



SENATE BILL 523: Rev. Laws Clarifying & Administrative Changes.

2019-2020 General Assembly

Committee:	House Finance. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	June 26, 2019
Introduced by:	Sens. Tillman, Hise, Newton	Prepared by:	Finance Team
Analysis of:	PCS to Third Edition S523-CSSVxf-27		

OVERVIEW: *Senate Bill 523 makes various technical, clarifying, and administrative changes, most of which were recommended by the Department of Revenue and include the following:*

With respect to sales tax,

- *Broadens the scope of the sales tax on digital property by eliminating the requirement that an item have a taxable, tangible corollary in order to be taxable.*
- *Clarifies that counties must wait at least one year from the date of the last preceding election before holding another special election on the issue of levying the quarter-cent local option sales tax.*
- *Clarifies the taxation of repair, maintenance, and installation services provided by property managers pursuant to a property management contract.*
- *Creates a new category of limited service car washes and exempts them from sales tax.*
- *Exempts the sales of equipment, including attachments and repair parts, used in cutting, shaping, polishing and finishing slabs of natural and engineered stone sold to a company primarily engaged in the business of made-to-order countertops, walls, or tubs.*

With respect to the tobacco excise tax,

- *Requires tobacco product licensees to renew their excise tax license every three years at no cost. Currently, these licenses are not required to be renewed after the initial issuance.*
- *Regulates the Internet sale of tobacco products, except for cigars. Many of the requirements are already required under federal law with respect to cigarettes and smokeless tobacco products.*

With respect to collection and other administrative matters,

- *Imposes the collection assistance fee after 60 days. Currently, the fee is imposed after 90 days.*
- *Makes 3 groups of informational returns subject to penalties for failure to file and failure to file in the correct format: Article 2A Tobacco Products Tax; Article 2C Alcoholic Beverage License and Excise Taxes; and Article 4 Income Tax (includes informational returns from payers and partnerships).*
- *Broadens the innocent spouse relief provision to mirror the federal law and provide relief for both underpayments and understatements of tax.*
- *Restores the venue for criminal tax law violations to the office of the Secretary in Raleigh, which was the law prior to December 1, 2018.*

CURRENT LAW, BILL ANALYSIS, AND EFFECTIVE DATE:

Karen Cochrane-Brown
Director



S 5 2 3 - S M S V - 5 3 C S S V X F - 2 7 - V - 5

Legislative Analysis
Division
919-733-2578

Senate PCS 523

Page 2

Section	Explanation	Effective Date
PART I. BUSINESS TAX CHANGES		
1.1	<p>Eliminates the possibility of duplicate refund payments where an in-state business made a tax payment on behalf of a nonresident owner. Under current law, both the business and the nonresident owner can seek a refund. The nonresident owner would rely on the tax return filed by the business to show the amount of tax submitted; however, the business could have adjusted the amounts. Section 1.1 limits tax refunds for payments by a business for a nonresident owner as follows:</p> <ul style="list-style-type: none"> • Before the business files its tax return, the business may adjust the amount of tax submitted and seek a tax refund for amounts paid on behalf of a nonresident owner. • After the business files its tax return, only the nonresident owner may seek a tax refund based on the amounts shown on the tax return. 	For taxable years beginning on or after January 1, 2019.
PART II. PERSONAL INCOME TAX CHANGES		
2.1	<p>Modifies the "innocent spouse" provision to mirror the federal law and, therefore, provide relief from liability with respect to both underpayments of tax and understatements of tax.</p> <p>At both the federal and State levels, spouses filing joint returns are jointly and severally liable for any deficiency or tax due, which permits the IRS and/or the State to collect the entire amount due from either taxpayer. IRC §6015 provides three avenues of relief from joint and several liability:</p> <ul style="list-style-type: none"> • Innocent spouse relief – Taxpayer did not know (and had no reason to know) that their spouse failed to report income or made other misstatements. • Separation of liability relief – Taxpayer did not know about an erroneous item and is now divorced, separated, or living apart from their spouse. • Equitable relief – Taxpayer does not qualify for innocent spouse relief or separation of liability relief but, based on all the facts and circumstances, it would be unfair to hold the taxpayer liable for an item attributable to their spouse. <p>G.S. 105-153.8(e) provides that if a spouse qualifies for relief of liability for federal tax attributable to a substantial <u>understatement</u> of tax by the other spouse pursuant to section 6015 of the Code, the spouse is not liable for the corresponding tax imposed. Since the North Carolina statute specifically references relief only for an understatement of tax, the Department of Revenue does not extend relief for an underpayment of tax. However, under IRC § 6015, the IRS can also grant relief for an underpayment of tax.</p> <p>This section would require the State to follow all determinations by the IRS under IRC §6015 that a taxpayer is not liable for items attributable to their</p>	For taxable years beginning on or after January 1, 2018.

Senate PCS 523

	spouse on a joint income tax return and would include relief for both understatements and underpayments of tax.	
PART III. SALES AND USE TAX		
3.1(a); 3.3	<p>Defines "Item." – Sales and use tax applies to tangible personal property, certain digital property, and some services. When the sales tax was originally enacted, it applied only to tangible personal property. The terms "item" and "product" were often used throughout the statutes as a substitute reference to tangible personal property. Once digital property and services were added to the sales tax statutes, references were updated to reflect those additions, but with some inconsistencies. Some references list all three categories, and others refer to "items and services." To create consistency and to avoid repeating the lengthy phrase "tangible personal property, digital property, and services" throughout the statutes, the term "item" is defined to include all three categories and replaces that phrase where it appears.</p> <p>Defines "Certain Digital Property." – Only certain kinds of digital property are currently subject to sales tax. Specifically:</p> <ul style="list-style-type: none"> • Audio works • Audiovisual works • Books, magazines, newspapers, newsletters, reports, or other publications. • Photographs or greeting cards. <p>In order for any of these items to be taxable, the item must be delivered or accessed electronically, it must not be considered tangible personal property¹, and it must be taxable if it were sold in a tangible medium.</p> <p>While there are statutory definitions for "audio work" and "audiovisual work," the term "digital property" is not defined. As part of the reorganization of the imposition statute (<i>see Section 3.2(a)</i>), the bill defines the term, moving most of the language from G.S. 105-164.4(a)(6b) to the new G.S. 105-164.3(2f). The new term is "certain digital property" to reflect the fact that the definition includes only that subset of digital property that is taxable; it does not define all digital property. Conforming changes are made throughout the statutes to reflect the new defined term.</p> <p>Updates SSTA Date Reference. – Updates the reference date to the Streamlined Sales Tax Agreement.</p> <p>Makes other technical changes.</p>	When Law.
3.1(b)	<p>Expands the imposition of the sales tax on digital property by deleting the requirement that the item have a taxable, tangible corollary.</p> <p>Under current law, in order for an item of digital property to be taxable, the law requires that the item "<i>would be taxable...if sold in a tangible medium.</i>" When the General Assembly imposed sales tax on digital property, it was viewed more as an effort to modernize the sales tax base, rather than to</p>	For sales of digital property occurring on or after

¹ Prewritten computer software is considered tangible personal property.

Senate PCS 523

Page 4

	<p>expand it, and to treat similar transactions similarly. It was for this reason that the language regarding "tangible medium" was included; it was intended to be a limitation.</p> <p>With the expansion of technology and the increase in the kinds of digital property, this phrase has created confusion with respect to items that may fall into one of the digital property categories, but do not necessarily have a tangible corollary. An example of this would be certain e-learning materials, along the lines of a continuing education course, where a customer can engage in an interactive online course and take an exam at the conclusion of the course. This material would meet the definition of an "audiovisual work," but it may not exist in a tangible format. Although the statutory limitation is phrased as a hypothetical (the item <i>would be taxable if it was sold in a tangible medium</i>), the Department has issued a private letter ruling stating that because these particular courses are not available in a tangible medium, they are not subject to sales tax.</p> <p>The bill removes this phrase, thereby lifting the requirement that an item of digital property, in order to be taxable, have a tangible corollary that is also taxable. By removing this phrase, these types of videos that meet the definition of an "audiovisual work" would become subject to tax.</p>	October 1, 2019
3.2	<p>Reorganizes the imposition statute by moving digital property from G.S. 105-164.4(a)(6b) to (a)(1) and clarifies that all repair, maintenance, and installation services are taxed at the general rate regardless of whether the underlying item, such as a boat or aircraft, is subject to a different rate of tax or to a maximum tax.</p>	When Law.
3.3(c)	<p>Clarifies that the sales tax on admissions does not apply to charges to attend instructional seminars, conferences, or educational workshops where entertainment activity is provided as an ancillary purpose.</p>	When Law.
3.3(l)	<p>Clarifies the sales and use tax exemption for certain substances purchased by farmers for use on animals or plants.</p> <p>Under current law, G.S. 105-164.13E(a)(6), vaccines, remedies, medications, litter materials, and feeds given to animals held or produced for commercial purposes are exempt from sales tax; however, the exemption does not apply to the equipment or devices used to administer these items. The General Assembly enacted this limitation on equipment and devices in 2002. At that time, the exemption for vaccines, remedies, medications, litter materials, and feeds purchased for use on animals held or produced for commercial purposes applied to all taxpayers. There was a separate statutory exemption for "equipment . . . used for housing, raising, or feeding animals."</p> <p>In 2013, the General Assembly restructured the statutes that contained the sales tax exemptions. G.S. 105-164.13E contains all farm-related sales tax exemptions and G.S. 105-164.13 contains general exemptions not limited to farmers. The two different exemptions (i.e., the one applicable to vaccines, remedies, and medications, and the one applicable to equipment) are in G.S. 105-164.13E, applicable only to farmers, and appear to contradict each other. This section removes the inconsistency and the removal of the</p>	When Law.

Senate PCS 523

	<p>sentence does not expand the exemption since the General Assembly limited the exemption to farmers in 2013.</p>	
3.4	<p>Clarifies the taxability of charges billed to a customer for the installation of utilities.</p> <p>Under current law, there are two provisions affecting the taxability of the installation of utilities on utility-owned land, a right of way, or an easement, but they are worded differently, which has resulted in confusion about their application.</p> <p>A "capital improvement," which is not taxable, is defined to include:</p> <p><i>"Installation of utilities on utility-owned land, right-of-way, or easement, notwithstanding that charges for such may be included in the gross receipts derived from services subject to the combined general rate under G.S. 105-164.4."</i></p> <p>When a utility company installs utility assets on its own land, it is considered a capital improvement and, therefore, not subject to tax. When a utility company installs a utility asset in the right of way or on an easement for the benefit of a customer, such as installing an electrical line to a new house, the utility company does not typically charge the customer the full cost of installation, but rather it bills the customer an amount that reflects a portion of the cost known as a "contribution in aid of construction." These charges are reflected on a customer's bill and have historically been taxed as part of the "gross receipts derived from the sale of electricity." The "notwithstanding" clause was included in the statute to preserve the taxability of these charges even though the installation is otherwise considered a capital improvement.</p> <p>There is a sales tax exemption for repair, maintenance, and installation services and service contracts related to:</p> <p><i>"A transmission, distribution, or other network asset contained on utility-owned land, right-of-way, or easement."</i></p> <p>Because the notwithstanding language does not appear in the exemption statute, like it does in the "capital improvement" definition, an argument has been made that repair, maintenance, or installation services performed on a utility asset is exempt from sales tax, even if those charges are included on a customer's bill, which does not reflect the intent of this provision. This exemption was directed at transactions between a utility and contractors it hires to perform work on behalf of the utility, but it was not intended to exclude from tax those charges passed on to a customer on the customer's electric bill.</p> <p>This section clarifies the application of the tax on utilities to include those charges that are billed to a customer and are included in the gross receipts derived from the provision of those services.</p> <p>To the extent it was unclear what services were covered by the term "utility," this section also identifies specifically that this application of tax applies to installations performed by telecommunications companies, video</p>	When Law.

Senate PCS 523

	programming companies, and providers of electricity, piped natural gas, water, and sewer service.	
3.5	<p>Adds language consistent with the Streamlined requirement that requires the lowest combined tax rate to apply in a zip code area if the area includes more than one rate in any level of taxing jurisdictions.</p> <p>Requires a taxing district to update at regular intervals the GIS data and address information for all property and addresses included in the district.</p>	When Law.
3.6	<p>Eliminates unnecessary language that gives the Department broad authority to assess retailers for use tax in certain situations despite the fact that the retailer may not be held liable for sales tax undercollections related to certain RMI, real property contract, and service contract transactions because the statute was subsequently amended to provide narrower, more specific use tax assessment authority within the statute.</p> <p>The "sales tax base expansion protection act" was enacted shortly after the initial expansion of the sales tax base to include repair, maintenance, and installation services. It was intended to give retailers a grace period from liability if they failed to properly collect the correct amount of tax given the confusion surrounding the new law. The statute sets out a series of circumstances under which the Department may not assess tax, but it also included a broad provision allowing the Department to assess for use tax. Last year, the General Assembly narrowed the use tax exception to certain circumstances. The narrower provisions now conflict with the broader exception, and the statute needs to be clarified.</p>	When Law.
3.7	<p>Clarifies the conditions under which taxpayer is entitled to relief with respect to the undercollection of tax for linen rentals.</p> <p>Through audit by the Department of Revenue, it was discovered that some vacation rental companies were not properly collecting tax on linen rentals, and they were subsequently assessed for the undercollection of tax. The General Assembly opted to provide these taxpayers with some measure of relief (90% reduction of the assessment) if they met certain conditions. One of the conditions was that the person was an otherwise compliant taxpayer that had timely remitted other sales taxes it had collected during the period for which they were being audited. Specifically, the condition reads:</p> <p><i>"The taxpayer remitted to the Department all of the sales and use taxes it collected during the audit period."</i></p> <p>The phrase "during the audit period" was intended to modify when the taxpayer was supposed to have remitted the taxes it collected. However, at least one taxpayer, who did not remit the taxes he collected until after he was audited, has made the argument that the condition merely requires that he remit the taxes he collected at some point, but that the provision does not stipulate when they have to be remitted.</p>	When Law.

Senate PCS 523

	<p>This clarification reflects the original intent of the statute, which was that in order to be eligible for the relief provided, the taxpayer must have remitted, during the period under audit, the sales taxes it had collected.</p>	
<p>3.8</p>	<p>Clarifies that a special election for a local option sales tax cannot be held within one year from the date of the last preceding election. This change conforms Article 46 to the same restriction that applies in Articles 39, 40, and 42.</p> <p>Article 46 of Chapter 105 authorizes counties to hold a special election on the question of whether to levy a quarter-cent local sales and use tax. To date, 42 counties levy this tax. The Article provides:</p> <p><i>"Except as provided in this Article, the adoption, levy, collection, administration, and repeal of these additional taxes must be <u>in accordance with Article 39 of this Chapter.</u>"</i></p> <p>Article 39, in relevant part, provides:</p> <p><i>"The county board of elections shall fix the date of the special election on a date permitted by G.S. 163A-1592, <u>except that the special election shall not be held within one year from the date of the last preceding special election under this section.</u>"</i></p> <p>There has been some confusion among counties as to whether the one-year limitation in Article 39 applies to Article 46 referenda. At least 8 counties have held more than one special election within a one-year period, although no county has held a successful referendum within one year of a failed referendum. This section clarifies that the one-year waiting period applies.</p>	<p>Applies to elections held on or after July 1, 2019.</p>
<p>3.9</p>	<p>Managing real property is not a taxable service under current law. Last year, real property managers requested property management contracts be exempt from sales tax. The General Assembly enacted this exemption, effective January 1, 2020.</p> <p>Since property management services are not taxable, the purpose of the exemption is unclear. Over the interim, and throughout this session, the finance team has worked with the interested parties to better define the policy question and how best to resolve the concerns.</p> <p>Sometimes a real property manager may provide taxable repair, maintenance, and installation (RMI) services for real property that the person manages. The issue is when does a real property manager become a retailer of RMI services for sales and use tax purposes, within the guiding policy principle of taxing similar transactions the same.</p> <p>This section defines a property management contract, and provides when RMI services provided by a real property manager under a property management contract are taxable.</p> <ul style="list-style-type: none"> • A property management contract is a contract obligating a person to provide five or more real property services, one of which is providing RMI services to comply with lease, rental, or management obligations. 	<p>When Law.</p>

Senate PCS 523

	<ul style="list-style-type: none"> • RMI services provided by a real property manager are subject to sales and use tax if they are provided for an additional charge. • RMI services provided by a real property manager under a property management contract are subject to sales and use tax if more than 25% of the time spent managing the property for the billing or invoice period is attributable to taxable RMI services. The tax would be due on the portion of the invoice amount reasonably allocated to the provision of the RMI services. A real property manager may substantiate, based on a reasonable approximation, the amount of time spent on taxable RMI services. That substantiation will be determined to be a good-faith effort to comply with the sales tax laws. If a property manager maintains this substantiation, then should upon audit it be found that more than 25% of the time spent was on taxable RMI services, the Secretary may compromise the taxpayer’s liability. • Certain RMI services provided by a real property manager under a property management contract are excluded from taxation, and from the 25% calculation: <ul style="list-style-type: none"> ○ To troubleshoot, identify, or attempt to identify the source of a problem for the purpose of determining what is needed to restore the real property to working order or good condition. ○ To inspect or monitor the real property, including the operation of all systems that are part of the real property. <p>This section also provides a grace period, from January 1, 2019, through January 1, 2021. Under this grace period, the Department may not assess a real property manager for failure to collect sales tax on RMI services provided under a property management contract if the real property manager has not received specific written advice from the Secretary for the transactions at issue. The current grace period applicable to the sales tax base expansion ended on January 1, 2019. This section provides an additional 2-year grace period for real property managers.</p>	
3.10	Corrects a statutory reference.	When Law.
3.11	<p>Exempts from sales and use tax limited service car washes, and defines limited service car wash as the cleaning of a car by mechanical means where the only activity performed by a person is one that is not related to the cleaning of the vehicle.</p> <p>Under current law, cleaning of tangible personal property is taxable and installing or applying tangible personal property is a taxable service. There is a sales tax exemption for <i>self-service</i> car washes and vacuums. The term "self-service car wash" is not defined. The Department has interpreted that the term does not include a car wash where any activity is performed by an employee to install, apply, or set into position tangible personal property. In a private letter ruling, the Department determined that a self-service car wash did not include a car wash where, among other things, an employee placed a cover over the rear windshield wiper.</p>	October 1, 2019, and applies to sales made on or after that date.

Senate PCS 523

	This section defines a limited-service car wash and exempts limited-service car washes from sales tax.	
3.12	<p>Exempts from sales and use tax equipment, including attachments and repair parts, used in cutting, shaping, polishing, and finishing rough cut slabs of natural or engineered stone and stone-like products sold to a company that is primarily engaged in the business of providing made-to-order countertops, walls, or tubs.</p> <p>Under current law, sales of "mill machinery," including parts and accessories, to a manufacturing industry or plant are exempt from sales and use tax. However, the statute does not specifically define a "manufacturing industry" or "mill machinery." Given the lack of statutory guidance, many questions have arisen over the years as to whether a company is a manufacturer and whether a particular piece of equipment qualifies as mill machinery. The Department of Revenue has, through a combination of administrative rule, case law, and interpretation of the Secretary, developed guidance and criteria to determine the application of the tax, but the criteria have not always been consistent or clear to taxpayers. In 2016, the Revenue Laws Study Committee heard a presentation on this issue but did not make any recommendations at the time.</p> <p>Manufacturing comprises so many different activities that the definition, interpretation, and application of the term varies from state to state. It is one of the greatest sources of complexity in sales tax law and has generated innumerable court cases in virtually all states. For example, all manufacturing probably includes some processing or fabrication, but not all fabrication or processing is manufacturing. Similar questions arise over refining, assembly, and construction. In <i>East Tex. Motor Freight Lines v. Frozen Foods Express</i>, 351 U.S. 49 (1956), the U.S. Supreme Court stated that "manufacturing implies a change...there must be a transformation; a new and different article must emerge, having a distinctive name, character, or use."</p> <p>In a 1968 North Carolina Supreme Court case, <i>Duke Power Co. v. Clayton</i>, the Court held that the crushing of coal did not constitute manufacturing because it doesn't result in a new and different article. "Crush coal...and it is still merely coal." Following this logic, the Department recently issued a private letter ruling finding that a taxpayer who makes countertops "does not transform the natural stone into a new and different product which is no longer natural stone...the granite slab used to make the countertop remains a granite slab." Therefore, the equipment purchased by the countertop company was subject to sales tax.</p> <p>This section would overrule the Department's interpretation with respect to the manufacture of countertops on a prospective basis.</p>	October 1, 2019, and applies to sales made on or after that date.
PART IV. EXCISE TAX CHANGES		
4.1	Subsection (a) makes two technical changes. It substitutes the word "cancels" for "surrenders". Cancellation is the voluntary surrender of the	When Law.

Senate PCS 523

	<p>license by the licensee. It clarifies that the list to manufacturers is limited to G.S. 105-113.4A(g)(3) rather than all of subsection (g).</p> <p>Subsection (b) requires the immediate return to the Department of a license when a tobacco products licensee voluntarily cancels his or her license. A similar change was made with respect to motor fuels licensees in S.L. 2019-6.</p> <p>Subsection (b) requires that a notice of hearing for a tobacco products license revocation to be sent by certified mail rather than registered mail.</p> <p>Subsection (c) adds the word "licensed" to reflect the proper defined term. Under the excise tax statutes, there is a defined term for "distributor" and a "licensed distributor." Certain out-of-state distributors may not necessarily be required to be licensed in this State. This statute would only apply to licensed distributors.</p> <p>Subsection (d) clarifies that even if a cigarette manufacturer is not required to pay tax, the manufacturer must still file the required reports.</p>	
4.2	<p>Requires tobacco products licensees to renew their excise tax license every three years. Would also ensure that licensees are maintaining their annual reporting requirements with the Secretary of State's office.</p> <p>Subsection (d) rewrites the existing statute for improved clarity. The only substantive change in the rewrite is the addition of language related to license renewal every three years.</p>	1/1/2020
4.3	<p>Subsections (a) and (b) clarify the activities for which a distributor report is due. Subsection (a) also specifies that the quantity of cigarettes brought into the State must be reported.</p> <p>Subsection (a) deletes obsolete language requiring a manufacturer to report on cigarettes distributed free of charge because a manufacturer is prohibited from distributing free samples of cigarettes under federal law.²</p> <p>Subsection (b) repeals the section of the statute dealing with the designation of exempt sales. This designation process is rarely used, and the transaction described, in practice, should be reported without regard to the designation. If a product is sold for an exempt purpose, it would be reported as such.</p>	When Law.
4.4	<p>Clarifies that shipping and delivery records are required in addition to sales records and to specify that records may be inspected by the Secretary and must be maintained for a period of three years.</p>	When Law.
4.5	<p>Clarifies that free samples of tobacco products other than cigarettes may only be distributed in qualified adult-only facilities as that term is defined under federal law.³</p>	When Law.

² 21 CFR 1140.16(d)(1).

³ Under 21 CFR 1140.16(d)(2), the term "qualified adult-only facility" means a facility or restricted area that:

(A) Requires each person present to provide to a law enforcement officer (whether on or off duty) or to a security guard licensed by a governmental entity government-issued identification showing a photograph and at least the minimum age established by applicable law for the purchase of smokeless tobacco;

Senate PCS 523

	<p>Clarifies that a manufacturer of vapor products cannot also be a retail dealer if the manufacturer seeks to obtain the manufacturer's exemption, and that the manufacturer's exemption does not relieve the manufacturer from filing monthly reports.</p> <p>Clarifies that the limitation on exchanging non-tax-paid product extends to all wholesale dealers and not just integrated wholesale dealers, which is consistent with G.S. 105-113.27 disallowing the exchange of non-tax-paid cigarettes between licensed distributors.</p>	
4.6	<p>Imposes a use tax on non-tax-paid tobacco products other than cigarettes brought into this State by a person who is not licensed as an OTP wholesale dealer or retail dealer. This provision mirrors the existing law with respect to use tax on cigarettes similarly brought into this State.</p>	<p>For taxable years beginning on or after January 1, 2019.</p>
4.7	<p>Regulates Internet sales of tobacco products, except for cigars, by requiring that delivery sellers obtain an excise tax license, report and remit all applicable taxes, including both excise and sales tax, and verify age at the time of order. Age verification during both the ordering process and at delivery is required by federal law for cigarettes and smokeless tobacco. North Carolina law also requires age verification during the ordering process only for all tobacco products, including vapor products.</p> <p>This section would also require delivery sellers to file a monthly report with the Secretary providing customer information and the type and quantity of products sold. This information is already required to be reported by federal law for cigarettes and smokeless tobacco, but this would add the requirement for e-cigarettes. This section also creates a \$1,000 for first-time violators and a penalty of up to \$5,000 for subsequent violations.</p>	<p>For delivery sales occurring on or after October 1, 2019.</p>
4.8	<p>Clarifies that the definition of "wholesaler or importer" of wine and malt beverages includes wineries, wine producers, and breweries that sell their beverages, whether made by them or by another entity under contract, at wholesale to a retailer or at retail. It also removes the qualifier for breweries that produce fewer than 25,000 barrels and lists out the permit holders covered by the definition.</p>	<p>When Law.</p>

(B) Does not sell, serve, or distribute alcohol;

(C) Is not located adjacent to or immediately across from (in any direction) a space that is used primarily for youth-oriented marketing, promotional, or other activities;

(D) Is a temporary structure constructed, designated, and operated as a distinct enclosed area for the purpose of distributing free samples of smokeless tobacco in accordance with this paragraph (d)(2) of this section;

(E) Is enclosed by a barrier that:

(1) Is constructed of, or covered with, an opaque material (except for entrances and exits);

(2) Extends from no more than 12 inches above the ground or floor (which area at the bottom of the barrier must be covered with material that restricts visibility but may allow airflow) to at least 8 feet above the ground or floor (or to the ceiling); and

(3) Prevents persons outside the qualified adult-only facility from seeing into the qualified adult-only facility, unless they make unreasonable efforts to do so; and

(F) Does not display on its exterior:

(1) Any tobacco product advertising;

(2) A brand name other than in conjunction with words for an area or enclosure to identify an adult-only facility; or

(3) Any combination of words that would imply to a reasonable observer that the manufacturer, distributor, or retailer has a sponsorship that would violate 1140.34(c).

Senate PCS 523

4.9	Clarifies that "resident wine producers" are required to file monthly informational reports with the Department and requires any report filed under G.S. 105-113.84 to include the amount of beverages sold, delivered or shipped to wholesalers, importers and purchasers. The informational report refers to non-tax-paid sales to wholesalers, importers and purchasers who would then be responsible for reporting and paying the excise tax on the product. This change will aid tax compliance by allowing the Department to better understand who should be paying the excise tax on the beverages.	When Law.
4.10	Adds failure to maintain proper motor vehicle registration on a qualified motor vehicle as a reason the Secretary may refuse to license and issue a decal to a motor carrier.	When Law.
4.11	Creates a definition for "tank wagon for-hire" and clarifies that a tank wagon for-hire is considered a transport truck, which is subject to transporter licensure and informational reporting requirements under Article 36C.	When Law.
4.12	Adds "a biodiesel provider" to the list of licensees required to provide a shipping document when transporting motor fuels by railroad tank car or transport truck.	When Law.
4.13	Requires the destination state of the fuel to be included in shipping documents required to be filed by certain tank wagon operators when transporting fuel.	When Law.
4.14	Clarifies that possessing non-tax-paid cigarettes intended for resale at an unlicensed facility is unlawful. This change tracks G.S. 105-113.5, which is the statute that imposes the tax. Under current law, a license is required and the tax is owed when someone possesses cigarettes with the intent to sell, so this change puts similar language in the corresponding statute that sets out the penalty for violating those requirements.	12/1/20 Applies to offenses committed on or after that date
PART V. TAX COMPLIANCE		
5.1	Allows the Department to impose the collection assistance fee 60 days after a tax debt is deemed collectible unless the taxpayer has arranged a payment plan. The current period is 90 days. The Department has requested this change because it begins the collection process 30 days after the tax is deemed collectible, and this change would more closely align the assessment of the fee with the point in time when the Department's collection expenses begin. The fee is 20% of the amount of the overdue tax debt. The proceeds of the fee are Departmental receipts and are applied to the cost of collecting and reducing the incidence of overdue tax debts.	12/1/20 Applies to tax debts that become collectible on or after that date.
5.2	Adds 3 groups of informational returns subject to penalties for failure to file (\$50 per day, up to a maximum of \$1,000) and failure to file in the format prescribed by the Secretary (\$200): <ul style="list-style-type: none"> • Article 2A Tobacco Products Tax • Article 2C Alcoholic Beverage License and Excise Taxes 	1/1/20

Senate PCS 523

Page 13

	<ul style="list-style-type: none"> Article 4 which contains G.S. 105-154 requiring informational returns from payers and partnerships. Current law imposes penalties on returns with tax due. This provision would impose penalties when no tax is due. 	
5.3	Directs the Revenue Laws Study Committee to study issues associated with the underreporting of sales tax by franchisees, including whether franchisors should be required to annually report certain information about their franchisees to the Department of Revenue. The Committee shall report any findings and make any legislative recommendations to the 2020 Regular Session of the 2019-2020 General Assembly.	When Law.
PART VI. GENERAL TAX ADMINISTRATION		
6.1	Expands the circumstances when a taxpayer may claim a tax refund outside the general statute of limitations. Under current law, a taxpayer must claim a refund by the later of 3 years after the due date of the return or 2 years after payment of the tax. There are several exceptions to the general statute of limitations including contingent events such as litigation or a state tax audit. However, current law requires a taxpayer to use the contingent event exception within the general statute of limitations – preventing a taxpayer from using multiple exceptions. This provision would allow a taxpayer to use the contingent event exception if the statute of limitations is open due to another exception.	When Law.
6.2	Clarifies that the date a taxpayer filed a federal amended return is presumed to be the date recorded by the Internal Revenue Service (IRS). This provision clarifies the calculation of the statute of limitations for the Department to assess additional tax when a taxpayer filed a federal amended return but fails to timely file a State amended return.	When Law.
6.3	Expressly requires a federal audit be final to be considered a federal determination for State purposes and make technical corrections to uniformly reference "an agreement of the U.S. competent authority" for federal determinations under international tax treaties. Federal audits (and agreements under international tax treaties) are considered final in the following circumstances: <ul style="list-style-type: none"> The determination is not subject to administrative or judicial review The taxpayer does not timely file an administrative appeal with the IRS after receiving audit findings The taxpayer consented to any of the audit findings with IRS The Department is seeking a clear, statutory rule that creates finality and moves tax disputes forward in a timely manner.	When Law.
6.4	Clarifies Article 4A of Chapter 105 on withholding by simplifying definitions and uniformly referring to "payee" in the Article as the category of persons subject to withholding. Payee is defined as follows: <ul style="list-style-type: none"> A nonresident contractor - A nonresident individual or entity that performs in connection with a performance, an entertainment, an 	When Law.

Senate PCS 523

	<p>athletic event, a speech, or the creation of a film, radio, or television program</p> <ul style="list-style-type: none"> • An ITIN contractor - An ITIN holder who performs services in this State for compensation other than wages • A person who fails to provide a taxpayer identification number • A person who provided a taxpayer identification number that the Department notified the payer that is invalid <p>Compared to current law, the provision expands the definition of payee to include persons who do not provide a taxpayer identification number or provide a taxpayer identification number that the Department has notified payers as invalid.</p>	
6.5	<p>Adds to the list of notices that the Department is required to send a taxpayer, a notice of a denial of a refund.</p> <p>If the Department determines that the taxpayer's request for a refund is outside the statute of limitations, the Department will issue a notice of denial. Under prior law, the taxpayer could only dispute the denial in superior court. In 2016, the General Assembly changed the law to allow a taxpayer whose claim for refund is denied because it was filed after the statute of limitations passed to appeal the determination before the Office of Administrative Hearings. A final decision by the administrative law judge on the denial is subject to judicial review.</p> <p>As the result of this change, there are now two kinds of "denials" issued by the Department subject to administrative review – <u>a proposed denial of a refund claim</u> and <u>a denial of a refund claim</u> when the basis for the denial is a determination by the Department that the claim is outside the statute of limitations.</p> <p>This is a conforming change so that the notice requirement reflects both kinds of denial.</p>	When Law.
6.6	<p>Relocates the statute authorizing the Secretary to require a power of attorney of each agent for any taxpayer from the Franchise Tax Article to the General Administration Article because the authority is not limited to the franchise tax context.</p>	When Law.
6.7	<p>Modifies one of the circumstances under which the Department may collect a tax related to the dismissal of a contested case at the Office of Administrative Hearings. Under current law, the provision specifically provides that a tax becomes collectible if a petition is dismissed on the basis of lack of jurisdiction because the sole issue is the constitutionality of a statute. However, there are other circumstances under which a petition may be dismissed, and the tax should be collectible whenever a petition is dismissed regardless of the reason.</p>	When Law.
6.8	<p>Restores the venue provision for criminal tax law violations to the office of the Secretary in Raleigh, which was the law prior to December 1, 2018.</p>	December 1, 2018, and applies to

Senate PCS 523

Page 15

	<p>Historically, a violation of a tax law was considered to be an act committed in part at the office of the Secretary in Raleigh for venue purposes. In 2018, the General Assembly changed the law to bifurcate the venue between civil and criminal tax law violations. Under S.L. 2018-98, which became effective December 1, 2018, the venue for a civil violation of a tax law continues to be Raleigh, but the exclusive jurisdiction to prosecute a criminal violation of a tax law is held by the District Attorney in the county where the charged offense occurred.</p> <p>This section would return the law to the way it was prior to the 2018 change.</p>	<p>offenses committed on or after that date.</p>
PART VII. OTHER CHANGES		
7.1	<p>Deletes an obsolete reference to a \$15 registration fee that was applicable to a person who sells items at a specialty market but that was repealed, effective January 1, 2000.</p>	<p>When Law.</p>