

Article 9.

General Administration; Penalties and Remedies.

**§ 105-228.90. Scope and definitions.**

- (a) Scope. – This Article applies to all of the following:
- (1) Subchapters I, V, and VIII of this Chapter.
  - (2) The annual report filing requirements of G.S. 55-16-22.
  - (3) The primary forest product assessment levied under Article 81 of Chapter 106 of the General Statutes.
  - (4) The inspection taxes levied under Article 3 of Chapter 119 of the General Statutes.
  - (5) Chapter 105A of the General Statutes.
- (b) Definitions. – The following definitions apply in this Article:
- (1) CARES Act. – The Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136, March 27, 2020, 134 Stat. 359.
  - (3) Charter school. – A nonprofit corporation that has a charter under G.S. 115C-218.5 to operate a charter school.
  - (5) City. – A city as defined by G.S. 160A-1(2). The term also includes an urban service district defined by the governing board of a consolidated city-county, as defined by G.S. 160B-2(1).
  - (7) Code. – The Internal Revenue Code as enacted as of May 1, 2020, including any provisions enacted as of that date that become effective either before or after that date.
  - (9) County. – Any one of the counties listed in G.S. 153A-10. The term also includes a consolidated city-county as defined by G.S. 160B-2(1).
  - (11) Department. – The Department of Revenue.
  - (13) Electronic Funds Transfer. – A transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account.
  - (15) Federal determination. – A change or correction arising from an audit by the Commissioner of Internal Revenue or an agreement of the U.S. competent authority, and the change or correction has become final. A federal determination is final when the determination is not subject to administrative or judicial review. Additionally, audit findings made by the Internal Revenue Service are deemed final in the following circumstances:
    - a. The taxpayer has received audit findings from the Internal Revenue Service for the tax period and the taxpayer does not timely file an administrative appeal with the Internal Revenue Service.
    - b. The taxpayer consented to any of the audit findings for the tax period through a form or other written agreement with the Internal Revenue Service.
  - (17) Income tax return preparer. – Any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by Article 4 of this Chapter or any claim for refund of tax imposed by Article 4 of this Chapter. For purposes of this definition, the completion of a substantial portion of a return or claim for refund is treated as the preparation of the return or claim for refund. The term does not include a person merely

because the person (i) furnishes typing, reproducing, or other mechanical assistance, (ii) prepares a return or claim for refund of the employer, or an officer or employee of the employer, by whom the person is regularly and continuously employed, (iii) prepares as a fiduciary a return or claim for refund for any person, or (iv) represents a taxpayer in a hearing regarding a proposed assessment.

- (19) NAICS. – The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2007.
- (21) Pass-through entity. – An entity or business, including a limited partnership, a general partnership, a joint venture, a Subchapter S Corporation, or a limited liability company, all of which is treated as owned by individuals or other entities under the federal tax laws, in which the owners report their share of the income, losses, and credits from the entity or business on their income tax returns filed with this State. For the purpose of this section, an owner of a pass-through entity is an individual or entity who is treated as an owner under the federal tax laws.
- (23) Person. – An individual, a fiduciary, a firm, an association, a partnership, a limited liability company, a corporation, a unit of government, or another group acting as a unit. The term includes an officer or employee of a corporation, a member, a manager, or an employee of a limited liability company, and a member or employee of a partnership who, as officer, employee, member, or manager, is under a duty to perform an act in meeting the requirements of Subchapter I, V, or VIII of this Chapter, of G.S. 55-16-22, of Article 81 of Chapter 106 of the General Statutes, or of Article 3 of Chapter 119 of the General Statutes.
- (25) Secretary. – The Secretary of Revenue.
- (27) Tax. – A tax levied under Subchapter I, V, or VIII of this Chapter, the primary forest product assessment levied under Article 81 of Chapter 106 of the General Statutes, or an inspection tax levied under Article 3 of Chapter 119 of the General Statutes. Unless the context clearly requires otherwise, the term "tax" includes penalties and interest as well as the principal amount.
- (29) Taxpayer. – A person subject to the tax or reporting requirements of Subchapter I, V, or VIII of this Chapter, of Article 81 of Chapter 106 of the General Statutes, or of Article 3 of Chapter 119 of the General Statutes.
- (31) 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).
- (33) Truncated Taxpayer Identification Number (TTIN). – This term has the same meaning as defined in Treasury Regulation section 301.6109-4. (1991 (Reg. Sess., 1992), c. 930, s. 13; 1993, c. 12, s. 1; c. 354, s. 18; c. 450, s. 1; 1993 (Reg. Sess., 1994), c. 662, s. 1; c. 745, s. 13; 1995, c. 17, s. 9; c. 461, s. 14; 1995 (Reg. Sess., 1996), c. 664, s. 1; 1997-55, s. 1; 1997-475, s. 6.9; 1998-171, s. 1; 1999-415, s. 1; 2000-72, s. 1; 2000-126, s. 1; 2000-140, s. 69; 2001-414, s. 23; 2001-427, s. 4(a); 2002-106, s. 1; 2002-126, s. 30C.1(a); 2003-25, s. 1; 2003-284, s. 37A.1; 2003-416, s. 4(d); 2004-110, s. 1.1; 2005-276, ss. 35.1(a),

(d); 2006-18, s. 1; 2007-323, s. 31.1(a); 2007-491, s. 25; 2008-107, s. 28.1(a); 2009-451, s. 27A.6(a), (b); 2010-31, s. 31.1(a); 2011-5, s. 1; 2011-145, s. 13.25(xx); 2011-330, ss. 11, 31(a), 37; 2012-79, s. 1.7(a); 2013-10, s. 1; 2014-3, s. 14.16(a); 2014-101, s. 7; 2015-2, s. 1.1; 2016-6, s. 1; 2017-39, s. 1; 2018-5, ss. 38.1(a), 38.3(g); 2019-6, s. 1.1; 2019-169, s. 6.3(a); 2020-58, ss. 1(a), 4.4(a).)

**§ 105-229:** Repealed by Session Laws 1995 (Regular Session, 1996), c. 646, s. 9.

**§ 105-230. Charter suspended for failure to report.**

(a) If a corporation or a limited liability company fails to file any report or return or to pay any tax or fee required by this Subchapter for 90 days after it is due, the Secretary shall inform the Secretary of State of this failure. The Secretary of State shall suspend the articles of incorporation, articles of organization, or certificate of authority, as appropriate, of the corporation or limited liability company. The Secretary of State shall immediately notify by mail every domestic or foreign corporation or limited liability company so suspended of its suspension. The powers, privileges, and franchises conferred upon the corporation or limited liability company by the articles of incorporation, the articles of organization, or the certificate of authority terminate upon suspension.

(b) Any act performed or attempted to be performed during the period of suspension is invalid and of no effect, unless the Secretary of State reinstates the corporation or limited liability company pursuant to G.S. 105-232. However, a suspended entity's state tax filing obligations and the payment of its tax liability is not affected by the suspension, nor does a suspension affect the liability of a responsible person under G.S. 105-242.2, whether the obligation or liability is enforced in the context of a civil or criminal proceeding or otherwise. (1939, c. 158, ss. 901, 902; 1957, c. 498; 1967, c. 823, s. 31; 1969, c. 965, s. 2; 1973, c. 476, s. 193; 1987, c. 644, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 19(a); 1993, c. 354, ss. 19, 20; 1998-212, s. 29A.14(l); 2001-387, s. 152; 2018-5, s. 38.10(a).)

**§ 105-231:** Recodified as the second paragraph of § 105-230 by S.L. 1998-212, s. 29A.14(k).

**§ 105-232. Rights restored; receivership and liquidation.**

(a) Any corporation or limited liability company whose articles of incorporation, articles of organization, or certificate of authority to do business in this State has been suspended by the Secretary of State under G.S. 105-230, that complies with all the requirements of this Subchapter and pays all State taxes, fees, or penalties due from it (which total amount due may be computed, for years prior and subsequent to the suspension, in the same manner as if the suspension had not taken place), and pays to the Secretary of Revenue a fee of twenty-five dollars (\$25.00) to cover the cost of reinstatement, is entitled to exercise again its rights, privileges, and franchises in this State. The Secretary of Revenue shall notify the Secretary of State of this compliance and the Secretary of State shall reinstate the corporation or limited liability company by appropriate entry upon the records of the office of the Secretary of State. Upon entry of reinstatement, it relates back to and takes effect as of the date of the suspension by the Secretary of State and the corporation or limited liability company resumes carrying on its business as if the suspension had never occurred, subject to the rights of any person who reasonably relied, to that person's prejudice, upon the

suspension. The Secretary of State shall immediately notify by mail the corporation or limited liability company of the reinstatement.

(b) When the articles of incorporation, articles of organization, or certificate of authority to do business in this State has been suspended by the Secretary of State under G.S. 105-230, and the corporation or limited liability company has ceased to operate as a going concern, if there remains property held in the name of the corporation or limited liability company or undisposed of at the time of the suspension, or there remain future interests that may accrue to the corporation, the limited liability company, or its successors, members, or stockholders, any interested party may apply to the superior court for the appointment of a receiver. Application for the receiver may be made in a civil action to which all stockholders, members, or their representatives or next of kin shall be made parties. Stockholders or members whose whereabouts are unknown, unknown stockholders or members, unknown heirs and next of kin of deceased stockholders, members, creditors, dealers, and other interested persons may be served by publication. A guardian ad litem may be appointed for any stockholders, members, or their representatives who are infants or incompetent. The receiver shall enter into a bond if the court requires one and shall give notice to creditors by publication or otherwise as the court may prescribe. Any creditor who fails to file a claim with the receiver within the time set shall be barred of the right to participate in the distribution of the assets. The receiver may (i) sell the property interests of the corporation or limited liability company upon such terms and in such manner as the court may order, (ii) apply the proceeds to the payment of any debts of the corporation or limited liability company, and (iii) distribute the remainder among the stockholders, the members, or their representatives in proportion to their interests in the property interests. Shares due to any stockholder or member who is unknown or whose whereabouts are unknown shall be paid into the office of the clerk of the superior court, to be disbursed according to law. In the event the records of the corporation or limited liability company are lost or do not reflect the owners of the property interests, the court shall determine the owners from the best evidence available, and the receiver shall be protected in acting in accordance with the court's finding. This proceeding is authorized for the sole purpose of providing a procedure for disposing of the assets of the corporation or limited liability company by the payment of its debts and by the transfer to its stockholders, its members, or their representatives their proportionate shares of its assets. (1939, c. 158, s. 903; c. 370, s. 1; 1943, c. 400, s. 9; 1947, c. 501, s. 9; 1951, c. 29; 1969, c. 541, s. 10; 1973, c. 476, s. 193; c. 1065; 1987, c. 644, s. 2; 1989 (Reg. Sess., 1990), c. 1024, s. 19(b); 1991, c. 645, s. 21; 1993, c. 354, s. 21; 2001-387, s. 153; 2001-487, s. 62(dd).)

**§ 105-233:** Repealed by Session Laws 2006-162, s. 12(a), effective July 24, 2006.

**§ 105-234:** Repealed by Session Laws 2006-162, s. 12(a), effective July 24, 2006.

**§ 105-235. Every day's failure a separate offense.**

The willful failure, refusal, or neglect to observe and comply with any order, direction, or mandate of the Secretary of Revenue, or to perform any duty enjoined by this Subchapter, by any person, firm, or corporation subject to the provisions of this Subchapter, or any officer, agent, or employee thereof, shall, for each day such failure, refusal, or neglect continues, constitute a separate and distinct offense. (1939, c. 158, s. 906; 1973, c. 476, s. 193.)

**§ 105-236. Penalties; situs of violations; penalty disposition.**

- (a) Penalties. – The following civil penalties and criminal offenses apply:
- (1) Penalty for Bad Checks. – When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess a penalty equal to ten percent (10%) of the check, subject to a minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds.
  - (1a) Penalty for Bad Electronic Funds Transfer. – When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the Secretary shall assess a penalty equal to ten percent (10%) of the amount of the transfer, subject to a minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.
  - (1b) Making Payment in Wrong Form. – For making a payment of tax in a form other than the form required by the Secretary pursuant to G.S. 105-241(a), the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax, subject to a minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.
  - (2) Failure to Obtain a License. – For failure to obtain a license before engaging in a business, trade or profession for which a license is required, the Secretary shall assess a penalty equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, not to exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars (\$5.00). In cases in which the taxpayer, after written notification by the Department, fails to obtain a license as required under G.S. 105-449.65 or G.S. 105-449.131, the Secretary may assess a penalty of one thousand dollars (\$1,000).
  - (3) Failure to File Return. – In case of failure to file any return on the date it is due, determined with regard to any extension of time for filing, the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax if the failure is for not more than one month, with an additional five percent (5%) for each additional month, or fraction thereof, during which the failure continues, not exceeding twenty-five percent (25%) in aggregate.
  - (4) Failure to Pay Tax When Due. – In the case of failure to pay any tax when due, without intent to evade the tax, the Secretary shall assess a penalty equal to ten percent (10%) of the tax. This penalty does not apply in any of the following circumstances:
    - a. When the amount of tax shown as due on an amended return is paid when the return is filed.

- b. When the Secretary proposes an assessment for tax due but not shown on a return and the tax due is paid within 45 days after the later of the following:
    - 1. The date of the notice of proposed assessment of the tax, if the taxpayer does not file a timely request for a Departmental review of the proposed assessment.
    - 2. The date the proposed assessment becomes collectible under one of the circumstances listed in G.S. 105-241.22(3) through (6), if the taxpayer files a timely request for a Departmental review of the proposed assessment.
  - c. When a taxpayer timely files a consolidated or combined return at the request of the Secretary under Part 1 of Article 4 of this Chapter and the tax due is paid within 45 days after the latest of the following:
    - 1. The date the return is filed.
    - 2. The date of a notice of proposed assessment based on the return, if the taxpayer does not file a timely request for a Departmental review of the proposed assessment.
    - 3. The date the Departmental review of the proposed assessment ends as a result of the occurrence of one of the actions listed in G.S. 105-241.22(3) through (6), if the taxpayer files a timely request for a Departmental review.
- (5) Negligence. –
- a. Finding of negligence. – For negligent failure to comply with any of the provisions to which this Article applies, or rules issued pursuant thereto, without intent to defraud, the Secretary shall assess a penalty equal to ten percent (10%) of the deficiency due to the negligence.
  - b. Large individual income tax deficiency. – In the case of individual income tax, if a taxpayer understates taxable income, by any means, by an amount equal to twenty-five percent (25%) or more of gross income, the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency. For purposes of this subdivision, "gross income" means gross income as defined in section 61 of the Code.
  - c. Other large tax deficiency. – In the case of a tax other than individual income tax, if a taxpayer understates tax liability by twenty-five percent (25%) or more, the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency.
  - d. No double penalty. – If a penalty is assessed under subdivision (6) of this section, no additional penalty for negligence shall be assessed with respect to the same deficiency.
  - e. Repealed by Session Laws 2013-316, s. 7(c), effective January 1, 2013, and applicable to estates of decedents dying on or after that date.
  - f. Consolidated or combined return. – The amount of tax shown as due on a consolidated or combined return filed at the request of the Secretary under Part 1 of Article 4 of this Chapter is not considered a deficiency and is not subject to this subdivision unless one or more of the following applies:

1. The return is an amended consolidated or combined return that includes the same corporations as the initial consolidated or combined return filed at the request of the Secretary. In this case the deficiency is the extent to which the amount shown as due on the amended return exceeds the amount shown as due on the initial return.
  2. Repealed by Session Laws 2011-390, s. 5, effective January 1, 2012.
  3. Pursuant to a written request from a taxpayer, the Secretary has provided written advice to that taxpayer stating that the Secretary will require a consolidated or combined return under the facts and circumstances set out in the request, and the Secretary requires a taxpayer to file a consolidated or combined return under G.S. 105-130.5A because the taxpayer's facts and circumstances meet those described in the written advice.
- (5a) Misuse of Exemption Certificate. – For misuse of an exemption certificate by a purchaser, the Secretary shall assess a penalty equal to two hundred fifty dollars (\$250.00). An exemption certificate is a certificate issued by the Secretary that authorizes a retailer to sell tangible personal property to the holder of the certificate and either collect tax at a preferential rate or not collect tax on the sale. Examples of an exemption certificate include a certificate of exemption, a direct pay certificate, and a conditional exemption certificate.
- (5b) Road Tax Understatement. – If a motor carrier understates its liability for the road tax imposed by Article 36B of this Chapter by twenty-five percent (25%) or more, the Secretary shall assess the motor carrier a penalty in an amount equal to two times the amount of the deficiency.
- (6) Fraud. – If there is a deficiency or delinquency in payment of any tax because of fraud with intent to evade the tax, the Secretary shall assess a penalty equal to fifty percent (50%) of the total deficiency.
- (7) Attempt to Evade or Defeat Tax. – Any person who willfully attempts, or any person who aids or abets any person to attempt in any manner to evade or defeat a tax or its payment, shall, in addition to other penalties provided by law, be guilty of a Class H felony.
- (8) Willful Failure to Collect, Withhold, or Pay Over Tax. – Any person required to collect, withhold, account for, and pay over any tax who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of six years after the date of the violation.
- (9) Willful Failure to File Return, Supply Information, or Pay Tax. – Any person required to pay any tax, to file a return, to keep any records, or to supply any information, who willfully fails to pay the tax, file the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, is, in addition to other penalties provided by law, guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no

prosecution for a violation brought under this subdivision is barred before the expiration of six years after the date of the violation.

- (9a) Aid or Assistance. – Any person, pursuant to or in connection with the revenue laws, who willfully aids, assists in, procures, counsels, or advises the preparation, presentation, or filing of a return, affidavit, claim, or any other document that the person knows is fraudulent or false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present or file the return, affidavit, claim, or other document, is guilty of a felony as follows:
- a. If the person who commits an offense under this subdivision is an income tax return preparer and the amount of all taxes fraudulently evaded on returns filed in one taxable year is one hundred thousand dollars (\$100,000) or more, the person is guilty of a Class C felony.
  - b. If the person who commits an offense under this subdivision is an income tax return preparer and the amount of all taxes fraudulently evaded on returns filed in one taxable year is less than one hundred thousand dollars (\$100,000), the person is guilty of a Class F felony.
  - c. If the person who commits an offense under this subdivision is not covered under sub-subdivision a. or b. of this subdivision, the person is guilty of a Class H felony.
- (9b) Identity Theft. – A person who knowingly obtains, possesses, or uses identifying information of another person, living or dead, with the intent to fraudulently utilize that information in a submission to the Department to obtain anything of value, benefit, or advantage for themselves or another is guilty of a Class G felony. If the person whose identifying information is obtained, possessed, or used by another in this manner suffers any adverse financial impact as a proximate result of the offense, then the person who obtained, possessed, or used the identifying information is guilty of a Class F felony. Each person's identity obtained, possessed, or used in this manner shall count as a separate offense. The term "identifying information" as used in this subdivision includes the following:
- a. Legal name.
  - b. Date of birth.
  - c. Social Security Number.
  - d. Taxpayer Identification Number.
  - e. Federal Identification Number.
  - f. Bank account numbers.
  - g. Federal or State tax or tax return information.
- (10) Penalties Regarding Informational Returns. – The following penalties apply with regard to an informational return required by Article 2A, 2C, 4, 4A, 5, 9, 36C, or 36D of this Chapter:
- a. Repealed by Session Laws 1998-212, s. 29A.14(m), effective January 1, 1999.
  - b. Repealed by Session Laws 2018-5, s. 38.10(p), effective June 12, 2018.



- c. For failure to file with the Secretary by the date the return is due, the Secretary shall assess a penalty of fifty dollars (\$50.00) per day, up to a maximum penalty of one thousand dollars (\$1,000).
  - d. For failure to file in the format prescribed by the Secretary, the Secretary shall assess a penalty of two hundred dollars (\$200.00).
- (10a) Filing a Frivolous Return. – If a taxpayer files a frivolous return under Part 2 of Article 4 of this Chapter, the Secretary shall assess a penalty in the amount of up to five hundred dollars (\$500.00). A frivolous return is a return that meets both of the following requirements:
- a. It fails to provide sufficient information to permit a determination that the return is correct or contains information which positively indicates the return is incorrect, and
  - b. It evidences an intention to delay, impede or negate the revenue laws of this State or purports to adopt a position that is lacking in seriousness.
- (10b) Misrepresentation Concerning Payment. – A person who receives money from a taxpayer with the understanding that the money is to be remitted to the Secretary for application to the taxpayer's tax liability and who willfully fails to remit the money to the Secretary is guilty of a Class F felony.
- (11) Repealed by Session Laws 2006-162, s. 12(b), effective July 24, 2006.
- (12) Repealed by Session Laws 1991, c. 45, s. 27.

(b) Situs. – A violation of a tax law is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

(c) Penalty Disposition. – Civil penalties assessed by the Secretary are assessed as an additional tax. The clear proceeds of civil penalties assessed by the Secretary must be credited to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.1. (1939, c. 158, s. 907; 1953, c. 1302, s. 7; 1959, c. 1259, s. 8; 1963, c. 1169, s. 6; 1967, c. 1110, s. 9; 1973, c. 476, s. 193; c. 1287, s. 13; 1979, c. 156, s. 2; 1985, c. 114, s. 11; 1985 (Reg. Sess., 1986), c. 983; 1987 (Reg. Sess., 1988), c. 1076; 1989, c. 557, ss. 7 to 10; 1989 (Reg. Sess., 1990), c. 1005, s. 9; 1991, c. 45, s. 27; 1991 (Reg. Sess., 1992), c. 914, s. 2; c. 1007, s. 10; 1993, c. 354, s. 22; c. 450, s. 10; c. 539, ss. 709, 710, 1292, 1293; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 390, s. 36; 1995 (Reg. Sess., 1996), c. 646, s. 10; c. 647, s. 51; c. 696, s. 1; 1997-6, s. 8; 1997-109, s. 3; 1998-178, ss. 1, 2; 1998-212, s. 29A.14(m); 1999-415, ss. 2, 3; 1999-438, ss. 15, 16; 2000-119, s. 2; 2000-120, s. 7; 2000-140, s. 70; 2002-106, ss. 2, 4; 2005-276, s. 6.37(n); 2005-435, s. 1; 2006-162, s. 12(b); 2007-491, s. 26; 2008-107, s. 28.18(b); 2010-31, s. 31.10(a), (b); 2011-330, s. 32; 2011-390, s. 5; 2011-411, s. 8(b); 2012-79, s. 2.18(a); 2013-316, s. 7(c); 2013-414, s. 1(h); 2014-3, s. 3.1(c); 2015-259, s. 7.1(b); 2017-204, s. 3.1(a); 2018-5, s. 38.10(p); 2018-98, s. 2(a); 2019-169, ss. 5.2(a), 6.8.)

**§ 105-236.1. Enforcement of revenue laws by revenue law enforcement agents.**

(a) General. – The Secretary may appoint employees of the Unauthorized Substances Tax Section of the Tax Enforcement Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the excise tax on unauthorized substances imposed by Article 2D of this Chapter.

The Secretary may appoint up to 11 employees of the Motor Fuels Investigations Section of the Tax Enforcement Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the taxes on motor fuels imposed by Articles 36B, 36C, and 36D of this Chapter and by Chapter 119 of the General Statutes.

The Secretary may appoint employees of the Criminal Investigations Section of the Tax Enforcement Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the following tax violations and criminal offenses:

- (1) The felony and misdemeanor tax violations in G.S. 105-236.
- (2) The misdemeanor tax violations in G.S. 105-449.117 and G.S. 105-449.120.
- (3) The following criminal offenses when they involve a tax imposed under Chapter 105 of the General Statutes:
  - a. G.S. 14-91 (Embezzlement of State Property).
  - b. G.S. 14-92 (Embezzlement of Funds).
  - c. G.S. 14-100 (Obtaining Property By False Pretenses).
  - c1. G.S. 14-113.20 (Identity Theft).
  - c2. G.S. 14-113.20A (Trafficking in Stolen Identities).
  - d. G.S. 14-119 (Forgery).
  - e. G.S. 14-120 (Uttering Forged Paper).
  - f. G.S. 14-401.18 (Sale of Certain Packages of Cigarettes).
  - g. G.S. 14-118.7 (Possession, transfer, or use of automated sales suppression device).
  - h. G.S. 105-259 (Secrecy of tax information).

(b) Authority. – A revenue law enforcement officer is a State officer with jurisdiction throughout the State within the officer's subject-matter jurisdiction. A revenue law enforcement officer may serve and execute notices, orders, warrants, or demands issued by the Secretary or the General Court of Justice in connection with the enforcement of the officer's subject-matter jurisdiction. A revenue law enforcement officer has the full powers of arrest as provided by G.S. 15A-401 while executing the notices, orders, warrants, or demands.

(c) Qualifications. – To serve as a revenue law enforcement officer, an employee must be certified as a criminal justice officer under Article 1 of Chapter 17C of the General Statutes. The Secretary may administer the oath of office to revenue law enforcement officers appointed pursuant to this section. (1997-503, s. 1; 2000-119, s. 1; 2004-124, s. 23.4; 2013-414, s. 17; 2014-3, s. 14.12; 2020-58, s. 6.1.)

### **§ 105-237. Waiver; installment payments.**

(a) Waiver. – The Secretary may, upon making a record of the reasons therefor, do the following:

- (1) Reduce or waive any penalties provided for in this Subchapter.
- (2) Reduce or waive any interest provided for in this Subchapter on taxes imposed prior to or during a period for which a taxpayer has declared bankruptcy under Chapter 7 or Chapter 13 of Title 11 of the United States Code.

(b) Installment Payments. – After a proposed assessment of a tax becomes final, the Secretary may enter into an agreement with the taxpayer for payment of the tax in installments if the Secretary determines that the agreement will facilitate collection of the tax. The agreement may include a waiver of penalties but may not include a waiver of liability for tax or interest due.

The Secretary may modify or terminate the agreement if one or more of the following findings is made:

- (1) Information provided by the taxpayer in support of the agreement was inaccurate or incomplete.
- (2) Collection of tax to which the agreement applies is in jeopardy.
- (3) The taxpayer's financial condition has changed.
- (4) The taxpayer has failed to pay an installment when due or to pay another tax when due.
- (5) The taxpayer has failed to provide information requested by the Secretary.

The Secretary must give a taxpayer who has entered into an installment agreement at least 30 days' written notice before modifying or terminating the agreement on the grounds that the taxpayer's financial condition has changed unless the taxpayer failed to disclose or concealed assets or income when the agreement was made or the taxpayer has acquired assets since the agreement was made that can satisfy all or part of the tax liability. A notice must specify the basis for the Secretary's finding of a change in the taxpayer's financial condition. (1939, c. 158, s. 908; c. 370, s. 1; 1973, c. 476, s. 193; 1993, c. 532, s. 1; 1999-438, s. 17; 2015-259, s. 7.2.)

#### **§ 105-237.1. Compromise of liability.**

(a) Authority. – The Secretary may compromise a taxpayer's liability for a tax that is collectible under G.S. 105-241.22 when the Secretary determines that the compromise is in the best interest of the State and makes one or more of the following findings:

- (1) There is a reasonable doubt as to the amount of the liability of the taxpayer under the law and the facts.
- (2) The taxpayer is insolvent and the Secretary probably could not otherwise collect an amount equal to or in excess of the amount offered in compromise. A taxpayer is considered insolvent only in one of the following circumstances:
  - a. It is plain and indisputable that the taxpayer is clearly insolvent and will remain so in the reasonable future.
  - b. The taxpayer has been determined to be insolvent in a judicial proceeding.
- (3) Collection of a greater amount than that offered in compromise is improbable, and the funds or a substantial portion of the funds offered in the settlement come from sources from which the Secretary could not otherwise collect.
- (4) A federal tax assessment arising out of the same facts has been compromised with the federal government on the same or a similar basis as that proposed to the State and the Secretary could probably not collect an amount equal to or in excess of that offered in compromise.
- (5) Collection of a greater amount than that offered in compromise would produce an unjust result under the circumstances.
- (6) The taxpayer is a retailer or a person under Article 5 of this Chapter; the assessment is for sales or use tax the retailer failed to collect or the person failed to pay on an item taxable under G.S. 105-164.4(a)(10) through (a)(15), and the retailer or person made a good-faith effort to comply with the sales and use tax laws. This subdivision applies to assessments for any tax due for a reporting period ending prior to July 1, 2020.

- (7) The assessment is for sales tax the taxpayer failed to collect or use tax the taxpayer failed to pay as a result of the change in the definition of retailer or the sales tax base expansion to (i) service contracts, (ii) repair, maintenance, and installation services, or (iii) sales transactions for a person in retail trade. The Secretary must determine that the taxpayer made a good-faith effort to comply with the sales and use tax laws. This subdivision applies to assessments for any reporting period beginning March 1, 2016, and ending December 31, 2022.
- (8) The assessment is for sales tax the taxpayer failed to collect or use tax the taxpayer failed to pay on repair, maintenance, and installation services provided by a real property manager under a property management contract. The Secretary must determine that the taxpayer made a good-faith effort to comply with the sales and use tax laws. Absent fraud or other egregious activities, a taxpayer that substantiated the time spent managing real property for a billing or invoice period as provided under G.S. 105-164.4K(c) will be determined to have made a good-faith effort to comply with the sales and use tax laws.
- (9) The taxpayer is an auctioneer licensed under Chapter 85B of the General Statutes, and the assessment is for sales tax that the taxpayer failed to collect for the sale of livestock at auction. The Secretary must determine that the taxpayer has made a good-faith effort to comply with the tax laws, including being registered as a retailer on or before July 1, 2020. This subdivision applies to assessments for any tax due for a reporting period ending prior to July 1, 2020. This subdivision does not apply if the person received specific written advice from the Secretary for the transactions at issue for the laws in effect for the applicable period or for tax collected and not remitted to the Department.

(b) **Written Statement.** – When the Secretary compromises a tax liability under this section and the amount of the liability is at least one thousand dollars (\$1,000), the Secretary must make a written statement that sets out the amount of the liability, the amount accepted under the compromise, a summary of the facts concerning the liability, and the findings on which the compromise is based. The Secretary must sign the statement and keep a record of the statement. If the compromise settles a dispute that is in litigation, the Secretary must obtain the approval of the Attorney General before accepting the compromise, and the Attorney General must sign the statement describing the compromise. (1957, c. 1340, s. 10; 1959, c. 1259, s. 8; 1973, c. 476, s. 193; 1985, c. 114, s. 11; 1991 (Reg. Sess., 1992), c. 1007, s. 11; 2008-107, s. 28.16(f); 2013-316, s. 9(b); 2015-241, s. 32.18(f); 2016-94, s. 38.5(b); 2018-5, s. 38.10(c); 2019-169, s. 3.9(f); 2019-246, s. 7(a); 2020-6, s. 1(c).)

**§ 105-238. Tax a debt.**

Every tax imposed by this Subchapter, and all increases, interest, and penalties thereon, shall become, from the time it is due and payable, a debt from the person, firm, or corporation liable to pay the same to the State of North Carolina. (1939, c. 158, s. 909.)

**§ 105-239:** Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

**§ 105-239.1. Transferee liability.**

(a) **Lien and Liability.** – Property transferred for an inadequate consideration to a donee, heir, devisee, distributee, stockholder of a liquidated corporation, or any other person at a time

when the transferor is insolvent or is rendered insolvent by reason of the transfer is subject to a lien for any taxes owing by the transferor to the State of North Carolina at the time of the transfer whether or not the amount of the taxes has been ascertained or assessed at the time of the transfer. G.S. 105-241 applies to this tax lien. In the event the transferee has disposed of the property so that it cannot be subjected to the State's tax lien, the transferee is personally liable for the difference between the fair market value of the property at the time of the transfer and the actual consideration, if any, paid to the transferor by the transferee.

(b) Procedure. – The Department may proceed to enforce a lien that arises under this section against property transferred by a taxpayer to another person or to hold that person liable for the tax due by sending the person a notice of proposed assessment in accordance with G.S. 105-241.9. The Department has the burden of establishing that a person to whom property was transferred is liable. The period of limitations for assessment of any liability against a transferee or enforcing the lien against the transferred property expires one year after the expiration of the period of limitations for assessment against the transferor.

(c) Proceeds. – When property transferred by a taxpayer to another person is sold to satisfy the lien that arises under this section, the person is entitled to receive from the proceeds of the sale the amount of consideration, if any, the person paid for the property. The proceeds must be applied for this purpose before they are applied to satisfy the lien.

(d) Repealed by Session Laws 2007-491, s. 27, effective January 1, 2008. (1957, c. 1340, s. 10; 1973, c. 476, s. 193; 1993, c. 450, s. 11; 2007-491, s. 27; 2011-284, s. 69.)

#### **§ 105-240. Tax upon settlement of fiduciary's account.**

No final account of a fiduciary shall be allowed by the probate court unless such account shows, and the judge of said court finds, that all taxes imposed by the provisions of this Subchapter upon said fiduciary, which have become payable, have been paid, and that all taxes which may become due are secured by bond, deposit, or otherwise. The certificate of the Secretary of Revenue and the receipt for the amount of tax herein certified shall be conclusive as to the payment of the tax to the extent of said certificate.

For the purpose of facilitating the settlement and distribution of estates held by fiduciaries, the Secretary of Revenue, with the approval of the Attorney General, may, on behalf of the State, agree upon the amount of taxes at any time due or to become due from such fiduciaries under the provisions of this Subchapter, and the payment in accordance with such agreement shall be full satisfaction of the taxes to which the agreement relates. (1939, c. 158, s. 911; 1973, c. 476, s. 193.)

#### **§ 105-240.1. Agreements with respect to domicile.**

Whenever reasonably necessary in order to facilitate the collection of any tax, the Secretary of Revenue with the consent and approval of the Attorney General, is authorized to make agreements with the taxing officials of other states of the United States or with taxpayers in cases of disputes as to the domicile of a decedent. (1957, c. 1340, s. 10; 1973, c. 476, s. 193.)

#### **§ 105-241. Where and how taxes payable; tax period; liens.**

(a) Form of Payment. – Taxes are payable in the national currency. The Secretary shall prescribe where taxes are to be paid and whether taxes must be paid in cash, by check, by electronic funds transfer, or by another method.

(b) Electronic Funds Transfer. – Payment by electronic funds transfer is required as provided in this subsection.

- (1) Corporate estimated taxes. – A corporation that is required under the Code to pay its federal-estimated corporate income tax by electronic funds transfer must pay its State-estimated corporate income tax by electronic funds transfer as provided in G.S. 105-163.40.
- (2) Prepayment taxes. – A taxpayer that is required to prepay tax under G.S. 105-116 or G.S. 105-164.16 must pay the tax by electronic funds transfer.
- (2a) Motor fuel taxes. – A taxpayer that files an electronic return under Subchapter V of this Chapter or Article 3 of Chapter 119 of the General Statutes must pay the tax by electronic funds transfer.
- (3) Large tax payments. – Except as otherwise provided in this subsection, the Secretary shall not require a taxpayer to pay a tax by electronic funds transfer unless, during the applicable period for that tax, the average amount of the taxpayer's required payments of the tax was at least twenty thousand dollars (\$20,000) a month. The twenty thousand dollar (\$20,000) threshold applies separately to each tax. The applicable period for a tax is a 12-month period, designated by the Secretary, preceding the imposition or review of the payment requirement. The requirement that a taxpayer pay a tax by electronic funds transfer remains in effect until suspended by the Secretary. Every 12 months after requiring a taxpayer to pay a tax by electronic funds transfer, the Secretary must determine whether, during the applicable period for that tax, the average amount of the taxpayer's required payments of the tax was at least twenty thousand dollars (\$20,000) a month. If it was not, the Secretary must suspend the requirement that the taxpayer pay the tax by electronic funds transfer and must notify the taxpayer in writing that the requirement has been suspended.

(c) Tax Period. – Except as otherwise provided in this Chapter, taxes are levied for the fiscal year of the state in which they became due.

(d) Lien. – This subsection applies except when another Article of this Chapter contains contrary provisions with respect to a lien for a tax levied in that Article. The lien of a tax attaches to all real and personal property of a taxpayer on the date a tax owed by the taxpayer becomes due. The lien continues until the tax and any interest, penalty, and costs associated with the tax are paid. A tax lien is not extinguished by the sale of the taxpayer's property. A tax lien, however, is not enforceable against a bona fide purchaser for value or the holder of a duly recorded lien unless:

- (1) In the case of real property, a certificate of tax liability or a judgment was first docketed in the office of the clerk of superior court of the county in which the real property is located.
- (2) In the case of personal property, there has already been a levy on the property under an execution or a tax warrant.

The priority of these claims and liens is determined by the date and time of recording, docketing, levy, or bona fide purchase.

If a taxpayer executes an assignment for the benefit of creditors or if insolvency proceedings are instituted against a taxpayer who owes a tax, the tax lien attaches to all real and personal property of the taxpayer as of the date and time the taxpayer executes the assignment for the benefit of creditors or the date and time the insolvency proceedings are instituted. In these cases, the tax lien is subject only to a prior recorded specific lien and the reasonable costs of administering the assignment or the insolvency proceedings. (1939, c. 158, s. 912; 1949, c. 392, s. 6; 1957, c. 1340,

s. 5; 1993, c. 450, s. 2; 1999-389, s. 8; 2001-427, s. 6(b); 2005-435, s. 2; 2007-527, s. 31; 2010-95, s. 25; 2012-79, s. 2.15.)

**§ 105-241.01. Electronic filing of returns.**

(a) Purpose. – The General Assembly finds that the various statutes within Chapter 105 of the General Statutes that address the filing of tax returns or informational returns were originally drafted for the use of paper returns submitted either personally or through the mail. Through technological advances, there are many methods by which tax returns can be filed electronically that can be processed more efficiently by the Department of Revenue, are easier and more convenient for taxpayers, improve the accuracy of the return, and are safer to use with respect to identity theft.

The General Assembly further finds that, in some cases, it is proper to require returns to be filed electronically, while in other cases it is more appropriate to provide electronic filing as an option instead of a requirement. In addition, the General Assembly recognizes that, because of constant technological advances, it is necessary to allow the Department of Revenue flexibility to provide specific guidance for how to file returns electronically, with a goal of continually improving the process and reducing the costs of and time to process returns.

(b) Electronically Filed Returns. – The Department shall offer electronic filing for returns required under this Chapter if the Department determines that it is cost-effective to do so and the Department has established and implemented procedures to electronically file specific returns.

(c) Form of Filing Electronically; Electronic Signature. – The Secretary shall prescribe the form of electronically filing each return that is required to or may be filed electronically and how the taxpayer or return preparer signs an electronically filed return.

(d) Waiver of Requirement to File Electronically. – The Secretary may, upon showing of good cause, waive any electronic submission requirement for returns required to be filed electronically under this Chapter.

(e) Notice to Taxpayers. – The Department shall, by December 1 of each year, publish on its Web site a list of returns required to be filed electronically and permitted to be filed electronically during the next calendar year. (2018-5, s. 38.10(r).)

**§ 105-241.1:** Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

**§ 105-241.2:** Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

**§ 105-241.3:** Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

**§ 105-241.4:** Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

**§ 105-241.5:** Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

**§ 105-241.6. Statute of limitations for refunds.**

(a) General. – The general statute of limitations for obtaining a refund of an overpayment applies unless a different period applies under subsection (b) of this section. The general statute of limitations for obtaining a refund of an overpayment is the later of the following:

- (1) Three years after the due date of the return.
- (2) Two years after payment of the tax.

(b) Exceptions. – The exceptions to the general statute of limitations for obtaining a refund of an overpayment are as follows:

- (1) Federal Determination. – If a taxpayer files a return reflecting a federal determination and the return is filed within the time required by this Subchapter, the period for requesting a refund is one year after the return reflecting the federal determination is filed or three years after the original return was filed or due to be filed, whichever is later.
- (2) Waiver. – A taxpayer's waiver of the statute of limitations for making a proposed assessment extends the period in which the taxpayer can obtain a refund to the end of the period extended by the waiver.
- (3) Worthless Debts or Securities. – Section 6511(d)(1) of the Code applies to an overpayment of the tax levied in Part 2 or 3 of Article 4 of this Chapter to the extent the overpayment is attributable to either of the following:
  - a. The deductibility by the taxpayer under section 166 of the Code of a debt that becomes worthless, or under section 165(g) of the Code of a loss from a security that becomes worthless.
  - b. The effect of the deductibility of a debt or loss described in subpart a. of this subdivision on the application of a carryover to the taxpayer.
- (4) Capital Loss and Net Operating Loss Carrybacks. – Section 6511(d)(2) of the Code applies to an overpayment of the tax levied in Part 2 or 3 of Article 4 of this Chapter to the extent the overpayment is attributable to a capital loss carryback under section 1212(c) of the Code or to a net operating loss carryback under section 172 of the Code.
- (5) Contingent Event. – The period to request a refund of an overpayment may be extended once as provided in this subdivision:
  - a. Litigation or a State Tax Audit. – If a taxpayer is subject to litigation or a state tax audit that prevents the taxpayer from filing an accurate and definite request for a refund of an overpayment within the period under this section, the period to request a refund of an overpayment is six months after the litigation or state tax audit concludes. The taxpayer must file written notice to the Secretary prior to expiration of the statute of limitations under this section. The notice must identify and describe the litigation or state tax audit, identify the type of tax, list the return or payment affected, and state in clear terms the basis for and an estimated amount of the overpayment.
  - b. Other Event. – If a taxpayer contends that an event has occurred that prevents the taxpayer from filing an accurate and definite request for a refund of an overpayment within the period under this section, the taxpayer may submit a written request to the Secretary seeking an extension of the statute of limitations. The taxpayer must file a written request to the Secretary prior to expiration of the statute of limitations under this section. The request must establish by clear, convincing proof that the event is beyond the taxpayer's control and prevents the taxpayer from timely filing an accurate and definite request for a refund of an overpayment. The Secretary's decision on the request is final and is not subject to administrative or judicial review.



- (6) Expired. (2007-491, s. 1; 2013-414, s. 47(a); 2015-6, s. 2.16; 2016-6, s. 5(a); 2019-169, s. 6.1(a).)

**§ 105-241.7. Procedure for obtaining a refund.**

(a) Initiated by Department. – The Department must refund an overpayment made by a taxpayer if the Department discovers the overpayment before the expiration of the statute of limitations for obtaining a refund. Discovery occurs in any of the following circumstances:

- (1) The automated processing of a return indicates the return requires further review.
- (2) A review of a return by an employee of the Department indicates an overpayment.
- (3) An audit of a taxpayer by an employee of the Department indicates an overpayment.

(b) Initiated by Taxpayer. – A taxpayer may request a refund of an overpayment made by the taxpayer by taking one of the actions listed in this subsection within the statute of limitations for obtaining a refund. A taxpayer may not request a refund of an overpayment based on a contingent event as defined in G.S. 105-241.6(b)(5) until the event is finalized and an accurate and definite request for refund of an overpayment may be determined. The actions are:

- (1) Filing an amended return reflecting an overpayment due the taxpayer.
- (2) Filing a claim for refund. The claim must identify the taxpayer, the type and amount of tax overpaid, the filing period to which the overpayment applies, and the basis for the claim. The taxpayer's statement of the basis of the claim does not limit the taxpayer from changing the basis.

(c) Action on Request. – When a taxpayer files an amended return or a claim for refund, the Department must take one of the actions listed in this subsection within six months after the date the amended return or claim for refund is filed. If the Department does not take one of these actions within this time limit, the inaction is considered a proposed denial of the requested refund.

- (1) Send the taxpayer a refund of the amount shown due on the amended return or claim for refund.
- (2) Adjust the amount of the requested refund by increasing or decreasing the amount shown due on the amended return or claim for refund and send the taxpayer a refund of the adjusted amount. If the adjusted amount is less than the amount shown due on the amended return or claim for refund, the adjusted refund must include a reason for the adjustment. The adjusted refund is considered a notice of proposed denial for the amount of the requested refund that is not included in the adjusted refund.
- (3) Deny the refund and send the taxpayer a notice of proposed denial.
- (4) Send the taxpayer a letter requesting additional information concerning the requested refund. If a taxpayer does not respond to a request for information, the Department may deny the refund and send the taxpayer a notice of proposed denial. If a taxpayer provides the requested information, the Department must take one of the actions listed in this subsection within the later of the following:
  - a. The remainder of the six-month period.
  - b. 30 days after receiving the information.
  - c. A time period mutually agreed upon by the Department and the taxpayer.

(c1) Action on Request Regarding Statute of Limitations. – When the taxpayer files an amended return or a claim for refund which the Department determines to be outside the statute of limitations, the Department must deny the refund and send the taxpayer a notice of denial.

(d) Notice. – A notice of a proposed denial of a request for refund issued pursuant to subsection (c) of this section and a notice of denial of a request for a refund issued pursuant to subsection (c1) of this section must contain the following information:

- (1) The basis for the denial or the proposed denial. The statement of the basis of the denial does not limit the Department from changing the basis.
- (2) The circumstances under which a proposed denial will become final.

(e) Restrictions. – The Department may not refund any of the following:

- (1) Until a taxpayer files a final return for a tax period, an amount paid before the final return is filed.
- (2) An overpayment setoff under Chapter 105A, the Setoff Debt Collection Act, or under another setoff debt collection program authorized by law.
- (3) An income tax overpayment the taxpayer has elected to apply to another purpose as provided in this Article.
- (4) An individual income tax overpayment of less than one dollar (\$1.00) or another tax overpayment of less than three dollars (\$3.00), unless the taxpayer files a written claim for the refund.

(f) Effect of Denial or Refund. – A proposed denial of a refund and a denial of a refund by the Secretary are presumed to be correct. A refund does not absolve a taxpayer of a tax liability that may in fact exist. The Secretary may propose an assessment for any deficiency as provided in this Article. (2007-491, s. 1; 2011-4, s. 1; 2013-414, s. 47(b); 2016-76, s. 2(a); 2017-204, s. 4.1(a).)

#### **§ 105-241.8. Statute of limitations for assessments.**

(a) General. – The general statute of limitations for proposing an assessment applies unless a different period applies under subsection (b) of this section. The general statute of limitations for proposing an assessment is the later of the following:

- (1) Three years after the due date of the return.
- (2) Three years after the taxpayer filed the return.

(b) Exceptions. – The exceptions to the general statute of limitations for proposing an assessment are as follows:

- (1) Federal determination. – If a taxpayer files a return reflecting a federal determination and the return is filed within the time required by this Subchapter, the period for proposing an assessment of any tax due is one year after the return is filed or three years after the original return was filed or due to be filed, whichever is later. If there is a federal determination and the taxpayer does not file the return within the required time, the period for proposing an assessment of any tax due is three years after the date the Secretary received the final report of the federal determination.
- (1a) Federal amended return. – If a taxpayer files a return as a result of filing a federal amended return and the return is filed within the time required by this Subchapter, the period for proposing an assessment of any tax due is one year after the return is filed or three years after the original return was filed or due to be filed, whichever is later. If the taxpayer does not file the return within the required time, the period for proposing an assessment of any tax due is three

- years after the date the federal amended return was filed with the Commissioner of Internal Revenue. The date the federal amended return was filed is presumed to be the date recorded by the Internal Revenue Service.
- (2) Failure to file or filing false return. – There is no statute of limitations and the Secretary may propose an assessment of tax due from a taxpayer at any time if any of the following applies:
    - a. The taxpayer did not file a return.
    - b. The taxpayer filed a fraudulent return.
    - c. The taxpayer attempted in any manner to fraudulently evade or defeat the tax.
  - (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.
  - (3) Tax forfeiture. – If a taxpayer forfeits a tax credit or tax benefit pursuant to forfeiture provisions of this Chapter, the period for proposing an assessment of any tax due as a result of the forfeiture is three years after the date of the forfeiture.
  - (4) Nonrecognition of gain. – If a taxpayer elects under section 1033(a)(2)(A) of the Code not to recognize gain from involuntary conversion of property into money, the period for proposing an assessment of any tax due as a result of the conversion or election is the applicable period provided under section 1033(a)(2)(C) or section 1033(a)(2)(D) of the Code. (2007-491, s. 1; 2018-5, s. 38.3(e); 2019-169, s. 6.2(a); 2020-58, s. 6.2(a).)

**§ 105-241.9. Procedure for proposing an assessment.**

- (a) Authority. – The Secretary may propose an assessment against a taxpayer for tax due from the taxpayer. The Secretary must base a proposed assessment on the best information available. A proposed assessment of the Secretary is presumed to be correct.
- (b) Time Limit. – The Secretary must propose an assessment within the statute of limitations for proposed assessments unless the taxpayer waives the limitations period before it expires by agreeing in writing to extend the period. A taxpayer may waive the limitations period for either a definite or an indefinite time. If the taxpayer waives the limitations period, the Secretary may propose an assessment at any time within the time extended by the waiver.
- (c) Notice. – The Secretary must give a taxpayer written notice of a proposed assessment. The notice of a proposed assessment must contain the following information:
  - (1) The basis for the proposed assessment. The statement of the basis for the proposed assessment does not limit the Department from changing the basis.
  - (2) The amount of tax, interest, and penalties included in the proposed assessment. The amount for each of these must be stated separately.
  - (2a) The date a failure to pay penalty will apply to the proposed assessment if the proposed assessment is not paid by that date and the amount of the penalty. If the proposed assessment is not paid by the specified date, the failure to pay penalty is considered to be assessed and applies to the proposed assessment without further notice.

- (3) The circumstances under which the proposed assessment will become final and collectible. (2007-491, s. 1; 2010-95, s. 8(a); 2011-330, s. 34.)

**§ 105-241.10. Limit on refunds and assessments after a federal determination.**

The limitations in this section apply when a taxpayer files a timely return reflecting a federal determination that affects the amount of State tax payable and the general statute of limitations for requesting a refund or proposing an assessment of the State tax has expired. A return reflecting a federal determination is timely if it is filed within the time required by G.S. 105-130.20, 105-159, 105-160.8, or 105-163.6A, as appropriate. A federal determination has the same meaning as defined in G.S. 105-228.90. The limitations are:

- (1) Refund. – A taxpayer is allowed a refund only if the refund is the result of adjustments related to the federal determination.
- (2) Assessment. – A taxpayer is liable for additional tax only if the additional tax is the result of adjustments related to the federal determination. A proposed assessment may not include an amount that is outside the scope of this liability. (2007-491, s. 1; 2008-107, s. 28.18(d); 2013-316, s. 7(b); 2018-5, s. 38.3(f).)

**§ 105-241.11. Requesting review of a proposed denial of a refund or a proposed assessment.**

(a) Procedure. – A taxpayer who objects to a proposed denial of a refund or a proposed assessment of tax may request a Departmental review of the proposed action by filing a request for review. The request for review must be in the form prescribed by the Secretary and include an explanation for the request for review. The request must be filed with the Department as follows:

- (1) Within 45 days of the date the notice of the proposed denial of the refund or proposed assessment was mailed to the taxpayer, if the notice was delivered by mail.
- (2) Within 45 days of the date the notice of the proposed denial of the refund or proposed assessment was delivered to the taxpayer, if the notice was delivered in person.
- (3) At any time between the date that inaction by the Department on a request for refund is considered a proposed denial of the refund and the date the time periods set in the other subdivisions of this subsection expire.

(b) Filing. – A request for a Departmental review of a proposed denial of a refund or a proposed assessment is considered filed on the following dates:

- (1) For a request that is delivered in person, the date it is delivered.
- (2) For a request that is mailed, the date determined in accordance with G.S. 105-263.
- (3) For a request delivered by another method, the date the Department receives it.

(c) FTP Penalty. – A request for a Departmental review of a proposed assessment is considered a request for a Departmental review of a failure to pay penalty that is based on the assessment. A taxpayer who does not request a Departmental review of a proposed assessment may not request a Departmental review of a failure to pay penalty that is based on the assessment but is assessed on a subsequent date in another notice. (2007-491, s. 1; 2008-134, s. 5(a); 2010-95, ss. 8(b), 10(b); 2017-204, s. 4.1(b).)

**§ 105-241.12. Result when taxpayer does not request a review.**

(a) Refund. – If a taxpayer does not file a timely request for a Departmental review of a proposed denial of a refund, the proposed denial is final and is not subject to further administrative or judicial review. A taxpayer whose proposed denial becomes final may not file another amended return or claim for refund to obtain the denied refund.

(b) Assessment. – If a taxpayer does not file a timely request for a Departmental review of a proposed assessment, the proposed assessment is final and is not subject to further administrative or judicial review. Upon payment of the tax, the taxpayer may request a refund of the tax.

Before the Department collects a proposed assessment that becomes final when the taxpayer does not file a timely request for a Departmental review, the Department must send the taxpayer a notice of collection. A notice of collection must contain the following information:

- (1) A statement that the proposed assessment is final and collectible.
- (2) The amount of tax, interest, and penalties payable by the taxpayer.
- (3) An explanation of the collection options available to the Department if the taxpayer does not pay the amount shown due on the notice and any remedies available to the taxpayer concerning these collection options. (2007-491, s. 1.)

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

(a) Action on Request. – If a taxpayer files a timely request for a Departmental review of a proposed denial of a refund or a proposed assessment, the Department must conduct a review of the proposed denial or proposed assessment and do one or more of the following:

- (1) Grant the refund or remove the assessment.
- (2) Adjust the amount of tax due or refund owed.
- (3) Request additional information from the taxpayer concerning the requested refund or proposed assessment. If a taxpayer makes no response to the Department's request for additional information by the requested response date, the Department must reissue the request. The Department must give a taxpayer at least 30 days to respond to a request for additional information and to respond to the reissuance of a request for additional information. If a taxpayer makes no response to the reissuance of the request for additional information by the requested response date, the refund or assessment is subject to the provisions of G.S. 105-241.13A.

(a1) Payment by Taxpayer. – If a taxpayer timely requests a Departmental review of a proposed assessment and thereafter pays the amount due or the amount due as adjusted by the Department, the Department may accept payment and take no further action on the request for Departmental review, unless the taxpayer states in writing that the taxpayer wishes to continue the Departmental review. If the review is not continued, the taxpayer may request a refund of taxes paid pursuant to G.S. 105-241.7(b).

(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:

- (1) The Department and the taxpayer agree on a resolution.
- (2) The Department and the taxpayer agree that additional time is needed to resolve the taxpayer's objection to the proposed denial of the refund or 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. (2007-491, s. 1; 2017-204, s. 4.1(d); 2020-58, s. 4.5.)

#### **§ 105-241.13A. Taxpayer inaction.**

(a) Consequence of Inaction. – Inaction by a taxpayer after timely filing a request for review shall result in the proposed denial of a refund or the proposed assessment becoming final as provided in this section. As used in this section, "inaction" means that the taxpayer made no response to the Department's initial request for additional information or to the reissuance of the request by the requested response date as provided under G.S. 105-241.13(a). A partial response, a request for additional time, or any other contact by the taxpayer with the Department does not constitute inaction under this section. The Department must send the taxpayer a notice of inaction stating that the proposed denial of a refund or the proposed assessment becomes final 10 days from the date of the notice unless the taxpayer responds to the Department. A proposed denial of a refund or a proposed assessment that becomes final is not subject to further administrative or judicial review. A taxpayer may not file another amended return or claim for refund to obtain the denied refund. Upon payment of the tax, the taxpayer may request a refund of the tax.

(b) Notice of Collection. – Before the Department collects a proposed assessment that becomes final under this section, the Department must send the taxpayer a notice of collection containing the information required under G.S. 105-241.12.

(c) Determining Timely Response. – The provisions of G.S. 105-241.11(b) apply for purposes of determining whether a taxpayer has timely responded to the Department as required under this section. (2017-204, s. 4.1(c).)

#### **§ 105-241.14. Final determination after Departmental review.**

(a) Refund. – If a taxpayer files a timely request for a Departmental review of a proposed denial of a refund and the Department and the taxpayer are unable to resolve the taxpayer's objection to the proposed denial, the Department must send the taxpayer a notice of final determination concerning the refund. The notice of final determination must state the basis for the determination and inform the taxpayer of the procedure for contesting the determination. The statement of the basis for the determination does not limit the Department from changing the basis.

(b) **Assessment.** – If a taxpayer files a timely request for a Departmental review of a proposed assessment and the Department and the taxpayer are unable to resolve the taxpayer's objection to the proposed assessment, the Department must send the taxpayer a notice of final determination concerning the proposed assessment. A notice of final determination concerning the proposed assessment must contain the following information:

- (1) The basis for the determination. This information may be stated on the notice or be set out in a separate document. The statement of the basis for the determination does not limit the Department from changing the basis.
- (2) The amount of tax, interest, and penalties payable by the taxpayer.
- (3) The procedure the taxpayer must follow to contest the final determination.
- (4) A statement that the amount payable stated on the notice is collectible by the Department unless the taxpayer contests the final determination.
- (5) An explanation of the collection options available to the Department if the taxpayer does not pay the amount shown due on the notice and any remedies available to the taxpayer concerning these collection options.

(c) **Time Limit.** – The process set out in G.S. 105-241.13 for reviewing and attempting to resolve a proposed denial of a refund or a proposed assessment must conclude, and a final determination must be issued within nine months after the date the taxpayer files a request for review. The Department and the taxpayer may extend this time limit by mutual agreement. Failure to issue a notice of final determination within the required time does not affect the validity of a proposed denial of a refund or proposed assessment. (2007-491, s. 1; 2008-134, s. 6(a); 2019-6, s. 5.7.)

#### **§ 105-241.15. Contested case hearing on final determination.**

(a) **Contest Final Determination.** – A taxpayer who disagrees with a notice of final determination issued by the Department may contest the determination by filing a petition for a contested case hearing at the Office of Administrative Hearings in accordance with Article 3 of Chapter 150B of the General Statutes. A taxpayer may file a petition for a contested case hearing only if the taxpayer has exhausted the prehearing remedy. A taxpayer's prehearing remedy is exhausted when the Department issues a final determination after conducting a review and a conference.

(b) **Contest Statute of Limitations.** – A taxpayer who disagrees with a notice of denial issued by the Department pursuant to G.S. 105-241.7(c1) may contest the statute of limitations determination by filing a petition for a contested case hearing at the office of Administrative Hearings in accordance with Article 3 of Chapter 150B of the General Statutes on the sole issue of whether the statute of limitations bars the taxpayer's claim. A final decision by the administrative law judge regarding the statute of limitations is subject to judicial review under Article 4 of Chapter 150B of the General Statutes and under G.S. 105-241.16. In the event judicial review of the decision is not sought and the final decision is that the taxpayer's claim was not barred by the statute of limitations, then the administrative law judge must remand the matter to the Department for consideration of the substantive issues. In the event judicial review is sought and it is finally determined that the taxpayer's claim was not barred by the statute of limitations, then the matter shall be remanded to the Department for consideration of the substantive issues. Any remand shall be regarded as a new amended return or claim for refund timely filed within the statute of limitations under G.S. 105-241.7(c). (2007-491, s. 1; 2016-76, s. 2(b).)

**§ 105-241.16. Judicial review of decision after contested case hearing.**

A party aggrieved by the final decision in a contested case commenced at the Office of Administrative Hearings may seek judicial review of the decision in accordance with Article 4 of Chapter 150B of the General Statutes. Notwithstanding G.S. 150B-45, a petition for judicial review must be filed in the Superior Court of Wake County and in accordance with the procedures for a mandatory business case set forth in G.S. 7A-45.4(b) through (f). Before filing a petition for judicial review, a taxpayer must pay the amount of tax, penalties, and interest the final decision states is due. A party may appeal a decision of the Business Court to the appellate division in accordance with G.S. 150B-52. (2007-491, s. 1; 2010-95, s. 9; 2017-204, s. 4.1(e).)

**§ 105-241.17. Civil action challenging statute as unconstitutional.**

A taxpayer who claims that a tax statute is unconstitutional may bring a civil action in the Superior Court of Wake County to determine the taxpayer's liability under that statute if all of the conditions in this section are met. In filing an action under this section, a taxpayer must follow the procedures for a mandatory business case set forth in G.S. 7A-45.4(b) through (f). The conditions for filing a civil action are:

- (1) The taxpayer exhausted the prehearing remedy by receiving a final determination after a review and a conference.
- (2) The taxpayer commenced a contested case at the Office of Administrative Hearings.
- (3) The Office of Administrative Hearings dismissed the contested case petition for lack of jurisdiction because the sole issue is the constitutionality of a statute and not the application of a statute.
- (4) The taxpayer has paid the amount of tax, penalties, and interest the final determination states is due.
- (5) The civil action is filed within two years of the dismissal. (2007-491, s. 1.)

**§ 105-241.18. Class actions.**

(a) Authority. – A class action against the State for the refund of a tax paid may be maintained only on the grounds of an alleged unconstitutional statute and only if the requirements of Rule 23 of the North Carolina Rules of Civil Procedure and the requirements of this section are met. For purposes of this section, a class action commences upon the later of the following:

- (1) The date a complaint is filed in accordance with G.S. 105-241.17 alleging the existence of a class pursuant to Rule 23 of the North Carolina Rules of Civil Procedure.
- (2) The date a complaint filed in accordance with G.S. 105-241.17 is amended to allege the existence of a class.

(b) Class. – To serve as a class representative of a class action brought under this section, a taxpayer must comply with all of the conditions in G.S. 105-241.17 and the taxpayer's claims must be typical of the claims of the class members. A taxpayer who is not a class representative is eligible to become a member of a class if the taxpayer could have filed a claim for refund under G.S. 105-241.7 as of the date the class action commenced or as of a subsequent date set by the court, whether or not the taxpayer actually filed a claim for refund as of that date. An eligible class member who is not a class representative and who indicates a desire to be included in the class in accordance with the procedure approved by the court under subsection (c) of this section is not required to follow the procedures in G.S. 105-241.11 through G.S. 105-241.17 for the



administrative and judicial review of a request for refund or a proposed denial of a request for refund.

(c) Procedure. – To become a member of a class action brought under this section, an eligible taxpayer must affirmatively indicate a desire to be included in the class in response to a notice of the class action. If the court so orders, the Department must provide to a class representative a list of names and last known addresses of all taxpayers who are readily determinable by the Department and who are eligible to become a member of the class. The court must approve the content of a notice of a class action, the method for distributing the notice, and the procedure by which an eligible taxpayer affirmatively indicates a desire to be included in the class. The class representative must advance the costs of notifying eligible taxpayers of the class action.

(d) Statute of Limitations. – The statute of limitations for filing a claim for refund of tax paid due to an alleged unconstitutional statute is tolled for a taxpayer who is eligible to become a member of a class action. The tolling begins on the date the class action is commenced. For a taxpayer who does not join the class, the tolling ends when the taxpayer does not affirmatively indicate a desire to be included in the class within the time and in accordance with the procedure approved by the court under subsection (c) of this section. For a taxpayer who joins the class, the tolling ends when a court enters any of the following in the class action:

- (1) A final order denying certification of the class.
- (2) A final order decertifying the class.
- (3) A final order dismissing the class action without an adjudication on the merits.
- (4) A final judgment on the merits.

(e) Effect on Nonparticipating Taxpayers. – A taxpayer who does not become a member of a class may file and prosecute a claim for refund, if the statute of limitations has not otherwise expired for filing the claim, or may contest a pending assessment in accordance with the procedures in G.S. 105-241.11 through G.S. 105-241.17. Except as otherwise provided in this subsection, the effect of an adjudication in a class action on a nonparticipating taxpayer's claim for refund or contest of an assessment is governed by the normal rules relating to claim preclusion and issue preclusion.

If a final judgment on the merits is entered in a class action in favor of the class, the following applies to an eligible taxpayer who did not become a member of the class:

- (1) The taxpayer is not entitled to receive any monetary relief awarded to the class on account of taxes previously paid by the taxpayer.
- (2) If the taxpayer has been assessed for failure to pay the tax at issue in the class action and the taxpayer has not paid the assessment, then the assessment is abated.
- (3) The taxpayer is relieved of any future liability for the tax that is the subject of the class action. (2008-107, s. 28.28(b).)

#### **§ 105-241.19. Declaratory judgments, injunctions, and other actions prohibited.**

The remedies in G.S. 105-241.11 through G.S. 105-241.18 set out the exclusive remedies for disputing the denial of a requested refund, a taxpayer's liability for a tax, or the constitutionality of a tax statute. Any other action is barred. Neither an action for declaratory judgment, an action for an injunction to prevent the collection of a tax, nor any other action is allowed. (2007-491, s. 1; 2008-107, s. 28.28(c).)

**§ 105-241.20. Delivery of notice to the taxpayer.**

- (a) Scope. – This section applies to the following notices:
- (1) A proposed denial of a refund or a denial of a refund.
  - (2) A proposed assessment.
  - (3) A notice of collection.
  - (4) A final determination.

(b) Method. – The Secretary must deliver a notice listed in subsection (a) of this section to a taxpayer either in person or by United States mail sent to the taxpayer's last known address. A notice mailed to a taxpayer is presumed to have been received by the taxpayer unless the taxpayer makes an affidavit to the contrary within 90 days after the notice was mailed. If the taxpayer makes this affidavit, the notice is considered to have been delivered on the date the taxpayer makes the affidavit, and any time limit affected by the notice is extended to the date the taxpayer makes the affidavit. (2007-491, s. 1; 2019-169, s. 6.5.)

**§ 105-241.21. Interest on taxes.**

(a) Rate. – The interest rate set by the Secretary applies to interest that accrues on overpayments and assessments of tax. On or before June 1 and December 1 of each year, the Secretary must establish the interest rate to be in effect during the six-month period beginning on the next succeeding July 1 and January 1, respectively. In determining the interest rate, the Secretary must give due consideration to current market conditions and to the rate that will be in effect on that date pursuant to the Code. If no new rate is established, the rate in effect during the preceding six-month period continues in effect. The rate established by the Secretary may not be less than five percent (5%) per year and may not exceed sixteen percent (16%) per year.

(b) Accrual on Underpayments. – Interest accrues on an underpayment of tax from the date set by statute for payment of the tax until the tax is paid. Interest accrues only on the principal of the tax and does not accrue on any penalty.

(c) Accrual on Refund. – Interest accrues on an overpayment of tax from the time set in the following subdivisions until the refund is paid.

- (1) Franchise, income, and gross premiums. – Interest on an overpayment of a tax levied under Article 3 of this Chapter and payable on an annual basis or of a tax levied under Article 4 or 8B of this Chapter accrues from a date 45 days after the latest of the following dates:
  - a. The date the final return was filed.
  - b. The date the final return was due to be filed.
  - c. The date of the overpayment. The date of an overpayment of a tax levied under Article 4 or Article 8B of this Chapter is determined in accordance with section 6611(d), (f), (g), and (h) of the Code.
- (2) All other taxes. – Interest on an overpayment of a tax that is not included in subdivision (1) of this subsection accrues from a date that is 90 days after the date the tax was paid.

(d) When Refund Is Paid. – A refund sent to a taxpayer is considered paid on a date determined by the Secretary that is no sooner than five days after a refund check is mailed. A refund set off against a debt pursuant to Chapter 105A of the General Statutes is considered paid five days after the Department mails the taxpayer a notice of the setoff, unless G.S. 105A-5 or G.S. 105A-8 requires the agency that requested the setoff to return the refund to the taxpayer. In this

circumstance, the refund that was set off is not considered paid until five days after the agency that requested the refund mails the taxpayer a check for the refund. (2007-491, s. 1.)

**§ 105-241.22. Collection of tax.**

The Department may collect a tax in the following circumstances:

- (1) When a taxpayer files a return showing an amount due with the return and does not pay the amount shown due. This subdivision does not apply to a consolidated or combined return filed at the request of the Secretary under Part 1 of Article 4 of this Chapter.
- (2) When the Department sends a notice of collection after a taxpayer does not file a timely request for a Departmental review of a proposed assessment of tax or based upon taxpayer inaction in accordance with G.S. 105-241.13A.
- (3) When a taxpayer and the Department agree on a settlement concerning the amount of tax due.
- (4) When the Department sends a notice of final determination concerning an assessment of tax and the taxpayer does not file a timely petition for a contested case hearing on the assessment.
- (5) When a final decision is issued on a proposed assessment of tax after a contested case hearing.
- (6) When a petition for a contested case at the Office of Administrative Hearings is dismissed and the period for timely filing a petition has expired. (2007-491, s. 1; 2008-134, s. 7(a); 2010-31, s. 31.10(c); 2017-204, s. 4.2; 2019-169, s. 6.7.)

**§ 105-241.23. Jeopardy assessment and collection.**

(a) Action. – The Secretary may at any time within the statute of limitations immediately assess and collect any tax the Secretary finds is due from a taxpayer if the Secretary determines that collection of the tax is in jeopardy and immediate assessment and collection are necessary in order to protect the interest of the State. In making a jeopardy collection, the Secretary may use any of the collection remedies in G.S. 105-242 and is not required to wait any period of time before using these remedies. Within 30 days after initiating a jeopardy collection, the Secretary must give the taxpayer the notice of proposed assessment required by G.S. 105-241.9.

(b) Review by Department. – Within five days after initiating a jeopardy collection that is not the result of a criminal investigation or of a liability for a tax imposed under Article 2D of this Chapter, the Secretary must provide the taxpayer with a written statement of the information upon which the Secretary relied in initiating the jeopardy collection. Within 30 days after receipt of this written statement or, if no statement is received, within 30 days after the statement was due, the taxpayer may request the Secretary to review the action taken. After receipt of this request, the Secretary must determine whether initiating the jeopardy collection was reasonable under all the circumstances and whether the amount assessed and collected was reasonable under all the circumstances. The Secretary must give the taxpayer written notice of this determination within 30 days after the request.

(c) Judicial Review. – Within 90 days after the earlier of the date a taxpayer received or should have received a determination of the Secretary concerning a jeopardy collection under subsection (b) of this section, the taxpayer may bring a civil action seeking review of the jeopardy collection. The taxpayer may bring the action in the Superior Court of Wake County or in the county in North Carolina in which the taxpayer resides. Within 20 days after the action is filed,

the court must determine whether the initiation of the jeopardy collection was reasonable under the circumstances. If the court determines that an action of the Secretary was unreasonable or inappropriate, the court may order the Secretary to take any action the court finds appropriate. If the taxpayer shows reasonable grounds why the 20-day limit on the court should be extended, the court may grant an extension of not more than 40 additional days. (2007-491, s. 1.)

**§ 105-242. Warrants for collection of taxes; garnishment and attachment; certificate or judgment for taxes.**

(a) Levy and Sale. – If a taxpayer does not pay a tax within 30 days after it is collectible under G.S. 105-241.22, the Secretary may take either of the following actions to collect the tax:

- (1) Issue a warrant directing the sheriff of any county of the State to levy upon and sell the real and personal property of the taxpayer found within the county for the payment of the tax and the cost of executing the warrant and to return to the Secretary the money collected, within a time to be specified in the warrant but not less than 60 days from the date of the warrant. The procedure for executions issued against property upon judgments of a court apply to executions under a warrant.
- (2) Issue a warrant to any revenue officer or other employee of the Department charged with the duty to collect taxes, commanding the officer or employee to levy upon and sell the taxpayer's personal property found within the State for the payment of the tax. Except as otherwise provided in this subdivision, the levy upon and sale of personal property by an officer or employee of the Department is subject to and must be conducted in accordance with the laws governing the sale of property levied upon under execution. The Secretary may sell the property levied upon in any county and may advertise the sale in any reasonable manner and for any reasonable period of time to produce an adequate bid for the property. Levy and sale fees, plus actual advertising costs, must be added to and collected in the same manner as taxes. The Secretary is not required to file a report of sale with the clerk of superior court, if the sale is otherwise publicly reported.

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

A person who is in possession of intangible property that is subject to attachment and garnishment is the garnishee and is liable for the amount the taxpayer owes. The liability applies only to the amount of the taxpayer's property in the garnishee's possession, reduced by any amount the taxpayer owes the garnishee.

The Secretary may submit to a financial institution, as defined in G.S. 53B-2, information that identifies a taxpayer who owes a tax debt that is collectible under G.S. 105-241.22 and the amount of the debt. The Secretary may submit the information on a quarterly basis or, with the agreement of the financial institution, on a more frequent basis. A financial institution that receives the information must determine the amount, if any, of intangible property it holds that belongs to the

taxpayer and must inform the Secretary of its determination. The Secretary must reimburse a financial institution for its costs in providing the information, not to exceed the amount payable to the financial institution under G.S. 110-139 for providing information for use in locating a noncustodial parent.

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

(c) Certificate of Tax Liability. – The Department may file a certificate of tax liability to collect a tax that is owed by a taxpayer and is collectible under G.S. 105-241.22. A certificate of tax liability must state the taxpayer's name and the type and amount of tax owed. If the taxpayer resides in this State or has property in this State, the Department must file the certificate of tax liability with the clerk of the superior court of a county in which the taxpayer resides or has property. If the taxpayer does not reside in this State or have property in this State, the Department must file the certificate of tax liability in Wake County.

The clerk of court must record a certificate of tax liability in the same manner as a judgment. A recorded certificate of tax liability is considered a judgment and is enforceable in the same manner as other judgments. The legal rate of interest set in G.S. 24-1 applies to the principal amount of tax stated on the certificate of tax liability. The tax stated on a certificate of tax liability is a lien on real and personal property from the date the certificate is recorded.

A certificate of tax liability is enforceable for a period of 10 years from the date it is recorded. If the certificate is not satisfied within this period, the remaining liability of the taxpayer is abated and the Department must cancel the certificate. An execution sale initiated before the end of the 10-year period may be completed after the end of this period, regardless of whether resales are required because of the posting of increased bids. The Secretary may accept tax payments made after a certificate has expired, regardless of whether any collection actions were taken before the certificate expired. A taxpayer may waive the 10-year period for enforcement of the certificate for either a definite or an indefinite time.

The 10-year period in which a certificate of tax liability is enforceable is tolled during the following periods:

- (1) While the taxpayer is absent from the State. The period is tolled during the taxpayer's absence plus one year after the taxpayer returns.
- (2) Upon the death of the taxpayer. The period is tolled while the taxpayer's estate is administered plus one year after the estate is closed.
- (3) While an action is pending to set aside a conveyance made by the taxpayer as a fraudulent conveyance.
- (4) While an insolvency proceeding against the taxpayer is pending.
- (5) During the period of any statutory or judicial bar to the enforcement of the certificate.
- (6) The period for which a taxpayer has waived the 10-year period.

(c1) Release of Lien. – The Secretary shall release the State tax lien on a taxpayer's property if the liability for which the lien attached has been satisfied. The Secretary may release the State tax lien on all or part of a taxpayer's property if one or more of the following findings is made:

- (1) The liability for which the lien attached has become unenforceable due to lapse of time.
- (2) The lien is creating an economic hardship due to the financial condition of the taxpayer.

- (3) The fair market value of the property exceeds the tax liability and release of the lien on part of the property would not hinder collection of the liability.
- (4) Release of the lien will probably facilitate, expedite, or enhance the State's chances for ultimately collecting a tax due the State.

If the Secretary of Revenue shall find that it will be for the best interest of the State in that it will probably facilitate, expedite or enhance the State's chances for ultimately collecting a tax due the State, he may authorize a deputy or agent to release the lien of a State tax judgment or certificate of tax liability upon a specified parcel or parcels of real estate by noting such release upon the judgment docket where such certificate of tax liability is recorded. Such release shall be signed by the deputy or agent and witnessed by the clerk of court or his deputy or assistant and shall be in substantially the following form: "The lien of this judgment upon (insert here a short description of the property to be released sufficient to identify it, such as reference to a particular tract described in a recorded instrument) is hereby released, but this judgment shall continue in full force and effect as to other real property to which it has heretofore attached or may hereafter attach. This \_\_\_ day of \_\_\_, \_\_\_\_

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Revenue Officer, N.C. Department of Revenue

WITNESS:

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42 C.S.C."

The release shall be noted on the judgment docket only upon conditions prescribed by the Secretary and shall have effect only as to the real estate described therein and shall not affect any other rights of the State under said judgment.

(d) Remedies Cumulative. – The remedies herein given are cumulative and in addition to all other remedies provided by law for the collection of said taxes.

(e) Exempt Property. – Only the following property is exempt from levy, attachment, and garnishment under this Article:

- (1) The taxpayer's principal residence, unless the Secretary approves of the levy in writing or the Secretary finds that collection of the tax is in jeopardy.
- (2) Tangible personal property that is exempt from federal levy as provided in section 6334 of the Code.
- (3) Intangible personal property that is exempt from federal levy under section 6334 of the Code.
- (4) Ninety percent (90%) of the taxpayer's salary or wages per month.

(f) Uneconomical Levy. – The Secretary shall not levy against any property if the Secretary estimates before levy that the expenses the Department would incur in levying against the property would exceed the fair market value of the property.

(g) Erroneous Lien. – A taxpayer may appeal to the Secretary after a certificate is filed under subsection (c) of this section if the taxpayer alleges an error in the filing of the lien. The Secretary shall make a determination of such an appeal as quickly as possible. If the Secretary finds that the filing of the certificate was erroneous, the Secretary shall withdraw the lien as quickly as possible by issuing a certificate of withdrawal. (1939, c. 158, s. 913; 1941, c. 50, s. 10; 1949, c. 392, s. 6; 1951, c. 643, s. 9; 1955, c. 1285; c. 1350, s. 23; 1957, c. 1340, s. 10; 1959, c. 368; 1963, c. 1169, s. 6; 1969, c. 1071, s. 1; 1973, c. 476, s. 193; c. 1287, s. 13; 1979, c. 103, ss. 1, 2; c. 179, s. 5; 1979, 2nd Sess., c. 1085, s. 1; 1989, c. 37, s. 6; c. 580; 1991, c. 228, s. 1; 1991 (Reg.

Sess., 1992), c. 1007, ss. 12, 13; 1993, c. 532, s. 5; 1997-121, s. 1; 1999-456, s. 59; 2003-349, s. 2; 2007-491, ss. 28, 29, 31; 2010-31, s. 31.8(h); 2014-3, s. 14.17.)

### **§ 105-242.1. Procedure for attachment and garnishment.**

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

- (1) The taxpayer's name.
- (2) The taxpayer's social security number or federal identification number.
- (3) The amount of tax, interest, and penalties the taxpayer owes.
- (4) An explanation of the liability of a garnishee for tax owed by a taxpayer.
- (5) An explanation of the garnishee's responsibility concerning the notice.

(a1) Electronic Notice. – Before the Department sends an electronic notice of garnishment to a garnishee, the Department and the garnishee must have an agreement that establishes the protocol for transmitting the notice and provides the information required under subdivisions (4) and (5) of subsection (a) of this section. An electronic notice must contain the information required under subdivisions (1), (2), and (3) of subsection (a) of this section.

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

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

(c) Release. – A notice of garnishment sent to a financial institution is released when the financial institution complies with the notice. A notice of garnishment sent to all other garnishees is released when the Department sends the garnishee a notice of release. A notice of release must state the name and social security number or federal identification number of the taxpayer to whom the release applies.

(d) Financial Institution. – As used in this section, the term "financial institution" has the same meaning as in G.S. 53B-2. (2007-491, s. 30; 2010-31, s. 31.8(i).)

### **§ 105-242.2. Personal liability when certain taxes not paid.**

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

- (1) Business entity. – A corporation, a limited liability company, or a partnership, regardless of whether the entity is suspended under G.S. 105-230 or is dissolved under Article 14 of Chapter 55 of the General Statutes or under Article 6 of Chapter 57D of the General Statutes.
- (2) Responsible person. – Any of the following:

- a. The president, treasurer, or chief financial officer of a corporation.
- b. A manager of a limited liability company or a partnership.
- c. An officer of a corporation, a member or company official of a limited liability company, or a partner in a partnership who has a duty to deduct, account for, or pay taxes listed in subsection (b) of this section.
- d. A partner who is liable for the debts and obligations of a partnership under G.S. 59-45 or G.S. 59-403.

(b) **Responsible Person.** – Each responsible person in a business entity is personally and individually liable for the principal amount of taxes that are owed by the business entity and are listed in this subsection. If a business entity does not pay the amount it owes after the amount becomes collectible under G.S. 105-241.22, the Secretary may enforce the responsible person's liability for the amount by sending the responsible person a notice of proposed assessment in accordance with G.S. 105-241.9. This subsection applies to the following:

- (1) All sales and use taxes collected by the business entity upon its taxable transactions.
- (2) All sales and use taxes due upon taxable transactions of the business entity but upon which it failed to collect the tax, but only if the person knew, or in the exercise of reasonable care should have known, that the tax was not being collected.
- (3) All taxes due from the business entity pursuant to the provisions of Articles 36C and 36D of Subchapter V of this Chapter and all taxes payable under those Articles by it to a supplier for remittance to this State or another state.
- (4) All income taxes required to be withheld by the business entity.

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1007, s. 15.

(d) **Distributions.** – An officer, partner, trustee, or receiver of a business entity required to file a report with the Secretary who has custody of funds of the entity and who allows the funds to be paid out or distributed to the owners of the entity without having remitted to the Secretary any State taxes that are due is personally liable for the payment of the tax. The Secretary may enforce an individual's liability under this subsection by sending the individual a notice of proposed assessment in accordance with G.S. 105-241.9.

(e) **Statute of Limitations.** – The period of limitations for assessing a responsible person for unpaid taxes under this section expires the later of (i) one year after the expiration of the period of limitations for assessing the business entity or (ii) one year after a tax becomes collectible from the business entity under G.S. 105-241.22(3), (4), (5), or (6).

(f) **Scope.** – This section shall not apply to, or limit, the criminal liability of any person. (1939, c. 158, s. 923; 1941, c. 50, s. 10; 1955, c. 1350, s. 23; 1973, c. 476, s. 193; c. 1287, s. 13; 1983, c. 220, s. 1; 1991, c. 690, s. 7; 1991 (Reg. Sess., 1992), c. 1007, s. 15; 1995, c. 390, s. 15; 1995 (Reg. Sess., 1996), c. 647, s. 52; 1997-6, s. 9; 1998-212, s. 29A.14(p); 1999-337, s. 34; 2007-491, s. 34; 2008-134, s. 10(a); 2013-414, s. 56(a); 2014-3, s. 14.18; 2016-5, s. 5.1(a); 2018-5, s. 38.10(b); 2020-58, s. 6.3.)

**§ 105-243. Taxes recoverable by action.**

When requested by the Secretary, the Attorney General must bring an action to recover the amount of tax that is due from a taxpayer and is collectible under G.S. 105-241.22. In the action, the taxpayer may not challenge the liability for the tax. A judgment in the action has the same



priority as a tax lien. The judgment is not subject to a claim for a homestead exemption. The action must be brought in one of the following:

- (1) The Superior Court of Wake County.
- (2) The taxpayer's county of residence.
- (3) A county where the taxpayer owns real property.
- (4) The county in which the taxpayer has its principal place of business.
- (5) A court of competent jurisdiction of another state. (1939, c. 158, s. 914; 1973, c. 476, s. 193; 2007-491, s. 32.)

**§ 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 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 60 days after the tax debt became collectible, if the taxpayer has not failed to make any payments due under the installment agreement.
- (2) Tax debt. – The total amount of tax, penalty, and interest collectible under G.S. 105-241.22.

(b) Outsourcing. – The Secretary may contract for the collection of tax debts owed by nonresidents and foreign entities. At least 30 days before the Department submits a tax debt to a contractor for collection, the Department must notify the taxpayer by mail that the debt may be submitted for collection if payment is not received within 30 days after the notice was mailed.

(b1) [Outsourcing Limitation. –] In determining the liability of any person for a tax, the Secretary may not employ an agent who is compensated in whole or in part by the State for services rendered on a contingent basis or any other basis related to the amount of tax, interest, or penalty assessed against or collected from the person.

(c) Secrecy. – A contract for the collection of tax debts is conditioned on compliance with G.S. 105-259. If a contractor violates G.S. 105-259, the contract is terminated, and the Secretary must notify the contractor of the termination. A contractor whose contract is terminated for violation of G.S. 105-259 is not eligible for an award of another contract under this section for a period of five years from the termination. These sanctions are in addition to the criminal penalties set out in G.S. 105-259.

(d) Fee. – A collection assistance fee is imposed on an overdue tax 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 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.

(e) Use. – The fee is a receipt of the Department and must be applied to the costs of collecting and reducing the incidence of overdue tax debts. The proceeds of the fee must be credited to a special account within the Department and may be expended only as provided in this subsection. The proceeds of the fee may not be used for any purpose that is not directly and primarily related to collecting and reducing the incidence of overdue tax debts. The Department

may apply the proceeds of the fee for the purposes listed in this subsection. The remaining proceeds of the fee may be spent only pursuant to appropriation by the General Assembly. The fee proceeds do not revert but remain in the special account until spent for the purposes listed in this subsection. The Department and the Office of State Budget and Management must account for all expenditures using accounting procedures that clearly distinguish costs allocable to the purposes listed in this subsection from costs allocable to other purposes and must demonstrate that none of the fee proceeds are used for any other purpose.

The Department may apply the fee proceeds for the following purposes:

- (1) To pay (i) contractors for collecting overdue tax debts under subsection (b) of this section and (ii) auditors responsible for identifying overdue tax debts.
- (2) To pay the fee the United States Department of the Treasury charges for setoff to recover tax owed to North Carolina.
- (3) To pay for taxpayer locator services, not to exceed three hundred fifty thousand dollars (\$350,000) a year.
- (4) To pay for postage or other delivery charges for correspondence directly and primarily relating to collecting overdue tax debts, not to exceed seven hundred fifty thousand dollars (\$750,000) a year.
- (5) To pay for operating expenses for Project Collection Tax and the Taxpayer Assistance Call Center.
- (6) To pay for expenses of the Examination and Collection Division directly and primarily relating to collecting overdue tax debts.
- (7) To pay the direct and indirect expenses of information technology upgrades to the Department of Revenue computer systems that are intended to upgrade Department of Revenue capabilities to (i) allow for electronic filing of returns by taxpayers and the electronic issuance of refunds by the Department for all remaining tax schedules and (ii) accomplish other mission-critical information technology tasks of the Department as approved by the Office of State Budget and Management in consultation with the State CIO.

(f) Reports. – The report of Department activities required by G.S. 105-256 contains information on the Department's efforts to collect tax debts and its use of the proceeds of the collection assistance fee. (2001-380, ss. 2, 8; 2002-126, s. 22.2; 2003-349, s. 3; 2004-124, ss. 23.2(a), 23.3(c); 2004-170, s. 22.5; 2005-276, ss. 22.1(a), (b), 22.6(a); 2006-66, ss. 19.2, 19.3(a); 2007-323, s. 6.9(a); 2007-491, s. 33; 2012-152, s. 1; 2012-194, s. 61.5(b); 2014-3, s. 10.1(d); 2014-100, s. 26.1; 2015-109, s. 1; 2015-241, s. 28.2; 2019-169, s. 5.1(a); 2020-58, s. 6.4(a), (b).)

**§ 105-244: Repealed by Session Laws 1998-212, s. 29A.14(o).**

#### **§ 105-244.1. Cancellation of certain assessments.**

The Secretary of Revenue is hereby authorized, empowered and directed to cancel and abate all assessments made after October 16, 1940, for or on account of any tax owing to the State of North Carolina and which is payable to the Department of Revenue against any person who was killed while a member of the Armed Forces of the United States or who has a service connected disability as a result of which the United States is paying him disability compensation. This provision shall apply only to assessments made after October 16, 1940, for taxes which were due prior to the time the taxpayer was inducted into the Armed Forces of the United States. If any such

assessment is or has been paid, the Secretary of Revenue may refund the amount paid but shall not add thereto any interest. (1949, c. 392, s. 6; 1973, c. 476, s. 193; 2011-183, s. 73.)

§ 105-244.2: Expired pursuant to its own terms, effective January 1, 2010.

**§ 105-244.3. Sales tax base expansion protection act.**

(a) Grace Period. – The Department shall take no action to assess any tax due for a filing period beginning on or after March 1, 2016, and ending prior to January 1, 2019, if one or more of the conditions of this subsection apply and the retailer did not receive specific written advice from the Secretary for the transactions at issue for the laws in effect for the applicable periods. Except as otherwise provided, this subsection also applies to use tax liability imposed on a purchaser under G.S. 105-164.6. The conditions are as follows:

- (1) A retailer failed to charge sales tax due on separately stated installation charges that are part of the sales price of tangible personal property or certain digital property sold at retail.
- (2) A person failed to properly classify themselves as a retailer in retail trade for the period beginning March 1, 2016, and ending December 31, 2016, and did not charge sales tax on all retail transactions but rather treated some transactions as real property contracts in error for sales and use tax purposes. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill a transaction erroneously treated as a real property contract.
- (3) A person treated a transaction as a real property contract in error and did not collect sales tax on the transaction as a retail sale. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill a transaction erroneously treated as a real property contract.
- (4) A person failed to collect sales tax on the sales price of a service contract for one or more components, systems, or accessories for a motor vehicle on or after March 1, 2016, and prior to January 1, 2017, where the contract was sold by a motor vehicle dealer, a motor vehicle service agreement company, or a motor vehicle dealer on behalf of a motor vehicle service agreement company.
- (5) A person failed to collect sales tax on the retail sale of a service contract for tangible personal property that becomes a part of or is affixed to real property.
- (6) A person failed to collect sales tax on the retail sale of a service contract for a pool, a fish tank, or similar aquatic feature on or after January 1, 2017, and prior to January 1, 2019, provided the person paid tax on any purchases used to fulfill the service contract.
- (7) A person failed to collect sales tax on the sales price of or the gross receipts derived from the retail sale of a home warranty on or after January 1, 2017, and prior to January 1, 2019, provided the warranty includes coverage for real property.
- (8) A person failed to collect sales tax on the taxable portion of a mixed service contract that exceeds ten percent (10%) for a transaction on or after January 1, 2017, and prior to January 1, 2019. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill a mixed service contract.

- (8a) A person failed to collect sales tax on the taxable portion of a mixed transaction contract that exceeds twenty-five percent (25%) for a transaction on or after January 1, 2017, and prior to January 1, 2019. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill a mixed transaction contract.
- (8b) A person failed to collect sales tax on the taxable portion of a bundled transaction that included a contract for two or more services, one of which was subject to tax and one of which was not subject to tax, for a transaction on or after March 1, 2016, and prior to January 1, 2017.
- (9) A person treats a transaction as a real property contract for remodeling instead of the retail sale of repair, maintenance, and installation services sold at retail prior to January 1, 2019. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill the transaction.
- (10) A person failed to collect sales tax on repair, maintenance, and installation services for tangible personal property, motor vehicles, or certain digital property.
- (b) Limitations. – This section does not prohibit the following assessments:
  - (1) The assessment of tax collected by a person and not remitted to the Department.
  - (2) The assessment of tax due on an amount included in the definition of sales price where a retailer failed to charge or remit the tax, except as allowed under subsection (a) of this section.
  - (3) Repealed by Session Laws 2019-169, s. 3.6, effective July 26, 2019. (2017-204, s. 2.8(c); 2018-5, s. 38.5(q); 2019-6, s. 5.8; 2019-169, s. 3.6.)

**§ 105-244.4. Reduction of certain sales tax assessments.**

- (a) Reduction. – The Secretary may reduce an assessment against a taxpayer who requests relief for State and local sales and use taxes in the amount as provided in this section and waive any penalties imposed as part of the assessment when the assessment is the result of an audit of the taxpayer by the Department and all of the following apply:
  - (1) The taxpayer remitted to the Department during the period under audit all of the sales and use taxes it collected during that period.
  - (2) The taxpayer had not been informed by the Department in a prior audit to collect sales and use taxes in the circumstance that is the basis of the assessment, as reflected in the written audit comments of the prior audit.
  - (3) The taxpayer had not requested and received from the Department a private letter ruling advising to collect sales and use taxes in the circumstance that is the basis of the assessment.
  - (4) The assessment is based on the incorrect application of one or both of the following areas of the sales and use tax statutes:
    - a. The failure to collect sales tax on separately stated linen charges where the linens are furnished by a facilitator, rental agent, or other person and the charges are part of the gross receipts derived from the rental of the accommodation taxed in accordance with G.S. 105-164.4F.
    - b. The failure to pay sales or use tax to the lessor on the rental of the linens used by a facilitator, rental agent, or other person in providing the rental of an accommodation taxed in accordance with G.S. 105-164.4F where

the facilitator, rental agent, or other person issued a certificate of exemption or the required data elements per G.S. 105-164.28 to the lessor.

- (5) The taxpayer meets one of the following:
- a. The taxpayer received a proposed assessment dated on or before August 15, 2017, did not file a request for review, paid the tax due, and files a written request with the Secretary on or before December 29, 2017, to request the amount of sales or use taxes be reduced as provided in this section citing the specific reasons therefor.
  - b. The taxpayer received a proposed assessment dated on or before September 30, 2017, timely filed a request for review, and files a written request with the Secretary on or before December 29, 2017, to request the amount of sales or use taxes be reduced as provided in this section citing the specific reasons therefor. The Department does not need to take further action on the taxpayer's request for review unless the taxpayer states in writing, when filing a request for reduction under this section, that the reduction does not resolve the taxpayer's objection to the proposed assessment and that the taxpayer wishes to continue the Departmental review.
  - c. The taxpayer receives a proposed assessment after September 30, 2017, and timely files a request for review as provided in G.S. 105-241.11 and files a written request with the Secretary no later than 45 days from the date of the notice of the proposed assessment to request the amount of sales or use taxes be reduced as provided in this section citing the specific reasons therefor.

(b) Amount. – A sales and use tax assessment against a taxpayer may be reduced by ninety percent (90%) of the total amount of sales and use tax assessed. The Secretary may also waive all penalties that were imposed as part of the assessment. A reduction of an assessment under this section and the waiver of penalties imposed as part of the assessment apply only to the amount of the assessment attributable to the incorrect application of one or both of the areas of the law listed in subdivision (a)(4) of this section.

(c) Application. – This section applies to the following for a tax period ending prior to January 1, 2018:

- (1) A proposed assessment or portion of a proposed assessment.
- (2) An assessment that becomes collectible under G.S. 105-241.22.
- (3) A pending request for review case.
- (4) This section does not authorize a refund for sales or use taxes that were originally collected and remitted to the Department.

(d) Expiration. – This section is not applicable to an assessment attributable to the incorrect application of one or both areas listed in subdivision (a)(4) of this section for a period beginning on or after January 1, 2018. (2017-204, s. 2.8A; 2017-212, s. 7.1(a); 2019-169, s. 3.7.)

**§ 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. (2020-6, s. 3(d); 2020-58, s. 3.6.)

**§ 105-245. Failure of sheriff to execute order.**

If any sheriff of this State shall willfully fail, refuse, or neglect to execute any order directed to him by the Secretary of Revenue and within the time provided in this Subchapter, the official bond of such sheriff shall be liable for the tax, penalty, interest, and cost due by the taxpayer. (1939, c. 158, s. 916; 1973, c. 476, s. 193.)

**§ 105-246. Actions, when tried.**

All actions or processes brought in any of the superior courts of this State, under provisions of this Subchapter, shall have precedence over any other civil causes pending in such courts, and the courts shall always be deemed open for trial of any such action or proceeding brought therein. (1939, c. 158, s. 917.)

**§ 105-247. Municipalities not to levy income and inheritance tax.**

No city, town, township, or county shall levy any tax on income or inheritance. (1939, c. 158, s. 918.)

**§ 105-248. Purpose of State taxes.**

The taxes levied in this Subchapter are for the expenses of the State government, the appropriations to its educational, charitable, and penal institutions, the interest on the debt of the State, the public schools, and other specific appropriations made by law, and shall be collected and paid into the General Fund. (1939, c. 158, s. 919; 1981, c. 3; 1993 (Reg. Sess., 1994), c. 745, s. 17.)

**§ 105-248.1:** Repealed by Session Laws 2007-527, s. 32, effective August 31, 2007.

**§ 105-249:** Repealed by Session Laws 1998-95, s. 27.

**§ 105-249.1:** Repealed by Session Laws 1998-95, s. 28.

**§ 105-249.2. Due date extended and penalties waived for certain military personnel or persons affected by a presidentially declared disaster.**

(a) **Combat.** – The Secretary may not assess interest or a penalty against a taxpayer for any period that is disregarded under section 7508 of the Code in determining the taxpayer's liability for a federal tax. A taxpayer is granted an extension of time to file a return or take another action

concerning a State tax for any period during which the Secretary may not assess interest or a penalty under this section.

(b) Disaster. – The penalties in G.S. 105-236(a)(2), (3), and (4) may not be assessed for any period in which the time for filing a federal return or report or for paying a federal tax is extended under section 7508A of the Code because of a presidentially declared disaster. For the purpose of this section, "presidentially declared disaster" has the same meaning as in section 1033(h)(3) of the Code. (1967, c. 706, s. 1; 1991, c. 439, s. 1; 1991 (Reg. Sess., 1992), c. 922, s. 10; 2001-87, s. 1; 2001-414, s. 24; 2006-162, s. 18; 2008-187, s. 16.)

**§ 105-249.3: Repealed by Session Laws 1998-98, s. 19.**

**§ 105-250. Law applicable to foreign corporations.**

All foreign corporations, and the officers and agents thereof, doing business in this State, shall be subject to all the liabilities and restrictions that are or may be imposed upon corporations of like character, organized under the laws of this State, and shall have no other or greater powers. (1939, c. 158, s. 920.)

**§ 105-250.1. Repealed by Session Laws 1981 (Regular Session, 1982), c. 1209.**

**§ 105-251. Information required of taxpayer and corrections based on information.**

(a) Scope of Information. – A taxpayer must give information to the Secretary when the Secretary requests the information. The Secretary may request a taxpayer to provide only the following kinds of information on a return, a report, or otherwise:

- (1) Information that identifies the taxpayer.
- (2) Information needed to determine the liability of the taxpayer for a tax.
- (3) Information needed to determine whether an item is subject to a tax.
- (4) Information that enables the Secretary to collect a tax.
- (5) Other information the law requires a taxpayer to provide or the Secretary needs to perform a duty a law requires the Secretary to perform.

(b) Correction of Liability. – When a taxpayer provides information to the Secretary within the statute of limitations and the information establishes that an assessment against the taxpayer is incorrect or that the taxpayer is allowed a refund, the Secretary must adjust the assessment or issue the refund in accordance with the information. This action is a correction of an error by the Department or by the taxpayer and is not part of the process for the administrative or judicial review of a proposed assessment or a claim for refund. (1939, c. 158, s. 921; 1973, c. 476, s. 193; 1993 (Reg. Sess., 1994), c. 661, s. 2; 2008-134, s. 71.)

**§ 105-251.1: Repealed by Session Laws 1991 (Regular Session, 1992), c. 1007, s. 14.**

**§ 105-251.2. Compliance informational returns.**

(a) Occupational Licensing Board. – An occupational licensing board must give information to the Secretary when the Secretary requests the information. The Secretary may not request the information more than one time per calendar year. The Secretary may request the board to provide on a return, a report, or otherwise, a licensee's name, license number, tax identification number, business address, and any other information pertaining to the licensee in possession of the board that the Secretary deems necessary to determine the licensee's compliance with this Chapter.

For purposes of this subsection, the term "occupational licensing board" has the same meaning as defined in G.S. 93B-1.

(b) Alcohol Vendor. – An alcohol vendor must give information to the Secretary when the Secretary requests the information. The Secretary may not request the information more than one time per calendar year. The Secretary may request the alcohol vendor to provide on a return, a report, or otherwise, for a permittee to which the alcohol vendor provides alcohol, a permittee's name, license number, and business address and any other information pertaining to the permittee in possession of the alcohol vendor that the Secretary deems necessary to determine the permittee's compliance with this Chapter. This subsection applies to the following alcohol vendors:

- (1) An ABC store in the ABC system, as defined in G.S. 18B-101.
- (2) A wine wholesaler, as defined in G.S. 18B-1201.
- (3) A wholesaler, as defined in G.S. 18B-1301.
- (4) The holder of an unfortified winery permit, a fortified winery permit, a brewery permit, or a distillery permit under G.S. 18B-1100.

(c) Payment Settlement Entity. – For any year in which a payment settlement entity is required to make a return pursuant to section 6050W of the Code, the entity shall submit the information in the return to the Secretary at the time the return is made. For purposes of this subsection, the term "payment settlement entity" has the same meaning as provided in section 6050W of the Code.

(d) Electronic Format. – All reports submitted to the Department of Revenue under this section shall be in an electronic format as prescribed by the Secretary. (2015-259, s. 7.3(a); 2017-204, s. 3.2; 2018-5, s. 38.10(o).)

### **§ 105-252. Returns required.**

A person who receives from the Secretary any form requiring information shall fill the form out properly and answer each question fully and correctly. If unable to answer a question, the person shall explain why in writing. The person shall return the form to the Secretary at the time and place required by the Secretary. The person shall also furnish an oath or affirmation verifying the return; the oath or affirmation shall be in the form required by the Secretary. (1939, c. 158, s. 922; 1973, c. 476, s. 193; 1991 (Reg. Sess., 1992), c. 930, s. 5.)

#### **§ 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. (2020-58, s. 4.4(b).)

**§ 105-253:** Recodified as G.S. 105-242.2 by Session Laws 2008-134, s. 10(a), effective July 1, 2008, and applicable to taxes that become collectible on or after that date.

#### **§ 105-254. Secretary to furnish forms.**

The Secretary shall prepare forms suitable for carrying out the duties delegated to the Secretary. Upon request, the Secretary shall provide forms to any person subject to the laws administered by the Secretary. Failure to receive or secure a form does not relieve a person from a duty to file a return or a report. (1939, c. 158, s. 924; 1973, c. 476, s. 193; 1991 (Reg. Sess., 1992), c. 930, s. 6.)

#### **§ 105-254.1. Identification of veterans on income tax form D-400.**



(a) The Secretary shall provide appropriate space and instructions on the individual income tax form D-400 for an individual to voluntarily indicate whether or not the filing individual is a veteran and, on a joint return, whether or not the individual's spouse is a veteran.

(b) Using the information reported pursuant to this section, the Secretary shall compile summary information on an aggregate basis about the number of veterans filing tax returns in this State and shall annually provide that information to the Department of Military and Veterans Affairs no later than January 15 of each year. Information specific to individual employers or employees shall remain confidential in accordance with G.S. 105-259.

(c) As used in this section, the term "veteran" shall mean a person as defined in G.S. 143B-1213(3)b. (2016-112, s. 1.)

**§ 105-255. Secretary of Revenue to keep records.**

The Secretary of Revenue shall keep books of account and records of collections of taxes as may be prescribed by the Director of the Budget; shall keep an assessment roll for the taxes levied, assessed, and collected under this Subchapter, showing in same the name of each taxpayer, the amount of tax assessed against each, when assessed, the increase or decrease in such assessment; the penalties imposed and collected, and the total tax paid; and shall make monthly reports to the Director of the Budget and to the Auditor and/or State Treasurer of all collections of taxes on such forms as prescribed by the Director of the Budget. (1939, c. 158, s. 925; 1973, c. 476, s. 193.)

**§ 105-256. Publications prepared by Secretary of Revenue; report on fraud prevention progress.**

(a) Publications. – The Secretary shall prepare and publish the following:

- (1) At least every two years, statistics concerning taxes imposed by this Chapter, including amounts collected, classifications of taxpayers, geographic distribution of taxes, and other facts considered pertinent and valuable.
- (2) At least every two years, a tax expenditure report that lists the tax expenditures made by a provision in this Chapter, other than a provision in Subchapter II, and gives an estimate of the amount by which revenue is reduced by each tax expenditure. A "tax expenditure" is an exemption, an exclusion, a deduction, an allowance, a credit, a refund, a preferential tax rate, or another device that reduces the amount of tax revenue that would otherwise be available to the State. An estimate of the amount by which revenue is reduced by a tax expenditure may be stated as ranging between two amounts if the Department does not have sufficient data to make a more specific estimate.
- (2a) By May 1 of each year, an economic incentives report that contains information on tax credits and tax refunds, itemized by credit or refund and by taxpayer, for the previous calendar year.
- (3) As often as required, a report that is not listed in this subsection but is required by another law.
- (4) As often as the Secretary determines is needed, other reports concerning taxes imposed by this Chapter.
- (5) At least once a year, a statement of the taxpayer's bill of rights, which sets forth in simple and nontechnical terms the following:
  - a. The taxpayer's right to have the taxpayer's tax information kept confidential.

- b. The rights of a taxpayer and the obligations of the Department during an audit.
  - c. The procedure for a taxpayer to appeal an adverse decision of the Department at each level of determination.
  - d. The procedure for a taxpayer to claim a refund for an alleged overpayment.
  - e. The procedure for a taxpayer to request information, assistance, and interpretations or to make complaints.
  - f. Penalties and interest that may apply and the basis for requesting waiver of a penalty.
  - g. The procedures the Department may use to enforce the collection of a tax, including assessment, jeopardy assessment, enforcement of liens, and garnishment and attachment.
- (6) On an annual basis, a report on the quality of services provided to taxpayers through the Taxpayer Assistance Call Center, walk-in assistance, and taxpayer education. The report must be submitted to the Joint Legislative Commission on Governmental Operations.
- (7) Repealed by Session Laws 2011-330, s. 35, effective June 27, 2011.
- (8) By January 1 and July 1 of each year, a semiannual report on the Department's activities listed in this subdivision. The report must be submitted to the Joint Legislative Commission on Governmental Operations and to the Revenue Laws Study Committee.
- a. Its efforts to increase compliance with the tax laws. The report must describe the Department's existing initiatives in this area as of July 1, 2006, and must estimate, by tax type and amount, the revenue expected in the fiscal year by the initiative. The report must describe any new initiative implemented since July 1, 2006, and estimate, by tax type and amount, the revenue expected in the fiscal year by the initiative.
  - b. Its efforts to identify and address fraud and other abuses of the voluntary tax compliance system that result in unreported and underreported tax. The report must describe the Department's long-term plan for achieving greater voluntary compliance and must summarize the steps taken since the last report and their results.
  - c. Its efforts to collect tax debts. The report must include a breakdown of the amount and age of tax debts collected through warning letters and by other means, must itemize collections by type of tax, must describe the Department's long-term collection plan, and must summarize the steps taken since the last report and their results.
  - d. Its use of the proceeds of the collection assistance fee imposed by G.S. 105-243.1.
- (9) Repealed by Session Laws 2013-416, s. 18(a), effective August 23, 2013.
- (a1) [Fraud Prevention Progress Reports. –] Beginning March 1, 2016, and every six months thereafter, the Department of Revenue and the Government Data Analytics Center must make written progress reports to the Revenue Laws Study Committee on the following:
- (1) Prevention or reduction of the occurrence of stolen identities and refund fraud.
  - (2) Elimination of fraudulent returns.

- (3) Tax compliance by business professionals and alcohol vendors.
- (4) Coordination of efforts between the Department of Revenue and the Government Data Analytics Center to identify and integrate into the Department's operations and procedures the most effective and accurate processes and scalable tools available to reduce refund fraud, payment of fraudulent returns, and business tax compliance.

(b) Information. – The Secretary may require a unit of State or local government to furnish the Secretary statistical information the Secretary needs to prepare a report under this section. Upon request of the Secretary, a unit of government shall submit statistical information on one or more forms provided by the Secretary.

(c) Distribution. – The Secretary shall distribute reports prepared by the Secretary as follows without charge:

- (1) Five copies to the Division of State Library of the Department of Natural and Cultural Resources, as required by G.S. 125-11.7.
- (2) Five copies to the Legislative Services Commission for the use of the General Assembly.
- (3) Upon request, one copy to each entity and official to which a copy of the reports of the Appellate Division of the General Court of Justice is furnished under G.S. 7A-343.1.
- (4) One copy of the tax expenditure report to each member of the General Assembly and, upon request, one copy of any other report to each member of the General Assembly.
- (5) One copy of the taxpayer's bill of rights to each taxpayer the Department contacts regarding determination or collection of a tax, other than by providing a tax form.
- (6) Upon request, one copy of the taxpayer's bill of rights to each taxpayer.

The Secretary may charge a person not listed in this subsection a fee for a report prepared by the Secretary in an amount that covers publication or copying costs and mailing costs.

(d) Other Requirements. – The following requirements apply to the Secretary:

- (1) Repealed by Session Laws 2006-6, s. 10, effective July 1, 2007.
- (2) Escheats. – G.S. 116B-60(g) requires the Secretary to furnish information to the Escheat Fund on October 1 of each year.

(e) Repealed by Session Laws 2004-124, s. 23.3(b), effective July 1, 2004. (1939, c. 158, s. 926; 1955, c. 1350, s. 8; 1973, c. 476, s. 193; 1991, c. 10, s. 1; 1991 (Reg. Sess., 1992), c. 1007, s. 16; 1993, c. 433, s. 1; c. 532, s. 6; 2001-414, ss. 25, 26; 2002-87, s. 8; 2002-126, s. 22.5; 2004-124, s. 23.3(b); 2006-6, s. 10; 2006-66, s. 19.3(b); 2007-491, ss. 35, 36; 2010-166, s. 1.21; 2011-330, ss. 33(a), 35; 2013-414, s. 18(a); 2015-241, s. 14.30(s); 2015-259, s. 7.3(b).)

### **§ 105-256.1. Corporate annual report.**

A corporation that files its annual report with the Secretary must pay the amount provided in G.S. 55-1-22 when it files the report. Amounts collected under this section shall be credited to the General Fund as tax revenue. The Secretary must transmit an annual report filed with the Secretary in accordance with G.S. 55-16-22 to the Secretary of State. (1997-475, s. 6.10.)

### **§ 105-257. Department may charge fee for report or other document.**

The Secretary of Revenue may charge a fee for a report or another document in an amount that covers copying or publication costs and mailing costs. (1933, c. 88, s. 2; 1955, c. 1350, s. 9; 1973, c. 476, s. 193; 1991, c. 10, s. 2.)

**§ 105-258. Powers of Secretary of Revenue; who may sign and verify legal documents; who may serve civil papers.**

(a) Secretary May Examine Data and Summon Persons. – The Secretary of Revenue is authorized to do any of the following for the purpose of ascertaining the correctness of any return, filing a return where none has been filed, or determining the liability of any person for a tax, or collecting any tax:

- (1) Examine, personally, or by an agent designated by him, any books, papers, records, or other data that may be relevant or material to the inquiry.
- (2) Summon any of the following persons to appear at a time and place named in the summons, to produce such books, papers, records, or other data, and to give such testimony under oath as may be relevant or material to the inquiry:
  - a. Any person liable for the tax or required to perform the act, or any officer or employee of such person.
  - b. Any person having possession, custody, care or control of books of account containing entries relevant or material to the income and expenditures of the person liable for the tax or required to perform the act, or any other person having knowledge in the premises.
- (3) Administer oaths to the persons listed in this subsection.
- (4) Apply to the Superior Court of Wake County for an order requiring any person who refuses to obey the summons or to give testimony when summoned. Failure to comply with the court order shall be punished as for contempt.

(b) Department Employees May Sign and Verify Legal Documents. – In a matter to which the Secretary of Revenue is a party or in which the Secretary has an interest, all legal documents may be signed and verified on behalf of the Secretary by (i) a Deputy or Assistant Secretary; (ii) any director or assistant director of any division of the Department of Revenue; or (iii) any other agent or employee of the Department so authorized by the Secretary of Revenue.

(c) Department Employees May Serve Civil Papers. – In a civil matter to which the Secretary of Revenue is a party or in which the Secretary has an interest, any agent or employee of the Department of Revenue may serve summonses and other legal documents lawfully issued when so authorized by the Secretary of Revenue. (1939, c. 158, s. 927; 1943, c. 400, s. 9; 1955, c. 435; 1959, c. 1259, s. 8A; 1973, c. 476, s. 193; 1987 (Reg. Sess., 1988), c. 1044, s. 1; 1991, c. 157, s. 1; 2007-527, s. 15; 2013-414, s. 1(i).)

**§ 105-258.1. Taxpayer interviews.**

(a) Scope. – This section applies to in-person interviews between a taxpayer and an officer or employee of the Department relating to the determination or collection of a tax, other than an in-person interview concerning any of the following:

- (1) A criminal investigation.
- (2) The determination or collection of a tax imposed by Article 2D of this Chapter.
- (3) Repealed by Session Laws 2007-491, s. 37, effective January 1, 2008.
- (4) A jeopardy assessment and collection.

(b) Recording of Interview. – The Department shall allow a taxpayer to make an audio recording of an interview at the taxpayer's expense and using the taxpayer's equipment. The Department may make an audio recording of an interview at its own expense and using its own equipment. The Department shall, upon request of the taxpayer, provide the taxpayer a transcript of an interview recorded by the Department; the Department may charge the taxpayer for the cost of the requested transcription and reproduction of the transcript.

(c) Disclosure of Procedure. – At or before an initial interview relating to the determination of a tax, the Department shall provide the taxpayer a written explanation of the audit process and the taxpayer's rights in the process. At or before an initial interview relating to the collection of a tax, the Department shall provide the taxpayer a written explanation of the collection process and the taxpayer's rights in the process.

(d) Right of Consultation. – A taxpayer may authorize a person to represent the taxpayer in an interview if the person has a written power of attorney executed by the taxpayer. The Department may not require a taxpayer to accompany the taxpayer's representative to the interview unless the Secretary has summoned the taxpayer pursuant to G.S. 105-258.

(e) Suspension of Interview. – The Department shall suspend an interview relating to the determination of a tax if the taxpayer is not accompanied by a representative and, at any time during the interview, expresses the desire to consult with another person. (1993, c. 532, s. 7; 1993 (Reg. Sess., 1994), c. 745, s. 18; 2007-491, s. 37.)

#### **§ 105-258.2. Taxpayer conversations.**

(a) Scope. – This section applies to a conversation that is conducted by telephone or in person, is between a taxpayer and an employee of the Department, and occurs at an office of the Department if the conversation is in person. It does not apply to a conversation that occurs at a presentation, a conference, or another forum.

(b) Documentation. – The Secretary must document advice given to a taxpayer in a conversation with that taxpayer when the taxpayer gives the Secretary the taxpayer's identifying information, asks the Secretary about the application of a tax to the taxpayer in specific circumstances, and requests that the Secretary document the advice in the taxpayer's records. The documentation may be an entry in the account record of the taxpayer or by another method determined by the Secretary. The documentation must set out the date of the conversation, the question asked, and the advice given.

(c) Sales Tax Inquiries. – The Secretary must document advice given in a conversation with a person who is not registered as a retailer or a wholesale merchant under Article 5 of this Chapter when the person gives the Secretary the person's name and address, describes a business in which the person is engaged, asks if the person is required to be registered under Article 5 of this Chapter, and requests that the Secretary document the advice. The Secretary must keep a record of the person's inquiry that sets out the date of the conversation, the person making the inquiry, the business described in the conversation, and the advice given. (2008-107, s. 28.16(c), (d).)

#### **§ 105-258.3. Power of attorney.**

The Secretary of Revenue may require a proper power of attorney of each and every agent for any taxpayer. (1939, c. 158, s. 217; 1973, c. 476, s. 193; 2019-169, s. 6.6(a), (b).)

#### **§ 105-259. Secrecy required of officials; penalty for violation.**

- (a) Definitions. – The following definitions apply in this section:
- (1) Employee or officer. – The term includes a former employee, a former officer, and a current or former member of a State board or commission.
  - (2) Tax information. – Any information from any source concerning the liability of a taxpayer for a tax, as defined in G.S. 105-228.90. The term includes the following:
    - a. Information contained on a tax return, a tax report, or an application for a license for which a tax is imposed.
    - b. Information obtained through an audit of a taxpayer or by correspondence with a taxpayer.
    - c. Information on whether a taxpayer has filed a tax return or a tax report.
    - d. A list or other compilation of the names, addresses, social security numbers, or similar information concerning taxpayers.

The term does not include (i) statistics classified so that information about specific taxpayers cannot be identified, (ii) an annual report required to be filed under G.S. 55-16-22 or (iii) the amount of tax refunds paid to a governmental entity listed in G.S. 105-164.14(c) or to a State agency.

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

- (1) To comply with a court order, an administrative law judge's order in a contested tax case, or a law.
- (2) Review by the Attorney General or a representative of the Attorney General.
- (3) To exchange the following types of information with a tax official of another jurisdiction if the laws of the other jurisdiction allow it to provide similar tax information to a representative of this State:
  - a. Information to aid the jurisdiction in collecting a tax imposed by this State or the other jurisdiction.
  - b. Information needed for statistical reports and revenue estimates.
- (4) To provide a governmental agency or an officer of an organized association of taxpayers with a list of taxpayers who have paid a privilege license tax under Article 2 of this Chapter.
- (5) To furnish to the chair of a board of county commissioners information on the county sales and use tax.
- (5a) Reserved.
- (5b) To furnish to the finance officials of a city a list of the utility taxable gross receipts and piped natural gas tax revenues attributable to the city under G.S. 105-116.1 and G.S. 105-187.44 or under former G.S. 105-116 and G.S. 105-120.
- (5c) To provide the following information to a regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of Chapter 160A of the General Statutes on an annual basis, when the information is needed to enable the authority to administer its tax laws:

- a. The name, address, and identification number of retailers who collect the tax on leased vehicles imposed by G.S. 105-187.5.
  - b. The name, address, and identification number of a retailer audited by the Department of Revenue regarding the tax on leased vehicles imposed by G.S. 105-187.5, when the Department determines that the audit results may be of interest to the authority.
- (5d) To provide the following information to a county or city on an annual basis, when the county or city needs the information for the administration of its local prepared food and beverages tax, room occupancy tax, vehicle rental tax, or heavy equipment rental tax:
- a. The name, address, and identification number of retailers who collect the sales and use taxes imposed under Article 5 of this Chapter and may be engaged in a business subject to one or more of these local taxes.
  - b. The name, address, and identification number of a retailer audited by the Department regarding the sales and use taxes imposed under Article 5 of this Chapter, when the Department determines that the audit results may be of interest to the county or city in the administration of one or more of these local taxes.
- (6) To sort, process, or deliver tax information on behalf of the Department of Revenue.
- (6a) To furnish the county or city official designated under G.S. 105-164.29B a list of claimants that have received a refund of the county sales or use tax to the extent authorized in that statute.
- (7) To exchange information with the State Highway Patrol of the Department of Public Safety, the Division of Motor Vehicles of the Department of Transportation, the International Fuel Tax Association, Inc., or the Joint Operations Center for National Fuel Tax Compliance when the information is needed to fulfill a duty imposed on the Department of Revenue, the State Highway Patrol of the Department of Public Safety, or the Division of Motor Vehicles of the Department of Transportation.
- (7a) To furnish the name and identifying information of motor carriers whose licenses have been revoked to the administrator of a national criminal justice system database that makes the information available only to criminal justice agencies and public safety organizations.
- (8) To furnish to the Department of State Treasurer, upon request, the name, address, and account and identification numbers of a taxpayer who may be entitled to property held in the Escheat Fund.
- (9) To furnish to the Division of Employment Security the name, address, and account and identification numbers of a taxpayer when the information is requested by the Division in order to fulfill a duty imposed under Article 2 of Chapter 96 of the General Statutes.
- (9a) To furnish information to the Division of Employment Security to the extent required for its NC WORKS study of the working poor pursuant to G.S. 108A-29(r). The Division of Employment Security shall use information furnished to it under this subdivision only in a nonidentifying form for statistical and analytical purposes related to its NC WORKS study. The information that

may be furnished under this subdivision is the following with respect to individual income taxpayers, as shown on the North Carolina income tax forms:

- a. Name, social security number, spouse's name, spouse's social security number, and county of residence.
  - b. Filing status and federal personal exemptions.
  - c. Federal taxable income, additions to federal taxable income, and total of federal taxable income plus additional income.
  - d. Income while a North Carolina resident, total income from North Carolina sources while a nonresident, and total income from all sources.
  - e. Exemption for children, nonresidents' and part-year residents' exemption for children, and credit for children.
  - f. Expenses for child and dependent care, portion of expenses paid while a resident of North Carolina, portion of expenses paid while a resident of North Carolina that was incurred for dependents who were under the age of seven and dependents who were physically or mentally incapable of caring for themselves, credit for child and dependent care expenses, other qualifying expenses, credit for other qualifying expenses, total credit for child and dependent care expenses.
- (10) Review by the State Auditor to the extent authorized in G.S. 147-64.7.
  - (11) To give a spouse who elects to file a joint tax return a copy of the return or information contained on the return.
  - (11a) To provide a copy of a return to the taxpayer who filed the return.
  - (11b) In the case of a return filed by a corporation, a partnership, a trust, or an estate, to provide a copy of the return or information on the return to a person who has a material interest in the return if, under the circumstances, section 6103(e)(1) of the Code would require disclosure to that person of any corresponding federal return or information.
  - (11c) In the case of a return of an individual who is legally incompetent or deceased, to provide a copy of the return to the legal representative of the estate of the incompetent individual or decedent.
  - (12) To contract with a financial institution for the receipt of withheld income tax payments under G.S. 105-163.6 or for the transmittal of payments by electronic funds transfer.
  - (13) To furnish the following to the Fiscal Research Division of the General Assembly, upon request:
    - a. A sample, suitable in character, composition, and size for statistical analyses, of tax returns or other tax information from which taxpayers' names and identification numbers have been removed.
    - b. An analysis of the fiscal impact of proposed legislation.
  - (14) To exchange information concerning a tax imposed by Subchapter V of this Chapter with the Standards Division of the Department of Agriculture and Consumer Services when the information is needed to administer the Gasoline and Oil Inspection Act, Article 3 of Chapter 119 of the General Statutes.
  - (15) To exchange information concerning a tax imposed by Articles 2A, 2C, or 2D of this Chapter with one of the following agencies when the information is needed to fulfill a duty imposed on the Department or the agency:



- a. The North Carolina Alcoholic Beverage Control Commission.
  - b. The Alcohol Law Enforcement Division of the Department of Public Safety.
  - c. The Bureau of Alcohol, Tobacco, and Firearms of the United States Department of Justice.
  - c1. The Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury.
  - d. Law enforcement agencies.
  - e. The Section of Community Corrections of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety.
- (15a) To furnish to the appropriate local, State, or federal law enforcement agency, including a prosecutorial agency, information concerning the commission of an offense under the jurisdiction of that agency when the Department has initiated a criminal investigation of the taxpayer.
- (16) To furnish to the Department of Secretary of State the name, address, tax year end, and account and identification numbers of a corporation liable for corporate income or franchise taxes or of a limited liability company liable for a corporate or a partnership tax return to enable the Secretary of State to notify the corporation or the limited liability company of the annual report filing requirement or that its articles of incorporation or articles of organization or its certificate of authority has been suspended.
- (16a) To provide the North Carolina Self-Insurance Security Association information on self-insurers' premiums as determined under G.S. 105-228.5(b), (b1), and (c) for the purpose of collecting the assessments authorized in G.S. 97-133(a).
- (17) To inform the Business License Information Office of the Department of Commerce of the status of an application for a license for which a tax is imposed and of any information needed to process the application.
- (18) To furnish to the Office of the State Controller information needed by the State Controller to implement the setoff debt collection program established under G.S. 147-86.25, verify statewide vendor files, or track debtors of the State.
- (19) To furnish to the North Carolina Industrial Commission information concerning workers' compensation reported to the Secretary under G.S. 105-163.7.
- (20) **(See note for expiration date)** To furnish to the Environmental Management Commission information concerning whether a person who is requesting certification of a dry-cleaning facility or wholesale distribution facility from the Commission is liable for privilege tax under Article 5D of this Chapter. This subdivision is repealed when Part 6 of Article 21A of Chapter 143 of the General Statutes expires.
- (21) To exchange information concerning the tax on piped natural gas imposed by Article 5E of this Chapter with the North Carolina Utilities Commission or the Public Staff of that Commission.
- (22) To provide the Secretary of Administration pursuant to G.S. 143-59.1 a list of vendors and their affiliates who meet one or more of the conditions of G.S. 105-164.8(b) but refuse to collect the use tax levied under Article 5 of this Chapter on their sales delivered to North Carolina.

- (23) To provide public access to a database containing the names and account numbers of taxpayers who are not required to pay sales and use taxes under Article 5 of this Chapter to a retailer because of an exemption or because they are authorized to pay the tax directly to the Department of Revenue.
- (24) To furnish the Department of Commerce and the Division of Employment Security a copy of the qualifying information required in G.S. 105-129.7(b) or G.S. 105-129.86(b).
- (25) To provide public access to a database containing the names and registration numbers of retailers who are registered to collect sales and use taxes under Article 5 of this Chapter.
- (26) To contract for the collection of tax debts pursuant to G.S. 105-243.1.
- (27) To provide a publication or written determination required under this Chapter. The term "written determination" has the same meaning as defined in G.S. 105-264.2.
- (28) To exchange information concerning a tax credit claimed under Article 3E of this Chapter with the North Carolina Housing Finance Agency.
- (29) To provide to the Economic Investment Committee established pursuant to G.S. 143B-437.54 information necessary to implement economic development programs under the responsibility of the Committee.
- (30) To prove that a business does not meet the definition of "small business" under Article 3F of this Chapter because the annual receipts of the business, combined with the annual receipts of all related persons, exceeds the applicable amount.
- (31) Repealed by Session Laws 2010-166, s. 3.7, effective July 1, 2010.
- (32) Repealed by Session Laws 2006-162, s. 4(c), as amended by Session Laws 2007-527, s. 24, effective July 24, 2006.
- (33) To provide to the North Carolina State Lottery Commission the information required under G.S. 18C-141.
- (34) To exchange information concerning a tax credit claimed under G.S. 105-130.47 or G.S. 105-151.29 with the North Carolina Film Office of the Department of Commerce and with the regional film commissions.
- (34a) To exchange information concerning a grant awarded under G.S. 143B-437.02A with the Department of Revenue, the Department of Commerce, or a contractor hired by the Department of Commerce and necessary for the Department to administer the program. A contractor hired pursuant to this subdivision shall be an agent of the State subject to the provisions of this statute with respect to any tax information provided.
- (35) Repealed by Session Laws 2010-166, s. 3.7, effective July 1, 2010.
- (36) To furnish to a taxpayer claiming a credit under G.S. 105-130.47 or G.S. 105-151.29 information used by the Secretary to adjust the amount of the credit claimed by the taxpayer.
- (37) To furnish the Department of Commerce with the information needed to complete the study required under G.S. 105-129.82.
- (38) To verify with a nonprofit organization or a unit of State or local government information relating to eligibility for a credit under G.S. 105-129.16H.
- (39) To furnish the Department of State Treasurer with information it requests about whether a unit of local government has timely filed a withholding report, has

been charged a penalty, or has paid a penalty, as such information may be helpful in auditing local government accounts pursuant to G.S. 159-34 and determining compliance with the Local Government Finance Act.

- (39a) To furnish the Department of State Treasurer periodically upon request, the State tax return of a beneficiary, or the wage and income statement of beneficiary, or the NC-3 information of an employer, for the purpose of substantiating the beneficiary's statement required to be submitted under G.S. 135-5(e)(4), 135-109, or 128-27(e)(4); or for the purpose of assisting a fraud or compliance investigation in accordance with G.S. 135-1(7b), 135-1(11b), 135-6(q), 128-21(7b), 128-21(11c), and 128-28(r); provided that no federal tax information may be disclosed under this subdivision unless such a disclosure is permitted by section 6103 of the Code.
- (39b) To furnish to the Department of State Treasurer periodically upon request the State tax return of a beneficiary, or the wage and income statement of a beneficiary, or the NC-3 information of an employer for the purpose of assisting a fraud or compliance investigation or audit under G.S. 135-48.30(a)(9), or in accordance with G.S. 135-48.16; provided, however, that no federal tax information may be disclosed under this subdivision unless such a disclosure is permitted by section 6103 of the Code.
- (40) To furnish a nonparticipating manufacturer, as defined in G.S. 66-292, the amount of the manufacturer's tobacco products that a taxpayer sold in this State by distributor, and that the Secretary reports to the Attorney General under G.S. 105-113.4C.
- (40a) To furnish a data clearinghouse the information required to be released in accordance with the State's agreement under the December 2012 Term Sheet Settlement, as finalized by the State in the NPM Adjustment Settlement Agreement, concerning annual tobacco product sales by a nonparticipating manufacturer. Such information released to a data clearinghouse may be released to parties to the NPM Adjustment Settlement Agreement provided confidentiality protections are agreed to by the parties and overseen and enforced by this State's applicable court for enforcement of the Master Settlement Agreement for (i) any state information constituting confidential tax information or otherwise confidential under state law and (ii) manufacturer information designated confidential. The following definitions apply in this subdivision:
  - a. Data clearinghouse. – Defined in the Term Sheet Settlement and in the NPM Adjustment Settlement Agreement.
  - b. Master Settlement Agreement. – Defined in G.S. 66-290.
  - c. Nonparticipating manufacturer. – Defined in G.S. 66-292.
  - d. NPM Adjustment Settlement Agreement. – The final executed settlement document resulting from the 2012 Term Sheet Settlement.
  - e. Participating manufacturer. – Defined in G.S. 66-292.
  - f. Term Sheet Settlement. – The settlement agreement entered into in December 2012 by the State and certain participating manufacturers under the Master Settlement Agreement.

- (41) To furnish the North Carolina Forest Service of the Department of Agriculture and Consumer Services pertinent contact and financial information concerning companies that are involved in the primary processing of timber products so that the Commissioner of Agriculture is able to comply with G.S. 106-1029 under the Primary Forest Product Assessment Act.
- (42) To furnish to a taxpayer claiming a credit under G.S. 105-129.16A information used by the Secretary to adjust the amount of the credit claimed by the taxpayer.
- (43) To furnish requested workforce data to the North Carolina Longitudinal Data System, as required by G.S. 116E-6. Information furnished to the North Carolina Longitudinal Data System shall be provided in a nonidentifying form for statistical and analytical purposes to facilitate and enable the linkage of student data and workforce data and shall not include information allowing the identification of specific taxpayers.
- (44) To furnish the State Budget Director or the Director's designee a sample of tax returns or other tax information from which taxpayers' names and identification numbers have been removed that is suitable in character, composition, and size for statistical analyses by the Office of State Budget and Management.
- (45) To furnish tax information to the State Chief Information Officer pursuant to G.S. 143B-1385. The use and reporting of individual data may be restricted to only those activities specifically allowed by law when potential fraud or other illegal activity is indicated.
- (46) To furnish to a person who provides the State with a bond or irrevocable letter of credit on behalf of a taxpayer the information necessary for the Department to collect on the bond or letter of credit in the case of noncompliance with the tax laws by the taxpayer covered by the bond or letter of credit.
- (47) To provide the Alcoholic Beverage Control Commission the information required under G.S. 18B-900.
- (48) To furnish to the Department of Environmental Quality the name, address, tax year end, and account and identification numbers of an entity liable for severance tax to enable the Secretary of Environmental Quality to notify the entity that the Department of Environmental Quality shall suspend permits of the entity for oil and gas exploration using horizontal drilling and hydraulic fracturing under G.S. 113-395.
- (49) To exchange information concerning a tax imposed by Article 8B of this Chapter with the North Carolina Department of Insurance or the North Carolina Department of Health and Human Services when the information is needed to fulfill a duty imposed on the Department of Revenue.
- (50) To make available a list containing the name, physical address, and account number of entities licensed under Article 2A of this Chapter to all entities licensed under Article 2A of this Chapter.
- (51) To exchange information regarding the tax imposed on motor carriers under Article 36B of this Chapter with other jurisdictions that administer the International Fuel Tax Agreement to aid in the administration of the Agreement.
- (52) To furnish tax information to the State Education Assistance Authority as necessary for administering the coordinated and centralized residency

determination process in accordance with Article 14 of Chapter 116 of the General Statutes.

- (53) To furnish to the North Carolina Department of Labor, the Division of Employment Security within the North Carolina Department of Commerce, the North Carolina Industrial Commission, and the Employee Classification Section within the Industrial Commission employee misclassification information pursuant to Article 83 of Chapter 143 of the General Statutes.
- (54) To provide to the Office of Child Support and Enforcement of the Department of Health and Human Services State tax information that relates to noncustodial parent location information as required under 45 C.F.R. § 303.3 and Title IV-D of the Social Security Act.
- (55) To provide data drawn from an individual taxpayer's tax information to the Office of Recovery and Resiliency for the purpose of facilitating such a taxpayer's application for any means-tested federal or state disaster relief following a federal major disaster declaration; provided, however, that no federal tax information may be disclosed under this subpart unless such a disclosure is permitted by section 6103 of the Code.

(b1) Information Security. – The Secretary shall, consistent with the requirements of this section to maintain secrecy of tax information, determine when, how, and under what conditions the disclosure of tax information authorized by subsection (b) of this section shall be made. The Secretary shall be solely responsible for determining whether information security protections for systems or services that store, process, or transmit State or federal tax information are adequate, and the Secretary is not required to use any systems or services determined to be inadequate.

(c) Punishment. – A person who violates this section is guilty of a Class 1 misdemeanor. If the person committing the violation is an officer or employee, that person shall be dismissed from public office or public employment and may not hold any public office or public employment in this State for five years after the violation. (1939, c. 158, s. 928; 1951, c. 190, s. 2; 1973, c. 476, s. 193; c. 903, s. 4; c. 1287, s. 13; 1975, c. 19, s. 29; c. 275, s. 7; 1977, c. 657, s. 6; 1979, c. 495; 1983, c. 7; 1983 (Reg. Sess., 1984), c. 1004, s. 3; c. 1034, s. 125; 1987, c. 440, s. 4; 1989, c. 628; c. 728, s. 1.47; 1989 (Reg. Sess., 1990), c. 945, s. 15; 1993, c. 485, s. 31; c. 539, s. 712; 1994, Ex. Sess., c. 14, s. 51; c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 679, s. 8.4; 1995, c. 17, s. 11; c. 21, s. 2; 1997-118, s. 6; 1997-261, s. 14; 1997-340, s. 2; 1997-392, s. 4.1; 1997-475, s. 6.11; 1998-22, ss. 10, 11; 1998-98, ss. 13.1(b), 20; 1998-139, s. 1; 1998-212, s. 12.27A(o); 1999-219, s. 7.1; 1999-340, s. 8; 1999-341, s. 8; 1999-360, s. 2.1; 1999-438, s. 18; 1999-452, s. 28.1; 2000-120, s. 8; 2000-173, s. 11; 2001-205, s. 1; 2001-380, s. 5; 2001-476, s. 8(b); 2001-487, ss. 47(d), 123; 2002-87, s. 7; 2002-106, s. 5; 2002-172, s. 2.3; 2003-349, s. 4; 2003-416, s. 2; 2004-124, s. 32D.3; 2004-170, s. 23; 2004-204, 1st Ex. Sess., s. 4; 2005-276, ss. 31.1(cc), 39.1(c), 7.27(b); 2005-400, s. 20; 2005-429, s. 2.13; 2005-435, ss. 32(b), 32(c), 37, 48; 2006-162, s. 4(c); 2006-196, s. 11; 2006-252, s. 2.21; 2007-397, s. 13(d); 2007-491, s. 38; 2007-527, ss. 24, 33, 34, 35, 36; 2008-107, s. 28.25(d); 2008-144, s. 4; 2009-283, s. 1; 2009-445, s. 39; 2009-483, ss. 5, 10; 2010-31, ss. 13.15, 31.8(g); 2010-95, s. 11; 2010-166, s. 3.7; 2010-167, s. 2(c); 2011-145, ss. 19.1(g), (h), (k), (n), (p), 13.25(nn), (xx); 2011-330, s. 33(b); 2011-401, ss. 3.9, 5.1; 2012-83, s. 35; 2012-133, s. 1(b); 2013-155, s. 6; 2013-360, ss. 6.9, 7.10(c); 2013-414, s. 19; 2014-3, ss. 9.3, 10.1(c); 2014-4, s. 17(b); 2014-100, s. 17.1(xxx); 2014-115, s. 56.8(e); 2015-99, s. 2; 2015-241, ss. 6.24(h), 7A.4(h), 14.30(u), (v), 15.25(b), 16A.7(j); 2016-5, s. 4.5(a); 2016-57, s. 2(f); 2016-103, s. 7; 2017-128, s. 6(a); 2017-135, s. 7(a); 2017-186, s. 2(uuuu); 2017-203, s. 2; 2017-204, s. 4.7; 2018-5, ss. 37.5(a),

38.6(e); 2018-136, 3rd Ex. Sess., s. 5.17; 2019-6, s. 4.10; 2019-203, s. 9(a); 2020-58, s. 2.2(b); 2020-88, s. 16(e).)

### **§ 105-260. Evaluation of Department personnel.**

The Secretary may not use records of tax enforcement results, or production goals based on these records, as the sole criteria in evaluating employees of the Department who are directly involved in tax collection activities or in evaluating the immediate supervisors of these employees. The Secretary must consider records of taxpayer complaints that named an employee as discourteous, unresponsive, or incompetent in evaluating the employee. (1939, c. 158, s. 929; 1973, c. 476, s. 193; 1981, c. 859, s. 79; c. 1127, s. 53; 1993, c. 532, s. 8.)

#### **§ 105-260.1. Delegation of authority to hold hearings.**

The Secretary may delegate the authority to hold a hearing required or allowed under this Chapter. (1985, c. 258; 2014-3, s. 9.4.)

#### **§ 105-261. Secretary and deputies to administer oaths.**

The Secretary of Revenue and such deputies as he may designate shall have the power to administer an oath to any person or to take the acknowledgment of any person in respect to any return or report required by this Subchapter or under the rules and regulations of the Secretary of Revenue, and shall have access to all the books and records of any person, firm, corporation, county, or municipality in this State. (1939, c. 158, s. 930; 1973, c. 476, s. 193.)

#### **§ 105-262. Rules.**

(a) Authority. – The Secretary of Revenue may adopt rules needed to administer a tax collected by the Secretary or to fulfill another duty delegated to the Secretary. G.S. 150B-1 and Article 2A of Chapter 150B of the General Statutes set out the procedure for the adoption of rules by the Secretary.

(b) Repealed by Session Laws 2012-43, s. 1, effective June 20, 2012, and Session Laws 2012-79, s. 1.14(d), effective June 26, 2012.

(c) Fiscal Note. – The Secretary must ask the Office of State Budget and Management to prepare a fiscal note for a proposed new rule or a proposed change to a rule that has a substantial economic impact, as defined in G.S. 150B-21.4(b1). The Secretary shall not take final action on a proposed rule change that has a substantial economic impact until at least 60 days after the fiscal note has been prepared. (1939, c. 158, s. 931; 1955, c. 1350, s. 2; 1973, c. 476, s. 193; 1981, c. 859, s. 80; c. 1127, s. 53; 1991, c. 45, s. 28; c. 477, s. 7; 1995, c. 507, s. 27.8(p); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2007-491, s. 39; 2010-31, s. 31.10(f); 2012-43, s. 1; 2012-79, s. 1.14(d).)

#### **§ 105-262.1. Rules to exercise authority under G.S. 105-130.5A.**

(a) Purpose and Scope. – It is the policy of the State to provide necessary guidance on a timely basis to corporate taxpayers subject under G.S. 105-130.5A to have their net income adjusted or to be required to file a combined return. Except for a voluntary redetermination as allowed under G.S. 105-130.5A(c), the Secretary may not redetermine the State net income of a corporation properly attributable to its business carried on in the State under G.S. 105-130.5A until a rule adopted by the Secretary in accordance with this section becomes effective. This section provides an expedited procedure for the adoption of rules needed to administer G.S. 105-130.5A.

The Secretary may not interpret G.S. 105-130.5A in the form of a bulletin or directive under G.S. 105-264.

The Secretary is exempt from G.S. 150B-21.1 through G.S. 150B-21.4 of Part 2 of Article 2A of Chapter 150B of the General Statutes but is subject to the expedited procedure for the adoption of rules as established by this section. The Secretary is exempt from Part 3 of Article 2A of Chapter 150B of the General Statutes but is subject to the expedited review procedure as established by this section.

(b) Definitions. – The definitions in G.S. 150B-2 apply in this section.

(c) Fiscal Note. – The Secretary must prepare a fiscal note for a proposed new rule or a proposed change to a rule that has a substantial economic impact. The fiscal note must be submitted with the proposed rule when the rule is submitted to the Codifier of Rules, and the Codifier of Rules must publish the fiscal note with the proposed rule on the Internet. The Secretary must accept a written comment on the fiscal note in the same manner the Secretary accepts written comments on the proposed rule. The Secretary is not subject to the fiscal note requirement under G.S. 105-262(c). For purposes of this section, a "substantial economic impact" has the same meaning as defined in G.S. 150B-21.4(b1).

(d) Adoption. – The Secretary may adopt a rule under this section by using the procedure for adoption of a temporary rule set forth in G.S. 150B-21.1(a3). The Secretary must provide electronic notification of the adoption of a rule to persons on the mailing list maintained in accordance with G.S. 150B-21.2(d) and any other interested parties, including those originally given notice of the rule making and those who provided comment on the rule. If the Secretary receives written comment objecting to the rule and requesting review by the Commission, the rule must be reviewed in accordance with subsections (e) through (i) of this section. A person may object to the rule and request review by the Commission at any point following the agency's adoption of the rule and by 5:00 P.M. on the third business day following electronic notification from the Secretary of the adoption of a rule. If the Secretary receives no written comment objecting to the rule and requesting review by the Commission, the Secretary must deliver the rule to the Codifier of Rules. The Codifier of Rules must enter the rule into the North Carolina Administrative Code upon receipt of the rule.

(e) Review. – If the Secretary receives written comment objecting to the rule and requesting review by the Commission, the Secretary must submit the rule to the Commission for review. The Commission may not consider questions relating to the quality or efficacy of the rule but must restrict its review to a determination of whether the rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission must consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with this section.

(f) Manner of Review. – When the Commission reviews a rule under this section, the time limits in subsections (b) and (b1) of G.S. 150B-21.1 apply. The Commission must review the rule to determine whether the rule meets the standards in subsection (e) of this section. The Commission must direct a member of its staff who is an attorney licensed to practice law in North Carolina to review the rule. The staff member must make a recommendation to the Commission or its designee. The Commission's designee must be a panel of at least three members of the

Commission. The staff member, Commission's designee, or the Commission may also request technical changes as allowed in G.S. 150B-21.10. In reviewing the rule, the Commission may consider any information submitted by the Secretary or another person.

(g) **Objection.** – If the Commission or its designee finds that the rule does not meet the standards in subsection (e) of this section and objects to the rule, the Commission or its designee must send the Secretary a written statement of the objection and the reason for the objection within one business day. The Secretary must take one of the following actions:

- (1) Change the rule to satisfy the Commission's objection and submit the revised rule to the Commission.
- (2) Submit a written response to the Commission indicating that the Secretary has decided not to change the rule.

(h) **Changes.** – When the Secretary changes a rule in response to an objection by the Commission, the Commission must determine whether the change satisfies the Commission's objection. If it does, the Commission must approve the rule. If it does not, the Commission must send the Secretary a written statement of the Commission's continued objection and the reason for the continued objection.

(i) **Approval.** – If the Commission or its designee finds that the rule meets the standards in subsection (e) of this section, the Commission or its designee must approve the rule and deliver the rule to the Codifier of Rules. The Codifier of Rules must enter the rule into the North Carolina Administrative Code upon receipt from the Commission or its designee.

(j) **Return of Rule.** – A rule to which the Commission has objected remains under review by the Commission until the Secretary decides not to satisfy the Commission's objection and makes a written request to the Commission to return the rule to the Secretary. When the Commission returns a rule to the Secretary in accordance with this section, the Secretary may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.

(k) **Effective Date.** – G.S. 150B-21.3 does not apply to a rule adopted under this section. A rule adopted under this section becomes effective on the last day of the month the Codifier of Rules enters the rule in the North Carolina Administrative Code. (2012-43, s. 2; 2013-414, s. 48.)

### **§ 105-263. Timely filing of mailed documents and requests for extensions.**

(a) **Mailed Document.** – Sections 7502 and 7503 of the Code govern when a return, report, payment, or any other document that is mailed to the Department is timely filed.

(b) **(Effective for taxable years beginning before January 1, 2019) Extension.** – The Secretary may extend the time in which a person must file a return with the Secretary. To obtain an extension of time for filing a return, a person must comply with any application requirement set by the Secretary. An extension of time for filing a franchise tax return or an income tax return does not extend the time for paying the tax due or the time when a penalty attaches for failure to pay the tax. An extension of time for filing any return other than a franchise tax return or an income tax return extends the time for paying the tax due and the time when a penalty attaches for failure to pay the tax. When an extension of time for filing a return extends the time for paying the tax expected to be due with the return, interest, at the rate established pursuant to G.S. 105-241.21, accrues on the tax due from the original due date of the return to the date the tax is paid.

(b) **(Effective for taxable years beginning on or after January 1, 2019) Extension.** – The Secretary may extend the time in which a person must file a return with the Secretary. Except as provided in subsection (c) of this section, a person must comply with any application



requirement set by the Secretary to obtain an extension of time for filing a return. An extension of time for filing a franchise tax return or an income tax return does not extend the time for paying the tax due or the time when a penalty attaches for failure to pay the tax. An extension of time for filing any return other than a franchise tax return or an income tax return extends the time for paying the tax due and the time when a penalty attaches for failure to pay the tax. When an extension of time for filing a return extends the time for paying the tax expected to be due with the return, interest, at the rate established pursuant to G.S. 105-241.21, accrues on the tax due from the original due date of the return to the date the tax is paid.

(c) **(Effective for taxable years beginning on or after January 1, 2019)** Automatic Extension. – A person who is granted an automatic extension to file a federal income tax return, including a return of partnership income, is granted an automatic extension to file the corresponding State income tax return and franchise tax return. The person must certify on the State tax return that the person was granted a federal extension.

(d) Electronic Documents. – The Secretary shall prescribe when a return, report, payment, or any other document that is electronically submitted to the Department is timely filed. (1939, c. 158, s. 932; 1973, c. 476, s. 193; 1977, c. 1114, s. 2; 1989 (Reg. Sess., 1990), c. 984, s. 14; 1991 (Reg. Sess., 1992), c. 930, s. 11; 1997-300, s. 1; 2007-491, s. 44(1)a; 2008-107, s. 28.18(c); 2010-95, s. 10(a); 2012-79, s. 1.8; 2013-414, s. 1(j); 2018-5, ss. 38.4(a), 38.10(q).)

#### **§ 105-264. Effect of Secretary's interpretation of revenue laws.**

(a) Interpretation. – It is the duty of the Secretary to interpret all laws administered by the Secretary. The Secretary's interpretation of these laws shall be consistent with the applicable rules. An interpretation by the Secretary is prima facie correct. When the Secretary interprets a law by adopting a rule or publishing a bulletin or directive on the law, the interpretation is a protection to the officers and taxpayers affected by the interpretation, and taxpayers are entitled to rely upon the interpretation. If the Secretary changes an interpretation, a taxpayer who relied on it before it was changed is not liable for any penalty or additional assessment on any tax that accrued before the interpretation was changed and was not paid by reason of reliance upon the interpretation.

(b) Advice. – If a taxpayer requests specific advice from the Department and receives erroneous advice in response, the taxpayer is not liable for any penalty or additional assessment attributable to the erroneous advice furnished by the Department to the extent that the following conditions are all satisfied:

- (1) The advice was reasonably relied upon by the taxpayer.
- (2) The penalty or additional assessment did not result from the taxpayer's failure to provide adequate or accurate information.
- (3) The Department provided the advice in writing or the Department's records establish that the Department provided erroneous verbal advice.

(c) Revised Interpretations. – This section does not prevent the Secretary from changing an interpretation, and it does not prevent a change in an interpretation from applying on and after the effective date of the change. An interpretation that revises a prior interpretation by expanding the scope of a tax or otherwise increasing the amount of tax due may not become effective sooner than the following:

- (1) For a tax that is payable on a monthly or quarterly basis, the first day of a month that is at least 90 days after the date the revised interpretation is issued.
- (2) For a tax that is payable on an annual basis, the first day of a tax year that begins after the date the revised interpretation is issued.

(d) Fee. – The Secretary may charge a fee for providing a written determination at the request of a taxpayer. The fee is a receipt of the Department and must be applied to the costs of providing the written determination. The proceeds of the fee must be credited to a special account within the Department and do not revert but remain in the special account until spent by the Department for the costs of providing the written determination. The Secretary may adopt a tiered fee structure based on the taxpayer's income or gross receipts, the relative complexity of the advice requested, or the tax schedule for which advice is requested. The fee shall not be less than one hundred dollars (\$100.00) or more than five thousand dollars (\$5,000). The fee may be waived by the Secretary. The term "written determination" has the same meaning as defined in G.S. 105-264.2. (1939, c. 158, s. 933; 1955, c. 1350, s. 4; 1957, c. 1340, s. 14; 1973, c. 476, s. 193; 1991, c. 45, s. 29; 1993, c. 532, s. 9; 1998-98, s. 21; 2008-107, s. 28.16(e); 2010-31, s. 31.7A(a); 2011-390, s. 6; 2016-103, s. 6.)

**§ 105-264.1. Secretary's interpretation applies to local taxes that are based on State taxes.**

An interpretation by the Secretary of a law administered by the Secretary applies to a local law administered by a unit of local government when the local law refers to the State law to determine the application of the local law. A person who is subject to the local law or the unit of local government that administers the local law may ask the Secretary for an interpretation of the State law that determines the application of the local law. An interpretation by the Secretary of a State law that determines the application of a local law provides the same protections against liability under the local law that it provides under the State law. (2008-134, s. 12(a).)

**§ 105-264.2. Publication of written determinations.**

(a) Written Determinations. – A written determination applies the tax law to a specific set of existing facts furnished by a particular taxpayer. A written determination is applicable only to the individual taxpayer addressed and as such has no precedential value except to the taxpayer to whom the determination is issued.

(b) Publication. – The text of a written determination must be published on the Department's Web site within 90 days of the date the determination is provided to the taxpayer. The text of a written determination must be redacted as provided in subsection (c) of this section before it is published. The publication requirement of this section does not include disclosure of background file documents.

(c) Redacted Written Determinations. – The Secretary must redact all of the following from a written determination before it is published:

- (1) The names, addresses, and other identifying details of the taxpayer to whom the written determination pertains.
- (2) The names, addresses, and other identifying details of any other person referenced in the written determination.
- (3) Information specifically exempted from disclosure by State or federal law.
- (4) Trade secrets and commercial or financial information obtained from a person that is privileged or confidential.

(d) Liability. – The Secretary must determine the appropriate extent of the redactions. The Secretary is not liable for failure to make redactions unless the Secretary fails to make the redactions in intentional and willful disregard of this section, has agreed to redact the information, or has been ordered by a court to make the redaction.

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

- (1) Alternative apportionment ruling. – Written advice issued by the Secretary to a taxpayer pursuant to a written request by the taxpayer for alternative apportionment under G.S. 105-130.4(t1) or under G.S. 105-122(c1).
- (2) Background file document. – Any one or more of the following:
  - a. The request for the written determination.
  - b. Any written materials submitted in support of the request.
  - c. Any communication between the Department and persons outside the Department in connection with the written determination.
  - d. Any information submitted by the taxpayer in response to a request from the Department for information that is required to provide the written determination.
- (3) Private letter ruling. – Written advice issued by the Secretary to a taxpayer pursuant to a written request by the taxpayer for specific advice under G.S. 105-264(b).
- (4) Redetermination private letter ruling. – Written advice issued by the Secretary to a corporation under G.S. 105-130.5A concerning one or more of the following:
  - a. Specific advice requested in writing by a corporation as to whether a redetermination of a corporation's State net income or a combined return is required by the Secretary, as provided under G.S. 105-130.5A(m).
  - b. A determination and agreement made jointly between the Secretary and a corporation to an alternative filing methodology that accurately reports State net income, as provided under G.S. 105-130.5A(c).
- (5) Written determination. – Any one or more of the following:
  - a. An alternative apportionment ruling.
  - b. A private letter ruling.
  - c. A redetermination private letter ruling. (2016-103, s. 5.)

**§ 105-265: Repealed by Session Laws 1991, c. 45, s. 19.**

**§ 105-266:** Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

**§ 105-266.1:** Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

**§ 105-266.2. Refund of tax paid on substantial income later restored.**

This section applies to a taxpayer who is subject to the alternative tax under § 1341(a)(5) of the Code for the current taxable year because the taxpayer restored an item of income that had been included in the taxpayer's gross income for an earlier taxable year. For the purpose of Article 4 of this Chapter, the taxpayer is considered to have made a payment of tax for the current taxable year on the later of the date the return for the current taxable year was filed or the date the return was due to be filed. The amount of this payment of tax is (i) the amount the taxpayer's tax under Article 4 for the earlier taxable year was increased because the item of income was included in gross income for that year minus (ii) the amount the taxpayer's tax under Article 4 for the current taxable year was decreased because the item was deductible for that year. To the extent this payment of tax creates an overpayment, the overpayment is refundable in accordance with G.S. 105-241.21. (1997-213, s. 1; 2007-491, s. 44(1)c.)

§ 105-267: Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

§ 105-267.1: Repealed by Session Laws 1991, c. 45, s. 30.

§ 105-268. Reciprocal comity.

The courts of this State shall recognize and enforce liabilities for taxes lawfully imposed by other states which extend a like comity to this State. (1939, c. 158, s. 938.)

§ 105-268.1. Agreements to coordinate the administration and collection of taxes.

The Secretary of Revenue is hereby authorized, with the approval of the Governor and Council of State, to enter into agreements with the United States government or any department or agency thereof, or with a state or any political subdivision thereof, for the purpose of coordinating the administration and collection of taxes imposed by this State and administered and collected by said Secretary with taxes imposed by the United States or by any other state or political subdivision thereof. (1943, c. 747, s. 1; 1971, c. 806, s. 2; 1973, c. 476, s. 193.)

§ 105-268.2. Expenditures and commitments authorized to effectuate agreements.

The Secretary of Revenue with the approval of the Governor and Council of State is authorized and empowered to undertake such commitments and make such expenditures, within the appropriations provided by law, as may be necessary to effectuate such agreements. (1943, c. 747, s. 2; 1971, c. 806, s. 2; 1973, c. 476, s. 193.)

§ 105-268.3. Returns to be filed and taxes paid pursuant to agreements.

Notwithstanding any other provision of law, returns shall be filed and taxes paid in accordance with the provisions of any agreement entered into pursuant to this Article. (1943, c. 747, s. 3; 1971, c. 806, s. 2.)

§ 105-269. Extraterritorial authority to enforce payment.

(a) The Secretary, with the assistance of the Attorney General, is authorized to bring suits in the courts of other states to collect taxes legally due this State. The officials of other states that extend a like comity to this State are empowered to sue for the collection of taxes in the courts of this State. A certificate by the Secretary of State, under the Great Seal of the State, that these officers have authority to collect the tax is conclusive evidence of this authority. Whenever the Secretary considers it expedient to employ local counsel to assist in bringing suit in an out-of-state court, the Secretary, with the concurrence of the Attorney General, may employ local counsel on the basis of a negotiated retainer or in accordance with prevailing commercial law league rates.

(b) Repealed by Session Laws 2001-380, s. 4, effective August 20, 2001, and applicable to tax debts that remain unpaid on or after that date. (1939, c. 158, s. 939; 1963, c. 1169, s. 6; 1973, c. 476, s. 193; 1983 (Reg. Sess., 1984), c. 1005; 2001-380, s. 4.)

§ 105-269.1. Local authorities authorized to furnish office space.

Boards of county commissioners and governing boards of cities and towns are hereby fully authorized and empowered to furnish adequate and suitable office space for field representatives of the Department of Revenue upon request of the Secretary of Revenue, and are hereby authorized and empowered to make necessary expenditures therefor. (1951, c. 643, s. 9; 1973, c. 476, s. 193.)

**§ 105-269.2:** Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.

**§ 105-269.3. Enforcement of Subchapter V and fuel inspection tax.**

The State Highway Patrol and law enforcement officers and other appropriate personnel in the Department of Public Safety may assist the Department of Revenue in enforcing Subchapter V of this Chapter and Article 3 of Chapter 119 of the General Statutes. The State Highway Patrol and law enforcement officers of the Department of Public Safety have the power of peace officers in matters concerning the enforcement of Subchapter V of this Chapter and Article 3 of Chapter 119 of the General Statutes. (1963, c. 1169, s. 6; 1991, c. 42, s. 16; 1991 (Reg. Sess., 1992), c. 1007, s. 17; 1993, c. 485, s. 15; 1993 (Reg. Sess., 1994), c. 745, s. 19; 2002-159, s. 31.5(b); 2002-190, s. 2; 2011-145, s. 19.1(g).)

**§ 105-269.4. Election to apply income tax refund to following year's tax.**

Any taxpayer required to file an income tax return under Article 4 of this Subchapter whose return shows that the taxpayer is entitled to a refund may elect to apply part or all of the refund to that taxpayer's estimated income tax liability for the following year. The Secretary of Revenue shall amend the income tax returns to permit the election authorized by this section. (1983, c. 663, s. 1; 1989 (Reg. Sess., 1990), c. 814, s. 28.)

**§ 105-269.5. Contribution of income tax refund to Wildlife Conservation Account.**

Any taxpayer entitled to a refund of income taxes under Article 4 of this Chapter may elect to contribute all or part of the refund to the Wildlife Conservation Account established under G.S. 143-247.2 to be used for the management, protection, and preservation of wildlife in accordance with that statute. The Secretary shall provide appropriate language and space on the income tax form in which to make the election. The taxpayer's election becomes irrevocable upon filing the taxpayer's income tax return for the taxable year. The Secretary shall transmit the contributions made pursuant to this section to the State Treasurer for credit to the Wildlife Conservation Account. (1983, c. 865, s. 2; 1991, c. 45, s. 20; 1993, c. 543, s. 6.)

**§ 105-269.6: Repealed by Session Laws 2002-158, s. 6(a), effective for taxable years beginning on or after January 1, 2003.**

**§ 105-269.7. Contribution of income tax refund or payment to the North Carolina Education Endowment Fund.**

Any taxpayer entitled to a refund of income taxes under Article 4 of this Chapter, or any taxpayer who desires to make a contribution, may elect to contribute all or part of the refund or may make a contribution to the North Carolina Education Endowment Fund established pursuant to G.S. 115C-472.16 to be used in accordance with that statute. The Secretary shall provide appropriate language and space on the income tax form in which to make the election or contribution. The taxpayer's election or contribution becomes irrevocable upon filing the taxpayer's income tax return for the taxable year. The Secretary shall transmit the amounts designated pursuant to this section to the State Treasurer for credit to the North Carolina Education Endowment Fund. (2014-100, s. 8.11(h).)

**§ 105-269.8. (Effective for taxable years beginning on or after January 1, 2017 and expiring for taxable years beginning on or after January 1, 2026) Contribution by individual for early detection of breast and cervical cancer.**

(a) Contribution. – An individual entitled to a refund of income taxes under Part 2 of Article 4 of this Chapter may elect to contribute all or part of the refund to be used for early detection of breast and cervical cancer at the Cancer Prevention and Control Branch of the Division of Public Health of the Department of Health and Human Services. The Secretary shall provide appropriate language and space on the individual income tax form in which to make the election. The Secretary shall include in the income tax instructions an explanation that the contributions will be used for early detection of breast and cervical cancer only. The election becomes irrevocable upon filing the individual's income tax return for the taxable year.

(b) Distribution. – The Secretary shall transmit the contributions made pursuant to this section to the State Treasurer to be distributed for early detection of breast and cervical cancer. The State Treasurer shall distribute the contributions to the Cancer Prevention and Control Branch of the Division of Public Health of the Department of Health and Human Services. Funds distributed pursuant to this section shall be used only for early detection of breast and cervical cancer and shall be used in accordance with North Carolina's Breast and Cervical Cancer Control Program's policies and procedures.

(c) Sunset. – This section expires for taxable years beginning on or after January 1, 2026. (2017-204, s. 6.2(a); 2020-58, s. 7.1.)

**§ 105-269.9:** Reserved for future codification purposes.

**§ 105-269.10:** Reserved for future codification purposes.

**§ 105-269.11:** Reserved for future codification purposes.

**§ 105-269.12:** Reserved for future codification purposes.

**§ 105-269.13. Debts not collectible under North Carolina law.**

(a) Debts Not Collectible. – The following debts are not collectible and are not subject to execution under Article 28 of Chapter 1 of the General Statutes or any other provision of law:

- (1) A loan made by a person who does not comply with G.S. 105-88.
- (2) A debt owed to a retailer described in subsection (b) of this section as the result of the purchase of tangible personal property.

(b) Retailer. – A debt owed to a retailer is subject to this section if all of the following applies to the retailer:

- (1) The retailer meets one or more of the conditions in G.S. 105-164.8(b).
- (2) The retailer is not registered to collect the use tax due under Article 5 of this Chapter on its sales delivered to an address in North Carolina.
- (3) The retailer reported gross sales of at least five million dollars (\$5,000,000) on its most recent federal income tax return.

(c) Assignment. – An assignment to a person of a debt listed in subsection (a) of this section is subject to the collection restrictions imposed by this section. (2000-120, s. 9.)

**§ 105-269.14. Payment of use tax with individual income tax.**

(a) Requirement. – An individual who owes use tax that is payable on an annual basis pursuant to G.S. 105-164.16(d) and who is required to file an individual income tax return under Part 2 of Article 4 of this Chapter must pay the use tax with the individual income tax return for the taxable year. The Secretary must provide appropriate space and information on the individual income tax form and instructions. The information must include the following:

- (1) An explanation of an individual's obligation to pay use tax on items purchased from mail order, Internet, or other sellers that do not collect State and local sales and use taxes on the items.
- (2) A method to help an individual determine the amount of use tax the individual owes. The method must list categories of items, such as personal computers and clothing, that are commonly sold by mail order or Internet and must include a table that gives the average amounts of use tax payable by taxpayers in various income ranges.

(b) Distribution. – The Secretary must distribute the local portion of the net use tax proceeds collected under this section in accordance with Subchapter VIII of this Chapter and Chapter 1096 of the 1967 Session Laws. (1999-341, s. 2; 2000-120, s. 10; 2002-72, s. 20; 2003-284, s. 44.1; 2005-276, s. 33.24; 2007-323, s. 31.16.3(i); 2009-451, s. 27A.3(b), (c); 2010-95, s. 42; 2019-6, s. 5.9.)

#### **§ 105-269.15. Income tax credits of partnerships.**

(a) Qualification. – A partnership that engages in an activity that is eligible for a tax credit qualifies for the credit as an entity and then passes through to each of its partners the partner's distributive share of the credit for which the partnership entity qualifies. Maximum dollar limits and other limitations that apply in determining the amount of a tax credit available to a taxpayer apply to the same extent in determining the amount of a tax credit for which the partnership entity qualifies, with one exception. The exception is a limitation that the tax credit cannot exceed the amount of tax imposed on the taxpayer.

(b) Allowance of Credit to Partner. – A partner's distributive share of an income tax credit passed through by a partnership is allowed to the partner only to the extent the partner would have qualified for the credit if the partner stood in the position of the partnership. All limitations on an income tax credit apply to each partner to the extent of the partner's distributive share of the credit, except that a corporate partner's distributive share of an individual income tax credit is allowed as a corporation income tax credit to the extent the corporate partner could have qualified for a corporation income tax credit if it stood in the position of the partnership. All limitations on an income tax credit apply to the sum of the credit passed through to the partner plus the credit for which the partner qualifies directly.

(c) Determination of Distributive Share. – A partner's distributive share of an income tax credit shall be determined in accordance with sections 702 and 704 of the Code. (1993 (Reg. Sess., 1994), c. 674, s. 3; 2001-335, s. 1.)