on the percentage of its income-producing activities
46 performed in this State. The election must be made on the 2020 tax year return and must be in
47 the form prescribed by the Secretary and contain any supporting documentation the Secretary
48 may require. The election is binding and irrevocable until the earlier of the tax year in which (i)
49 the existing State net loss balance is fully utilized or (ii) all of the existing State net loss balance
50 has expired, as determined by applying the limitations set forth in G.S. 105-130.8A(b). A
51 taxpayer must apportion receipts from services in accordance with subdivision (l)(4) of this

1 section for tax years beginning on and after the tax year that the existing State net loss is fully
2 utilized.

3 For purposes of this subsection, a taxpayer's State net loss balance is the total amount of State
4 net losses computed under G.S. 105-130.8A for taxable years beginning before January 1, 2020,
5 and available to carry forward to taxable years beginning on or after January 1, 2020. A State net
6 loss balance does not include a State net loss created in a taxable year beginning on or after
7 January 1, 2020. A State net loss created in a taxable year beginning on or after January 1, 2020,
8 must be determined using the apportionment rules in G.S. 105-130.4(I)."

9 **SECTION 3.(b)** Part 1 of Article 4 of Chapter 105 of the General Statutes is amended
10 by adding a new section to read:

11 **"§ 105-130.4A. Market-based sourcing for wholesale content distributors.**

12 (a) Definitions. – The definitions in G.S. 105-130.4 and the following definitions apply
13 to this section:

14 (1) Customer. – A person who has a direct contractual relationship with a
15 wholesale content distributor from whom the wholesale content distributor
16 derives gross receipts, including a business customer such as an advertiser or
17 licensee and an individual customer that directly subscribes with the
18 wholesale content distributor for access to film programming.

19 (2) Gross receipts. – The same meaning as the term "sales" in G.S. 105-130.4.

20 (3) Wholesale content distributor. – A broadcast television network, a cable
21 program network, or any television distribution company owned by, affiliated
22 with, or under common ownership with any such network. The term does not
23 mean or include a multichannel video programming distributor or a distributor
24 of subscription-based Internet programming services.

25 (b) Market for Receipts. – The receipts factor of a wholesale content distributor is a
26 fraction, the numerator of which is the sum of the wholesale content distributor's gross receipts
27 from transactions and activity in the regular course of its trade or business from sources within
28 the State and the denominator of which is the sum of the wholesale content distributor's gross
29 receipts from transactions and activity in the regular course of its trade or business everywhere.
30 A wholesale content distributor's receipts from transactions and activities in the regular course
31 of its business, including advertising, licensing, and distribution activities, but excluding receipts
32 from the sale of real property or tangible personal property, are in this State if derived from a
33 business customer whose commercial domicile is in this State. Receipts derived from an
34 individual customer are in this State if the billing address of the individual customer as listed in
35 the broadcaster's books and records is in this State."

36 **SECTION 3.(c)** Part 1 of Article 4 of Chapter 105 of the General Statutes is amended
37 by adding a new section to read:

38 **"§ 105-130.4B. Market-based sourcing for banks.**

39 (a) Definitions. – The definitions in G.S. 105-130.4 apply to this section, and the
40 following definitions apply to this section:

41 (1) Bank. – Defined in G.S. 105-130.7B.

42 (2) Billing address. – The location indicated in the books and records of the
43 taxpayer on the first day of the taxable year, or on the date in the taxable year
44 when the customer relationship began, as the address where any notice,
45 statement, or billing relating to the customer's account is mailed.

46 (3) Borrower, cardholder, or payor located in this State. – A borrower, credit
47 cardholder, or payor whose billing address is in this State.

48 (4) Card issuer's reimbursement fee. – The fee a taxpayer receives from a
49 merchant's bank because one of the persons to whom the taxpayer has issued
50 a credit, debit, or similar type of card has charged merchandise or services to
51 the card.

- 1 (5) Credit card. – A card, or other means of providing information, that entitles
2 the holder to charge the cost of purchases, or a cash advance, against a line of
3 credit.
- 4 (6) Debit card. – A card, or other means of providing information, that enables
5 the holder to charge the cost of purchases, or a cash withdrawal, against the
6 holder's bank account or a remaining balance on the card.
- 7 (7) Loan. – Any extension of credit resulting from direct negotiations between the
8 taxpayer and its customer, and/or the purchase, in whole or in part, of such an
9 extension of credit from another. The term includes participations,
10 syndications, and leases treated as loans for federal income tax purposes.
- 11 (8) Loan secured by real property. – A loan or other obligation of which fifty
12 percent (50%) or more of the aggregate value of the collateral used to secure
13 the loan or other obligation, when valued at fair market value as of the time
14 the original loan or obligation was incurred, was real property.
- 15 (9) Merchant discount. – The fee, or negotiated discount, charged to a merchant
16 by the taxpayer for the privilege of participating in a program whereby a
17 credit, debit, or similar type of card is accepted in payment for merchandise
18 or services sold to the cardholder, net of any cardholder chargeback and
19 unreduced by any interchange transaction or issuer reimbursement fee paid to
20 another for charges or purchases made by its cardholder.
- 21 (10) Participation. – An extension of credit in which an undivided ownership
22 interest is held on a prorated basis in a single loan or pool of loans and related
23 collateral. In a loan participation, the credit originator initially makes the loan
24 and then subsequently resells all or a portion of it to other lenders. The
25 participation may or may not be known to the borrower.
- 26 (11) Payor. – The person who is legally responsible for making payment to the
27 taxpayer.
- 28 (12) Real property owned. – Real property (i) on which the taxpayer may claim
29 depreciation for federal income tax purposes or (ii) to which the taxpayer
30 holds legal title and on which no other person may claim depreciation for
31 federal income tax purposes or could claim depreciation if subject to federal
32 income tax. Real property does not include coin, currency, or property
33 acquired in lieu of or pursuant to a foreclosure.
- 34 (13) Syndication. – An extension of credit in which two or more persons fund and
35 each person is at risk only up to a specified percentage of the total extension
36 of credit or up to a specified dollar amount.
- 37 (14) Tangible personal property owned. – Tangible personal property (i) on which
38 the taxpayer may claim depreciation for federal income tax purposes or (ii) to
39 which the taxpayer holds legal title and on which no other person may claim
40 depreciation for federal income tax purposes could claim depreciation if
41 subject to federal income tax. Tangible personal property does not include
42 coin, currency, or property acquired in lieu of or pursuant to a foreclosure.
- 43 (15) Transportation property. – Vehicles and vessels capable of moving under their
44 own power as well as any equipment or containers attached to such property.
45 Examples of transportation property include aircraft, trains, water vessels,
46 motor vehicles, rolling stock, barges, and trailers.
- 47 (b) General Rule. – The receipts factor of a bank is a fraction, the numerator of which is
48 the total receipts of the taxpayer in this State during the income year, and the denominator of
49 which is the total receipts of the taxpayer everywhere during the income year. The method of
50 calculating receipts for purposes of the denominator is the same as the method used in
51 determining receipts for purposes of the numerator. The receipts factor includes only those

1 receipts described herein that are apportionable income for the taxable year. Notwithstanding any
2 other provision under this Part, the receipts from the following are excluded from both the
3 numerator and the denominator of the receipts factor:

- 4 (1) Receipts from a casual sale of property.
- 5 (2) Receipts exempt from taxation.
- 6 (3) The portion of receipts realized from the sale or maturity of securities or other
7 obligations that represents a return of principal.
- 8 (4) Receipts in the nature of dividends subtracted under G.S. 105-130.5(b)(3a)
9 and (3b) and dividends excluded for federal tax purposes.
- 10 (5) The portion of receipts from financial swaps and other similar financial
11 derivatives that represent the notional principal amount that generates the cash
12 flow traded in the swap agreement.

13 (c) Receipts from the Sale, Lease, or Rental of Real Property. – The numerator of the
14 receipts factor includes receipts from the sale, lease, or rental of real property owned by the
15 taxpayer if the property is located within this State or receipts from the sublease of real property
16 if the property is located within this State.

17 (d) Receipts from the Sale, Lease, or Rental of Tangible Personal Property. – The method
18 for calculating receipts from the sale, lease, or rental of tangible personal property is as follows:

- 19 (1) Tangible personal property. – Except as provided in subdivision (2) of this
20 subsection, the numerator of the receipts factor includes receipts from the sale,
21 lease, or rental of tangible personal property owned by the taxpayer if the
22 property is located within this State when it is first placed in service by the
23 lessee.
- 24 (2) Transportation property. – Receipts from the lease or rental of transportation
25 property owned by the taxpayer are included in the numerator of the receipts
26 factor to the extent that the property is used in this State. The extent an aircraft
27 will be deemed to be used in this State and the amount of receipts that is to be
28 included in the numerator of this State's receipts factor is determined by
29 multiplying all the receipts from the lease or rental of the aircraft by a fraction,
30 the numerator of which is the number of landings of the aircraft in this State
31 and the denominator of which is the total number of landings of the aircraft.
32 If the extent of the use of any transportation property within this State cannot
33 be determined, then the property will be deemed to be used wholly in the state
34 in which the property has its principal base of operations. A motor vehicle will
35 be deemed to be used wholly in the state in which it is registered.

36 (e) Interest, Fees, and Penalties from Loans Secured by Real Property. – The numerator
37 of the receipts factor includes interest, fees, and penalties from loans secured by real property if
38 the property is located within this State. If the property is located both within this State and one
39 or more other states, the receipts described in this subsection are included in the numerator of the
40 receipts factor if more than fifty percent (50%) of the fair market value of the real property is
41 located within this State. If more than fifty percent (50%) of the fair market value of the real
42 property is not located within any one state, then the receipts described in this subsection are
43 included in the numerator of the receipts factor if the borrower is located in this State. The
44 determination of whether the real property securing a loan is located within this State is made as
45 of the time the original agreement was made and any and all subsequent substitutions of collateral
46 are disregarded.

47 (f) Interest, Fees, and Penalties from Loans Not Secured by Real Property. – The
48 numerator of the receipts factor includes interest, fees, and penalties from loans not secured by
49 real property if the borrower is located in this State.

50 (g) Net Gains from the Sale of Loans. – The numerator of the receipts factor includes net
51 gains from the sale of loans. Net gains from the sale of loans include income recorded under the

1 coupon stripping rules of section 1286 of the Code. The amount of net gains from the sale of
2 loans that is included in the numerator is determined as follows:

3 (1) Secured by real property. – The amount of net gains, but not less than zero,
4 from the sale of loans secured by real property is determined by multiplying
5 the net gains by a fraction, the numerator of which is the amount included in
6 the numerator of the receipts factor pursuant to subsection (e) of this section,
7 and the denominator of which is the total amount of interest, fees, and
8 penalties from loans secured by real property.

9 (2) Not secured by real property. – The amount of net gains, but not less than zero,
10 from the sale of loans not secured by real property is determined by
11 multiplying the net gains by a fraction, the numerator of which is the amount
12 included in the numerator of the receipts factor pursuant to subsection (f) of
13 this section, and the denominator of which is the total amount of interest, fees,
14 and penalties from loans not secured by real property.

15 (h) Receipts from Interest, Fees, and Penalties from Cardholders. – The numerator of the
16 receipts factor includes interest, fees, and penalties charged to credit, debit, or similar
17 cardholders, including annual fees and overdraft fees, if the cardholder is located in this State.

18 (i) Receipts from ATM Fees. – The numerator of the receipts factor includes receipts
19 from fees from the use of an ATM owned or rented by the taxpayer, if the ATM is located in this
20 State. The receipts factor includes all ATM fees that are not forwarded directly to another bank.
21 Receipts from ATM fees that are not sourced under this subsection are sourced pursuant to
22 subsection (l) of this section.

23 (j) Net Gains from the Sale of Credit Card Receivables. – The numerator of the receipts
24 factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied
25 by a fraction, the numerator of which is the amount included in the numerator of the receipts
26 factor pursuant to subsection (h) of this section, and the denominator of which is the taxpayer's
27 total amount of interest, fees, and penalties charged to cardholders.

28 (k) Miscellaneous Receipts. – The numerator of the receipts factor includes all of the
29 following:

30 (1) Card issuer's reimbursement fees. – Receipts from card issuer's reimbursement
31 fees if the payor is located in this State.

32 (2) Receipts from merchant's discount. – Receipts from a merchant discount if the
33 payor is located in this State.

34 (3) Loan servicing fees. – Receipts from loan servicing fees if the payor is located
35 in this State.

36 (4) Receipts from services. – Receipts from services not otherwise apportioned
37 under this section if the payor is located in this State.

38 (5) Receipts from investment assets and activity and trading assets and activity. –
39 Receipts from one or more of the following:

40 a. Interest and dividends from investment assets and activities and
41 trading assets and activities if the payor is located in this State.

42 b. Net gains and other income, but not less than zero, from investment
43 assets and activities and trading assets and activities multiplied by a
44 fraction, the numerator of which is the amount included in the
45 numerator of the receipts factor pursuant to sub-subdivision a. of this
46 subdivision, and the denominator of which is the taxpayer's total
47 amount of interest and dividends from investment assets and activities
48 and trading assets and activities.

49 (l) All Other Receipts. – All other receipts not specifically enumerated in this section are
50 included in the numerator of the receipts factor if the payor is located in this State."

51 **SECTION 3.(d)** G.S. 105-122(c1) reads as rewritten:

1 "(c1) Apportionment. – A corporation that is doing business in this State and in one or more
2 other states must apportion its net worth to this State. A corporation must use the apportionment
3 method set out in subdivision (1) of this subsection unless the Department has authorized it to
4 use a different method under subdivision (2) of this subsection. A taxpayer that has made an
5 election under G.S. 105-130.4(t3) must use the apportionment method set out in subdivision (1)
6 of this subsection as if the election had not been made, unless the Department has authorized a
7 different method under subdivision (2) of this subsection. The portion of a corporation's net worth
8 determined by applying the appropriate apportionment method is considered the amount of net
9 worth the corporation uses in its business in this State:

10 (1) Statutory. – A corporation that is subject to income tax under Article 4 of this
11 Chapter must apportion its net worth by using the fraction it applies in
12 apportioning its income under that Article. A corporation that is not subject to
13 income tax under Article 4 of this Chapter must apportion its net worth by
14 using the fraction it would be required to apply in apportioning its income if
15 it were subject to that Article. The apportionment fraction for a wholesale
16 content distributor, as that term is defined in G.S. 105-130.4A, shall not be
17 less than two percent (2%). The apportionment method set out in this
18 subdivision is considered the statutory method of apportionment and is
19 presumed to be the best method of determining the amount of a corporation's
20 capital stock, surplus, and undivided profits attributable to the corporation's
21 business in this State.

22"

23 **SECTION 3.(e)** The Utilities Commission shall adjust the rates for public utilities,
24 excluding water public utilities with less than two hundred thousand dollars (\$200,000) in annual
25 operating revenues, for the tax changes in subsection (a) of this section. Each utility shall
26 calculate the cumulative net effect of the tax changes and file the calculations with proposed rate
27 changes to reflect the net prospective tax changes in utility customer rates within 60 days of the
28 enactment of this act. Any adjustments required to existing tax assets or liabilities reflected in
29 the utility's books and records required by the tax changes shall be deferred and reflected in
30 customer rates in either the utility's next rate case or earlier if deemed appropriate by the
31 Commission.

32 **SECTION 3.(f)** Under Section 38.4 of S.L. 2016-94, the Department of Revenue
33 adopted and submitted to the Rules Review Commission rules regarding the implementation and
34 administration of market-based sourcing principles based on legislation proposed in that section.
35 The Department adopted the rules on January 4, 2017, and submitted the rules to the Rules
36 Review Commission on January 18, 2017. The Rules Review Commission approved and
37 delivered the rules to the Codifier of Rules on February 16, 2017. Pursuant to Section 38.4(b) of
38 S.L. 2016-94, the Codifier of Rules did not enter the rules into the Administrative Code. The
39 Codifier of Rules is hereby directed by the General Assembly to enter the rules into the
40 Administrative Code on the effective date of this act, and the rules apply to taxable years
41 beginning on or after January 1, 2020.

42 The Department of Revenue shall adopt and submit to the Rules Review Commission
43 rules regarding the implementation and administration of market-based sourcing principles, to
44 the extent modifications are needed based on the statutory changes enacted by this section. In
45 adopting rules pursuant to this subsection, the following provisions apply:

- 46 (1) The exemption provided in G.S. 150B-1(d)(4) applies.
- 47 (2) The provisions of G.S. 150B-21.3(b1) and (b2) do not apply.
- 48 (3) The provisions of G.S. 150B-21.4 do not apply.

49 **SECTION 3.(g)** Subsections (a) through (d) of this section are effective for taxable
50 years beginning on or after January 1, 2020. The remainder of this section is effective when it
51 becomes law.

MARKETPLACE FACILITATORS TO COLLECT SALES TAX**SECTION 4.(a)** G.S. 105-164.3 reads as rewritten:**"§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(20a) Marketplace. – A physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items, the delivery of or first use of which is sourced to this State.

(20b) Marketplace-facilitated sale. – The sale of an item by a marketplace facilitator on behalf of a marketplace seller that occurs through a marketplace.

(20c) Marketplace facilitator. – A person that, directly or indirectly and whether through one or more affiliates, does both of the following:

a. Lists or otherwise makes available for sale a marketplace seller's items through a marketplace owned or operated by the marketplace facilitator.

b. Does one or more of the following:

1. Collects the sales price or purchase price of a marketplace seller's items or otherwise processes payment.

2. Makes payment processing services available to purchasers for the sale of a marketplace seller's items.

(20d) Marketplace seller. – A person that sells or offers to sell items through a marketplace regardless of any of the following:

a. Whether the person has a physical presence in this State.

b. Whether the person is registered as a retailer in this State.

c. Whether the person would have been required to collect and remit sales and use tax had the sales not been made through a marketplace.

d. Whether the person would not have been required to collect and remit sales and use tax had the sales not been made through a marketplace.

...."

SECTION 4.(b) G.S. 105-164.8(b), as amended by S.L. 2019-6, reads as rewritten:

"(b) Remote Sales. – A retailer who makes a remote sale is engaged in business in this State and is subject to the tax levied under this Article if at least one of the following conditions is met:

...

(3) The retailer solicits or transacts business in this State by employees, independent contractors, agents, or other representatives, whether the remote sales ~~thus~~ subject to taxation by this State result from or are related in any other way to the solicitation or transaction of business. A retailer is presumed to be soliciting or transacting business by an independent contractor, agent, or other representative if the retailer enters into an agreement with a ~~resident person~~ person of this State under which the ~~resident person~~, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an Internet Web site or otherwise, to the retailer. This presumption applies only if the cumulative gross receipts from sales by the retailer to purchasers in this State who are referred to the retailer by all ~~residents~~ persons with this type of agreement with the retailer is in excess of ten thousand dollars (\$10,000) during the preceding four quarterly periods. This presumption may be rebutted by proof that the ~~resident person~~ with whom the retailer has an agreement did not engage in any solicitation in the State on behalf of the seller

1 that would satisfy the nexus requirement of the United States Constitution
2 during the four quarterly periods in question.

3 ...

4 (9) ~~The retailer, with respect to retailer makes remote sales into North Carolina~~
5 ~~sourced to this State, including sales as a marketplace seller, for the previous~~
6 ~~or the current calendar year, had one or more year that meet either of the~~
7 ~~following:~~

8 a. Gross sales in excess of one hundred thousand dollars (\$100,000).

9 b. Two hundred or more separate transactions.

10 (10) The retailer is a marketplace facilitator that makes sales, including all
11 marketplace-facilitated sales for all marketplace sellers, sourced to this State
12 for the previous or the current calendar year that meet either of the following:

13 a. Gross sales in excess of one hundred thousand dollars (\$100,000).

14 b. Two hundred or more separate transactions."

15 **SECTION 4.(c)** Part 2 of Article 5 of Chapter 105 of the General Statutes is amended
16 by adding a new section to read:

17 **"§ 105-164.4J. Marketplace-facilitated sales.**

18 (a) Scope. – This section applies to a marketplace facilitator that makes sales, including
19 all marketplace-facilitated sales for all marketplace sellers, sourced to this State for the previous
20 or the current calendar year that meet either of the following:

21 (1) Gross sales in excess of one hundred thousand dollars (\$100,000).

22 (2) Two hundred or more separate transactions.

23 (b) Payment of Tax. – A marketplace facilitator that meets the threshold in subsection (a)
24 of this section is considered the retailer of each marketplace-facilitated sale it makes and is liable
25 for collecting and remitting the sales and use tax on all such sales. A marketplace facilitator is
26 required to comply with the same requirements and procedures as all other retailers registered or
27 who are required to be registered to collect and remit sales and use tax in this State. A marketplace
28 facilitator is required to collect and remit sales tax as required by this section regardless of
29 whether a marketplace seller for whom it makes a marketplace-facilitated sale meets any of the
30 following conditions:

31 (1) Has a physical presence in this State.

32 (2) Is required to be registered to collect and remit sales and use tax in this State.

33 (3) Would have been required to collect and remit sales and use tax in this State
34 had the sale not been made through a marketplace.

35 (4) Would not have been required to collect and remit sales and use tax in this
36 State had the sale not been made through a marketplace.

37 (c) Report. – A marketplace facilitator must provide or make available to each
38 marketplace seller the information listed in this subsection with respect to marketplace-facilitated
39 sales that are made on behalf of the marketplace seller and that are sourced to this State. The
40 information may be provided in any format and shall be provided or made available no later than
41 10 days after the end of each calendar month. The required information to be provided or made
42 available to each marketplace seller is as follows:

43 (1) Gross sales.

44 (2) The number of separate transactions.

45 (d) Liability Relief. – The Department shall not assess a marketplace facilitator for failure
46 to collect the correct amount of tax due if the marketplace facilitator can demonstrate to the
47 Secretary's satisfaction that all of the circumstances listed in this subsection apply. This
48 subsection does not apply with regard to a marketplace-facilitated sale for which the marketplace
49 facilitator is the marketplace seller or if the marketplace facilitator and the marketplace seller are
50 affiliates. If a marketplace facilitator is not assessed for tax due under this section, the
51 marketplace seller is liable for the tax due under this section provided the marketplace seller is

1 engaged in business in this State. The circumstances that a marketplace facilitator must
2 demonstrate are as follows:

3 (1) The failure to collect the correct amount of tax was due to incorrect
4 information given to the marketplace facilitator by the marketplace seller.

5 (2) The marketplace facilitator did not receive specific written advice from the
6 Secretary for the transaction at issue.

7 (e) Refund of Tax. – If a purchaser receives a refund on any portion of the sales price
8 from a marketplace facilitator who collected and remitted the tax on the retail sale, the provisions
9 of G.S. 105-164.11A(a) apply.

10 (f) Class Actions. – No class action may be brought against a marketplace facilitator in
11 any court of this State on behalf of customers arising from or in any way related to an
12 overpayment of sales or use tax collected on facilitated sales by a marketplace facilitator,
13 regardless of whether that claim is characterized as a tax refund claim. Nothing in this subsection
14 affects a customer's right to seek a refund as provided under G.S. 105-164.11.

15 (g) Agreements. – Nothing in this section shall be construed to interfere with the ability
16 of a marketplace facilitator and a marketplace seller to enter into an agreement with each other
17 regarding the fulfillment of the requirements of this Article, except that an agreement may not
18 require a marketplace seller to collect and remit sales and use tax on marketplace-facilitated sales.

19 (h) Use Tax Obligation. – Nothing in this section affects the obligation of any purchaser
20 to remit use tax for any taxable transaction for which a marketplace facilitator does not collect
21 and remit sales or use tax.

22 (i) Limitation. – This section does not apply to an accommodation facilitator, an
23 admission facilitator, or a service contract facilitator whose collection and remittance
24 requirements are set out in G.S. 105-164.4F, 105-164.4G, and 105-164.4I, respectively."

25 **SECTION 4.(d)** G.S. 105-164.3 reads as rewritten:

26 **"§ 105-164.3. Definitions.**

27 The following definitions apply in this Article:

28 (1) Accommodation. – A hotel room, a motel room, a residence, a cottage, or a
29 similar lodging facility for occupancy by an individual.

30 (1a) Accommodation facilitator. – A person that contracts, either directly or
31 indirectly, with a provider of an accommodation to perform, either directly or
32 indirectly, one or more of the activities listed in this subdivision. The term
33 includes a real estate broker as defined in G.S. 93A-2. The activities are:

34 a. Market the accommodation and accept payment or collect credit card
35 or other payment information for the rental of the accommodation.

36 b. List the accommodation for rental on a forum, platform, or other
37 application for a fee or other consideration.

38"

39 **SECTION 4.(e)** G.S. 105-164.4F reads as rewritten:

40 **"§ 105-164.4F. Accommodation rentals.**

41 (a) ~~Definition.—The following definitions apply in this section:~~

42 (1) ~~Accommodation.—A hotel room, a motel room, a residence, a cottage, or a~~
43 ~~similar lodging facility for occupancy by an individual.~~

44 (2) ~~Facilitator.—A person who is not a rental agent and who contracts with a~~
45 ~~provider of an accommodation to market the accommodation and to accept~~
46 ~~payment from the consumer for the accommodation.~~

47 (3) ~~Rental agent.—The term includes a real estate broker, as defined in G.S.~~
48 ~~93A 2.~~

49 (b) ~~Tax. – The gross receipts derived from the rental of an accommodation are taxed at~~
50 ~~the general rate set in G.S. 105-164.4. Gross receipts derived from the rental of an~~
51 ~~accommodation include the sales price of the rental of the accommodation. The sales price of the~~

1 rental of an accommodation is determined as if the rental were a rental of tangible personal
2 property. The sales price of the rental of an accommodation ~~marketed~~made by a ~~an~~
3 accommodation facilitator includes any charges designated as facilitation fees and any other
4 charges or fees, by whatever name called, charged by the accommodation facilitator to the
5 purchaser of the accommodation that are necessary to complete the rental. The tax is due and
6 payable by the retailer in accordance with G.S. 105-164.16.

7 (b1) Retailer. – Except as otherwise provided in subsection (c) of this section, the retailer
8 of the rental of an accommodation is one or more of the persons listed below that collects the
9 payment, or a portion of the payment, for the rental of the accommodation. In the event the person
10 who collects the payment cannot be determined or is a third party that is not listed in this
11 subsection, and subsection (c) of this section does not apply, the provider of the accommodation
12 shall be considered the retailer of the transaction. The retailer is liable for reporting and remitting
13 the tax due on the portion of the gross receipts derived from the rental of the accommodation that
14 the retailer collects. The retailer may be one or more of the following:

15 (1) The provider of the accommodation.

16 (2) An accommodation facilitator.

17 (c) Certain Accommodation Facilitator Transactions. – ~~A facilitator must report to the~~
18 ~~retailer with whom it has a contract the sales price a consumer pays to the facilitator for an~~
19 ~~accommodation rental marketed by the facilitator. A retailer must notify a facilitator when an~~
20 ~~accommodation rental marketed by the facilitator is completed, and the~~ This subsection applies
21 only to an accommodation facilitator that is operated by or on behalf of a hotel or a hotel
22 corporation, that facilitates the rental of hotel accommodations solely for the hotel or the hotel
23 corporation's owned or managed hotels and franchisees, and that collects payment, or a portion
24 of the payment, for the rental of an accommodation. An accommodation facilitator subject to this
25 subsection is not considered the retailer of the rental of the accommodation. The accommodation
26 facilitator must send the retailer the portion of the sales price the facilitator owes the retailer and
27 the tax due on the sales price-price, or the portion of the sales price, the accommodation facilitator
28 collected no later than 10 days after the end of each calendar month. A ~~An accommodation~~
29 ~~facilitator that does not send the retailer the tax due on the sales price-price, or the portion of the~~
30 ~~sales price the accommodation facilitator collected, is liable for the amount of tax the~~
31 ~~accommodation facilitator fails to send. A~~ An accommodation facilitator is not liable for tax sent
32 to a retailer but not remitted by the retailer to the Secretary. Tax payments received by a retailer
33 from a ~~an accommodation~~ facilitator are held in trust by the retailer for remittance to the
34 Secretary. A retailer that receives a tax payment from a ~~an accommodation~~ facilitator must remit
35 the amount received to the Secretary. A retailer is not liable for tax due but not received from a
36 an accommodation facilitator. ~~The requirements imposed by this section on a retailer and a~~
37 ~~facilitator are considered terms of the contract between the retailer and the facilitator.~~

38 (c1) Accommodation Facilitator Report. – An accommodation facilitator must file with
39 the Secretary an annual report by March 31 of each year for the prior calendar year for
40 accommodation rentals it makes. The annual report must be provided in electronic format and
41 include the property owner's name, the property owner's mailing address, the physical location
42 of the accommodation, and gross receipts information for the rentals. The report may only be
43 used by the Secretary, and any person receiving the report, pursuant to G.S. 105-259, for tax
44 compliance purposes.

45 (d) Rental Agent. – ~~A person who, by written contract, agrees to be the rental agent for~~
46 ~~the provider of an accommodation is considered a retailer under this Article and is liable for the~~
47 ~~tax imposed by this section. The liability of a rental agent for the tax imposed by this section~~
48 ~~relieves the provider of the accommodation from liability.~~

49 (e) Exemptions. – The tax imposed by this section does not apply to the following:

50 (1) A private residence, cottage, or similar accommodation that is rented for fewer
51 than 15 days in a calendar year other than a private residence, cottage, or

1 ~~similar accommodation listed with a real estate broker or agent, unless the~~
2 ~~rental of the accommodation is made by an accommodation facilitator.~~

3 (2) An accommodation supplied to the same person for a period of 90 or more
4 continuous days.

5 (3) An accommodation arranged or provided to a person by a school, camp, or
6 similar entity where a tuition or fee is charged to the person for enrollment in
7 the school, camp, or similar entity."

8 **SECTION 4.(f)** G.S. 160A-215(c) reads as rewritten:

9 "(c) Collection. – A retailer who is required to remit to the Department of Revenue the
10 State sales tax imposed by G.S. 105-164.4(a)(3) on accommodations is required to remit a room
11 occupancy tax to the taxing city on and after the effective date of the levy of the room occupancy
12 tax. The room occupancy tax applies to the same gross receipts as the State sales tax on
13 accommodations and is calculated in the same manner as that tax. ~~A rental agent or a facilitator,~~
14 ~~as defined in G.S. 105-164.4F, An accommodation facilitator, as defined in G.S. 105-164.3,~~ has
15 the same responsibility and liability under the room occupancy tax as the ~~rental agent or~~
16 accommodation facilitator has under the State sales tax on accommodations.

17 If a taxable accommodation is furnished as part of a package, the bundled transaction
18 provisions in G.S. 105-164.4D apply in determining the sales price of the taxable
19 accommodation. If those provisions do not address the type of package offered, the person
20 offering the package may determine an allocated price for each item in the package based on a
21 reasonable allocation of revenue that is supported by the person's business records kept in the
22 ordinary course of business and calculate tax on the allocated price of the taxable
23 accommodation.

24 A retailer must separately state the room occupancy tax. Room occupancy taxes paid to a
25 retailer are held in trust for and on account of the taxing city.

26 The taxing city shall design and furnish to all appropriate businesses and persons in the city
27 the necessary forms for filing returns and instructions to ensure the full collection of the tax. An
28 operator of a business who collects a room occupancy tax may deduct from the amount remitted
29 to the taxing city a discount equal to the discount the State allows the retailer for State sales and
30 use tax."

31 **SECTION 4.(g)** G.S. 153A-155(c) reads as rewritten:

32 "(c) Collection. – A retailer who is required to remit to the Department of Revenue the
33 State sales tax imposed by G.S. 105-164.4(a)(3) on accommodations is required to remit a room
34 occupancy tax to the taxing county on and after the effective date of the levy of the room
35 occupancy tax. The room occupancy tax applies to the same gross receipts as the State sales tax
36 on accommodations and is calculated in the same manner as that tax. ~~A rental agent or a~~
37 ~~facilitator, as defined in G.S. 105-164.4F, An accommodation facilitator, as defined in~~
38 G.S. 105-164.3, has the same responsibility and liability under the room occupancy tax as the
39 ~~rental agent or~~ accommodation facilitator has under the State sales tax on accommodations.

40 If a taxable accommodation is furnished as part of a package, the bundled transaction
41 provisions in G.S. 105-164.4D apply in determining the sales price of the taxable
42 accommodation. If those provisions do not address the type of package offered, the person
43 offering the package may determine an allocated price for each item in the package based on a
44 reasonable allocation of revenue that is supported by the person's business records kept in the
45 ordinary course of business and calculate tax on the allocated price of the taxable
46 accommodation.

47 A retailer must separately state the room occupancy tax. Room occupancy taxes paid to a
48 retailer are held in trust for and on account of the taxing county.

49 The taxing county shall design and furnish to all appropriate businesses and persons in the
50 county the necessary forms for filing returns and instructions to ensure the full collection of the
51 tax. A retailer who collects a room occupancy tax may deduct from the amount remitted to the

1 taxing county a discount equal to the discount the State allows the retailer for State sales and use
2 tax."

3 **SECTION 4.(h)** G.S. 105-164.3 reads as rewritten:

4 **"§ 105-164.3. Definitions.**

5 The following definitions apply in this Article:

6 ...

7 **(1b)** Admission charge. – Gross receipts derived for the right to attend an
8 entertainment activity. The term includes a charge for a single ticket, a
9 multi-occasion ticket, a seasonal pass, and an annual pass; a membership fee
10 that provides for admission; a cover charge; a surcharge; a convenience fee, a
11 processing fee, a facility charge, a facilitation fee, or similar charge; or any
12 other charges included in gross receipts derived from admission.

13 **(1c)** Admission facilitator. – A person who accepts payment of an admission
14 charge to an entertainment activity and who is not the operator of the venue
15 where the entertainment activity occurs.

16 ...

17 **(1f)** Amenity. – A feature that increases the value or attractiveness of an
18 entertainment activity that allows a person access to items that are not subject
19 to tax under this Article and that are not available with the purchase of
20 admission to the same event without the feature. The term includes parking
21 privileges, special entrances, access to areas other than general admission,
22 mascot visits, and merchandise discounts. The term does not include any
23 charge for food, prepared food, and alcoholic beverages subject to tax under
24 this Article.

25 ...

26 **(9a)** Entertainment activity. – An activity listed in this subdivision:

27 a. A live performance or other live event of any kind, the purpose of
28 which is for entertainment.

29 b. A movie, motion picture, or film.

30 c. A museum, a cultural site, a garden, an exhibit, a show, or a similar
31 attraction.

32 d. A guided tour at any of the activities listed in sub-subdivision c. of this
33 subdivision.

34"

35 **SECTION 4.(i)** G.S. 105-164.4G reads as rewritten:

36 **"§ 105-164.4G. Entertainment activity.**

37 (a) ~~Definition.—The following definitions apply in this section:~~

38 ~~(1) Admission charge.—Gross receipts derived for the right to attend an~~
39 ~~entertainment activity. The term includes a charge for a single ticket, a~~
40 ~~multi-occasion ticket, a seasonal pass, and an annual pass; a membership fee~~
41 ~~that provides for admission; a cover charge; a surcharge; a convenience fee, a~~
42 ~~processing fee, a facility charge, a facilitation fee, or similar charge; or any~~
43 ~~other charges included in gross receipts derived from admission.~~

44 ~~(2) Amenity.—A feature that increases the value or attractiveness of an~~
45 ~~entertainment activity that allows a person access to items that are not subject~~
46 ~~to tax under this Article and that are not available with the purchase of~~
47 ~~admission to the same event without the feature. The term includes parking~~
48 ~~privileges, special entrances, access to areas other than general admission,~~
49 ~~mascot visits, and merchandise discounts. The term does not include any~~
50 ~~charge for food, prepared food, and alcoholic beverages subject to tax under~~
51 ~~this Article.~~

- 1 (3) Entertainment activity. — ~~An activity listed in this subdivision:~~
 2 a. ~~A live performance or other live event of any kind, the purpose of~~
 3 ~~which is for entertainment.~~
 4 b. ~~A movie, motion picture, or film.~~
 5 c. ~~A museum, a cultural site, a garden, an exhibit, a show, or a similar~~
 6 ~~attraction.~~
 7 d. ~~A guided tour at any of the activities listed in sub-subdivision c. of this~~
 8 ~~subdivision.~~

- 9 (4) Facilitator. — ~~A person who accepts payment of an admission charge to an~~
 10 ~~entertainment activity and who is not the operator of the venue where the~~
 11 ~~entertainment activity occurs.~~

12 (b) Tax. — The gross receipts derived from an admission charge to an entertainment
 13 activity are taxed at the general rate set in G.S. 105-164.4. The tax is due and payable by the
 14 retailer in accordance with G.S. 105-164.16. For purposes of the tax imposed by this section, the
 15 retailer is the applicable person listed below:

- 16 (1) The operator of the venue where the entertainment activity occurs, unless the
 17 retailer and the admission facilitator have a contract between them allowing
 18 for dual remittance, as provided in subsection (d) of this section.
 19 (2) The person that provides the entertainment and that receives admission
 20 charges directly from a purchaser.
 21 (3) A person other than a person listed in subdivision (1) or (2) of this subsection
 22 that receives gross receipts derived from an admission charge sold at retail.

23 (c) Admission Facilitator. — ~~A~~ An admission facilitator must report to the retailer with
 24 whom it has a contract the admission charge a consumer pays to the admission facilitator for an
 25 entertainment activity. The admission facilitator must send the retailer the portion of the gross
 26 receipts the admission facilitator owes the retailer and the tax due on the gross receipts derived
 27 from an admission charge no later than 10 days after the end of each calendar month. ~~A~~ An
 28 admission facilitator that does not send the retailer the tax due on the gross receipts derived from
 29 an admission charge is liable for the amount of tax the admission facilitator fails to send to the
 30 retailer. ~~A~~ An admission facilitator is not liable for tax sent to a retailer but not remitted by the
 31 retailer to the Secretary. Tax payments received by a retailer from ~~a~~ an admission facilitator are
 32 held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment
 33 from ~~a~~ an admission facilitator must remit the amount received to the Secretary. A retailer is not
 34 liable for tax due but not received from ~~a~~ an admission facilitator. The requirements imposed by
 35 this subsection on a retailer and ~~a~~ an admission facilitator are considered terms of the contract
 36 between the retailer and the admission facilitator.

37 (d) Dual Remittance. — The tax due on the gross receipts derived from an admission
 38 charge may be partially reported and remitted to the operator of the venue for remittance to the
 39 Department and partially reported and remitted by the admission facilitator directly to the
 40 Department. The portion of the tax not reported and remitted to the operator of the venue must
 41 be reported and remitted directly by the admission facilitator to the Department. ~~A~~ An admission
 42 facilitator that elects to remit tax under the dual remittance option is required to obtain a
 43 certificate of registration in accordance with G.S. 105-164.29. ~~A~~ An admission facilitator is
 44 subject to the provisions of Article 9 of this Chapter.

45 "

46 **SECTION 4.(j)** G.S. 105-164.3 reads as rewritten:

47 "**§ 105-164.3. Definitions.**

48 The following definitions apply in this Article:

49 ...

1 (38c) Service contract facilitator. – A person who contracts with the obligor of a
2 service contract to market the service contract and accepts payment from the
3 purchaser for the service contract.

4 "

5 **SECTION 4.(k)** G.S. 105-164.4I reads as rewritten:

6 "**§ 105-164.4I. Service contracts.**

7 (a) Tax. – The sales price of or the gross receipts derived from a service contract or the
8 renewal of a service contract sold at retail is subject to the general rate of tax set in G.S. 105-164.4
9 and is sourced in accordance with the sourcing principles in G.S. 105-164.4B. The retailer of a
10 service contract is required to collect the tax due at the time of the retail sale of the contract and
11 is liable for payment of the tax. The tax is due and payable in accordance with G.S. 105-164.16.

12 The retailer of a service contract is the applicable person listed below:

- 13 (1) When a service contract is sold at retail to a purchaser by the obligor under
14 the contract, the obligor is the retailer.
- 15 (2) When a service contract is sold at retail to a purchaser by a service contract
16 facilitator on behalf of the obligor under the contract, the service contract
17 facilitator is the retailer unless the provisions of subdivision (3) of this
18 subsection apply.
- 19 (3) When a service contract is sold at retail to a purchaser by a service contract
20 facilitator on behalf of the obligor under the contract and there is an agreement
21 between the service contract facilitator and the obligor that states the obligor
22 will be liable for the payment of the tax, the obligor is the retailer. The service
23 contract facilitator must send the retailer the tax due on the sales price of or
24 gross receipts derived from the service contract no later than 10 days after the
25 end of each calendar month. A service contract facilitator that does not send
26 the retailer the tax due on the sales price or gross receipts is liable for the
27 amount of tax the service contract facilitator fails to send. A service contract
28 facilitator is not liable for tax sent to a retailer but not remitted by the retailer
29 to the Secretary. Tax payments received by a retailer from a service contract
30 facilitator are held in trust by the retailer for remittance to the Secretary. A
31 retailer that receives a tax payment from a service contract facilitator must
32 remit the amount received to the Secretary. A retailer is not liable for tax due
33 but not received from a service contract facilitator. The requirements imposed
34 by this subdivision on a retailer and a service contract facilitator are
35 considered terms of the agreement between the retailer and the service
36 contract facilitator.

37 ...

38 (e) Definition.—~~For purposes of this section, the term "facilitator" means a person who~~
39 ~~contracts with the obligor of the service contract to market the service contract and accepts~~
40 ~~payment from the purchaser for the service contract."~~

41 **SECTION 4.(l)** G.S. 105-164.22 reads as rewritten:

42 "**§ 105-164.22. Record-keeping requirements, inspection authority, and effect of failure to**
43 **keep records.**

44 (a) Record Keeping Generally. – Retailers, wholesale merchants, facilitators, real
45 property contractors, and consumers must keep records that establish their tax liability under this
46 Article. The Secretary or a person designated by the Secretary may inspect these records at any
47 reasonable time during the day.

48 (b) Retailers. – A retailer's records must include records of the retailer's gross income,
49 gross sales, net taxable sales, ~~and all items purchased for resale.~~ resale, and any reports or records
50 related to transactions with a facilitator with whom it has a contract as provided in this Article.

1 Failure of a retailer to keep records that establish ~~that~~ a sale is exempt under this Article subjects
2 the retailer to liability for tax on the sale.

3 (c) Wholesale Merchants. – A wholesale merchant's records must include a bill of sale
4 for each customer that contains the name and address of the purchaser, the date of the purchase,
5 the item purchased, and the sales price at which the wholesale merchant sold of the item. A
6 wholesale merchant must also keep records that establish a sale is exempt from tax and any
7 reports or records related to transactions with a facilitator with whom it has a contract as provided
8 in this Article. Failure of a wholesale merchant to keep ~~these records for the sale of an item that~~
9 ~~establish a sale is exempt from tax under this Article~~ subjects the wholesale merchant to liability
10 for tax at the rate that applies to the retail sale of the item.

11 (d) Facilitators. – A facilitator's records must include records of the facilitator's gross
12 income, gross sales, net taxable sales, all items purchased for resale, any reports or records related
13 to transactions with a retailer with whom it has a contract as provided in this Article, and any
14 other records that establish its tax liability. Failure of a facilitator to keep records that establish a
15 sale is exempt from tax under this Article subjects the facilitator to liability for tax on the sale.

16 (e) Real Property Contractors. – A real property contractor's records must include
17 substantiation that a transaction is a real property contract or a mixed transaction contract
18 pursuant to G.S. 105-164.4H(a1). Failure of a real property contractor to keep records that
19 establish a real property contract under this Article subjects the real property contractor to
20 liability for tax on the sale.

21 (f) Consumers. – A consumer's records must include an invoice or other statement of the
22 purchase price of an item the consumer purchased from inside or outside the ~~State.~~ State and any
23 sales and use tax paid thereon. Failure of the consumer to keep these records subjects the
24 consumer to liability for tax on the purchase price of the item, as determined by the Secretary."

25 **SECTION 4.(m)** G.S. 105-164.3, as amended by subsection (a) of this section, reads
26 as rewritten:

27 **"§ 105-164.3. Definitions.**

28 The following definitions apply in this Article:

29 ...

30 ~~(1d)~~ (1d) Advertising and promotional direct mail. – Printed material that meets the
31 definition of "direct mail" and the primary purpose of which is to attract public
32 attention to ~~a product, an item,~~ person, business, or organization, or to attempt
33 to sell, popularize, or secure financial support for ~~a product, an item,~~ person,
34 business, or organization. ~~As used in this subdivision, "product" means~~
35 ~~tangible personal property, digital property, or a service.~~

36 (1e) Affiliate. – Defined in G.S. 105-130.2.

37 ...

38 ~~(1a)~~ (1g) Analytical services. – Testing laboratories that are included in national
39 industry 541380 of NAICS or medical laboratories that are included in
40 national industry 621511 of NAICS.

41 ~~(1b)~~ (1h) Ancillary service. – A service associated with or incidental to the
42 provision of a telecommunications service. The term includes detailed
43 communications billing, directory assistance, vertical service, and voice mail
44 service. A vertical service is a service, such as call forwarding, caller ID,
45 three-way calling, and conference bridging, that allows a customer to identify
46 a caller or manage multiple calls and call connections.

47 ~~(1f)~~ (1i) Audio work. – A series of musical, spoken, or other sounds, including a
48 ringtone.

49 ~~(1g)~~ (1j) Audiovisual work. – A series of related images and any sounds
50 accompanying the images that impart an impression of motion when shown
51 in succession.

- 1 ~~(1h)~~(1k) Aviation gasoline. – Defined in G.S. 105-449.60.
- 2 ~~(1i)~~(1l) Bundled transaction. – A retail sale of two or more distinct and identifiable
- 3 ~~products, items,~~ at least one of which is taxable and one of which is ~~exempt,~~
- 4 ~~nontaxable,~~ for one nonitemized price. The term does not apply to real
- 5 property ~~and~~ or services to real property. ~~Products-Items~~ are not sold for one
- 6 nonitemized price if an invoice or another sales document made available to
- 7 the purchaser separately identifies the price of each ~~product-item.~~ A bundled
- 8 transaction does not include the retail sale of any of the following:
- 9 a. ~~A product-An item~~ and any packaging ~~item~~ that accompanies the
- 10 ~~product item~~ and is exempt under G.S. 105-164.13(23).
- 11 b. A sale of two or more ~~products-items~~ whose combined price varies, or
- 12 is negotiable, depending on the ~~products-items~~ the purchaser selects.
- 13 c. A sale of ~~a product-an item~~ accompanied by a transfer of another
- 14 ~~product-item~~ with no additional consideration.
- 15 d. ~~A product-An item~~ and the delivery or installation of the ~~product-item.~~
- 16 e. ~~A product-An item~~ and any service necessary to complete the sale.
- 17 ~~(1k)~~(1m) Business. – An activity a person engages in or causes another to engage in
- 18 with the object of gain, profit, benefit, or advantage, either direct or indirect.
- 19 The term does not include an occasional and isolated sale or transaction by a
- 20 person who does not claim to be engaged in business.
- 21 ~~(1m)~~(1n) Cable service. – The one-way transmission to subscribers of video
- 22 programming or other programming service and any subscriber interaction
- 23 required to select or use the service.
- 24 ...
- 25 (2c) Capital improvement. – One or more of the following:
- 26 ...
- 27 k. An addition or alteration to real property that is permanently affixed
- 28 or installed to real property and is not an activity listed in subdivision
- 29 ~~(33f)~~(33m) of this section as repair, maintenance, and installation
- 30 services.
- 31 ...
- 32 (9) Engaged in business. – Any of the following:
- 33 a. Maintaining, occupying, or using permanently or temporarily, directly
- 34 or indirectly, or through a subsidiary or agent, by whatever name
- 35 called, any office, place of distribution, sales or sample room,
- 36 warehouse or storage place, or other place of business ~~for selling or~~
- 37 ~~delivering tangible personal property, digital property, or a service for~~
- 38 ~~storage, use, or consumption~~ in this State, or permanently or
- 39 temporarily, directly or through a subsidiary, having any
- 40 representative, agent, sales representative, marketplace facilitator
- 41 subject to the requirements of G.S. 105-164.4J, or solicitor operating
- 42 or transacting business by mobile phone application or other
- 43 applications in this State in the selling or delivering State. The fact
- 44 that any corporate retailer, agent, or subsidiary engaged in business in
- 45 this State may not be legally domesticated or qualified to do business
- 46 in this State is immaterial.
- 47 ...
- 48 e. Making marketplace-facilitated sales subject to the requirements of
- 49 G.S. 105-164.4J.
- 50 ...

- 1 (9e) Facilitator. – An accommodation facilitator, an admission facilitator, or a
 2 service contract facilitator.
 3 ...
- 4 ~~(20b)~~(20e) Mixed transaction contract. – A contract that includes both a real property
 5 contract for a capital improvement and repair, maintenance, and installation
 6 services for real property that are not related to the capital improvement.
 7 ...
- 8 (33j) Remote sale. – A sale of ~~tangible personal property or digital property~~ an item
 9 ordered by mail, by telephone, via the Internet, mobile phone application, or
 10 by another similar method, to a purchaser who is in this State at the time the
 11 order is remitted, from ~~method~~ by a retailer who receives the order in another
 12 state and delivers the ~~property item~~ or makes it accessible to a person in this
 13 State or causes ~~it the item~~ to be delivered or made accessible to a person in
 14 this State. State or performs a service sourced to this State. It is presumed that
 15 a resident of this State who ~~remits~~ makes an order was in this State at the time
 16 the order was ~~remitted~~ made.
 17 ...
- 18 ~~(33d)~~(33m) Repair, maintenance, and installation services. – The term includes the
 19 activities listed in this subdivision and applies to tangible personal property,
 20 motor ~~vehicle, vehicles,~~ certain digital property, and real property. The term
 21 does not include ~~services~~ a service used to fulfill a real property contract taxed
 22 in accordance with ~~G.S. 105-164.4H~~ G.S. 105-164.4H. The included
 23 activities are:
 24 ...
- 25 (35) Retailer. – Any of the following persons:
 26 a. A person engaged in business of making sales at retail, offering to
 27 make sales at retail, or soliciting sales at retail of ~~tangible personal~~
 28 ~~property, digital property for storage, use, or consumption in this State,~~
 29 ~~or services items~~ sourced to this State. When the Secretary finds it
 30 necessary for the efficient administration of this Article to regard any
 31 sales representatives, solicitors, representatives, consignees, peddlers,
 32 or truckers as agents of the dealers, distributors, consignors,
 33 supervisors, employers, or persons under whom they operate or from
 34 whom they obtain the items sold by them regardless of whether they
 35 are making sales on their own behalf or on behalf of these dealers,
 36 distributors, consignors, supervisors, employers, or persons, the
 37 Secretary may so regard them and may regard the dealers, distributors,
 38 consignors, supervisors, employers, or persons as "retailers" for the
 39 purpose of this Article.
 40 b. A person, other than a real property contractor, engaged in business of
 41 delivering, erecting, installing, or applying tangible personal property
 42 or digital property for use in this State.
 43 c. A person engaged in business of making a remote sale, if one of the
 44 conditions listed in G.S. 105-164.8(b) is met.
 45 d. A ~~person, other than a facilitator,~~ person required to collect the State
 46 tax levied under this Article or the local taxes levied under Subchapter
 47 VIII of this Chapter and under Chapter 1096 of the 1967 Session Laws.
 48 e. A marketplace facilitator that is subject to the requirements of
 49 G.S. 105-164.4J or a facilitator that is required to collect and remit the
 50 tax under this Article.
 51 "

1 **SECTION 4.(n)** There is no obligation to collect the sales and use tax required by
2 this section retroactively.

3 **SECTION 4.(o)** If any provision of this section, or the application of any provision
4 to a person or circumstance, is held to be invalid or unconstitutional, then the remainder of this
5 section, and the application of the provisions to any person or circumstance, shall not be affected
6 thereby.

7 **SECTION 4.(p)** The Revisor of Statutes is authorized to renumber the subdivisions
8 of G.S. 105-164.3 to ensure that the subdivisions are listed in alphabetical order and in a manner
9 that reduces the current use of alphanumeric designations, to make conforming changes, and to
10 reserve sufficient space to accommodate future additions to the statutory section.

11 **SECTION 4.(q)** This section becomes effective February 1, 2020, and applies to
12 sales occurring on or after that date.

13 14 **REVENUE LAWS STUDY OF TAX SUNSET PROVISIONS**

15 **SECTION 5.** G.S. 120-70.106(a) reads as rewritten:

16 (a) The Revenue Laws Study Committee may:

- 17 (1) Study the revenue laws of North Carolina and the administration of those laws.
- 18 (2) Review the State's revenue laws to determine which laws need clarification,
19 technical amendment, repeal, or other change to make the laws concise,
20 intelligible, easy to administer, and equitable.
- 21 (2a) Review any tax provision set to sunset within one year of the beginning of
22 next regular session of the General Assembly to determine whether the sunset
23 needs to be extended.
- 24 (3) Call upon the Department of Revenue to cooperate with it in the study of the
25 revenue laws.
- 26 (4) Report to the General Assembly at the beginning of each regular session
27 concerning its determinations of needed changes in the State's revenue laws.

28 These powers, which are enumerated by way of illustration, shall be liberally construed to
29 provide for the maximum review by the Committee of all revenue law matters in this State."
30

31 **TECHNICAL CHANGES**

32 **SECTION 6.** G.S. 105-164.13(61a) reads as rewritten:

33 (61a) The sales price of or the gross receipts derived from the repair, maintenance,
34 and installation services and service contracts listed in this subdivision are
35 exempt from tax. Except as otherwise provided in this subdivision, property
36 and services used to fulfill either a repair, maintenance, or installation service
37 or a service contract exempt from tax under this subdivision are taxable. The
38 list of repair, maintenance, and installation services and service contracts
39 exempt from tax under this subdivision is as follows:

40 ...

41 k. Self-service ~~car~~-vehicle wash or vacuum and limited-service vehicle
42 wash. For purposes of this sub-subdivision, the following definitions
43 apply:

- 44 1. Limited-service vehicle wash. – The cleaning of a vehicle by
45 mechanical means where the only activities performed by an
46 employee include one or more of the following: (i) receiving
47 payment for the transaction, (ii) guiding the vehicle into the
48 entrance or exit of a conveyor, (iii) applying low-pressure
49 spray of chemicals to the vehicle prior to the cleaning of the
50 vehicle, or (iv) placing protective tape or covers on the vehicle
51 prior to cleaning. The term does not include any activity

whereby an employee physically touches the vehicle for the purpose of cleaning or restoring the vehicle, enters or cleans any part of the interior of the vehicle, or performs an activity on the vehicle other than one of those listed in this sub-sub-subdivision.

- 2. Self-service vehicle wash or vacuum. – The cleaning of a vehicle by a customer without any cleaning or restoring activity performed by an employee."

SECTION 7.(a) Section 3.9(g) of S.L. 2019-169 reads as rewritten:

"SECTION 3.9.(g) This section is effective when it becomes law and applies to property management contracts entered into on or after that date. law. The provisions of G.S. 105-164.15A apply to the implementation of this change as if it is a decrease in the tax rate."

SECTION 7.(b) This section is effective when it becomes law and applies retroactively to July 26, 2019.

SECTION 8. G.S. 105-164.3(12) reads as rewritten:

"(12) Gross sales. – The sum total of the sales price of all sales of ~~items~~ tangible personal property, digital property, and services."

DOR/UPDATE ELECTRONIC TAX SYSTEMS TO SEND NOTICES TO TAXPAYER AND TAXPAYER'S POWER OF ATTORNEY

SECTION 8.1. The Department of Revenue shall update its electronic tax systems to store and recognize power of attorney registrations to ensure that notices generated by the Department are simultaneously sent to both the taxpayer and the person designated in the taxpayer's power of attorney registration. By January 31, 2020, the Department shall report to the Joint Legislative Oversight Committee on General Government on its progress in updating its electronic tax systems to store and recognize power of attorney registrations.

EFFECTIVE DATE

SECTION 9. Except as otherwise provided, this act is effective when it becomes law.