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SENATE BILL DRS15274-SVxf-11A*

Short Title: Tax Reduction Act of 2019.

(Public)

Sponsors: Senators Tillman, Hise, and Newton (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE STANDARD DEDUCTION, TO SIMPLIFY THE
3 FRANCHISE TAX BASE, TO LOWER THE FRANCHISE TAX RATE, TO REQUIRE
4 MARKETPLACE FACILITATORS TO COLLECT AND REMIT SALES AND USE TAX
5 ON MARKETPLACE FACILITATED SALES, AND TO MAKE OTHER TAX LAW
6 CHANGES.

7 The General Assembly of North Carolina enacts:

8
9 **PART I. PERSONAL INCOME TAX CHANGES**

10 **SECTION 1.1.(a)** G.S. 105-153.5(a)(1) reads as rewritten:

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

15 Filing Status	16 Standard Deduction
17 Married, filing jointly/surviving spouse	\$20,000 \$20,750
18 Head of Household	15,000 15,563
19 Single	10,000 10,375
20 Married, filing separately	10,000 10,375."

21 **SECTION 1.1.(b)** This section is effective for taxable years beginning on or after
22 January 1, 2021.

23 **SECTION 1.2.(a)** G.S. 105-153.5(a)(2)a. reads as rewritten:

24 "a. Charitable Contribution. – The amount allowed as a deduction for
25 charitable contributions under section 170 of the Code for that taxable
26 year. For taxable years ~~beginning on or after 2014, 2014 through 2018,~~
27 a taxpayer who elected to take the income exclusion under section
28 408(d)(8) of the Code for a qualified charitable distribution from an
29 individual retirement plan by a person who has attained the age of 70
30 1/2 may deduct the amount that would have been allowed as a
31 charitable deduction under section 170 of the Code had the taxpayer
32 not elected to take the income exclusion."

33 **SECTION 1.2.(b)** G.S. 105-153.5(c2)(3) reads as rewritten:

34 "(3) For taxable years ~~beginning on or after 2014, 2014 through 2018,~~ the taxpayer
35 must add the amount excluded from the taxpayer's gross income for a qualified
36 charitable distribution from an individual retirement plan by a person who has
attained age 70 1/2 under section 408(d)(8) of the Code. The purpose of this



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1 subdivision is to decouple from the income exclusion available under federal
2 tax law."

3 **SECTION 1.2.(c)** This section is effective when it becomes law.
4

5 **PART II. FRANCHISE TAX CHANGES**

6 **SECTION 2.1.(a)** G.S. 105-120.2(b) reads as rewritten:

7 "(b) Tax Rate. – Every corporation taxed under this section shall annually pay to the
8 Secretary of Revenue, at the time the return is due, the greater of the following:

9 (1) A franchise or privilege tax at the rate of ~~one dollar and fifty cents (\$1.50)~~ set
10 in G.S. 105-122(d2) per one thousand dollars (\$1,000) of the amount
11 determined under subsection (a) of this section, but in section. In no case shall
12 the tax be more than one hundred fifty thousand dollars (\$150,000) nor less
13 than two hundred dollars (\$200.00).

14 (2) If the tax calculated under this subdivision exceeds the tax calculated under
15 subdivision (1) of this subsection, then the tax is levied at the rate of ~~one dollar~~
16 ~~and fifty cents (\$1.50)~~ set in G.S. 105-122(d2) per one thousand dollars
17 (\$1,000) on the greater of the following: the total actual investment in tangible
18 property in this State of such corporation as computed under G.S. 105-122(d).

19 a. ~~Fifty five percent (55%) of the appraised value as determined for ad~~
20 ~~valorem taxation of all the real and tangible personal property in this~~
21 ~~State of each such corporation plus the total appraised value of~~
22 ~~intangible property returned for taxation of intangible personal~~
23 ~~property as computed under G.S. 105-122(d).~~

24 b. ~~The total actual investment in tangible property in this State of such~~
25 ~~corporation as computed under G.S. 105-122(d)."~~

26 **SECTION 2.1.(b)** G.S. 105-122(d)(2) is repealed.

27 **SECTION 2.1.(c)** G.S. 105-122(d2) reads as rewritten:

28 "(d2) Tax Rate. – For an electric power company or a company that is a member of a
29 qualified group, the tax rate is one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000)
30 of the company's tax base as determined under subsection (d) of this section. For purposes of this
31 subsection, the term "electric power company" has the same meaning as defined in
32 G.S. 105-130.4(s3) and the term "qualified group" means an affiliated group that has one or more
33 members that is an electric power company.

34 ~~For a C Corporation, For all other C Corporations, as defined in G.S. 105-130.2, [the] the tax~~
35 ~~rate is one dollar and fifty cents (\$1.50) one dollar and thirty cents (\$1.30) per one thousand~~
36 ~~dollars (\$1,000) of the corporation's tax base as determined under subsection (d) of this section.~~
37 ~~For an S Corporation, as defined in G.S. 105-130.2, the tax rate is two hundred dollars (\$200.00)~~
38 ~~for the first one million dollars (\$1,000,000) of the corporation's tax base as determined under~~
39 ~~subsection (d) of this section and one dollar and fifty cents (\$1.50) one dollar and thirty cents~~
40 ~~(\$1.30) per one thousand dollars (\$1,000) of its tax base that exceeds one million dollars~~
41 ~~(\$1,000,000).~~

42 In no event may the tax imposed by this section be less than two hundred dollars (\$200.00)."

43 **SECTION 2.1.(d)** This section is effective for taxable years beginning on or after
44 January 1, 2020, and applicable to the calculation of franchise tax reported on the 2019 and later
45 corporate income tax returns.

46 **SECTION 2.2.(a)** G.S. 105-122(d2), as amended by Section 2.1(c) of this Part, reads
47 as rewritten:

48 "(d2) Tax Rate. – For an electric power company or a company that is a member of a
49 qualified group, the tax rate is one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000)
50 of the company's tax base as determined under subsection (d) of this section. For purposes of this
51 subsection, the term "electric power company" has the same meaning as defined in

1 G.S. 105-130.4(s3) and the term "qualified group" means an affiliated group that has one or more
2 members that is an electric power company.

3 For all other C Corporations, as defined in G.S. 105-130.2, the tax rate is ~~one dollar and thirty~~
4 ~~cents (\$1.30)~~ one dollar (\$1.00) per one thousand dollars (\$1,000) of the corporation's tax base
5 as determined under subsection (d) of this section. For an S Corporation, as defined in
6 G.S. 105-130.2, the tax rate is two hundred dollars (\$200.00) for the first one million dollars
7 (\$1,000,000) of the corporation's tax base as determined under subsection (d) of this section and
8 ~~one dollar and thirty cents (\$1.30)~~ one dollar (\$1.00) per one thousand dollars (\$1,000) of its tax
9 base that exceeds one million dollars (\$1,000,000).

10 In no event may the tax imposed by this section be less than two hundred dollars (\$200.00)."

11 **SECTION 2.2.(b)** This section is effective for taxable years beginning on or after
12 January 1, 2021, and applicable to the calculation of franchise tax reported on the 2020 and later
13 corporate income tax returns.

14 **SECTION 2.3.(a)** G.S. 105-122(d2), as amended by Sections 2.1(c) and 2.2(a) of
15 this Part, reads as rewritten:

16 "(d2) Tax Rate. – ~~For an electric power company or a company that is a member of a~~
17 ~~qualified group, the tax rate is one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000)~~
18 ~~of the company's tax base as determined under subsection (d) of this section. For purposes of this~~
19 ~~subsection, the term "electric power company" has the same meaning as defined in G.S. 105-~~
20 ~~130.4(s3) and the term "qualified group" means an affiliated group that has one or more members~~
21 ~~that is an electric power company.~~

22 ~~For all other C Corporations,~~ For a C Corporation, as defined in G.S. 105-130.2, the tax rate
23 is one dollar (\$1.00) per one thousand dollars (\$1,000) of the corporation's tax base as determined
24 under subsection (d) of this section. For an S Corporation, as defined in G.S. 105-130.2, the tax
25 rate is two hundred dollars (\$200.00) for the first one million dollars (\$1,000,000) of the
26 corporation's tax base as determined under subsection (d) of this section and one dollar (\$1.00)
27 per one thousand dollars (\$1,000) of its tax base that exceeds one million dollars (\$1,000,000).

28 In no event may the tax imposed by this section be less than two hundred dollars (\$200.00)."

29 **SECTION 2.3.(b)** This section is effective for taxable years beginning on or after
30 January 1, 2027, and applicable to the calculation of franchise tax reported on the 2026 and later
31 corporate income tax returns.

32 33 **PART III. USE MARKET-BASED SOURCING FOR MULTISTATE INCOME TAX** 34 **APPORTIONMENT**

35 **SECTION 3.1.** G.S. 105-130.4 reads as rewritten:

36 "**§ 105-130.4. Allocation and apportionment of income for corporations.**

37 ...

38 (l) ~~(4)~~ Sales Factor. – The sales factor is a fraction, the numerator of which is the total
39 sales of the corporation in this State during the income year, and the denominator of which is the
40 total sales of the corporation everywhere during the income year. Notwithstanding any other
41 provision under this Part, the receipts from any casual sale of property shall be excluded from
42 both the numerator and the denominator of the sales factor. Where a corporation is not taxable in
43 another state on its apportionable income but is taxable in another state only because of
44 nonapportionable income, all sales shall be treated as having been made in this State.

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

- 1 (1) In the case of sale, rental, lease, or license of real property, if and to the extent
2 the property is located in this State.
- 3 (2) In the case of rental, lease, or license of tangible personal property, if and to
4 the extent the property is located in this State.~~Sales of tangible personal~~
5 ~~property are in this State if the property is received in this State by the~~
6 ~~purchaser. In the case of delivery of goods by common carrier or by other~~
7 ~~means of transportation, including transportation by the purchaser, the place~~
8 ~~at which the goods are ultimately received after all transportation has been~~
9 ~~completed shall be considered as the place at which the goods are received by~~
10 ~~the purchaser. Direct delivery into this State by the taxpayer to a person or~~
11 ~~firm designated by a purchaser from within or without the State shall~~
12 ~~constitute delivery to the purchaser in this State.~~
- 13 (3) In the case of sale of tangible personal property, if and to the extent the
14 property is received in this State by the purchaser. In the case of delivery of
15 goods by common carrier or by other means of transportation, including
16 transportation by the purchaser, the place at which the goods are ultimately
17 received after all transportation has been completed is considered the place at
18 which the goods are received by the purchaser. Direct delivery into this State
19 by the taxpayer to a person or firm designated by a purchaser from within or
20 without the State constitutes delivery to the purchaser in this State.~~Other sales~~
21 ~~are in this State if any of the following occur:~~
- 22 a. ~~The receipts are from real or tangible personal property located in this~~
23 ~~State, and includes receipts from incidental services sold as part of, or~~
24 ~~in connection with, the sale of tangible personal property in this State.~~
- 25 b. ~~The receipts are from intangible property and are received from~~
26 ~~sources within this State.~~
- 27 c. ~~The receipts are from services and the income producing activities are~~
28 ~~in this State. For the purposes of this subdivision, an~~
29 ~~"income producing activity" means an activity directly performed by~~
30 ~~the taxpayer or its agents for the ultimate purpose of generating the~~
31 ~~sale of the service. Receipts from income producing activities~~
32 ~~performed within and without this State are attributed to this State in~~
33 ~~proportion to the income producing activities performed in this State~~
34 ~~to total income producing activities performed everywhere that~~
35 ~~generate the sale of service.~~
- 36 (4) In the case of sale of a service, if and to the extent the service is delivered to
37 a location in this State.
- 38 (5) In the case of intangible property that is rented, leased, or licensed, if and to
39 the extent the property is used in this State. Intangible property utilized in
40 marketing a good or service to a consumer is "used in this State" if that good
41 or service is purchased by a consumer who is in this State.
- 42 (6) In the case of intangible property that is sold, if and to the extent the property
43 is used in this State. A contract right, government license, or similar intangible
44 property that authorized the holder to conduct a business activity in a specific
45 geographic area is "used in this State" if the geographic area includes all or
46 part of this State. Receipts from a sale of intangible property that is contingent
47 on the productivity, use, or disposition of the intangible property shall be
48 treated as receipts from the rental, lease, or licensing of the intangible property
49 as provided under subdivision (5) of this subsection. All other receipts from a
50 sale of intangible property shall be excluded from the numerator and
51 denominator of the sales factor.

1 (1) Broadcasters. – A broadcaster's market for receipts is in this State as provided in
 2 G.S. 105-130.4A. For purposes of this section, the term "broadcaster" has the same meaning as
 3 defined in G.S. 105-130.4A.

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

7

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

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

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

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

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

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

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

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

45 "

46 **SECTION 3.2.** Part 1 of Article 4 of Chapter 105 of the General Statutes is amended
 47 by adding a new section to read:

48 **"§ 105-130.4A. Market-based sourcing for broadcasters.**

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

- 1 (1) Audience factor. – The factor determined by the ratio provided in this
2 subdivision. The ratio is as follows:
3 a. Television station. – The ratio that the viewing audience located in this
4 State for a television station bears to the total viewing audience for a
5 television station.
6 b. Radio station. – The ratio that the listening audience in this State for a
7 radio station bears to the total listening audience for a radio station.
8 c. Cable or satellite program and channel broadcasts. – The ratio that the
9 subscribers for a cable or satellite system located in this State bears to
10 the total subscribers of a cable or satellite system. If the number of
11 subscribers cannot be accurately determined from the books and
12 records maintained by the taxpayer, the ratio shall be determined on
13 the basis of the applicable year's subscription statistics located in
14 published surveys, provided the source selected is consistently used
15 from year to year for this purpose.
16 (2) Broadcast. – The transmission of audio or video programming, directly or
17 indirectly, to viewers and listeners by any other method of communication or
18 combination of methods.
19 (3) Broadcaster. – A person that provides audio or video programming to
20 customers in this State by digital or analog means in exchange for one or more
21 of the following: advertising receipts, subscriber fees, license, rent, or similar
22 fees. The term includes a television or radio station licensed by the Federal
23 Communications Commission, including network-owned or affiliated
24 stations, a television or radio broadcast network, a cable program network, a
25 distributor of audio or video programming, a cable system operator, and
26 satellite system operator.
27 (4) Gross receipts. – The same meaning as the term "sales" in G.S. 105-130.4.
28 (5) Release or in release. – The placing of film or radio programming into service.
29 A film or radio program is placed into service when it is first broadcast to the
30 primary audience for entertainment, educational, commercial, artistic, or other
31 purposes. Each episode of a television or radio series is placed in service when
32 it is first broadcast. A program is not placed in service merely because it is
33 completed and therefore in a condition or state of readiness and availability
34 for broadcast or merely because it is previewed to prospective sponsors or
35 purchasers.
36 (6) Rent. – License fees or other payments or consideration provided in exchange
37 for the broadcast or other use of television or radio programming.
38 (7) Subscriber. – The individual residence or other outlet that is the ultimate
39 recipient of the transmission of the audio or video programming.
40 (b) Reasonable Approximation. – If the audience factor for a receipt cannot be
41 determined, the state or states of assignment shall be reasonably approximated. If a taxpayer is
42 delivering advertising or licensed content directly or indirectly to a known list of subscribers, the
43 taxpayer shall reasonably approximate the receipts attributable to this State's market using a
44 percentage that reflects the ratio of North Carolina subscribers to the total number of subscribers.
45 If the taxpayer is delivering advertising or licensed content through an intermediary and does not
46 have access to the list of subscribers, the taxpayer shall reasonably approximate the receipts
47 attributable to this State's market using a percentage that reflects the ratio of the North Carolina
48 population to the total population in the specific geographic area where the advertisement or
49 licensed content is materially used. Unless the taxpayer provides substantial evidence to the
50 contrary, the area where the advertisement or licensed content is materially used does not include
51 areas outside the United States. If the taxpayer is able to show with substantial evidence that the

1 advertisement or licensed content is materially used in a city within a foreign country, then the
2 population of that city may be included in the population ratio calculation. If the taxpayer is able
3 to show with substantial evidence that the advertisement or license content is materially used
4 throughout a foreign county, then the population of that foreign country may be included in the
5 population ratio calculation. In a case where the specified rules of reasonable approximation fail
6 to reasonably approximate the percentage of receipts attributable to this State's market, the
7 Department may authorize an alternate approach that reflects an attempt to obtain the most
8 accurate assignment of receipts.

9 (c) Market for Receipts. – The receipts factor of a broadcaster is a fraction, the numerator
10 of which is the sum of the broadcaster's gross receipts from sources within the State and the
11 denominator of which is the sum of the broadcaster's gross receipts from transactions and activity
12 in the regular course of its trade or business everywhere. Advertising gross receipts and license
13 fees for audio or video programming in release are attributable to this State in accordance with
14 the audience factor in this State. Gross receipts from subscriber fees, rents, sales, or similar
15 charges from audio or video programming in release are attributable to this State based on the
16 amount of subscriber or other fees paid by customers in this State. A sale of audio or video
17 programming on tangible media is sourced to this State as sales of tangible personal property."

18 **SECTION 3.3.** Part 1 of Article 4 of Chapter 105 of the General Statutes is amended
19 by adding a new section to read:

20 "**§ 105-130.4B. Market-based sourcing for banks.**

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

- 23 (1) Bank. – Defined in G.S. 105-130.7B.
- 24 (2) Billing address. – The location indicated in the books and records of the
25 taxpayer on the first day of the taxable year, or on the date in the taxable year
26 when the customer relationship began, as the address where any notice,
27 statement, or billing relating to the customer's account is mailed.
- 28 (3) Borrower, cardholder, or payor located in this State. – A borrower, credit
29 cardholder, or payor whose billing address is in this State.
- 30 (4) Card issuer's reimbursement fee. – The fee a taxpayer receives from a
31 merchant's bank because one of the persons to whom the taxpayer has issued
32 a credit, debit, or similar type of card has charged merchandise or services to
33 the card.
- 34 (5) Credit card. – A card, or other means of providing information, that entitles
35 the holder to charge the cost of purchases, or a cash advance against a line of
36 credit.
- 37 (6) Debit card. – A card, or other means of providing information, that enables
38 the holder to charge the cost of purchases, or a cash withdrawal, against the
39 holder's bank account or a remaining balance on the card.
- 40 (7) Loan. – Any extension of credit resulting from direct negotiations between the
41 taxpayer and its customer, and/or the purchase, in whole or in part, of such an
42 extension of credit from another. The term includes participations,
43 syndications, and leases treated as loans for federal income tax purposes.
- 44 (8) Loan secured by real property. – A loan or other obligation of which fifty
45 percent (50%) or more of the aggregate value of the collateral used to secure
46 the loan or other obligation, when valued at fair market value as of the time
47 the original loan or obligation was incurred, was real property.
- 48 (9) Merchant discount. – The fee, or negotiated discount, charged to a merchant
49 by the taxpayer for the privilege of participating in a program whereby a
50 credit, debit, or similar type of card is accepted in payment for merchandise
51 or services sold to the cardholder, net of any cardholder chargeback and

1 unreduced by any interchange transaction or issuer reimbursement fee paid to
2 another for charges or purchased made by its cardholder.

3 (10) Participation. – An extension of credit in which an undivided ownership
4 interest is held on a prorata basis in a single loan or pool of loans and related
5 collateral. In a loan participation, the credit originator initially makes the loan
6 and then subsequently resells all or a portion of it to other lenders. The
7 participation may or may not be known to the borrower.

8 (11) Payor. – The person who is legally responsible for making payment to the
9 taxpayer.

10 (12) Real property owned. – Real property (i) on which the taxpayer may claim
11 depreciation for federal income tax purposes, or (ii) to which the taxpayer
12 holds legal title and on which no other person may claim depreciation for
13 federal income tax purposes or could claim depreciation if subject to federal
14 income tax. Real property does not include coin, currency, or property
15 acquired in lieu of or pursuant to a foreclosure.

16 (13) Syndication. – An extension of credit in which two or more persons fund and
17 each person is at risk only up to a specified percentage of the total extension
18 of credit or up to a specified dollar amount.

19 (14) Tangible personal property owned. – Tangible personal property (i) on which
20 the taxpayer may claim depreciation for federal income tax purposes or (ii) to
21 which the taxpayer holds legal title and on which no other person may claim
22 depreciation for federal income tax purposes could claim depreciation if
23 subject to federal income tax. Tangible personal property does not include
24 coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

25 (15) Transportation property. – Vehicles and vessels capable of moving under their
26 own power as well as any equipment or containers attached to such property.
27 Examples of transportation property include aircraft, trains, water vessels,
28 motor vehicles, rolling stock, barges, and trailers.

29 (b) General Rule. – The receipts factor of a bank is a fraction, the numerator of which is
30 the total receipts of the taxpayer in this State during the income year, and the denominator of
31 which is the total receipts of the taxpayer everywhere during the income year. The method of
32 calculating receipts for purposes of the denominator is the same as the method used in
33 determining receipts for purposes of the numerator. The receipts factor includes only those
34 receipts described herein that are apportionable income for the taxable year. Notwithstanding any
35 other provision under this Part, the receipts from the following are excluded from both the
36 numerator and the denominator of the receipts factor:

37 (1) Receipts from a casual sale of property.

38 (2) Receipts exempt from taxation.

39 (3) The portion of receipts realized from the sale or maturity of securities or other
40 obligations that represents a return of principal.

41 (4) Receipts in the nature of dividends subtracted under G.S. 105-130.5(b)(3a)
42 and (3b) and dividends excluded for federal tax purposes.

43 (5) The portion of receipts from financial swaps and other similar financial
44 derivatives that represent the notional principal amount that generates the cash
45 flow traded in the swap agreement.

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

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

1 (1) Tangible personal property. – Except as provided in subdivision (2) of this
2 subsection, the numerator of the receipts factor includes receipts from the sale,
3 lease, or rental of tangible personal property owned by the taxpayer if the
4 property is located within this State when it is first placed in service by the
5 lessee.

6 (2) Transportation property. – Receipts from the lease or rental of transportation
7 property owned by the taxpayer are included in the numerator of the receipts
8 factor to the extent that the property is used in this State. The extent an aircraft
9 will be deemed to be used in this State and the amount of receipts that is to be
10 included in the numerator of this State's receipts factor is determined by
11 multiplying all the receipts from the lease or rental of the aircraft by a fraction,
12 the numerator of which is the number of landings of the aircraft in this State
13 and the denominator of which is the total number of landings of the aircraft.
14 If the extent of the use of any transportation property within this State cannot
15 be determined, then the property will be deemed to be used wholly in the state
16 in which the property has its principal base of operations. A motor vehicle will
17 be deemed to be used wholly in the state in which it is registered.

18 (e) Interest, Fees, and Penalties from Loans Secured by Real Property. – The numerator
19 of the receipts factor includes interest, fees, and penalties from loans secured by real property if
20 the property is located within this State. If the property is located both within this State and one
21 or more other states, the receipts described in this subsection are included in the numerator of the
22 receipts factor if more than fifty percent (50%) of the fair market value of the real property is
23 located within this State. If more than fifty percent (50%) of the fair market value of the real
24 property is not located within any one state, then the receipts described in this subsection are
25 included in the numerator of the receipts factor if the borrower is located in this State. The
26 determination of whether the real property securing a loan is located within this State is made as
27 of the time the original agreement was made and any and all subsequent substitutions of collateral
28 are disregarded.

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

32 (g) Net Gains from the Sale of Loans. – The numerator of the receipts factor includes net
33 gains from the sale of loans. Net gains from the sale of loans include income recorded under the
34 coupon stripping rules of section 1286 of the Code. The amount of net gains from the sale of
35 loans that is included in the numerator is determined as follows:

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

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

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

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

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

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

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

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

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

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

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

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

25 b. Net gains and other income, but not less than zero, from investment
26 assets and activities and trading assets and activities multiplied by a
27 fraction, the numerator of which is the amount included in the
28 numerator of the receipts factor pursuant to sub-subdivision a. of this
29 subdivision, and the denominator of which is the taxpayer's total
30 amount of interest and dividends from investment assets and activities
31 and trading assets and activities.

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

34 **SECTION 3.4.** The Utilities Commission shall adjust the rates for public utilities,
35 excluding water public utilities with less than two hundred thousand dollars (\$200,000) in annual
36 operating revenues, for the tax changes in Section 3.1 of this Part. Each utility shall calculate the
37 cumulative net effect of the tax changes and file the calculations with proposed rate changes to
38 reflect the net prospective tax changes in utility customer rates within 60 days of the enactment
39 of this act. Any adjustments required to existing tax assets or liabilities reflected in the utility's
40 books and records required by the tax changes shall be deferred and reflected in customer rates
41 in either the utility's next rate case or earlier if deemed appropriate by the Commission.

42 **SECTION 3.5.** Under Section 38.4 of S.L. 2016-94, the Department of Revenue
43 adopted and submitted to the Rules Review Commission rules regarding the implementation and
44 administration of market-based sourcing principles based on legislation proposed in that section.
45 The Department adopted the rules on January 4, 2017, and submitted the rules to the Rules
46 Review Commission on January 18, 2017. The Rules Review Commission approved the rules
47 and delivered to the Codifier of Rules on February 16, 2017. Pursuant to Section 38.4(b) of S.L.
48 2016-94, the Codifier of Rules did not enter the rules into the Administrative Code. The Codifier
49 of Rules is hereby directed by the General Assembly to enter the rules into the Administrative
50 Code on the effective date of this act, and the rules apply to taxable years beginning on or after
51 January 1, 2020.

1 **SECTION 3.6.** Sections 3.1 through 3.3 of this Part are effective for taxable years
2 beginning on or after January 1, 2020. The remainder of this Part is effective when it becomes
3 law.

4
5 **PART IV. MARKETPLACE FACILITATORS TO COLLECT SALES TAX**

6 **SECTION 4.1.(a)** G.S. 105-164.3 reads as rewritten:

7 **"§ 105-164.3. Definitions.**

8 The following definitions apply in this Article:

9 ...

10 (20a) Marketplace. – A physical or electronic place, forum, platform, application,
11 or other method by which a marketplace seller sells or offers to sell items, the
12 delivery of or first use of which is sourced to this State.

13 (20b) Marketplace facilitated sale. – The sale of an item by a marketplace facilitator
14 on behalf of a marketplace seller that occurs through a marketplace.

15 (20c) Marketplace facilitator. – A person that, directly or indirectly and whether
16 through one or more affiliates, does both of the following:

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

20 b. Does one or more of the following:

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

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

25 3. Transmits the offer or acceptance for the sale of the items.

26 (20d) Marketplace seller. – A person that sells or offers to sell items through a
27 marketplace regardless of any of the following:

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

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

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

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

34 "

35 **SECTION 4.1.(b)** G.S. 105-164.8(b) reads as rewritten:

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

39 ...

40 (3) The retailer solicits or transacts business in this State by employees,
41 independent contractors, agents, or other representatives, whether the remote
42 sales ~~thus~~ subject to taxation by this State result from or are related in any
43 other way to the solicitation or transaction of business. A retailer is presumed
44 to be soliciting or transacting business by an independent contractor, agent, or
45 other representative if the retailer enters into an agreement with a resident of
46 this State under which the ~~resident,~~ person, for a commission or other
47 consideration, directly or indirectly refers potential customers, whether by a
48 link on an Internet Web site or otherwise, to the retailer. This presumption
49 applies only if the cumulative gross receipts from sales by the retailer to
50 purchasers in this State who are referred to the retailer by all ~~residents~~ persons
51 with this type of agreement with the retailer is in excess of ten thousand dollars

1 (\$10,000) during the preceding four quarterly periods. This presumption may
2 be rebutted by proof that the ~~resident person~~ with whom the retailer has an
3 agreement did not engage in any solicitation in the State on behalf of the seller
4 that would satisfy the nexus requirement of the United States Constitution
5 during the four quarterly periods in question.

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

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

12 b. Two hundred or more separate transactions.

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

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

17 b. Two hundred or more separate transactions."

18 **SECTION 4.1.(c)** Part 2 of Article 5 of Chapter 105 of the General Statutes is
19 amended by adding a new section to read:

20 **"§ 105-164.4J. Marketplace facilitated sales.**

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

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

25 (2) Two hundred or more separate transactions.

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

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

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

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

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

41 (c) Report. – A marketplace facilitator must report to each marketplace seller for whom
42 it makes marketplace facilitated sales, the gross sales sourced to this State and the number of
43 separate transactions sourced to this State made on behalf of the marketplace seller. The report
44 shall be made no later than 10 days after the end of each calendar month.

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

48 (e) Class Actions. – No class action may be brought against a marketplace facilitator in
49 any court of this State on behalf of customers arising from or in any way related to an
50 overpayment of sales or use tax collected on facilitated sales by a marketplace facilitator.

1 regardless of whether that claim is characterized as a tax refund claim. Nothing in this subsection
2 affects a customer's right to seek a refund as provided under G.S. 105-164.11.

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

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

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

13 **SECTION 4.1.(d)** G.S. 105-237.1(a) reads as rewritten:

14 "(a) Authority. – The Secretary may compromise a taxpayer's liability for a tax that is
15 collectible under G.S. 105-241.22 when the Secretary determines that the compromise is in the
16 best interest of the State and makes one or more of the following findings:

17 ...

18 (8) A marketplace facilitator can show to the satisfaction of the Secretary that the
19 failure to collect the correct amount of tax was due to incorrect information
20 given to the marketplace facilitator by a marketplace seller."

21 **SECTION 4.2.(a)** G.S. 105-164.3 reads as rewritten:

22 "**§ 105-164.3. Definitions.**

23 The following definitions apply in this Article:

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

26 (1a) Accommodation facilitator. – A person that contracts, either directly or
27 indirectly, with a provider of an accommodation to do, either directly or
28 indirectly, one or more of the activities listed in this subdivision. The term
29 includes a real estate broker as defined in G.S. 93A-2. The activities are:

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

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

34"

35 **SECTION 4.2.(b)** G.S. 105-164.4F reads as rewritten:

36 "**§ 105-164.4F. Accommodation rentals.**

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

38 (1) ~~Accommodation.~~—~~A hotel room, a motel room, a residence, a cottage, or a~~
39 ~~similar lodging facility for occupaney by an individual.~~

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

43 (3) ~~Rental agent.~~—~~The term includes a real estate broker, as defined in G.S.~~
44 ~~93A-2.~~

45 (b) Tax. – The gross receipts derived from the rental of an accommodation are taxed at
46 the general rate set in G.S. 105-164.4. Gross receipts derived from the rental of an
47 accommodation include the sales price of the rental of the accommodation. The sales price of the
48 rental of an accommodation is determined as if the rental were a rental of tangible personal
49 property. The sales price of the rental of an accommodation ~~marketed~~ made by a ~~an~~
50 accommodation facilitator includes charges designated as ~~facilitation fees~~ fees, service fees,
51 listing fees, and any other charges necessary to complete the rental.

1 (b1) Retailer. – For purposes of the tax imposed by this section, the retailer is the
2 applicable person listed below. The liability of an accommodation facilitator for the tax imposed
3 by this section relieves the provider of the accommodation from liability. The retailer is:

4 (1) The provider of the accommodation if the provider of the accommodation
5 does any of the following with respect to the rental of the accommodation:

6 a. Collects payment for the accommodation at the time of the reservation.

7 b. Collects payment for the accommodation at the time the consumer
8 occupies or has the right to occupy the accommodation.

9 c. Contracts with an accommodation facilitator that makes the
10 reservation and collects credit card or other payment information at
11 the time of the reservation but does not collect payment for the
12 accommodation at the time of the reservation.

13 (2) The accommodation facilitator if the accommodation facilitator collects
14 payment or a deposit for the accommodation at the time of the reservation.

15 (c) Accommodation Facilitator Transactions. – For a transaction in which the rental of
16 an accommodation is made by an accommodation facilitator but the provider of the
17 accommodation is considered the retailer, the following provisions apply:

18 (1) ~~A~~The accommodation facilitator must report to the retailer ~~with whom it has~~
19 ~~a contract~~ the sales price a consumer pays to the facilitator for an ~~the~~
20 accommodation rental ~~marketed~~ made by the accommodation facilitator.

21 (2) A retailer must notify a ~~an~~ accommodation facilitator when an
22 accommodation rental ~~marketed~~ made by the accommodation facilitator is
23 completed, and the accommodation facilitator must send the retailer the
24 portion of the sales price the accommodation facilitator owes the retailer and
25 the tax due on the sales price no later than 10 days after the end of each
26 calendar month.

27 (3) An accommodation facilitator that does not send the retailer the tax due on the
28 sales price is liable for the amount of tax the accommodation facilitator fails
29 to send. ~~A~~An accommodation facilitator is not liable for tax sent to a retailer
30 but not remitted by the retailer to the Secretary. Tax payments received by a
31 retailer from a ~~an~~ accommodation facilitator are held in trust by the retailer
32 for remittance to the Secretary.

33 (4) A retailer that receives a tax payment from a ~~an~~ accommodation facilitator
34 must remit the amount received to the Secretary. A retailer is not liable for tax
35 due but not received from a ~~an~~ accommodation facilitator.

36 (5) The requirements imposed by this section on a retailer and a ~~an~~
37 accommodation facilitator are considered terms of the contract between the
38 retailer and the accommodation facilitator.

39 (c1) Accommodation Facilitator Report. – An accommodation facilitator must file with
40 the Secretary an annual report by March 31 of each year for the prior calendar year for
41 accommodation rentals for which it is not considered the retailer under subsection (b1) of this
42 section. The annual report must be provided in electronic format and include the property owner's
43 name, property owner's mailing address, physical location of the accommodation, rental activity
44 detail, available gross receipts information for rentals, and any other information deemed
45 necessary by the Secretary.

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

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

- 1 (1) A private residence, cottage, or similar accommodation that is rented for fewer
2 than 15 days in a calendar year ~~other than a private residence, cottage, or~~
3 ~~similar accommodation listed with a real estate broker or agent unless the~~
4 accommodation is rented by an accommodation facilitator that is considered
5 the retailer under subsection (b1) of this section.
- 6 (2) An accommodation supplied to the same person for a period of 90 or more
7 continuous days.
- 8 (3) An accommodation arranged or provided to a person by a school, camp, or
9 similar entity where a tuition or fee is charged to the person for enrollment in
10 the school, camp, or similar entity."

11 **SECTION 4.3.(a)** G.S. 105-164.3 reads as rewritten:

12 **"§ 105-164.3. Definitions.**

13 The following definitions apply in this Article:

- 14 ...
- 15 (1b) Admission charge. – Gross receipts derived for the right to attend an
16 entertainment activity. The term includes a charge for a single ticket, a
17 multi-occasion ticket, a seasonal pass, and an annual pass; a membership fee
18 that provides for admission; a cover charge; a surcharge; a convenience fee, a
19 processing fee, a facility charge, a facilitation fee, or similar charge; or any
20 other charges included in gross receipts derived from admission.
- 21 (1c) Admission facilitator. – A person who accepts payment of an admission
22 charge to an entertainment activity and who is not the operator of the venue
23 where the entertainment activity occurs.
- 24 ...
- 25 (1f) Amenity. – A feature that increases the value or attractiveness of an
26 entertainment activity that allows a person access to items that are not subject
27 to tax under this Article and that are not available with the purchase of
28 admission to the same event without the feature. The term includes parking
29 privileges, special entrances, access to areas other than general admission,
30 mascot visits, and merchandise discounts. The term does not include any
31 charge for food, prepared food, and alcoholic beverages subject to tax under
32 this Article.
- 33 ...
- 34 (9a) Entertainment activity. – An activity listed in this subdivision:
 - 35 a. A live performance or other live event of any kind, the purpose of
36 which is for entertainment.
 - 37 b. A movie, motion picture, or film.
 - 38 c. A museum, a cultural site, a garden, an exhibit, a show, or a similar
39 attraction.
 - 40 d. A guided tour at any of the activities listed in sub-subdivision c. of this
41 subdivision.

42"

43 **SECTION 4.3.(b)** G.S. 105-164.4G reads as rewritten:

44 **"§ 105-164.4G. Entertainment activity.**

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

- 46 (1) ~~Admission charge. – Gross receipts derived for the right to attend an~~
47 ~~entertainment activity. The term includes a charge for a single ticket, a~~
48 ~~multi-occasion ticket, a seasonal pass, and an annual pass; a membership fee~~
49 ~~that provides for admission; a cover charge; a surcharge; a convenience fee, a~~
50 ~~processing fee, a facility charge, a facilitation fee, or similar charge; or any~~
51 ~~other charges included in gross receipts derived from admission.~~

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

9 (3) ~~Entertainment activity.—An activity listed in this subdivision:~~

10 a. ~~A live performance or other live event of any kind, the purpose of~~
11 ~~which is for entertainment.~~

12 b. ~~A movie, motion picture, or film.~~

13 c. ~~A museum, a cultural site, a garden, an exhibit, a show, or a similar~~
14 ~~attraction.~~

15 d. ~~A guided tour at any of the activities listed in sub-subdivision c. of this~~
16 ~~subdivision.~~

17 (4) ~~Facilitator.—A person who accepts payment of an admission charge to an~~
18 ~~entertainment activity and who is not the operator of the venue where the~~
19 ~~entertainment activity occurs.~~

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

24 (1) The operator of the venue where the entertainment activity occurs, unless the
25 retailer and the admission facilitator have a contract between them allowing
26 for dual remittance, as provided in subsection (d) of this section.

27 (2) The person that provides the entertainment and that receives admission
28 charges directly from a purchaser.

29 (3) A person other than a person listed in subdivision (1) or (2) of this subsection
30 that receives gross receipts derived from an admission charge sold at retail.

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

45 (d) Dual Remittance. – The tax due on the gross receipts derived from an admission
46 charge may be partially reported and remitted to the operator of the venue for remittance to the
47 Department and partially reported and remitted by the admission facilitator directly to the
48 Department. The portion of the tax not reported and remitted to the operator of the venue must
49 be reported and remitted directly by the admission facilitator to the Department. ~~A~~ An admission
50 facilitator that elects to remit tax under the dual remittance option is required to obtain a

1 certificate of registration in accordance with G.S. 105-164.29. ~~A~~ An admission facilitator is
2 subject to the provisions of Article 9 of this Chapter.

3"

4 **SECTION 4.4.(a)** G.S. 105-164.3 reads as rewritten:

5 **"§ 105-164.3. Definitions.**

6 The following definitions apply in this Article:

7 ...

8 (38c) Service contract facilitator. – A person who contracts with the obligor of a
9 service contract to market the service contract and accepts payment from the
10 purchaser for the service contract.

11"

12 **SECTION 4.4.(b)** G.S. 105-164.4I reads as rewritten:

13 **"§ 105-164.4I. Service contracts.**

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

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

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

44 ...

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

48 **SECTION 4.5.(a)** G.S. 105-164.22 reads as rewritten:

49 **"§ 105-164.22. ~~Record-keeping~~ Recordkeeping requirements, inspection authority, and**
50 **effect of failure to keep records.**

1 (a) Recordkeeping Generally. – Retailers, wholesale merchants, facilitators, real property
 2 contractors, and consumers must keep records that establish their tax liability under this Article.
 3 The Secretary or a person designated by the Secretary may inspect these records at any reasonable
 4 time during the day.

5 (b) Retailers. – A retailer's records must include records of the retailer's gross income,
 6 gross sales, net taxable sales, ~~and all items purchased for resale.~~ and any reports or records
 7 related to transactions with a facilitator with whom it has a contract as provided in this Article.
 8 Failure of a retailer to keep records that establish ~~that~~ a sale is exempt under this Article subjects
 9 the retailer to liability for tax on the sale.

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

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

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

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

32 **SECTION 4.5.(b)** G.S. 105-164.3, as amended by Section 1 of this Part, reads as
 33 rewritten:

34 **"§ 105-164.3. Definitions.**

35 The following definitions apply in this Article:

36 ...

37 ~~(1)~~(1d) Advertising and promotional direct mail. – Printed material that meets the
 38 definition of "direct mail" and the primary purpose of which is to attract public
 39 attention to ~~a product, an item,~~ person, business, or organization, or to attempt
 40 to sell, popularize, or secure financial support for ~~a product, an item,~~ person,
 41 business, or organization. ~~As used in this subdivision, "product" means~~
 42 tangible personal property, digital property, or a service.

43 (1e) Affiliate. – Defined in G.S. 105-130.2.

44 ...

45 ~~(1a)~~(1g) Analytical services. – Testing laboratories that are included in national
 46 industry 541380 of NAICS or medical laboratories that are included in
 47 national industry 621511 of NAICS.

48 ~~(1b)~~(1h) Ancillary service. – A service associated with or incidental to the
 49 provision of a telecommunications service. The term includes detailed
 50 communications billing, directory assistance, vertical service, and voice mail
 51 service. A vertical service is a service, such as call forwarding, caller ID,

1 three-way calling, and conference bridging, that allows a customer to identify
2 a caller or manage multiple calls and call connections.

3 ~~(1f)~~(1i) Audio work. – A series of musical, spoken, or other sounds, including a
4 ringtone.

5 ~~(1g)~~(1j) Audiovisual work. – A series of related images and any sounds
6 accompanying the images that impart an impression of motion when shown
7 in succession.

8 ~~(1h)~~(1k) Aviation gasoline. – Defined in G.S. 105-449.60.

9 ~~(1i)~~(1l) Bundled transaction. – A retail sale of two or more distinct and identifiable
10 ~~products, items,~~ at least one of which is taxable and one of which is ~~exempt,~~
11 ~~nontaxable,~~ for one nonitemized price. The term does not apply to real
12 property ~~and or~~ services to real property. ~~Products-Items~~ are not sold for one
13 nonitemized price if an invoice or another sales document made available to
14 the purchaser separately identifies the price of each ~~product, item.~~ A bundled
15 transaction does not include the retail sale of any of the following:

16 a. ~~A product-An item~~ and any packaging ~~item~~ that accompanies the
17 ~~product item~~ and is exempt under G.S. 105-164.13(23).

18 b. A sale of two or more ~~products-items~~ whose combined price varies, or
19 is negotiable, depending on the ~~products-items~~ the purchaser selects.

20 c. A sale of a ~~product-an item~~ accompanied by a transfer of another
21 ~~product item~~ with no additional consideration.

22 d. ~~A product-An item~~ and the delivery or installation of the ~~product.item.~~

23 e. ~~A product-An item~~ and any service necessary to complete the sale.

24 ~~(1k)~~(1m) Business. – An activity a person engages in or causes another to engage in
25 with the object of gain, profit, benefit, or advantage, either direct or indirect.
26 The term does not include an occasional and isolated sale or transaction by a
27 person who does not claim to be engaged in business.

28 ~~(1m)~~(1n) Cable service. – The one-way transmission to subscribers of video
29 programming or other programming service and any subscriber interaction
30 required to select or use the service.

31 ...

32 (2c) Capital improvement. – One or more of the following:

33 ...

34 k. An addition or alteration to real property that is permanently affixed
35 or installed to real property and is not an activity listed in subdivision
36 ~~(33f)~~(33m) of this section as repair, maintenance, and installation
37 services.

38 ...

39 (9) Engaged in business. – Any of the following:

40 a. Maintaining, occupying, or using permanently or temporarily, directly
41 or indirectly, or through a subsidiary or agent, by whatever name
42 called, any office, place of distribution, sales or sample room,
43 warehouse or storage place, or other place of business ~~for selling or~~
44 ~~delivering tangible personal property, digital property, or a service for~~
45 ~~storage, use, or consumption~~ in this State, or permanently or
46 temporarily, directly or through a subsidiary, having any
47 representative, agent, sales representative, marketplace facilitator
48 subject to the requirements of G.S. 105-164.4J, or solicitor operating
49 or transacting business by mobile phone application or other
50 applications in this State in the selling or delivering. State. The fact
51 that any corporate retailer, agent, or subsidiary engaged in business in

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

- 1 d. A ~~person, other than a facilitator,~~ person required to collect the State
2 tax levied under this Article or the local taxes levied under Subchapter
3 VIII of this Chapter and under Chapter 1096 of the 1967 Session Laws.
4 e. A marketplace facilitator that is subject to the requirements of
5 G.S. 105-164.4J or a facilitator that is required to collect and remit the
6 tax under this Article.

7"

8 **SECTION 4.6.** There is no obligation to collect the sales and use tax required by this
9 Part retroactively.

10 **SECTION 4.7.** If any provision of this Part, or the application of any provision to a
11 person or circumstance, is held to be unconstitutional, then the remainder of this Part, and the
12 application of the provisions to any person or circumstance, shall not be affected thereby.

13 **SECTION 4.8.** The Revisor of Statutes is authorized to renumber the subdivisions
14 of G.S. 105-164.3 to ensure that the subdivisions are listed in alphabetical order and in a manner
15 that reduces the current use of alphanumeric designations, to make conforming changes, and to
16 reserve sufficient space to accommodate future additions to the statutory section.

17 **SECTION 4.9.** This Part becomes effective September 1, 2019, and applies to sales
18 occurring on or after that date.

19 **PART V. OTHER BUSINESS TAX CHANGES**

20 **SECTION 5.1.(a)** G.S. 105-130.5(b) reads as rewritten:

21 "(b) The following deductions from federal taxable income shall be made in determining
22 State net income:

23 ...

24
25 (31) To the extent included in federal taxable income, the amount received by a
26 taxpayer as an economic incentive pursuant to G.S. 143B-437.012 or Part 2G
27 or 2H of Article 10 of Chapter 143B of the General Statutes."

28 **SECTION 5.1.(b)** G.S. 105-153.5(b) reads as rewritten:

29 "(b) Other Deductions. – In calculating North Carolina taxable income, a taxpayer may
30 deduct from the taxpayer's adjusted gross income any of the following items that are included in
31 the taxpayer's adjusted gross income:

32 ...

33 (14) The amount received by a taxpayer as an economic incentive pursuant to
34 G.S. 143B-437.012 or Part 2G or 2H of Article 10 of Chapter 143B of the
35 General Statutes."

36 **SECTION 5.1.(c)** This section is effective for taxable years beginning on or after
37 January 1, 2019, and applies to amounts received by a taxpayer pursuant to an economic incentive
38 agreement entered into on or after that date.

39 **SECTION 5.2.** G.S. 105-129.110 reads as rewritten:

40 **"§ 105-129.110. Sunset.**

41 This Article expires for qualified rehabilitation expenditures and rehabilitation expenses
42 incurred on or after ~~January 1, 2020.~~ January 1, 2024. For qualified rehabilitation expenditures
43 and rehabilitation expenses incurred prior to ~~January 1, 2020,~~ January 1, 2024, this Article expires
44 for property not placed in service by ~~January 1, 2028.~~ January 1, 2032."

45 **SECTION 5.3.(a)** G.S. 105-164.13(11b) reads as rewritten:

46 "(11b) Sales of aviation gasoline and jet fuel to an interstate air business for use in a
47 commercial aircraft. For purposes of this subdivision, the term "commercial
48 aircraft" has the same meaning as defined in subdivision (45a) of this section.
49 This exemption also applies to aviation gasoline and jet fuel purchased for use
50 in a commercial aircraft in interstate or foreign commerce by a person whose

1 primary business is scheduled passenger air transportation. This subdivision
2 expires ~~January 1, 2020.~~ January 1, 2024."

3 **SECTION 5.3.(b)** G.S. 105-164.13(65) and (65a) read as rewritten:

4 "(65) This subdivision expires ~~January 1, 2020.~~ January 1, 2024. Sales of the
5 following to a professional motorsports racing team or a related member of a
6 team for use in competition in a sanctioned race series:

- 7 a. The sale, lease, or rental of an engine.
8 b. The sales price of or gross receipts derived from a service contract on,
9 or repair, maintenance, and installation services for, a transmission, an
10 engine, rear-end gears, and any other item that is purchased, leased, or
11 rented and that is exempt from tax under this subdivision or that is
12 allowed a sales tax refund under G.S. 105-164.14A(a)(5).
13 c. The gross receipts derived from an agreement to provide an engine to
14 a professional motorsports racing team or related member of a team
15 for use in competition in a sanctioned race series, where such
16 agreement does not meet the definition of a "service contract" as
17 defined in G.S. 105-164.3 but may meet the definition of the term
18 "lease or rental" as defined in G.S. 105-164.3.

19 (65a) An engine or a part to build or rebuild an engine for the purpose of providing
20 an engine under an agreement to a professional motorsports racing team or a
21 related member of a team for use in competition in a sanctioned race series.
22 This subdivision expires ~~January 1, 2020.~~ January 1, 2024."

23 **SECTION 5.3.(c)** G.S. 105-164.14A(a)(4) and (a)(5) read as rewritten:

24 "(4) Motorsports team or sanctioning body. – A professional motorsports racing
25 team, a motorsports sanctioning body, or a related member of such a team or
26 body is allowed a refund of the sales and use tax paid by it in this State on
27 aviation gasoline or jet fuel that is used to travel to or from a motorsports event
28 in this State, to travel to a motorsports event in another state from a location
29 in this State, or to travel to this State from a motorsports event in another state.
30 For purposes of this subdivision, a "motorsports event" includes a motorsports
31 race, a motorsports sponsor event, and motorsports testing. This subdivision
32 is repealed for purchases made on or after ~~January 1, 2020.~~ January 1, 2024.

33 (5) Professional motorsports team. – A professional motorsports racing team or a
34 related member of a team is allowed a refund of fifty percent (50%) of the
35 sales and use tax paid by it in this State on tangible personal property, other
36 than tires or accessories, that comprises any part of a professional motorsports
37 vehicle. For purposes of this subdivision, "motorsports accessories" includes
38 instrumentation, telemetry, consumables, and paint. This subdivision is
39 repealed for purchases made on or after ~~January 1, 2020.~~ January 1, 2024."

40 **SECTION 5.4.** Except as otherwise provided, this Part is effective when it becomes

41 law.

42 43 **PART VI. FACILITATE RESPONSE TO DISASTERS**

44 **SECTION 6.1.** Part 8 of Article 166A of the General Statutes is amended by adding
45 a new section to read:

46 **§ 166A-19.70A. Tax and business relief for critical infrastructure businesses and**
47 **employees during a disaster response period.**

48 (a) **Purpose.** – The State finds that it is appropriate to exempt from certain State laws
49 **businesses and employees who come from out-of-state to provide temporary resources and**
50 **personnel to assist in disaster-related work related to critical infrastructure in response to a**
51 **disaster declaration.**

- 1 (b) Definitions. – In addition to the definitions in G.S. 166A-19.3, the following
2 definitions apply in this section:
- 3 (1) Critical infrastructure. – Property and equipment owned or used by a critical
4 infrastructure company for utility or communications transmission services to
5 the public in the State. Examples of critical infrastructure include
6 communications networks, electric generation, transmission and distribution
7 systems, natural gas transmission and distribution systems, water pipelines,
8 and related support facilities. Related support facilities may include buildings,
9 offices, lines, poles, pipes, structures, and equipment.
- 10 (2) Critical infrastructure company. – One of the following:
11 a. A registered public communications provider.
12 b. A registered public utility.
- 13 (3) Disaster-related work. – Repairing, renovating, installing, building, or
14 performing services on critical infrastructure that has been damaged,
15 impaired, or destroyed as a result of a disaster or emergency in an area covered
16 by the disaster declaration.
- 17 (4) Disaster response period. – A period that begins ten days prior to the first day
18 of a disaster declaration and extends for 60 days following the expiration of
19 the disaster declaration.
- 20 (5) Out-of-state business. – A person that, except with regard to the performance
21 of disaster-related work, meets all of conditions of this subdivision. The term
22 may include an affiliate or subsidiary of a critical infrastructure company. The
23 conditions are as follows:
24 a. Has no physical presence in the State.
25 b. Does not conduct business operations in this State.
26 c. Is not registered with any State agency to conduct business in the State.
27 d. Has not been required to file any tax returns with the State for three
28 years prior to the disaster response period, other than those arising
29 from the performance of disaster-related work during a tax year prior
30 to the enactment of this section.
- 31 (6) Out-of-state employee. – A nonresident who is an employee of an out-of-state
32 business entitled to relief under subsection (c) of this section or a nonresident
33 employee of a critical infrastructure company temporarily in the State to
34 perform disaster-related work during the disaster response period. The term
35 does not include a nonresident who otherwise works in this State.
- 36 (7) Registered public communications provider. – A person registered to conduct
37 business in this State prior to the disaster declaration that provides the
38 transmission to the public of one or more of the following:
39 a. Broadband.
40 b. Mobile telecommunications.
41 c. Telecommunications.
42 d. Wireless Internet access.
- 43 (8) Registered public utility. – A person registered to conduct business in this
44 State prior to the disaster declaration that is subject to control of one or more
45 of the following entities:
46 a. North Carolina Utilities Commission.
47 b. Federal Communications Commission.
48 c. Federal Energy Regulatory Commission.
- 49 (c) State Relief for Out-of-State Business. – An out-of-state business performing
50 disaster-related work in this State during a disaster response period at the request of a critical

1 infrastructure company is not considered to be conducting business in this State, and as such is
2 exempt from the following statutory requirements:

- 3 (1) Franchise tax, as provided under G.S. 105-125.
- 4 (2) Income tax, as provided under G.S. 105-130.11.
- 5 (3) S-corporation income tax, as provided under G.S. 105-131.7.
- 6 (4) Information returns, as provided under G.S. 105-154(a).
- 7 (5) Unemployment tax, as provided under G.S. 96-9.2.
- 8 (6) Workers' compensation, as provided under G.S. 97-13.
- 9 (7) Registration with the Secretary of State to transact business in this State, as
10 provided under G.S. 55-1-51.

11 (d) State Relief for Out-of-State Employee. – An out-of-state employee is not required to
12 pay State income tax, or file an income tax return, on earnings received for disaster-related work
13 performed during a disaster response period, as provided in G.S. 105-153.4(f) and
14 G.S. 105-153.8(a)(2). The employer of an out-of-state employee is not required to withhold
15 income tax from the wages of the employee, as provided in G.S. 105-163.2(f).

16 (e) Notification. – A critical infrastructure company that requests an out-of-state business
17 to perform disaster-related work in this State during the disaster response period must notify the
18 State Emergency Response Team within 30 business days of the out-of-state business's entry into
19 the State of the business's presence in the State. The notification must include the contact
20 information of the critical infrastructure company that requested the presence of the out-of-state
21 business as well as the following information about the out-of-state business: name, state of
22 domicile, principal business address, federal tax identification number, date of entry, and any
23 other information required by the State Emergency Response Team. The State Emergency
24 Response Team must disseminate the information to the appropriate State agencies. Failure of
25 the critical infrastructure company to provide this information in a timely manner does not
26 invalidate the relief provided by this section so long as the company provides it to the appropriate
27 State agency upon request.

28 (f) Limitation. – The exemptions from the State laws provided by this section cease to
29 apply when the disaster response period expires. An out-of-state business or out-of-state
30 employee that remains in the State after the disaster response period expires must abide by all
31 State and local registration, license, and filing requirements that apply to any other out-of-state
32 business and out-of-state employee doing business in this State."

33 **SECTION 6.2.(a)** Article 1 of Chapter 55 of the General Statutes is amended by
34 adding a new section to read:

35 **"§ 55-1-51. Exemption for disaster relief.**

36 (a) Critical Infrastructure. – In accordance with the policy established in
37 G.S. 166A-19.70A, an out-of-state business performing disaster-related work in this State during
38 a disaster response period at the request of a critical infrastructure company is not required to
39 obtain a certificate of authority from the Secretary of State as otherwise required under
40 G.S. 55-15-01.

41 (b) Motor Fuel. – A person issued a temporary license by the Department of Revenue
42 under G.S. 105-449.69A to import, export, distribute, or transport motor fuel in this State in
43 response to a disaster declaration is not required to obtain a certificate of authority from the
44 Secretary of State to transact business in this State for the duration of the temporary license."

45 **SECTION 6.2.(b)** G.S. 96-9.2(a) reads as rewritten:

46 "(a) Required Contribution. – An employer is required to make a contribution in each
47 calendar year to the Unemployment Insurance Fund in an amount equal to the applicable
48 percentage of the taxable wages the employer pays its employees during the year for services
49 performed in this State. An employer may not deduct the contributions due in whole or in part
50 from the remuneration of the individuals employed. Taxable wages are determined in accordance

1 with G.S. 96-9.3. The applicable percentage for an employer is considered the employer's
2 contribution rate and determined in accordance with this section.

3 In accordance with the policy established in G.S. 166A-19.70A, an out-of-state business
4 performing disaster-related work in this State during a disaster response period at the request of
5 a critical infrastructure company is exempt from the provisions of this Chapter. The definitions,
6 provisions, and limitations in G.S. 166A-19.70A apply in this section."

7 **SECTION 6.2.(c)** G.S. 97-13 is amended by adding a new subsection to read:

8 "**§ 97-13. Exceptions from provisions of Article.**

9 (e) Disaster Relief. – In accordance with the policy established in G.S. 166A-19.70A, an
10 out-of-state business performing disaster-related work in this State during a disaster response
11 period at the request of a critical infrastructure company is exempt from the provisions of this
12 Chapter. The definitions, provisions, and limitations in G.S. 166A-19.70A apply in this
13 subsection."

14 **SECTION 6.2.(d)** G.S. 105-125(a) is amended by adding a new subdivision to read:

15 "**§ 105-125. Exempt corporations.**

16 (a) Exemptions. – The following corporations are exempt from the taxes levied by this
17 Article. Upon request of the Secretary, an exempt corporation must establish its claim for
18 exemption in writing:

19 ...

20 (9) In accordance with the policy established in G.S. 166A-19.70A, an
21 out-of-state business performing disaster-related work in this State during a
22 disaster response period at the request of a critical infrastructure company is
23 exempt from the provisions of this Article. The definitions, provisions, and
24 limitations in G.S. 166A-19.70A apply in this subdivision."

25 **SECTION 6.2.(e)** G.S. 105-130.11(a) is amended by adding a new subdivision to
26 read:

27 "(a) Exempt Organizations. – Except as provided in subsections (b) and (c), the following
28 organizations and any organization that is exempt from federal income tax under the Code are
29 exempt from the tax imposed under this Part.

30 ...

31 (12) In accordance with the policy established in G.S. 166A-19.70A, an
32 out-of-state business performing disaster-related work in this State during a
33 disaster response period at the request of a critical infrastructure company is
34 exempt from the provisions of this Part. The definitions, provisions, and
35 limitations in G.S. 166A-19.70A apply in this subdivision."

36 **SECTION 6.2.(f)** G.S. 105-131.7(a) reads as rewritten:

37 "(a) An S Corporation incorporated or doing business in the State shall file with the
38 Department an annual return, on a form prescribed by the Secretary, on or before the due date
39 prescribed for the filing of C Corporation returns in G.S. 105-130.17. The return shall show the
40 name, address, and social security or federal identification number of each shareholder, income
41 attributable to the State and the income not attributable to the State with respect to each
42 shareholder as defined in G.S. 105-131(b)(4) and (5), and such other information as the Secretary
43 may require.

44 In accordance with the policy established in G.S. 166A-19.70A, an S Corporation that is an
45 out-of-state business performing disaster-related work in this State during a disaster response
46 period at the request of a critical infrastructure company is not required to file an annual return
47 for income derived for the work performed during this period. The definitions, provisions, and
48 limitations in G.S. 166A-19.70A apply to this subsection."

49 **SECTION 6.2.(g)** G.S. 105-153.4 is amended by adding a new subsection to read:

50 "**§ 105-153.4. North Carolina taxable income defined.**

51 ...

1 (f) Disaster Relief Tax Exclusion. – In accordance with the policy established in
 2 G.S. 166A-19.70A, an out-of-state business and an out-of-state employee performing
 3 disaster-related work in this State during a disaster response period at the request of a critical
 4 infrastructure company is not considered to be conducting business in this State for the work
 5 performed during this period. The definitions, provisions, and limitations in G.S. 166A-19.70A
 6 apply to this subsection. Accordingly, North Carolina taxable income, for purposes of this Part,
 7 does not include the following:

- 8 (1) Nonresident employee. – The earnings paid to an out-of-state employee.
 9 (2) S Corporations shareholders. – A shareholder's pro rata share of S Corporation
 10 income if the income is attributable to work performed by the S Corporation
 11 as an out-of-state business performing disaster-related work in this State
 12 during a disaster response period at the request of a critical infrastructure
 13 company.
 14 (3) Partners and members of unincorporated business. – The amount of a partner's
 15 or member's distributive share of the total net income of the business of a
 16 partnership or another unincorporated business if the income is attributable to
 17 work performed by an out-of-state business performing disaster-related work
 18 in this State during a disaster response period at the request of a critical
 19 infrastructure company."

20 **SECTION 6.2.(h)** G.S. 105-153.8(a)(2) reads as rewritten:

21 "**§ 105-153.8. Income tax returns.**

22 (a) Who Must File. – The following individuals must file with the Secretary an income
 23 tax return under affirmation:

24 ...

- 25 (2) Every nonresident individual who ~~meets all of the following requirements:~~(i)
 26 has gross income under the Code that exceeds the applicable standard
 27 deduction amount provided in G.S. 105-153.5(a)(1) and (ii) receives
 28 a. ~~Receives~~ during the taxable year gross income that is derived from
 29 North Carolina sources and is attributable to the ownership of any
 30 interest in real or tangible personal property in this State, is derived
 31 from a business, trade, profession, or occupation carried on in this
 32 State, or is derived from gambling activities in this State. This
 33 subdivision does not apply to a nonresident individual who is not
 34 subject to withholding under G.S. 105-163.2(f).
 35 b. ~~Has gross income under the Code that exceeds the applicable standard~~
 36 deduction amount provided in G.S. 105-153.5(a)(1).

37 "

38 **SECTION 6.2.(i)** G.S. 105-154(c) reads as rewritten:

39 "(c) Information Returns of Partnerships. – A partnership doing business in this State and
 40 required to file a return under the Code shall file an information return with the Secretary. A
 41 partnership that the Secretary believes to be doing business in this State and to be required to file
 42 a return under the Code shall file an information return when requested to do so by the Secretary.
 43 The information return shall contain all information required by the Secretary. It shall state
 44 specifically the items of the partnership's gross income, the deductions allowed under the Code,
 45 each partner's distributive share of the partnership's income, and the adjustments required by this
 46 Part. A partner's distributive share of partnership net income includes any guaranteed payments
 47 made to the partner. The information return shall also include the name and address of each
 48 person who would be entitled to share in the partnership's net income, if distributable, and the
 49 amount each person's distributive share would be. The information return shall be signed by one
 50 of the partners under affirmation in the form required by the Secretary.

1 A partnership that files an information return under this subsection shall furnish to each
2 person who would be entitled to share in the partnership's net income, if distributable, any
3 information necessary for that person to properly file a State income tax return. The information
4 shall be in the form prescribed by the Secretary and must be furnished on or before the due date
5 of the information return.

6 In accordance with the policy established in G.S. 166A-19.70A, a partnership that is an
7 out-of-state business performing disaster-related work in this State during a disaster response
8 period at the request of a critical infrastructure company is not required to file an information
9 return for income derived for the work performed during this period. The definitions, provisions,
10 and limitations in G.S. 166A-19.70A apply to this subsection."

11 **SECTION 6.2.(j)** G.S. 105-163.2 reads as rewritten:

12 **"§ 105-163.2. Employers must withhold taxes.**

13 (a) Withholding Required. – ~~An~~ Except as provided in subsection (f) of this section, an
14 employer shall deduct and withhold from the wages of each employee the State income taxes
15 payable by the employee on the wages. For each payroll period, the employer shall withhold
16 from the employee's wages an amount that would approximate the employee's income tax
17 liability under Article 4 of this Chapter if the employer withheld the same amount from the
18 employee's wages for each similar payroll period in a calendar year. In calculating an employee's
19 anticipated income tax liability, the employer shall allow for the additions that employee is
20 required to make under Article 4 of this Chapter and the deductions, and credits to which the
21 employee is entitled under Article 4 of this Chapter. The amount of State income taxes withheld
22 by an employer is held in trust for the Secretary.

23 ...

24 (f) Nonresident Disaster Relief Employees. – In accordance with the policy established
25 in G.S. 166A-19.70A, an employer is not required to withhold from the wages of its out-of-state
26 employees the State income taxes that may otherwise apply for disaster-related work performed
27 in this State during a disaster response period. The definitions, provisions, and limitations in
28 G.S. 166A-19.70A apply in this subsection."

29 **SECTION 6.3.** G.S. 105-130.5(a) is amended by adding a new subdivision to read:

30 "(a) The following additions to federal taxable income shall be made in determining State
31 net income:

32 ...

33 (30) Payments made to a related party that is not subject to tax under this Chapter
34 in accordance with the policy established in G.S. 166A-19.70A, to the extent
35 the payments are deducted in determining federal taxable income. For
36 purposes of this subdivision, the term "related entity" has the same meaning
37 as in G.S. 105-130.7A(b)(4)."

38 **SECTION 6.4.** Part 2 of Article 36B of Chapter 105 of the General Statutes is
39 amended by adding a new section to read:

40 **"§ 105-449.69A. Temporary license during disaster response period.**

41 (a) Temporary License. – The Secretary may grant a temporary license to an applicant to
42 import, export, distribute, or transport motor fuel in this State in response to a disaster declaration.
43 The term "disaster declaration" has the same meaning as defined in G.S. 166A-19.3. The
44 temporary license expires upon the expiration of the disaster declaration. A temporary license
45 issued under this section may not be renewed or a new temporary license granted if the licensee
46 failed to file the required returns or make payments of the required taxes.

47 (b) Requirements. – To obtain a temporary license, a person must file an application with
48 the Secretary on a form prescribed by the Secretary within seven calendar days from the date of
49 the disaster declaration. An application must include all of the following information:

50 (1) The legal name of the business and the trade name, if applicable, under which
51 the person will transact business within the State.

- 1 (2) The federal identification number of the business or, if such number is
- 2 unavailable, the social security number of the owner.
- 3 (3) The location, with a street number address, of the principal office or place of
- 4 business and the location where records will be made available for inspection.
- 5 (4) Any other information required by the Secretary.
- 6 (c) Exceptions. – The Secretary may issue a temporary license under this section as an
- 7 importer, exporter, distributor, or transporter without requiring the applicant to file with the
- 8 Secretary a bond or an irrevocable letter of credit, as otherwise required by G.S. 105-449.72, and
- 9 without requiring the applicant to be authorized to transact business in this State with the
- 10 Secretary of State."

11 **SECTION 6.5.** This Part is effective when it becomes law and applies to taxable
12 years beginning on or after January 1, 2019.

13
14 **PART VII. EFFECTIVE DATE**

15 **SECTION 7.** Except as otherwise provided, this act is effective when it becomes
16 law.