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The **NORTH CAROLINA REGISTER**

IN THIS ISSUE

EXECUTIVE ORDERS

FINAL DECISION LETTER

PROPOSED RULES

Cosmetic Art Examiners, Board of
Economic and Community Development
Electrical Contractors, Board of Examiners
Environment, Health, and Natural Resources
Human Resources
Insurance
Public Education
State Treasurer

FINAL RULES

Revenue

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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: *Subscriptions*.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 52 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. **1:1 NCR 101-201, April 1, 1986** refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

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NORTH CAROLINA REGISTER



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ISSUE CONTENTS

I. EXECUTIVE ORDERS

Executive Orders 111-113.....313

II. FINAL DECISION LETTER

Voting Rights Act.....316

III. PROPOSED RULES

Economic and Community

Development

Community Assistance

Division.....317

Credit Union

Division.....317

Environment, Health, and Natural Resources

Wildlife Resources

Commission349

Human Resources

Mental Health, Developmental

Disabilities and Substance

Abuse Services318

Insurance

Agent Services Division.....321

Financial Evaluation

Division.....342

Fire and Casualty

Division.....335

Licensing Boards

Board of Cosmetic Art

Examiners.....355

Board of Examiners of

Electrical Contractors356

Public Education

Elementary and Secondary.....351

State Treasurer

Departmental Rules352

Local Government

Commission352

Solid Waste Management

Capital Projects Financing

Agency.....354

IV. FINAL RULES

Revenue

Individual Income Tax.....359

V. CUMULATIVE INDEX.....406

NORTH CAROLINA REGISTER
Publication Schedule
 (January 1990 - December 1991)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing & Adoption by Agency	* Earliest Effective Date
*****	*****	*****	*****	*****
01/02/90	12/07/89	12/14/89	02/01/90	05/01/90
01/16/90	12/20/89	12/29/89	02/15/90	05/01/90
02/01/90	01/10/90	01/18/90	03/03/90	06/01/90
02/15/90	01/25/90	02/01/90	03/17/90	06/01/90
03/01/90	02/08/90	02/15/90	03/31/90	07/01/90
03/15/90	02/22/90	03/01/90	04/14/90	07/01/90
04/02/90	03/12/90	03/19/90	05/02/90	08/01/90
04/16/90	03/23/90	03/30/90	05/16/90	08/01/90
05/01/90	04/09/90	04/17/90	05/31/90	09/01/90
05/15/90	04/24/90	05/01/90	06/14/90	09/01/90
06/01/90	05/10/90	05/17/90	07/01/90	10/01/90
06/15/90	05/24/90	06/01/90	07/15/90	10/01/90
07/02/90	06/11/90	06/18/90	08/01/90	11/01/90
07/16/90	06/22/90	06/29/90	08/15/90	11/01/90
08/01/90	07/11/90	07/18/90	08/31/90	12/01/90
08/15/90	07/25/90	08/01/90	09/14/90	12/01/90
09/04/90	08/13/90	08/20/90	10/04/90	01/01/91
09/14/90	08/24/90	08/31/90	10/14/90	01/01/91
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11/15/90	10/24/90	10/31/90	12/14/90	03/01/91
12/03/90	11/08/90	11/15/90	01/02/91	04/01/91
12/14/90	11/21/90	11/30/90	01/13/91	04/01/91
01/02/91	12/07/90	12/14/90	02/01/91	05/01/91
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09/03/91	08/12/91	08/19/91	10/03/91	01/01/92
10/01/91	09/10/91	09/17/91	10/31/91	02/01/92
11/01/91	10/11/91	10/18/91	12/01/91	03/01/92
12/02/91	11/07/91	11/14/91	01/01/92	04/01/92

* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.

EXECUTIVE ORDER NUMBER 111
AMENDMENT AND EXTENSION OF
EXECUTIVE ORDER NUMBER 45

WHEREAS, the Governor's Language Institutes Advisory Board was established by Executive Order Number 45, reissued and extended by Executive Order Number 93; and

WHEREAS, it has been made to appear to me that it is necessary to clarify that participation in the Institutes is limited to elementary and secondary foreign language teachers; and

WHEREAS, it has been made to appear to me that the Advisory Board should have discretion to establish guidelines for private school teachers to participate in the Institutes;

THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, it is ORDERED:

Executive Order Number 45, reissued and extended by Executive Order Number 93, is hereby amended and extended as follows:

Section 2. Functions: The Board shall have the following duties:

- (A) oversee planning and operation of the Governor's Language Institutes which shall be located in various locations across the State to provide educational programs for North Carolina elementary and secondary teachers of foreign languages;
- (B) select an external consultant to assist in the planning of the Governor's Language Institutes' programs and to recommend curriculum, instructors, location of Institutes, and sources of support;
- (C) select a full-time Executive Director to manage the Institutes; and
- (D) establish guidelines pertaining to the participation of teachers from non-public schools in the Governor's Language Institutes Program.

Section 4. Effective Date and Expiration Date. This Executive Order shall be effective immediately, and in accordance with North Carolina law shall expire two years from the date it is signed. It is subject to reissuance at expiration.

Done in the Capital City of Raleigh, North Carolina, this 12th day of April, 1990.

EXECUTIVE ORDER NUMBER 112
RESTRUCTURING AND REESTABLISHING
GOVERNOR'S ADVISORY COMMISSION ON
TRAVEL AND TOURISM

WHEREAS, travel and tourism is of major economic concern to the State; and

WHEREAS, participation in the Governor's Advisory Commission on Travel and Tourism by members of the General Assembly and representatives of specific industries in travel and tourism would enhance the development of travel and tourism issues; and

WHEREAS, it has been made to appear to me that a restructuring of the Governor's Advisory Commission on Travel and Tourism is desirable in order to foster such participation;

NOW THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina it is ORDERED:

Section 1. Reestablishment. The Governor's Advisory Commission on Travel and Tourism, originally established by Executive Order Number 8, and extended and reissued by Executive Order Number 51 and Executive Order Number 93, is hereby reestablished according to the terms of this order.

Section 2. Membership. The Commission shall consist of not less than the following 16 members:

- a. the Director of the North Carolina Division of Travel and Tourism, who shall serve ex officio;
- b. two Senators, currently serving in the North Carolina General Assembly, having interest in and knowledge of matters related to travel and tourism, who shall be appointed by the President of the Senate;
- c. two Representatives, currently serving in the North Carolina General Assembly, having an interest in and knowledge of matters related to travel and tourism, who shall be appointed by the Speaker of the House of Representatives;
- d. one member associated with the transportation industry who shall be appointed by the Governor;
- e. one member associated with the food service industry who shall be appointed by the Governor;
- f. one member associated with the lodging industry who shall be appointed by the Governor;
- g. at least two at-large members with an interest in the travel and tourism industry who shall be appointed by the Governor;
- h. one member associated with a local chamber of commerce, tourism development authority, or convention and visitors bureau who shall be appointed by the Governor;

- i. one member associated with municipal government who shall be appointed by the Governor;
- j. one member associated with The Travel Council of North Carolina, Inc. (or its successors) who shall be appointed by the Governor;
- k. one member associated with parks and recreation or cultural resources who shall be appointed by the Governor;
- l. one member with interest in and knowledge of the environmental impact of travel and tourism who shall be appointed by the Governor; and
- m. one member associated with county government who shall be appointed by the Governor.

Section 3. Terms. All members shall serve at the pleasure of the appointing authority.

Section 4. Chairmanship. The Commission shall elect a chairperson from its membership.

Section 5. Meetings. The first meeting of the Commission shall be called by the Director of the Division of Travel and Tourism. Thereafter, meetings will be held on a quarterly basis or as directed by the Governor or Secretary of Economic and Community Development.

Section 6. Quorum. A majority of the membership shall constitute a quorum.

Section 7. Vacancies. Appointments to fill vacancies in the membership of the Commission that occur due to resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term and shall be made by the same appointing authority that made the initial appointment.

Section 8. Duties and Powers. The duties of the Commission shall be:

- a. to assist and advise the Secretary of Economic and Community Development in the planning and implementation of policy and priorities for the promotion and development of travel and tourism in the State;
- b. to assist and advise the Secretary of Economic and Community Development in the development of a budget for the Division of Travel and Tourism;
- c. to recommend programs to the Governor, the General Assembly, and the Secretary of Economic and Community Development that will promote the State as a

travel and tourism destination and that will develop travel and tourism opportunities throughout the State;

- d. to assist and advise the Secretary of Economic and Community Development in setting criteria for selection of an advertising agency which will assist the department in promotion of the State as a travel and tourism destination within the context of the normal advertising agency review cycle. These criteria shall be utilized by a selection committee appointed by the Secretary of Economic and Community Development;
- e. to recommend to the Secretary of Economic and Community Development and the General Assembly rules, regulations, or standards that may be necessary to administer a matching funds tourism grant program;
- f. to promote the exchange of ideas and information on travel and tourism between State and local governmental agencies, and private organizations and individuals; and
- g. to advise the Secretary of Economic and Community Development upon any matter that the Secretary, Governor, or Director of the Division of Travel and Tourism may refer to the Commission.

Section 9. Administrative Support. The Secretary of Economic and Community Development shall provide clerical and other services as required by the Commission.

Section 10. Expenses. While on official business, Commission members who are legislators will receive subsistence and travel allowances at the rates set forth in N.C.G.S. 120-3.1. Commission members who are employees of the State will receive travel allowances at the rate set forth in N.C.G.S. 138-6. All other Commission members will receive per diem, subsistence, and travel expenses at the rates set forth in N.C.G.S. 138-5.

Section 11. Previous Orders Rescinded. Executive Order Number 8, and those portions of Executive Orders Number 51 and 93 dealing with the Governor's Advisory Committee on Travel and Tourism, dated June 28, 1985, July 14, 1987, and June 20, 1989, respectively, are hereby rescinded. All records of the Governor's Advisory Commission on Travel and Tourism created pursuant to these executive orders are transferred to the Advisory Commission created herein. The Advisory Commission herein shall be the suc-

cessor to the Governor's Advisory Commission on Travel and Tourism.

Section 12. This Executive Order is effective immediately and shall remain in effect until January 31, 1992, unless terminated earlier or extended by further Executive Order.

Done in Raleigh, North Carolina this the 12th day of April, 1990.

EXECUTIVE ORDER NUMBER 113
COMMITTEE ON GOVERNOR'S
CONFERENCES ON
LIBRARY AND INFORMATION SERVICES

WHEREAS, access to information and ideas is indispensable to the development of human potential, the advancement of civilization, and the continuance of enlightened self government; and

WHEREAS, the preservation and the dissemination of information and ideas are the primary purpose and function of the library and information services; and

WHEREAS, libraries and information services are essential to a learning society; and

WHEREAS, North Carolina's economic strength and the productivity of its workforce depends on access to information; and

WHEREAS, the President of the United States, with the concurrence of the United States Senate and House of Representatives, has called for the convening of the Second White House Conference on Library and Information Services to be held in Washington, D.C., July 9-13, 1991; and

WHEREAS, Public law 100-382, the White House Conference on Library and Information Services authorizing act, provides \$30,000 in federal funding to North Carolina to conduct statewide conferences leading up to the White House Conference;

THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, it is ORDERED:

Section 1. Establishment. That the North Carolina Governor's Conference on Library and Information Services Committee is created.

Section 2. Membership. The Committee will be composed of forty persons whom I will appoint for a one year term beginning May 1, 1990, and who shall serve at my pleasure.

Section 3. Chairman. The Secretary of Cultural Resources will serve as the chairperson of the Committee established herein.

Section 4. Purpose. The mission of the Committee shall be to organize and conduct Governor's Conferences on Library and Information Services. Nine regional conferences and one statewide conference shall be held between August 1990 and February 1991, with the purpose of developing recommendations for further improvement of library and information services to increase productivity, expand literacy, and strengthen democracy.

Delegates elected at these conferences shall elect sixteen (16) delegates to the Second White House Conference on Library and Information Services.

Section 5. Administrative Support. The North Carolina Department of Cultural Resources Division of the State Library is the coordinating agency to work with the Committee in planning and conducting all regional and statewide events leading up to the White House Conference.

Section 6. Travel and Subsistence. The Department of Cultural Resources shall pay travel and subsistence to Committee members from the \$30,000 in federal money appropriated for this purpose.

Section 7. Effective Date and Expiration Date. This Executive Order shall be effective immediately and shall expire July 13, 1991.

Done in the Capital City of Raleigh, North Carolina, this the 20th day of April, 1990.

VOTING RIGHTS ACT FINAL DECISION LETTER

[G.S. 120-30.911, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.]

U.S. Department of Justice
Civil Rights Division

JPT:MAP:TGL:rac
DJ 166-012-3
Z5485

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

February 26, 1990

DeWitt F. McCarley, Esq.
City Attorney
P.O. Box 7207
Greenville, North Carolina 27835-7207

Dear Mr. McCarley:

This refers to Chapter 272 (1981), which provides that the mayor may vote only in case of a tie vote for the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on December 27, 1989.

The Attorney General does not interpose any objection to the change in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

By:

Barry H. Weinberg
Acting Chief, Voting Section

**TITLE 4 - DEPARTMENT OF ECONOMIC
AND COMMUNITY DEVELOPMENT**

Notice is hereby given in accordance with G.S. 150B-12 that the Credit Union Division, ECD intends to amend rule(s) cited as 4 NCAC 6C .0203.

The proposed effective date of this action is October 1, 1990.

The public hearing will be conducted at 10:00 a.m. on July 9, 1990 at Room 4009, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27603.

Comment Procedures: Any interested person may present his/her comments either in writing three days prior to or at the hearing or orally at the hearing for a maximum of ten minutes. Any person may request information by writing or calling Mr. Stanley W. Brown, Jr., Credit Union Division, 430 North Salisbury Street, Raleigh, North Carolina. (919) 733-7501

CHAPTER 6 - CREDIT UNION

SUBCHAPTER 6C - CREDIT UNIONS

**SECTION .0200 - ORGANIZATION OF CREDIT
UNIONS**

.0203 FIELDS OF MEMBERSHIP

(a) Parity. To preserve and protect the welfare of state chartered credit union, the Administrator may approve fields of membership and allow state chartered credit unions the same latitude with regard to membership limitations and restrictions as is available to federally chartered credit unions.

(b) New Charters. Pursuant to The field(s) of membership of an applicant for a new credit union shall be reviewed and approved or disapproved in conformity with criteria and policies set out in Chapter 1 of the National Credit Union Administration's (NCUA) Interpretative Ruling and Policy Statements 82-3 and 83-2, the Administrator may approve new charters with fields of membership which include more than one distinct group or multiple occupational or associational groups. Statement 89-1, entitled CHARTERING AND FIELD OF MEMBERSHIP POLICY, which are adopted by reference pursuant to G.S. 150B-14(c).

(c) Expansion Requests. Requests for expanded multiple fields of membership for existing credit unions shall be reviewed and approved or

disapproved in conformity with criteria and policies set out in Chapter 2 of the National Credit Union Administration's Interpretive Ruling and Policy Statement 89-1, entitled CHARTERING AND FIELD OF MEMBERSHIP POLICY, which are adopted by reference pursuant to G.S. 150B-14(c). In accordance with Paragraphs (a) and (b) of this Rule, requests for expanded multiple fields of membership for existing credit unions may be approved subject to the following:

- (1) the groups are within a "well defined area";
- (2) the affected groups have made a written request for service;
- (3) the Credit Union has and is adequately serving a large percentage of its existing potential members;
- (4) there is proof that the Credit Union can provide service to the new group(s);
- (5) it is economically feasible and advisable;
- (6) the Credit Union has a satisfactory performance record, is well managed and its operations are safe and sound; and
- (7) other factors which are relevant in approving the request.

(d) If other factors warrant, the Administrator may waive or modify any of the requirements in this Rule.

(e) In allowing an expansion of the field of membership, any such credit union would be bound by membership limitations or restrictions contained in its charter or bylaws as amended and approved by the Administrator.

Statutory Authority G.S. 54-109.1; 54-109.2(e); 54-109.3(3); 54-109.4; 54-109.11(3); 54-109.12; 54-109.21(25); 54-109.22.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Dept. of Economic & Community Development - Division of Community Assistance intends to amend rule(s) cited as 4 NCAC 19Q .0102.

The proposed effective date of this action is October 1, 1990.

The public hearing will be conducted at 3:00 p.m. on July 9, 1990 at Second Floor Conference Room, 1307 Glenwood Avenue, Suite 250, Raleigh, North Carolina.

Comment Procedures: Comments may be presented at the hearing or submitted by mail to:

Deborah G. McCrae
Division of Community Assistance
1307 Glenwood Avenue, Suite 250
Raleigh, North Carolina 27605

CHAPTER 19 - DIVISION OF COMMUNITY ASSISTANCE

SUBCHAPTER 19Q - EMERGENCY SHELTER GRANTS PROGRAM ADMINISTRATIVE RULES

SECTION .0100 - GENERAL PROVISION

.0102 DEFINITIONS

(8) "Shelter" means ~~an individual facility with the capacity to provide overnight lodging whose purpose is to assist homeless persons through activities funded under this Subchapter. For purposes of this program, the term "shelter" excludes substance abuse rehabilitation centers.~~ "any facility, the primary purpose of which is to provide temporary or transitional shelter for the homeless in general or for specific populations of the homeless." As a result, day centers and drop-in centers are eligible to receive funds for all ESG eligible activities.

Authority G.S. 143-323; 143B-10; 24 C.F.R. 576.3; P. L. 100-77.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services intends to amend rule(s) cited as 10 NCAC 14C .1117, .1135, .1145; and adopt rule(s) cited as 10 NCAC 14C .1147.

The proposed effective date of this action is October 1, 1990.

The public hearing will be conducted at 10:00 a.m. on July 12, 1990 at Albemarle Building, 325 N. Salisbury Street, 8th Floor Conference Room 864, Raleigh, NC 27603.

Comment Procedures: Any interested person may present his/her comments by oral presentation or by submitting a written statement. Persons wishing to make oral presentations should contact Marilyn Brothers, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 325 N. Salisbury St., Raleigh, NC 27603, (919) 733-4774 by July 11, 1990. The hearing record will remain open for written com-

ments from June 11, 1990 through July 11, 1990. Written comments must be sent to the above address and must state the rule(s) to which the comments are addressed. Fiscal information on these rules is also available from the same address.

CHAPTER 14 - MENTAL HEALTH: GENERAL

SUBCHAPTER 14C - GENERAL RULES

SECTION .1100 - STATE AND FEDERAL FUNDS ADMINISTERED

.1117 GRANT-IN-AID FOR ADULT DEVELOPMENTAL ACTIVITY PROGRAMS

(a) The Division shall administer a program of grants to area programs to be called the grant-in-aid for adult developmental activity programs.

(b) Such grant-in-aid funds shall be used to support clients who are:

(1) ~~substantially mentally retarded developmentally disabled~~ or severely physically disabled persons as defined in 10 NCAC 181 .0120 except that clients with a primary diagnosis of other than substantial ~~mental retardation~~ developmentally disability or severe physical disability may be eligible for funding provided:

(A) they have been in an ADAP continuously from a date prior to January 1, 1975 and are currently receiving ADAP grant-in-aid; and

(B) that all other ADAP standards and regulations such as annual re-evaluation and referral to the Division of Vocational Rehabilitation Services shall apply equally to this client population; or

(2) otherwise substantially developmentally disabled which means those individuals functioning at either Level I or Level II as defined in "Pioneer Funding System Operations Manual, Volume III, Level of Eligibility, Section 4, Child and Adult Developmental Disability".

(3) ~~(2)~~ 16 years of age and older;

(4) ~~(3)~~ residents of North Carolina; and

(5) ~~(4)~~ eligible for ADAP grant-in-aid regardless of financial resources with the exception of a client whose work earnings exceed one-half the federal statutory minimum wage over a consecutive 90-day period. With prior approval of the appropriate ~~regional director, area director or designee~~, clients who are participating in a supported employment program authorized by the Division may have earnings in excess of one-half the minimum wage. Eligibility for clients in non-

supported employment settings whose earnings have exceeded over one-half the minimum wage for over 90 consecutive days may be extended for up to one calendar year if supported employment options are not available locally and the client is ineligible for other services from the Division of Vocational Rehabilitation, or if the client's social, behavioral or vocational skill deficits preclude participation in supported employment options and results in ineligibility for other vocational rehabilitation services. The eligibility extension shall occur through the existing client recertification process carried out by the designated area program qualified developmental disabilities professional (QDDP) as referenced in 10 NCAC 18M .0800. Requests for the extension shall be based on a joint case review involving a representative of the involved ADAP, the local VR unit and the area program. ~~meeting between a representative of the involved ADAP, the local Vocational Rehabilitation unit, and the area program. The request shall be submitted to and approved by the designated area program qualified mental retardation professional responsible for client certification. The request shall identify the specific skill deficits precluding eligibility for supported employment or other vocational rehabilitation services and include plans for reducing these deficits. The certification extension may be reapplied for a maximum of two times only. The same criteria and procedures shall be followed in each instance of re-application as are required for the initial extension.~~

(c) Grant-in-aid for adult developmental activity programs shall be administered to area programs up to a standard rate per month, as approved by the General Assembly or division director, or both, except programs may receive federal grant-in-aid funds on a total cost basis with the Division Director's approval in accordance with Section 26 of the "Area Program Budgeting and Procedures Manual" (division publication APSM 75-1) as published June 27, 1984. Copies of Section 26 of the "Area Program Budgeting and Procedures Manual" may be inspected at the Raleigh office of the Division or copies may be obtained from the Publications Office of the Division at a charge which covers printing and postage.

(d) Funding of new adult developmental activity programs shall be limited to the areas (county

~~and/~~ or community or both) specified in division publication APSR 120-1, "Development of New Adult Developmental Activity Programs," as published July 1, 1981. Copies of this publication may be inspected or obtained as specified in (c) of this Rule.

(e) To apply for ADAP grant-in-aid funds an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to the appropriate regional office of the Division.

(f) Approval of release of ADAP grant-in-aid funds shall be made by the Division Director or his designee. These adoptions by reference are in accordance with G.S. 150B-14(c).

Statutory Authority G.S. 122C-112(a)(6); 122C-131; 122C-141.

1135 FUNDS FOR FORENSIC SCREENING: CAPACITY TO PROCEED TO TRIAL

(a) To the extent state funds are available, the division shall provide reimbursement for court-ordered screening and evaluation of persons to determine their capacity to proceed to trial.

(b) The screening or evaluation shall be performed by a qualified mental health professional who is registered with the Division as a forensic evaluator screening examiner who is certified by the Division at the time of the examination. ~~Evaluations shall be performed only by a medical doctor or a person deemed a medical expert by the court.~~

(c) Only area programs are eligible for reimbursement.

(d) To obtain reimbursement the area program shall submit to the appropriate regional office the following:

- (1) four copies of an itemized invoice which reflects the following:
 - (A) name of respondent screened and evaluated;
 - (B) name of certified forensic ~~screening examiner or~~ evaluator for each respondent;
 - (C) amount of time in hours or portion thereof required for each screening examination or evaluation; ~~plus report preparation;~~
 - (D) rate per hour for each examination or evaluation; and
 - (E) dollar amount for each examination or evaluation.
- (2) three copies of the individual court order. The copies of the court order shall be attached to the invoice required in (d)(1) of this Rule so that three of the four copies

of the invoice have a copy of the court order attached.

(e) The rate per hour for each ~~screening examiner or forensic evaluator~~ required on the invoice under (d)(1)(D) of this Rule shall be the usual and customary charges of the area program before adjustment to the sliding fee scale. The amount invoiced to the division shall not exceed ~~fifty dollars (\$50.00) per screening examination or evaluation; the rate approved by the Division.~~

(f) The regional office shall review the invoices and court orders to determine that all requirements in (d) of this Rule have been met. If the invoices are in order and the regional office has uncommitted forensic screening or evaluation funds, the invoices shall be initialed for approval by the Regional Director or ~~the regional accountant~~ his designee and forwarded to the fiscal services section of the Division for payment.

(g) The procedures of this Rule apply only to reimbursement for screening examinations or evaluations to determine the capacity of an individual to proceed to trial and do not apply to reimbursement for any treatment determined to be necessary as a result of the evaluation.

Statutory Authority G.S. 122C-147; 143B-10.

.1145 DEVELOPMENTAL DAY CARE GRANTS-IN-AID

(a) The Division shall administer a program of grants to area programs to be called developmental day care grants-in-aid.

(b) Developmental day care grants-in-aid shall be administered to area programs up to a standard rate per month as approved by the General Assembly, ~~and~~ division director or both, unless administered on a total cost basis with the Division Director's approval in accordance with Section 26 of the "Area Program Budgeting and Procedures Manual" (division publication APSM 75-1) adopted pursuant to G.S. 150B-14(c), as published June 27, 1984. Copies of Section 26 of the "Area Program Budgeting and Procedures Manual" may be inspected at the Raleigh office of the Division or copies may be obtained from the Publications Office of the Division at a charge which covers printing and postage.

(c) Children in whose behalf funds are administered to programs shall be:

- (1) mentally retarded, otherwise developmentally disabled, developmentally delayed, or have atypical development or be infants or toddlers at high risk for mental retardation; any of these conditions, for whom a disability specific diagnostic label diagnosis is inappropriate; prior to three

years of age, as certified by a licensed physician, and for whom a less restrictive program is not available;

- (2) between the ages of birth and 19; and
- (3) residents of North Carolina.

(d) Children with moderate, severe, or profound mental retardation, substantial other developmental disabilities, who are moderately, severely or profoundly mentally retarded or infants or toddlers with or at high risk for developmental delays, developmental disabilities, or atypical development mental retardation shall be given first priority for available funds. Children determined to be substantially developmentally disabled shall be those functioning at either Level I or Level II as defined in "Pioneer Funding System Operating Manual, Volume III: Level of Eligibility, Section 4, Child Developmental Disability". Preschool children with mild mental retardation, other mild developmental disabilities, developmental delays or those with atypical development who are mildly retarded shall be given the next priority for available funds if they meet the eligibility requirement specified in (c) (3) of this Rule and if prior approval of the appropriate regional office director or designee is obtained. When non matching social services block grant or other federal funds are utilized, children who are developmentally delayed or at risk for developmental delay shall be served if they meet the eligibility requirements specified in (c)(2) and (3) of this Rule and if prior approval of the appropriate regional office is obtained.

(e) To apply for developmental day care grant-in-aid funds an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to the appropriate regional office of the Division.

(f) Funds for developmental day care shall be allocated among the regions of the Division by the Division Director.

(g) Disbursement of developmental day care grant-in-aid funds shall be made after approval of the plan and budget by the Regional Director.

Statutory Authority G.S. 122C-112(a)(6); 122C-131; 122C-147.

.1147 EARLY INTERVENTION-FEDERAL-EIHA

(a) The Division shall administer a program of grants to area programs called Early Intervention-Federal-EIHA.

(b) Such funds shall be used to provide for the establishment of early intervention services. Early intervention services shall be provided through home or center-based models, program consultation or through other specific activities

specified in P.L. 99-457, Section 672(2) (A-G) within the following guidelines:

- (1) Children served shall be those with developmental delays or atypical development or those at risk for these conditions as defined in 10 NCAC 14K .0103.
- (2) Children served shall be from birth through two years of age.
- (3) Funds shall be used to supplement and increase the level of State and local funds for these children and in no case supplant such State and local funds.
- (e) To apply for funds for these services, an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to the regional office of the Division.
- (d) Funds shall be allocated to the regions of the Division by the Division Director.
- (e) Based on the annual plan and budget request submitted by the area programs and approved by the Division, funds will be made available for reimbursement of services.

Statutory Authority G.S. 122C-112 7(a)(6); 122C-131; 122C-150; 20 USC 1471.

TITLE 11 - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Department of Insurance intends to amend rule(s) cited as 11 NCAC 6A .0101, .0212, .0215 - .0216, .0219, .0221, .0223, .0236, .0301, .0304 - .0306, .0402 - .0405, .0408, .0410, .0412 - .0413, .0501 - .0503, .0505 - .0506, .0601 - .0602, .0701 - .0706; repeal rule(s) cited as 11 NCAC 6A .0406 - .0407; and adopt rule(s) cited as 11 NCAC 6A .0414 - .0415.

The proposed effective date of this action is October 1, 1990.

The public hearing will be conducted at 10:00 a.m. on July 9, 1990 at Third Floor Hearing Room, Dobbs Building, 430 N. Salisbury Street, Raleigh, N.C. 27611.

Comment Procedures: Written comments may be sent to Shirley Williams, Agent Services Division, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Shirley Williams at (919) 733-7487, or Ellen Sprengel at (919) 733-4700.

CHAPTER 6 - AGENT SERVICES DIVISION

SUBCHAPTER 6A - AGENT SERVICES DIVISION

SECTION .0100 - GENERAL PROVISIONS

.0101 DEFINITIONS

In this Chapter, unless the context otherwise requires:

- (1) "Agent Services Division" or "Division" shall mean the Agent Services Division of the North Carolina Department of Insurance, the Division responsible for the licensing, education and regulation of agents and other licensees.
- (2) "Company" shall mean any insurance company properly licensed to do business in this state and shall further be defined as in ~~G.S. 58-2(3).~~ G.S. 58-1-5(3).
- ~~(3) "Home State" or "State of Residency" shall mean the state in which the licensee is responsible for payment of state income tax, would be under judicial authority in event of criminal action or would be eligible to vote in a general election.~~
- (3) ~~(4)~~ "Professional Testing Service" or "Service" shall mean the organization specializing in the development and administration of licensing examinations on a contract basis.
- ~~(4) (5)~~ "State Licensing Examination" or "Examination" shall mean a collection of ~~questions~~ items designed to test the applicant's knowledge of the basic concepts, principles and laws relevant to the insurance profession to determine the competence to be licensed in North Carolina.
- ~~(5) (6)~~ The singular shall include the plural and the masculine shall include the feminine wherever appropriate.

Statutory Authority G.S. 58-2-40; 58-33-30(e)(h).

SECTION .0200 - DESCRIPTION OF FORMS

.0212 LICENSES

All licenses shall include the name of the licensee, type of license, kind of insurance covered by the license, date of issuance, name of company represented, if applicable, geographic area covered, and terms of the license. In addition, all licenses shall bear the signature of the Commissioner.

Statutory Authority G.S. 58-2-40; 58-33-25(1).

.0215 RESIDENT BROKER APPLICATION

The "Resident Broker Application" shall include personal information, license fee, signature

of the applicant and other information to aid the Division in determining the qualification of the applicant. ~~This form is used for both new and renewal applicants.~~

Statutory Authority G.S. 58-33-25(n); 58-33-30(a); 58-33-30(h)(1).

.0216 NONRESIDENT BROKER APPLICATION

The ~~Non Resident~~ "Nonresident Broker Application" shall include personal information, license fee, signature of the applicant and other information to aid the Division in determining the qualification of the applicant and must be accompanied by a Home State Certification. ~~This form is used for both new and renewal applicants.~~

Statutory Authority G.S. 58-33-25(n); 58-33-30(a); 58-33-30(h)(2).

.0219 APPLICATION TO DETERMINE ELIGIBILITY FOR DESIGNATED AGENT

The "Application to Determine Eligibility for Designated Agent" shall include the name and address of the agent, ~~and evidence that the agent has satisfied the statutory requirements set out in G.S. 58-218-33(g)(6), G.S. 58-37-35(g)(6) and other information to aid the Division in determining the qualification of the applicant.~~ The form must be signed by the applicant and notarized.

Statutory Authority G.S. 58-2-40; 58-37-35(g)(6).

.0221 CANDIDATE GUIDE

The "Candidate Guide Application" shall require the applicant to provide personal information, type of examination to be taken, signature of authorized company representative when applicable, and other information to aid the Division in determining if the applicant is qualified to take the examination for which he is applying. The guide shall be made available through the Division and provided upon written request and appropriate fee.

Statutory Authority G.S. 58-33-30(a).

.0223 NORTH CAROLINA LIMITED REPRESENTATIVE APPLICATION

The "North Carolina Limited ~~Insurance~~ Representative Application" shall include personal information, type of license applied for, company number, signature of the applicant and the authorized company representative, and other information to aid the Division in determining

what license should be issued and if the applicant is qualified for that license.

Statutory Authority G.S. 58-33-30(a).

.0236 APPLICATION FOR CORPORATE/ PARTNERSHIP INSURANCE LICENSE

The "Application for Corporate Partnership Insurance License" shall contain pertinent information concerning the corporation partnership and other information that is relevant in aiding the Division in determining if the applicant meets eligibility requirements for licensing. The application must be signed ~~by all officers, partners~~ and notarized. ~~This form is used for both new and renewal applicants.~~

Statutory Authority G.S. 58-33-25(h); 58-33-30(a).

SECTION .0300 - EXAMINATIONS

.0301 TYPES OF EXAMINATIONS

Types of examinations administered for licensing are life, accident and health; accident and health; fire and casualty; auto physical damage; adjusters; hail adjusters; ~~hospital; dental;~~ title; and surplus lines. Additional examinations may be created and administered at the discretion of the Commissioner.

Statutory Authority G.S. 58-21-65(b)(3); 58-33-30(e).

.0304 RESPONSIBILITY OF APPLICANT AT EXAMINATION SITE

Applicants are responsible at the examination site for the following:

- (1) Applicants who have pre-registered and who have not previously failed the same examination must bring to the examination site the ticket of admission and two forms of proof of identity, one of which must be photo bearing.
- (2) Applicants who wish to take the examination on a walk-in basis and who have not previously failed the same examination must bring to the examination site a properly completed application, two forms of proof of identity, one of which must be photo bearing, and proper fees.
- (3) Applicants who have previously failed an examination may retake the examination in accordance with instructions furnished by the Commissioner and must pay applicable fees for each administration.
- (4) Examination fees must be paid by company check, certified check, ~~cashier's check~~ or money order, made payable to the Service.

- (5) Applicants taking the life, accident and health, accident and health or fire and casualty examination are required to bring to the examination site a ~~prelicensing course completion certificate~~ "Certificate of Prelicensing Course Completion" indicating that the applicant has successfully completed the mandatory prelicensing education requirements as specified in ~~G.S. 58-615(d)(2)~~. G.S. 58-33-30(d)(2). The ~~prelicensing course completion certificate~~ "Certificate of Prelicensing Course Completion" is valid for 12 months from the date of course completion. A "Certificate of Prelicensing Course Completion" is valid for 60 days from the date of issue for those waiving the prelicensing education requirement.
- (6) No applications will be supplied at the examination site for completion by applicants; nor will required supplies be furnished to applicants.
- (7) Applicants must arrive at the examination site at the time specified in the current examination schedule.

Statutory Authority G.S. 58-33-30(d)(2); 58-33-30(e); 58-33-125.

.0305 ADMINISTRATION OF EXAMINATION

Applicants should expect the examination to be administered using, among others, the following procedures:

- (1) Applicants shall present to the test site personnel upon request the applicable items described in 11 NCAC 6A .0304 (1) through (7).
- (2) Applicants should follow carefully all instructions given by the examination proctors, particularly when completing the answer sheet.
- (3) Applicants are not permitted to take calculators, textbooks, other books or papers into the examinations. Applicants found to have any of these materials or other aids will not be allowed to continue the examination.
- (4) The answer sheets must contain only identification data and responses to exam questions. No credit will be given to any applicant for any marks or answers made in the examination booklet.
- (5) Applicants may leave the examination room only after obtaining permission from the examination proctors and handing in exam materials. No extra time will be allowed for completing the examination.
- (6) Any applicant who gives or receives assistance during the examination will be required to turn in all exam materials immediately

and leave the room. Under these circumstances, the applicant's answer sheet will not be scored and the relevant facts will be reported by the proctors to the Commissioner.

- (7) An applicant may take only one examination on any given exam date.

Statutory Authority G.S. 58-33-30(e).

.0306 APPLICATION FOR EXAMINATION

Application for examination and licensure must be postmarked no later than the published filing deadline for applicants who wish to pre-register to take the examination. A separate application for examination and licensure must be made for each ~~examination~~. kind of insurance for which an individual wishes to be examined.

Statutory Authority G.S. 58-33-30(e).

SECTION .0400 - LICENSING PROCEDURES

.0402 LICENSING OF RESIDENT AGENT, LTD REPRESENTATIVE/ADJUSTER

(a) Applicants must meet minimum qualifications as stated in ~~G.S. 58-615 of the General Statutes of North Carolina~~. G.S. 58-33-30.

(b) An applicant for a license agent licensed to sell life, accident and health has authority to sell variable contracts must follow additional procedures as outlined in 11 NCAC 6A .0406, provided the agent is licensed to sell securities through the Secretary of State, holds a current NASD registration, (series 6 or 7 and 63) and is appointed by a company authorized to sell variable annuities and variable life products in North Carolina. The company is responsible for verifying that the agent has met all NASD requirement.

(c) A limited representative must be licensed with each company for which he will solicit business. No solicitation shall begin by the applicant until he has received such license.

(d) Responsibility of ~~company~~ companies for forms and fees:

- (1) Companies shall make application for limited representatives and company firm adjusters to be licensed.
- (2) Companies shall have on file with the Division the address of one central licensing office and the individual within such office to which all correspondence, licenses, and invoices will be forwarded.
- (3) Companies shall have on file with the Division a list of persons authorized to make application for the issuance and termination of licenses, and to submit the name of the individual responsible for all agent

- appointments, ~~and~~ termination of agent appointments and agent license applications submitted by the company to the Division.
- (4) ~~The companies~~ Companies shall submit to the Division company checks for the proper amount due.
- (e) Responsibility of the agent:
- (1) An applicant who is subject to the examination shall submit to the Service the candidate guide application along with a company check, certified check, cashier's check or money order in the appropriate amount.
- (2) An agent shall be responsible for verifying licensure to a company prior to being appointed.
- (3) A person, after surrender or termination of a license for such period of time that he is no longer eligible for waiver of the examination, shall meet all legal requirements for previously unlicensed persons.
- (4) Any licensee licensed under Chapter 58, Article 33 of the North Carolina General Statutes shall notify the Division in writing of any change of residence or business address within 30 days of such change.
- (5) An agent whose license terminates because of inactivity shall be allowed to reapply within two years after the license terminates without having to meet education and examination requirements. If the agent's license terminates a second time as a result of continued inactivity, the agent upon application shall be required to meet all education and examination requirements.
- (f) Responsibility of the service:
- (1) The service shall administer the examination for life, accident and health; fire and casualty; automobile physical damage; adjusters; hail adjusters; ~~hospital service;~~ title; accident and health; ~~dental service;~~ and surplus lines.
- (2) The service shall issue pass or fail notices for each examination administered, without reference to numeric scores, within two weeks of testing.
- (3) The service shall notify the Division of score reports for all examinations administered, within one week of testing.
- (4) The service shall meet the requirements of its contract with the Commissioner in a timely manner.
- (g) Responsibility of the Division:
- (1) Upon receipt of score reports from the service, the Division shall issue appropriate licenses to qualified applicants.

- (2) For eligible applicants, the Division shall issue a 90-day temporary license. that is valid pending successful completion of the examination. If an applicant who holds a valid temporary license fails the examination, the Division shall notify the company and the applicant and shall terminate the temporary license. For additional information refer to 11 NCAC 6A .0410.

(h) An applicant for a resident license shall, if applicable, obtain a an original letter of clearance from his former state of residency certifying the kinds of insurance for which the applicant was licensed, that the applicant qualified by written examination, that all licenses held in that state have been cancelled and that the applicant was in good standing in that state at the time of the cancellation of licenses. A letter of clearance shall be valid for no more than 60 days from date of issuance.

Statutory Authority G.S. 58-33-30; 58-33-65.

.0403 LICENSING: NONRESIDENT AGENT, LTD REPRESENTATIVE/ADJUSTER

(a) An applicant must meet minimum qualifications as stated in G.S. 58-615, G.S. 58-33-30, except those pertaining to residency.

(b) A ~~non-resident~~ nonresident applicant must submit appropriate forms, along with a company check, certified check, cashier's check or money order, and a an original letter of certification from the applicant's state of residency stating that he is duly licensed for the same kind of insurance for which he is applying. A letter of certification shall be valid for no more than 60 days from date of issuance.

Statutory Authority G.S. 58-33-30(a),(h)(2).

.0404 LICENSING OF RESIDENT BROKER

(a) An applicant must be a duly licensed agent in North Carolina and have an appointment with at least one company for each kind of insurance to be brokered.

(b) A broker's license gives the holder authority to broker only those kinds of insurance for which he holds an agent's license and company appointment. Brokering must be done through a licensed and appointed ~~resident~~ agent of the company with which the business is being placed. A broker's licenses does not confer binding authority; it only gives authority to share in commissions with a writing agent.

(c) In addition to all required forms, an applicant must submit a company check, certified check, cashier's check or money order, made

payable to the N.C. Department of Insurance, in the amount set forth in G.S. 58-33-125(a).

(d) Each applicant shall file with his application the bond required by statute.

Statutory Authority G.S. 58-33-30(f),(h)(1).

.0405 LICENSING OF NONRESIDENT BROKER

(a) In addition to all required forms, an applicant must submit a company check, certified check, cashier's check or money order made payable to the N.C. Department of Insurance, in the amount set forth under ~~G.S. 58-634(a)~~ G.S. 58-33-125(a).

(b) A ~~non resident~~ nonresident broker's license gives the holder authority to broker only those kinds of insurance for which he holds a license as an agent in his state of residency.

(c) Each applicant shall file with his application the bond required by statute.

(d) A ~~non resident~~ nonresident broker must submit ~~a~~ an original home state certification with his application stating the kinds of insurance for which he is licensed in his state of residency, and whether he is in good standing in his state of residency. A letter of certification shall be valid for no more than 60 days from date of issuance.

(e) ~~Non resident~~ A nonresident broker may not solicit directly or indirectly, but ~~they~~ he may participate in commissions of brokered business. Brokering must be done through a licensed and appointed ~~resident~~ agent of the company with which the business is being placed.

Statutory Authority G.S. 58-33-30(f),(h)(2); 58-33-125(a).

.0406 LICENSING OF RESIDENT VARIABLE CONTRACT LTD REPRESENTATIVE (REPEALED)

.0407 LICENSING/NONRESIDENT VARIABLE CONTRACT LTD REPRESENTATIVE (REPEALED)

Statutory Authority G.S. 58-614(e)(1); 58-615.

.0408 LICENSING OF MOTOR VEHICLE DAMAGE APPRAISER

(a) The applicant must submit the appropriate forms along with a company check, certified check, cashier's check or money order in the proper amount to the Division. The applicant must meet all other relevant requirements of ~~G.S. 58-615 and 58-614(e)~~ G.S. 58-33-30 and 58-33-10(e).

(b) In addition to all required forms and fees, an applicant for a ~~non resident~~ nonresident motor vehicle damage appraiser license shall submit

a home state certification stating that the applicant is duly licensed for the same kind of insurance for which he is applying. A letter of certification shall be valid for no more than 60 days from date of issuance.

Statutory Authority G.S. 58-33-10(e); 58-33-30.

.0410 TEMPORARY LICENSE

(a) A temporary license is available only to persons described in ~~G.S. 58-622(a)~~ G.S. 58-33-65(a).

(b) The company shall submit to the Division the application for temporary license at the same time the applicant forwards the candidate guide application to the service.

(c) Successful completion of the examination within 90 days from the date a temporary license is issued will cause the temporary license to be changed to a permanent license.

(d) Unsuccessful completion of, or failure to take the examination within 90 days from the date a temporary license is issued, will cause immediate cancellation of the temporary license. The company shall return the temporary license to the Division immediately.

(e) Applicants for temporary license ~~due to hardship under G.S. 58-33-65(a)(1),(2) will follow the procedures outlined in~~ NCAC 6A .0402 this Rule. In addition, an authorized company official shall send a letter to the Division requesting a temporary license and stating the reason applicant is applying.

Statutory Authority G.S. 58-33-65.

.0412 APPOINTMENT OF AGENT: RESPONSIBILITY OF COMPANY

Companies shall be responsible for investigating an agent prior to appointing the agent. The company shall determine that each agent holds the proper license for each kind of authority for which such agent will be appointed. A company's investigation of an agent shall give due consideration to the provisions of ~~G.S. 58-615(e)~~ G.S. 58-33-30(c) concerning character, competence and trustworthiness. The appointing company shall inquire of agents information relevant to the grounds for license suspension or revocation set forth in ~~G.S. 58-618(a)~~ G.S. 58-33-45(a). The "Appointment of North Carolina Agent" form must be received by the Division within 30 days of the appointment.

Statutory Authority G.S. 58-33-40.

.0413 LICENSING OF CORPORATION/ PARTNERSHIPS

(a) An applicant must meet minimum qualifications as stated in ~~G.S. 58-615~~, G.S. 58-33-30.

(b) An applicant shall submit application forms with a company check, certified check, cashier's check or money order.

(c) A corporation making first time application and domiciled in North Carolina shall provide proof of corporate status by submitting a copy of its Articles of Incorporation certified by the North Carolina Secretary of State.

(d) A foreign corporation making first time application shall provide proof of corporate status by submitting a copy of its application for Certificate of Authority certified by the North Carolina Secretary of State.

(e) A partnership making first time application shall submit a copy of the filing with the county clerk's office where the partnership business is being conducted. This copy shall be certified by the county clerk or a notary public.

(f) Applicant shall file with the Department Division a list of all companies contracted with the firm along with the names and social security numbers of the agents representing each company.

(g) Any addition or deletion of an agent or company shall be submitted ~~in writing on a form prescribed by the Commissioner~~ within 30 days of any such change in the corporate representation.

~~(h) The "Corporation Partnership Application" shall bear the signatures of all officers of the corporation or partners of the partnership.~~

Statutory Authority G.S. 58-33-30.

.0414 ADJUSTER'S LEARNER'S PERMIT

A request for an adjuster's learner's permit must be made in writing and accompanied by an "Adjuster and Appraiser N.C. License Application". The request must be made by an authorized company or independent adjusting firm. The applicant must have registered to take the North Carolina adjuster's examination prior to applying for a learner's permit. The permit is valid for 90 days from date of issuance. Only one permit will be given to any individual.

Statutory Authority G.S. 58-33-70.

.0415 LICENSING OF RENTAL CAR COMPANIES' EMPLOYEES/ REPRESENTATIVES

(a) An employee or other representative of a rental car company who solicits or sells personal accident insurance (P.A.I) or personal effects coverage (P.E.C) in connection with a rental agree-

ment shall be licensed as a limited representative for travel, accident and baggage insurance.

(b) An employee or other representative of a rental car company who solicits or sells limited liability supplement insurance (LIS) in connection with a rental agreement shall be licensed as an agent for fire and casualty insurance.

Statutory Authority G.S. 66-205.

SECTION .0500 - RENEWAL AND CANCELLATION OF LICENSES

.0501 RENEWAL/AGENT APPTS: LICENSES/ LIMITED REPS: COMPANY ADJUSTERS

(a) Annually the Division will ~~provide to each company a list of appointees and licensees. notify each company of dates and procedures for renewing agent appointments and limited representative and adjuster licenses. Following instructions accompanying such list, the company shall indicate all appointments and licenses which are to be terminated. Each list shall be returned no later than the date specified by the instructions.~~ Companies will be given at least 30 days' advance notice of the last date the Division will process terminations.

(b) On the date specified by the Division as the last date to submit terminations, the Division shall cease processing all terminations and bill companies for renewals. All appointments and licenses will automatically be renewed unless the Division has received a termination request from the company within the specified time.

(c) Each company will be sent an invoice stating the total amount of money due. Companies shall remit a check made payable to the North Carolina Department of Insurance in the amount of the invoice. Any discrepancies claimed by companies will be adjusted investigated only after full payment is received.

(d) Upon receipt of the company check, the Division will mail to the company a list of all appointments and licenses renewed.

(e) Appointments recorded and licenses issued prior to the renewal date, but after the date specified by the Division as the last date to process termination will be considered valid until the following year.

(f) Annually the Division will, upon written request and payment of prescribed fee, provide to any company a list of all appointees or licensees.

Statutory Authority G.S. 58-33-55.

.0502 RENEWAL OF BROKERS' LICENSES

(a) The Division will mail to all brokers a "Resident Broker Application" or "Non-

~~Resident Broker Application," whichever is the appropriate renewal application.~~

(b) Brokers shall complete the form and return it to the Division by the date specified.

(c) Brokers shall submit the proper renewal fee as stated in ~~G.S. 58-634~~ G.S. 58-33-125(a). An agency check, company check, certified check, cashier's check or money order must be made payable to the North Carolina Department of Insurance.

(d) Broker bonds must be in force at the time of renewal.

Statutory Authority G.S. 58-33-30(f); 58-33-125.

**.0503 RENEWAL: SELF-EMPLOYED
ADJUSTER: MOTOR VEHICLE
DAMAGE APPR**

The Division will mail an appropriate renewal form to the self-employed adjuster or motor vehicle damage appraiser and will specify the last date that the Division will accept renewals. The renewal form and appropriate renewal fee as specified in ~~G.S. 58-634~~ G.S. 58-33-125(a) must be submitted to the Division within the time allowed. An adjusting company check, certified check, cashier's check or money order must be made payable to the North Carolina Department of Insurance.

Statutory Authority G.S. 58-33-25(n); 58-33-125.

**.0505 CANCELLATION/LICENSES FOR
LIMITED REPS AND COMPANY
ADJUSTERS**

(a) Any company wishing to cancel the license of any of its limited representatives or adjusters shall

~~(1) Submit~~ submit the N.C. Notice of Cancellation to the Division within 30 days of the date on which limited representative's or adjuster's employment with the company was terminated.

~~(2) Send the license to the Division with the notice of cancellation. If the license cannot be located, the company must furnish the Division with an affidavit stating the reason for the license not being returned.~~

~~(3) For cancellation other than at the renewal date, submit notice of cancellation within 30 days of the date on which the limited representative's or adjuster's employment with the company was terminated.~~

(b) It is the company's responsibility to retrieve and destroy any license issued in its name to any limited representative or adjuster terminated by such company.

Statutory Authority G.S. 58-33-55.

**.0506 CANCELLATION OF LICENSES
ISSUED TO INDIVIDUALS**

(a) An agent, broker, adjuster or motor vehicle damage appraiser desiring to cancel a license shall submit a notarized written request to the Division and return the license to the Division. If the license cannot be located, the licensee must furnish a statement explaining the reason for not returning the license.

(b) Cancellation of a license will automatically terminate all appointments for the kind of authority covered by such license.

Statutory Authority G.S. 58-33-40(e); 58-33-50.

SECTION .0600 - DENIAL OF LICENSE

.0601 BASIS FOR DENIAL OF LICENSE

For purposes of determining that a licensee has committed forgery under ~~G.S. 58-618(a)(12)~~ G.S. 58-33-45(a)(12) an "Application for Insurance" shall be considered to be the application form, underwriting form and any policy servicing or claim form that affects any funds, rights or privileges of the policyowner, beneficiary or insured.

Statutory Authority G.S. 58-33-45.

**.0602 COURT RECORDS AND AFFIDAVITS
REQUIRED**

An individual who has been convicted of a misdemeanor involving moral turpitude, or a felony, shall submit to the Division the following information with ~~applications~~ the application for ~~license~~ licensure and examination:

- (1) a copy of the entire court record judgment, including a complete criminal history check;
- (2) a copy of unconditional release ~~and~~ or unconditional discharge from the Board of Paroles, where applicable, on the forms provided by the North Carolina Department of Correction;
- (3) if the applicant or licensee is currently employed or expects to be employed by an insurer, agency, company or firm in the business of insurance, the applicant or licensee shall submit a letter from such employer or potential employer stating that the applicant or licensee has disclosed to the employer information concerning the conviction;
- (4) a notarized affidavit from the applicant concerning the conviction;
- (5) when applicable, a statement from the applicant's probation officer;
- (6) any additional supportive information ~~which~~ that the Division deems necessary and proper.

Statutory Authority G.S. 58-33-45(a)(8).

SECTION .0700 - PRELICENSING EDUCATION

.0701 GENERAL REQUIREMENTS

(a) This Section applies to individuals attempting to obtain a resident license to solicit life, accident and health, ~~and-or~~ fire and casualty or accident and health insurance in North Carolina except as specifically exempted by 11 NCAC 6A .0701 (b) ~~through (e), and (c).~~

(b) The following individuals applying for a life, accident and health ~~and-or~~ fire and casualty license shall be exempt from the provisions of this Section:

- (1) An individual licensed in North Carolina for life, accident and health ~~and-or~~ fire and casualty insurance within 24 months preceding the date of application for a new license in that kind of insurance; ~~or~~
- (2) An individual licensed in another state for life, accident and health ~~and-or~~ fire and casualty insurance within 24 months preceding the date of application for a new license in that kind of insurance, upon furnishing a letter of clearance certifying same and that such license was granted upon passing a written examination given by an insurance department of a state. A letter of clearance is valid for six months from its date of issuance.

(b) Individuals who are exempt from the requirement for a written examination pursuant to G.S. 58-33-35(1), (3), and (4) are exempt from prelicensing education requirements.

(c) The following individuals applying for a life, accident and health license shall be exempt from the provisions of this Section:

- (1) Chartered Financial Consultant (ChFC); ~~or~~
- (2) Chartered Life Underwriter (CLU); ~~or~~
- (3) Fellow of Life Management Institute (FLMI); ~~or~~
- (4) Life Underwriter Training Council Fellow (LUTCFL).

(d) Individuals applying for a fire and casualty license who are Chartered Property and Casualty Underwriters (CPCU) shall be exempt from the provisions of this Section.

(c) (e) The following individuals applying for a life, accident and health ~~and-or~~ fire and casualty license shall be exempt from the provisions of this Section but are required to take the examination: Individuals who satisfy the following are exempt from prelicensing education requirements:

- (I) Life, accident and health:

- (A) Certified Employee Benefits Specialist (CEBS); or
- (B) Fraternal Insurance Counselor (FIC); or
- (C) Life Underwriter Training Council Graduate (LUTC Graduate); or
- (D) Certified Financial Planner (CFP). ~~or~~
- (~~F~~) ~~Holder of degree in insurance (associate or bachelors).~~
- (2) Fire and casualty:
 - (A) Accredited Advisor in Insurance (AAI); or
 - (B) Associate in Claims (AIC); or
 - (C) Associate in Insurance Accounting and Finance (AIAF); or
 - (D) Associate in Premium Auditing (APA); or
 - (E) Associate in Risk Management (ARM); or
 - (F) Associate in Underwriting (AU); or
 - (G) Certified Insurance Counselor (CIC); or
 - (H) Holder of Certificate in General Insurance (INS). ~~or~~
 - (~~I~~) ~~Holder of degree in Insurance (Associate or Bachelors).~~
- (3) Accident and health:
 - (A) Associate in Life and Health Claims (ALHC); or
 - (B) Certified Employee Benefits Specialist (CEBS); or
 - (C) Holder of Health Insurance Association of America Certificate; or
 - (D) Registered Health Underwriter (RHU).
- (4) Life, accident and health, fire and casualty and accident and health:
 - (A) Holder of degree in insurance (associate or bachelors); or
 - (B) An individual whose license in another state or jurisdiction for the same kind of insurance as that for which applied has been cancelled within 60 days of the Division's receipt of the letter of clearance and the individual's request for waiver of prelicensing education; or
 - (C) An individual who is currently licensed in another state or jurisdiction for the same kind of insurance as that for which applied.

(d) If an applicant exempted from prelicensing education under the provisions of Rule .0701(c) 11 NCAC 6A .0701(c) fails the examination, the applicant must successfully meet North Carolina's mandatory prelicensing education requirement prior to retaking the examination.

(c) (~~F~~) In this Section, unless otherwise noted the following definitions will apply:

- (1) "Assistant Instructor" shall mean an approved instructor in a classroom school who is responsible for the presentation of lesson plans to assure that the outline is taught to that school's students. The assistant instructor shall be supervised by the school's appropriate lead instructor and program director.
- (2) "Classroom School" shall mean an entity that provides prelicensing education sponsored by a company, agency, association or educational institution through instruction by either a lead or assistant instructor utilizing a teaching curriculum based on the outline.
- (3) "Correspondence Course" shall mean home, self, individual, or correspondence study utilizing programmed text instructions.
- (4) "Correspondence School" shall mean an entity that provides prelicensing education sponsored by a company, agency, association or educational institution through completion of a correspondence course ~~which that~~ has been approved by the Commissioner, with students individually supervised by an approved proctor.
- (5) "Instructional Hour" shall mean a 60-minute hour.
- (6) ~~(5)~~ "Lead Instructor" shall mean an approved instructor in a classroom school who is responsible for preparation and presentation of lesson plans to assure that the outline is taught to that school's students and who prepares a final course examination. The lead instructor shall direct and supervise teaching by an assistant instructor.
- (7) ~~(6)~~ "Outline" shall mean the North Carolina Instructors Life, Accident and Health and or Fire and Casualty Outline instructor/examination content outlines prepared and published by the Department in the "State of North Carolina Insurance Licensure Examination Candidate Guide".
- (8) ~~(7)~~ "Proctor" shall mean an individual approved by the Commissioner to assist and supervise students in the completion of an approved correspondence course.
- (9) ~~(8)~~ "Program Director" shall mean the individual associated with an approved classroom or correspondence school who is responsible for the administration of that school according to 11 NCAC 6A .0702 ~~(4)~~ (1).

.0702 PRELICENSING EDUCATION SCHOOLS

(a) This Rule applies to all classroom and correspondence schools offering a prelicensing course prescribed by General Statute ~~58-615, 58-33-30~~. All schools desiring to conduct a prelicensing course shall be approved by the Commissioner prior to commencement of the courses.

(b) A school seeking approval to conduct a prelicensing course shall make written application to the Commissioner upon a form prescribed by the Commissioner.

(c) After due investigation and consideration, approval shall be granted to the school when it is shown to the satisfaction of the Commissioner that:

- (1) the school has submitted all information required by the Commissioner;
- (2) the course to be conducted complies with ~~Rule .0704 of this Section;~~ 11 NCAC 6A .0704;
- (3) the instructor or proctor for the course has been approved by the Commissioner in accordance with ~~Rule .0705 or .0706 of this Section;~~ 11 NCAC 6A .0705 or .0706; and
- (4) the program director has been approved by the Commissioner in accordance with ~~Rule .0703 of this Section;~~ 11 NCAC 6A .0703.

(d) The following guidelines shall apply to the approval of classroom and correspondence schools:

- (1) Approval extends only to the course and location reported in the application for approval.
- (2) Approval shall terminate on June 30 next following the date of issuance.
- (3) A school must renew annually its approval to conduct prelicensing courses by submitting an application for approval not later than May 31 of each year.
- ~~(4) Any school that does not conduct at least one Prelicensing course during the 24 months preceding application for renewal shall be deemed ineligible for approval.~~

(e) The Commissioner shall deny, ~~withdraw~~ revoke or suspend approval of any school upon finding that:

- (1) the school has refused or failed to comply with any of the provisions of ~~Rules .0702, .0703, .0704, .0705, or .0706 of this Section;~~ 11 NCAC 6A .0702, .0703, .0704, .0705 or .0706; or
- (2) any school official or instructor has obtained or used, or attempted to obtain or use, in any manner or form, examination questions; or

Statutory Authority G.S. 58-33-30(d); 58-33-35.

- (3) the school's students have a licensing examination performance record that is determined by the Commissioner to be substantially below the performance record of all first-time examination candidates; or
 - (4) the school has not conducted at least one preclicensing course during any 24-month period; or
 - (5) the school has refused or failed to submit information or properly-completed forms prescribed by the Commissioner within the required time frames.
- (f) In all proceedings to ~~withdraw or~~ deny, revoke or suspend approval of a school, the provisions of Chapter 150B of the General Statutes shall be applicable.
- (g) When a school's approval is discontinued, the procedure for reinstatement shall be to apply as a new school, with a statement of the reasons that the school is now eligible for reconsideration. The Commissioner may require an investigation before new approval is granted.
- (h) If a school's approval has been suspended upon the Commissioner's finding that the school has not conducted at least one preclicensing course during any 24-month period, that school may reapply after one year of suspension. At such time, the school will be given 12 months to conduct at least one preclicensing course. If such course is not conducted, the school's authority will be suspended indefinitely.
- (i) ~~(4)~~ The following guidelines shall apply for changes during any approved year:
- (1) A school shall obtain advance approval from the Commissioner for any change of course location or change of instructors or proctors. Requests for approval of such changes shall be in writing.
 - (2) An approved school that intends to terminate its preclicensing program, other than during the annual renewal period, shall notify the Commissioner in writing.
 - (3) A school shall notify the Commissioner in writing of a change of textbook.
 - (4) A school shall notify the Commissioner in writing at the time an instructor or proctor resigns or ceases to be associated with the school.
- (j) ~~(4)~~ An approved school may utilize, for advertising or promotional purposes, examination performance data provided made available to the school by the Commissioner, provided that any data disclosed by the school shall be accurate, shall be presented in a manner that is not misleading, and shall:
- (1) be limited to the annual examination performance data for the particular school and for all examination candidates in the state;
 - (2) include the type of examination, the time period covered, the number of first-time candidates examined, and either the number or percentage of first-time candidates passing the examination; and
 - (3) be reviewed and approved by the Commissioner in writing prior to publication.
- (k) ~~(4)~~ A classroom school's facilities and equipment shall have been found by appropriate local building, heating and fire inspectors to be in compliance with all applicable local, state and federal laws and regulations regarding safety, sanitation, and access by handicapped persons.
- (l) ~~(4)~~ The school shall designate one person as the program director. The program director shall be responsible for administrative matters such as recruiting, evaluating and certifying the qualifications of instructors and/or proctors, program development, scheduling of classes, advertising, maintaining facilities and equipment, recordkeeping and general supervision of the preclicensing program.
- (m) ~~(4)~~ A school shall publish and provide to all preclicensing students prior to enrollment a bulletin or similar official publication of that school that contains the following information:
- (1) name of school and publication date;
 - (2) name of sponsor;
 - (3) all associated costs;
 - (4) detailed outline or description of all preclicensing courses offered.
- (n) ~~(4)~~ A school shall file with the Commissioner information giving exact dates, times, and locations for each scheduled preclicensing course. This information may be submitted either at the beginning of each quarter semester, or no later than one week prior to the first class meeting of each preclicensing course.
- (o) ~~(4)~~ Classroom schools shall retain the following material on file at one location for a minimum of three years:
- (1) class schedules;
 - (2) advertisements;
 - (3) bulletins, catalogues, and other official publications;
 - (4) grade reports;
 - (5) attendance records;
 - (6) master copy of each final course examination, indicating the answer key, the school name, course location, course dates and name of instructor; and
 - (7) list of student names, and with social security numbers, for each course, and the name of the Instructor; and
 - (8) student registration information.

All files shall be made available to the Commissioner upon request.

~~(p)~~ ~~(e)~~ Correspondence schools shall retain the following material on file at one location for a minimum of three years:

- (1) advertisements,
- (2) bulletins, catalogues and other official publications,
- (3) master copy of each final course examination, indicating the answer key,
- (4) grade reports, ~~and~~
- (5) a list of student names, ~~and with~~ social security numbers, for each course, and the name of the proctor, and
- (6) student registration information that must be obtained prior to the distribution of course material.

All files shall be made available to the Commissioner upon request.

~~(q)~~ ~~(p)~~ In the event of illness, injury or death of an instructor or proctor, the program director may utilize a non-approved instructor or proctor to complete a course. The school shall thereafter suspend operation of its preclicensing courses until an approved instructor or proctor is available.

Statutory Authority G.S. 58-33-30(d).

.0703 PROGRAM DIRECTORS

(a) All program directors shall be approved by the Commissioner in accordance with the provisions of this Section.

(b) A person desiring approval as a program director shall make written application to the Commissioner upon a form prescribed by the Commissioner.

(c) Applications must be endorsed by the president/chief operating officer of the sponsoring educational institution, company, agency or association. If the employing school is not currently approved by the Commissioner, an application for school approval should be submitted along with the application for program director approval.

(d) The Commissioner shall approve an applicant as a program director upon finding that the applicant is recommended by the president/chief operating officer of the sponsoring educational institution, company, agency or association has submitted all information required by the Commissioner, possesses good character and reputation, and: ~~possesses the qualifications described in this Paragraph:~~

- (1) Holds a baccalaureate or higher degree and has at least ~~two years~~ years of experience as an instructor of insurance or as an educational administrator; or

- (2) Holds a baccalaureate or higher degree and has at least six years of experience in the insurance industry with a minimum of two years of experience in insurance management; or

- (3) Possesses qualifications ~~which that~~ are found by the Commissioner to be substantially equivalent to those described.

(c) Program director approval shall be valid for an indefinite period, subject to future changes in laws or regulations regarding approval of program directors.

(f) The Commissioner shall deny, revoke, or suspend the approval of any program director upon finding that:

- (1) The program director fails to meet the criteria for approval provided by these regulations; or
- (2) The program director has failed to comply with any provisions of 11 NCAC 6A .0700; or
- (3) The program director's employment has been terminated by any sponsoring educational institution/company; or
- (4) The program director provided false information to the Commissioner when making application for approval; or
- (5) The program director has at any time had an insurance license denied, suspended or revoked by this or any other insurance department, or has ever been required to return a license while under investigation; or
- (6) The program director has obtained or used, or attempted to obtain or use, in any manner or form, examination questions; or
- (7) The program director has failed to utilize an acceptable level of performance in directing the insurance preclicensing program.

(g) In all proceedings to deny, revoke, or suspend approval, the provisions of Chapter 150B of the General Statutes shall be applicable.

(h) When a program director's approval is discontinued, the procedure for reinstatement shall be to apply as a new program director, with a statement of the reasons that he is now eligible for reconsideration. The Commissioner may require an investigation before new approval is granted.

(i) An approved program director shall inform the Commissioner of any change in program affiliation by filing an application for program director approval prior to directing a new program.

(j) Full-time faculty of fully accredited senior level colleges and universities who regularly teach

risk and insurance courses shall be deemed to meet the eligibility requirements of this Section.

Statutory Authority G.S. 58-33-30(d).

.0704 COURSES

(a) This Rule establishes minimum standards for life, accident and health, ~~and or~~ fire and casualty and accident and health prelicensing courses prescribed by General Statute ~~58-615~~ 58-33-30.

(b) Insurance prelicensing programs shall consist of ~~one or both~~ any of the following courses:

- (1) life, accident and health insurance;
- (2) fire and casualty insurance;
- (3) accident and health insurance.

(c) The maximum length of an approved prelicensing education course shall be at the discretion of the school. In no event shall a school offer a life, accident and health or fire and casualty course of ~~less~~ fewer than 40 hours or an accident and health course of fewer than 20 hours.

(d) The following requirements are course standards:

- (1) All courses shall consist of instruction in the subject areas covered in the outline.
- (2) Courses may also include coverage of related subject areas not prescribed by the Commissioner; however, such courses must provide additional class time, above the minimum requirement stated in Rule .0704(c) of this Section, for the coverage of such subject areas.
- (3) Prelicensing courses are intended for instructional purposes only and not for promoting the interests of or recruiting employees for any particular insurance agency or company.
- (4) Schools shall establish and enforce academic standards for course completion that reasonably assure that students receiving a passing grade possess adequate knowledge and understanding of the subject areas prescribed for the course. In any course for which college credit is awarded, the passing grade for such course shall be the same as the grade that is considered passing under the school's uniform grading system.
- (5) Schools shall conduct a final comprehensive course examination that covers all subject areas prescribed by the Commissioner for each course. ~~The time for this examination shall be in addition to the minimum 40 hours of instruction required.~~ Schools may allow a student to make up a missed examination or to retake a failed examination in accordance

with policies adopted by the school. No final examination ~~may be scheduled until the fifth day after the commencement of the course.~~ shall be given until a student has completed the instructional requirement.

- (6) Students shall attend a minimum of 40 hours of life, accident and health or fire and casualty instruction or a minimum of 20 hours of accident and health instruction. ~~Break time may~~ Time set aside for breaks, pop-tests, quizzes, the final comprehensive course examination and other non-instructional activities shall not count toward the 40 hour minimum instructional requirement. If a life, accident and health or property and casualty course is scheduled for 50 or more instructional hours, a student shall attend at least 80 percent of the total hours offered by the course.

(e) The following requirements shall be met for scheduling purposes:

- (1) Class meetings or correspondence courses shall be limited to a maximum of eight hours of instruction in any given day.
- (2) Classroom courses shall have fixed beginning and ending dates and may not be conducted on an open-entry open-exit basis.
- (3) Correspondence courses shall not have fixed beginning and ending dates and shall be conducted on an open-entry basis.

(f) The following shall apply to the use of text books:

- (1) Choice of classroom course text shall be at the discretion of each school.
- (2) Text books used in correspondence courses shall be approved by the Commissioner before use.

(g) All prelicensing classroom school courses shall be taught by instructors who have been approved by the Commissioner. A lead instructor must be designated for each course location.

(h) All prelicensing correspondence courses shall be monitored by proctors who have been approved by the Commissioner. A proctor shall be designated for each correspondence course student.

(i) The following certification of course completion procedures shall apply:

- (1) Schools shall furnish each student who successfully completes a prelicensing course an official certificate on a form prescribed by the Commissioner. A certificate shall not be issued to a student prior to completion of all course require-

ments and the passing of the course's comprehensive final examination.

- (2) A certificate of prelicensing course completion shall be issued for each course successfully completed by a student. A certificate presented at the examination site that indicates completion of more than one course shall be held invalid.
- (3) A certificate of prelicensing course completion shall be valid for access to the examination for 12 months. If an applicant for a license does not successfully pass the examination within 12 months, he shall again complete a prelicensing education course to be eligible for the examination.

Statutory Authority G.S. 58-33-30(d).

.0705 LEAD AND ASSISTANT INSTRUCTORS

(a) All lead and assistant instructors shall be approved by the Commissioner in accordance with the provisions of this Rule.

(b) A person desiring approval to teach prelicensing courses shall make written application to the Commissioner upon a form prescribed by the Commissioner.

(c) Applications must be endorsed by the program director of the employing school. If the employing school is not currently approved by the Commissioner, an application for school approval should be submitted along with the application for lead or assistant instructor approval.

(d) The Commissioner shall approve an applicant as a lead instructor upon finding that the applicant is recommended by an approved school, has submitted all information required by the Commissioner, possesses good character and reputation, and possesses the appropriate qualifications described in this Paragraph:

- (1) Life, accident and health:
 - (A) Chartered Life Underwriter (CLU); or
 - (B) Chartered Financial Consultant (ChFC); or
 - (C) Fellow Life Management Institute (FLMI); or
 - (D) Life Underwriter Training Council Fellow (LUTCF); or
 - ~~(F) Attorney (LLB or JD); or~~
 - ~~(E) (F)~~ Four years of experience as a full-time employee or representative interpreting or explaining insurance policy contracts in the life, accident and health industry and a designation as:
 - (i) Certified Employee Benefits Specialist (CEBS); or
 - (ii) Life Underwriter Training Council Graduate (LUTC Graduate); or

(iii) Fraternal Insurance Counselor (FIC); or

(iv) Certified Financial Planner (CFP); or

(v) Holder of degree in insurance (associate or bachelors); or

~~(F) (G)~~ Three years of experience teaching life, accident and health prelicensing courses; or

~~(G) (H)~~ Seven years of experience as a full-time employee or representative interpreting or explaining insurance policy contracts in the life, accident and health industry; or

~~(H) (I)~~ A combination of training, experience and qualifications that are substantially equivalent to those listed among ~~Rule .0705 (d)(1)(A) through (H) of this Section II NCAC 6A .0705(d)(1)(A) through (G)~~ to satisfy the Commissioner that the applicant is qualified.

(2) Fire and casualty:

(A) Chartered Property and Casualty Underwriter (CPCU); or

~~(B) Attorney (LLB or JD); or~~

~~(B) (C)~~ Four years of experience as a full-time employee or representative interpreting or explaining insurance policy contracts in the fire and casualty industry and a designation as:

(i) Associate in Underwriting (AU); or

(ii) Program in General Insurance (INS); or

(iii) Accredited Advisor in Insurance (AAI); or

(iv) Associate in Claims (AIC); or

(v) Associate in Risk Management (ARM); or

(vi) Certified Insurance Counselor (CIC); or

(vii) Associate in Premium Auditing (APA); or

(viii) Associate in Insurance Accounting and Finance (AIAF); or

(ix) Holder of degree in insurance (associate or bachelors); or

~~(C) (D)~~ Three years of experience teaching fire and casualty prelicensing courses; or

~~(D) (E)~~ Seven years of experience as a full-time employee or representative interpreting or explaining insurance policy contracts in the fire and casualty industry; or

~~(E) (F)~~ A combination of training, experience and qualifications that are substantially equivalent to those listed among ~~Rule .0705 (d)(2)(A) through (F) of this Section II NCAC 6A .0705(d)(2)(A)~~

through (D) to satisfy the Commissioner that the applicant is qualified.

(e) The Commissioner shall approve an applicant as an assistant instructor upon finding that the applicant is recommended by an approved school, has submitted all information required by the Commissioner possesses good character and reputation, has taken and passed the state examination within the most recent two years and possesses the appropriate qualifications described in this Rule:

- (1) Life, accident and health and/or accident and health insurance: three years of experience as a full-time employee or representative interpreting or explaining insurance policy contracts in the life, accident and health industry.
- (2) Fire and casualty insurance: three years of experience as a full-time employee or representative interpreting or explaining insurance policy contracts in the fire and casualty insurance industry.
- (3) Possesses qualifications that are found by the Commissioner to be substantially equivalent to those described in Subparagraphs (e)(1) and (2) of this Rule.

(f) An applicant for lead ~~and~~ or assistant instructor shall be approved for each course taught in the prelicensing curriculum.

(g) Approval of an instructor for a school shall continue until cancellation by that school's program director, resignation by the instructor, revocation or suspension by the Commissioner, or disapproval or termination of that school.

(h) The Commissioner shall deny, revoke, or suspend the approval of an instructor upon finding that:

- (1) The instructor fails to meet the criteria for approval provided by these regulations; or
- (2) The instructor has failed to comply with the Commissioner's regulations regarding prelicensing courses or schools; or
- (3) The instructor's employment has been terminated by any school approved by the Commissioner on the grounds of incompetence or failure to comply with institutional policies and procedures; or
- (4) The instructor provided false information to the Commissioner on any form or application; or
- (5) The instructor has at any time had an insurance license denied, suspended or revoked by this or any other insurance department, or has ever been required to return a license while under investigation; or

(6) The instructor has obtained or used, or attempted to obtain or use, in any manner or form, examination questions; or

(7) The instructor has failed to employ acceptable instructional principles and methods.

(i) In all proceedings to deny, revoke, or suspend approval of a lead or assistant instructor, the provisions of Chapter 150B of the General Statutes shall be applicable.

(j) When an instructor's approval is discontinued, the procedure for reinstatement shall be to apply as a new instructor, with a statement of reasons that he is now eligible for reconsideration. The Commissioner may require an investigation before new approval is granted.

(k) An approved instructor shall inform the Commissioner of any change in school affiliation by filing an application for instructor approval prior to instructing in the new school.

Statutory Authority G.S. 58-33-30(d).

.0706 PROCTORS

(a) All proctors shall be approved by the Commissioner in accordance with the provisions of this Rule.

(b) A person desiring to be approved as a proctor shall make written application upon a form prescribed by the Commissioner.

(c) Applications must be endorsed by the program director of the employing correspondence school. If the school is not currently approved by the Commissioner, the application for school approval should be submitted along with the application for proctor approval.

(d) The Commissioner shall approve an applicant to monitor correspondence courses as a proctor upon finding that the applicant is recommended by an approved school, has submitted all information required by the Commissioner, possesses good character and reputation, has provided evidence of successful completion of each correspondence course for which he is to be approved as proctor, and possesses the appropriate qualifications described in 11 NCAC 6A .0705(d)(1) and (2); ~~this Paragraph for each course for which approval is sought:~~

- (1) ~~Has three years' experience in the life, accident and health insurance industry to proctor life, accident and health insurance courses; or~~
- (2) ~~Has three years' experience in the fire and casualty insurance industry to proctor fire and casualty insurance courses;~~
- (2) ~~Possesses qualifications that are found by the Commissioner to be substantially~~

equivalent to those described in Subparagraphs (d)(1) and (2) of this Rule.

(e) An applicant shall be approved for each course proctored in the prelicensing curriculum.

(f) Approval of a proctor for a school continues until cancellation by that school's program director, resignation by the proctor, revocation or suspension by the Commissioner, or disapproval or termination of the school.

(g) A proctor's duties are prescribed by the Commissioner and a description may be obtained by writing to the North Carolina Department of Insurance, Agent Services Division, Prelicensing Education Section, Post Office Box 26267, Raleigh, North Carolina 27611.

(h) The Commissioner shall deny, revoke or suspend the approval of a proctor upon finding that:

- (1) The proctor fails to meet the criteria for approval provided by these regulations; or
- (2) The proctor has failed to comply with the Commissioner's regulations regarding correspondence courses or schools; or
- (3) The proctor's employment has been terminated by the school; or
- (4) The proctor provided false information to the Commissioner on any form or application; or
- (5) The proctor has at any time had an insurance license denied, suspended or revoked by this or any other insurance department, or has ever been required to return a license while under investigation; or
- (6) The proctor has obtained or used, or attempted to obtain or use, in any manner or form, examination questions; or
- (7) The proctor has failed to utilize an acceptable level of performance in overseeing a prelicensing course.

(i) In all proceedings to deny, revoke, or suspend approval of a proctor, the provisions of Chapter 150B of the General Statutes shall be applicable.

(j) When a proctor's approval is discontinued, the procedure for reinstatement shall be to apply as a new proctor, with a statement of reasons that he is now eligible for reconsideration. The Commissioner may require an investigation before new approval is granted.

(k) An approved proctor shall inform the Commissioner of any change in school affiliation by filing an application for proctor approval prior to proctoring in the new school.

Statutory Authority G.S. 58-33-30(d).

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Department of Insurance intends to amend rule(s) cited as 11 NCAC 10 .1103.

The proposed effective date of this action is October 1, 1990.

The public hearing will be conducted at 10:00 a.m. on July 3, 1990 at Third Floor Hearing Room, Dobbs Building, 430 N. Salisbury Street, Raleigh, N.C. 27611.

Comment Procedures: Written comments may be sent to Pete Murdza, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Pete Murdza at (919) 733-3284 or Ellen Sprenkel at (919) 733-4700.

CHAPTER 10 - FIRE AND CASUALTY DIVISION

SECTION .1100 - RATE FILINGS

.1103 WORKERS' COMPENSATION

The information required by ~~N.C.G.S. 58-124.20(h)~~ N.C.G.S. 58-36-15(h) shall be presented as follows:

Note: If data required by this Rule are not being collected or reported, or are not readily available to insurers prior to October 1, 1990, insurers shall commence collecting or reporting such data beginning January 1, 1992. If certain data are not regularly collected through the statistical plan, a special call for such data to companies whose aggregate workers' compensation written premium is at least three-fourths of the North Carolina premium may be substituted. Thereafter, such required data that have accrued shall be included in each filing until enough data are available to fully satisfy this Rule. If in addition to the full years of data specified in any of the below requests, this Rule, more recent data of less than a full year is available, that such data shall also be provided. If updates to the information specified in this Rule become available before the close of evidence relating to the filing, they shall also be provided.

- (f) North Carolina premium, loss earned premiums at the actual and current rate level; losses and loss adjustment expenses; expenses, each on paid and incurred bases without trending or other modification for the experience period, including the loss ra-

tio anticipated at the time the rates were promulgated for the experience period:

- (a) Include premium, loss, and loss adjustment expense data from all companies writing North Carolina workers' compensation insurance. ~~in North Carolina shall be included in the rate filing.~~ In addition, if exposures are used in the calculation of premiums at present rates, provide all available exposure data from these companies. If the experience of any company that ~~has~~ writes more than one percent of the North Carolina workers' compensation written premium ~~is has been~~ excluded from ~~the~~ any rate level, trend, loss development, or investment income calculations, identify ~~that~~ the company and its ~~marketshare~~ market share and provide an explanation for its exclusion. Also estimate the aggregate ~~marketshare~~ market share of other companies whose experience is excluded from ~~these such~~ calculations.
- (b) Include expense data from all companies writing North Carolina workers' compensation insurance. If the experience of any company of the ~~top~~ 50 largest (based on written premium) countrywide writers of workers' compensation insurance is excluded from any expense level calculations, identify ~~that~~ the company and its ~~marketshare~~ market share and provide an explanation for its exclusion. Also estimate the aggregate ~~marketshare~~ market share of other companies whose experience is excluded from such expense level calculations.
- (c) If any identifiable group of policies is excluded from the calculation of classification differentials, describe those policies, indicate their market share, ~~and their percentage of the market~~ and provide an explanation for their exclusion.
- (d) Clearly describe all adjustments to premiums, losses, loss adjustment expenses, expenses, and exposures included in the filing. Show the unadjusted amounts to which adjustments were made, identify the specific adjustments, provide details on the derivation and application of the adjustment factors, and describe all intermediate calculations.
- (c) ~~(d)~~ Premiums at current rate level shall be calculated. Whenever on level factors are used, show their derivation. Include actual earned premiums and calculate earned premiums at present rates. Also indicate how such calculations were

produced, supply supporting documentation for a sample of such calculations, and justify any aggregate factors used.

- (f) ~~(e)~~ The Estimate the amount of premium collected from the expense constant shall be estimated. constants. Provide this premium in dollars, and as a percentage of the standard earned premium, and as a percentage of net earned premium. If the percentage of premium collected in this manner is expected to change, estimate the extent of the change and provide the details of this estimation. calculation.
- (g) ~~(f)~~ The Estimate the amount of additional premium collected because of the minimum premium shall be shown. rule. Provide this premium in dollars, and as a percentage of standard earned premium, and as a percentage of net earned premium. If the percentage of premium collected in this manner is expected to change, estimate the extent of the change and provide the details of this estimation. calculation.
- (e) Earned premiums shall include premium collected from the specific disease loading. If disease loadings have been excluded, provide a justification.
- (h) Provide the The latest page 14 available written and earned premiums and ~~marketshares~~ market shares for the ten largest writers of North Carolina workers' compensation insurers in North Carolina shall be provided. insurance.
- (i) Provide composite loss and premium information from each of the latest two Annual Statements for which aggregate data are available for the 50 largest writers of North Carolina workers' compensation insurance, including the following:
 - (i) Underwriting and Investment Exhibit, Part 2, Line 16;
 - (ii) Underwriting and Investment Exhibit, Part 3, Line 16;
 - (iii) North Carolina Page 14, Line 16.
- (j) ~~(i)~~ The Provide to the extent possible the following information on companies deviating from Bureau the workers' compensation rates of the North Carolina Rate Bureau shall be included for each of the latest five available calendar years:
 - (i) A list of all deviating companies;
 - (ii) The estimated total standard premium written at deviated rates;
 - (iii) The estimated percentage of the entire statewide standard premium written at deviated rates;

- (iv) The total amount of deviations in dollars;
- (v) The average percentage deviation for deviating companies;
- (vi) The average percentage deviation for all companies.
- (k) ~~(j)~~ Provide to the extent possible the following information on company companies issuing dividends on North Carolina workers' compensation dividend practices shall be included policies for each of the latest five calendar years:
 - (i) A list of all companies issuing dividends;
 - (ii) The estimated total premium ~~from~~ of companies issuing dividends;
 - (iii) The estimated percentage of the entire statewide premium of companies issuing dividends;
 - (iv) The total amount of dividends in dollars;
 - (v) The average percentage dividend issued by companies issuing dividends;
 - (vi) The average percentage dividend issued by all companies.
- ~~(k)~~ Information from the Annual Statement on losses and premiums shall be included. Provide such information separately for the latest two Annual Statements for which aggregate data is available, including the following items on a composite basis for the top 50 workers' compensation insurers in North Carolina:
 - (i) ~~Page 14, Line 16;~~
 - (ii) ~~Part 2, Line 16;~~
 - (iii) ~~Part 3A, Line 16.~~
- (l) All policy year and accident year incurred loss data used in the filing shall be provided in the aggregate and also separated into paid losses, case incurreds, and incurred but not reported losses. Provide the following information on losses and loss adjustment expenses:
 - (i) For each of the latest three available accident and calendar years, undeveloped and untrended losses and loss adjustment expenses;
 - (ii) For each rate level implemented in the latest three calendar years, the expected loss ratios that were anticipated in the implemented rates;
 - (iii) For each accident and policy year included in the filing, paid losses, case basis reserves, loss development, incurred allocated loss adjustment expenses (if collected separately from losses), incurred unallocated (or combined allocated and unallocated) loss adjustment expenses,
 - applied trend factors, and trended incurred losses and loss adjustment expenses.
- (2) Credibility factor development and application. Provide all information related to the derivation of all credibility factors contained in the filing, including the following: All information relating to the selection of the credibility factors contained in the filing shall be provided including a complete description of the methodology used to derive the factors.
 - (a) A description of all data reviewed and all worksheets used;
 - (b) A complete description of the methodology used to derive these factors;
 - (c) A description of alternative methodologies used or considered for use in the last three years;
 - (d) A description of the criteria used to select a methodology;
 - (e) Specific details on the application of these criteria in the selection of a methodology for this filing;
 - (f) Details on the application of the methodology to this filing.
- (3) Loss development factor development and application on both paid and incurred bases and in both numbers and dollars of claims:
 - (a) Provide all information related to the derivation of all loss development factors contained in the filing, including the following:
 - (i) A description of all data reviewed and all worksheets used;
 - (ii) A complete description of the methodology used to derive these factors;
 - (iii) A description of alternative methodologies used or considered for use in the last three years;
 - (iv) A description of the criteria used to select a methodology;
 - (v) Specific details on the application of these criteria in the selection of a methodology for this filing;
 - (vi) Details on the application of the methodology to this filing.
 - (b) ~~(a)~~ So that loss development factors can be produced, the following loss data at successive evaluation dates shall be provided:
 - ~~(i)~~ At Provide at least the latest five available ~~five~~ years of the aggregate loss data described in Subparagraphs (3)(b)(i) through (iii) of this Rule for matching companies for all pairs of successive evaluation dates. Also provide the corresponding loss development factors and

- five-year average factors derivable from these data.
- (i) ~~(ii)~~ Data on both a policy year and an accident year basis;
 - (ii) ~~(iii)~~ Data separated into indemnity and medical only losses portions, as well as combined data;
 - (iii) ~~(iv)~~ Data separated into paid, case incurred, and incurred but not reported portions, as well as total losses; combined data;
 - (v) ~~Reported indemnity, medical only, and total claims for all years and evaluation dates for which loss information is provided.~~
- (c) Provide for each of the loss amounts in Subparagraph (3)(b) of this Rule, the corresponding earned premiums, paid claim counts, incurred claim counts, and outstanding claim counts.
- (d) ~~(b)~~ So that the different development patterns by type of injury can be traced, the following loss data and a description of its derivation shall also be included:
- (i) ~~At~~ Provide at least the latest ten available ten unit statistical policy years of the incurred loss data described in Subparagraphs (3)(d)(i) through (ii) of this Rule from the Unit Statistical Plan loss data for matching policies for all pairs of successive evaluation dates. Also provide the corresponding loss development factors and five-year average factors derivable from the data.
 - (ii) ~~Case incurred losses, number of claims, standard earned premium, and earned exposures;~~
 - (i) ~~(iii)~~ Losses separated into indemnity and medical losses; portions, as well as combined data;
 - (ii) ~~(iv)~~ Compensable claim experience Losses separated into deaths, permanent totals, major permanent partials, minor permanent partials, and temporary totals, and noncompensable medicals.
 - (v) ~~Current on-level benefit factors for each injury type split between indemnity and medical;~~
 - (vi) ~~For each policy year, the actual average wage and the average wage after the application of any payroll limitation.~~
- (e) All information relating to the selection of the loss development factors contained in the filing shall be provided including a complete description of the methodology used to arrive at the selected factors and the details of its specific application.
- (e) Provide for each of the loss amounts in Subparagraph (3)(d) of this Rule the corresponding incurred claim counts and for each of the policy years in Subparagraph (3)(d) of this Rule the aggregate earned exposures and standard earned premium.
 - (f) Provide for each of the policy periods in Subparagraphs (3)(b) and (3)(d) of this Rule the law amendment factors for adjusting past losses to current benefit levels.
 - (g) Include a description of the reasons for the differences between the policy year data provided in response to Subparagraphs (3)(b) and (3)(c) of this Rule and those provided in response to Subparagraphs (3)(d) and (3)(e) of this Rule.
 - (h) Provide the information in Subparagraphs (3)(b) and (3)(c) of this Rule for each of the 15 largest writers of North Carolina workers' compensation insurance.
 - (d) ~~For each of the ten largest writers of workers' compensation insurance in North Carolina, a statement regarding any reserve strengthening or weakening that has occurred in the last five years shall be included.~~
- (4) Trending factor development and application:
- (a) Provide all information related to the derivation of all trend factors contained in the filing including the following:
 - (i) A description of all data reviewed and all worksheets used;
 - (ii) A complete description of the methodology used to derive these factors;
 - (iii) A description of alternative methodologies used or considered for use in the last three years;
 - (iv) A description of the criteria used to select a methodology;
 - (v) Specific details on the application of these criteria in the selection of a methodology for this filing;
 - (vi) Details on the application of the methodology to this filing.
 - (b) ~~(a)~~ So that a variety of possible trend factors may be evaluated, provide Calculate the following calculations: trend factors:
 - (i) Indemnity and medical trend factor calculations factors based upon both on the latest five available policy years of North Carolina policy year paid and incurred data; and North Carolina accident year data.
 - (ii) Indemnity and medical trend factor calculations factors based upon countywide policy year and accident year on the latest five available accident years of data;

- (iii) Indemnity and medical trend factors based on the latest five available policy years of countrywide paid and incurred data;
- (iv) ~~(iii)~~ Indemnity and medical trend factor calculations factors for individual states based on both a policy year and an accident year basis data and their reconciliations with the countrywide factors;
- (v) ~~(iv)~~ For the medical Medical trend factors for individual states and for groups of separate compilations for fee schedule and non-fee schedule states based on both a incurred policy year and an accident year basis. data and their reconciliation with the countrywide factor;
- (vi) The factors in Subparagraphs (4)(b)(iii), (4)(b)(iv), and (4)(b)(v) of this Rule based on accident year data, if available.
- (b) All information relating to the selection of the trend factors contained in the filing shall be provided including a complete description of the methodology used to derive the selected factors and the details of its specific application.
- (5) Changes in premium base and exposures.
 - (a) Information on the distribution by size of policy shall be provided so that the effects of premium discount, the expense constant, and the minimum premium rule can be reviewed. This information shall include For the intervals listed in this Subparagraph, provide the number of North Carolina workers' compensation policies and dollar amount of their aggregate premium in North Carolina for the latest available five policy years. Provide this information separately for stock and non-stock companies and for all companies combined: using the following premium size distribution \$0 \$1 - \$99, \$100 - \$199, \$200 - \$299, \$300 - \$499, \$500 - \$999, \$1,000 - \$2,999, \$3,000 - \$4,999, \$5,000 - \$9,999, \$10,000 - \$24,999, \$25,000 - \$49,999, \$50,000 - \$99,999, \$100,000 - \$249,999, and over \$249,999. \$250,000 - \$499,999, and over \$499,999.
 - (b) Describe any Any countrywide distributions of number of policies or premium by layer that is are used in the filing. shall be described. Also provide details of how such distributions have been used in the rate filing and a description of any adjustments that have been made to the distributions. them.
- (c) Provide the following estimates of the average premium discount for each of the latest five available policy years:
 - (i) That using the North Carolina distribution of policies contained in Subparagraph (5)(a) of this Rule;
 - (ii) That using a countrywide distribution of policies;
 - (iii) That using the North Carolina distribution of policies contained in Subparagraph (5)(a) of this Rule adjusted for its exclusion of the portions of interstate policies not located in North Carolina. In making this adjustment calculate and take into the account the aggregate intrastate portions of those policies making up the countrywide distribution in Subparagraph (5)(c)(ii) of this Rule.
- (d) (e) The changes in the statewide average weekly wage for the latest five calendar years shall also be included as well as estimated changes during the period when the rates will be in effect. Provide the following information on exposure trends:
 - (i) The statewide average weekly wage for the latest five available calendar years;
 - (ii) The statewide average weekly wage for the latest ten available policy years without the application of a payroll limitation;
 - (iii) The statewide average weekly wage for the latest ten available policy years after the application of a payroll limitation;
 - (iv) The estimated statewide average weekly wage for the calendar and policy years during which the rates will be in effect.
- (6) Limiting factor development and application. Information Provide information on the following items: shall be provided:
 - (a) Limitations on losses included in the statistical data used in the filing;
 - (b) Limitations on the extent of the rate level change;
 - (c) Limitations on the extent of classification rate changes;
 - (d) Any other limitations applied.
- (7) Overhead expenses. expense development and the application of commission and brokerage, other acquisition expenses, general expenses, taxes, licenses, and fees:
 - (a) All information relating to the derivation of the expense provisions contained in the filing shall be provided including a complete description of the methodology used to derive the selected provisions and the details on its specific application. Provide all information related to the derivation of all expense provisions contained in the filing including the following:

- (i) A description of all data reviewed and all worksheets used;
 - (ii) A complete description of the methodology used to derive these factors;
 - (iii) A description of alternative methodologies used or considered for use in the last three years;
 - (iv) A description of the criteria used to select a methodology;
 - (v) Specific details on the application of these criteria in the selection of a methodology for this filing;
 - (vi) Details on the application of the methodology to this filing.
- (b) ~~The~~ The filing shall include support for all the expense, tax, and profit provisions for the proposed rates, under both the current and proposed expense programs. Explain why these provisions are appropriate for all types of insurance companies.
- (c) ~~The~~ Provide a comparison of the proposed expense provisions shall be compared to with those composite provisions for the 50 largest writers of North Carolina workers' compensation insurance included in the latest available Insurance Expense Exhibit, to with those same composite provisions included in the preliminary data underlying the next such Exhibit (if available), and to with those provisions in the latest available Call for 19xx Calendar Year Data by State for North Carolina. Describe any adjustments of countrywide data to reflect North Carolina conditions and provide the details of the underlying calculations. If the proposed provisions differ from those indicated by the data, provide an explanation.
- (d) All information available shall be provided on how proposed allowances for expenses are reviewed each year by committees of the National Council on Compensation Insurance and the North Carolina Rate Bureau.
- (e) If any of the collected loss data includes taxes or assessments of any type, the dollar amount of such taxes or assessments shall be calculated.
- (f) The details of the derivation of the tax multiplier shall be provided.
- (g) For each of the ten largest writers of North Carolina workers' compensation insurance, in North Carolina, provide a statement regarding any expense cutting activities affecting expense or service levels undertaken in the last three years. shall be included.
- (8) The percent rate change:
- (a) ~~The~~ Provide the overall statewide rate change, shall be shown and as well as the amount of the change attributable to each of the following: loss experience, a modification of the trend factor, a change in expense provisions, law amendments, a change in the tax provision, a change in the assessment provision, and any other factors.
 - (b) ~~The~~ Provide the rate changes for each industry group and for each classification. shall also be shown.
 - (c) If the rate changes eventually implemented differ from those provided in the filing, submit a supplement to the filing that describes the implemented changes and the modifications made to the filing to produce them. This supplement shall be submitted as soon as possible after a decision is reached to implement rates other than those that were originally filed and in any case no later than the first implementation date of the rates.
- (9) Proposed rates. The final proposed rates:
- (a) Provide the proposed rates for each classification. shall be included.
 - (b) If the rates eventually implemented differ from those provided in the filing, submit a supplement to the filing that describes the implemented rates in the same detail as described in Subparagraph (9)(a) of this Rule. This supplement shall be submitted as soon as possible after a decision is reached to implement rates other than those that were originally filed and in any case no later than the first implementation date of the rates.
- (10) Investment earnings, consisting of investment income and realized plus unrealized capital gains, from loss, loss expense, and unearned premium reserves; Information on anticipated investment income is necessary to establish the provision for underwriting profit and contingencies in the rates.
- (a) ~~Information on~~ Calculate the amount of investment income earned on loss, loss expense and unearned premium reserves from North Carolina workers' compensation policies (as a ratio in relation to both net and standard earned premium for workers' compensation in North Carolina shall be calculated premium) for each of the latest five available calendar years and estimated estimate that income for the current year and for all years during which the proposed rates will are expected to be in effect. Provide the derivation details

- of ~~such~~ all calculations, ~~in detail~~ including the amount of the composite reserves of each type at the beginning and end of each of the specified latest five available calendar years. Also describe and justify all assumptions used in such calculations.
- (b) ~~Information~~ Provide information on the estimated average length of time that elapses between the occurrence of a compensable accident in North Carolina and the payment of a claim shall be provided on that accident. The average shall be a weighted average based on size of claim payments. Indicate ~~Estimate~~ how the length has changed over the last latest ten available calendar years.
- (c) ~~To evaluate recent insurer profitability, composite information from the Annual Statement for the top 50 workers' compensation insurers in North Carolina shall be included. Provide the following composite asset, liability, and income information from each of the latest two Annual Statements for which aggregate data is are available for the 50 largest writers of North Carolina workers' compensation insurance, including the following (in in the same format and detail as the exhibits in individual company statements: statements):~~
- (i) Page 2 (Assets);
 - (ii) Page 3 (Liabilities, Surplus and Other Funds);
 - (iii) Page 4 (Underwriting and Investment Exhibit);
 - (iv) ~~Schedule B~~ sections dealing with workers' compensation;
 - (v) ~~Insurance Expense Exhibit Part II, Column 16.~~
- (11) ~~Identification and Certification of Statistical Plans.~~ of applicable statistical plans and programs and a certification of compliance with them:
- (a) ~~All~~ Identify all statistical plans used or consulted in preparing this filing ~~shall be identified.~~ Also and describe the data compiled by each plan.
 - (b) ~~A~~ Provide a certification that there is no evidence known to the Bureau or to the statistical agencies involved that the data that ~~was~~ were collected in accordance with such statistical plans and ~~utilized~~ were used in the rate filing are not true and accurate representations of each company's experience to the best of ~~its~~ that company's knowledge. ~~shall also be provided.~~
 - (c) Provide general descriptions of the editing procedures used to verify that the data
- were collected in accordance with the statistical plans, and concise summaries of the errors uncovered by such editing procedures, and of the adjustments and corrections implemented.
- (12) ~~Investment Earnings on Capital and Surplus.~~ earnings on capital and surplus: Given the selected underwriting profit and ~~contingency loading~~ contingencies provision contained in the filing, indicate the resulting rates of return (including consideration of investment income) on equity capital, on statutory surplus, and on total assets. ~~including consideration of investment income shall be calculated.~~ Show the derivation of all factors used in producing these calculations and provide justification that these rates of return are reasonable and fair. justify the fairness and reasonableness of these rates of return.
- (13) ~~Level of Capital Surplus Needed.~~ To calculate returns on capital and surplus, the following information shall be provided: capital surplus needed to support premium writings without endangering the solvency of member companies:
- (a) ~~Aggregate~~ Provide aggregate premium to surplus ratios for the latest five ten available calendar years for all those companies writing North Carolina workers' compensation insurance in North Carolina, during that entire period;
 - (b) ~~Estimate.~~ Provide estimates of the comparable ratios for all companies writing North Carolina nonfleet private passenger automobile insurance for all the years during which the proposed rates will be expected to be in effect.
 - (c) Provide information on the amount of surplus needed to support the writing of North Carolina workers' compensation insurance, taking into account the riskiness of the line. Describe the assumptions used in the derivation of that amount.
 - (d) Provide all information relating to any explicit or implicit allocation of surplus by state and by line undertaken in the filing, including the following:
 - (i) A description of all data reviewed and all worksheets used;
 - (ii) A complete description of the methodology used to produce this allocation;
 - (iii) A description of alternative methodologies used or considered for use in the last three years;
 - (iv) A description of the criteria used to select a methodology;

- (v) Specific details on the application of these criteria in the selection of a methodology for this filing;
- (vi) Details on the application of the methodology to this filing.
- (14) Other Information. Such other information that may be required by any rule adopted by the Commissioner:
 - (a) Information. Provide information on certain the following aspects of Workers' Compensation Individual Risk Rating Plans shall be provided. For the following items, include workers' compensation individual risk rating plans, including an explanation of their purpose and a detailed description of their derivation:
 - (i) Expected loss rate;
 - (ii) D-Ratio;
 - (iii) Excess loss factors;
 - (iv) Excess loss adjustment amounts;
 - (v) Table of weighting and ballast values.
 - (b) All information relating to the derivation of the profit and contingency loading contained in the filing shall be provided including a complete description of the methodology used to arrive at the selected loading and the details of its specific application. Provide all information relating to the profit and contingencies provision contained in the filing, including the following:
 - (i) A description of all data reviewed and all worksheets used;
 - (ii) A complete description of the methodology used to derive this provision;
 - (iii) A description of alternative methodologies used or considered for use in the last three years;
 - (iv) A description of the criteria used to select a methodology;
 - (v) Specific details on the application of these criteria in the selection of a methodology for this filing;
 - (vi) Details on the application of the methodology to this filing.
 - (c) Agendas. Include copies of all agendas and minutes of meetings of the North Carolina Rate Bureau affecting the filing, shall be included as well as a list of all attendees at these meetings, their titles, and their affiliations.
 - (d) Payments. Describe all payments made to any other all consultants (including lawyers, actuaries, and economists) related to this filing. and the previous one on workers' compensation shall be described. If payments are not cannot be specifically

- identified as related to individual particular filings, estimate the charges, them.
- (e) Identify and describe all changes in methodologies from the previous North Carolina workers' compensation rate filing. If any collected or reported data required by this Rule are provided within 30 days after the initial submittal of a filing, that data shall be made a part of the filing, provided the initial submittal acknowledges that it is incomplete and identifies specifically what further data are to be submitted within the time permitted. No filing otherwise complete shall be deemed to be proper until such time that all data required by this Rule have been submitted.

Statutory Authority G.S. 58-2-40; 58-36-15(h).

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Department of Insurance intends to adopt rules cited as 11 NCAC 11B .0601 - .0614.

The proposed effective date of this action is October 1, 1990.

The public hearing will be conducted at 10:00 a.m. on July 5, 1990 at Third Floor Hearing Room, Dobbs Building, 430 N. Salisbury Street, Raleigh, N.C. 27611.

Comment Procedures: Written comments may be sent to Al Barham, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Al Barham at (919) 733-5631 or Ellen Sprenkel at (919) 733-4700.

CHAPTER 11 - FINANCIAL EVALUATION DIVISION

SUBCHAPTER 11B - SPECIAL PROGRAMS

SECTION .0600 - WORKERS' COMPENSATION SELF-INSURANCE

.0601 DEFINITIONS

As used in this Section:

- (1) "Act" means Chapter 97 of the North Carolina General Statutes, as amended.
- (2) "Certified audit" means an audit upon which an auditor duly qualified to practice as a public accountant or certified public

accountant expresses his professional opinion that the accompanying statements fairly present the financial position of the employer or of the group, in conformity with generally accepted accounting principles as considered necessary by the auditor under the circumstances.

- (3) "Commissioner" means the Commissioner of Insurance or his authorized representative.
- (4) "Corporate surety" means an insurer authorized by the commissioner to write surety business in North Carolina.
- (5) "Employer" means a self-insured individual employer.
- (6) "Fund year" means that elected period of coverage, up to 12 month in duration, pursuant to which a group self-insurer extends coverage to its members.
- (7) "Group" means a self-insured group of employers.
- (8) "Loss fund" means that portion of net or standard premium, exclusive of past due balances deemed to be delinquent, that covers the retention of liability for a self-insurer under the terms of an aggregate excess insurance contract; and means, in the absence of an aggregate excess policy, that portion of net or standard premium, exclusive of past due balances deemed to be delinquent, that is allocated to pay claims.
- (9) "Manual premium" means premium determined by multiplying the annualized payroll amount, segregated into the proper workers' compensation job classifications, by the applicable manual premium rates approved for use in North Carolina.
- (10) "Self-insurer" means either a self-insured individual employer or self-insured group of employers.
- (11) "Service company" means a business that has contracted with an employer or group for the purpose of providing any or all services necessary to a self-insured program.
- (12) "Surplus" means all other assets a loss fund has on hand that are in excess of all loss reserves and actual and contingent liabilities, including general business expenses.
- (13) "Trustees" means the governing body of a group that is elected by its members for stated terms of office to direct the administration of a group; and whose duties include responsibility for approving applications for new members of such group.
- (14) "Trustees' fund" means any monetary fund under the control of the board of trustees of a group that is not part of the loss fund or that is not set aside to pay claims.

Statutory Authority G.S. 97-93.

**.0602 ADMINISTRATION - ALL
SELF-INSURERS**

(a) Each self-insurer, as a condition of the authority to self-insure, shall provide proof of compliance with the provisions of this Section regarding its ability to operate a program of self-insurance, either through in-house capabilities or servicing companies.

(b) Every self-insurer shall make provision for competent persons to administer and adjust claims.

(c) If a self-insurer contracts with a service company, the commissioner may use the service company as an intermediary in his dealings with the self-insurer if the commissioner determines that this will result in a more rapid and accurate flow of information from the self-insurer and will aid in the self-insurer's compliance with this Section and the act.

(d) Each self-insurer contracting with a service company shall notify the Commissioner within 30 days after the contract execution.

(e) Each self-insurer and service company shall maintain its records in such manner to enable the Commissioner or any designated auditor to verify the accuracy and completeness of all reports and documents that are submitted to the Commissioner pursuant to this Section, as well as all records and reports necessary to evaluate the financial solvency of the self-insurer and its ability to meet its obligations under the act. Such records shall be open to inspection by the Commissioner during regular business hours. Such records shall be retained for a period of time sufficient to ensure their availability for audit purposes. In the absence of other guidelines established by the Commissioner, all records shall be retained according to the schedule adopted by the Commissioner for insurers. The location of these records shall be within North Carolina and shall be made known to the Commissioner as necessary for audit purposes. A self-insurer may keep records outside of North Carolina; provided, that the self-insurer shall make such records available for inspection within North Carolina within ten days after any request for inspection by the Commissioner. If a self-insurer has contracted with a service company for claims handling, the self-insurer's claims files and related records may be located at the offices of the service company.

(f) Each self-insurer's and service company's records may, in the discretion of the Commissioner, be audited. If ordered, such audits shall be performed by accountants or auditors accept-

able to the Commissioner. The cost of such audits shall be borne by the party examined.

(g) After each audit conducted, a written report shall be prepared and submitted to the Commissioner with a copy to the self-insurer or service company, and such report shall be a part of the annual review for compliance with this Section. Any deficiencies cited by the audit report shall be considered in determining whether there may be grounds for the suspension, revocation, or nonrenewal of the authority to self-insure.

Statutory Authority G.S. 58-2-145; 97-93.

.0603 EXCESS INSURANCE POLICIES - ALL SELF-INSURERS

(a) Any excess workers' compensation insurance policy required by and submitted in accordance with this Section shall be underwritten by either a licensed insurance company or an approved surplus lines insurance company.

(b) No policy of excess insurance issued or renewed after October 1, 1990, shall be recognized by the Commissioner in considering the ability of a self-insurer to fulfill its financial obligations under the act unless such policy provides for at least 30 days written notice of cancellation, by registered or certified mail, return receipt requested, to the other party to the policy and to the Commissioner.

(c) All self-insurers shall file copies of any excess insurance binders, policies, certificates, or any other evidences of coverage with the Commissioner upon the request of the Commissioner.

Statutory Authority G.S. 58-2-145; 97-93.

.0604 REPORTS - ALL SELF-INSURERS

(a) Each self-insurer shall submit to the Commissioner payroll information for the purpose of tax assessment as required by this Section. The Rules, classifications, and rates as set forth in the most recently approved workers' compensation and employers' liability insurance manual governs the audits of payrolls and the adjustments of premiums. Payroll information shall be submitted summarized by classification. Each self-insurer shall maintain true and accurate payroll records. Unless payroll records are maintained in such manner that a true and accurate identification and division by employer or group member departments or divisions or occupational classifications can readily be determined for proper rating, the entire payroll of that employer or group member shall be presumed to be within the classification to which the highest workers' compensation insurance rate is applicable.

(b) Each self-insurer shall, within 90 days after the end of each calendar year, file with the commissioner a statement of total workers' compensation benefits paid by the self-insurer during the reported calendar year, as well as total future liability of all open claims, regardless of the dates of accidents.

(c) Each year every self-insurer shall file statements of financial condition with the Commissioner. These statements must be certified audits, except that a self-insurer may submit noncertified audit reports if an owner, partner, or corporate officer of the employer or group attests to their being true and correct. These statements shall, at a minimum, comprise a balance sheet, profit and loss statement, and a statement of change in loss fund position. Non-certified interim financial statements may be required by the Commissioner at the end of any fiscal quarter or any calendar month whenever he has reason to believe there has been a deterioration in the financial condition of a self-insurer that adversely affects the self-insurer's ability to pay expected losses.

(d) Extensions may be granted by the Commissioner for good cause.

Statutory Authority G.S. 58-2-145; 97-93.

.0605 DEPOSITS OR SURETY BONDS - ALL SELF-INSURERS

(a) In addition to cash, deposit funds that are acceptable under this Section as a security deposit are U.S. Government bonds, notes, or bills, that are issued or guaranteed by the United States of America; money market funds that are invested only in U.S. Government or U.S. Government agency obligations that have a maturity of one year or less; certificates of deposit issued by duly chartered commercial banks or thrift institutions and that are fully protected by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or any successor entity; surety bonds in a form acceptable to the Commissioner and issued by a corporate surety; or such other investments that are approved by the Commissioner.

(b) All bonds or securities that are posted as security deposits shall be valued annually at market value. In the event market value is less than face value, the Commissioner may require that additional securities be posted by the self-insurer. In making such determination, the Commissioner shall consider the self-insurer's financial condition, the amount by which market value is less than face value, and the likelihood that such securities will be needed to provide benefits.

(c) Securities deposited under this Section shall be assigned to the Commissioner, his successors, assigns, or trustees, pursuant to a legal document that is acceptable to the Commissioner and that renders such securities negotiable by the Commissioner. In the event a self-insurer is in default, the Commissioner may sell or collect, or both, such amounts that will yield sufficient funds to meet the self-insurer's obligations under the act. Interest accruing on any negotiable security deposited under this Section shall be collected and transmitted to the self-insurer provided that the self-insurer is not in default. As used in this Paragraph "default" means the inability or failure to make timely payments of any awards or other disbursements required pursuant to the act.

(d) All deposits shall remain in the custody of the Commissioner until all obligations of the self-insurer have been fully discharged, at which time the Commissioner shall return the deposits to the self-insurer.

(e) No judgment creditor, other than a claimant entitled to benefits under the act, has a right to levy upon any of a self-insurer's deposits made under this Section.

Statutory Authority G.S. 97-93.

**.0606 SECURITIES WITHDRAWAL OR
EXCHANGE - ALL SELF-INSURERS**

Any securities held by the Commissioner may be exchanged or replaced by the self-insurer with other securities of like nature and amount as long as the self-insurer is solvent. No release shall be effectuated until replacement securities or bonds of an equal value have been substituted. Any surety bond may be exchanged or replaced with another surety bond that meets the requirements of this Section, provided 30 days advance written notice is given to the Commissioner. Whenever a self-insurer ceases to self-insure or desires to replace securities with an acceptable surety bond or bonds, he shall so notify the Commissioner; and may recover all or a portion of the securities deposited with the Commissioner upon posting in lieu thereof an acceptable special release bond issued by a corporate surety in an amount equal to the total value of such securities. The special release bond shall cover all existing liabilities under the act plus an amount to cover future loss development; and shall remain in force until such time as all such obligations under the act have been fully discharged.

Statutory Authority G.S. 97-93.

.0607 APPLICATION - EMPLOYERS

(a) Each employer desiring to self-insure shall make application to the Commissioner for such authority on a form prescribed by the Commissioner. This application shall be filed with the Commissioner at least 60 days prior to the desired effective date of self-insurer status. The application shall contain answers to all questions propounded and shall be a sworn statement. Until all requested data has been filed, an application is incomplete.

(b) In addition to the filing of the application, compliance with all of the following is required:

- (1) The applicant shall provide the Commissioner with certified statements of financial condition of current origin and the two next most recent years including, at a minimum, a balance sheet, a profit and loss statement, and a statement of change in loss fund position, prepared on the basis of generally accepted accounting principles consistently applied. Such statements may be noncertified if the employer is a sole proprietorship, partnership, or corporation, and if such statements are attested to by an officer or owner thereof who beneficially owns more than 50 percent of the equity in the business. Public employers, including public nonprofit employers, may furnish a copy of current year budget or audit report in lieu of a certified financial statement.
- (2) Specific or aggregate excess insurance, or both, with policy limits and retention amounts acceptable to the Commissioner, may be required for each applicant.
- (3) Each applicant shall satisfy the Commissioner that either it has, within its own organization, ample facilities and competent personnel to administer and adjust claims, or shall contract with a service company to provide these services.

(c) Only an applicant whose modified workers' compensation insurance premium in North Carolina has reached one hundred thousand dollars (\$100,000) per year and whose total fixed assets amount to five hundred thousand dollars (\$500,000) or more is eligible to apply for authority to self-insure. For good cause shown, the Commissioner may waive the requirement on fixed assets or minimum premium volume. In considering the financial strength and liquidity of the applicant to comply with the act, the Commissioner may consider, among other evaluative criteria, the applicant's: organizational structure and management background; profit and loss history; source and reliability of financial information; compensation loss history; number of employees; claims administration; excess in-

surance; access to excess insurance markets; ratio of current assets to current liabilities; ratio of tangible net worth to annual self-insurance retention; ratio of net worth to annual compensation premium; ratio of working capital to total assets; ratio of quick assets to current liabilities; ratio of debt to tangible net worth; ratio of total debt to total assets; ratio of cash flow to total debt; ratio of new sales to total assets; ratio of new income to total assets; ratio of net income to net sales; (if a mercantile or manufacturing business) ratio of net credit sales to average accounts receivable; ratio of income, before interest and income taxes, to annual interest expense; and such other meaningful financial analyses in each case that the Commissioner may apply.

(d) All financial statement formulations shall be provided in such detail as to facilitate application of indicated ratio analyses.

(e) Each applicant shall execute and file with the Commissioner an agreement, which shall be part of his application, wherein the applicant agrees to fully comply with the act and to deposit with the Commissioner cash, acceptable securities, or a surety bond issued by a corporate surety that will guarantee the applicant's compliance with this Section and with the act.

(f) After considering the application and all supportive data, the Commissioner shall either grant authorization or deny authorization and advise the applicant of deficiencies that constitute the basis for denial. If the deficiencies are resolved to the Commissioner's satisfaction within 30 days of the date of Commissioner's notice, authorization shall be granted.

(g) The applicant may, in the discretion of the Commissioner, be granted additional time to remedy deficiencies in its application in order to meet the requirements of this Section. A request for an extension of time shall be made in writing by the applicant within 30 days after notice of denial by the Commissioner. If the Commissioner is not satisfied that all requirements of this Section have been met, the application shall be considered withdrawn.

(h) Upon meeting the requirements of this Section, an applicant shall receive a written certificate of authority to self-insure.

Statutory Authority G.S. 97-93.

.0608 DEPOSITS: BONDS: EXCESS INSURANCE - EMPLOYERS

(a) Each employer shall, on or before the effective date of operation of its plan of self-insurance, deposit with the Commissioner, cash or acceptable securities, or post a surety bond issued by a corporate surety, in a minimum

amount of two hundred thousand dollars (\$200,000). A surety bond or security deposit in excess of two hundred thousand dollars (\$200,000) may be required by the Commissioner depending on the financial status of the employer or if the employer has experienced a deterioration in financial condition.

(b) Each employer, except a public employer, with a net worth of at least twenty-five million dollars (\$25,000,000) and total fixed assets in North Carolina of at least three hundred million dollars (\$300,000,000) shall maintain specific excess insurance unless the Commissioner, in his discretion, waives this requirement. Such specific excess insurance shall be in a limit of at least two million dollars (\$2,000,000). Higher limits may be required for an employer with a higher risk of multiple injuries from a single occurrence. The retention underlying specific excess policies shall be the lowest retention generally available for employers of similar size and exposure, but may, in the Commissioner's discretion, be established at higher levels consistent with the employer's claims experience and financial condition.

(c) Each employer, except a public employer, with either a net worth of less than twenty-five million (\$25,000,000) or total fixed assets in North Carolina of less than three hundred million dollars (\$300,000,000), shall maintain aggregate excess insurance unless the Commissioner in his discretion waives this requirement. The amount of such insurance and the self-insurance retention shall be subject to determination by and approval of the Commissioner.

Statutory Authority G.S. 97-93.

.0609 REPORTS - EMPLOYERS

(a) A report may be submitted on other than a prescribed form only with the prior approval of the Commissioner. The deadlines for filing of prescribed reports are as provided in this Section. Reports other than those with prescribed due dates shall be filed at such times that the Commissioner establishes and, except reports related to financial impairment, shall not be required to be filed without 30 days prior written notice from the Commissioner.

(b) Copies of all final payroll reports showing payrolls by appropriate classification shall be filed.

(c) Each employer shall promptly report to the Commissioner changes in the names and addresses of the businesses it self-insures or intends to self-insure, as well as changes in its business structure, including its divisions, subsidiaries, and internal organization. Any such change shall be reported in writing to the Commissioner within

ten days after the effective date of the change. Appropriate endorsements to surety bonds or excess insurance policies, or both, that specify that any additional named insureds shall be filed within 90 days of the effective date of the change. Bonds of coverages or cover notes providing for at least 90 days coverage shall be filed within 30 days after the effective date of the change.

(d) Each employer shall submit a statement of financial condition meeting the criteria established in this Section within 120 days following the close of its fiscal year.

(e) Within 60 days of the evaluation date of the losses for a coverage period, each employer shall submit an annual report of outstanding workers' compensation liabilities. Such report shall show liabilities, excess carrier and other qualifying credits, if any, and net retained liabilities.

(f) All employers shall maintain such payroll records that are necessary to complete and verify the accuracy of the annual self-insurers payroll report.

(g) An employer that does not have the record-keeping capability required by this Section on October 1, 1990, shall comply with this Section within one year thereafter.

(h) Summary loss reports formatted by classifications as prescribed in the unit statistical plan of the principal workers' compensation rating organization in North Carolina shall be filed as required by the Commissioner.

Statutory Authority G.S. 58-2-145; 97-93.

.0610 APPLICATION - GROUPS

(a) Application may be made to provide workers' compensation coverage for a group in accordance with the terms of an indemnity agreement. Application shall be made to the Commissioner for such privilege on forms prescribed by the Commissioner and shall be filed with the Commissioner at least 60 days prior to the desired effective date of self-insured status. The application shall contain answers to all questions propounded and shall be a sworn statement. Until all requested data has been filed, an application is incomplete.

(b) The application shall include without limitation to the following:

- (1) a copy of the bylaws of the proposed group;
- (2) an individual application of each member of the group applying for coverage in the group on the inception date of the group;
- (3) a current certified financial statement of each member, including at a minimum, a balance sheet, a profit and loss statement, a statement of change in loss fund posi-

tion, and a statement showing the combined net worth of all members applying for coverage on the inception date of the group. Such combined net worth shall be an amount that establishes the financial strength and liquidity of the businesses. Public groups and nonprofit groups may furnish a copy of a current year budget or audit report in lieu of a certified financial statement;

- (4) evidence of the financial ability of the group to meet its obligations under the act;
- (5) a composite listing of the estimated standard premium to be developed for each member individually and in total as a group. Payroll data for each of the three preceding years shall be furnished by risk classification;
- (6) documented agreement by each member to pay to the group not less than 25 percent of estimated annual manual premium not later than the initial day of coverage afforded by the group;
- (7) a confirmation of any required excess insurance underwritten by an authorized insurer in limits that are acceptable to the Commissioner;
- (8) designation of the initial trustees or administrator, or both;
- (9) proof of a fidelity bond, issued by an authorized insurer, covering the group administrator in a form and an amount acceptable to the Commissioner;
- (10) an indemnity agreement jointly and severally binding the group and each member thereof to comply with the provisions of the act and pay obligations imposed by the act, which shall conform to an indemnity agreement prescribed by the Commissioner;
- (11) a breakdown of all projected administrative expenses for the fund year in dollar amount and as a percentage of the estimated annual manual premium;
- (12) proof provided by the trustees, satisfactory to the Commissioner, that the annual gross premiums of the group will be not less than one hundred thousand dollars (\$100,000);
- (13) proof, satisfactory to the Commissioner, that either the applicant has within its own organization ample facilities and competent personnel to service its own program with respect to underwriting matters, claims adjusting, and industrial safety engineering; or that the applicant will contract with a service company to

provide these services and the reporting of loss data to the Commissioner. If any plan servicing is to be done by the applicant, biographies of those persons who will be responsible for or performing such functions shall be submitted to the Commissioner with the application;

- (14) a letter of assent stipulating the applicant's acceptance of membership status in the North Carolina Self-Insurance Guaranty Association under Article 4 of the act.

(c) After considering the application and all supportive data, the Commissioner shall either grant authorization or deny authorization and inform the applicant of deficiencies that constitute the basis for denial. If the deficiencies are resolved to the Commissioner's satisfaction within 30 days of the Commissioner's notice, authorization shall be granted to the applicant.

(d) The applicant may, in the discretion of the Commissioner, be granted additional time to remedy the deficiencies in its application in order to meet the requirements of this Section. A request for an extension of time shall be made in writing by the applicant within 30 days after notice of denial by the Commissioner. If the Commissioner is not satisfied that all requirements of this Section have been met, the application shall be considered withdrawn.

(e) Upon meeting the requirements of this Section, the applicant shall receive a written certificate of authority to self-insure.

Statutory Authority G.S. 58-2-145; 97-93.

.0611 DEPOSITS: BONDS: EXCESS INSURANCE - GROUPS

(a) Each group shall deposit with the Commissioner, not later than the effective date of coverage, cash or acceptable securities, or post a surety bond issued by a corporate surety, in a minimum amount of four hundred thousand dollars (\$400,000). A surety bond or security deposit in excess of four hundred thousand dollars (\$400,000) may be required by the Commissioner if he determines that the group has experienced a deterioration in financial condition.

(b) The amount of the security deposit or bond required shall be determined at least annually by the Commissioner based on data submitted by the group to the Commissioner.

(c) Each group shall maintain specific excess insurance with a limit of at least two million dollars (\$2,000,000). Groups comprising businesses with high risks of multiple injuries from single occurrences may be required by the Commissioner to maintain higher limits. With respect

to specific excess insurance, a group's retention shall be the lowest retention generally available for groups with similar exposures and annual premium; but the Commissioner may, in his discretion, require higher levels consistent with the group's claims experience and financial condition.

(d) Each group shall maintain aggregate excess insurance; unless a security deposit acceptable to the Commissioner is made or unless unencumbered surplus or additional loss funds in an amount and asset form acceptable to the Commissioner is held by the group. The aggregate excess insurance limit and aggregate retention for a group must be acceptable to the Commissioner.

Statutory Authority G.S. 97-93.

.0612 REPORTS - GROUPS

(a) Reports as to financial condition, payroll records, coverage, accident experience, compensation payments, and other reports shall be filed with the Commissioner as follows:

- (1) Each group shall file with the Commissioner within 120 days after the close of the fund year a statement of financial condition, which statement shall include a report of the outstanding workers' compensation liabilities of the group, including details of the amount and source of all monies recoverable from any third party. Financial statements shall, at a minimum, comprise a balance sheet, a profit and loss statement, a statement of change in group position, and a listing of any accounts that are delinquent by more than 90 days.
- (2) The Commissioner may require quarterly or monthly financial disclosures of a similar nature from individual members of a group or of the group if he has reason to believe that there has been a deterioration in the financial condition of the group or of any of the group's members that adversely affects the group's ability to pay expected losses.
- (3) Summary loss reports, formatted by classifications as prescribed in the unit statistical plan of the principal workers' compensation rating organization in North Carolina, shall be filed as required by the Commissioner.
- (4) Properly classified and audited payrolls on each group member shall be submitted to the Commissioner within 60 days after the evaluation date of the summary loss in-

formation required in Paragraph (a)(3) of this Rule.

- (5) Quarterly status reports that accurately reflect the financial condition of each open fund year, if required, shall be filed with the Commissioner within 45 days after the close of each fund year quarter and signed by the chairman of the trustees or by the fund administrator. A fund year shall be considered open as long as one claim remains outstanding; but in any event shall remain open not less than three years from the beginning of the fund year. A listing of all delinquent accounts shall be furnished to the Commissioner as part of this report.

(b) The failure or refusal of any group to file the reports specified in Paragraph (a) of this Rule within the time limits prescribed by this Section or by any provision of the act may be grounds for revocation, suspension, or nonrenewal of the authority to self-insure.

(c) Every group member shall notify the group to which it belongs of any changes in the names, addresses, structure, or composition of any businesses or subsidiaries that participate in the group. Every group member shall notify the group of any additions or deletions of the businesses or subsidiaries participating in the group, including changes in majority ownership interest in any business or subsidiary that is covered or that will be covered by the group. All such changes shall be reported to the group within ten days after the effective date of the change. Upon receipt of such notice, each group shall notify the Commissioner, in writing, of such reported changes.

(d) Any group that does not have the record-keeping capability required by this Section on October 1, 1990, must be in compliance with this Section within 90 days thereafter.

Statutory Authority G.S. 58-2-145; 97-93.

.0613 GROUP RESPONSIBILITIES

(a) The trustees of each group shall cause to be adopted a set of bylaws or shall enter into a trust agreement that governs the operation of the group. These bylaws or trust agreement shall contain, but not be limited to, the following subjects:

- (1) qualifications for group membership, including underwriting considerations;
- (2) the method for selecting the trustees, including the term of office;
- (3) the method for amending the bylaws and plan of operation;

- (4) the method for establishing and maintaining the group, which has previously been approved by the Commissioner in writing.

(b) Each group shall file a copy of the current bylaws, trust agreement, and required written policies with the Commissioner. Any changes in bylaws, trust agreement, or written policies shall be filed with the Commissioner no later than 30 days prior to the date of becoming effective. The Commissioner may order the group to rescind or revoke any bylaw or policy if it is in violation of this Section or any other applicable law or administrative rule.

(c) The majority of such trustees must be members of the group, but a trustee shall not be an owner, officer, or employee of a service company. Trustees may delegate ministerial authority for membership approval to such person as they select, provided that person is not an owner, officer, or employee of any service company.

Statutory Authority G.S. 97-93.

.0614 ADMISSION AND TERMINATION OF GROUP MEMBERS

(a) After the inception date of a group, prospective new members of a group shall submit an application for membership to the trustees or the group administrator, on a form approved or prescribed by the Commissioner. The trustees or administrator may approve the application for membership pursuant to the bylaws of the group. The application for membership shall then be filed with the Commissioner. Membership shall take effect after approval by the Commissioner. Members shall receive a certificate of coverage from the trustees on a form acceptable to the Commissioner.

(b) Individual members may elect to terminate their participation in a group and may be subject to cancellation by the group pursuant to the bylaws of the group. However, such termination or cancellation shall not take place for at least ten days after the Commissioner has received notice of the termination or cancellation. Not less than 30 days' notice shall be given to a member prior to any cancellation by the group.

Statutory Authority G.S. 97-93.

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Wildlife Re-

PROPOSED RULES

sources Commission intends to amend rule(s) cited as 15A NCAC 10C .0305.

The proposed effective date of this action is November 1, 1990.

The public hearing will be conducted at 7:00 p.m. on July 5, 1990 at Halifax Community College, Weldon, NC 27839.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from June 21, 1990 to July 20, 1990. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27611.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10C - INLAND FISHING REGULATIONS

SECTION .0300 - GAME FISH

.0305 OPEN SEASONS: CREEL AND SIZE LIMITS

(a) Generally. Subject to the exceptions listed in Paragraph (b) of this Rule, the open seasons and creel and size limits are as indicated in the following table:

GAME FISHES	DAILY CREEL LIMITS		
Mountain Trout (All Species)	7 (exceptn. 3)		
Muskellunge and Tiger Musky	2		
Chain Pickerel (Jack)	None (exceptn. 1)		
Walleye	8 (exceptn. 9 and 10)		
Sauger	8		
Black Bass: Largemouth	8		
		Smallmouth and Spotted	8 (exceptn. 8 and 10)
		White Bass	25 (exceptn. 1)
		Sea Trout (Spot- ted or Speckled)	None
		Flounder	None
		Red drum (channel bass, red fish, puppy drum)	None
		Striped Bass and their hybrids (Morone Hybrids)	8 aggregate (exc. 1 and 6)
		Kokanee Salmon	7
		Panfishes	None (exceptn. 5)
		NONGAME FISHES	None
		MINIMUM SIZE LIMITS	OPEN SEASON (EXCPTN. 2)
		None (exceptn. 3)	All year, except March 1 to 12 hr. before sunrise on first Saturday in April (exceptns. 2 and 3)
		30 in.	ALL YEAR
		None	ALL YEAR
		None (exceptn. 9)	ALL YEAR
		15 in.	ALL YEAR
		14 in. (exceptns. 4, 8 and 11)	ALL YEAR (exceptn. 13)

PROPOSED RULES

12 in. ALL YEAR
(excp'tns. 4,
8 and 11)

None ALL YEAR

12 in. ALL YEAR

13 in. ALL YEAR
14 in. ALL YEAR

16 in. ALL YEAR
(exc. 1 and 12) (excp'tn. 6)

None ALL YEAR

None ALL YEAR
(excp'tn. 5)

None ALL YEAR
(excp'tn. 7)

(b) Exceptions

- (6) In the inland fishing waters of the coastal rivers and their tributaries extending upstream to the first impoundment, or to the headwaters, if unimpounded, the daily creel limit for striped bass and their hybrids is three fish and no striped bass between the lengths of 22 inches and 27 inches, both inclusive, may be retained from April 1 through May 31. In the Roanoke River and its tributaries upstream to the dam at Roanoke Rapids, no striped bass may be retained from May 10 to March 31.

Statutory Authority G.S. 113-134; 113-292; 113-304; 113-305.

TITLE 16 - DEPARTMENT OF PUBLIC EDUCATION

Notice is hereby given in accordance with G.S. 150B-12 that the State Board of Education intends to amend rules cited as 16 NCAC 6C .0403.

The proposed effective date of this action is October 1, 1990.

The public hearing will be conducted at 3:00 p.m. on July 5, 1990 at Third Floor Board Room,

Education Building, 116 West Edenton Street, Raleigh, NC 27603-1712.

Comment Procedures: Any interested person may present views and comments either in writing prior to or at the hearing or orally at the hearing.

CHAPTER 6 - ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 6C - PERSONNEL

SECTION .0400 - LEAVE

.0403 SUBSTITUTES

(a) LEAs shall employ all substitutes deemed necessary for the efficient operation of the unit. The superintendent determines the need to employ a substitute for a non-teaching assistant principal, principal or supervisor.

(b) The period of substitution is short-term if it includes 5 or less consecutive days in the same position. Periods in excess of five days are long-term.

~~(c) The LEA may not pay teacher aides as substitute teachers.~~

~~(d)~~ (c) LEAs employ substitute teachers in units of half or whole days. The LEA treats responsibilities which require less than half a day as a half day of employment.

~~(e)~~ (d) The LEA pays substitutes as follows:

(1) A person who substitutes for a non-teaching assistant principal, principal or supervisor is paid from local funds.

(2) Unless required to be otherwise, a substitute for the regular teacher is paid from the same source of funds as the regular teacher is paid.

~~(f)~~ (c) Absences not covered in Rule .0404 require the appropriate amount of substitute teacher pay to be deducted from the regular teacher's salary. These absences include extended sick leave as explained in Paragraph ~~(g)~~ (f) of this Rule, personal leave and in-state meetings of no longer than 3 days or out-of-state meetings of no longer than 5 days, and not to exceed a total of 10 days within the school year, for professional responsibilities and attendance at professional meetings. The superintendent must approve these absences. The time limitations of this Rule do not apply to a person who is the local or district president or president-elect or a state or national officer of an educational professional organization, or to a person selected as National Teacher of the Year from this state.

~~(g)~~ (f) A teacher may be absent due to personal illness for up to 20 teaching days in excess of accumulated sick leave. The superintendent may

require a doctor's certificate or other acceptable proof of the reason for the absence.

(h) (g) Teachers earn personal leave at the rate of one-half day for every two and one-half months .20 days for full month of employment and may accumulate five personal leave days. Teachers may transfer these days between LEAs. A teacher who requests personal leave at least five days in advance of the date desired is not required to give a reason for the leave. No teacher may take personal leave on the first day teachers are required to report for the school year, required teacher workdays, the day before or the day after holidays or scheduled vacation days, except as approved by the principal. The LEA shall credit a teacher who has separated from service and is re-employed within 60 months from the date of separation with all personal leave, up to the five-day maximum, accumulated at the time of separation. The LEA may not advance personal leave beyond that which a teacher earns. Teachers may take personal leave in units of one-half or whole days.

(h) (h) If the regular teacher vacates a teaching position during the school year, that teacher receives the regular compensation for the actual days employed during the current month, adjusted for overdrawn leave or unpaid longevity pay. If the LEA employs an interim teacher to fill the vacancy until a regular teacher is available, the LEA pays the interim teacher as follows:

- (1) For service of no more than 10 teaching days, the person is paid as a substitute.
- (2) For service in excess of 10 teaching days, the person is paid on the basis of the person's certified salary rating. The person may elect to be paid as a substitute.

Statutory Authority G.S. 115C-12(8).

TITLE 20 - DEPARTMENT OF STATE TREASURER

Notice is hereby given in accordance with G.S. 150B-12 that the State Treasurer intends to amend rule cited as 20 NCAC 1G .0104. The Local Government Commission intends to adopt rules cited as 20 NCAC 3 .1001 - .1010. The Solid Waste Management Capital Projects Financing Agency intends to adopt rules cited as 20 NCAC 10 .0101 - .0102, .0201 - .0202, .0301, .0401 - .0403, .0501 - .0502.

The proposed effective date of these actions are October 1, 1990.

The public hearing will be conducted at 10:00 a.m. on July 17, 1990 at Conference Room, Room 100, Albemarle Building, 325 North Salisbury Street, Raleigh, North Carolina 27603-1388.

Comment Procedures: A written copy of the comments will be required of all persons wishing to speak at the Public Hearing. The hearing period will remain open for written comments until July 19, 1990. Written comments should be sent to the APA Coordinator at the address above.

CHAPTER 1 - DEPARTMENTAL RULES

SUBCHAPTER 1G - INVESTMENT PROGRAM

SECTION .0100 - GENERAL PROVISIONS

.0104 ACCOUNTING FOR EXCHANGES

(b) An exchange shall be considered to be the disposition of one fixed income investment security and the reinvestment of the proceeds of that sale in an equal par value of another fixed income investment security with both transactions having the same trade date. Equal par value means that the difference in par value between the incoming and outgoing securities at the time the transaction is agreed to is less than thirteen thousand dollars (\$13,000) or equal to one percent of the par value of the outgoing security(ies).

Statutory Authority G.S. 147-69.3.

CHAPTER 3 - LOCAL GOVERNMENT COMMISSION

SECTION .1000 - EVIDENTIARY HEARING ON REFUNDING BONDS

.1001 DEFINITIONS

The words and phrases in this Section of the administrative rules will have the same meanings as set forth in G.S. 159-1 and G.S. 159B-3.

Statutory Authority G.S. 159-3(f); 159B-25(b).

.1002 WHO MAY REQUEST A HEARING

Any municipality or joint agency that wishes to issue refunding bonds pursuant to G.S. 159B-25(b) and meets the time limits set forth in that subsection of the statute may request an evidentiary hearing before the Local Government Commission.

Statutory Authority G.S. 159-3(f); 159B-25(b).

.1003 PETITION FOR HEARING

The municipality or joint agency shall file a petition with the Secretary of the Local Government Commission setting forth the facts upon which its desire to issue refunding bonds is based and any legal arguments supporting its view that reissuance is proper. The municipality or joint agency should mail one original and ten copies of the petition to the office of the Secretary of the Local Government Commission at 325 North Salisbury Street, Raleigh, North Carolina 27603. No filing fee is required.

Statutory Authority G.S. 159-3(f); 159B-25(b).

.1004 FORM FOR FILING

The petition shall be in such form as is generally used in a legal proceeding.

Statutory Authority G.S. 159-3(f); 159B-25(b).

.1005 HEARING OFFICER

The State Treasurer shall designate the hearing officer responsible for the conduct of the evidentiary hearing and for making a recommendation for decision to the Local Government Commission.

Statutory Authority G.S. 159-3(f); 159B-25(b).

.1006 TIME FOR THE HEARING

The evidentiary hearing shall be scheduled by the hearing officer within 30 days of the receipt by the Secretary of the Local Government Commission of a petition requesting the hearing.

Statutory Authority G.S. 159-3(f); 159B-25(b).

.1007 NOTICE OF HEARING

The hearing officer shall give notice by certified mail of the time, date and place of the hearing to the petitioner and its member municipalities at least 15 days prior thereto.

Statutory Authority G.S. 159-3(f); 159B-25(b).

.1008 CONDUCT OF THE HEARING

(a) If a party or interested person fails to appear after notice was given, the hearing officer may proceed with the hearing and make its decision in the absence of the party or interested person.

(b) The petitioner shall be given an opportunity to present arguments on matters of law and policy and an opportunity to present evidence on matters of fact as they relate to the issues set forth in Rule .1009 of this Section.

(c) The staff for the Local Government Commission shall be given an opportunity, if they so request in writing at least ten days before the

scheduled hearing date, to present arguments on matters of law and policy and an opportunity to present evidence on matters of fact as they relate to the issues set forth in Rule .1009 of this Section. A copy of any written request from the staff must be served upon the petitioner and any parties known to have a direct interest in the hearing at the time the request is made.

(d) The rules of evidence for the hearing shall be as set forth in G.S. 150B-29.

(e) Official notice may be taken of all facts of which judicial notice maybe taken and of other facts within the specialized knowledge of the hearing officer.

(f) The hearing officer is authorized to issue subpoenas upon his own motion or upon written request.

(g) An informal record containing in substance the evidence, contentions and arguments presented at the hearing shall be made. A verbatim transcript of the hearing may be requested by the petitioner, a participating party or the staff to the Commission. The costs of the production of the original verbatim transcript shall be borne by the party requesting it.

(h) The hearing officer is authorized to control the hearing, its length, the order of the presentation of evidence and arguments and to require the submission of proposed findings and conclusions.

Statutory Authority G.S. 159-3(f); 159B-25(b).

.1009 RECOMMENDED DECISION

The hearing officer shall issue a recommended decision in writing containing findings and conclusions as required under G.S. 159B-25(b). The recommended decision shall be issued within ten days of the completion of the hearing or the preparation of a verbatim transcript, whichever occurs last; and shall be presented promptly to the Local Government Commission.

Statutory Authority G.S. 159-3(f); 159B-25(b).

.1010 FINAL DECISION

(a) The Secretary shall call a meeting of the Local Government Commission or its Executive Committee within ten days of the receipt of the recommended decision and the review from the hearing officer.

(b) A copy of the final decision shall be served upon the petitioner, and all other parties participating in the hearing by certified mail or personal service.

Statutory Authority G.S. 159-3(f); 159B-25(b).

CHAPTER 10 - SOLID WASTE MANAGEMENT
CAPITAL PROJECTS FINANCING AGENCY

SECTION .0100 - GENERAL PROVISIONS

.0101 ORGANIZATION AND FUNCTIONS

(a) The Solid Waste Management Capital Projects Financing Agency operates within the Department of State Treasurer and is the state agency charged with the implementation of Chapter 159I of the General Statutes of North Carolina for the Solid Waste Management Loan Program.

(b) The following is general information about the Agency:

- (1) The Administrative Officer is the Administrator of the Agency;
- (2) The mailing address is 325 North Salisbury Street, Raleigh, North Carolina 27603-1388; and
- (3) The office is located in the Albemarle Building, 325 North Salisbury Street, Raleigh, North Carolina.

(c) The staff of the Solid Waste Management Capital Projects Financing Agency is provided by the State and Local Government Finance Division of the Department of the State Treasurer.

Statutory Authority G.S. 159I-4(h); 159I-5(8).

.0102 DEFINITIONS

The words and phrases defined in this Rule will have the meanings indicated when used in this Chapter, unless the context clearly requires another meaning:

- (1) "Agency" is the Solid Waste Management Capital Projects Financing Agency and the Board of Directors thereof.
- (2) "Administrator" is the Administrator of the Agency and is the Secretary-Treasurer of the Agency.
- (3) "Division" means the Division of Solid Waste Management of the Department of Environment, Health, and Natural Resources.
- (4) "Applicant" means a unit of government as defined in G.S. 159I.

Statutory Authority G.S. 159I-3; 159I-5(8).

SECTION .0200 - RULE-MAKING

.0201 RULE-MAKING PROCEDURES

(a) 20 NCAC 1F .0100 shall govern the issuance of rules by the Agency.

(b) All correspondence shall be addressed to the Administrator at the mailing address of the Agency.

Statutory Authority G.S. 159I-5(14); 159I-10(b)(5).

.0202 DECLARATORY RULES

(a) 20 NCAC 1F .0200 shall govern the issuance of declaratory rules by the Agency.

(b) All correspondence shall be addressed to the Administrator at the mailing address of the Agency.

Statutory Authority G.S. 159I-5(14).

SECTION .0300 - CONTESTED CASES

.0301 CONTESTED CASE PROCEDURES

(a) 20 NCAC 1F .0300 shall govern the hearings and decisions in contested cases.

(b) All correspondence shall be directed to the Administrator at the mailing address of the Agency.

Statutory Authority G.S. 159I-5(14).

SECTION .0400 - APPROVAL OF APPLICATIONS

.0401 PRELIMINARY CONFERENCE

Each applicant shall request an informal preliminary conference with the Administrator prior to submitting an application to the Division in order to discuss the financial feasibility of the project. The Administrator may invite the staff of the Local Government Commission to participate.

Statutory Authority G.S. 159I-5(14).

.0402 APPLICATION FOR LOAN

(a) No final determination of financial eligibility shall be made by the Agency until all of the following have been received by the Administrator:

- (1) A copy of the application for the project submitted under G.S. 159-9;
- (2) The determination of the Division that the applicant is eligible under G.S. 159I-10;
- (3) The project priority established by the Division under G.S. 159I-11; and
- (4) Any additional financial data requested by the Administrator.

(b) Upon receipt of the application by the Agency the Administrator may require the petitioner to attend an informal conference with the staff of the Agency. The Administrator may require the filing of such additional information as he may consider valuable to the consideration of the issues. The Administrator may invite the staff of the Local Government Commission to

the informal conference to discuss financing of the project.

Statutory Authority G.S. 159I-9; 159I-10; 159I-12.

.0403 AMENDMENT OF PRIOR APPROVALS

(a) The applicant may make an application to amend a prior financial approval by the Agency, provided said application must be received prior to the Agency's incurring an obligation for the purpose of funding the applicant's project.

(b) An application to amend prior approvals shall be submitted in the same manner as required for initial approval including such other additional items as the Agency may request.

(c) When the Agency proposes an amendment, it shall notify the applicant promptly.

Statutory Authority G.S. 159I-11 (d); 159I-12 (d).

SECTION .0500 - FEES

.0501 COLLECTION OF FEES

(a) Application fees and other determinable costs shall be payable prior to final approval or participation by the Agency.

(b) Annual fees, shall be payable as determined by the Agency.

Statutory Authority G.S. 159I-5(7).

.0502 FEES AND EXPENSES

(a) A non-refundable fee is to be submitted with the application for a loan from Agency of \$_____.

(b) A non-refundable fee is to be submitted with the application for an amendment of a prior approval of \$_____.

(c) An annual fee of \$_____ per year.

(d) All direct costs of the Agency, shall be reimbursed to the Agency by the applicant.

(e) The Agency shall not incur extraordinary expenses without prior agreement of the unit to reimburse the Agency for all related costs.

Statutory Authority G.S. 159I-5(7).

**TITLE 21 - OCCUPATIONAL LICENSING
BOARDS**

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. State Board of Cosmetic Art Examiners intends to amend rules cited as 21 NCAC 14I .0304; 14J .0206 and adopt rule cited as 21 NCAC 14J .0107.

The proposed effective date of this action is October 1, 1990.

The public hearing will be conducted at 10:00 a.m. on July 9, 1990 at N.C. State Board of Cosmetic Art Examiners' Office, 4101 Capital Blvd., Suite H, Raleigh, N.C. 27604.

Comment Procedures: Written comments and/or requests for information or copies of the above rules may be sent to Vicky R. Goudie, Executive Secretary, N.C. State Board of Cosmetic Art Examiners, 4101 Capital Blvd., Suite H, Raleigh, N.C. 27604. Written and oral comments (for no more than ten minutes) on these rules may be presented at the hearing. Notice should be sent to Mrs. Goudie at least three days prior to the hearing, if you desire to speak.

**CHAPTER 14 - BOARD OF COSMETIC ART
EXAMINERS**

**SUBCHAPTER 14I - OPERATIONS OF
SCHOOLS OF COSMETIC ART**

SECTION .0300 - CLASSROOMS

.0304 CLASSROOM WORK

(a) All of the work outlined in the Beginners' Department and the Advanced Department shall be given to the students through practical demonstrations and recitations.

(b) At least five recitations per week of one hour each shall be given to all students. Five hours of recitations shall be given to full-time students per week. Two and one-half hours of recitation shall be given to part-time students per week.

(c) Recitations shall include lectures, questions and answers on textbooks, and written examinations.

(d) All papers written shall be carefully graded and returned to the students in order that the students may see their errors.

Statutory Authority G.S. 88-23.

SUBCHAPTER 14J - CURRICULUM

SECTION .0100 - BEGINNERS' DEPARTMENT

.0107 APPROVED FIELD TRIPS

Cosmetology Educational Field Trips include the following activities:

- (1) Beauty Shops,
- (2) Cosmetology Conventions,
- (3) Competition Training,
- (4) Other Schools,
- (5) State Board Office and Archives Museum,

- (6) Supply Houses,
- (7) College or Career Day at School,
- (8) Fashion Shows,
- (9) Rest Homes/Nursing Homes,
- (10) Hospitals,
- (11) Funeral Homes (Desaiology).

An instructor must be present during these educational field trips, for credit to be given to student, with a ratio of one instructor per 20 students present.

Statutory Authority G.S. 88-23.

SECTION .0200 - ADVANCED DEPARTMENT

.0206 EQUIPMENT IN ADVANCED DEPARTMENT

The advanced department must be equipped with the following minimum equipment ~~for every 20 students~~ in the department:

- (1) four manicure tables and stools,
- (2) eighteen dryers and chairs,
- (3) eight shampoo bowls and chairs,
- (4) three heating caps or one conditioning machine,
- (5) thirty dressing tables and styling chairs,
- (6) three facial chairs,
- (7) three marcel heaters,
- (8) three marcel irons, and
- (9) sufficient cold wave rods for each student enrolled in the department.

Statutory Authority G.S. 88-23.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the State Board of Examiners of Electrical Contractors intends to adopt rules cited as 21 NCAC 18B .1101 - .1108.

The proposed effective date of this action is October 1, 1990.

The public hearing will be conducted at 10:30 a.m. on July 12, 1990 at State Board of Examiners of Electrical Contractors, 1200 Front Street, Suite 105, Raleigh, NC 27609.

Comment Procedures: Any person interested in these rules may present oral comments relevant to the actions proposed at the public hearing or deliver written comments to the State Board of Examiners of Electrical Contractors, 1200 Front Street, Suite 105, Raleigh, NC 27609, not later than 9 a.m. on July 12, 1990.

CHAPTER 18 - BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

SUBCHAPTER 18B - BOARD'S RULES FOR THE IMPLEMENTATION OF THE ELECTRICAL CONTRACTING LICENSING ACT

SECTION .1100 - CONTINUING EDUCATION

.1101 CONTINUING EDUCATION REQUIREMENTS FOR LISTED QUALIFIED INDIVIDUALS

(a) Effective July 1, 1991, every listed qualified individual, including listed qualified individuals pursuant to G.S. 87-50, shall complete six contact hours of approved continuing education for each license period (July 1 - June 30) to renew the license on which he is currently listed, for the next license period, except as follows:

- (1) Individuals becoming qualified by examination during the 12 month period immediately preceding the license renewal date;
- (2) Qualified individuals unable to fulfill the required number of hours as the result of illness or undue hardship as certified in writing by the attending physician or other responsible person and the waiver of this requirement as specifically approved by the Board; or
- (3) Approved instructors actually presenting courses in accordance with this Section.

(b) The Board approves course sponsors and instructors, not particular courses, except as provided in Paragraph (c) of this Rule. A course provided by an approved sponsor is presumed to meet the requirements as set forth in these Rules. Because of differences in the electrical contracting industry and individual needs of listed qualified individuals, each qualified individual must exercise judgment in selecting courses for which continuing education is claimed and in choosing only those courses that will advance his knowledge.

(c) Course sponsors may be, but are not limited to, colleges or universities, community colleges, trade associations, providers of self-study programs, employers, third party professional examination companies, private instructors and the like.

(d) North Carolina listed qualified individuals residing within the state must obtain the required continuing education hours by taking a course provided by an approved sponsor.

(e) North Carolina listed qualified individuals residing outside of North Carolina, including listed qualified individuals pursuant to G.S. 87-50, may obtain credit for courses offered in their state, province or country of residence and

provided by non-approved sponsors or instructors provided the Board subsequently approves the courses taken.

Statutory Authority G.S. 87-42; 87-44.1.

**.1102 MINIMUM REQUIREMENTS FOR
COURSE SPONSOR APPROVAL**

(a) Each course sponsor shall submit an application for continuing education course sponsor approval to the Board on a form provided by the Board by March 1 of the year prior to the license period (July 1 - June 30) in which the course will be offered. The application shall include but is not limited to:

- (1) The name of the sponsor;
- (2) Sponsor contact person, address and telephone number;
- (3) Course title and outline;
- (4) Course contact hours;
- (5) Schedule of courses, if established, including dates, time and locations;
- (6) Course fee; and
- (7) Name(s) of instructor(s).

(b) To qualify as an approved continuing education course sponsor:

- (1) The course offered shall last six or more contact hours; and
- (2) The course offered shall cover articles of the current National Electrical Code; North Carolina General Statutes Chapter 87, Article 4; Title 21 North Carolina Administrative Code Chapter 18B; or other subject matter satisfying the requirements in G.S. 87-44.1 as approved by the Board.

(c) The course offered shall be presented by one or more instructors approved by the Board.

(d) The course sponsor or instructor shall provide the Board with a certified class roster of all attending qualified individuals within 30 days after the completion of each course.

(e) The course sponsor or instructor shall provide each attending qualified individual with a certificate of completion within 30 days after completion of each course.

(f) The Board shall approve or deny applications at its April meeting.

(g) Appeals from denials shall be heard by the Board at a scheduled meeting in May.

(h) Upon approval of the application, each approved sponsor shall agree to conduct courses in accordance with this Section and shall indicate its agreement by signing a continuing education sponsor agreement form provided by the Board.

Statutory Authority G.S. 87-42; 87-44.1.

**.1103 MINIMUM REQUIREMENTS FOR
COURSE INSTRUCTOR APPROVAL**

(a) Each course instructor shall submit an application for continuing education course instructor approval to the Board on a form provided by the Board by March 1 of the year prior to the license period (July 1 - June 30) in which the course will be offered. The application shall include but is not limited to:

- (1) The name of the instructor;
- (2) Instructor's address and telephone number;
- (3) The name of the course sponsor;
- (4) Course title;
- (5) Course contact hours; and
- (6) Qualifications of instructor.

(b) To qualify as an approved continuing education course instructor:

- (1) The instructor shall have professional or trade experience evidenced by an appropriate license, certification or degree; or
- (2) The instructor shall have other recognized expertise in the electrical industry.

(c) The course instructor application shall be submitted together with the application for continuing education course sponsor approval as prescribed in Rule .1102 of this Section.

(d) The Board shall approve or deny applications at its April meeting.

(e) Appeals from denials shall be heard by the Board at a scheduled meeting in May.

(f) Upon approval of the application, each approved instructor shall agree to conduct courses in accordance with this Section and shall indicate his agreement by signing a continuing education instructor agreement form provided by the Board.

Statutory Authority G.S. 87-42; 87-44.1.

.1104 CONTACT HOURS

(a) Approved courses must be offered for six or more contact hours. Credit will be given only in multiples of six contact hours (6, 12, 18).

(b) Credit shall be granted to the qualified individual only upon completion of an entire course.

(c) When a qualified individual has completed more than the required number of hours of continuing education in any one license period, the extra hours may be carried forward in multiples of six and treated as hours earned in the following one or two additional license periods.

(d) No credit will be granted for courses attended prior to July 1, 1991.

(e) No credit will be granted for courses attended prior to being qualified by examination.

Statutory Authority G.S. 87-42; 87-44.1.

.1105 COMPUTATION OF CONTINUING EDUCATION HOURS

(a) Group Courses: Non-college. Continuing education credit for a group course that is not part of a college curriculum is given based on contact hours. A contact hour is 50 minutes of instruction. Credit is granted only for full contact hours. For example, a group course lasting 300 minutes is six contact hours and thus satisfies one year of the continuing education requirement.

(b) College Courses. Continuing education credit for a college course in the college curriculum is given based on college credit hours. One semester hour of college credit is 15 contact hours; one quarter hour of college credit is ten contact hours; and one continuing education unit (CEU) is ten contact hours.

(c) Self-Study Courses. Continuing education credit for a self-study course is given based on the average number of contact hours needed to complete the course. One-half of the average completion time is allowed for continuing education credit. A sponsor must determine the average number of contact hours it takes to complete the self-study course and submit this information with its application for continuing education course sponsor approval.

(d) Examination. Continuing education credit for an examination is given based on the type of examination, maximum number of questions, maximum number of hours permitted to take the examination, and minimum passing grade. A sponsor must determine and submit this information with its application for continuing education course sponsor approval.

(e) Totaling Annual Hours. No credit shall be allowed for a course having a total of fewer than six contact hours. A course lasting between six and 11 hours will satisfy one year of the required continuing education; a course lasting between 12-17 hours will satisfy 2 years of the required continuing education; and a course lasting 18 or more hours will satisfy three years of the required continuing education. Credit hours for more than one year are subject to the provisions of Rule .1104(c) of this Section.

Statutory Authority G.S. 87-42; 87-44.1.

.1106 LIST OF APPROVED COURSE SPONSORS AND INSTRUCTORS

In July of each year the Board shall publish and distribute to all listed qualified individuals a listing that shall include but is not limited to:

- (1) All approved course sponsors and instructors for that fiscal year; and
- (2) Brief description, number of contact hours, and course fee for each course to be provided by approved course sponsors and instructors.

Statutory Authority G.S. 87-42; 87-44.1.

.1107 ADVERTISEMENTS BY APPROVED COURSE SPONSORS AND INSTRUCTORS

Approved course sponsors and instructors who state in their advertisements, brochures or other course descriptions that a particular course meets the requirement of the North Carolina State Board of Examiners of Electrical Contractors for continuing education shall so state exactly as follows:

This course, when offered during fiscal year _____, meets the requirements of the North Carolina State Board of Examiners of Electrical Contractors for _____ contact hours of continuing education credit. This course is not sponsored by the Board.

Statutory Authority G.S. 87-42; 87-44.1.

.1108 REVOCATION OF COURSE SPONSOR OR INSTRUCTOR APPROVAL

(a) The Board may revoke, suspend or terminate the agreement with any approved continuing education course sponsor and/or instructor if the Board determines that either has failed to comply with the terms of the agreement or the Rules of the Board.

(b) The Board shall have the authority to monitor courses to determine whether the course sponsor and instructor are complying with the terms of the agreement and the rules of the Board.

Statutory Authority G.S. 87-42; 87-44.1.

The List of Rules Codified is a listing of rules that were filed to be effective in the month indicated.

Rules filed for publication in the NCAC may not be identical to the proposed text published previously in the Register. Please contact this office if you have any questions.

Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication in the N.C. Register of proposed rules.

Upon request from the adopting agency, the text of rules will be published in this section.

*Punctuation, typographical and technical changes to rules are incorporated into the **List of Rules Codified** and are noted as * **Correction**. These changes do not change the effective date of the rule.*

TITLE 17 - DEPARTMENT OF REVENUE

CHAPTER 6 - INDIVIDUAL INCOME TAX DIVISION

SUBCHAPTER 6A - DIVISIONAL RULES

.0002 GENERAL PURPOSES

The individual income tax division is responsible for administering Divisions II, III, IV and V of Article 4, Schedule D, and Article 4A of Chapter 105 of the General Statutes of North Carolina, being the individual income tax, the income tax of trusts, estates, and beneficiaries, income tax credits for property taxes, individual income tax credits for qualified business investments, the withholding of income tax from wages, and the filing and payment of estimated income tax by individuals.

*History Note: Statutory Authority G.S. 105-133 to 105-163.24; 143B-10; 143B-221;
Eff. February 1, 1976;
Amended Eff. June 1, 1990.*

.0003 ADMINISTRATIVE ORGANIZATION

The individual income tax division is administered by a director, and an assistant director for operations, and a chief tax auditor for examinations. There are separate sections for handling different phases of the work and a separate section for handling income tax withholding.

*History Note: Statutory Authority G.S. 105-133 to 105-163.24; 143B-10; 143B-221;
Eff. February 1, 1976;
Amended Eff. June 1, 1990.*

.0004 INDIVIDUAL INCOME TAX

(a) In addition to the director, assistant director for operations, and a chief tax auditor for examinations, the administrative staff includes several revenue administrative officers who assist in various overall phases of the work.

(b) The clerical section is divided into processing units for handling, processing, and filing income tax returns and returns of estimated tax. Separate special units of temporary employees are set up during the filing and refund rush periods.

(c) The examinations section is composed of two examination groups, each being made up of auditors, tax technicians, support services personnel and supervisory personnel.

*History Note: Statutory Authority G.S. 105-133 to 105-163.24; 143B-221; 143-10;
Eff. February 1, 1976;
Amended Eff. June 1, 1990.*

SUBCHAPTER 6B - INDIVIDUAL INCOME TAX

SECTION .0100 - FILING INDIVIDUAL INCOME TAX RETURNS

.0103 COMBINED RETURNS

*History Note: Statutory Authority G.S. 105-152(e); 105-262;
Eff. February 1, 1976;
Amended Eff. February 4, 1978;
Repealed Eff. June 1, 1990.*

.0104 ITEMS REQUIRING SPECIAL ATTENTION

The individual taxpayer or his agent should give special attention to the following items when preparing an individual income tax return:

- (1) The Form D-400 for the proper year should be used.

Note: A 1985 form for a taxpayer whose calendar year ends December 31, 1985 and a 1984 form for a fiscal year taxpayer whose fiscal year begins in 1984 should be used.

- (2) The name and current address of the taxpayer should be plainly printed. The first name, middle initial and last name should be printed or typed. When a preaddressed form is used, any error in the name or address should be corrected.
- (3) When filing an income tax return for an unmarried individual who died during the taxable year, write "Deceased" after the individual's name on the return followed with the name and address of the executor or administrator.

Note: John Doe (Deceased), Richard Doe, Executor; 100 Oak Street, Anywhere, North Carolina, 27000.

- (4) When filing a separate return of a decedent who was married at the time of death, write "Deceased" after the name and enter the name and address of the surviving spouse. The first two hundred dollars (\$200.00) of any refund due on the return must be paid to the surviving spouse. If the refund is more than two hundred dollars (\$200.00), the first two hundred dollars (\$200.00) plus one-half of the remainder must be paid to the surviving spouse. The remaining refund is paid to the estate; therefore, the name and address of the administrator or executor must also be shown on the return. The refund due on a return of a surviving spouse filing a joint return with the deceased will be made to the surviving spouse.
- (5) The North Carolina law requires the taxpayer to furnish his social security number with the return. This number is necessary to verify the identity of the taxpayer, since the Department uses an accounting system and equipment which identifies taxpayers and credits returns and payments by social security number. Separate returns of spouses are often interrelated whether they are living together or apart; therefore, the taxpayer is asked to furnish the name and social security number of his spouse. This information can save time, correspondence, and difficulty for the taxpayer and the Department.
- (6) The occupation should be entered so that the return may be properly coded. The general occupational field should be shown rather than the specific job assignment.
Note: The occupation for a "spinner" in a textile plant should be entered on the occupation line as "Textile" or "Textile Employee."
- (7) The name and address of your last employer should always be entered.
- (8) Each applicable line on page one of the tax return must be completed and the entering of words or phrases, such as "unconstitutional" or "object - self incrimination" does not meet the requirement of completing each applicable line on the return.
- (9) The tax must be computed accurately, and in the case of a delinquent return, the penalty and interest prescribed by statute should be added.
- (10) If an individual has moved into or out of North Carolina during the tax year or is a nonresident with income from sources within North Carolina, the section on page 2 of Form D-400, Computation of North Carolina Taxable Income for Part-Year Residents and Nonresidents must be completed. Credit for tax paid to another state is not allowed to an individual moving into or out of this state unless he has income derived from and taxed by another state or country while he is a resident of this state. (see Credit for Income Tax Paid to Another State or Country 17 NCAC 6B .0607)

- (11) If a tax credit is claimed, there must be attached to the return a true copy of the return filed with the other state or country and a canceled check, receipt, or other proof of payment of tax to the other state or country.
- (12) Every return must be signed by the taxpayer or his or her authorized agent, and joint returns must be signed by both spouses. If husband and wife use different last names on a joint return, there will be a delay in processing any refund that may be due. A refund may be delayed by an unsigned return.
- (13) Where tax has been withheld, the state copy of the Wage and Tax Statement must be attached to the return.
- (14) Any additional information that will assist in the processing and auditing of a return should be indicated on the return or a worksheet or schedule attached to the return.
- (15) Anyone who is paid to prepare a return must sign the return in the space provided. When more than one person prepares a return, the preparer with primary responsibility for the overall accuracy of the return must sign as the preparer. The signature must be by hand. Stamps and labels are not acceptable.

History Note: Statutory Authority G.S. 28A-15-8; 105-151; 105-152; 105-154; 105-155; 105-163.5(e); 105-163.7; 105-163.10; 105-251; 105-252; 105-262; Eff. February 1, 1976; Amended Eff. June 1, 1990; August 1, 1986; May 1, 1984; March 22, 1981.

.0106 FEDERAL FORMS

If a taxpayer was required to file Federal Schedules A, B, C, D, E, and/or F with his Federal income tax return, he must attach a copy of his Federal return, including all schedules, to the North Carolina return.

History Note: Statutory Authority G.S. 105-155; 105-251; 105-252; 105-262; Eff. February 1, 1976; Amended Eff. June 1, 1990; May 1, 1984.

.0107 EXTENSIONS

(a) An extension of time for filing may be granted in the case of sickness, absence, disability, or other good cause. When an extension of time has been granted for filing a federal return, a like extension will be granted for filing the state return if a copy of either the approved federal extension or a copy of the federal Form 4868, Automatic 4-Month Extension, is attached to the state return. A copy of the approved federal extension or a copy of the federal Form 4868 should not be sent to the Department of Revenue until such time the State return is filed on the extended date. When a joint federal return is filed, a separate copy of the approved federal extension form or federal Form 4868 must be attached to the return of each spouse if they file separately. No tentative tax payment is required by the state. If there is no federal extension, submit a request for extension in triplicate on Form D-410 on or before the due date.

(b) If a taxpayer is living or on military duty abroad on the date his return is due, an extension of two months is automatically granted provided a statement is attached to the return showing that the taxpayer was living outside of the United States on the due date. Interest is due on any unpaid tax from the original due date until paid.

History Note: Statutory Authority G.S. 105-263; 105-262; Eff. February 1, 1976; Amended Eff. June 1, 1990; May 1, 1984; June 1, 1982; February 4, 1978.

.0109 FILING REQUIREMENTS - GENERAL STATEMENT

The minimum gross income filing requirements under North Carolina law are different from the filing requirements under the Internal Revenue Code because North Carolina law does not adjust the standard deduction and personal exemption for inflation as required by the Internal Revenue Code.

History Note: Statutory Authority G.S. 105-134.6(c); 105-262; Eff. June 1, 1990.

.0110 INDIVIDUALS REQUIRED TO FILE A N.C. INDIVIDUAL INCOME TAX RETURN

FINAL RULES

Residents and part-year residents of North Carolina are required to file North Carolina returns if they are required to file Federal income tax returns for the taxable year, excluding the applicable Federal standard deduction and personal exemption inflation adjustments. Nonresidents who derive income from North Carolina sources are required to file North Carolina returns if they are required to file Federal income tax returns for the taxable year, excluding the applicable Federal standard deduction and personal exemption inflation adjustments.

*History Note: Statutory Authority G.S. 105-152; 105-262;
Eff. June 1, 1990.*

.0111 MINIMUM GROSS INCOME FILING REQUIREMENTS

(a) The minimum gross income filing requirements for most people are shown in Chart A:

CHART A - FOR MOST TAXPAYERS

(1) Single.....	\$ 5,000
Single (age 65 or over).....	5,750
(2) Married - Filing Joint Return	\$ 9,000
Married - Filing Joint Return, (one age 65 or over)	9,600
Married - Filing Joint Return, (both age 65 or over).....	10,200
(3) Married - Filing Separate Return	\$ 2,000
(4) Head of Household.....	\$ 6,400
Head of Household (age 65 or over)	7,150
(5) Qualifying Widow(er) with dependent child	\$ 7,000
Qualifying widow(er) (age 65 or over).....	7,600

(b) If an individual was not required to file a Federal income tax return but had gross income inside and outside of North Carolina that equals or exceeds the amounts in Chart A, a Federal return must be completed and attached to the North Carolina return to show how the negative Federal taxable income was determined.

(c) The minimum gross income filing requirements for children and other dependents are shown in Chart B. The filing requirements in Chart B generally are applicable to those individuals who can be claimed as a dependent by another person (such as a parent).

Note: EARNED INCOME is salaries, wages, tips, professional fees, and other amounts received as pay for work actually done.

Note: UNEARNED INCOME is income other than earned income (salaries or wages). It is investment-type income and includes interest, dividends, and capital gains. Distributions of interest, dividends, capital gains, and other unearned income from a trust are also unearned income to a beneficiary of the trust.

CHART B - FOR CHILDREN AND OTHER DEPENDENTS

- (1) Single dependents neither blind nor 65 or older - You must file a return if:
 - (A) Your unearned income was one dollar (\$1.00) or more and the total of that income plus your earned income was more than five hundred dollars (\$500.00).
 - (B) Your unearned income was zero dollars (\$0.00) and the total of that income plus your earned income was more than three thousand dollars (\$3,000).
- (2) Single dependents 65 or older or blind - You must file a return if:
 - (A) Your earned income was more than three thousand seven hundred fifty dollars (\$3,750) [four thousand five hundred dollars (\$4,500) if 65 or older and blind], or
 - (B) Your unearned income was more than one thousand two hundred fifty dollars (\$1,250) [two thousand dollars (\$2,000) if 65 or older and blind], or
 - (C) Your gross income was more than the total of your earned income [up to three thousand dollars (\$3,000)] or five hundred dollars (\$500.00), whichever is larger, plus seven hundred fifty dollars (\$750.00) [one thousand five hundred dollars (\$1,500) if 65 or older and blind].
- (3) Married dependents neither blind nor 65 or older - You must file a return if:
 - (A) Your earned income was more than two thousand five hundred dollars (\$2,500), or

- (B) You had any unearned income and your gross income was more than five hundred dollars (\$500.00), or
- (C) Your gross income was at least five dollars (\$5.00) and your spouse files a separate Federal income tax return on Form 1040 and itemizes deductions.
- (4) Married dependents 65 or older or blind - You must file a return if:
 - (A) Your earned income was more than three thousand one hundred dollars (\$3,100) [three thousand seven hundred dollars (\$3,700) if 65 or older and blind], or
 - (B) Your unearned income was more than one thousand one hundred dollars (\$1,100) [one thousand seven hundred dollars (\$1,700) if 65 or older and blind], or
 - (C) Your gross income was more than the total of your earned income [up to two thousand five hundred dollars (\$2,500)], or five hundred dollars (\$500.00), whichever is larger, plus six hundred dollars (\$600.00) [one thousand two hundred dollars (\$1,200) if 65 or older and blind], or
 - (D) Your gross income was at least five dollars (\$5.00) and your spouse files a separate Federal income tax return on Form 1040 and itemizes deductions.
- (d) If an individual is required to file Federal Schedules A, B, C, D, E, and/or F with his Federal income tax return, he must attach a copy of his Federal return, including all schedules, to his North Carolina income tax return. A nonresident or part-year resident is required to attach a copy of his Federal return to the North Carolina return regardless of whether or not Federal Schedule A, B, C, D, E, and/or F was filed.

History Note: Statutory Authority G.S. 105-134.2; 105-134.5; 105-134.6(c); 105-152; 105-262; Eff. June 1, 1990.

.0112 JOINT RETURNS

- (a) G.S. 105-152.1 requires that a husband and wife file a joint State return if:
 - (1) They file a joint Federal income tax return, and
 - (2) Both spouses are residents of North Carolina or both spouses had North Carolina taxable income.

All other individuals must file separate returns.

(b) On joint returns, both spouses are jointly and severally liable for the due. However, if a spouse has been relieved of any liability for Federal income tax under the Internal Revenue Code as an "innocent spouse" attributable to a substantial understatement by the other spouse, the "innocent spouse" would not be liable for the State income tax attributable to such understatement by the other spouse.

(c) If an individual and his spouse file a joint return using different last names, they should separate the names with "and". For example, "John Brown and Mary Smith".

(d) If an individual files a joint Federal return but files a separate North Carolina return, he must complete a separate Federal return and attach it to his North Carolina tax return to show how his Federal taxable income would be determined on a separate Federal return. In lieu of completing a separate Federal return, an individual may submit a schedule showing the computation of the separate Federal taxable income provided a copy of the joint Federal income tax return is provided with the North Carolina return.

History Note: Statutory Authority G.S. 105-152.1; 105-262; Eff. June 1, 1990.

.0113 TAXPAYERS DOMICILED IN COMMUNITY PROPERTY STATES

(a) Generally, if a husband and wife file separate returns, each must claim credit for the actual amount of tax withheld from his or her salary or wages. If a husband and wife who are domiciled in a community property state or country recognized as such for federal income tax purposes file separate North Carolina returns and each spouse reports one-half of the salary and wages received while domiciled in the community property state or country, each spouse is entitled to claim one-half of the credit for the income tax withheld with respect to such community wages.

(b) A schedule or statement should be attached to the North Carolina return showing the name and social security number of each spouse and that they were domiciled in a community property state and as such, 50 percent of the husband's and, or wife's income tax withheld is allocated to the other spouse's income tax return.

History Note: Statutory Authority G.S. 105-163.10; 105-262;

FINAL RULES

Eff. June 1, 1990.

.0114 COMPUTATION OF TAXABLE INCOME - GENERAL

The starting point in determining North Carolina taxable income is taxable income for Federal income tax purposes determined under the Internal Revenue Code in effect as of January 1, 1989, subject to the following additions, deductions and transitional adjustments which are required because of differences in the way State and Federal law treated certain tax transactions prior to January 1, 1989. These adjustments do not apply to all individuals; however, each individual should determine if any of the adjustments apply to his return.

*History Note: Statutory Authority G.S. 105-134.1; 105-134.5; 105-134.6; 105-134.7;
Eff. June 1, 1990.*

.0115 ADDITIONS TO FEDERAL TAXABLE INCOME

(a) Federal taxable income must be increased by the following additions to the extent the amounts are not included in Federal gross income:

- (1) Interest received upon obligations of states other than North Carolina and their political subdivisions;
(This addition includes that portion of an exempt interest dividend from a regulated investment company (mutual fund) that represents interest on direct obligations of states and their political subdivisions other than North Carolina. See 17 NCAC 6B .4100 for additional information on regulated investment companies.)
 - (2) Any amount allowed as a deduction from gross income that is taxed by a separate tax under the Internal Revenue Code. This would include lump-sum distributions from certain employee's retirement plans which a taxpayer may elect to exclude from taxable income in the regular tax computation and compute the tax separately using the favorable ten-year and five-year forward averaging rules;
 - (3) State, local, and foreign income taxes deducted on the Federal return;
 - (4) The Federal standard deduction inflation adjustments for taxable years beginning after 1988 and the Federal personal exemption inflation adjustments for taxable years beginning after 1989. These adjustments are necessary because the Federal standard deduction amounts and personal exemption amounts will be adjusted each year, if necessary, for inflation.
- (b) The standard deduction for North Carolina purposes is shown in the schedules in this Paragraph:

SCHEDULE A

Individuals who are not claimed as dependents by another taxpayer

FILING STATUS	STANDARD DEDUCTION
Single.....	\$ 3,000
65 or older or blind.....	3,750
65 or older and blind.....	4,500
Married Filing Jointly Qualifying Widow(er).....	5,000
One Spouse 65 or older or blind.....	5,600
One Spouse 65 or older and blind.....	6,200
Both spouses 65 or older or blind.....	6,200
Both spouses 65 or older and blind.....	7,400
*Married Filing Separately.....	2,500
65 or older or blind.....	3,100
65 or older and blind.....	3,700
Head of Household.....	4,400
65 or older or blind.....	5,150
65 or older and blind.....	5,900

SCHEDULE B

Individuals who can be claimed as dependents by another taxpayer who have earned income of \$500.00 or less

FILING STATUS	STANDARD
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FINAL RULES

	DEDUCTION
Single	
Under 65 and not blind	\$ 0,500
65 or older or blind	1,250
65 or older and blind	2,000
*Married Filing Separately	
Under 65 and not blind	0,500
65 or older or blind	1,100
65 or older and blind	1,700

SCHEDULE C

Individuals who can be claimed as dependents by another taxpayer and have earned income of \$500.00 or more

STANDARD DEDUCTION

FILING STATUS	AMT OF EARNED INCOME	ADDITIONAL ALLOWANCES	LIMITED TO
Single			
Under 65 and not blind	\$ _____	+ \$ -0-	\$3,000
65 or older or blind	\$ _____	+ \$ 750	\$3,750
65 or older and blind	\$ _____	+ \$1,500	\$4,500
*Married Filing Separately			
Under 65 and not blind	\$ _____	+ \$ -0-	\$2,500
65 or older or blind	\$ _____	+ \$ 600	\$3,100
65 or older and blind	\$ _____	+ \$1,200	\$3,700

*The standard deduction is zero for a married individual filing separately whose spouse claims itemized deductions.

(c) The standard deduction for nonresident aliens and individuals filing a short-year return due to a change of accounting period is zero.

*History Note: Statutory Authority G.S. 105-134.6(c); 105-262;
Eff. June 1, 1990.*

.0116 DEDUCTIONS FROM FEDERAL TAXABLE INCOME

Federal taxable income must be decreased by the following deductions to the extent the amounts are included in Federal gross income:

- (1) Interest upon obligations of the United States or its possessions;
Interest earned on obligations that are merely backed or guaranteed by the United States Government will not qualify for deduction from an individual's income. The deduction from income will not apply to distributions which represent gain from the sale or other disposition of the securities, nor to interest paid in connection with repurchase agreements issued by banks and savings and loan associations.
- (2) Interest on bonds, notes, and other obligations of the State of North Carolina or any of its political subdivisions;
- (3) Interest on obligations and gain from the sale or disposition of obligations if North Carolina law under which the obligations were issued specifically exempts the interest or gain;
- (4) Social Security benefits received under Title II of the Social Security Act and Railroad Retirement benefits received under the Railroad Retirement Act of 1937;
- (5) Up to fifteen hundred dollars (\$1,500) paid to an individual as compensation for the performance of duties as a member of the North Carolina National Guard;
- (6) Refunds of State, local, and foreign income taxes;
- (7) Up to four thousand dollars (\$4,000) in retirement benefits from one or more Federal, state, or local government retirement plans;
- (8) Up to two thousand dollars (\$2,000) in retirement benefits from one or more private retirement plans;

- (a) If an individual receives Federal, state, or local government retirement benefits and also receives other qualified retirement benefits, the total deduction is limited to four thousand dollars (\$4,000). For married couples filing a joint return, the maximum dollar amount of retirement benefits that may be deducted from Federal taxable income applies separately to the benefits received by each spouse, so that the maximum deduction on a joint return is eight thousand dollars (\$8,000).
- (b) If an individual received retirement benefits during the year from one or more private retirement plans other than state, local, or Federal government retirement plans, he may deduct the amount received or two thousand dollars (\$2,000), whichever is less. Married individuals filing a joint return where both received such retirement benefits may each deduct up to two thousand dollars (\$2,000) for a potential total deduction of four thousand dollars (\$4,000).
- (c) "Retirement benefits" are amounts paid to a former employee or to a beneficiary of a former employee under a written retirement plan established by the employer to provide payments to an employee or beneficiary after the end of the employee's employment with the employer where the right to receive the payment is based upon the employment relationship. For self-employed individuals, retirement benefits are amounts paid to an individual, or beneficiary under a written retirement plan established by the individual to provide payments after the end of self-employment. Retirement benefits also include amounts received from an individual retirement account or from an individual retirement annuity (IRA), both of which are described in Section 408 of the Internal Revenue Code. An individual is not required to have ceased employment to qualify for the two thousand dollar (\$2,000) deduction for distributions from an individual retirement account or an individual retirement annuity.
- (d) The deduction for retirement benefits is allowed only to the extent the benefits are included in federal gross income. If an individual elects to roll-over the distribution from his employer's plan or from his individual retirement account, no deduction is allowed since the amount rolled over is not included in gross income.
- (e) A change in the structure of a corporate employer which causes a distribution to be paid to the employee from the employer's retirement plan does not entitle the employee to claim the deduction for retirement benefits from such distribution. For example, Company A is merged with Company B. An employee of A continues to work for the merged company. During 1989, the employee received a distribution of five thousand dollars (\$5,000) representing his total credit in the non-contributory retirement plan of Company A. The employee would not be entitled to the two thousand dollar (\$2,000) deduction since he had not ceased employment.
- (f) Since short-term disability benefits from the Disability Income Plan of North Carolina administered for the benefit of North Carolina teachers and State employees are not paid to a former employee under a retirement plan after the end of the employee's employment, the benefits are not subject to the four thousand dollar (\$4,000) deduction from Federal taxable income. Long-term disability benefits are payable after the conclusion of the short-term disability period or after salary continuation payments cease, whichever is later. Recipients of long-term disability benefits under the Disability Income Plan of North Carolina are former employees and they are entitled to the four thousand dollar (\$4,000) deduction from Federal taxable income.
- (g) Benefits paid to Federal civil service employees who become disabled prior to becoming age 60 upon separation from service are paid to a former employee under a retirement plan after the end of the employee's employment and are subject to the four thousand dollar (\$4,000) deduction from Federal taxable income.
- (h) Survivors of a member of the armed forces who receive benefits from the Retired Serviceman's Family Protection Plan or the Survivor's Benefits Plan as the result of taking a reduction in retirement pay are subject to the deduction of up to four thousand dollars (\$4,000) from Federal taxable income.
- (9) The amount of North Carolina inheritance tax paid that is attributable to an item of income in respect of a decedent.
The deduction from Federal taxable income is determined by multiplying the amount of North Carolina inheritance tax paid on all property transferred to the particular beneficiary, less the North Carolina inheritance tax paid if the item of income in respect of a decedent had not been included, by a fraction, the numerator of which is the income in respect of a decedent the beneficiary included in Federal gross income, as adjusted, and the denominator of which is the total income in respect of a decedent transferred to the beneficiary;

- (10) Income earned by an enrolled member of the Eastern Band of Cherokee Indians or other federally recognized tribes if such income is derived from activities on the Cherokee reservation while the member resided on the reservation.

*History Note: Statutory Authority G.S. 105-134.6(b); 105-262;
Eff. June 1, 1990.*

.0117 TRANSITIONAL ADJUSTMENTS

The following transitional adjustments are required because of differences in the way State and Federal law treated certain tax transactions prior to January 1, 1989.

- (1) Amounts that were included in the basis of property under Federal law but not under State law prior to January 1, 1989, must be added to taxable income in the year of disposition of the property. These adjustments include the increase in basis for Federal gift tax paid on property received as a gift and in certain cases where the individual was permitted under Federal law to capitalize certain expenditures for interest and taxes.
- (2) Amounts that were included in the basis of property under State law but not under Federal law prior to January 1, 1989, must be deducted from an individual's taxable income in the year of disposition of the property. Deductions of this type include the increase in basis for State gift tax paid on property received as a gift and certain business expenditures that an individual elected to expense under Section 179 of the Internal Revenue Code but which were required to be capitalized for State income tax purposes.
- (3) Amounts recognized as income under Federal law but not under State law prior to January 1, 1989, because of the use of the installment method for reporting gain from the sale of property must be added to taxable income in the individual's first taxable year beginning on or after January 1, 1989. Amounts recognized as income under State law but not under Federal law prior to January 1, 1989, because of the use of the installment method for reporting gain from the sale of property must be deducted from taxable income in the individual's first taxable year beginning on or after January 1, 1989.
- (4) A loss or deduction that was incurred or paid and deducted in full for North Carolina income tax purposes under prior State law in a taxable year beginning before January 1, 1989, but was carried forward and deducted from Federal taxable income in a taxable year beginning on or after January 1, 1989, must be added to taxable income.

In determining the amount to add back, a capital loss from taxable years beginning prior to January 1, 1989, must be applied before applying a capital loss that was sustained in a taxable year beginning on or after January 1, 1989.

EXAMPLE: The full amount of a capital loss incurred in 1988 would have been deductible on an individual's 1988 State income tax return but on his Federal income tax return the amount of the deductible loss would have been limited to his capital gains plus three thousand dollars (\$3,000) [one thousand five hundred dollars (\$1,500) if married and filing a separate return]. Any remaining loss could be carried forward to 1989 and deducted on his Federal income tax return in computing his 1989 Federal taxable income. In this instance, the individual must add back the loss deducted from his 1989 Federal taxable income in arriving at the amount of his North Carolina taxable income.

[An individual had a six thousand five hundred dollar (\$6,500) capital loss in 1988 which was limited to three thousand dollars (\$3,000) on his Federal income tax return but which was deducted in full on the State return. An additional net capital loss was also incurred in 1989. Since the individual's 1989 Federal taxable income would include a three thousand dollar (\$3,000) loss carry-over the individual must add back three thousand dollars (\$3,000) to Federal taxable income on the 1989 State return. The remaining five hundred dollars (\$500.00) would be added back to the individual's Federal taxable income for 1990.]

EXAMPLE: Prior State law required charitable contributions to be deducted in the year they were paid and did not permit any amount to be carried over to another tax year. Under Federal law, an individual who may not be entitled to deduct the full amount of certain contributions because of an adjusted gross income limitation may carry over the unused portion to the succeeding tax year. In this situation, the individual must add back to Federal taxable income the contributions carry-over from 1988 if he itemized deductions on his 1989 Federal income tax return.

EXAMPLE: Generally, for Federal income tax purposes for tax years beginning on or after January 1, 1987, to the extent that the total deductions from passive activities exceed the total income from such activities for the tax year, the excess (passive activity loss) is not allowed as a deduction

for that year. A disallowed passive loss is allowed to be carried forward as a deduction from passive activity income in the next succeeding tax year. Generally, losses from passive activities may not be deducted from other types of income (e.g., wages, interest, or dividends). A passive activity is one that involves the conduct of any trade or business in which the taxpayer does not materially participate. Any rental activity is a passive activity regardless of whether the taxpayer materially participates. Special rules apply to rental activities. Under State law, a passive loss carried forward from a tax year beginning prior to January 1, 1989, must be added back to Federal taxable income since the entire loss was deductible on the taxpayer's return for the year the loss was incurred.

- (5) Amounts deducted on an individual's Federal income tax return as net operating losses brought forward from tax years beginning prior to January 1, 1989, must be added to Federal taxable income. For tax years prior to January 1, 1989, State law allowed a net economic loss to be carried forward to subsequent years but was computed differently from the Federal net operating loss. Prior State law did not permit the loss to be carried back to prior tax years as did Federal law.

EXAMPLE: An individual sustains a business loss of one hundred thousand dollars (\$100,000) in 1988, had no other business income or business expenses for that year, and received interest income of eighty-two thousand dollars (\$82,000) from City of Raleigh bonds during the taxable year. For Federal income tax purposes, the individual would have sustained a net operating loss of one hundred thousand dollars (\$100,000). If the individual had no income in the prior three tax years to offset the net operating loss, he could carry the one hundred thousand dollar (\$100,000) loss forward and deduct it as a net operating loss on his 1989 Federal income tax return. Under prior State law, the individual would have incurred a net economic loss of eighteen thousand dollars (\$18,000) [business loss of one hundred thousand dollars (\$100,000) less nontaxable income of eighty-two thousand dollars (\$82,000)] that could be carried forward to 1989. In this situation, the individual must add back the net operating loss deduction to his Federal taxable income.

- (6) If an individual recovered all or any portion of his contributions to an annuity for State income tax purposes for taxable years beginning prior to January 1, 1989, but such amount was not recovered for federal income tax purposes, he must include a ratable portion of the difference in the cost previously recovered for North Carolina purposes and the amount previously recovered for Federal purposes on the North Carolina return for each year beginning on or after January 1, 1989.

EXAMPLE: Both the employee and the employer contributed to the cost of the employee's annuity and the employee will recover his contribution within three years from the annuity starting date. For tax years beginning prior to January 1, 1989, the employee was entitled under State law to recover his contributions to the annuity in full before being taxed on the benefits. The ratable portion to be added to Federal taxable income is determined as follows:

$$\frac{\text{Amount recovered on State return} - \text{Amount recovered on Federal return}}{\text{Remaining Years Life Expectancy}} = \text{Addition to Taxable Income}$$

If the cost recovered for federal income tax purposes for taxable years beginning prior to January 1, 1989, is greater than the cost recovered for State income tax purposes for years prior to 1989, the ratable portion to be deducted from federal taxable income is determined as follows:

$$\frac{\text{Amount recovered on Federal return} - \text{Amount recovered on State return}}{\text{Remaining Years Life Expectancy}} = \text{Deduction from Taxable Income}$$

The amount of difference in the numerator of the fractions in this Subparagraph should reflect the cost recovered during the taxpayer's period of residence in North Carolina and exclude any cost recovered during residence in another state. In the denominator, the remaining years life expectancy to be entered is the life expectancy determined for federal income tax purposes for the year the annuity started less the number of tax years the annuity was reportable for federal tax purposes prior to January 1, 1989. The amount of the transitional adjustment computed for the tax year 1989 will remain the same for each year of the individual's remaining life expectancy.

This transitional adjustment will not apply to retirement annuities from any federal retirement program which were taxed unconstitutionally prior to January 1, 1989, and to annuities which were exempt under prior State law, including retirement annuities from the North Carolina Teachers' and

State Employees' Retirement System and the North Carolina Local Governmental Employees' Retirement System. Also, this transitional adjustment will not apply to retirement annuities received by former teachers and state employees of other states which were fully exempt from North Carolina income tax prior to January 1, 1989, because the other state had no income tax law or practiced reciprocity with North Carolina with respect to taxing such benefits.

This transitional adjustment will apply to retirement annuities received by former teachers and state employees of other states which were not fully exempt because those states practiced no reciprocity or only partial reciprocity with North Carolina with respect to such benefits for taxable years beginning prior to January 1, 1989. The amount of cost recovered on the North Carolina return prior to January 1, 1989, to be used in the formula for computing the addition to federal taxable income is to be computed without considering any benefits which were excluded as the result of partial reciprocity.

- (7) Net economic losses sustained in the five taxable years preceding an individual's first taxable year beginning on or after January 1, 1989, may be carried forward and deducted from taxable income as under prior law. Under prior law, a net economic loss could be carried forward for up to five years. The law defines a net economic loss as the amount by which allowable deductions for the year other than personal exemptions, nonbusiness deductions and prior-year losses exceed income from all sources in the year, including any nontaxable income.
- (8) A Federal net operating loss for a taxable year beginning on or after January 1, 1989, carried back for Federal income tax purposes to a taxable year beginning before January 1, 1989, may be deducted from North Carolina taxable income in the taxable year following the taxable year in which the loss occurred.
- (9) Adjustments must also be made in the taxable income of a shareholder of an S corporation. (See 17 NCAC 6B .4000)
- (10) When a parent elects to report his child's unearned income, the child is treated as having no gross income for the year and is not required to file a Federal income tax return. A parent electing to report a child's unearned income for Federal tax purposes must add back to his Federal taxable income the amount of the child's unearned income in excess of five hundred dollars (\$500.00) but not exceeding one thousand dollars (\$1,000).

Other additions and deductions to Federal taxable income may be required to ensure that the transition to the new tax law does not result in the double taxation of income, the exemption of otherwise taxable income or double allowance of deductions.

*History Note: Statutory Authority G.S. 105-134.7; 105-262;
Eff. June 1, 1990.*

SECTION .0300 - PERSONAL EXEMPTION

- .0301 GENERAL
- .0302 ONE THOUSAND ONE HUNDRED DOLLAR PERSONAL EXEMPTION
- .0303 TWO THOUSAND TWO HUNDRED DOLLAR PERSONAL EXEMPTION
- .0304 BLIND PERSONS
- .0305 INDIVIDUALS AGE 65 OR OVER
- .0306 SEVERELY RETARDED DEPENDENT
- .0307 HEMOPHILIACS
- .0308 EXEMPTION FOR DEPENDENTS
- .0309 DEPENDENT IN INSTITUTION OF HIGHER LEARNING
- .0310 DECEASED OR INCOMPETENT INDIVIDUALS
- .0311 PRORATED PERSONAL EXEMPTION
- .0312 OTHER CONSIDERATIONS

*History Note: Statutory Authority G.S. 105-135; 105-149; 105-149(a)(2); 105-149(a)(4); 105-149(a)(5); 105-149(a)(6); 105-149(a)(7); 105-149(a)(8); 105-149(a)(9); 105-149(a)(10); 105-149(a)(2a); 105-149(a)(8a); 105-149(b); 105-149(c); 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 1989; November 1, 1988; August 1, 1986; May 1, 1984;
Repealed Eff. June 1, 1990.*

- .0313 DEAF INDIVIDUALS
- .0314 RENAL DISEASE

FINAL RULES

History Note: Statutory Authority G.S. 105-149(a)(8b); 105-149(a)(8c); 105-262;
Eff. February 11, 1978;
Amended Eff. November 1, 1988; April 19, 1981;
Repealed Eff. June 1, 1990.

.0315 PARAPLEGICS

History Note: Statutory Authority G.S. 105-149(a)(8d); 105-262;
Eff. April 19, 1981;
Amended Eff. November 1, 1988; February 1, 1988;
Repealed Eff. June 1, 1990.

.0316 CYSTIC FIBROSIS

.0317 SPINA BIFIDA

.0318 MULTIPLE SCLEROSIS

.0319 SEVERE HEAD INJURY

History Note: Statutory Authority G.S. 105-149(a)(8e); 105-149(a)(8f); 105-149(a)(8g);
105-149(a)(8h); 105-262;
Eff. August 1, 1986;
Amended Eff. November 1, 1988;
Repealed Eff. June 1, 1990.

.0320 MUSCULAR DYSTROPHY

.0321 ORGAN AND TISSUE TRANSPLANTS

History Note: Statutory Authority G.S. 105-149(a); 105-262;
Eff. November 1, 1988;
Amended Eff. December 1, 1988;
Repealed Eff. June 1, 1990.

SECTION .0400 - ANNUITIES AND PENSIONS

.0401 GENERAL

.0402 GENERAL RULES FOR ANNUITIES

.0403 SPECIAL RULE

.0404 VARIABLE ANNUITIES

.0405 GUARANTEED PAYMENTS

.0406 LUMP SUM

.0407 INSTALLMENT OPTIONS

.0408 FEDERAL EMPLOYEES PENSIONS

History Note: Statutory Authority G.S. 105-141.1; 105-141(b)(2); 105-141(b)(14);
105-141(b)(18); 105-141(b)(20); 105-141(c); 105-141.1(d)(3);
105-141.1(g); 105-262;
Eff. February 1, 1976;
Amended Eff. November 1, 1988; May 1, 1984; June 1, 1982; March 22, 1981;
Repealed Eff. June 1, 1990.

SECTION .0500 - DIVORCED OR SEPARATED PERSONS

.0501 GENERAL

History Note: Statutory Authority G.S. 105-141.2; 105-147.21; 105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 1986; March 22, 1981;
Repealed Eff. June 1, 1990.

SECTION .0600 - TAX CREDITS

.0601 GENERAL
.0602 RESIDENTS
.0603 NONRESIDENTS

History Note: Statutory Authority G.S. 105-130.4; 105-134; 105-135(13); 105-141(a); 105-142(c); 105-147(9); 105-147(18); 105-149(b); 105-151; 105-262;
Eff. February 1, 1976;
Amended Eff. November 1, 1988; August 1, 1986; May 1, 1984; June 1, 1982;
Repealed Eff. June 1, 1990.

.0605 SOLAR ENERGY TAX CREDIT

(a) A credit is allowable to a corporation or an individual, including an individual member of a partnership who causes to be constructed or installed a solar hot water, heating or cooling system in any building in North Carolina. The credit is limited to 25 percent of the installation and equipment cost of each system, up to a maximum credit of \$1,000 per system or per year on any single building or for each family dwelling unit of a multi-dwelling building. Installation of two systems in the same year which work independently of each other in one building will be limited to a maximum \$1,000 credit. However, if two systems working independently were installed in separate years, then an allowable credit, not to exceed \$1,000 each year, would be allowed for each system.

(b) The owner who first occupies a newly solar-equipped building or the owner-lessor who first leases the building for use after construction or installation will be allowed the tax credit. The credit is only allowable to the individual who owns or controls the building at the time of installation. Only one credit is allowed per system, regardless of the number of subsequent owners or owner-lessors. The cost of repairs to an existing solar system will not qualify for any additional tax credit; however, enhancement to an existing solar system could qualify for additional credit provided the individual has not yet exceeded the maximum \$1,000 credit allowed for the system.

(c) The cost on which the credit is based is the sales price less discounts, rebates, advertising, installation assistance, and name referral allowances paid to the purchaser and/or someone he or she designates, other similar reductions, and/or the fair market value of items given as inducements to purchase a solar energy system. If the allowable credit exceeds the tax liability for the year after being reduced by all other credits, the unused portion of the credit may be carried over the next three succeeding years. In the case of property owned by the entirety, where both spouses are required to file North Carolina income tax returns, the credit may be claimed only if the spouses file a joint return.

(d) A system is not a solar energy system for purposes of the tax credit until it is installed and fully functional. If an individual has paid for the system, but it is not yet installed and available for use during the year, no credit is allowed for North Carolina tax purposes until the year in which the system is placed in service.

(e) Equipment, components, and other items not qualifying for the solar energy credit for State tax purposes includes:

- (1) Insulation (except where otherwise noted in these guidelines).
- (2) Storm windows and storm doors.
- (3) Wood burning stoves and furnaces.
- (4) Oil and gas furnaces, including replacement burners and ignition systems labeled as "energy efficient".
- (5) Automatic set back thermostats.
- (6) Heat pumps, including both air and water-source units.
- (7) Evaporative cooling systems.

(f) Solar energy is energy that is derived directly from sunlight (solar radiation). Solar energy property is equipment that uses solar energy to heat or cool a building or to provide hot water for use within the building. Solar energy property includes "active" and "passive" solar energy systems.

(g) An individual claiming a solar tax credit must designate on his or her North Carolina income tax return the type of solar system installed.

- (1) An active solar energy system is a system capable of collecting and converting solar radiation into heat and transferring the heat to storage or to the point of use. Any solar system which has a fan, pump, or other mechanical means of moving the collection medium in the collection loop of the system, is an active solar system. While the components, design, operation, and performance of active systems will vary, in order to qualify for the tax credit the system must have the following capabilities:

(A) A means of collecting and/or absorbing sunlight to heat liquids or air.

- (B) Thermal storage media which are specifically designed and constructed for storage of solar energy such as tanks to store hot liquids and/or rock beds to store hot air.
- (C) Controls to activate fans or pumps that circulate the hot liquids or hot air.
- (D) Heat exchangers to utilize hot liquids or hot air to heat air or water.

Components of a solar system that function as a part of a conventional or backup heating, air conditioning, or domestic hot water system will not qualify for the credit.

- (2) A passive solar energy system is an assembly of structural and non-structural components which is designed to provide a net energy savings to a building from solar energy, using non-mechanical means of moving heat from the collection area to thermal storage. All qualifying equipment and materials must be integral parts of a system designed to collect, convert, transport or control energy derived directly from sunlight. To qualify as a passive solar energy system, the following elements must be present:

- (A) solar collection surface;
- (B) thermal storage; and
- (C) control and distribution elements.

These three elements must be designed to work together as a whole. Items which only incidentally provide passive solar benefits are not eligible. For example, south-facing glass is only eligible if part of a complete system with thermal storage and control and distribution elements. The only exception to the passive solar system criteria (requiring all three elements) is a thermosiphoning collector, which may be used without thermal storage. Thermosiphoning collectors, sometimes known as dayheaters, qualify for the tax credit. Eligibility requirements are established below according to subsystem type and individual component type. Components which serve a dual function in a building are not fully eligible for the tax credit.

- (i) Solar Collection Surfaces. All solar collection surfaces must be oriented to within 30 degrees of true south for new construction and within 45 degrees of true south for retrofits. Solar collection surfaces must be no more than 25 percent shaded on December 21 between 11 a.m. and 2 p.m. (December 21 is the day when the sun is at the lowest angle in the sky). Solar collection surfaces must be designed so as not to cause additional heat gain to the conditioned area of the building in the summer. Solar collection surfaces include:

- (I) South-facing windows. These must be double-glazed or equipped with moveable insulation having an insulating value of at least R-3 to prevent nighttime heat loss. They must also be shaded to prevent direct sunlight from entering the conditioned area at noon on June 21 (June 21 is the day when the sun is at the highest angle in the sky). The percentage of south-facing windows eligible for the solar tax credit is based on the formula $X - Y = Z$ where:

X = total area of south-facing windows
total area of south-facing wall

Y = total area of north, east, and west-facing windows
total area of north, east, and west-facing walls

Z = percentage of windows considered passive solar equipment.

Multiply Z times the cost for the south-facing windows.

- (II) Attached solar greenhouses and other "sunspaces". These must be double-glazed or equipped with moveable insulation having an insulating value of at least R-3. They must also have a means of distributing solar heat into the conditioned area of the adjacent building. Doors will not qualify as a distribution method. The greenhouse or "sunspace" must have a specifically designed distribution method to facilitate or enhance the convective flow. Greenhouses or other sunspaces which do not provide solar heat to an adjacent building or which require heat from non-solar sources to maintain inside temperatures for any reason are not eligible for the tax credit. 50 percent of the cost of glazing, accompanying structural components including foundation, framing, siding, insulation, and roofing materials is eligible for the credit. Thermal storage elements and control and distribution elements are eligible according to the formulas listed for those categories. For prefabricated sunspaces in which component costs are not provided, multiply 50 percent times the cost of the sunspace.

- (III) Trombe wall or water-wall glazing. 100 percent of the cost of glazing and framing mounted no more than two feet in front of a thermal storage wall is eligible for the tax credit, provided that its sole function is for the collection of solar energy.

- (IV) Skylights. 100 percent of the cost of skylights located on a south-facing roof and equipped with nighttime insulation having a minimum R-value of 3 is eligible for the tax

credit. Skylights on non-south-facing roofs or not equipped with nighttime insulation are not eligible for the tax credit.

- (V) Thermosiphoning collectors. 100 percent of the cost of solar collectors that operate on thermosiphoning principles and that serve no other function besides solar collection are eligible for the tax credit. These include solar window box heaters, thermosiphoning air panels, "breadbox" solar water heaters, etc.
- (ii) Thermal Storage Elements. Devices or materials specifically designed for the storage of solar energy are eligible for the solar tax credit. These materials must be located within the insulated shell of the building or enclosed by fixed or moveable insulation or double-glazing. Masonry products used as thermal storage in walls or floors must be a minimum of three inches thick. Floors used as thermal storage must be insulated around the perimeter to a depth of two and one-half feet below grade or under the floor with a material approved for underground installation and having an insulating value of at least R-10. Materials which are not specifically designed for thermal storage such as hot tubs, swimming pools, chimneys, single layer gypsum board, wood panelling and flooring, linoleum tile, masonry walls and floors not exposed to direct sunlight during the heating season, and floors covered with carpeting are not eligible for the tax credit.
- (I) Non-load-bearing thermal storage elements. 100 percent of the cost of non-load-bearing thermal storage elements is eligible for the tax credit. This includes items such as containers filled with water, rock, or phase change materials, rock beds, and free-standing walls of brick, concrete or solid block.
- (II) Load-bearing thermal storage components. 50 percent of the cost of load-bearing thermal storage components is eligible for the tax credit. This includes walls and floors of brick, concrete, or solid brick.
- (iii) Control and Distribution Elements. Devices that are specifically designed to control heat loss or heat gain or to distribute heat from a passive solar energy system are eligible for the 25 percent solar tax credit. These include:
- (I) Moveable insulation. 100 percent of the cost of moveable insulation devices are eligible for the tax credit provided they have an R-value of at least three and seal tightly against the window frame. Standard draperies and curtains do not qualify.
- (II) Shading devices. 100 percent of the cost of devices used to shade solar collection surfaces is eligible for the tax credit, provided that these devices shade no portion of the collection surface on December 21. Adjustable or removeable awnings, solar screens, and solar films, and lattice work used to support vines are examples of shading devices. Trees, shrubbery, and other vegetation are not eligible, nor are interior shading devices such as shades or blinds.
- (III) Ducts, fans, vents, backflow preventers, etc. 100 percent of the cost of these items is eligible for the tax credit if designed exclusively as part of the solar energy distribution (not collection) system. Ceiling fans, attic fans, and free standing fans are not eligible for the tax credit.
- (IV) Controls. 100 percent of the cost of thermostatic controls or other controls, sensors and equipment, is eligible for the tax credit when designed as part of the solar system.

*History Note: Statutory Authority G.S. 105-151.2; 105-163.03; 105-262;
Eff. June 1, 1982;
Amended Eff. June 1, 1990; July 1, 1986; May 1, 1984.*

.0606 CREDIT FOR CHILD AND DEPENDENT CARE EXPENSES

(a) A tax credit is allowable for the employment-related expenses for child and dependent care. The credit is calculated on the net qualified Federal employment-related expenses after reduction for any employer-paid dependent care assistance that is excluded from Federal gross income. For dependents who were seven years old or older and not physically or mentally incapable of caring for themselves, the credit is seven percent of the net qualified Federal employment-related expenses.

(b) For dependents who were under the age of seven and dependents who were physically or mentally incapable of caring for themselves, the credit is ten percent of the net qualified Federal employment-related expenses. An individual who is not able to dress, clean, or feed himself because of a physical or mental condition is not able to care for himself. Individuals with mental conditions who require constant attention to prevent them from injuring themselves or others are considered to be unable to care for themselves.

(c) For a dependent who becomes age seven during the taxable year and who is not physically or mentally incapable of caring for himself, the tax credit for employment-related expenses incurred prior to the dependent's seventh birthday will be calculated at the ten percent rate, and the tax credit for employment-related expenses incurred after the dependent becomes age seven will be calculated at the seven percent rate.

(d) If an individual was a resident of North Carolina and his spouse was a nonresident, he may not claim credit for any employment-related expenses paid by his spouse. An individual who was a nonresident during any part of the tax year, must reduce the employment-related expenses by the amount he paid during the period he was a nonresident.

*History Note: Statutory Authority G.S. 105-151.11; 105-262;
Eff. June 1, 1990.*

.0607 CREDIT FOR INCOME TAX PAID TO ANOTHER STATE OR COUNTRY

A tax credit is allowed to an individual who is a resident of North Carolina for tax imposed by and paid to another state or country on income that is also taxed by North Carolina, subject to the following conditions:

- (1) The income must have been derived from sources in the other state or country and must have been taxed under the laws of that state or country, regardless of the legal residence of the taxpayer.
- (2) The credit allowable is the smaller of either the tax paid the other state or country on income also taxed by North Carolina or the product obtained by multiplying the North Carolina tax computed before credit by a fraction in which the numerator is the part of the North Carolina income, as adjusted, which is taxed in the other state or country and the denominator is the total income as adjusted, received while a resident of North Carolina. If credits are claimed for taxes paid to more than one state or country, a separate computation must be made for each state or country and the separate credits combined to determine the total credit.
- (3) Receipt or other proof showing payment of income tax to the other state or country and a true copy of the return filed with the other state or country must be submitted with the North Carolina return. No credit is allowed for income taxes paid to a city, county, or other political subdivision of a state or to the Federal government.

If any tax for which a resident has claimed a tax credit on his North Carolina income tax return is refunded at any time by the other state or country, a tax equal to that portion of the credit allowed for the taxes credited or refunded must be paid to North Carolina.

*History Note: Statutory Authority G.S. 105-151; 105-262;
Eff. June 1, 1990.*

.0608 CREDIT FOR CORPORATE TAX PAID BY S CORPORATION TO ANOTHER STATE

(a) Credit is allowed to a resident shareholder for his share of the corporate tax paid by an S corporation to another state that taxes the corporation rather than the shareholder on the S corporation's income, or the computed credit, whichever is less.

(b) If credit is claimed for the shareholder's part of the corporate tax paid, a schedule must be attached to the North Carolina return showing the total tax paid by the S corporation and how the pro rata share of the tax was determined.

(c) This credit is also allowed to resident shareholders with respect to the corporate income tax paid to North Carolina by an S corporation for a fiscal year ending in the calendar year 1989.

*History Note: Statutory Authority G.S. 105-131.8; 105-262;
Eff. June 1, 1990.*

.0609 CREDIT FOR NORTH CAROLINA DIVIDENDS

(a) A tax credit is allowed to a taxpayer for dividends received from a corporation which allocates 50 percent or more of its income or loss for the year to North Carolina. The credit is six percent of the amount of dividends received by the taxpayer while a resident of North Carolina and may not exceed the tax liability for the tax year reduced by all other tax credits.

(b) The maximum credit is three hundred dollars (\$300.00) per taxpayer; however, if a joint return is filed the three hundred dollars (\$300.00) maximum credit applies separately to each spouse for a total potential credit of six hundred dollars (\$600.00). Dividends from stock owned jointly must be allocated

FINAL RULES

50 percent to each spouse. Dividends from stock owned by only one spouse must be allocated entirely to that spouse.

(c) The tax credit is not allowed for dividends received from a corporation which elected to be taxed as an S corporation under the Internal Revenue Code except for dividends attributable to a taxable period during which the corporation operated as a C corporation.

*History Note: Statutory Authority G.S. 105-151.19; 105-262;
Eff. June 1, 1990.*

SECTION .0700 - ACTIVE AND RESERVE DUTY MILITARY PAY

- .0701 MILITARY PAY IN GENERAL
- .0702 RESIDENT ARMED SERVICES PERSONNEL
- .0703 NONRESIDENT ARMED SERVICES PERSONNEL
- .0704 ESTIMATED INCOME TAX RETURNS
- .0705 SERVICE INCOME AND DEDUCTIONS
- .0706 EXTENSIONS

*History Note: Statutory Authority G.S. 105-134; 105-135(13); 105-141; 105-141(b)(25); 105-147;
105-163.15; 105-163.18; 105-262; 105-263; 50 U.S.C. Sec. 574;
Eff. February 1, 1976;
Amended Eff. August 1, 1986; May 1, 1984; June 1, 1982; March 22, 1981;
Repealed Eff. June 1, 1990.*

SECTION .0800 - INSTALLMENT SALES

.0801 GENERAL

*History Note: Statutory Authority G.S. 105-141(a); 105-142(f); 105-144; 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 1988; May 1, 1984; June 1, 1982;
Repealed Eff. June 1, 1990.*

SECTION .0900 - SALE OF PRINCIPAL RESIDENCE

- .0901 GENERAL
- .0902 RULES
- .0903 DEFINITIONS
- .0904 PARTIALLY USED AS A RESIDENCE
- .0905 CONVERTED TO RENTAL PROPERTY
- .0906 EXCHANGE
- .0907 ALLOCATION BETWEEN HUSBAND AND WIFE
- .0908 ACQUIRED BY GIFT OR INHERITANCE

*History Note: Statutory Authority G.S. 105-144.2; 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 1988; August 1, 1986; May 1, 1984; March 21, 1981;
Repealed Eff. June 1, 1990.*

.0910 REPORTING SALE

*History Note: Statutory Authority G.S. 105-144.2; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1982; March 29, 1981; February 21, 1979;
Repealed Eff. June 1, 1990.*

.0911 55 OR OVER

*History Note: Statutory Authority G.S. 105-141(b)(26); 105-262;
Eff. March 29, 1981;
Amended Eff. May 1, 1984;*

FINAL RULES

Repealed Eff. June 1, 1990.

SECTION .1000 - PRIVATE ANNUITY TRANSACTIONS

.1001 GENERAL

*History Note: Statutory Authority G.S. 105-141(a); 105-144; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1982;
Repealed Eff. June 1, 1990.*

SECTION .1100 - INVOLUNTARY CONVERSION

.1101 GENERAL

*History Note: Statutory Authority G.S. 105-144.1; 105-262;
Eff. February 1, 1976;
Amended Eff. April 1, 1978;
Repealed Eff. June 1, 1990.*

SECTION .1200 - COST BASIS OF PROPERTY

.1201 GENERAL

.1202 CHANGES IN THE BASIS

.1203 COST BASIS GUIDE CHART

*History Note: Statutory Authority G.S. 105-144; 105-262;
Eff. February 1, 1976;
Amended Eff. March 25, 1978;
Repealed Eff. June 1, 1990.*

SECTION .1300 - TENANCY BY THE ENTIRETY

.1301 GENERAL

.1302 HOW CREATED

.1303 INCOME

.1304 GAIN OR LOSS

.1305 BASIS TO SURVIVOR

*History Note: Statutory Authority G.S. 39-13.6; 39-13.6(c); 105-144; 105-262;
Eff. February 1, 1976;
Amended Eff. May 1, 1984; June 1, 1982; February 18, 1978;
Repealed Eff. June 1, 1990.*

.1306 BASIS AFTER DIVORCE

*History Note: Statutory Authority G.S. 105-262;
Eff. February 18, 1978;
Repealed Eff. June 1, 1990.*

SECTION .1400 - INCOME AND DEDUCTIONS OF DECEDENTS

.1401 GENERAL

.1402 THE REPORTING OF INCOME

.1403 DEDUCTIONS

.1404 REFUNDS

*History Note: Statutory Authority G.S. 28A-15-8; 28A-15-9; 31A-4; 105-142; 105-142.1;
105-152; 105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 1986; June 1, 1982; February 21, 1979;
Repealed Eff. June 1, 1990.*

FINAL RULES

SECTION .1500 - STOCK DIVIDENDS AND STOCK RIGHTS

.1501 GENERAL

*History Note: Statutory Authority G.S. 105-141(a); 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1982;
Repealed Eff. June 1, 1990.*

SECTION .1600 - BASIS OF DIVESTED STOCK

.1601 GENERAL

.1602 ALLOCATION OF BASIS

*History Note: Statutory Authority G.S. 105-144.4; 105-262;
Eff. February 1, 1976;
Repealed Eff. June 1, 1990.*

SECTION .1700 - EXEMPT INCOME

.1701 GENERAL

.1702 LIFE INSURANCE PROCEEDS

.1703 RETURN OF PREMIUMS

.1704 GIFTS

.1705 INHERITANCE

.1706 GOVERNMENT OBLIGATIONS

*History Note: Statutory Authority G.S. 105-141; 105-141(a); 105-141(b)(1); 105-141(b)(2);
105-141(b)(3); 105-141(b)(4); 105-144; 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 1989; August 1, 1986; June 1, 1982; March 29, 1981;
Repealed Eff. June 1, 1990.*

.1708 ACCIDENT OR HEALTH INSURANCE

.1709 MEDICAL BENEFITS

*History Note: Statutory Authority G.S. 105-141(a); 105-141(b)(5); 105-262;
Eff. February 1, 1976;
Amended Eff. May 1, 1984;
Repealed Eff. June 1, 1990.*

.1715 RETIREMENT BENEFITS FROM OTHER STATES

.1716 MEALS AND LODGING

*History Note: Statutory Authority G.S. 105-141(a); 105-141(b)(8); 105-141(b)(9)a.; 105-262;
Eff. February 1, 1976;
Amended Eff. April 19, 1981; March 29, 1981; February 18, 1978;
Repealed Eff. June 1, 1990.*

.1728 TAX SHELTERED ANNUITIES

*History Note: Statutory Authority G.S. 105-141(b)(17); 105-262;
Eff. February 1, 1976;
Amended Eff. April 19, 1981; February 18, 1978;
Repealed Eff. June 1, 1990.*

.1730 DEDUCTIBLE DIVIDENDS

.1731 RELOCATION EXPENSE

History Note: Statutory Authority G.S. 105-141(a); 105-142(c); 105-144; 105-147(7);

105-262; 133-15;
Eff. February 1, 1976;
Amended Eff. June 1, 1982; April 19, 1981;
Repealed Eff. June 1, 1990.

.1733 NORTH CAROLINA LOCAL GOVERNMENT
.1734 RAILROAD RETIREMENT

History Note: Statutory Authority G.S. 105-141(a); 105-262; 128-31; 45 U.S.C. Sec. 231m;
Eff. February 1, 1976;
Amended Eff. June 1, 1982;
Repealed Eff. June 1, 1990.

.1737 VETERANS ADMINISTRATION BENEFITS
.1738 DISABILITY INCOME

History Note: Statutory Authority G.S. 105-141; 105-262; 38 U.S.C. sec. 3101;
Eff. February 1, 1976;
Amended Eff. June 1, 1982;
Repealed Eff. June 1, 1990.

.1740 STATE EMPLOYEES' RETIREMENT

History Note: Statutory Authority G.S. 135-9; 105-262;
Eff. February 1, 1976;
Amended Eff. May 1, 1984; February 18, 1978;
Repealed Eff. June 1, 1990.

.1742 CAMPAIGN CONTRIBUTIONS
.1743 TRAINING ALLOWANCES
.1744 BROTHERHOOD RELIEF

History Note: Statutory Authority G.S. 105-141(a); 105-141(b)(3); 105-262;
Eff. February 1, 1976;
Repealed Eff. June 1, 1990.

.1747 INDIAN RESERVATION INCOME

History Note: Statutory Authority United States Court of Appeals (Fourth Circuit) No. 79-1589;
G.S. 105-141; 105-262;
Eff. June 1, 1982;
Repealed Eff. June 1, 1990.

.1748 NORTH CAROLINA LEGISLATIVE RETIREMENT BENEFITS

History Note: Statutory Authority G.S. 120-4.4; 120-4.23; 105-262;
Eff. May 1, 1984;
Amended Eff. August 1, 1986;
Repealed Eff. June 1, 1990.

.1749 PUNITIVE DAMAGES
.1750 FOSTER PARENTS REIMBURSEMENT
.1751 CHILD AND DEPENDENT ASSISTANCE PAID BY EMPLOYER
.1752 FOREIGN INCOME EXCLUSION

History Note: Statutory Authority G.S. 105-141(a); 105-141(b)5; 105-141(b)(9)c.;
105-141(b)(22); 105-262;
Eff. August 1, 1986;
Amended Eff. November 1, 1988;
Repealed Eff. June 1, 1990.

FINAL RULES

SECTION .1800 - SCHOLARSHIP AND FELLOWSHIP GRANTS

.1802 FEDERAL PRACTICE TO BE FOLLOWED

*History Note: Statutory Authority G.S. 105-141(b)(10); 105-262;
Eff. February 1, 1976;
Repealed Eff. June 1, 1990.*

SECTION .1900 - EMPLOYEE DEATH BENEFITS

.1901 GENERAL

.1902 THE FIVE THOUSAND DOLLAR EXCLUSION

.1903 NONFORFEITABLE RIGHTS

*History Note: Statutory Authority G.S. 105-141(a)(16); 105-141.1; 105-141(b)(11); 105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 1986; June 1, 1982; February 18, 1978;
Repealed Eff. June 1, 1990.*

SECTION .2000 - DEPRECIATION AND DEPLETION

.2003 STATE AND FEDERAL DIFFERENCES

.2004 FEDERAL PRACTICE TO BE FOLLOWED

*History Note: Statutory Authority G.S. 105-147(12); 105-262;
Eff. February 1, 1976;
Amended Eff. May 1, 1984; June 1, 1982;
Repealed Eff. June 1, 1990.*

SECTION .2100 - CONSERVATION AND LAND CLEARING

.2102 FEDERAL PRACTICE TO BE FOLLOWED

*History Note: Statutory Authority G.S. 105-147(1); 105-262;
Eff. February 1, 1976;
Repealed Eff. June 1, 1990.*

SECTION .2200 - TRAVEL EXPENSES

.2201 GENERAL

*History Note: Statutory Authority G.S. 105-147(1); 105-147(2); 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 1989;
Repealed Eff. June 1, 1990.*

.2203 FEDERAL PRACTICE TO BE FOLLOWED

*History Note: Statutory Authority G.S. 105-147(1); 105-147(2); 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 1988; June 1, 1982;
Repealed Eff. June 1, 1990.*

.2204 REIMBURSEMENT FOR MEALS

*History Note: Statutory Authority G.S. 105-147(1); 105-262;
Eff. March 29, 1981;
Repealed Eff. June 1, 1990.*

SECTION .2300 - EDUCATION EXPENSES

.2301 GENERAL

.2302 FEDERAL PRACTICE TO BE FOLLOWED

*History Note: Statutory Authority G.S. 105-147(2); 105-147(3); 105-148(1); 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 1988;
Repealed Eff. June 1, 1990.*

.2303 EMPLOYER'S EDUCATIONAL ASSISTANCE

*History Note: Statutory Authority G.S. 105-141(b)(23); 105-262;
Eff. March 29, 1981;
Repealed Eff. June 1, 1990.*

SECTION .2400 - MOVING EXPENSES

.2401 GENERAL

.2402 FEDERAL PRACTICE TO BE FOLLOWED

*History Note: Statutory Authority G.S. 105-141(a)(21); 105-147(8); 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 1988; March 11, 1978;
Repealed Eff. June 1, 1990.*

.2403 MEMBERS OF THE ARMED FORCES

*History Note: Statutory Authority G.S. 105-141(a)(21); 105-147(8); 105-262;
Eff. March 11, 1978;
Repealed Eff. June 1, 1990.*

.2404 FOREIGN MOVES

*History Note: Statutory Authority G.S. 105-141(a)(21); 105-147(8); 105-262;
Eff. May 1, 1984;
Repealed Eff. June 1, 1990.*

SECTION .2500 - RETIREMENT PLANS

.2502 FEDERAL PRACTICE TO BE FOLLOWED

*History Note: Statutory Authority G.S. 105-147(20); 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 1988; August 1, 1986; May 1, 1984; June 1, 1982;
Repealed Eff. June 1, 1990.*

.2504 FEDERAL PRACTICE TO BE FOLLOWED

*History Note: Statutory Authority G.S. 105-147(20); 105-262;
Eff. February 1, 1976;
Amended Eff. May 1, 1984; June 1, 1982;
Repealed Eff. June 1, 1990.*

SECTION .2600 - CARRY-OVER LOSS

.2601 GENERAL

*History Note: Statutory Authority G.S. 105-147(9)d.; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1982;
Repealed Eff. June 1, 1990.*

.2603 BUSINESS-CONNECTED DEDUCTION
.2604 APPORTIONMENT

*History Note: Statutory Authority G.S. 105-147(9)d.; 105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 1986; June 1, 1982;
Repealed Eff. June 1, 1990.*

SECTION .2700 - INTEREST DEDUCTION

.2701 GENERAL
.2702 CASH AND ACCRUAL BASIS
.2703 BUSINESS DEDUCTION
.2704 HUSBAND AND WIFE
.2705 MORTGAGES
.2706 LIFE INSURANCE LOANS
.2707 COOPERATIVE OWNERS
.2708 NOTE DISCOUNT

*History Note: Statutory Authority G.S. 105-135(11); 105-141.3; 105-142; 105-147(5);
105-147(19); 105-262;
Eff. February 1, 1976;
Amended Eff. November 1, 1988; June 1, 1982;
Repealed Eff. June 1, 1990.*

.2711 REVOLVING CHARGE ACCOUNTS
.2712 OTHER INTEREST PAYMENTS
.2713 RETIREMENT SYSTEMS

*History Note: Statutory Authority G.S. 105-147(5); 105-262;
Eff. February 1, 1976;
Repealed Eff. June 1, 1990.*

SECTION .2800 - TAXES PAID

.2801 GENERAL
.2802 CASH AND ACCRUAL BASIS
.2803 WHO MAY CLAIM THE DEDUCTION
.2804 BUSINESS DEDUCTION
.2805 DEDUCTIBLE BY RESIDENTS
.2806 NONDEDUCTIBLE

*History Note: Statutory Authority G.S. 105-135(11); 105-141.3; 105-147(6); 105-147(19); 105-262;
Eff. February 1, 1976;
Amended Eff. November 1, 1988; February 1, 1988; August 1, 1986; April 5, 1981;
Repealed Eff. June 1, 1990.*

SECTION .2900 - CASUALTY AND THEFT LOSSES

.2901 GENERAL

*History Note: Statutory Authority G.S. 105-147(9)a.; 105-147(9)b.; 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 1988; May 1, 1984; June 1, 1982;
Repealed Eff. June 1, 1990.*

SECTION .3000 - CONTRIBUTIONS

.3001 GENERAL
.3002 QUALIFIED ORGANIZATIONS
.3003 GRATUITOUS SERVICE EXPENSES

FINAL RULES

- .3004 WHEN DEDUCTIBLE
- .3005 LIMITATIONS
- .3006 AMOUNT DEDUCTIBLE
- .3007 NONDEDUCTIBLE CONTRIBUTIONS
- .3008 PARTNERSHIP CONTRIBUTIONS

History Note: Statutory Authority G.S. 105-147(15); 105-147(15a); 105-147(16); 105-163.16(e); 105-262; Eff. February 1, 1976; Amended Eff. November 1, 1988; August 1, 1986; May 1, 1984; June 1, 1982; Repealed Eff. June 1, 1990.

SECTION .3100 - MEDICAL EXPENSES

- .3101 GENERAL
- .3102 DEFINITIONS
- .3103 LIMITATIONS
- .3104 HUSBAND AND WIFE
- .3105 DEPENDENTS
- .3106 FUNERAL EXPENSES
- .3107 COMMON DEDUCTIBLE EXPENSES
- .3108 SPECIAL CASES
- .3109 NONDEDUCTIBLE EXPENSES
- .3110 MEDICAL CARE FOR A DECEDENT
- .3111 REIMBURSEMENT

History Note: Statutory Authority G.S. 105-142.1; 105-147(11); 105-262; Eff. February 1, 1976; Amended Eff. May 1, 1984; June 1, 1982; April 12, 1981; March 11, 1978; Repealed Eff. June 1, 1990.

SECTION .3200 - PENALTIES: INDIVIDUAL INCOME TAX

.3203 PENALTIES FOR FAILURE TO FILE AND PAY

(a) Under the provisions of G.S. 105-236 both the failure to file and failure to pay penalties, if due, can be applied for the same month. If a return is filed late without payment of the tax shown due, both the late filing and late payment penalties will be assessed at the same time as shown in the table in this Rule:

Cause	Penalty
(1) Return filed by due date showing tax due of \$1.00 or more--No tax paid by due date	10% failure to pay (minimum \$5.00).
(2) Return filed late showing tax due of \$1.00 or more--No tax paid with return	5% per month failure to file (\$5.00 min. --25% max.) and 10% failure to pay-- (\$5.00 min.).
(3) Return filed late showing tax due of \$1.00 or more paid with return	5% per month failure to file (\$5.00 min. --25% max.) and 10% failure to pay (\$5.00 min.).
(4) Return filed late showing no tax due or tax due of less than \$1.00--Tax due after examination.....	*5% per month failure to file (\$5.00 min. --25% max.).
(5) Return filed by due date showing no tax due or tax due of less than \$1.00--Tax due after examination.	*No penalty at time of examination.
(6) Return filed late showing tax due of \$1.00 or more--Tax and failure to file penalty paid with return-- More tax due after examination	*Failure to file penalty on additional

FINAL RULES

..... tax on same basis as was assessed on
..... original return. 10% failure to pay on the
..... tax shown due on the return--(\$5.00 min.)

- (7) Return filed by due date showing tax due
tax paid with return--More tax due after
examination..... *No penalty at time of examination.
- (8) Return filed late showing refund--Refund
is made--Tax due after examination..... *5% per month failure to file (\$5.00 min.
--25% max.) on additional tax.
- (9) Return filed late showing refund--Refund
is not made--Tax due after examination..... *5% per month failure to file (\$5.00 min.
--25% max.) on additional tax.
- (10) Return filed by due date showing refund
--Refund is made--Tax due after examination..... *No penalty at time of examination.
- (11) Amended return filed showing tax due of
\$1.00 or more--no tax paid with return..... 10% failure to pay (\$5.00 min.).
- (12) Amended return filed showing tax due of
\$1.00 or more--part of tax paid with return..... 10% failure to pay on balance of tax due
(\$5.00 min.).

*A negligence or fraud penalty may also be assessed.

(b) If the return is filed under an extension, the failure to file penalty will be assessed from the extended filing date rather than from the original due date. Interest is due from the original due date to the date paid.

(c) The failure to file penalty will not be assessed on the return of an individual residing or traveling outside the United States if the return is filed on or before the 15th day of the sixth month from the close of the tax year (June 15th in the case of a calendar year taxpayer) or later if the taxpayer has a federal extension, a copy of which is attached to the return; or a further extension of time may be granted, based upon the facts, if the taxpayer completes Form D-410, "Application for Extension of Time for Filing State Income Tax Returns".

History Note: Statutory Authority G.S. 105-152(e); 105-236; 105-262; 105-263;
Eff. April 1, 1978;
Amended Eff. June 1, 1990.

.3205 FAILURE TO REPORT FEDERAL CHANGES

When a taxpayer fails to report federal changes within two years from the date he receives the federal revenue agent's report or other final determination of corrected net income, he is subject to the failure to file and failure to pay penalties and forfeits his right to any refund as the result of the federal changes. The failure to file and failure to pay penalties begin at the expiration of the two-year period.

History Note: Statutory Authority G.S. 105-159; 105-236(3); 105-262;
Eff. April 1, 1978;
Amended Eff. June 1, 1990.

.3209 WAIVER OF PENALTY

Any penalty can be waived by the Secretary of Revenue except the penalty for unpaid checks. Any request for waiver or reduction of penalty should be made in writing explaining the reasons for requesting the waiver. Interest however will not be waived under any circumstances.

History Note: Statutory Authority G.S. 105-163.15; 105-237; 105-262;
Eff. April 1, 1978;
Amended Eff. June 1, 1990.

SECTION .3300 - ACCOUNTING PERIODS AND METHODS

.3301 GENERAL

.3302 ACCOUNTING METHODS

.3303 ACCOUNTING PERIODS

.3304 CHANGE IN INCOME YEAR

.3305 ANNUALIZING INCOME

*History Note: Statutory Authority G.S. 105-135(5); 105-142(a); 105-142(b); 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 1988; June 1, 1982; April 12, 1981;
Repealed Eff. June 1, 1990.*

SECTION .3400 - STATUTE OF LIMITATIONS AND FEDERAL CHANGES

.3406 REFUNDS

(a) G.S. 105-266 authorizes refunds to taxpayers for overpayment of taxes of three dollars (\$3.00) or more with interest beginning 90 days after the tax was paid. A refund of less than three dollars (\$3.00) will not be made unless a written request is received from the taxpayer. The section also provides a time limit for refunds by specifying that "... no overpayment shall be refunded irrespective of whether upon discovery or receipt of written demand if such discovery is not made or such demand is not received within three years from the date set by the statute for the filing of the return or within six months of the payment of the tax alleged to be an overpayment whichever date is the later." If the taxpayer has been granted an extension of time for filing the return, the three year period referred to in G.S. 105-266 is three years from the extended date.

(b) G.S. 105-163.16 provides for the refunding of overpayments amounting to one dollar (\$1.00) or more which result from the withholding of income taxes from wages at the source or from payments made on declarations of estimated tax. An overpayment of less than one dollar (\$1.00) will not be refunded except upon receipt of a written demand from the taxpayer. Interest on these overpayments will be computed from a date six months from the time the return is filed or is due to be filed, whichever is later. The time limit for claiming refunds is three years from the due date or six months after payment whichever is later, except in the case of federal changes as explained in .3403 of this Section.

(c) The law requires the interest rate to be determined on or before June 1 for the following six-month period beginning on July 1 and on or before December 1 for the following six-month period beginning on January 1. The current rate of interest may be obtained by contacting the Department of Revenue.

(d) For refunds barred by the three-year statute of limitations, G.S. 105-267.1 provides for the refunding of taxes which through clerical error, or misinterpretation of the law, or otherwise have been paid in excess of the amount legally due; provided, the demand for such refund is made within two years from the time of the payment. This two-year statute of limitations does not apply in cases where the tax is due and payable to another state. Any refund made under this statute must be certified by the Director of the Individual Income Tax Division, approved by the Attorney General, and will not include any interest.

*History Note: Statutory Authority G.S. 105-163.16; 105-241.1; 105-262; 105-266;
Eff. February 1, 1976;
Amended Eff. June 1, 1990; August 1, 1986; May 1, 1984; December 17, 1978.*

SECTION .3500 - PARTNERSHIPS

.3501 GENERAL

The partnership's taxable income determined under the Internal Revenue Code is the starting point for preparing the North Carolina partnership income tax returns. The same additions, deductions and transitional adjustments to Federal taxable income required for individuals apply to partnerships.

*History Note: Statutory Authority G.S. 105-152(a)(3)(2); 105-154(b); 105-142(c); 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1990; December 1, 1986.*

.3502 TAXING PARTNERSHIP INCOME

*History Note: Statutory Authority G.S. 105-142(c); 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1982;
Repealed Eff. June 1, 1990.*

.3503 PARTNERSHIP RETURNS

(a) A North Carolina partnership return (Form D-403), must be filed by every partnership doing business in North Carolina if a Federal partnership return was required to be filed. For individual income tax purposes, the term "business carried on in this State" means the operation of any activity within North Carolina regularly, continuously, and systematically for the purpose of income or profit. A sporadic activity, a hobby, or an amusement diversion does not come within the definition of a business carried on in this State. Income from an intangible source which is received in the course of a business operation in this State so as to have a taxable situs here (including such income which is included in the distributive share of partnership income, whether distributed or not) is included in the numerator of the fraction used in determining the portion of federal taxable income that is taxable to North Carolina by a nonresident. The return must include the names and addresses of the individuals entitled to share in the net income of the partnership and must be signed by the managing partner and the individual preparing the return.

(b) A copy of the Federal Partnership Income Tax Return, Form 1065, and all schedules, including each K-1 must be attached to the North Carolina partnership return.

*History Note: Statutory Authority G.S. 105-142(c); 105-152(a)(2); 105-154(b); 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1990; June 1, 1982.*

- .3504 ACCOUNTING PERIOD**
- .3505 ACCOUNTING METHODS**
- .3506 ITEMS EXEMPT FROM INCOME**
- .3507 BUSINESS DEDUCTIONS**
- .3508 CONTRIBUTIONS**
- .3509 DEDUCTIBLE DIVIDENDS**

*History Note: Statutory Authority G.S. 105-141; 105-142(a); 105-142(b); 105-142(c);
105-147(1)(b); 105-147(2); 105-147(7); 105-147(15); 105-147(16);
105-154(b); 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 1988;
Repealed Eff. June 1, 1990.*

- .3511 NONDEDUCTIBLE ITEMS**
- .3512 OUT-OF-STATE INCOME**

*History Note: Statutory Authority G.S. 105-136; 105-140; 105-141(a); 105-142(c); 105-151;
105-154(b); 105-262;
Eff. February 1, 1976;
Repealed Eff. June 1, 1990.*

- .3513 NONRESIDENT PARTNERS**

(a) When an established business in North Carolina is owned by a partnership having one or more nonresident members, the managing partner is responsible for reporting the distribution share of the income of each nonresident partner and is required to compute and pay the tax due for each nonresident partner. The tax rate is six percent of the nonresident partner's share of income up to twelve thousand seven hundred fifty dollars (\$12,750), plus seven percent of the income over twelve thousand seven hundred fifty dollars (\$12,750). The manager is authorized by statute to withhold the tax due from each nonresident partner's share of the partnership net income. Payment of the tax on behalf of nonresident corporate partners does not relieve the corporation from filing corporate income tax and franchise tax returns; however, credit for the tax paid by the managing partner may be claimed on the corporate returns. Although a partnership may treat guaranteed payments to a partner for services or for use of capital as if they were paid to a person who is not a partner, such treatment is only for purposes of determining its gross income and deductible business expenses. For other tax purposes, such guaranteed payments are treated as a partner's distributive share of ordinary income. In determining the allowable North Carolina deductions from Federal taxable income, do not include a partner's salary, interest on a partner's capital account, partner relocation and mortgage interest differential payments, or payments to a retired partner regardless of whether they were determined without regard to current profits. These types of payments are treated as part of the partner's share of the partnership income. A nonresident partner is not required to file a North Carolina individual income tax return

when the only income from North Carolina sources is the nonresident's share of income from a partnership doing business in North Carolina and the manager of the partnership has reported the income of the nonresident partners and paid the tax due. A nonresident partner may file an individual income tax return and claim credit for the tax paid by the manager of the partnership if the payment is properly identified on the individual income tax return.

(b) If a partnership has one or more nonresident partners and is operating in one or more states other than North Carolina, the partnership's net income attributable to North Carolina for the purpose of determining the North Carolina income tax liability of a nonresident partner must be determined by multiplying the total net income of the partnership by the ratio ascertained under the provisions of G.S. 105-130.4. This means that in the allocation of net income of a nonresident partner to North Carolina the applicable allocation formula prescribed for corporations is used. This allocation of income does not affect the reporting of partnership income by the resident partner because he is taxable on his share of the net income of the partnership whether or not any portion of it is attributable to another state or country.

*History Note: Statutory Authority G.S. 105-134.5(d); 105-142(c); 105-154; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1990; April 12, 1981.*

.3514 LIMITATION ON LOSSES

.3515 BASIS OF A PARTNER'S INTEREST

.3516 LIQUIDATION

.3517 PROPERTY RETAINED

.3518 GAIN OR LOSS ON DISTRIBUTION

.3519 DISPOSITION OF PARTNER'S INTEREST

.3520 FAMILY PARTNERSHIPS

*History Note: Statutory Authority G.S. 105-142(a); 105-142(c); 105-144(a); 105-147(9)a.;
105-154(b); 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1982;
Repealed Eff. June 1, 1990.*

.3521 ESTIMATED INCOME TAX

No estimated income tax is required of a partnership. Individual partners must pay estimated income tax on Form NC-40.

*History Note: Statutory Authority G.S. 105-163.11; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1990.*

.3523 COMMON TRUST FUNDS

.3524 INVESTMENT CLUBS

.3525 TENANCY BY THE ENTIRETY

*History Note: Statutory Authority G.S. 105-142(c); 105-152(a)(3); 105-154(b); 105-262;
Eff. February 1, 1976;
Amended Eff. November 1, 1988; May 1, 1984;
Repealed Eff. June 1, 1990.*

.3526 TAX CREDITS

Since the total dividend income is allocated to the individual partners, the partnership should furnish each resident partner a schedule of his share of the dividends to be used in determining any allowable tax credit to be claimed on the partner's individual income tax return.

*History Note: Statutory Authority G.S. 105-151.19; 105-262;
Eff. June 1, 1990.*

SECTION .3600 - LIFE ESTATE AND REMAINDER INTEREST

.3601 GENERAL

.3602 DEFINITIONS
.3603 BASIS OF LIFE ESTATE PROPERTY
.3604 ALLOCATION OF BASIS
.3605 BASIS TO REMAINDERMAN
.3606 BASIS TO REMAINDERMAN'S SUCCESSOR
.3607 DEPRECIATION AND DEPLETION
.3608 CASUALTY LOSS DEDUCTION
.3609 CAPITAL EXPENDITURES
.3610 SALE OF LIFE ESTATE AND REMAINDER INTERESTS
.3611 TABLES

History Note: Statutory Authority G.S. 8-46; 8-47; 105-144; 105-144(a); 105-147(9)b.; 105-147(12); 105-148(2); 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1982;
Repealed Eff. June 1, 1990.

SECTION .3700 - ESTATES AND TRUSTS

.3701 GENERAL

All income of an estate or trust is taxed to the fiduciary or the beneficiary. The conduit rules for taxing estates and trusts are applicable for North Carolina income tax purposes. Under the conduit rules, regardless of who is taxed, the income retains its same character as when received by the estate or trust.

History Note: Statutory Authority G.S. 105-160 to 105-163; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1990.

.3703 SIMPLE AND COMPLEX TRUSTS
.3704 INCOME TAXABLE TO FIDUCIARIES
.3705 OTHER INCOME
.3706 EXEMPT INCOME

History Note: Statutory Authority G.S. 105-152; 105-161(b); 105-161(c)(3); 105-161(d)(5); 105-161(d)(7); 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 1989;
Repealed Eff. June 1, 1990.

.3708 PERSONAL EXEMPTIONS
.3709 ORDINARY DEDUCTIONS
.3710 DEDUCTION FOR CHARITABLE PURPOSES
.3711 DISTRIBUTABLE NET INCOME
.3712 DISTRIBUTIONS TO BENEFICIARIES
.3713 BASIS OF PROPERTY

History Note: Statutory Authority G.S. 105-142.1(c); 105-144(a); 105-161(c)(1); 105-161(d); 105-161(d)(4); 105-161(d)(5); 105-161(d)(6); 105-161(d)(7); 105-162(e); 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 1988; August 1, 1986; June 1, 1982;
Repealed Eff. June 1, 1990.

.3714 TAX CREDITS

- (a) Estates and trusts are allowed all tax credits allowed to individuals except for:
 - (1) Tax credits for income taxes paid by individuals to other states or countries,
 - (2) Tax credits for child and dependent care,
 - (3) Tax credits for the disabled.
- (b) A fiduciary required to pay an income tax to North Carolina for a trust or estate for which he acts may claim a credit for tax imposed and paid to another state or country on income from sources within the other state or country under the provisions of G.S. 105-160.4(a).

(c) A resident beneficiary of an estate or trust, the fiduciary of which pays an income tax to another state or country on distributable income reportable to North Carolina which is derived from sources in the other state or country may claim a credit against his North Carolina tax for his share of tax paid the other state or country under the provisions of G.S. 105-160.4(e).

(d) A schedule is provided on the fiduciary return for use in computing the tax credit allowable to the estate or trust. Before this schedule may be completed, however, there must be an allocation between the estate or trust and its beneficiaries of the tax paid and the gross income on which such tax was paid to the other state or country.

(e) The fiduciary's share and each beneficiary's share of the gross income on which tax has been paid to another state or country is determined by the governing instrument and should be entered in the appropriate schedule on the fiduciary return. The fiduciary's share of the total gross income to be used in the tax credit computation schedule is the total gross income from Federal Form 1041.

(f) The tax credit for North Carolina dividends apportioned to the estate or trust should be entered on the line for "other tax credits". The credit apportionment is based on the distributions during the year as they relate to the distributable net income adjusted for State tax purposes unless the will or trust instrument creating the estate or trust provides for the distribution of the dividends to certain beneficiaries. If such is the case, the tax credit would be available to the beneficiary to which the dividends were distributed.

(g) If additional tax credits are claimed, a separate schedule should be attached to the fiduciary return showing how the credits were determined and how they are allocated between the beneficiaries and the fiduciary.

*History Note: Statutory Authority G.S. 105-159.19; 105-160.3; 105-160.4; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1990; June 1, 1982.*

.3715 INCOME TAXABLE TO BENEFICIARIES

*History Note: Statutory Authority G.S. 105-162(a); 105-162(b); 105-262;
Eff. February 1, 1976;
Amended Eff. May 1, 1984; June 1, 1982;
Repealed Eff. June 1, 1990.*

.3716 FIDUCIARY RETURNS

(a) The Federal taxable income of the fiduciary is the starting point for preparing a North Carolina Fiduciary Return, Form D-407 and requires the same additions, deductions, and transitional adjustments to Federal taxable income as required for individuals.

(b) The fiduciary responsible for administering the estate or trust is responsible for filing the fiduciary return and paying the tax. The fiduciary must file an income tax return for the estate or trust for which he acts if he is required to file a Federal fiduciary income tax return and:

(1) the estate or trust derives income from North Carolina sources; or

(2) the estate or trust derives any income which is for the benefit of a resident of North Carolina.

(c) The return is required to be filed on or before April 15 if on a calendar year basis and on or before the 15th day of the fourth month following the end of the fiscal year if on a fiscal year basis.

(d) Fiduciaries should be consistent in the use of the name and address of an estate or trust on a return. If a different name for an estate or trust is used in any year from that used in the prior year that fact should be noted on the first page of the return and the name used in the prior year indicated. The use of numbers assigned by banks to estates and trusts are also helpful in the processing of trust returns after they are filed.

*History Note: Statutory Authority G.S. 105-160.5; 105-160.6; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1990; April 12, 1981.*

.3717 TRUST INSTRUMENTS AND WILLS

*History Note: Statutory Authority G.S. 105-161(c)(1); 105-262;
Eff. February 1, 1976;
Repealed Eff. June 1, 1990.*

.3718 PAYMENT OF TAX

(a) The tax rate for estates and trusts is six percent of the taxable income up to twelve thousand seven hundred fifty dollars (\$12,750), plus seven percent of the amount over twelve thousand seven hundred fifty dollars (\$12,750).

(b) There is no provision in the income tax statutes to allow installment payment of income tax due on returns filed for estates or trusts. The tax due on a fiduciary return is payable in full by the due date of the return.

*History Note: Statutory Authority G.S. 105-160.2; 105-160.7; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1990.*

.3721 SPECIAL TRUSTS

.3722 GRANTORS TRUSTS

*History Note: Statutory Authority G.S. 105-142(c); 105-152(3); 105-154(b); 105-161(f)(1)a;
105-163; 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 1988; April 12, 1981;
Repealed Eff. June 1, 1990.*

.3723 ALLOCATION OF ADJUSTMENTS

(a) The additions and deductions to Federal taxable income of an estate or trust must be apportioned between the estate or trust and the beneficiaries based on the distributions of income made during the taxable year. Unless the trust instrument or will that created the estate or trust specifically provides for the distribution of certain classes of income to different beneficiaries, the apportionment of additions and deductions to the beneficiaries is determined on the basis that each beneficiary's share of the income for regular tax purposes from Schedule K-1, Federal Form 1041 relates to adjusted total income from Federal Form 1041. If the trust instrument or will specifically provides for the distribution of certain classes of income to different beneficiaries, any addition or deduction directly attributable to a particular class of income must be apportioned to the beneficiary to which that class of income is distributed. After apportioning the additions and deductions to the beneficiaries, the balance is apportioned to the fiduciary.

(b) In allocating the adjustments, for State purposes the amount of income for regular tax purposes on Federal Schedule K-1 must be adjusted for distributions to the beneficiary which are not reflected in income for regular tax purposes. The adjusted total income on Federal Form 1041 must be adjusted to:

- (1) exclude classes of income that are not part of the distribution to the beneficiary;
- (2) include classes of income that are a part of the distribution to the beneficiary but are not included in adjusted total income; and
- (3) by any deduction treated differently for State and Federal tax purposes that adjust federal taxable income pursuant to G.S. 105-134.6 and G.S. 105-134.7.

*History Note: Statutory Authority G.S. 105-134.5; 105-134.6; 105-134.7; 105-160.2;
105-160.5; 105-262;
Eff. June 1, 1990.*

.3724 ALLOCATION OF INCOME ATTRIBUTABLE TO NONRESIDENTS

(a) If the estate or trust has income from sources outside of North Carolina and if any of the beneficiaries are nonresidents of North Carolina, the portion of Federal taxable income of the Fiduciary that is subject to North Carolina tax must be determined. If there are no nonresident beneficiaries or if there is no gross income from dividends, interest, other intangibles or from sources outside North Carolina for the benefit of a nonresident beneficiary, the total income of the estate or trust is taxable to the fiduciary.

(b) The determination of the amount of undistributed income from intangible property which is for the benefit of a resident is based on the beneficiary's state of residence on the last day of the taxable year of the trust. In the case of both resident and nonresident beneficiaries, the determination of the amount of undistributed income from intangible property which is for the benefit of a resident is made

on the basis that the resident beneficiary's interest for the taxable year relates to the interest of both resident and nonresident income beneficiaries for the taxable year. The state of residence of the trustee or remainderman has no effect upon the determination of the North Carolina income tax liability of the trust.

*History Note: Statutory Authority G.S. 105-134.5; 105-160.2; 105-262;
Eff. June 1, 1990.*

.3725 ADMINISTRATION EXPENSES

The federal taxable income of an estate is not adjusted for administration expenses claimed on the federal fiduciary income tax return in calculating the estate's State taxable income even though a deduction may be claimed for such administration expenses on the North Carolina inheritance tax return. G.S. 105-134.7 provides that the Secretary may by rule require transitional adjustments that will assure that the change to federal taxable income as a starting point in calculating State taxable income will not result in a double allowance of deductions. This applies to the double allowance of deductions for income tax purposes and does not apply to a deduction claimed for inheritance tax purposes which is allowed under a separate division of the Revenue Laws.

*History Note: Statutory Authority G.S. 105-160.2; 105-262;
Eff. June 1, 1990.*

SECTION .3800 - MISCELLANEOUS RULES

.3801 INCOME

.3802 DEDUCTIONS

.3803 OTHER ITEMS

*History Note: Statutory Authority G.S. 8-45.3; 105-141(a); 105-141.1; 105-142(a); 105-144(a); 105-144(c); 105-144.3; 105-147(1); 105-147(1)h; 105-147(2); 105-147(7); 105-147(9)a; 105-147(10); 105-147(17); 105-147(19); 105-147(24); 105-147(28); 105-148(1); 105-148(2); 105-148(8); 105-159.1; 105-163.16(c); 105-163.16(e); 105-251; 105-262; 147-77;
Eff. February 1, 1976;*

*Amended Eff. November 1, 1988; February 1, 1988; April 1, 1987; February 1, 1987;
Repealed Eff. June 1, 1990.*

.3804 MISCELLANEOUS RULES

(a) When a payment is received by the Department of Revenue for less than the correct tax, penalty, and interest due under the law and the facts, and the payment includes the statement, "paid in full" or other similar statements, the payment will be deposited as required by G.S. 144-77. The endorsement and deposit of the payment with such statement will not make the statement binding on the Department of Revenue and will not prevent the collection of the correct balance due.

(b) The Department of Revenue is authorized by law to photograph, photocopy, or microphotocopy all records of the Department, including tax returns, and such copies, when certified by the Department as true and correct copies, shall be admissible in evidence as the original would have been. (G.S. 8-45.3)

(c) In some cases debts owed to certain State and county agencies will be collected from an individual's income tax refund. If the agency files a claim with the Department for a debt of at least fifty dollars (\$50.00) and the refund is at least fifty dollars (\$50.00), the debt will be set off and paid from the refund. The Department will notify the debtor after the set-off has been finalized and will refund any balance which may be due. The debtor will be notified and given an opportunity to contest the debt to the agency making the claim before the set-off is completed.

(d) An individual may elect to contribute all or any portion of his income tax refund, at least one dollar (\$1.00) or more, to the North Carolina Nongame and Endangered Wildlife Fund. Once the election is made to contribute, the election cannot be revoked after the return has been filed. The contribution will be used to assist in the management and protection of North Carolina's many nongame species, including endangered wildlife. The Nongame and Endangered Wildlife Fund will be the primary source of money to support much needed research, public education, and management programs designated specifically to benefit nongame wildlife.

(e) When an individual checks "Yes" to the question, "Do you want \$1.00 to go to this fund (North Carolina Political Parties Financing Fund)?" on his tax return, the total funds designated will be distributed to political parties in North Carolina on a pro rata basis according to voter registrations. Checking "Yes" will neither increase his tax nor reduce his refund.

(f) Tenancy by the Entirety: When filing separate returns a determination must be made as to that portion of the income or loss from real property that must be reported by each spouse. Under G.S. 39-13.6, a husband and wife have equal right to the control, use, possession, rents, income, and profit from real property held as tenants by the entirety and each spouse is taxed on one-half of the income or loss from such property located in North Carolina. When real property conveyed jointly in the name of husband and wife is located in another state and the share of ownership of each is not fixed in the deed or other instrument creating the co-tenancy, each spouse is considered as having received one-half of the income or loss from the real property unless they can demonstrate that the laws of that particular state with respect to the right to the income from the property allocate the income or losses in a different manner.

(g) Cancelled checks, receipts, or other evidence to substantiate deductions on the tax return should be kept for a period of at least three years from the due date of the return or three years from the date the return is filed, whichever is later. Lack of adequate records could result in the disallowance of all or part of the deductions claimed. A cancelled check, money order stub, or Departmental receipt showing payment of tax should be kept for at least five years from the due date of the tax return.

(h) An individual may elect to contribute all or any portion of his income tax refund (at least one dollar (\$1.00) or more) to the North Carolina Candidates Financing Fund. Once the election is made to contribute, the election cannot be revoked after the return has been filed. The Candidates Financing Fund was created to induce candidates for governor and council of state offices to limit their campaign spending, and contributions made from refunds will be placed in the Fund.

*History Note: Statutory Authority G.S. 8-45.3; 39-13.6; 105-159.1; 105-163.16(c); 105-163.16(e); 105-251; 105-262; 105-269.4;
Eff. June 1, 1990.*

SECTION .3900 - NONRESIDENTS AND PART-YEAR RESIDENTS

.3901 DEFINITION OF RESIDENT

(a) G.S. 105-134.1(12) defines a resident as "an individual who is domiciled in this State at any time during the taxable year or who resides in this State during the taxable year for other than a temporary or transitory purpose".

(b) Domicile has been defined as the place where an individual has a true, fixed permanent home and principal establishment, and to which place, whenever he is absent, he has the intention of returning. There are other definitions of domicile, and this definition is presented solely to be used as a guide in determining residency.

(c) If an individual lives in North Carolina for more than 183 days of a tax year, he is presumed to be a resident for income tax purposes in the absence of factual proof to the contrary; but the absence of an individual from the State for more than 183 days raises no presumption that he is not a resident. The fact of marriage does not raise any presumption as to domicile or residence.

(d) In many cases, a determination must be made as to when or whether a domicile has been abandoned. A long standing principle in tax administration, repeatedly upheld by the courts, is that a man can have but one domicile; and, once established, it is not legally abandoned until a new one is established. A taxpayer may have several places of abode in a year, but at no time can an individual have more than one domicile. A mere intent or desire to make a change in domicile is not enough; voluntary and positive action must be taken.

(e) Some of the tests or factors to be considered in determining the legal residence of an individual for income tax purposes are as follows:

- (1) Place of birth.
- (2) Permanent residence of father.
- (3) Family connections, close friends.
- (4) Address given for military purposes.
- (5) Civic ties, church membership, club or lodge membership.
- (6) Bank account or business connections.
- (7) Payment of state income taxes.
- (8) Listing of "legal" or "permanent" address on Federal tax returns.

- (9) Continuous car registration and driver's license.
 - (10) Voting by absentee ballot (one of the best tests to determine permanent residence).
 - (11) Occasional visits or spending one's leave "at home" if a member of the armed services.
 - (12) Ownership of a home.
 - (13) Professional ties--teachers, bar, CPA, etc., certificates.
 - (14) Attendance of children at State supported colleges or universities on a basis of residence--taking advantage of lower tuition fees.
 - (15) Execution of approved certificates or other statements indicating permanent residence.
 - (16) Expression of intention.
- (f) A legal resident of North Carolina serving in the United States Armed Forces is liable for North Carolina income tax and North Carolina income tax should be withheld from his military pay whether he is stationed in this State or in some other state or country.
- (g) An individual who enters military service while a resident of North Carolina is presumed to be a resident of this State for income tax purposes. A residence (or domicile) in this State is not abandoned until a definite residence is established elsewhere.
- (h) To change legal residence, the serviceman must not only be present in the new location with the intention of making it his domicile, but must also factually establish that he has done so.

*History Note: Statutory Authority G.S. 105-134.1(12); 105-134.5; 105-262;
Eff. June 1, 1990.*

.3902 NONRESIDENTS

- (a) The Statute does not define the term "nonresident" but administrative practice is to consider a nonresident for income tax purposes to be an individual:
- (1) Who resides in North Carolina for a temporary or transitory purpose and is, in fact, a domiciliary resident of another state or country; or
 - (2) Who does not reside in North Carolina but has income from sources within North Carolina and is, in fact, a domiciliary resident of another state or country.
- (b) Under the Soldiers' and Sailors' Civil Relief Act, a member of the Armed Services who is a legal resident of another state stationed in North Carolina by virtue of military orders, is not subject to North Carolina income tax on his service pay but other income from employment, a business, or tangible property in North Carolina is subject to North Carolina income tax.
- (c) There is no presumption as to the residence of a spouse of a member of the armed forces because of marriage. Legal residence will be determined based on the facts in each case.

*History Note: Statutory Authority G.S. 105-134.5; 105-262;
Eff. June 1, 1990.*

.3903 PART-YEAR RESIDENT

An individual who moves his domicile (legal residence) into or out of North Carolina during the tax year, is a part-year resident.

*History Note: Statutory Authority G.S. 105-134.5; 105-262;
Eff. June 1, 1990.*

.3904 TAXABLE INCOME OF NONRESIDENTS AND PART-YEAR RESIDENTS

- (a) Nonresidents and part-year residents are required to prorate their Federal taxable income to determine the portion that is subject to North Carolina tax.
- (b) The taxable income of a nonresident subject to North Carolina income tax is determined by multiplying the Federal taxable income, less any applicable adjustments, by the percentage obtained when dividing the portion of total Federal income, as adjusted, derived from North Carolina sources by the total income from the applicable line of the Federal return, as adjusted.
- (c) For part-year residents who are subject to North Carolina tax, taxable income is determined by multiplying the total Federal income as calculated under the Internal Revenue Code, less any applicable adjustments, by the percentage obtained when dividing the portion of total Federal income received from all sources during the period the individual was a resident of North Carolina, plus any income received from North Carolina sources while a nonresident, as adjusted, by the total Federal income, as adjusted.

(d) If an individual files a joint Federal income tax return with his spouse but cannot qualify to file a joint North Carolina income tax return because his spouse is a nonresident and had no North Carolina taxable income, he must calculate his Federal taxable income on a Federal income tax form as a married person filing a separate Federal income tax return and attach it to his North Carolina return to show how his separate Federal taxable income was determined. In lieu of making the calculation on a federal form, an individual may submit a schedule showing the computation of his separate federal taxable income provided he submits a copy of his federal joint income return with his North Carolina return.

(e) If an individual has income from sources within another state or country while a resident of North Carolina and the other state or country taxes the individual on such income, he may be eligible to claim a tax credit on the North Carolina income tax return.

(f) A nonresident is not entitled to the tax credits for tax paid another state or country or for child and dependent care expenses.

*History Note: Statutory Authority G.S. 105-134.5; 105-262;
Eff. June 1, 1990.*

SECTION .4000 - S CORPORATION

.4001 REPORTING INCOME - IN GENERAL

Effective for tax years beginning on or after January 1, 1989, an individual shareholder of an S corporation is required to take into account his pro rata share of an S corporation's net income in the manner provided under Section 1366 of the Internal Revenue Code subject to certain adjustments.

*History Note: Statutory Authority G.S. 105-131.1; 105-262;
Eff. June 1, 1990.*

.4002 RESIDENT SHAREHOLDERS

Since 100 percent of the S corporation's income is included in the Federal taxable income starting point, no adjustment because of doing business outside of North Carolina is required by a resident.

*History Note: Statutory Authority G.S. 105-131; 105-131.1; 105-131.2; 105-134.6(a); 105-262;
Eff. June 1, 1990.*

.4003 NONRESIDENT SHAREHOLDERS

(a) A nonresident shareholder of an S corporation takes into account only his share of the S corporation's income attributable to North Carolina in the numerator of the fraction in determining that portion of Federal taxable income that is taxable to North Carolina. If an S corporation does business in North Carolina and one or more other states, the income attributable to North Carolina is determined by the same apportionment formula as used for other corporations.

(b) All nonresident shareholders must include an agreement with the first S corporation return filed with North Carolina agreeing to be liable and subject to the laws of North Carolina for individual income tax purposes; otherwise, the S corporation becomes liable for the tax at seven percent of the income attributable to such nonresident shareholders.

(c) A nonresident shareholder in an S corporation may claim the proportionate share of the tax paid on his behalf by the S corporation to North Carolina on his share of the S corporation income.

*History Note: Statutory Authority G.S. 105-131.1; 105-131.5; 105-131.7; 105-134.5(d); 105-262;
Eff. June 1, 1990.*

.4004 TAX CREDITS

If part of the S corporation's income is earned within and taxed by another state, either to the individual or to the corporation, a resident shareholder is entitled to a tax credit on his individual income tax return for his share of the tax paid to the other state. A shareholder claiming the tax credit must attach a schedule to his income tax return reflecting the total amount of tax paid to the state by the S corporation, and explaining how his pro rata share of the tax was determined. A tax credit is also allowed to resident shareholders with respect to the corporate tax paid to North Carolina by an S corporation for a fiscal year ending in calendar year 1989. Nonresident shareholders are not allowed credit for tax paid to another state.

*History Note: Statutory Authority G.S. 105-131.8; 105-262;
Eff. June 1, 1990.*

.4005 BASIS IN STOCK

(a) Due to different tax treatment of an S corporation's income for State and Federal purposes for taxable years beginning before January 1, 1989, a shareholder's basis in the stock of an S corporation for State tax purposes may be different than for Federal tax purposes; thereby causing transitional adjustments in determining North Carolina taxable income upon receipt by the shareholder of distributions from the S corporation and upon disposition of the S corporation stock.

(b) The initial basis of the stock in an S corporation to a nonresident of North Carolina is zero, and the nonresident shareholder is not taxed on distributions from the corporation and recognizes no income or loss upon disposition of the stock. A nonresident shareholder's basis in the S corporation stock is adjusted for his pro rata share of the income or loss of the corporation.

(c) A resident shareholder's initial basis in the stock of an S corporation is determined as of the later of the date the stock is acquired, the effective date of the S corporation election, or the date the shareholder became a resident of North Carolina. A resident shareholder's basis in the stock is increased by his pro rata share of the corporation's income adjusted pursuant to G.S. 105-131.2 except for income exempt from Federal or State income taxes and deductions for depletion in excess of the basis of the property being depleted. The basis is decreased by distributions to the extent deemed a return of basis; a pro rata share of the losses of the corporations as adjusted; nondeductible expenses of the corporation; and the amount of the shareholder's deduction for depletion of oil and gas wells to the extent the deduction does not exceed the proportionate share of the adjusted basis of that property allocated to the shareholder. The adjustments to the basis do not apply to tax periods beginning prior to January 1, 1989.

*History Note: Statutory Authority G.S. 105-131.3; 105-262;
Eff. June 1, 1990.*

.4006 DISTRIBUTIONS

(a) A resident shareholder must take into account distributions from an S corporation in computing North Carolina taxable income to the extent the distributions are characterized as dividends or as gains pursuant to Section 1368 of the Internal Revenue Code. Section 1368 of the Code provides that if the S corporation has no accumulated earnings and profits, the amount distributed to a shareholder reduces the adjusted basis in his stock. If the S corporation has earnings and profits, the distribution is applied in the following order:

- (1) To the Accumulated Adjustments Account (AAA), which basically includes the income during the period the corporation has been an S corporation reduced by its losses and distributions during that period. The AAA for State income tax purposes does not include the Federal AAA for tax years beginning prior to January 1, 1989. The shareholder does not take into account distributions from the AAA in determining taxable income but such distributions reduce the adjusted basis of his stock.
- (2) To Earnings and Profits (E and P): An S corporation is not considered to have earnings and profits for State tax purposes for years in which it operates as an S corporation after January 1, 1989. The E and P account basically includes the earnings and profits on hand from the period the corporation was a C corporation; and for State tax purposes, the E and P account also includes the undistributed earnings and profits of the S corporation from tax years beginning before January 1, 1989, (the Federal AAA that existed on the day North Carolina began to measure the S corporation shareholder's income by reference to the income of the S corporation). The amount distributed to the shareholder from the E and P account is taxed to the shareholder as a dividend. Since the State E and P account includes the Federal AAA that existed prior to the change in State law taxing the S corporation income to the shareholders, a transitional adjustment must be made to increase State taxable income for any distributions from the Federal AAA that existed prior to the law change.
- (3) To the basis of the shareholder's stock: Any excess over the shareholder's basis is taxed as a capital gain.

(b) If an S corporation has accumulated earnings and profits, the shareholders may elect to treat distributions from the S corporation as being paid first from earnings and profits provided all shareholders consent to the election in the year of the distribution.

*History Note: Statutory Authority G.S. 105-131.6; 105-262;
Eff. June 1, 1990.*

.4007 FISCAL YEAR S CORPORATION

(a) Section 1366 of the Internal Revenue Code requires a shareholder to include his share of the S corporation's net income in his Federal taxable income for the tax year that includes the last day of the S corporation's tax year. Therefore, a calendar year shareholder must include his share of the net income of an S corporation filing on a fiscal year basis ending in 1989 in his North Carolina taxable income for the tax year 1989 even though for corporate income tax purposes the same income is taxed to the corporation because the corporation's tax year began before January 1, 1989. A tax credit is allowed to resident shareholders with respect to the corporate tax paid to North Carolina by an S corporation for a fiscal year ending in calendar year 1989.

(b) The amount of the S corporation's net income required to be included by the shareholder in his North Carolina taxable income will increase his accumulated adjustments account. Distributions to the shareholder from the accumulated adjustments account are not included in the shareholder's taxable income.

*History Note: Statutory Authority G.S. 105-131.1(b); 105-262;
Eff. June 1, 1990.*

SECTION .4100 - TAXABLE STATUS OF DISTRIBUTIONS FROM REGULATED INVESTMENT COMPANIES

.4101 GENERAL

(a) Distributions received from regulated investment companies (mutual funds) by a shareholder who was a North Carolina resident must be included in his North Carolina taxable income to the same extent included in his Federal taxable income; except, an amount not included in his Federal gross income which was determined to be an "exempt interest dividend" for Federal income tax purposes, must be added to Federal taxable income to the extent it represents interest on obligations of states other than North Carolina and their political subdivisions.

(b) Distributions from a regulated investment company other than "capital gain distributions" and "exempt interest dividends" are included in Federal taxable income in the same manner as distributions of other corporations. Distributions from earnings and profits are ordinary dividends (taxable dividends) unless the mutual fund notifies the taxpayer to the contrary.

(c) Capital gain distributions are paid by mutual funds from their net realized long-term capital gains. The individual receiving a capital gain distribution must report the distribution as a long-term capital gain on his Federal income tax return.

*History Note: Statutory Authority G.S. 105-134.5; 105-262;
Eff. June 1, 1990.*

.4102 EXEMPT INTEREST DIVIDENDS

(a) A mutual fund is qualified to pay exempt interest dividends only if at the close of each quarter of its taxable year at least 50 percent of the value of the total assets of the company consist of state and local bonds, the interest from which is exempt from Federal income tax and certain other obligations on which the interest is exempt from Federal income tax under provisions of Federal law other than the Internal Revenue Code, as those provisions of the law were in effect on January 6, 1983. A mutual fund paying exempt interest dividends to its shareholders must send its shareholders a statement within 60 days after the close of the taxable year showing the amount of exempt interest dividends. The exempt interest dividends are not required to be included in Federal taxable income.

(b) Since interest from states other than North Carolina and their political subdivisions is required to be added to Federal taxable income in calculating North Carolina taxable income, the exempt interest dividends received from mutual funds must be added to Federal taxable income to the extent such dividends do not represent interest from bonds issued by North Carolina and political subdivisions of North Carolina provided the mutual fund furnishes a supporting statement to the taxpayer. In the absence of such statement, the total amount designated as exempt interest must be added to Federal taxable income in computing the taxpayer's North Carolina taxable income.

*History Note: Statutory Authority G.S. 105-134.6(c); 105-262;
Eff. June 1, 1990.*

.4103 ORDINARY DIVIDENDS

The ordinary dividends from mutual funds are included in Federal taxable income and no adjustment to Federal taxable income is necessary in determining North Carolina taxable income. Although the ordinary dividends may include interest earned by the fund on obligations of the United States Government or its possessions, the dividends are reported in the same manner as distributions from other corporations, and no deduction is allowed from Federal taxable income with respect to such interest. The amount of the ordinary dividends (taxable dividends) will qualify for the dividend tax credit provided 50 percent or more of the income was from obligations of the United States Government or its possessions and obligations of the State of North Carolina or its political subdivisions.

*History Note: Statutory Authority G.S. 105-130.7; 105-151.19; 105-262;
Eff. June 1, 1990.*

.4104 CAPITAL GAIN DISTRIBUTIONS

The portion of distributions from a regulated investment company that represents capital gain is reportable on the federal income tax return as capital gain income and not dividend income. Therefore, under G.S. 105-134.6(b)(2) capital gains distributable to a shareholder who is a resident of North Carolina and attributable to the sale of an obligation the profit from which is exempt by North Carolina statute is deductible from federal taxable income in determining the North Carolina taxable income of an individual, trust and estate.

*History Note: Statutory Authority G.S. 105-134.6(b)(2); 105-262;
Eff. June 1, 1990.*

.4105 DIVIDEND TAX CREDIT

A corporation may deduct the proportionate share of dividends received from a regulated investment company which represents and corresponds to income received by such regulated investment company which would not be taxed by North Carolina if received directly by the corporation. The ordinary dividends from a mutual fund qualify for the dividend tax credit if more than 50 percent of the income from the fund represents interest on direct obligations of the United States Government or its possessions and from North Carolina obligations and those of its political subdivisions. The dividend tax credit is equal to six percent of the dividends included in Federal gross income plus any amount of an "exempt interest dividend" added to Federal taxable income that represents interest on obligations of states other than North Carolina and their political subdivisions, up to a maximum tax credit of three hundred dollars (\$300.00).

*History Note: Statutory Authority G.S. 105-151.19; 105-262;
Eff. June 1, 1990.*

SUBCHAPTER 6C - WITHHOLDING

SECTION .0100 - WITHHOLDING INCOME TAXES

.0102 WITHHOLDING FROM WAGES

Employers must withhold North Carolina income tax from the wages paid to their employees according to tables prepared by the North Carolina Department of Revenue or by using an acceptable alternate method and they must pay over the amount withheld to the Department. The manner in which this is required to be done is explained in the booklet, "Income Tax Withholding Tables and Instructions for Employers", Form NC-30.

*History Note: Statutory Authority G.S. 105-163.1; 105-163.1(4); 105-163.1(5); 105-163.1(6);
105-163.2; 105-163.3; 105-163.6; 105-163.18; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1990; December 1, 1988; April 1, 1987.*

.0103 INCOME NOT SUBJECT TO WITHHOLDING

(a) No withholding is required for any income which is exempt from income taxation nor is withholding required for other types of income specifically exempt by other provisions of the North

Carolina statutes or those provisions of the federal statutes which deny to the states the right to impose any income tax on certain types of income.

(b) In addition to those items which are specifically exempt from income taxation, there are other classes of income payments which are taxable for income tax purposes but which are not subject to withholding and for which the recipients are required to pay estimated income tax. These classes of income are as follows:

- (1) Income payments to workers employed on the farm for services rendered on the farm in the production, harvesting, and transportation of agricultural products to the market for the farmer-employer.
- (2) Income payments for the performance of domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;
- (3) Income payments for services not in the course of the employer's trade or business, unless for the service the employee receives fifty dollars (\$50.00) or more in cash remuneration for any calendar quarter in which he is regularly employed to perform the service;
- (4) Fees paid to a public official;
- (5) Income paid to, or on behalf of, an employee or his beneficiary, from a trust described in Section 401(a) of the Internal Revenue Code or under an annuity plan meeting the requirements of this Section, unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust. Report of income, paid to beneficiaries may be made on Forms NC-1099 or copies of federal Form W-2P or acceptable substitutes.
- (6) If an employer enters into a voluntary agreement with the employee to withhold North Carolina tax, the amount withheld will be accepted and the employee will receive credit on his annual income tax return provided the rules which apply to withholding are followed. Since the agreement to withhold is voluntary between the employer and the employee and is not required by law, the employee should understand that he cannot receive credit for any amount withheld that is not properly paid to the Department of Revenue.

*History Note: Statutory Authority G.S. 105-154; 105-163.1(6); 105-163.11; 105-163.14; 105-163.18; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1990.*

.0104 EXEMPTION CERTIFICATES

*History Note: Filed as a Temporary Amendment [(d) and (f)] Eff. November 16, 1981, for a Period of 46 Days to Expire on January 1, 1982;
Statutory Authority G.S. 105-163.3; 105-163.5; 105-163.18; 105-262;
Eff. February 1, 1976;
Amended Eff. January 1, 1989; June 1, 1982; January 1, 1982; April 12, 1981;
Repealed Eff. June 1, 1990.*

.0105 WAGES

Wages consist of all compensation, whether in cash or other form, paid for services performed by an employee, including salaries, fees, and commissions and payments for services performed in prior periods, such as vacation pay, bonuses, and pensions. Wages paid in a form other than money are measured by the fair market value of the goods or consideration given in payment, and withholding is required whether payments are based on time (hour, day, week, et cetera), or on piece work, commission, or percentage. Employers are required to withhold on travel expenses, sick pay, supplemental unemployment compensation, fringe benefits, and tips to the same extent required for Federal income tax purposes.

*History Note: Statutory Authority G.S. 105-163.1(6); 105-163.2; 105-163.18; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1990.*

.0113 BONUS PAYMENTS

.0114 TRAVEL ALLOWANCES

.0115 MOVING EXPENSE REIMBURSEMENT

.0116 WITHHOLDING FROM TIPS

*History Note: Statutory Authority G.S. 105-163.1(6); 105-163.2; 105-163.4; 105-163.18; 105-262;
Eff. February 1, 1976;
Amended Eff. May 1, 1984; February 21, 1979;
Repealed Eff. June 1, 1990.*

.0117 SUPPLEMENTAL WAGE PAYMENTS

(a) If an employer pays supplemental wages separately (or combines them with regular wages in a single payment and specifies the amount of each), the income tax withholding method depends partly on whether the employer withholds income tax from the employee's regular wages.

(b) If tax has been withheld on the regular wages and the supplemental amount is not paid in a single payment together with regular wages, the employer may treat the supplemental wages as wholly separate from the regular wages and apply a flat rate of six percent to the supplemental wage payment without making any allowance for exemptions. Otherwise, the supplemental wages are added to the regular wages for the most recent payroll period. The income tax is figured as if the regular wages and supplemental wages constitute a single payment. The tax already withheld from the regular wages is subtracted from this amount.

(c) The remaining tax is then withheld from the supplemental wages. If the employer did not withhold income tax from the employee's regular wages, the employer must add the supplemental wages to the employee's regular wages paid for the current or last preceding payroll period and withhold tax as though the supplemental wages and regular wages were one payment.

(d) Tips treated as supplemental wages. The employer withholds the income tax on tips from wages or from funds the employee makes available. If an employee receives regular wages and reports tips, the employer figures income tax as if the tips were supplemental wages. If the employer has not withheld income tax from the regular wages, the employer adds the tips to the regular wages and withholds income tax on the total. If the employer withheld income tax from the regular wages, the employer can withhold on the tips as explained in this Paragraph.

*History Note: Statutory Authority G.S. 105-163.1(6); 105-163.2; 105-163.18; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1990.*

.0118 SICK PAY

*History Note: Statutory Authority G.S. 105-163.1(4); 105-163.1(5); 105-163.1(6);
105-163.2; 105-163.18; 105-262;
Eff. February 1, 1976;
Repealed Eff. June 1, 1990.*

.0120 RECIPROCITY OF TAX CREDITS

North Carolina does not allow tax credit to nonresidents for income tax paid to another state or country; therefore, any relief from double taxation must be granted by the state of residence. North Carolina provides such relief to its residents as explained in 17 NCAC 6C .0107.

*History Note: Statutory Authority G.S. 105-151(a); 105-163.22; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1990.*

.0122 FRINGE BENEFITS

*History Note: Statutory Authority G.S. 105-163.1(6); 105-163.2; 105-163.18; 105-262;
Eff. July 1, 1986;
Repealed Eff. June 1, 1990.*

.0123 EMPLOYEE'S WITHHOLDING ALLOWANCE CERTIFICATE

(a) Each new employee, before beginning employment, must furnish his employer with a signed North Carolina Employee's Withholding Allowance Certificate, Form NC-4. A certificate filed by a new employee is effective upon the first payment of wages thereafter and remains in effect until a new one is furnished. State and Federal definitions of dependent, single person, married, head of household,

and qualifying widow(er) are the same; however, the number of allowances an individual is entitled to will differ. (Federal Exemption Certificates Are Not Acceptable.) If an employee fails to furnish an exemption certificate, Form NC-4, the employer must withhold tax as if the employee is single with zero allowances.

(b) The employer is not required to ascertain whether or not the total amount of allowances claimed is greater than the total number to which the employee is entitled. If, however, the employer has reason to believe that the number of allowances claimed by an employee is greater than the number to which such employee is entitled, the employer is requested to notify the Department of Revenue immediately.

(c) If an employee's allowances should decrease, requiring more tax to be withheld, the employee is required to furnish his employer with an amended certificate within ten days after the change. Should the allowances increase, requiring less tax to be withheld, the employee may furnish his employer with an amended certificate at any time after the change occurs.

*History Note: Statutory Authority G.S. 105-163.3; 105-163.5; 105-163.18; 105-262;
Eff. June 1, 1990.*

.0124 ADDITIONAL WITHHOLDING ALLOWANCES

Additional withholding allowances may be claimed by taxpayers expecting to have allowable itemized deductions exceeding the standard deduction or allowable adjustments to income. One additional allowance may be claimed for each two thousand dollars (\$2,000) that the itemized deductions are expected to exceed the standard deduction and for each two thousand dollars (\$2,000) of adjustments reducing income. If an employee will be entitled to a tax credit, he may claim one additional allowance for each one hundred forty dollars (\$140.00) of tax credit.

*History Note: Statutory Authority G.S. 105-163.3; 105-163.5; 105-163.18; 105-262;
Eff. June 1, 1990.*

.0125 PENALTY

G.S. 105-163.5 provides a civil penalty against an employee who furnished his employer with an allowance certificate that contains information which has no reasonable basis and results in a lesser amount of tax being withheld than would have been withheld had the employee furnished reasonable information. The penalty is 50 percent of the amount not properly withheld.

*History Note: Statutory Authority G.S. 105-163.5; 105-262;
Eff. June 1, 1990.*

.0126 SUBMISSION OF CERTAIN WITHHOLDING ALLOWANCE CERTIFICATES

(a) An employer is required to submit copies of any withholding allowance certificates on which the employee claims more than ten withholding allowances or claims exemption from withholding and the employee's wages would normally exceed two hundred dollars (\$200.00) per week.

(b) An employer filing quarterly withholding reports is required to submit copies of the certificates received during the quarter at the time for filing his quarterly report. An employer filing monthly withholding reports is required to submit copies of the certificates received during the quarter at the time for filing his monthly report for the third month of the calendar quarter. Copies may be submitted earlier and for shorter reporting periods.

(c) Copies of the certificates, along with a letter showing the employer's name, address, withholding identification number, and the number of certificates submitted, are to be mailed to: North Carolina Department of Revenue, Withholding Section, P.O. Box 25000, Raleigh, North Carolina 27640.

(d) The employer shall withhold on the basis of the certificate until written notice is received from the Department that the certificate is defective. As part of that written notice, the Department will advise the employer to ignore the allowance certificate filed and to withhold on a number specified.

(e) The employer shall promptly furnish the employee a copy of the written notice.

(f) If the employee files a new certificate, the employer shall honor that certificate only if the employee does not claim exempt and claims a number smaller than the number allowed in the Department's written notice. If the new certificate claims a number larger than the employee has been allowed and the employee specifies, in writing, any circumstances as justification to support the claims, the employer must forward a copy of the certificate and the employee's written statement to the Department for review. The employer shall continue to withhold as specified in the Department's written notice until

written notice is received from the Department advising the employer to withhold on the basis of the new certificate.

(g) To increase withholding an employee may claim less than his allowable allowances or may enter into an agreement with his employer and request that an additional amount be withheld by entering the desired amount on Form NC-4.

(h) An employee working for two or more employers should claim his allowable allowance with only one employer and claim zero allowances with the other employers.

(i) If an employee claims total exemption from withholding, his wages will be exempt from withholding of North Carolina income tax for the remainder of the calendar year unless the employee withdraws the statement during the year. An employee claiming exemption from withholding must complete a new certificate by February 15. If the employee does not complete a new certificate, the employer must withhold on the basis of a single individual with zero withholding allowances.

*History Note: Statutory Authority G.S. 105-163.5; 105-163.18; 105-262;
Eff. June 1, 1990.*

SECTION .0200 - FILING WITHHOLDING REPORTS

.0201 NEW EMPLOYERS

North Carolina does not use a deposit system for income tax withheld. Each new employer who is required to withhold North Carolina income tax must complete and file with the Department an application for a withholding identification number, Form NC-1, which can be obtained from any office of the Department. A withholding identification number will be assigned which should be recorded in a permanent place and used on all reports and correspondence concerning withholding.

*History Note: Statutory Authority G.S. 105-163.18; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1990.*

.0203 ANNUAL REPORTS

(a) At the end of each calendar year employers are required to furnish wage and tax statements, Form NC-2, to employees. Two copies must be furnished to the employee and one copy must be furnished to the Department. The Internal Revenue Service supplies a six part Form W-2 which will produce the required federal and North Carolina statements in one packet.

(b) The copies of the wage and tax statements for the Department of Revenue must be filed with the Annual Reconciliation of North Carolina Income Tax Withheld, Form NC-3, or NC-3M.

(c) Reports of payments of income, interest, rents, premiums, dividends, annuities, remunerations, emoluments, fees, gains, profits, taxable meal reimbursements, and other determinable annual or periodic gains during a calendar year must be made on Information at the Source Reports, Form NC-1099, if the payments have not otherwise been reported.

*History Note: Statutory Authority G.S. 105-154; 105-163.7; 105-163.18; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1990; April 12, 1981.*

.0204 AMOUNTS WITHHELD ARE HELD IN TRUST FOR THE SECRETARY OF REVENUE

(a) The tax withheld or required to be withheld is due to be paid at the time that the return is due to be filed.

(b) A penalty of 25 percent of the amount due is imposed for failure to withhold, to file a report on time, or to pay the tax when due.

(c) An employer who fails to withhold or pay the amount required to be withheld is personally and individually liable for the tax. If an employer has failed to withhold or to pay over income tax withheld or required to have been withheld, a 100 percent penalty may be asserted against the responsible corporate officers or other responsible person whenever such taxes cannot be immediately collected from the employer. More than one person may be liable as a person responsible for the payment of withholding taxes; however, the amount of the income tax withheld or required to have been withheld will be collected only once, whether from the employer or one or more responsible persons. The term "responsible person" includes any person who is in a position to control the finances of the employer or has the authority or ability to determine which obligations should or should not be paid. Respon-

sibility is a matter of status, duty, and authority, not knowledge. For the penalty to apply, it is not necessary that the failure to collect and pay the withholding amounts was willful; it is only necessary that the responsible person failed to pay the tax withheld or required to have been withheld to the Secretary of Revenue regardless of his reasons or the knowledge he had of such failure.

(d) When the Department of Revenue determines that collection of the tax is in jeopardy, an employer may be required to report and pay the tax at any time after payment of the wages.

History Note: Statutory Authority G.S. 105-163.6; 105-163.17; 105-163.18; 105-241.1(g); 105-262; Eff. June 1, 1990.

SUBCHAPTER 6D - ESTIMATED TAX

SECTION .0100 - FILING ESTIMATED INCOME TAX PAYMENTS

.0102 REQUIREMENTS FOR FILING

(a) An individual is required to pay estimated income tax if the tax shown due on the income tax return for the taxable year, reduced by the North Carolina tax withheld and allowable tax credits, is forty dollars (\$40.00) or more regardless of the amount of income the individual has that is not subject to withholding.

(b) Married individuals can make joint payments of estimated income tax even if they are not living together; however, they are not entitled to make joint estimated tax payments if they are separated under a decree of divorce or of separate maintenance. Also, they may not make joint estimated tax payments if either of them is a nonresident alien or if either of them have different tax years. Whether a man and wife make joint estimated tax payments or separate payments will not affect their choice of filing a joint income tax return or separate return. If they make joint payments and then file separate returns, they may divide the estimated tax payments between them.

(c) A taxpayer filing a short period return because of changing his income year is required to make estimated income tax payments on the installment dates which fall within the short period and 15 days after the close of the short period which would have been due had he not changed his income year. The penalty for underpayment of estimated income tax for a short period will be computed for the period of underpayment based on the tax shown due on the short period return and computed in the same manner as it would have been computed had the taxpayer not changed his income year.

(d) An individual may elect to have his or her income tax refund applied to estimated income tax for the following year. For example, an individual due a refund on his 1989 income tax return may have all or any portion of the refund applied to his estimated tax for 1990. The individual may not however, file a 1989 tax return in 1991 and request the refund be applied to his 1991 estimated tax since the refund can only be applied to the tax year which follows the year for which the request for refund is made.

(e) If an individual makes a valid election, that individual may not revoke the election after the return has been filed in order to have the amount refunded or applied in any other manner, such as an offset against any subsequently determined tax liability.

History Note: Statutory Authority G.S. 105-163.15; 105-163.18; 105-262; Eff. February 1, 1976; Amended Eff. June 1, 1990; February 1, 1988; August 1, 1986; May 1, 1984.

SECTION .0200 - PENALTY FOR UNDERPAYMENT OF ESTIMATED INCOME TAX

.0201 GENERAL

A civil penalty may be due for underpayment of estimated income tax. The penalty is computed separately for each payment period, therefore an individual may owe the penalty for an early period even if that individual later paid enough to make up the underpayment. If an individual did not pay enough tax by the due date of each of the payment periods, he may owe a penalty even if he is due a refund when he files his return.

History Note: Statutory Authority G.S. 105-163.15; 105-236(9); 105-241.1(i); 105-262; 105-163.18; Eff. February 1, 1976; Amended Eff. June 1, 1990; August 1, 1986; February 21, 1979.

.0202 THE AMOUNT OF UNDERPAYMENT (TAXABLE YEARS BEFORE 1986)

FINAL RULES

.0203 THE PERIOD OF UNDERPAYMENT (TAXABLE YEARS BEFORE 1986)

.0204 AVOIDING PENALTY (TAXABLE YEARS BEFORE 1986)

*History Note: Statutory Authority G.S. 105-163.15(b); 105-163.15(c); 105-163.15(d); 105-163.18; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1982; April 12, 1981; February 21, 1979;
Repealed Eff. June 1, 1990.*

.0205 ESTIMATED TAX PAYMENTS (TAXABLE YEARS AFTER 1986)

*History Note: Statutory Authority G.S. 105-163.15; 105-163.18; 105-262;
Eff. August 1, 1986;
Repealed Eff. June 1, 1990.*

.0206 AVOIDING PENALTY

(a) The penalty for underpayment of estimated income tax will not apply if the individual makes payments of estimated income tax on each installment date for 25 percent of the lesser of:

- (1) 80 percent (66.67 percent for farmers and fishermen) of the tax (after tax credits) on the current year's return,
- (2) 100 percent of the tax on the preceding year's return (provided it was a taxable year of 12 months and the individual filed a return for that year), or
- (3) 80 percent (66.67 percent for farmers and fishermen) of the tax determined by annualizing the income received during the year up to the month in which the installment is due.

Also, no penalty for underpayment will be due if an individual had not tax liability for the preceding year or if the total tax shown on the current-year return minus the amount paid through withholding is less than forty dollars (\$40.00).

(b) Effective for taxable years beginning on or after January 1, 1990, the percentage of the required annual payment will increase from 80 percent to 90 percent.

(c) For taxable years beginning in 1989, the estimated income tax penalty does not apply to an underpayment to the extent that the underpayment was created or increased by changes in the law under the Tax Fairness Act of 1989 which adopts taxable income determined under the Internal Revenue Code as the starting point for determining North Carolina taxable income.

*History Note: Statutory Authority G.S. 105-163.15; 105-163.18; 105-262;
Eff. June 1, 1990.*

.0207 UNDERPAYMENTS

(a) An underpayment is the excess of the required installment (or, if lower, the annualized income installment) for a payment period over the portion of the amount paid by the due date that is not applied to an underpayment for an earlier payment period.

(b) Payments include income tax withheld and are considered payments of estimated tax in equal installments on the required installment dates (usual four), unless the individual can prove otherwise. A payment of estimated tax is credited against unpaid installments in the order in which the installments are required to be paid.

*History Note: Statutory Authority G.S. 105-163.15; 105-163.18; 105-262;
Eff. June 1, 1990.*

.0208 OVERPAYMENTS

An overpayment for any period occurs when the withholding and estimated tax payments are more than the total of any underpayments for an earlier period plus the lesser of the required installment or the annualized income installment for the period. If there is an overpayment for a period, it should be carried to the next period and added to the withholding and estimated tax paid for that later period to determine any underpayment or overpayment for that later period.

*History Note: Statutory Authority G.S. 105-163.15; 105-163.18; 105-262;
Eff. June 1, 1990.*

.0209 DETERMINING AN UNDERPAYMENT

(a) No penalty will be due if the estimated tax payments were made on time and the payment for each period was at least as much as either the required installment or the annualized income installment for the period. Use Form D-422, Penalty for Underpayment of Estimated Income Tax, to determine any underpayment.

(b) The required installment for any payment period is the lesser of 20 percent (22.5 percent beginning January 1, 1990) of the tax shown on the current-year return or 25 percent of the tax shown on the prior-year return (if the prior-year return covered all 12 months of the year). However, if the annualized income installment for any period is less than the required installment for the same period and the annualized income installment is used in determining the underpayment, add the difference between the annualized income installment and the required installment to the required installment for the next period. If the annualized income installment for the next payment period is used, add the difference between the annualized income installment for that period and the required installment (as increased) for that period to the required installment for the following payment period.

(c) There will be no underpayment for any payment period in which the estimated tax payments, reduced by any amounts applied to underpayments in earlier periods, were paid by the due date for the period and were at least as much as the annualized income installment for the period.

*History Note: Statutory Authority G.S. 105-163.15; 105-163.18; 105-262;
Eff. June 1, 1990.*

.0210 PERIOD OF UNDERPAYMENT

(a) The penalty is applied to the number of days that the installment was not paid. For tax year 1989, for example, determine the period of the underpayment by counting the number of days after the due date of the installment to and including the date of payment, or April 16, 1990, whichever is earlier. Fiscal year taxpayers use the 15th day of the fourth month following the close of the fiscal year instead of April 16, 1990.

(b) Calendar year taxpayer's payments were due on April 17, June 15, and September 15, 1989, and January 16, 1990.

(c) Payments for fiscal year taxpayers were due on the 15th day of the fourth month, the 15th day of the sixth month, and the 15th day of the ninth month of the fiscal year, and the 15th day of the first month after the end of the fiscal year.

(d) Periods and amounts of underpayment are determined by applying estimated tax payments to any underpayments of earlier installments in the order in which such installments were required to be paid.

(e) If a payment of estimated tax is applied to an underpayment for an earlier period, but the payment is less than the underpayment, there will be more than one period of underpayment for the earlier period.

(f) The first period of underpayment for any payment period will be from the day after the due date for the payment period to the date of the first applied payment. Later periods of underpayment for that payment period will be from the day after the due date for the payment period to the date of the next applied payment or April 15 of the following year, whichever is earlier.

(g) To determine the penalty for a payment period with more than one period of underpayment, compute a penalty amount separately for each of the periods of underpayment using the number of days in each period of underpayment, the correct underpayment balance, and the appropriate penalty rates.

*History Note: Statutory Authority G.S. 105-163.15; 105-163.18; 105-262;
Eff. June 1, 1990.*

.0211 FARMERS AND FISHERMEN

(a) The following special rules for underpayment of estimated tax apply to farmers and fishermen:

- (1) The penalty for underpaying 1989 estimated tax will not apply if the return is filed and all tax is paid by March 1, 1990. For fiscal year taxpayers, the penalty will not apply if the return is filed and tax due is paid by the first day of the third month after the end of the tax year.
- (2) Any penalty owed for underpaying 1989 estimated tax will be determined from one payment due date, January 15, 1990.
- (3) The underpayment penalty for 1989 is computed on the difference between the amount of estimated tax paid by the due date and the lesser of 100 percent of the tax shown on the 1988 return or $66\frac{2}{3}$ of the 1989 tax.

FINAL RULES

(b) Even if these special rules apply to a farmer or fisherman, he will not have to pay a penalty if the tax due (less withholding) is less than forty dollars (\$40.00) or if he had no tax liability for the prior year.

*History Note: Statutory Authority G.S. 105-163.15; 105-163.18; 105-262;
Eff. June 1, 1990.*

NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Architecture	2
2	Agriculture	Auctioneers	4
3	Auditor	Barber Examiners	6
4	Economic and Community Development	Certified Public Accountant Examiners	8
5	Correction	Chiropractic Examiners	10
6	Council of State	General Contractors	12
7	Cultural Resources	Cosmetic Art Examiners	14
8	Elections	Dental Examiners	16
9	Governor	Electrical Contractors	18
10	Human Resources	Foresters	20
11	Insurance	Geologists	21
12	Justice	Hearing Aid Dealers and Fitters	22
13	Labor	Landscape Architects	26
14A	Crime Control and Public Safety	Landscape Contractors	28
15A	Environment, Health, and Natural Resources	Marital & Family Therapy	31
16	Public Education	Medical Examiners	32
17	Revenue	Midwifery Joint Committee	33
18	Secretary of State	Mortuary Science	34
19A	Transportation	Nursing	36
20	Treasurer	Nursing Home Administrators	37
*21	Occupational Licensing Boards	Occupational Therapists	38
22	Administrative Procedures	Opticians	40
23	Community Colleges	Optometry	42
24	Independent Agencies	Osteopathic Examination and Registration	44
25	State Personnel	Pharmacy	46
26	Administrative Hearings	Physical Therapy Examiners	48
		Plumbing and Heating Contractors	50
		Podiatry Examiners	52
		Practicing Counselors	53
		Practicing Psychologists	54
		Professional Engineers and Land Surveyors	56
		Real Estate Commission	58
		Refrigeration Examiners	60
		Sanitarian Examiners	62
		Social Work	63
		Speech and Language Pathologists and Audiologists	64
		Veterinary Medical Board	66

Note: Title 21 contains the chapters of the various occupational licensing boards.

CUMULATIVE INDEX

CUMULATIVE INDEX (April 1990 - March 1991)

1990 - 1991

Pages	Issue
1 - 151.....	1 - April
152- 235.....	2 - April
236- 285.....	3 - May
286- 312.....	4 - May
313- 407.....	5 - June

AO - Administrative Order
AG - Attorney General's Opinions
C - Correction
FR - Final Rule
GS - General Statute
JO - Judicial Orders or Decision
M - Miscellaneous
NP - Notice of Petitions
PR - Proposed Rule
SO - Statements of Organization
TR - Temporary Rule

AGRICULTURE

Plant Conservation Board, 1 PR
Structural Pest Control Committee, 7 PR

CRIME CONTROL AND PUBLIC SAFETY

State Highway Patrol, 53 PR

ECONOMIC AND COMMUNITY DEVELOPMENT

Banking Commission, 16 PR
Community Assistance, 25 PR, 317 PR
Credit Union, 317 PR
Milk Commission, 24 PR

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management, 136 PR, 292 PR
Environmental Management, 54 PR, 193 PR
Health Services, 190 PR
Marine Fisheries, 63 PR
Wildlife Resources and Water Safety, 137 PR, 206 PR, 293 PR, 349 PR

FINAL DECISION LETTERS

Voting Rights Act, 241, 286, 316

FINAL RULES

List of Rules Codified, 143 FR, 226 FR, 302 FR

GOVERNOR/LT. GOVERNOR

Executive Orders, 236, 313

HUMAN RESOURCES

Health Services, 152 PR, 245 PR

Medical Assistance, 191 PR

Mental Health, Developmental Disabilities and Substance Abuse Services, 29 PR, 318 PR

Social Services, 247 PR

Water Treatment Facility Operators Board of Certification, 27 PR

Youth Services, 261 PR

INSURANCE

Agent Services Division, 321 PR

Financial Evaluation Division, 342 PR

Fire and Casualty Division, 335 PR

Life: Accident and Health, 264 PR, 287 PR

JUSTICE

Attorney General, Office of the, 192 PR, 273 PR

LICENSING BOARDS

Cosmetic Art Examiners, Board of, 355 PR

Electrical Contractors, Board of Examiners of, 356 PR

Medical Examiners, Board of, 207 PR

Nursing, Board of, 300 PR

PUBLIC EDUCATION

Elementary and Secondary, 141 PR, 275 PR, 351 PR

REVENUE

Individual Income Tax, 359 FR

Sales and Use Tax, 213 FR

SECRETARY OF STATE

Securities Division, 293 PR

STATE PERSONNEL

State Personnel Commission, 277 PR

STATE TREASURER

Department Rules, 352 PR

Local Government Commission, 352 PR

Solid Waste Management Capital Projects Financing Agency, 354 PR

TRANSPORTATION

Motor Vehicles, Division of, 222 FR

NORTH CAROLINA ADMINISTRATIVE CODE

The full publication consists of 52 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available at one-half the new subscription price.

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25	10	34 - 41	Human Resources	60.00		
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27	10	43 - 51	Human Resources	90.00		
28	11	1 - 15	Insurance	90.00		

Continued

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