SENATE BILL 105:
2021 Appropriations Act.

2021-2022 General Assembly

Committee:	House Finance. If favorable, re-refer to Appropriations. If favorable, re-refer to Pensions and Retirement. If favorable, re-refer to Rules, Calendar, and Operations of the House	**Date:**	August 8, 2021
Introduced by:	Sens. B. Jackson, Harrington, Hise	**Prepared by:**	Finance Team
Analysis of:	PCS to Third Edition S105-CSSVxfr-30		

OVERVIEW: The House Committee Substitute for Senate Bill 105 contains assorted fee changes and the following tax-policy provisions:

- ***Personal income tax changes that include reducing the personal income tax rate, increasing the standard deduction, conforming to the permanent federal medical expense deduction threshold, eliminating the tax on military pension income, and creating a tax credit for live organ donation expenses.***
- ***Corporate and franchise tax changes that include reducing the corporate income tax rate to 1.99% by 2025 and eliminating the two property bases for purposes of calculating the franchise tax.***
- ***An update to the Internal Revenue Code reference, with corresponding decoupling provisions consistent with previous NC practice, and conformity with the following, in addition to the medical expense deduction threshold mentioned above:***
    - ***Deductibility of expenses using funds from forgiven PPP loans and from similar pandemic-related loan or grant programs.***
    - ***Income exclusion for unemployment income up to $10,200 for taxpayers with AGI less than $150,000.***
- ***Other income tax-related changes that would reduce the impact of the federal SALT cap by allowing certain pass-throughs to elect to pay at the entity level and create a separate net operating loss calculation for individual income tax purposes.***
- ***Re-enacting and making permanent the mill rehabilitation tax credit as well as making permanent the historic rehabilitation tax credit and increasing the credit amount for structures that are used for an educational purpose.***
- ***Sales tax changes that include exempting equipment, ingredients, and supplies used by alcohol beverage manufacturers that are primarily engaged in the restaurant business, and exempting goods and services, other than alcoholic beverages, sold by a continuing care retirement community to its independent living residents.***
- ***Various other provisions that:***

Jeffrey Hudson
Director

Legislative Analysis Division
919-733-2578

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- ***Subject online sales of cigars to the current rate of excise tax.***
- ***Limit the gross premiums tax on surety of bail bonds to amounts received by an insurer from a surety bondsman.***
- ***Graduate late payment penalties.***
- ***Exempt from property tax vaccines held by private medical practices.***

- ***Technical, clarifying, and administrative changes recommended by the Department of Revenue.***

CURRENT LAW, BILL ANALYSIS, AND EFFECTIVE DATES:

FEE PROVISIONS

Section	Description
7.62(a) EDU	Allows the newly-created boards of trustees for each school for the deaf to set fees, other than textbook fees that are determined by the State Board of Education. ***The Senate did not have this fee change in its budget.***
10.2 ANER	Authorizes the Board of Agriculture to create a fee for phytosanitary certificates. The term "phytosanitary" relates to measures for the control of plant diseases, especially in agricultural crops. ***The Senate had this identical provision in its budget.***
12.10A ANER	This section would increase the erosion and sedimentation fee from $65 per acre to $150 per acre. The fee was last increased in 2007. It is estimated to generate $2.7M in new revenue to be used to support additional positions for the program. ***The Senate did not have this fee change in its budget.***
16.12 JPS	Clarifies that the Supreme Court's rule-making authority over fees established by the Court of Appeals includes fees for Document Management Services and that these fees shall be deposited into and spent from the Appellate Courts Printing and Computer Operations Fund to support document management services. ***The Senate had this identical provision in its budget.***
30.1 GEN GOV	Temporarily reduces the insurance regulatory fee from 6.5% to 5% for the 2022 calendar year. The revenue from the insurance regulatory fee supports the operation of the Department of Insurance. The balance in the Insurance Regulatory Fund exceeds what is necessary to defray the Department's cost of operations, including a reasonable margin for a reserve. The temporary rate reduction will spend down the excessive cash balance. ***The Senate had this identical provision in its budget.***

TAX POLICY PROVISIONS

PERSONAL INCOME TAX CHANGES[1]

Section	Description	Effective Date
42.1.(a)	***PIT Rate Reduction*** (page 17) Reduce the individual income tax rate from 5.25% to 4.99%, effective for taxable years beginning on or after January 1, 2022. North Carolina moved to a flat tax rate system in 2014. Prior to that date, the State used a tiered tax rate system ranging from 6% to 7.75%. The rate in 2014 was 5.8%. The rate has gradually decreased over time to 5.25%, where it stands today.	For taxable years beginning on or after January 1, 2022
42.1.(b)	***Increase Standard Deduction*** (page 17) Conform the standard deduction amounts to the 2022 federal standard deduction amounts[2]. This change would be effective for taxable years beginning on or after January 1, 2022. The change would increase the standard deduction amounts by approximately 18.5%: • Married filing jointly: $21,500 to $25,500 • Married filing separately: $10,750 to $12,750 • Head of Household: $16,125 to $19,125 • Single: $10,750 to $12,750	For taxable years beginning on or after January 1, 2022
42.1A	***Exempt Military Retiree Income*** (pages 17-18) Exempt the following military retiree income from taxation: • Military retirement pay received by a retired member of the Armed Forces of the United States who served at least 20 years or was medically retired. • Payments from the Survivor Benefit Plan to a beneficiary of a retired member of the Armed Forces of the United States who served at least 20 years or was medically retired. Members of the military pay federal income tax on their retirement pay. North Carolina residents pay a flat 5.25% income tax rate on their adjusted gross income unless it is otherwise exempt. While there continues to be an income tax exemption of retirement pay for a retired member of the military who vested prior to August 12, 1989, because of the *Bailey* court decision, the tax simplification and reform legislation enacted in 2013 eliminated the $4,000 income tax exemption for all other governmental retirees, including military retirees, effective for taxable years beginning on or after January 1, 2014.	For taxable years beginning on or after January 1, 2021.

[1] Conformity to the permanent federal medical expense deduction threshold is discussed in the IRC Update section, beginning on page 5 of this Bill Analysis.
[2] The federal standard deduction amounts are indexed annually.

	For a more detailed summary of this provision, please see the most recent Bill Analysis for House Bill 83.	
42.1B	***Living Organ Donor Tax Credit*** (pages 18-20) Establish a tax credit for individuals who are living organ donors, including bone marrow. This section would also provide insurance protections and paid leave for State employees and State-supported personnel who are living organ or bone marrow donors. A taxpayer who makes a live organ donation, or who claims as a dependent a person who makes a live organ donation, would be eligible for a tax credit for expenses incurred due to the donation. The credit would be equal to the lesser of the expenses incurred or $5,000. Qualifying expenses would be lost wages, transportation, lodging, and meals that are directly related to the procedure itself or are incurred due to evaluation, recovery, follow-ups, or rehospitalization associated with the procedure. A taxpayer would not be permitted to take a medical expense deduction for the same expenses in addition to the credit. ***For a more detailed summary of the insurance protections and paid leave benefits in this section, as well as additional background about live organ donation, please see the most recent Bill Analysis for House Bill 71.***	The tax credit is effective for taxable years beginning on or after January 1, 2022. The remainder is effective when it becomes law.

CORPORATE AND FRANCHISE TAX CHANGES		
Section	**Description**	**Effective Date**
42.2(a) and (b)	***CIT Rate Reduction*** (page 20) Reduce the corporate income tax rate from 2.5% to 2.25% for taxable year 2024 and from 2.25% to 1.99%, beginning with taxable year 2025. North Carolina began reducing the corporate income tax rate in 2014 when it decreased the rate from 6.9% to 6%. The rate was last reduced from 3% to 2.5% in 2019.	For taxable years beginning on or after January 1, 2024, then January 1, 2025.
42.3	***Simplify Franchise Tax Base*** (pages 20-21) Simplify the franchise tax base calculation and, for some taxpayers reduce the franchise tax amount, by eliminating the two tax bases calculated using property values. The elimination of the two property bases will reduce the franchise tax liability of corporations that have significant real and personal property investments in the State. The franchise tax is imposed on C corporations and S corporations for the privilege of engaging in business in this State. The tax does not apply to a business organized as a limited liability company, unless the LLC elects to be taxes as a corporation for franchise tax purposes, or to a general partnership or sole proprietorship. The rate of tax is	For taxable years beginning on or after January 1, 2023, and applicable to the calculation of franchise tax reported on the 2022 and later corporate

	$1.50 per $1,000, subject to a minimum tax of $200.[3] The tax rate applies to the highest of three bases. The three bases are: • Net worth as computed in accordance with generally accepted accounting principles.[4] *Under this section, this base would become the franchise tax base for all taxpayers. Most taxpayers use this base and would not see any change in their tax liability.* • Book value of North Carolina real and tangible personal property, less outstanding debt created to acquire or improve the real property. *This section would eliminate this base and taxpayers currently using this base would probably see a reduction in their tax liability.* • 55% of the appraised value of North Carolina real and tangible personal property. *This section would eliminate this base and taxpayers currently using this base would probably see a reduction in their tax liability.*	income tax returns.

CONFORM TO FEDERAL TAX TREATMENT FOR PANDEMIC-RELATED ASSISTANCE/IRC UPDATE

Section	Description	Effective Date
42.4(a) & (b)	***Update IRC Reference and Conformity*** (page 21) Update the reference to the Internal Revenue Code used in defining and determining certain State tax provisions from May 1, 2020 to April 1, 2021. North Carolina's tax law tracks many provisions of the federal Internal Revenue Code by reference to the Code.[5] The General Assembly determines each year whether to update its reference to the Code.[6] Updating the reference makes recent amendments to the Code applicable to the State to the extent that State law previously tracked federal law. The General Assembly's decision whether to conform to	When it becomes law.

[3] The maximum franchise tax on a holding company is $150,000. A S-corporation pays a flat rate of $200 on the first $1,000,000 of net worth and $1.50 for every $1,000 of net worth over $1,000,000. The General Assembly reduced the franchise tax on S-corporations for taxable years beginning on or after January 1, 2019.

[4] The General Assembly significantly simplified the franchise tax base calculation when it moved from the capital base calculation to the net worth base calculation, effective for franchise tax returns due in 2017.

[5] North Carolina first began referencing the Internal Revenue Code in 1967, the year it changed its taxation of corporate income to a percentage of federal taxable income.

[6] The North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Article V, Section 2(1) of the Constitution provides in pertinent part that the "power of taxation … shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would be invalidated as an unconstitutional delegation of legislative power."

	federal changes is based on the fiscal, practical, and policy implications of the federal changes. The update of the Code reference would result in the following changes: • Conforming the State's **medical expense deduction** to the permanent lowering of the threshold for taking the federal medical expense deduction from 10% of AGI to 7.5%. This deduction allows a taxpayer to deduct unreimbursed medical expenses that exceed 7.5% of the taxpayer's AGI. The "floor" for the medical expense deductions has fluctuated during recent years between 7.5% and 10%. The floor was scheduled to return to 10% for the 2021 taxable year. The Consolidated Appropriations Act, 2021, enacted on December 27, 2020, made the 7.5% floor permanent. • Conforming to the federal tax treatment afforded expenses using **PPP loans and other federal pandemic-related assistance**. Specifically, it would allow individual and corporate taxpayers an income tax deduction for expenses paid using a loan forgiven under the Paycheck Protection Program or the Economic Injury Disaster Loan (EIDL) program, or Shuttered Venue and Restaurant Revitalization grants. • Conforming to the federal exclusion from income for **unemployment benefits** received in 2020. This exclusion applies to taxpayers whose adjusted gross income is less than $150,000 and to the extent the benefits do not exceed $10,200.	
42.4(c) & (d)	***Decoupled Provisions*** (pages 21-23) Decouple from the following provisions that were enacted or extended by Congress under either the Consolidated Appropriations Act, 2021 (CAA), or the American Rescue Plan Act of 2021 (ARPA): • ***Charitable Giving.*** – The following two items would maintain NC's current policy of decoupling from provisions originally enacted by Congress under the CARES Act related to charitable giving. One affects itemizers and the other affects nonitemizers: o For itemizers, there is a temporary suspension of the 60% AGI limitation with respect to the deduction for certain cash charitable contributions at the federal level. Under prior law, if the aggregate amount of an individual's contributions for the year exceeded 60% of AGI, then the excess was carried forward and treated as a deductible charitable contribution in each of the five succeeding tax years. Under the CARES Act, to encourage charitable giving during the COVID-19 pandemic, taxpayers were	When it becomes law.

	permitted to deduct 100% of cash contributions made to a qualified public charity during 2020. NC decoupled from this provision, meaning that taxpayers were limited to deducting 60% for tax year 2020 and carrying forward the excess. The CAA extended this temporary suspension for 2021; under this section, NC would continue to decouple from this provision. o For nonitemizers, the CARES Act created an above-the-line deduction for charitable contributions of up to $300. The CARES Act did not specifically address how the deduction applied to a married couple. NC decoupled from this provision last year. Under the CAA, Congress made this provision permanent and clarified that the deduction applied to each person, allowing MFJ filers to deduct up to $600. Under this section, NC would permanently decouple. • ***Mortgage Insurance.*** – Deduction for mortgage insurance premiums treated as interest for taxpayers who itemize. The General Assembly has decoupled from this provision every year since 2014. • ***Principal Residence Indebtedness.*** – Income exclusion for the discharge of qualified principal residence indebtedness through 2025. The General Assembly has decoupled from this provision every year since 2014. • ***Student Loans.*** – Two provisions relate to student loans: o Income exclusion for employer payments of student loans. The General Assembly decoupled for tax year 2020. o Income exclusion for the discharge of a student loan in 2021-2025. This was a new provision under ARPA. • ***"Business Lunches."*** – 100% deduction for business related expenses for food and beverages provided by a restaurant for 2021 and 2022. NC would continue to allow a 50% deduction for these expenses.	

SALT CAP WORKAROUND AND STATE NOL CALCULATION		
Section	**Description**	**Effective Date**
42.5	***SALT Cap Workaround*** (pages 23-28) Allow pass-through entities to elect to pay the State income taxes at the entity level, which is not subject to the federal state and local tax (SALT) cap of $10,000.	For taxable years beginning on or after

	The 2017 Tax Cuts and Jobs Act (TCJA) imposed a $10,000 cap on the amount of SALT individual taxpayers can deduct on their federal returns. Typically, pass-through entities such as partnerships and S corporations allocate business income to the owners' individual income tax returns, which is subject to the SALT cap. In proposed regulations, Notice 2020-75, the Internal Revenue Service and the Department of the Treasury signaled their approval of a workaround that allows the pass-through entity to pay the state income taxes at the entity level, which is not subject to the SALT cap. This workaround allows the owners to avoid the SALT cap on the taxes paid by the entity. The workaround only works for shareholders and members of S corporations, partnerships, and LLCs treated as partnerships for federal income tax purposes. Subsection (c) would allow an S corporation to elect to be taxed at the State level. The election is made on its timely filed annual return, is irrevocable, and covers that taxable year. The election must be made each year. Tax credits and any carryforwards or installments of those tax credits must be taken by the taxpayer that filed the return for the year the initial tax credit was taken. The full amount of tax payable as shown on the return must be paid within the time allowed for filing the return. If the taxed S corporation does not pay the amount shown as due, the Secretary must issue a notice of collection for the tax debt to the taxed S Corporation. If the tax debt is not paid within 60 days of the date the notice of collection is mailed to the taxed S corporation, Secretary must send the shareholders a notice of proposed assessment. Subsection (h) would allow a partnership to elect to be taxed at the State level. The provisions governing this election are the same as the provisions for a taxed S corporation. The election cannot be made by a publicly traded partnership or by a partnership that has at any time during its taxable year a partner who is not an individual, an estate, a trust, or an organization described in section 1361(c)(6) of the Code. Subsection (i) would allow an individual income taxpayer who is a shareholder of a taxed S corporation or a partner of a taxed partnership to make the following adjustments to the taxpayer's adjusted gross income: • A deduction of the amount of the taxpayer's pro rata share or distributive share of income from the taxed pass-through entity to the extent it was included in the taxed pass-through entity's NC tax income and the taxpayers AGI. • An addition of the amount of the taxpayer's pro rata share or distributive share of loss from the taxed pass-through entity to the extent it was included in the taxed pass-through entity's NC taxable income and the taxpayer's AGI. Subsection (j) would not allow a shareholder or partner of a taxed pass-through entity, or fiduciaries and beneficiaries of estates and	January 1, 2022.

	trusts who are shareholders or partners of a taxed pass-through entity, a credit for taxed paid by the taxed pass-through entity to another state or country. The taxed pass-through entity is allowed the credit. Subsection (m) would provide that a taxed pass-through entity must pay estimated taxes.	
42.6	***State NOL Calculation*** (pages 28-30) Create a separate North Carolina net operating loss (NOL) calculation. A separate State NOL calculation would more closely align to the calculation of North Carolina taxable income by adjusting for differences between federal and State law and business activities taking place in multiple states. North Carolina has a corporate NOL calculation that is separate from the federal calculation, but it does not have a separate NOL calculation for individual income tax. The federal loss amount is the taxpayer's State loss amount. This calculation benefits some taxpayers but hurts others. Subsection (a) would require a taxpayer to add-back the amount allowed as a NOL under the Code, and to deduct the State NOL amount. Subsection (b) would provide the new rules for calculating the State NOL deduction amount. It provides that any remaining losses from years prior to January 1, 2022, may be carried forward, but the old loss amounts would not be calculated using the new rules. This transition rule is consistent with how the State treated prior year losses when it modified the corporate NOL calculation in 2015.	For taxable years beginning on or after January 1, 2022.

MILL REHABILITATION & HISTORIC REHABILITATION TAX CREDITS		
Section	**Description**	**Effective Date**
42.7	***Mill Rehabilitation Credit*** (pages 30-31) Re-enact and make permanent the mill rehabilitation tax credit, including the credit for a rehabilitated railroad station. In 2006, the General Assembly created a tax credit for rehabilitating vacant historic manufacturing sites if the taxpayer spent at least $3 million to rehabilitate the site. The credit is a percentage of the qualified rehabilitation expenditures, and the percentage varies depending on the enterprise tier location of the site and the eligibility for the federal credit. This credit expired January 1, 2015, for projects that had not obtained an eligibility certification by that date. For projects that had obtained an eligibility certification by that date, the credit will expire for projects not placed in service by January 1, 2023. In 2019, the General Assembly created a specific mill rehabilitation tax credit for an eligible railroad station. This credit sunsets for expenditures occurred on or after January 1, 2022, and for	When it becomes law.

	rehabilitation projects not completed and placed in service prior to January 1, 2022. This provision does three things: • It re-enacts the mill rehabilitation credit and eliminates the sunset, making it permanent. It also makes clear that previously issued eligibility certifications do not expire. • It expands the tax credit for rehabilitated railroad station projects by modifying the conditions so that an additional project would qualify. • It makes permanent the credit for rehabilitated railroad station projects by eliminating the sunset.	
42.7A	***Historic Rehabilitation Credit*** (pages 31-32) Expand and make permanent the historic rehabilitation tax credit. Article 3L of Chapter 105 is the Historic Rehabilitation Tax Credits Investment Program, providing tax credits for rehabilitating income-producing and non-income producing historic structures. To qualify, the taxpayer must qualify for the federal income tax credit under section 47 of the Code, and the credit amount is based on a percentage of expenses and, for income-producing structures, the location of the structure. Article 3L sunsets for rehabilitation expenditures incurred on or after January 1, 2024. Subsection (a) would expand the credit by increasing the credit amount if the certified historic structure is used for an educational purpose. The bonus amount is equal to 5% of rehabilitation expenses with a cap of $1 million. The certified historic structure must have had an original use as an educational building, return to service as an educational building following the rehabilitation, and remain an educational building when the tax credit is taken. For a certified historic structure used for multiple purposes, the bonus amount is prorated based on the area of the building used for an educational purpose. An educational purpose is defined as: "A purpose that has as its objective the education or instruction of human beings; it comprehends the transmission of information and the training or development of the knowledge or skills of individual persons." Subsection (b) makes the credit program permanent by repealing the sunset.	For taxable years beginning on or after January 1, 2021, and when law.

LIMIT GROSS PREMIUMS TAX ON SURETY BONDS FOR BAIL BONDS		
Section	**Description**	**Effective Date**
42.8	(pages 32-33)	For taxable years beginning on

	Limit the gross premium tax base for premiums paid to a surety bondsman to the amount paid by the surety bondsman to the insurer of the bail bonds. The amount paid to a surety bondsman consists of two parts, the amount paid to the insurer of the bail bonds and the amount retained by the surety bondsman for its services. The limitation of the tax base only applies to the transactions related to the insuring of bail bonds, and not to any other line of insurance. The gross premiums tax levied on insurers is imposed on the gross premiums from business done in this State. In determining the amount of gross premiums from business in this State, all gross premiums received in this State unless the statute provides otherwise. This section would limit this calculation in the case of an insurer of bail bonds. The tax rate applied to the taxable gross premiums is 1.9%.	or after January 1, 2022.

EXCISE TAX CHANGES		
Section	**Description**	**Effective Date**
42.9	***Tax Online Sales of Cigars*** (pages 33-39) Subject remote sales of cigars to the current rate of excise tax, which is 12.8% of the cost price per cigar. Under current law, cigars are subject to an excise tax at the rate of 12.8% of the cost price of the product, but because the tax is paid by the first person in the State to handle the product, a remote seller is not required to collect the tax. This section would also modify existing excise tax statutes to address and distinguish between delivery sales and remote sales of tobacco products. "Delivery sales" are sales of tobacco products subject to the federal PACT Act, which are cigarettes, smokeless tobacco, and vapor products, where the purchase is not made in-person. "Remote sales" are also sales not made in-person but are of tobacco products that are not subject to the PACT Act, like cigars and pipe tobacco. The PACT Act requires age verification, special labeling, detailed reporting, licensing and tax compliance, and registration with ATF and prohibits delivery through U.S. Mail. All tobacco products, whether sold in-person or online, are already subject to sales tax. This section would become effective July 1, 2022, and apply to sales or purchases occurring on or after that date.	July 1, 2022

SALES TAX CHANGES		
Section	**Description**	**Effective Date**

42.10A	***Sales Tax Exemption for Alcohol Beverage Manufacturing*** (page 39) Exempt from sales and use tax sales of machinery, parts, accessories, supplies, and ingredients to certain ABC permittees for use in the manufacturing of beer, wine, and spiritous liquor for which the purchaser would otherwise be ineligible because the purchaser is primarily engaged in the restaurant business. Sales of "mill machinery," including parts and accessories, to a "manufacturing industry or plant" are exempt from sales and use tax. A business that manufactures alcohol is considered a manufacturer and is eligible for the sales tax exemption on machinery, parts, and accessories that are used in the manufacturing process. However, while there is no statutory definition for "manufacturing industry," the statute expressly excludes from the term "a retailer that is principally engaged in the retail sale of food prepared by it for consumption on or off its premises." The phrase "principally engaged" has been interpreted by the Department of Revenue to mean more than 50% of the business' total revenues. Therefore, a business cannot be considered a manufacturer if more than 50% of its revenue is derived from the retail sale of food that it prepares even though it may also manufacture alcohol. For a more detailed summary, please see the most recent Bill Analysis for House Bill 619.	Effective July 1, 2021, and applies to sales made on or after that date.
42.10B	***CCRC Sales Tax Exemption and Forgiveness*** (pages 40-41) Exempt from sales tax goods and services, other than alcoholic beverages, sold by a provider of continuing care to its independent living residents. North Carolina law imposes a sales tax on most goods and services, including prepared food, laundry, medical supplies, over-the-counter medicines, and certain home maintenance services. The tax is imposed regardless of who provides the goods and services unless the law provides a specific entity-based exemption. For purposes of North Carolina's sales tax law, a continuing care retirement community (CCRC) falls within the definition of retailer except for when it provides certain goods or services as part of healthcare services provided to its member-patients at a medical facility. Subsection (a) of this section would exempt CCRCs from collecting and remitting sales tax on taxable goods and services when those goods and services are provided to its independent living member-residents. The exemption would not apply to sales of alcoholic beverages. The exemption is effective for goods and services sold on or after October 1, 2021. Subsection (b) of this section would effectively make the exemption effective retroactively to sales occurring on or after February 1, 2015 by prohibiting the Department of Revenue from assessing or collecting sales tax on a provider of continuing care for the retail sales of taxable	Effective October 1, 2021, and applies to sales made on or after that date.

	items, other than alcoholic beverages, sold to its independent living residents. There are at least two assessments pending. This subsection also provides a refund to any provider of continuing care for sales tax collected and remitted during this period. To receive a refund, the retailer (CCRC) must refund or credit the tax collected to the purchaser (resident) and must request the refund on or before January 1, 2022.	

GRADUATE LATE PAYMENT PENALTIES		
Section	**Description**	**Effective Date**
42.11	***Graduate Late Payment Penalties*** (pages 40-41) Replace the flat penalty amount assessed for failure to pay a tax when due to a graduated amount. The current flat penalty amount is equal to 10% of the tax. This section would reduce the penalty amount to 2% of the tax for the first month, increased 2% for each succeeding month or fraction thereof, not to exceed 10%.	July 1, 2022, and applies to tax assessed on or after that date.

PROPERTY TAX CHANGES		
Section	**Description**	**Effective Date**
42.12	***Property Tax Exemption for Vaccines*** (page 41) Exempt vaccines from the local property tax base. Vaccines held by private medical facilities and doctors' offices are taxable as business personal property. The value of the property is usually assigned based on an estimate of the amount routinely held by that facility, not on the amount held on a certain day or the amount held throughout the year. Vaccines held by pharmacies and other retailers are exempt from property tax because they are inventory and inventory of retailers is exempt from tax. Vaccines held by nonprofit medical facilities are exempt from property tax because real and personal property of the nonprofit exempt from tax.	For taxable years beginning on or after July 1, 2022.

REVENUE LAWS TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES		
SUBPART A: PERSONAL INCOME TAX CHANGES		
42.13A(a)	(page 41) This section does two things: • Makes technical correction by renumbering a subdivision. • Extends the sunset of the deduction from federal AGI of any amounts the taxpayer received from the State as an Extra	When the act becomes law.

	Credit grant amount from January 1, 2021 to January 1, 2022. The grant program was extended into the 2021 taxable year.	
42.13A(b)	(page 42) Corrects an unintended consequence when NC decoupled from a provision in the CARES Act by allowing a taxpayer to fully deduct the applicable amount of business interest expense over time. NC conformed to the federal TCJA in 2017. Part of the TCJA limited the interest expense deduction under section 163(j) of the Code for taxpayers with $25M or more in receipts per year to 30% of the taxpayer's AGI. Under the CARES Act, Congress increased the interest expense limitation from 30% to 50% for the 2019 and 2020 taxable years. NC decoupled from this change and remains at 30%. To decouple from the federal provision, State law requires a taxpayer to addback the difference. This section does two things: • It provides that the add-back is not required to the extent the amount was added back under another provision of State law to avoid a double add-back. • It provides a taxpayer may deduct over a five-year period the amount of interest expense allowed under federal law that exceeds the State's 30% limit. Without this change, the taxpayer would be permanently disallowed the full amount of the deduction.	When the act becomes law.
42.13A(c)	(pages 41-42) Makes technical correction by deleting a reference to a repealed statute.	When the act becomes law.
42.13A(d)	(page 42) Increases the time allowed for an employer to file an informational return reporting wages (Form NC-3) when the employer terminates its business. Under current law, an employer who terminates its business or permanently ceases paying wages must file an informational return within 30 days of the last payment of wages. Informational returns would now be due the month after the end of the calendar quarter when the employer terminates its business (but no later than January 31 of the succeeding year). This section also removes the duty to file when an employer permanently ceases paying wages. This section matches federal filing requirements for IRS Forms W-2, W-3, and 1099.	When the act becomes law.
42.13A(e)	(pages 42) Explicitly states the Secretary of Revenue can assess a withholding agent based on an estimate of the tax due when the withholding agent fails to file a return or files a grossly incorrect, false, or fraudulent return. New G.S. 105-163.8(c) mirrors existing G.S. 105-164.32 which has the same language for sales and use tax.	When the act becomes law.

42.13A(f)	(page 42) Clarifies that a request for a tax refund is due 6 months after the contingent event concludes. Under current law, refund claims delayed due to litigation or a state tax audit are due 6 months after the litigation or audit concludes. This section clarifies that the same period applies to other contingent events that prevent the taxpayer from filing an accurate and definite request for a refund.	When the act becomes law.
42.13A(g)	(page 43) Authorizes the Secretary of Revenue to allow the use of truncated taxpayer identification numbers (TTIN) on tax returns and other documents. TTIN helps prevent identity theft by using only the last 4 digits of a Social Security number (e.g., XXX-XX-9999). Under current law, the General Assembly must authorize the use of a TTIN on each type of tax form. The Secretary wants to avoid repeated law changes as IRS forms, payroll forms, and tax return forms change. For example, for the 2020 tax year, the IRS allows payroll providers to submit IRS Form W-2 with TTIN to prevent identity theft. The NC Department of Revenue lacks the authority to conform to the use of the TTIN.	When the act becomes law.
42.13A(h)	(pages 43) S.L. 2021-16 provided for the nonaccrual of interest on individual income tax returns due on or before April 15, 2021, from April 15 through May 17, 2021. This section clarifies that for the purposes of the nonaccrual of interest, an individual income tax return includes partnership and estate and trust tax returns.	When the act becomes law.
SUBPART B: CORPORATE INCOME TAX CHANGES		
42.13B(a)	(page 43) Corrects an omission from 2015 when the General Assembly made the policy decision to tax banks in the same manner as other corporations. As part of that legislation, the General Assembly repealed the privilege license tax on banks[7] but it failed to make a corresponding change to the exemption for banks from the privilege license tax on installment paper dealers. This section makes that change.	Effective retroactively to the 2016 taxable year.
42.13B(b)	(page 43) Prevents a double denial of interest expenses. Substantially the same explanation as Section 4A.2, while considering the limitation that may be required under G.S. 105-130.7B.	When the act becomes law.
42.13B(c) and (d)	(page 43-44) Prevents a double denial of nondeductible interest expenses. Both State and federal tax law limit the deduction amount allowed for net	Effective retroactively to taxable years

[7] The corporate income tax change resulted in an increased tax burden on banks. The repeal of the privilege tax on banks helped to offset this tax burden.

	business interest expenses. Therefore, it is possible that a partial limitation has been imposed on the intercompany interest under section 163(j) of the Code, and if that is the case, that deduction needs to be recognized by G.S. 105-130.7B. Otherwise, the taxpayer may have to add back more interest than it actually incurred in total.	beginning on or after January 1, 2018.[8]
42.13B(e)	(pages 44) Clarifies that, for taxable years beginning on or after January 1, 2015, the limitations of Code sections 381 and 382 apply to all losses from mergers and acquisitions regardless of the date of the merger or acquisition. The clarification takes the position most favorable to the taxpayer. It also provides parity among taxpayers and eases the administration of the carry-forward for both the taxpayer and the Department.	When the act becomes law.
42.13B(f)	(page 44) This section requires a taxpayer to provide financial or tax documentation necessary for the Department to make the appropriate adjustments and determinations under G.S. 105-130.5A. G.S. 105-130.5A requires the Secretary to adjust net income or require a combined report when the Secretary has reason to believe a corporation fails to accurately report its State net income using intercompany transactions. This change provides that if the Secretary requests information or documentation needed under G.S. 105-130.5A, and the information is not timely provided, the Secretary may propose any allowable adjustment, including the filing of a combined return. All tax information is protected by the tax secrecy provisions of G.S. 105-259.[9]	When the act becomes law.
SUBPART C: SALES AND USE TAX CHANGES		
42.13C(a)	(page 44) Expands the sales and use tax exemptions for certain purchases made by qualifying farmers and conditional farmers to include fowl. Currently, livestock, baby chicks, and poults are exempt from sales and use tax when purchased by a qualifying farmer or conditional farmer and used primarily in farming operations. This section would expand the types of animals that are exempt from sales and use taxes to include, among other things, adult chickens and turkeys.	Effective retroactively to July 1, 2020 and applies to purchases made on or after that date.
42.13C(b)	(page 44) Removes obsolete language. The statutes referenced G.S. 105-259(b)(5b) have been repealed and the subdivision is no longer needed.	When the act becomes law.
SUBPART D: EXCISE TAX HEARING CHANGES		

[8] The taxable year the federal law changes under section 163(j) became effective.
[9] Violation of the tax secrecy provisions is a Class 1 misdemeanor and dismissal of the employee from public employment.

(pages 45-51) This Part represents a comprehensive restructuring of the license revocation and hearing procedures across all excise tax schedules to streamline and make consistent these procedures. The affected schedules are tobacco products, motor carriers, motor fuels, and alternative fuels. Below is a summary of the current law. This Part maintains the two distinct methods for revocation – summary and non-summary – but provides more specificity with respect to the process and makes them more consistent across all excise tax schedules. *Please see the tables at the end of this summary that show how the procedures proposed by this Part differ from the current law.* **License Revocation for Tobacco, Motor Fuels, and Alternative Fuels Licensees.** – The license revocation and hearing procedures under the tobacco product, motor fuel, and alternative fuel schedules share similar features. Specifically, the Secretary of Revenue may revoke a license in two ways: ***Summary Revocation.*** – The Secretary may summarily revoke a license, which means that the license is revoked prior to a hearing, if the Secretary discovers that a licensee is incurring tax liability after failing to pay a tax when due. The Secretary must hold a hearing within 10 days of the revocation after sending notice to the revoked licensee. Summary revocation is not often used by the Department and is reserved for extraordinary circumstances. ***Non-Summary Revocation.*** – The more common method for revoking a license is after holding a hearing, regardless of whether the licensee has requested one. The Secretary must provide the licensee with at least 10 days' written notice of the hearing. If the licensee fails to attend the hearing, the license revocation is effective 15 days after the noticed hearing. The statutes are silent as to when the Secretary must issue a final decision and the content of that decision if the licensee attends the hearing. The Department asserts that holding a hearing even if a licensee has not requested one is an inefficient use of its resources because it requires them to fully prepare and conduct a hearing whether the licensee has expressed their intention to maintain the license or attend the hearing. **License Revocation for Motor Carriers.** – Not only is the revocation and hearings procedure for motor carriers different than the other excise tax schedules, but it is also not set out in statute. G.S. 105-449.57 permits the Secretary to enter into cooperative agreements with other jurisdictions regarding the administration of the motor carrier tax. To the extent our statutes are silent, the Department follows the IFTA Rules for revocation. These rules differ from the other revocation procedures in the three primary ways: (1) a taxpayer can only request a hearing after revocation; (2) a licensee must request a hearing within 30 days; and (3) 20 days' hearing notice is required. Unlike the procedures for other excise tax schedules, the Department does not perform summary revocations or provide a hearing before revocation. Instead, the Department notifies the motor carrier taxpayer of the intent to revoke the license and then revokes it if the taxpayer does not come into compliance. There is an opportunity for a hearing after the revocation.	Effective January 1, 2022 and applies to summary revocations and non-summary revocations initiated by the Department on or after that date.
SUBPART E: OTHER EXCISE TAX CHANGES	

42.13E(a)-(f)	(page 50-51) Recodifies various statutes to a more appropriate place and makes technical and conforming changes.	When the act becomes law.
42.13E(g)	(pages 51) Codifies the current practice of the Department and industry and makes a clarifying change. Generally, the wholesaler or importer who first handles the alcoholic beverage in the State is required to pay the excise tax on the product. However, the Department, by policy, authorizes an exception to this rule. The Department authorizes an ABC permitted wholesaler to remit the excise tax when a brewery or winery transfers their product to the wholesaler for distribution and the wholesaler agrees to pay the excise tax on the product. This section would codify this practice. This section also moves language pertaining to wine shipper permittees to a more appropriate place.	When the act becomes law.
42.13E(h)	(page 51-52) Requires distilleries to be bonded. Generally, any ABC permittee that can incur excise tax liability must be bonded. Distilleries are authorized to incur excise tax liability but are not currently required to be bonded. This section would require distilleries to be bonded and treat them similarly to other ABC permittees that are authorized to incur excise tax liability.	When the act becomes law.
42.13E(i)	(page 52) Changes the penalties for engaging in business as a distributor, wholesale dealer, or retail dealer without first obtaining the appropriate license. Currently, the maximum penalty is $6.25 for failing to obtain a distributor license or wholesale dealer license, and $5.00 for failing to obtain a retail dealer license. The Department has had some issues with compliance due to the current penalty not providing an effective deterrent. This section would increase the potential penalty to $1,000 for failing to obtain the respective license, which is on par with the penalties for failing to obtain various motor fuel licenses. To assess the penalty, the Department must provide written notification to the taxpayer of their noncompliance, and the taxpayer must fail to comply after receiving the notification.	Effective January 1, 2022 and applies to penalties assessed on or after that date.
42.13E(j)	(pages 52) Codifies the current authority to assess a failure to pay penalty on motor carriers that fail to pay tax when due under the International Fuel Tax Agreement (IFTA), provides exceptions to the penalty, and authorizes the Department to waive failure to file and failure to pay penalties on motor carriers. IFTA is an agreement between member taxing jurisdictions to assist each other in the collection and	When the act becomes law.

	administration of taxes paid by interstate motor carriers on their use of motor fuel. North Carolina has been a member of IFTA since 1992. This section codifies the current practice of the Department when assessing failure to pay penalties for motor carriers authorized under IFTA as well as exceptions to the penalty provided for under North Carolina law. The penalty is $50.00 or 10% of the tax due, whichever is greater. This section also provides authority for the Department to waive any failure to file or failure to pay penalty assessed against a motor carrier.	
42.13E(k)	(page 52-53) Creates a definition of "fuel grade ethanol" and adjusts the definition of "gasohol" to continue to capture gasohol in the same manner as it is currently. Currently, there is no definition of "fuel grade ethanol" but it is considered a taxable motor fuel. Without a proper definition of fuel grade ethanol, the Department has had difficulty assessing liability on taxpayers. The Department requested this change to aid in compliance by providing certainty as to what fuel grade ethanol is. The definition of "gasohol" refers to fuel grade ethanol, but currently captures more than what the new definition of fuel grade ethanol would cover. Therefore, the Department requested an update to the definition of gasohol to continue to capture gasohol as it is captured currently.	Effective January 1, 2022.
42.13E(*l*) and (m)	(pages 53-54) Aligns the shipping document requirements when transporting motor fuel by railroad tank cars, transport trucks, and tank wagons. This will reduce confusion and aid in compliance when motor fuel is diverted to a state other than the state listed on the shipping document.	Effective January 1, 2022.
42.13E(n)	(pages 54) Changes the penalty for failing to properly mark certain dyed, nontaxable, motor fuel storage facilities. Dyed motor fuel is not for use on the highway and therefore is not taxable. A person who is a retailer of dyed motor fuel or anyone who stores both dyed and undyed motor fuel must properly mark the storage tanks of dyed motor fuel or be assessed a penalty. Currently the penalty is equal to the motor fuel rate multiplied by the inventory held in the storage tank or, if the inventory cannot be determined, the penalty is calculated on the capacity of the storage tank. This section would remove the requirement that the Department determine inventory or capacity and make the penalty a flat $250.00 per offense. Each inspection resulting in non-compliance would be a separate offense.	Effective January 1, 2022 and applies to penalties assessed on or after that date.

	The Department requested this change to ease administrative burden as it is often difficult to ascertain the tank size and amount of fuel in the tank. The Department estimates this change will decrease the average penalty assessed under this section.	
SUBPART F: LOCAL GOVERNMENT CHANGES		
42.13F(a)	(page 55) Makes an update to reflect the proper statutory reference. Local planning and development regulation statutes in Chapters 153A and 160A were recodified to Chapter 160D. This section updates the statutory reference as historic landmarks are now designated as such under a local ordinance adopted pursuant to G.S. 160D-945 (which was previously G.S. 160A-400.5).	Effective retroactively to June 19, 2020.