GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 745
HOUSE BILL 1725

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE REVENUE LAWS AND RELATED STATUTES, TO IMPROVE THE ADMINISTRATION OF THE SOFT DRINK EXCISE TAX, AND TO EXTEND THE SUNSET OF A TAX CREDIT, TO AMEND THE LAW REGARDING APPLICATION FOR CERTIFICATION AS A CLINICAL SOCIAL WORKER, TO RESTORE THE SOFT DRINK TAX EXEMPTION FOR NATURAL JUICE WITH NO ADDITIVES OTHER THAN VITAMINS, MINERALS, OR SUGAR, AND TO MAKE THE EFFECTIVE DATE OF CHANGES MADE DURING THE 1993 SESSION TO THE CONSUMER CREDIT SALE LAWS RETROACTIVE.

The General Assembly of North Carolina enacts:

Section 1. Section 4 of Chapter 543 of the 1993 Session Laws is repealed.

Sec. 2. G.S. 105-113.18(3) reads as rewritten:

"(3) Shipping Report. – Any person, except a licensed distributor, who transports cigarettes upon the public highways, roads, or streets of this State, upon notice from the Secretary, shall file a report in the form prescribed by the Secretary and containing the information required by the Secretary."

Sec. 3. G.S. 105-113.45 reads as rewritten:

"**§ 105-113.45. Excise taxes on soft drinks and base products.**

(a) Bottled Soft Drinks. – An excise tax of one cent (1¢) is levied on each bottled soft drink.

(b) Repealed by Session Laws 1991, c. 689, s. 276.

(c) Liquid Base Products. – An excise tax at the rate of one dollar ($1.00) a ~~gallon, or four-fifths of a cent (4/5¢) an ounce or a fraction of an ounce,~~ gallon is levied on each individual container of a liquid base product. The tax applies regardless whether the liquid base product is diverted to and used for a purpose other than making a soft drink.

(d) Dry Base Products. – An excise tax is levied on each individual container of a dry base product at the rate:

(1) Of one cent (1¢) an ounce ~~or a fraction of an ounce~~ if the dry base product is not converted into a syrup or other liquid base product before it is used to make a soft drink.

(2) That would apply under subsection (c) to the resulting liquid base product if the dry base product is converted into a liquid base product before it is used to make a soft drink.

(e) Repealed by Session Laws 1991, c. 689, s. 276."

Sec. 4. G.S. 105-130.5(a)(12) is reenacted and reads as rewritten:

"(12) The amount allowed under the Code for depreciation or as an expense in lieu of depreciation for a utility plant acquired by a natural gas local distribution company, to the extent the plant is included in the company's rate base at zero cost in accordance with G.S. 62-158."

Sec. 5. G. S. 105-130.5(b)(11) reads as rewritten:

"(11) ~~The amount by which~~ If a deduction for an ordinary and necessary business expense was required to be reduced or was not allowed under the Code ~~for federal tax purposes or the amount of such a deduction that was not allowed under the Code~~ because the corporation claimed a federal tax credit against its federal income tax liability for the income year in lieu of a ~~deduction.~~ deduction, the amount by which the deduction was reduced and the amount of the deduction that was disallowed."

Sec. 6. G. S. 105-130.37(b)(3) reads as rewritten:

"(3) 'Nonprofit organization' means an organization ~~for which contributions are deductible under G.S. 105-130.9 or 105-147(15) or (16).~~ to which charitable contributions are deductible from gross income under the Code."

Sec. 7. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(10) The amount by which the basis of property under this Article exceeds the basis of the property under the Code, in the year the taxpayer disposes of the property."

Sec. 8. G.S. 105-163.012(d) reads as rewritten:

"(d) ~~For purposes of this Article,~~ Unless the taxpayer is required to add the amount of allowable credit to federal taxable income under G.S. 105-130.5(a)(10), the taxpayer's basis in the equity securities or subordinated debt acquired as a result of an investment in a North Carolina Enterprise Corporation, qualified business venture, or qualified grantee business shall be reduced for the purposes of this Article by the amount of allowable credit. 'Allowable credit' means the amount of credit allowed under G.S. 105-163.011 reduced as provided in subsection (c) of this section."

Sec. 9. G.S. 105-163.013(d) reads as rewritten:

"(d) Application Forms; Rules; Fees. Applications for registration, renewal of registration, and reinstatement of registration under this section shall be in the form required by the Secretary of State. The Secretary of State may, by rule, require applicants to furnish supporting information in addition to the information required by subsections ~~(a), (b),~~ (b) and (c) of this section. The Secretary of State may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary's responsibilities under this Division. The Secretary of State shall prepare blank forms for the applications and shall distribute them throughout the State and furnish them on request. Each application shall be signed by the owners of the business or, in the case of a corporation, by its president, vice-president, treasurer, or secretary. There shall be annexed to the application the affirmation of the person making the

application in the following form: 'Under penalties prescribed by law, I certify and affirm that to the best of my knowledge and belief this application is true and complete.' A person who submits a false application is guilty of a misdemeanor and is punishable as provided in G.S. 14-3.

The fee for filing an application for registration under this section ~~shall be~~ is one hundred dollars ($100.00). The fee for filing an application for renewal of registration under this section ~~shall be~~ is fifty dollars ($50.00). The fee for filing an application for reinstatement of registration under this section ~~shall be~~ is fifty dollars ($50.00).

An application for renewal of registration under this section shall indicate whether the applicant is a minority business, as defined in G.S. 143-128, and shall include a report of the number of jobs the business created during the preceding year that are attributable to investments that qualify under this section for a tax credit and the average wages paid by each job. An application that does not contain this information is incomplete and the applicant's registration may not be renewed until the information is provided."

Sec. 10. G.S. 105-163.013(g) reads as rewritten:

"(g) ~~[Report by Secretary of State].~~Report by Secretary of State. – The Secretary of State shall report to the Legislative Research Commission by October 1 of each odd-numbered year and by February 1 of each even-numbered year all of the businesses that have registered with the Secretary of State as qualified business ventures and qualified grantee businesses. The report shall include the name and address of each business, a detailed description of the types of business in which it engages, whether the business is a minority business as defined in G.S. 143-128, the number of jobs created by the business during the period covered by the report, and the average wages paid by these jobs."

Sec. 11. Effective July 1, 1995, G.S. 105-213(b), as amended by Section 26(a) of Chapter 321 of the 1993 Session Laws, reads as rewritten:

"(b) Allocation of Distribution. – The amount of revenue to be distributed under subsection (a) shall be allocated among the counties in proportion to the net amount of taxes collected under this Article in each county during the preceding fiscal year. The net amount of taxes collected in a county is the amount collected less the amount of refunds made of taxes previously collected. The Secretary shall keep a separate record by counties of the taxes collected under this Article. The Secretary shall allocate the amount of revenue to be distributed under subsection (a) to the counties in accordance with the tax records. The amounts so allocated to each county shall in turn be allocated between the county and the municipalities in the county in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding the distribution. In dividing these amounts between each county and its municipalities, the Secretary shall treat taxes levied by a merged school administrative unit described in G.S. 115C-513 in a part of the unit located in a county as taxes levied by the county in which that part is located. After making these allocations, the Secretary shall certify to the State Controller and to the State Treasurer the amount to be distributed to each county and municipality in the State. The State Controller shall then issue a warrant on the State Treasurer to each county and municipality in the amount certified.

For the purpose of computing the ~~distribution of the intangibles tax~~ allocation of the tax under this subsection to any county and the municipalities located in the county for any quarter with respect to which the property valuation of a public service company is the subject of an appeal and the Department of Revenue is restrained by law from certifying the valuation to the county and the municipalities in the county, the Department shall use the last property valuation of the public service company that has been certified.

The chair of each board of county commissioners and the mayor of each municipality shall report to the Secretary information requested by the Secretary to enable the Secretary to allocate the amount distributed by this subsection. If a county or municipality fails to make a requested report within the time allowed, the Secretary may disregard the county or municipality in allocating the amount distributed by this subsection."

Sec. 12. G.S. 105-228.4(a) reads as rewritten:

"(a) As a condition precedent to doing business in this State, an insurance company must apply for and obtain a certificate of registration from the Commissioner of Insurance by March 1 of each year. The certificate shall become effective the following July 1 and shall remain in effect for one year. Except as provided in subsections (b) and (c) of this section, the insurance company shall pay an annual fee for the certificate as follows: ~~Each insurance company shall, as a condition precedent for doing business in this State, on or before the first day of March of each year apply for and obtain from the Commissioner of Insurance a certificate of registration, or license, effective the first day of July, and shall pay for such certificate the following annual fees except as hereinafter provided in subsections (b) and (c):~~

For each domestic farmer's mutual assessment fire insurance company ~~each~~	$ 25.00
For each fraternal order	100.00
For each of all other insurance companies, except mutual burial associations taxed under G.S. 105-121.1	500.00

The fees levied ~~above~~ in this subsection shall be in addition to those specified in G.S. 58-6-5."

Sec. 13. G.S. 105-228.90 reads as rewritten:

"**§ 105-228.90. Scope and definitions.**

(a) Scope. – This Article applies to Subchapters I, V, and VIII of this Chapter and to inspection ~~fees~~ taxes levied under Article 3 of Chapter 119 of the General Statutes.

(b) Definitions. – The following definitions apply in this Article:

(1) Code. – The Internal Revenue Code as enacted as of January 1, 1993, including any provisions enacted as of that date which become effective either before or after that date.

(2) Reserved.

(3) Electronic Funds Transfer. – A transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to

instruct or authorize a financial institution or its agent to credit or debit an account.

(4) Reserved.

(5) Person. – An individual, a fiduciary, a firm, an association, a partnership, a limited liability company, a corporation, a unit of government, or another group acting as a unit. The term includes an officer or employee of a corporation, a member, a manager, or an employee of a limited liability company, and a member or employee of a partnership who, as officer, employee, member, or manager, is under a duty to perform an act in meeting the requirements of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes.

(6) Secretary. – The Secretary of Revenue.

(7) Tax. – A tax levied under Subchapter I, V, or VIII of this Chapter or an inspection ~~fee~~ tax levied under Article 3 of Chapter 119 of the General Statutes. Unless the context clearly requires otherwise, the terms 'tax' and 'additional tax' include penalties and interest as well as the principal amount.

(8) Taxpayer. – A person subject to the tax or reporting requirements of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes."

Sec. 14. G.S. 105-241.1(e) reads as rewritten:

"(e) ~~Where~~ Statute of Limitations. – If a proper application for a license or a return has been filed and in the absence of fraud, the Secretary ~~of Revenue~~ shall assess any tax or additional tax due from a taxpayer within three years after the date upon which ~~such~~ the application or return ~~is~~ was filed or within three years after the date upon which ~~such~~ the application or return was required by law to be filed, whichever is ~~the~~ later. If a taxpayer forfeits a tax credit pursuant to G.S. 105-163.014, the Secretary shall assess any tax or additional tax due as a result of the forfeiture within three years after the date of the forfeiture. Any tax or additional tax due from the taxpayer may be assessed at any time if (i) no proper application for a license or no return has been filed, (ii) a false or fraudulent application or return has been filed, or (iii) there has been an attempt in any manner to fraudulently defeat or evade tax.

~~Provided, the~~ The taxpayer may make a written waiver of any of the limitations of time set out in this section, for either a definite or an indefinite ~~time, and if such waiver is accepted by the Secretary he~~ time. If the Secretary accepts the waiver, the Secretary may institute assessment procedures at any time within the time extended by ~~such~~ the waiver. ~~This proviso shall apply to assessments made or undertaken under any provision of all schedules of the Revenue Act, and to assessments under Subchapter V of Chapter 105 and Chapter 18 of the General Statutes.~~"

Sec. 15. G.S. 105-241.2(b) reads as rewritten:

"(b) Secretary to Provide Records. – Upon receipt by the Secretary of the taxpayer's petition, the Secretary shall transmit to the Tax Review Board all of the records, data, evidence, and other materials in the Secretary's possession pertaining to

the matters the Tax Review Board is being requested by the taxpayer to review. The Secretary shall also transmit to the Board a copy of the decision of the ~~Board~~ Secretary on the matters."

Sec. 16. G.S. 105-241.2(e) reads as rewritten:

"(e) Jeopardy ~~Assessments.~~Levies. – At any time the Secretary may, if in the Secretary's opinion, such action is necessary for the protection of the interest of the State, proceed at once to levy the assessment for the amount of the tax against the property of the taxpayer seeking the administrative review. In levying the assessment the Secretary shall make a certificate verifying the essential parts relating to the tax, including the amount thereof asserted to be due, the date when same is asserted to have become due and payable, the person, firm, or corporation chargeable therewith, and the nature of the tax. The Secretary shall transmit this certificate to the clerk of the superior court of any county in which the taxpayer resides or has property; whereupon, it shall be the duty of the clerk of the superior court of the county to docket the certificate and to index it on the cross index of judgments. When so docketed and indexed, the certificate of tax liability shall constitute a lien upon the property of the taxpayer to the same extent as that provided for by G.S. 105-241. No execution shall issue on the certificate before final determination of the administrative review by the Tax Review Board; provided, however, if the Secretary determines that the collection of the tax would be jeopardized by delay, the Secretary may cause execution to be issued, as provided in this Chapter, immediately against the personal property of the taxpayer unless the taxpayer files with the Secretary a bond in the amount of the asserted liability for tax, penalty and interest. If upon final administrative determination the tax asserted or any part thereof is sustained, execution may issue on the certificate at the request of the Secretary and the sheriff shall proceed to advertise and sell the property of the taxpayer.

Within five days after a jeopardy levy is made under this subsection that is not the result of a criminal investigation or of a liability for a tax imposed under Article 2D of this Chapter, the Secretary must provide the taxpayer with a written statement of the information upon which the Secretary relied in making the levy. Within 30 days after receipt of this statement or, if no statement was received, within 30 days after the statement was due, the taxpayer may request the Secretary to review the action taken. After receipt of this request, the Secretary shall determine whether the levy was reasonable under the circumstances. The Secretary shall give the taxpayer written notice of this determination within 30 days after the request. The taxpayer may seek judicial review of this determination as provided in G.S. 105-241.5."

Sec. 17. G.S. 105-248 reads as rewritten:

"**§ 105-248. ~~State taxes; purposes.~~ Purpose of State taxes.**

The taxes levied in this Subchapter are for the expenses of the State government, the appropriations to its educational, charitable, and penal institutions, ~~pensions for Confederate soldiers and widows,~~ the interest on the debt of the State, ~~for~~ the public schools, and other specific appropriations made by law, and shall be collected and paid into the ~~general fund of the State Treasurer.~~ General Fund.

~~Whenever in any law or act of incorporation, granted either under the general law or by special act, there is any limitation or exemption of taxation, the same is hereby~~

~~repealed, and all the property and effects of all such corporations, other than the bonds of this State and of the United States government, shall be liable to taxation, except property belonging to the United States and to municipal corporations, and property of churches, religious societies, charitable, educational, literary, or benevolent institutions or orders, and also cemeteries: Provided, that no property whatever, held or used for investment, speculation, or rent, shall be exempt, other than bonds of this State and of the United States government, unless said rent or the interest on or income from such investment shall be used exclusively for religious, charitable, educational, or benevolent purposes, or the interest upon the bonded indebtedness of said religious, charitable, or benevolent institutions~~."

Sec. 18. G.S. 105-258.1(e) reads as rewritten:

"(e) Suspension of Interview. – The Department shall suspend an interview relating to the determination of a tax ~~if,~~ if the taxpayer is not accompanied by a representative and, at any time during the interview, ~~the taxpayer~~ expresses the desire to consult with ~~a person permitted to represent the taxpayer before the Department.~~ another person."

Sec. 19. The catch line of G.S. 105-269.3 reads as rewritten:

"**§ 105-269.3. Enforcement of Subchapter V and fuel inspection ~~fee.~~ tax.**"

Sec. 20. G.S. 105-446 reads as rewritten:

"**§ 105-446. Refund for tax on motor fuel used other than to ~~propel~~ operate a motor vehicle.**

A person who purchases and uses motor fuel for a purpose other than to operate a licensed motor vehicle may receive an annual refund for the tax the person paid on fuel used during the preceding calendar year at a rate equal to the amount of the flat cents-per-gallon rate in effect during the year for which the refund is claimed plus the average of the two variable cents-per-gallon rates in effect during that year, less one cent (1¢) per gallon. An application for a refund allowed under this section shall be made in accordance with G.S. 105-440."

Sec. 21. G.S. 105-449.16(a) reads as rewritten:

"(a) A tax is imposed upon all of the following fuel:

(1) Fuel sold or delivered by a supplier to a licensed user-seller.

(2) Fuel used by a supplier in a motor vehicle owned, leased, or operated by the supplier.

(3) Fuel delivered by a supplier directly into the fuel supply tank of a motor vehicle.

(4) Fuel imported by a user-seller into this State, by a means other than carrying the fuel in a fuel supply tank of a motor vehicle, for resale or to ~~propel~~ operate a motor vehicle.

(5) Fuel acquired tax free by a user-seller or user in this State for resale or to ~~propel~~ operate a motor vehicle.

The tax on liquid fuel is at the rate established under G.S. 105-434. The tax on non-liquid fuel is at a rate equivalent to the rate of tax on liquid fuel, as determined by the Secretary. A supplier who consigns fuel to a reseller may elect to report and pay the tax

due on the fuel when the reseller sells or dispenses the fuel instead of when the supplier delivers the fuel to the reseller.

The primary purposes of this levy and this Article are to provide a more efficient and effective method of collecting the tax now imposed and collected pursuant to G.S. 105-435, by providing for the collection of the tax from the supplier instead of the user. The tax levied by this Article is in lieu of rather than in addition to the tax levied by G.S. 105-435; payment of the tax levied by this Article constitutes compliance with G.S. 105-435."

Sec. 22. G.S. 105-449.17 reads as rewritten:

"**§ 105-449.17. Exemption for fuel sold for nonhighway use.**

The tax imposed by this Article does not apply to fuel sold or delivered by a supplier to a user or user-seller when all of the following apply:

(1) The fuel is for a purpose other than to ~~propel~~ operate a motor vehicle.

(2) The supplier dispenses the fuel into a storage facility that is not required to be marked or is marked as follows with the phrase 'For Nonhighway Use' or a similar phrase that clearly indicates the fuel is not to be used to ~~propel~~ operate a motor vehicle:

a. The storage tank of the storage facility must be marked if the storage tank is visible.

b. The fillcap or spill containment box of the storage facility must be marked.

c. The dispensing device that serves the storage facility must be marked.

A storage facility must be marked unless it contains fuel used only in heating, drying crops, or a manufacturing process and is installed in a manner that makes use of the fuel for any other purpose improbable.

(3) The supplier does not know or have reason to know the fuel is to be used to ~~propel~~ operate a motor vehicle.

A supplier is liable for the tax due on fuel dispensed into a storage facility of a user or user-seller that is required to be marked but is not marked to indicate the fuel is to be used for a purpose other than to ~~propel~~ operate a motor vehicle. A user or user-seller is liable for the tax due on fuel dispensed by a supplier into a storage facility that is marked for nonhighway use and is subsequently used or sold for use to ~~propel~~ operate a motor vehicle."

Sec. 23. G.S. 105-449.18 reads as rewritten:

"**§ 105-449.18. Liability for tax on non-tax-paid fuel sold or delivered to unlicensed persons.**

A person who, knowing or having reason to know that the fuel is to be sold or used to ~~propel~~ operate a motor vehicle, sells or delivers to a person who is not licensed under this Article fuel on which the tax due under this Article has not been paid is liable for the tax imposed on the fuel by this Article."

Sec. 24. G.S. 105-449.19 reads as rewritten:

"**§ 105-449.19. Time when supplier must file return and pay any tax due.**

(a) Return. – A supplier of fuel who acquires, sells, delivers, or uses part or all of the fuel to ~~propel~~ operate a motor vehicle must file a monthly return. A supplier of fuel who sells, delivers, or uses fuel only for a purpose other than to ~~propel~~ operate a motor vehicle must file a quarterly return. A return must be filed with the Secretary on a form provided by the Secretary. A monthly return covers a calendar month and is due within 25 days after the end of each month. A quarterly return covers a calendar quarter and is due within 30 days after the end of each quarter. Tax owed by a supplier on fuel acquired, sold, delivered, or used by the supplier during a reporting period is due when the return for that period is due.

(b) Information. – A return filed by a supplier must contain all of the following information:

(1) The amount of fuel the supplier had on hand on the first and last days of the reporting period.

(2) The amount of fuel the supplier received during the reporting period.

(3) The amount of fuel the supplier used during the reporting period to ~~propel~~ operate a motor vehicle and the amount of fuel the supplier used during the reporting period for a purpose other than to ~~propel~~ operate a motor vehicle, stated separately.

(4) The amount of fuel the supplier sold or delivered to a licensed bulk-user, a licensed reseller, a licensed user, or other persons, stated separately."

Sec. 25. G.S. 105-449.20 reads as rewritten:

"**§ 105-449.20. When Secretary may estimate tax liability of supplier or user-seller.**

Whenever a supplier or a user-seller fails to file a report under G.S. 105-449.19 or 105-449.21 or files a false report under one of those statutes, the Secretary shall determine, from any information obtainable, the number of gallons of fuel with respect to which the supplier or user-seller owes tax under this Article. When a user-seller sells or uses more fuel than the user-seller reports to the Secretary as having been purchased from a supplier, the user-seller is presumed to have acquired the unreported fuel tax-free to ~~propel~~ operate a motor vehicle. When a user-seller sells or uses more fuel to ~~propel~~ operate a motor vehicle than the user-seller reports to the Secretary as having been purchased from a supplier to ~~propel~~ operate a motor vehicle, the user-seller is presumed to have acquired tax-free to ~~propel~~ operate a motor vehicle all fuel not reported as having been acquired to ~~propel~~ operate a motor vehicle."

Sec. 26. G.S. 105-449.26 reads as rewritten:

"**§ 105-449.26. User-sellers and certain suppliers must give receipts for and keep records of fuel sold at retail.**

(a) Receipts and Records. – When required by this section, a user-seller and a supplier who is also a reseller but is licensed only as a supplier must give a receipt for and keep a record of certain fuel sold at retail from any of the following locations:

(1) A retail service station or other retail establishment operated by the user-seller or supplier.

(2) A bulk storage facility of the user-seller or supplier to which the buyer came to buy the fuel.

(3) Any other location at which the user-seller or supplier dispenses fuel into a motor vehicle.

If the fuel is sold to ~~propel~~ operate a motor vehicle, the user-seller or supplier must give the buyer a receipt only when the buyer asks for a receipt and must keep a record of any receipt given. If the fuel is diesel and is sold for a purpose other than to ~~propel~~ operate a motor vehicle, the user-seller or supplier must give the buyer a receipt only when the buyer asks for a receipt but must always keep a record of the sale unless subsection (c) exempts the user-seller or supplier from the requirement of keeping a record.

If the Secretary determines that a user-seller or a supplier has sold nontaxpaid fuel at retail to ~~propel~~ operate a motor vehicle, the Secretary may require the user-seller or supplier to keep a record of all fuel sold at retail to ~~propel~~ operate a motor vehicle. A user-seller or supplier who is required to keep a record of diesel sold at retail for a purpose other than to ~~propel~~ operate a motor vehicle is liable for the excise tax and the inspection ~~fee~~ tax on the diesel if the user-seller or supplier does not keep a record of the sale.

(b) Content. – A record of a sale and a receipt for a sale shall include all of the following information:

(1) The name and address of the user-seller or supplier.
(2) The name and address of the person buying the fuel.
(3) The date the fuel was sold.
(4) The amount of fuel sold.
(5) The type of fuel sold.
(6) The total sales price of the fuel.
(7) Either of the following:
  a. The company name and company unit number of the motor vehicle into which the fuel was dispensed.
  b. The license plate number of the motor vehicle into which the fuel was dispensed and the state that issued the license plate.
(8) If the fuel is diesel and is sold for a purpose other than to ~~propel~~ operate a motor vehicle, the type of container or equipment into which the fuel was dispensed.

(c) Exception. – A user-seller or supplier who sells diesel at a marina from a storage facility whose location makes it improbable that the diesel could be dispensed for a purpose other than to ~~propel~~ operate a watercraft must keep a record of a sale only if the user-seller or supplier gives the buyer a receipt for the sale."

Sec. 27. G.S. 105-449.32 is repealed.

Sec. 28. G.S. 18B-902(e) reads as rewritten:

"(e) Fee for Combined Applications. – If application is made at the same time for retail malt beverage, unfortified wine and fortified wine permits for a single business location, the total fee for those applications shall be two hundred dollars ($200.00). If application is made at the same time for brown-bagging and special occasion permits for a single business location, the total fee for those applications shall be three hundred dollars ($300.00). If application is made at the same time for wine and malt beverage

importer permits, the total fee for those applications shall be one hundred fifty dollars ($150.00). If application is made at the same time for wine and malt beverage wholesaler permits, the total fee for those applications shall be one hundred fifty dollars ($150.00). If application is made in the same year for vendor representative permits to represent more than one vendor, only one fee shall be paid. If application is made at the same time for nonresident malt beverage vendor and nonresident wine vendor permits, the total fee for those applications shall be ~~twenty-five dollars ($25.00).~~ fifty dollars ($50.00)."

Sec. 29. G.S. 119-16.2 reads as rewritten:

"**§ 119-16.2. Application for license.**

~~Any person, firm or corporation having in his possession kerosene on which the inspection fee has not been paid, and who is not required to be licensed under the provisions of G.S. 105-433, shall, prior to the commencement of doing business, file a duly acknowledged application for a license with the Secretary of Revenue on a form prescribed by the Secretary setting forth the name under which such distributor transacts or intends to transact business within this State, the address of each place of business and a designation of the principal place of business. If such distributor is a firm or association, the application shall set forth the name and address of each person constituting the firm or association, and if a corporation, the names and addresses of the principal officers and such other information as the Secretary of Revenue may require. Each distributor shall at the same time file a bond in such amount, not exceeding twenty thousand dollars ($20,000) in such form and with such surety or sureties as may be required by the Secretary of Revenue, conditioned upon the rendition of the reports and the payment of the tax hereinafter provided for. Upon approval of the application and bond, the Secretary of Revenue shall issue to the distributor a nonassignable license with a duplicate copy of each place of business of said distributor in this State, a copy of which shall be displayed conspicuously at each such place of business and shall continue in force until surrendered or cancelled. No distributor shall sell, offer for sale, or use any kerosene within this State, until such license has been issued. Any distributor failing to comply with or violating any of the provisions of this section shall be~~ A person may not engage in business as a kerosene distributor unless the person has either a license issued under G.S. 105-433 or a kerosene license issued under this section. To obtain a license under this section, an applicant must file an application with the Secretary of Revenue on a form provided by the Secretary and file with the Secretary a bond in the amount required by the Secretary, not to exceed twenty thousand dollars ($20,000). An applicant must give the Secretary the same information the applicant would be required to give under G.S. 105-433 if the applicant were applying for a license under that section. A bond filed under this section must be conditioned on compliance with this Article, be payable to the State, and be in the form required by the Secretary. A license issued under this section remains in effect until surrendered or canceled, must be displayed in the same manner as a license issued under G.S. 105-433, and is subject to the same restrictions as a license issued under that section. A person who fails to comply with this section is guilty of a Class 1 misdemeanor."

Sec. 30. G.S. 158-37(b)(3) reads as rewritten:

"(3) Except as otherwise provided in this Article, to exercise the powers granted to a local government for development by G.S. ~~158-7.1 and the powers granted to certain local governments for development in G.S. 158-7.1(d1),~~ 158-7.1, except the power to levy a property tax."

Sec. 31. G.S. 158-37(b)(10) reads as rewritten:

"(10) To exercise the powers of a regional planning commission as provided in G.S. 153A-395 and the powers of a regional economic development commission as provided in ~~G.S. 158-13,~~ Article 2 of this Chapter, but the Zone does not have the authority to establish land-use zoning in any county."

Sec. 32. Effective October 1, 1994, G.S. 105-113.51 reads as rewritten:

"**§ 105-113.51. Liability for and payment of excise taxes.**

(a) ~~Primary Liability.~~Liability. – The distributor, wholesale dealer, or retail dealer who first distributes, sells, consumes, or otherwise handles bottled soft drinks or base products in this State is liable for the tax imposed by this Article. A distributor, wholesale dealer, or retail dealer who brings into this State a bottled soft drink or base product made outside the State is the first person to handle the bottled soft drink or base product in this State. A distributor, wholesale dealer, or retail dealer who is the original consignee of a bottled soft drink or base product that is made outside the State and is shipped into the State is the first person to handle the bottled soft drink or base product in this State.

Presentation of a soft drink certificate of liability to a distributor or a wholesale dealer releases the distributor or wholesale dealer from liability under this subsection. Subsection (b) of this section governs who is liable when a soft drink certificate of liability is presented.

(b) ~~Secondary Liability.~~Soft Drink Certificate of Liability. ~~– A retail dealer who acquires non-tax-paid bottled soft drinks or non-tax-paid base products from a distributor or a wholesale dealer is liable for any tax due on the bottled soft drinks or base products. A retail dealer who is liable for tax under this subsection may not deduct a discount from the amount of tax due when reporting the tax.~~ A distributor, a wholesale dealer, or a retail dealer may apply to the Secretary for a soft drink certificate of liability. A distributor, a wholesale dealer, or a retail dealer who has a soft drink certificate of liability may purchase non-tax-paid bottled soft drinks or non-tax-paid base products from a distributor or a wholesale dealer by presenting the certificate to the distributor or wholesale dealer. Presentation of the certificate to a distributor or a wholesale dealer authorizes the distributor or wholesale dealer to sell non-tax-paid bottled soft drinks or non-tax-paid base products to the person who presents the certificate; it releases the distributor or wholesale dealer from liability for any tax due on the sale and transfers the liability to the person who presents the certificate.

A distributor or a wholesale dealer to whom a soft drink certificate of liability is presented must accept the certificate. A soft drink certificate of liability is considered to have been presented to a distributor or a wholesale dealer when the person to whom it is issued gives a copy of it to the distributor or wholesale dealer. When a person presents

a soft drink certificate of liability to a distributor or a wholesale dealer, it indicates the person's intent that the certificate apply to all future sales to the person by the distributor or wholesale dealer. Once presented, a soft drink certificate of liability remains in effect until the person who presented the certificate gives the distributor or wholesale dealer to whom it was presented written notice that the certificate no longer applies.

(c) Monthly Report. ~~– Except for tax on a designated sale under subsection (d), the~~ The taxes levied by this Article are payable when a report is required to be filed. A report is due on a monthly basis. A monthly report covers sales and other activities occurring in a calendar month and is due within 15 days after the end of the month covered by the report. A report shall be filed on a form provided by the Secretary and shall contain the information required by the Secretary.

~~(d) Designation of Exempt Sale. – A distributor or a wholesale dealer who sells a bottled soft drink or a base product to a person who has notified the distributor or wholesale dealer in writing that the person intends to resell the item in a transaction that is exempt from tax under G.S. 105-113.46(7) or (8) may, when filing a monthly report under subsection (c), designate the quantity of bottled soft drinks or base products sold to the person for resale. A distributor or wholesale dealer shall report a designated sale on a form provided by the Secretary.~~

~~A distributor or a wholesale dealer is not required to pay tax on a designated sale when filing a monthly report. The distributor or wholesale dealer shall pay the tax due on all other sales in accordance with this section. A distributor, a wholesale dealer, or a customer of a distributor or wholesale dealer may not delay payment of the tax due on a bottled soft drink or base product by failing to pay tax on a sale that is not a designated sale or by overstating the quantity of bottled soft drinks or base products that will be resold in a transaction exempt under G.S. 105-113.46(7) or (8).~~

~~A person who does not sell a bottled soft drink or base product in a transaction exempt under G.S. 105-113.46(7) or (8) after a distributor or a wholesale dealer has failed to pay the tax due on the sale of the item to the person in reliance on the person's written notification of intent is liable for the tax and any penalties and interest due on the designated sale. If the Secretary determines that a bottled soft drink or a base product reported as a designated sale is not sold as reported, the Secretary shall assess the person who notified the distributor or wholesale dealer of an intention to resell the item in an exempt transaction for the tax due on the sale and any applicable penalties and interest. A distributor or a wholesale dealer who does not pay tax on a bottled soft drink or base product in reliance on a person's written notification of intent to resell the item in an exempt transaction is not liable for any tax assessed on the item.~~

(e) Repealed by Session Laws 1991 (Regular Session, 1992), c. 955, s. 16, effective July 15, 1992."

Sec. 33. Effective October 1, 1994, G.S. 105-113.52(a) reads as rewritten:

"(a) Tax Reduction. – The tax on the first 15,000 gross of bottled soft drinks sold at wholesale on or after October 1 of each year by a distributor or wholesale dealer who is liable for the tax and who files a timely report under G.S. 105-113.51 is seventy-two cents (72¢) a gross rather than the amount stated in G.S. 105-113.45. The tax reduction does not apply to bottled soft drinks acquired by the distributor or wholesale dealer in a

sale in which the distributor or wholesale dealer presented a soft drink certificate of liability, and it does not apply to sales made by a distributor or wholesale dealer who is not licensed as required by this Article. When reporting tax due on bottled soft drinks to which this reduced rate applies, a distributor or wholesale dealer shall pay the reduced amount."

Sec. 34. G.S. 105-130.27(g) reads as rewritten:

"(g) Expiration. – This section applies only to costs incurred during taxable years beginning prior to January 1, ~~1996.~~ 1998."

Sec. 35. G.S. 105-151.6(g) reads as rewritten:

"(g) Expiration. – This section applies only to costs incurred during taxable years beginning prior to January 1, ~~1996.~~ 1998."

Sec. 36. Effective August 1, 1994, G.S. 130A-309.81 reads as rewritten:

"**§ 130A-309.81. Management of discarded white goods; ~~additional~~ disposal fee prohibited.**

(a) Duty. – Each county is responsible for providing at least one site for the collection of discarded white goods. It must also provide for the disposal of discarded white goods and for the removal of chlorofluorocarbon refrigerants from white goods. A county may contract with another unit of local government or a private entity in accordance with Article 15 of Chapter 153A of the General Statutes to provide for the management of discarded white goods or for the removal of chlorofluorocarbon refrigerants from white goods.

(b) Restrictions. – A unit of local government or a contracting party may not charge a disposal fee for the disposal of white ~~goods that is in addition to the fee charged for the disposal of any other type of municipal solid waste.~~ goods. A white good may not be disposed of in a landfill, an incinerator, or a waste-to-energy facility.

(c) Plan. – Each county shall establish written procedures for the management of white goods. The county shall include the procedures in any solid waste management plan required by the Department under this Article."

Sec. 37. Section 6 of Chapter 471 of the 1993 Session Laws is repealed.

Sec. 38. Effective July 1, 1998, G.S. 130A-309.81, as amended by this act, reads as rewritten:

"**§ 130A-309.81. Management of discarded white goods; disposal fee ~~prohibited.~~ allowed.**

(a) Duty. – Each county is responsible for providing at least one site for the collection of discarded white goods. It must also provide for the disposal of discarded white goods and for the removal of chlorofluorocarbon refrigerants from white goods. A county may contract with another unit of local government or a private entity in accordance with Article 15 of Chapter 153A of the General Statutes to provide for the management of discarded white goods or for the removal of chlorofluorocarbon refrigerants from white goods.

(b) Restrictions. – A unit of local government or a contracting party may ~~not~~ charge a disposal fee for the disposal of white goods. A white good may not be disposed of in a landfill, an incinerator, or a waste-to-energy facility.

(c) Plan. – Each county shall establish written procedures for the management of white goods. The county shall include the procedures in any solid waste management plan required by the Department under this Article."

Sec. 38.1. G.S. 90B-10(b)(1) reads as rewritten:

"(1) A person who has engaged in clinical social work practice for one year prior to the effective date of this act and who properly applies for and pays the required fees for a certificate as a certified clinical social worker prior to January 1, 1993. Notwithstanding the foregoing provision of this subdivision, any applicant who applied for certification pursuant to this subdivision between December 1, 1993, and January 15, 1994, and who is otherwise eligible for certification under this subdivision but for the January 1, 1993, deadline shall be certified."

Sec. 38.2. (a) G.S. 105-113.46 reads as rewritten:

"**§ 105-113.46. Exemptions.**

The taxes imposed by this Article do not apply to an item that is listed in this section and, if the item is a bottled soft drink or a juice concentrate included in subdivision ~~(2) or (3),~~ (2), (3), or (3a), is registered with the Secretary in accordance with G.S. 105-113.47:

(1) A natural liquid milk drink produced by a farmer or a dairy.
(2) A bottled soft drink that contains at least thirty-five percent (35%) natural milk measured by volume and is not exempt under subdivision (1).
(3) Natural juice.
(3a) Juice that would be natural if it did not contain sugar.
(4) Natural water.
(5) A base product used to make a bottled soft drink subject to tax under this Article.
(6) Coffee or tea in any form.
(7) A bottled soft drink or base product sold outside the State.
(8) A bottled soft drink or base product sold to the federal government.
(9) A base product for domestic use that either contains milk or, according to directions on the base product's container, requires milk to be added to make a soft drink."

(b) G.S. 105-113.47(a) reads as rewritten:

"(a) Requirement. – To be exempt from the tax imposed by this Article, the following items must be registered with the Secretary as an exempt item:

(1) A bottled soft drink that contains at least thirty-five percent (35%) natural milk measured by volume and is not exempt under G.S. 105-113.46(1).
(2) A natural juice bottled soft drink.
(3) A natural juice concentrate.
(4) A juice concentrate or juice bottled soft drink that would be natural if it did not contain sugar.

To register an item as exempt, the person who controls the brand name or formula of the item must file an application for registration with the Secretary on a form provided by the Secretary. An application must include an affidavit stating the complete and itemized formula by volume of the bottled soft drink or juice concentrate that is the subject of the application."

(c) This section becomes effective October 1, 1994.

Sec. 38.3. (a) G.S. 25A-27 is amended by adding two new subsections to read:

"(c) For payments received by a seller on or after October 1, 1988, but before October 1, 1993, a seller may elect to apply the provisions of this section as the section read October 1, 1993, or as the section read September 30, 1993. A seller made this election when the seller determined, and disclosed to the buyer, how payments received on a consumer credit sale would be applied: either on a proportional basis or on a 'first in - first out' basis with the payments applied first to finance charges and then to principal in the order that each obligation is assumed.

(d) The exclusive remedy for failure of a seller to apply payments of a buyer as required by subdivision (a)(3) or (b)(2) of this section during the period October 1, 1993, through October 1, 1996, is an order that the seller apply the payments as required by those provisions."

(b) G.S. 25A-27(c), as enacted by this section, does not apply to pending actions.

Sec. 39. G.S. 105-275(19) reads as rewritten:

"(19) Real and personal property belonging to the Loyal Order of Moose, the Benevolent and Protective Order of Elks, the Knights of Pythias, the Odd ~~Fellows~~ Fellows, the Woodmen of the World, and similar fraternal or civic orders and organizations operated for nonprofit benevolent, patriotic, historical, charitable, or civic purposes, when used exclusively for meeting or lodge purposes by ~~said~~ the organization, together with ~~such~~ as much additional adjacent real property as may be necessary for the convenient normal use of the ~~buildings thereon.~~ buildings. Notwithstanding the exclusive-use requirement ~~hereinabove established,~~ of this subdivision, if a part of a property that otherwise meets this subdivision's requirements is used for a purpose that would require that it not be listed, appraised, ~~assessed~~ assessed, or taxed if the entire property were so used, that part, according to its ~~value~~ value, shall not be listed, appraised, ~~assessed~~ assessed, or taxed. The fact that a building or facility is incidentally available to and patronized by the general public, so far as there is no material amount of business or patronage with the general public, shall not defeat the classification granted by this section. Nothing in this ~~section~~ subdivision shall be construed so as to include social fraternities, sororities, and similar college, university, or high school organizations in the classification for exclusion from ad valorem taxes."

Sec. 40. Except as otherwise provided in this act, this act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1994.

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Marc Basnight
President Pro Tempore of the Senate

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Daniel Blue, Jr.
Speaker of the House of Representatives