

GENERAL ASSEMBLY OF NORTH CAROLINA

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SENATE BILL 1241  
Finance Committee Substitute Adopted 6/4/98  
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Short Title: Amendments to the Revenue Laws.

(Public)

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Sponsors:

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Referred to:

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May 21, 1998

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO MAKE THE REVENUE ACT PENALTIES UNIFORM, TO DELETE  
3 OBSOLETE AND INEFFECTIVE PENALTIES, TO GIVE NONPROFIT  
4 ENTITIES THREE YEARS TO FILE APPLICATIONS FOR REFUND OF TAXES  
5 PAID, TO PROVIDE THAT RULE 11 OF THE RULES OF CIVIL PROCEDURE  
6 APPLIES TO TAX APPEALS BEFORE THE TAX REVIEW BOARD, TO  
7 EXTEND THE SUNSET ON THE QUALIFIED BUSINESS INVESTMENT TAX  
8 CREDIT, TO AMEND THE QUALIFIED BUSINESS INVESTMENT TAX  
9 CREDIT TO PROVIDE AN INCENTIVE FOR INVESTMENT IN SMALL FILM  
10 PRODUCTION BUSINESSES, AND TO DIRECT THE REVENUE LAWS STUDY  
11 COMMITTEE TO STUDY WHETHER A TAXPAYER WHO PREVAILS IN AN  
12 ADMINISTRATIVE APPEAL OR A LAWSUIT SHOULD RECEIVE  
13 REIMBURSEMENT OF EXPENSES IN CERTAIN CIRCUMSTANCES.  
14 The General Assembly of North Carolina enacts:  
15                   Section 1. G.S. 105-16 reads as rewritten:  
16 "**§ 105-16. ~~Interest and penalty.~~ When tax must be paid.**

1 ~~All taxes~~ Taxes imposed by this Article are due within nine months after the death of  
2 ~~the decedent, shall be due and payable at the death of the testator, intestate, grantor, donor~~  
3 ~~or vendor; if not paid within nine months from date of death of the testator, intestate,~~  
4 ~~grantor, donor or vendor, such tax shall bear interest at the rate established pursuant to~~  
5 ~~G.S. 105-241.1(i), to be computed from the expiration of nine months from the date of~~  
6 ~~the death of such testator, intestate, grantor, donor or vendor until paid: Provided, that if~~  
7 ~~the taxes herein levied shall not be paid in full within nine months from the later of the~~  
8 ~~date of death of the testator, intestate, grantor, donor or vendor, or from the qualification~~  
9 ~~of the executor or administrator, then and in such case a penalty of ten per centum (10%)~~  
10 ~~upon the amount of taxes remaining due and unpaid shall be added: Provided further,~~  
11 ~~that the penalty of ten per centum (10%) herein imposed may be remitted by the~~  
12 ~~Secretary of Revenue in case of unavoidable delay in settlement of estate or of pending~~  
13 ~~litigation, and the Secretary of Revenue is further authorized, in case of protracted~~  
14 ~~litigation or other delay in settlement not attributable to laches of the party liable for the~~  
15 ~~tax, to remit all or any portion of the interest charges accruing under this schedule, with~~  
16 ~~respect to so much of the estate as was involved in such litigation or other unavoidable~~  
17 ~~cause of delay. Provided, that the time for payment and collection of such tax may be~~  
18 ~~extended by the Secretary of Revenue for reasonable cause shown."~~

19 Section 2. G.S. 105-22 reads as rewritten:

20 **"§105-22. Duties of clerks of superior court.**

21 ~~It shall be the duty of the~~ The clerk of the superior court ~~to~~ must obtain from ~~any~~ an  
22 executor or administrator, at the time of the qualification of ~~such~~ the executor or  
23 administrator, the address of the personal representative qualifying, the names and  
24 addresses of the heirs-at-law, legatees, distributees, devisees, etc., as far as practical, the  
25 approximate value and character of the property or estate, both real and personal, the  
26 relationship of the heirs-at-law, legatees, devisees, etc., to the decedents, and forward the  
27 same to the Secretary of Revenue on or before the tenth day of each month. The clerk  
28 shall make no report of a death if no inheritance tax return is required to be filed for the  
29 decedent's estate under G.S. 105-23 because the estate meets the requirements of  
30 subsection (b) of that section. ~~Any clerk of the superior court who shall fail, neglect, or~~  
31 ~~refuse to file such monthly reports as required by this section shall be liable to a penalty in the~~  
32 ~~sum of one hundred dollars (\$100.00) to be recovered by the Secretary of Revenue in an action~~  
33 ~~to be brought by the Secretary of Revenue."~~

34 Section 3. G.S. 105-29 reads as rewritten:

35 **"§ 105-29. Uniform valuation.**

36 When filing an inheritance tax return, the personal representative of an estate must  
37 report as the value of the estate the value that is reported on an estate tax return filed for  
38 the estate under the Code. If the federal government does not correct or otherwise  
39 determine the value of an estate reported on an estate tax return, the Secretary may  
40 determine the value based on evidence of any kind that becomes available to the  
41 Secretary from any source.

42 If the federal government corrects or otherwise determines the value of an estate  
43 reported on an estate tax return, the personal representative must, within two years after

1 being notified of the correction or final determination by the federal government, file an  
2 inheritance tax return with the Secretary reflecting the corrected or determined value. The  
3 Secretary must adopt the value as corrected or determined by the federal government for  
4 federal estate tax purposes. The Secretary shall assess and collect any additional tax due  
5 on the transfer of property in the estate as provided in Article 9 of this Chapter and shall  
6 refund any overpayment of tax as provided in Article 9 of this Chapter. A personal  
7 representative who fails to report a federal correction or determination is subject to the  
8 penalties in G.S. 105-236 and forfeits the right of the estate to any refund due by reason of  
9 the determination."

10 Section 4. G.S. 105-109 reads as rewritten:

11 "**§ 105-109. ~~Engaging in business without a license.~~ Obtaining license and paying tax.**

12 (a) When Tax Due. – All State license taxes under this Article or schedule, unless  
13 otherwise provided for, shall be due and payable annually on or before the first day of  
14 July of each year, or at the date of engaging in such business, trade, employment and/or  
15 profession, or doing the act.

16 (b) License Required. – Before a person may engage in a business, trade, or  
17 profession for which a license is required under this Article, the person must be licensed  
18 by the Department pursuant to G.S. 105-104. A license must be displayed conspicuously  
19 at the location of the licensed business, trade, or profession. ~~If any person, firm, or~~  
20 ~~corporation shall continue the business, trade, employment, or profession, or to do the act, after~~  
21 ~~the expiration of a license previously issued, without obtaining a new license, he or it shall be~~  
22 ~~guilty of a Class 1 misdemeanor, which may include a fine which shall not be less than twenty~~  
23 ~~percent (20%) of the tax in addition to the tax and the costs; and if such failure to apply for and~~  
24 ~~obtain a new license be continued, such person, firm, or corporation shall pay additional tax of~~  
25 ~~five per centum (5%) of the amount of the State license tax which was due and payable on the~~  
26 ~~first day of July of the current year, in addition to the State license tax imposed by this Article,~~  
27 ~~for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from~~  
28 ~~the date that same was due and payable, and such additional tax shall be assessed by the~~  
29 ~~Secretary of Revenue and paid with the State license tax, and shall become a part of the State~~  
30 ~~license tax. The penalties for delayed payment hereinbefore provided shall not impair the~~  
31 ~~obligation to procure a license in advance or modify any of the pains and penalties for failure to~~  
32 ~~do so.~~

33 ~~The provisions of this section shall apply to taxes levied by the counties of the State~~  
34 ~~under authority of this Article in the same manner and to the same extent as they apply to~~  
35 ~~taxes levied by the State.~~

36 (c) ~~If any person, firm, or corporation shall commence to exercise any privilege or~~  
37 ~~to promote any business, trade, employment, or profession, or to do any act requiring a~~  
38 ~~State license under this Article without such State license, he or it shall be guilty of a~~  
39 ~~Class 1 misdemeanor; and if such failure, neglect, or refusal to apply for and obtain such~~  
40 ~~State license be continued, such person, firm, or corporation shall pay an additional tax of~~  
41 ~~five per centum (5%) of the amount of such State license tax which was due and payable~~  
42 ~~at the commencement of the business, trade, employment or profession, or doing the act,~~  
43 ~~in addition to the State license tax imposed by this Article, for each and every 30 days, or~~  
44 ~~fraction thereof, that such State license tax remains unpaid from the date that same was~~

1 ~~due and payable, and such additional tax shall be assessed by the Secretary of Revenue~~  
2 ~~and paid with the State license tax and shall become a part of the State license tax.~~

3 (d) Penalties. – The penalties in G.S. 105-236 apply to this Article. The Secretary  
4 may collect a tax due under this Article in any manner allowed under Article 9 of this  
5 Chapter. If any person, firm, or corporation shall fail, refuse, or neglect to make immediate  
6 payment of any taxes due and payable under this Article, additional taxes, and/or any penalties  
7 imposed pursuant thereto, upon demand, the Secretary of Revenue shall certify the same to the  
8 sheriff of the county in which such delinquent lives or has his place of business, and such sheriff  
9 shall have the power and shall levy upon any personal or real property owned by such delinquent  
10 person, firm, or corporation, and sell the same for the payment of the said tax or taxes, penalty  
11 and costs, in the same manner as provided by law for the levy and sale of property for the  
12 collection of other taxes, and if sufficient property is not found, the said sheriff or deputy  
13 commissioner shall swear out a warrant for the violation of the provisions of this Article and as  
14 provided in this Article.

15 (e) Local License Taxes. – The penalty and collection provisions of this section  
16 apply to taxes levied by counties of the State under the authority of this Article in the  
17 same manner and to the same extent as they apply to taxes levied by the State. The  
18 provisions of this section for the collection of delinquent license taxes shall apply to  
19 license taxes levied by the cities and towns of this State under authority of this Article, or  
20 any other provision of law, in the same manner and to the same extent as they apply to  
21 taxes levied by the State and counties of this State: Provided, the municipal officer charged  
22 with the duty of collecting municipal taxes may exercise the powers vested in the sheriff by this  
23 section. State."

24 Section 5. G.S. 105-110 is repealed.

25 Section 6. G.S. 105-112 is repealed.

26 Section 7. G.S. 105-113.3(b) reads as rewritten:

27 "(b) Administration. —~~Except as provided in this section, Article 9 of this Chapter~~  
28 ~~applies to this Article. If a person fails or refuses to pay a tax due under this Article, a~~  
29 ~~penalty shall be added to the tax due in an amount equal to fifty percent (50%) of the tax~~  
30 ~~due."~~

31 Section 8. G.S. 105-113.87 reads as rewritten:

32 "**§ 105-113.87. Refund for excise tax paid on sacramental wine.**

33 (a) Refund Allowed. – A person who purchases wine for the purpose stated in G.S.  
34 18B-103(8) may obtain a refund from the Secretary for the amount of the excise tax  
35 levied under this Article. The Secretary shall make refunds annually.

36 (b) Application. – An applicant for a refund authorized by this section shall file a  
37 written request with the Secretary for the refund due for the prior calendar year on or  
38 before April 15. The Secretary may by rule prescribe what information and records shall  
39 be supplied by the applicant to qualify for the refund. No refund may be made if the  
40 application is filed more than three years after the date it is due.

41 (e) ~~Late Application.~~ — ~~An application for a refund filed later than required in~~  
42 ~~subsection (b) shall be accepted by the Secretary but shall be subject to the following late~~  
43 ~~penalties: an application filed by May 15, twenty-five percent (25%); an application filed~~

1 after May 15 but no later than October 15, fifty percent (50%). No refund may be made  
2 if the application is filed after October 15."

3 Section 9. G.S. 105-130.6 reads as rewritten:

4 **"§ 105-130.6. Subsidiary and affiliated corporations.**

5 The net income of a corporation doing business in this State ~~which that~~ is a parent,  
6 ~~subsidiary—subsidiary,~~ or affiliate of another corporation shall be determined by  
7 eliminating all payments to or charges by ~~a—the~~ parent, ~~subsidiary—subsidiary,~~ or affiliated  
8 corporation in excess of fair compensation in all intercompany transactions of any kind  
9 whatsoever. If the Secretary of Revenue ~~shall find—finds~~ as a fact that a report by ~~such—a~~  
10 corporation does not disclose the true earnings of ~~such—the~~ corporation on its business  
11 carried on in this State, the Secretary may require ~~that such—the~~ corporation to file a  
12 consolidated return of the entire operations of the parent corporation and of its  
13 subsidiaries and affiliates, including its own operations and ~~income, and shall income.~~ The  
14 Secretary shall determine the true amount of net income earned by such—the corporation in  
15 this State as provided herein—State. The combined net income of ~~such—the~~ corporation and  
16 of its parent, ~~subsidiaries—subsidiaries,~~ and affiliates shall be apportioned to this State by  
17 use of the applicable apportionment formula required to be used by ~~such—the~~ corporation  
18 under G.S. 105-130.4. ~~In such cases there shall be included—The return shall include~~ in the  
19 apportionment formula the property, ~~payrolls—payrolls,~~ and sales of all corporations for  
20 which the return is made. For the purposes of this section, a corporation ~~shall be deemed—is~~  
21 considered a subsidiary of another corporation hereby designated the parent corporation,  
22 when, directly or indirectly, it is subject to control by ~~such—the~~ other corporation by stock  
23 ownership, interlocking directors, or by any other means whatsoever exercised by the  
24 same or associated financial interests, whether ~~such—the~~ control is direct or through one or  
25 more subsidiary, affiliated, or controlled ~~corporations, and a corporations.~~ A corporation  
26 shall be deemed—is considered an affiliate of another corporation when both are directly or  
27 indirectly controlled by the same parent corporation or by the same or associated  
28 financial interests by stock ownership, interlocking directors, or by any other means  
29 whatsoever, whether ~~such—the~~ control be direct or through one or more subsidiary,  
30 ~~affiliated—affiliated,~~ or controlled corporations. ~~Upon such a finding by the Secretary of~~  
31 ~~Revenue,—The Secretary may require a the—consolidated return authorized by—under~~ this  
32 section ~~may be required—regardless of~~ whether the parent or controlling corporation or  
33 interests or its subsidiaries or affiliates, other than the taxpayer, are or are not doing  
34 business in this State.

35 If ~~such—a~~ consolidated return ~~is required and by this section~~ is not filed within 60 days  
36 after ~~demand, it is demanded,~~ said parent, subsidiary or affiliated corporation shall be  
37 subject to the penalty provided in this act for failure to file return and, in addition, shall  
38 be subject to the penalty provided in G.S. 105-230, and in such event the provisions of  
39 G.S. 105-236 shall apply. then the corporation is subject to the penalties provided in G.S.  
40 105-230 and G.S. 105-236.

41 ~~Such—The~~ parent, ~~subsidiary—subsidiary,~~ or affiliated corporation shall ~~must~~ incorporate  
42 in its return required under this section ~~such information as the Secretary of Revenue may~~  
43 reasonably require for the determination of—information needed to determine the net income

1 taxable under this ~~Division, Part,~~ and shall ~~must~~ furnish ~~such any~~ additional information as  
2 the Secretary ~~may reasonably require.~~ requires. If the return does not contain the  
3 information ~~therein~~ required or ~~such the~~ additional information requested is not furnished  
4 within 30 days after ~~demand, it is demanded,~~ the corporation shall ~~be subject to a penalty of~~  
5 ~~one hundred dollars (\$100.00) for each day's omission, in addition is subject to the penalty~~  
6 penalties provided in ~~G.S. 105-230.~~ G.S. 105-230 and G.S. 105-236.

7 If the Secretary finds that the determination of the income of a parent, ~~subsidiary~~  
8 subsidiary, or affiliated corporation under a consolidated return as ~~herein provided~~ will  
9 produce a greater or lesser figure than the amount of income earned in this State, ~~he the~~  
10 Secretary may readjust the determination by reasonable methods of computation to make  
11 it conform to the amount of income earned in this State; ~~and if State.~~ If the corporation  
12 contends the figure produced is greater than the earnings in this State, it shall ~~must~~ file  
13 with the Secretary within 30 days after notice of ~~such determination, file with the Secretary~~  
14 the determination a statement of its objections and of an alternative method of  
15 ~~determination with such detail and proof as the Secretary may require, and the determination.~~  
16 The Secretary shall must consider the ~~same statement~~ in determining the income earned in  
17 this State. ~~In making such determination, the~~ The findings and conclusions of the Secretary  
18 shall be presumed to be correct and shall not be set aside unless shown to be plainly  
19 wrong."

20 Section 10. G.S. 105-163.8 reads as rewritten:

21 "**§ 105-163.8. Liability of withholding agents and others.** agents.

22 (a) ~~Withholding Agents.~~—A withholding agent who withholds the proper amount  
23 of income taxes under this Article and pays the withheld amount to the Secretary is not  
24 liable to any person for the amount paid. A withholding agent who fails to withhold the  
25 proper amount of income taxes or pay the amount withheld to the Secretary is liable for  
26 the amount of tax not withheld or not paid. A withholding agent who fails to withhold  
27 the amount of income taxes required by this Article or who fails to pay withheld taxes by  
28 the due date for paying the taxes is subject to the penalties provided in Article 9 of this  
29 Chapter.

30 (b) ~~Others.~~—A person who ~~has a duty to deduct, account for, or pay taxes required~~  
31 ~~to be withheld under this Article and who fails to do so is liable for the amount of tax not~~  
32 ~~deducted, not accounted for, or not paid."~~

33 Section 11. G.S. 105-163.15(a) reads as rewritten:

34 "(a) In the case of any underpayment of the estimated tax by an individual, ~~there~~  
35 ~~shall be added to the tax imposed under Article 4 for the taxable year~~ the Secretary shall assess  
36 a penalty in an amount determined by applying the applicable annual rate established  
37 under G.S. 105-241.1(i) to the amount of the underpayment for the period of the  
38 underpayment."

39 Section 12. G.S. 105-164.14(d) reads as rewritten:

40 "(d) ~~Penalties for Late Applications.~~ —~~Refunds made pursuant to applications filed~~  
41 ~~after the dates specified in subsections (b) and (c) above are subject to the following~~  
42 ~~penalties for late filing: applications filed within 30 days after the due date, twenty five~~  
43 ~~percent (25%); applications filed after 30 days but within three years after the due date,~~

1 ~~fifty percent (50%).—Refunds applied for more than three years after the due date are~~  
2 ~~barred."~~

3 Section 13. G.S. 105-228.2(i) reads as rewritten:

4 "(i) ~~If any such freight line company or railroad company shall fail to pay the tax~~  
5 ~~levied herein when due a penalty of ten percent (10%) thereof shall immediately accrue~~  
6 ~~and thereafter one percent (1%) per month shall be added to such tax and penalty while~~  
7 ~~such tax remains unpaid. All provisions of laws for enforcing payment of taxes levied in~~  
8 ~~this Article shall be applicable to the gross earnings taxes of freight line companies. Any~~  
9 ~~freight line company against which a tax is assessed under the provisions of this Article~~  
10 ~~may appear and defend in any action brought for the collection of such tax. The~~  
11 ~~provisions of Article 9 of this Chapter apply to this Article."~~

12 Section 14. G.S. 105-231 is recodified as G.S. 105-230(b).

13 Section 15. G.S. 105-230, as amended by this act, reads as rewritten:

14 "**§ 105-230. Charter suspended for failure to report.**

15 If a corporation or a limited liability company fails to file any report or return or to  
16 pay any tax or fee required by this Subchapter for 90 days after it is due, the Secretary  
17 shall inform the Secretary of State of this failure. The Secretary of State shall suspend the  
18 articles of incorporation, articles of organization, or certificate of authority, as  
19 appropriate, of the corporation or limited liability company. The Secretary of State shall  
20 immediately notify by mail every domestic or foreign corporation or limited liability  
21 company so suspended of its suspension. The powers, privileges, and franchises  
22 conferred upon the corporation or limited liability company by the articles of  
23 incorporation, the articles of organization, or the certificate of authority terminate upon  
24 suspension. The Secretary of State shall immediately notify by mail every domestic or foreign  
25 corporation or limited liability company of the suspension.

26 (b) ~~Penalty for exercising functions after suspension of articles or certificate.~~

27 ~~A person who exercises or by any act attempts to exercise any powers, privileges, or~~  
28 ~~franchises under articles of incorporation, articles of organization, or a certificate of~~  
29 ~~authority after it has been suspended under G.S. 105-230 shall pay a penalty of not less~~  
30 ~~than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000), to be~~  
31 ~~recovered in an action to be brought by the Secretary in the Superior Court of Wake~~  
32 ~~County.—Any act performed or attempted to be performed during the period of~~  
33 ~~suspension is invalid and of no effect."~~

34 Section 16. G.S. 105-236 reads as rewritten:

35 "**§ 105-236. Penalties.**

36 Penalties assessed by the Secretary under this Subchapter are assessed as an additional  
37 tax. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237,  
38 the following penalties shall be applicable:

- 39 (1) Penalty for Bad Checks. – When the bank upon which any uncertified  
40 check tendered to the Department of Revenue in payment of any  
41 obligation due to the Department returns the check because of  
42 insufficient funds or the nonexistence of an account of the drawer, the  
43 Secretary shall assess an additional tax a penalty equal to ten percent

1 (10%) of the ~~check shall be imposed, check,~~ subject to a minimum of one  
2 dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). This  
3 penalty does not apply if the Secretary finds that, when the check was  
4 presented for payment, the drawer of the check had sufficient funds in  
5 an account at a financial institution in this State to pay the check and, by  
6 inadvertence, the drawer of the check failed to draw the check on the  
7 account that had sufficient funds. The ~~additional tax penalty~~ imposed  
8 may not be waived or diminished by the Secretary.

9 (1a) Penalty for Bad Electronic Funds Transfer. – When an electronic funds  
10 transfer cannot be completed due to insufficient funds or the  
11 nonexistence of an account of the transferor, the Secretary shall assess a  
12 penalty equal to ten percent (10%) of the amount of the transfer, subject  
13 to a minimum of one dollar (\$1.00) and a maximum of one thousand  
14 dollars (\$1,000). This penalty may be waived by the Secretary in  
15 accordance with G.S. 105-237.

16 (1b) Making Payment in Wrong Form. – For making a payment of tax in a  
17 form other than the form required by the Secretary pursuant to G.S. 105-  
18 241(a), the Secretary shall assess a penalty equal to five percent (5%) of  
19 the amount of the tax, subject to a minimum of one dollar (\$1.00) and a  
20 maximum of one thousand dollars (\$1,000). This penalty may be  
21 waived by the Secretary in accordance with G.S. 105-237.

22 (2) Failure to Obtain a License. – For failure to obtain a license before  
23 engaging in a business, trade or profession for which a license is  
24 required, ~~there shall be assessed an additional tax~~ the Secretary shall assess  
25 a penalty equal to five percent (5%) of the amount prescribed for the  
26 license per month or fraction thereof until paid, ~~which additional tax shall~~  
27 ~~not~~ not to exceed twenty-five percent (25%) of the amount so  
28 prescribed, but in any event shall not be less than five dollars (\$5.00).

29 (3) Failure to File Return. – In case of failure to file any return on the date  
30 ~~prescribed therefor (determined it is due, determined~~ with regard to any  
31 extension of time for ~~filing), unless it is shown that the failure is due to~~  
32 ~~reasonable cause, there shall be added to the amount required to be shown as~~  
33 ~~tax on the return, as a penalty, filing,~~ the Secretary shall assess a penalty  
34 equal to five percent (5%) of the amount of the tax if the failure is for  
35 not more than one month, with an additional five percent (5%) for each  
36 additional month, or fraction thereof, during which the failure continues,  
37 not exceeding twenty-five percent (25%) in the aggregate, or five  
38 dollars (\$5.00), whichever is the greater.

39 (4) Failure to Pay Tax When Due. – In the case of failure to pay any tax  
40 when due, without intent to evade the tax, ~~there shall be an additional tax,~~  
41 ~~as a penalty, of~~ the Secretary shall assess a penalty equal to ten percent  
42 (10%) of the tax; provided, that such the penalty shall in no event be less



1 than five dollars (\$5.00). This penalty does not apply in any of the  
2 following circumstances:

- 3 a. When the amount of tax shown as due on an amended return is  
4 paid when the return is filed.  
5 b. When a tax due but not shown on a return is assessed by the  
6 Secretary and is paid within 30 days after the date of the  
7 proposed notice of assessment of the tax.

8 (5) Negligence. –

- 9 a. ~~Most cases.~~ Finding of negligence. – For negligent failure to  
10 comply with any of the provisions to which this Article applies,  
11 or rules issued pursuant thereto, without intent to defraud, ~~there~~  
12 ~~shall be assessed, as a penalty, an additional tax of the Secretary shall~~  
13 ~~assess a penalty equal to ten percent (10%) of the deficiency due~~  
14 ~~to the negligence.~~  
15 b. Large income tax deficiency. – In the case of income tax, if a  
16 taxpayer understates ~~gross income, overstates deductions from~~  
17 ~~gross income, other than personal exemptions, makes erroneous~~  
18 ~~adjustments to federal taxable income, or does any combination~~  
19 ~~of these, and the combined errors equal or exceed taxable~~  
20 ~~income, by any means, by an amount equal to twenty-five~~  
21 ~~percent (25%) or more of gross income, the penalty assessed~~  
22 ~~shall be the Secretary shall assess a penalty equal to twenty-five~~  
23 ~~percent (25%) of the deficiency. For purposes of this subdivision,~~  
24 ~~'gross income' means gross income as defined in section 61 of the~~  
25 ~~Code. Code and "deductions" means deductions allowed in~~  
26 ~~arriving at federal taxable income.~~  
27 c. ~~Large sales~~ Other large tax deficiency. – In the case of a tax other  
28 than income tax, sales and use taxes, if a taxpayer understates ~~total~~  
29 ~~tax liability by twenty-five percent (25%) or more as a result of~~  
30 ~~one or more of the following reasons, the penalty assessed shall be~~  
31 ~~more, the Secretary shall assess a penalty equal to twenty-five~~  
32 ~~percent (25%) of the deficiency. total deficiency:~~  
33 1. ~~Omission or understatement of gross sales, gross receipts,~~  
34 ~~or gross purchases.~~  
35 2. ~~Overstatement of exemptions or deductions.~~  
36 3. ~~Incorrect application of a lesser rate of tax.~~  
37 d. ~~No double penalty.~~ double penalty. – If a penalty is assessed under  
38 subdivision (6) of this section, no additional penalty for  
39 negligence shall be assessed with respect to the same deficiency.  
40 e. Inheritance and gift tax deficiencies. – This subdivision does not  
41 apply to inheritance and gift tax deficiencies that are the result of  
42 valuation understatements.

- 1 (5a) Misuse of Certificate of Resale. – For misuse of a certificate of resale by  
2 a purchaser, the Secretary shall assess ~~an additional tax, as a penalty, of~~  
3 penalty equal to two hundred fifty dollars (\$250.00).
- 4 (5b) Road Tax Understatement. – If a motor carrier understates its liability  
5 for the road tax imposed by Article 36B of this Chapter by twenty-five  
6 percent (25%) or more, the Secretary shall assess the motor carrier a  
7 penalty in an amount equal to two times the amount of the deficiency.
- 8 (6) Fraud. – If there is a deficiency or delinquency in payment of any tax  
9 because of fraud with intent to evade the tax, ~~there shall be assessed, as a~~  
10 ~~penalty, an additional tax~~ the Secretary shall assess a penalty equal to fifty  
11 percent (50%) of the total deficiency.
- 12 (7) Attempt to Evade or Defeat Tax. – Any person who willfully attempts,  
13 or any person who aids or abets any person to attempt in any manner to  
14 evade or defeat a tax or its payment, shall, in addition to other penalties  
15 provided by law, be guilty of a Class I felony which may include a fine  
16 up to twenty-five thousand dollars (\$25,000).
- 17 (8) Willful Failure to Collect, Withhold, or Pay Over Tax. – Any person  
18 required to collect, withhold, account for, and pay over any tax who  
19 willfully fails to collect or truthfully account for and pay over the tax  
20 shall, in addition to other penalties provided by law, be guilty of a Class  
21 1 misdemeanor. Notwithstanding any other provision of law, no  
22 prosecution for a violation brought under this subdivision shall be  
23 barred before the expiration of three years after the date of the violation.
- 24 (9) Willful Failure to File Return, Supply Information, or Pay Tax. – Any  
25 person required to pay any tax, to make a return, to keep any records, or  
26 to supply any information, who willfully fails to pay the tax, make the  
27 return, keep the records, or supply the information, at the time or times  
28 required by law, or rules issued pursuant thereto, shall, in addition to  
29 other penalties provided by law, be guilty of a Class 1 misdemeanor.  
30 Notwithstanding any other provision of law, no prosecution for a  
31 violation brought under this subdivision shall be barred before the  
32 expiration of three years after the date of the violation.
- 33 (9a) Aid or Assistance. – Any person, pursuant to or in connection with the  
34 revenue laws, who willfully aids, assists in, procures, counsels, or  
35 advises the preparation, presentation, or filing of a return, affidavit,  
36 claim, or any other document that the person knows is fraudulent or  
37 false as to any material matter, whether or not the falsity or fraud is with  
38 the knowledge or consent of the person authorized or required to present  
39 or file the return, affidavit, claim, or other document, shall be guilty of a  
40 Class I felony which may include a fine up to ten thousand dollars  
41 (\$10,000).
- 42 (10) Failure to File Informational Returns. –

1 a. ~~For failure to file a partnership or a fiduciary informational return~~  
2 ~~when the return is due to be filed, there shall be assessed as a tax~~  
3 ~~against the delinquent five dollars (\$5.00) per month or fraction~~  
4 ~~thereof of the delinquency, this penalty, however, in the~~  
5 ~~aggregate not to exceed twenty-five dollars (\$25.00). When~~  
6 ~~assessed against a fiduciary, the penalty shall be paid by the~~  
7 ~~fiduciary and shall not be passed on to the trust or estate. No tax~~  
8 ~~may be assessed against the delinquent when it is a partnership as~~  
9 ~~defined under Section 6231(a)(1)(B) of the Code and no penalty~~  
10 ~~could be assessed as provided by Rev. Proc. 84-35, except that~~  
11 ~~for the purpose of Section 3.01 of that procedure "the~~  
12 ~~Department of Revenue" is substituted for "the Internal Revenue~~  
13 ~~Service".~~

14 b. ~~For failure to file timely statements of payments to another~~  
15 ~~person with respect to wages, dividends, rents, or interest paid to~~  
16 ~~that person, there shall be assessed as a tax a penalty of one~~  
17 ~~dollar (\$1.00) for each statement not filed on time, the aggregate~~  
18 ~~of the penalties for each tax year not to exceed one hundred~~  
19 ~~dollars (\$100.00), and in addition thereto, if the Secretary~~  
20 ~~requests the payer to file the statements and sets a date by which~~  
21 ~~the statements must be filed, and The Secretary may request a~~  
22 ~~person who fails to file timely statements of payment to another~~  
23 ~~person with respect to wages, dividends, rents, or interest paid to~~  
24 ~~that person to file the statements by a certain date. If the payer~~  
25 ~~fails to file the statements within this time, by that date, the~~  
26 ~~amounts claimed on payer's income tax return as deductions for~~  
27 ~~salaries and wages, or rents or interest shall be disallowed to the~~  
28 ~~extent that the payer failed to comply with the Secretary's request~~  
29 ~~with respect to the statements.~~

30 c. For failure to file an informational return required by Article 36C  
31 or 36D of this Chapter by the date the return is due, there shall be  
32 assessed as a tax a penalty of fifty dollars (\$50.00).

33 (11) Any violation of Subchapter I, V, or VIII of this Chapter or of Article 3  
34 of Chapter 119 of the General Statutes is considered an act committed in  
35 part at the office of the Secretary in Raleigh. The certificate of the  
36 Secretary that a tax has not been paid, a return has not been filed, or  
37 information has not been supplied, as required by law, is prima facie  
38 evidence that the tax has not been paid, the return has not been filed, or  
39 the information has not been supplied.

40 (12) Repealed by Session Laws 1991, c. 45, s. 27, effective April 22, 1991."

41 Section 17. G.S. 105-241.2(b1) reads as rewritten:

42 "(b1) Hearing. – Within 60 days after a timely petition for administrative review has  
43 been filed and at least 10 days before the date set for the hearing, the Tax Review Board

1 shall notify the taxpayer and the Secretary in writing of the time and place at which the  
2 hearing will be conducted. The hearing shall be held in Raleigh and the date set for the  
3 hearing shall be within 90 days after the timely petition for administrative review was  
4 filed or at a later date mutually agreed upon by the taxpayer and the Secretary. The date  
5 set for the hearing may be postponed once at the request of the taxpayer and once at the  
6 request of the Secretary for a period of up to 90 days or for a longer period mutually  
7 agreed upon by the taxpayer and the Secretary. Officers and employees of the Revenue  
8 Department, when so requested by the Board, shall attend hearings on petitions for  
9 review and shall furnish the Board with all information they have respecting the asserted  
10 liability. ~~The G.S. 1A-1, Rule 11, applies to hearings before the Tax Review Board. In~~  
11 other respects, the Tax Review Board may establish the procedure to be followed in  
12 hearings before it and may establish a schedule of costs of the proceedings. At least two  
13 members of the Board shall sit at the hearing and all members shall consider and decide  
14 the matters on review."

15 Section 18. G.S. 105-241.2(c) reads as rewritten:

16 "(c) Frivolous Petitions. – Upon receipt of a petition requesting administrative  
17 review as provided in the preceding subsection, the Tax Review Board shall examine the  
18 petition and the records and other data transmitted by the Secretary pertaining to the  
19 matter for which review is sought, and if it ~~should appear~~ appears from ~~such the~~ records  
20 and data that the petition is frivolous or filed for the purpose of delay, the Tax Review  
21 Board shall dismiss the petition for review and, ~~in addition, is authorized, in its discretion, to~~  
22 ~~impose a penalty not to exceed one hundred dollars (\$100.00), which penalty shall be in addition~~  
23 ~~to the tax, penalties, interests, and costs, and shall be collected in the same manner as the~~  
24 ~~principal tax liability.~~ review."

25 Section 19. G.S. 105-244 is repealed.

26 Section 20. G.S. 105-253 reads as rewritten:

27 "**§ 105-253. Personal liability of officers, trustees, or receivers. when certain taxes not**  
28 **remitted.**

29 (a) Any officer, trustee, or receiver of any corporation required to file a report with  
30 the Secretary of Revenue who has custody of funds of the corporation and who allows the  
31 funds to be paid out or distributed to the stockholders of the corporation without having  
32 remitted to the Secretary of Revenue any State taxes that are due ~~shall be~~ is personally  
33 liable for the payment of the tax, ~~and shall be subject to an additional penalty equal to the~~  
34 ~~amount of tax due.~~ tax.

35 (b) Each responsible ~~corporate~~ officer is personally and individually liable for all of  
36 the following:

37 (1) All sales and use taxes collected by a corporation or a limited liability  
38 company upon its taxable transactions of the corporation. ~~transactions.~~

39 (2) All sales and use taxes due upon taxable transactions of ~~the a~~  
40 corporation or a limited liability company but upon which ~~the~~  
41 ~~corporation~~ it failed to collect the tax, but only if the ~~responsible officer~~  
42 person knew, or in the exercise of reasonable care should have known,  
43 that the tax was not being collected.

1           (3) All taxes due from ~~the~~ a corporation or a limited liability company  
2           pursuant to the provisions of Articles 36C and 36D of Subchapter V of  
3           this Chapter and all taxes payable under those Articles by ~~the corporation~~  
4           it to a supplier for remittance to this State or another state.

5           (4) All income taxes required to be withheld from the wages of employees  
6           of a corporation or a limited liability company.

7           The liability of the responsible ~~corporate~~ officer is satisfied upon timely remittance of  
8           the tax by the ~~corporation~~ corporation or the limited liability company. If the tax remains  
9           unpaid ~~by the corporation~~ after it is due and payable, the Secretary may assess the tax  
10          ~~against~~ against and collect the tax ~~from~~ from any responsible ~~corporate~~ officer in  
11          accordance with the procedures in this Article for assessing and collecting tax from a  
12          taxpayer. As used in this section, the term "responsible ~~corporate~~ officer" ~~includes~~ means  
13          the president and the treasurer of ~~the corporation~~ a corporation, the manager of a limited  
14          liability company, and any other officers assigned the duty of filing tax returns and remitting  
15          taxes on behalf of the corporation ~~officer of a corporation or member of a limited liability~~  
16          company who has a duty to deduct, account for, or pay taxes listed in this subsection.  
17          Any penalties that may be imposed under G.S. 105-236 and that apply to a deficiency  
18          ~~shall also~~ apply to ~~any~~ an assessment made under this section. The provisions of this  
19          Article apply to an assessment made under this section to the extent they are not  
20          inconsistent with this section.

21          The period of limitations for assessing a responsible ~~corporate~~ officer for unpaid taxes  
22          under this section ~~shall expire~~ expires one year after the expiration of the period of  
23          limitations for assessment against the ~~corporation~~ corporation or limited liability  
24          company.

25          (c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1007, s. 15."

26          Section 21. G.S. 105-449.45(d) reads as rewritten:

27          "(d) Penalties. – A motor carrier that fails to file a report under this section by the  
28          required date is subject to a penalty of ~~up to fifty dollars (\$50.00) for the first failure and of~~  
29          ~~up to one hundred dollars (\$100.00) for a subsequent failure.~~ fifty dollars (\$50.00)."

30          Section 22. G.S. 105-449.108 is amended by adding a new subsection to read:

31          "(d) Late Application. – A refund applied for more than three years after the date  
32          the application is due is barred."

33          Section 23. G.S. 105-449.109 is repealed.

34          Section 24. Section 7 of Chapter 443 of the 1993 Session Laws reads as  
35          rewritten:

36          "Sec. 7. Division V of Article 4 of Chapter 105 of the General Statutes is repealed  
37          effective for investments made on or after January 1, ~~1999~~ 2003. Division V of Article 4  
38          of Chapter 105 of the General Statutes will remain in effect for investments made before  
39          January 1, ~~1999~~ 2003."

40          Section 25. Section 10 of Chapter 443 of the 1993 Session Laws reads as  
41          rewritten:

42          "Sec. 10. Section 6 of this act is effective upon ratification. Section 7 of this act  
43          becomes effective for investments made on or after January 1, ~~1999~~ 2003. The

1 remainder of this act becomes effective for taxable years beginning on or after January 1,  
2 1994.

3 A business registered as a qualified business venture or a qualified grantee business  
4 before January 1, 1994, retains its registration until the renewal date for the registration of  
5 that business under Division V of Article 4 of Chapter 105 of the General Statutes as in  
6 effect before January 1, 1994. The Secretary of State shall not grant renewal of a  
7 registration as a qualified business venture or a qualified grantee business unless at the  
8 time of filing the renewal application, the business meets the requirements then in effect  
9 for a new registration.

10 Notwithstanding the provisions of G.S. 105-163.014(a), as amended by this act, a  
11 credit under Division V of Article 4 of Chapter 105 of the General Statutes for an  
12 investment made before January 1, 1994, is not forfeited solely on the grounds that a  
13 sibling of the taxpayer provides services for compensation to the business in which the  
14 taxpayer invested.

15 Notwithstanding the provisions of G.S. 105-163.014(d), as amended by this act, a  
16 credit under Division V of Article 4 of Chapter 105 of the General Statutes for an  
17 investment made before January 1, 1994, is not forfeited solely on the grounds that a  
18 redemption of the securities received in the investment is made within five years after the  
19 investment was made.

20 The Secretary of State may require a qualified business venture or a qualified grantee  
21 business that is unable to renew its registration after January 1, 1994, to file reports the  
22 Secretary of State considers appropriate to determine the location of the headquarters and  
23 principal business operations of the business until three years after the date of the last  
24 investment in the business that qualified for the tax credit allowed under Division V of  
25 Article 4 of Chapter 105 of the General Statutes."

26 Section 26. G.S. 105-163.014 is amended by adding a new subsection to read:

27 "(d1) Certain Redemptions Allowed. – Forfeiture of a credit does not occur under  
28 this section if a qualified business venture that engages primarily in motion picture film  
29 production makes a redemption with respect to securities received in an investment and  
30 the following conditions are met:

31 (1) The redemption occurred because the qualified business venture  
32 completed production of a film, sold the film, and was liquidated.

33 (2) Neither the qualified business venture nor a related person continues to  
34 engage in business with respect to the film produced by the qualified  
35 business venture."

36 Section 27. G.S. 105-163.014(d)(2) reads as rewritten:

37 "~~Within~~ Except as provided in subsection (d1) of this section, within five  
38 years after the investment was made, the qualified business venture or  
39 qualified grantee business in which the investment was made makes a  
40 redemption with respect to the securities received in the investment."

41 Section 28. G.S. 105-163.010 is amended by adding a new subdivision to  
42 read:

1           "(10a) Related person. – A person described in one of the relationships set  
2           forth in section 267(b) or 707(b) of the Code."

3           Section 29. G.S. 105-163.010(14) reads as rewritten:

4           "(14) Subordinated debt. – Indebtedness that ~~(i) by its terms matures five or~~  
5           ~~more years after its issuance, (ii) is not secured, and (iii) is not secured and~~  
6           is subordinated to all other indebtedness of the issuer issued or to be  
7           issued to a financial institution other than a financial institution  
8           described in subdivisions (5)(ii) through (5)(v) of this section. ~~Any~~  
9           Except as provided in G.S. 105-163.014(d1), any portion of  
10           indebtedness that matures earlier than five years after its issuance is not  
11           subordinated debt."

12           Section 30. G.S. 105-163.013(b) reads as rewritten:

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

21           (1) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 7.

22           (1b) Either (i) it was organized after January 1 of the calendar year in which  
23           its application is filed or (ii) during its most recent fiscal year before  
24           filing the application, it had gross revenues, as determined in  
25           accordance with generally accepted accounting principles, of five  
26           million dollars (\$5,000,000) or less on a consolidated basis.

27           (2) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 7.

28           (3) It is organized to engage primarily in manufacturing, processing,  
29           warehousing, wholesaling, research and development, or a service-  
30           related industry.

31           (4) It does not engage as a substantial part of its business in any of the  
32           following:

33           a. Providing a professional service as defined in Chapter 55B of the  
34           General Statutes.

35           b. Construction or contracting.

36           c. Selling or leasing at retail.

37           d. The purchase, sale, or development, or purchasing, selling, or  
38           holding for investment of commercial paper, notes, other  
39           indebtedness, financial instruments, securities, or real property,  
40           or otherwise make investments.

41           e. Providing personal grooming or cosmetics services.

1 f. Offering any form of entertainment, amusement, recreation, or  
2 athletic or fitness activity for which an admission or a  
3 membership is charged.

4 (5) It was not formed for the primary purpose of acquiring all or part of the  
5 stock or assets of one or more existing businesses.

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

7 The effective date of registration for a qualified business venture whose application is  
8 accepted for registration is ~~the filing date of its application~~ 60 days before the date its  
9 application was filed. No credit is allowed under this Division for an investment made  
10 before the effective date of the registration or after the registration is revoked. For the  
11 purpose of this Article, if a taxpayer's investment is placed initially in escrow conditioned  
12 upon other investors' commitment of additional funds, the date of the investment is the  
13 date escrowed funds are transferred to the qualified business venture free of the  
14 condition.

15 To remain qualified as a qualified business venture, the business must renew its  
16 registration annually as prescribed by rule by filing a financial statement for the most  
17 recent fiscal year showing gross revenues, as determined in accordance with generally  
18 accepted accounting principles, of five million dollars (\$5,000,000) or less on a  
19 consolidated basis and an application for renewal in which the business certifies the facts  
20 required in the original application.

21 Failure of a qualified business venture to renew its registration by the applicable  
22 deadline shall result in revocation of its registration effective as of the next day after the  
23 renewal deadline, but shall not result in forfeiture of tax credits previously allowed to  
24 taxpayers who invested in the business except as provided in G.S. 105-163.014. The  
25 Secretary of State shall send the qualified business venture notice of revocation within 60  
26 days after the renewal deadline. A qualified business venture may apply to have its  
27 registration reinstated by the Secretary of State by filing an application for reinstatement,  
28 accompanied by the reinstatement application fee and a late filing penalty of one  
29 thousand dollars (\$1,000), within 30 days after receipt of the revocation notice from the  
30 Secretary of State. A business that seeks approval of a new application for registration  
31 after its registration has been revoked must also pay a penalty of one thousand dollars  
32 (\$1,000). A registration that has been reinstated is treated as if it had not been revoked.

33 If the gross revenues of a qualified business venture exceed five million dollars  
34 (\$5,000,000) in a fiscal year, the business must notify the Secretary of State in writing of  
35 this fact by filing a financial statement showing the revenues of the business for that  
36 year."

37 Section 31. The Revenue Laws Study Committee shall study whether a  
38 taxpayer should receive reimbursement of legal costs, including reasonable attorney fees,  
39 from the State when the taxpayer substantially prevails in an administrative appeal or a  
40 lawsuit with respect to the amount in controversy or with respect to the most significant  
41 issue or set of issues presented. The Committee may report its findings and  
42 recommendations on this issue to the 1999 Regular Session of the 1999 General  
43 Assembly.



- 1           Section 32. Sections 1 - 23 of this act become effective September 1, 1998.
- 2 Sections 24 and 25 of this act are effective when this act becomes law. The remainder of
- 3 this act is effective for taxable years beginning on or after January 1, 1998.