

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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**SENATE BILL 1292
Finance Committee Substitute Adopted 6/11/02
Third Edition Engrossed 6/13/02
House Committee Substitute Favorable 7/17/02
House Committee Substitute #2 Favorable 7/24/02**

Short Title: Budget Revenue Act of 2002.

(Public)

Sponsors:

Referred to:

June 10, 2002

A BILL TO BE ENTITLED

1
2 AN ACT TO ACCELERATE THE ADDITIONAL LOCAL OPTION SALES TAX,
3 THE REPEAL OF REIMBURSEMENTS, AND THE DECREASE IN THE STATE
4 SALES TAX RATE; TO PROVIDE NO HOLD HARMLESS PAYMENTS IN
5 THE 2002-2003 FISCAL YEAR OTHER THAN A PAYMENT EQUAL TO THE
6 EXCESS, IF ANY, OF A LOCAL GOVERNMENT'S REPEALED
7 REIMBURSEMENT AMOUNT OVER THREE TIMES ITS ESTIMATED
8 PROCEEDS FROM THE NEW TAX; TO DELAY THE INCREASE IN THE
9 CHILD TAX CREDIT BY ONE YEAR; TO DELAY THE INCREASE IN THE
10 STANDARD DEDUCTION FOR MARRIED PERSONS BY ONE YEAR; TO
11 UPDATE THE REFERENCE DATE TO THE INTERNAL REVENUE CODE
12 USED TO DEFINE AND DETERMINE CERTAIN STATE TAX PROVISIONS;
13 TO CONFORM TO THE FEDERAL ANNUAL EXCLUSION AMOUNT FOR
14 GIFT TAXES; TO DELAY THE EFFECT OF ACCELERATED DEPRECIATION
15 UNDER SECTION 168 OF THE CODE AND SECTION 1400L OF THE CODE;
16 TO DISREGARD THE PHASE-OUT OF THE STATE DEATH TAX CREDIT
17 UNDER THE CODE; TO ALLOW THE SECRETARY OF REVENUE TO
18 RECOUP A PORTION OF THE COSTS OF ADMINISTERING THE
19 UNAUTHORIZED SUBSTANCES TAX FROM LOCAL SALES AND USE TAX
20 DISTRIBUTIONS; TO SET THE INSURANCE REGULATORY FEE AND THE
21 PUBLIC UTILITY REGULATORY FEES; TO PROVIDE THAT LOCAL
22 REVENUES MAY NOT BE WITHHELD OR IMPOUNDED BY THE
23 GOVERNOR; TO CONFORM THE DEFINITION OF BUSINESS INCOME TO
24 FEDERAL STANDARDS; TO PROVIDE THAT IN APPORTIONING
25 CORPORATE INCOME TO THIS STATE FOR INCOME TAX PURPOSES,
26 SALES OF TANGIBLE PERSONAL PROPERTY IN ANOTHER STATE OR

1 COUNTRY WHERE THE SALES ARE NOT TAXABLE ARE NOT
2 CONSIDERED; TO CLOSE A LOOPHOLE IN THE 2001 LEGISLATION
3 INTENDED TO CLOSE A LOOPHOLE THAT ALLOWS CORPORATIONS TO
4 AVOID FRANCHISE TAX LIABILITY BY TRANSFERRING ASSETS TO A
5 LIMITED LIABILITY COMPANY; AND TO ENLARGE THE CLASS OF
6 TAXPAYERS ELIGIBLE FOR AN ENHANCED CREDIT FOR INVESTING IN
7 LOW-INCOME HOUSING IN A COUNTY THAT SUSTAINED SEVERE OR
8 MODERATE DAMAGE FROM A HURRICANE IN 1999.

9 The General Assembly of North Carolina enacts:

10
11 **PART I. ACCELERATE SALES TAX SWAP**

12
13 **SECTION 1.1.** G.S. 105-517(c) reads as rewritten:

14 "(c) Effective Date. – A tax levied under this Article may not become effective
15 before ~~July-January~~ January 1, 2003."

16 **SECTION 1.2.** G.S. 105-518(b) reads as rewritten:

17 "(b) Ballot Question. – The question to be presented on a ballot for a special
18 election concerning the levy of the taxes authorized by this Article must be in the
19 following form:

20 [] FOR [] AGAINST

21 one-half percent (1/2%) local sales and use taxes, to replace the current one-half percent
22 (1/2%) State sales and use taxes that end ~~July-January~~ January 1, 2003."

23 **SECTION 1.3.** G.S. 105-521(a)(3) reads as rewritten:

24 "(a) Definitions. – The following definitions apply in this section:

25 ...

26 (3) Repealed reimbursement amount. – The total amount a local
27 government would have been entitled to receive during the ~~2002-2003~~
28 2001-2002 fiscal year under G.S. 105-164.44C, 105-275.1, 105-275.2,
29 105-277.001, and 105-277.1A, if the Governor had not withheld any
30 distributions under those sections."

31 **SECTION 1.4.** G.S. 105-521, as amended by this act, is repealed effective
32 July 1, 2012.

33 **SECTION 1.5.** Section 13(g) of S.L. 2001-427 reads as rewritten:

34 "**SECTION 13.(g)** This section becomes effective ~~July 1, 2003,~~October 1, 2002,
35 and applies to amounts collected on or after that date."

36 **SECTION 1.6.** Section 34.13(c) of S.L. 2001-424 reads as rewritten:

37 "**SECTION 34.13.(c)** This section becomes effective October 16, 2001, and applies
38 to sales made on or after that date. This section is repealed effective for sales made on
39 or after ~~July-January~~ January 1, 2003. This section does not affect the rights or liabilities of the
40 State, a taxpayer, or another person arising under a statute amended or repealed by this
41 section before the effective date of its amendment or repeal; nor does it affect the right
42 to any refund or credit of a tax that accrued under the amended or repealed statute
43 before the effective date of its amendment or repeal."

1 **SECTION 1.7.** Effective for taxable years beginning on or after January 1,
2 2002, G.S. 105-269.14(b) reads as rewritten:

3 "(b) Distribution. – The Secretary must distribute ~~one-third~~ a portion of the net use
4 tax proceeds collected under this section to counties and ~~cities in proportion to their~~
5 ~~total distributions under Articles 39, 40, and 42 of this Chapter and Chapter 1096 of the~~
6 ~~1967 Session Laws for the most recent period for which data is available.~~ cities. The
7 portion to be distributed to all counties and cities is the total net use tax proceeds
8 collected under this section multiplied by a fraction. The numerator of the fraction is the
9 local use tax proceeds collected under this section. The denominator of the fraction is
10 the total use tax proceeds collected under this section. The Secretary must distribute this
11 portion to the counties and cities in proportion to their total distributions under Articles
12 39, 40, 42, 43, and 44 of this Chapter and Chapter 1096 of the 1967 Session Laws for
13 the most recent period for which data are available. The provisions of G.S. 105-472,
14 105-486, ~~and 105-501~~ 105-501, and 105-520 do not apply to tax proceeds distributed
15 under this section."

16 **SECTION 1.8.** G.S. 159-15 reads as rewritten:

17 **"§ 159-15. Amendments to the budget ordinance.**

18 Except as otherwise restricted by law, the governing board may amend the budget
19 ordinance at any time after the ordinance's adoption in any manner, so long as the
20 ordinance, as amended, continues to satisfy the requirements of G.S. 159-8 and 159-13.
21 However, except as otherwise provided in this section, no amendment may increase or
22 reduce a property tax levy or in any manner alter a property taxpayer's liability, unless
23 the board is ordered to do so by a court of competent jurisdiction, or by a State agency
24 having the power to compel the levy of taxes by the board.

25 If after July 1 the local government receives additional and unanticipated revenues,
26 the governing body may, before January 1, amend the budget ordinance to reduce the
27 property tax levy to account for the unanticipated revenues.

28 The governing board by appropriate resolution or ordinance may authorize the
29 budget officer to transfer moneys from one appropriation to another within the same
30 fund subject to such limitations and procedures as it may prescribe. Any such transfers
31 shall be reported to the governing board at its next regular meeting and shall be entered
32 in the minutes."

33 **SECTION 1.9.** Section 34.14(b) of S.L. 2001-424 reads as rewritten:

34 **"SECTION 34.14.(b)** Notwithstanding the provisions of G.S. 105-466(c), a tax
35 levied ~~during the 2003 calendar year~~ under Article 44 of Chapter 105 of the General
36 Statutes, as enacted by this act, may become effective on the first day of any calendar
37 month beginning on or after ~~July 1, 2003.~~ January 1, 2003, and on or before July 1,
38 2003. Notwithstanding the provisions of G.S. 105-466(c), if a county levies a tax ~~during~~
39 ~~the 2003 calendar year~~ under Article 44 of Chapter 105 of the General Statutes, as
40 enacted by this act, that is to become effective on or before July 1, 2003, the county is
41 required to give the Secretary of Revenue only 30 days' advance notice of the tax levy.
42 For taxes levied ~~on or~~ under Article 44 of Chapter 105 of the General Statutes that
43 become effective after January 1, 2004, July 1, 2003, the provisions of G.S. 105-466(c)
44 apply."

1 local government to the local government's repealed reimbursement amount. If the
2 repealed reimbursement amount is more than three times the estimated tax amount for
3 any local government, the Secretary must pay that local government the excess of its
4 repealed reimbursement amount over three times its estimated tax amount. The
5 Secretary must draw these funds from the source provided in G.S. 105-521(c).

6 7 **PART II. DELAY 2001 TAX BREAKS**

8
9 **SECTION 2.1.(a)** The lead-in language of Section 34.19(a) of S.L.
10 2001-424 reads as rewritten:

11 "**SECTION 34.19.(a)** Effective for taxable years beginning on or after January 1,
12 ~~2002,2003~~, G.S. 105-134.6(c)(3) and (4) reads as rewritten:".

13 **SECTION 2.1.(b)** The lead-in language of Section 34.19(b) of S.L.
14 2001-424 reads as rewritten:

15 "**SECTION 34.19.(b)** Effective for taxable years beginning on or after January 1,
16 ~~2003,2004~~, G.S. 105-134.6(c)(4), as amended by this section, reads as rewritten:".

17 **SECTION 2.2.(a)** The lead-in language of Section 34.20(a) of S.L.
18 2001-424 reads as rewritten:

19 "**SECTION 34.20.(a)** Effective for taxable years beginning on or after January 1,
20 ~~2002,2003~~, G.S. 105-151.24 reads as rewritten:".

21 **SECTION 2.2.(b)** The lead-in language of Section 34.20(b) of S.L.
22 2001-424 reads as rewritten:

23 "**SECTION 34.20.(b)** Effective for taxable years beginning on or after January 1,
24 ~~2003,2004~~, G.S. 105-151.24, as amended by this section, reads as rewritten:".

25 26 **PART III. UPDATE IRC REFERENCE**

27
28 **SECTION 3.1.** G.S. 105-228.90(b)(1b) reads as rewritten:

29 "(1b) Code. – The Internal Revenue Code as enacted as of ~~January 1,~~
30 ~~2001,May 1, 2002~~, including any provisions enacted as of that date
31 which become effective either before or after that date."

32 **SECTION 3.2.(a)** G.S. 105-130.5(a) is amended by adding a new
33 subdivision to read:

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

36 ...

37 (15) The applicable percentage of the amount allowed as a thirty percent
38 (30%) accelerated depreciation deduction under section 168(k) or
39 section 1400L of the Code, as set out in the table below. In addition, a
40 taxpayer who was allowed a thirty percent (30%) accelerated
41 depreciation deduction under section 168(k) or section 1400L of the
42 Code in a taxable year beginning before January 1, 2002, and whose
43 North Carolina taxable income in that earlier year reflected that
44 accelerated depreciation deduction must add to federal taxable income

1 in the taxpayer's first taxable year beginning on or after January 1,
 2 2002, an amount equal to the amount of the deduction allowed in the
 3 earlier taxable year. These adjustments do not result in a difference in
 4 basis of the affected assets for State and federal income tax purposes.
 5 The applicable percentage is as follows:

<u>Taxable Year</u>	<u>Percentage</u>
<u>2002</u>	<u>100%</u>
<u>2003</u>	<u>70%</u>
<u>2004 and thereafter</u>	<u>0%"</u>

10 **SECTION 3.2.(b)** G.S. 105-134.6(c) is amended by adding a new
 11 subdivision to read:

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

15 ...

16 (8) The applicable percentage of the amount allowed as a thirty percent
 17 (30%) accelerated depreciation deduction under section 168(k) or
 18 section 1400L of the Code, as set out in the table below. In addition, a
 19 taxpayer who was allowed a thirty percent (30%) accelerated
 20 depreciation deduction under section 168(k) or section 1400L of the
 21 Code in a taxable year beginning before January 1, 2002, and whose
 22 North Carolina taxable income in that earlier year reflected that
 23 accelerated depreciation deduction must add to federal taxable income
 24 in the taxpayer's first taxable year beginning on or after January 1,
 25 2002, an amount equal to the amount of the deduction allowed in the
 26 earlier taxable year. These adjustments do not result in a difference in
 27 basis of the affected assets for State and federal income tax purposes.
 28 The applicable percentage is as follows:

<u>Taxable Year</u>	<u>Percentage</u>
<u>2002</u>	<u>100%</u>
<u>2003</u>	<u>70%</u>
<u>2004 and thereafter</u>	<u>0%"</u>

33 **SECTION 3.2.(c)** This section is effective for taxable years beginning on or
 34 after January 1, 2002.

35 **SECTION 3.3.(a)** G.S. 105-130.5(b) is amended by adding a new
 36 subdivision to read:

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

39 ...

40 (21) In each of the taxpayer's first five taxable years beginning on or after
 41 January 1, 2005, an amount equal to twenty percent (20%) of the
 42 amount added to taxable income in a previous year as accelerated
 43 depreciation under subdivision (a)(15) of this section."

1 **SECTION 3.3.(b)** G.S. 105-134.6(b) is amended by adding a new
2 subdivision to read:

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

6 ...

7 (17) In each of the taxpayer's first five taxable years beginning on or after
8 January 1, 2005, an amount equal to twenty percent (20%) of the
9 amount added to taxable income in a previous year as accelerated
10 depreciation under subdivision (c)(8) of this section."

11 **SECTION 3.3.(c)** This section is effective for taxable years beginning on or
12 after January 1, 2002.

13 **SECTION 3.4.(a)** G.S. 105-32.2(b) reads as rewritten:

14 "(b) Amount. – The amount of the estate tax imposed by this section is the
15 maximum credit for state death taxes allowed under section 2011 of the ~~Code~~, Code
16 without regard to the phase-out of that credit under subdivision (b)(2) of that section. If
17 any property in the estate is located in a state other than North Carolina, the amount of
18 tax payable is the North Carolina percentage of the credit.

19 If the decedent was a resident of this State at death, the North Carolina percentage is
20 the net value of the estate that does not have a tax situs in another state, divided by the
21 net value of all property in the estate. If the decedent was not a resident of this State at
22 death, the North Carolina percentage is the net value of real property that is located in
23 North Carolina plus the net value of any personal property that has a tax situs in North
24 Carolina, divided by the net value of all property in the estate, unless the decedent's
25 state of residence uses a different formula to determine that state's percentage. In that
26 circumstance, the North Carolina percentage is the amount determined by the formula
27 used by the decedent's state of residence.

28 The net value of property that is located in or has a tax situs in this State is its gross
29 value reduced by any debt secured by that property. The net value of all the property in
30 the estate is its gross value reduced by any debts and deductions of the estate."

31 **SECTION 3.4.(b)** This section is effective on and after January 1, 2002, and
32 applies to the estates of decedents dying on or after that date. This section is repealed
33 effective for the estates of decedents dying on or after January 1, 2004.

34 **SECTION 3.5.** Effective for taxable years beginning on or after January 1,
35 2002, G.S. 105-134.6(b)(13) is repealed.

36 **SECTION 3.6.** Notwithstanding Section 3.1 of this act, any amendments to
37 the Internal Revenue Code enacted in 2001 that increase North Carolina taxable income
38 for the 2001 taxable year become effective for taxable years beginning on or after
39 January 1, 2002.

40 **SECTION 3.7.(a)** G.S. 105-188(d) reads as rewritten:

41 "(d) Annual Exclusion. – The annual exclusion amount is equal to the federal
42 inflation-adjusted exclusion amount provided in section 2503(b) of the Code. Gifts not
43 exceeding a total value of ten thousand dollars (\$10,000) equal to the annual exclusion
44 amount made to any one donee in a calendar year are not taxable under this Article.

1 When gifts exceeding a total value of ~~ten thousand dollars (\$10,000)~~ equal to the annual
2 exclusion amount are made to any one donee in a calendar year, only the portion of the
3 gifts exceeding ~~ten thousand dollars (\$10,000)~~ the annual exclusion amount in value is
4 taxable under this Article. This exclusion does not apply to gifts of future interests in
5 property. For the purposes of determining the ~~exclusion herein provided, annual~~
6 exclusion, no part of a gift to an individual, or in trust for an individual, who has not
7 attained the age of 21 years on the date of ~~such the transfer shall be~~ is considered a gift
8 of a future interest in property if the property and the income therefrom meet all of the
9 following conditions: (i) they may be expended by, or for the benefit of, the donee
10 before his attaining the donee reaches the age of 21 years, and years; (ii) they will to the
11 extent not so expended pass to the donee on his attaining when the donee reaches the age
12 of 21 years, and years; and (iii) they will, in the event the donee dies before attaining the
13 age of 21 years, reaching that age, be payable to the estate of the donee or as he the
14 donee may appoint under a general power of appointment.

15 When a gift is made by one spouse to a person other than the donor's spouse, the
16 donor may claim both the donor's annual exclusion and the spouse's annual exclusion
17 ~~provided that if~~ if both spouses consent and both spouses are residents of this State when
18 the gift is made. Consent to share annual gift tax exclusions ~~shall~~ must be made in
19 writing on a timely filed gift tax return. Once given, consent to share annual exclusions
20 is irrevocable."

21 **SECTION 3.7.(b)** This section is effective January 1, 2002, and applies to
22 gifts made on or after that date."
23

24 **PART IV. UNAUTHORIZED SUBSTANCE TAX EXPENSES**

25
26 **SECTION 4.1.** G.S. 105-501 is amended by adding a new subdivision to
27 read:

28 "...

29 In determining the net proceeds of the tax to be distributed, the Secretary shall
30 deduct from the collections to be allocated an amount equal to one-fourth of the costs
31 during the preceding fiscal year of:

32 ...

33 (1a) Seventy percent (70%) of the expenses of the Department of Revenue
34 in performing the duties imposed by Article 2D of this Chapter.

35"

36 **SECTION 4.2.** This Part becomes effective June 30, 2002.
37

38 **PART V. INSURANCE REGULATORY CHARGE**

39
40 **SECTION 5.(a)** The percentage rate to be used in calculating the insurance
41 regulatory charge under G.S. 58-6-25 is six and one-half percent (6.5%) for the 2002
42 calendar year.

43 **SECTION 5.(b)** This section is effective when it becomes law.
44

PART VI. REGULATORY FEE FOR UTILITIES COMMISSION

SECTION 6.(a) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is one-tenth percent (0.1%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2002.

SECTION 6.(b) The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the 2002-2003 fiscal year is two hundred thousand dollars (\$200,000).

SECTION 6.(c) This section becomes effective July 1, 2002.

PART VII. RESERVED**PART VIII. SECURE LOCAL REVENUES**

SECTION 8.1. G.S. 105-113.82(d) reads as rewritten:

"(d) Time. – The revenue shall be distributed to cities and counties within 60 days after March 31 of each year. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.2. G.S. 105-116.1(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute to the cities part of the taxes collected under this Article on electric power companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back amount and one-fourth of the city's proportionate share of the annual cost to the Department of administering the distribution. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.3. G.S. 105-187.44(b) reads as rewritten:

"(b) Distribution. – Within 75 days after the end of each calendar quarter, the Secretary must distribute to the cities part of the tax proceeds collected under this Article during that quarter. The amount to be distributed to a city is one-half of the amount of tax attributable to that city for that quarter under subsection (a) of this section. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.4. G.S. 105-164.44F is amended by adding a new subsection to read:

1 "(f) Nature. – The General Assembly finds that the revenue distributed under this
2 section is local revenue, not a State expenditure, for the purpose of Section 5(3) of
3 Article III of the North Carolina Constitution. Therefore, the Governor may not reduce
4 or withhold the distribution."

5 **SECTION 8.5.** G.S. 136-41.1 is amended by adding a new subsection to
6 read:

7 "(d) Nature. – The General Assembly finds that the revenue distributed under this
8 section is local revenue, not a State expenditure, for the purpose of Section 5(3) of
9 Article III of the North Carolina Constitution. Therefore, the Governor may not reduce
10 or withhold the distribution."

11 **SECTION 8.6.** G.S. 159B-27(d) reads as rewritten:

12 "(d) The State shall distribute to cities and towns which receive electric power and
13 energy from their ownership share of a project or to which electric power and energy is
14 sold by a joint agency an amount equal to a tax of three and nine hundredths percent
15 (3.09%) of all moneys expended by a municipality on account of its ownership share of
16 a project, including payment of principal and interest on bonds issued to finance such
17 ownership share, or an amount equal to a tax of three and nine hundredths percent
18 (3.09%) of the gross receipts from all sales of electric power and energy to such city or
19 town by a joint agency, as the case may be. The General Assembly finds that the
20 revenue distributed under this section is local revenue, not a State expenditure, for the
21 purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the
22 Governor may not reduce or withhold the distribution."

23 **SECTION 8.7.** G.S. 143-25 reads as rewritten:

24 "**§ 143-25. Maintenance appropriations dependent upon adequacy of revenues to**
25 **support them.**

26 (a) All maintenance appropriations now or hereafter made are hereby declared to
27 be maximum, conditional and proportionate appropriations, the purpose being to make
28 the appropriations payable in full in the amounts named herein if necessary and then
29 only in the event the aggregate revenues collected and available during each fiscal year
30 of the biennium for which such appropriations are made, are sufficient to pay all of the
31 appropriations in full; otherwise, the said appropriations shall be deemed to be payable
32 in such proportion as the total sum of all appropriations bears to the total amount of
33 revenue available in each of said fiscal years. The Except as provided in subsection (b)
34 of this section, the Director of the Budget is hereby given full power and authority to
35 examine and survey the progress of the collection of the revenue out of which such
36 appropriations are to be made, and to declare and determine the amounts that can be,
37 during each quarter of each of the fiscal years of the biennium properly allocated to
38 each respective appropriation. In making such examination and survey, he the Director
39 of the Budget shall receive estimates of the prospective collection of revenues from the
40 Secretary of Revenue and every other revenue collecting agency of the State. The
41 Director of the Budget may reduce all of said appropriations pro rata when necessary to
42 prevent an overdraft or deficit to the fiscal period for which such appropriations are
43 made. The Governor may also reduce all of said appropriations pursuant to Article III,
44 Section 5(3) of the Constitution in accordance with subsection (b) of this section, after

1 consulting with the Joint Legislative Commission on Governmental Operations under
2 G.S. 120-76(8) if prior consultation is required by that section. The purpose and policy
3 of this Article are to provide and insure that there shall be no overdraft or deficit in the
4 general fund of the State at the end of the fiscal period, growing out of appropriations
5 for maintenance and the Director of the Budget is directed and required to so administer
6 this Article as to prevent any such overdraft or deficit. Prior to taking any action under
7 this section to reduce appropriations pro rata, the Governor may consult with the
8 Advisory Budget Commission.

9 (b) The General Assembly recognizes that it has required units of local
10 government to adopt and maintain annual balanced budgets and take other steps to
11 assure financially sound operations under the Local Government Budget and Fiscal
12 Control Act and other provisions of Chapter 159 of the General Statutes. Accordingly,
13 the General Assembly finds that in order to satisfy those statutory requirements and
14 provide adequate services to their citizens, units of local government must be able to
15 rely on the funds and local revenue sources the General Assembly has provided.

16 It is the intent of the General Assembly that funds that have been collected by the
17 State on behalf of local governments and funds that the General Assembly has
18 appropriated or otherwise committed to local governments shall not be reduced except
19 as provided in this section. In exercising the powers contained in Section 5(3) of Article
20 III of the Constitution, the Governor shall not withhold from distribution funds that have
21 been collected by the State on behalf of local governments or funds that the General
22 Assembly has appropriated or otherwise committed to local governments unless, after
23 making adequate provision for the prompt payment of principal of and interest on bonds
24 and notes of the State according to their terms, the Governor has exhausted all other
25 sources of revenue of the State including surplus remaining in the treasury at the
26 beginning of the fiscal period and has been authorized to withhold the funds by an act of
27 the General Assembly.

28 This subsection does not authorize the Governor to withhold revenues from taxes
29 levied by units of local governments and collected by the State. The General Assembly
30 recognizes that under Section 19 of Article I of the North Carolina Constitution and
31 under the Due Process Clause of the United States Constitution, the State is prohibited
32 from taking local tax revenue."

33 34 PART IX. CLOSE CORPORATE TAX LOOPHOLES

35
36 **SECTION 9.1.(a)** G.S. 105-130.4(a)(1) reads as rewritten:

37 "(1) "Business income" means ~~income arising from transactions and~~
38 ~~activity in the regular course of the corporation's trade or business and~~
39 ~~includes income from tangible and intangible property if the~~
40 ~~acquisition, management, and/or disposition of the property constitute~~
41 ~~integral parts of the corporation's regular trade or business operations.~~
42 all income that is apportionable under the United States Constitution."

43 **SECTION 9.1.(b)** This section is effective for taxable years beginning on or
44 after January 1, 2002.

1 **SECTION 9.2.(a)** G.S. 105-130.4(l) reads as rewritten:

- 2 (1) Sales factor. – The sales factor is a fraction, the numerator of which is
3 the total sales of the corporation in this State during the income year,
4 and the denominator of which is the total sales of the corporation
5 everywhere during the income year. Notwithstanding any other
6 provision under this Part, the receipts from any casual sale of property
7 shall be excluded from both the numerator and the denominator of the
8 sales factor. Where a corporation is not taxable in another state on its
9 business income but is taxable in another state only because of
10 nonbusiness income, all sales shall be treated as having been made in
11 this State.
- 12 (2) Tangible personal property. – Sales of tangible personal property are
13 excluded from the denominator if they are sales to the United States
14 government or sales that are in a state in which the taxpayer is not
15 taxable. Sales of tangible personal property are in this State if the
16 property is received in this State by the ~~purchaser~~ purchaser and the
17 purchaser is not the United States government. In the case of delivery
18 of goods by common carrier or by other means of transportation,
19 including transportation by the purchaser, the place at which the goods
20 are ultimately received after all transportation has been completed
21 shall be considered as the place at which the goods are received by the
22 purchaser. Direct delivery into this State by the taxpayer to a person or
23 firm designated by a purchaser from within or without the State shall
24 constitute delivery to the purchaser in this State.
- 25 (3) Other sales. – Other sales are in this State if:
26 a. The receipts are from real or tangible personal property located
27 in this State; or
28 b. The receipts are from intangible property and are received from
29 sources within this State; or
30 c. The receipts are from services and the income-producing
31 activities are in this State."

32 **SECTION 9.2.(b)** This section is effective for taxable years beginning on or
33 after January 1, 2002.

34 **SECTION 9.3.(a)** Section 2(a) of S.L. 2001-327 reads as rewritten:

35 **"EQUALIZE FRANCHISE TAX ON CORPORATE-AFFILIATED LLCs**

36 **SECTION 2.(a)** The General Assembly finds that most corporations engaged in
37 business in this State comply with the State franchise tax on corporate assets. Some
38 taxpayers, however, take advantage of an unintended loophole in the law and avoid
39 franchise tax by transferring their assets to a controlled limited liability company. This
40 tax avoidance creates an unfair burden on corporate citizens that pay the franchise tax
41 on their assets. It is the intent of this section to apply the franchise tax equally to assets
42 held by corporations and assets held by corporate-affiliated limited liability companies.
43 It is also the intent of this section to provide that a criminal penalty applies to taxpayers
44 who fraudulently evade the tax.

1 The General Assembly further finds that, after this loophole was closed in 2001,
2 some taxpayers continue to avoid franchise tax by manipulating ownership of assets.
3 One method is to interpose a controlled partnership between the corporation and the
4 controlled limited liability company. This tax avoidance creates an unfair burden on
5 corporate citizens that pay the franchise tax on their assets. It is the intent of the General
6 Assembly to apply the franchise tax equally to assets held by corporations and assets
7 held by corporate-controlled entities."

8 **SECTION 9.3.(b)** G.S. 105-114(c) is recodified as G.S. 105-114.1 and reads
9 as rewritten:

10 **"§ 105-114.1. Limited liability companies.**

11 (a) Definitions. – The definitions in G.S. 105-130.7A apply in this section. In
12 addition, the following definitions apply in this section:

13 (1) Governing law. – A limited liability company's governing law is
14 determined under G.S. 57C-6-05 or G.S. 57C-7-01, as applicable.

15 (2) Owned indirectly. – A person owns indirectly assets of a limited
16 liability company if the limited liability company's governing law
17 provides that seventy percent (70%) or more of its assets, after
18 payments to creditors, must be distributed upon dissolution to the
19 person as of the last day of the principal corporation's taxable year.

20 (3) Principal corporation. – A corporation that is a member of a limited
21 liability company or has a related member that is a member of a
22 limited liability company.

23 (b) Controlled Companies. – If a corporation or a related member of the
24 corporation is a member of a limited liability company and the principal corporation and
25 any related members of the principal corporation together own indirectly the limited
26 liability company's governing law provides that seventy percent (70%) or more of its the
27 limited liability company's assets, after payments to creditors, must be distributed upon
28 dissolution to the member corporation or to includible corporations of an affiliated
29 group in which the member corporation is includible, then the following provisions
30 apply:

31 (1) ~~(i) a~~ percentage of the limited liability company's income, assets,
32 liabilities, and equity is attributed to that member-principal corporation
33 and must be included in the member-principal corporation's
34 computation of tax under this Article, and ~~(ii) the~~ Article.

35 (2) The principal member-corporation's investment in the limited liability
36 company is not included in the member-principal corporation's
37 computation of tax under this Article.

38 (3) The attributable percentage is equal to the percentage of the limited
39 liability company's assets, after payments to creditors, that would be
40 distributable to the member corporation assets owned indirectly by the
41 principal corporation divided by the percentage of the limited liability
42 company's assets owned indirectly by related members of the principal
43 corporation that are corporations. under the limited liability company's

1 ~~governing law if the limited liability company dissolved as of the last~~
2 ~~day of the member corporation's taxable year.~~

3 (c) Other Companies. – In all other cases, none of the limited liability company's
4 income, assets, liabilities, or equity is attributed to a ~~member~~ principal corporation
5 under this Article. ~~A limited liability company's governing law is determined under G.S.~~
6 ~~57C 6-05 or G.S. 57C 7-01, as applicable. The definitions in section 1504 of the Code~~
7 ~~apply in this subsection.~~

8 (d) Penalty. – A taxpayer who, because of fraud with intent to evade tax,
9 underpays the tax under this Article on assets attributable to it under this ~~subsection~~
10 section is guilty of a Class H felony in accordance with G.S. 105-236(7)."

11 **SECTION 9.3.(c)** This section becomes effective January 1, 2003, and
12 applies to taxes due on or after that date.

13 14 **PART X. HOUSING TAX CREDIT EFFECTIVE DATE CHANGE**

15
16 **SECTION 10.** Section 10.(f) of S.L. 2000-56 reads as rewritten:

17 "**SECTION 10.(f)** Low-Income Housing Credit Changes. – G.S. 105-129.16B(d),
18 as amended by Section 7 of this act, is effective for taxable years beginning on or after
19 January 1, 2000. The remainder of Section 7 is effective for taxable years beginning on
20 or after January 1, 2001, applies to buildings to which federal credits are allocated on or
21 after January 1, ~~2001~~, 2000, and expires January 1, 2005."

22 23 **PART XI. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

24
25 **SECTION 11.1.** The provisions of this act are severable. If any provision of
26 this act is held invalid by a court of competent jurisdiction, the invalidity does not affect
27 other provisions of the act that can be given effect without the invalid provision.

28 **SECTION 11.2.** Except as otherwise provided, this act is effective when it
29 becomes law. Notwithstanding G.S. 105-163.15 and G.S. 105-163.41, no addition to
30 tax may be made under those statutes for a taxable year beginning on or after January 1,
31 2002, and before January 1, 2003, with respect to an underpayment of corporate or
32 individual income tax to the extent the underpayment was created or increased by this
33 act.