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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2019

SESSION LAW 2020-58

HOUSE BILL 1080

AN ACT TO MAKE VARIOUS CHANGES TO THE REVENUE LAWS AND TO CODIFY THE INSURANCE REGULATORY CHARGE.

The General Assembly of North Carolina enacts:

PART I. IRC UPDATE

SECTION 1.(a) G.S. 105-228.90(b) reads as rewritten:

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

(#) CARES Act. – The Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136, March 27, 2020, 134 Stat. 359.

...

(1b) Code. – The Internal Revenue Code as enacted as of ~~January 1, 2019,~~ May 1, 2020, including any provisions enacted as of that date that become effective either before or after that date.

...."

SECTION 1.(b) The Revisor of Statutes is authorized to renumber the subdivisions of G.S. 105-228.90(b) 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 subsection.

SECTION 1.(c) G.S. 105-130.5(a) reads as rewritten:

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

...

(31) For taxable years 2019 and 2020, a taxpayer must add an amount equal to the amount by which the taxpayer's interest expense deduction under section 163(j) of the Code exceeds the interest expense deduction that would have been allowed under the Internal Revenue Code as enacted as of January 1, 2020, as calculated on a separate entity basis. The purpose of this subdivision is to decouple from the modification of limitation on business interest allowed under section 2306 of the CARES Act.

(32) The amount of any expense deducted under the Code to the extent that payment of the expense results in forgiveness of a covered loan pursuant to section 1106(b) of the CARES Act and the income associated with the forgiveness is excluded from gross income pursuant to section 1106(i) of the CARES Act. The term "covered loan" has the same meaning as defined in section 1106 of the CARES Act."

SECTION 1.(d) G.S. 105-153.5(a)(2)a. reads as rewritten:

"a. Charitable Contribution. – The amount allowed as a deduction for charitable contributions under section 170 of the Code for that taxable year. For taxable years 2014 through 2018, a taxpayer who elected to take the income exclusion under section 408(d)(8) of the Code for a qualified charitable distribution from an individual retirement plan by a person who has attained the age of 70 1/2 may deduct the amount that would have been allowed as a charitable deduction under section 170 of the Code had the taxpayer not elected to take the income exclusion. For taxable year 2020, notwithstanding G.S. 105-228.90(b)(1b), for purposes of this sub-subdivision the term "Code" means the Internal Revenue Code as enacted as of January 1, 2020. For taxable years beginning on or after January 1, 2021, a

taxpayer may only carry forward the charitable contributions from taxable year 2020 that exceed the applicable percentage limitation for the 2020 taxable year allowed under this sub-subdivision. The purpose for defining the Internal Revenue Code differently for the 2020 taxable year is to decouple from the modification of limitations on charitable contributions during 2020 allowed under section 2205 of the CARES Act."

SECTION 1.(e) G.S. 105-153.5(a)(2)b. reads as rewritten:

"b. Mortgage Expense and Property Tax. – The amount allowed as a deduction for interest paid or accrued during the taxable year under section 163(h) of the Code with respect to any qualified residence plus the amount allowed as a deduction for property taxes paid or accrued on real estate under section 164 of the Code for that taxable year. For taxable years ~~2014, 2015, 2016, and 2017,~~ 2014 through 2020, the amount allowed as a deduction for interest paid or accrued during the taxable year under section 163(h) of the Code with respect to any qualified residence shall not include the amount for mortgage insurance premiums treated as qualified residence interest. The amount allowed under this sub-subdivision may not exceed twenty thousand dollars ($20,000). For spouses filing as married filing separately or married filing jointly, the total mortgage interest and real estate taxes claimed by both spouses combined may not exceed twenty thousand dollars ($20,000). For spouses filing as married filing separately with a joint obligation for mortgage interest and real estate taxes, the deduction for these items is allowable to the spouse who actually paid them. If the amount of the mortgage interest and real estate taxes paid by both spouses exceeds twenty thousand dollars ($20,000), these deductions must be prorated based on the percentage paid by each spouse. For joint obligations paid from joint accounts, the proration is based on the income reported by each spouse for that taxable year."

SECTION 1.(f) G.S. 105-153.5(c2) reads as rewritten:

"(c2) Decoupling Adjustments. – In calculating North Carolina taxable income, a taxpayer must make the following adjustments to the taxpayer's adjusted gross income:

(1) For taxable years ~~2014, 2015, 2016, and 2017,~~ 2014 through 2020, the taxpayer must add the amount excluded from the taxpayer's gross income for the discharge of qualified principal residence indebtedness under section 108 of the Code. The purpose of this subdivision is to decouple from the income exclusion available under federal tax law. If the taxpayer is insolvent, as defined in section 108(d)(3) of the Code, then the addition required under this subdivision is limited to the amount of discharge of qualified principal residence indebtedness excluded from adjusted gross income under section 108(a)(1)(E) of the Code that exceeds the amount of discharge of indebtedness that would have been excluded under section 108(a)(1)(B) of the Code.

(2) For taxable ~~year 2014, 2015, 2016, and 2017,~~ years 2014 through 2020, the taxpayer must add the amount of the taxpayer's deduction for qualified tuition and related expenses under section 222 of the Code. The purpose of this subdivision is to decouple from the above-the-line deduction available under federal tax law.

...

(8) For taxable years 2013, 2014, 2015, 2016, or 2017, the taxpayer must add the amount of any 2018 net operating loss deducted and absorbed on a federal return under section 172 of the Code. The purpose of the adjustments made under this subdivision is to decouple from the net operating loss carryback provisions of section 2303 of the CARES Act. The addition under this subdivision is not required to the extent the 2018 net operating loss is carried back under the provisions of section 172(b)(1)(B) of the Code.

(9) For taxable years 2014, 2015, 2016, 2017, or 2018, the taxpayer must add the amount of any 2019 net operating loss deducted and absorbed on a federal return under section 172 of the Code. The purpose of the adjustments made under this subdivision is to decouple from the net operating loss carryback provisions of section 2303 of the CARES Act. The addition under this subdivision is not required to the extent the 2019 net operating loss is carried back under the provisions of section 172(b)(1)(B) of the Code.

(10) For taxable years 2015, 2016, 2017, 2018, or 2019, the taxpayer must add the amount of any 2020 net operating loss deducted and absorbed on a federal return under section 172 of the Code. The purpose of the adjustments made under this subdivision is to decouple from the net operating loss carryback provisions of section 2303 of the CARES Act. The addition under this subdivision is not required to the extent the 2020 net operating loss is carried back under the provisions of section 172(b)(1)(B) of the Code.

(11) For taxable years 2013, 2014, 2015, 2016, 2017, 2018, or 2019, the taxpayer must add the amount of any 2018, 2019, or 2020 net operating loss carried back and deducted on a federal return pursuant to section 2303(b) of the CARES Act but not absorbed in that year and carried forward to a subsequent year. The addition under this subdivision is not required to the extent an addition is required under G.S. 105-153.5(c)(6). The purpose of the adjustments made under this subdivision is to decouple from the net operating loss carryback provision of section 2303 of the CARES Act.

(12) For taxable years 2018, 2019, and 2020, the taxpayer must add an amount equal to the taxpayer's excess business loss, as defined under the provisions of section 461(*l*) of the Internal Revenue Code as enacted as of January 1, 2019. The addition under this subdivision is not required to the extent the loss is added under subdivision (8), (9), or (10) of this subsection.

(13) The taxpayer must add the amount by which the taxpayer's net operating loss carryforward deduction exceeds the amount allowed under the provisions of section 172(a)(2)(B) of the Internal Revenue Code as enacted as of January 1, 2019. This add-back only applies to net operating losses arising during taxable years 2018, 2019, and 2020.

(14) For taxable years 2021 through 2025, a taxpayer who made an addition under subdivision (8), (9), or (10) of this subsection may deduct twenty percent (20%) per tax year of the sum of the amount added under subdivisions (8), (9), and (10) of this subsection.

(15) A taxpayer who made an addition under subdivision (12) of this subsection may deduct twenty percent (20%) of the addition in each of the taxable years 2021 through 2025.

(16) A taxpayer who made an addition under subdivision (13) of this subsection may deduct twenty percent (20%) of the add-back in each of the taxable years 2021 through 2025.

(17) For taxable years 2019 and 2020, a taxpayer must add an amount equal to the amount by which the taxpayer's interest expense deduction under section 163(j) of the Code exceeds the interest expense deduction that would have been allowed under the Internal Revenue Code as enacted as of January 1, 2020. The purpose of this subdivision is to decouple from the modification of limitation on business interest allowed under section 2306 of the CARES Act.

(18) For taxable year 2020, a taxpayer must add the amount excluded from the taxpayer's gross income for payment by an employer, whether paid to the taxpayer or to a lender, of principal or interest on any qualified education loan, as defined in section 221(d)(1) of the Code, incurred by the taxpayer for education of the taxpayer. The purpose of this subdivision is to decouple from the exclusion for certain employer payments of student loans under section 2206 of the CARES Act.

(19) For taxable year 2020, a taxpayer must add the amount excluded from the taxpayer's gross income under section 62(a)(22) of the Code. The purpose of this subdivision is to decouple from the allowance of a partial above-the-line deduction of qualified charitable contributions under section 2204 of the CARES Act.

(20) A taxpayer must add the amount of any expense deducted under the Code to the extent that payment of the expense results in forgiveness of a covered loan pursuant to section 1106(b) of the CARES Act, and the income associated with the forgiveness is excluded from gross income pursuant to section 1106(i) of the CARES Act. The term "covered loan" has the same meaning as defined in section 1106 of the CARES Act."

PART II. EXCISE TAX CHANGES

SECTION 2.1. G.S. 105-113.4(10) reads as rewritten:

"(10) Sale. – A ~~transfer,~~ transfer of possession, transfer of ownership, a trade, an exchange, or a barter, in any manner or by any means, with or without consideration."

SECTION 2.2.(a) G.S. 105-113.4A reads as rewritten:

"§ 105-113.4A. Licenses.

(a) General. – To obtain or renew a license required by this Article, an applicant must file an application with the Secretary on a form provided by the Secretary and pay the tax due for the license. An application must include the applicant's name, address, federal employer identification number, and any other information required by the Secretary. A license is not transferable or assignable and must be displayed in a conspicuous place at ~~the~~ each place of business for which it is issued.

...

(h) Lists. – The Secretary must ~~provide~~ make available the list required under subdivision (3) of subsection (g) of this section upon request of a manufacturer that is a licensee under this Article. The list must state the name, account number, and business address of each licensee on the list."

SECTION 2.2.(b) G.S. 105-259(b)(50) reads as rewritten:

"(50) To ~~provide public access to~~ make available a list containing the name, physical address, and account number of entities licensed under Article 2A of this Chapter to ~~aid in the administration of the tobacco products tax.~~ all entities licensed under Article 2A of this Chapter."

SECTION 2.2.(c) G.S. 105-449.77(b) reads as rewritten:

"(b) Lists. – The Secretary must ~~annually give~~ make available to each licensee a list ~~to each licensee~~ of all the licensees under this Article. The list must state the name, account number, and business address of each licensee on the list. The Secretary must ~~send a monthly~~ update ~~of~~ the list ~~to each licensed refiner or licensed supplier and to any other licensee that requests a copy of the list.~~ monthly."

SECTION 2.2.(d) G.S. 105-449.139(c) reads as rewritten:

"(c) Lists. – The Secretary must ~~give~~ make available a list of licensed alternative fuel providers to each licensed bulk end-user and licensed retailer. The Secretary must also ~~give~~ make available a list of licensed bulk end-users and licensed retailers to each licensed alternative fuel provider. A list must state the name, account number, and business address of each licensee on the list. The Secretary must ~~send an annual~~ update ~~of a list to each licensee, as appropriate.~~ the lists required under this section annually."

SECTION 2.3.(a) G.S. 105-113.4B reads as rewritten:

"§ 105-113.4B. Cancellation or revocation of license.

(a) ~~Reasons.~~ Cancellation. – The Secretary may cancel a license issued under this Article upon the written request of the ~~licensee and the immediate~~ licensee. The licensee's request must include a proposed effective date of cancellation. The licensee must return ~~of~~ the license to the ~~Secretary.~~ Secretary on or before the proposed effective date. If the licensee's request does not include a proposed effective date of cancellation, the license is cancelled 15 days after the Department receives the written request. If the license is unable to be returned, the licensee must include a written statement of the reasons, satisfactory to the Secretary, why the license cannot be returned. The Secretary shall notify the licensee when the license is cancelled.

(a1) Revocation. – The Secretary may summarily revoke a license issued under this Article when the Secretary finds that the licensee is incurring liability for the tax imposed under this Article after failing to pay a tax when due under this Article. In addition, the Secretary may revoke the license of a licensee that commits one or more of the following acts after holding a hearing on whether the license should be revoked:

...

(b) Procedure. – The Secretary must send a person whose license is summarily revoked a notice of the revocation and must give the person an opportunity to have a hearing on the revocation within 10 days after the revocation. The Secretary must give a person whose license may be revoked after a hearing at least 10 days' written notice of the date, time, and place of the hearing. A notice of a summary license revocation and a notice of hearing must be sent by certified mail to the last known address of the licensee. If the person whose license may be revoked fails to attend the noticed hearing, the license revocation is effective 15 days after the noticed hearing.

...."

SECTION 2.3.(b) G.S. 105-449.76 reads as rewritten:

"§ 105-449.76. Cancellation or revocation of license.

(a) ~~Reasons.~~ Cancellation. – The Secretary may cancel a license issued under this Article upon the written request of the ~~licensee~~ licensee. The licensee's request must include a proposed effective date of cancellation and ~~the immediate~~ must return ~~of~~ the license to the ~~Secretary.~~ Secretary on or before the proposed effective date. If the licensee's request does not include a proposed effective date of cancellation, the license is cancelled 15 days after the Department receives the written request. If the license is unable to be returned, the licensee must include a written statement of the reasons, satisfactory to the Secretary, why the license cannot be returned. The Secretary shall notify the licensee when the license is cancelled.

(a1) Revocation. – The Secretary may summarily revoke a license issued under this Article when the Secretary finds that the licensee is incurring liability for the tax imposed under this Article after failing to pay a tax when due under this Article. In addition, the Secretary may revoke the license of a licensee that commits one or more of the acts listed in G.S. 105-449.120 after holding a hearing on whether the license should be revoked.

(b) Procedure. – The Secretary must send a person whose license is summarily revoked a notice of the revocation and must give the person an opportunity to have a hearing on the revocation within 10 days after the revocation. The Secretary must give a person whose license may be revoked after a hearing at least 10 days' written notice of the date, time, and place of the hearing. A notice of a summary license revocation and a notice of hearing must be sent by certified mail to the last known address of the licensee. If the person whose license may be revoked fails to attend the noticed hearing, the license revocation is effective 15 days after the noticed hearing.

...."

SECTION 2.4. G.S. 105-113.4E reads as rewritten:

"§ 105-113.4E. Modified risk tobacco products.

...

(c) Substantiation. – Generally, tobacco products are subject to the tax imposed under this Article, unless a ~~taxpayer~~ manufacturer substantiates that a product qualifies as a modified risk tobacco product and is subject to a reduced rate of tax in accordance with subsection (b) of this section. A ~~taxpayer~~ manufacturer may substantiate that a product qualifies as a modified risk tobacco product by providing the Department a copy of the order issued by the United States Food and Drug Administration verifying the product as a modified risk tobacco product. Once the ~~taxpayer~~ manufacturer provides the order to the Department, the Department must reduce the tax due as required under subsection (b) of this section effective on the first day of the next calendar month. If the order indicating a product qualifies as a modified risk tobacco product is renewed, the manufacturer must provide the order renewing the product ~~must be provided~~ to the Department within 14 days of receipt.

(d) Forfeiture. – If the product no longer qualifies as a modified risk tobacco product, the rate reduction under subsection (b) of this section is forfeited. A product no longer qualifies when the order qualifying the product as a modified risk tobacco product expires and is not renewed or the order is withdrawn by the United States Food and Drug Administration. The ~~taxpayer~~ manufacturer must provide notice of such expiration or withdrawal to the Department within 14 days of receipt. Upon determination by the Department that the product no longer qualifies as a modified risk tobacco product, the Department must determine if the taxpayer paid a reduced rate after the order expired or was withdrawn. If the taxpayer did avoid taxes, the taxpayer is liable for all past taxes avoided as a result of the product no longer qualifying plus interest at the rate established under G.S. 105-241.21, computed from the date the taxes would have been due if the rate reduction had not been allowed. The past taxes and interest are due 30 days after the date the rate reduction is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236."

SECTION 2.5.(a) Part 1 of Article 2A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-113.4G. Records to be kept.

Every person required to be licensed under this Article and every person required to make reports under this Article shall keep complete and accurate records of all purchases, inventories, sales, shipments, and deliveries of tobacco products, and other information

as required under this Article. The records shall be in the form prescribed by the Secretary and shall be open at all times for inspection by the Secretary or an authorized representative of the Secretary.

These records shall be safely preserved for a period of three years in a manner to ensure their security and accessibility for inspection by the Department."

SECTION 2.5.(b) G.S. 105-113.26 and G.S. 105-113.40 are repealed.

SECTION 2.6.(a) G.S. 105-113.13(b) reads as rewritten:

"(b) The Secretary may require a licensed distributor to furnish a bond in an amount that adequately protects the State from ~~loss if the licensed distributor fails~~ a licensed distributor's failure to pay taxes due under this Part. A bond must be conditioned on compliance with this Part, payable to the State, and in the form required by the Secretary. The amount of the bond is two times the licensed distributor's average expected monthly tax liability under this Article, as determined by the Secretary, provided the amount of the bond may not be less than two thousand dollars ($2,000) and may not be more than two million dollars ($2,000,000). The Secretary should periodically review the sufficiency of bonds required of the licensed distributor and increase the required bond amount if the amount no longer covers the anticipated tax liability of the licensed distributor and decrease the amount if the Secretary finds that a lower bond amount will protect the State adequately from loss.

For purposes of this section, a licensed distributor may substitute an irrevocable letter of credit for the secured bond required by this section. The letter of credit must be issued by a commercial bank acceptable to the Secretary and available to the State as a beneficiary. The letter of credit must be in a form acceptable to the Secretary, conditioned upon compliance with this Article, and in the amounts stipulated in this section."

SECTION 2.6.(b) G.S. 105-113.38 reads as rewritten:

"§ 105-113.38. Bond or irrevocable letter of credit.

The Secretary may require a wholesale dealer or a retail dealer to furnish a bond in an amount that adequately protects the State from ~~loss if the dealer fails~~ a wholesale dealer's or a retail dealer's failure to pay taxes due under this Part. A bond must be conditioned on compliance with this Part, payable to the State, and in the form required by the Secretary. The amount of the bond is two times the wholesale or retail dealer's average expected monthly tax liability under this Article, as determined by the Secretary, provided the amount of the bond may not be less than two thousand dollars ($2,000) and may not be more than two million dollars ($2,000,000). The Secretary should periodically review the sufficiency of bonds required of dealers, and increase the amount of a required bond when the amount of the bond furnished no longer covers the anticipated tax liability of the wholesale dealer or retail dealer and decrease the amount when the Secretary determines that a smaller bond amount will adequately protect the State from loss.

For purposes of this section, a wholesale dealer or a retail dealer may substitute an irrevocable letter of credit for the secured bond required by this section. The letter of credit must be issued by a commercial bank acceptable to the Secretary and available to the State as a beneficiary. The letter of credit must be in a form acceptable to the Secretary, conditioned upon compliance with this Article, and in the amounts stipulated in this section."

SECTION 2.7. G.S. 105-113.27(b) reads as rewritten:

"(b) ~~No~~ Except as otherwise provided in this Article, no person shall sell or offer for sale non-tax-paid cigarettes."

SECTION 2.8.(a) G.S. 105-187.76(2) reads as rewritten:

"(2) Commission. – The ~~Mining and Energy~~ Oil and Gas Commission."

SECTION 2.8.(b) G.S. 105-187.77(d) reads as rewritten:

"(d) Marginal Gas Rate. – The producer of a proposed or existing gas well may apply to the ~~Mining and Energy~~ Commission for a determination that the well qualifies as a marginal gas well. The producer may elect to have the gas taxed at the marginal gas rate or the gas rate. For severance of gas from a marginal gas well the percentage rate is six-tenths of one percent (0.6%)."

SECTION 2.8.(c) G.S. 105-187.80(h) reads as rewritten:

"(h) Commission Determination. – To claim the marginal gas rate, the producer or taxpayer of a proposed or existing gas well shall provide to the Secretary proof that the ~~Mining and Energy~~ Commission has determined the well qualifies as a marginal gas well."

SECTION 2.9. G.S. 105-449.37(a)(1) reads as rewritten:

"(1) International Fuel Tax Agreement. – The Articles of Agreement adopted by the International Fuel Tax Association, Inc., as amended as of ~~January 1, 2017.~~ December 1, 2018."

SECTION 2.10.(a) G.S. 105-449.47(a1) reads as rewritten:

"(a1) License and Decal. – When the Secretary licenses a motor carrier, the Secretary must issue a license for the motor carrier and a set of decals for each qualified motor vehicle. A motor carrier must keep records of decals issued to it and must be able to account for all decals it receives from the Secretary. Licenses and decals issued by the Secretary are for a calendar year. All decals issued by the Secretary remain the property of the State. The Secretary may revoke a license or a decal when a motor carrier fails to comply with this Article or Article 36C or 36D of this Subchapter.

A motor carrier must carry a copy of its license in each motor vehicle operated by the motor carrier when the vehicle is in this State. ~~A~~ Unless operating under a temporary permit under G.S. 105-449.49, a motor vehicle must clearly display one decal on each side of the vehicle at all times. A decal must be affixed to the qualified motor vehicle for which it was issued in the place and manner designated by the authority that issued it."

SECTION 2.10.(b) G.S. 105-449.49 reads as rewritten:

"§ 105-449.49. Temporary permits.

(a) ~~Issuance.~~ Permitting Service. – Upon application to the Secretary and payment of a fee of fifty dollars ($50.00), a permitting service may obtain a temporary permit authorizing a motor carrier to operate a vehicle in the State for three days without licensing the vehicle in accordance with G.S. 105-449.47. The permitting service may sell the temporary permit to a motor carrier. A motor carrier to whom a temporary permit has been issued may elect not to report its operation of the vehicle during the three-day period. Fees collected under this subsection are credited to the Highway Fund.

...

(c) Licensed Motor Carrier. – A licensed motor carrier in North Carolina, who is subject to the International Fuel Tax Agreement, may apply for a temporary permit authorizing the motor carrier to operate a qualified motor vehicle in the State for 30 days without a decal. The licensed motor carrier must be in compliance with this Article, and the application must be on a form prescribed by the Secretary and contain information required by the Secretary.

(d) Permit. – A motor carrier operating under a temporary permit issued pursuant to this section must keep a copy of the permit in the motor vehicle."

SECTION 2.11. G.S. 105-449.69A reads as rewritten:

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

(a) Temporary License. – The Secretary may grant a temporary license to an applicant to import, export, distribute, or transport motor fuel in this State in response to a state of emergency or a disaster declaration. The ~~term~~ terms "state of emergency" and "disaster declaration" ~~has~~ have the same meaning as defined in G.S. 166A-19.3. ~~The temporary license expires upon the expiration of the disaster declaration.~~ A temporary license is effective on the date the applicant engages in business in this State and expires 30 days after that date. Prior to the expiration of the temporary license, the licensee may request, on a form prescribed by the Secretary, that the license be extended for an additional 30 days, if the state of emergency or disaster declaration remains in effect. A temporary license issued under this section may not be renewed or a new temporary license granted if the licensee failed to ~~file the required returns or make payments of the required taxes.~~ comply with this Article.

(b) Requirements. – To obtain a temporary license, a person must file an application with the Secretary on a form prescribed by the Secretary within seven calendar days ~~from the date of the disaster declaration. An~~ of engaging in business in this State. The application must be filed prior to the termination of the state of emergency or disaster declaration and must include all of the following information:

...."

SECTION 2.12. G.S. 105-449.134 reads as rewritten:

"§ 105-449.134. Denial, revocation, or cancellation of license.

The Secretary may deny an application for a license or cancel or revoke a license under this Article for the same reasons that the Secretary may deny an application for a license or cancel or revoke a license under Article 36C of this Chapter. The procedure in Article 36C for cancelling or revoking a license applies to the cancellation or revocation of a license under this Article."

SECTION 2.13. G.S. 119-19(b) reads as rewritten:

"(b) Procedure. – The Secretary must send a person whose license is summarily revoked a notice of the revocation and must give the person an opportunity to have a hearing on the revocation within 10 days after the revocation. The Secretary must give a person whose license may be revoked after a hearing at least 10 days' written notice of the date, time, and place of the hearing. A notice of a summary license revocation and a notice of hearing must be sent by ~~registered~~ certified mail to the last known address of the licensee."

PART III. SALES AND USE TAX CHANGES

SECTION 3.1.(a) G.S. 105-164.14 reads as rewritten:

"§ 105-164.14. Certain refunds authorized.

...

(b) Nonprofit Entities and Hospital Drugs. – A nonprofit entity is allowed a semiannual refund of sales and use taxes paid by it under this Article on direct purchases of ~~tangible personal property and services~~ items for use in carrying on the work of the nonprofit entity. Sales and use tax liability indirectly incurred by a nonprofit entity through reimbursement to an authorized person of the entity for the purchase of tangible personal property and services for use in carrying on the work of the nonprofit entity is considered a direct purchase by the entity. Sales and use tax liability indirectly incurred by a nonprofit entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the nonprofit entity and is being erected, altered,

or repaired for use by the nonprofit entity for carrying on its nonprofit activities is considered a sales or use tax liability incurred on direct purchases by the nonprofit entity. The refund allowed under this subsection does not apply to purchases of electricity, telecommunications service, ancillary service, piped natural gas, video programming, or a prepaid meal plan. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund for the first six months of a calendar year is due the following October 15; a request for a refund for the second six months of a calendar year is due the following April 15. The aggregate annual refund amount allowed an entity under this subsection for the State's fiscal year may not exceed thirty-one million seven hundred thousand dollars ($31,700,000).

The refunds allowed under this subsection do not apply to an entity that is owned and controlled by the United States or to an entity that is owned or controlled by the State and is not listed in this subsection. A hospital that is not listed in this subsection is allowed a semiannual refund of sales and use taxes paid by it on over-the-counter drugs purchased for use in carrying out its work. The following nonprofit entities are allowed a refund under this subsection:

...

(c) Certain Governmental Entities. – A governmental entity listed in this subsection is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of ~~tangible personal property and services.~~ items. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection. The refund allowed under this subsection does not apply to purchases of electricity, telecommunications service, ancillary service, piped natural gas, video programming, or a prepaid meal plan. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year.

This subsection applies only to the following governmental entities:

...."

SECTION 3.1.(b) This section becomes effective July 1, 2020, and applies to purchases made on or after that date.

SECTION 3.2. G.S. 105-164.16(d) reads as rewritten:

"(d) Use Tax on ~~Out-of-State~~ Purchases. – Use tax payable by an individual who purchases an item, other than a boat or aircraft, ~~outside the State~~ for a nonbusiness purpose is due on an annual basis. For an individual who is not required to file an individual income tax return under Part 2 of Article 4 of this Chapter, the annual reporting period ends on the last day of the calendar year and a use tax return is due by the following April 15. For an individual who is required to file an individual income tax return, the annual reporting period ends on the last day of the individual's income tax year, and the use tax must be paid on the income tax return as provided in G.S. 105-269.14."

SECTION 3.3.(a) G.S. 105-164.4J reads as rewritten:

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

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

~~(1) Gross sales in excess of one hundred thousand dollars ($100,000).~~

~~(2) Two hundred or more separate transactions.~~

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

...."

SECTION 3.3.(b) This section becomes effective July 1, 2020, and applies to sales occurring on or after that date.

SECTION 3.4. G.S. 105-164.4(a)(1) reads as rewritten:

"(1) The general rate of tax applies to the following items sold at retail:

...

b. The sales price of certain digital property. The tax applies regardless of whether the purchaser of the property has a right to use it permanently or to use it without making continued payments. The sale at retail or the use, storage, or consumption in this State of a digital code is treated the same as the sale at retail or the use, storage, or consumption in this State of certain digital property for which the digital code relates."

SECTION 3.5.(a) G.S. 153A-154.1 reads as rewritten:

"§ 153A-154.1. Uniform ~~penalties~~ provisions for local meals taxes.

(a) Scope. – This section applies to every county authorized by the General Assembly to levy a meals tax. To the extent this section conflicts with any provision of a local act, this section supersedes that provision.

(b) Collection. – A retailer who is required to remit to the Department of Revenue the State and local sales and use tax is required to remit the local meals tax on prepared food and beverages to the taxing county on and after the effective date of the levy of the local meals tax.

~~(a)~~ (c) Penalties. – ~~Notwithstanding any other provision of law, the~~ The civil and criminal penalties that apply to State sales and use taxes under Chapter 105 of the General Statutes apply to local meals taxes. The governing board of a taxing county has the same authority to waive the penalties for a local meals tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

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

(1) Meals tax. – A tax on prepared food and beverages.

(2) Prepared food and beverages. – The term means both of the following:

a. Prepared food, as defined in G.S. 105-164.3.

b. An alcoholic beverage, as defined in G.S. 18B-101, that meets at least one of the conditions of prepared food under G.S. 105-164.3.

~~(b) Scope. – This section applies to every county authorized by the General Assembly to levy a meals tax. As used in this section, the term "meals tax" means a tax on prepared food and drink.~~"

SECTION 3.5.(b) G.S. 160A-214.1 reads as rewritten:

"§ 160A-214.1. Uniform ~~penalties~~ provisions for local meals taxes.

(a) Scope. – This section applies to every city authorized by the General Assembly to levy a meals tax. To the extent this section conflicts with any provision of a local act, this section supersedes that provision.

(b) Collection. – A retailer who is required to remit to the Department of Revenue the State and local sales and use tax is required to remit the local meals tax on prepared food and beverages to the taxing city on and after the effective date of the levy of the local meals tax.

~~(a)~~ (c) Penalties. – ~~Notwithstanding any other provision of law, the~~ The civil and criminal penalties that apply to State sales and use taxes under Chapter 105 of the General Statutes apply to local meals taxes. The governing board of a taxing city has the same authority to waive the penalties for a meals tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

~~(b) Scope. – This section applies to every city authorized by the General Assembly to levy a meals tax.~~

~~(c)~~ (d) Definitions. – The following definitions apply in this section:

(1) City. – A municipality.

(2) Meals tax. – A tax on prepared food and ~~drink.~~ beverages.

(3) Prepared food and beverages. – The term means both of the following:

a. Prepared food, as defined in G.S. 105-164.3.

b. An alcoholic beverage, as defined in G.S. 18B-101, that meets at least one of the conditions of prepared food under G.S. 105-164.3."

SECTION 3.5.(c) This section becomes effective July 1, 2020, and applies to sales occurring on or after that date.

SECTION 3.6. G.S. 105-244.4A, as enacted by Section 3(d) of S.L. 2020-6, reads as rewritten:

"§ 105-244.4A. Grace period from sales and use tax enforcement actions with respect to the sale of certain digital property by certain continuing education and professional development providers.

The Department shall take no action to assess a person for any sales and use tax due for a filing period beginning on or after October 1, 2019, and ending prior to August 1, 2020, with respect to the retail sale of digital audio works or digital audiovisual works that meet either of the conditions listed in this section. This section does not apply to a person that received specific written advice from the Secretary for the transactions at issue for the laws in effect for the applicable period or to a person that collected tax and failed to remit it to the Department. The conditions are:

(1) The digital audio works or digital audiovisual works consist of continuing education instruction approved or required by an occupational licensing board.

(2) The digital audio works or digital audiovisual works consist of professional development instruction for school board members, administrators, or staff."

PART IV. PERSONAL INCOME TAX CHANGES

SECTION 4.1. G.S. 105-131.8(a) reads as rewritten:

"(a) For purposes of ~~G.S. 105-151~~ G.S. 105-153.9 and G.S. 105-160.4, each resident shareholder is considered to have paid a tax imposed on the shareholder in an amount equal to the shareholder's pro rata share of any net income tax paid by the S Corporation to a state that does not measure the income of S Corporation shareholders by the income of the S Corporation. For purposes of the preceding sentence, the term "net income tax" means any tax imposed on or measured by a corporation's net income."

SECTION 4.2. G.S. 105-153.5(b)(10) is repealed.

SECTION 4.3. G.S. 105-154(d) reads as rewritten:

"(d) Payment of Tax on Behalf of Nonresident Owner or Partner. – If a business conducted in this State is owned by a nonresident individual or by a partnership having one or more nonresident members, the manager of the business shall report information concerning the earnings of the business in this State, the distributive share of the income of each nonresident owner or partner, and any other information required by the Secretary. The distributive share of the income of each nonresident partner includes any guaranteed payments made to the partner. The manager of the business shall pay with the return the tax on each nonresident owner or partner's share of the income computed at the rate levied on individuals under G.S. 105-153.7. The business may deduct the payment for each nonresident owner or partner from the owner or partner's distributive share of the income of the business in this State. If the nonresident partner is not an individual and the partner has executed an affirmation that the partner will pay the tax with its corporate, partnership, trust, or estate income tax return, the manager of the business is not required to pay the tax on the partner's share. In this case, the manager shall include a copy of the affirmation with the report required by this subsection. The affirmation must be annually filed by the nonresident partner and submitted by the manager by the due date of the report required in this subsection. Otherwise, the manager of the business is required to pay the tax on the nonresident partner's share. Notwithstanding the provisions of G.S. 105-241.7(b), the manager of the business may not request a refund of an overpayment made on behalf of a nonresident owner or partner if the manager of the business has previously filed the return and paid the tax due. The nonresident owner or partner may, on its own income tax return, request a refund of an overpayment made on its behalf by the manager of the business within the provisions of G.S. 105-241.6."

SECTION 4.4.(a) G.S. 105-228.90(b) reads as rewritten:

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

...

(9) Taxpayer Identification Number (TIN). – An identification number issued by the Social Security Administration or the Internal Revenue Service, excluding a Taxpayer Identification Number for Pending U.S. Adoptions (ATIN) and Preparer Taxpayer Identification Number (PTIN).

(10) Truncated Taxpayer Identification Number (TTIN). – This term has the same meaning as defined in Treasury Regulation section 301.6109-4."

SECTION 4.4.(b) Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-252.1. Use of a TTIN.**

A TTIN may not be used on any return, statement, or other document required to be filed with or furnished to the Department unless specifically authorized in this Chapter."

SECTION 4.4.(c) G.S. 105-163.1(12a) reads as rewritten:

"(12a) Taxpayer Identification Number (TIN). – ~~An identification number issued by the Social Security Administration or the Internal Revenue Service excluding Taxpayer Identification Number for Pending U.S. Adoptions (ATIN) and Preparer Taxpayer Identification Number (PTIN).~~ Defined in G.S. 105-228.90(b)(9)."

SECTION 4.5. G.S. 105-241.13 reads as rewritten:

"**§ 105-241.13. Action on request for review.**

...

(b) Conference. – When the Department and the taxpayer agree that an action taken under subsection (a) or (a1) of this section resolves the taxpayer's objection to the Department's proposed denial of a refund or a proposed assessment, the Department does not need to take further action on the request for review. When an action taken under subsection (a) or (a1) of this section does not resolve the taxpayer's objection to the Department's proposed denial of a refund or a proposed assessment, the Department must schedule a conference with the taxpayer. The Department must set the time and place for the conference, which may include a conference by telephone, and must send the taxpayer notice of the designated time and place. The Department must send the notice at least 30 days

before the date of the conference or, if the Department and the taxpayer agree, within a shorter period. The Department and the taxpayer may reschedule the conference by mutual agreement. If a taxpayer fails to attend a scheduled conference on the proposed denial of a refund or a proposed assessment, the Department and the taxpayer are considered to be unable to resolve the taxpayer's objection.

The conference is an informal proceeding at which the taxpayer and the Department must attempt to resolve the case. Testimony under oath is not taken, and the rules of evidence do not apply. A taxpayer may designate a representative to act on the taxpayer's behalf. The taxpayer may present any objections to the proposed denial of refund or proposed assessment at the conference and is not limited by the explanation set forth in the taxpayer's request for review.

(c) After Conference. – One of the following must occur after the Department conducts a conference on a proposed denial of a refund or a proposed assessment:

...

(3) The Department and the taxpayer are unable to resolve the taxpayer's objection to the proposed denial of the refund or proposed assessment. ~~If a taxpayer fails to attend a scheduled conference on the proposed denial of a refund or a proposed assessment without prior notice to the Department, the Department and the taxpayer are considered to be unable to resolve the taxpayer's objection.~~"

PART V. CORPORATE TAX CHANGES

SECTION 5.1.(a) G.S. 105-122(b)(2) reads as rewritten:

"(2) An addition for the amount of indebtedness the corporation owes ~~to a parent, a subsidiary, an affiliate, or a noncorporate entity in which the corporation or an affiliated group of corporations owns directly or indirectly more than fifty percent (50%) of the capital interests of the noncorporate entity. The amount added back to the corporation's net worth may be further adjusted if part of the capital of the creditor is capital borrowed from a source other than a parent, a subsidiary, or an affiliate. The debtor corporation may deduct a proportionate part of the indebtedness based on the ratio of the borrowed capital of the creditor to the total assets of the creditor. For purposes of this subdivision, borrowed capital does not include indebtedness incurred by a bank arising out of the receipt of a deposit and evidenced by a certificate of deposit, a passbook, a cashier's check, a certified check, or other similar document.~~ that creates net interest expense, as defined in G.S. 105-130.7B(b)(3), but does not create qualified interest expense, as defined in G.S. 105-130.7B(b)(4)."

SECTION 5.1.(b) This section is effective for taxable years beginning on or after January 1, 2021, and applicable to the calculation of franchise tax reported on the 2020 and later corporate income tax returns.

SECTION 5.2.(a) G.S. 105-130.4(*l*1) reads as rewritten:

"(*l*1) Wholesale Content Distributors. – A wholesale content distributor's market for receipts is in this State as provided in G.S. 105-130.4A. In no event may the amount of ~~income apportioned~~ receipts sourced to this State be less than the amount determined under this subsection. The amount determined under this subsection is the total domestic gross receipts of the wholesale content distributor from advertising and licensing activities multiplied by two percent (2%). For purposes of this section, the term "wholesale content distributor" has the same meaning as defined in G.S. 105-130.4A."

SECTION 5.2.(b) G.S. 105-122(c1)(1) reads as rewritten:

"(1) Statutory. – A corporation that is subject to income tax under Article 4 of this Chapter must apportion its net worth by using the fraction it applies in apportioning its income under that Article. A corporation that is not subject to income tax under Article 4 of this Chapter must apportion its net worth by using the fraction it would be required to apply in apportioning its income if it were subject to that Article. ~~The apportionment fraction for a wholesale content distributor, as that term is defined in G.S. 105-130.4A, shall not be less than two percent (2%).~~ The apportionment method set out in this subdivision is considered the statutory method of apportionment and is presumed to be the best method of determining the amount of a corporation's net worth attributable to the corporation's business in this State."

SECTION 5.2.(c) This section is effective for taxable years beginning on or after January 1, 2020.

SECTION 5.3. Subdivisions (a)(21) and (b)(25) of G.S. 105-130.5 are repealed.

SECTION 5.4. G.S. 105-130.5A(k) reads as rewritten:

"(k) Proposed Assessment or Refund. – If the Secretary redetermines the State net income of the corporation in accordance with this section by adjusting the State net income of the corporation or requiring a combined return, the Secretary shall issue a proposed assessment or refund upon making such redetermination. ~~The~~ When a refund is determined in whole or part by a proposed assessment to an affiliated group member under this section, the refund shall not be issued until the proposed assessment to the affiliated group member has become collectable under G.S. 105-241.22. The amount of the refund shall reflect any changes made by the Department under this section. Otherwise, the procedures for a proposed assessment or a refund in Article 9 of Chapter 105 shall be applicable to proposed assessments and refunds made under this section."

SECTION 5.5. G.S. 105-130.11(b)(4) is repealed.

PART VI. TAX ENFORCEMENT AND ADMINISTRATION CHANGES

SECTION 6.1. G.S. 105-236.1(a)(3) reads as rewritten:

"(3) The following criminal offenses when they involve a tax imposed under Chapter 105 of the General Statutes:

...

h. G.S. 105-259 (Secrecy of tax information)."

SECTION 6.2.(a) G.S. 105-241.8(b) is amended by adding a new subdivision to read:

"(2a) Failure to pay trust taxes. – If a taxpayer, as a trustee, collects taxes on behalf of the State, but fails to remit all the taxes held in trust when due, the period for proposing an assessment is the later of the following:

a. Ten years after the due date of the return.

b. Ten years after the taxpayer filed the return."

SECTION 6.2.(b) This section is effective when it becomes law and applies to assessments not barred by the statute of limitations prior to that date.

SECTION 6.3. G.S. 105-242.2 is amended by adding a new subsection to read:

"(f) Scope. – This section shall not apply to, or limit, the criminal liability of any person."

SECTION 6.4.(a) G.S. 105-243.1 reads as rewritten:

"§ 105-243.1. Collection of tax debts.

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

(1) Overdue tax debt. – Any part of a tax debt that remains unpaid ~~90~~ 60 days or more after it becomes collectible under G.S. 105-241.22. The term does not include a tax debt for which the taxpayer entered into an installment agreement for the tax debt under G.S. 105-237 within ~~90~~ 60 days after the tax debt became collectible, if the taxpayer has not failed to make any payments due under the installment agreement.

...

(d) Fee. – A collection assistance fee is imposed on an overdue tax ~~debt that remains unpaid 60 days or more after the tax debt is deemed collectible under G.S. 105-241.22.~~ debt. In order to impose a collection assistance fee on a tax debt, the Department must notify the taxpayer that the fee will be imposed ~~if the tax debt is not paid in full within 60 days after the date the notice of collection was mailed to the taxpayer.~~ in accordance with this section at least 60 days prior to its imposition. The fee notice may be included on the notice of collection. The fee is collectible as part of the debt. The Secretary may waive the fee pursuant to G.S. 105-237 to the same extent as if it were a penalty.

The amount of the collection assistance fee is twenty percent (20%) of the amount of the overdue tax debt. If a taxpayer pays only part of an overdue tax debt, the payment is credited proportionally to fee revenue and tax revenue.

...."

SECTION 6.4.(b) Section 5.1(b) of S.L. 2019-169 reads as rewritten:

"**SECTION 5.1.(b)** This section becomes effective ~~January 1, 2020,~~ August 1, 2020, and applies to tax debts that become collectible on or after that date."

SECTION 6.4.(c) Subsection (a) of this section becomes effective August 1, 2020, and applies to tax debts that become collectible on or after that date. The remainder of this section is effective when it becomes law.

SECTION 6.5. G.S. 93B-1(3) reads as rewritten:

"(3) State agency licensing board. – Any State agency staffed by full-time State employees, which as part of their regular functions issue licenses. This section does not apply to the North Carolina Criminal Justice Education and Training Standards ~~Commission and~~ Commission, the North Carolina Sheriffs' Education and Training Standards ~~Commission.~~ Commission, and the North Carolina Department of Revenue. The following is a nonexclusive list of State agency licensing boards and the profession or occupation for which the board, agency, or officer may issue licenses:

...."

SECTION 6.6. Of the funds generated in the 2020-2021 fiscal year by the Department of Revenue's collection assistance fee, imposed under G.S. 105-243.1, the Department may use up to five hundred thousand dollars ($500,000) to implement Section 8.1 of S.L. 2019-246.

PART VII. EXTEND CERTAIN SUNSETS

SECTION 7.1. G.S. 105-269.8(c) reads as rewritten:

"(c) Sunset. – This section expires for taxable years beginning on or after January 1, ~~2021.~~ 2026."

SECTION 7.2. G.S. 160A-239.1(b) reads as rewritten:

"(b) Sunset. – This Article expires July 1, ~~2020,~~ 2025, for projects that have not been approved under a final assessment resolution. The expiration does not affect the validity of assessments imposed or to be imposed or bonds issued or authorized or to be issued or authorized under the provisions of this Article if a final assessment resolution has been adopted prior to the effective date of the expiration."

SECTION 7.3. Section 3 of S.L. 2016-118 reads as rewritten:

"**SECTION 3.** This act is effective when it becomes law and expires July 1, ~~2021.~~ 2026. The expiration does not affect the validity of any rate adjustment surcharge mechanism imposed or authorized under the provisions of this act prior to the effective date of the expiration."

SECTION 7.4. G.S. 143B-437.62 reads as rewritten:

"§ 143B-437.62. Expiration.

The authority of the Committee to award new grants expires January 1, ~~2021.~~ 2030."

PART VIII. INSURANCE REGULATORY CHARGE

SECTION 8. G.S. 58-6-25 reads as rewritten:

"§ 58-6-25. Insurance regulatory charge.

...

(b) Rates. – The rate of the charge for each taxable year shall be ~~the percentage rate established by the General Assembly.~~ six and one-half percent (6.5%). When the Department prepares its budget request for each upcoming fiscal year, the Department shall propose a percentage rate of the charge levied in this section. The Governor shall submit that proposed rate to the General Assembly each fiscal year. ~~The General Assembly shall set by law the percentage rate of the charge levied in this section. The~~ It is the intent of the General Assembly (i) that the percentage rate ~~may~~ not exceed the rate necessary to generate funds sufficient to defray the estimated cost of the operations of the Department for each upcoming fiscal year, including a reasonable margin for a reserve ~~fund. The~~ fund, and (ii) that the amount of the reserve ~~may~~ not exceed one-third of the estimated cost of operating the Department for each upcoming fiscal year. In calculating the amount of the reserve, the General Assembly shall consider all relevant factors that may affect the cost of operating the Department or a possible unanticipated increase or decrease in North Carolina premiums or other charge revenue.

...."

PART IX. FUNDS TRANSFER

SECTION 9.(a) Transfer of Funds. – The State Controller shall transfer the sum of thirty-six million dollars ($36,000,000) in nonrecurring funds for the 2020-2021 fiscal year from the Medicaid Transformation Reserve to the General Fund. This transfer is not an "appropriation made by law," as that phrase is used in Section 7(1) of Article V of the North Carolina Constitution.

SECTION 9.(b) Effective Date. – This section becomes effective July 1, 2020.

PART X. EFFECTIVE DATE

SECTION 10. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 25th day of June, 2020.

s/ Philip E. Berger

President Pro Tempore of the Senate

s/ Tim Moore

Speaker of the House of Representatives

s/ Roy Cooper

Governor

Approved 12:21 p.m. this 30th day of June, 2020

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