

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

**SESSION LAW 2016-94
HOUSE BILL 1030**

AN ACT TO MODIFY THE CURRENT OPERATIONS AND CAPITAL IMPROVEMENTS
APPROPRIATIONS ACT OF 2015 AND TO MAKE OTHER CHANGES IN THE
BUDGET OPERATIONS OF THE STATE.

The General Assembly of North Carolina enacts:

PART I. INTRODUCTION AND TITLE OF ACT

INTRODUCTION

SECTION 1.1. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget. Savings shall be affected where the total amounts appropriated are not required to perform these services and accomplish these purposes, and, except as allowed by the State Budget Act or this act, the savings shall revert to the appropriate fund at the end of each fiscal year, except as otherwise provided by G.S. 143C-1-2(b).

TITLE OF ACT

SECTION 1.2. This act shall be known as the "Current Operations and Capital Improvements Appropriations Act of 2016."

PART II. CURRENT OPERATIONS AND EXPANSION GENERAL FUND

CURRENT OPERATIONS AND EXPANSION/GENERAL FUND

SECTION 2.1. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated, are adjusted for the fiscal year ending June 30, 2017, according to the schedule that follows. Amounts set out in parentheses are reductions from General Fund appropriations for the 2016-2017 fiscal year:

Current Operations – General Fund **FY 2016-2017**

EDUCATION

Community Colleges System Office 30,095,192

Department of Public Instruction 313,930,959

University of North Carolina – Board of Governors

Appalachian State University

East Carolina University

Academic Affairs

Health Affairs

Elizabeth City State University 250,000

Fayetteville State University

NC A&T State University

NC Central University

NC State University

Academic Affairs 200,000



MARKET-BASED SOURCING

SECTION 38.4.(a) Notwithstanding any provision of Chapter 150B of the General Statutes or any other provision of law prohibiting adoption of rules based on legislation not yet enacted into law, on or before January 20, 2017, the Department of Revenue shall adopt and submit to the Rules Review Commission rules regarding the implementation and administration of market-based sourcing principles as if the proposed statutory changes in subsection (c) of this section was law. In adopting rules pursuant to this subsection, the exemption provided by G.S. 150B-1(d)(4) shall not apply, and the Department shall observe the general provisions of Article 2A of Chapter 150B of the General Statutes, except as follows:

- (1) Notwithstanding G.S. 150B-21.2(f), the agency must accept comments on the text of the proposed rules for at least 90 days after the text is published.
- (2) The provisions of G.S. 150B-21.4 do not apply.
- (3) If House Bill 169 of the 2016 Regular Session of the 2015 General Assembly is enacted, the provisions of G.S. 150B-19.4, as enacted by Section 1.1 of House Bill 169 of the 2016 Regular Session of the 2015 General Assembly, do not apply.

SECTION 38.4.(b) In determining whether the rules adopted pursuant to subsection (a) of this section meet the standards for review, the Rules Review Commission shall apply the standards in G.S. 150B-21.9(a) as though the proposed statutory changes in subsection (c) of this section were law. If the Commission approves the rules adopted pursuant to subsection (a) of this section, the Commission shall deliver the approved rules to the Codifier of Rules. The Codifier of Rules shall not enter the rules into the Administrative Code until the General Assembly enacts the proposed statutory changes and directs the Codifier to do so. The rules become effective on the date they are entered in the Administrative Code.

SECTION 38.4.(c) The proposed statutory changes referenced in subsection (a) of this section are as follows:

"§ 105-130.4. Allocation and apportionment of income for corporations.

...

(l) ~~(1) The Sales Factor.~~ – The sales factor is a fraction, the numerator of which is the total sales of the corporation in this State during the income year, and the denominator of which is the total sales of the corporation everywhere during the income year. Notwithstanding any other provision under this Part, the receipts from any casual sale of property shall be excluded from both the numerator and the denominator of the sales factor. Where a corporation is not taxable in another state on its apportionable income but is taxable in another state only because of nonapportionable income, all sales shall be treated as having been made in this State.

Receipts are in this State if the taxpayer's market for the receipts is in this State. If the market for a receipt cannot be determined, the state or states of assignment shall be reasonably approximated. In a case in which a taxpayer cannot ascertain the state or states to which receipts of a sale are to be assigned through the use of a method of reasonable approximation, the receipts must be excluded from the denominator of a taxpayer's sales factor. Except as otherwise provided by this section, a taxpayer's market for receipts is in this State as provided below:

- (1) In the case of sale, rental, lease, or license of real property, if and to the extent the property is located in this State.
- (2) Sales of tangible personal property are in this State if the property is received in this State by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State shall constitute delivery to the purchaser in this State. In the case of rental, lease, or license of tangible personal property, if and to the extent the property is located in this State.
- (3) Other sales are in this State if: In the case of sale of tangible personal property, if and to the extent the property is received in this State by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place

at which the goods are ultimately received after all transportation has been completed is considered the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State constitutes delivery to the purchaser in this State.

- ~~a. The receipts are from real or tangible personal property located in this State; or~~
 - ~~b. The receipts are from intangible property and are received from sources within this State; or~~
 - ~~c. The receipts are from services and the income-producing activities are in this State.~~
- (4) In the case of sale of a service, if and to the extent the service is delivered to a location in this State.
 - (5) In the case of intangible property that is rented, leased, or licensed, if and to the extent the property is used in this State. Intangible property utilized in marketing a good or service to a consumer is "used in this State" if that good or service is purchased by a consumer who is in this State.
 - (6) In the case of intangible property that is sold, if and to the extent the property is used in this State. A contract right, government license, or similar intangible property that authorized the holder to conduct a business activity in a specific geographic area is "used in this State" if the geographic area includes all or part of this State. Receipts from a sale of intangible property that is contingent on the productivity, use, or disposition of the intangible property shall be treated as receipts from the rental, lease, or licensing of the intangible property as provided under subdivision (5) of this subsection. All other receipts from a sale of intangible property shall be excluded from the numerator and denominator of the sales factor.

(11) Banks. – A bank's market for receipts is in this State as provided in G.S. 105-130.4A. For purposes of this section, the term "bank" has the same meaning as defined in G.S. 105-130.4A.

...
"§ 105-130.4A. Market-based sourcing for banks.

(a) Definitions. – The definitions in G.S. 105-130.4 apply to this section, and the following definitions apply to this section:

- (1) Bank. – Defined in G.S. 105-130.7B.
- (2) Billing address. – The location indicated in the books and records of the taxpayer on the first day of the taxable year, or on the date in the taxable year when the customer relationship began, as the address where any notice, statement, or billing relating to the customer's account is mailed.
- (3) Borrower, card holder, or payor located in this State. – A borrower, credit card holder, or payor whose billing address is in this State.
- (4) Card issuer's reimbursement fee. – The fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit, debit, or similar type of card has charged merchandise or services to the card.
- (5) Credit card. – A card, or other means of providing information, that entitles the holder to charge the cost of purchases, or a cash advance, against a line of credit.
- (6) Debit card. – A card, or other means of providing information, that enables the holder to charge the cost of purchases, or a cash withdrawal, against the holder's bank account or a remaining balance on the card.
- (7) Loan. – Any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such an extension of credit from another. The term includes participations, syndications, and leases treated as loans for federal income tax purposes.
- (8) Loan secured by real property. – A loan or other obligation of which fifty percent (50%) or more of the aggregate value of the collateral used to secure the loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

- (9) Merchant discount. – The fee, or negotiated discount, charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit, debit, or similar type of card is accepted in payment for merchandise or services sold to the card holder, net of any cardholder chargeback and unreduced by any interchange transaction or issuer reimbursement fee paid to another for charges or purchases made by its cardholder.
- (10) Participation. – An extension of credit in which an undivided ownership interest is held on a prorated basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.
- (11) Payor. – The person who is legally responsible for making payment to the taxpayer.
- (12) Real property owned. – Real property (i) on which the taxpayer may claim depreciation for federal income tax purposes or (ii) to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes or could claim depreciation if subject to federal income tax. Real property does not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.
- (13) Syndication. – An extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.
- (14) Tangible personal property owned. – Tangible personal property (i) on which the taxpayer may claim depreciation for federal income tax purposes or (ii) to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes could claim depreciation if subject to federal income tax. Tangible personal property does not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.
- (15) Transportation property. – Vehicles and vessels capable of moving under their own power as well as any equipment or containers attached to such property. Examples of transportation property include aircraft, trains, water vessels, motor vehicles, rolling stock, barges, and trailers.

(b) General Rule. – The receipts factor of a bank is a fraction, the numerator of which is the total receipts of the taxpayer in this State during the income year, and the denominator of which is the total receipts of the taxpayer everywhere during the income year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. The receipts factor includes only those receipts described herein that are apportionable income for the taxable year. Notwithstanding any other provision under this Part, the receipts from the following are excluded from both the numerator and the denominator of the receipts factor:

- (1) Receipts from a casual sale of property.
- (2) Receipts exempt from taxation.
- (3) The portion of receipts realized from the sale or maturity of securities or other obligations that represents a return of principal.
- (4) Receipts in the nature of dividends subtracted under G.S. 105-130.5(b)(3a) and (3b) and dividends excluded for federal tax purposes.
- (5) The portion of receipts from financial swaps and other similar financial derivatives that represent the notional principal amount that generates the cash flow traded in the swap agreement.

(c) Receipts From the Sale, Lease, or Rental of Real Property. – The numerator of the receipts factor includes receipts from the sale, lease, or rental of real property owned by the taxpayer if the property is located within this State or receipts from the sublease of real property if the property is located within this State.

(d) Receipts From the Sale, Lease, or Rental of Tangible Personal Property. – The method for calculating receipts from the sale, lease, or rental of tangible personal property is as follows:

- (1) Tangible personal property. – Except as provided in subdivision (2) of this subsection, the numerator of the receipts factor includes receipts from the

sale, lease, or rental of tangible personal property owned by the taxpayer if the property is located within this State when it is first placed in service by the lessee.

(2) Transportation property. – Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in this State. The extent an aircraft will be deemed to be used in this State and the amount of receipts that is to be included in the numerator of this State's receipts factor is determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this State and the denominator of which is the total number of landings of the aircraft. If the extent of the use of any transportation property within this State cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(e) Interest, Fees, and Penalties From Loans Secured by Real Property. – The numerator of the receipts factor includes interest, fees, and penalties from loans secured by real property if the property is located within this State. If the property is located both within this State and one or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than fifty percent (50%) of the fair market value of the real property is located within this State. If more than fifty percent (50%) of the fair market value of the real property is not located within any one state, then the receipts described in this subsection are included in the numerator of the receipts factor if the borrower is located in this State. The determination of whether the real property securing a loan is located within this State is made as of the time the original agreement was made and any and all subsequent substitutions of collateral are disregarded.

(f) Interest, Fees, and Penalties From Loans Not Secured by Real Property. – The numerator of the receipts factor includes interest, fees, and penalties from loans not secured by real property if the borrower is located in this State.

(g) Net Gains From the Sale of Loans. – The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans include income recorded under the coupon stripping rules of section 1286 of the Code. The amount of net gains from the sale of loans that is included in the numerator is determined as follows:

(1) Secured by real property. – The amount of net gains, but not less than zero, from the sale of loans secured by real property is determined by multiplying the net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (e) of this section, and the denominator of which is the total amount of interest, fees, and penalties from loans secured by real property.

(2) Not secured by real property. – The amount of net gains, but not less than zero, from the sale of loans not secured by real property is determined by multiplying the net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (f) of this section, and the denominator of which is the total amount of interest, fees, and penalties from loans not secured by real property.

(h) Receipts From Interest, Fees, and Penalties from Card Holders. – The numerator of the receipts factor includes interest, fees, and penalties charged to credit, debit, or similar card holders, including annual fees and overdraft fees, if the card holder is located in this State.

(i) Receipts From ATM Fees. – The numerator of the receipts factor includes receipts from fees from the use of an ATM owned or rented by the taxpayer, if the ATM is located in this State. The receipts factor includes all ATM fees that are not forwarded directly to another bank. Receipts from ATM fees that are not sourced under this subsection are sourced pursuant to subsection (l) of this section.

(j) Net Gains From the Sale of Credit Card Receivables. – The numerator of the receipts factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (h) of this section, and the denominator of which is the taxpayer's total amount of interest, fees, and penalties charged to card holders.

(k) Miscellaneous Receipts. – The numerator of the receipts factor includes all of the following:

- (1) Card issuer's reimbursement fees. – Receipts from card issuer's reimbursement fees if the payor is located in this State.
- (2) Receipts from merchant's discount. – Receipts from a merchant discount if the payor is located in this State.
- (3) Loan servicing fees. – Receipts from loan servicing fees if the payor is located in this State.
- (4) Receipts from services. – Receipts from services not otherwise apportioned under this section if the payor is located in this State.
- (5) Receipts from investment assets and activity and trading assets and activity. – Receipts from one or more of the following:
 - a. Interest and dividends from investment assets and activities and trading assets and activities if the payor is located in this State.
 - b. Net gains and other income, but not less than zero, from investment assets and activities and trading assets and activities multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to sub-subdivision a. of this subdivision, and the denominator of which is the taxpayer's total amount of interest and dividends from investment assets and activities and trading assets and activities.

(l) All Other Receipts. – All other receipts not specifically enumerated in this section are included in the numerator of the receipts factor if the payor is located in this State."

SECTION 38.4.(d) If the General Assembly directs the Codifier of Rules to enter the rules into the Administrative Code pursuant to subsection (b) of this section, the Utilities Commission shall adjust the rates for public utilities, excluding water public utilities with less than two hundred thousand dollars (\$200,000) in annual operating revenues, for the tax changes in subsection (c) of this section. Each utility shall calculate the cumulative net effect of the tax changes and file the calculations with proposed rate changes to reflect the net prospective tax changes in utility customer rates within 60 days of the enactment of this section. Any adjustments required to existing tax assets or liabilities reflected in the utility's books and records required by the tax changes shall be deferred and reflected in customer rates in either the utility's next rate case or earlier, if deemed appropriate by the Commission.

SECTION 38.4.(e) This section is effective when it becomes law.

SALES TAX CHANGES

SECTION 38.5.(a) A retailer is not liable for an undercollection of sales or use tax as a result of the changes made under Section 32.18 of S.L. 2015-241 and under Part V of S.L. 2015-259 if the retailer made a good-faith effort to comply with the law and collect the proper amount of tax. This applies only to the period beginning March 1, 2016, and ending December 31, 2016.

SECTION 38.5.(b) G.S. 105-237.1(a) is amended by adding a new subdivision to read:

"(a) Authority. – The Secretary may compromise a taxpayer's liability for a tax that is collectible under G.S. 105-241.22 when the Secretary determines that the compromise is in the best interest of the State and makes one or more of the following findings:

- ...
- (7) The assessment is for sales tax the taxpayer failed to collect or use tax the taxpayer failed to pay as a result of the change in the definition of retailer or the sales tax base expansion to (i) service contracts, (ii) repair, maintenance, and installation services, or (iii) sales transactions for a person in retail trade. The Secretary must determine that the taxpayer made a good-faith effort to comply with the sales and use tax laws. This subdivision applies to assessments for any reporting period beginning March 1, 2016, and ending December 31, 2022."

SECTION 38.5.(c) G.S. 105-164.4H(c) reads as rewritten:

"(c) Erroneous Collection if Separately Stated. – An invoice or other documentation issued to a consumer at the time of the sale by a real property contractor shall not separately state any amount for tax. Any amount for tax separately stated on an invoice or other

SECTION 39.6.(b) Notwithstanding any modifications by this act in the amounts appropriated, except where expressly repealed or amended, the limitations and directions for the 2015-2017 fiscal biennium in S.L. 2015-241, S.L. 2015-263, S.L. 2015-264, S.L. 2015-267, S.L. 2015-268, S.L. 2015-276, S.L. 2015-286, and S.L. 2016-5 that applied to appropriations to particular agencies or for particular purposes apply to the newly enacted appropriations and budget reductions of this act for those same particular purposes.

SEVERABILITY CLAUSE

SECTION 39.7. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

EFFECTIVE DATE

SECTION 39.8. Except as otherwise provided, this act becomes effective July 1, 2016.

In the General Assembly read three times and ratified this the 1st day of July, 2016.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 10:30 a.m. this 14th day of July, 2016