HOUSE BILL 966:
2019 Appropriations Act - Finance Provisions.

2019-2020 General Assembly

Committee:	House Finance. If favorable, re-refer to Rules, Calendar, and Operations of the House. If favorable, re-refer to Appropriations. If favorable, re-refer to Pensions and Retirement	**Date:**	April 30, 2019
Introduced by:	Reps. Johnson, Lambeth, Saine, McGrady	**Prepared by:**	Finance Team
Analysis of:	PCS to First Edition H966-CSMGxfra-5		

OVERVIEW: Part XLI of the 2019 Appropriations Act is the <u>Finance Part</u> of the budget and would make the following tax law changes:

- ***Increase the standard deduction 3.75%, from $20,000 to $20,750 for married filing jointly taxpayers.***
- ***Allow an income exclusion for distributions from IRAs to charities by taxpayers age 70½ or older.***
- ***Reduce the franchise tax rate from $1.50 to $1.00 over two years, and eliminate one of the three franchise tax bases, 55% of the appraised value of real and tangible personal property.***
- ***Require a multistate corporation to calculate its sales factor, for apportionment purposes, based on the percentage of income attributed to the consumption of products and services in the North Carolina marketplace.***
- ***Obligate a "marketplace facilitator" that meets the same threshold applicable to remote retailers to calculate, collect, and remit sales tax on a third-party seller's behalf.***
- ***Allow an income tax deduction for amounts received as a JDIG, JMAC, or OneNC grant.***
- ***Extend the following sunsets for four years:***
  - ***Historic rehabilitation tax credit.***
  - ***Sales tax exemption and refund for professional motorsports racing teams or related members of a team.***
  - ***Sales tax exemption for aviation gasoline and jet fuel sold to an interstate air business.***
- ***Provide tax and regulatory relief to out-of-state businesses that perform disaster-related work during a disaster response period at the request of a public utility or a public communications provider; and to allow the Secretary of Revenue to issue a temporary license to an importer, exporter, distributor, or transporter of motor fuel in response to a disaster declaration.***

The <u>Transportation Subcommittee</u> of the Appropriations Committee included three tax-related provisions in the package it adopted last week.

The first item would expand the category of vehicles eligible for a historic vehicle special license plate by reducing the age of an eligible vehicle from at least 35 years old to 25 years old. This modification would have the effect of broadening the scope of the property tax benefit available to "antique automobiles." Antique automobiles that meet certain additional criteria are assessed at the lower of its true value or $500. (See Part XL, Section 40.14, p. 251)

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The other two tax-related Transportation items are repealed by the Finance Part. The items being repealed are as follows:

- ***The provision to create a 7% privilege tax on intrastate services provided by transportation network companies, like Uber and Lyft. This new tax would be collected and administered like a sales tax except that the proceeds would be credited to the Highway Fund rather than to the General Fund. The tax was estimated to generate approximately $14.6 million in the first year. (See Part XL, Section 40.20, p. 255)***
- ***The provision to increase the additional fee for electric vehicles from $130 to $200 over the next two years; to establish a new additional fee of $87.50 for plug-in hybrid vehicles that would be increased to $137.50 over the next two years; and to have both fees annually adjusted, beginning January 1, 2023, by a statutory formula. The proceeds of these fees would be credited to the General Maintenance Reserve Fund (See Part XL, Section 40.15, p. 251)***

The Department of Environmental Quality Part of the budget also included a tax-related provision. The Finance Part of the budget repeals that provision. The provision would have extended for 10 years the dry cleaning solvent tax and the corresponding transfer of funds derived from the tax to the Dry Cleaning Solvent Cleanup Fund. (See Part XII, Section 12.11, p. 183)

CURRENT LAW, BILL ANALYSIS, & EFFECTIVE DATES

SECTION 41.1: INCREASE STANDARD DEDUCTION

Most taxpayers have a choice of either taking a standard deduction or itemizing their deductions and will choose the method that gives them the lower tax. The standard deduction is a dollar amount that reduces taxable income and eliminates the need to itemize actual deductions, such as mortgage interest, medical expenses, or charitable deductions. Taxpayers whose taxable income falls below the standard deduction amount do not owe State income tax on their income.

Section 41.1 of the bill would increase the standard deduction by 3.75%. Effectively, it would increase the standard deduction by $750 for married filing jointly taxpayers, to $20,750; by $563 for head of household taxpayers, to $15,563; and by $375 for single taxpayers, to $10,375. This section would be effective for taxable years beginning on or after January 1, 2021.

SECTION 41.2: INCOME EXCLUSION FOR IRA DISTRIBUTIONS TO CHARITIES BY TAXPAYERS AGE 70 ½ OR OLDER

Generally, a taxpayer must include in gross income distributions made from a traditional or Roth IRA account except to the extent they represent a return of nondeductible contributions or are rolled over into another qualified retirement plan. Since 2006,[1] federal law permits taxpayers age 70½ or older to contribute up to $100,000 from their IRA account to a charity tax-free, meaning the distribution is excluded from the taxpayer's gross income. North Carolina conformed to this provision for tax years 2006 through 2013, but decoupled for tax years 2014 through 2018. A taxpayer who makes this election for federal tax purposes must include the distribution in State taxable income; the taxpayer may include the amount contributed as part of the itemized deduction for charitable contributions at the State level to the extent the amount would have been allowed as a charitable deduction under the Code had the taxpayer not elected to take the income exclusion.

[1] This exclusion was originally authorized by the Pension Protection Act of 2006. The law was extended through 2009 by the Emergency Economic Stabilization Act of 2008, and through 2011, by the 2010 Tax Relief Act. The PATH Act made the exclusion permanent in 2015.

Section 41.2 of the bill would change this policy decision by conforming to the income exclusion for a qualified charitable distribution from an individual retirement plan by a person who has attained the age of 70½, beginning prospectively with the 2019 tax year. The treatment is capped at a maximum of $100,000 per taxpayer. A taxpayer who elects the income exclusion and contributes more than the capped amount may deduct as a charitable deduction the excess amount to the extent the amount would have been allowed as a charitable deduction under the Code had the taxpayer not elected to take the income exclusion.

SECTION 41.3: FRANCHISE TAX CHANGES

This section would reduce the franchise tax rate for most corporations in North Carolina and eliminate one of the three franchise tax bases. Corporations must use the greatest of three methods when determining its franchise tax base. C Corporations in the State pay $1.50 per $1,000 of the corporation's tax base, and S Corporations pay a flat $200 on the first $1,000,000 of the corporation's tax base, and $1.50 per $1,000 of its tax base that exceeds $1,000,000.

Subsection (b) would simplify the tax base calculation for franchise tax purposes by repealing the method requiring a corporation to determine 55% of its appraised value as determined for ad valorem taxation of all real and tangible personal property in North Carolina. This would reduce the amount of franchise taxes paid by some corporations and will not adversely affect the remaining corporations that would not see a benefit from the repeal of this method. This change is effective for taxable years beginning on or after January 1, 2020, applicable to the calculation of franchise tax reported on the 2019 and later corporate income tax returns.

Subsection (c) of this section would reduce the franchise tax rate for all corporations other than electric power companies. Effective for taxable years beginning on or after January 1, 2020, the rate would be reduced to $1.30 per $1,000 of the corporation's tax base, applicable to the calculation of franchise tax reported on the 2019 and later corporate income tax returns. Effective for taxable years beginning on or after January 1, 2021, **subsection (d)** of this section would further reduce the franchise tax rate to $1.00 per $1,000 of the corporation's tax base.

Electric power companies will continue to pay a franchise tax rate of $1.50 per $1,000 of tax base until 2026. Effective for taxable years beginning on or after January 1, 2027, electric power companies will pay the franchise tax rate applicable to all corporations.

SECTION 41.4: USE MARKET-BASED SOURCING FOR MULTISTATE INCOME TAX APPORTIONMENT

A corporation that does business in more than one state must pay income tax to each of the states in which it has nexus. The conventional method used by states to determine how much of a corporation's income should be taxed in each state has been the apportionment formula, which is used to derive an apportionment percentage. The method of apportionment may vary from state to state. For many years, most states used an apportionment formula based on three factors: sales, property, and payroll. Today, 25 states use single sales factor apportionment, including North Carolina.[2] And an additional 14 states give greater weight to the sales factor in their apportionment formulas.

A single sales factor arguably makes a state a more attractive place for a multistate company that provides products to expand its property and payroll because if those factors are ignored in calculating a state's corporate tax, then the company can hire employees or build a plant without incurring additional state tax on its corporate profits. Single sales factor does not provide the same incentive to a multistate company

[2] The General Assembly enacted legislation in 2015 to phase in single sales factor apportionment over three years, beginning in taxable year 2016.

that provides services, because its sales factor is not based on the percentage of income derived from consumption of the company's services in a state's marketplace. Instead, its sales factor is based on the percentage of business activities conducted in a state, which is generally measured by the amount of labor costs and capital investment incurred in a state to provide the services. Consequently, states that adopt a single sales factor apportionment incentive usually adopt a market-based calculation of the sales factor for all multistate corporations, including those that provide services. At least 30 states have adopted market-based sourcing.

Section 41.4 would calculate the sales factor based on the percentage of income attributed to consumption of products and services in the North Carolina marketplace, not based on labor costs and capital investment in North Carolina. Here is a general description of the income apportionment concept proposed in this section, coupled with the single sales factor legislation, for a corporation that does business in North Carolina and in other states:

Percentage of Income Taxed by NC = Total Income Multiplied By a Ratio:

$$\frac{\text{Consumption in North Carolina of a Corporation's Products and Services}}{\text{Total Consumption of the Corporation's Products and Services}}$$

Electric Power Companies. **– Subsection (a)** would allow electric power companies to continue to source their receipts using a calculation based on the value of real and personal property owned or rented and used in this State. However, effective for taxable years beginning on or after January 1, 2026, electric power companies would be required to source their receipts in accordance with the general law: based on where the service is received.

Subsection (d) directs the NC Utilities Commission to adjust the rates for public utilities for the tax changes made by this section. Each utility must calculate the cumulative net effect of the tax changes and file the calculations with proposed rate changes to reflect the net prospective tax changes in utility customer rates within 60 days of the enactment of this act. Any adjustments required to existing tax assets or liabilities reflected in the utility's books and records required by the tax changes shall be deferred and reflected in customer rates in either the utility's next rate case, or earlier if deemed appropriate by the Commission.

Wholesale Content Distributors. – States may have a separate set of apportionment rules for companies that create and produce movies and television shows. These companies, known as "wholesale content distributors," receive licensing fees from cable, satellite, and internet streaming companies in return for the rights to offer the shows to consumers as well as advertising revenue from advertisers. Under current practice, as a result of a private letter ruling[3], wholesale content distributors are only required to apportion their income to North Carolina if a contract is executed in North Carolina to give a company the rights to offer their shows. **Subsection (b)** would apportion their income based on the commercial domicile of their customers. If the customer is a business customer, the income would be sourced based on the commercial domicile of the business. If the customer is an individual that directly subscribes with the wholesale content distributor, the income would be sourced based on the billing address of the individual customer. In no event may the amount of income sourced to the State be less than 2% of the wholesale content distributor's total domestic gross receipts from advertising and licensing activities.

Banks. – States often have a separate set of apportionment rules outlined for banks. Under current North Carolina law, banks are allowed to source their receipts using a market-based calculation of the sales factor. **Subsection (c)** would apply similar sourcing rules for banks as is currently applied under North Carolina law.

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[3] DOR private letter ruling.

Subsection (e) directs the Department of Revenue to revise the rules adopted on January 4, 2017, and approved by the Rules Review Commission on February 16, 2017, based on the changes made by this act. Section 38.4 of S.L. 2016-94 directed the Department of Revenue to adopt rules regarding the implementation and administration of market based sourcing principles, based upon the proposed statutory changes. The rules were adopted, approved, and delivered to the Codifier. The 2016 legislation did not allow the Codifier to enter the rules into the Administrative Code until the General Assembly enacted the proposed statutory changes and directed the Codifier to do so. This section makes a couple of significant statutory changes to the proposed statutory changes upon which the adopted rules were developed. This subsection directs the Department to amend its rules.

Subsections (a) through (c) and subsection (g) of this section are effective for taxable years beginning on or after January 1, 2020. Subsection (f) is effective for table years beginning on or after January 1, 2026. The remainder of this section is effective when it becomes law.

SECTION 41.5: MARKETPLACE FACILITATORS & OTHER FACILITATORS

MARKETPLACE FACILITATORS

BACKGROUND: Prior to last year, a state could not require a remote retailer to collect sales and use tax on behalf of the state if the retailer did not have a physical presence in that state. On June 21, 2018, the United States Supreme Court held in *South Dakota v. Wayfair, Inc.* that a retailer without a physical presence in a state may be required to collect and remit sales tax if it has an economic nexus with that state. The Court found that a South Dakota statute requiring remote retailers with gross sales in excess of $100,000 or at least 200 transactions sourced to that State to collect and remit sales tax met the "substantial nexus" standard required under the Constitution. The Court sided with South Dakota because the State showed that the requirement was not overly burdensome for interstate sellers. The majority made note of the fact that South Dakota's law was not retroactive and provided a safe harbor for smaller remote vendors. The Court also noted that South Dakota was a member of the Streamlined Sales and Use Tax Agreement, which standardizes taxes across states to lower compliance costs, requires state-level tax administration, and provides Internet vendors with access to sales tax administration software paid for by the State.

On August 7, 2018, the Department of Revenue issued a directive requiring retailers that meet either threshold to register and begin collecting and remitting sales tax beginning the later of November 1, 2018, or 60 days after meeting the threshold. On March 20, 2019, the Governor signed S.L. 2019-6 into law, which codified the Department's directive.

Many states are relying on the principles espoused in *Wayfair* as the basis for legislation that would require "marketplace facilitators" to collect and remit sales tax. At least 22 states and the District of Columbia have enacted a marketplace provision, either through administrative rule or legislation, and many other states have legislation pending.

A "marketplace facilitator" is a person that contracts with third parties to sell goods and services on its platform, which could be a physical space or an Internet website or application, in exchange for some form of consideration, which typically takes the form of facilitation fees or a percentage of the sales. The most widely known marketplace facilitators are businesses like Amazon, eBay, Etsy, and Walmart. Some of these entities make both direct sales from their own inventory of goods and services and sales of third party items, while some only sell third party items. Of note, third party sales constituted 58% of Amazon's sales in 2018 as compared to 3% in 1999.

CURRENT LAW: Under current law, a remote retailer is required to collect and remit sales and use tax to this State if, in the previous or current calendar year, it made gross sales of more than $100,000 sourced to this State or it made 200 or more separate sales transactions sourced to this State. There is no provision

in the current law that would require a marketplace facilitator to collect sales tax on sales of third party goods or services.

ANALYSIS: Section 41.5 of the bill would obligate a marketplace facilitator that meets the same threshold applicable to remote retailers to calculate, collect, and remit sales tax on a third-party seller's behalf. This section would become effective September 1, 2019, and would apply to sales occurring on or after that date.

Having a marketplace facilitator provision is a more cost effective way to collect the tax and increases collections because the aggregation of third-party sales on a single, large-scale marketplace provides the requisite nexus for a collection obligation that the remote retailers would not necessarily have individually, and it allows the State to collect from a single entity rather than from each third party seller in that marketplace.

Threshold. – A marketplace facilitator would only be required to collect and remit sales tax to this State if it meets a threshold. The threshold is the same that applies to remote retailers. The facilitator must, in the previous or current calendar year, make gross sales in excess of $100,000 sourced to this State or 200 or more separate transactions sourced to this State. For purposes of determining whether the threshold is met, a facilitator would be required to include all sales, including direct sales to customers as well as sales made on behalf of all marketplace sellers.

The bill would also clarify that remote retailers must include their marketplace facilitated sales when determining whether they meet the threshold and are, therefore, required to collect tax on their direct sales sourced to this State.

Key Definitions.

- ***Marketplace.*** – A physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items, the delivery of or first use of which is sourced to this State. While most discussion of the marketplace facilitator issue tends to refer to Internet retailers or "platforms" that sell third-party items, a marketplace could also be a physical place.
- ***Marketplace facilitator.*** – A person that, directly or indirectly and whether through one or more affiliates, does both of the following:
    1. Lists or otherwise makes available for sale a marketplace seller's items through a marketplace owned or operated by the marketplace facilitator.
    2. Does one or more of the following:
        - Collects the sales price or purchase price of a marketplace seller's items or otherwise processes payment.
        - Makes payment processing services available to purchasers for the sale of a marketplace seller's items.
        - Transmits the offer or acceptance for the sale of the items.
- ***Marketplace seller.*** – A person that sells or offers to sell items through a marketplace regardless of any of the following:
    - ❖ Whether the person has a physical presence in this State.
    - ❖ Whether the person is registered as a retailer in this State.
    - ❖ Whether the person would have been required to collect and remit sales and use tax had the sales not been made through a marketplace.

- ❖ Whether the person would not have been required to collect and remit sales and use tax had the sales not been made through a marketplace.

The purpose of these qualifications is to make clear that a marketplace's facilitator's remittance obligations are not contingent on the nexus or threshold status of a marketplace seller. Specifically, if a marketplace seller has nexus with this State and would otherwise be required to register and collect sales tax, the marketplace facilitator is, nevertheless, the retailer if the seller's items are being sold through its marketplace, assuming the marketplace facilitator meets the threshold.

The reverse is also the case. If a remote retailer does not have nexus with this State and, therefore, would not be required to collect sales tax if the sales were made directly to North Carolina customers, the marketplace facilitator may nevertheless be required to collect sales tax on behalf of the seller for those sales if the marketplace facilitator meets the threshold.

Payment of Tax. – A person that meets the definition of a "marketplace facilitator" and meets the economic nexus threshold would be considered the retailer for all marketplace facilitated sales it makes and would be required to collect and remit sales and use tax to this State. The facilitator would be subject to all requirements and procedures that apply to retailers generally.

Relief from Liability. – The bill would give the Secretary of Revenue the ability to provide a marketplace facilitator with relief from liability if the facilitator can satisfactorily demonstrate that the failure to collect the correct amount of tax was due to incorrect information given to the facilitator by the seller.

Report. – A marketplace facilitator would be required, within 10 days after the end of each calendar month, to report to each marketplace seller for whom it makes marketplace facilitated sales the gross sales and the number of separate transactions sourced to this State. The purpose of this report is to help a marketplace seller determine whether they have nexus with this State by virtue of their marketplace facilitated sales and are, therefore, required to collect and remit on any direct sales they may have.

Limitation. – Currently, North Carolina recognizes "facilitators" in three other sales tax contexts: the rental of accommodations, the sale of admission to entertainment activities, and the sale of service contracts. The marketplace facilitator provisions in this bill do not apply to these other facilitators. However, as a practical matter, there are situations in which these other facilitators are considered to be the "retailer" for particular transactions, and their collection and remittance obligations are set out in separate statutes.

OTHER FACILITATORS

Subsections (e) through (j) of this section make changes to the statutes that govern other types of facilitated transactions. Each of these statutes contains a defined term for a "facilitator," yet each definition of the same word is different. With the addition of a "marketplace facilitator," this section modifies these statutes to more specifically denominate the various facilitators to avoid confusion.

Specifically:

- This section creates a new defined term for an **"admission facilitator"** for purposes of the sales tax that applies to the gross receipts derived from admission charges to an entertainment activity and makes conforming changes throughout the statute, but it does not make any substantive changes as it relates to admissions.

- This section creates a new defined term for a **"service contract facilitator"** for purposes of the sales tax that applies to service contracts and makes conforming changes throughout the statute, but it does not make any substantive changes as it relates to service contracts.
- In addition, all of the definitions currently located in each of the three statutes are being relocated to the global definitions section for Article 5.

With respect to accommodations, this section makes the following substantive changes:

- ***Definition Change.*** – It modifies the definition of **"accommodation facilitator."** Under current law, an accommodation facilitator is a person who contracts with a provider of an accommodation to market and accept payment for the accommodation; it specifically excludes a rental agent. Historically, rental agents have been viewed differently than "facilitators" though descriptions of what they do are very similar. Generally speaking, a rental agent contracts with a property owner to rent the owner's residential property as an accommodation and is usually the person who interacts with and accepts payment from the renter. Rental agents tend to be considered as providing more of a "person-to-person" service compared to an online travel company, such as Expedia, which is an internet platform through which customers can rent hotel rooms. In North Carolina, a rental agent is always considered the retailer for purposes of accommodation rentals, but that is not the case with accommodation facilitators. Facilitators typically send the portion of the sales price that they owe the provider and any tax due on that portion to the provider once the customer has occupied the room, and the provider is considered the retailer of the transaction.

  Since North Carolina originally enacted its accommodation facilitator provision, new types of accommodation models, like Airbnb and VRBO, have entered the market space, and the ruling in the *Wayfair* case has eliminated physical presence concerns that previously limited the State's ability to collect from these facilitators. Given the changes in the landscape and to be more consistent with the treatment of marketplace facilitators, the bill would modify the definition of "accommodation facilitator" to include a person that lists an accommodation for rental on a forum, platform, or other application for a fee or other consideration and real estate brokers.
- ***Specifies who the Retailer is.*** – It more specifically describes the conditions under which a person is considered the retailer for the rental of an accommodation. Generally, the provider of the accommodation would be considered the retailer unless it has contracted with an accommodation facilitator who collects payment or a deposit at the time of the reservation, in which case the facilitator would be considered the retailer. For the most part, this preserves the current framework but would expand the remittance obligation when an online travel company or other accommodation facilitator collects and processes payment at the time the reservation is made (as opposed to merely collecting credit card information to hold a reservation).
- ***Exemption.*** – Under current law, the rental of a private residence for fewer than 15 days in a calendar year is exempt from sales tax unless the rental is listed with a rental agent or real estate broker. Under the bill, the exemption would not apply if the accommodation is rented by a facilitator who is considered the retailer, which means the facilitator collects payment or a deposit at the time of the reservation; this would include a rental agent.
- ***Report.*** – The bill would require an accommodation facilitator to file an annual report with the Secretary of Revenue for rentals for which it is not considered the retailer. The report must include the property owner's name and mailing address, the physical location of the accommodation, rental

activity detail, the gross receipts derived from the rentals, and any other information deemed necessary by the Department.

Subsection (k) updates the recordkeeping statute to address the types of records that facilitators and real property contractors must keep.

Subsection (*l*) makes various technical and stylistic changes to the definitions section and makes various conforming changes to address the addition of marketplace facilitators as retailers.

SECTION 41.6: DEDUCTION FOR AMOUNTS RECEIVED AS ECONOMIC INCENTIVES

Prior to 2017, IRC §118 excluded from gross income "any contribution to the capital of the taxpayer." Historically, this exclusion extended to contributions made by a "governmental unit or by a civic group for the purpose of inducing the corporation to locate its business in a particular community, or for the purpose of enabling the corporation to expand its operating facilities."

The Tax Cuts and Jobs Act, enacted by Congress in 2017, made a significant change to the treatment of certain incentives offered to corporate taxpayers by state and local governments. Specifically, IRC §118 was amended to expressly provide that the term "contribution to the capital of the taxpayer" does not include "any contribution by any governmental entity or civic group (other than a contribution made by a shareholder as such)." Accordingly, contributions of money or property to a corporation by a governmental entity made on or after December 22, 2017, are includible in gross income.

When the General Assembly enacted its IRC Update legislation in 2018, it did not specifically address this provision. The updated Code date resulted in North Carolina conforming to this provision, thereby making those cash grants included in taxable income.

Section 41.6 of the bill would decouple from this federal tax law change by creating a corporate and individual income tax deduction for amounts received by a taxpayer as an economic incentive under the Job Maintenance and Capital Development Fund (JMAC), the Jobs Development Investment Grant Program (JDIG), or the One North Carolina Fund.

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

SECTION 41.7: EXTEND HISTORIC REHABILITATION CREDIT

Section 41.7 would extend the sunset of the existing historic rehabilitation tax credit from January 1, 2020, to January 1, 2024.

The tax credit for income producing property is capped at $4.5 million, and is equal to 15% of the first $10 million in qualified rehabilitation expenditures, plus 10% of the next $10 million, plus 5% for the first $20 million if the structure is located in a Tier 1 or 2 area, plus 5% for the first $20 million if the structure is located on an eligible targeted investment site.

The tax credit for non-income producing property is capped at $22,500, and is equal to 15% of expenses to rehabilitate a building listed in the National Register of Historic Places or certified by the State Historic Preservation Officer as contributing to the historic significance of a National Register Historic District or a locally designated historic district certified by the United States Department of the Interior. The taxpayer must have at least $10,000 in expenses to qualify for the non-income producing credit.

SECTION 41.8: EXTEND SALES TAX EXEMPTION FOR QUALIFYING AIRLINES

Section 41.8 would extend the sunset of the sales and use tax exemption for sales of aviation gasoline and jet fuel to an interstate air business for use in a commercial aircraft from January 1, 2020, to January 1,

2024. Aviation gasoline and jet fuel are subject to a 7% State sales tax rate, and the revenue generated by the tax is earmarked to the Division of Aviation, Department of Transportation.

SECTION 41.9: EXTEND SALES TAX PREFERENCES FOR PROFESSIONAL MOTORSPORTS RACING TEAMS

Section 41.9 would extend the sunset of the sales and use tax preferences for certain sales to professional motorsports racing teams or a related member of the team for use in competition in a sanctioned race series. This section would extend the sunset for the provisions from January 1, 2020, to January 1, 2024. The General Assembly first enacted sales tax preferences in this area in 2005; they have been extended many times. The sales tax preferences that would be extended by this section are as follows:

- A sales tax exemption for the sale, lease, or rental of an engine.
- A sales tax exemption for the gross receipts derived from a service contract on or repair, maintenance, and installation services for a transmission, engine, rear-end gears, and any other item that is purchase, leased, or rented and that is exempt from sales tax.
- A sales tax exemption for the gross receipts derived from an agreement to provide an engine, where the agreement does not meet the definition of a "service contract."
- A sales tax exemption for an engine or a part to build or rebuild an engine for the purpose of providing an engine under an agreement to a professional motorsports racing team or a related member of a team for use in competition in a sanctioned race series.
- A sales tax refund for sales taxes paid on aviation gasoline or jet fuel used to travel to or from a motorsports event in North Carolina, to a motorsports event in another state from North Carolina, or to North Carolina from a motorsports event in another state.
- A sales tax refund equal to 50% of the sales taxes paid on tangible personal property, other than tires and accessories, which comprises any part of the motorsports vehicle.

SECTION 41.10: FACILITATE RESPONSE TO DISASTERS

During times of natural disasters, property and equipment owned or used by utility or communications transmission services to the public in the State are severely damaged and customers are often left without vital services. The companies that provide these services request other similarly situated companies, subsidiaries, and affiliates from out-of-state to come into the State to assist the companies in restoring these services. Whenever these companies come into the State, they are doing business in the State and become subject to various regulatory and tax laws.

Section 41.10 would provide that the out-of-state companies and employees that are requested to come into the State at the request of a *critical infrastructure company* are not doing business in this State for the disaster-related work performed during the disaster response period, and therefore would not be subject to the following State laws:

- Registration with the Secretary of State.
- Corporate income and franchise tax.
- Individual income tax.
- Workers compensation laws.
- Unemployment insurance taxes.

Subsection (a) defines a "critical infrastructure company" as a person that provides broadband, mobile telecommunications, telecommunications, or wireless Internet access, and a person that is subject to control of the Utilities Commission, the Federal Communications Commission, or the Federal Energy Regulatory Commission. Examples of critical infrastructure include communications networks; electric generation, transmission, and distribution systems; natural gas transmission and distribution systems; water pipelines; and related support facilities. A disaster response period begins 10 days prior to the first day of a disaster declaration and extends for 60 days following the expiration of the disaster declaration. Part 8 of Article 166A of the General Statutes defines a disaster declaration and provides when those declarations expire.[4]

Subsection (m) would allow the Secretary of Revenue to issue a temporary license to an applicant to import, export, distribute, or transport motor fuel in this State in response to a disaster declaration. The temporary license would expire upon the expiration of the disaster declaration. The person would continue to be responsible for filing returns and paying the required motor fuel taxes, but the person would not have to post a bond or obtain a certificate of authority to operate in this State from the Secretary of State to receive the temporary license. The Secretary of Revenue would not be allowed to renew or issue a temporary license to a person that failed to file the required returns or make payments of the required taxes.

This section is effective when it becomes law and applies to taxable years beginning on or after January 1, 2019.

SECTION 41.11: REPEAL DRY CLEANING SOLVENT PROGRAM AMENDMENTS

State sales tax applies to the gross receipts derived from dry cleaning, laundering services, and linen rentals. Sixty percent (60%) of the revenue attributable to the State's sales tax on these services is transferred to the Dry Cleaning Solvent Cleanup Fund. The total annual transfer is estimated to be $8 million. This transfer will sunset as of July 1, 2020.

There is also an additional State sales tax on each gallon of dry cleaning solvent sold by a retailer to a dry cleaning facility. The rate is $10 per gallon of halogenated hydrocarbon-based dry cleaning solvent and $1.35 per gallon of hydrocarbon-based dry cleaning solvent. The net proceeds of this tax are also credited to the Dry Cleaning Solvent Cleanup Fund. This tax will sunset on January 1, 2020.

The Fund is used to assess and clean up dry-cleaning solvent contamination at dry-cleaning and wholesale distribution facilities and to prevent dry-cleaning solvent releases at operating facilities. The Dry Cleaning Solvent Cleanup Act program is wholly funded by receipts from taxes on dry-cleaning sales and dry-cleaning solvents.

Section 12.11 of the budget (DEQ Part) would have extended the tax and the corresponding transfer of funds from the State sales tax on dry cleaning services for 10 years. **Section 41.11** repeals this provision.

SECTION 41.12: REPEAL TRANSPORTATION NETWORK COMPANY PRIVILEGE TAX

Section 40.20 of the budget would have created a new sales tax at the rate of 7% on the intrastate services of transportation network companies, like Uber and Lyft. For the vast majority of items subject to sales tax, there is a State sales tax and a local tax. The proceeds of the tax are remitted the General Fund and local governments receive a distribution representing the local portion of the tax. Under this proposed new tax, the proceeds would be credited to the Highway Fund.

Section 41.12 of the bill would repeal this provision of the Transportation Part of the budget.

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[4] G.S. 166A-19.21.

SECTION 41.13: REPEAL DMV/REGISTRATION FEES FOR ELECTRIC AND HYBRID VEHICLES

Section 40.15 of the budget would do the following:

- Increase the additional fee for electric vehicles from $130 to $200 over the next two years.
- Establish a new additional fee for plug-in hybrid vehicles at the rate of $87.50, and this fee would be increased to $137.50 over the next two years.
- Annually adjust the fees, beginning January 1, 2023, using the same statutory formula used to adjust the motor fuel tax rate.[5]

The fee proceeds would be appropriated to the General Maintenance Reserve Fund. **Section 41.13** repeals this provision in the Transportation Part of the budget.

[5] The motor fuel tax in North Carolina was modified to a formula-based rate beginning in January 1, 2018. The formula is based on the previous year's tax rate multiplied by a percentage. The percentage is 100% plus or minus the sum of 75% of population percentage change for the upcoming calendar year and 25% of the Consumer Price Index change, as determined in October for the upcoming calendar year.