SENATE BILL 622:
Tax Reduction Act of 2019.

2019-2020 General Assembly

Committee:	Senate Rules and Operations of the Senate	**Date:**	May 15, 2019
Introduced by:	Sens. Tillman, Hise, Newton	**Prepared by:**	Finance Team
Analysis of:	Second Edition		

OVERVIEW: Senate Bill 622 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 for nonresident businesses and nonresident employees 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.***

CURRENT LAW, BILL ANALYSIS, & EFFECTIVE DATES

PART I: PERSONAL INCOME TAX CHANGES

This Part would do two things:

- Increase the standard deduction, effective for taxable years beginning on or after 2021.
- Allow an income exclusion for IRA distributions to charities by taxpayers age 70 ½ or older, effective for taxable years beginning on or after 2019.

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 1.1 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.

Exclusion for IRA distributions – 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.

Section 1.2 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.

PART II. FRANCHISE TAX CHANGES

This Part would reduce the franchise tax liability for most corporations in North Carolina in the following ways:

- Eliminate one of the three franchise tax bases, effective for taxable years beginning on or after 2020.
- Reduces the franchise tax rate from $1.50 to $1.30, effective for the taxable year 2020, and it reduces the rate from $1.30 to $1.00, effective for taxable years beginning on or after 2021.
- Retain the current franchise tax rate of $1.50 for electric power companies until taxable year 2027; at that point the franchise tax rate for electric power companies will be the general franchise tax rate that exists at that time.

Corporations must use the greatest of three methods when determining its franchise tax base. The franchise tax rate for a C corporation is $1.50 per $1,000 of its tax base, and the franchise tax rate for an S corporations is a flat rate of $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.

[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 2.1(b)[2] 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.

Section 2.1(c) 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.

Section 2.2 would further reduce the franchise tax rate to $1.00 per $1,000 of the corporation's tax base. This reduction becomes effective for taxable years beginning on or after January 1, 2021, applicable to the calculation of franchise tax reported on the 2020 and later corporate income tax returns.

Section 2.3 would reduce the franchise tax rate for electric power companies from $1.50 to the general franchise tax rate that exists at that time, effective for taxable years beginning on or after January 1, 2027, and applicable to the calculation of franchise tax reported on the 2026 and later corporate income tax returns.

PART III. USE MARKET-BASED SOURCING FOR MULTISTATE INCOME TAX APPORTIONMENT

This Part would make the following changes to the apportionment methodology for multistate corporations, effective for taxable years beginning on or after January 1, 2020:

- Treat receipts from the transportation or transmission of natural gas the same as petroleum-based liquids. (Section 3.1)
- 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.
- Allow a taxpayer with a State net loss balance as of the end of its 2019 taxable year to elect to apportion receipts from services, for corporate income tax purposes, based on the percentage of its income-producing activities performed in this State until the earlier of the tax year in which (i) the existing State net loss balance is fully utilized or (ii) all of the existing state net loss balance has expired.

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.[3] And an additional 14 states give greater weight to the sales factor in their apportionment formulas.

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[2] **Section 2.1(a)** makes conforming changes to the franchise tax statute for holding companies.

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

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 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 3.1 of this Part would adopt a market-based calculation of the sales factor for most multistate corporations. Here is a general description of the income apportionment concept, 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. – Electric power companies would 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. **Section 3.5** directs the NC Utilities Commission to adjust the rates for public utilities for the tax changes made by this Part. 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.

Broadcasters. – States may have a separate set of apportionment rules for companies that create and produce movies and television shows. These companies 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, these content providers apportion their income to North Carolina when a contract is executed in North Carolina to give a company the rights to offer their shows.[4] The model rules proposed by the Multistate Tax Commission would apportion the income for these companies differently than current North Carolina practice. Under the model rules, the sourcing is based on the percentage of the viewing audience in a state compared to its total viewing audience. **Section 3.2** would apply the audience factor sourcing rules for broadcasters as is recommended by the Multistate Tax Commission model rules.

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. **Section 3.3** would apply similar sourcing rules for banks as is currently applied under North Carolina law.

Election for State Net Loss. – A taxpayer with a State net loss balance as of the end of its 2019 taxable year may elect, for corporate income tax purposes, to apportion its receipts from services based on the percentage of its income-producing activities performed in the State. The election would not apply to franchise tax. The election must be made on the 2020 tax year return, and it is binding and irrevocable

[4] DOR private letter ruling.

until the earlier of the tax year in which (i) the existing State net loss balance is fully utilized, or (ii) all of the existing State net loss balance has expired. A taxpayer's State net loss balance is the total amount of State net losses computed for taxable years beginning before January 1, 2020, and available to carry forward to taxable years beginning on or after January 1, 2020. A State net loss balance does not include a State net loss created in a taxable year beginning on or after January 1, 2020; a State net loss created in a taxable year beginning on or after January 1, 2020, must be determined using the market-based apportionment rules.

Section 3.6 directs the Codifier of Rules to enter the rules adopted by the Department of Revenue on January 4, 2017, and approved by the Rules Review Commission on February 16, 2017, into the Administrative Code on the effective date of this act, and the rules would apply to taxable years beginning on or after January 1, 2020. 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 Part enacts substantially similar statutory changes, and this section directs the Codifier to enter the rules in the Administrative Code.

PART IV. 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: Part IV 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.
- ***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 to either provide or make available, within 10 days after the end of each calendar month, to each marketplace seller for whom it makes marketplace facilitated sales the gross sales and the number of separate transactions sourced to this State. Many marketplace facilitators already make this information available as a way of providing an accounting to their sellers of transactions made on the seller's behalf through the facilitator's website. 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

Sections 4.2, 4.3, and 4.4 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," these sections modify these statutes to more specifically denominate the various facilitators to avoid confusion.

Specifically:

- The bill 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.
- The bill 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, **Section 4.2** 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 designates who the retailer is for purposes of collecting sales tax on the rental of accommodations by stating that it is the provider of the accommodation, the accommodation facilitator, or a combination thereof, to the extent that person collects the payment, or some portion of the payment, for the rental. 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). This section also creates an exception, which essentially maintains the status quo, with respect to certain accommodation facilitators. An example of the type of accommodation facilitator that this exception applies to would be Marriott.com or Hilton.com, which only facilitates reservations at Marriott hotels and Hilton hotels, respectively. Industry has requested this provision because these facilitators typically do not act as a billing or collection system, nor do they charge customers a separate fee for their "facilitation" services. Rather, the customer's payment information is retrieved from the website by the hotel's payment processing system, and the hotel collects and

remits the tax. This remittance arrangement, as well as a requirement that the hotel use the brand name .com platform, is usually set out in their franchise agreement.

- ***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 an accommodation facilitator, this would include a rental agent.

- ***Report.*** – Section 4.2(b) would require an accommodation facilitator to file an annual report with the Secretary of Revenue. The report must include the property owner's name and mailing address, the physical location of the accommodation, and gross receipts information for the rentals.
- ***Conforming Changes.*** **–** Section 4.2(c) and (d) make conforming changes with respect to the definition of "accommodation facilitator" in the occupancy tax statutes.

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.

PART V. OTHER BUSINESS TAX CHANGES

This Part would make the following tax law changes:

- Allow 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, effective for taxable years beginning on or after January 1, 2019.
- Extend the sunset of the historic rehabilitation tax credit from 2020 to 2024.
- 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 2020 to 2024.
- 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 from 2020 to 2024.

Cash grants for economic development. – 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 5.1** 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.

Historic rehabilitation tax credit extension. – 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 5.2 would extend the sunset of the existing historic rehabilitation tax credit from January 1, 2020, to January 1, 2024.

Sales tax exemption for qualifying airlines. – 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 5.3(a)** 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.

Sales tax preferences for professional motorsports racing teams. – The General Assembly first enacted sales tax preferences in this area in 2005; they have been extended many times. **Sections 5.3(b) and 5.3(c)** would extend the sunset of these sales and use tax preferences from January 1, 2020, to January 1, 2024. The sales tax preferences that would be extended by these sections 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.

PART VI. FACILITATE CRITICAL INFRASTRUCTURE DISASTER RELIEF

This Part would provide tax and regulatory relief to out-of-state businesses that come into the State immediately after a disaster to help with critical infrastructure repair. At least 29 states have enacted similar disaster recovery legislation. Those states include Ohio, Florida, Texas, Virginia, Georgia, South Carolina, and Tennessee. The Part would do two things:

- Exclude a nonresident business and nonresident employees from income and franchise tax, business registration, and NC's unemployment and workers' compensation requirements.
- 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.

Nonresident business and nonresident employees. – This Part would provide that nonresident businesses and nonresident 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 are therefore exempt from registration requirements, workers compensation requirements, and State tax requirements. The tax and regulatory relief provided by this Part is limited in several ways:

- It only applies to nonresident businesses and nonresident employees who come into the State at the request of a critical infrastructure company.
- It only applies to disaster-related work performed during a disaster response period.
- It only applies if the nonresident business or nonresident employee has no other income attributable to this State. Ie, it only applies in situations where, but for this work, the business or employee would not be subject to NC income and franchise taxes.

Section 6.1 defines a "*critical infrastructure company*" as a corporation doing business in this State prior to the disaster declaration that meets one or more of the following:

- Provides broadband, mobile telecommunications, telecommunications, or wireless Internet access.
- Is subject to control of the NC Utilities Commission, the NC Rural Electrification Authority, the Federal Communications Commission, or the Federal Energy Regulatory Commission.

It defines a "*nonresident business"* as an entity that has not been required to file an income or franchise tax return with the State for three years prior to the disaster response period. The term "nonresident business" includes a corporation, an affiliate or subsidiary of a critical infrastructure company, a pass-through entity, as well as a sole proprietorship.

It defines "*critical infrastructure*." 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. The definition of "*disaster-related work*" as repairing, renovating, installing, building, or performing services on critical infrastructure.

It defines a "*disaster response period*" as the beginning 10 days prior to the first day of a disaster declaration and extending until the earlier of the following:

- 60 days following the expiration of the disaster declaration, as provided under G.S. 166A-19.21(c).
- 180 days following the issuance of the disaster declaration. This period of time coincides with the general law.

Sections 6.2 through 6.4 provide relief from the following regulatory laws:

- Section 6.2 provides a nonresident business solely performing disaster-related work in this State during a disaster response period at the request of a critical infrastructure company does not have to obtain a certificate of authority from the Secretary of State's office to do business in this State.

Under general law, a foreign corporation that performs work in this State must obtain a certificate of authority from the Secretary of State. The application fee for a certificate of authority is $250. Failure to obtain a certificate of authority would prevent a foreign corporation from maintaining an action or proceeding in any court in this State. The relief is granted to both corporations and LLCs.

- Section 6.3 provides service performed by a nonresident employee for a nonresident business performing disaster-related work in this State during a disaster response period at the request of a critical infrastructure company is not considered employment for purposes of the State unemployment insurance laws.
- Section 6.4 provides that the workers compensation laws do not apply to a nonresident employee performing disaster-related work for a nonresident business in this State during a disaster response period at the request of a critical infrastructure company.

Sections 6.5 through 6.9 provide relief from the following tax laws:

- Section 6.5 provides that a nonresident business that solely performs disaster-related work in this State during a disaster response period at the request of a critical infrastructure company is not considered to be doing business in this State and therefore is not subject to the State's franchise tax.
- Section 6.6 provides a nonresident business that solely performs disaster-related work in this State during a disaster response period at the request of a critical infrastructure company is not considered to be doing business in this State and therefore is not subject to the State's corporate income tax. It does require that payments made to an affiliate or subsidiary that is not subject to tax for this reason must be added back to determine State taxable income, to the extent the payments are deducted for federal tax purposes.
- Section 6.7 provides that pass-through entities, such as a subchapter-S corporation or a partnership, do not have to file informational returns with the Department of Revenue if the entity is a nonresident business that solely performs disaster-related work in this State during a disaster response period at the request of a critical infrastructure company. However, the entity must provide information to their shareholders and partners so that they may properly file a NC return if they are otherwise required to do so.
- Section 6.8 provides a nonresident business or a nonresident employee who solely derives income from NC sources attributable to disaster-related work in this State during a disaster response period at the request of a critical infrastructure company is not considered to be doing business in this State and therefore is not subject to the State's individual income tax.
- Section 6.9 provides that a business does not have to withhold NC individual income taxes for ages paid to a nonresident employee or for compensation paid to an ITIN contractor who is a nonresident if the income is derived from disaster-related work performed during a disaster response period at the request of a critical infrastructure company.

Temporary license to import, export, distribute, or transport motor fuel

Section 6.10 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.