

GENERAL ASSEMBLY OF NORTH CAROLINA
SECOND EXTRA SESSION 1996

CHAPTER 13
HOUSE BILL 18

AN ACT TO REDUCE TAXES FOR THE CITIZENS OF NORTH CAROLINA AND
TO PROVIDE INCENTIVES FOR HIGH QUALITY JOBS AND BUSINESS
EXPANSION IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

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Section 1. This act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

PART I. REDUCE SALES TAX ON FOOD

Sec. 1.1. G.S. 105-164.4(a) is amended by adding a new subdivision to read:

"(5) The rate of three percent (3%) applies to the sales price of food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

Sec. 1.2. G.S. 105-465 reads as rewritten:

"§ 105-465. County election as to adoption of local sales and use tax.

The board of elections of any county, upon the written request of the board of county ~~commissioners thereof, commissioners,~~ or upon receipt of a petition signed by qualified voters of the county equal in number to at least fifteen percent (15%) of the total number of votes cast in the county, at the last preceding election for the office of Governor, shall call a special election for the purpose of submitting to the voters of the county the question of whether a one percent (1%) sales and use tax as ~~hereinafter provided~~ will be levied.

The special election shall be held under the same rules and regulations applicable to the election of members of the General Assembly. No new registration of voters shall be required. All qualified voters in the county who are properly registered not later than 21 days (excluding Saturdays and Sundays) prior to the election shall be entitled to vote at ~~said~~ the election. The county board of elections shall give at least 20 days' public notice prior to the closing of the registration books for the special election.

The county board of ~~election~~ elections shall prepare ballots for the special ~~election~~ election which shall contain the words, election. The question presented on the ballot shall be 'FOR ~~the one percent (1%) local sales and use tax only on those items presently covered by the four percent (4%) sales and use tax,~~ and the words, on items subject to State sales and use tax at the general State rate and on food or 'AGAINST ~~the one percent (1%) local sales and use tax only on those items presently covered by the four percent (4%) sales and use tax,~~ with appropriate squares so that each voter may designate his vote by his cross (X) mark. on items subject to State sales and use tax at the general State rate and on food'.

The county board of elections shall fix the date of the special ~~election; provided, however,~~ election, except that the special election shall not be held on the date or within 60 days of any biennial election for county officers, ~~nor within 60 days thereof,~~ nor within one year from the date of the last preceding special election under this section."

Sec. 1.3. G.S. 105-467 reads as rewritten:

"§ 105-467. Scope of sales tax.

The sales tax ~~which that~~ may be imposed under this Article is limited to a tax at the rate of one percent (1%) ~~of~~ of the following:

- (1) The sales price of ~~those articles of~~ tangible personal property ~~now~~ subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(1) and ~~(4b);~~ (a)(4b).
- (2) The gross receipts derived from the lease or rental of tangible personal property when the lease or rental of the property is subject to the general rate of sales tax imposed by the State under G.S. ~~105-164.4(a)(2);~~ 105-164.4(a)(2).
- (3) The gross receipts derived from the rental of any room or ~~lodging furnished by any hotel, motel, inn, tourist camp or other similar accommodations now~~ subject to the general rate of sales tax imposed by the State under G.S. ~~105-164.4(a)(3);~~ and 105-164.4(a)(3).
- (4) The gross receipts derived from services rendered by laundries, dry cleaners, and other businesses ~~now~~ subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(4).
- (5) The sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from the State sales and use tax pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51.

The sales tax authorized by this Article does not apply to sales that are taxable by the State under G.S. 105-164.4 but are not specifically included in ~~subdivisions (1) through (4)~~ of this section.

The State exemptions and exclusions contained in G.S. 105-164.13 and the State refund provisions contained in G.S. 105-164.14 shall apply with equal force and in like manner to the local sales and use tax authorized to be levied and imposed under this Article. A taxing county shall have no authority, with respect to the local sales and use tax imposed under this Article to change, alter, add to or delete any refund provisions contained in G.S. 105-164.14, or any exemptions or exclusions contained in G.S. 105-164.13 or which are elsewhere provided for. may not allow an exemption, exclusion, or refund that is not allowed under the State sales and use tax.

The local sales tax authorized to be imposed and levied under the provisions of this Article shall apply to such retail sales, leases, rentals, the rendering of services, furnishing of rooms, lodgings or accommodations and other applies to taxable transactions which are made, furnished or rendered by retailers whose place of business is located within the taxing county. The tax imposed shall apply to the furnishing of rooms, lodging or other accommodations within the county which are rented to transients. For the purpose of this Article, the situs of a transaction is the location of the retailer's place of business."

Sec. 1.4. G.S. 105-468 reads as rewritten:

"§ 105-468. Scope of use tax.

The use tax ~~which may be imposed under~~ authorized by this Article shall be ~~is~~ a tax at the rate of one percent (1%) of the cost price of each item or article of tangible personal property ~~when it that is not sold in the taxing county but is used, consumed~~ consumed, or stored for use or consumption in the taxing county, ~~except that no tax shall be imposed upon tangible personal property when the property would be taxed by the State at a rate other than the general rate of tax set in G.S. 105-164.4 if it were taxable under G.S. 105-164.6.~~ county. The tax applies to the same items that are subject to tax under G.S. 105-467.

Every retailer who is engaged in business in this State and in the taxing county and is required to collect the use tax levied by G.S. 105-164.6 shall ~~also~~ collect the one percent (1%) use tax when ~~such~~ the property is to be used, ~~consumed~~ consumed, or stored in the taxing county, ~~one percent (1%) use tax to be collected concurrently with the State's use tax; but no retailer not required to collect the use tax levied by G.S. 105-164.6 shall be required to collect the one percent (1%) use tax.~~ county. The use tax contemplated by this section shall be levied against the purchaser, and the purchaser's liability for the use tax shall be extinguished only upon payment of the use tax to the retailer, where the retailer is required to collect the tax, or to the ~~Secretary of Revenue, or to the taxing county, as appropriate,~~ Secretary, where the retailer is not required to collect the tax.

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser, either in another taxing county within the State, or in a taxing jurisdiction outside the State where the purpose of the tax is similar in purpose and intent to the tax which may be imposed pursuant to this Article, the tax paid may be credited against the tax imposed under this section by a taxing county upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due the taxing county under this section, the purchaser shall pay to the Secretary of

~~Revenue or to the taxing county, as appropriate, an amount equal to the difference between the amount so paid in the other taxing county or jurisdiction and the amount due in the taxing county. The Secretary of Revenue or the taxing county, as appropriate, may require such proof of payment in another taxing county or jurisdiction as is deemed to be necessary. The use tax levied under this Article is not subject to credit for payment of any State sales or use tax not imposed for the benefit and use of counties and municipalities. No credit shall be given under this section for sales or use taxes paid in a taxing jurisdiction outside this State if that taxing jurisdiction does not grant similar credit for sales taxes paid under this Article."~~

Sec. 1.5. The first paragraph of Section 4 of Chapter 1096 of the 1967 Session Laws, as amended, is amended as follows:

- (1) By deleting the word "and" before subdivision (4).
- (2) By changing the period at the end of subdivision (4) to a semicolon and adding the word "and".
- (3) By adding a new subdivision to read:
- "(5) The sales price of food and other items that are not otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from the State sales and use tax pursuant to G.S. 105-164.13 if purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

Sec. 1.6. Section 5 of Chapter 1096 of the 1967 Session Laws is amended by deleting the first sentence of that section and substituting the following sentences to read:

"The use tax that Mecklenburg County may impose under this division is a tax at the rate of one percent (1%) of the cost price of each item or article of tangible personal property that is not sold but is used, consumed, or stored for use or consumption in Mecklenburg County. The tax applies to the same items that are subject to tax under Section 4 of this act."

Sec. 1.7. Approval under Article 39, 40, or 42 of Chapter 105 of the General Statutes or under the Mecklenburg County Sales and Use Tax Act, Chapter 1096 of the 1967 Session Laws, as amended, of local sales and use taxes on items subject to State sales and use tax at the general State rate constitutes approval of local sales and use taxes on food.

PART II. REDUCE CORPORATE INCOME TAX

Sec. 2.1. G.S. 105-130.3 reads as rewritten:

"§ 105-130.3. Corporations.

A tax is imposed on the State net income of every C Corporation doing business in this State ~~at seven and seventy-five one hundredths percent (7.75%) of the corporation's State net income.~~ State. An S Corporation is not subject to the tax levied in this section. The tax is a percentage of the taxpayer's State net income computed as follows:

<u>Income Years Beginning</u>	<u>Tax</u>
<u>In 1997</u>	<u>7.5%</u>
<u>In 1998</u>	<u>7.25%</u>
<u>In 1999</u>	<u>7%</u>

After 1999 6.9%".

Sec. 2.2. G.S. 115C-546.1 reads as rewritten:

"§ 115C-546.1. Creation of Fund; administration.

(a) There is created the Public School Building Capital Fund. The Fund shall be used to assist county governments in meeting their public school building capital needs.

(b) Each calendar quarter, the Secretary of Revenue shall remit to the State Treasurer for credit to the Public School Building Capital Fund an amount equal to ~~two thirty-firsts (2/31)~~ the applicable fraction provided in the table below of the net collections received during the previous quarter by the Department of Revenue under G.S. 105-130.3 minus two million five hundred thousand dollars (\$2,500,000). All funds deposited in the Public School Building Capital Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3.

<u>Period</u>	<u>Fraction</u>
<u>10/1/97 to 9/30/98</u>	<u>One-fifteenth (1/15)</u>
<u>10/1/98 to 9/30/99</u>	<u>Two twenty-ninths (2/29)</u>
<u>10/1/99 to 9/30/00</u>	<u>One-fourteenth (1/14)</u>
<u>After 9/30/00</u>	<u>Five sixty-ninths (5/69)</u>

(c) The Fund shall be administered by the Office of State Budget and Management."

PART III. QUALITY JOBS AND BUSINESS EXPANSION TAX CREDITS

Sec. 3.1. Chapter 105 of the General Statutes is amended by adding a new Article 3A entitled "Tax Incentives for New and Expanding Businesses."

Sec. 3.2. G.S. 105-130.40 is recodified as G.S. 105-129.8 in Article 3A of Chapter 105 of the General Statutes.

Sec. 3.3. Article 3A of Chapter 105 of the General Statutes, as enacted by this act, reads as rewritten:

"ARTICLE 3A.

"Tax Incentives for New and Expanding Businesses.

"§ 105-129.2. Definitions.

The following definitions apply in this Article:

- (1) Cost. – Defined in section 179 of the Code.
- (2) Data processing. – Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.
- (3) Enterprise tier. – The classification assigned to an area pursuant to G.S. 105-129.3.
- (4) Full-time job. – A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.
- (5) Machinery and equipment. – Engines, machinery, tools, and implements that are capitalized by the taxpayer for tax purposes under the Code and are used or designed to be used in manufacturing or processing, warehousing and distribution, or data processing. The

term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

- (6) Manufacturing and processing. – Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.
- (7) Purchase. – Defined in section 179 of the Code.
- (8) Warehousing and distribution. – Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.

"§ 105-129.3. Enterprise tier designation.

(a) Tiers Defined. – An enterprise tier one area is a county whose enterprise factor is one of the 10 highest in the State. An enterprise tier two area is a county whose enterprise factor is one of the next 15 highest in the State. An enterprise tier three area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier four area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier five area is any area that is not in a lower-numbered enterprise tier.

(b) Annual Designation. – Each year, on or before December 31, the Secretary of Commerce shall assign to each county in the State an enterprise factor that is the sum of the following:

- (1) The county's rank in a ranking of counties by rate of unemployment from lowest to highest.
- (2) The county's rank in a ranking of counties by per capita income from highest to lowest.
- (3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest.

The Secretary of Commerce shall then rank all the counties within the State according to their enterprise factor from highest to lowest, identify all the areas of the State by enterprise tier, and provide this information to the Secretary of Revenue. An enterprise tier designation is effective only for the calendar year following the designation.

In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer.

"§ 105-129.4. Eligibility; forfeiture.

(a) Type of Business. – A taxpayer is eligible for a credit allowed by this Article if the taxpayer engages in manufacturing or processing, warehousing or distributing, or data processing, and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business.

(b) Wage Standard. – A taxpayer is eligible for the credit for creating jobs or the credit for worker training if the jobs for which the credit is claimed meet the wage

standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the credit for investing in machinery and equipment or the credit for research and development if the jobs at the location with respect to which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average weekly wage that is at least ten percent (10%) above the average weekly wage paid in the county in which the jobs will be located. In calculating the average weekly wage of jobs, positions that pay a wage or salary at a rate that exceeds one hundred thousand dollars (\$100,000) a year shall be excluded. For the purpose of this subsection, the average wage in a county is the average wage for all insured industries in the county as computed by the Employment Security Commission for the most recent period for which data are available.

(c) Worker Training. – A taxpayer is eligible for the tax credit for worker training only for training workers who occupy jobs for which the taxpayer is eligible to claim an installment of the credit for creating jobs or which are full-time positions at a location with respect to which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment for the taxable year.

The credit for worker training is allowed only with respect to employees in positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and for expenditures for training that would be eligible for expenditure or reimbursement under the Department of Community Colleges' New and Expanding Industry Program, as determined by guidelines adopted by the State Board of Community Colleges. To establish eligibility, the taxpayer must obtain as part of the application process under G.S. 105-129.6 the certification of the Department of Community Colleges that the taxpayer's planned worker training would satisfy the requirements of this paragraph. A taxpayer shall apply to the Department of Community Colleges for this certification. The application must be on a form provided by the Department of Community Colleges, must provide a detailed plan of the worker training to be provided, and must contain any information required by the Department of Community Colleges to determine whether the requirements of this paragraph will be satisfied. If the Department of Community Colleges determines that the planned worker training meets the requirements of this paragraph, the Department of Community Colleges shall issue a certificate describing the location with respect to which the credit is claimed and stating that the planned worker training meets the requirements of this paragraph. The State Board of Community Colleges may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out its responsibilities under this paragraph.

(d) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit

for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the credit for investing in machinery and equipment was claimed.

(e) Change in Ownership of Business. – The sale, merger, acquisition, or bankruptcy of a business, or any other transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability.

"§ 105-129.5. Tax election; cap.

(a) Tax Election. – The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter and the income taxes levied in Article 4 of this Chapter. The taxpayer shall elect the tax against which a credit will be claimed when filing the application for the credit. This election is binding. Any carryforwards of the credit must be claimed against the same tax elected in the application.

(b) Cap. – The credits allowed under this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of the credit may be carried forward for the succeeding five years.

"§ 105-129.6. Application; reports.

(a) Application. – To claim the credits allowed by this Article, the taxpayer must provide with the tax return the certification of the Secretary of Commerce that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to each credit. A taxpayer shall apply to the Secretary of Commerce for certification of eligibility. The application must be on a form provided by the Secretary of Commerce, must specify the credit and the tax against which it will be claimed, and must contain any information necessary for the Secretary of Commerce to determine whether the taxpayer meets the eligibility requirements. If the Secretary determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary shall issue a certificate describing the location with respect to which the credit is claimed, specifying the tax against which the credit will be claimed, outlining the eligibility requirements for the credit, and stating that the taxpayer meets the eligibility requirements. If the Secretary determines that the taxpayer does not meet all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary must advise the taxpayer in writing of the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary of Commerce's responsibilities under this section.

(b) Reports. – The Department of Commerce shall report to the Department of Revenue and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

- (1) The number of applications for each credit allowed in this Article.
- (2) The number and enterprise tier area of new jobs with respect to which credits were applied for.
- (3) The cost of machinery and equipment with respect to which credits were applied for.

"§ 105-129.7. Substantiation.

To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"§ 105-129.8. Credit for creating jobs in severely distressed county. jobs.

(a) Credit. – A corporation that (i) for at least 40 weeks during the year has at least nine employees and (ii) is located, for part or all of its taxable year, in a severely distressed county taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more employees for at least 40 weeks during the taxable year, may qualify for a credit against the tax imposed by this Division by creating new full-time jobs with the corporation in the severely distressed county during that year. A corporation and that hires an additional full-time employee during that year to fill a position located in a severely distressed county this State is allowed a credit of two thousand eight hundred dollars (\$2,800) for the additional employee. for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is located:

<u>Area Enterprise Tier</u>	<u>Amount of Credit</u>
<u>Tier One</u>	<u>\$12,500</u>
<u>Tier Two</u>	<u>4,000</u>
<u>Tier Three</u>	<u>3,000</u>
<u>Tier Four</u>	<u>1,000</u>
<u>Tier Five</u>	<u>500</u>

A position is located in a county an area if (i) at least more than fifty percent (50%) of the employee's duties are performed in the county, or (ii) the employee is a resident of the county area. The credit may not be taken in the income-taxable year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the income-taxable year in which the additional employee was hired and shall be conditioned on the continued employment by the corporation taxpayer of the number of full-time employees the corporation taxpayer had upon hiring the employee that caused the corporation taxpayer to qualify for the credit. If,

If, in one of the four years in which the installment of a credit accrues, the number of the corporation's taxpayer's full-time employees falls below the number of full-time employees the company taxpayer had in the year in which the corporation taxpayer

~~qualified for the credit or the position filled by the employee is moved to another county, credit, the credit expires and the corporation taxpayer may not take any remaining installment of the credit. The corporation taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under subsection (e) of this section. G.S. 105-129.5.~~

Jobs transferred from one area in the State to another area in the State shall not be considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, the remaining installments of the credit shall be calculated as if the position had been created initially in the area to which it was moved.

~~For the purposes of this section, a full-time job is a position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.~~

~~(b) Repealed by Session Laws 1989, c. 111, s. 1.~~

~~(b1) Eligibility.—A corporation is eligible for the tax credit allowed by this section only if it obtained a credit under this section for taxable year 1988 or the Department of Commerce determines that it engages in the manufacturing of goods, or that it engages in an industrial activity such as the processing of foods, raw materials, chemicals and process agents, goods in process, or finished products.~~

~~(c) County Designation.—A severely distressed county is a county designated as severely distressed by the Secretary of Commerce. Each year, on or before December 31, the Secretary of Commerce shall designate which counties are considered severely distressed, and shall provide that information to the Secretary of Revenue. A county is considered severely distressed if its distress factor is one of the fifty highest in the State.~~

~~The Secretary shall assign to each county in the State a distress factor that is the sum of the following:~~

- ~~(1) The county's rank in a ranking of counties by rate of unemployment from lowest to highest.~~
- ~~(2) The county's rank in a ranking of counties by per capita income from highest to lowest.~~
- ~~(3) The county's rank in a ranking of counties by percentage growth in population from lowest to highest.~~

~~In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer. A designation as a severely distressed county is effective only for the calendar year following the designation.~~

~~(d) Planned Expansion. — A corporation that, during the year in which a county is designated as a severely distressed county, taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in that distressed county a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by this section based on the area's~~

enterprise tier for that year even though the employees are not hired that year. The credit shall be available in the income-taxable year after at least twenty employees have been hired if such the hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the county is no longer designated a severely distressed county area is redesignated to a higher-numbered enterprise tier after the year the letter of commitment was signed, the credit is still available. allowed based on the area's enterprise tier for the year the letter was signed. If the corporation-taxpayer does not hire the employees within the two-year period, the corporation-taxpayer does not qualify for the credit. However, if the corporation-taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, it the taxpayer may take the credit under that subsection.

~~(e) Limitations.—The sale, merger, acquisition, or bankruptcy of a business, or any other transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to jobs for which the predecessor was not eligible under this section. A successor corporation may, however, take any installment of or carried over portion of a credit that its predecessor could have taken if it had taxable income.~~

~~Jobs transferred from one county in the State to another county in the State shall not be considered new jobs for purposes of this section. A credit taken under this section may not exceed fifty percent (50%) of the tax imposed by this Division for the taxable year, reduced by the sum of all other credits allowed under this Division, except tax payments made by or on behalf of the corporation. Any unused portion of the credit may be carried forward for the succeeding five years.~~

~~(f) Substantiation.—Every corporation claiming the credit provided in subsection (a) shall maintain and make available for inspection by the Secretary of Revenue or his agent such records as may be necessary to determine and verify the amount of the credit to which it is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the corporation, and no credit shall be allowed to a corporation that fails to maintain adequate records or to make them available for inspection.~~

"§ 105-129.9. Credit for investing in machinery and equipment.

(a) Credit. – A taxpayer that has purchased machinery and equipment and places it in service in this State during the taxable year is allowed a credit equal to seven percent (7%) of the excess of the eligible investment amount over the applicable threshold. The credit may not be taken for the taxable year in which the equipment is placed in service but shall be taken in equal installments over the seven years following the taxable year in which the equipment is placed in service.

(b) Eligible Investment Amount. – The eligible investment amount is the lesser of (i) the cost of the machinery and equipment and (ii) the amount by which the cost of all of the taxpayer's machinery and equipment that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's machinery and equipment that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most machinery and equipment in service in this State.

(c) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier of the area where the machinery and equipment are placed in service during the taxable year. If the taxpayer places machinery and equipment in service in more than one area during the taxable year, the threshold applies separately to the machinery and equipment placed in service in each area.

<u>Area Enterprise Tier</u>	<u>Threshold</u>
<u>Tier One</u>	<u>\$ -0-</u>
<u>Tier Two</u>	<u>100,000</u>
<u>Tier Three</u>	<u>200,000</u>
<u>Tier Four</u>	<u>500,000</u>
<u>Tier Five</u>	<u>1,000,000</u>

(d) Expiration. – If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are sold or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved.

"§ 105-129.10. Credit for research and development.

A taxpayer that claims for the taxable year a federal income tax credit under section 41 of the Code for increasing research activities is allowed a credit equal to five percent (5%) of the State's apportioned share of the taxpayer's expenditures for increasing research activities. The State's apportioned share of a taxpayer's expenditures for increasing research activities is the excess of the taxpayer's qualified research expenses for the taxable year over the base amount, as determined under section 41 of the Code, multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year. As used in this section, the terms 'qualified research expenses' and 'base amount' have the meaning provided in section 41 of the Code.

"§ 105-129.11. Credit for worker training.

(a) Credit. – A taxpayer that provides worker training for five or more of its eligible employees during the taxable year is allowed a credit equal to fifty percent (50%) of its eligible expenditures for the training. For positions located in an enterprise tier one area, the credit may not exceed one thousand dollars (\$1,000) per employee trained during the taxable year. For other positions, the credit may not exceed five hundred dollars (\$500.00) per employee trained during the taxable year. A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area.

(b) Eligibility. – The eligibility of a taxpayer's expenditures and employees is determined as provided in G.S. 105-129.4."

Sec. 3.4. G.S. 105-151.17 is recodified as G.S. 105-129.8. G.S. 105-129.8, as rewritten by this act, incorporates both G.S. 105-130.40 and G.S. 105-151.17.

Sec. 3.5. G.S. 143B-437A reads as rewritten:

"§ 143B-437A. Industrial Development Fund.

(a) Creation and Purpose of Fund. – There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically ~~depressed~~ distressed counties in the State in creating jobs in ~~qualified~~ certain industries. ~~As used in this section, the term 'qualified industry' means the manufacturing of goods or the processing of foods, raw materials, chemicals and process agents, goods in process, or finished products.~~ The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the ~~following:~~ following provisions, which shall apply to each grant from the fund:

- (1) The funds shall be used for (i) installation of or purchases of equipment for ~~qualified industries, manufacturing or processing,~~ (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of ~~qualified industries, manufacturing or processing,~~ or (iii) construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for qualified industrial operations, or (iv) ~~in the case of counties designated as severely distressed counties under G.S. 105-130.40(c) or G.S. 105-151.17(c) or units of local government within those counties, construction of or improvement to new or existing water, sewer, gas, or electrical utility distribution lines or equipment to serve new or proposed industrial buildings to be used for qualified industrial operations.~~ manufacturing or processing operations. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific ~~qualified industrial~~ manufacturing or processing activity.
- (1a) The funds shall be used for projects located in economically distressed counties except that ~~However,~~ the Secretary of Commerce may use up to one hundred thousand dollars (\$100,000) to provide emergency economic development assistance in any county ~~which~~ that is documented to be experiencing a major economic dislocation.
- (2) The funds shall be used by the city and county governments for projects that will directly result in the creation of new jobs. The funds shall be expended at a rate of ~~two thousand four hundred dollars (\$2,400)~~ four thousand dollars (\$4,000) per new job created up to a maximum of ~~two hundred fifty thousand dollars (\$250,000)~~ four hundred thousand dollars (\$400,000) per project.

- (3) There shall be no local match requirement if the project is located in an enterprise tier one area as defined in G.S. 105-129.3.
- (a1) Definitions. – The following definitions apply in this section:
- (1) Economically distressed county. – A county designated as an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.
- (2) Major economic dislocation. – The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.
- (3) Manufacturing and processing. – Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.

~~(b) Each year, on or before December 31, the Secretary of Commerce shall designate the most economically distressed counties in the State; this designation shall remain effective for the following calendar year. The Secretary of Commerce shall determine which counties are the most economically distressed counties in the State based on (i) rate of unemployment, (ii) per capita income, and (iii) relative population and work force growth or lack of growth, as determined by the Secretary of Commerce.~~

(b1) Utility Account. – There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of enterprise tier one areas, as defined in G.S. 105-129.3, in creating jobs in manufacturing and processing, warehousing and distribution, and data processing, as defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census. The Department of Commerce shall adopt rules providing for the administration of the program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for industrial operations in manufacturing or processing, warehousing or distribution, or data processing. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project.

~~(c) Reports. – The Department of Commerce shall report annually to the General Assembly concerning the applications made to the fund and the payments made from the fund and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the fund, including information regarding to whom payments were made, in what amounts, and for what purposes.~~

~~(d) As used in this section, 'major economic dislocation' means the actual or imminent loss of:~~

- (1) ~~500 or more manufacturing jobs in the county; or~~
- (2) ~~A number of manufacturing jobs which is equal to or more than ten percent (10%) of the existing manufacturing workforce in the county."~~

Sec. 3.6. Part 2 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-437D. Economic development block grants.

The Department of Commerce shall adopt guidelines for the awarding of Community Development Block Grants for economic development that will ensure that no local match is required for grants awarded for projects located in enterprise tier one areas as defined in G.S. 105-129.3 and, to the extent practicable, that priority consideration for grants is given to projects located in enterprise tier one areas as defined in G.S. 105-129.3."

Sec. 3.7. G.S. 105-241.1(e), as amended by Chapter 646 of the 1995 Session Laws, reads as rewritten:

"(e) Statute of Limitations. – There is no statute of limitations and the Secretary may propose an assessment of tax due from a taxpayer at any time if (i) the taxpayer did not file a proper application for a license or did not file a return, (ii) the taxpayer filed a false or fraudulent application or return, or (iii) the taxpayer attempted in any manner to fraudulently evade or defeat the tax.

If a taxpayer files a return reflecting a federal determination as provided in G.S. 105-29, 105-130.20, 105-159, 105-160.8, 105-163.6A, or 105-197.1, the Secretary must propose an assessment of any tax due within one year after the return is filed or within three years of when the original return was filed or due to be filed, whichever is later. If there is a federal determination and the taxpayer does not file the required return, the Secretary must propose an assessment of any tax due within three years after the date the Secretary received the final report of the federal determination. If a taxpayer forfeits a tax credit pursuant to G.S. ~~105-163.014~~, 105-163.014 or Article 3A of this Chapter, the Secretary must assess any tax due as a result of the forfeiture within three years after the date of the forfeiture. If a taxpayer elects under section 1033(a)(2)(A) of the Code not to recognize gain from involuntary conversion of property into money, the Secretary must assess any tax due as a result of the conversion or election within the applicable period provided under section 1033(a)(2)(C) or section 1033(a)(2)(D) of the Code. If a taxpayer sells at a gain the taxpayer's principal residence, the Secretary must assess any tax due as a result of the sale within the period provided under section 1034(j) of the Code.

In all other cases, the Secretary must propose an assessment of any tax due from a taxpayer within three years after the date the taxpayer filed an application for a license or a return or the date the application or return was required by law to be filed, whichever is later.

If the Secretary proposes an assessment of tax within the time provided in this section, the final assessment of the tax is timely.

A taxpayer may make a written waiver of any of the limitations of time set out in this subsection, for either a definite or an indefinite time. If the Secretary accepts the

taxpayer's waiver, the Secretary may propose an assessment at any time within the time extended by the waiver."

Sec. 3.8. G.S. 153A-376(f) reads as rewritten:

"(f) All program income from Economic Development Grants from the Small Cities Community Development Block Grant Program may be retained by recipient '~~severely~~'economically distressed counties', as ~~designated under G.S. 105-130.40(e), defined in G.S. 143B-437A~~ for the purposes of creating local economic development revolving loan funds. Such program income derived through the use by counties of Small Cities Community Development Block Grant money includes but is not limited to: (i) payment of principal and interest on loans made by the county using Community Development Block Grant Funds; (ii) proceeds from the lease or disposition of real property acquired with Community Development Block Grant Funds; and (iii) any late fees associated with loan or lease payments in (i) and (ii) above. The local economic development revolving loan fund set up by the county shall fund only those activities eligible under Title I of the federal Housing and Community Development Act of 1974, as amended (P.L. 93-383), and shall meet at least one of the three national objectives of the Housing and Community Development Act. Any expiration of ~~G.S. 105-130.40(e) 143B-437A~~ or G.S. 105-129.3 shall not affect this subsection as to designations of ~~severely economically~~ distressed counties made prior to its expiration."

Sec. 3.9. G.S. 160A-456(e1) reads as rewritten:

"(e1) All program income from Economic Development Grants from the Small Cities Community Development Block Grant Program may be retained by recipient cities in '~~severely~~'economically distressed counties', as ~~designated under G.S. 105-130.40(e), defined in G.S. 143B-437A~~, for the purposes of creating local economic development revolving loan funds. Such program income derived through the use by cities of Small Cities Community Development Block Grant money includes but is not limited to: (i) payment of principal and interest on loans made by the county using Community Development Block Grant Funds; (ii) proceeds from the lease or disposition of real property acquired with Community Development Block Grant Funds; and (iii) any late fees associated with loan or lease payments in (i) and (ii) above. The local economic development revolving loan fund set up by the city shall fund only those activities eligible under Title I of the federal Housing and Community Development Act of 1974, as amended (P.L. 93-383), and shall meet at least one of the three national objectives of the Housing and Community Development Act. Any expiration of ~~G.S. 105-130.40(e)-143B-437A~~ or G.S. 105-129.3 shall not affect this subsection as to designations of ~~severely economically~~ distressed counties made prior to its expiration."

Sec. 3.10. Part 2 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-437D. Regional development.

The Department of Commerce shall review the Economic Development Board's annual report on economic development to evaluate the progress of development in each of the economic regions defined by the Board in its Comprehensive Strategic Economic Development Plan. In its recruitment and development work, the Department shall

strive for balance and equality among the economic regions and shall use its best efforts to locate new industries in the less developed areas of the State."

Sec. 3.11. Notwithstanding the provisions of G.S. 105-129.10, as enacted by this act, if a taxpayer relocates an employee to this State during 1996, any in-house research expenses the taxpayer incurs with respect to that employee during 1996, either before or after the employee is relocated to this State, are considered in-house research expenses in this State for the purposes of G.S. 105-129.10. Notwithstanding the definition of "Code" in G.S. 105-228.90, if the federal tax credit for increasing research activities that was formerly allowed under section 41 of the Code is reenacted, the credit for research and development allowed in Article 3A of Chapter 105 of the General Statutes, as enacted by this act, becomes effective for the same taxable year for which the reenacted federal credit becomes effective.

Sec. 3.12. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3B.

"Business Tax Credit.

"§ 105-129.15. Definitions.

The following definitions apply in this Article:

- (1) Business property. – Tangible personal property that is used by the taxpayer in connection with a business or for the production of income and is capitalized by the taxpayer for tax purposes under the Code. The term does not include, however, a luxury passenger automobile taxable under section 4001 of the Code or a watercraft used principally for entertainment and pleasure outings for which no admission is charged.
- (2) Cost. – Defined in section 179 of the Code.
- (3) Purchase. – Defined in section 179 of the Code.

"§ 105-129.16. Credit for investing in business property.

(a) Credit. – A taxpayer that has purchased business property and places it in service in this State during the taxable year is allowed a credit equal to four and one-half percent (4.5%) of the cost of the property. The maximum credit allowed a taxpayer for property placed in service during a taxable year is four thousand five hundred dollars (\$4,500). The entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service.

(b) Expiration. – If, in one of the five years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is sold or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17.

(c) No Double Credit. – A taxpayer that claims the credit allowed under Article 3A of this Chapter with respect to business property may not take the credit allowed in this section with respect to the same property.

"§ 105-129.17. Tax election; cap.

(a) Tax Election. – The credit allowed in this Article is allowed against the franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4 of this Chapter. The taxpayer must elect the tax against which the credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. – The credit allowed in this Article may not exceed fifty percent (50%) of the tax against which it is claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of the credit may be carried forward for the succeeding five years.

"§ 105-129.18. Substantiation.

To claim the credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article must maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"§ 105-129.19. Reports.

The Department of Revenue shall report to the Legislative Research Commission and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

- (1) The number of taxpayers that claimed the credit allowed in this Article.
- (2) The cost of business property with respect to which credits were claimed.
- (3) The total cost to the General Fund of the credits claimed."

PART IV. PHASE OUT SOFT DRINK TAX

Sec. 4.1. G.S. 105-113.45, as amended by Chapter 646 of the 1995 Session Laws, reads as rewritten:

"§ 105-113.45. Excise taxes on soft drinks and base products.

(a) Bottled Soft Drinks. – An excise tax of ~~three-fourths cent (3/4¢)~~ at the applicable rate provided in the following table is levied on each bottled soft drink.

<u>Date Tax Accrues</u>	<u>Rate</u>
<u>From 7/1/96 until 6/30/97</u>	<u>3/4¢</u>

From 7/1/97 until 6/30/98 1/2¢
After 7/1/98 1/4¢

(b) Repealed by Session Laws 1991, c. 689, s. 276.

(c) Liquid Base Products. – An excise tax at the ~~rate of seventy-five cents (75¢) a gallon~~ applicable per-gallon rate provided in the table below is levied on each individual container of a liquid base product. The tax applies regardless whether the liquid base product is diverted to and used for a purpose other than making a soft drink.

<u>Date Tax Accrues</u>	<u>Rate</u>
<u>From 7/1/96 until 6/30/97</u>	<u>75¢</u>
<u>From 7/1/97 until 6/30/98</u>	<u>50¢</u>
<u>After 7/1/98</u>	<u>25¢</u>

(d) Dry Base Products. – An excise tax is levied on each individual container of a dry base product ~~at the rate:~~ at:

(1) ~~Of three-fourths cent (3/4¢) an ounce~~ The applicable per-ounce rate in the table below if the dry base product is not converted into a syrup or other liquid base product before it is used to make a soft drink.

<u>Date Tax Accrues</u>	<u>Rate</u>
<u>From 7/1/96 until 6/30/97</u>	<u>3/4¢</u>
<u>From 7/1/97 until 6/30/98</u>	<u>1/2¢</u>
<u>After 7/1/98</u>	<u>1/4¢</u>

(2) ~~That~~ The rate that would apply under subsection (c) to the resulting liquid base product if the dry base product is converted into a liquid base product before it is used to make a soft drink.

(e) Repealed by Session Laws 1991, c. 689, s. 276."

Sec. 4.2. Effective July 1, 1999, Article 2B of Chapter 105 of the General Statutes, as amended by this act, is repealed. The Secretary shall retain from collections under Article 2 of Chapter 105 of the General Statutes the cost of refunding the taxes levied in Article 2B of Chapter 105 of the General Statutes.

PART V. MODIFY BUNDLED TRANSACTION SALES TAX

Sec. 5.1. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-164.12B. Bundled transactions.

(a) Bundled Transaction Defined. – A bundled transaction is a transaction in which all of the following conditions are met:

- (1) A seller transfers an item of tangible personal property to a consumer on the condition that the consumer enter into an agreement to purchase services on an ongoing basis for a minimum period of at least six months.
- (2) The agreement requires the consumer to pay a cancellation fee to the service provider if the consumer cancels the contract for services within the minimum period.
- (3) For the item transferred, the seller:
 - a. Does not charge the consumer; or

b. Charges the consumer a price that, after any discount or rebate the seller gives the consumer, is below the cost price the seller paid for the item.

(b) Bundled Transaction Is a Sale; Sales Price. – If a seller transfers an item of tangible personal property as part of a bundled transaction, a sale has occurred, and the sales price of the item is presumed to be the retail price at which the item would sell if no agreement for services were entered into. Part of this price may be paid by the consumer at the time of the transfer; the remainder of the price is considered paid as part of the price to be paid for the services contracted for. Sales tax is due on any part of the price paid by the consumer at the time of the transfer.

(c) No Additional Sales Tax if Services Taxed. – If the services for which the consumer was required to contract are subject to services taxes at a combined rate equal to or greater than the combined State and local general rate of sales and use tax, then no additional sales tax is due on the transfer. However, if the consumer cancels the contract for services before the expiration of the minimum period, sales tax applies to the cancellation fee paid by the consumer.

(d) Additional Sales Tax if Services Not Taxed. – If the services for which the consumer was required to contract are not subject to services taxes at a combined rate equal to or greater than the combined State and local general rate of sales and use tax, then sales tax is due at the time of the transfer on the remainder of the sales price not paid at that time.

(e) Services Taxes Defined. – For the purpose of this section, the term 'services taxes' means any combination of State franchise tax on gross receipts, State sales tax, or local sales tax levied on the sale of or gross receipts from the services.

(f) Determination of Cost Price. – For the purpose of this section, the cost price a seller paid for an item is presumed to be no greater than the price the seller paid for the same model within 12 months before the bundled transaction, as shown on the seller's invoices."

PART VI. REDUCE INHERITANCE AND GIFT TAXES

Sec. 6.1. G.S. 105-4(b) reads as rewritten:

"(b) An inheritance tax credit ~~in the amount specified in the following table of thirty-three thousand one hundred fifty dollars (\$33,150)~~ is allowed against the tax imposed by this Article on the transfer of property to a Class A beneficiary.

<u>For Decedents Dying on or After</u>	<u>Amount of Credit</u>
<u>August 1, 1985</u>	<u>\$ 2,350</u>
<u>July 1, 1986</u>	<u>8,150</u>
<u>January 1, 1987</u>	<u>14,150</u>
<u>January 1, 1988</u>	<u>20,150</u>
<u>January 1, 1989</u>	<u>26,150</u>

The credit may not exceed the amount of tax imposed by this Article.

This credit is allowed to Class A beneficiaries in the following order:

- (1) Children who are less than 18 years old, and children who are at least 18 years old and who are single, are unable to support themselves

because of mental or physical incapacity, and either are members of the decedent's household or, because of their mental or physical incapacity, live in an institution.

- (2) Other Class A Beneficiaries. – The status of a beneficiary is determined as of the date of the decedent's death. When two or more beneficiaries are equally entitled to the credit, the credit shall be allocated among those beneficiaries on a pro rata basis according to their tax liability. ~~The credit allowed by this section may not exceed the amount of tax imposed by this Article.~~"

Sec. 6.2. G.S. 105-3 is amended by adding a new subdivision to read:

"(11) Property transferred to a spouse when the transfer of the property is exempt from federal estate and gift taxes under section 2056(b)(7) of the Code because it is considered qualified terminable interest property."

Sec. 6.3. G.S. 105-188 is amended by adding a new subsection to read:

"(j) The tax does not apply to property transferred to a spouse when the transfer of the property is exempt from federal estate and gift taxes under section 2523(f) of the Code because it is considered qualified terminable interest property."

Sec. 6.4. G.S. 105-2(a) reads as rewritten:

"(a) A tax shall be and is hereby imposed upon the transfer of any property, real or personal, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations, in the following cases:

- (1) When the transfer is from a person who dies seized of the property while a resident of the State and it is made:
- a. By will or by intestacy;
 - b. Pursuant to a final judgment entered in a proceeding to caveat a will; or
 - c. Pursuant to a settlement agreement, to which the personal representative is a party, that, in the determination of the Secretary of Revenue in his sole discretion based on evidence presented by the personal representative, reflects the good faith, arm's-length compromise of an actual dispute between beneficiaries, heirs, or personal representatives and does not have the primary purpose of avoiding inheritance tax.
- (2) When the transfer is by will or intestate laws of this or any other state of real property or goods, wares, and merchandise within this State, or of any property, real, personal, or mixed, tangible or intangible, over which the State of North Carolina has a taxing jurisdiction, including State and municipal bonds, and the decedent was a resident of the State at the time of death; when the transfer is of real property or tangible personal property within the State, or intangible personal property that has acquired a situs in this State, and the decedent was a nonresident of the State at the time of death.

- (3) When the transfer of property made by a resident, or nonresident, is of real property within this State, or of goods, wares and merchandise within this State, or of any other property, real, personal, or mixed, tangible or intangible, over which the State of North Carolina has taxing jurisdiction, including State and municipal bonds, by deed, grant, bargain, sale, or gift made in contemplation of the death of the grantor, vendor, or donor, or intended to take effect in possession or enjoyment at or after such death, including a transfer under which the transferor has retained for his life or any period not ending before his death (i) the possession or enjoyment of, or the income from, the property or (ii) the right to designate the persons who shall possess or enjoy the property or the income therefrom. The aggregate value exceeding ten thousand dollars (\$10,000) of transfers to any one donee within a tax year by deed, grant, bargain, sale, gift, or combination thereof, made within three years prior to the death of the grantor, vendor, or donor, without an adequate valuable consideration, shall be presumed, subject to rebuttal, to have been made in contemplation of death within the meaning of this section; the first ten thousand dollars (\$10,000) in value shall be deemed not made in contemplation of death.
- (4) When any person or corporation comes into possession or enjoyment, by a transfer from a resident, or from a nonresident decedent when such nonresident decedent's property consists of real property within this State or tangible personal property within the State, or intangible personal property that has acquired a situs in this State, of an estate in expectancy of any kind or character which is contingent or defeasible, transferred by any instrument taking effect after March 24, 1939.
- (5) a. For purposes of this Article, the term 'general power of appointment' means a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate; except that:
1. A power to consume, invade or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support or maintenance of the decedent shall not be deemed a general power of appointment.
 2. A power of appointment which is exercisable by the decedent only in conjunction with another person:
 - I. If the power is not exercisable by the decedent except in conjunction with the creator of the power, such power shall not be deemed a general power of appointment.
 - II. If the power is not exercisable by the decedent except in conjunction with a person having a substantial interest in the property, subject to the power, which is adverse to

exercise of the power in favor of the decedent, such power shall not be deemed a general power of appointment. For the purposes of this clause a person who, after the death of the decedent, may be possessed of a power of appointment (with respect to the property subject to the decedent's power) which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the decedent's power.

III. If (after the application of clauses I and II) the power is a general power of appointment and is exercisable in favor of such other person, such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such power, such part to be determined by dividing the value of such property by the number of such persons (including the decedent) in favor of whom such power is exercisable.

IV. For purposes of clauses II and III, a power shall be deemed to be exercisable in favor of a person if it is exercisable in favor of such person, his estate, his creditors, or the creditors of his estate.

b. Whenever any person shall have a general power of appointment with respect to any interest in property, such person shall, for the purposes of this Article, be deemed the owner of such interest and accordingly:

1. If in connection with any transfer of property taxable under this Article the transferor shall give to any person a general power of appointment with respect to any interest in such property, the transferor shall be deemed to have given such interest in such property to such person.
2. If any person holding a general power of appointment with respect to any interest in property shall exercise such power in favor of any other person or persons, either by will or by an appointment made in contemplation of the death of such person, or by an appointment intended to take effect in possession or enjoyment at or after such death, he shall be deemed to have made a transfer of such interest to such person or persons.
3. If any person holding a general power of appointment with respect to any interest in property shall relinquish such power by any action taken in contemplation of death or intended to take effect at or after his death, or shall die without fully exercising such power, he shall be deemed, to the extent of such relinquishment or nonexercise, to have made a transfer of such interest to the person or persons who shall benefit thereby.

- (6) Neither the exercise nor the relinquishment of a special power of appointment (which shall mean any power other than a general power) with respect to an interest in property shall be deemed to constitute a transfer of such interest within the meaning of this Article. If in connection with any transfer taxable under this Article the transferor shall give to any person a special power of appointment with respect to any interest in property, he shall be deemed, for the purpose of computing the tax applicable thereto, to have given such interest in equal shares to those persons, not more than two, among the possible appointees and takers in default of appointment whom the transferor's executor or administrator may designate as transferees in the inheritance tax return, except that:
- a. If a gift tax return is filed with respect to such transfer, the persons designated therein shall also be designated in the inheritance tax return, and
 - b. The tax shall be computed according to the relationship of the donee of the power to the persons designated if the possible appointees and takers in default of appointment include any persons more closely related to the donee of the power than to the donor, and if such computation would produce a higher tax.
- (7), (7a) Repealed by Session Laws, 1985, c. 656, s. 1.
- (8) Where the proceeds of life insurance policies are payable as provided in G.S. 105-13.
- (9) Whenever any person or corporation comes into possession or enjoyment of any real or personal property, including bonds of the United States and bonds of a state or subdivision or agency thereof, at or after the death of an individual and by reason of said individual's having entered into a contract or other arrangement with the United States, a state or any person or corporation to pay, transfer or deliver said real or personal property, including bonds of the United States and bonds of a state, to the person or corporation receiving the same, whether said person or corporation is named in the contract or other arrangement or not: Provided, that no tax shall be due or collected on that portion of the real or personal property received under the conditions outlined herein which the person or corporation receiving the same purchased or otherwise acquired by funds or property of the person or corporation receiving the same, or had acquired by a completed inter vivos gift.
- Nothing in subdivision (9) shall apply to the proceeds of life insurance policies.
- (10) Upon the death of a spouse who had a qualifying income interest for life in qualified terminable interest property whose previous transfer was exempt from inheritance or gift taxes under G.S. 105-3(11) or G.S. 105-188(j), the qualified terminable interest property that was

previously exempt is considered to pass from the spouse to the person who is entitled to the property upon the termination of the spouse's qualifying income interest for life.

However, nothing in this Article shall be construed as imposing a tax upon any transfer of intangibles not having a commercial or business situs in this State, by a person, or by reason of the death of a person, who was not a resident of this State at the time of his death, and, if held or transferred in trust, such intangibles shall not be deemed to have a commercial or business situs in this State merely because the trustee is a resident or, if a corporation, is doing business in this State, unless the same be employed in or held or used in connection with some business carried on in whole or in part in this State."

Sec. 6.5. G.S. 105-9(8) reads as rewritten:

"(8) Costs of administration, including administration not claimed as a deduction on the federal income tax return filed under the Code by the fiduciary for the decedent's estate. Costs of administration include reasonable attorneys' fees."

Sec. 6.6. Article 1 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-23.1. Making installment payments of tax due when federal estate tax is payable in installments.

A personal representative who elects under section 6166 of the Code to make installment payments of federal estate tax may elect to make installment payments of the tax imposed by this Article. An election under this section extends the time for payment of the tax due in accordance with the extension elected under section 6166 of the Code. Payments of tax are due under this section at the same time and in the same proportion to the total amount of tax due as payments of federal tax under section 6166 of the Code. Acceleration of payments under section 6166 of the Code accelerates the payments due under this section."

PART VII. NONITEMIZER CHARITABLE CONTRIBUTION TAX CREDIT

Sec. 7.1. Division II of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-151.26. Credit for charitable contributions by nonitemizers.

A taxpayer who elects the standard deduction under section 63 of the Code for federal tax purposes is allowed as a credit against the tax imposed by this Division an amount equal to two and three-fourths percent (2.75%) of the taxpayer's excess charitable contributions. The taxpayer's excess charitable contributions are the amount by which the taxpayer's charitable contributions for the taxable year that would have been deductible under section 170 of the Code if the taxpayer had not elected the standard deduction exceed two percent (2%) of the taxpayer's adjusted gross income as calculated under the Code.

No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code or for contributions for which a credit was claimed under G.S. 105-151.12 or G.S. 105-151.14. A nonresident or part-

year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. 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, except payments of tax made by or on behalf of the taxpayer."

PART VIII. EXCLUDE CERTAIN SEVERANCE PAY FROM INCOME TAX

Sec. 8.1. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(11) The amount paid to the taxpayer as severance wages as the result of the permanent closure of a manufacturing or processing plant, not to exceed a maximum of thirty-five thousand dollars (\$35,000) for the taxable year."

Sec. 8.2. G.S. 105-134.1 is amended by adding a new subdivision to read:

"(15a) Manufacturing and processing. – Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census."

PART IX. REDUCE SALES TAX ON FARM AND INDUSTRY FUEL

Sec. 9.1. G.S. 105-164.4(a) is amended by adding a new subdivision to read:

"(1f) The rate of two and eighty-three-hundredths percent (2.83%) applies to the sales price of electricity and piped natural gas described in this subdivision and measured by a separate meter or another device:

- a. Sales of electricity and piped natural gas to farmers to be used by them for any farm purposes other than preparing food, heating dwellings, and other household purposes. The quantity of electricity or gas purchased or used at any one time shall not be a determinative factor as to whether its sale or use is or is not subject to the rate of tax provided in this subdivision.
- b. Sales of electricity and piped natural gas to manufacturing industries and manufacturing plants for use in connection with the operation of the industries and plants other than sales of electricity and gas to be used for residential heating purposes. The quantity of electricity or gas purchased or used at any one time shall not be a determinative factor as to whether its sale or use is or is not subject to the rate of tax provided in this subdivision.
- c. Sales of electricity and piped natural gas to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service."

Sec. 9.2. G.S. 105-164.4(a)(4a) reads as rewritten:

"(4a) The rate of three percent (3%) applies to the gross receipts derived by a utility from sales of electricity, piped natural gas, or local telecommunications service as defined by G.S. 405-

~~120(e).~~ 105-120(e), other than sales of electricity or piped natural gas subject to tax under another subdivision in this section. Gross receipts from sales of piped natural gas shall not include natural gas expansion surcharges imposed under G.S. 62-158. A person who operates a utility is considered a retailer under this Article."

PART X. EFFECTIVE DATES

Sec. 10.1. This act does not affect the rights or liabilities of the State, a taxpayer, or another 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. 10.2. This act becomes effective as follows:

- (1) Reduce sales tax on food. – Part I of this act becomes effective January 1, 1997, and applies to sales made on or after that date.
- (2) Reduce corporate income tax. – Section 2.1 of Part II of this act is effective for taxable years beginning on or after January 1, 1997. Section 2.2 of Part II of this act becomes effective October 1, 1997, and applies to remittances made on or after that date.
- (3) Quality jobs and business expansion tax credits. – Sections 3.5, 3.6, and 3.8 through 3.10 of Part III of this act become effective August 1, 1996. G.S. 105-129.11, as enacted by Part III of this act, becomes effective for taxable years beginning on or after January 1, 1997, and applies to training expenditures made on or after July 1, 1997. The remainder of Part III of this act is effective for taxable years beginning on or after January 1, 1996, and applies to jobs created on or after August 1, 1996, and property placed in service on or after August 1, 1996. Article 3A of Chapter 105 of the General Statutes is repealed effective for applications for credits filed under G.S. 105-129.6 on or after January 1, 2002. Article 3B of Chapter 105 of the General Statutes is repealed effective for business property placed in service on or after January 1, 2002.
- (4) Phase out soft drink tax. – Section 4.1 of Part IV of this act becomes effective July 1, 1997. Section 4.2 of Part IV of this act becomes effective July 1, 1999.
- (5) Modify bundled transaction sales tax. – Part V of this act becomes effective on the earliest date practicable. The "earliest date practicable" is considered to be the first day of the third month following the ratification of this act. The Part applies to sales made on or after the effective date.
- (6) Reduce inheritance and gift taxes. – Part VI of this act becomes effective January 1, 1997, and applies to the estates of decedents dying on or after that date and to gifts made on or after that date.

- (7) Nonitemizer charitable contribution tax credit. – Part VII of this act is effective for taxable years beginning on or after January 1, 1997.
- (8) Exclude certain severance pay from income tax. – Part VIII of this act is effective for taxable years beginning on or after January 1, 1996.
- (9) Reduce sales tax on farm and industry fuel. – Part IX of this act becomes effective August 1, 1996, and applies to sales made on or after that date.
- (10) Remainder. – The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of August, 1996.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives