

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 728
SENATE BILL 51

AN ACT TO ENHANCE THE SIMPLICITY AND FAIRNESS OF THE STATE
INCOME TAX SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. This act shall be known as The Tax Fairness Act of 1989.

Sec. 2. The following is a table of contents for this act. It is designed for reference only; the descriptive headings in the table of contents and throughout the act do not affect the scope or application of the act.

Part I. Income Tax Reform.

- A. Individual Income Tax Act Amendments.
- B. S Corporation Income Tax Act Amendments.
- C. Income Tax Act for Estates and Trusts Amendments.
- D. Chapter 105 Conforming Amendments.

Part II. Savings Clause and Effective Date.

Part I.

Income Tax Reform.

A. Individual Income Tax Act Amendments.

Sec. 1.1. G.S. 105-133 reads as rewritten:

"§ 105-133. Short title.

This Division of the income tax Article shall be known ~~and may be cited~~ as the Individual Income Tax Act."

Sec. 1.2. G.S. 105-134 reads as rewritten:

"§ 105-134. Purpose.

The general purpose of this Division is to impose a tax for the use of the State government upon the ~~net taxable income in excess of the exemptions herein allowed~~ collectible annually:

- (1) Of every resident of this State.
- (2) Of every nonresident individual deriving income from North Carolina sources attributable to the ownership of any interest in real or tangible personal property in this State or deriving income from a business, trade, profession, or occupation carried on in this State."

Sec. 1.3. G.S. 105-135 through G.S. 105-149 are repealed.

Sec. 1.4. Division II of Article 4 of Chapter 105 of the General Statutes is amended by adding after G.S. 105-134 the following new sections to read:

"§ 105-134.1. Definitions.

The following definitions apply in this Division:

- (1) Code. The Internal Revenue Code as enacted as of January 1, 1989, including any provisions enacted as of that date which become effective either before or after that date, but not including sections 63(c)(4) and 151(d)(3).
- (2) Department. The Department of Revenue.
- (3) Educational institution. An educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.
- (4) Fiscal year. Defined in section 441(e) of the Code.
- (5) Gross income. Defined in section 61 of the Code.
- (6) Head of household. Defined in section 2(b) of the Code.
- (7) Individual. A natural person.
- (8) Married individual. An individual who is married and is considered married as provided in section 7703 of the Code.
- (9) Nonresident individual. An individual who is not a resident of this State.
- (10) North Carolina taxable income. Defined in G.S. 105-134.5.
- (11) Person. An individual, a fiduciary, a partnership, or a corporation. The term includes an officer or employee of a corporation or a member or employee of a partnership who, as officer, employee, or member, is under a duty to perform an act in meeting the requirements of this Division.
- (12) Resident. An individual who is domiciled in this State at any time during the taxable year or who resides in this State during the taxable year for other than a temporary or transitory purpose. In the absence of convincing proof to the contrary, an individual who is present within the State for more than 183 days during the taxable year is presumed to be a resident, but the absence of an individual from the State for more than 183 days raises no presumption that the individual is not a resident. A resident who removes from the State during a taxable year is considered a resident until he has both established a definite domicile elsewhere and abandoned any domicile in this State. The fact of marriage does not raise any presumption as to domicile or residence.
- (13) Retirement benefits. Amounts paid to a former employee or the beneficiary of a former employee under a written retirement plan established by the employer to provide payments to an employee or the beneficiary of an employee after the end of the employee's employment with the employer where the right to receive the payments is based upon the employment relationship. With respect to a self-employed individual or the beneficiary of a self-employed individual, the term means amounts paid to the individual or beneficiary of the individual under a written retirement plan

established by the individual to provide payments to the individual or the beneficiary of the individual after the end of the self-employment. For the purpose of this subdivision, the term 'employee' includes a volunteer worker.

(14) S Corporation. Defined in G.S. 105-131(b).

(15) Secretary. The Secretary of Revenue.

(16) Taxable income. Defined in section 63 of the Code.

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

(18) Taxpayer. An individual subject to the tax imposed by this Division.

(19) This State. The State of North Carolina.

"§ 105-134.2. Individual income tax imposed.

(a) A tax is imposed upon the North Carolina taxable income of every individual. The tax shall be levied, collected, and paid annually and shall be computed at the following percentages of the taxpayer's North Carolina taxable income.

(1) For married individuals who file a joint return under G.S. 105-152.1 and for surviving spouses, as defined in section 2(a) of the Code:

On the North Carolina taxable income up to twenty-one thousand two hundred fifty dollars (\$21,250), six percent (6%); and

On the excess over twenty-one thousand two hundred fifty dollars (\$21,250), seven percent (7%).

(2) For heads of households, as defined in section 2(b) of the Code:

On the North Carolina taxable income up to seventeen thousand dollars (\$17,000), six percent (6%); and

On the excess over seventeen thousand dollars (\$17,000), seven percent (7%).

(3) For unmarried individuals other than surviving spouses and heads of households:

On the North Carolina taxable income up to twelve thousand seven hundred fifty dollars (\$12,750), six percent (6%); and

On the excess over twelve thousand seven hundred fifty dollars (\$12,750), seven percent (7%).

(4) For married individuals who do not file a joint return under G.S. 105-152.1:

On the North Carolina taxable income up to ten thousand six hundred twenty-five dollars (\$10,625), six percent (6%); and

On the excess over ten thousand six hundred twenty-five dollars (\$10,625), seven percent (7%).

"§ 105-134.3. Year of assessment.

The tax imposed by this Division shall be assessed, collected, and paid in the taxable year following the taxable year for which the assessment is made, except as provided to the contrary in Article 4A of this Chapter.

"§ 105-134.4. Taxable year.

A taxpayer shall compute North Carolina taxable income on the basis of the taxable year used in computing the taxpayer's income tax liability under the Code.

"§ 105-134.5. North Carolina taxable income defined.

(a) Residents. For residents of this State, the term 'North Carolina taxable income' means taxable income as calculated under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7.

(b) Nonresidents. For nonresident individuals, the term 'North Carolina taxable income' means taxable income as calculated under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, multiplied by a fraction the denominator of which is the taxpayer's gross income as calculated under the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, and the numerator of which is the amount of that gross income, as adjusted, that is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State or is derived from a business, trade, profession, or occupation carried on in this State.

(c) Part-year Residents. If an individual was a resident of this State for only part of the taxable year, having moved into or removed from the State during the year, the term 'North Carolina taxable income' has the same meaning as in subsection (b) except that the numerator shall include gross income, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, derived from all sources during the period the individual was a resident.

(d) S Corporations and Partnerships. In order to calculate the numerator of the fraction provided in subsection (b), the amount of a shareholder's pro rata share of S Corporation income that is includable in the numerator shall be the shareholder's pro rata share of the S Corporation's income attributable to the State, as defined in G.S. 105-131(b)(4). In order to calculate the numerator of the fraction provided in subsection (b) for a member of a partnership or other unincorporated business with one or more nonresident members that operates in one or more other states, the amount of the member's distributive share of income of the business that is includable in the numerator shall be determined by multiplying the total net income of the business by the ratio ascertained under the provisions of G.S. 105-130.4. As used in this subsection, total net income means the entire gross income of the business less all expenses, taxes, interest, and other deductions allowable under the Code which were incurred in the operation of the business.

"§ 105-134.6. Adjustments to taxable income.

(a) S Corporations. The pro rata share of each shareholder in the income attributable to the State of an S Corporation shall be adjusted as provided in G.S. 105-130.5. The pro rata share of each resident shareholder in the income not attributable to the State of an S Corporation shall be subject to the adjustments provided in subsections (b) and (c) of this section.

(b) Deductions. The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in gross income:

- (1) Interest upon the obligations of (i) the United States or its possessions, (ii) this State or a political subdivision of this State, or (iii) a nonprofit educational institution organized or chartered under the laws of this State.

- (2) Interest upon obligations and gain from the disposition of obligations to the extent the interest or gain is exempt from tax under the laws of this State.
- (3) Benefits received under Title II of the Social Security Act and amounts received from retirement annuities or pensions paid under the provisions of the Railroad Retirement Act of 1937.
- (4) Any amount not to exceed one thousand five hundred dollars (\$1,500) received by the taxpayer during the taxable year as compensation for the performance of duties as a member of the North Carolina organized militia, the national guard as defined in G.S. 127A-3.
- (5) Refunds of State, local, and foreign income taxes included in the taxpayer's gross income.

(c) Additions. The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in gross income:

- (1) Interest upon the obligations of states, other than this State, and their political subdivisions.
- (2) Any amount allowed as a deduction from gross income under the Code that is taxed under the Code by a separate tax other than the tax imposed in section 1 of the Code. The Secretary shall report to the 1991 General Assembly all provisions under the Code for taxing certain amounts separately and shall recommend whether those amounts should be taxed separately under this Division or should be added to taxable income in calculating North Carolina taxable income.
- (3) Any amount deducted from gross income under section 164 of the Code as State, local, or foreign income tax to the extent that the taxpayer's total itemized deductions deducted under the Code for the taxable year exceed the standard deduction allowable to the taxpayer under the Code reduced by the amount by which the taxpayer's allowable standard deduction has been increased under section 63(c)(4) of the Code.
- (4) The amount by which the taxpayer's standard deduction has been increased under section 63(c)(4) of the Code and the amount by which the taxpayer's personal exemptions have been increased under section 151(d)(3) of the Code.

"§ 105-134.7. Transitional adjustments.

(a) The following adjustments to taxable income shall be made in calculating North Carolina taxable income:

- (1) Amounts that were included in the basis of property under federal tax law but not under State tax law before January 1, 1989, shall be added to taxable income in the year the taxpayer disposes of the property.
- (2) Amounts that were included in the basis of property under State tax law but not under federal tax law before January 1, 1989, shall be

deducted from taxable income in the year the taxpayer disposes of the property.

- (3) Amounts that were recognized as income under federal law but not under State law due to a taxpayer's use of the installment method set out in G.S. 105-142(f) prior to January 1, 1989, shall be added to taxable income in the taxpayer's first taxable year beginning on or after January 1, 1989. Amounts that were recognized as income under State law but not under federal law due to a taxpayer's use of a different installment method prior to January 1, 1989, shall be deducted from taxable income in the taxpayer's first taxable year beginning on or after January 1, 1989.
- (4) Losses in the nature of net economic losses sustained in any or all of the five taxable years preceding the taxpayer's first taxable year beginning on or after January 1, 1989, arising from business transactions, business capital, or business property, may be deducted from taxable income subject to the limitations contained in former G.S. 105-147(9)a., c., and d. (repealed).
- (5) The amount of any net operating loss for a taxable year beginning on or after January 1, 1989, carried back to a taxable year beginning before January 1, 1989, pursuant to section 172 of the Code may be deducted from taxable income in the taxable year following the taxable year for which the loss occurred.
- (6) A loss or deduction that was incurred or paid and deducted from State taxable income in a taxable year beginning before January 1, 1989, and is carried forward and deducted in a taxable year beginning on or after January 1, 1989, under the Code shall be added to taxable income.
- (7) The transitional adjustments provided in Division I-S of this Article shall be made with respect to a shareholder's pro rata share of S Corporation income.

(b) The Secretary may by rule require other adjustments to be made to taxable income as necessary to assure that the transition to the tax changes effective January 1, 1989, will not result in double taxation of income, exemption of otherwise taxable income from taxation under this Division, or double allowance of deductions.

"§ 105-134.8. Inventory.

Whenever, in the opinion of the Secretary, it is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by the taxpayer as prescribed by the Secretary, conforming as nearly as possible to the best accounting practice in the trade or business and most clearly reflecting the income."

Sec. 1.5. G.S. 105-151 reads as rewritten:

"§ 105-151. Tax credits for income taxes paid to other states by individuals.

(a) ~~Individuals who are residents~~ An individual who is a resident of this State shall be allowed ~~is allowed~~ a credit against the taxes imposed by this ~~division~~ Division for income taxes imposed by and paid to another state or country on income taxed under this ~~division~~ Division, subject to the following conditions:

- (1) The credit shall be allowed only for taxes paid to ~~such other another~~ state or country on income derived from sources within ~~such that~~ state or country ~~which that~~ is taxed under ~~the its~~ laws thereof irrespective of the residence or domicile of the recipient; provided, that whenever a taxpayer who is deemed to be a resident of this State under the provisions of this ~~division~~ Division and ~~who~~ is deemed also to be a resident of another state or country under the laws of ~~such other that~~ state or ~~country~~ country, the Secretary of ~~Revenue~~ may, in his discretion, allow a credit against the taxes imposed by this ~~division~~ Division for ~~such~~ taxes imposed by and paid to ~~such the~~ other state or country on income taxed under this ~~division~~ Division.
- (2) The fraction of the gross ~~income for North Carolina income tax purposes which income~~, as calculated under the Code and adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, that is subject to income tax in another state or country shall be ~~ascertained~~ ascertained, and the North Carolina net income tax before credit under this section shall be multiplied by ~~such that~~ fraction. The credit allowed shall be either the product thus calculated or the income tax actually paid the other state or ~~country~~ country, whichever is smaller.
- (3) Receipts showing the payment of income taxes to another state or country and a true copy of a return or returns upon the basis of which the taxes are assessed ~~must~~ shall be filed with the Secretary of ~~Revenue~~ at, or prior to, the time credit is claimed. If credit is claimed on account of a deficiency assessment, a true copy of the notice assessing or proposing to assess the deficiency, as well as a receipt showing the payment of the deficiency, shall be filed.

(b) If any taxes paid to another state or country for which a taxpayer has been allowed a credit under this section are at any time credited or refunded to the taxpayer, a tax equal to that portion of the credit allowed for ~~such the~~ taxes so credited or refunded shall be due and payable from the taxpayer ~~within 30 days from the date of the receipt of the refund or notice of the credit. If the amount of tax is not paid within 30 days of receipt or notice the taxpayer and~~ shall be subject to the penalties and interest on ~~delinquent payments provided for in~~ Subchapter I of this Chapter."

Sec. 1.6. G.S. 105-151.1 reads as rewritten:

"§ 105-151.1. Tax credit for construction of dwelling units for handicapped persons.

There shall be allowed to resident owners of multifamily rental units located in North Carolina as a credit against the tax imposed by this ~~Division~~ Division an amount equal to five hundred fifty dollars (\$550.00) for each dwelling unit constructed by ~~such the~~ resident owner ~~which that~~ conforms to the recommendations of section (11x) of the North Carolina Building Code for the taxable year within which the construction of ~~such the~~ dwelling units is completed; provided, that credit will be allowed under this section only for the number of ~~such~~ dwelling units completed during the taxable year ~~which that~~ were required to be built in compliance with section (11x) of the North

Carolina Building Code; provided further, that if the credit allowed by this section exceeds the tax imposed by this Division reduced by all other credits allowed by the provisions of this Division, ~~such the~~ excess shall be allowed as a credit against the tax imposed by this Division for the next succeeding year; and provided further, that in order to secure the credit allowed by this section the taxpayer shall file with ~~his the~~ income tax return for the taxable year with respect to which ~~such the~~ credit is to be claimed, a copy of the occupancy permit on the face of which there shall be recorded by the building inspector the number of units completed during the taxable year ~~which that~~ conform to section (11x) of the North Carolina Building Code. ~~When he has recorded~~ After recording the number of ~~such~~ units on the face of the occupancy permit, the building inspector shall promptly ~~make and~~ forward a copy of the permit to the Special Office for the Handicapped, Department of Insurance."

Sec. 1.7. G.S. 105-151.2 reads as rewritten:

"§ 105-151.2. Credit against ~~personal income tax~~ for solar hot water, heating heating, and cooling.

(a) ~~Any person (to include partnerships)~~ A person or partnership who causes to be constructed or installed a solar hot water, ~~heating heating,~~ or cooling system in any ~~residence or other~~ building in North Carolina shall be allowed as a credit against the tax imposed by this ~~Division, Division~~ an amount equal to twenty-five percent (25%) of the installation and equipment cost of the solar hot water, ~~heating heating,~~ or cooling equipment; ~~provided; provided,~~ that the credit allowed under this section ~~shall may~~ not exceed one thousand dollars (\$1,000) per system or per year on any single building or for each family dwelling unit of a multi-dwelling building which is individually metered for electric power or natural gas or with separate furnace for oil heat paid for by the occupant; provided further, that to obtain the credit the taxpayer must own or control the use of the building at the time of the installation, except that in the case of a building constructed or modified for sale in which a solar system is constructed or installed, the credit shall be allowed to the owner who first occupies the building for use after the construction or installation of the system or the owner-lessor who first leases the building for use after the construction or installation of the system; provided further, that the credit shall not be allowed to the extent that any of the cost of the system was provided by federal, State, or local grants; and provided further, that if the credit allowed by this section exceeds the taxes imposed by this Division reduced by all other credits allowed by the provisions of this Division, ~~such the~~ excess shall be allowed against the taxes imposed by this Division for the next three succeeding years.

(b) In the case of property owned by the entirety, where both spouses are required to file North Carolina income tax returns, ~~each spouse may claim one half of the credit allowed by this section or one spouse may claim the entire credit allowed by this section by agreement with the other spouse, provided both spouses were living together at the end of the taxable year and file their separate returns for the taxable year on the combined form.~~ the credit allowed by this section may be claimed only if the spouses file a joint return under G.S. 105-152.1. Where only one spouse is required to file a North Carolina income tax return, ~~such that~~ spouse may claim the credit allowed by this section.

(c) For the purpose of this section, the term 'solar hot water, ~~heating~~ heating, and cooling equipment' means any hot water, heating, cooling, or heating and cooling equipment which meets the definitive performance criteria established by the U.S. Secretary of the Treasury or any other performance criteria approved and published by the Secretary of Revenue, or passive solar systems that meet the eligibility criteria approved and published by the Secretary of Revenue."

Sec. 1.8. G.S. 105-151.4 is repealed.

Sec. 1.9. G.S. 105-151.5 reads as rewritten:

"§ 105-151.5. Credit against ~~personal income tax~~ for conversion of industrial boiler to wood fuel.

~~Any~~ A person who modifies or replaces an oil or gas-fired boiler or kiln and the associated fuel and residue handling equipment used in the manufacturing process of a manufacturing business located in this State with one ~~which~~ that is capable of burning wood shall be allowed as a credit against the tax imposed by this ~~Division~~, Division an amount equal to fifteen percent (15%) of the installation and equipment cost of ~~such~~ the conversion; provided, that in order to secure the credit allowed by this section, the taxpayer must own or control the business in which ~~such~~ the boiler or kiln is used at the time of ~~such~~ the conversion and payment in part or in whole for ~~such~~ the installation and equipment must be made by the taxpayer during the ~~tax~~ taxable year for which the credit is ~~claimed; and the~~ claimed. The amount of credit allowed for any one ~~income year shall be limited to taxable year may not exceed~~ fifteen percent (15%) of such ~~the~~ costs paid during the ~~year; and the~~ year. The credit allowed by this section ~~shall~~ may not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except for payments of tax made by or on behalf of the taxpayer. If a credit is granted under this section to a taxpayer engaged in the business of poultry production and that credit exceeds the tax imposed under this Division, the excess may be carried forward and applied to the tax imposed under this Division for the succeeding five years."

Sec. 1.10. The catch line of G.S. 105-151.6 reads as rewritten:

"§ 105-151.6. Credit against ~~personal income tax~~ for construction of a fuel ethanol distillery."

Sec. 1.11. G.S. 105-151.6A is repealed.

Sec. 1.12. G.S. 105-151.7 reads as rewritten:

"§ 105-151.7. Credit against ~~personal income tax~~ for installation of a hydroelectric generator.

(a) ~~Any~~ A person who constructs or installs a hydroelectric generator with a capacity of at least three kilowatts (3KW) at an existing dam or free flowing stream located in this State shall be allowed as a credit against the tax imposed by this Division an amount equal to ten percent (10%) of the installation and equipment costs of the hydroelectric generator. The credit allowed under this section may not exceed five thousand dollars (\$5,000) for any single installation. This credit shall not be allowed to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the hydroelectric generator is installed. The credit allowed by this

section may not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except payments of tax made by or on behalf of the taxpayer.

(b) In the case of property owned by the entirety, where both spouses are required to file North Carolina income tax returns, ~~each spouse may claim one half of the credit allowed by this section or one spouse may claim the entire credit allowed by this section by agreement with the other spouse, provided both spouses were living together at the end of the taxable year and file their separate returns for the taxable year on the combined form.~~ the credit allowed by this section may be claimed only if the spouses file a joint return under G.S. 105-152.1. Where only one spouse is required to file a North Carolina income tax return, ~~such that~~ spouse may claim the credit allowed by this section.

(c) The term 'installation costs' includes spillway and other site construction and modifications necessary to accommodate the hydroelectric generator.

(d) As used in this section, 'hydroelectric generator' means a machine that produces electricity by water power or by the friction of water or steam."

Sec. 1.13. G.S. 105-151.8 reads as rewritten:

"§ 105-151.8. Credit ~~against personal income tax~~ for installation of solar equipment for the production of industrial or process heat.

(a) ~~Any~~ A person who constructs or installs solar equipment for the production of heat in the manufacturing or service processes of his business located in this State shall be allowed as a credit against the tax imposed by this Division an amount equal to twenty percent (20%) of the installation and equipment costs of the solar equipment. The credit allowed under this section may not exceed eight thousand dollars (\$8,000) for any single installation. This credit shall not be allowed to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the business at the time the solar equipment is installed. The credit allowed by this section may not exceed the amount of ~~the~~ tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except payment of tax made by or on behalf of the taxpayer. In no case shall a tax credit be allowed ~~both under the provisions of both~~ this section and G.S. 105-151.2.

(b) In the case of property owned by the entirety, where both spouses are required to file North Carolina income tax returns, ~~each spouse may claim one half of the credit allowed by this section or one spouse may claim the entire credit allowed by this section by agreement with the other spouse, provided both spouses were living together at the end of the taxable year and file their separate returns for the taxable year on the combined form.~~ the credit allowed by this section may be claimed only if the spouses file a joint return under G.S. 105-152.2. Where only one spouse is required to file a North Carolina income tax return, ~~such that~~ spouse may claim the credit allowed by this section.

(c) As used in this section, 'solar equipment' means equipment and materials designed to collect, store, transport, or control energy derived directly from the sun."

Sec. 1.14. G.S. 105-151.9 reads as rewritten:

"§ 105-151.9. Credit against personal income tax for installation of a wind energy device.

(a) ~~Any~~ A person who constructs or installs a wind energy device for the production of electricity at a site located in this State shall be allowed as a credit against the tax imposed by this Division an amount equal to ten percent (10%) of the installation and equipment costs of the wind energy device. The credit allowed under this section may not exceed one thousand dollars (\$1,000) for any single installation. This credit shall not be allowed to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the wind energy device is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except payments of tax made by or on behalf of the taxpayer.

(b) In the case of property owned by the entirety, where both spouses are required to file North Carolina income tax returns, ~~each spouse may claim one half of the credit allowed by this section or one spouse may claim the entire credit allowed by this section by agreement with the other spouse, provided both spouses were living together at the end of the taxable year and file their separate returns for the taxable year on the combined form.~~ the credit allowed by this section may be claimed only if the spouses file a joint return under G.S. 105-152.1. Where only one spouse is required to file a North Carolina income tax return, ~~such~~ that spouse may claim the credit allowed by this section.

(c) As used in this section, 'wind energy device' means ~~equipment (and equipment, and parts solely related~~ related solely to the functioning of the ~~equipment) equipment, that,~~ when installed on a site, ~~transmits or uses~~ transmit or use wind energy to generate electricity."

Sec. 1.15. G.S. 105-151.10 reads as rewritten:

"§ 105-151.10. Credit against personal income tax for construction of a methane gas facility.

(a) ~~Any~~ A person who constructs in North Carolina a facility for the production of methane gas from renewable biomass resources shall be allowed as a credit against the tax imposed by this Division an amount equal to ten percent (10%) of the installation and equipment costs of construction. The credit allowed under this section may not exceed two thousand five hundred dollars (\$2,500) for any single installation. This credit shall not be allowed to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. The credit allowed by this section may not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except payments of tax made by or on behalf of the taxpayer.

(b) In the case of property owned by the entirety, where both spouses are required to file North Carolina income tax returns, ~~each spouse may claim one half of the credit allowed by this section or one spouse may claim the entire credit allowed by this section by agreement with the other spouse, provided both spouses were living~~

~~together at the end of the taxable year and file their separate returns for the taxable year on the combined form. the credit allowed by this section may be claimed only if the spouses file a joint return under G.S. 105-152.1. Where only one spouse is required to file a North Carolina income tax return, such that spouse may claim the credit allowed by this section.~~

(c) As used in this section, 'renewable biomass resources' means organic matter produced by terrestrial and aquatic plants and animals such as standing vegetation, aquatic crops, forestry and agricultural residues and animal wastes that can be used for the production of energy."

Sec. 1.16. G.S. 105-151.11 reads as rewritten:

"§ 105-151.11. Credit ~~against personal income tax~~ for child care and certain employment-related expenses.

~~(a) Any person who maintains a household which includes as a member one or more qualifying individuals shall be allowed as a credit against the tax imposed by this Division an amount equal to seven percent (7%) of the employment-related expenses as defined in subdivision (b)(2) herein.~~

~~(b) For the purposes of this section:~~

~~(1) The term "qualifying individual" means:~~

- ~~a. A dependent of the taxpayer who is under the age of 15 and with respect to whom the taxpayer is entitled to a deduction under G.S. 105-149(a)(5);~~
- ~~b. A dependent of the taxpayer who is physically or mentally incapable of caring for himself; or~~
- ~~c. The spouse of the taxpayer, if the spouse is physically or mentally incapable of caring for himself or herself.~~

~~(2) The term "employment-related expenses" means amounts paid for expenses for household service and for the care of a qualifying individual, but only if such expenses are incurred to enable the taxpayer to be gainfully employed. The term includes expenses incurred for services outside the taxpayer's household if the expenses incurred are for the care of a qualifying individual described in (b)(1)a. or a qualifying individual described in (b)(1)b. or c. who regularly spends at least eight hours each day in the taxpayer's household.~~

~~(3) a. For the purposes of this section, an individual shall be treated as maintaining a household for any period only if over half of the cost of maintaining the household during such period is furnished by such individual.~~

~~b. In the case of a married person living with his or her spouse and such spouse is maintaining the household, the credit provided for herein shall be allowed with respect to employment-related expenses in connection with any qualifying individuals, except as limited herein, of the spouse not maintaining the household.~~

~~(4) If a child (as defined in G.S. 105-149(a)(5)) who is under the age of 15 or who is physically or mentally incapable of caring for himself~~

~~receives over half of his support during the calendar year from his parents who are divorced or separated with the intent to remain separate and apart, and such child is in the custody of one or both of his parents for more than one half of the calendar year, in the case of any taxable year beginning in such calendar year such child shall be treated as being a qualifying individual described in subparagraph a or b of subdivision (b)(1), as the case may be, with respect to that parent who has custody for a longer period during such calendar year than the other parent, and shall not be treated as being a qualifying individual with respect to such other parent.~~

~~(b1) The amount of employment-related expenses for which a credit may be claimed may not exceed two thousand four hundred dollars (\$2,400) if the taxpayer's household includes one qualifying individual, and may not exceed four thousand eight hundred dollars (\$4,800) if the taxpayer's household includes more than one qualifying individual.~~

~~(c) (1) If the taxpayer is married and living with his spouse for any period during the taxable year, there shall be taken into account employment-related expenses incurred during any month of such period only if:~~

~~a. Both spouses are gainfully employed on a substantially full-time basis, or one spouse is gainfully employed on a substantially full-time basis and the other spouse is a full-time student, which shall mean an individual who during each of five calendar months during the taxable year is a full-time student at an educational institution, or~~

~~b. The spouse is a qualifying individual described in subdivision (b)(1)c.~~

~~(2) No credit shall be allowed under this section with respect to any amount paid by the taxpayer to an individual with respect to whom a deduction is allowable under G.S. 105-149(a)(5) to the taxpayer or his spouse, or who is a child of the taxpayer (within the meaning of G.S. 105-149(a)(5)) who has not attained the age of 19 at the close of the taxable year.~~

~~(3) In the case of employment-related expenses incurred during any taxable year solely with respect to a qualifying individual (other than an individual who is also described in subdivision (b)(1)a), the amount of such expenses which may be taken into account for purposes of this section shall be reduced:~~

~~a. If such individual is described in subdivision (b)(1)b, by the amount by which the sum of:~~

~~1. Such individual's adjusted gross income for such taxable year, and~~

~~2. The disability payments received by such individual during such year, exceed one thousand dollars (\$1,000),~~

~~or~~

~~b. In the case of a qualifying individual described in subdivision (b)(1)c, by the amount of disability payments received by such individual during the taxable year.~~

~~For purposes of this paragraph, the term "disability payment" means a payment (other than a gift) which is made on account of the physical or mental condition of an individual and which is not included in gross income.~~

~~(d) If a husband and wife are living together at the end of the taxable year, no credit under this section shall be allowed unless they file a combined return for the year.~~

(a) A person who is allowed a credit against federal income tax for a percentage of employment-related expenses under section 21 of the Code shall be allowed as a credit against the tax imposed by this Division an amount equal to the applicable percentage of the employment-related expenses as defined in section 21(b)(2) of the Code. For employment-related expenses that are incurred only with respect to one or more dependents who are seven years old or older and are not physically or mentally incapable of caring for themselves, the applicable percentage is seven percent (7%). For employment-related expenses with respect to any other qualifying individual, the applicable percentage is ten percent (10%).

(b) The amount of employment-related expenses for which a credit may be claimed may not exceed two thousand four hundred dollars (\$2,400) if the taxpayer's household includes one qualifying individual, as defined in section 21(b)(1) of the Code, and may not exceed four thousand eight hundred dollars (\$4,800) if the taxpayer's household includes more than one qualifying individual.

~~(e)(c) No credit shall be allowed under this section unless the taxpayer completes and attaches to his tax return the necessary form or forms as may be required by the Secretary of Revenue, nor shall any deduction be allowed under G.S. 105-147(11) for amounts claimed under this subdivision. No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code.~~

~~(d) The credit allowed by this section shall not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except for payments of tax made by or on behalf of the taxpayer.~~

~~(e) No credit shall be allowed under this section with respect to employment-related expenses paid by a nonresident of this State."~~

Sec. 1.17. G.S. 105-151.12 reads as rewritten:

"§ 105-151.12. Credit for certain real property donations.

(a) Any A person that who makes a qualified donation of interests in real property located in North Carolina during the taxable year that is useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, or (iv) other similar land conservation purposes, shall be allowed as a credit against the taxes tax imposed by this Division an amount equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in property must be donated to and accepted by either the

State, a ~~local government~~ government, or a body that is both organized to receive and administer lands for conservation purposes and is qualified to receive charitable contributions pursuant to ~~G.S. 105-147(15) or (16)~~; under the Code; provided, however, that lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under such regulations or ordinances ~~shall are~~ not be eligible for this credit. The credit allowed under this section may not exceed five thousand dollars (\$5,000). To support the credit allowed by this section, the taxpayer shall file with the income tax return for the taxable year in which the credit is ~~elaimed~~, claimed a certification by the Department of Natural Resources and Community Development that the property donated is suitable for one or more of the valid public benefits set forth by this subsection.

(b) The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed under this Division, except payments of tax made by or on behalf of the taxpayer.

(~~e~~) Any unused portion of this credit may be carried forward for the next succeeding five years.

(~~d~~) ~~The fair market value, or any portion thereof, of a qualifying donation that is not eligible for a credit pursuant to this section may be considered as a charitable contribution pursuant to G.S. 105-147(15) or (16). That portion of the donation allowed as a credit pursuant to this section shall not be eligible as a charitable contribution.~~

(c) No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code.

(~~e~~)(d) In the case of property owned by the entirety, where both spouses are required to file North Carolina income tax returns, ~~each spouse may claim one half of the credit allowed by this section or one spouse may claim the entire credit allowed by this section by agreement with the other spouse, provided both spouses were living together at the end of the taxable year and file their separate returns for the taxable year on the combined form.~~ the credit allowed by this section may be claimed only if the spouses file a joint return under G.S. 105-152.1. Where only one spouse is required to file a North Carolina income tax return, ~~such that~~ spouse may claim the credit allowed by this section.

(~~f~~)(e) In the case of marshland for which a claim has been filed pursuant to G.S. 113-205, the offer of donation must be made before December 31, 1990, to qualify for the credit allowed by this section."

Sec. 1.18. G.S. 105-151.13 reads as rewritten:

"§ 105-151.13. Credit for conservation tillage equipment.

(a) ~~Any~~ A person who purchases conservation tillage equipment for use in a farming business, including tree farming, shall be allowed as a credit against the tax imposed by this Division an amount equal to twenty-five percent (25%) of the cost of the equipment. This credit may not exceed two thousand five hundred dollars (\$2,500) for any ~~income-taxable~~ year. The credit may ~~only~~ be claimed only by the first purchaser of the equipment and may not be claimed by a person who purchases the equipment for resale or for use outside this State. This credit may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits

allowable under this Division, except tax payments made by or on behalf of the taxpayer. If the credit allowed by this section exceeds the tax imposed under this Division, the excess may be carried forward and applied to the tax imposed under this Division for the next succeeding five years. The basis in any equipment for which a credit is allowed under this section shall be reduced by the amount of the credit allowable.

(b) As used in this section, 'conservation tillage equipment' means:

- (1) A planter such as a planter commonly known as a 'no-till' planter designed to minimize disturbance of the soil in planting crops or trees, including equipment that may be attached to equipment already owned by the taxpayer; ~~or, or~~
- (2) Equipment designed to minimize disturbance of the soil in reforestation site preparation, including equipment that may be attached to equipment already owned by the taxpayer; provided, however, this shall include only those items of equipment generally known as a 'KG-Blade', a 'drum-chopper', or a 'V-Blade'.

(c) In the case of conservation tillage equipment owned jointly by a husband and wife, where both spouses are required to file North Carolina income tax returns, ~~each spouse may claim one half of the credit allowed by this section or one spouse may claim the entire credit allowed by this section by agreement with the other spouse, provided both spouses were living together at the end of the taxable year and file their separate returns for the taxable year on the combined form.~~ the credit allowed by this section may be claimed only if the spouses file a joint return under G.S. 105-152.1. Where only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this section."

Sec. 1.19. G.S. 105-151.14 reads as rewritten:

"§ 105-151.14. Credit for gleaned crop.

(a) ~~Any~~ A person who grows a crop and permits the gleaning of the crop shall be allowed as a credit against the tax imposed by this Division an amount equal to ten percent (10%) of the market price of the quantity of the gleaned crop. This credit may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except tax payments made by or on behalf of the taxpayer. ~~No deduction is allowed under G.S. 105-147(15) or (16) for the items for which a credit is claimed under this section. No credit is allowed under this section for amounts that were deducted from gross income in calculating taxable income under the Code.~~ Any unused portion of the credit may be carried forward for the next succeeding five years.

(b) The following definitions apply to this section:

- (1) 'Gleaning' means the harvesting of a crop that has been donated by the grower to a nonprofit organization which will distribute the crop to individuals or other nonprofit organizations it considers appropriate recipients of the ~~food;~~ food.
- (2) 'Market price' means the season average price of the crop as determined by the North Carolina Crop and Livestock Reporting

Service in the Department of Agriculture, or the average price of the crop in the nearest local market for the month in which the crop is gleaned if the Crop and Livestock Reporting Service does not determine the season average price for that ~~crop; and crop.~~

- (3) 'Nonprofit organization' means an organization ~~for~~ to which charitable contributions are deductible from gross income under ~~G.S. 105-130.9 or G.S. 105-147(15) or (16).~~ the Code."

Sec. 1.20. G.S. 105-151.15 reads as rewritten:

"§ 105-151.15. Credit for distributing North Carolina wine.

(a) Credit. A person who is required by Article 2C of this Chapter to pay the excise tax levied on unfortified or fortified wine is allowed as a credit against the tax imposed by this Division an amount equal to the product of twenty cents (20¢) and the number of liters of qualifying native wine on which the person paid excise tax during the taxable year. To obtain this credit a person who is a wine wholesaler or an importer must attach the following to the tax return on which the credit is claimed:

- (1) A copy of the sales invoice between the manufacturer of the wine for which the credit is claimed and the grower from whom the fruits or berries of which the wine is composed was purchased;
- (2) A statement signed by the manufacturer of the wine certifying that the wine for which the credit is claimed is qualifying native wine and giving the names of any other wine wholesalers or importers in North Carolina who received part of the same qualifying native wine.

If the person claiming the credit is an unfortified winery or a fortified winery, the person must attach to his return a signed statement certifying that the wine for which the credit is claimed is qualifying native wine. This credit may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except tax payments made by or on behalf of the taxpayer.

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

- (1) Native Wine. Unfortified or fortified wine at least sixty percent (60%) of which is composed of fruits or berries grown in North Carolina.
- (2) Qualifying Native Wine. Native wine that is part of the first 950 liters of wine produced by a manufacturer from a ton of fruits or berries grown in North Carolina."

Sec. 1.21. G.S. 105-151.16 is repealed.

Sec. 1.22. Division II of Article 4 of Chapter 105 of the General Statutes is amended by adding after G.S. 105-151.17 the following new sections to read:

"§ 105-151.18. Credit for the disabled.

A person who (i) is retired on disability, (ii) at the time of retirement, was permanently and totally disabled as defined in section 22 of the Code, and (iii) claims a federal income tax credit under section 22 of the Code for the taxable year, is allowed as a credit against the tax imposed by this Division an amount equal to one-third of the amount of the federal income tax credit for which he is eligible under section 22 of the Code. The credit allowed under this section may not exceed the amount of tax imposed

by this Division for the taxable year reduced by the sum of all credits allowed under this Division, except payments of tax made by or on behalf of the taxpayer.

"§ 105-151.19. Credit for North Carolina dividends.

There is allowed as a credit against the tax imposed by this Division an amount equal to six percent (6%) of the amount of dividends received by the taxpayer during the taxable year from stock issued by a qualified corporation, up to a maximum credit of three hundred dollars (\$300.00) per taxpayer for the taxable year. A corporation is a qualified corporation if fifty percent (50%) or more of the dividends from stock issued by the corporation would be deductible by a corporate shareholder for the taxable year under the provisions of G.S. 105-130.7(1), (2), (3), or (3a), except that no credit shall be allowed for dividends issued with respect to a taxable period during which the corporation is an S Corporation subject to the provisions of Division I-S of this Article.

This credit applies only with respect to dividends received while the taxpayer was a resident of this State. In the case of a married couple filing a joint return where both spouses received dividends during the taxable year, the three hundred dollar (\$300.00) maximum applies separately to each spouse's dividends for a potential total credit of six hundred dollars (\$600.00) for the couple. This credit may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed under this Division, except payments of tax made by or on behalf of the taxpayer."

Sec. 1.23. G.S. 105-152 reads as rewritten:

"§ 105-152. Returns.

(a) The following persons shall file with the Secretary of Revenue an income tax return under affirmation, showing ~~therein~~ specifically the ~~items of gross taxable income~~ and the ~~deductions allowed~~ adjustments required by this Division, and such other facts as the Secretary may require for the purpose of making any computation required by this Division:

- (1) Every resident required to file an income tax return for the taxable year under the Code and every ~~or~~ nonresident who (i) derived gross income from North Carolina sources during the taxable year attributable to the ownership of any interest in real or tangible personal property in this State or derived from a business, trade, profession, or occupation carried on in this State and (ii) is required to file an income tax return for the taxable year under the Code. ~~has a gross income during the income year which is in excess of the personal exemption to which he or she is entitled under the provisions of G.S. 105-149(a), without the inclusion of the exemptions for dependents provided under subdivision (5), any part of which is subject to taxation in this State.~~
- (2) Every resident ~~or nonresident required under the provisions of G.S. 105-149(b) to prorate his exemption and who has a gross income during the income year from sources both within and without this State in excess of the prorated exemption, any part of which is subject to taxation in this State.~~
- ~~(3)~~(2) Every partnership doing business in this State as provided in G.S. 105-154.

~~(4)~~(3) Any person whom the Secretary believes to be liable for a tax under this Division, when so notified by the Secretary of Revenue and requested to file a return.

(b) If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of ~~such the~~ taxpayer.

(c) The return of an ~~individual, who, while living, receiving income in excess of the exemption during the income year, individual who was required to file a return for the taxable year while living~~ and who has died before making the return, shall be made in his name and behalf by the ~~administrator, administrator~~ or executor of the estate, and the tax shall be levied upon and collected from ~~his the~~ estate.

(d) When the Secretary of Revenue has reason to believe that any taxpayer so conducts ~~the a~~ trade or business as either directly or indirectly to distort ~~his true net the taxpayer's taxable income and the net income properly attributable to the State, or North Carolina taxable income~~ whether by the arbitrary shifting of income, through price fixing, charges for service, or otherwise, whereby the net income is arbitrarily assigned to one or another unit in a group of taxpayers carrying on business under a substantially common control, ~~he the~~ Secretary may require such facts as he deems necessary for the proper computation of the ~~entire net taxable income and the North Carolina taxable income, net income properly attributable to the State, and in determining the same~~ the Secretary of Revenue shall have regard to the fair profit ~~which that~~ would normally arise from the conduct of the trade or business.

(e) ~~A joint return may not be filed by a husband and wife; however, a husband and wife may, at their election, file their separate income tax returns on a single form, and a husband and wife so filing shall be deemed to have expressly agreed that:~~

- ~~(1) If the sum of the payments by either spouse, including withheld and estimated taxes, exceeds the amount of the tax for which such spouse is separately liable, the excess may be applied by the Department of Revenue to the credit of the other spouse if the sum of the payments by such other spouse, including withholding and estimated taxes, is less than the amount of the tax for which such other spouse is separately liable.~~
- ~~(2) If the sum of the payments made by both spouses with respect to the taxes for which they are separately liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses or if either is deceased, to the survivor.~~

A joint return may be filed by a husband and wife as provided in G.S. 105-152.1. Except as otherwise provided in this Division, a wife and husband filing jointly are treated as one taxpayer for the purpose of determining the tax imposed by this Division. A husband and wife filing jointly are jointly and severally liable for the tax imposed by this Division reduced by the sum of all credits allowable under this Division including tax payments made by or on behalf of the husband and wife. However, if a spouse has been relieved of liability for federal tax attributable to a substantial understatement by

the other spouse pursuant to section 6013 of the Code, that spouse is not liable for the corresponding tax imposed by this Division attributable to the same substantial understatement by the other spouse. A wife and husband filing jointly shall be deemed to have expressly agreed that if the amount of the payments made by them with respect to the taxes for which they are liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses jointly or, if either is deceased, to the survivor alone.

(f) The Secretary may require some or all persons required to file a return under this section to attach to the return a copy of their federal income tax return for the taxable year. The Secretary may require a taxpayer to provide the Department with copies of any other return the taxpayer has filed with the Internal Revenue Service and to verify any information in the return."

Sec. 1.24. Division II of Article 4 of Chapter 105 of the General Statutes is amended by adding after G.S. 105-152 a new section to read:

"§ 105-152.1. Joint returns.

A husband and wife shall make a single return jointly if:

- (1) Their federal taxable income is determined on a joint federal return; and
- (2) Both spouses are residents of this State or both spouses have North Carolina taxable income."

Sec. 1.25. G.S. 105-154 reads as rewritten:

"§ 105-154. Information at the source.

(a) Every individual, partnership, corporation, joint-stock company or association, or insurance company, being a resident or having a place of business or having one or more employees, agents, or other representatives in this State, in whatever capacity acting, including lessors or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the State or of any political subdivision of the State and all officers and employees of the United States ~~of America~~ or of any political subdivision or agency thereof having the control, receipt, custody, disposal, or payment of interest (other than interest coupons payable to bearer), rent, salaries, wages, dividends, premiums, annuities, compensations, remunerations, ~~emoluments~~ emoluments, or other fixed or determinable annual or periodical gains, profits, and incomes paid or payable during any year to any taxpayer, shall make complete return thereof to the Secretary ~~of Revenue~~ under such regulations and in such form and manner and to such extent as may be prescribed by ~~him~~ the Secretary. The filing of any report in compliance with the provisions of this section by a foreign corporation shall not constitute an act in evidence of and shall not be deemed to be evidence that ~~such~~ the corporation is doing business in this State.

(b) Every partnership doing business in the State required to file a return under the Code shall make a ~~return~~ return stating specifically the items of its gross income and the deductions allowed under the Code and the adjustments required by this Division, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributable, and the amount of the distributive share of each individual, together with the distributive shares of corporation

dividends. The return shall be signed by one of the partners under affirmation in the form prescribed in G.S. 105-155 of this Division, and the same penalties prescribed in G.S. 105-236 shall apply in the event of a willful misstatement. If a business established in this State is owned by a nonresident individual or by a partnership having one or more nonresident members, the manager of the business shall report the earnings of the business in this State and the distributive share of the income of each nonresident owner or partner, and shall pay the tax as levied on individuals under G.S. 105-134.2 for each nonresident owner or partner. The business may deduct the payment for each nonresident owner or partner from the owner or partner's distributive share of the profits of the business in this State."

Sec. 1.26. G.S. 105-155 reads as rewritten:

"§ 105-155. Time and place of filing returns.

Returns shall be in such forms as the Secretary ~~of Revenue~~ may from time to time prescribe, and shall be filed with the Secretary at his main ~~office,~~ office or at any branch office. ~~office which he may establish.~~ The return of every ~~person-taxpayer~~ reporting on a calendar year basis shall be filed on or before the fifteenth day of April in each year, and the return of every ~~person-taxpayer~~ reporting on a fiscal year basis shall be filed on or before the fifteenth day of the fourth month following the close of the fiscal year. In case of sickness, absence, or other disability or whenever in his judgment good cause exists, the Secretary may allow further time for filing returns.

There shall be annexed to the return the affirmation of the taxpayer making the return in the following form: 'Under penalties prescribed by law, I hereby affirm that to the best of my knowledge and belief this return, including any accompanying schedules and statements, is true and complete. (If prepared by a person other than the taxpayer, ~~his~~ that the preparer's affirmation is based on all information of which ~~he~~ the preparer has any knowledge.)' The Secretary shall ~~cause to be prepared~~ prepare blank forms for the ~~said~~ returns, ~~and shall cause them to be distributed~~ distribute them throughout the State, and ~~to be furnished~~ furnish them upon application; but failure to receive or secure the form shall not relieve any taxpayer from the obligation of ~~making any filing~~ a return herein required. ~~required by this Division.~~"

Sec. 1.27. G.S. 105-156 reads as rewritten:

"§ 105-156. Failure to file returns; supplementary returns.

If the Secretary ~~of Revenue~~ ~~shall be~~ is of the opinion that any taxpayer has failed to file a return or to include in a return filed, either intentionally or through error, ~~items of~~ taxable income, ~~he~~ the Secretary may require from ~~such~~ the taxpayer a return or supplementary return, under oath, in such form as ~~he~~ the Secretary shall prescribe, of all the items of gross income ~~which~~ the taxpayer received during the year for which the return is made, whether or not taxable under the provisions of this Division. If from a supplementary return or otherwise the Secretary finds that any ~~items of income, taxable under this Division,~~ taxable income has been omitted from the original return, ~~or any items returned as taxable that are not taxable, or any item as taxable income overstated,~~ he may require the ~~items~~ taxable income so omitted to be disclosed to him under oath of the taxpayer, and to be added to ~~or deducted from~~ the original return. ~~Such~~ The supplementary return and the correction of the original return shall not relieve

the taxpayer from any of the penalties to which he may be liable under G.S. 105-236. The Secretary may proceed under the provisions of G.S. ~~105-241.1~~, 105-241.1 whether or not he requires a return or a supplementary return under this section."

Sec. 1.28. G.S. 105-156.1 is repealed.

Sec. 1.29. G.S. 105-157 reads as rewritten:

"§ 105-157. Time and place of payment of tax.

(a) Except as otherwise provided in this section and in Article 4A of this Chapter, the full amount of the tax payable as shown on the face of the return shall be paid to the Secretary of Revenue at the office where the return is filed at the time fixed by law for filing the return. ~~return; provided, that when a husband and wife have elected under G.S. 105-152(e) to file their separate income tax returns on a single form and the amount for which one spouse is separately liable has been reduced by credit for overpayment of tax by the other spouse as provided in that subsection, only the amount in excess of such credit shall be payable; provided, that if~~ If the amount shown to be due after all credits is less than one dollar (\$1.00), no payment need be made.

(b) The tax may be paid with uncertified check during such time and under such regulations as the Secretary of Revenue ~~shall~~ may prescribe; but if a check so received is not paid by the bank on which it is drawn, the taxpayer by whom ~~such~~ the check is was tendered shall remain liable for the payment of the tax and for all legal penalties the same as if ~~such~~ the check had not been tendered."

Sec. 1.30. G.S. 105-158 reads as rewritten:

"§ 105-158. Abatement of income taxes of certain members of the armed forces upon death.

In the case of any individual

(1) Who dies

- a. On or after January 1, ~~1964~~; 1964,
- b. While in active service as a member of the armed forces of the United States, and
- c. While serving in a combat zone; ~~zone (as determined under G.S.105-141(b)(12))~~; or

(2) Who dies

- a. On or after January 1, ~~1964~~; 1964, and
- b. As a result of wounds, ~~disease~~ disease, or injury incurred while in active service as a member of the armed forces of the United States, and while serving in a combat zone on or after January 1, 1964,

No individual income tax imposed by ~~the State of North Carolina~~ this Division shall apply with respect to the taxable year in which falls the date of ~~his~~ the individual's death, or with respect to any prior taxable year ending on or after the first day ~~he~~ the individual so served in a combat zone; and any tax under this Division and under the corresponding provisions of prior revenue laws for taxable years preceding those above specified which is unpaid at the date of ~~his~~ the individual's death (including interest, additions to the tax, and additional amounts) shall not be assessed and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an

overpayment. As used in this section, the term 'combat zone' means an area which the President of the United States by executive order designates as an area in which the armed forces of the United States are or have been engaged in combat."

Sec. 1.31. G.S. 105-159 reads as rewritten:

"§ 105-159. Corrections and changes.

If the amount of the ~~net-taxable~~ income for any year of any taxpayer under this Division, as reported or as reportable to the United States Treasury Department, is changed, corrected, or otherwise determined by the Commissioner of Internal Revenue or other officer of the United States of competent authority, ~~such-the~~ taxpayer, within two years after receipt of the internal revenue agent's report or supplemental report reflecting the corrected or determined ~~net-taxable~~ income shall make return under oath or affirmation to the Secretary ~~of Revenue~~ of ~~such-the~~ corrected, ~~changed-changed~~, or determined ~~net-taxable~~ income. In making ~~any-an~~ assessment or refund under this section, the Secretary shall consider all ~~facts-or~~ evidence brought to his attention, whether or not ~~the-same-were-it-was~~ considered ~~or-taken-into-account~~ in the federal assessment or correction. If the taxpayer fails to notify the Secretary ~~of Revenue~~ of ~~assessment-of-additional-tax-by-the-Commissioner-of-Internal-Revenue~~, that the taxpayer's taxable income for any year as reported or as reportable to the United States Treasury Department, is changed, corrected, or otherwise determined for federal income tax purposes, the statute of limitations shall not ~~apply.~~ apply to assessments under this section. The Secretary ~~of Revenue~~ shall ~~thereupon~~ proceed to ~~determine,~~ determine from such evidence as ~~he-may-have-been~~ brought to his attention ~~or-shall-otherwise-acquire~~, the correct North Carolina taxable net income of ~~such-the~~ taxpayer for the ~~fiscal-or-calendar-taxable~~ year, and if there ~~shall-be-is~~ any additional tax due from ~~such-the~~ taxpayer ~~the-same-it~~ shall be assessed and collected; and if there ~~shall-have-has~~ been an overpayment of the tax the ~~said~~ Secretary shall, within 30 days after the final determination of the North Carolina taxable net income of ~~such-the~~ taxpayer, refund the amount of ~~such-the~~ excess: Provided, that any taxpayer who fails to comply with this section as ~~to-making-report-of-such-change-as-made-by-the-federal-government~~ within the time specified shall be subject to all penalties as provided in G.S. 105-236, in case of additional tax due, and shall forfeit ~~his-rights~~ the right to any refund due by reason of ~~such-the~~ change.

When the taxpayer makes the return reflecting the corrected ~~net-taxable~~ income as required by this section, the Secretary ~~of Revenue~~ shall make assessments or refunds based thereon within three years ~~from-after~~ the date the return required by this section is filed and not thereafter. When the taxpayer does not make the return reflecting the corrected ~~net-taxable~~ income as required by this section but the Department ~~of Revenue~~ receives from the United States government or one of its agents a report reflecting ~~such~~ corrected ~~net-taxable~~ income, the Secretary ~~of Revenue~~ shall make assessments for taxes due based on ~~such-the~~ corrected ~~net-taxable~~ income within five years ~~from-after~~ the date the report from the United States government or its agent is actually received and not thereafter.

Nothing in this section ~~shall-be-constructed-as-preventing~~ prevents the Secretary ~~of Revenue~~ from making an assessment immediately following the receipt from any source

of information concerning the correction, change in, or determination of ~~net-taxable~~ income of a taxpayer by the United States government. The assessment of tax or additional tax under this section shall not be subject to any statute of limitations except as provided in this section."

Sec. 1.32. G.S. 105-159.1 reads as rewritten:

"§ 105-159.1. Designation of tax by individual to political party.

(a) Every individual whose income tax liability for the taxable year is one dollar (\$1.00) or more may designate on his or her income tax return that one dollar (\$1.00) of the amount of tax paid by him or her to the Department of Revenue shall thereafter be paid by the Secretary of Revenue, in the manner hereinafter described, to the State Treasurer for the use of all political parties as defined herein upon a pro rata basis according to their respective party voter registrations according to the most recent certification of the State Board of Elections; Provided, however, that no political party with less than one percent (1%) of the total number of registered voters in the State shall receive any ~~such of these~~ funds, and the registration of such ~~parties~~ a party shall not be included in calculating the pro rata distribution. ~~For purposes of~~ As used in this section, ~~political party~~ the term 'political party' shall ~~mean~~ means a political party which at the last preceding general State election received at least ten percent (10%) of the entire vote cast in the State for ~~Governor, Governor~~ or for presidential electors, or a group of voters who by July 1 of the preceding calendar year, by virtue of a petition as a new political party, had duly qualified as a new political party within the meaning of Chapter 163 of the General Statutes of North Carolina. ~~Statutes.~~

(b) For each quarterly period beginning on or after January 1, 1978, ~~and for each quarterly period thereafter~~, on or before the last day of the month following the close of ~~each the~~ quarterly period, the Secretary of Revenue shall remit all funds ~~so~~ designated ~~above pursuant to this section~~ collected during the preceding quarter to the State Treasurer who shall ~~thereafter~~ deposit them in an interest-bearing account to be known as the North Carolina Political Parties Financing Fund. Any interest earned on funds so deposited shall be credited to the political party ~~for to~~ which ~~said the~~ funds were ~~designated~~ allocated. A report to the State Treasurer, State Board of ~~Elections Elections~~, and each State party chairman shall accompany each ~~such~~ remittance, and shall detail the amount of funds forwarded, the cumulative total of funds forwarded to date for the year, and an estimate of the probable total amount to be collected and forwarded for that calendar year.

(d) The Secretary of Revenue shall amend the income tax return in order that all taxpayers desiring to make the political contributions authorized ~~herein shall in this section may~~ do so by designating ~~same~~ on the front face of the tax return. The line of authorization for ~~such the~~ designation shall be color contrasted with the color scheme of the remainder of the income tax return. ~~Such return, The return or its accompanying explanatory instruction, instruction~~ shall readily indicate that any ~~such~~ designations neither increase nor decrease an individual's tax liability."

B. S Corporation Income Tax Act Amendments.

Sec. 1.33. Section 6 of Chapter 1089 of the 1987 Session Laws reads as rewritten:

"Sec. 6. This act is effective for taxable years beginning on or after ~~July 1, 1990.~~
January 1, 1989."

Sec. 1.34. Sections 3 and 4 of Chapter 1089 of the 1987 Session Laws are repealed.

Sec. 1.35. Division I-S of Article 4 of Chapter 105 of the General Statutes reads as rewritten:

"DIVISION I-S. S CORPORATION INCOME TAX.

"§ 105-131. Title; definitions; interpretation.

(a) This Division of the income tax Article shall be known and may be cited as the S Corporation Income Tax Act.

(b) For the purpose of this Division, unless otherwise required by the context:

~~(1) 'Business income' means items of income, loss, deduction or credit arising from transactions and activity in the regular course of the S Corporation's trade or business, and includes income from tangible and intangible property if the acquisition, management, and/or disposition of the property constitute integral parts of the S Corporation's regular trade or business operations.~~

~~(1)(2)~~ 'Code' means the Internal Revenue Code of 1986, as enacted as of January 1, ~~1988, 1989,~~ and includes any provisions enacted as of that date which become effective either before or after that date.

~~(2)~~ ~~(3)~~ 'C Corporation' means a corporation that is not an S Corporation and is subject to the tax levied under Division I of this Article.

~~(3)~~ ~~(4)~~ 'Department' means the Department of Revenue.

~~(4)~~ 'Income attributable to the State' means items of income, loss, deduction, or credit of the S Corporation apportioned and allocated to this State pursuant to G.S. 105-130.4.

~~(5)~~ ~~'Net income' or 'net loss' shall be the same as the S Corporation's taxable income, as defined in the Code.~~

~~(5)~~ 'Income not attributable to the State' means all items of income, loss, deduction, or credit of the S Corporation other than income attributable to the State.

~~(6)~~ ~~'Nonbusiness income' means all items of income, loss, deduction, or credit of the S Corporation other than business income.~~

~~(6)(7)~~ 'Post-termination transition period' means that period defined in section 1377(b)(1) of the Code.

~~(7)(8)~~ 'Pro rata share' means the share determined with respect to an S Corporation shareholder for a taxable period in the manner provided in section 1377(a) of the Code.

~~(8)(9)~~ 'S Corporation' means a corporation for which a valid election under section 1362(a) of the Code is in effect.

~~(9)(10)~~ 'Secretary' means the Secretary of Revenue.

~~(10)(11)~~ 'Taxable period' means any taxable year or portion of a taxable year during which a corporation is an S Corporation.

(c) Except as otherwise expressly provided or clearly appearing from the context, any term used in this Division shall have the same meaning as when used in a comparable context in the Code, or in any statute relating to federal income taxes, in effect during the taxable period. Due consideration shall be given in the interpretation of this Division to applicable sections of the Code in effect and to federal rulings and regulations interpreting such ~~those~~ sections, except where the Code, ruling, or regulation conflicts with the provisions of this Division.

"§ 105-131.1. Taxation of an S Corporation and its shareholders.

(a) An S Corporation shall not be subject to the tax levied under G.S. 105-130.3.

(b) Each shareholder's pro rata share of an S Corporation's income attributable to the State and each resident shareholder's pro rata share of income not attributable to the State, net income or net loss, to the extent apportioned and allocated to this State pursuant to G.S. 105-130.4, shall be taken into account by the shareholder in the manner and subject to the adjustments provided in G.S. 105-131.2-Division II of this Article and section 1366 of the Code and shall be subject to the tax levied under Division II of this Article.

"§ 105-131.2. Apportionment, ~~allocation, adjustment,~~ Adjustment and characterization of income.

~~(a) Allocation of Net Income. The net income of an S Corporation shall be allocated and apportioned to this State as provided in G.S. 105-130.4.~~

(a) Adjustment. The pro rata share of each shareholder in the income attributable to the State of an S Corporation shall be subject to the adjustments provided in G.S. 105-130.5. The pro rata share of each resident shareholder in the income not attributable to the State of an S Corporation shall be subject to the adjustments provided in G.S. 105-134.6(b) and (c).

~~(b) Allocation of Shareholder's Pro Rata Share.~~

~~(1) The pro rata share of each resident and nonresident shareholder in the business income of the S Corporation apportioned to this State under subsection (a) of this section shall, for purposes of G.S. 105-131.1(b), be taken into account by the shareholder subject to the adjustments in determining State net income as provided in G.S. 105-130.5.~~

~~(2) The pro rata share of each resident shareholder in (i) the business income of the S Corporation not apportioned to this State under subsection (a) above, and (ii) the entire nonbusiness income of the S Corporation, shall, for purposes of G.S. 105-131.1(b), be taken into account by the shareholder subject to the adjustments in determining State net income for items exempt from taxation in the State under G.S. 105-141(b).~~

~~(3) The pro rata share of each nonresident shareholder in the nonbusiness income of the S Corporation allocated to this State under subsection (a) above, shall, for purposes of G.S. 105-131.1(b), be taken into account by the shareholder subject to the adjustments in determining State net income as provided in G.S. 105-130.5.~~

(c) Characterization of Income. S Corporation items of income, loss, deduction, and credit taken into account by a shareholder pursuant to G.S. 105-131.1(b) shall be characterized ~~for purposes of this Division~~ as though received or incurred by the S Corporation and not its shareholder.

"§ 105-131.3. Basis and adjustments.

(a) The initial basis of a resident shareholder in the stock of an S Corporation and in any indebtedness of the corporation owed to that shareholder shall be determined, as of the later of the date the stock is acquired, the effective date of the S Corporation election, or the date the shareholder became a resident of this State, as provided under the Code.

(b) The basis of a resident shareholder in the stock and indebtedness of an S Corporation shall be adjusted in the manner and to the extent required by section 1011 of the Code except that:

- (1) Any adjustments made (other than for income exempt from federal or State income taxes) ~~to the S Corporation's business income and nonbusiness income~~ pursuant to G.S. 105-131.2 shall be taken into account; and
- (2) Any adjustments made pursuant to section 1367 of the Code for a taxable period during which this State did not measure S Corporation shareholder income by reference to the corporation's income shall be disregarded.

(c) The initial basis of a nonresident shareholder in the stock of an S Corporation and in any indebtedness of the corporation to that shareholder shall be zero.

(d) The basis of a nonresident shareholder in the stock and indebtedness of an S Corporation shall be adjusted as provided in section 1367 of the Code, except that adjustments to basis shall be limited to the ~~business income and nonbusiness income~~ taken into account by the shareholder pursuant to G.S. 105-131.1(b).

(e) The basis of a shareholder in the stock of an S Corporation shall be reduced by the amount allowed as a loss or deduction pursuant to G.S. 105-131.4(c).

(f) The basis of a resident shareholder in the stock of an S Corporation shall be reduced by the amount of any cash distribution that is not taxable to the shareholder as a result of the application of G.S. 105-131.6(b).

(g) For purposes of this section, a shareholder shall be considered to have acquired stock or indebtedness received by gift at the time the donor acquired the stock or indebtedness, if the donor was a resident of this State at the time of the gift.

"§ 105-131.4. Carryforwards; carrybacks; loss limitation.

(a) Carryforwards and carrybacks to and from an S Corporation shall be restricted in the manner provided in section 1371(b) of the Code.

(b) The aggregate amount of losses or deductions of an S Corporation taken into account by a shareholder pursuant to G.S. 105-131.1(b) may not exceed the combined adjusted bases, determined in accordance with G.S. 105-131.3, of the shareholder in the stock and indebtedness of the S Corporation.

(c) Any loss or deduction that is disallowed for a taxable period pursuant to subsection (b) of this section shall be treated as incurred by the corporation in the succeeding taxable period with respect to that shareholder.

(d) (1) Any loss or deduction that is disallowed pursuant to subsection (b) of this section for the corporation's last taxable period as an S Corporation shall be treated as incurred by the shareholder on the last day of any post-termination transition period.

(2) The aggregate amount of losses and deductions taken into account by a shareholder pursuant to subdivision (1) of this subsection may not exceed the adjusted basis of the shareholder in the stock of the corporation (determined in accordance with G.S. 105-131.3 at the close of the last day of any post-termination transition period and without regard to this subsection).

"§ 105-131.5. Part-year resident shareholder.

If a shareholder of an S Corporation is both a resident and nonresident of this State during any taxable period, the shareholder's pro rata share of the S Corporation's income attributable to the State and income not attributable to the State for the taxable period ~~business income and nonbusiness income determined pursuant to G.S. 105-131.2~~ shall be further prorated between the shareholder's periods of residence and nonresidence, in accordance with the number of days in each ~~period.~~ period, as provided in G.S. 105-134.5.

"§ 105-131.6. Distributions.

(a) Subject to the provisions of subsection (c) of this section, a distribution made by an S Corporation with respect to its stock to a resident shareholder shall be taxable to the shareholder ~~under as provided in Division II of this Article~~ only to the extent that the distribution is characterized as a dividend or as gain from the sale or exchange of property pursuant to section 1368 of the Code.

(b) Subject to the provisions of subsection (c) of this section, any distribution of money made by a corporation with respect to its stock to a resident shareholder during a post-termination transition period shall not be taxable to the shareholder ~~under as provided in~~ Division II of this Article to the extent the distribution is applied against and reduces the adjusted basis of the stock of the shareholder in accordance with section 1371(e) of the Code.

(c) In applying sections 1368 and 1371(e) of the Code to any distribution referred to in this section:

(1) The term 'adjusted basis of the stock' means the adjusted basis of the shareholder's stock as determined under G.S. 105-131.3; and

(2) The accumulated adjustments account maintained for each resident shareholder shall be equal to, and shall be adjusted in the same manner as, the corporation's accumulated adjustments account defined in section 1368(e)(1)(A) of the Code, except that:

a. The accumulated adjustments account shall be modified in the manner provided in G.S. 105-131.3(b)(1); and

- b. The amount of the corporation's federal accumulated adjustments account that existed on the day this State began to measure the S Corporation shareholders' income by reference to the income of the S Corporation shall be ignored and shall be treated for purposes of Divisions I and II of this Article as additional accumulated earnings and profits of the corporation.

"§ 105-131.7. Returns; shareholder agreements; mandatory withholding.

(a) An S Corporation incorporated or doing business in the State shall file with the Department an annual return, on a form prescribed by the Secretary, on or before the due date prescribed for the filing of C Corporation returns in G.S. 105-130.17. The return shall show the name, address, and social security or federal identification number of each shareholder, income attributable to the State and the income not attributable to the State with respect to each shareholder as determined under G.S. 105-131.2, defined in G.S. 105-131(4) and (5), and such other information as the Secretary may require.

(b) The Department shall permit S Corporations to file composite returns and to make composite payments of tax on behalf of some or all nonresident shareholders. The Department may permit S Corporations to file composite returns and make composite payments of tax on behalf of some or all resident shareholders.

(c) An S Corporation shall file with the Department, on a form prescribed by the Secretary, the agreement of each nonresident shareholder of the corporation (i) to file a return and make timely payment of all taxes imposed by this State on the shareholder with respect to the income of the S Corporation, and (ii) to be subject to personal jurisdiction in this State for purposes of the collection of any unpaid income tax, together with related interest and penalties, owed by the nonresident shareholder. If the corporation fails to timely file an agreement required by this subsection on behalf of any of its nonresident shareholders, then the corporation shall at the time specified in subsection (d) of this section pay to the Department on behalf of each nonresident shareholder with respect to whom an agreement has not been timely filed who fails to execute such an agreement an amount equal to seven percent (7%) of the shareholder's pro rata share of the S Corporation's net income attributable to the State reflected on the corporation's return for the taxable period. An S Corporation may recover a payment made pursuant to the preceding sentence from the shareholder on whose behalf the payment was made. apportioned and allocated to this State pursuant to G.S. 105-130.4 and adjusted pursuant to G.S. 105-131.2.

(d) The agreements required to be filed pursuant to subsection (c) of this section shall be filed at the following times:

- (1) At the time the annual return is required to be filed for the first taxable period for which the S Corporation becomes subject to the provisions of this Division; and
- (2) At the time the annual return is required to be filed for any taxable period in which the corporation has a nonresident shareholder on whose behalf such an agreement has not been previously filed.

(e) Amounts paid to the Department on account of the corporation's shareholders under subsections (b) and (c) shall constitute payments on their behalf of the income tax imposed on them under Division II of this Article for the taxable period.

"§ 105-131.8. Tax credits.

(a) For purposes of G.S. 105-151, each resident shareholder shall be considered to have paid a tax imposed on the shareholder in an amount equal to the shareholder's pro rata share of any net income tax paid by the S Corporation to a state which does not measure the income of S Corporation shareholders by the income of the S Corporation. For purposes of the preceding sentence, the term 'net income tax' means any tax imposed on or measured by a corporation's net income.

(b) Each shareholder of an S Corporation shall be allowed as a credit against the tax imposed by Division II of this Article in an amount equal to the shareholder's pro rata share of the tax credits ~~described in G.S. 105-130.22 through G.S. 105-130.39~~ for which the S Corporation is eligible."

C. Income Tax Act for Estates and Trusts Amendments.

Sec. 1.36. G.S. 105-160 reads as rewritten:

"§ 105-160. Short title.

This Division shall be known ~~and may be cited as~~ the Income Tax Act for Estates and Trusts."

Sec. 1.37. G.S. 105-161, 105-162, and 105-163 are repealed.

Sec. 1.38. Division III of Article 4 of Chapter 105 of the General Statutes is amended by adding after G.S. 105-160 the following new sections to read:

"§ 105-160.1. Definitions.

The definitions provided in Division II of this Article shall apply in this Division except where the context clearly indicates a different meaning.

"§ 105-160.2. Imposition of tax.

The tax imposed by this Division shall apply to the taxable income of estates and trusts as determined under the provisions of the Code except as otherwise provided in this Division. The taxable income of an estate or trust shall be the same as taxable income for such an estate or trust under the provisions of the Code, adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, except that the adjustments provided in G.S. 105-134.6 and G.S. 105-134.7 shall be apportioned between the estate or trust and the beneficiaries based on the distributions made during the taxable year. The tax shall be computed at the following percentages of an amount equal to the taxable income multiplied by a fraction, the numerator of which is the estate or trust's gross income from North Carolina sources, plus the gross income from sources outside of the State and from intangible sources which is for the benefit of a resident of this State, and the denominator of which is the estate or trust's gross income as calculated under the Code. For purposes of the preceding sentence, taxable income and gross income shall be computed subject to the adjustments provided in G.S. 105-134.6 and G.S. 105-134.7. The tax shall be at six percent (6%) on the first twelve thousand seven hundred fifty dollars (\$12,750) of the amount computed above; and at seven percent (7%) of the excess of the amount computed above over twelve thousand seven hundred fifty dollars

(\$12,750). The tax computed under the provisions of this Division shall be paid by the fiduciary responsible for administering the estate or trust.

"§ 105-160.3. Tax credits.

(a) Except as otherwise provided in this section, the credits allowed to an individual against the tax imposed by Division II of this Article shall be allowed to the same extent to an estate or a trust against the tax imposed by this Division. Any credit computed as a percentage of income received shall be apportioned between the estate or trust and the beneficiaries based on the distributions made during the taxable year. No credit may exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except for payments of tax made by or on behalf of the estate or trust.

(b) The following credits are not allowed to an estate or trust:

- (1) G.S. 105-151. Tax credits for income taxes paid to other states by individuals.
- (2) G.S. 105-151.11. Credit for child care and certain employment-related expenses.
- (3) G.S. 105-151.18. Credit for the disabled.

"§ 105-160.4. Tax credits for income taxes paid to other states by estates and trusts.

(a) If a fiduciary is required to pay income tax to this State for an estate or a trust, the fiduciary shall be allowed a credit against the tax imposed by this Division for income taxes imposed by and paid to another state or country on income derived from sources within that other state or country in accordance with the formula contained in subsection (b) and the requirements of subsection (c).

(b) The fraction of the gross income for North Carolina income tax purposes that is derived from sources within and subject to income tax in another state or country shall be ascertained and the North Carolina income tax before credit under this section shall be multiplied by that fraction. The credit allowed shall be either the product thus calculated or the income tax actually paid the other state or country, whichever is smaller.

(c) Receipts showing the payment of income taxes to another state or country and a true copy of the return upon the basis of which the taxes are assessed shall be filed with the Secretary at or before the time credit is claimed. If credit is claimed on account of a deficiency assessment, a true copy of the notice assessing or proposing to assess the deficiency, as well as a receipt showing the payment of the deficiency, shall be filed with the Secretary.

(d) If any taxes paid to another state or country for which a fiduciary has been allowed a credit under this section are at any time credited or refunded to the fiduciary, a tax equal to that portion of the credit allowed for the taxes so credited or refunded shall be due and payable from the fiduciary and shall be subject to the penalties and interest on delinquent payments provided in G.S. 105-236 and G.S. 105-241.1.

(e) A resident beneficiary of an estate or trust who is taxed under the provisions of Division II of this Article on income from an estate or trust determined to be includable in the resident's gross income is allowed a credit against the tax imposed for income taxes paid by the fiduciary to another state or country on the income in

accordance with the formula contained in subsection (b) of this section and the requirements of subsection (c) of this section; provided, that if any taxes paid to another state or country for which a beneficiary has been allowed credit under this section are at any time credited or refunded to the beneficiary, a tax equal to that portion of the credit allowed for the taxes so credited or refunded shall be due and payable from the beneficiary and shall be subject to the penalties and interest on delinquent payments provided in G.S. 105-236 and G.S. 105-241.1.

"§ 105-160.5. Returns.

The fiduciary of an estate or trust described below shall file an income tax return under affirmation, showing specifically the taxable income and the adjustments required by this Division and such other facts as the Secretary may require for the purpose of making any computation required by this Division:

- (1) Every estate or trust which has taxable income under this Division during the taxable year and is required to file an income tax return for the taxable year under the Code.
- (2) Every estate or trust which the Secretary believes to be liable for a tax under this Division, when so notified by the Secretary and requested to file a return.

"§ 105-160.6. Time and place of filing returns.

Returns required under the provisions of G.S. 105-160.5 shall be in such form as the Secretary may prescribe, and shall be filed with the Secretary at the Secretary's main office or at any branch office which the Secretary may establish. The return of every fiduciary reporting on a calendar-year basis shall be filed on or before the 15th day of April in each year, and the return of every fiduciary reporting on a fiscal year basis shall be filed on or before the 15th day of the fourth month following the close of the fiscal year. In the case of sickness, absence, or other disability or whenever in his judgment good cause exists, the Secretary may allow further time for filing a return.

"§ 105-160.7. Time and place of payment of tax.

(a) The full amount of the tax payable as shown on the face of the return shall be paid to the Secretary at the office where the return is filed at the time fixed by law for filing the return. However, if the amount shown to be due after all credits is less than one dollar (\$1.00), no payment need be made.

(b) The tax may be paid with uncertified check, but if a check so received is not paid by the financial institution on which it is drawn, the fiduciary by whom the check was tendered shall remain liable for the payment of the tax and for all penalties lawfully imposed.

"§ 105-160.8. Corrections and changes.

For purposes of this Division, the provisions of G.S. 105-159 requiring an individual to report changes, corrections, or the determination of net income by the Internal Revenue Service shall apply to fiduciaries required to file returns for estates and trusts."

D. Chapter 105 Conforming Amendments.

Sec. 1.39. G.S. 105-163.02(11) reads as rewritten:

"(11) 'Taxable year' shall have the meaning ~~ascribed to such term provided~~ in G.S. ~~105-135(9)~~ 105-134.1 and G.S. 105-130.2(5), as appropriate.

In addition, 'taxable year' shall be that taxable year for which a manufacturer files an income tax return upon which the tax credit provided for under this Division is claimed."

Sec. 1.40. G.S. 105-163.1(3) reads as rewritten:

"(3) 'Dependent' means a dependent with respect to whom an income tax exemption is allowed under the ~~provisions of G.S. 105-149(a)(5) Code.~~"

Sec. 1.41. G.S. 105-163.2(a) and (b) read as rewritten:

"(a) Every employer making payment of wages on or after January 1, 1960, shall deduct and withhold with respect to the wages of each employee for each payroll period an amount determined as follows:

~~Such An~~ amount which, if an equal amount was collected for each similar payroll period with respect to a similar amount of wages for each payroll period during an entire calendar year, would aggregate or approximate the income tax liability of ~~such the~~ employee under Article 4 of this Chapter after making allowance for the personal exemptions to which ~~such the~~ employee would be entitled on the basis of his status during ~~such the~~ payroll period and after making allowance for withholding purposes for a deduction from wages of the amount of the standard deduction allowed under ~~G.S. 105-147(22) the Code less the amount by which the standard deduction has been increased under section 63(c)(4) of the Code~~ and without making allowance for any other deductions.

(b) The Secretary of ~~Revenue~~ shall cause to be prepared and shall promulgate tables for computing amounts to be withheld with respect to different rates of wages for different payroll periods applicable to the various combinations of exemptions to which an employee may be entitled and taking into account the ~~limited ten percent (10%) deduction above referred to. appropriate standard deduction.~~ ~~Such The~~ tables may provide for the same amount to be withheld within reasonable salary brackets or ranges so designed as to result in the withholding during a year of approximately the amount of an employee's indicated income tax liability ~~with respect to said~~ for that year. The withholding of wages pursuant to and in accordance with ~~such these~~ tables shall be deemed as a matter of law to constitute compliance with the provisions of subsection (a) of this section, notwithstanding any other provisions of this Article."

Sec. 1.42. G.S. 105-163.3 reads as rewritten:

"§ 105-163.3. Withholding in accordance with regulations.

The manner of withholding and the amount to be deducted and withheld under G.S. 105-163.2 shall be determined in accordance with tables, ~~rules rules,~~ and regulations promulgated by the Secretary. The withholding exemption allowed by ~~such these~~ tables, ~~rules rules,~~ and regulations shall, as nearly as possible, approximate the exemptions to which an employee would be entitled under ~~G.S. 105-149. the Code less the amount by which the exemptions would be increased under section 151(d)(3) of the Code.~~"

Sec. 1.43. G.S. 105-163.5(b) reads as rewritten:

"(b) Every employee shall, on or before January 1, 1960, or at the time of commencing employment, whichever is later, furnish his employer with a signed

withholding exemption certificate informing the employer of the exemptions ~~which~~ the employee claims, which in no event shall exceed the amount of exemptions to which the employee is entitled under ~~G.S. 105-149; the Code;~~ but, in the event that the employee fails to file the exemption ~~certificate required herein,~~ certificate the employer, in computing amounts to be withheld from ~~said~~ the employee's wages, shall allow the employee the exemption accorded a single person with no dependents."

Sec. 1.44. G.S. 105-163.10 reads as rewritten:

"§ 105-163.10. Withheld amounts credited to individual for calendar year.

The amount deducted and withheld under G.S. 105-163.2 during any calendar year from the wages of any individual shall be allowed as a credit to ~~such~~ that individual against the tax imposed by G.S. ~~105-136,~~ 105-134.2 for taxable years beginning in ~~such~~ that calendar year. If more than one taxable year begins in ~~such~~ that calendar year ~~such~~ the amount shall be allowed as a credit against the tax for the last taxable year so beginning. As a prerequisite to obtaining the credit allowed ~~herein,~~ in this section, the individual taxpayer must file with the Secretary one copy, and such other copies and information as may be required by regulation, of the withholding statement provided for by G.S. 105-163.7, and ~~such~~ the withholding statement must accompany the annual income tax return required by G.S. 105-152."

Sec. 1.45. G.S. 105-163.16(d), (e), and (f) read as rewritten:

"(d) When a husband and wife have elected under ~~G.S. 105-152(e)~~ G.S. 105-152.1 to file ~~their separate income tax returns on a single form~~ a joint return and a refund for overpayment of tax is made payable to both spouses as provided in that subsection, the provisions of this section shall apply to ~~such~~ the refund.

(e) Any taxpayer who ~~shall be~~ is entitled to a refund of taxes withheld or estimated taxes paid as provided by this section may elect to contribute all or any part of ~~such~~ the refund to the Wildlife Fund for the support of wildlife management and protection programs primarily for nongame wildlife species and wildlife species which are or may hereafter be designated as endangered or threatened. The Secretary shall provide appropriate language and space on the individual income tax form in which to make ~~such election~~ the election, and ~~shall note the same in his instructions as a contribution qualifying as a deduction under G.S. 105-147(16).~~ Any such ~~The~~ election shall become irrevocable upon filing the taxpayer's income tax return for the taxable year. All of ~~such~~ the contributions made pursuant to this subsection shall be transmitted to the State Treasurer for credit to the Wildlife Fund which shall be made available to the Wildlife Resources Commission for the support of management and protection programs primarily for nongame wildlife and endangered and threatened species and to match federal funds which may become available for ~~such~~ these purposes.

(f) Any taxpayer who ~~shall be~~ is entitled to a refund of taxes withheld or estimated taxes paid as provided by this section may elect to contribute all or any part of ~~such~~ the refund to the North Carolina Candidates Financing Fund for the use of political campaigns as provided in Article 22C of Chapter 163 of the General Statutes. The Secretary shall provide appropriate language and space on the individual income tax form in which to make ~~such election~~ the election, and ~~shall note the same in his instructions as a contribution qualifying as a deduction under G.S. 105-147(16).~~ Any

~~such~~ The election shall become irrevocable upon filing the taxpayer's income tax return for the taxable year. The Secretary shall, on a quarterly basis, transmit the ~~remainder of such~~ the contributions made pursuant to this subsection to the State Treasurer for deposit in the North Carolina Candidates Financing Fund. Any interest earned on funds so deposited shall be credited to that Fund."

Sec. 1.46. G.S. 105-203 reads as rewritten:

"§ 105-203. Shares of stock.

All shares of stock (including shares and units of ownership of mutual funds, investment ~~trusts~~ trusts, and investment funds) owned by residents of this State or having a business, ~~commercial~~ commercial, or taxable situs in this State on December 31 of each year, with the exception herein provided, shall be subject to an annual tax, which is hereby levied, of twenty-five cents (25¢) on every one hundred dollars (\$100.00) of the total fair market value of ~~such~~ the stock on December 31 of each year less ~~such~~ the proportion of ~~such~~ the value as ~~that~~ is equal to ~~the~~ proportion of the dividends upon such stock deductible by such taxpayer in computing his income tax liability under the provisions of G.S. 105-130.7 and 105-147(7) without regard to the ~~fifteen thousand dollar (\$15,000) limitation under subdivision (7) of G.S. 105-147 and 105-130.7.~~ to:

- (1) In the case of a taxpayer that is a corporation, the proportion of the dividends upon the stock deductible by the taxpayer in computing its income tax liability under G.S. 105-130.7 without regard to the fifteen thousand dollar (\$15,000) limitation under G.S. 105-130.7; and
- (2) In the case of a taxpayer that is not a corporation, the proportion of the dividends upon the stock that would be deductible by the taxpayer, if the taxpayer were a corporation, in computing its income tax liability under the provisions of G.S. 105-130.7(1),(2),(3), and (3a), without regard to the fifteen thousand dollar (\$15,000) limitation under G.S. 105-130.7.

The tax herein levied shall not apply to shares of stock in building and loan associations or savings and loan associations which pay a tax as levied under Article 8D of Chapter 105 of the General Statutes, nor to shares of stock owned by any corporation which has its commercial domicile in North Carolina, where ~~such~~ the corporation owns more than fifty percent (50%) of the outstanding voting stock.

The tax herein levied shall not apply to units of ownership in an investment trust, the corpus of which is composed (i) entirely of obligations of this State or (ii) entirely of obligations of the United States and of this State, at least eighty percent (80%) of the fair market value of which represents obligations of this State. For the purpose of this paragraph, 'State' includes the State of North Carolina, political subdivisions of this State, and agencies of such governmental units; 'United States' includes the United States and its possessions, and the District of Columbia; 'obligations' includes bonds, notes and other evidences of debt. In order for the exemption provided for in this paragraph to apply, it shall be the duty of the trustees of an investment trust to provide to the Secretary of Revenue, in form satisfactory to him and not later than December 31

of the year with respect to which the exemption applies, information sufficient to establish the applicability of this exemption.

Indebtedness incurred directly for the purchase of shares of stock may be deducted from the total value of ~~such~~ those shares; provided, the specific shares of stock so purchased are pledged as collateral to secure ~~said~~ the indebtedness; provided further, that only so much of ~~said~~ the indebtedness may be deducted as is in the same proportion as the taxable value of ~~said~~ the shares of stock is to the total value of ~~said~~ the shares of stock."

Sec. 1.47. G.S. 105-259 reads as rewritten:

"§ 105-259. Secrecy required of officials; penalty for violation.

With respect to any one of the following persons: (i) the Secretary of Revenue and all other officers or employees, and former officers and employees, of the Department of Revenue; (ii) local tax officials, as defined in G.S. 105-273, and former local tax officials; (iii) members and former members of the Property Tax Commission; (iv) any other person authorized in this section to receive information concerning any item contained in any report or return, or authorized to inspect any report or return; and (v) the Commissioner of Insurance and all other officers or employees and former officers and employees of the Department of Insurance with respect to State and federal income tax returns filed with the Commissioner of Insurance by domestic insurance companies; and except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any of ~~said~~ these persons to divulge or make known in any manner the amount of income, income tax or other taxes of any taxpayer, or information relating thereto or from which the amount of income, income tax or other taxes or any part thereof might be determined, deduced or estimated, whether ~~the same be it is~~ set forth or disclosed in or by means of any report or return required to be filed or furnished under this Subchapter, or in or by means of any audit, assessment, application, correspondence, schedule or other document relating to ~~such~~ the taxpayer, notwithstanding the provisions of Chapter 132 of the General Statutes or of any other law or laws relating to public records. It shall likewise be unlawful to reveal whether or not any taxpayer has filed a return, and to abstract, compile or furnish to any person, firm or corporation not otherwise entitled to information relating to the amount of income, income tax or other taxes of a taxpayer, any list of names, addresses, social security numbers or other personal information concerning ~~such~~ the taxpayer, whether or not ~~such~~ the list discloses a taxpayer's income, income tax or other taxes, or any part thereof, except that when an election is made by a husband and wife ~~under G.S. 105-152(e) to file their separate returns on a single form, or in order to determine an exemption allowable under G.S. 105-149(a)(2) under G.S. 105-152.1 to file a joint return,~~ any information given to one spouse concerning the income or income tax of the other spouse reported or reportable on ~~such~~ single the joint return ~~or on separate returns~~ shall not be a violation of the provisions of this section.

Nothing in this section shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns, and the items thereof; the inspection of ~~such~~ these reports or returns by the Governor, Attorney General, or their duly authorized representative; or the inspection by a legal

representative of the State of the report or return of any taxpayer who shall bring an action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or penalty imposed by this Subchapter; nor shall the provisions of this section prohibit the Department of Revenue furnishing information to other governmental agencies of persons and firms properly licensed under Schedule B, G.S. 105-33 to 105-113. The Department of Revenue may exchange information with the officers of organized associations of taxpayers under Schedule B, G.S. 105-33 to 105-113, with respect to parties liable for ~~such~~ these taxes and as to parties who have paid ~~such~~ these license taxes.

When any record of the Department of Revenue ~~shall have~~ has been photographed, ~~photocopied~~ photocopied, or microphotocopied pursuant to the authority contained in G.S. 8-45.3, the original of ~~said~~ that record may thereafter be destroyed at any time upon the order of the Secretary of Revenue, notwithstanding the provisions of G.S. 121-5, ~~G.S. 132-3~~ G.S. 132-2, or any other law ~~or laws~~ relating to the preservation of public records. Any record ~~which shall not have~~ that has not been so photographed, ~~photocopied~~ photocopied, or microphotocopied shall be preserved for three years, and thereafter until the Secretary of Revenue ~~shall order the same to be~~ orders it destroyed.

Any person, officer, agent, clerk, employee, or local tax official or ~~former officer, employee or any former officer, employee, or local tax official~~ violating ~~who violates~~ the provisions of this section shall be guilty of a misdemeanor and fined not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000) and/or imprisoned, in the discretion of the court; and if ~~such offending person be~~ the person committing the violation is a public officer or employee, ~~he~~ that person shall be dismissed from such office or employment, and ~~shall~~ may not hold any public office or employment in this State for a period of five years thereafter.

Notwithstanding the provisions of this section, the Secretary of Revenue may permit the Commissioner of Internal Revenue of the United States, or the revenue officer of any other state imposing any of the taxes imposed in this Subchapter, or the duly authorized representative of either, to inspect the report or return of any taxpayer; or may furnish ~~such officer or his authorized agent~~ that person an abstract of the report or return of any taxpayer; or supply ~~such officer~~ that person with information concerning any item contained in any report or return, or disclosed by the report of any investigation of ~~such~~ any report or return of any taxpayer. ~~Such~~ The permission, however, ~~shall~~ may be granted or ~~such~~ the information furnished to ~~such officer, or his duly authorized representatives, the officer or agent~~ only if the statutes of the United States or of ~~such~~ the other state ~~grants~~ grant substantially similar privilege to the Secretary of Revenue of this State or ~~his~~ the Secretary's duly authorized representative. Notwithstanding any other provision of law, the Secretary may also furnish names, addresses, and account and identification numbers of ~~(a)~~ (i) taxpayers who may be entitled to property held in the Escheat Fund to the Department of State Treasurer when that Department requests the information for the purpose of administering Chapter 116B of the General Statutes, and ~~(b)~~ (ii) taxpayers to the Employment Security Commission when that Commission requests the information for the purpose of administering Article 2 of Chapter 96 of the General Statutes. Neither this section nor any other law prevents

the exchange of information between the Department of Revenue and the Department of Transportation's Division of Motor Vehicles when the information is needed by either to administer the laws with which they are charged. Notwithstanding any other provision of law, State officers and employees who perform computerized data processing functions pursuant to G.S. 143-341(9) for the Department of Revenue are authorized to receive and process for the Department of Revenue information in reports and returns and are subject to the criminal provisions of this section.

Notwithstanding the provisions of this section, the Secretary of Revenue may contract with any person, firm or corporation to receive and address, sort, bag, or deliver to the United States Postal Service any bulk mailing originated by the Department of Revenue, and may deliver the mail to the contractor pursuant to the contract. To ensure performance of the contract, the contractor shall furnish a bond in a form and amount acceptable to the Secretary."

Sec. 1.48. G.S. 105-266 reads as rewritten:

"§ 105-266. Overpayment of taxes to be refunded with interest.

If the Secretary of Revenue discovers from the examination of any return, or otherwise, that any taxpayer has overpaid the correct amount of tax (including penalties, interest and costs if any), ~~such that~~ overpayment if the amount of three dollars (\$3.00) or more, shall be refunded to the taxpayer within 60 days after it is ascertained together with interest ~~thereon~~ at the rate established in G.S. 105-241.1(i) for assessments; provided, that interest on ~~any such the~~ refund shall be computed from a date 90 days after the date the tax was originally paid by the taxpayer; except that there shall be no refund to the taxpayer of any sum set off under the provisions of Chapter 105A, the Set-off Debt Collection Act. If ~~said the~~ overpayment is less than three dollars (\$3.00) ~~said the~~ overpayment shall be refunded ~~as aforesaid but~~ only upon receipt by the Secretary of Revenue of a written demand for ~~such the~~ refund from the taxpayer. Provided, however, that no overpayment shall be refunded irrespective of whether upon discovery or receipt of written demand if ~~such the~~ discovery is not made or ~~such the~~ demand is not received within three years from the date set by the statute for the filing of the return or within six months of the payment of the tax alleged to be an overpayment, whichever date is the later. The provisions of this paragraph shall not apply to interest required under G.S. 105-267. When a husband and wife have elected ~~under G.S. 105-152(e) to file their separate income tax returns on a single form under G.S. 105-152.1 to file a~~ joint return and a refund for overpayment of tax is made payable to both spouses as provided in that subsection, the provisions of this section shall apply to ~~such the~~ refund."

Part II.

Savings Clause and Effective Date.

Sec. 2.1. This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

Sec. 2.2. Notwithstanding the provisions of G.S. 105-163.15, no addition to tax shall be made under G.S. 105-163.15 for a taxable year beginning on or after January 1, 1989, and before January 1, 1990, with respect to any underpayment to the extent the underpayment was created or increased by any provision of Part I of this act.

Sec. 2.3. This act is effective for taxable years beginning on or after January 1, 1989.

In the General Assembly read three times and ratified this the 7th day of August, 1989.