SENATE BILL 99:
Appropriations Act of 2018.

2017-2018 General Assembly

Committee:	House Appropriations. If favorable, re-refer to Finance. If favorable, re-refer to Pensions and Retirement	**Date:**	May 29, 2018
Introduced by:	Sens. Lee, Meredith, Ford	**Prepared by:**	Finance Team
Analysis of:	Conference Committee Substitute (S99-CCSMMxr-2)		

OVERVIEW: Sections 5.6(j), 5.6(k), and 35.25(g) and Part XXXVIII of the Conference Committee Substitute for Senate Bill 99 make up the finance provisions contained in the Appropriations Act of 2018.

Section	Bill Analysis	Effective Date[1]
DISASTER RECOVERY - 2018		
5.6(j) and (k)	Provides a State income tax deduction equal to the amount paid to the taxpayer, either individual or business, during the taxable year from the State Emergency Response and Disaster Relief Reserve Fund for hurricane relief or assistance.[2] The deduction does not apply to amounts received as payments for goods and services provided by the taxpayer. Under current State and federal law, payments received to replace property lost in a federally declared disaster are exempt from tax. However, payments received to replace income are not exempt. Payments to farmers for crop losses would be an example of a taxable payment, as the crops are assumed to be converted into income.	Effective for tax years beginning on or after January 1, 2017.
STATE TROOPER TRAINING LOAN REIMBURSEMENT		
35.25(g)	Provides a State income tax deduction equal to the loan amount forgiven under the Trooper Training Reimbursement Program. Under current State and federal law, when an obligation is forgiven, the amount received as loan proceeds is reportable as income because the taxpayer no longer has an obligation to repay the debt.[3]	Effective for taxable years beginning on or after

[1] The provisions are effective when they become law except as otherwise noted in this column.
[2] The General Assembly provided similar tax relief to Hurricane Floyd victims in 1999, and again in 2004 when NC was struck by six hurricanes: Hurricanes Alex, Bonnie, Charlie, Frances, Jeanne, and Ivan. The Tax Simplification and Reduction Act, S.L. 2013-316, repealed the deduction for payments received from Hurricane Floyd Reserve Fund (no fund no longer exists) and for payments received from Disaster Relief Fund.
[3] The amount of the canceled debt is reported to the taxpayer and the IRS on a Form 1099-C, Cancellation of Debt.

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		January 1, 2018.
PART XXXVIII: FINANCE PROVISIONS *There are 10 Finance Special Provisions. Six of those 10 special provisions came as a recommendation of the Revenue Laws Study Committee (SB 715 and HB 975).*		
IRC UPDATE: SECTION 38.1[4]		
38.1	Updates the reference to the Internal Revenue Code from January 1, 2017, to February 9, 2018. Except as provided below, this means that to the extent North Carolina follows federal tax provisions in calculating State tax liability, changes made to the IRC by the Federal Tax Cuts and Jobs Act (TCJA) and the Bipartisan Budget Act of 2018 will apply to North Carolina. The TCJA made many changes to the calculation of federal taxable income. This legislation's impact on North Carolina is not as significant as it may be on other states due to the tax reform changes enacted in this State since 2011. Here are some of the major tax reform changes North Carolina has enacted that minimize the impact of the TCJA: • NC starts with adjusted gross income instead of federal taxable income. • NC does not conform to federal standard deductions or personal exemption amounts. • NC does not conform to federal itemized deductions. • NC allows cost of capital asset purchases to be deducted over a five-year period in place of federal law that allows the cost to be deducted in one year. • NC eliminated tax credits that were based on federal tax credits. This Section[5] would decouple from two of the tax changes included in TCJA: • The deferral of gain and the exclusion of gain for assets invested in an Opportunity Fund. • The inclusion, and deduction, associated with foreign-derived intangible income (FDII) and global intangible low-taxed income (GILTI). The Bipartisan Budget Act of 2018 temporarily reduces the threshold for deducting medical expenses from 10% to 7.5% of income for the 2017 and 2018 taxable years. This Section conforms to this change. The Act also extends three provisions from which North Carolina has historically decoupled. This Section[6] decouples from those three provisions: (i) income exclusion for forgiveness of	

[4] Part I of SB 715.
[5] Section 38.1(b) and Section 38.1(c).
[6] Section 38.1(c).

	debt on primary residence; (ii) mortgage insurance deductible as mortgage interest; and (iii) deduction for tuition and expenses.	
38.1(b)	Makes the adjustments necessary to State net income to decouple from the recently enacted FDII, GILTI, and Opportunity Zone provisions.	
38.1(c)	Makes the adjustments necessary to North Carolina taxable income to decouple from the recently extended provisions in the Bipartisan Budget Act of 2018 noted in the overview of Section 38.1 of this summary and from the Opportunity Zone provisions. It also removes language that would otherwise prohibit an individual taxpayer from claiming a State itemized deduction if the taxpayer claimed the federal standard deduction.	
38.1(d)	Removes unnecessary language in the definition of "wages".	
38.1(e) & (f)	Repeals an addback for a Section 199 deduction taken at the federal level. Section 199 of the Code is the domestic production activities deduction. North Carolina decoupled from this federal deduction in 2005. The State addback is being repealed because the federal deduction was repealed in the TCJA.[7]	Applies to taxable years beginning on and after January 1, 2018.
38.1(g)	Decouples North Carolina's filing requirement from the federal filing requirement. Under current law, an individual's obligation to file a State income tax return is tied to whether the individual had to file a federal return. An individual is required to file a federal income tax return if the individual's gross income exceeds the federal standard deduction. Since the federal standard deduction is now higher than the NC standard deduction, taxpayers with income less than the federal standard deduction amount but more than the NC standard deduction amount would not be required to file an NC tax return although NC income tax may be due. This change corrects this problem.	
38.1(h) & (i)	Enables participants in the NC 529 Plan to take full advantage of the expanded benefits permitted under section 529 of the Code, as amended by the TCJA. Under the TCJA changes enacted by Congress, a participant in a 529 plan may withdraw funds to pay for tuition in connection with a beneficiary's enrollment at an elementary or secondary public, private, or religious school. Previously, a withdrawal could only be made for purposes of higher education expenses. The TCJA also allows existing 529 savings plans to be rolled into 529 ABLE accounts. Under federal law, contributions to a 529 plan are payable from after-tax income but the earnings in a 529 plan are not taxable and will not be taxed when the money is withdrawn for purposes permitted under section 529 of the Code. The tax-free nature of the	Applies to taxable years beginning on and after January 1, 2018.

[7] Section 13305 of P.L. 115-97.

	earnings is also applicable for State tax purposes because NC follows federal law. Prior to taxable years beginning on or after January 1, 2014, contributions to a NC 529 plan were tax deductible for State tax purposes. If funds are withdrawn from the plan and not used for qualified higher education expenses, then the taxpayer must add the amount deducted in a prior taxable year to the taxpayer's State taxable income in the year the funds are withdrawn. Subsection (h) makes conforming changes to the income tax add-back provision to avoid penalizing a taxpayer who took the income tax deduction for contributions to the NC 529 plan while the deduction was in effect when the person withdraws the funds for purposes allowed under section 529 of the Code, as amended by Congress in the TCJA. Subsection (i) make conforming changes to the Parental Savings Trust Fund established under G.S. 116-209.25, and the responsibilities of the State Education Assistance Authority (SEAA) for the fund. The SEAA provides the requisite state oversight for the NC 529 Plan to be operated as a "qualified tuition program" under the IRC.	
BUSINESS TAX CHANGES, SECTION 38.2[8]		
38.2(a)	Amends the definition of a "corporation" for purposes of the application of the franchise tax to include partnerships that elect to be taxed as a corporation for income tax purposes. Under current law, the definition includes limited liability companies that elect to be taxed as corporations, but it does not include partnerships. This change would equalize the treatment among all business entities that either are corporations or choose to be taxed as one. Moreover, the change makes franchise tax treatment consistent with the income tax treatment.	1/1/19, and applies to calculation of franchise tax reported on the 2018 and later returns.
38.2(b)	Does two things as it relates to the determination of net worth for franchise tax purposes: • Eliminates vague language to make clear that if a corporation does not maintain its books in accordance with generally accepted accounting principles (GAAP), then its net worth is computed in accordance with the method it uses for federal tax purposes. If a corporation uses a method for federal tax purposes other than GAAP, then the new subdivision (1a) requires that asset valuation, depreciation, depletion and amortization be calculated for franchise tax purposes using same method used for federal income tax purposes. • Prevents a double deduction of treasury stock that is already captured in the current franchise tax calculation.	1/1/19, and applies to calculation of franchise tax reported on the 2018 and later returns.

[8] Part II of SB 715.

38.2(c)	Provides guidance to the Department with respect to the term "income-producing activity" for apportionment purposes. The modernization of the language comports with current practice and policy.	
38.2(d)	Repeals references in the corporate addback statute to credits or deductions that have expired.[9]	
38.2(e), (f), and (g)	Clarifies that non-North Carolina captive insurance companies, which are those licensed and taxed in another state, are not subject to the tax on captive insurance companies, the corporate income tax, the franchise tax, or the gross premiums tax. No state taxes a foreign captive insurance company despite the fact that the insured risk may be located in the state.	
38.2(h)	Re-enacts a provision that was inadvertently not roll-called during the 2017 Session. Section 4 of S.L. 2017-151 added massage and bodywork therapists to the list of professionals that are required to pay the annual $50 State privilege license tax. However, the bill was not roll-called at the time of enactment as required by the NC Constitution.	Applies to taxable years beginning on and after July 1, 2018.
38.2(i)	Provides that the income tax applicable to unrelated business income of a nonprofit organization does not include amounts paid or incurred by a 501(c)(3) organization for transportation and parking benefits it provides to its employees. Under the TCJA, a nonprofit organization that provides these benefits must pay tax on these expenses. This section becomes effective for taxable years beginning on or after January 1, 2018; and ensures that NC's income tax treatment of these expenses will remain the same.	Applies to taxable years beginning or and after January 1, 2018
FEDERAL DETERMINATIONS AND AMENDED RETURNS, SECTION 38.3[10]		
38.3(a)	Clarifies when a taxpayer must notify the Secretary as the result of either a federal determination or a voluntarily filed amended federal return that affects the amount of State tax payable. Similar changes are being made to both statutes that address federal determinations, the one for corporate taxpayers (G.S. 105-130.20) and the one for individual income taxpayers (G.S. 105-159). Under current law, if a taxpayer's State tax payable is affected by a federal determination, the taxpayer must file an amended return with the Secretary within 6 months of being notified, regardless of whether the amount owed is increased or decreased. Moreover, current law does not specify what constitutes "a final determination by the federal government."	

[9] G.S. 105-130.47 is the film credit that expired January 1, 2015. G.S. 105-129.16H is the credit for donating funds to a nonprofit or unit of State or local government to enable the acquisition of renewable energy property, which expired January 1, 2017.
[10] Part III of SB 715.

	This section incorporates a cross-reference to a new definition of "federal determination," which means a change or correction of federal tax due arising from an audit of the Commissioner of Internal Revenue. It also provides that if a taxpayer voluntarily files an amended federal return, the taxpayer must file an amended State return if it results in an increase in State tax payable. An amended State return is optional if the adjustment results in less tax owed.	
38.3(b)	Clarifies a taxpayer's filing requirements as the result of a federal determination or when a taxpayer voluntarily files an amended federal return. These changes mirror those made in Section 38.3(a) of the bill.	
38.3(c)	Incorporates the changes made to G.S. 105-159 with regard to its application to estates and trusts (*See* Section 38.3(a) of this summary).	
38.3(d)	Incorporates the changes made to G.S. 105-159 with regard to changes to the amount of withholding tax an employer is required to pay under the Code. (*See* Section 38.3(a) of this summary).	
38.3(e)	Provides an exception to the general statute of limitations for assessments proposed from adjustments voluntarily filed with the IRS that affect State tax payable.	
38.3(f)	Incorporates reference to newly defined term "federal determination." (See Section 38.e(g) of this summary).	
38.3(g)	Creates a definition for the term "federal determination" and clarifies the meaning to be a change or correction of the amount of federal tax due arising from an audit by the Commissioner of Internal Revenue. The current law refers to a "final determination by the federal government," but it is unclear as to what stage in the process this refers to or whether this could apply in a situation where a taxpayer voluntarily files an amended federal return that is consequently changed or corrected but not at the initiation of the IRS.	
AUTOMATIC EXTENSION OF TIME TO FILE TAX RETURNS, SECTION 38.4		
38.4	Provides that a taxpayer who is granted an automatic extension to file a federal income tax return is granted an automatic extension to file a State income and franchise tax return. Currently, a taxpayer must file a State tax extension form. NC does not receive copies of federally filed extension forms. An extension of time to file a return is not an extension of time to pay the amount of tax due.	Applies to taxable years beginning on or after January 1, 2019
SALES AND USE TAX CHANGES, SECTION 38.5[11]		
38.5(a)	Clarifies that the term "mixed transaction contract" applies to real property transactions; it does not include a contract that consists of a	Effective retroactively

[11] Part IV of SB 715.

	capital improvement and repair, maintenance, and installation (RMI) services for tangible personal property.	to January 1, 2017.
38.5(b)	Makes various stylistic and clarifying changes to sales tax definitions. The following changes are of note: • In subdivision (33c), language is being added regarding certain requirements for datacenters to address the fact that, often there are no jobs at the time of application for a written determination. • In subdivision (33*l*), the language that creates an exemption for security or other monitoring services from taxable RMI services is being moved to the exemption statute (See Section 38.5(j) of bill). The changes in this subdivision also separate services applicable to motor vehicles into one sub-subdivision. • In subdivision (37), the language clarifies that a credit for trade-in does not reduce the sales price. • In subdivision (45a), the reference date to the Streamlined Agreement is updated to the most recent iteration. • In subdivision (49), a reference in the definition of "use" is being deleted because it is no longer applicable on or after January 1, 2017, as a result of the change to the definition of "storage" for sales and purchases.	
38.5(c)	Merges the imposition of sales and use tax of RMI services with the taxation of the items themselves. This change alleviates the necessity of determining whether the imposition is on the sale of the item plus installation or on the RMI service. The taxation of the installation is the same, regardless of how it is classified; and this change removes any distinction that may exist.	
38.5(d)	Does two things in the sourcing statute: • Clarifies that the sourcing principles are generally for the benefit of the seller and that they do not alter the imposition of the use tax against a purchaser. • Provides guidance regarding the sourcing of computer software renewal. Currently, the statute is silent on this issue and the new language is consistent with the provisions of the Streamlined Sales and Use Tax Agreement.	
38.5(e)	Clarifies that certain activities are exempt from the sales and use tax on admission charges. The Department receives a number of inquiries regarding whether certain charges are subject to or exempt from the tax on admissions charges. Much of the administration of the tax hinges on the definition of "admission charges" which states, in part, "gross	

	receipts derived for the right to attend an entertainment activity." The exemption for these activities is consistent with current practice, but by listing them explicitly in the statute, it will provide clearer guidance to taxpayers.	
38.5(f)	Moves service contract exemptions from the service contract statute to the sales tax exemption statute. It is not a substantive change. (See Section 38.5(j) of the bill).	
38.5(g)	Corrects a statutory cross-reference.	Effective retroactively to January 1, 2017.
38.5(h) and (i)	Provides a mechanism for a retailer who pays sales and use tax on property or services and subsequently resells the property or service at retail to recover the sales tax originally paid to a seller. The retailer could recover the sales tax originally paid by reducing taxable receipts by the taxable amount of the purchase price of the property or services resold for the period in which the retail sales occurs.[12] The records of the retailer must clearly reflect and support the adjustment to taxable receipts for the period in which the adjustment is made. The General Assembly provided a temporary means for a retailer to recover sales and use tax originally paid on an item subsequently resold at retail last session in section 2.8 of S.L. 2017-204, and directed the Revenue Laws Study Committee to study the feasibility of providing a permanent means.	
38.5(j)	Makes various technical and clarifying changes to the sales and use tax exemption statute. The notable changes are as follow: • Last year, the General Assembly repealed the 1%/$80 privilege tax on mill machinery and substituted a sales tax exemption. The intent was to keep the interpretation and application of Article 5F the same, but to eliminate the tax on those items. Under the prior law, G.S. 105-187.51 specified that the term "accessories" did not include electricity. This caveat was inadvertently dropped when the language was moved into the sales tax exemption statute. The change in subdivision (5e) corrects the omission. • Subdivision (13) clarifies the taxation of over-the-counter drugs. In 2003, NC changed its taxation of drugs to use the defined terms under the Streamlined Sales and Use Tax Agreement. Since that time, drugs required by federal law to be dispensed only on prescription and over-the-counter drugs	

[12] A retailer who purchases property or services for resell may purchase the items with a sales tax exemption certificate. If the items are subsequently used by the retailer, as opposed to resold, the retailer must remit use tax on the items purchased. The mechanism provided by this section give the retailer a different way to address this situation.

	sold on prescription have been exempt from sales tax and the Department's Directives have provided guidance that adheres to the statutory exemptions. However, several questions continue to arise in this area and the intent of the amendment to this subdivision is to clarify the statutory language and adhere to the historical application. The amendment makes it clear that pet food is subject to tax, even if the manufacturer of that food requires that the food be sold on prescription; the exemption only applies to drugs required by *federal law* to be dispensed only on prescription. The amendment also makes it clear that over-the-counter drugs used to treat a patient in a medical facility are subject to tax; the exemption only applies to over-the-counter drugs *sold* on prescription. • Subdivision (15) provides guidance with respect to "worthless accounts" by reference to "bad debts" under the Code. A retailer may deduct worthless accounts from gross sales. • Relocates the current exemptions from the tax on RMI services and service contracts from the service contract statute. • Subdivision (70) is not a substantive change but merely corresponds with and cross-references the statute that sets out how to administer the tax on accommodations. That statute currently provides exemptions for private residences rented for fewer than 15 days a year, an accommodation provided for 90 or more days, and accommodations provided by a school, camp, or similar entity where a fee is charged for enrollment.	
38.5(k)	This section does two things: • Clarifies that a qualifying farmer may be a person who boards horses. This clarification conforms to a similar change made to the present use value statutes last session. • Provides that remedies, vaccines, medications, litter materials, feeds, rodenticides, insecticides, and other substances may be exempt from sales and use tax if purchased for use on animals and plants held or produced for commercial purposes by a qualifying farmer. Prior to the tax law change made in 2014, these substances were exempt from tax if purchased for use on animals or plants held or produced for commercial purposes. Effective July 1, 2014, these substances *had to be purchased by a qualifying farmer* to meet the exemption requirements. Under the change made by this section, the exemption applies regardless of who purchases the substances so long as the substances are used to provide a service to a person who holds a qualifying farmer	Retroactive to July 1, 2014.

	exemption certificate or a conditional farmer exemption certificate. Provides a person who paid sales and use tax for a return period ending prior to the date this section becomes law on an item exempt under this section may seek a refund directly from the Department of Revenue. The request must be made on or before October 1, 2018.	
38.5(*l*)	Adds the term "taxable" to the statute authorizing a sales tax refund on certain purchases by an interstate carrier. By adding this term, it will identify that motor vehicle service contracts are exempt from sales and use taxes and will eliminate the requirement to include purchases of various items that are exempt from sales and use tax. Since the refund is calculated using a ratio reflecting in-State mileage which is then multiplied by the purchase price of the items purchased, the refund is amount is more accurately reflective of the formula if only taxable items are included within the total purchase price of items.	
38.5(m)	Makes a technical change to accurately correspond with defined term.	
38.5(n)	Eliminates a provision limiting the Secretary to extend the time for filing a sales tax return to no more than 30 days after the regular due date of the return. This change came about as the result of needing to extend the time beyond the 30-day period for taxpayers who were affected by Hurricane Matthew. With the change, sales tax extensions would be governed by G.S. 105-263 without the 30-day limitation. Under that statute, an extension of time for filing a return other than a franchise tax return or an income tax return extends the time for paying the tax due and the time when the penalty attaches for failure to pay the tax. However, interest accrues on the tax due from the original due date of the return.	
38.5(o)	Makes two changes in the direct pay permit statute: • Clarifies that a direct pay permit is not applicable to any of the items that are subject to the combined general rate of tax, with the exception of telecommunication service as allowed under G.S. 105-164.27A(b). • Clarifies that items withdrawn from inventory and sent to another state are subject to tax in NC because the first "use" occurs in this State. This change is consistent with removal of the exceptions from the definition of "storage," effective January 1, 2017.	
38.5(p)	Adds facilitators to the statute that authorizes the Secretary to estimate tax due and assess entities with sales tax remittance obligations when those entities fail to file a return or file a false or fraudulent return. They are being added because facilitators have	

	sales tax remittance obligations under the sales tax statutes along with retailers and wholesale merchants.	
38.5(q)	Extends the Sales Tax Base Expansion Protection Act for an additional year to better ensure retailers with sales tax obligations understand the applicable tax law changes. Under the Act, impacted retailers are given a grace period under which the Department will not impose assessments if the retailer demonstrates a good faith effort to comply. It also adds transactions to the grace period that have been inadvertently omitted.	
38.5(r)	Corrects a cross-reference due to the repeal of a subsection.	
38.5(s)	Makes a grammatical change.	
38.5(t)	Provides that a consumer must keep records of items purchased inside the State, as well as outside the State. This change is needed to enable the Department to administer the new provision in Section 38.5(h) that allows a retailer who pays sales and use tax on property or services and subsequently resells the property or service at retail to recover the sales tax originally paid to a seller. It also highlights for the retailer the need to retain these records.	
38.5(u)	Provides a sale tax exemption for that portion of the gross receipts derived from an admission charge that is described in section 170(*l*)(2) of the Code. Under the TCJA, a charitable deduction is no longer allowed for an amount paid to an educational institution of higher learning if the taxpayer receives, directly or indirectly, the right to purchase tickets for an athletic event. Under current sales tax law, any amount deductible as a charitable contribution is exempt from sales tax. The amendment ensures that any change in the deductibility of a contribution for income tax purposes does not inadvertently broaden the sales tax base for admission charges.	
38.5(v)	Modernizes the statute to recognize the expansion of the sales tax base to services.	
38.5(w)	Modernizes the statute and makes changes consistent with provisions in Part VI of the bill that provide a framework for the Department of Revenue to offer and prescribe the format for electronic filings.	
38.5(x) and (y)	Defines a property management contract and provides that a property management contract is not subject to sales tax. The effective date is January 1, 2020. The service of providing property management is not currently subject to sales tax. However, RMI services that a property management company may perform in addition to its management services may be subject to sales tax.	January 1, 2020
38.5(z)	Directs the Revenue Laws Study Committee to review the amendments made by subsections (x) and (y) of this Section, and to	

	recommend any changes necessary to make the law concise, intelligible, easy to administer, and equitable.	
EXCISE TAX CHANGES, SECTION 38.6[13]		
38.6(a)	Replaces the phrase "wholesaler or retailer registered through the Secretary" with the term "purchaser" to make the statutory language internally consistent as the term "purchaser" is used to reference the nonresident vendor throughout the remainder of the statute.	
38.6(b)	Removes language indicating that a retail dealer may make tobacco products at their place of business. In practice, only licensed wholesale dealers should be making or manufacturing any tobacco product.	
38.6(c)	Requires the listed ABC permit holders to register with the Department and to notify the Department when a permittee discontinues their business. Certain ABC permit holders must pay excise taxes. Most of these permittees hold commercial ABC permits, which remain valid indefinitely. Because these permittees do not have to renew their permits annually, they do not fall under the procedure to confirm State tax compliance, which only applies to newly issued permits and annual permit renewals. This new statute would provide the Department with a mechanism for requiring this type of permittee to comply with tax obligations.	Effective October 1, 2018.
38.6(d)	Removes language indicating that a bond for nonresident vendors may be made "by a pledge of obligations of the federal government, the State, or a political subdivision of the State." This same language was removed from a different section of the statute in S.L. 2014-3. In practice, only surety bonds or irrevocable letters of credit are accepted to satisfy the bonding requirement.	
38.6(e)	Adds a tobacco product licensee's address to the list of information permitted to be disclosed by the Department. Under current law, the Department is authorized to provide public access to a list of the names and account numbers of tobacco products licensees. Because tobacco product licensees are required to obtain a license for "each place of business," then without also disclosing the physical address of each license, the user of the public access list cannot discern if the particular location is, in fact, licensed.	
38.6(f)	Modifies the language directing the manner in which the Department obtains data for the Consumer Price Index (CPI) in order to calculate the motor fuel tax rate. The current tax rate calculation language[14] specifies that the data needed to calculate the CPI portion of the tax rate must be obtained	

[13] Part V of SB 715.
[14] Enacted in S.L. 2015-2.

	through "the detailed report released in the October prior to the applicable calendar year by the Bureau of Labor Statistics…." As of June 2017, the Bureau of Labor Statistics stopped publication of the detailed report, and instead, releases the same information via publicly accessible databases available on the Bureau's website. By allowing for the use of "data determined by the Secretary to be equivalent," the Division will continue using the same data that was intended by the original enactment, but this will clarify that since the "detailed reports" are no longer available, the Bureau of Labor Statistics are an equivalent source.	
38.6(g) – (k)	Increases the motor fuel tax rate for those gas stations deemed to be a special class under S.L. 2016-23 each year in accordance with the rate increase in South Carolina. Section 2.(b) of S.L. 2016-23 designated a class of gas stations (currently limited to one) that were recognized as being in North Carolina as a result of the boundary recertification as a special class of property authorized to charge a motor fuel tax rate of 16 cents per gallon, which was the rate charged by South Carolina at the time of enactment. The session law also directed the Revenue Laws Study Committee to monitor the rate of the gas tax charged by South Carolina and authorized the Committee to recommend an increase to the motor fuel tax rate charged by these establishments up to the amount charged in South Carolina, should the rate in South Carolina change. In 2017, the South Carolina Legislature passed House Bill 3516, which permanently increased the motor fuel tax rate by 2 cents per gallon each year for the next 6 years, totaling 12 cents over that time, beginning July 1, 2017.	
MODIFIED RISK TOBACCO PRODUCT TAX REDUCTION, SECTION 38.7		
38.7(a)	Provides an excise tax rate reduction for modified risk tobacco products. A modified risk tobacco product is a product that is sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products. For a product to qualify as a modified risk tobacco product, it must be issued an order by the United States Food and Drug Administration (FDA). The rate would be reduced by 50% if the product is issued a risk modification order by the FDA under 21 U.S.C. 387k(g)(1) or 25% if the product is issued an exposure modification order by the FDA under 21 U.S.C. 387k(g)(2). To date, the FDA has not issued any such orders. Currently, there are two pending applications awaiting decision: IQOS system with Marlboro Heatsticks and Camel Snus. The IQOS system with Marlboro Heatsticks is a smokeless cigarette that heats tobacco sticks instead of burning them, releasing nicotine vapor rather than smoke. Camel Snus is a smokeless, spit-free, moist tobacco powder pouch that is placed between the lips and gums.	

ALLOW CITIES TO USE REVENUES FOR PUBLIC EDUCATION, SECTION 38.8		
38.8(a)	Authorizes, but does not require, cities to levy property taxes to supplement funding for public elementary and secondary schools. In addition to a school under the control of a local board of education, a "public school" would also include charter schools, innovative schools, laboratory schools, and regional schools. Cities may levy property taxes for any of the purposes listed in G.S. 160A-209(c) up to a combined rate of $1.50 per $100[15] of appraised value of property subject to taxation. A city may exceed this rate by holding a referendum. Under current law, cities are not authorized to use property tax revenue for schools.	Effective July 1, 2018, and applies to revenues derived from taxes levied on or after that date.
38.8(b)	Authorizes, but does not require, cities to appropriate property tax revenues or other unrestricted revenues[16] to supplement public education, so long as the appropriation benefits residents of the city. Cities may earmark appropriations for specific uses at particular schools. Funds appropriated for schools *within* the city limits can be spent on either capital or operating expenses. This would include spending on operational or financing leases for real property to be used as school facilities and payments on loans for facilities, equipment, or operations. However, funds may not be used to secure debt for the purchase of real property and cities may not pledge their taxing power for this purpose. Funds appropriated for schools *outside* the city limits may only be spent on operating expenses. Procedurally, if a public school is under the control of a local board of education, then the appropriation for that school would be made to the local board of education of the local school administrative unit. For a school that is not under the control of a local board, the appropriation could be made directly to the school.	
38.8(c)-(h)	Authorizes the various types of public schools to request and receive appropriations from cities.	
WAIVE CERTAIN PROPERTY TAX PENALTIES AND INTEREST, SECTION 38.9		
38.9(a)	Adjusts the due date for certain property tax deadlines. Under current law, if the last day for doing an act required under the property tax laws, such as listing of property or payment of property taxes, is a Saturday, Sunday, or holiday, then the due date is considered to be the next business day. This provision would provide that the due date is considered to be the next business day if the actual date is on a day that meets all three of the following conditions: • The tax office is closed.	Effective for taxes imposed for taxable years beginning on or after July 1, 2018.

[15] For fiscal year 16-17, the city with the highest property tax rate was Enfield in Halifax County at a rate of 83.80¢/$100.
[16] Unrestricted revenues would include proceeds derived from the tax on the short-term lease or rental of vehicles, the tax on short-term heavy equipment rentals, animal taxes, the city portion of the first two cents of the local sales and use tax, amounts distributed to cities from beer and wine taxes and the State sales tax on utilities.

	• The taxpayer certifies in writing that the US Postal Service did not provide service to the taxpayer's address. • A disaster declaration is declared pursuant to a gubernatorial, county, or municipal declaration.	
OTHER TAX CHANGES, SECTION 38.10[17]		
38.10(a) and (b)	Clarifies that the imposition of a revenue suspension, which is an act done by the Secretary of State at the direction of DOR, does not mean that the suspended corporation or LLC ceases to be liable following the suspension for accrued, current, or subsequent State taxes; rather the tax liability remains unaffected by the suspension.	
38.10(c)	Clarifies the expiration date of a provision that allows the Secretary to compromise the liability of a retailer who is assessed for failure to properly collect sales tax on admission charges, service contracts, prepaid meal plans, or aviation gasoline and jet fuel. The language is being adjusted to mirror the language in G.S. 105-237.1(a)(7) because the intent was for the provision to be tied to a certain reporting period and not for the expiration to be tied to when assessments are issued.	
38.10(d)	Adds references to recently created property tax exemptions to the list of those for which a property owner must file a single application. Generally speaking, a property owner seeking a property tax exemption must file an annual application. There are some exceptions, under which either no application is required or only a one-time application is required. This section adds the following exemptions to the single application requirement; these exemptions were established in recent years but corresponding changes were not made to the application statute: • Real property occupied by charter schools • Energy mineral interest in property for which a permit has not been issued under G.S. 113-395. • Real and personal property located on lands held in trust by the United State for the Eastern Band of Cherokee Indians, regardless of ownership. • A mobile classroom or modular unit that is occupied by a school and used exclusively for educational purposes.	
38.10(e)	Corrects a cross-reference.	
38.10(e) and (f)	Requires that lunch and dinner meals, served at the option of guests staying at a bed and breakfast home or inn, be charged separately on the guest's bill and, therefore, are not included in the room rate. This change corrects a provision enacted last year to more accurately reflect the General Assembly's intent. Subsection 38.10(s), the effective date provisions for this section, provide that a retailer is not liable for an undercollection of sales tax,	Effective July 1, 2018.

[17] Part VI of SB 715.

	occupancy tax, or prepared food and beverage tax if the retailer made a good-faith effort to comply with the law and collect the proper amount of tax; this provision applies only to the period beginning January 1, 2018, and ending July 1, 2018.	
38.10(g) and (h)	Waives an antiquated restriction regarding sales and use tax revenue distributed to a municipality for water and sewer capital outlay purposes. G.S. 105-487(b) required a municipality to use a percentage of the sales and use tax revenue distributed to it under Article 40 of Chapter 105 of the General Statutes, First One-Half Cent (½¢) Local Government Sales and Use Tax, only for water and sewage capital outlay purposes. This restriction was time-limited. Prior to the sunset of the restriction, a municipality could petition the Local Government Commission to waive part or all of the restriction if the municipality demonstrated that its water and sewer needs could be met without the use of the restricted sales tax revenue. A similar restriction existed under Article 42, Second One-Half Cent (½¢) Local Government Sales and Use Tax. The restrictions on this use expired more than 20 years ago. The General Assembly repealed the obsolete restrictions in S.L. 1998-98: G.S. 105-487(b) and G.S. 105-504. Some municipalities have monies in their enterprise funds received from sales and use tax distributions prior to the expiration of the restrictions. Those funds must be expended as provided in the statute that existed at the time of the distributions, unless the municipality petitions the Local Government Commission to waive the restriction and the petition is approved. Under 20-NCAC 03.0112, the Local Government Commission charges a fee of $625 for services rendered to obtain this approval. There are some municipalities who do not own or operate a water or sewer system. In at least once instance, the amount of revenue subject to the restriction is less than one thousand five hundred dollars ($1,500). This section would allow a municipality that does not own or operate a water or sewer system to expend those funds for any public purpose without the necessity of petitioning the Local Government Commission for approval.	
38.10(i)	Repeals an obsolete provision.	
38.10(j) and (k)	Provides more specificity with regard to the expiration of the Historic Rehabilitation Tax Credits. The State historic tax credit under Article 3D expired for expenditures incurred on or after January 1, 2015. However, the taxable year for which the credit is taken is not the year in which the expenditures are incurred, but the taxable year in which the certified historic structure is placed in service.	

	Generally speaking, "placed in service" is the earlier of the taxable year in which the period for depreciation with respect to the property begins, or the taxable year in which the property is available for a specifically assigned function (ie, trade or business, production of income, personal activity, tax-exempt activity). The purpose of the provision in Sections 38.10(j) and (k) is to give more specificity with regard to the expiration of the tax credit, so the Department will know with certainty when it may remove the tax credit from the tax forms. Under subsection (j), the property for which an expenditure incurred prior to 1-1-15 must be placed in service would be 1-1-23. Subsection (k) makes a similar clarification to the prospective sunset of the existing historic rehabilitation tax credit under Article 3L – the credit expires for expenditures incurred on or after 1-1-20; and the historic structure for which those expenses were incurred must be placed in service by 1-1-28.	
38.10(*l*)	Deletes a reference to an expired credit that is not permitted to be claimed by an estate or trust. G.S. 105-153.10 is the child credit that is repealed for tax years beginning on or after January 1, 2018.	
38.10(m)	Repeals a provision that creates a double income tax benefit for funds in a Personal Education Savings Account (PESA). G.S. 105-153.5 allows a State tax deduction for amounts deposited into a PESA account during the taxable year; this deduction would remain in place. This section repeals a provision that excludes the same funds from taxable income.	For taxable years beginning on or after January 1, 2018.
38.10(n)	Restores the "out of business" provision, which directs employers as to when they must file the withholding reconciliation informational return if the employer terminates its business during the calendar year. In 2015, the General Assembly changed the due date for filing the NC-3 Form from "the same date the employer's federal information return of federal income taxes withheld from wages is due under the Code" to "January 31." Under the Code, an employer that goes out of business is required to file the federal reconciliation report with the IRS within 30 days from the last day the taxpayer has payroll. An unintended consequence of changing the due date without reference to the Code was the loss of this 30- day provision. This change restores that requirement for NC tax purposes. This section also moves existing language from another statute into this statute. This language is not new but is being relocated. (See Section 38.10(p) of the bill).	
38.10(o)	Corrects a grammatical error and strikes penalty language for failure to timely file an information request because the penalty language is	

	being modified and addressed in another statute. (See Section 38.10(p) of the bill).	
38.10(p)	Modifies the existing penalty for failure to file an informational return and creates a $200 penalty for failure to file an informational return in the proper format. The current penalty for failure to file an NC-3 is $50; the current penalty for failure to file an informational return under G.S. 105-251.2, which applies to occupational licensing boards, alcohol vendors, and payment settlement entities, is $1,000. This section tries to better align these penalties by changing both to $50 per day with a maximum penalty of $1,000.	
38.10(q)	Provides that the Secretary will prescribe when a return, report, payment, or any other document that is electronically submitted to the Department is considered timely filed.	
38.10(r)	Provides a framework for the Department to offer and prescribe the format for electronic filings. This statute includes authority to waive an electronic submission requirement and requires the Department to publish annually on its website a list of returns that are *required* to be filed electronically and those that are *permitted* to be filed electronically during the next calendar year.	