

The **NORTH CAROLINA REGISTER**

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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 27447, Raleigh, N. C. 27611-7447, 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 53 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



*Office of Administrative Hearings
P. O. Drawer 27447
Raleigh, NC 27611-7447
(919) 733 - 2678*

Julian Mann III,
Director
James R. Scarcella Sr.,
Deputy Director
Molly Masich,
Director APA Services

Staff:
Ruby Creech,
Publications Coordinator
Teresa Kilpatrick,
Editorial Assistant
Jean Shirley,
Editorial Assistant

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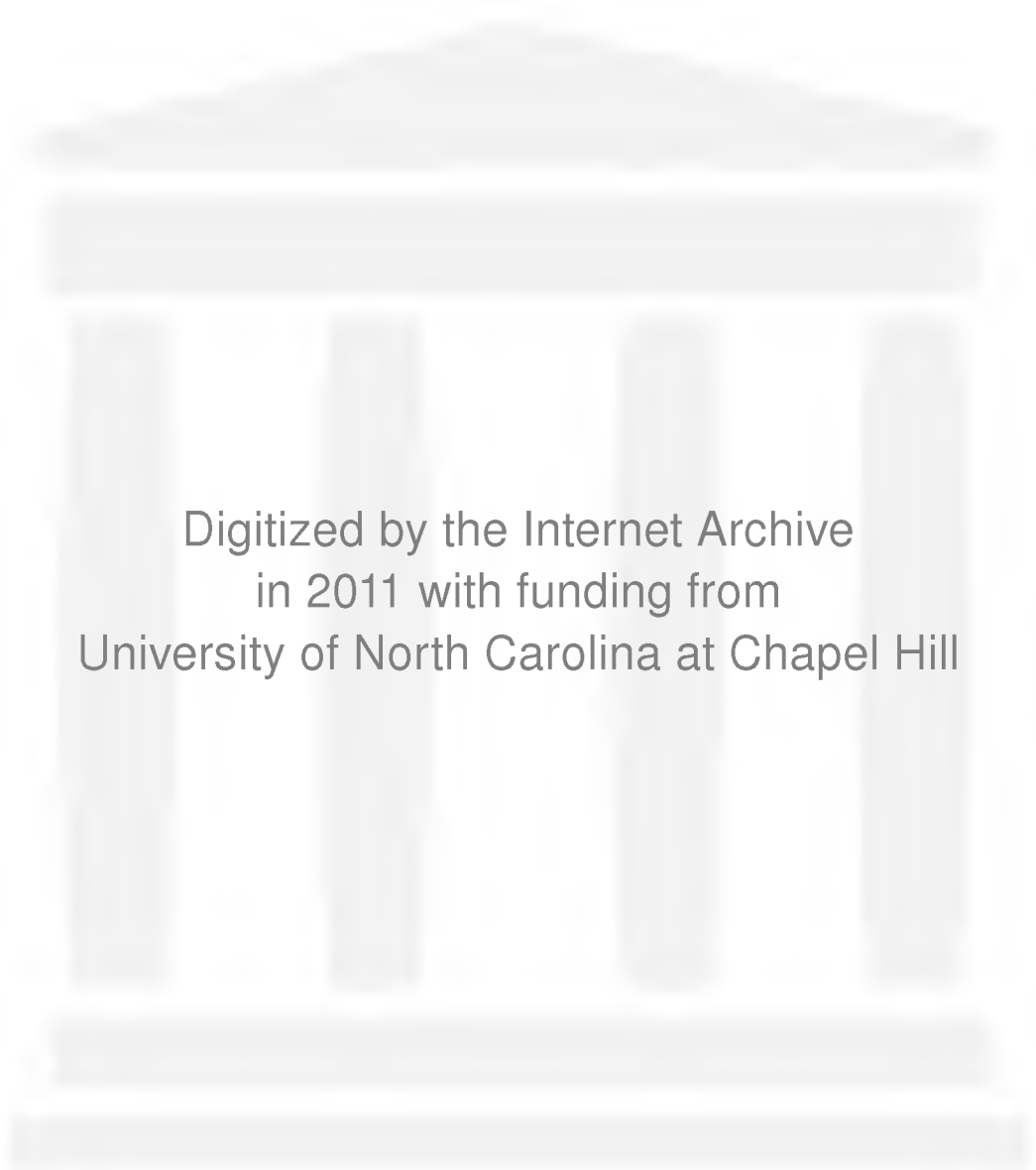
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VOTING RIGHTS ACT FINAL DECISION LETTERS

[G.S. 120-30.9H, 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

JRD:SSC:TGL:gmh
DJ 166-012-3
91-1952

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

August 15, 1991

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

Dear Mr. McCarley:

This refers to the delay in the municipal election schedule from November 1991 to May 1992 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 June 19, 1991.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

VOTING RIGHTS ACT FINAL DECISION LETTERS

U.S. Department of Justice
Civil Rights Division

JRD:RBJ:NT:tlb
DJ 166-012-3
91-1978

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

August 19, 1991

George Weaver, Esq.
Lee, Reece & Weaver
P. O. Box 2047
Wilson, North Carolina 27894-2047

Dear Mr. Weaver:

This refers to the election day voter transfer procedures in Wilson 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 June 20, 1991.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

VOTING RIGHTS ACT FINAL DECISION LETTERS

U.S. Department of Justice
Civil Rights Division

JRD:MAP:JRN:tlb
DJ 166-012-3
91-2085
90-3761

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

August 22, 1991

Michael Crowell, Esq.
Tharrington, Smith & Hargrove
P. O. Box 1151
Raleigh, North Carolina 27602

Dear Mr. Crowell:

This refers to Chapter 374 (1991), which provides for a change in method of election from at large to two double-member districts and one at-large position, the districting plan, and the implementation schedule for the Town of Williamston in Martin 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 June 26, 1991.

This also refers to the Town of Williamston's submission under Section 5 of Chapter 883 (1990), which provided for a change in method of election from at-large to three single-member districts and two at-large positions elected by limited voting, and the districting plan. We received your request to withdraw this submission on June 26, 1991.

With respect to the changes occasioned by Chapter 374 (1991), the Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With respect to the changes occasioned by Chapter 883 (1990), your June 25, 1991 letter withdraws your submission from Section 5 review. Accordingly, no determination by the Attorney General is required concerning this matter. See [28 C.F.R. 51.25(a)].

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

**TITLE 2 - DEPARTMENT OF
AGRICULTURE**

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Pesticide Board intends to adopt rules cited as 2 NCAC 9L .2101 - .2107.

The proposed effective date of this action is February 1, 1992.

The public hearing will be conducted at 1:00 p.m. on November 7, 1991 at the Board Room, Agriculture Building, One Edenton Street, Raleigh, NC 27601.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to John L. Smith, Secretary, North Carolina Pesticide Board, P.O. Box 27647, Raleigh, NC 27611.

**CHAPTER 9 - FOOD AND DRUG PROTECTION
DIVISION**

SUBCHAPTER 9L - PESTICIDE SECTION

**SECTION .2100 - HEARING RULES OF THE
NORTH CAROLINA PESTICIDE BOARD**

.2101 NOTICE OF HEARING: ANSWER

(a) The contents and manner of service of notice of hearing in a contested case shall be as prescribed in G.S. 150B-38(b) and (c).

(b) Any party who has been served with notice of hearing may file a written response as prescribed in G.S. 150B-38(d).

Statutory Authority G.S. 143-437; 150B-38.

.2102 RIGHT TO HEARING

(a) Contested Cases. Disciplinary proceedings to enforce the provisions of North Carolina Pesticide Law of 1971 and 2 NCAC 9L are deemed to be "contested cases" within the meaning of G.S. 150B-2, and any person subject to such proceedings shall be given notice and the opportunity to be heard.

(b) Summary Suspension. Nothing within Paragraph (a) of this Rule shall abridge the right of the Board to summarily suspend a license or certification prior to hearing pursuant to G.S. 150B-3(c).

Statutory Authority G.S. 143-437; 150B-38.

.2103 LOCATION OF HEARING

The location of the hearing in a contested case shall be as prescribed in G.S. 150B-38(e).

Statutory Authority G.S. 143-437; 150B-38.

.2104 INTERVENTION

The intervention of persons not initially parties to a contested case is governed by G.S. 150B-38(f). Petitions or motions to intervene must be in writing. The Board shall promptly determine whether to grant or deny intervention and shall so notify the petitioner and all parties in writing.

Statutory Authority G.S. 143-437; 150B-38.

.2105 SUBPOENAS

The authority of the Board to issue or revoke subpoenas in preparation for, or in the conduct of, contested cases is governed by G.S. 150B-39. If a subpoena is issued at the request of a party and not on the Board's own motion, that party shall bear the cost of service.

Statutory Authority G.S. 143-437; 150B-38.

.2106 CONDUCT OF HEARING

(a) Hearings in contested cases shall be conducted by a majority of the Board. The chairman shall serve as presiding officer unless he is absent or disqualified, in which case the vice-chairman shall preside. Hearings shall be conducted as prescribed in G.S. 150B-40.

(b) Disqualification. An affidavit seeking disqualification of any Board member, if filed in good faith and in a timely manner, will be ruled on by the remaining members of the Board. An affidavit is considered timely if it is filed:

- (1) Prior to the hearing; or
- (2) As soon after the commencement of the hearing as the affiant becomes aware of facts which give rise to his belief that a Board member should be disqualified.

(c) Evidence. The admission of evidence in a hearing in a contested case shall be as prescribed in G.S. 150B-41.

Statutory Authority G.S. 143-437; 150B-38.

.2107 DECISION OF BOARD

(a) The form and content of the Board's decision in a contested case shall be as prescribed by G.S. 150B-42(a), and its decision shall be served upon the parties in a manner consistent with said statute.

(b) The official record of the hearing in a contested case shall contain those items specified in G.S. 150B-42(b).

Statutory Authority G.S. 143-437; 150B-38.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources/Division of Medical Assistance intends to amend rule(s) cited as 10 NCAC 26B .0104; 50B .0101 - .0102.

The proposed effective date of this action is January 1, 1992.

The public hearing will be conducted at 1:30 p.m. on October 16, 1991 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 297, Raleigh, N.C. 27603.

Comment Procedures: Written comments concerning these amendments must be submitted by October 16, 1991, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 27603, ATTN.: Bill Hottel, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26B - MEDICAL ASSISTANCE PROVIDED

SECTION .0100 - GENERAL

.0104 LABORATORY AND X-RAY SERVICES

Laboratory and x-ray services shall ~~not~~ be covered ~~if performed in connection with a routine physical examination.~~ to the extent permitted in federal regulations and subject to the following conditions:

- (1) The service is not performed in connection with a routine physical examination.
- (2) Laboratory services are rendered by providers who:
 - (a) Are Medicare certified laboratory providers, and
 - (b) Are inspected by the N.C. Division of Facility Services, and
 - (c) Participate in an approved laboratory proficiency testing program.
- (3) Portable x-ray services are medically necessary and ordered in writing by the attending physician. Services may be provided only by providers who are Medicare certified and inspected by the N.C. Division of Facility

Services and are limited to provision in the patient's home or a nursing facility. The ordering physician must:

- (a) State the patient's diagnosis, and
- (b) Indicate the condition suspected, and
- (c) Reason why "portable" service is needed.

Authority G.S. 108A-25(b); 108A-54; 42 C.F.R. 440.30; 42 C.F.R. 441.16.

CHAPTER 50 - MEDICAL ASSISTANCE

SUBCHAPTER 50B - ELIGIBILITY DETERMINATION

SECTION .0100 - COVERAGE GROUPS

.0101 MANDATORY

The following groups required by 42 U.S.C. 1396a(a)(10)(A)(i) shall be eligible for Medicaid:

- (1) Recipients receiving AFDC.
- (2) Deemed recipients of AFDC including:
 - (a) Individuals denied AFDC solely because the payment amount would be less than ten dollars (\$10.00),
 - (b) Participants in AFDC work supplementation programs approved in the AFDC State Plan,
 - (c) Individuals deemed to be AFDC recipients for four months following termination of AFDC due to collection or increased collection of child support,
 - (d) Individuals receiving transitional Medicaid as described in 42 U.S.C. 1396s when AFDC eligibility is lost due to increased earnings,
 - (e) Individuals for whom an adoption assistance agreement is in effect or foster care maintenance payments are being made under Title IV E of the Social Security Act as described at 42 U.S.C. 673 (b).
- (3) Qualified pregnant women as defined at 42 U.S.C. 1396d(n)(1).
- (4) Qualified children as defined at 42 U.S.C. 1396d(n)(2).
- (5) Pregnant women, during a 60 day period following termination of the pregnancy, for pregnancy related and post partum services if they applied for Medicaid prior to termination or the pregnancy and were eligible on the date pregnancy is terminated.
- (6) Infants, born to a woman who was eligible for an receiving Medicaid on the date of birth, for up to one year from the date of birth; as long as the mother remains eligible for Medicaid.
- (7) Aged, blind or disabled individuals who meet financial eligibility criteria more restrictive than those of the SSI program.

- (8) Individuals who meet the requirements under 42 U.S.C. 1382h(a) or (b)(1).
- (9) Blind or disabled individuals who were eligible in December 1973 as blind or disabled and who for each consecutive month since December 1973 continue to meet December 1973 eligibility criteria.
- (10) Individuals who were eligible in December 1973 as aged, or blind, or disabled with an essential spouse and who, for each consecutive month since December 1973, continue to live with the essential spouse and meet December 1973 eligibility criteria.
- (11) Individuals who in December 1973 were eligible as the essential spouse of an aged, or blind, or disabled individual and who for each consecutive month since December 1973, have continued to live with that individual who has met December 1973 eligibility criteria.
- (12) Qualified Medicare Beneficiaries described at 42 U.S.C. 1396d(p).
- (13) Pregnant women whose countable income does not exceed the percent of the income official poverty line, established at 42 U.S.C. 1396a(1)(2), for pregnancy related services including labor and delivery.
- (14) Children born after September 30, 1983 and who are under age six whose countable income does not exceed the percent of the income official poverty line, established 19 who are described at 42 U.S.C. 1396a(1)(2); 42 U.S.C. 1396a(1).

Authority G.S. 108A-54; 150B-14(c); 42 U.S.C. 1396a(a)(10)(A)(i); 42 U.S.C. 1396a(f); 42 C.F.R. 435.110; 42 C.F.R. 435.112; 42 C.F.R. 435.113; 42 C.F.R. 435.114; 42 C.F.R. 435.115; 42 C.F.R. 435.116; 42 C.F.R. 435.117; 42 C.F.R. 435.118; 42 C.F.R. 435.121; 42 C.F.R. 435.131; 42 C.F.R. 435.132; 42 C.F.R. 435.133.

.0102 OPTIONAL

The following optional groups of individuals described by 42 U.S.C. 1396a(a)(10)(A)(ii) and 42 U.S.C. 1396a(a)(10)(C) shall be eligible for Medicaid:

- (1) Children:
 - (a) ~~Children under the age limit established by the General Assembly whose family income is equal to or less than the percent of the federal poverty level, established by the General Assembly;~~
 - (a) ~~(b)~~ Children under age one whose family income is more than the amount established under Paragraph (14), Rule .0101 of this Section and not more than a per-

- cent of the federal poverty level established by the General Assembly;
- (b) ~~(c)~~ Children under age 21 who meet the eligibility requirements of this Subchapter.
- (2) Individuals receiving optional state supplemental payment.
- (3) Caretaker relatives of eligible dependent children.
- (4) Pregnant women:
 - (a) Whose countable income is more than the amount established under Paragraph (13), Rule .0101 of this Section and not more than a percent of the federal poverty level established by the General Assembly, or
 - (b) Who, if their countable income exceeds the percent of the federal poverty level, established in Subparagraph (4)(a) of this Rule, meet the eligibility criteria for medically needy set forth in this Subchapter.

Authority G.S. 108A-54; 42 U.S.C. 1396 (a)(10) (A) (ii); 42 U.S.C. 1396a (a) (10) (C); 42 C.F.R. 435.210; 42 C.F.R. 435.222; 42 C.F.R. 435.230; 42 C.F.R. 435.301; 42 C.F.R. 435.308; 42 C.F.R. 435.322; 42 C.F.R. 435.330; S.L. 1983, c. 1034, s. 62.2; S.L. 1987, c. 738, s. 69 and 70; S.L. 1989, c. 752, s. 133.

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

Notice is hereby given in accordance with G.S. 150B-12 that the Commission for Health Services, Department of Environment, Health, and Natural Resources intends to amend rule(s) cited as 15A NCAC 18A .1945; 18C .1534; and adopt rule(s) cited as 15A NCAC 18C .2101 - .2104.

The proposed effective date of this action is February 1, 1992.

The public hearing will be conducted at the following Dates, Times, and Locations:

October 16, 1991

1:30 p.m.

Ground Floor Hearing Room
Archdale Building
512 North Salisbury Street
Raleigh, N.C.

October 21, 1991

7:30 p.m.

Willis Building Auditorium
Eastern North Carolina Regional Development
Institute

PROPOSED RULES

Corner of First and Reade Street
Greenville, N.C.

October 24, 1991

7:30 p.m.

Auditorium

Forsyth-Stokes Mental Health Center

725 Highland Avenue

Winston-Salem, N.C.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to John P. Barkley, DEHNR, P.O. Box 27687, Raleigh, NC 27611-7687, (919) 733-2747. If you desire to speak at the public hearing, notify John P. Barkley at least three days prior to the public hearing. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. At the discretion of the Chairman, the public may also be allowed to comment on the rules at the Commission Meeting. IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS, OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION FOR HEALTH SERVICES MAY ADOPT MORE OR LESS STRINGENT STANDARDS OR REQUIREMENTS THAT MAY DIFFER FROM THOSE BEING NOTICED HEREIN, WITHOUT RENOTICE OR REHEARING, IF THE COMMISSION FOR HEALTH SERVICES DETERMINES THAT THE FINAL ADOPTED RULES ARE A LOGICAL OUTGROWTH OF THE NOTICE, PUBLIC HEARINGS AND THE HEARING COMMENTS RECEIVED.

Pursuant to G.S. 150B-11(4), a fiscal note has been prepared for 15A NCAC 18C .2101 - .2104 and may be obtained from the agency.

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .1900 - SEWAGE TREATMENT AND DISPOSAL SYSTEMS

.1945 AVAILABLE SPACE

(a) Sites shall have sufficient available space to permit the installation and proper functioning of ground absorption sewage treatment and disposal systems, based upon the square footage of nitrification field required for the application rate long-term acceptance rate determined in accordance with these Rules.

(b) Sites shall have sufficient available space for a repair area, equal to the area determined in Rule .1945(a) of this Section, based upon the square footage of the nitrification field determined in accordance with these Rules to accommodate the installation of a replacement system specified in Rule .1955, .1956, or .1957 of this Section. The original system layout, the repair area, and the replacement system shall be designated by the local health department and shall be shown on the Improvement Permit initially issued for a site.

(c) The repair area requirement of Paragraph (b) of this Rule shall not apply to a lot or tract of land:

- (1) which is specifically described in a document on file with the local health department on July 1, 1982, or which is specifically described in a recorded deed or a recorded plat on January 1, 1983; and
- (2) which is of insufficient size to satisfy the repair area requirement of Paragraph (b) of this Rule, as determined by the local health department; and
- (3) on which a ground absorption sewage treatment and disposal system with a design daily flow of:
 - (A) no more than 480 gallons is to be installed; or
 - (B) more than 480 gallons is to be installed if application for an improvements permit which meets the requirements of Rule .1937(c) of this Subchapter is received by the local health department on or before April 1, 1983.

(d) Although a lot or tract of land is exempted under Paragraph (c) from the repair area requirement of Paragraph (b), the maximum feasible area, as determined by the local health department, shall be allocated for a repair area.

Statutory Authority G.S. 130A-335(e) and (f).

SUBCHAPTER 18C - WATER SUPPLIES

SECTION .1500 - WATER QUALITY STANDARDS

.1534 COLIFORM SAMPLING

(a) The provisions of 40 C.F.R. 141.21 are hereby adopted by reference in accordance with G.S. 150B-14(c), with the following exceptions:

PROPOSED RULES

- (1) The provision of 40 C.F.R. 141.21(a)(2) concerning the reduction of monitoring frequency for community water systems serving 25 to 1,000 persons is not adopted;
- (2) The provision of 40 C.F.R. 141.21(b)(3) concerning collection of large volume repeat samples in containers of any size is not adopted; and
- (3) The provision of 40 C.F.R. 141.21(c)(2) concerning waiver of the 24-hour limit for re-sampling is not adopted.

(b) An adjacent water system shall submit samples monthly from each section of the water system supplied from a separate source. The minimum number of samples each month per section is based on the population served by the section and shall be determined by the table in 40 C.F.R. 141.21(a)(2).

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.21.

SECTION .2100 - OPERATING PERMITS

.2101 APPLICATION FOR PERMIT

(a) An application for the issuance or renewal of an operating permit for a community water system shall be made on forms approved by the Department. An application shall include the following information:

- (1) Name and identification number of the community water system;
- (2) Name, address and social security number of the supplier of water;
- (3) Name, address and certification number of the certified operator in responsible charge of the community water system;
- (4) Name of each certified laboratory which provides analyses of water samples; and
- (5) Population served by the community water system.

(b) An operating permit must be obtained for a new community water system before water service is provided to the first connection.

(c) An operating permit shall be renewed annually.

Statutory Authority G.S. 130A-328.

.2102 FEES

(a) The fee for issuance or renewal of an operating permit is set forth in G.S. 130A-328.

(b) Payment shall be made by check, payable to the Department of Environment, Health, and Natural Resources, and shall accompany the application.

(c) A new community water system which applies for an operating permit after December 31

of any year shall pay one half the annual fee set forth in G.S. 130A-328.

(d) The fee for an operating permit issued between January 1, 1992 and June 30, 1992 shall be one half the fee set forth in G.S. 130A-328.

Statutory Authority G.S. 130A-328.

.2103 REVOCATION

(a) The Department may revoke or suspend an operating permit when it is found that a supplier of water has:

- (1) Failed to pay the annual fee;
- (2) Failed to submit a complete permit application or provided fraudulent or misleading information in a permit application; or
- (3) Failed to comply with rules governing community water systems set forth in 15A NCAC 18C.

(b) Action to revoke or suspend an operating permit shall not preclude the Department from seeking other remedies authorized by Part 2, Article 1 of Chapter 130A of the General Statutes.

Statutory Authority G.S. 130A-328.

.2104 EFFECTIVE DATES

(a) Operating permits are required for all community water systems as of January 1, 1992. Permits issued from January 1, 1992 through June 30, 1992 shall be valid until July 1, 1992.

(b) Operating permits issued or renewed after June 30, 1992 shall be valid for one year.

Statutory Authority G.S. 130A-328.

Notice is hereby given in accordance with G.S. 150B-12 that the Commission for Health Services, Department of Environment, Health, and Natural Resources intends to repeal rules cited as 15A NCAC 23 .0201, .0310 and amend rules cited as 15A NCAC 23 .0202, .0204, .0303, .0305 - .0306, .0309, .0401.

The proposed effective date of this action is February 1, 1992.

The public hearings will be conducted at the following Dates, Times and Locations:

October 16, 1991

1:30 p.m.

*Ground Floor Hearing Room
Archdale Building*

PROPOSED RULES

512 North Salisbury Street
Raleigh, NC

October 21, 1991

7:30 p.m.

Willis Building Auditorium
Eastern North Carolina Regional Development
Institute
Corner of First and Reade Streets
Greenville, NC

October 24, 1991

7:30 p.m.

Auditorium
Forsyth-Stokes Mental Health Center
725 Highland Avenue
Winston-Salem, NC

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to John P. Barkley, DEHNR, P.O. Box 27687, Raleigh, NC 27611-7687, (919) 733-2747. If you desire to speak at the public hearing, notify John P. Barkley at least three days prior to the public hearing. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. At the discretion of the Chairman, the public may also be allowed to comment on the rules at the Commission Meeting.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS, OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION FOR HEALTH SERVICES MAY ADOPT MORE OR LESS STRINGENT STANDARDS OR REQUIREMENTS THAT MAY DIFFER FROM THOSE BEING NOTICED HEREIN, WITHOUT RENOTICE OR REHEARING, IF THE COMMISSION FOR HEALTH SERVICES DETERMINES THAT THE FINAL ADOPTED RULES ARE A LOGICAL OUTGROWTH OF THE NOTICE, PUBLIC HEARINGS AND THE HEARING COMMENTS RECEIVED.

CHAPTER 23 - DIVISION OF POSTMORTEM MEDICOLEGAL EXAMINATION

SECTION .0200 - FEES

.0201 MEDICAL EXAMINER FEE (REPEALED)

Statutory Authority G.S. 130A-381; 130A-387; 130A-393.

.0202 PATHOLOGY FEE

For each autopsy ordered by a county medical examiner or the chief medical examiner, the pathologist shall receive a fee of four hundred dollars (\$400.00) when the autopsy report is received at the Office of the Chief Medical Examiner within ~~60~~ 120 days from the date of autopsy. ~~The fee shall be three hundred fifty dollars (\$350.00) for reports received after 60 days but within 120 days from the date of autopsy.~~ There will be no fee for reports received after the 120 day period, unless the Chief Medical Examiner determines that the delay was beyond the control of the pathologist. ~~The fee shall be paid by the state unless the decedent is a legal resident of the county in which death occurred, in which event the county of residence shall be responsible for the fee.~~

Statutory Authority G.S. 130A-389(c).

.0204 HOSPITAL FEE

A fee of ~~twenty dollars (\$20.00)~~ forty dollars (\$40.00) is paid by the state to a hospital when a county medical examiner orders a body taken to the hospital and later examines the body in that facility. No payment is due a hospital when an autopsy is performed in that facility. No payment is due when the county medical examiner utilizes a hospital emergency room or other hospital facility for examination of a body unless such examiner expressly orders a body, that would otherwise go to a funeral home or morgue, to be transported to the hospital for examination.

Statutory Authority G.S. 130A-381; 130A-393.

SECTION .0300 - MIGRANT WORKER BODY DISPOSITION

.0303 SOCIAL SERVICES NOTIFICATION

The Department of Social Services in the county where the body of a migrant farm worker or dependent is found shall notify the Office of the Chief Medical Examiner of the death and furnish any information respecting the deceased including:

- (1) place of employment;
- (2) ~~name~~ names of crew leader and farmer;
- (3) social security number;
- (4) permanent residence; and
- (5) name, address and telephone number of any relative or interested person.

Statutory Authority G.S. 130A-418.

PROPOSED RULES

.0305 TIME LIMIT TO CLAIM BODY

Within ~~30~~ 10 days after receipt of notification, next-of-kin or any interested person willing to assume responsibility for final disposition must:

- (1) notify the Office of the Chief Medical Examiner of their intentions to claim or not claim the body; and
- (2) take possession of the body if claimed.

Statutory Authority G.S. 130A-418.

.0306 TRANSPORTATION COSTS

(a) An itemized list of estimated funeral expenses and a signed statement that the party is unable to meet transportation costs shall be submitted to the Office of the Chief Medical Examiner before any payment shall be made.

(b) All payments shall be made jointly to ~~any~~ the party assuming responsibility for final disposition and to the firm handling the disposition arranging the transportation of the body.

Statutory Authority G.S. 130A-417; 130A-418.

.0309 CLAIMS MADE AFTER TRANSPORTATION

(a) If upon death of a migrant farm worker or dependent, the next-of-kin or interested persons claim the body and make their arrangements for transportation and disposition prior to notification of the Office of the Chief Medical Examiner, they may claim defrayment of transportation expenses up to two hundred dollars (\$200.00) in the following manner:

- (1) They must supply the Office of the Chief Medical Examiner with details of their case; and
- ~~(2) An information packet will be sent to them;~~
- ~~(3)~~ (2) They will in writing indicate their inability to pay transportation expenses, and will enclose an itemized list of funeral transportation expenses.

(b) Any ensuing payment shall be made in accordance with Rule .0306 of this Section.

Statutory Authority G.S. 130A-417; 130A-418.

.0310 RESPONSIBILITY FOR TRANSPORT AND DISPOSITION (REPEALED)

Statutory Authority G.S. 130A-417; 130A-418.

SECTION .0400 - INVESTIGATIONAL PROCEDURES

.0401 UNCLAIMED BODIES

The chief medical examiner shall retain charge or control of an unclaimed body for a period of

ten days. During this period, reasonable effort shall be made to locate relatives of the decedent. After the search for relatives has been completed and the required ten day period has passed, each unclaimed body ~~shall~~ may be disposed of by cremation. The ashes shall be retained in the control of the chief medical examiner for a period of three years. During this time appropriate family members of the decedent may claim and receive the ashes. At the end of the three years any unclaimed ashes shall be disposed of ~~in an appropriate manner.~~ in accordance with G.S. 90-210.46(f).

Statutory Authority G.S. 130A-381; 130A-393.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Commission for Health Services, Department of Environment, Health, and Natural Resources intends to amend rule(s) cited as 15A NCAC 24A .0202, .0302 - .0303, .0402.

The proposed effective date of this action is February 1, 1992.

The public hearing will be conducted at the following Dates, Times, and Locations:

October 16, 1991

1:30 p.m.

*Ground Floor Hearing Room
Archdale Building
512 North Salisbury Street
Raleigh, N.C.*

October 21, 1991

7:30 p.m.

*Willis Building Auditorium
Eastern North Carolina Regional Development
Institute
Corner of First and Reade Street
Greenville, N.C.*

October 24, 1991

7:30 p.m.

*Auditorium
Forsyth-Stokes Mental Health Center
725 Highland Avenue
Winston-Salem, N.C.*

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to John P.

Barkley, DEHNR, P.O. Box 27687, Raleigh, NC 27611-7687, (919) 733-2747. If you desire to speak at the public hearing, notify John P. Barkley at least three days prior to the public hearing. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. At the discretion of the Chairman, the public may also be allowed to comment on the rules at the Commission Meeting. IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS, OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION FOR HEALTH SERVICES MAY ADOPT MORE OR LESS STRINGENT STANDARDS OR REQUIREMENTS THAT MAY DIFFER FROM THOSE BEING NOTICED HEREIN, WITHOUT RENOTICE OR REHEARING, IF THE COMMISSION FOR HEALTH SERVICES DETERMINES THAT THE FINAL ADOPTED RULES ARE A LOGICAL OUTGROWTH OF THE NOTICE, PUBLIC HEARINGS AND THE HEARING COMMENTS RECEIVED.

CHAPTER 24 - GENERAL PROCEDURES FOR PUBLIC HEALTH PROGRAMS

SUBCHAPTER 24A - PAYMENT PROGRAMS

SECTION .0200 - ELIGIBILITY DETERMINATIONS

.0202 DETERMINATION OF FINANCIAL ELIGIBILITY

(a) A patient must meet the financial eligibility requirements of this Subchapter to be eligible for benefits provided by any of the payment programs, except as provided in Paragraph (b) of this Rule. Financial eligibility for all state funded payment programs shall be determined through application of the General Assembly's financial eligibility scales for non-medicaid medical programs. The definition of annual net income in Rule .0203 of this Subchapter and the definitions of family in Rule .0204 of this Subchapter shall be used in applying the General Assembly's financial eligibility scales and the federal poverty scale for payment program eligibility purposes.

(b) A person shall be financially eligible for the federal AIDS Drug Reimbursement Program if

the person's net income is at or below 85 percent of the federal poverty level.

(c) The financial eligibility requirements of this Subchapter shall not apply to:

- (1) Migrant Health Program;
- (2) Children's Special Health Services when the requirements of 15A NCAC 21F .0800 are met;
- (3) School Health Program financial eligibility determinations performed by a local health department which has chosen to use the financial eligibility standards of the Department of Public Instruction's free lunch program;
- (4) Prenatal outpatient services sponsored through local health department delivery funds, 15A NCAC 21C .0200; or through Perinatal Program high risk maternity clinic reimbursement funds, 15A NCAC 21C .0300.

(d) Except as provided in Paragraph (e) of this Rule, once an individual is determined financially eligible for payment program benefits, the individual shall remain financially eligible for a period of one year after the date of application for financial eligibility unless there is a change in the individual's family size pursuant to Rule .0204 of this Subchapter or his family's financial resources or expenses during that period. If there is a change, financial eligibility for payment program benefits must be redetermined. Financial eligibility must be redetermined at least once a year.

(e) For purposes of the Kidney Program, once an individual is determined to be financially eligible, if the application for financial eligibility was received by the Department in the fourth quarter of the fiscal year, the individual shall remain financially eligible for benefits under the Kidney Program until the end of the next fiscal year unless there is a change in the individual's family size pursuant to Rule .0204 of this Subchapter or his family's financial resources or expenses during that period.

(f) If the most current financial eligibility form on file with the Department shows that the patient was financially eligible on the date an authorization request was received, the authorization request may be approved so long as the authorized service does not extend more than 90 days after the term of eligibility expires.

Statutory Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-177; 130A-205.

SECTION .0300 - ELIGIBILITY PROCEDURES

.0302 AUTHORIZATIONS AND CLAIMS

PROCESSING TIME FRAMES

The following time frames shall apply to all payment programs:

- (1) ~~Requests for authorization~~ An Authorization Request must be received by the Department within 90 days after the date of service or it will be denied.
- (2) The Department shall respond to an ~~authorization request~~ Authorization Request within 45 days after receipt.
- (3) If additional information is requested, this information must be received within 90 days after the date of service or within 30 days after the date of the Department's request, whichever is later, or the Authorization Request will be denied.
- (4) The Department shall approve or deny an ~~authorization request~~ Authorization Request within 45 days after receipt of ~~the~~ all necessary information.
- (5) A claim for payment must be received by the Department within 180 days after the date of service or within 45 days after the date of authorization approval, whichever is later, or the claim will be denied. Corrections to claims and requests for payment adjustment must be received by the Department within one year after the date of service or within 45 days after the date the claim is paid or returned for additional information, whichever is later, or the claim will be denied.
- (6) A claim shall show payments by other third party payors or it shall show that all other payors have denied payment or that there are no other payors. Once another payor has been billed, if no response has been received within 80 days after the date of service, the provider may bill the Department, but the claim shall indicate that the other payor has been billed and no response has been received. If payment is received later from the other payor, the provider shall refund the Department. Providers of pharmacy outpatient services are required to bill Medicaid. However, they are not required to bill other third party payors and wait 80 days before billing the Department but are required to refund the Department if other third party payments are received.
- (7) The Department shall pay or deny a claim within 45 days after receipt of a completed claim.
- (8) ~~Requests for authorization~~ Authorization Requests and claims for payment shall be submitted on forms approved by the Department.

Statutory Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-177; 130A-205.

.0303 PAYMENT LIMITATIONS

(a) Payment program payments will be made for authorized services only when funds are available.

(b) During the last six months of the fiscal year, the State Health Director may limit payment program benefits that can be authorized when the total amount of outstanding authorizations, plus the estimated authorizations for the remainder of the fiscal year, less estimated cancellations, exceeds 100 percent of the program's cash balance. The State Health Director shall rescind the limitations at the end of the fiscal year, or prior to the end of the fiscal year if sufficient funds become available to authorize full program benefits for the remainder of the fiscal year.

(c) Payment program benefits shall be available only for services or appliances which are not covered by another third party payor or which cannot be paid for out of funds received in settlement of a civil claim. Patients are responsible for applying for Medicaid or Medicare benefits to which they may be entitled. However, payment program benefits shall be available for Children's Special Health Services sponsored clinic patients who cannot reasonably be examined or treated by a Medicaid provider or an authorized provider for another third party payor because of transportation problems, a need for emergency care, or similar exceptional situations. All exceptions must be approved by the Children's Special Health Services program's medical director. Also, Children's Special Health Services may make payments for services provided to Medicaid patients when acting as a Medicaid provider under an agreement making the program eligible for reimbursement from Medicaid. Providers shall take reasonable measures to collect other third party payments. For the purposes of this Subchapter, third party payor means any person or entity that is or may be indirectly liable for the cost of services or appliances furnished to a patient. Third party payors include, without limitation, the following:

- (1) School services, including physical or occupational therapy, speech and language pathology and audiology services, and nursing services for special needs children;
- (2) Medicaid;
- (3) Medicare, Part A and Part B;
- (4) Insurance;
- (5) Social Services;
- (6) Worker's compensation;
- (7) CHAMPUS; and
- (8) Head Start programs.

(d) If prior to the Department's payment for particular services or appliances, the provider, the patient, or a person responsible for the patient receives partial or total payment for the services or appliances from a third party payor, or receives funds in settlement of a civil claim, the Department shall pay only the amount, if any, by which the Department's payment rate exceeds the amount received by the person. For the purpose of this Rule the Department's payment rate means the rate of reimbursement established in 15A NCAC 24A .0400.

(e) Notwithstanding Paragraph (d) of this Rule, when the provider, the patient or a person responsible for the patient receives other third party payments equal to or exceeding the Department's payment rate, the Department shall pay the difference between the other third party payments and the provider's charge for an adopted child that meets the requirements of 15A NCAC 21F .0801. The Department's payment shall not exceed the payment rate in Section .0400 of the Subchapter.

(f) If after the Department makes payment for particular services or appliances, the provider, the patient, or a person responsible for the patient receives partial or total payment for the services or appliances from a third party payor, or receives funds in settlement of a civil claim which are available to pay for the services or appliances, the person receiving the payment shall reimburse the Department to the extent of the amount received by the person without exceeding the amount of the Department's prior payment to the provider. This reimbursement shall be made to the Department within 45 days after receipt of the third party payment.

(g) Notwithstanding Paragraph (f) of this Rule, if after the Department makes payment for particular services or appliances for an adopted child that meets the requirements of 15A NCAC 21F .0801, the provider receives partial or total payment from a third party payor, the provider shall only be required to reimburse the Department the amount by which the total of payments exceeds the provider's charge.

(h) If the Department requests a refund of a payment made to a provider, the refund shall be made to the Department within 45 days after the date of the refund request.

Statutory Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-177; 130A-205.

SECTION .0400 - REIMBURSEMENT

.0402 REIMBURSEMENT FOR INPATIENT HOSPITALIZATION

(a) The Department shall reimburse providers of authorized inpatient hospitalization services ~~under the Tuberculosis Program and the Cancer Program~~ at the Medicaid per diem rate in effect at the time the claim is received by the Department, except in the Migrant Health Program. ~~When the Medicaid per diem rate changes to the "excess days" per diem rate as provided in the Medicaid reimbursement plan, the Department shall reimburse at the "excess days" rate for services provided under these programs.~~

(b) ~~The Department shall reimburse providers of authorized inpatient hospitalization services under Children's Special Health Services and the Sickle Cell Syndrome Program as follows:~~

(1) ~~The first nine days of each inpatient hospitalization shall be reimbursed at the full Medicaid per diem rate specified in the Medicaid reimbursement plan in effect at the time the claim is received by the Department. The Department shall continue to reimburse at the full Medicaid per diem rate for these services even when the rate changes to the "excess days" rate as provided in the Medicaid reimbursement plan;~~

(2) ~~Subsequent days of each inpatient hospitalization shall be reimbursed at the Medicaid "excess days" per diem rate specified in the Medicaid reimbursement plan in effect at the time the claim is received by the Department.~~

(b) ~~(e)~~ The Department shall reimburse providers of authorized inpatient hospitalization services under the Migrant Health Program at the rate of two hundred dollars (\$200.00) per day or the ~~full~~ Medicaid per diem rate, whichever is less.

Statutory Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-177; 130A-205.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the EIHR - State Registrar intends to amend rules cited as 15A NCAC 19H .0601, .0701 - .0702, .0901, .1202.

The proposed effective date of this action is January 1, 1992.

The public hearing will be conducted at 3:00 p.m. on October 17, 1991 at the Norton Board Room, Sixth Floor Cooper Memorial Building, 225 North McDowell Street, Raleigh, NC.

Comment Procedures: Any person requiring information concerning the proposed rules should contact A. Torrey McLean, Vital Records, P. O. Box 29537, Raleigh, NC 27626-0537, (919) 733-3000. Written comments on these rules may be sent to M. McLean at the above address or submitted at the public hearing. If you desire to speak at the public hearing, notify M. McLean at least three days prior to the public hearing.

CHAPTER 19 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 19H - VITAL RECORDS

SECTION .0600 - CERTIFIED COPIES

.0601 BIRTH CERTIFICATES

(a) There shall be three forms of copies of birth certificates:

- (1) a photocopy of the original record excluding medical and health related information with facsimile of the signature of the State Registrar and raised seal and date issued; and
- (2) a typed copy prepared on a form printed on safety paper with facsimile of the signature of the State Registrar and raised seal; the form shall provide at least the following items of information:
 - (A) name and sex of child;
 - (B) date and place of birth;
 - (C) names, ages (at time of birth), and birthplaces of father and mother;
 - (D) date filed with local registrar;
 - (E) certificate number;
 - (F) date of issue; and
 - (G) items amended and date of amendment; and
- (3) a typed wallet-size card with facsimile of the signature of the State Registrar providing as a minimum the following items of information:
 - (A) name and sex of child;
 - (B) date and place of birth;
 - (C) date filed with local registrar;
 - (D) certificate number;
 - (E) date of issue; and
 - (F) changes of names by court order noted on back for persons older than 15 years unless good cause is shown for deleting the notation.

(b) A wallet-size card shall be issued when specifically requested.

(c) A typed copy shall be issued when specifically requested, when the original certificate cannot be photocopied, when the original has been corrected or amended, or when the record is that of an adopted or legitimated person.

(d) A photocopy shall be issued when specifically requested or whenever it is most convenient except in cases in which a typed copy is required.

(e) In cases when the individual is known to be deceased, the word "DECEASED" shall be added to the certificate in a prominent location. This procedure shall apply to copies issued by the Vital Records Section and to each register of deeds or local health department that issues certified copies of birth certificates.

Statutory Authority G.S. 130A-92(7).

SECTION .0700 - FEES AND REFUNDS

.0701 ROUTINE REQUESTS FOR CERTIFIED COPIES

The fee for searching for a certificate of birth, death, marriage or divorce shall be ~~five dollars (\$5.00)~~ ten dollars (\$10.00), which shall include the cost of a search of the year indicated and if necessary the year immediately prior to and subsequent to the indicated year. This fee also covers issuance of a copy if the record is found. If the record is not located, the fee shall be retained for providing the search.

Statutory Authority G.S. 130A-92(7); 130A-93.

.0702 RESEARCH REQUESTS

(a) The State Registrar may permit the use of data from vital records for research purposes. The State Registrar shall require the applicant to specify in writing the conditions under which the records or data will be used, the purpose of the research, the research protocol, and such other data as may be deemed necessary by the State Registrar.

(b) The State Registrar may determine fees charged for searching or providing information from, or non-certified copies of the vital records based on the estimated cost of rendering the service. An hourly rate or charge per name searched may be imposed. The fee shall not exceed ~~five dollars (\$5.00)~~ ten dollars (\$10.00) per name searched, in addition to standard applicable fees for expedited service, if requested.

(c) Vital records or data provided under this Rule shall be used only for the purposes described in the application.

Statutory Authority G.S. 130A-92(7); 130A-93.

SECTION .0900 - CORRECTIONS AND AMENDMENTS

.0901 ERRORS

The State Registrar may correct any obvious clerical or typographical error or error of omission by his own observation or by request from the person or institution responsible for filing the original certificate or from the local registrar. Although these corrected records shall not be marked "amended," a notation shall be made on the back of the certificate to indicate the source and the date of the correction.

(a) The State Registrar may correct errors by his own observation, by request from the person or institution responsible for filing the original certificate, by the informant, by the local register of deeds, or by the local registrar. The local register of deeds shall be notified of all such corrections either by the State Registrar or through the local registrar as provided in Paragraph (b) of this Rule. Upon written notification, the local register of deeds shall then ensure that the county copy of the certificate is corrected so as to provide the same information as the original certificate filed in the Vital Records Section. If deemed necessary by the State Registrar, a replacement copy shall be provided to the register of deeds. When a certificate has been corrected or replaced in the county, that certificate becomes the official county record. Only official records shall be certified.

(b) Prior to such time as the record is forwarded to the State Registrar, each local registrar is empowered to correct errors on the original record. The local registrar (or designated agent) shall notify the register of deeds in writing of the correction(s) made on the original record and the register of deeds then shall make the same correction(s) on the county copy of the certificate. If deemed appropriate by the State Registrar, the local registrar shall provide the register of deeds with a replacement copy after a correction has been made on the original record.

(c) Although records corrected in this manner shall not be marked "amended," a notation shall be made on the certificate indicating the source of the information and the date of the correction.

Statutory Authority G.S. 130A-92(7).

SECTION .1200 - REMOVAL OF GRAVES

.1202 FORMS

Source of Forms. The Removal of Graves Certificate may be obtained from the local register of deeds office. Additional supplies of these forms may be ordered from Vital Records Section, P.O. Box 27687, Raleigh, North Carolina 27611-7687.

Statutory Authority G.S. 130A-92(7).

TITLE 20 - DEPARTMENT OF STATE TREASURER

Notice is hereby given in accordance with G.S. 150B-12 that the Boards of Trustees, Teachers' and State Employees' Retirement System and Local Governmental Employees' Retirement System intends to adopt rules cited as 20 NCAC 2A .0504; 2B .0404; 2C .0404.

The proposed effective date of this action is January 1, 1992.

The public hearing will be conducted at 10:00 a.m. on October 17, 1991 at the 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 a public hearing. All written comments must be received by 4:30 p.m. on October 17, 1991. Written comments should be sent to the APA Coordinator at the address above.

CHAPTER 2 - RETIREMENT SYSTEMS

SUBCHAPTER 2A - DIVISIONAL RULES

SECTION .0500 - GENERAL PROCEDURES

.0504 DIRECT DEPOSIT OF MONTHLY BENEFIT PAYMENTS

(a) This Rule applies to any individual case in which a beneficiary's monthly benefit was paid via electronic funds transfer (EFT) or direct deposit, when such EFT was suspended by the Division in error. This Rule does not apply to any individual case involving a delay by this Division to initiate an EFT or a change in an existing EFT arrangement requested by a beneficiary.

(b) The Division may reimburse non-sufficient fund charges incurred by a beneficiary due to the suspension in error of an existing EFT arrangement when the beneficiary was not properly notified of the suspension of such arrangement and upon receipt of satisfactory proof that such charges were incurred.

(c) Any other bad check service charges or fees imposed by any financial institution or merchant may be reimbursed at the discretion of the Division Director upon receipt of satisfactory proof that such charges were incurred.

(d) Any such reimbursement of NSF or bad check service charges shall be paid from the Pension Accumulation Fund of the Retirement System in which the beneficiary is in receipt of a benefit.

Statutory Authority G.S. 128-21(3); 128-21(15); 128-28(g); 135-1(3); 135-1(16); 135-6(f); 135-52; 135-58(a); 135-101(3); 135-102.

SUBCHAPTER 2B - TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM

SECTION .0400 - EMPLOYER CONTRIBUTIONS

.0404 DUE DATE OF CONTRIBUTIONS

Both the employee and employer contributions are due in the Raleigh offices of the Retirement System no later than the fifth State government working day of the month succeeding the month for which the contributions are required. Contributions received after the fifth State government working day of the month are delinquent.

Statutory Authority G.S. 128-30(g).

SUBCHAPTER 2C - LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM

SECTION .0400 - CONTRIBUTIONS

.0404 DUE DATE OF CONTRIBUTIONS

Both the employee and employer contributions are due in the Raleigh offices of the Retirement System no later than the fifth State government working day of the month succeeding the month for which the contributions are required. Contributions received after the fifth State government working day of the month are delinquent.

Statutory Authority G.S. 135-8(f).

TITLE 21 - OCCUPATIONAL LICENSING BOARD

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Board of Electrolysis Examiners intends to adopt rules cited as 21 NCAC 19 .0101, .0201 - .0202.

The proposed effective date of this action is January 1, 1992.

The public hearing will be conducted at 1:00 p.m. on October 17, 1991 at the Office of the North Carolina Real Estate Commission, 1313 Navaho Drive, Raleigh, NC 27609.

Comment Procedures: Comments regarding the rules may be made orally or submitted in writing at the public hearing. Written comments not submitted at the hearing may be delivered to the North Carolina Board of Electrolysis Examiners, c/o 205 Westview Place, High Point, North Carolina 27260, so as to be received by the hearing date. Persons who wish to make oral comments at the hearing should notify Patricia Holland at the Board's address or at 1-800-288-3580.

CHAPTER 19 - NORTH CAROLINA BOARD OF ELECTROLYSIS EXAMINERS

SECTION .0100 - GENERAL PROVISIONS

.0101 ADDRESS

The mailing address of the Board is: North Carolina Board of Electrolysis Examiners, c/o 205 Westview Place, High Point, North Carolina 27260.

Statutory Authority G.S. 88A-6.

SECTION .0200 - APPLICATION PROCEDURES

.0201 FEES

(a) The following fees shall be payable to the Board:

- | | |
|---|-----------|
| (1) Application for licensure as an electrologist..... | \$ 150.00 |
| (2) Renewal of electrologist's license | \$ 100.00 |
| (3) Application for certification as an electrology instructor..... | \$ 150.00 |
| (4) Renewal of instructor's certificate | \$ 40.00 |
| (5) Application for certification as a Board approved school of electrology | \$ 500.00 |
| (6) Renewal of school certification..... | \$ 250.00 |
| (7) Late renewal charge..... | \$ 25.00 |
| (8) Reinstatement of expired license | \$ 150.00 |

(b) All fees shall be paid by check or money order, made payable to "The North Carolina Board of Electrolysis Examiners".

Statutory Authority G.S. 88A-9.

.0202 APPLICATION FOR LICENSURE: PRACTICING BEFORE JANUARY 1, 1992

(a) Anyone engaged in the practice of electrology in this State before January 1, 1992, who seeks licensure as an electrologist without examination under the provisions of G.S. 88A-11(a), shall submit an application on the

form provided by the Board, accompanied by proof of age, proof of practice before January 1, 1992, proof of completion of high school or equivalency certificate, certification of completion from each electrology institution attended with verification of the number of hours completed in theory and clinical training, if applicable, statement from ophthalmologist or optometrist that vision is sufficient to perform duties as an electrologist, recent photograph, and the required application fee.

(b) All applications for licensure under this Section must be either actually received by the Board or postmarked on or before December 31, 1991.

(c) Proof of age shall be shown by certified copy of a birth certificate. If the applicant cannot obtain a certified copy of the birth certificate,

the applicant shall attach an explanation why no birth certificate is obtainable and shall submit other proof of age. Other proof of age includes passports, current life insurance policies held for at least one year showing date of birth, entries in family bibles, medical or school records showing date of birth, and marriage licenses showing age.

(d) Proof of practice before January 1, 1992 may be shown by copies of a privilege license or by sworn affidavit of a person unrelated to the applicant stating that the applicant did practice electrology in North Carolina before January 1, 1992.

(e) The Board may reject incomplete or partial applications.

Statutory Authority G.S. 88A-6; 88A-9; 88A-10; 88A-11(a); 88A-21.

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.

**TITLE 17
DEPARTMENT OF REVENUE**

CHAPTER 3 - INDIVIDUAL INCOME, INHERITANCE AND GIFT TAX DIVISION

SUBCHAPTER 3B - INHERITANCE TAX

SECTION .0100 - GENERAL INFORMATION

.0107 TRANSFERS IN CONTEMPLATION OF DEATH

The aggregate value exceeding ten thousand dollars (\$10,000) of transfers to any one donee within a tax year by deed, grant, bargain, sale, gift, or combination thereof, made within three years prior to the death of the grantor, vendor, or donor, without an adequate valuable consideration, shall be presumed, subject to rebuttal, to have been made in contemplation of death within the meaning of this Section; the first ten thousand dollars (\$10,000) in value shall be deemed not made in contemplation of death.

*History Note: Statutory Authority G.S. 105-2; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; October 30, 1977.*

SUBCHAPTER 3C - GIFT TAX

.0001 DEFINITIONS

Annual Exclusion. An exclusion of ten thousand dollars (\$10,000) is allowed for gifts of present interest for each donee during any one calendar year.

Specific Exemption. The donor is entitled to a lifetime specific exemption of one hundred thousand dollars (\$100,000) which is apportioned or prorated among the Class "A" donees.

*History Note: Statutory Authority G.S. 105-188; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0004 REMAINDER INTEREST

A gift of a remainder interest is a gift of a future interest, and the annual exclusion of ten thousand dollars (\$10,000) would not apply.

*History Note: Statutory Authority G.S. 105-188; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0006 REAL PROPERTY: CREATION OF AN ESTATE BY THE ENTIRETY

When one spouse furnishes the funds for purchase of real property titled in husband and wife creating an estate by the entirety, one-half of such funds is a gift on the part of the spouse furnishing the funds and a gift tax return is required when the value of the gift exceeds the annual exclusion of ten thousand dollars (\$10,000).

*History Note: Statutory Authority G.S. 105-188; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

CHAPTER 4 - LICENSE AND EXCISE TAX DIVISION

SUBCHAPTER 4C - CIGARETTE TAX

SECTION .0500 - AFFIXATION OF STAMPS AND IMPRINTS

.0505 LIMITED TIME TO AFFIX TAXPAID INDICIA (STAMPS AND IMPRINTS)

(a) Licensed cigarette distributors shall affix proper cigarette tax indicia to cigarettes within 72 hours of the receipt of all unstamped cigarettes exclusive of Saturdays, Sundays and legal holidays of this State, and prior to any and all deliveries to other persons except deliveries to points outside the State and those deliveries which the State is prohibited from taxing under the Constitution or the statutes of the United States.

(b) Problems and unusual circumstances regarding the affixing of tax indicia within the time specified in Paragraph (a) of this Rule shall be reviewed on a case by case basis. However, in no instance shall a distributor exceed the 72 hour requirement without prior approval from the Secretary or a duly authorized agent.

*History Note: Statutory Authority G.S. 105-113.20; 105-262;
Eff. October 1, 1991.*

SUBCHAPTER 4D - SOFT DRINK TAX

SECTION .0300 - TAX RATES

.0303 LIQUID BASE RATE ILLUSTRATED

(a) Whenever a dry mixture is converted to a liquid base, the tax per ounce of dry mixture will be computed in direct ratio to the quantity of ready-to-use liquid base produced.

Note: Cocoa powder; generally, one pound of cocoa powder is used in the manufacture of a gallon of chocolate syrup. The tax on a gallon of syrup being one dollar (\$1.00), and since 16 ounces of powder are required to produce one gallon of syrup, the tax levied in this instance would be at the rate of six and one-fourth cents (6- $\frac{1}{4}$ ¢) per ounce of the dry mixture.

(b) Concentrated mixtures which are used commercially for compounding soft drink liquid base products are subject to tax in proportion to the concentrates.

Note: Concentrate X is a quadruple strength syrup. This concentrate represents four gallons of ready-to-use syrup. In such instance, the tax rate on such concentrate would be four dollars (\$4.00) and would have to be tax paid accordingly by the distributor, wholesaler or retailer.

(c) Premixed flavored milk shake drink mixes or premixed flavored imitation milk shake drink mixes which are not in ready-to-use size containers, and which milk shake drink mixes are for the purpose of further dispensing before being ready for consumption, are subject to tax based upon the amount of base product used in the manufacture of same. The fact that such products may be further chilled or partially frozen before being dispensed would not affect this liability.

Approximately 10 percent of the premixed flavored milk shake drink mixes represents the amount of base product used in the manufacture of such premixed milk shake drink mix. Thus, a soft drink tax of ten cents (\$.10) will cover the excise tax due on the soft drink products used in the manufacture of one gallon of premixed flavored milk shake drink mix. On a five gallon container of premixed flavored milk shake drink mix, a soft drink tax of fifty cents (\$.50) would be applicable. A dealer is permitted to use this basis for payment of the tax on these premixed flavored milk shake drink mixes.

(d) Premixed carbonated drinks, such as now manufactured and distributed, which are not in ready-to-use size containers, and which drinks are for the purpose of further dispensing before being ready for consumption, are not considered bottled soft drinks under the Soft Drink Tax Article. Instead, the tax on same shall be determined on the basis of the amount of liquid base product used in the manufacture of such premixed carbonated drinks. Proper tax shall be applicable to each such container based on the amount of liquid base product used in producing such drink.

Using a five to one ratio, a liquid base product tax of seventeen cents (\$.17) will cover the amount of liquid base in one gallon of premixed carbonated drink. A dealer is permitted to use this basis for payment of the tax on these premixed carbonated drinks. Thus, on a five-gallon container of premixed drink, same would require a liquid base tax of eighty-five cents (\$.85).

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Note: A 600-ounce container of premixed carbonated drink using this same five to one ratio, would represent approximately 100 ounces of syrup. On this basis, a tax of eighty cents (\$0.80) would be applicable to each container of premixed carbonated drink.

*History Note: Statutory Authority G.S. 105-113.45; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; October 30, 1981.*

.0305 PRODUCTS USED BY MANUFACTURER

(a) The excise tax levied on base products does not apply to base products used by persons in the manufacture of bottled soft drinks which are otherwise subject to tax.

(b) All base products possessed or stored by the manufacturer which are not for use by such persons in the manufacture of bottled soft drinks shall be stored in a separate compartment or location from that known to be intended for use in the manufacture of bottled soft drinks. Adequate and complete records must be maintained to reflect the quantity of such products that are stored or kept within the separate compartment or location. The records must include quantity of ingredients purchased, date received, and the name and address of the person from whom they were received, date of withdrawal, user and the quantity withdrawn. All such records shall be made available to the Secretary of Revenue or an authorized agent at any time upon request for purpose of examination for at least three years.

*History Note: Statutory Authority G.S. 105-113.45; 105-113.46;
105-113.57; 105-113.58; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

SECTION .0400 - TAXABLE STATUS OF VARIOUS PRODUCTS

.0401 DOMESTIC USE VERSUS COMMERCIAL USE

(a) For further clarification of the taxable status of soft drink products, the following explanation is given.

(b) Bottled soft drinks are subject to tax both domestically and commercially.

(c) Liquid (frozen or unfrozen) base products that contain milk or the package instructions indicate to add milk are exempt when used domestically but taxable commercially.

(d) Liquid (frozen or unfrozen) base products that do not meet the exemption/registration requirements under G.S. 105-113.46 and G.S. 105-113.47 are taxable both domestically and commercially.

Note: Juice bases that do not contain 100 percent juice or do contain 100 percent juice when reconstituted according to package directions but are not registered as approved products.

(e) Dry base products such as hot chocolate mix or other dry mixes which contain milk or milk is added, per package directions, are exempt domestically but taxable commercially.

(f) Dry base products such as Tang, Country Time Lemonade, Gatorade, Kool-Aid, Oh Boy Drink, Tip-Top, Miracle Aid, all similar products and all dry mixes which do not contain milk or which the package directions do not indicate to add milk are taxable both domestically and commercially.

(g) Base products that do not contain any milk are taxable both domestically and commercially.

(h) Base products to which a liquid other than milk is added to make a soft drink are taxable both domestically and commercially.

(i) Base products, even if classified as exempt for domestic use, that are purchased by a commercial establishment from a retail store immediately become taxable products and tax must be paid thereon.

Note: Cocoa mix containing milk which is exempt domestically but taxable commercially.

(j) Base products sold to commercial establishments such as drug stores, drive-ins, hospitals, restaurants, vending machines, schools, churches, etc. are all subject to the soft drink excise tax.

*History Note: Statutory Authority G.S. 105-113.45; 105-113.46;
105-113.47; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; October 30, 1981.*

SECTION .0500 - EXEMPTIONS FROM SOFT DRINK EXCISE TAX

.0501 FEDERAL GOVERNMENT

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(a) Soft drink products may be sold to the federal government and its instrumentalities, such as the Armed Forces Exchange Services, without the payment of the soft drink excise tax, but sales of soft drink products by such services must be limited to members of the armed forces and their dependents who hold identification cards entitling them to make purchases through Armed Forces Exchange Services.

(b) Whenever tax exempt deliveries of soft drink products are made by distributors, wholesalers or retailers to Armed Forces Exchange Services, the seller must require a duly receipted invoice or copy thereof from the governmental agent designated to accept delivery.

(c) If a person engages in the sale of any soft drink products, defined under the Soft Drink Act, on a military reservation; regardless of the fact that he may have a contract with the federal government, whereby the federal government will receive a commission, flat fee or some other type of compensation on such sales; same does not exempt the sale of such products from the excise tax. In such instance, such sales would not be made by the federal government or an instrumentality thereof. Instead, all such sales are subject to the soft drink excise tax and shall be tax paid as required herein.

*History Note: Statutory Authority G.S. 105-113.46; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; October 30, 1981.*

.0505 APPLICATION FOR EXEMPTION REQUIRED

(a) Registration of all natural juice and all bottled milk drinks, except a natural liquid milk drink produced by a farmer or a dairy, is required under G.S. 105-113.47.

(1) Any bottled soft drink (juice or milk) for which exemption is claimed shall be registered with the secretary on Form B-B-8, Application for Registration of Product for Exemption from Bottled (Closed Container) Soft Drink Excise Tax.

(2) Any concentrated fruit or vegetable juice for which exemption is claimed shall be registered with the Secretary on Form B-B-50, Application for Registration of Concentrated Frozen or Unfrozen Fruit or Vegetable Juice for Exemption from the Soft Drink Excise Tax.

(b) To register an item as exempt, the person who controls the brand name or formula of the item must file the application for registration.

(c) Three copies of the label which will be affixed to the product or sample of the physical package showing weight and content and supporting the claim for exemption must accompany each application.

(d) Registration as an exempt item applies prospectively to sales of the registered bottled soft drink or registered juice concentrate made on or after the date of registration. Registration does not relieve a person of liability for taxes due on sales made before the date an item is registered.

(e) All bottled soft drinks and base products for which exemption has not been provided under the Soft Drink Tax Act are subject to tax both commercially and domestically.

*History Note: Statutory Authority G.S. 105-113.47; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; April 1, 1986.*

.0506 EXEMPT SALES RECORDS AND INVENTORIES

Proper records and separate inventories must be maintained on all soft drinks and base products purchased or designated for exemption transactions. These records and inventories must be maintained in such manner as can be inspected and audited by the Secretary or duly authorized representative at any time and without having to go through and separate or segregate all sales of the taxpayer in order to arrive at the amount of exempt sales or inventories. Every retail dealer and every distributor or wholesaler and their customers must keep records of inventories, purchases, and sales of bottled soft drink and base products for at least 3 years.

*History Note: Statutory Authority G.S. 105-113.51; 105-113.58; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; October 30, 1981.*

.0507 EXEMPTION OF CONCENTRATED JUICES DETERMINED

*History Note: Statutory Authority G.S. 105-113.44; 105-113.47; 105-113.63;
Eff. July 1, 1984;*

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*Amended Eff. April 1, 1986;
Repealed Eff. October 1, 1991.*

.0508 NATURAL PRODUCTS EXEMPTION DETERMINED

(a) Natural liquid milk drink produced by a farmer or a dairy is exempt from the excise tax. Farmers and dairies are not required to register natural liquid milk. However, a milk drink produced other than by a farmer or dairy is subject to the tax unless exempted under G.S. 105-113.47.

(b) A bottled soft drink, not already exempt under subdivision (1) of G.S. 105-113.46, that contains at least 35 percent natural milk measured by volume and has an approved registration under G.S. 105-113.47 is exempt from the excise tax.

(c) Natural juice (bottled, concentrated, reconstituted) that has an approved registration under G.S. 105-113.47 is exempt from the excise tax.

(1) A bottled soft drink that contains 100 percent juice, with or without added vitamins.

(2) A concentrate (100 percent juice dehydrated), with or without added vitamins.

(3) A reconstituted 100 percent juice (100 percent juice liquid which results from adding water, according to package directions, to a dehydrated 100 percent juice), with or without added vitamins.

(d) Except for added vitamins, the addition of any other ingredients (such as sugar, salt, coloring, artificial flavoring, preservative, carbonation, etc.) to a bottled, concentrated or reconstituted juice makes the product a taxable item.

*History Note: Statutory Authority G.S. 105-113.46; 105-113.47; 105-262;
Eff. October 1, 1991.*

.0509 DESIGNATION OF EXEMPT SALES

(a) Bottled soft drinks or base products designated as tax exempt must be sold in tax exempt transactions.

(b) No distributor, wholesaler or customer of a distributor or wholesaler may delay payment of the tax due on bottled soft drinks or base products by failing to pay tax on a sale that is not designated or by overstating the quantity of soft drink products that will be sold in an exempt transaction.

(c) A distributor or wholesale dealer may sell nontaxpaid bottled soft drinks or base products to a customer who has tax exempt sales provided the customer has notified the distributor or wholesale dealer in writing that the customer intends to resell the items in exempt transactions. Where prior written notification is not provided, the distributor or wholesale dealer must remit applicable tax.

(d) The distributor or wholesale dealer must separately invoice and indicate the soft drinks or base products designated for exempt transactions.

Note: Sales designated for customers with soft drink product sales outside North Carolina must be invoiced to read, "Designated for Sale Outside North Carolina".

(e) The distributor or wholesaler selling the designated soft drink products must provide this Department, as part of their monthly soft drink excise tax report, a schedule (Form B-B-60, Schedule I) showing full information on the designated sale; i.e., name and address of the customer, invoice number and date, and quantity of bottled soft drinks or base products sold to the person for resale in the exempt transactions.

(f) The distributor or wholesale dealer who relies on the prior written exempt intent of its customer is not required to pay tax on the designated sales when filing a monthly report. However, the distributor or wholesaler must pay the tax due on all other taxable sales.

(g) The tax liability plus penalties and interest will be held against the distributor's or wholesaler's customer who sells soft drink products designated exempt in a taxable transaction. Customers violating designation procedures should anticipate full penalties to be held on designated products improperly handled and are not entitled to the reduced tax rate or discount.

*History Note: Statutory Authority G.S. 105-113.51; 105-262;
Eff. October 1, 1991.*

SECTION .0600 - TAXPAID STAMP (DECAL AND IMPRINT) AND CROWN METHODS OF REMITTANCE

.0602 TAXPAID STAMPS

.0603 TAXPAID CROWNS

.0604 AFFIXING OF CROWNS AND STAMPS

.0605 TAXPAID IMPRINT STAMP

.0606 PROMPT MAIL SERVICE

*History Note: Statutory Authority G.S. 105-113.44; 105-113.51;
105-113.52; 105-113.54; 105-113.63;
Eff. February 1, 1976;
Amended Eff. October 30, 1981;
Repealed Eff. October 1, 1991.*

.0608 CONTROL OF TAX EXEMPT TRANSACTIONS

*History Note: Statutory Authority G.S. 105-113.45; 105-113.48; 105-113.57; 105-113.63; 105-113.66;
Eff. February 1, 1976;
Amended Eff. October 30, 1981; June 11, 1977;
Repealed Eff. October 1, 1991.*

.0610 ONLY NORTH CAROLINA TAXPAID INDICIA ALLOWED

No bottled soft drinks, or base products shall be sold in this State evidencing another state's taxpaid stamp, crown or other taxpaid indicia.

*History Note: Statutory Authority G.S. 105-113.51; 105-262;
Eff. July 1, 1984;
Amended Eff. October 1, 1991.*

**SECTION .0700 - ALTERNATE METHOD OF PAYMENT ON BOTTLED
(CLOSED CONTAINER) SOFT DRINKS**

.0701 APPLICABLE TO BOTTLED DRINKS

.0702 LIABILITY REQUIREMENT

*History Note: Statutory Authority G.S. 105-113.51; 1-5-113.56A; 105-113.63;
Eff. February 1, 1976;
Amended Eff. June 11, 1977;
Repealed Eff. October 1, 1991.*

.0706 REDUCED RATE UNDER ALTERNATE METHOD

.0707 METHOD REQUIRED ON INVOICE

.0708 REPORTING SYSTEM PROVIDED DISTRIBUTORS

*History Note: Statutory Authority G.S. 105-113.56A; 105-113.63;
Eff. February 1, 1976;
Amended Eff. October 30, 1981; June 11, 1977;
Repealed Eff. October 1, 1991.*

.0710 NO RETAILER QUALIFIES

.0711 BOND REQUIREMENT

*History Note: Statutory Authority G.S. 105-113.56A; 105-113.63;
Eff. February 1, 1976;
Repealed Eff. October 1, 1991.*

**SECTION .0800 - OPTIONAL METHOD FOR PAYMENT OF
SOFT DRINK EXCISE TAX**

.0801 NOTIFICATION REQUIREMENT OF METHOD ELECTED

.0802 PROCEDURE FOR OPTIONAL METHODS

.0803 NO DISCOUNT ALLOWED

FINAL RULES

*History Note: Statutory Authority G.S. 105-113.56B; 105-113.63;
Eff. February 1, 1976;
Amended Eff. October 30, 1981;
Repealed Eff. October 1, 1991.*

.0805 CONTROL OF TAX EXEMPT TRANSACTIONS

.0806 CONTINUOUS USE OF METHOD

*History Note: Statutory Authority G.S. 105-113.45; 105-113.48;
105-113.56B; 105-113.57; 105-113.63; 105-113.66;
Eff. February 1, 1976;
Amended Eff. June 11, 1977;
Repealed Eff. October 1, 1991.*

.0808 BOND REQUIREMENT

*History Note: Statutory Authority G.S. 105-113.56B; 105-113.63;
Eff. February 1, 1976;
Amended Eff. October 30, 1981;
Repealed Eff. October 1, 1991.*

SECTION .0900 - MONTHLY REPORTS

.0901 REPORT BY DISTRIBUTOR OR WHOLESALE

(a) Distributors and wholesalers, liable for the tax under G.S. 105-113.51, must file monthly reports on Form B-B-60 (Monthly Soft Drink Excise Tax Report of Distributor or Wholesale Dealer) with the Secretary, showing transactions for the preceding month. This monthly report is required whether or not any tax is shown to be due. The secretary will provide monthly report forms which must be filled out in detail, and any remittance due must accompany these reports.

(b) Distributors and wholesalers, liable for the tax under G.S. 105-113.51, are subject to the tax at the reduced rate of seventy-two cents (\$.72) per gross, instead of one dollar and forty-four cents (\$1.44) per gross, on the first 15,000 gross of bottled soft drinks sold at wholesale from October 1 to September 30 of each year. This equates to a reduced rate of one-half cent (1/2¢) per bottled soft drink on the first 2,160,000 drinks sold annually.

(c) A wholesale sale is a sale made by a distributor or wholesale for resale and does not include a sale to the user or ultimate consumer.

(d) No discount is allowed on wholesale sales of bottled soft drinks tax paid at the reduced rate of one-half cent (1/2¢) per bottle.

*History Note: Statutory Authority G.S. 105-113.51; 105-113.52; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; October 30, 1981.*

.0902 REPORT BY RETAILER

Retail dealers, liable for the excise tax under G.S. 105-113.51, shall file monthly reports on Form B-B-61 (Retail Dealer's Monthly Soft Drink Excise Tax Report) covering such transactions. This report is required whether or not any tax is shown to be due. The Secretary will provide monthly reports forms which must be filled out in detail, and any remittance due must accompany these reports.

*History Note: Statutory Authority G.S. 105-113.51; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0903 REPORT BY DEALER ON TRAINS

Railroads operating interstate are permitted to sell nontaxpaid bottled soft drinks in this State, but such carriers must notify the Secretary and report on Form B-B-15 (Monthly Report of Sales of Nontaxpaid Bottled Soft Drinks by Dealers on Trains). This report is due on or before the 15th day of each month showing all taxable sales for the preceding month. A remittance for the amount of the excise tax due the state on such sales must be submitted with the report.

*History Note: Statutory Authority G.S. 105-113.51; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.0904 REPORT BY CROWN MANUFACTURERS
.0905 REPORT BY IMPRINT MANUFACTURERS

*History Note: Statutory Authority G.S. 105-113.52; 105-113.54; 105-113.63;
Eff. February 1, 1976;
Repealed Eff. October 1, 1991.*

.0907 DISCOUNT FOR TIMELY FILING AND PAYMENT

(a) Distributors and wholesale dealers liable for the soft drink excise tax under G.S. 105-113.51 and who file timely reports may deduct a four percent discount from taxes due on:

- (1) bottled soft drinks sold at retail.
- (2) bottled soft drinks sold in excess of the first 15,000 gross (2,160,000 bottles) sold at wholesale from October 1 to September 30 of each year. This discount does not apply to bottled soft drinks tax due under the 15,000 gross reduced rate [one-half cent ($1/2\%$ per bottle)] on wholesale sales.

(3) wholesale or retail sales of base products.

(b) Retail dealers liable for the soft drink excise tax under G.S. 105-113.51 and who file timely reports may deduct a 4 percent discount from total taxes due on retail sales of bottled soft drinks and base products for the month. Retail dealers are not required to be licensed or make monthly reports when they purchase only taxpaid soft drink products.

(c) Failure to file a timely report with tax due for the month will result in the Department of Revenue disallowing the four percent discount for timely payment and adding General Statute penalties and interest for late filing/failure to pay when due.

*History Note: Statutory Authority G.S. 105-113.51; 105-113.52; 105-262;
Eff. October 1, 1991.*

.0908 INVOICING REQUIREMENTS

(a) All sales invoices of distributors and wholesalers, whether resident or nonresident, shall indicate payment of the North Carolina soft drink excise tax by setting the tax out as a separate line item on the invoice.

(b) All sales invoices of nonresident distributors or wholesalers shall show the point of origin and mode of transportation for all shipments of bottled soft drinks or base products into this State.

*History Note: Statutory Authority G.S. 105-113.51; 105-113.58; 105-262;
Eff. October 1, 1991.*

.0909 BOND REQUIREMENTS

(a) The Secretary may require a distributor, wholesale dealer or retail dealer to furnish a bond (Form B-B-13) in an amount that adequately protects the State from loss if the distributor or dealer fails to pay taxes due under the Soft Drink Tax Act. A bond shall be conditioned on compliance with this Article, shall be payable to the State, and shall be in the form required by the Secretary. The Secretary shall proportion a bond amount to the anticipated tax liability of the distributor or dealer. The Secretary shall periodically review the sufficiency of bonds required and shall increase or decrease the amount that is adequate to protect the State from loss.

(b) Also, the Secretary of State may be required to be appointed lawful attorney in fact (Form B-B-43) by out-of-state distributors, wholesale dealers or retail dealers with no located place of business in this State.

*History Note: Statutory Authority G.S. 105-113.51; 105-113.53; 105-262;
Eff. October 1, 1991.*

SECTION .1000 - LIABILITY FOR AND PAYMENT OF THE SOFT DRINK EXCISE TAX

.1001 PRIMARY LIABILITY

(a) The distributor or retail dealer who first manufactures and distributes the soft drink products in this State is liable for payment of the soft drink excise tax.

(b) The distributor, wholesale dealer or retail dealer who brings soft drink products into this State is liable for the payment of the excise tax.

(1) The out-of-state distributor, wholesale dealer or retail dealer who brings such products into the State on its own truck.

(2) The in-state distributor, wholesale dealer or retail dealer who brings such products into the State on its own truck.

(3) The distributor, wholesale dealer or retail dealer who first receives or handles the soft drink products in this State.

(A) The distributor, wholesale dealer or retail dealer who is the original consignee of any soft drink products manufactured or produced outside this State.

(B) The in-state distributor, wholesale dealer or retail dealer who first receive such products from outside the State by common carrier or contract carrier.

*History Note: Statutory Authority G.S. 105-113.51; 105-262;
Eff. October 1, 1991.*

.1002 SECONDARY LIABILITY

(a) When any nontaxpaid soft drink product is found in possession of any retail dealer, the distributor or wholesale dealer selling such items within this State shall be subject to the penalties provided under the General Statutes of the North Carolina Revenue Laws.

(b) A retail dealer who acquires nontaxpaid bottled soft drinks or nontaxpaid base products from a distributor or a wholesale dealer is secondarily liable for any tax due on the bottled soft drink or base products and may not deduct a discount from the amount of tax due when reporting the tax.

*History Note: Statutory Authority G.S. 105-113.51; 105-262;
Eff. October 1, 1991.*

SUBCHAPTER 4F - EXCISE STAMP TAX ON CONVEYANCES

.0005 CONVEYANCE TAX (EXCISE TAX ON DEEDS) REPORT

The county finance officer shall file Form R-1 [Conveyance Tax (Excise Tax on Deeds) Report] on or before the 20th day of each month with remittance covering one-half of the net proceeds received from the conveyance tax for the preceding month.

*History Note: Statutory Authority G.S. 105-228.30; 105-262;
Eff. October 1, 1991.*

CHAPTER 6 - INDIVIDUAL INCOME TAX DIVISION

SUBCHAPTER 6B - INDIVIDUAL INCOME TAX

SECTION .0100 - FILING INDIVIDUAL INCOME TAX RETURNS

.0101 FORMS

The individual income tax returns, Form D-400 or Form D-400EZ, are available from the Department of Revenue. Additional schedules prescribed by the Secretary of Revenue and instructions are available also.

*History Note: Statutory Authority G.S. 105-155; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991.*

.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 or D-400EZ for the proper year should be used.

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Note: A 1991 form for a taxpayer whose calendar year ends December 31, 1991 and a 1990 form for a fiscal year taxpayer whose fiscal year begins in 1990. Form D-400 must be used to file a fiscal year return.

- (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 same filing status checked on the Federal income tax return should also be checked on the North Carolina income tax return (Federal Form 1040EZ filers should check single). However, if either the taxpayer or the taxpayer's spouse in a nonresident and had no North Carolina Taxable income for the taxable year, the filing status MARRIED FILING SEPARATELY should be checked.
- (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. October 1, 1991; June 1, 1990; August 1, 1986; May 1, 1984.

.0107 EXTENSIONS

(a) If an income tax return cannot be filed by the due date, an individual may apply for an automatic four-month extension of time to file the return. To receive the extension, an individual must file Form D-410, Application for Automatic Extension of Time to File State Income Tax Returns, and pay the full amount of tax he expects to owe by the original due date of the return. In lieu of filing Form D-410, an automatic four-month extension of time to file a North Carolina income tax return will be granted if an individual files Federal Form 4868, Application for Automatic Extension of Time, with the Internal Revenue Service, provided he submits a copy of the completed Form 4868 and full payment of the tax by the original due date of the return. When filing a copy of the Form 4868 in lieu of Form D-410, an individual must clearly state that the form is for North Carolina; mark through the federal amounts shown on the form; enter the applicable amounts for North Carolina; and pay the tax due.

(b) A ten percent late payment penalty will apply on the remaining balance due if the tax paid by the due date of the return is less than 90 percent of the total amount of tax due. If the 90 percent rule is met, any remaining balance due, including interest, must be paid with the income tax return before the expiration of the extension period to avoid the late payment penalty.

(c) An individual can apply for an additional extension beyond the automatic four-month extension by filing Form D-410A, Application for Additional Extension of Time to File State Income Tax Returns, in duplicate. Extensions of time beyond the automatic four-month extension of time to file are granted only for very good reasons. In lieu of filing Form D-410A, an additional extension of time will be granted if an individual files Federal Form 2688 with the Internal Revenue Service and includes a copy of the approved Form 2688 with his North Carolina return.

(d) A return may be filed at any time within the extension period but it must be filed before the end of the extension period to avoid the late filing penalty.

(e) This Rule applies to taxable years beginning on or after January 1, 1990.

History Note: Statutory Authority G.S. 105-155; 105-157; 105-236(4); 105-160.6; 105-160.7; 105-262; 105-263; Eff. February 1, 1976; Amended Eff. October 1, 1991; February 1, 1991; June 1, 1990; May 1, 1984.

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

The following individuals are required to file a North Carolina individual income tax return:

- (1) Every resident of North Carolina whose income for the taxable years equals or exceeds the amount for his filing status shown in Rule .0111 of this Subchapter.
- (2) Every part-year resident who received income while a resident of North Carolina or who received income while a nonresident attributable to the ownership of any interest in real or tangible personal property in North Carolina or derived from a business, trade, profession, or occupation carried on in North Carolina and whose total income for the taxable year equals or exceeds the amount for his filing status shown in Rule .0111 of this Subchapter.
- (3) Every nonresident who received income for the taxable year from North Carolina sources that was attributable to the ownership of any interest in real or tangible personal property in North Carolina or derived from a business, trade, profession, or occupation carried on in North Carolina and whose total income for the taxable year equals or exceeds the amount for his filing status shown in Rule .0111 of this Subchapter.

History Note: Statutory Authority G.S. 105-152; 105-262; Eff. June 1, 1990; Amended Eff. October 1, 1991.

.0114 COMPUTATION OF TAXABLE INCOME - GENERAL

The starting point in determining North Carolina taxable income is taxable income for Federal income tax purposes, subject to the following additions, deductions and transitional adjustments which are re-

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quired 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;
Amended Eff. October 1, 1991.*

.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;
 - (5) The fair market value not to exceed [one hundred thousand dollars (\$100,000)] of real property donated for conservation purposes and/or the market price of donated gleaned crops for which an individual income tax credit(s) was claimed on the North Carolina individual income tax return.
- (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 DEDUCTION
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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;
Amended Eff. October 1, 1991.*

.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 direct 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) Refunds of State, local, and foreign income taxes;
- (6) Up to four thousand dollars (\$4,000) in retirement benefits from one or more Federal, state, or local government retirement plans;
- (7) 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;
- (8) 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;
- (9) 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.

- (10) An amount by which any federal income tax deduction is disallowed because of the allowance of a federal income tax credit for part of all of the expense comprising the deduction to the extent that a similar State income tax credit is not allowed.

EXAMPLE: If an individual itemizes his deductions and claims the mortgage interest tax credit on his federal tax return because of participating in the mortgage credit certificate program (MCC), he may reduce his North Carolina taxable income by the amount the mortgage interest deduction was reduced due to claiming the mortgage interest credit on the federal tax return.

EXAMPLE: If an individual qualified and elected to claim the federal earned income tax credit for a portion of his health insurance premiums in lieu of claiming them as a medical expensed deduction, he is entitled to a deduction for the amount of the credit, provided he itemized his deductions of his federal return and the net medical expenses on Federal Schedule A are greater than zero. Self-employed individuals who do not itemize and/or have no net medical expenses on Federal Schedule A may claim a deduction for 25 percent of the amount of the credit.

*History Note: Statutory Authority G.S. 105-134.6(b); 105-262;
Eff. June 1, 1990;
Amended Eff. October 1, 1991; April 1, 1991.*

.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) 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.

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 subsequent tax years and deducted on his Federal income tax return in computing his Federal taxable income. In this instance, the individual must add back each year that portion of the 1988 loss deducted from his Federal taxable income in arriving at the amount of his North Carolina taxable income. In determining the amount of a capital loss to add back, short-term capital losses from taxable years beginning prior to January 1, 1989, must be applied before applying short-term capital losses incurred in taxable years beginning on or after January 1, 1989, and before applying long-term capital losses from any year. Long-term capital losses from taxable years beginning prior to January 1, 1989, must be applied before applying long-term capital losses incurred in taxable years beginning on or after January 1, 1989.

EXAMPLE: An individual carries over six thousand dollars (\$6,000) of capital losses from years beginning prior to January 1, 1989, consisting of four thousand (\$4,000) of short-term losses and two thousand dollars (\$2,000) of long-term losses. In 1989, the individual incurs additional capital losses of two thousand five hundred dollars (\$2,500), consisting of one thousand five hundred (\$1,500) of short-term losses and one thousand dollars (\$1,000) of long-term losses. The individual claims a capital loss deduction of three thousand dollars (\$3,000) on his federal income tax return. In 1990 and 1991 the individual has no additional capital gains or losses and claims a three thousand dollars (\$3,000) capital loss carry-over on his 1990 federal income tax return and the balance of two thousand five hundred dollars (\$2,500) capital loss carry-over on his 1991 federal income tax return. The taxpayer would be required to all back the following amounts as transitional ad-

justments: 1989 - three thousand dollars (\$3,000) (a portion of the short-term capital loss from 1988); 1990 - one thousand five hundred dollars (\$1,500) consisting of the one thousand dollars (\$1,000) balance of the 1988 short-term loss and five hundred dollars (\$500) of the 1988 long-term loss; 1991 - one thousand five hundred dollars (\$1,500) consisting of the remaining 1988 long-term loss carry-over.

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 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.

- (4) 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 for up to 15 years and deduct it as a net operating loss on his subsequent Federal income tax returns. 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 up to five years after reducing it by both taxable and nontaxable income. In this situation, the individual must add back the net operating loss deduction to his Federal taxable income.

- (5) 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:

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

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.

- (6) 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.
- (7) 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 Federal taxable income in the taxable year following the taxable year in which the loss occurred.
- (8) Adjustments must also be made in the taxable income of a shareholder of an S corporation. (See 17 NCAC 6B .4000)
- (9) 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).
- (10) For taxable years beginning prior to January 1, 1989, an individual engaged in the commercial growing of trees could elect to claim a current income tax deduction for reasonable expenses paid for reforestation and cultivation or he could elect to amortize such expenses over a period of 60 months. Federal law required such expenses to be amortized on the federal return over 84 months. If a taxpayer elected to claim reforestation expenses currently on his North Carolina tax return for tax years beginning prior to January 1, 1989, he must add to Federal taxable income the amount deducted as amortization expenses each year on his Federal income tax return.
A taxpayer who amortized such expenses on his North Carolina return for tax years beginning prior to January 1, 1989, may continue to amortize by deducting the allowable amortization expenses each year on his North Carolina return; however, federal taxable income must be increased by the amortization expenses claimed each year on his federal income tax return.
- (11) Other additions and deductions to Federal taxable income may be required to ensure that the transition to the new law does not result in the double taxation of income, the exemption of otherwise taxable income or double allowance of deductions.

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*History Note: Statutory Authority G.S. 105-134.7; 105-262;
Eff. June 1, 1990;
Amended Eff. October 1, 1991; July 1, 1991; February 1, 1991.*

SECTION .0600 - TAX CREDITS

.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. In calculating the credit, also include expenses incurred in the previous tax year but not paid until the current tax year, and expenses paid for the care of a qualifying dependent for whom the Federal earned income tax credit for a child born in 1991 was claimed, instead of the federal child and dependent care tax credit. 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 non-resident 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;
Amended Eff. October 1, 1991.*

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SECTION .3200 - PENALTIES: INDIVIDUAL INCOME TAX

.3202 SCHEDULE OF PENALTIES

The following is the schedule of penalties for individual income tax:

<u>Cause</u>	<u>Penalty</u>
(1) Failure to file.....	5% per mo. (\$5 min.--25% max.)
(2) Return filed late.....	5% per mo. (\$5 min.--25% max.)
(3) Failure to pay by due date.....	10% (\$5 min.--no max.)
(4) Only a part of tax paid when due.....	10% on unpaid portion (\$5 min.--no max.)
(5) Assessment after examination:	
(a) Delinquent return showing no tax due--tax due after audit.....	5% per mo. to date filed (\$5 min.--25% max.)*
(b) Delinquent return showing tax due and payment made-- more tax due after audit.....	5% per mo. to date filed on total tax due (\$5 min.--25% max.)*
(6) Negligence:	
(a) Negligent failure to comply with law without intent to defraud.....	10% of deficiency (no min.--no max.)
(b) Understatement of gross income by 25% or more of gross income.....	25% of deficiency (no min.--no max.)
(c) Overstatement of deductions by 25% or more of gross income.....	25% of deficiency (no min.--no max.)
(d) Combination of understatement of gross income and overstatement of deductions by 25% or more of gross income.....	25% of deficiency (no min.--no max.)
(7) Failure to report federal changes within two years after receipt of Revenue Agent's Report.....	5% per mo. (\$5 min.--25% max.) beginning two years from date of receipt by taxpayer of Revenue Agent's report. (Also forfeits right to any refund resulting from the changes.)

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- (8) Withholding and estimated income tax:
- (a) Underpayment of estimated tax.....At the applicable rate on underpayment for period of underpayment.
 - (b) Failure to pay over any amounts withheld from wages (employer).....Full amount withheld and 25% penalty.
 - (c) False exemption certificate.....50% of the amount not properly withheld.
 - (d) Personal liability.....Any person required to collect, truthfully account for, and pay over any amounts required to be deducted and withheld, who fails to collect and pay over such amount shall be personally liable for the total amount of tax not collected or not accounted for and paid over.
- (9) Extension of time granted for filing.....None (if filed by extension due date). Applicable penalties start as of the extended date. Ten percent on remaining balance due if tax paid by due date is less than 90 percent of the total amount due.
- (10) Information returns:
- (a) Failure to file partnership information return.....\$5 per mo. (\$25 max.)
 - (b) Failure to file fiduciary return (with no tax due thereon).....\$5 per mo. (\$25 max.)
 - (c) Failure to file NC-1099's.....\$1 per report (\$100 max.)
 - (d) Failure to file NC-2's.....\$1 per report (\$100 max.)
- (11) Fraud.....50% of deficiency.
- (*A negligence or fraud penalty may also be assessed if applicable.)

*History Note: Statutory Authority G.S. 105-159; 105-161(j); 105-163.15; 105-163.17; 105-236; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; July 1, 1986; March 11, 1978.*

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 re-

ceived 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.

*History Note: Statutory Authority G.S. 105-163.16; 105-241.1; 105-262; 105-266;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; June 1, 1990; August 1, 1986; May 1, 1984.*

SECTION .3500 - PARTNERSHIPS

.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 distributive 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) A partnership with one or more nonresident partners whose business operations in North Carolina are unified and integrated with its business operations in other states must determine its net income attributable to North Carolina, for the purpose of determining the North Carolina income tax liability of a nonresident partner, by multiplying the total net income of the partnership by the apportionment percentage computed in Schedule B of Form D-403. 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. A partnership whose business operations are not integrated and are segregated from its business activities in other states must separately account for its income earned in North Carolina. In lieu of completing Schedule B, the partnership should attach a statement to this effect. This allocation of income does not affect the reporting of partnership income by the resident partner because he is taxed 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); 105-154; 105-262;

*Eff. February 1, 1976;
Amended Eff. October 1, 1991; April 1, 1991;
February 1, 1991; December 1, 1990.*

.3528 PART-YEAR RESIDENT PARTNERS

A part-year resident receiving partnership income from a partnership doing business in North Carolina and in one or more other states, must prorate his share of the partnership's income attributable and not attributable to North Carolina between his periods of residence and nonresidence in accordance with the number of days in each period. The amount required to be included in the numerator of the fraction for determining taxable income is the taxpayer's share of partnership income determined for the period of residence, plus the taxpayer's share of the partnership income attributable to North Carolina during the period of nonresidence.

*History Note: Statutory Authority G. S. 105-134.5; 105-154; 105-262;
Eff. October 1, 1991.*

SECTION .3700 - ESTATES AND TRUSTS

.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) For estates and trusts located outside of North Carolina, a fiduciary must file a North Carolina fiduciary income tax return for the estate or trust if he is required to file a federal fiduciary income tax return and the estate or trust derives income from:

- (1) North Carolina sources that is attributable to the ownership of any interest in real or tangible personal property located in North Carolina, or;
- (2) a business, trade, profession, or occupation carried on in North Carolina.

(d) 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.

(e) 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. October 1, 1991; June 1, 1990; April 12, 1981.*

.3718 PAYMENT OF TAX

(a) The tax rate for estates and trusts is the same as the rates for single individuals.

(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. October 1, 1991; 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. In determining the taxable income of an estate or trust located outside North Carolina, do not include any intangible income or any other income derived from sources outside North Carolina.

(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.

*History Note: Statutory Authority G.S. 105-134.5; 105-160.2; 105-262;
Eff. June 1, 1990;
Amended Eff. October 1, 1991.*

SECTION .3800 - MISCELLANEOUS RULES

.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.

If an individual has an outstanding Federal income tax liability of at least fifty dollars (\$50.00), the Internal Revenue Service may attach the individual's income tax refund.

(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 the tax nor reduce the refund. A married couple filing a joint return may make a designation only if their income tax liability is two dollars (\$2.00) or more.

(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.

(i) In determining North Carolina taxable income, G.S. 105-134.6(b) allows an individual to deduct from his federal taxable income interest received from obligations of the United States or its possessions, the State of North Carolina or its political subdivisions, and nonprofit educational institutions located in North Carolina, to the extent the interest is included in his federal gross income. Under this statute, an individual is allowed to deduct the total of such interest included in his federal gross income even though certain expenses incurred in earning the interest are allowed as deductions on his federal income tax return.

G.S. 105-134.6(c) requires an individual to add interest received from obligations of states other than North Carolina and their political subdivisions to federal taxable income in calculating his North Carolina taxable income, to the extent the interest is not included in his federal gross income. Under this statute, an individual is required to add the total of such interest to federal taxable income even though he may have incurred expenses in earning the interest.

Similar adjustments may be required by a partner or beneficiary. Although the interest passed to a partner in a partnership or to a beneficiary of an estate or trust retains its same character as when received by the partnership or the estate or trust, the expenses incurred in earning such income are deductible by the partnership or the estate or trust, and the net interest income after deducting the expenses is reflected in the partner's or beneficiary's pro rata share of the net income of the partnership or fiduciary. Therefore, in the case of interest income subject to federal income tax, the partner's or beneficiary's federal gross income reflects the net interest income after allowing the expenses incurred in earning the income. Interest income not subject to federal income tax is not reflected in the partner's or beneficiary's federal taxable income. This being the case, a partner or beneficiary must adjust his federal taxable income in determining his North Carolina taxable income as required by G.S. 105-134.6(b) and G.S. 105-134.6(c), as an addition or deduction for the net amount of interest from the above sources attributable to a partnership or an estate or trust.

(j) Effective for sales on or after January 1, 1992, every individual, fiduciary, partnership, corporation, or unit of government buying real property located in North Carolina from a nonresident individual, partnership, estate or trust is required to complete Form NC-1099NRS, Sale of Real Property by Nonresidents, reporting the seller's name, address, and social security number, or federal employer identification number; the location of the property; the date of closing; and the gross sales price of the real property and its associated tangible personal property.

Within 15 days of the closing date of the sale, the buyer must file one copy of the report with the Department and also furnish a copy of the report to the seller.

History Note: Statutory Authority G.S. 105-134.6(b); 105-134.6(c); 105-154; 105-159.1; 105-262; 105-269.6; Eff. June 1, 1990; Amended Eff. October 1, 1991; February 1, 1991.

SECTION .4000 - S CORPORATION

.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 on the income attributable to such nonresident shareholders at the tax rate for single individuals.

(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;
Amended Eff. October 1, 1991.*

SECTION .4100 - TAXABLE STATUS OF DISTRIBUTIONS FROM REGULATED INVESTMENT COMPANIES

.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, Guam, Puerto Rico, and the United States Virgin Islands, including the governments thereof and their agencies, instrumentalities and authorities, 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;
Amended Eff. October 1, 1991.*

SUBCHAPTER 6C - WITHHOLDING

SECTION .0100 - WITHHOLDING INCOME TAXES

.0103 INCOME NOT SUBJECT TO WITHHOLDING

*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;
Repealed Eff. October 1, 1991.*

.0105 WAGES

(a) 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.

(b) Employers are required to withhold tax to the same extent required for Federal income tax purposes with two exceptions:

- (1) Withholding is not required on pensions, annuities and certain deferred income, and
- (2) Withholding is not required on payments to an individual employed on a farm for services rendered on the farm in the production, harvesting and transportation of agricultural products to the market for the farmer-employer.

(c) If an employer enters into a voluntary agreement to withhold North Carolina tax on income not requiring withholding, 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. 105-163.1(13); 105-163.2; 105-163.18; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; June 1, 1990.*

.0109 MINISTERS

An ordained or licensed clergyman who performs services for a church of any religious denomination may file an election with the Secretary of Revenue and the church he serves to be considered an employee of the church instead of self-employed. Until a clergyman files an election, amounts paid by a church to a clergyman are not subject to withholding.

*History Note: Statutory Authority G.S. 105-163.1A; 105-163.2; 105-163.18; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; August 1, 1986;
February 21, 1979.*

.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 one allowance.

(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;
Amended Eff. October 1, 1991.*

SECTION .0200 - FILING WITHHOLDING REPORTS

.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.

(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. October 1, 1991; February 1, 1991; June 1, 1990; April 12, 1981.

SECTION .0300 - PAYMENT OF INCOME TAX WITHHELD

.0301 GENERAL

.0302 PENALTY

.0303 PERSONAL LIABILITY

.0304 JEOPARDY REPORTING AND PAYMENT

History Note: Statutory Authority G.S. 105-163.6(a); 105-163.6(b);

105-163.6(f); 105-163.17; 105-241.1(g); 105-262;

Eff. July 1, 1986;

Repealed Eff. October 1, 1991.

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 1991 income tax return may have all or any portion of the refund applied to his estimated tax for 1992. The individual may not however, file a 1991 tax return in 1993 and request the refund be applied to his 1993 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. The last allowable due date for making a 1992 estimated tax payment is January 15, 1993; therefore, you must file your 1991 income tax return by January 15, 1993, to elect to apply a portion of your refund to 1992 estimated tax.

(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. October 1, 1991; June 1, 1990; February 1, 1988; August 1, 1986.

SECTION .0200 - PENALTY FOR UNDERPAYMENT OF ESTIMATED INCOME TAX

.0206 AVOIDING PENALTY

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:

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- (1) 90 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) 90 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 no 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).

*History Note: Statutory Authority G.S. 105-163.15; 105-163.18; 105-262;
Eff. June 1, 1990;
Amended Eff. October 1, 1991.*

.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 22.5 percent 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;
Amended Eff. October 1, 1991.*

CHAPTER 8 - INTANGIBLES TAX DIVISION

SECTION .0400 - ACCOUNTS RECEIVABLE

.0403 ACCOUNTS RECEIVABLE SUBJECT TO TAXATION

Accounts receivable which are subject to intangibles tax include, but are not limited to, the following:

- (1) trade accounts, open book accounts and charge accounts;
- (2) revolving type charge accounts;
- (3) salaries and commissions receivable;
- (4) bonuses receivable if such bonuses were declared or were otherwise determinable as of the valuation date;
- (5) dividends receivable;
- (6) tax refunds which have been approved for payment;
- (7) dealer reserves and finance reserves due from banks, finance companies, etc;
- (8) the total amount of periodic or progress billings (excluding retainage) to which a contractor is entitled under terms of contracts in progress;
- (9) accounts receivable of all taxpayers whether they are operating on a cash or an accrual basis;
- (10) accounts receivable of professional associations and professional persons when such accounts represent amounts owing to them for professional services;
- (11) all inter-company receivables which are not evidenced by a note or other written evidences of debt;
- (12) accrued rent which is due or otherwise determinable as of the valuation date;
- (13) royalties which have become due or which are otherwise determinable as of the valuation date;

- (14) patronage dividends;
- (15) accounts receivable which have a business, commercial or taxable situs in North Carolina, even though such accounts may be owned by a nonresident or foreign corporation.

*History Note: Statutory Authority G.S. 105-201; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; February 1, 1991; August 1, 1986; December 1, 1985.*

.0404 DEDUCTIBLE ACCOUNTS PAYABLE

Accounts payable which may be deducted from accounts receivable include, but are not limited to, the following:

- (1) trade accounts, charge accounts and certain accrued expenses not evidenced by a note or conditional sales contract;
- (2) accrued salaries, wages and commissions payable;
- (3) accrued dividends payable;
- (4) accrued bonuses payable provided such bonuses were declared or were otherwise determinable as of the valuation date;
- (5) federal and state withholding taxes and that portion of social security taxes withheld from employees;
- (6) the amount of periodic or progress billings (excluding retainage) payable to a contractor under terms of a contract in progress;
- (7) amounts due for professional services;
- (8) all inter-company payables which are not evidenced by a note or other written evidences of debt;
- (9) accrued rent payable or otherwise determinable as of the valuation date;
- (10) royalties payable or otherwise determinable as of the valuation date;
- (11) certain short term notes payable may qualify as accounts payable provided they were issued or made for a term of one year or less and are not deducted as notes payable under G.S. 105-202. (This deduction does not apply to notes "payable on demand" or the current portion of long term debt.);
- (12) amounts due and payable to pension and profit-sharing trusts which qualify as exempt from state income tax;
- (13) in the case of banks, checking account and demand saving account liabilities are deductible as accounts payable.

*History Note: Statutory Authority G.S. 105-201; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; February 1, 1991; August 1, 1986; December 1, 1985.*

SECTION .0500 - NOTES: BONDS AND OTHER EVIDENCES OF DEBT

.0506 DEDUCTIONS FOR LIKE EVIDENCES OF DEBT OWED

Notes, bonds and other evidences of debt owed which may be deducted from notes, bonds and other evidences of debt owned include, but are not limited to, the following:

- (1) Notes and mortgages payable;
- (2) Liabilities resulting from the issuance of bonds, debentures, participation certificates and commercial paper;
- (3) Payables evidenced by conditional sales contracts;
- (4) Notes owed to affiliated companies;
- (5) accrued interest due on notes, bonds and other evidences of debt;
- (6) Accounts payable to security brokers; provided they were incurred directly for the purchase of bonds, debentures and similar investments taxable under G.S. 105-202;
- (7) In the case of banks, certificate of deposit liabilities are deductible as evidences of debt payable;
- (8) Amounts owing to banks under retail credit card plans.

*History Note: Statutory Authority G.S. 105-202; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; October 25, 1979; October 15, 1978; July 1, 1977.*

FINAL RULES

CHAPTER 9 MOTOR FUELS TAX DIVISION

SUBCHAPTER 9F - DIVISIONAL RULES

.0003 DIVISIONAL ORGANIZATION

The Motor Fuels Tax Division is administered by a director and assistant director. The Division is divided into three sections: administrative, office operations, and audit sections.

- (1) The administrative section includes the director, assistant director, and two secretaries. It is the responsibility of the director and assistant director to administer the entire operations of the Division. They handle personnel matters in conjunction with the section supervisors; devise rules and regulations; resolve controversial issues; conduct conferences with taxpayers and their representatives; represent the Department in hearings before the Secretary of Revenue and generally direct the activities of the Division.
- (2) The office operations section receives and processes gasoline, special fuels and highway fuel use reports as well as quarterly and annual refund claims for motor fuels. This section issues vehicle fuel registrations and temporary emergency permits and is responsible for the accounting functions. An administrative assistant directs the operations of this section.
- (3) The field audit section is responsible for making the necessary field audits for all schedules administered by the Motor Fuels Tax Division. The assistant director directs the operations of this section.

*History Note: Statutory Authority G.S. 105-430 through 105-449.56;
119-15 through 119-22; 143B-10; 143B-221;
Eff. January 1, 1983;
Amended Eff. October 1, 1991; February 1, 1990; March 1, 1987.*

SUBCHAPTER 9G - MOTOR FUELS TAX DIVISION

SECTION .0100 - APPLICATION FOR AND CANCELLATION OF LICENSE AS A DISTRIBUTOR

.0103 USER UNQUALIFIED

*History Note: Statutory Authority G.S. 105-262; 105-430; 105-433; 105-434;
Eff. January 1, 1983;
Repealed Eff. October 1, 1991.*

.0104 AMOUNT OF BOND REQUIRED

(a) The requirements set by the Department of Revenue for a motor fuel distributor's bond or irrevocable letter of credit are based on two times the following:

- (1) For an applicant who imports motor fuel, the average monthly amount of tax liability if the sale of imported motor fuel to a distributor were subject to tax plus the applicant's average expected monthly tax liability.
- (2) For an applicant who does not import fuel, the average expected monthly tax liability.

(b) The amount of bond or irrevocable letter of credit shall be rounded to the nearest one thousand dollars (\$1,000.00). If the amount required is exactly between two one thousand dollar (\$1,000.00) increments, the amount shall be rounded to the higher of the two. The maximum amount required is one hundred twenty-five thousand dollars (\$125,000.00) and the minimum amount required is two thousand dollars (\$2,000.00).

*History Note: Statutory Authority G.S. 105-262; 105-433;
Eff. January 1, 1983;
Amended Eff. October 1, 1991; August 1, 1983.*

.0105 TYPES OF ACCEPTABLE BONDS

The Motor Fuels Tax Division will accept surety bonds on Form Gas. 1212, furnished by this Department, which have been properly executed by any surety company authorized to do business in this State. The Division will also accept the following types of collateral to execute a bond:

- (1) Negotiable U.S. Treasury bonds;
- (2) Negotiable U.S. Treasury notes;
- (3) State of North Carolina bonds;
- (4) Certificates of deposit or cashier's checks, made payable to the taxpayer;
- (5) Public School Facilities bonds;
- (6) Housing Finance Agency bonds.

*History Note: Statutory Authority G.S. 105-262; 105-441; 105-442;
Eff. January 1, 1983;
Amended Eff. October 1, 1991; March 1, 1987.*

.0106 CANCELLATION OF LICENSE AND BOND

*History Note: Statutory Authority G.S. 105-262; 105-441; 105-442;
Eff. January 1, 1983;
Amended Eff. March 1, 1987;
Repealed Eff. October 1, 1991.*

SECTION .0200 - FIRST SALE TO LICENSED DISTRIBUTORS FROM PIPELINE OR PORT TERMINALS

.0204 EXCHANGE AGREEMENTS

*History Note: Statutory Authority G.S. 105-262; 105-432;
Eff. January 1, 1983;
Amended Eff. March 1, 1987;
Repealed Eff. October 1, 1991.*

SECTION .0400 - REBATES FOR FUELS SOLD TO THE UNITED STATES GOVERNMENT AND PUBLIC SCHOOLS

.0401 DELIVERIES TO THE NATIONAL GUARD

*History Note: Statutory Authority G.S. 105-262; 105-439;
Eff. January 1, 1983;
Repealed Eff. October 1, 1991.*

.0404 EXEMPTION OF MOTOR FUELS: PUBLIC SCHOOLS AND STATE AGENCIES

An application for, and the acceptance of a credit card for the purchase of motor fuels by a city or county board of education or a state agency shall constitute a "contract" as required by G.S. 105-449 and G.S. 105-449A. If a purchase of motor fuel is for a dollar amount that is less than the amount that requires vendors by law to have a state contract then G.S. 105-449 and G.S. 105-449A do not require the vendor to hold a state contract. The sales invoice for motor fuels, signed by a person authorized to purchase motor fuels for a city or county board of education or a state agency, shall constitute a "purchase order" as required by G.S. 105-449 and G.S. 105-449A.

*History Note: Statutory Authority G.S. 105-262; 105-449; 105-449A;
Eff. January 1, 1983;
Amended Eff. October 1, 1991; March 1, 1987.*

SECTION .0500 - REFUNDS

.0510 COUNTIES: CITIES AND OTHERS: FORM GAS. 1200

Counties, municipal corporations, volunteer fire departments, county fire departments, volunteer rescue squads, "sheltered workshop" organizations recognized and approved by the Department of Human Resources, city transit systems and private non-profit organizations transporting passengers under contract with or at the express designation of units of local government must file Form Gas. 1200 to obtain a refund of tax paid on motor fuels.

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The application requires an accounting of tax paid motor fuels purchased and used. Invoices for the tax paid motor fuels must be submitted with the application.

*History Note: Statutory Authority G.S. 105-262; 105-446.1; 105-446.3;
Eff. January 1, 1983;
Amended Eff. October 1, 1991; March 1, 1987.*

SUBCHAPTER 9H - SPECIAL FUELS TAX

SECTION .0100 - SPECIAL FUELS LICENSES

.0101 APPLICATION FOR SUPPLIER'S LICENSE

*History Note: Statutory Authority G.S. 105-262; 105-449.2 through 105-449.8; 105-449.32;
Eff. January 1, 1983;
Repealed Eff. October 1, 1991.*

.0102 AMOUNT OF BOND REQUIRED

The requirements set by the Department of Revenue for a supplier's bond or irrevocable letter of credit are based on two times the applicant's average expected monthly tax liability. The amount required shall be rounded to the nearest one thousand dollars (\$1,000.00). If the amount required is exactly between two one thousand dollar (\$1,000.00) increments, the amount shall be rounded to the higher of the two. The maximum amount required is one hundred twenty-five thousand dollars (\$125,000.00) and the minimum amount required is five hundred dollars (\$500.00).

*History Note: Statutory Authority G.S. 105-262; 105-449.5; 105-449.32;
Eff. January 1, 1983;
Amended Eff. October 1, 1991; March 1, 1987; August 1, 1983.*

.0103 TYPES OF ACCEPTABLE BONDS

The Motor Fuels Tax Division will accept surety bonds on Form Gas. 1212, furnished by the Department, which have been properly executed by any surety company authorized to do business in this State. The Division will also accept the following types of collateral to execute a bond:

- (1) Negotiable U.S. Treasury bonds;
- (2) Negotiable U.S. Treasury notes;
- (3) State of North Carolina bonds;
- (4) Certificates of deposit or cashier's checks, made payable to the taxpayer;
- (5) Public School Facilities bonds;
- (6) Housing Finance Agency bonds.

*History Note: Statutory Authority G.S. 105-449.5; 105-449.32;
Eff. January 1, 1983;
Amended Eff. October 1, 1991; March 1, 1987.*

.0104 LEASE OPERATIONS

*History Note: Statutory Authority G.S. 105-449.3; 105-449.21; 105-449.22; 105-449.32;
Eff. January 1, 1983;
Amended Eff. August 1, 1983;
Repealed Eff. October 1, 1991.*

SECTION .0300 - LIQUIFIED PETROLEUM GAS

.0302 FUEL FROM CARGO SUPPLY TANK

Propane gas suppliers using directly from their cargo supply tank are required to report and pay road tax and inspection fees based on the trucks storage tank water (shell) capacity, as follows:

Tank Capacity	Miles Per Gallon
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.0203 TYPES OF ACCEPTABLE BONDS

The Motor Fuels Tax Division will accept surety bonds on Form Gas. 1212, furnished by this Department, which have been properly executed by any surety company authorized to do business in this State. The Division will also accept the following types of collateral to execute a bond:

- (1) Negotiable U.S. Treasury bonds;
- (2) Negotiable U.S. Treasury notes;
- (3) State of North Carolina bonds;
- (4) Certificates of deposit or cashier's checks, made payable to the taxpayer;
- (5) Public School Facilities bonds;
- (6) Housing Finance Agency bonds.

*History Note: Statutory Authority G.S. 105-262; 105-269.3; 119-16.2;
Eff. January 1, 1983;
Amended Eff. October 1, 1991; March 1, 1987.*

**TITLE 19A
DEPARTMENT OF TRANSPORTATION**

CHAPTER 3 - DIVISION OF MOTOR VEHICLES

SUBCHAPTER 3D - ENFORCEMENT SECTION

**SECTION .0500 - GENERAL INFORMATION REGARDING SAFETY INSPECTION OF
MOTOR VEHICLES**

.0515 SAFETY INSPECTION LICENSING AND PROCEDURES

(a) The Director of the Office of Administrative Hearings has determined that publication of the complete regulations governing licensing as a North Carolina Safety Equipment Inspection Station, and the requirements and procedures for such inspections are impracticable, and that the substance of this Rule should be summarized in accordance with the provisions of G.S. 150B-63(c).

(b) The regulations and procedures governing the licensing of Safety Equipment Inspection Stations for all counties are contained in a manual entitled "Safety Equipment Emission Inspections, Windshield Certificate Replacement Regulations Manual." This manual includes all procedures and forms to be used in the process of the safety inspection required by law.

(c) Official copies of these manuals are available upon request from the Enforcement Section, Division of Motor Vehicles, Department of Transportation, 1100 New Bern Avenue, Raleigh, N. C. 27697.

*History Note: Statutory Authority G.S. 20-1; 20-117.1(a); 20-122; 20-122.1; 20-123.1;
20-124; 20-125; 20-125.1; 20-126; 20-127; 20-128; 20-128.1; 20-129;
20-129.1; 20-130; 20-130.1; 20-130.2; 20-130.3; 20-131 through 20-134;
20-183.2; 20-183.3; 20-183.4; 20-183.5; 20-183.6; 20-183.7; 20-183.8; 150B-63(c);
Eff. January 1, 1983;
Amended Eff. October 1, 1991; October 1, 1989; November 1, 1988.*

SECTION .0800 - SAFETY RULES AND REGULATIONS

.0801 SAFETY OF OPERATION AND EQUIPMENT

(a) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-398 and amendments thereto) shall apply to all for-hire motor carrier vehicles, whether common carriers, contract carriers or exempt carriers and all private motor carriers, while engaged in interstate commerce over the highways of the State of North Carolina.

(b) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-398 and amendments thereto) shall apply to all for-hire motor carrier vehicles, whether common carriers, contract carriers or exempt carriers and all private motor carrier vehicles engaged in intrastate commerce over the highways of the State of North Carolina if such vehicles have a GVWR of greater than 26,000 pounds; are designed to transport 16 or more passengers, including the driver; or transport hazardous materials required to be placarded pursuant to 49 CFR 170-190. Provided, the following exceptions shall also apply to all intrastate motor carriers:

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Eff. March 1, 1987;
Amended Eff. October 1, 1991.

SUBCHAPTER 9I - HIGHWAY FUEL USE TAX

SECTION .0200 - NORTH CAROLINA FUEL PURCHASES

.0201 N.C. RETAIL FUEL PURCHASE INVOICES

(a) North Carolina retail fuel purchase invoices must contain the following information:

- (1) Date of purchase;
- (2) Seller's name and address;
- (3) Purchaser's name (in the case of a lessee/lessor agreement, receipts will be accepted in either name, provided a legal connection can be made to reporting party);
- (4) Number of gallons; and total cost of fuel;
- (5) Fuel type; and
- (6) Company unit number or vehicle license plate number and state.

(b) In order for the motor carrier to obtain credit for retail tax paid purchases, a receipt or invoice, a credit card receipt, or microfilm/microfiche, or computer imaging of the receipt or invoice must be retained by the motor carrier showing evidence of such purchases and tax having been paid.

(c) Invoices must be maintained for a period of at least three years for possible audit by an agent of the North Carolina Department of Revenue.

History Note: Statutory Authority G.S. 105-262; 105-449.10; 105-449.26; 105-449.32; 105-449.39;
Eff. January 1, 1983;
Amended Eff. October 1, 1991; February 1, 1990.

SECTION .0300 - CREDITS AND REFUNDS

.0304 TYPES OF ACCEPTABLE BONDS

The Motor Fuels Tax Division will accept surety bonds on Form Gas. 1212, furnished by this Department, which have been properly executed by any surety company authorized to do business in this State. The Division will also accept the following types of collateral to execute a bond:

- (1) Negotiable U.S. Treasury bonds;
- (2) Negotiable U.S. Treasury notes;
- (3) State of North Carolina bonds;
- (4) Certificates of deposit or cashier's checks, made payable to the taxpayer;
- (5) Public School Facilities bonds;
- (6) Housing Finance Agency bonds.

History Note: Statutory Authority G.S. 105-262; 105-449.40;
Eff. January 1, 1983;
Amended Eff. October 1, 1991; March 1, 1987.

SECTION .0500 - REGISTRATION CARDS AND IDENTIFICATION MARKERS

.0506 DEALER: MANUFACTURER: DRIVEAWAY: TRANSPORTER

Persons operating heavy vehicles with a dealer, manufacturer, driveaway or transporter license plate, issued either in North Carolina or other jurisdictions must obtain a fuel registration card and a vehicle identification marker, from the Motor Fuels Tax Division. The marker does not have to be mounted on the vehicle. There is no fee for the fuel registration card. These vehicles must have a fuel registration card at all times while operating in North Carolina.

History Note: Statutory Authority G.S. 105-262; 105-449.45; 105-449.47; 105-449.48; 105-449.50;
Eff. March 1, 1987;
Amended Eff. October 1, 1991; February 1, 1990.

SUBCHAPTER 9J - GASOLINE: SPECIAL FUELS AND KEROSENE INSPECTION

SECTION .0200 - KEROSENE IMPORTER

.0203 TYPES OF ACCEPTABLE BONDS

The Motor Fuels Tax Division will accept surety bonds on Form Gas. 1212, furnished by this Department, which have been properly executed by any surety company authorized to do business in this State. The Division will also accept the following types of collateral to execute a bond:

- (1) Negotiable U.S. Treasury bonds;
- (2) Negotiable U.S. Treasury notes;
- (3) State of North Carolina bonds;
- (4) Certificates of deposit or cashier's checks, made payable to the taxpayer;
- (5) Public School Facilities bonds;
- (6) Housing Finance Agency bonds.

*History Note: Statutory Authority G.S. 105-262; 105-269.3; 119-16.2;
Eff. January 1, 1983;
Amended Eff. October 1, 1991; March 1, 1987.*

**TITLE 19A
DEPARTMENT OF TRANSPORTATION**

CHAPTER 3 - DIVISION OF MOTOR VEHICLES

SUBCHAPTER 3D - ENFORCEMENT SECTION

**SECTION .0500 - GENERAL INFORMATION REGARDING SAFETY INSPECTION OF
MOTOR VEHICLES**

.0515 SAFETY INSPECTION LICENSING AND PROCEDURES

(a) The Director of the Office of Administrative Hearings has determined that publication of the complete regulations governing licensing as a North Carolina Safety Equipment Inspection Station, and the requirements and procedures for such inspections are impracticable, and that the substance of this Rule should be summarized in accordance with the provisions of G.S. 150B-63(c).

(b) The regulations and procedures governing the licensing of Safety Equipment Inspection Stations for all counties are contained in a manual entitled "Safety Equipment Emission Inspections, Windshield Certificate Replacement Regulations Manual." This manual includes all procedures and forms to be used in the process of the safety inspection required by law.

(c) Official copies of these manuals are available upon request from the Enforcement Section, Division of Motor Vehicles, Department of Transportation, 1100 New Bern Avenue, Raleigh, N. C. 27697.

*History Note: Statutory Authority G.S. 20-1; 20-117.1(a); 20-122; 20-122.1; 20-123.1;
20-124; 20-125; 20-125.1; 20-126; 20-127; 20-128; 20-128.1; 20-129;
20-129.1; 20-130; 20-130.1; 20-130.2; 20-130.3; 20-131 through 20-134;
20-183.2; 20-183.3; 20-183.4; 20-183.5; 20-183.6; 20-183.7; 20-183.8; 150B-63(c);
Eff. January 1, 1983;
Amended Eff. October 1, 1991; October 1, 1989; November 1, 1988.*

SECTION .0800 - SAFETY RULES AND REGULATIONS

.0801 SAFETY OF OPERATION AND EQUIPMENT

(a) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-398 and amendments thereto) shall apply to all for-hire motor carrier vehicles, whether common carriers, contract carriers or exempt carriers and all private motor carriers, while engaged in interstate commerce over the highways of the State of North Carolina.

(b) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-398 and amendments thereto) shall apply to all for-hire motor carrier vehicles, whether common carriers, contract carriers or exempt carriers and all private motor carrier vehicles engaged in intrastate commerce over the highways of the State of North Carolina if such vehicles have a GVWR of greater than 26,000 pounds; are designed to transport 16 or more passengers, including the driver; or transport hazardous materials required to be placarded pursuant to 49 CFR 170-190. Provided, the following exceptions shall also apply to all intrastate motor carriers:

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- (1) An intrastate motor carrier driver may not drive more than 12 hours following eight consecutive hours off duty; or for any period after having been on duty 16 hours following eight consecutive hours off duty; or after having been on duty 70 hours in seven consecutive days; or more than 80 hours in eight consecutive days. An intrastate driver will be determined by his previous seven days of operation.
- (2) Persons who otherwise qualify medically to operate a commercial motor vehicle within the State of North Carolina will be exempt from provisions of Part 391.11(b)(1) and Part 391.41(b)(1) through (11) and therefore will be authorized for intrastate operation if licensed prior to March 30, 1992, are approved by an Exemption Review Officer appointed by the Commissioner of Motor Vehicles and meet all other requirements of this Section. These drivers shall continue to be exempt upon completion of a biennial medical examination indicating the condition has not worsened or no new disqualifying conditions have been diagnosed and upon continued approval of an Exemption Review Officer.

History Note: Statutory Authority G.S. 20-384;

Eff. December 1, 1983;

Amended Eff. October 1, 1991; June 1, 1991; November 1, 1990; September 1, 1990.

SUBCHAPTER 3J - RULES AND REGULATIONS GOVERNING THE LICENSING OF COMMERCIAL TRUCK DRIVERS TRAINING SCHOOLS AND INSTRUCTIONS

SECTION .0800 - LICENSE REVOCATION OR SUSPENSION

.0803 REVOCATION OR SUSPENSION PROCEDURE

If any school or instructor or recruiter is alleged to be in violation of any provision of Article 14, Chapter 20 or of any provision of these Regulations, the school or instructor or recruiter shall be notified by certified or registered mail of the suspension or revocation. The notification shall set forth the details of the alleged violation which formed the basis for the action. The school (through its owner, partner, or corporate officer) or the instructor or the recruiter may request in writing a "show-cause" hearing. This request must be made within 30 days of receipt of the certified or registered letter. The hearing shall be heard by an officer designated by the commissioner and the school or instructor or recruiter may be represented by counsel. Upon completion of the hearing, the Division shall notify the school or instructor or recruiter within 30 days of the decision of the hearing officer. This decision may be appealed as provided by G.S. Chapter 150B.

History Note: Statutory Authority G.S. 20-325;

Eff. May 1, 1987;

Amended Eff. October 1, 1991.

SECTION .0900 - REQUIREMENTS AND APPLICATIONS FOR DRIVER TRAINING SCHOOL RECRUITERS

.0901 REQUIREMENTS

(a) A recruiter is one entitled to recruit or solicit candidates for truck driver training schools. Each recruiter shall:

- (1) Be of good moral character.
- (2) Not have been convicted of a felony or convicted of a misdemeanor involving moral turpitude in the ten years immediately preceding the date of application.
- (3) Have graduated from high school or hold a high school equivalency certificate.

(b) A recruiter/trainee is one entitled to assist a licensed recruiter while his recruiter's license application is pending at the Division. The Division must be notified in writing within five days of the date the trainee is hired. A recruiter/trainee:

- (1) may work in that capacity for only 30 days from the date he is hired;
- (2) must wear an identification badge which clearly identifies the individual as a recruiter/trainee.

History Note: Statutory Authority G.S. 20-321;

Eff. October 1, 1991.

.0902 ORIGINAL APPLICATION

Each original application for a commercial truck driver training recruiter license shall consist of:

- (1) A combination application and personal history form which must be completed and signed by the applicant.
- (2) Satisfactory evidence of high school graduation or equivalency.
- (3) Consent form for background information.
- (4) Ten year criminal history check.
- (5) Certification by the institutional director that the applicant will be directed to act in accordance with the regulations as set forth by the Commissioner.
- (6) Verification that the applicant has read and understands the rules and regulations on advertising and solicitation, and his intent to follow rules as they are set forth.

*History Note: Statutory Authority G.S. 20-321;
Eff. October 1, 1991.*

.0903 RENEWAL APPLICATION

Renewal application shall be made by a recruiter annually between May 1 and June 20 of each year. All licenses expire on June 30 of each year and no recruiter is permitted to operate with an expired license. However, applications for renewal may be accepted for up to 30 days from the date of expiration. Any license expired for more than 30 days shall be deemed permanently lapsed and renewal of such license must be by the same process as required for an entirely new license, with all forms and certifications being required.

*History Note: Statutory Authority G.S. 20-321;
Eff. October 1, 1991.*

.0904 DUPLICATE COPIES

All applications, either original or renewal, for a commercial truck driver training recruiter license shall be completed in duplicate. The original copy of each form shall be submitted to the Enforcement Section of the Division of Motor Vehicles. A copy of each form shall be filed at the place of business.

*History Note: Statutory Authority G.S. 20-321;
Eff. October 1, 1991.*

.0905 CONFIDENTIALITY

All personal history schedules submitted pursuant to this Subchapter shall be confidential and privileged and the information contained therein shall be used by the Division only.

*History Note: Statutory Authority G.S. 20-321;
Eff. October 1, 1991.*

.0906 SURRENDER OF LICENSES

Any licensed commercial truck driver training recruiter who ceases to recruit candidates for training for the school for which he is licensed shall surrender his license within five days. The owner, partner, or chief corporate officer of the school shall be responsible for the return of the recruiter's license to the Division on termination of employment of any instructor.

*History Note: Statutory Authority G.S. 20-321;
Eff. October 1, 1991.*

.0907 LICENSE REQUIRED

No person shall act as an instructor without the proper license as set forth in these Regulations. A recruiter must have a separate license for each school that they represent. All recruiters must verify by signature that they have read and that they understand the rules and regulations on advertising and solicitation and must verify their intent to follow rules as they are set forth.

*History Note: Statutory Authority G.S. 20-321;
Eff. October 1, 1991.*

ARRC OBJECTIONS

The Administrative Rules Review Commission (ARRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to ARRC as provided in G.S. 143B-30.2(d).

Temporary Rules are noted by "". These Rules have already gone into effect.*

ECONOMIC AND COMMUNITY DEVELOPMENT

Employment and Training

* 4 NCAC 20B .0903 - Allocation of Grants	ARRC Objection 8/22/91
* 4 NCAC 20B .0905 - Eligibility	ARRC Objection 8/22/91
* 4 NCAC 20B .0907 - Cost Limitations/Categories	ARRC Objection 8/22/91
* 4 NCAC 20B .0908 - Reporting	ARRC Objection 8/22/91
* 4 NCAC 20B .0909 - Performance Standards	ARRC Objection 8/22/91
* 4 NCAC 20B .0911 - Fund Availability	ARRC Objection 8/22/91

EDUCATION

Elementary and Secondary Education

16 NCAC 6C .0207 - Prospective Teacher Scholarship Loans	ARRC Objection 6/21/91
Agency Revised Rule	Obj. Removed 7/18/91
* 16 NCAC 6E .0301 - Driver Training	ARRC Objection 8/22/91

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Environmental Management

15A NCAC 2D .1102 - Applicability	ARRC Objection 8/22/91
15A NCAC 2D .1203 - Test Methods and Procedures	ARRC Objection 8/22/91
Agency Revised Rule	Obj. Removed 8/22/91
15A NCAC 2D .1208 - Operator Training Requirements	ARRC Objection 8/22/91
15A NCAC 2D .1209 - Compliance Schedules	ARRC Objection 8/22/91
Agency Revised Rule	Obj. Removed 8/22/91

Adult Health

15A NCAC 16A .0804 - Financial Eligibility	ARRC Objection 1/18/91
No Response from Agency	2/25/91
Agency Responded	No Action 3/21/91
No Response from Agency	No Action 4/18/91
15A NCAC 16A .0806 - Billing the HIV Health Services Program	ARRC Objection 1/18/91
No Response from Agency	2/25/91
Agency Responded	No Action 3/21/91
No Response from Agency	No Action 4/18/91

Wildlife

15A NCAC 10K .0001 - Course Requirements	ARRC Objection 7/18/91
Agency Revised Rule	Obj. Removed 8/22/91

HUMAN RESOURCES

ARRC OBJECTIONS

Children's Services

10 NCAC 41I .0406 - Responsibility for Training of Team Members
Pending Correction ARRC Objection 7/18/91
8/22/91

Economic Opportunity

* 10 NCAC 51F .0102 - Definitions ARRC Objection 8/22/91
* 10 NCAC 51F .0202 - Ineligible Activities ARRC Objection 8/22/91
* 10 NCAC 51F .0402 - Eligibility Requirements ARRC Objection 8/22/91
* 10 NCAC 51F .0501 - Grant Agreement ARRC Objection 8/22/91

Facility Services

10 NCAC 3U .0604 - General Safety Requirements ARRC Objection 8/22/91
10 NCAC 3U .0804 - Infectious and Contagious Diseases ARRC Objection 8/22/91

Individual and Family Support

10 NCAC 42B .1201 - Personnel Requirements ARRC Objection 1/18/91
No Response from Agency 2/25/91
Agency Returned Rule Unchanged No Action 3/21/91
Agency Filed Rule with OAH Rule Eff. 8/01/91
10 NCAC 42C .2001 - Qualifications of Administrator ARRC Objection 1/18/91
No Response from Agency 2/25/91
Agency Returned Rule Unchanged No Action 3/21/91
Agency Filed Rule with OAH Rule Eff. 8/01/91
10 NCAC 42C .2002 - Qualifications of Supervisor-in-Charge ARRC Objection 1/18/91
No Response from Agency 2/25/91
Agency Returned Rule Unchanged No Action 3/21/91
Agency Filed Rule with OAH Rule Eff. 8/01/91
10 NCAC 42C .2006 - Qualifications of Activities Coordinator ARRC Objection 1/18/91
No Response from Agency 2/25/91
Agency Returned Rule Unchanged No Action 3/21/91
Agency Filed Rule with OAH Rule Eff. 8/01/91
10 NCAC 42C .3301 - Existing Building ARRC Objection 11/14/90
Agency Returned Rule Unchanged No Action 12/20/90
Agency Filed Rule with OAH Rule Eff. 5/01/91
10 NCAC 42D .1401 - Qualifications of Administrator/Co-Administrator ARRC Objection 11/14/90
Agency Returned Rule Unchanged No Action 12/20/90
Agency Filed Rule with OAH Rule Eff. 5/01/91

Medical Assistance

10 NCAC 50B .0305 - Deprivation ARRC Objection 8/22/91
Agency Revised Rule Obj. Removed 8/22/91

Social Services

10 NCAC 24A .0303 - Sel County Board Members/Social Svcs Comm ARRC Objection 4/18/91
Agency Revised Rule Obj. Removed 7/18/91

INSURANCE

Engineering and Building Codes

11 NCAC 8 .0815 - Final Board Order ARRC Objection 7/18/91

ARRC OBJECTIONS

Agency Revised Rule

Obj. Removed 8/22/91

LICENSING BOARDS AND COMMISSIONS

Cosmetic Art Examiners

21 NCAC 14F .0010 - Sanitary Rules

ARRC Objection 5/16/91

No Response from Agency

No Action 7/18/91

Agency Requested Additional Time

7/18/91

Agency Responded Will Repeal Rule

Obj. Removed 8/22/91

21 NCAC 14G .0017 - Changes in Teaching Staff

ARRC Objection 5/16/91

No Response from Agency

No Action 7/18/91

Obj. Removed 7/18/91

21 NCAC 14I .0304 - Classroom Work

ARRC Objection 5/16/91

No Response from Agency

No Action 7/18/91

Agency Revised Rule

Obj. Removed 7/18/91

Medical Examiners

21 NCAC 32B .0309 - Personal Interview

ARRC Objection 2/25/91

Agency Responded

No Action 3/21/91

Rule Returned to Agency

5/16/91

Practicing Psychologists

21 NCAC 54 .1701 - Information Required

ARRC Objection 8/22/91

21 NCAC 54 .1704 - Review Procedure

ARRC Objection 8/22/91

Agency Revised Rule

Obj. Removed 8/22/91

21 NCAC 54 .2103 - Reinstatement

ARRC Objection 8/22/91

Real Estate Commission

21 NCAC 58C .0302 - Program Structuring

ARRC Objection 7/18/91

Agency Revised Rule

Obj. Removed 7/18/91

21 NCAC 58D .0201 - Qualifications for Appraiser Licensure and Cert.

ARRC Objection 7/18/91

Agency Revised Rule

Obj. Removed 7/18/91

This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

10 NCAC 26I .0101 - PURPOSE: SCOPE/NOTICE OF CHANGE IN LEVEL OF CARE

10 NCAC 26I .0102 - REQUESTS FOR RECONSIDERATION AND RECIPIENT APPEALS

10 NCAC 26I .0104 - FORMAL APPEALS

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rules 10 NCAC 26I .0101, 10 NCAC 26I .0102 and 10 NCAC 26I .0104 void as applied in *Linda Allred, Petitioner v. North Carolina Department of Human Resources, Division of Medical Assistance, Respondent* (90 DHR 0940).

10 NCAC 42W .0003(c) - COUNTY DEPT OF SOCIAL SERVICES RESPONSIBILITIES

10 NCAC 42W .0005 - REPORTING CASES OF RAPE AND INCEST

The North Carolina Court of Appeals, per Judge Robert F. Orr, declared Rules 10 NCAC 42W .0003(c) and 10 NCAC 42W .0005 void as applied in *Rankin Whittington, Daniel C. Hudgins, Dr. Takey Crist, Dr. Gwendolyn Boyd and Planned Parenthood of Greater Charlotte, Inc., Plaintiffs v. The North Carolina Department of Human Resources, David Flaherty, in his capacity as Secretary of the North Carolina Department of Human Resources, The North Carolina Social Services Commission, and C. Barry McCarty, in his capacity as Chairperson of the North Carolina Social Services Commission, Defendants* [100 N.C. App. 603, 398 S.E.2d 40 (1990)].

16 NCAC 6D .0105 - USE OF SCHOOL DAY

The North Carolina Supreme Court, per Associate Justice Henry E. Frye, held invalid Rule 16 NCAC 6D .0105 as decided in *The State of North Carolina; The North Carolina State Board of Education; and Bob Etheridge, State Superintendent of Public Instruction, Plaintiffs v. Whittle Communications and The Thomasville City Board of Education, Defendant-Counterclaimants and The Davidson County Board of Education, Defendant-Intervenor and Counterclaimant v. The State of North Carolina; The North Carolina State Board of Education; and Bob Etheridge, State Superintendent of Public Instruction; and Howard S. Haworth; Barbara M. Tapscott; Kenneth R. Harris; Teena Smith Little; W.C. Meekins Jr.; Mary B. Morgan; Patricia H. Neal; Cary C. Owen; Donald D. Pollock; Prezell R. Robinson; Norma B. Turnage; State Treasurer Harlan E. Boyles; and Lt. Governor James C. Gardner; in their official capacities as members of The North Carolina State Board of Education, Counterclaim Defendants* [328 N.C. 456, 402 S.E.2d 556 (1991)].

15A NCAC 7H .0308 - SPECIFIC USE STANDARDS

The North Carolina Court of Appeals, per Judge Sidney S. Eagles Jr., held that it was error for the Coastal Resources Commission to fail to follow the required notice and comment procedure prior to the adoption of temporary rule 15A NCAC 7H .0308(a)(1)(M), but that the CRC followed proper procedures when it adopted the text of the temporary rule as a permanent rule [15A NCAC 7H .0308(a)(1)(M)]. *Conservation Council of North Carolina v. Haste* [102 N.C. App. 411, 402 S.E.2d 447 (1991)].

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.

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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
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- AO - Administrative Order
- AG - Attorney General's Opinions
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NORTH CAROLINA ADMINISTRATIVE CODE

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