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Short Title: Econ. Devpt. and Tax Collection Changes.

(Public)

Sponsors:

Referred to:

May 20, 2010

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE MILL REHABILITATION CREDIT; TO MAKE CHANGES TO THE CREDIT FOR INVESTING IN RENEWABLE ENERGY PROPERTY; TO ESTABLISH A CREDIT FOR CONSTRUCTING A RENEWABLE ENERGY PROPERTY FACILITY; TO LOWER THE SALES TAX COMPLIANCE BURDEN ON SMALL RETAILERS; TO RELIEVE THE ANNUAL REPORT COMPLIANCE BURDEN ON SMALL BUSINESS; TO REDUCE THE FRANCHISE TAX BURDEN ON CONSTRUCTION COMPANIES; AND TO IMPROVE THE TAX AND DEBT COLLECTION PROCESS, AS RECOMMENDED BY THE REVENUE LAWS STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

**EXTEND MILL REHABILITATION CREDIT**

**SECTION 1.(a)** G.S. 105-129.75 reads as rewritten:

**"§ 105-129.75. Sunset.**

This Article expires ~~January 1, 2011~~, January 1, 2014, for rehabilitation projects for which an application for an eligibility certification is submitted on or after that date."

**SECTION 1.(b)** This section is effective when it becomes law.

**CHANGES TO CREDIT FOR INVESTING IN RENEWABLE ENERGY PROPERTY**

**SECTION 2.(a)** G.S. 105-129.15 reads as rewritten:

**"§ 105-129.15. Definitions.**

The following definitions apply in this Article:

...

(2) Cost. – ~~In the case of property owned by the taxpayer, cost~~ The cost of property is determined pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code. ~~In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).~~

...

(4b) Installation. – Renewable energy property that, standing alone or in combination with other machinery, equipment, or real property, is able to produce usable renewable energy on its own.

(4e) Pass-through entity. – Defined in G.S. 105-228.90.

...."

**SECTION 2.(b)** G.S. 105-129.16A reads as rewritten:



1 **"§ 105-129.16A. Credit for investing in renewable energy property.**

2 (a) Credit. – If a taxpayer that has constructed, purchased, or leased renewable energy  
3 property places it in service in this State during the taxable year, the taxpayer is allowed a  
4 credit equal to thirty-five percent (35%) of the cost of the property. In the case of renewable  
5 energy property that serves a single-family dwelling, the credit must be taken for the taxable  
6 year in which the property is placed in service. For all other renewable energy property, the  
7 entire credit may not be taken for the taxable year in which the property is placed in service but  
8 must be taken in five equal installments beginning with the taxable year in which the property  
9 is placed in service. Upon request of a taxpayer who leases renewable energy property, the  
10 lessor of the property must provide the taxpayer with a statement that describes the renewable  
11 energy property and states the cost of the property.

12 (b) Expiration. – If, in one of the years in which the installment of a credit accrues, the  
13 renewable energy property with respect to which the credit was claimed is disposed of, taken  
14 out of service, or moved out of State, the credit expires and the taxpayer may not take any  
15 remaining installment of the credit. The taxpayer may, however, take the portion of an  
16 installment that accrued in a previous year and was carried forward to the extent permitted  
17 under G.S. 105-129.17. No credit is allowed under this section to the extent the cost of the  
18 renewable energy property was provided by public funds.

19 (c) Ceilings. – The credit allowed by this section may not exceed the applicable ceilings  
20 provided in this subsection.

21 (1) Nonresidential Property. – A ceiling of two million five hundred thousand  
22 dollars (\$2,500,000) per installation applies to renewable energy property  
23 placed in service for any purpose other than residential.

24 (2) Residential Property. – The following ceilings apply to renewable energy  
25 property placed in service for residential purposes:

- 26 a. One thousand four hundred dollars (\$1,400) per dwelling unit for  
27 solar energy equipment for domestic water heating, including pool  
28 heating.
- 29 b. Three thousand five hundred dollars (\$3,500) per dwelling unit for  
30 solar energy equipment for active space heating, combined active  
31 space and domestic hot water systems, and passive space heating.
- 32 c. Ten thousand five hundred dollars (\$10,500) per installation for any  
33 other renewable energy property for residential purposes.
- 34 d. Eight thousand four hundred dollars (\$8,400) per installation for a  
35 geothermal heat pump or geothermal equipment.

36 (d) No Double Credit. – A taxpayer that claims any other credit allowed under this  
37 Chapter with respect to renewable energy property may not take the credit allowed in this  
38 section with respect to the same property. A taxpayer may not take the credit allowed in this  
39 section for renewable energy property the taxpayer leases from another unless the taxpayer  
40 obtains the lessor's written certification that the lessor will not claim a credit under this Chapter  
41 with respect to the property.

42 (e) Allocation. – Notwithstanding G.S.105-131.8 and G.S. 105-269.15, a pass-through  
43 entity that qualifies for the credit provided in this section may allocate the credit among any of  
44 its owners in its discretion as long as an owner's adjusted basis in the pass-through entity, as  
45 determined under the Code, at the end of the taxable year in which the renewable energy  
46 property is placed in service, is at least forty percent (40%) of the amount of credit allocated to  
47 that owner. Owners to whom a credit is allocated are allowed the credit as if they had qualified  
48 for the credit directly. A pass-through entity and its owners must include with their tax returns  
49 for every taxable year in which an allocated credit is claimed a statement of the allocation made  
50 by the pass-through entity and the allocation that would have been required under  
51 G.S. 105-131.8 or G.S. 105-269.15.

1       (f) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has  
2 qualified for the credit allowed under this section disposes of all or a portion of the owner's  
3 interest in the pass-through entity within five years from the date the renewable energy property  
4 is placed in service and the owner's interest in the pass-through entity is reduced to less than  
5 two-thirds of the owner's interest in the pass-through entity at the time the renewable energy  
6 property was placed in service, the owner forfeits a portion of the credit. The amount forfeited  
7 is determined by multiplying the amount of credit by the percentage reduction in ownership and  
8 then multiplying that product by the forfeiture percentage. The forfeiture percentage equals the  
9 recapture percentage found in the table in section 50(a)(1)(B) of the Code. The remaining  
10 allowable credit is allocated equally among the five years in which the credit is claimed.

11       (g) Exceptions to Forfeiture. – Forfeiture as provided in subsection (e) of this section is  
12 not required if the change in ownership is the result of any of the following:

13           (1) The death of the owner.

14           (2) A merger, consolidation, or similar transaction requiring approval by the  
15 shareholders, partners, or members of the taxpayer under applicable State  
16 law, to the extent the taxpayer does not receive cash or tangible property in  
17 the merger, consolidation, or other similar transaction.

18       (h) Liability From Forfeiture. – A taxpayer or an owner of a pass-through entity that  
19 forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus  
20 interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would  
21 have been due if the credit had not been allowed. The past taxes and interest are due 30 days  
22 after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to  
23 pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

24       ~~(e)~~(i) Sunset. – This section is repealed effective for renewable energy property placed  
25 into service on or after January 1, 2016."

26       **SECTION 2.(c)** G.S. 105-259(b) is amended by adding the following new  
27 subdivision:

28           "(40) To furnish to a taxpayer claiming a credit under G.S. 105-129.16A  
29 information used by the Secretary to adjust the amount of the credit claimed  
30 by the taxpayer."

31       **SECTION 2.(d)** This section is effective for taxable years beginning on or after  
32 January 1, 2010.

### 33 34 **ESTABLISH CREDIT FOR CONSTRUCTING A RENEWABLE ENERGY** 35 **PROPERTY FACILITY**

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

#### 38 **"§ 105-129.16I. Credit for constructing a renewable energy property facility.**

39       (a) Credit. – A taxpayer that constructs and places in service in this State a commercial  
40 facility for the manufacture of renewable energy property is allowed a credit equal to  
41 twenty-five percent (25%) of the cost to the taxpayer of constructing and equipping the facility.  
42 The entire credit may not be taken for the taxable year in which the facility is placed in service  
43 but must be taken in seven equal annual installments beginning with the taxable year in which  
44 the facility is placed in service. If, in one of the years in which the installment of a credit  
45 accrues, the facility with respect to which the credit was claimed is disposed of or taken out of  
46 service, the credit expires and the taxpayer may not take any remaining installment of the  
47 credit. The taxpayer may, however, take the portion of an installment that accrued in a previous  
48 year and was carried forward to the extent permitted under G.S. 105-129.17. A taxpayer that  
49 claims any other credit allowed under this Chapter with respect to construction of a facility may  
50 not take the credit allowed in this section with respect to the same facility.

1       (b) Sunset. – This section is repealed effective for a renewable energy property facility  
2 placed in service on or after January 1, 2014."

3               **SECTION 3.(b)** This section becomes effective for taxable years beginning on or  
4 after January 1, 2011.

#### 6 **LOWER SALES TAX COMPLIANCE BURDEN ON SMALL RETAILERS**

7               **SECTION 4.(a)** G.S. 105-164.16(b1) reads as rewritten:

8               "(b1) Monthly. – A taxpayer who is consistently liable for at least one hundred dollars  
9 (\$100.00) but less than ~~ten thousand dollars (\$10,000)~~ fifteen thousand dollars (\$15,000) a  
10 month in State and local sales and use taxes must file a return and pay the taxes due on a  
11 monthly basis. A monthly return is due by the 20th day of the month following the calendar  
12 month covered by the return."

13               **SECTION 4.(b)** G.S. 105-164.16(b2) reads as rewritten:

14               "(b2) Prepayment. – A taxpayer who is consistently liable for at least ~~ten thousand dollars~~  
15 ~~(\$10,000)~~ fifteen thousand dollars (\$15,000) a month in State and local sales and use taxes  
16 must make a monthly prepayment of the next month's tax liability. The prepayment is due on  
17 the date a monthly return is due. The prepayment must equal at least sixty-five percent (65%)  
18 of any of the following:

- 19               (1) The amount of tax due for the current month.
- 20               (2) The amount of tax due for the same month in the preceding year.
- 21               (3) The average monthly amount of tax due in the preceding calendar year."

22               **SECTION 4.(c)** G.S. 105-164.16(b1), as rewritten by subsection (a) of this section,  
23 reads as rewritten:

24               "(b1) Monthly. – A taxpayer who is consistently liable for at least one hundred dollars  
25 (\$100.00) but less than ~~fifteen thousand dollars (\$15,000)~~ twenty thousand dollars (\$20,000) a  
26 month in State and local sales and use taxes must file a return and pay the taxes due on a  
27 monthly basis. A monthly return is due by the 20th day of the month following the calendar  
28 month covered by the return."

29               **SECTION 4.(d)** G.S. 105-164.16(b2), as rewritten by subsection (b) of this  
30 section, reads as rewritten:

31               "(b2) Prepayment. – A taxpayer who is consistently liable for at least ~~fifteen thousand~~  
32 ~~dollars (\$15,000)~~ twenty thousand dollars (\$20,000) a month in State and local sales and use  
33 taxes must make a monthly prepayment of the next month's tax liability. The prepayment is due  
34 on the date a monthly return is due. The prepayment must equal at least sixty-five percent  
35 (65%) of any of the following:

- 36               (1) The amount of tax due for the current month.
- 37               (2) The amount of tax due for the same month in the preceding year.
- 38               (3) The average monthly amount of tax due in the preceding calendar year."

39               **SECTION 4.(e)** When the Secretary of Revenue conducts a review of a taxpayer's  
40 sales and use tax payment schedule requirements under G.S. 105-164.16(b3), the Secretary  
41 must identify the taxpayers who are no longer required to make a monthly prepayment of the  
42 next month's sales and use tax liability because of the reduction of the sales tax payment  
43 threshold under this section and must notify those taxpayers of the change in the taxpayer's  
44 payment requirement.

45               **SECTION 4.(f)** Subsections (a) and (b) of this section become effective October 1,  
46 2010. Subsections (c) and (d) of this section become effective October 1, 2011. The remainder  
47 of this section is effective when it becomes law.

#### 49 **RELIEVE ANNUAL REPORT COMPLIANCE BURDEN ON SMALL BUSINESS**

50               **SECTION 5.(a)** G.S. 55-16-22(c) reads as rewritten:

1       "(c) Due Date. – An annual report eligible to be delivered to the Secretary of Revenue is  
2 due by the due date for filing the corporation's income and franchise tax returns. An extension  
3 of time to file a return is an extension of time to file an annual report. At the option of the filer,  
4 an annual report may be filed directly with the Secretary of State in electronic form. An annual  
5 report required to be delivered to the Secretary of State is due by the fifteenth day of the ~~third~~  
6 fourth month following the close of the corporation's fiscal year."

7       **SECTION 5.(b)** G.S. 57C-2-23 reads as rewritten:

8       "**§ 57C-2-23. Annual report for Secretary of State.**

9       (a) Requirement and Content. – Each domestic limited liability company other than a  
10 professional limited liability company governed by G.S. 57C-2-01(c) and each foreign limited  
11 liability company authorized to transact business in this State, ~~shall deliver to the Secretary of~~  
12 ~~State for filing an annual report, in State must file an annual report with the Secretary of State~~  
13 on a form prescribed by the Secretary of State, that sets forth all of the following: and in the  
14 manner required by the Secretary. The annual report must specify the year to which the report  
15 applies and must set out the information listed in this subsection. The information must be  
16 current as of the date the company completes the report. If the information in the company's  
17 most recent annual report has not changed, the company may certify on its annual report that  
18 the information has not changed in lieu of restating the information.

19       The following information must be included on an annual report of a limited liability  
20 company:

- 21           (1) The name of the limited liability or foreign limited liability company and the  
22 state or country under whose law it is formed.
- 23           (2) The street address, and the mailing address if different from the street  
24 address, of the registered office, the county in which the registered office is  
25 located, and the name of its registered agent at that office in this State, and a  
26 statement of any change of the registered office or registered agent, or both.
- 27           (3) The address and telephone number of its principal office.
- 28           (4) The names and business addresses of its managers or, if the limited liability  
29 company has never had members, its organizers.
- 30           (5) A brief description of the nature of its business.

31 ~~If the information contained in the most recently filed annual report has not changed, a~~  
32 ~~certification to that effect may be made instead of setting forth the information required by~~  
33 ~~subdivisions (2) through (5) of this subsection. The Secretary of State shall make available the~~  
34 ~~form required to file an annual report.~~

35       ~~(b) Information in the annual report must be current as of the date the annual report is~~  
36 ~~executed on behalf of the limited liability company or the foreign limited liability company.~~

37       (c) Notice and Due Date. – The Secretary of State must notify limited liability  
38 companies of the annual report filing requirement. ~~The first annual report shall be delivered to~~  
39 ~~the Secretary of State of a limited liability company is due~~ by April 15th of each year. the year  
40 following the calendar year in which the company files its articles of organization with the  
41 Secretary of State. Each subsequent annual report is due on April 15.

42       (d) Incomplete Report. – If an annual report does not contain the information required  
43 by this section, the Secretary of State shall promptly notify the reporting domestic or foreign  
44 limited liability company in writing and return the report to it for correction. If the report is  
45 corrected to contain the information required by this section and delivered to the Secretary of  
46 State within 30 days after the effective date of notice, it is deemed to be timely filed.

47       (e) Amendments. – Amendments to any previously filed annual report may be filed  
48 with the Secretary of State at any time for the purpose of correcting, updating, or augmenting  
49 the information contained in the annual report."

50       **SECTION 5.(c)** A limited liability company that was formed on or after September  
51 1, 2001, but before January 1, 2010, and has filed an annual report in each calendar year after

1 the calendar year in which it was formed is not required to file any additional annual reports for  
2 those years. A limited liability company that was formed on or after January 1, 2010, but before  
3 April 15, 2010, is not required to file an annual report until April 15, 2011. A limited liability  
4 company that has filed more annual reports than is required under this section is not allowed a  
5 refund of the annual report filing fee paid for filing the unnecessary report but is not required to  
6 pay the annual report filing fee when filing the annual report due April 15, 2011. The Secretary  
7 of State must provide a place on the annual report form for calendar year 2011 for a limited  
8 liability company to designate that it is not subject to the 2011 annual report filing fee in  
9 accordance with this section. The Secretary must also provide instructions that explain why  
10 some limited liability companies are subject to the 2011 annual report filing fee and some are  
11 not.

12 **SECTION 5.(d)** This section is effective when it becomes law.

## 13 **REDUCE FRANCHISE TAX BURDEN ON CONSTRUCTION COMPANIES**

14 **SECTION 6.(a)** Section 2 of S.L. 2009-422 reads as rewritten:

15 "SECTION 2. This act is effective retroactively for taxable years beginning on or after  
16 January 1, 2010. January 1, 2007."

17 **SECTION 6.(b)** A taxpayer that paid franchise tax in taxable years 2007, 2008, or  
18 2009 and that included billings in excess of costs in its capital base may apply to the  
19 Department of Revenue for a refund of any excess tax paid to the extent the refund is the result  
20 of the change in the law enacted by this section. A request for a refund must be made on or  
21 before January 1, 2011. A request for refund received after that date is barred.

22 **SECTION 6.(c)** This section is effective when it becomes law.

## 23 **IMPROVE TAX AND DEBT COLLECTION PROCESS**

24 **SECTION 7.(a)** G.S. 147-86.20(1) reads as rewritten:

### 25 **"§ 147-86.20. Definitions.**

26 The following definitions apply in this Article:

- 27 (1) ~~Account Receivable~~. receivable. – An asset of the State reflecting a debt that  
28 is owed to the State and has not been received by the State agency servicing  
29 the debt. The term includes claims, damages, fees, fines, forfeitures, loans,  
30 overpayments, taxes, and tuition as well as penalties, interest, and other costs  
31 authorized by law. The term does not include court costs or fees assessed in  
32 actions before the General Court of Justice or counsel fees and other  
33 expenses of representing indigents under Article 36 of Chapter 7A of the  
34 General Statutes.

35 ...."

36 **SECTION 7.(b)** G.S. 147-86.22 reads as rewritten:

### 37 **"§ 147-86.22. Statewide accounts receivable program.**

38 (a) Program. – The State Controller shall implement a statewide accounts receivable  
39 program. As part of this program, the State Controller shall do all of the following:

- 40 (1) Monitor the State's accounts receivable collection efforts.  
41 (2) Coordinate information, systems, and procedures between State agencies to  
42 maximize the collection of past-due accounts receivable.  
43 (3) Adopt policies and procedures for the management and collection of  
44 accounts receivable by State agencies.  
45 (4) Establish procedures for writing off accounts ~~receivable and for determining~~  
46 ~~when to end efforts to collect accounts receivable after they have been~~  
47 ~~written off~~. receivable.

48 (b) Electronic Payment. – Notwithstanding the provisions of G.S. 147-86.20 and  
49 G.S. 147-86.21, this subsection applies to debts owed a community college, a local school  
50  
51

1 administrative unit, an area mental health, developmental disabilities, and substance abuse  
2 authority, and the Administrative Office of the Courts, and to debts payable to or through the  
3 office of a clerk of superior court or a magistrate, as well as to debts owed to other State  
4 agencies as defined in G.S. 147-86.20.

5 The State Controller shall establish policies that allow accounts receivable to be payable  
6 under certain conditions by electronic payment. These policies shall be established with the  
7 concurrence of the State Treasurer. In addition, any policies that apply to debts payable to or  
8 through the office of a clerk of superior court or a magistrate shall be established with the  
9 concurrence of the Administrative Officer of the Courts. The Administrative Officer of the  
10 Courts may also establish policies otherwise authorized by law that apply to these debts as long  
11 as those policies are not inconsistent with the Controller's policies.

12 A condition of payment by electronic payment is receipt by the appropriate State agency of  
13 the full amount of the account receivable owed to the State agency. A debtor who pays by  
14 electronic payment may be required to pay any fee or charge associated with the use of  
15 electronic payment. Fees associated with processing electronic payments may be paid out of the  
16 General Fund and Highway Fund if the payment of the fee by the State is economically  
17 beneficial to the State and the payment of the fee by the State has been approved by the State  
18 Controller and State Treasurer.

19 The State Controller and State Treasurer shall consult with the Joint Legislative  
20 Commission on Governmental Operations before establishing policies that allow accounts  
21 receivable to be payable by electronic payment and before authorizing fees associated with  
22 electronic payment to be paid out of the General Fund and Highway Fund. A State agency must  
23 also consult with the Joint Legislative Commission on Governmental Operations before  
24 implementing any program to accept payment under the policies established pursuant to this  
25 subsection.

26 A payment of an account receivable that is made by electronic payment and is not honored  
27 by the issuer of the card or the financial institution offering electronic funds transfer does not  
28 relieve the debtor of the obligation to pay the account receivable.

29 (c) Collection Techniques. – The State Controller, in conjunction with the Office of the  
30 Attorney General, shall establish policies and procedures to govern techniques for collection of  
31 accounts receivable. These techniques may include use of credit reporting bureaus, judicial  
32 remedies authorized by law, and administrative setoff by a reduction of ~~an individual's~~ tax  
33 refund pursuant to the Setoff Debt Collection Act, Chapter 105A of the General Statutes, or a  
34 reduction of another payment, other than payroll, due from the State to a person to reduce or  
35 eliminate an account receivable that the person owes the State.

36 ~~No later than January 1, 1999, the~~The State Controller shall negotiate a contract with a third  
37 party to perform an audit and collection process of inadvertent overpayments by State agencies  
38 to vendors as a result of pricing errors, neglected rebates and discounts, miscalculated freight  
39 charges, unclaimed refunds, erroneously paid excise taxes, and related errors. The third party  
40 shall be compensated only from funds recovered as a result of the audit. Savings realized in  
41 excess of costs shall be transferred from the agency to the Office of State Budget and  
42 Management and placed in a special reserve account for future direction by the General  
43 Assembly. Any disputed savings shall be settled by the State Controller. This paragraph does  
44 not apply to the purchase of medical services by State agencies or payments used to reimburse  
45 or otherwise pay for health care services."

46 **SECTION 7.(c)** G.S. 147-86.25 reads as rewritten:

47 **"§ 147-86.25. Setoff debt collection.**

48 The State Controller shall implement a statewide setoff debt collection program to provide  
49 for collection of ~~accounts receivable that have been written off. The statewide program shall~~  
50 ~~supplement the Setoff Debt Collection Act, Chapter 105A of the General Statutes, and shall~~  
51 ~~provide for written off~~the following accounts receivable to be set off by setoff against payments

1 the State owes to debtors, other than payments of ~~individual income~~ tax refunds and  
2 ~~payroll~~ payroll:

3 (1) Accounts receivable submitted to the Department of Revenue by a claimant  
4 agency under the Setoff Debt Collection Act, Chapter 105A of the General  
5 Statutes.

6 (2) An overdue tax debt, as defined in G.S. 105-243.1.

7 ~~A program shall provide that, before final setoff can occur, the State agency servicing the~~  
8 ~~debt must notify the debtor of the proposed setoff and of the debtor's right to contest the setoff~~  
9 ~~through an administrative hearing and judicial review. A proposed setoff by a State agency that~~  
10 ~~is a "claimant agency" under Chapter 105A of the General Statutes shall be conducted in~~  
11 ~~accordance with the procedures the State agency must follow under that Chapter. A proposed~~  
12 ~~setoff by a State agency that is not a "claimant agency" under Chapter 105A of the General~~  
13 ~~Statutes shall be conducted under Articles 3 and 4 of Chapter 150B of the General Statutes."~~

14 **SECTION 7.(d)** G.S. 105A-2 reads as rewritten:

15 "**§ 105A-2. Definitions.**

16 The following definitions apply in this Chapter:

17 ...

18 (3) Debtor. – ~~An individual~~ A person who owes a debt.

19 ...

20 (8) Refund. – ~~An individual's North Carolina income~~ A debtor's North Carolina  
21 tax refund.

22 (9) State agency. – Any of the following:

23 a. A unit of the executive, legislative, or judicial branch of State  
24 government.

25 b. A local agency, to the extent it administers a program supervised by  
26 the Department of Health and Human Services or it operates a Child  
27 Support Enforcement Program, enabled by Chapter 110, Article 9,  
28 and Title IV, Part D of the Social Security Act.

29 c. A community college."

30 **SECTION 7.(e)** G.S. 105A-3(c) reads as rewritten:

31 "(c) Identifying Information. – All claimant agencies shall whenever possible obtain the  
32 full name, social security ~~number~~, number or federal identification number, address, and any  
33 other identifying information required by the Department from any person for whom the  
34 agencies provide any service or transact any business and who the claimant agencies can  
35 foresee may become a debtor under this Chapter."

36 **SECTION 7.(f)** G.S. 105A-14(a) reads as rewritten:

37 "(a) Simultaneously with the transmittal of the net proceeds collected to a claimant  
38 agency, the Department must provide the agency with an accounting of the setoffs for which  
39 payment is being made. The accounting must whenever ~~possible~~, possible include the full  
40 names of the debtors, the debtors' social security ~~numbers~~, numbers or federal identification  
41 numbers, the gross proceeds collected per setoff, the net proceeds collected per setoff, and the  
42 collection assistance fee added to the debt and collected per setoff."

43 **SECTION 7.(g)** G.S. 105-259(b)(18) reads as rewritten:

44 "(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has  
45 access to tax information in the course of service to or employment by the State may not  
46 disclose the information to any other person except as provided in this subsection. Standards  
47 used or to be used for the selection of returns for examination and data used or to be used for  
48 determining the standards may not be disclosed for any purpose. All other tax information may  
49 be disclosed only if the disclosure is made for one of the following purposes:

50 ...



1 (18) To furnish to the Office of the State Controller ~~the name, address, and~~  
2 ~~account and identification numbers of a taxpayer upon request to~~  
3 ~~enable information needed by the State Controller to implement the setoff~~  
4 ~~debt collection program established under G.S. 147-86.25, verify statewide~~  
5 ~~vendor files~~ files, or track debtors of the State.

6 ...."

7 **SECTION 7.(h)** G.S. 105-242(b) reads as rewritten:

8 "(b) ~~Garnishment and Attachment.~~ Attachment and Garnishment. – Intangible property  
9 that belongs to a taxpayer, is owed to a taxpayer, or has been transferred by a taxpayer under  
10 circumstances that would permit it to be levied upon if it were tangible property is subject to  
11 attachment and garnishment in payment of a tax that is due from the taxpayer and is collectible  
12 under G.S. 105-241.22. Intangible personal property includes bank deposits, rent, salaries,  
13 wages, property held in the Escheat Fund, and any other property incapable of manual levy or  
14 delivery. AG.S. 105-242.1 sets out the procedure for attachment and garnishment of intangible  
15 property.

16 A person who is in possession of intangible property that is subject to attachment and  
17 garnishment is the garnishee and is liable for the amount the taxpayer owes. The liability  
18 applies only to the amount of the taxpayer's property in the garnishee's possession, reduced by  
19 any amount the taxpayer owes the garnishee. ~~G.S. 105-242.1 sets out the procedure for~~  
20 ~~attachment and garnishment of intangible property.~~

21 The Secretary may submit to a financial institution, as defined in G.S. 53B-2, information  
22 that identifies a taxpayer who owes a tax debt that is collectible under G.S. 105-241.22 and the  
23 amount of the debt. The Secretary may submit the information on a quarterly basis or, with the  
24 agreement of the financial institution, on a more frequent basis. A financial institution that  
25 receives the information must determine the amount, if any, of intangible property it holds that  
26 belongs to the taxpayer and must inform the Secretary of its determination. The Secretary must  
27 reimburse a financial institution for its costs in providing the information, not to exceed the  
28 amount payable to the financial institution under G.S. 110-139 for providing information for  
29 use in locating a noncustodial parent.

30 No more than ten percent (10%) of a taxpayer's wages or salary is subject to attachment and  
31 garnishment. The wages or salary of an employee of the United States, the State, or a political  
32 subdivision of the State are subject to attachment and garnishment."

33 **SECTION 7.(i)** G.S. 105-242.1 reads as rewritten:

34 "**§ 105-242.1. Procedure for attachment and garnishment.**

35 (a) Notice. – G.S. 105-242 specifies when intangible property is subject to attachment  
36 and garnishment. Before the Department attaches and garnishes intangible property in payment  
37 of a tax, the Department must send the garnishee a notice of garnishment. The notice must be  
38 sent in accordance with the methods authorized in G.S. 105-241.20 ~~or by registered or certified~~  
39 ~~mail or, with the agreement of the garnishee, by electronic means.~~ The notice must contain all  
40 of the following ~~information:~~ information, unless the notice is an electronic notice subject to  
41 subsection (a1) of this section:

42 (1) The taxpayer's ~~name, address, and social security number or federal~~  
43 ~~identification number.~~ name.

44 (2) The ~~type of tax the taxpayer owes and the tax periods for which the tax is~~  
45 ~~owed.~~ taxpayer's social security number or federal identification number.

46 (3) The amount of tax, interest, and penalties the taxpayer owes.

47 (4) An explanation of the liability of a garnishee for tax owed by a taxpayer.

48 (5) An explanation of the garnishee's responsibility concerning the notice.

49 (a1) Electronic Notice. – Before the Department sends an electronic notice of  
50 garnishment to a garnishee, the Department and the garnishee must have an agreement that  
51 establishes the protocol for transmitting the notice and provides the information required under

1 subdivisions (4) and (5) of subsection (a) of this section. An electronic notice must contain the  
2 information required under subdivisions (1), (2), and (3) of subsection (a) of this section.

3 (b) ~~Action. – Within 30 days after receiving a notice of garnishment, a~~ A garnishee must  
4 comply with the a notice of garnishment or file a written response to the notice-notice within  
5 the time set in this subsection. A garnishee that is a financial institution must comply or file a  
6 response within 20 days after receiving a notice of garnishment. All other garnishees must  
7 comply or file a response within 30 days after receiving a notice of garnishment. A written  
8 response must explain why the garnishee is not subject to garnishment and attachment. Upon

9 Upon receipt of the a written response, the Department must contact the garnishee and  
10 schedule a conference to discuss the response or inform the garnishee of the Department's  
11 position concerning the response. If the Department does not agree with the garnishee on the  
12 garnishee's liability, the Department may proceed to enforce the garnishee's liability for the tax  
13 by sending the garnishee a notice of proposed assessment in accordance with G.S. 105-241.9.

14 (c) ~~Release. – When the Department releases a garnishee from liability, the Department~~  
15 ~~must send the garnishee a letter of release. The letter must identify the taxpayer to whom the~~  
16 ~~release applies and contain the identifying information about the taxpayer that is required under~~  
17 ~~subsection (a) on a notice of garnishment.~~ A notice of garnishment sent to a financial institution  
18 is released when the financial institution complies with the notice. A notice of garnishment sent  
19 to all other garnishees is released when the Department sends the garnishee a notice of release.  
20 A notice of release must state the name and social security number or federal identification  
21 number of the taxpayer to whom the release applies.

22 (d) Financial Institution. – As used in this section, the term 'financial institution' has the  
23 same meaning as in G.S. 53B-2."

24 **SECTION 7.(j)** G.S. 53B-4(2) reads as rewritten:

25 **"§ 53B-4. Access to financial records.**

26 Notwithstanding any other provision of law, no government authority may have access to a  
27 customer's financial record held by a financial institution unless the financial record is  
28 described with reasonable specificity and access is sought pursuant to any of the following:

29 ...

30 (2) ~~Authorization under G.S. 105-254~~ G.S. 105-242 or G.S. 105-258."

31 **SECTION 7.(k)** Subsection (h) of this section becomes effective January 1, 2011.

32 The remainder of this section is effective when it becomes law.

33  
34 **EFFECTIVE DATE**

35 **SECTION 8.** Except as otherwise provided, this act is effective when it becomes  
36 law.