

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019**

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**SENATE BILL 622*
Finance Committee Substitute Adopted 5/14/19**

Short Title: Tax Reduction Act of 2019.

(Public)

Sponsors:

Referred to:

April 4, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE STANDARD DEDUCTION, TO SIMPLIFY THE
3 FRANCHISE TAX BASE, TO LOWER THE FRANCHISE TAX RATE, TO REQUIRE
4 MARKETPLACE FACILITATORS TO COLLECT AND REMIT SALES AND USE TAX
5 ON MARKETPLACE FACILITATED SALES, AND TO MAKE OTHER TAX LAW
6 CHANGES.

7 The General Assembly of North Carolina enacts:

8
9 **PART I. PERSONAL INCOME TAX CHANGES**

10 **SECTION 1.1.(a)** G.S. 105-153.5(a)(1) reads as rewritten:

11 "(1) Standard deduction amount. – The standard deduction amount is zero for a
12 person who is not eligible for a standard deduction under section 63 of the
13 Code. For all other taxpayers, the standard deduction amount is equal to the
14 amount listed in the table below based on the taxpayer's filing status:

Filing Status	Standard Deduction
Married, filing jointly/surviving spouse	\$20,000 <u>\$20,750</u>
Head of Household	15,000 <u>15,563</u>
Single	10,000 <u>10,375</u>
Married, filing separately	10,000 <u>10,375.</u> "

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20 **SECTION 1.1.(b)** This section is effective for taxable years beginning on or after
21 January 1, 2021.

22 **SECTION 1.2.(a)** G.S. 105-153.5(a)(2)a. reads as rewritten:

23 "a. Charitable Contribution. – The amount allowed as a deduction for
24 charitable contributions under section 170 of the Code for that taxable
25 year. For taxable years ~~beginning on or after 2014, 2014 through 2018,~~
26 a taxpayer who elected to take the income exclusion under section
27 408(d)(8) of the Code for a qualified charitable distribution from an
28 individual retirement plan by a person who has attained the age of 70
29 1/2 may deduct the amount that would have been allowed as a
30 charitable deduction under section 170 of the Code had the taxpayer
31 not elected to take the income exclusion."

32 **SECTION 1.2.(b)** G.S. 105-153.5(c2)(3) reads as rewritten:

33 "(3) For taxable years ~~beginning on or after 2014, 2014 through 2018,~~ the taxpayer
34 must add the amount excluded from the taxpayer's gross income for a qualified
35 charitable distribution from an individual retirement plan by a person who has
36 attained age 70 1/2 under section 408(d)(8) of the Code. The purpose of this



1 subdivision is to decouple from the income exclusion available under federal
2 tax law."

3 **SECTION 1.2.(c)** This section is effective when it becomes law.
4

5 **PART II. FRANCHISE TAX CHANGES**

6 **SECTION 2.1.(a)** G.S. 105-120.2(b) reads as rewritten:

7 "(b) Tax Rate. – Every corporation taxed under this section shall annually pay to the
8 Secretary of Revenue, at the time the return is due, the greater of the following:

9 (1) A franchise or privilege tax at the rate of ~~one dollar and fifty cents (\$1.50)~~ set
10 in G.S. 105-122(d2) per one thousand dollars (\$1,000) of the amount
11 determined under subsection (a) of this section, but in section. In no case shall
12 the tax be more than one hundred fifty thousand dollars (\$150,000) nor less
13 than two hundred dollars (\$200.00).

14 (2) If the tax calculated under this subdivision exceeds the tax calculated under
15 subdivision (1) of this subsection, then the tax is levied at the rate of ~~one dollar~~
16 ~~and fifty cents (\$1.50)~~ set in G.S. 105-122(d2) per one thousand dollars
17 (\$1,000) on the greater of the following: the total actual investment in tangible
18 property in this State of such corporation as computed under G.S. 105-122(d).

19 a. ~~Fifty five percent (55%) of the appraised value as determined for ad~~
20 ~~valorem taxation of all the real and tangible personal property in this~~
21 ~~State of each such corporation plus the total appraised value of~~
22 ~~intangible property returned for taxation of intangible personal~~
23 ~~property as computed under G.S. 105-122(d).~~

24 b. ~~The total actual investment in tangible property in this State of such~~
25 ~~corporation as computed under G.S. 105-122(d)."~~

26 **SECTION 2.1.(b)** G.S. 105-122(d)(2) is repealed.

27 **SECTION 2.1.(c)** G.S. 105-122(d2) reads as rewritten:

28 "(d2) Tax Rate. – For an electric power company or a company that is a member of a
29 qualified group, the tax rate is one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000)
30 of the company's tax base as determined under subsection (d) of this section. For purposes of this
31 subsection, the term "electric power company" has the same meaning as defined in
32 G.S. 105-130.4(s3) and the term "qualified group" means an affiliated group that has one or more
33 members that is an electric power company.

34 ~~For a C Corporation, For all other C Corporations, as defined in G.S. 105-130.2, [the] the tax~~
35 ~~rate is one dollar and fifty cents (\$1.50) one dollar and thirty cents (\$1.30) per one thousand~~
36 ~~dollars (\$1,000) of the corporation's tax base as determined under subsection (d) of this section.~~
37 ~~For an S Corporation, as defined in G.S. 105-130.2, the tax rate is two hundred dollars (\$200.00)~~
38 ~~for the first one million dollars (\$1,000,000) of the corporation's tax base as determined under~~
39 ~~subsection (d) of this section and one dollar and fifty cents (\$1.50) one dollar and thirty cents~~
40 ~~(\$1.30) per one thousand dollars (\$1,000) of its tax base that exceeds one million dollars~~
41 ~~(\$1,000,000).~~

42 In no event may the tax imposed by this section be less than two hundred dollars (\$200.00)."

43 **SECTION 2.1.(d)** This section is effective for taxable years beginning on or after
44 January 1, 2020, and applicable to the calculation of franchise tax reported on the 2019 and later
45 corporate income tax returns.

46 **SECTION 2.2.(a)** G.S. 105-122(d2), as amended by Section 2.1(c) of this Part, reads
47 as rewritten:

48 "(d2) Tax Rate. – For an electric power company or a company that is a member of a
49 qualified group, the tax rate is one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000)
50 of the company's tax base as determined under subsection (d) of this section. For purposes of this
51 subsection, the term "electric power company" has the same meaning as defined in

1 G.S. 105-130.4(s3) and the term "qualified group" means an affiliated group that has one or more
2 members that is an electric power company.

3 For all other C Corporations, as defined in G.S. 105-130.2, the tax rate is ~~one dollar and thirty~~
4 ~~cents (\$1.30)~~ one dollar (\$1.00) per one thousand dollars (\$1,000) of the corporation's tax base
5 as determined under subsection (d) of this section. For an S Corporation, as defined in
6 G.S. 105-130.2, the tax rate is two hundred dollars (\$200.00) for the first one million dollars
7 (\$1,000,000) of the corporation's tax base as determined under subsection (d) of this section and
8 ~~one dollar and thirty cents (\$1.30)~~ one dollar (\$1.00) per one thousand dollars (\$1,000) of its tax
9 base that exceeds one million dollars (\$1,000,000).

10 In no event may the tax imposed by this section be less than two hundred dollars (\$200.00)."

11 **SECTION 2.2.(b)** This section is effective for taxable years beginning on or after
12 January 1, 2021, and applicable to the calculation of franchise tax reported on the 2020 and later
13 corporate income tax returns.

14 **SECTION 2.3.(a)** G.S. 105-122(d2), as amended by Sections 2.1(c) and 2.2(a) of
15 this Part, reads as rewritten:

16 "(d2) Tax Rate. – ~~For an electric power company or a company that is a member of a~~
17 ~~qualified group, the tax rate is one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000)~~
18 ~~of the company's tax base as determined under subsection (d) of this section. For purposes of this~~
19 ~~subsection, the term "electric power company" has the same meaning as defined in G.S. 105-~~
20 ~~130.4(s3) and the term "qualified group" means an affiliated group that has one or more members~~
21 ~~that is an electric power company.~~

22 For all other C Corporations, For a C Corporation, as defined in G.S. 105-130.2, the tax rate
23 is one dollar (\$1.00) per one thousand dollars (\$1,000) of the corporation's tax base as determined
24 under subsection (d) of this section. For an S Corporation, as defined in G.S. 105-130.2, the tax
25 rate is two hundred dollars (\$200.00) for the first one million dollars (\$1,000,000) of the
26 corporation's tax base as determined under subsection (d) of this section and one dollar (\$1.00)
27 per one thousand dollars (\$1,000) of its tax base that exceeds one million dollars (\$1,000,000).

28 In no event may the tax imposed by this section be less than two hundred dollars (\$200.00)."

29 **SECTION 2.3.(b)** This section is effective for taxable years beginning on or after
30 January 1, 2027, and applicable to the calculation of franchise tax reported on the 2026 and later
31 corporate income tax returns.

32 33 **PART III. USE MARKET-BASED SOURCING FOR MULTISTATE INCOME TAX** 34 **APPORTIONMENT**

35 **SECTION 3.1.** G.S. 105-130.4 reads as rewritten:

36 "**§ 105-130.4. Allocation and apportionment of income for corporations.**

37 ...

38 (l) ~~(4)~~Sales Factor. – The sales factor is a fraction, the numerator of which is the total
39 sales of the corporation in this State during the income year, and the denominator of which is the
40 total sales of the corporation everywhere during the income year. Notwithstanding any other
41 provision under this Part, the receipts from any casual sale of property shall be excluded from
42 both the numerator and the denominator of the sales factor. Where a corporation is not taxable in
43 another state on its apportionable income but is taxable in another state only because of
44 nonapportionable income, all sales shall be treated as having been made in this State.

45 Receipts are in this State if the taxpayer's market for the receipts is in this State. If the market
46 for a receipt cannot be determined, the state or states of assignment shall be reasonably
47 approximated. In a case in which a taxpayer cannot ascertain the state or states to which receipts
48 of a sale are to be assigned through the use of a method of reasonable approximation, the receipts
49 must be excluded from the denominator of a taxpayer's sales factor. Except as otherwise provided
50 by this section, a taxpayer's market for receipts is in this State as provided below:

- 1 (1) In the case of sale, rental, lease, or license of real property, if and to the extent
2 the property is located in this State.
- 3 (2) In the case of rental, lease, or license of tangible personal property, if and to
4 the extent the property is located in this State.~~Sales of tangible personal~~
5 ~~property are in this State if the property is received in this State by the~~
6 ~~purchaser. In the case of delivery of goods by common carrier or by other~~
7 ~~means of transportation, including transportation by the purchaser, the place~~
8 ~~at which the goods are ultimately received after all transportation has been~~
9 ~~completed shall be considered as the place at which the goods are received by~~
10 ~~the purchaser. Direct delivery into this State by the taxpayer to a person or~~
11 ~~firm designated by a purchaser from within or without the State shall~~
12 ~~constitute delivery to the purchaser in this State.~~
- 13 (3) In the case of sale of tangible personal property, if and to the extent the
14 property is received in this State by the purchaser. In the case of delivery of
15 goods by common carrier or by other means of transportation, including
16 transportation by the purchaser, the place at which the goods are ultimately
17 received after all transportation has been completed is considered the place at
18 which the goods are received by the purchaser. Direct delivery into this State
19 by the taxpayer to a person or firm designated by a purchaser from within or
20 without the State constitutes delivery to the purchaser in this State.~~Other sales~~
21 ~~are in this State if any of the following occur:~~
- 22 a. ~~The receipts are from real or tangible personal property located in this~~
23 ~~State, and includes receipts from incidental services sold as part of, or~~
24 ~~in connection with, the sale of tangible personal property in this State.~~
- 25 b. ~~The receipts are from intangible property and are received from~~
26 ~~sources within this State.~~
- 27 c. ~~The receipts are from services and the income producing activities are~~
28 ~~in this State. For the purposes of this subdivision, an~~
29 ~~"income producing activity" means an activity directly performed by~~
30 ~~the taxpayer or its agents for the ultimate purpose of generating the~~
31 ~~sale of the service. Receipts from income producing activities~~
32 ~~performed within and without this State are attributed to this State in~~
33 ~~proportion to the income producing activities performed in this State~~
34 ~~to total income producing activities performed everywhere that~~
35 ~~generate the sale of service.~~
- 36 (4) In the case of sale of a service, if and to the extent the service is delivered to
37 a location in this State.
- 38 (5) In the case of intangible property that is rented, leased, or licensed, if and to
39 the extent the property is used in this State. Intangible property utilized in
40 marketing a good or service to a consumer is "used in this State" if that good
41 or service is purchased by a consumer who is in this State.
- 42 (6) In the case of intangible property that is sold, if and to the extent the property
43 is used in this State. A contract right, government license, or similar intangible
44 property that authorized the holder to conduct a business activity in a specific
45 geographic area is "used in this State" if the geographic area includes all or
46 part of this State. Receipts from a sale of intangible property that is contingent
47 on the productivity, use, or disposition of the intangible property shall be
48 treated as receipts from the rental, lease, or licensing of the intangible property
49 as provided under subdivision (5) of this subsection. All other receipts from a
50 sale of intangible property shall be excluded from the numerator and
51 denominator of the sales factor.

1 (1) Broadcasters. – A broadcaster's market for receipts is in this State as provided in
2 G.S. 105-130.4A. For purposes of this section, the term "broadcaster" has the same meaning as
3 defined in G.S. 105-130.4A.

4 (2) Banks. – A bank's market for receipts is in this State as provided in G.S. 105-130.4B.
5 For purposes of this section, the term "bank" has the same meaning as defined in
6 G.S. 105-130.4B.

7

8 (s2) Pipeline Company. – Receipts from the transportation or transmission of a
9 petroleum-based liquids pipeline or natural gas by a company subject to rate regulation by the
10 Federal Energy Regulatory Commission shall be apportioned by multiplying the income by a
11 fraction, the numerator of which is the number of barrel miles traffic units in this State during
12 the tax year and the denominator of which is the total number of barrel miles traffic units
13 everywhere during the tax year. For purposes of this section, the term "barrel mile" means one
14 barrel of liquid property transported one mile. "traffic unit" means one or more of the following:

15 (1) Barrel mile. – One barrel of liquid property transported one mile.

16 (2) Cubic foot mile. – One cubic foot of gaseous property transported one mile.

17 (s3) Electric Power Company. – All apportionable income of an electric power company
18 shall be apportioned by a fraction, the numerator of which is the average value of the real and
19 tangible personal property owned or rented and used in this State by the electric power company
20 during the income year and the denominator of which is the average value of all the real and
21 tangible personal property owned or rented and used by the electric power company during the
22 income year. For purposes of this subsection, the term "electric power company" is a company,
23 including any of its wholly owned noncorporate limited liability companies, primarily engaged
24 in the business of supplying electricity for light, heat, current, or power to persons in this State
25 and that is subject to control of one or more of the following entities: the North Carolina Utilities
26 Commission or the Federal Energy Regulatory Commission.

27 For purposes of this subsection, the average value of real and tangible personal property
28 owned or rented by an electric power company is determined as follows:

29 (1) The average value of property shall be determined by averaging the values at
30 the beginning and end of the income year, but in all cases the Secretary may
31 require the averaging of monthly or other periodic values during the income
32 year if reasonably required to reflect properly the average value of the
33 corporation's property.

34 (2) An electric power company that ceases its operations in this State before the
35 end of its income year because of its intention to dissolve or to relinquish its
36 certificate of authority, or because of a merger, conversion, or consolidation,
37 or for any other reason whatsoever shall use the real estate and tangible
38 personal property values as of the first day of the income year and the last day
39 of its operations in this State in determining the average value of property, but
40 the Secretary may require averaging of monthly or other periodic values
41 during the income year if reasonably required to reflect properly the average
42 value of the electric power company's property.

43 (3) Property owned by an electric power company is valued at its original cost.

44 (4) Property rented by an electric power company is valued at eight times the net
45 annual rental rate.

46 (5) Net annual rental rate is the annual rental rate paid by an electric power
47 company less any annual rental rate received by the electric power company
48 from sub-rentals except that sub-rentals shall not be deducted when they
49 constitute apportionable income.

50 (6) Any property under construction and any property the income from which
51 constitutes nonapportionable income shall be excluded from the computation

1 of the average value of an electric power company's real and tangible personal
2 property.

3

4 (t3) State Net Loss Apportionment Election. – Notwithstanding subsection (l)(4) of this
5 section, a taxpayer with a State net loss balance as of the end of its 2019 taxable year may elect
6 to apportion receipts from services based on the percentage of its income-producing activities
7 performed in this State. The election must be made on the 2020 tax year return and must be in
8 the form prescribed by the Secretary and contain any supporting documentation the Secretary
9 may require. The election is binding and irrevocable until the earlier of the tax year in which (i)
10 the existing State net loss balance is fully utilized or (ii) all of the existing State net loss balance
11 has expired, as determined by applying the limitations set forth in G.S. 105-130.8A(b). A
12 taxpayer must apportion receipts from services in accordance with subsection (l)(4) of this
13 section for tax years beginning on and after the tax year that the existing State net loss is fully
14 utilized.

15 For purposes of this subsection, a taxpayer's State net loss balance is the total amount of State
16 net losses computed under G.S. 105-130.8A for taxable years beginning before January 1, 2020,
17 and available to carry forward to taxable years beginning on or after January 1, 2020. A State net
18 loss balance does not include a State net loss created in a taxable year beginning on or after
19 January 1, 2020. A State net loss created in a taxable year beginning on or after January 1, 2020,
20 must be determined using the apportionment rules in G.S. 105-130.4(l)."

21 **SECTION 3.2.** Part 1 of Article 4 of Chapter 105 of the General Statutes is amended
22 by adding a new section to read:

23 **"§ 105-130.4A. Market-based sourcing for broadcasters.**

24 (a) Definitions. – The definitions in G.S. 105-130.4 and the following definitions apply
25 to this section:

- 26 (1) Audience factor. – The factor determined by the ratio provided in this
27 subdivision. The ratio is as follows:
- 28 a. Television station. – The ratio that the viewing audience located in this
29 State for a television station bears to the total viewing audience for a
30 television station.
- 31 b. Radio station. – The ratio that the listening audience in this State for a
32 radio station bears to the total listening audience for a radio station.
- 33 c. Cable or satellite program and channel broadcasts. – The ratio that the
34 subscribers for a cable or satellite system located in this State bears to
35 the total subscribers of a cable or satellite system. If the number of
36 subscribers cannot be accurately determined from the books and
37 records maintained by the taxpayer, the ratio shall be determined on
38 the basis of the applicable year's subscription statistics located in
39 published surveys, provided the source selected is consistently used
40 from year to year for this purpose.
- 41 (2) Broadcast. – The transmission of audio or video programming, directly or
42 indirectly, to viewers and listeners by any other method of communication or
43 combination of methods.
- 44 (3) Broadcaster. – A person that provides audio or video programming to
45 customers in this State by digital or analog means in exchange for one or more
46 of the following: advertising receipts, subscriber fees, license, rent, or similar
47 fees. The term includes a television or radio station licensed by the Federal
48 Communications Commission, including network-owned or affiliated
49 stations, a television or radio broadcast network, a cable program network, a
50 distributor of audio or video programming, a cable system operator, and
51 satellite system operator.

- 1 (4) Gross receipts. – The same meaning as the term "sales" in G.S. 105-130.4.
2 (5) Release or in release. – The placing of film or radio programming into service.
3 A film or radio program is placed into service when it is first broadcast to the
4 primary audience for entertainment, educational, commercial, artistic, or other
5 purposes. Each episode of a television or radio series is placed in service when
6 it is first broadcast. A program is not placed in service merely because it is
7 completed and therefore in a condition or state of readiness and availability
8 for broadcast or merely because it is previewed to prospective sponsors or
9 purchasers.
10 (6) Rent. – License fees or other payments or consideration provided in exchange
11 for the broadcast or other use of television or radio programming.
12 (7) Subscriber. – The individual residence or other outlet that is the ultimate
13 recipient of the transmission of the audio or video programming.

14 (b) Reasonable Approximation. – If the audience factor for a receipt cannot be
15 determined, the state or states of assignment shall be reasonably approximated. If a taxpayer is
16 delivering advertising or licensed content directly or indirectly to a known list of subscribers, the
17 taxpayer shall reasonably approximate the receipts attributable to this State's market using a
18 percentage that reflects the ratio of North Carolina subscribers to the total number of subscribers.
19 If the taxpayer is delivering advertising or licensed content through an intermediary and does not
20 have access to the list of subscribers, the taxpayer shall reasonably approximate the receipts
21 attributable to this State's market using a percentage that reflects the ratio of the North Carolina
22 population to the total population in the specific geographic area where the advertisement or
23 licensed content is materially used. Unless the taxpayer provides substantial evidence to the
24 contrary, the area where the advertisement or licensed content is materially used does not include
25 areas outside the United States. If the taxpayer is able to show with substantial evidence that the
26 advertisement or licensed content is materially used in a city within a foreign country, then the
27 population of that city may be included in the population ratio calculation. If the taxpayer is able
28 to show with substantial evidence that the advertisement or license content is materially used
29 throughout a foreign county, then the population of that foreign country may be included in the
30 population ratio calculation. In a case where the specified rules of reasonable approximation fail
31 to reasonably approximate the percentage of receipts attributable to this State's market, the
32 Department may authorize an alternate approach that reflects an attempt to obtain the most
33 accurate assignment of receipts.

34 (c) Market for Receipts. – The receipts factor of a broadcaster is a fraction, the numerator
35 of which is the sum of the broadcaster's gross receipts from sources within the State and the
36 denominator of which is the sum of the broadcaster's gross receipts from transactions and activity
37 in the regular course of its trade or business everywhere. Advertising gross receipts and license
38 fees for audio or video programming in release are attributable to this State in accordance with
39 the audience factor in this State. Gross receipts from subscriber fees, rents, sales, or similar
40 charges from audio or video programming in release are attributable to this State based on the
41 amount of subscriber or other fees paid by customers in this State. A sale of audio or video
42 programming on tangible media is sourced to this State as sales of tangible personal property."

43 **SECTION 3.3.** Part 1 of Article 4 of Chapter 105 of the General Statutes is amended
44 by adding a new section to read:

45 **"§ 105-130.4B. Market-based sourcing for banks.**

46 (a) Definitions. – The definitions in G.S. 105-130.4 apply to this section and the
47 following definitions apply to this section:

- 48 (1) Bank. – Defined in G.S. 105-130.7B.
49 (2) Billing address. – The location indicated in the books and records of the
50 taxpayer on the first day of the taxable year, or on the date in the taxable year

- 1 when the customer relationship began, as the address where any notice,
2 statement, or billing relating to the customer's account is mailed.
- 3 (3) Borrower, cardholder, or payor located in this State. – A borrower, credit
4 cardholder, or payor whose billing address is in this State.
- 5 (4) Card issuer's reimbursement fee. – The fee a taxpayer receives from a
6 merchant's bank because one of the persons to whom the taxpayer has issued
7 a credit, debit, or similar type of card has charged merchandise or services to
8 the card.
- 9 (5) Credit card. – A card, or other means of providing information, that entitles
10 the holder to charge the cost of purchases, or a cash advance against a line of
11 credit.
- 12 (6) Debit card. – A card, or other means of providing information, that enables
13 the holder to charge the cost of purchases, or a cash withdrawal, against the
14 holder's bank account or a remaining balance on the card.
- 15 (7) Loan. – Any extension of credit resulting from direct negotiations between the
16 taxpayer and its customer, and/or the purchase, in whole or in part, of such an
17 extension of credit from another. The term includes participations,
18 syndications, and leases treated as loans for federal income tax purposes.
- 19 (8) Loan secured by real property. – A loan or other obligation of which fifty
20 percent (50%) or more of the aggregate value of the collateral used to secure
21 the loan or other obligation, when valued at fair market value as of the time
22 the original loan or obligation was incurred, was real property.
- 23 (9) Merchant discount. – The fee, or negotiated discount, charged to a merchant
24 by the taxpayer for the privilege of participating in a program whereby a
25 credit, debit, or similar type of card is accepted in payment for merchandise
26 or services sold to the cardholder, net of any cardholder chargeback and
27 unreduced by any interchange transaction or issuer reimbursement fee paid to
28 another for charges or purchased made by its cardholder.
- 29 (10) Participation. – An extension of credit in which an undivided ownership
30 interest is held on a prorate basis in a single loan or pool of loans and related
31 collateral. In a loan participation, the credit originator initially makes the loan
32 and then subsequently resells all or a portion of it to other lenders. The
33 participation may or may not be known to the borrower.
- 34 (11) Payor. – The person who is legally responsible for making payment to the
35 taxpayer.
- 36 (12) Real property owned. – Real property (i) on which the taxpayer may claim
37 depreciation for federal income tax purposes, or (ii) to which the taxpayer
38 holds legal title and on which no other person may claim depreciation for
39 federal income tax purposes or could claim depreciation if subject to federal
40 income tax. Real property does not include coin, currency, or property
41 acquired in lieu of or pursuant to a foreclosure.
- 42 (13) Syndication. – An extension of credit in which two or more persons fund and
43 each person is at risk only up to a specified percentage of the total extension
44 of credit or up to a specified dollar amount.
- 45 (14) Tangible personal property owned. – Tangible personal property (i) on which
46 the taxpayer may claim depreciation for federal income tax purposes or (ii) to
47 which the taxpayer holds legal title and on which no other person may claim
48 depreciation for federal income tax purposes could claim deprecation if
49 subject to federal income tax. Tangible personal property does not include
50 coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

1 (15) Transportation property. – Vehicles and vessels capable of moving under their
2 own power as well as any equipment or containers attached to such property.
3 Examples of transportation property include aircraft, trains, water vessels,
4 motor vehicles, rolling stock, barges, and trailers.

5 (b) General Rule. – The receipts factor of a bank is a fraction, the numerator of which is
6 the total receipts of the taxpayer in this State during the income year, and the denominator of
7 which is the total receipts of the taxpayer everywhere during the income year. The method of
8 calculating receipts for purposes of the denominator is the same as the method used in
9 determining receipts for purposes of the numerator. The receipts factor includes only those
10 receipts described herein that are apportionable income for the taxable year. Notwithstanding any
11 other provision under this Part, the receipts from the following are excluded from both the
12 numerator and the denominator of the receipts factor:

13 (1) Receipts from a casual sale of property.

14 (2) Receipts exempt from taxation.

15 (3) The portion of receipts realized from the sale or maturity of securities or other
16 obligations that represents a return of principal.

17 (4) Receipts in the nature of dividends subtracted under G.S. 105-130.5(b)(3a)
18 and (3b) and dividends excluded for federal tax purposes.

19 (5) The portion of receipts from financial swaps and other similar financial
20 derivatives that represent the notional principal amount that generates the cash
21 flow traded in the swap agreement.

22 (c) Receipts from the Sale, Lease, or Rental of Real Property. – The numerator of the
23 receipts factor includes receipts from the sale, lease, or rental of real property owned by the
24 taxpayer if the property is located within this State or receipts from the sublease of real property
25 if the property is located within this State.

26 (d) Receipts from the Sale, Lease, or Rental of Tangible Personal Property. – The method
27 for calculating receipts from the sale, lease, or rental of tangible personal property is as follows:

28 (1) Tangible personal property. – Except as provided in subdivision (2) of this
29 subsection, the numerator of the receipts factor includes receipts from the sale,
30 lease, or rental of tangible personal property owned by the taxpayer if the
31 property is located within this State when it is first placed in service by the
32 lessee.

33 (2) Transportation property. – Receipts from the lease or rental of transportation
34 property owned by the taxpayer are included in the numerator of the receipts
35 factor to the extent that the property is used in this State. The extent an aircraft
36 will be deemed to be used in this State and the amount of receipts that is to be
37 included in the numerator of this State's receipts factor is determined by
38 multiplying all the receipts from the lease or rental of the aircraft by a fraction,
39 the numerator of which is the number of landings of the aircraft in this State
40 and the denominator of which is the total number of landings of the aircraft.
41 If the extent of the use of any transportation property within this State cannot
42 be determined, then the property will be deemed to be used wholly in the state
43 in which the property has its principal base of operations. A motor vehicle will
44 be deemed to be used wholly in the state in which it is registered.

45 (e) Interest, Fees, and Penalties from Loans Secured by Real Property. – The numerator
46 of the receipts factor includes interest, fees, and penalties from loans secured by real property if
47 the property is located within this State. If the property is located both within this State and one
48 or more other states, the receipts described in this subsection are included in the numerator of the
49 receipts factor if more than fifty percent (50%) of the fair market value of the real property is
50 located within this State. If more than fifty percent (50%) of the fair market value of the real
51 property is not located within any one state, then the receipts described in this subsection are

1 included in the numerator of the receipts factor if the borrower is located in this State. The
2 determination of whether the real property securing a loan is located within this State is made as
3 of the time the original agreement was made and any and all subsequent substitutions of collateral
4 are disregarded.

5 (f) Interest, Fees, and Penalties from Loans Not Secured by Real Property. – The
6 numerator of the receipts factor includes interest, fees, and penalties from loans not secured by
7 real property if the borrower is located in this State.

8 (g) Net Gains from the Sale of Loans. – The numerator of the receipts factor includes net
9 gains from the sale of loans. Net gains from the sale of loans include income recorded under the
10 coupon stripping rules of section 1286 of the Code. The amount of net gains from the sale of
11 loans that is included in the numerator is determined as follows:

12 (1) Secured by real property. – The amount of net gains, but not less than zero,
13 from the sale of loans secured by real property is determined by multiplying
14 the net gains by a fraction, the numerator of which is the amount included in
15 the numerator of the receipts factor pursuant to subsection (e) of this section,
16 and the denominator of which is the total amount of interest, fees, and
17 penalties from loans secured by real property.

18 (2) Not secured by real property. – The amount of net gains, but not less than zero,
19 from the sale of loans not secured by real property is determined by
20 multiplying the net gains by a fraction, the numerator of which is the amount
21 included in the numerator of the receipts factor pursuant to subsection (f) of
22 this section, and the denominator of which is the total amount of interest, fees,
23 and penalties from loans not secured by real property.

24 (h) Receipts from Interest, Fees, and Penalties from Cardholders. – The numerator of the
25 receipts factor includes interest, fees, and penalties charged to credit, debit, or similar
26 cardholders, including annual fees and overdraft fees, if the cardholder is located in this State.

27 (i) Receipts from ATM Fees. – The numerator of the receipts factor includes receipts
28 from fees from the use of an ATM owned or rented by the taxpayer, if the ATM is located in this
29 State. The receipts factor includes all ATM fees that are not forwarded directly to another bank.
30 Receipts from ATM fees that are not sourced under this subsection are sourced pursuant to
31 subsection (l) of this section.

32 (j) Net Gains from the Sale of Credit Card Receivables. – The numerator of the receipts
33 factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied
34 by a fraction, the numerator of which is the amount included in the numerator of the receipts
35 factor pursuant to subsection (h) of this section, and the denominator of which is the taxpayer's
36 total amount of interest, fees, and penalties charged to cardholders.

37 (k) Miscellaneous Receipts. – The numerator of the receipts factor includes all of the
38 following:

39 (1) Card issuer's reimbursement fees. – Receipts from card issuer's reimbursement
40 fees if the payor is located in this State.

41 (2) Receipts from merchant's discount. – Receipts from a merchant discount if the
42 payor is located in this State.

43 (3) Loan servicing fees. – Receipts from loan servicing fees if the payor is located
44 in this State.

45 (4) Receipts from services. – Receipts from services not otherwise apportioned
46 under this section if the payor is located in this State.

47 (5) Receipts from investment assets and activity and trading assets and activity. –
48 Receipts from one or more of the following:

49 a. Interest and dividends from investment assets and activities and
50 trading assets and activities if the payor is located in this State.

1 b. Net gains and other income, but not less than zero, from investment
2 assets and activities and trading assets and activities multiplied by a
3 fraction, the numerator of which is the amount included in the
4 numerator of the receipts factor pursuant to sub-subdivision a. of this
5 subdivision, and the denominator of which is the taxpayer's total
6 amount of interest and dividends from investment assets and activities
7 and trading assets and activities.

8 (D) All Other Receipts. – All other receipts not specifically enumerated in this section are
9 included in the numerator of the receipts factor if the payor is located in this State."

10 **SECTION 3.4.** G.S. 105-122(c1) reads as rewritten:

11 "(c1) Apportionment. – A corporation that is doing business in this State and in one or more
12 other states must apportion its capital stock, surplus, and undivided profits to this State. A
13 corporation must use the apportionment method set out in subdivision (1) of this subsection
14 unless the Department has authorized it to use a different method under subdivision (2) of this
15 subsection. A taxpayer that has made an election under G.S. 105-130.4(t3) must use the
16 apportionment method set out in subdivision (1) of this subsection as if the election had not been
17 made, unless the Department has authorized a different method under subdivision (2) of this
18 subsection. The portion of a corporation's capital stock, surplus, and undivided profits determined
19 by applying the appropriate apportionment method is considered the amount of capital stock,
20 surplus, and undivided profits the corporation uses in its business in this State.

21 "

22 **SECTION 3.5.** The Utilities Commission shall adjust the rates for public utilities,
23 excluding water public utilities with less than two hundred thousand dollars (\$200,000) in annual
24 operating revenues, for the tax changes in Section 3.1 of this Part. Each utility shall calculate the
25 cumulative net effect of the tax changes and file the calculations with proposed rate changes to
26 reflect the net prospective tax changes in utility customer rates within 60 days of the enactment
27 of this act. Any adjustments required to existing tax assets or liabilities reflected in the utility's
28 books and records required by the tax changes shall be deferred and reflected in customer rates
29 in either the utility's next rate case or earlier if deemed appropriate by the Commission.

30 **SECTION 3.6.** Under Section 38.4 of S.L. 2016-94, the Department of Revenue
31 adopted and submitted to the Rules Review Commission rules regarding the implementation and
32 administration of market-based sourcing principles based on legislation proposed in that section.
33 The Department adopted the rules on January 4, 2017, and submitted the rules to the Rules
34 Review Commission on January 18, 2017. The Rules Review Commission approved the rules
35 and delivered to the Codifier of Rules on February 16, 2017. Pursuant to Section 38.4(b) of S.L.
36 2016-94, the Codifier of Rules did not enter the rules into the Administrative Code. The Codifier
37 of Rules is hereby directed by the General Assembly to enter the rules into the Administrative
38 Code on the effective date of this act, and the rules apply to taxable years beginning on or after
39 January 1, 2020.

40 **SECTION 3.7.** Sections 3.1 through 3.4 of this Part are effective for taxable years
41 beginning on or after January 1, 2020. The remainder of this Part is effective when it becomes
42 law.

43 44 **PART IV. MARKETPLACE FACILITATORS TO COLLECT SALES TAX**

45 **SECTION 4.1.(a)** G.S. 105-164.3 reads as rewritten:

46 "**§ 105-164.3. Definitions.**

47 The following definitions apply in this Article:

48 ...

49 (20a) Marketplace. – A physical or electronic place, forum, platform, application,
50 or other method by which a marketplace seller sells or offers to sell items, the
51 delivery of or first use of which is sourced to this State.

- 1 (20b) Marketplace facilitated sale. – The sale of an item by a marketplace facilitator
- 2 on behalf of a marketplace seller that occurs through a marketplace.
- 3 (20c) Marketplace facilitator. – A person that, directly or indirectly and whether
- 4 through one or more affiliates, does both of the following:
- 5 a. Lists or otherwise makes available for sale a marketplace seller's items
- 6 through a marketplace owned or operated by the marketplace
- 7 facilitator.
- 8 b. Does one or more of the following:
- 9 1. Collects the sales price or purchase price of a marketplace
- 10 seller's items or otherwise processes payment.
- 11 2. Makes payment processing services available to purchasers for
- 12 the sale of a marketplace seller's items.
- 13 (20d) Marketplace seller. – A person that sells or offers to sell items through a
- 14 marketplace regardless of any of the following:
- 15 a. Whether the person has a physical presence in this State.
- 16 b. Whether the person is registered as a retailer in this State.
- 17 c. Whether the person would have been required to collect and remit
- 18 sales and use tax had the sales not been made through a marketplace.
- 19 d. Whether the person would not have been required to collect and remit
- 20 sales and use tax had the sales not been made through a marketplace.

21 "

22 **SECTION 4.1.(b)** G.S. 105-164.8(b) reads as rewritten:

23 "(b) Remote Sales. – A retailer who makes a remote sale is engaged in business in this

24 State and is subject to the tax levied under this Article if at least one of the following conditions

25 is met:

26 ...

27 (3) The retailer solicits or transacts business in this State by employees,

28 independent contractors, agents, or other representatives, whether the remote

29 sales ~~thus~~ subject to taxation by this State result from or are related in any

30 other way to the solicitation or transaction of business. A retailer is presumed

31 to be soliciting or transacting business by an independent contractor, agent, or

32 other representative if the retailer enters into an agreement with a resident of

33 this State under which the ~~resident, person,~~ for a commission or other

34 consideration, directly or indirectly refers potential customers, whether by a

35 link on an Internet Web site or otherwise, to the retailer. This presumption

36 applies only if the cumulative gross receipts from sales by the retailer to

37 purchasers in this State who are referred to the retailer by all ~~residents~~ persons

38 with this type of agreement with the retailer is in excess of ten thousand dollars

39 (\$10,000) during the preceding four quarterly periods. This presumption may

40 be rebutted by proof that the ~~resident person~~ with whom the retailer has an

41 agreement did not engage in any solicitation in the State on behalf of the seller

42 that would satisfy the nexus requirement of the United States Constitution

43 during the four quarterly periods in question.

44 ...

45 (9) The ~~retailer, with respect to~~ retailer makes remote sales into North Carolina

46 sourced to this State, including sales as a marketplace seller, for the previous

47 or the current calendar year, ~~had one or more~~ year that meet either of the

48 following:

49 a. Gross sales in excess of one hundred thousand dollars (\$100,000).

50 b. Two hundred or more separate transactions.

- 1 (10) The retailer is a marketplace facilitator that makes sales, including all
2 marketplace facilitated sales for all marketplace sellers, sourced to this State
3 for the previous or the current calendar year that meet either of the following:
4 a. Gross sales in excess of one hundred thousand dollars (\$100,000).
5 b. Two hundred or more separate transactions."

6 **SECTION 4.1.(c)** Part 2 of Article 5 of Chapter 105 of the General Statutes is
7 amended by adding a new section to read:

8 **"§ 105-164.4J. Marketplace facilitated sales.**

9 (a) Scope. – This section applies to a marketplace facilitator that makes sales, including
10 all marketplace facilitated sales for all marketplace sellers, sourced to this State for the previous
11 or the current calendar year that meet either of the following:

- 12 (1) Gross sales in excess of one hundred thousand dollars (\$100,000).
13 (2) Two hundred or more separate transactions.

14 (b) Payment of Tax. – A marketplace facilitator that meets the threshold in subsection (a)
15 of this section is considered the retailer of each marketplace facilitated sale it makes and is liable
16 for collecting and remitting the sales and use tax on all such sales. A marketplace facilitator is
17 required to comply with the same requirements and procedures as all other retailers registered or
18 who are required to be registered to collect and remit sales and use tax in this State. A marketplace
19 facilitator is required to collect and remit sales tax as required by this section regardless of
20 whether a marketplace seller for whom it makes a marketplace facilitated sale meets any of the
21 following conditions:

- 22 (1) Has a physical presence in this State.
23 (2) Is required to be registered to collect and remit sales and use tax in this State.
24 (3) Would have been required to collect and remit sales and use tax in this State
25 had the sale not been made through a marketplace.
26 (4) Would not have been required to collect and remit sales and use tax in this
27 State had the sale not been made through a marketplace.

28 (c) Report. – A marketplace facilitator must provide or make available to each
29 marketplace seller the information listed in this subsection with respect to marketplace facilitated
30 sales that are made on behalf of the marketplace seller and that are sourced to this State. The
31 information may be provided in any format and shall be provided or made available no later than
32 10 days after the end of each calendar month. The required information to be provided or made
33 available to each marketplace seller is as follows:

- 34 (1) Gross sales.
35 (2) The number of separate transactions.

36 (d) Refund of Tax. – If a purchaser receives a refund on any portion of the sales price
37 from a marketplace facilitator who collected and remitted the tax on the retail sale, the provisions
38 of G.S. 105-164.11A(a) apply.

39 (e) Class Actions. – No class action may be brought against a marketplace facilitator in
40 any court of this State on behalf of customers arising from or in any way related to an
41 overpayment of sales or use tax collected on facilitated sales by a marketplace facilitator,
42 regardless of whether that claim is characterized as a tax refund claim. Nothing in this subsection
43 affects a customer's right to seek a refund as provided under G.S. 105-164.11.

44 (f) Agreements. – Nothing in this section shall be construed to interfere with the ability
45 of a marketplace facilitator and a marketplace seller to enter into an agreement with each other
46 regarding the fulfillment of the requirements of this Article, except that an agreement may not
47 require a marketplace seller to collect and remit sales and use tax on marketplace facilitated sales.

48 (g) Use Tax Obligation. – Nothing in this section affects the obligation of any purchaser
49 to remit use tax for any taxable transaction for which a marketplace facilitator does not collect
50 and remit sales or use tax.

1 (h) Limitation. – This section does not apply to an accommodation facilitator, an
2 admission facilitator, or a service contract facilitator whose collection and remittance
3 requirements are set out in G.S. 105-164.4F, 105-164.4G, and 105-164.4I, respectively."

4 **SECTION 4.2.(a)** G.S. 105-164.3 reads as rewritten:

5 **"§ 105-164.3. Definitions.**

6 The following definitions apply in this Article:

7 (1) Accommodation. – A hotel room, a motel room, a residence, a cottage, or a
8 similar lodging facility for occupancy by an individual.

9 (1a) Accommodation facilitator. – A person that contracts, either directly or
10 indirectly, with a provider of an accommodation to perform, either directly or
11 indirectly, one or more of the activities listed in this subdivision. The term
12 includes a real estate broker as defined in G.S. 93A-2. The activities are:

13 a. Market the accommodation and accept payment or collect credit card
14 or other payment information for the rental of the accommodation.

15 b. List the accommodation for rental on a forum, platform, or other
16 application for a fee or other consideration.

17 "

18 **SECTION 4.2.(b)** G.S. 105-164.4F reads as rewritten:

19 **"§ 105-164.4F. Accommodation rentals.**

20 (a) ~~Definition.—The following definitions apply in this section:~~

21 (1) ~~Accommodation.—A hotel room, a motel room, a residence, a cottage, or a~~
22 ~~similar lodging facility for occupancy by an individual.~~

23 (2) ~~Facilitator.—A person who is not a rental agent and who contracts with a~~
24 ~~provider of an accommodation to market the accommodation and to accept~~
25 ~~payment from the consumer for the accommodation.~~

26 (3) ~~Rental agent.—The term includes a real estate broker, as defined in G.S.~~
27 ~~93A-2.~~

28 (b) Tax. – The gross receipts derived from the rental of an accommodation are taxed at
29 the general rate set in G.S. 105-164.4. Gross receipts derived from the rental of an
30 accommodation include the sales price of the rental of the accommodation. The sales price of the
31 rental of an accommodation is determined as if the rental were a rental of tangible personal
32 property. The sales price of the rental of an accommodation ~~marketed—made~~ by a ~~an~~
33 accommodation facilitator includes any charges designated as facilitation fees and any other
34 ~~charges or fees, by whatever name called, charged by the accommodation facilitator to the~~
35 ~~purchaser of the accommodation that are necessary to complete the rental. The tax is due and~~
36 ~~payable by the retailer in accordance with G.S. 105-164.16.~~

37 (b1) Retailer. – Except as otherwise provided in subsection (c) of this section, the retailer
38 of the rental of an accommodation is one or more of the persons listed below that collects the
39 payment, or a portion of the payment, for the rental of the accommodation. The retailer is liable
40 for reporting and remitting the tax due on the portion of the gross receipts derived from the rental
41 of the accommodation that the retailer collects. The retailer may be one or more of the following:

42 (1) The provider of the accommodation.

43 (2) An accommodation facilitator.

44 (c) Certain Accommodation Facilitator Transactions. – A ~~facilitator must report to the~~
45 ~~retailer with whom it has a contract the sales price a consumer pays to the facilitator for an~~
46 ~~accommodation rental marketed by the facilitator. A retailer must notify a facilitator when an~~
47 ~~accommodation rental marketed by the facilitator is completed, and the This subsection applies~~
48 ~~only to an accommodation facilitator that is operated by or on behalf of a hotel or a hotel~~
49 ~~corporation, that facilitates the rental of hotel accommodations solely for the hotel or the hotel~~
50 ~~corporation's owned or managed hotels and franchisees, and that collects payment, or a portion~~
51 ~~of the payment, for the rental of an accommodation. An accommodation facilitator subject to this~~

1 subsection is not considered the retailer of the rental of the accommodation. The accommodation
2 facilitator must send the retailer ~~the portion of the sales price the facilitator owes the retailer and~~
3 ~~the tax due on the sales price-price, or the portion of the sales price, the accommodation facilitator~~
4 ~~collected no later than 10 days after the end of each calendar month. A-An accommodation~~
5 ~~facilitator that does not send the retailer the tax due on the sales price-price, or the portion of the~~
6 ~~sales price the accommodation facilitator collected, is liable for the amount of tax the~~
7 ~~accommodation facilitator fails to send. A-An accommodation facilitator is not liable for tax sent~~
8 ~~to a retailer but not remitted by the retailer to the Secretary. Tax payments received by a retailer~~
9 ~~from a-an accommodation facilitator are held in trust by the retailer for remittance to the~~
10 ~~Secretary. A retailer that receives a tax payment from a-an accommodation facilitator must remit~~
11 ~~the amount received to the Secretary. A retailer is not liable for tax due but not received from a~~
12 ~~an accommodation facilitator. The requirements imposed by this section on a retailer and a~~
13 ~~facilitator are considered terms of the contract between the retailer and the facilitator.~~

14 (c1) Accommodation Facilitator Report. – An accommodation facilitator must file with
15 the Secretary an annual report by March 31 of each year for the prior calendar year for
16 accommodation rentals it makes. The annual report must be provided in electronic format and
17 include the property owner's name, the property owner's mailing address, the physical location
18 of the accommodation, and gross receipts information for the rentals.

19 (d) Rental Agent.— A person who, by written contract, agrees to be the rental agent for
20 the provider of an accommodation is considered a retailer under this Article and is liable for the
21 tax imposed by this section. The liability of a rental agent for the tax imposed by this section
22 relieves the provider of the accommodation from liability.

23 (e) Exemptions. – The tax imposed by this section does not apply to the following:

- 24 (1) A private residence, cottage, or similar accommodation that is rented for fewer
25 than 15 days in a calendar year ~~other than a private residence, cottage, or~~
26 ~~similar accommodation listed with a real estate broker or agent unless the~~
27 ~~rental of the accommodation is made by an accommodation facilitator.~~
- 28 (2) An accommodation supplied to the same person for a period of 90 or more
29 continuous days.
- 30 (3) An accommodation arranged or provided to a person by a school, camp, or
31 similar entity where a tuition or fee is charged to the person for enrollment in
32 the school, camp, or similar entity."

33 **SECTION 4.2.(c)** G.S. 160A-215(c) reads as rewritten:

34 "(c) Collection. – A retailer who is required to remit to the Department of Revenue the
35 State sales tax imposed by G.S. 105-164.4(a)(3) on accommodations is required to remit a room
36 occupancy tax to the taxing city on and after the effective date of the levy of the room occupancy
37 tax. The room occupancy tax applies to the same gross receipts as the State sales tax on
38 accommodations and is calculated in the same manner as that tax. ~~A rental agent or a facilitator,~~
39 ~~as defined in G.S. 105-164.4F,~~ An accommodation facilitator, as defined in G.S. 105-164.3, has
40 the same responsibility and liability under the room occupancy tax as the rental agent or
41 accommodation facilitator has under the State sales tax on accommodations.

42 If a taxable accommodation is furnished as part of a package, the bundled transaction
43 provisions in G.S. 105-164.4D apply in determining the sales price of the taxable
44 accommodation. If those provisions do not address the type of package offered, the person
45 offering the package may determine an allocated price for each item in the package based on a
46 reasonable allocation of revenue that is supported by the person's business records kept in the
47 ordinary course of business and calculate tax on the allocated price of the taxable
48 accommodation.

49 A retailer must separately state the room occupancy tax. Room occupancy taxes paid to a
50 retailer are held in trust for and on account of the taxing city.

1 The taxing city shall design and furnish to all appropriate businesses and persons in the city
 2 the necessary forms for filing returns and instructions to ensure the full collection of the tax. An
 3 operator of a business who collects a room occupancy tax may deduct from the amount remitted
 4 to the taxing city a discount equal to the discount the State allows the retailer for State sales and
 5 use tax."

6 **SECTION 4.2.(d)** G.S. 153A-155(c) reads as rewritten:

7 "(c) Collection. – A retailer who is required to remit to the Department of Revenue the
 8 State sales tax imposed by G.S. 105-164.4(a)(3) on accommodations is required to remit a room
 9 occupancy tax to the taxing county on and after the effective date of the levy of the room
 10 occupancy tax. The room occupancy tax applies to the same gross receipts as the State sales tax
 11 on accommodations and is calculated in the same manner as that tax. ~~A rental agent or a~~
 12 ~~facilitator, as defined in G.S. 105-164.4F,~~ An accommodation facilitator, as defined in
 13 G.S. 105-164.3, has the same responsibility and liability under the room occupancy tax as the
 14 ~~rental agent or accommodation~~ facilitator has under the State sales tax on accommodations.

15 If a taxable accommodation is furnished as part of a package, the bundled transaction
 16 provisions in G.S. 105-164.4D apply in determining the sales price of the taxable
 17 accommodation. If those provisions do not address the type of package offered, the person
 18 offering the package may determine an allocated price for each item in the package based on a
 19 reasonable allocation of revenue that is supported by the person's business records kept in the
 20 ordinary course of business and calculate tax on the allocated price of the taxable
 21 accommodation.

22 A retailer must separately state the room occupancy tax. Room occupancy taxes paid to a
 23 retailer are held in trust for and on account of the taxing county.

24 The taxing county shall design and furnish to all appropriate businesses and persons in the
 25 county the necessary forms for filing returns and instructions to ensure the full collection of the
 26 tax. A retailer who collects a room occupancy tax may deduct from the amount remitted to the
 27 taxing county a discount equal to the discount the State allows the retailer for State sales and use
 28 tax."

29 **SECTION 4.3.(a)** G.S. 105-164.3 reads as rewritten:

30 **"§ 105-164.3. Definitions.**

31 The following definitions apply in this Article:

32 ...
 33 (1b) Admission charge. – Gross receipts derived for the right to attend an
 34 entertainment activity. The term includes a charge for a single ticket, a
 35 multi-occasion ticket, a seasonal pass, and an annual pass; a membership fee
 36 that provides for admission; a cover charge; a surcharge; a convenience fee, a
 37 processing fee, a facility charge, a facilitation fee, or similar charge; or any
 38 other charges included in gross receipts derived from admission.

39 (1c) Admission facilitator. – A person who accepts payment of an admission
 40 charge to an entertainment activity and who is not the operator of the venue
 41 where the entertainment activity occurs.

42 ...
 43 (1f) Amenity. – A feature that increases the value or attractiveness of an
 44 entertainment activity that allows a person access to items that are not subject
 45 to tax under this Article and that are not available with the purchase of
 46 admission to the same event without the feature. The term includes parking
 47 privileges, special entrances, access to areas other than general admission,
 48 mascot visits, and merchandise discounts. The term does not include any
 49 charge for food, prepared food, and alcoholic beverages subject to tax under
 50 this Article.

51 ...

(9a) Entertainment activity. – An activity listed in this subdivision:

- a. A live performance or other live event of any kind, the purpose of which is for entertainment.
- b. A movie, motion picture, or film.
- c. A museum, a cultural site, a garden, an exhibit, a show, or a similar attraction.
- d. A guided tour at any of the activities listed in sub-subdivision c. of this subdivision.

...."

SECTION 4.3.(b) G.S. 105-164.4G reads as rewritten:

"§ 105-164.4G. Entertainment activity.

(a) **Definition.**—The following definitions apply in this section:

- (1) ~~Admission charge.~~—~~Gross receipts derived for the right to attend an entertainment activity. The term includes a charge for a single ticket, a multi-occasion ticket, a seasonal pass, and an annual pass; a membership fee that provides for admission; a cover charge; a surcharge; a convenience fee, a processing fee, a facility charge, a facilitation fee, or similar charge; or any other charges included in gross receipts derived from admission.~~
- (2) ~~Amenity.~~—~~A feature that increases the value or attractiveness of an entertainment activity that allows a person access to items that are not subject to tax under this Article and that are not available with the purchase of admission to the same event without the feature. The term includes parking privileges, special entrances, access to areas other than general admission, mascot visits, and merchandise discounts. The term does not include any charge for food, prepared food, and alcoholic beverages subject to tax under this Article.~~
- (3) ~~Entertainment activity.~~—~~An activity listed in this subdivision:~~
 - a. ~~A live performance or other live event of any kind, the purpose of which is for entertainment.~~
 - b. ~~A movie, motion picture, or film.~~
 - c. ~~A museum, a cultural site, a garden, an exhibit, a show, or a similar attraction.~~
 - d. ~~A guided tour at any of the activities listed in sub-subdivision c. of this subdivision.~~
- (4) ~~Facilitator.~~—~~A person who accepts payment of an admission charge to an entertainment activity and who is not the operator of the venue where the entertainment activity occurs.~~

(b) **Tax.** – The gross receipts derived from an admission charge to an entertainment activity are taxed at the general rate set in G.S. 105-164.4. The tax is due and payable by the retailer in accordance with G.S. 105-164.16. For purposes of the tax imposed by this section, the retailer is the applicable person listed below:

- (1) The operator of the venue where the entertainment activity occurs, unless the retailer and the admission facilitator have a contract between them allowing for dual remittance, as provided in subsection (d) of this section.
- (2) The person that provides the entertainment and that receives admission charges directly from a purchaser.
- (3) A person other than a person listed in subdivision (1) or (2) of this subsection that receives gross receipts derived from an admission charge sold at retail.

(c) Admission Facilitator. – ~~A~~ An admission facilitator must report to the retailer with whom it has a contract the admission charge a consumer pays to the admission facilitator for an entertainment activity. The admission facilitator must send the retailer the portion of the gross

1 receipts the admission facilitator owes the retailer and the tax due on the gross receipts derived
 2 from an admission charge no later than 10 days after the end of each calendar month. ~~A~~An
 3 admission facilitator that does not send the retailer the tax due on the gross receipts derived from
 4 an admission charge is liable for the amount of tax the admission facilitator fails to send to the
 5 retailer. ~~A~~An admission facilitator is not liable for tax sent to a retailer but not remitted by the
 6 retailer to the Secretary. Tax payments received by a retailer from ~~a~~an admission facilitator are
 7 held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment
 8 from ~~a~~an admission facilitator must remit the amount received to the Secretary. A retailer is not
 9 liable for tax due but not received from ~~a~~an admission facilitator. The requirements imposed by
 10 this subsection on a retailer and ~~a~~an admission facilitator are considered terms of the contract
 11 between the retailer and the admission facilitator.

12 (d) Dual Remittance. – The tax due on the gross receipts derived from an admission
 13 charge may be partially reported and remitted to the operator of the venue for remittance to the
 14 Department and partially reported and remitted by the admission facilitator directly to the
 15 Department. The portion of the tax not reported and remitted to the operator of the venue must
 16 be reported and remitted directly by the admission facilitator to the Department. ~~A~~An admission
 17 facilitator that elects to remit tax under the dual remittance option is required to obtain a
 18 certificate of registration in accordance with G.S. 105-164.29. ~~A~~An admission facilitator is
 19 subject to the provisions of Article 9 of this Chapter.

20"

21 **SECTION 4.4.(a)** G.S. 105-164.3 reads as rewritten:

22 "**§ 105-164.3. Definitions.**

23 The following definitions apply in this Article:

24 ...

25 (38c) Service contract facilitator. – A person who contracts with the obligor of a
 26 service contract to market the service contract and accepts payment from the
 27 purchaser for the service contract.

28"

29 **SECTION 4.4.(b)** G.S. 105-164.4I reads as rewritten:

30 "**§ 105-164.4I. Service contracts.**

31 (a) Tax. – The sales price of or the gross receipts derived from a service contract or the
 32 renewal of a service contract sold at retail is subject to the general rate of tax set in G.S. 105-164.4
 33 and is sourced in accordance with the sourcing principles in G.S. 105-164.4B. The retailer of a
 34 service contract is required to collect the tax due at the time of the retail sale of the contract and
 35 is liable for payment of the tax. The tax is due and payable in accordance with G.S. 105-164.16.

36 The retailer of a service contract is the applicable person listed below:

- 37 (1) When a service contract is sold at retail to a purchaser by the obligor under
 38 the contract, the obligor is the retailer.
- 39 (2) When a service contract is sold at retail to a purchaser by a service contract
 40 facilitator on behalf of the obligor under the contract, the service contract
 41 facilitator is the retailer unless the provisions of subdivision (3) of this
 42 subsection apply.
- 43 (3) When a service contract is sold at retail to a purchaser by a service contract
 44 facilitator on behalf of the obligor under the contract and there is an agreement
 45 between the service contract facilitator and the obligor that states the obligor
 46 will be liable for the payment of the tax, the obligor is the retailer. The service
 47 contract facilitator must send the retailer the tax due on the sales price of or
 48 gross receipts derived from the service contract no later than 10 days after the
 49 end of each calendar month. A service contract facilitator that does not send
 50 the retailer the tax due on the sales price or gross receipts is liable for the
 51 amount of tax the service contract facilitator fails to send. A service contract

1 facilitator is not liable for tax sent to a retailer but not remitted by the retailer
 2 to the Secretary. Tax payments received by a retailer from a service contract
 3 facilitator are held in trust by the retailer for remittance to the Secretary. A
 4 retailer that receives a tax payment from a service contract facilitator must
 5 remit the amount received to the Secretary. A retailer is not liable for tax due
 6 but not received from a service contract facilitator. The requirements imposed
 7 by this subdivision on a retailer and a service contract facilitator are
 8 considered terms of the agreement between the retailer and the service
 9 contract facilitator.

10 ...

11 (e) ~~Definition.—For purposes of this section, the term "facilitator" means a person who~~
 12 ~~contracts with the obligor of the service contract to market the service contract and accepts~~
 13 ~~payment from the purchaser for the service contract."~~

14 **SECTION 4.5.(a)** G.S. 105-164.22 reads as rewritten:

15 "**§ 105-164.22. Record-keeping Recordkeeping requirements, inspection authority, and**
 16 **effect of failure to keep records.**

17 (a) Recordkeeping Generally. – Retailers, wholesale merchants, facilitators, real property
 18 contractors, and consumers must keep records that establish their tax liability under this Article.
 19 The Secretary or a person designated by the Secretary may inspect these records at any reasonable
 20 time during the day.

21 (b) Retailers. – A retailer's records must include records of the retailer's gross income,
 22 gross sales, net taxable sales, ~~and all items purchased for resale.~~ resale, and any reports or records
 23 related to transactions with a facilitator with whom it has a contract as provided in this Article.
 24 Failure of a retailer to keep records that establish ~~that~~ a sale is exempt under this Article subjects
 25 the retailer to liability for tax on the sale.

26 (c) Wholesale Merchants. – A wholesale merchant's records must include a bill of sale
 27 for each customer that contains the name and address of the purchaser, the date of the purchase,
 28 the item purchased, and the sales price at which the wholesale merchant sold of the item. A
 29 wholesale merchant must also keep records that establish a sale is exempt from tax and any
 30 reports or records related to transactions with a facilitator with whom it has a contract as provided
 31 in this Article. Failure of a wholesale merchant to keep ~~these records for the sale of an item that~~
 32 establish a sale is exempt from tax under this Article subjects the wholesale merchant to liability
 33 for tax at the rate that applies to the retail sale of the item.

34 (d) Facilitators. – A facilitator's records must include records of the facilitator's gross
 35 income, gross sales, net taxable sales, all items purchased for resale, any reports or records related
 36 to transactions with a retailer with whom it has a contract as provided in this Article, and any
 37 other records that establish its tax liability. Failure of a facilitator to keep records that establish a
 38 sale is exempt from tax under this Article subjects the facilitator to liability for tax on the sale.

39 (e) Real Property Contractors. – A real property contractor's records must include
 40 substantiation that a transaction is a real property contract or a mixed transaction contract
 41 pursuant to G.S. 105-164.4H(a1). Failure of a real property contractor to keep records that
 42 establish a real property contract under this Article subjects the real property contractor to
 43 liability for tax on the sale.

44 (f) Consumers. – A consumer's records must include an invoice or other statement of the
 45 purchase price of an item the consumer purchased from inside or outside the ~~State.~~ State and any
 46 sales and use tax paid thereon. Failure of the consumer to keep these records subjects the
 47 consumer to liability for tax on the purchase price of the item, as determined by the Secretary."

48 **SECTION 4.5.(b)** G.S. 105-164.3, as amended by Section 1 of this Part, reads as
 49 rewritten:

50 "**§ 105-164.3. Definitions.**

51 The following definitions apply in this Article:

- 1 ...
- 2 ~~(1d)~~(1d) Advertising and promotional direct mail. – Printed material that meets the
- 3 definition of "direct mail" and the primary purpose of which is to attract public
- 4 attention to a ~~product, an item,~~ person, business, or organization, or to attempt
- 5 to sell, popularize, or secure financial support for a ~~product, an item,~~ person,
- 6 business, or organization. ~~As used in this subdivision, "product" means~~
- 7 ~~tangible personal property, digital property, or a service.~~
- 8 (1e) Affiliate. – Defined in G.S. 105-130.2.
- 9 ...
- 10 ~~(1a)~~(1g) Analytical services. – Testing laboratories that are included in national
- 11 industry 541380 of NAICS or medical laboratories that are included in
- 12 national industry 621511 of NAICS.
- 13 ~~(1b)~~(1h) Ancillary service. – A service associated with or incidental to the
- 14 provision of a telecommunications service. The term includes detailed
- 15 communications billing, directory assistance, vertical service, and voice mail
- 16 service. A vertical service is a service, such as call forwarding, caller ID,
- 17 three-way calling, and conference bridging, that allows a customer to identify
- 18 a caller or manage multiple calls and call connections.
- 19 ~~(1f)~~(1i) Audio work. – A series of musical, spoken, or other sounds, including a
- 20 ringtone.
- 21 ~~(1g)~~(1j) Audiovisual work. – A series of related images and any sounds
- 22 accompanying the images that impart an impression of motion when shown
- 23 in succession.
- 24 ~~(1h)~~(1k) Aviation gasoline. – Defined in G.S. 105-449.60.
- 25 ~~(1i)~~(1l) Bundled transaction. – A retail sale of two or more distinct and identifiable
- 26 ~~products, items,~~ at least one of which is taxable and one of which is ~~exempt,~~
- 27 nontaxable, for one nonitemized price. The term does not apply to real
- 28 property ~~and or~~ services to real property. ~~Products-Items~~ are not sold for one
- 29 nonitemized price if an invoice or another sales document made available to
- 30 the purchaser separately identifies the price of each ~~product-item.~~ A bundled
- 31 transaction does not include the retail sale of any of the following:
- 32 a. ~~A product-An item~~ and any packaging ~~item~~ that accompanies the
- 33 ~~product-item~~ and is exempt under G.S. 105-164.13(23).
- 34 b. A sale of two or more ~~products-items~~ whose combined price varies, or
- 35 is negotiable, depending on the ~~products-items~~ the purchaser selects.
- 36 c. A sale of a ~~product-an item~~ accompanied by a transfer of another
- 37 ~~product-item~~ with no additional consideration.
- 38 d. ~~A product-An item~~ and the delivery or installation of the ~~product-item.~~
- 39 e. ~~A product-An item~~ and any service necessary to complete the sale.
- 40 ~~(1k)~~(1m) Business. – An activity a person engages in or causes another to engage in
- 41 with the object of gain, profit, benefit, or advantage, either direct or indirect.
- 42 The term does not include an occasional and isolated sale or transaction by a
- 43 person who does not claim to be engaged in business.
- 44 ~~(1m)~~(1n) Cable service. – The one-way transmission to subscribers of video
- 45 programming or other programming service and any subscriber interaction
- 46 required to select or use the service.
- 47 ...
- 48 (2c) Capital improvement. – One or more of the following:
- 49 ...
- 50 k. An addition or alteration to real property that is permanently affixed
- 51 or installed to real property and is not an activity listed in subdivision

- 1 ~~(33A)~~(33m) of this section as repair, maintenance, and installation
 2 services.
 3 ...
 4 (9) Engaged in business. – Any of the following:
 5 a. Maintaining, occupying, or using permanently or temporarily, directly
 6 or indirectly, or through a subsidiary or agent, by whatever name
 7 called, any office, place of distribution, sales or sample room,
 8 warehouse or storage place, or other place of business ~~for selling or~~
 9 ~~delivering tangible personal property, digital property, or a service for~~
 10 ~~storage, use, or consumption~~ in this State, or permanently or
 11 temporarily, directly or through a subsidiary, having any
 12 representative, agent, sales representative, marketplace facilitator
 13 subject to the requirements of G.S. 105-164.4J, or solicitor operating
 14 or transacting business by mobile phone application or other
 15 applications in this State in the selling or delivering State. The fact
 16 that any corporate retailer, agent, or subsidiary engaged in business in
 17 this State may not be legally domesticated or qualified to do business
 18 in this State is immaterial.
 19 ...
 20 e. Making marketplace facilitated sales subject to the requirements of
 21 G.S. 105-164.4J.
 22 ...
 23 (9e) Facilitator. – An accommodation facilitator, an admission facilitator, or a
 24 service contract facilitator.
 25 ...
 26 ~~(20b)~~(20e) Mixed transaction contract. – A contract that includes both a real property
 27 contract for a capital improvement and repair, maintenance, and installation
 28 services for real property that are not related to the capital improvement.
 29 ...
 30 (33j) Remote sale. – A sale of ~~tangible personal property or digital property~~ an item
 31 ordered by mail, by telephone, via the Internet, mobile phone application, or
 32 by another similar method, to a purchaser who is in this State at the time the
 33 ~~order is remitted, from method by~~ a retailer who receives the order in another
 34 state and delivers the property item or makes it accessible to a person in this
 35 State or causes it the item to be delivered or made accessible to a person in
 36 this State. State or performs a service sourced to this State. It is presumed that
 37 a resident of this State who ~~remits~~ makes an order was in this State at the time
 38 the order was ~~remitted~~ made.
 39 ...
 40 ~~(33A)~~(33m) Repair, maintenance, and installation services. – The term includes the
 41 activities listed in this subdivision and applies to tangible personal property,
 42 motor ~~vehicle, vehicles, certain~~ digital property, and real property. The term
 43 does not include ~~services~~ a service used to fulfill a real property contract taxed
 44 in accordance with ~~G.S. 105-164.4H~~ G.S. 105-164.4H. The included
 45 activities are:
 46 ...
 47 (35) Retailer. – Any of the following persons:
 48 a. A person engaged in business of making sales at retail, offering to
 49 make sales at retail, or soliciting sales at retail of ~~tangible personal~~
 50 ~~property, digital property for storage, use, or consumption in this State,~~
 51 ~~or services~~ items sourced to this State. When the Secretary finds it

necessary for the efficient administration of this Article to regard any sales representatives, solicitors, representatives, consignees, peddlers, or truckers as agents of the dealers, distributors, consignors, supervisors, employers, or persons under whom they operate or from whom they obtain the items sold by them regardless of whether they are making sales on their own behalf or on behalf of these dealers, distributors, consignors, supervisors, employers, or persons, the Secretary may so regard them and may regard the dealers, distributors, consignors, supervisors, employers, or persons as "retailers" for the purpose of this Article.

- b. A person, other than a real property contractor, engaged in business of delivering, erecting, installing, or applying tangible personal property or digital property for use in this State.
- c. A person engaged in business of making a remote sale, if one of the conditions listed in G.S. 105-164.8(b) is met.
- d. ~~A person, other than a facilitator, person~~ required to collect the State tax levied under this Article or the local taxes levied under Subchapter VIII of this Chapter and under Chapter 1096 of the 1967 Session Laws.
- e. A marketplace facilitator that is subject to the requirements of G.S. 105-164.4J or a facilitator that is required to collect and remit the tax under this Article.

...."

SECTION 4.6. There is no obligation to collect the sales and use tax required by this Part retroactively.

SECTION 4.7. If any provision of this Part, or the application of any provision to a person or circumstance, is held to be unconstitutional, then the remainder of this Part, and the application of the provisions to any person or circumstance, shall not be affected thereby.

SECTION 4.8. The Revisor of Statutes is authorized to renumber the subdivisions of G.S. 105-164.3 to ensure that the subdivisions are listed in alphabetical order and in a manner that reduces the current use of alphanumeric designations, to make conforming changes, and to reserve sufficient space to accommodate future additions to the statutory section.

SECTION 4.9. This Part becomes effective September 1, 2019, and applies to sales occurring on or after that date.

PART V. OTHER BUSINESS TAX CHANGES

SECTION 5.1.(a) G.S. 105-130.5(b) reads as rewritten:

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

...

- (31) To the extent included in federal taxable income, the amount received by a taxpayer as an economic incentive pursuant to G.S. 143B-437.012 or Part 2G or 2H of Article 10 of Chapter 143B of the General Statutes."

SECTION 5.1.(b) G.S. 105-153.5(b) reads as rewritten:

"(b) Other Deductions. – In calculating North Carolina taxable income, a taxpayer may deduct from the taxpayer's adjusted gross income any of the following items that are included in the taxpayer's adjusted gross income:

...

- (14) The amount received by a taxpayer as an economic incentive pursuant to G.S. 143B-437.012 or Part 2G or 2H of Article 10 of Chapter 143B of the General Statutes."

1 **SECTION 5.1.(c)** This section is effective for taxable years beginning on or after
2 January 1, 2019, and applies to amounts received by a taxpayer pursuant to an economic incentive
3 agreement entered into on or after that date.

4 **SECTION 5.2.** G.S. 105-129.110 reads as rewritten:

5 "**§ 105-129.110. Sunset.**

6 This Article expires for qualified rehabilitation expenditures and rehabilitation expenses
7 incurred on or after ~~January 1, 2020.~~ January 1, 2024. For qualified rehabilitation expenditures
8 and rehabilitation expenses incurred prior to ~~January 1, 2020.~~ January 1, 2024., this Article expires
9 for property not placed in service by ~~January 1, 2028.~~ January 1, 2032."

10 **SECTION 5.3.(a)** G.S. 105-164.13(11b) reads as rewritten:

11 "(11b) Sales of aviation gasoline and jet fuel to an interstate air business for use in a
12 commercial aircraft. For purposes of this subdivision, the term "commercial
13 aircraft" has the same meaning as defined in subdivision (45a) of this section.
14 This exemption also applies to aviation gasoline and jet fuel purchased for use
15 in a commercial aircraft in interstate or foreign commerce by a person whose
16 primary business is scheduled passenger air transportation. This subdivision
17 expires ~~January 1, 2020.~~ January 1, 2024."

18 **SECTION 5.3.(b)** G.S. 105-164.13(65) and (65a) read as rewritten:

19 "(65) This subdivision expires ~~January 1, 2020.~~ January 1, 2024. Sales of the
20 following to a professional motorsports racing team or a related member of a
21 team for use in competition in a sanctioned race series:

- 22 a. The sale, lease, or rental of an engine.
23 b. The sales price of or gross receipts derived from a service contract on,
24 or repair, maintenance, and installation services for, a transmission, an
25 engine, rear-end gears, and any other item that is purchased, leased, or
26 rented and that is exempt from tax under this subdivision or that is
27 allowed a sales tax refund under G.S. 105-164.14A(a)(5).
28 c. The gross receipts derived from an agreement to provide an engine to
29 a professional motorsports racing team or related member of a team
30 for use in competition in a sanctioned race series, where such
31 agreement does not meet the definition of a "service contract" as
32 defined in G.S. 105-164.3 but may meet the definition of the term
33 "lease or rental" as defined in G.S. 105-164.3.

34 (65a) An engine or a part to build or rebuild an engine for the purpose of providing
35 an engine under an agreement to a professional motorsports racing team or a
36 related member of a team for use in competition in a sanctioned race series.
37 This subdivision expires ~~January 1, 2020.~~ January 1, 2024."

38 **SECTION 5.3.(c)** G.S. 105-164.14A(a)(4) and (a)(5) read as rewritten:

39 "(4) Motorsports team or sanctioning body. – A professional motorsports racing
40 team, a motorsports sanctioning body, or a related member of such a team or
41 body is allowed a refund of the sales and use tax paid by it in this State on
42 aviation gasoline or jet fuel that is used to travel to or from a motorsports event
43 in this State, to travel to a motorsports event in another state from a location
44 in this State, or to travel to this State from a motorsports event in another state.
45 For purposes of this subdivision, a "motorsports event" includes a motorsports
46 race, a motorsports sponsor event, and motorsports testing. This subdivision
47 is repealed for purchases made on or after ~~January 1, 2020.~~ January 1, 2024.

48 (5) Professional motorsports team. – A professional motorsports racing team or a
49 related member of a team is allowed a refund of fifty percent (50%) of the
50 sales and use tax paid by it in this State on tangible personal property, other
51 than tires or accessories, that comprises any part of a professional motorsports

1 vehicle. For purposes of this subdivision, "motorsports accessories" includes
2 instrumentation, telemetry, consumables, and paint. This subdivision is
3 repealed for purchases made on or after ~~January 1, 2020~~ January 1, 2024."

4 **SECTION 5.4.** Except as otherwise provided, this Part is effective when it becomes
5 law.

6
7 **PART VI. FACILITATE CRITICAL INFRASTRUCTURE DISASTER RELIEF**

8 **SECTION 6.1.** Part 8 of Article 166A of the General Statutes is amended by adding
9 a new section to read:

10 **"§ 166A-19.70A. Facilitate critical infrastructure disaster relief.**

11 (a) Purpose. – The State finds that it is appropriate to exclude nonresident businesses and
12 nonresident employees who temporarily come to this State at the request of a critical
13 infrastructure company solely to perform disaster-related work during a disaster response period
14 from the following tax and regulatory requirements:

- 15 (1) Corporate and individual income tax, as provided under G.S. 105-130.1 and
16 G.S. 105-153.2.
- 17 (2) Franchise tax, as provided under G.S. 105-114.
- 18 (3) Unemployment tax, as provided under G.S. 96-1(b)(12).
- 19 (4) Workers' compensation, as provided under G.S. 97-13(e).
- 20 (5) Certificate of Authority from the Secretary of State to transact business in
21 this State, as provided under G.S. 55-15-01(d) and G.S. 57D-1-24(d).

22 (b) Definitions. – In addition to the definitions in G.S. 166A-19.3, the following
23 definitions apply in this section:

- 24 (1) Corporation. – Defined in G.S. 105-130.2.
- 25 (2) Critical infrastructure. – Property and equipment owned or used by a critical
26 infrastructure company for utility or communications transmission services
27 provided to the public in the State. Examples of critical infrastructure include
28 communications networks, electric generation, transmission and distribution
29 systems, natural gas transmission and distribution systems, water pipelines,
30 and related support facilities. Related support facilities may include buildings,
31 offices, lines, poles, pipes, structures, and equipment.
- 32 (3) Critical infrastructure company. – One of the following:
 - 33 a. A registered public communications provider.
 - 34 b. A registered public utility.
- 35 (4) Disaster-related work. – Repairing, renovating, installing, building, or
36 performing services on critical infrastructure that has been damaged,
37 impaired, or destroyed as a result of a disaster or emergency in an area covered
38 by the disaster declaration.
- 39 (5) Disaster response period. – A period that begins ten days prior to the first day
40 of a disaster declaration and expires on the earlier of the following:
 - 41 a. Sixty days following the expiration of the disaster declaration, as
42 provided under G.S. 166A-19.21(c).
 - 43 b. One hundred eighty days following the issuance of the disaster
44 declaration.
- 45 (6) Employee. – Defined in G.S. 105-163.1.
- 46 (7) Nonresident business. – An entity that has not been required to file an income
47 or franchise tax return with the State for three years prior to the disaster
48 response period, other than those arising from the performance of
49 disaster-related work during a tax year prior to the enactment of this section,
50 and that meets one or more of the following conditions:
 - 51 a. Is a nonresident entity.

- 1 b. Is a nonresident individual who owns an unincorporated business as a
2 sole proprietor.
- 3 (8) Nonresident employee. – A nonresident individual who is one of the
4 following:
- 5 a. An employee of a nonresident business.
6 b. An employee of a critical infrastructure company who is temporarily
7 in this State to perform disaster-related work during a disaster response
8 period.
- 9 (9) Nonresident entity. – Defined in G.S. 105-163.1.
10 (10) Nonresident individual. – Defined in G.S. 105-153.3.
11 (11) Registered public communications provider. – A corporation doing business
12 in this State prior to the disaster declaration that provides the transmission to
13 the public of one or more of the following:
- 14 a. Broadband.
15 b. Mobile telecommunications.
16 c. Telecommunications.
17 d. Wireless Internet access.
- 18 (12) Registered public utility. – A corporation doing business in this State prior to
19 the disaster declaration that is subject to the control of one or more of the
20 following entities:
- 21 a. North Carolina Utilities Commission.
22 b. North Carolina Rural Electrification Authority.
23 c. Federal Communications Commission.
24 d. Federal Energy Regulatory Commission.
- 25 (c) Critical Infrastructure Company Notification. – A critical infrastructure company
26 must provide notification to the Department of Revenue within 90 days of the expiration of the
27 disaster response period. The notification must be in the form and manner required by the
28 Department. The notification must include the following:
- 29 (1) A list of all nonresident businesses who performed disaster-related work in
30 this State during a disaster response period at the request of the critical
31 infrastructure company.
- 32 (2) A list of nonresident employees who performed disaster-related work in this
33 State for the critical infrastructure company during a disaster response period.
34 The notification must include the amount of compensation paid to the
35 nonresident employee performing disaster-related work in this State.
- 36 (d) Nonresident Business Notification. – A nonresident business must provide
37 notification to the Department of Revenue within 90 days of the date the nonresident business
38 concludes its disaster-related work in the State. The notification must be in the form and manner
39 required by the Department. The notification must include a list of nonresident employees who
40 performed disaster-related work in this State during a disaster response period, along with the
41 amount of compensation paid to the nonresident employee performing disaster-related work in
42 this State.
- 43 (e) Limitation. – The intent of this section is to provide relief to nonresident businesses
44 and nonresident employees who would not otherwise be subject to this State's tax and
45 regulatory requirements if they had not performed disaster-related work during the disaster
46 response period. The relief provided under this section does not apply to any tax year that is
47 part of the disaster response period if the nonresident business or nonresident employee
48 continues to perform disaster-related work following the end of the disaster response period.
49 The relief provided under this section does not apply to a tax year that is part of the disaster
50 response period if the nonresident business nonresident employee is required to file an income

1 tax return for that tax year with the Department of Revenue for reasons other than the
2 performance of disaster-related work."

3 **SECTION 6.2.(a)** G.S. 55-15-01 is amended by adding a new subsection to read:

4 "(d) The following foreign corporations are not required to obtain a certificate of authority
5 from the Secretary of State:

6 (1) A nonresident business solely performing disaster-related work in this State
7 during a disaster response period at the request of a critical infrastructure
8 company. The definitions and provisions of G.S. 166A-19.70A apply to this
9 subdivision.

10 (2) A person issued a temporary license by the Department of Revenue under
11 G.S. 105-449.69A to import, export, distribute, or transport motor fuel in this
12 State in response to a disaster declaration."

13 **SECTION 6.2.(b)** G.S. 57D-1-24 is amended by adding a new subsection to read:

14 **"§ 57D-1-24. Certificate of existence; certificate of authorization.**

15 ...

16 (d) A nonresident business solely performing disaster-related work in this State during a
17 disaster response period at the request of a critical infrastructure company is not required to
18 obtain a certificate of authority from the Secretary of State. The definitions and provisions of
19 G.S. 166A-19.70A apply to this subdivision."

20 **SECTION 6.3.** G.S. 96-1(b)(12) reads as rewritten:

21 "(b) Definitions. – The following definitions apply in this Chapter:

22 ...

23 (12) Employment. – Defined in section 3306 of the Code, with the following
24 additions and exclusions:

25 ...

26 b. Exclusions. – The term excludes all of the following:

27 ...

28 5. Service performed by a nonresident employee for a
29 nonresident business performing disaster-related work in this
30 State during a disaster response period at the request of a
31 critical infrastructure company. The definitions and provisions
32 of G.S. 166A-19.70A apply to this exclusion."

33 **SECTION 6.4.** G.S. 97-13 is amended by adding a new subsection to read:

34 **"§ 97-13. Exceptions from provisions of Article.**

35 ...

36 (e) Critical Infrastructure Disaster Relief. – This Article shall not apply to nonresident
37 employees of a nonresident business that solely performs disaster-related work in this State
38 during a disaster response period at the request of a critical infrastructure company. The
39 definitions and provisions in G.S. 166A-19.70A apply in this subsection."

40 **SECTION 6.5.** G.S. 105-114 is amended by adding a new subsection to read:

41 "(d) Critical Infrastructure Disaster Relief. – A nonresident business that solely performs
42 disaster-related work in this State during a disaster response period at the request of a critical
43 infrastructure company is not considered to be doing business in this State for purposes of this
44 Article. The definitions and provisions in G.S. 166A-19.70A apply in this subsection."

45 **SECTION 6.6.(a)** G.S. 105-130.1 reads as rewritten:

46 **"§ 105-130.1. Purpose.**

47 (a) Purpose. – The general purpose of this Part is to impose a tax for the use of the State
48 government upon the net income of every domestic corporation and of every foreign corporation
49 doing business in this State.

50 The tax imposed upon the net income of corporations in this Part is in addition to all other
51 taxes imposed under this Subchapter.

1 (b) Critical Infrastructure Disaster Relief. – A nonresident business that solely performs
2 disaster-related work in this State during a disaster response period at the request of a critical
3 infrastructure company is not considered to be doing business in this State for purposes of this
4 Part. The definitions and provisions in G.S. 166A-19.70A apply in this subsection."

5 **SECTION 6.6.(b)** G.S. 105-130.5(a) is amended by adding a new subdivision to
6 read:

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

9 ...

10 (30) Payments made to an affiliate or subsidiary that is not subject to tax under this
11 Article pursuant to the exceptions for critical infrastructure disaster relief
12 provided under G.S. 166A-19.70A, to the extent the payments are deducted in
13 determining federal taxable income. The definitions and provisions of
14 G.S. 166A-19.70A apply to this subdivision."

15 **SECTION 6.7.(a)** G.S. 105-131.7 is amended by adding a new subsection to read:
16 **"§ 105-131.7. Returns; shareholder agreements; mandatory withholding.**

17 ...

18 (f) Critical Infrastructure Disaster Relief. – An S Corporation that is not doing business
19 in this State because it is a nonresident business performing disaster-related work during a
20 disaster response period at the request of a critical infrastructure company is not required to file
21 a return with the Department. However, the corporation must furnish to each shareholder who
22 would be entitled to share in the corporation income any information necessary for that person
23 to properly file a State income tax return. The definitions and provisions in G.S. 166A-19.70A
24 concerning disaster-related work apply to this subsection."

25 **SECTION 6.7.(b)** G.S. 105-154(c) reads as rewritten:
26 **"§ 105-154. Information at the source returns.**

27 ...

28 (c) Information Returns of Partnerships. – A partnership doing business in this State and
29 required to file a return under the Code shall file an information return with the Secretary. A
30 partnership that the Secretary believes to be doing business in this State and to be required to file
31 a return under the Code shall file an information return when requested to do so by the Secretary.
32 The information return shall contain all information required by the Secretary. It shall state
33 specifically the items of the partnership's gross income, the deductions allowed under the Code,
34 each partner's distributive share of the partnership's income, and the adjustments required by this
35 Part. A partner's distributive share of partnership net income includes any guaranteed payments
36 made to the partner. The information return shall also include the name and address of each
37 person who would be entitled to share in the partnership's net income, if distributable, and the
38 amount each person's distributive share would be. The information return shall be signed by one
39 of the partners under affirmation in the form required by the Secretary.

40 A partnership that files an information return under this subsection shall furnish to each
41 person who would be entitled to share in the partnership's net income, if distributable, any
42 information necessary for that person to properly file a State income tax return. The information
43 shall be in the form prescribed by the Secretary and must be furnished on or before the due date
44 of the information return.

45 A partnership that is not doing business in this State because it is a nonresident business
46 performing disaster-related work during a disaster response period at the request of a critical
47 infrastructure company is not required to file an information return with the Secretary. However,
48 the partnership must furnish to each person who would be entitled to share in the partnership's
49 net income, if distributable, any information necessary for that person to properly file a State
50 income tax return. The definitions and provisions in G.S. 166A-19.70A apply to this paragraph."

51 **SECTION 6.8.(a)** G.S. 105-153.2 reads as rewritten:

1 **"§ 105-153.2. Purpose.**

2 The general purpose of this Part is to impose a tax for the use of the State government upon
3 the taxable income collectible annually:

- 4 (1) Of every resident of this State.
5 (2) Of every nonresident individual deriving income from North Carolina sources
6 attributable to the ownership of any interest in real or tangible personal
7 property in this State, deriving income from a business, trade, profession, or
8 occupation carried on in this State, or deriving income from gambling
9 activities in this State. This subdivision does not apply to a nonresident
10 business or a nonresident employee who solely derives income from North
11 Carolina sources attributable to a business, trade, profession, or occupation
12 carried on in this State to perform disaster-related work during a disaster
13 response period at the request of a critical infrastructure company; the
14 definitions and provisions in G.S. 166A-19.70A apply to this subdivision."

15 **SECTION 6.8.(b)** G.S. 105-153.8(a) reads as rewritten:

16 "(a) Who Must File. – The following individuals must file with the Secretary an income
17 tax return under affirmation:

- 18 (1) Every resident who for the taxable year has gross income under the Code that
19 exceeds the standard deduction amount provided in G.S. 105-153.5(a)(1).
20 (2) Every nonresident individual who meets all of the following requirements:
21 a. Receives during the taxable year gross income that is derived from
22 North Carolina sources and is attributable to the ownership of any
23 interest in real or tangible personal property in this State, is derived
24 from a business, trade, profession, or occupation carried on in this
25 State, or is derived from gambling activities in this State. This
26 sub-subdivision does not apply to a nonresident business or a
27 nonresident employee who solely derives income from North Carolina
28 sources attributable to a business, trade, profession, or occupation
29 carried on in this State to perform disaster-related work during a
30 disaster response period at the request of a critical infrastructure
31 company; the definitions and provisions in G.S. 166A-19.70A apply
32 to this sub-subdivision.
33 b. Has gross income under the Code that exceeds the applicable standard
34 deduction amount provided in G.S. 105-153.5(a)(1).
35 (3) Any individual whom the Secretary believes to be liable for a tax under this
36 Part, when so notified by the Secretary and requested to file a return."

37 **SECTION 6.9.(a)** G.S. 105-163.1(13) reads as rewritten:

38 **"§ 105-163.1. Definitions.**

39 The following definitions apply in this Article:

- 40 ...
41 (13) Wages. – The term has the same meaning as in section 3401 of the ~~Code~~ Code,
42 except the term does not include amounts paid to a nonresident employee for
43 a business, trade, profession, or occupation carried on in this State to perform
44 disaster-related work during a disaster response period at the request of a
45 critical infrastructure company. The definitions and provisions of
46 G.S. 166A-19.70A apply to this subdivision.

47"

48 **SECTION 6.9.(b)** G.S. 105-163.3(b) is amended by adding a new subdivision to
49 read:

50 "(b) Exemptions. – The withholding requirement does not apply to the following:

51 ...

1 (5) Compensation paid by a nonresident business or a critical infrastructure
2 company to an ITIN contractor who is a nonresident individual for a business,
3 trade, profession, or occupation carried on in this State to perform
4 disaster-related work during a disaster response period at the request of a
5 critical infrastructure company. The definitions and provisions of
6 G.S. 166A-19.70A apply to this subdivision."

7 **SECTION 6.9.(c)** G.S. 105-163.7(b) reads as rewritten:

8 "(b) Informational Return to Secretary. – Every employer shall annually file an
9 informational return with the Secretary that contains the information given on each of the
10 employer's written statements to an employee. The Secretary may require additional information
11 to be included on the informational return, provided the Secretary has given a minimum of 90
12 days' notice of the additional information required. The informational return is due on or before
13 January 31 of the succeeding year and must be filed in an electronic format as prescribed by the
14 Secretary. If the employer terminates its business or permanently ceases paying wages during the
15 calendar year, the informational return must be filed within 30 days of the last payment of
16 remuneration. The informational return required by this subsection is in lieu of the report required
17 by G.S. 105-154.

18 An employer that is not doing business in this State because it is a nonresident business
19 performing disaster-related work during a disaster response period at the request of a critical
20 infrastructure company is not required to file an information return with the Secretary. However,
21 the employer must furnish to an employee, upon request, any information necessary for that
22 person to properly file a State income tax return. The definitions and provisions in
23 G.S. 166A-19.70A apply to this paragraph."

24 **SECTION 6.10.** Part 2 of Article 36B of Chapter 105 of the General Statutes is
25 amended by adding a new section to read:

26 "**§ 105-449.69A. Temporary license during disaster response period.**

27 (a) Temporary License. – The Secretary may grant a temporary license to an applicant to
28 import, export, distribute, or transport motor fuel in this State in response to a disaster declaration.
29 The term "disaster declaration" has the same meaning as defined in G.S. 166A-19.3. The
30 temporary license expires upon the expiration of the disaster declaration. A temporary license
31 issued under this section may not be renewed or a new temporary license granted if the licensee
32 failed to file the required returns or make payments of the required taxes.

33 (b) Requirements. – To obtain a temporary license, a person must file an application with
34 the Secretary on a form prescribed by the Secretary within seven calendar days from the date of
35 the disaster declaration. An application must include all of the following information:

- 36 (1) The legal name of the business and the trade name, if applicable, under which
37 the person will transact business within the State.
38 (2) The federal identification number of the business or, if such number is
39 unavailable, the Social Security number of the owner.
40 (3) The location, with a street number address, of the principal office or place of
41 business and the location where records will be made available for inspection.
42 (4) Any other information required by the Secretary.

43 (c) Exceptions. – The Secretary may issue a temporary license under this section as an
44 importer, exporter, distributor, or transporter without requiring the applicant to file with the
45 Secretary a bond or an irrevocable letter of credit, as otherwise required by G.S. 105-449.72, and
46 without requiring the applicant to be authorized to transact business in this State with the
47 Secretary of State."

48 **SECTION 6.11.** This Part is effective when it becomes law and applies to disaster
49 declarations on or after that date.

50
51 **PART VII. EFFECTIVE DATE**

1 **SECTION 7.** Except as otherwise provided, this act is effective when it becomes
2 law.