NCDOR | NORTH CAROLINA DEPARTMENT OF REVENUE

EXEMPTIONS AND EXCLUSIONS

GUIDE

LOCAL GOVERNMENT DIVISION

PROPERTY TAX SECTION

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1. Introduction

Exemptions and exclusions continue to grow in number and impact, and their administration consumes a significant portion of property tax office time and resources. Due to the volume of discussion required, this guide cannot address the intricacies of every exemption and exclusion, but it seeks to discuss some of the more common or difficult issues and some of the more popular exemptions and exclusions.

When discussing exemptions and exclusions one must first ask the question: What is the difference, if any, between an exemption and an exclusion? While an exclusion is granted pursuant to North Carolina Constitution Article V, Section 2(2), and an exemption is granted pursuant to Article V, Section 2(3), and thus have different legal origins, there is no practical difference between the two in the daily administration of the exemption and exclusion statutes. Exemptions and exclusions either remove all or a portion of the tax from the tax base, or defer some or all of the tax into the future.

Exemptions are authorized by North Carolina Constitution Article V, Section 2(3) which states:

> Property belonging to the State, counties, and municipal corporations shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, cultural, charitable, or religious purposes, and, to a value not exceeding $300, any personal property. The General Assembly may exempt from taxation not exceeding $1,000 in value of property held and used as the place of residence of the owner. Every exemption shall be on a State-wide basis and shall be made by general law uniformly applicable in every county, city and town, and other unit of local government. No taxing authority other than the General Assembly may grant exemptions, and the General Assembly shall not delegate the powers accorded to it by this subsection.[1]

Exclusions are authorized by North Carolina Constitution Article V, Section 2(2) which states:

> Only the General Assembly shall have the power to classify property for taxation, which power shall be exercised only on a State-wide basis and shall not be delegated. No class of property shall be taxed except by uniform rule, and every classification shall be made

[1] *North Carolina State Constitution*. p.20. Available at: https://www.ncleg.net/Legislation/constitution/ncconstitution.pdf.

by general law uniformly applicable in every county, city and town, and other unit of local government.[2]

The exemption clause has transformed greatly through the years. Its origin dates back to the 1865 – 1866 session of the *Public Laws of the State of North Carolina*. "All the property and other subjects of taxation, shall be annually taxed as by this act enacted, unless such property by [sic] expressly exempted from taxation by this or some other act".[3] The 1868 – 1869 session added uniformity to the statute. "All taxes levied by any County, City, Town, or Township, shall be uniform and ad valorem upon all property in the same, except property exempted by this Constitution."[4] House Bill 1348, in the 1935 session, gave the General Assembly the authority to exempt property. "The General Assembly may exempt from taxation not exceeding one thousand dollars ($1,000.00) in value of property held and used as the place of residence of the owner."[5]

In the 1961 session, House Bill 711, amended the powers of the General Assembly. "Only the General Assembly shall have the power to classify property and other subjects for taxation, which power shall be exercised only on a State-wide basis. No class or subject shall be taxed except by uniform rule, and every classification shall be uniformly applicable in every county, municipality, and other local taxing unit of the State."[6] Additionally, in November 1974 the North Carolina Supreme Court held that "[u]nder our Constitution uniformity in taxation relates to equality in the burden on the State's taxpayers."[7]

House Bill 169, in the 1971 session, created North Carolina General Statute (hereinafter G.S.) 105-274 as it reads today:[8]

(a) All property, real and personal, within the jurisdiction of the State shall be subject to taxation unless it is:

(1) Excluded from the tax base by a statute of statewide application enacted under the classification power accorded the General Assembly by Article V, § 2(2), of the North Carolina Constitution, or

[2] Id.
[3] General Assembly. *Public Laws of the State of North Carolina*. Session of 1865-'66 and 1861 - '62 – '63 and '64. Raleigh, N.C. (1866).
[4] General Assembly. *Public Laws of the State of North Carolina*. Session 1968-'69. Raleigh, N.C.(1869).
[5] General Assembly. *State of North Carolina Public Laws and Resolutions*. Session of 1935. Charlotte, N.C. (1935).
[6] General Assembly. *State of North Carolina Public Laws and Resolutions*. Reg. Session. Winston-Salem, N.C. (1961).
[7] In re *Martin*, Mecklenburg County, 286 N.C. 66, 209 S.E.2d 766 (1974).
[8] General Assembly. *State of North Carolina Public Laws and Resolutions*. Reg. Session. Winston-Salem, N.C. (1971).

(2) Exempted from taxation by the Constitution or by a statute of statewide application enacted under the authority granted the General Assembly by Article V, § 2(3), of the North Carolina Constitution.

(b) No provision of this Subchapter shall be construed to exempt from taxation any property situated in this State belonging to any foreign corporation unless the context of the provision clearly indicates a legislative intent to grant such an exemption.[9]

G.S. 105-274 creates a default rule. Everything is taxable unless there is a statute that exempts or excludes it. Additionally, the General Assembly, comprised of the Senate and House of Representatives, is apportioned the task of classifying property for special tax treatment.

The uniform rule prohibits the General Assembly from enacting exemptions and exclusions for a particular county or municipality. Any law changes must be applied uniformly to every unit of local government. It is illegal for the General Assembly to pass a bill exempting or excluding a type of property in a particular county or municipality. Failure to abide by this rule would make such legislation unconstitutional.

This manual will provide a detailed overview of exemptions and exclusions as legislated by the North Carolina General Assembly, along with property considered untaxable by the Constitution of the United States of America.

***DISCLAIMER: This document may contain information that is the opinion or recommendation of the North Carolina Department of Revenue, Property Tax Section, and may not have been substantiated by case law. Discussions of possible options and solutions to various issues do not constitute the opinion or recommendation of the Department unless specifically so stated.**

[9] *Machinery Act of North Carolina Annotated.* 2017 ed. Charlottesville, V.A.: LexisNexis. (2017). (any G.S. referenced throughout this manual, uses this reference).

2. Legal Framework

All decisions concerning exemptions and exclusions must be made on sound legal grounds. The purpose of G.S. 105-274 is to require all property to be subject to ad valorem taxation, unless specifically exempted or excluded from such taxation in the *Machinery Act* or the Constitution.

The following case notes are cited in the *Machinery Act*, providing clarification to G.S. 105-274:

- In April 1981, the Court of Appeals heard the case of a business operating in North Carolina, headquartered in New York. The Court held that "[t]he legislature has decreed that all property, real and personal, within the jurisdiction of the state, is subject to taxation whether owned by a resident or a non-resident. . . . The purpose of this strong decree is to treat all property owners equally so that the tax burden will be shared proportionately, and to gather in all the tax money to which the various counties and municipalities are entitled. If Plushbottom were entitled to avoid this tax, it would be placed in a more favorable position than a domestic corporation which operates an identical type business."[10]

- In February 1957, the Supreme Court heard the case of a private company leasing land from the United States Government to build rent-restricted housing, primarily for military personnel. Each of the housing units had an electric stove and refrigerator installed. The company contended that the property was exempt because, among other reasons, the State had not authorized Cumberland County to tax the property. The Court held that "[a]ll property, real and personal, within the jurisdiction of the State, not especially exempted, shall be subject to taxation. . . . Exemptions from taxation are not presumed and statutes providing exemption are strictly construed. It is, we think, clear from our statutes that the property is subject to tax. The stoves and refrigerators are tangible personal property and as such subject to taxation. The structures and improvements are subject to taxation as real property."[11]

The statutes provide numerous exemptions and exclusions, and the wording and organization of the statutes can sometimes be fairly cumbersome. Some statutes may list specific types of properties or organizations to be exempted or excluded, while others may only list the requirements necessary for a property or organization to be exempted or excluded. It is the latter category which is usually the most troublesome since it requires a determination as to

[10] *In re Plushbottom & Peabody, Ltd.*, Mecklenburg County, 51 N.C. App. 285, 276 S.E.2d 505, cert. denied, 303 N.C. 314, 281 S.E. 2d 653 (1981).
[11] *Bragg Inv. Co. v. Cumberland County*, 245 N.C. 492, 96 S.E.2d 341 (1957).

whether or not the individual application for exemption or exclusion fulfills the stated requirements. The property may not clearly fall within the provisions of the statute or there may be some discussion as to the correct interpretation of the statutory requirements. For example, an exclusion application for cargo containers, G.S. 105-275(24), is fairly straightforward and much less likely to produce gray area situations than an exclusion application for real property owned by a nonprofit corporation or association organized to receive and administer lands for conservation purposes, G.S. 105-275(12).

Therefore, it is vital that a strict, consistent, and fair interpretation of the statutes be applied. The position, consistently stated in legal decisions, is to rule on the side of taxation whenever there appears to be no clear legislative or constitutional provision for exemption or exclusion. Where the statutory language leaves room for interpretation, it is often helpful to look to the decisions of the appellate courts for the court's interpretation. At the administrative level, the Local Government Division of the North Carolina Department of Revenue (NCDOR) is available to assist counties in their administration of the *Machinery Act* provisions, and to determine if there are legal opinions or decisions that may help in the interpretation of any particular statute.

It is the domain of the legislative and judicial branches of government to make and interpret laws, and when there is doubt as to the clear intention of the laws, one must refer those questions back to those who have the authority. Therefore, when in doubt as to the validity of an exemption or exclusion claim, due to questions of law, and where research and consultation have provided no clear and defensible answers, the statutes are strictly construed in favor of taxation. Thus, the assessor is directed to deny the application. Once an application is denied and notice of the denial is sent to the applicant, the applicant may appeal the denial. If heard by the appellate courts, the opinion of the court may help clarify the interpretation of the statute. There may even be a legislative change based on the results of the court decision. Regardless, the assessor will now have a legal precedent on which to base decisions, given the same or similar circumstances.

A strict and consistent interpretation of the *Machinery Act* must also be coupled with a fair interpretation. It is entirely possible to have a strict and consistent exemption and exclusion approval process, which is also unfair if it is biased, whether intentional or not, toward or away from one property or ownership type.

The Fourteenth Amendment of the Constitution of the United States of America provides that:

> No State shall . . . deny any person within its jurisdiction the equal protection of the laws.[12]

[12] *Fourteenth Amendment*. Available at: https://www.congress.gov/content/conan/pdf/GPO-CONAN-2017-10-15.pdf

The following cases reference the Fourteenth Amendment:

- In December 1969, the Supreme Court of North Carolina held that "[t]he test of whether a tax law violates due process is 'whether the taxing power exerted by the state bears fiscal relation to protection, opportunities and benefits given by the state. The simple but controlling question is whether the state has given anything for which it can ask return.' . . . '[N]o state may tax anything not within her jurisdiction without violating the Fourteenth Amendment.'"[13]

- In June 1918, the opinion of the Supreme Court of the United States was that "[t]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents."[14]

A possible bias is the preference of a religious institution over a non-religious institution, or vice versa. Such a basis for distinguishing between the institutions is specifically to be avoided. The Constitution requires this secular neutrality in every statute. In June 1971, the United States Supreme Court provided a three part test:

> First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion . . . finally, the statute must not foster 'an excessive government entanglement with religion.'[15]

North Carolina courts have also heard cases regarding the constitutionality of General Statutes. In April 1998, the Supreme Court reviewed G.S. 105-275(32), which has since been recodified as G.S. 105-278.6A. The Court concluded that:

> The classification made by N.C.G.S. § 105-275(32) is challenged in the instant case because it makes preferential tax treatment contingent upon religious (or Masonic) ownership, operation, and management. It treats similarly situated, but competing, communities for the elderly differently. This statute's function is to describe a separate class of property for exclusion from the tax base, rather than to provide a tax exemption to religious organizations for property used for religious purposes.[16]

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[13] *Billings Transf. Corp. v. County of Davidson*, 276 N.C. 19, 170 S.E.2d 873 (1969). (quoting *Farmers Loan & Trust Co. v. Minnesota*, 280 U.S. 204, 50 S.Ct 98, 74 L.Ed. 371, 65 A.L.R. 1000 (1930)).
[14] *Sunday Lake Iron Co. v Township of Wakefield*, 247 U.S. 350, 352-53, 62 L. Ed. 1154, 1155-56 (1918).
[15] *Lemon v. Kurtzman*, 403 U.S. at 612-13, 29 L. Ed. 2d at 755 (quoting *Walz v. Tax Commission*, 397 U.S. 664, 674, 25 L. Ed. 2d 697, 704 (1970)).
[16] *In re Springmoor, Inc.,* Wake County, 348 N.C. App. 1, 498 S.E.2d 177 (1998).

Finally, "[b]y the rule of strict construction, however, is not meant that the statute shall be stintingly or even narrowly construed but it means that everything shall be excluded from its operation which does not clearly come within the scope of the language used."[17]

Therefore, all exemptions and exclusions must be viewed on equal grounds. A property used for charitable purposes must be considered equally with a property used for scientific purposes. Likewise, a veterans organization and a property used for literary purposes shall both receive equal consideration under the law. The benefits of an exemption and exclusion approval/review process that provides impartial treatment within a strict interpretation of the statutes will become evident in the public's increased confidence in the integrity of the process and, in the long run, will greatly outweigh the opposition offered by those seeking exemptions or exclusions who do not legitimately qualify.

[17] *Wake County v. Ingle* 273 N.C. 343, 346, 160 S.E. 2d 62, 64 (1968) quoting *State v. Whitehurst*, 212 N.C. 300, 193 S.E. 657, 113 A.L.R. 740.

3. Constitution of the United States of America

There are cases where property appears to have taxable situs in a state, but, because of federal constitutional prohibition, the state does not have jurisdiction over the property.

Commerce Clause

The Commerce Clause, Article I, Section 8 declares in part:

> Congress shall have power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States; … [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.[18]

This Federal prohibition on local taxation covers property from the time it enters the channels of interstate shipment and continues until the interstate journey has ended.

As a general statement, the interstate journey begins when the property is actually turned over to the carrier and ends when it is delivered to the consignee, either actually or constructively. Most states, including North Carolina (before inventories were excluded from taxation) extended this prohibition by the enactment of free port exclusions, which excluded property shipped into the state, from outside the state, held in a public warehouse for further shipment. This constituted a voluntary extension of the interstate journey.

Delays in interstate transit may create a taxable situs in an intermediate state, depending upon the nature and duration of the delay, whether it is incidental to the transportation of the property, or to accomplish some ulterior purpose of the owner not connected with such transportation. Property detained in transit to accomplish a particular purpose or object of the owner, other than transportation to its ultimate destination, may be taxed in the state in which it is so detained, as having a taxable situs there.

In January 1886, the United States Supreme Court heard the case of property detained in transit. The Court held that "[t]here must be a point of time when they cease to be governed exclusively by the domestic law and begin to be governed and protected by the national law of commercial regulation, and that moment seems to us to be a legitimate one for this purpose, in which they

[18] Congressional Research Service Library of Congress. *The Constitution of the United States of America, Analysis and Interpretation*. Centennial ed. Washington, DC: U.S. Government Publishing Office, (2017). Available at: https://www.congress.gov/content/conan/pdf/GPO-CONAN-2017.pdf

commence their final movement for transportation from the State of their origin to that of their destination."[19]

Some additional higher court cases, discussing interstate commerce, provided the following supplementary conclusions:

- December 2009: "ARI's continuous interstate use of its equipment cannot exclude North Carolina from taxing ARI's amusement ride equipment, especially when ARI did not provide any evidence establishing that it paid ad valorem taxes on the equipment elsewhere. Thus, pursuant to N.C. Gen. Stat. § 105-304(c)(2), ARI is a resident of Pender County and it failed to establish that its tangible personal property had tax situs elsewhere."[20]
- December 1969: "[i]nterstate commerce can be required to pay its nondiscriminatory share of taxes which each state may impose on property within its borders."[21]
- December 1922: "[i]f the interruptions are only to promote the safe or convenient transit, then the continuity of the interstate trip is not broken."[22]
- June 1884: "[p]roperty brought from another state into a state, for the purpose of subjecting it to a manufacturing process to prepare it for shipping out of the state, might obtain a tax situs within the state where the process occurs."[23]

Import - Export Clause

The Import-Export Clause was created to remedy the commercial strife between states. It prevents states from imposing tariffs on imports and exports without the consent of Congress. Article I, Section 10, Clause 2, states:

> No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's [sic] inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or

[19] *Coe v. Errol*, 116 U.S. 517 (1886)
[20] *In re Appeal of Amusements of Rochester, Inc.*, Pender County, 201 N.C. App. 419, 689 S.E.2d 451, 2009 N.C. App. LEXIS 2250 (2009).
[21] *Billings Transf. Corp. v. County of Davidson*, 276 N.C. 19, 170 S.E.2d 873 (1969).
[22] *Chaplain Realty Co. v. Brattleboro*, 260 U.S. 366 (1922) (quoting *State* v. *Engle,* 34 N.J.L. 425)
[23] *Standard Oil Co. v. Combs,* 96 Ind. 179, 1884 WL 5340 (1884). 72 Am Jur 2d State and Local Taxation § 603

> Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.[24]

In March 1827, the United States Supreme Court provided clarification on the Import-Export Clause in regards to goods imported from other states. "It may be proper to add that we suppose the principles laid down in this case to apply equally to importations from a sister state. We do not mean to give any opinion on a tax discriminating between foreign and domestic articles."[25]

However, in December 1868 this assumption was refuted.

> It is not too much to say that, so far as our research has extended, neither the word export, import, or impost is to be found in the discussions on this subject, as they have come down to us from that time, in reference to any other than foreign commerce, without some special form of words to show that foreign commerce is not meant. The only allusion to imposts in the Articles of Confederation is clearly limited to duties on goods imported from foreign States. Wherever we find the grievance to be remedied by this provision of the Constitution alluded to, the duty levied by the states on foreign importations is alone mentioned, and the advantages to accrue to Congress from the power confided to it, and withheld from the States, is always mentioned with exclusive reference to foreign trade. . . . But it is obvious that if articles brought from one State into another are exempt from taxation, even under the limited circumstances laid down in the case of *Brown v. Maryland,* the grossest injustice must prevail, and equality of public burdens in all our large cities is impossible.[26]

In a January 1976 decision, a three-part test was adopted.

> The Framers of the Constitution thus sought to alleviate three main concerns by committing sole power to lay imposts and duties on imports in the Federal Government, with no concurrent state power: [1] the Federal Government must speak with one voice when regulating commercial relations with foreign governments, and tariffs, which might affect foreign relations, could not be implemented by the States consistently with that exclusive power; [2] import revenues were to be the major source of revenue of the Federal Government and should not be diverted to the States; and [3] harmony among the States might be disturbed unless seaboard States, with their crucial ports of entry,

[24] Congressional Research Service Library of Congress. *The Constitution of the United States of America, Analysis and Interpretation*. Centennial ed. Washington, DC: U.S. Government Publishing Office, (2017). Available at: https://www.congress.gov/content/conan/pdf/GPO-CONAN-2017.pdf.
[25] *Brown v. Maryland*, 25 U.S. 419 (1827).
[26] *Woodruff v. Parham*, 75 U.S. 137 (1868).

> were prohibited from levying taxes on citizens of other States by taxing goods merely flowing through their ports to the other States not situated as favorably geographically.[27]

The *Michelin Tire Corp. v Wages* case also provided a historical discussion as to the evolution of the Import-Export Clause.

> Before 1787 it was commonplace for seaboard States with port facilities to derive revenue to defray the costs of state and local governments by imposing taxes on imported goods destined for customers in other States. The other source of dissatisfaction was the peculiar situation of some of the States, which having no convenient ports for foreign commerce, were subject to be taxed by their neighbors, thro[ugh] whose ports, their commerce was carried on. New Jersey, placed between Phila[delphia] & N[ew] York, was likened to a Cask tapped at both ends: and N[orth] Carolina between Virg[nia] & S[outh] Carolina to a patient bleeding at both Arms. The Articles of Confederation provided no remedy for the complaint: which produced a strong protest on the part of N[ew] Jersey; and never ceased to be a source of dissatisfaction discord, until the new Constitution, superseded the old.[28]

However, the Court decided in April 1978 that:

> Despite these formal differences, the Michelin approach should apply to taxation involving exports as well as imports. [T]his Court abandoned the traditional, formalistic methods of determining the validity of state levies under the Import-Export Clause and applied a functional analysis based on the exaction's relationship to the three policies that underlie the Clause: (i) preservation of uniform federal regulation of foreign relations; (ii) protection of federal revenue derived from imports; and (iii) maintenance of harmony among the inland States and the seaboard States.[29]

In December 1986, the Supreme Court heard the case of a New Jersey corporation with manufacturing facilities in North Carolina. The Court held that:

> Application of the North Carolina tax to appellant's imported tobacco does not violate the Import-Export Clause. The focus of Import-Export Clause cases is on the nature of the tax at issue, not the nature of the goods as imports. North Carolina's tax does not offend the policies behind the Clause: concern that a state tax might interfere with federal regulation of foreign commerce; fear that on account of such state taxation the Federal Government will lose an important source of revenue; and a desire to maintain harmony among the States, which would be disturbed if seaboard States could tax goods merely flowing through their

[27] *Michelin Tire Corp. v Wages*, 423 U.S. 276 (1976).
[28] *See id.*
[29] *Washington Rev. Dept. v. Stevedoring Assn.*, 435 U.S. 734 (1978).

ports to other States not so favorably situated. Accordingly, we conclude that the application of the tax to Reynolds' imported tobacco does not violate the Import-Export Clause. We therefore hold that, consistent with the Supremacy Clause, a State may impose a nondiscriminatory ad valorem property tax on imported goods stored in a customs-bonded warehouse and destined for domestic manufacture and sale.[30]

[30] *R.J. Reynolds Tobacco Co. v. Durham County*, 479 U.S. 130, 107 S. Ct. 499, 93 L. Ed. 2d 449 (1986).

4. Application for Property Tax Exemption or Exclusion

The *Machinery Act* states that all property must be taxed unless it is specifically exempted or excluded by the statutes. Therefore it is essential that a complete and accurate application be filed when claiming the benefit so that the assessor can determine whether the property falls within the strict definition of the exemption or exclusion for which application has been made.

At least four distinct scenarios may occur when an application for exemption or exclusion is filed:

1. A timely application is filed for the current year.
2. An untimely application is filed for the current year.
3. An application for previous years is filed in the current year. The property was listed for those previous years.
4. A request for previous years is filed in the current year due to a discovery in the current year. The property was not listed for the previous years.

Each scenario will be discussed in more detail further below.

Application Due Date

With a few exceptions, a timely application for the current year must be received during the regular listing period for the year in which the benefit is claimed. The regular listing period is the month of January. (Exceptions for discoveries, registered motor vehicles, present-use value, and the property tax relief programs are discussed in subsections that follow.) Any extension of the listing period under G.S. 105-307, whether general or individual, is considered the regular listing period and any application received during the extension are timely applications. Additionally, the regular listing period is automatically extended by G.S. 105-395.1 when the last day of January falls on a weekend, holiday, or closure date.

Burden of Proof

Per G.S. 105-282.1(a), every owner of property claiming exemption or exclusion from property taxes has the burden of establishing that the property is entitled to it. As stated above, it is essential that a complete and accurate application be filed when claiming the benefit so that the assessor can determine whether the property falls within the strict definition of the exemption

or exclusion for which application has been made. Additionally, the Courts have upheld the burden of proof requirement, ruling that "[t]he burden is on the taxpayer to show that it comes within the exemption or exception."[31]

Notification Requirements and Recommendations

G.S. 105-282.1(b) states that, if an assessor denies an application for exemption or exclusion, then the assessor must notify the owner of the decision. From that decision, the owner may appeal to the board of equalization and review or the board of county commissioners, as appropriate, and then from the county board to the Property Tax Commission. In a March 1986 ruling, the Court of Appeals held that:

> The plain intent and thrust of G.S. 105-282.1(b), G.S. 105-322 and G.S. 105-324, it seems to us, is to permit a property owner, as a matter of right, to appeal to the Property Tax Commission upon a county or municipal board denying its application for an exemption.[32]

Notice of denial or approval of exemption or exclusion should be given before the first meeting of the board of equalization and review, if at all possible. Since the application typically must be filed during the regular listing period to be timely, this goal should be achievable in most cases. The Department of Revenue recommends the taxpayer be given 30 days from the date of the notice by the assessor or until the adjournment of the board of equalization and review, whichever is later, to appeal the results of the notification.

This will allow the taxpayer a minimum of 30 days to appeal the results of the notification regardless of when the notification is given.

- If the taxpayer is notified 30 days or more before the adjournment of the board, the deadline for appeal should be the date of adjournment of the board.
- If the taxpayer is notified less than 30 days before the adjournment or after the adjournment of the board, then the deadline for appeal should be 30 days from the date of the notice.
- If the notice is mailed less than 30 days before the adjournment of the board of equalization and review and the taxpayer files an appeal prior to the adjournment, the appeal should be scheduled with the board of equalization and review. Otherwise, the appeal should be scheduled with the board of county commissioners.

[31] *In re Martin*, Mecklenburg County, 286 N.C. 66, 209 S.E.2d 766 (1974).
[32] *In re K-Mart Corp.*, Mecklenburg County, 319 N.C. 378, 354 S.E.2d 468 (1987).

It is the opinion of the Department of Revenue that the above procedure, in the absence of any clear statutory provisions for notification by the assessor after the first meeting of the board of equalization and review, provides full due process for the taxpayer.

> Due process merely requires that notice, considering the time, the general wording and the method of publication be 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and to afford them an opportunity to present their objections.'[33]

It is absolutely mandatory, however, that the notification fully and clearly inform the taxpayer concerning the appeal procedures and subsequent deadlines for appeal. Any failure to do so may jeopardize the county's ability to limit the time period for appeal if the information is not correctly conveyed to the taxpayer.

While the Department of Revenue fully supports its administrative recommendation, decisions of the Property Tax Commission must be noted. The Property Tax Commission has ruled that a taxpayer has until the end of the calendar year to file an appeal if adequate opportunity to appeal to the local board was not provided or if the taxpayer was not adequately notified of the proper appeal procedures and deadlines.

In additional support, there is a substantial list of case decisions which serve to protect the tax base from erosion later in the year, specifically with regard to untimely applications for exemptions and exclusions of listed property, but the general concept is applicable here. By sending notices out as early as possible and limiting the time frame for appeal to 30 days from the date of notice by the assessor or the adjournment of the board of equalization and review, whichever is later, the well-supported court position of protection of the tax base will be enhanced through an earlier resolution of any appeals, possibly before the final estimate of the tax base for the fiscal year.

Insufficient Information

Often a timely application for exemption or exclusion will be filed which does not contain sufficient information for the assessor to determine the eligibility of the property for the relief requested. A reasonable and fair action is to request the additional information within a specified time period. One possible procedure is to retain the original application in the office but send a copy of it back to the applicant, indicating the information needed and informing the applicant that if the information is not returned within a specified period of time the application will be denied. Thirty (30) days should generally be sufficient time for returning the additional

[33] *In re McElwee*, Wilkes County, at 81, 283 S.E.2d at 123 (quoting *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865, 873 (1950)).

information. If the information is not supplied, the application should be denied. If the information is supplied, the application may or may not be approved depending on its eligibility. Whether approved or denied, the application should be considered as timely filed if the original application was timely filed.

Scenario 1: Timely Application Filed for the Current Year

Applications filed by the applicable due dates as described in this section should be considered timely filed.

Scenario 2: Untimely Application Filed for the Current Year

Although the statutes require a strict interpretation of the requirements applicable to use and ownership, there is some flexibility with regard to the application filing process. There is a provision for untimely applications for the current tax year.

> G.S. 105-282.1(a1) Late Application. - Upon a showing of good cause by the applicant for failure to make a timely application, an application for exemption or exclusion filed after the close of the listing period may be approved by the Department of Revenue, the board of equalization and review, the board of county commissioners, or the governing body of a municipality, as appropriate. An untimely application for exemption or exclusion approved under this subsection applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed.

An untimely application applies only to property taxes levied in the calendar year in which the untimely application was filed. Since the taxes for the current year are considered levied when the taxes are billed, and since that typically happens around July-August of the current year, the application must be received by December 31 of the current year.

Applications untimely filed may be approved by the board of equalization and review or the board of county commissioners, whichever board is in session at that time. Note that, while the board of equalization and review is empowered by G.S. 105-325(g)(5) to meet after adjournment to carry out certain duties, consideration of untimely applications is not one of the specified duties. After adjournment, that duty now lies to the board of county commissioners.

The appropriate board may approve the application for exemption or exclusion if the application would have been approved if timely filed and if the applicant shows good cause for not filing a timely application. Good cause is not specifically defined and therefore gives the board some discretion in its determination of good cause. Each county should be consistent in its determination of good cause and should have a written policy as to what constitutes good cause.

Reasonable examples of good cause may include: medical or mental incapacitation, military service, and absence from the country.

An untimely application for the current year must be received by December 31 of the current year. The assessor's notification to the taxpayer and subsequent appeal may carry over into the following year, if the application is filed very late in the year. The intent of G.S. 105-282.1(a1) is to allow the exemption or exclusion for the current year, if the untimely application is approved, and for future years if no additional application would otherwise be necessary.

Scenario 3: Application for Previous Years for Listed Property

If a taxpayer has listed property in previous years and files application for exemption or exclusion for the listed property in a subsequent calendar year for any of the previous years, the application must be denied as untimely and without options for approval by the local board or the Property Tax Commission. The taxpayer may appeal the denial of their application by the county assessor to the local board, but according to the statutes, the local board has no power to approve applications for previous years if the property was listed and the taxes were levied in the previous calendar years.

The application should have been filed before the end of the calendar in which the taxes were levied.

As discussed next, the statutes do provide avenues for property which was not listed and was subsequently discovered.

Scenario 4: Request for Previous Years for Unlisted/Discovered Property

If a property is discovered and the taxpayer has previously neither listed nor filed an application for exemption or exclusion for the discovered years, the taxpayer has an avenue for possible approval of the exemption or exclusion.

> G.S. 105-282.1(c) Discovery of Property. - When an owner of property that may be eligible for exemption or exclusion neither lists the property nor files an application for exemption or exclusion, the assessor or the Department of Revenue, as appropriate, shall proceed to discover the property. If, **upon appeal**, the owner demonstrates that the property meets the conditions for exemption or exclusion, **the body hearing the appeal may approve the exemption or exclusion.** Discovery of the property by the Department or the county shall automatically constitute a discovery by any taxing unit in which the property has a taxable situs. [Emphasis added.]

> G.S. 105-312(d) - **Upon receipt of a timely exception to the notice of discovery**, the assessor shall arrange a conference with the taxpayer to **afford him the opportunity to present any evidence or argument he may have regarding the discovery**. Within 15 days after the conference, the assessor shall give written notice to the taxpayer of his final decision. [Emphasis added.]

The statutes, as well as numerous decisions by the courts, support the right of the taxpayer to exemption or exclusion of discovered property if the taxpayer demonstrates that the exemption or exclusion would have or should have been allowed for those years if an application had been timely filed.

The taxpayer must, however, execute a timely exception to the notice of discovery to make the claim for exemption or exclusion. Per G.S. 105-312(d)(4), a timely exception to the notice of discovery must be filed with the assessor within 30 days of the date of the notice of discovery. As a result of the exception, the assessor will schedule a conference with the taxpayer to allow the presentation of any evidence or argument concerning the discovery, including a claim for exemption or exclusion. This is considered to be a timely request for exemption or exclusion and may therefore be approved, if merited, by the assessor without having to appeal to the local board for approval. If denied, the taxpayer may appeal the decision of the assessor to the local board.

The only way to timely request exemption or exclusion of discovered property is by timely filing exception to the discovery and requesting exemption or exclusion at any time during the appeal process. The only statutory route for approval of exemption or exclusion on discovered property is for the body hearing the appeal of the discovery to approve the request.

It is the opinion of the Department of Revenue that the assessor can be considered the "body hearing the appeal" as mentioned in G.S. 105-282.1(c) and can approve the exemption or exclusion request during the assessors conference without having to send the request to the next level (board of equalization and review or board of county commissioners) for them to approve it.

Any exemption or exclusion request is untimely if submitted after the appeal process has been finalized or if no appeal was filed. It is the opinion of the Department of Revenue that there is no provision for approval of untimely exemption or exclusion requests on discovered property, based on the language of G.S. 105-282.1(c) and G.S. 105-312(d) which the Department believes effectively supersedes the late application provision in G.S. 105-282.1(a1).

While it is acknowledged that there is a general provision in G.S. 105-282.1(a1) for untimely applications, several things should be noted:

1. G.S. 105-282.1(c) never actually states that an application process is needed. It states that, as part of the appeal process, the owner must demonstrate that the property meets the conditions for exemption or exclusion.
2. G.S. 105-312(d) states that the assessors conference is when the taxpayer can present any evidence or argument regarding the discovery. Application submission is not mentioned.
3. G.S. 105-312(d)(4) states that the discovery becomes final if no appeal is filed.
4. G.S. 105-282.1(c) states the "body hearing the appeal" is the authority empowered to grant the exemption or exclusion. It follows that, if the property was not appealed or is no longer under appeal, then there is no "body hearing the appeals" to be able to grant the exemption or exclusion.

The Department of Revenue believes that the totality of the statutory provisions makes a strong argument that G.S. 105-282.1(a1) does not apply to discoveries and that there is no provision for approving exemption on exclusion for discovered property if no appeal was filed or if the discovery is no longer under appeal.

Application for Present-Use Value Program

Initial applications for the present-use value program follow the general rules in this section. However, there are special rules for continued use. These are discussed in detail in the NCDOR Present-Use Value Program Guide, available at the NCDOR Local Government Division website.

Application for Property Tax Relief Programs

Property tax relief programs are the Elderly/Disabled Exclusion, the Disabled Veteran Exclusion, and the Circuit Breaker. The application process for the property tax relief programs is not limited to the regular listing period. The deadline to timely file an application is June 1.

The extended timely filing season does not prevent owners from filing untimely applications as provided by G.S. 105-282.1(a1).

A single application is required for individuals qualified under the elderly/disabled or disabled veteran property tax exclusion. The circuit breaker exclusion requires an annual application. A more detailed definition of the property tax relief programs can be found in a later section.

Application for Registered Motor Vehicles

Classified motor vehicles have their own exemptions and exclusions statutes. Motor vehicle exemptions and exclusions include: vehicles provided to veterans that suffered disabilities in World War II, the Korean Conflict or the Vietnam Era (G.S. 105-275(5)); vehicles altered with special equipment to accommodate a service-connected disability (G.S. 105-275(5A)); antique automobiles (G.S. 105-330.9); and vehicles used for religious, charitable or educational purposes (multiple statutes).

G.S. 105-330.3(b) states that the owner of a classified motor vehicle who claims an exemption or exclusion from tax has the burden of establishing that the vehicle is entitled to the exemption or exclusion. The owner may establish prima facie entitlement to exemption or exclusion of the classified motor vehicle by filing an application for exempted or excluded status with the assessor within 30 days of the date taxes on the vehicle are due. When an approved application is on file, the assessor must omit from the tax records the classified motor vehicles described in the application. An application is not required for vehicles qualifying for the exemptions or exclusions listed in G.S. 105-282.1(a)(1) (vehicles owned by units of government). The remaining provisions of G.S. 105-282.1 do not apply to classified motor vehicles.

G.S. 105-330.2(b2) provides additional information about the appeal process. The owner of a classified motor vehicle may appeal the vehicle's eligibility for an exemption or exclusion by filing a request for appeal with the assessor within 30 days of the assessor's initial decision on the exemption or exclusion application. Appeals filed under this subsection shall proceed in the manner provided in G.S. 105-312(d). G.S. 105-312 is the discovered property statute.

As a matter of procedure, it is recommended that an application for exemption or exclusion be sent to the owners of vehicles that would likely qualify for an exemption or exclusion while working the monthly DMV upload report. This might reduce the number of problems that arise from situations where taxpayers assume that their property is automatically exempted or excluded.

Application When There Is a Transfer of Exempted or Excluded Property

Property that was exempted or excluded as of January 1, but was transferred to a new owner after January 1 and prior to July 1, is subject to the provisions of G.S. 105-285(d). This only applies to property that was exempted or excluded on January 1. This does not apply to property that was taxable on January 1. If the property was taxable on January 1, then it is taxable for the year.

> G.S. 105-285(d) states in part: "The value of real property shall be determined as of January 1 of the years prescribed by G.S. 105-286 and G.S. 105-287. The ownership of

> real property shall be determined annually as of January 1, except in the following situation: When any real property is acquired after January 1, but prior to July 1, and the property was not subject to taxation on January 1 on account of its exempt status, it shall be listed for taxation by the transferee as of the date of acquisition and shall be appraised in accordance with its true value as of January 1 preceding the date of acquisition; and the property shall be taxed for the fiscal year of the taxing unit beginning on July 1 of the year in which it is acquired. The person in whose name such property is listed shall have the right to appeal the listing, appraisal, and assessment of the property in the same manner as that provided for listings made as of January 1."

The effect is to give the new owner the same rights that would have been available had they been the owner as of January 1. By statute, the transferee must list the property for taxation as of the date of acquisition and the property shall be taxed for the fiscal year of the acquisition.

G.S. 105-285(d) states the new owner (transferee) has a duty to list the property, however the imposition of the permanent listing system removed that duty. The responsibility now lies with the assessor to list the property in the name of the new owner as of the date of transfer, and to remove the exemption or exclusion. Therefore, discovery is not involved if the transferee does not list the property, as permanent listing moved that responsibility to the assessor.

The new owner has full appeal rights as if the owner was the listing owner as of January 1. The statute does not explicitly state, but arguably implies, that the new owner could be considered to have a special listing period extending 31 days from the date of acquisition. Since the regular listing period is typically 31 days, January 1 through January 31, a reasonable position is that the new owner has 31 days from the date of acquisition to submit a timely application.

Therefore, if the new owner wishes, an application for exemption or exclusion may be timely filed within this time period. It then seems that if the new owner and the new use of the property would have qualified as of January 1, then the property should be returned to exempt status for the fiscal year of acquisition. However, practical application of this position is open to some interpretation. In a typical application, the use as of January 1 is determinative, for those instances when a use requirement is dictated by statute. Yet, for the new owner who acquires the property after January 1, the property is listed in their name as of the date of acquisition (in effect their determinative date for use requirements). Unless they were already the tenants of the property when they purchased the property, it will be difficult to show that the use was in place as of the exact date of acquisition. A reasonable interpretation and practical application might be to approve the application if the new owner can show that the use was already in place as of the date of acquisition or was put in place expeditiously following the date of acquisition. Certainly that position is not specifically set out by statute but seems to reflect the intent of the

statute. Since the position requires some subjective determination, counties must be diligent to be uniform and fair in their application of the position.

The new owner may also file an untimely application. Applications should be considered untimely filed if received later than 31 days after acquisition and before the end of the calendar year.

When notifying the taxpayer of the application approval decision, the Department of Revenue recommends the taxpayer be given 30 days from the date of the notice by the assessor or until the adjournment of the board of equalization and review, whichever is later, to appeal the results of the notification.

Application Requirements

All taxpayers claiming an exemption or exclusion are required to annually file an application unless otherwise provided in G.S. 105-282.1(a)(1) and (2). However, a number of the property classes have been granted special application requirements and do not require an annual application. Some exemptions and exclusions also have their own statutes that either modify or replace G.S. 105-282.1. Application requirements fall into three categories:

(1) Annual application,

(2) No application required, and

(3) Single application required.

The default statutory position is that annual applications are required unless otherwise stated. However, most of the exemptions and exclusions have either been deemed to require no application or a single application.

The exemptions and exclusions listed under G.S. 105-282.1(a)(1) do not have to file any application whatsoever, not even an initial application.

The majority of exemptions and exclusions are listed under G.S. 105-282.1(a)(2) and are required to file an initial application. After approval, the owner is not required to file an application in the subsequent years with the exception of the circumstance described here:

> G.S. 105-282.1(a)(2) Single application required. - An owner of the properties eligible for a property tax benefit must file an application for the benefit to receive it. Once the application has been approved, the owner does not need to file an application in subsequent years unless new or additional property is acquired or improvements are added or removed, necessitating a change in the valuation of the property, or there is a

change in the use of the property or the qualifications or eligibility of the taxpayer necessitating a review of the benefit.

The taxpayer has the responsibility of notifying the assessor of any changes listed above by filing a new application during the listing period immediately following the year in which the change occurred, or otherwise sufficiently notifying the tax assessor during the listing period. If the new application or notice indicates that the property no longer qualifies for exemption or exclusion, the property must be returned to taxable status. The assessor may discover the property for the allowable back years if it is determined that the property did not qualify for an exemption for those years. The current year, however, would not be a discovery if an application was properly and timely filed, or the tax assessor was otherwise timely and sufficiently notified. The property would just be returned to taxable status for the current year.

Although exclusions are, by statute, not to be listed, appraised, assessed or taxed, they are also subject to the application provisions of G.S. 105-282.1. Therefore, like exemptions, owners of property claiming an exclusion have the burden of establishing that they are entitled to the benefit and must file an application, unless otherwise stated in the statutes.

Court of Appeals Decisions

Some additional Court of Appeals decisions regarding application for exemption or exclusion are provided below.

- In May 2012, the Court of Appeals heard the case of an untimely application for exemption. "[T]he County claims the PTC overreached its boundaries in summarily deciding the entire case when the only matter before it was the preliminary Motion. Thus, DHMRI argues there was no genuine issue of material fact and that it deserved judgement as a matter of law based on its late application being improperly denied. DHMRI goes on to argue that the PTC properly denied the Motion and ruled in DHMRI's favor because the County failed to contest the facts as presented by DHMRI." The Court held that "[c]learly the Board's decision to deny DHMRI's late application was arbitrary and capricious due to its only feasible reason for denying the application being that DHMRI had received such a large assessment, which the County had already included in its budget for the upcoming year."[34]

- In December 1997, the Court of Appeals heard the case of an animal food products company requesting exclusion under G.S. 105-275(8)(b) for construction in progress. "In the 1994 tax year, taxpayer listed its taxes, specifying in its listing a value for construction

[34] *In re David H. Murdock Research Inst.*, Cabarrus County, 220 N.C. App. 377, 725 S.E.2d 619, 2012 N.C. App. LEXIS 595 (2012).

in progress, and stating its estimation of the amount that would qualify for the Res Rec exemption." In December 1994 DEHNR sent a tax certification to the County for Res Rec. "In February 1995, the Tax Assessor advised the taxpayer that its exemption was denied because it had not filed its exemption on the proper form, Form AV-10, 'Application for Property Tax Exemption.' Taxpayer submitted an application for exemption on the AV-10 form on 6 September 1995 in order to receive formal decision from which to appeal." The application was denied due to timeliness. The Court held that "[t]he County was clearly aware of taxpayer's intent and received all of the relevant information it needed. We hold that taxpayer's application was timely filed in substantial compliance with the statute within the calendar year for which it claimed the exemption."[35]

- In April 1990, the Court of Appeals heard the case of a paper manufacturing plant requesting exclusion under G.S. 105-275(8)(b). "The Jackson County Tax Supervisor denied taxpayer's request for exclusion '[s]ince the application and tax certification from the Department of Human Resources was not filed during the annual tax listing period for the year 1986 and previous years.' . . . the Commission erred in concluding that the certificate of compliance does not have to be filed along with an application for exclusion. The County says the application was incomplete until the certificate was received, and by then the application was late." The Court held that "[w]e believe that the Commission was correct in concluding that the taxpayer made a timely application for the year 1984 when it timely filed its application for exclusion. The time taken by the Department of Human Resources and its failure to furnish the certificate directly to the tax supervisor were matters beyond the control of the taxpayer, and it should not be penalized."[36] When this case was heard, an annual application was required for 105-275(8). However, the case does establish that the tax certification does not dictate if the application is timely. If the application for exclusion is deemed timely then the certification, once received, should also be considered timely.

- In June 1984, the Court of Appeals heard the case of an untimely application for exemption of listed property. The Court held that "[w]e find no merit to Taxpayer's argument that G.S. 105-282.1(c) allows either a tax supervisor or board of equalization and review to consider the merits of a late application for exemption of listed property. This statute provides in part: When an owner of property who is required to file an application for exemption or exclusion fails to do so, the tax supervisor shall proceed to discover the property as provided in G.S. 105-312. If upon appeal to the county board of equalization and review or board of commissioners, the owner demonstrates that the property meets the conditions for exemption, the exemption may be approved by the

[35] *In re Valley Proteins, Inc.*, Anson County, 128 N.C. App. 151, 494 S.E.2d 111 (1997).
[36] *In re Jackson Paper Manufacturing Co.,* Jackson County, (1990).

board at that time. Taxpayer argues that the Commission's interpretation of the foregoing statute as allowing review of the exempt status of a taxpayer who fails to list his property, but denying a hearing to a taxpayer who lists his property and does not file an application for exemption until after the listing period, is absurd. . . . the Legislature has defined the phrase to discover property as the determination that property has not been listed during a regular listing period and to the identification of the omitted item. G.S. 105-312(a)(3). This language is clear that property can only be discovered if it is not listed. G.S. 105-282.1(c), therefore, does not apply to Taxpayer's timely listed property. Second, an owner of discovered property which meets the conditions for exemption is allowed an exemption after the listing period, because his unlisted property was never included in the county's tax base."[37]

[37] *In re Wesleyan Educ. Center,* Forsyth County, 68 N.C. App. 742, 316 S.E.2d 87 (1984).

5. Compliance Review Process

Senate Bill 128 of the 1991 session of the General Assembly imposed an affirmative duty upon the assessor to conduct an annual review of one-eighth of the exempted and excluded properties. G.S. 105-296(l) states:

> The assessor shall annually review at least one-eighth of the parcels in the county exempted or excluded from taxation to verify that these parcels qualify for the exemption or exclusion. By this method, the assessor shall review the eligibility of all parcels exempted or excluded from taxation in an eight-year period. The assessor may require the owner of exempt or excluded property to make available for inspection any information reasonably needed by the assessor to verify that the property continues to qualify for the exemption or exclusion. The owner has 60 days from the date a written request for the information is made to submit the information to the assessor. If the assessor determines that the owner failed to make the information requested available in the time required without good cause, then the property loses its exemption or exclusion. If the property loses its exemption or exclusion for failure to provide the requested information, the assessor must reinstate the property's exemption or exclusion when the owner makes the requested information available within 60 days after the disqualification unless the information discloses that the property is no longer eligible for the exemption or exclusion.

Before Starting the Review Process

Any serious attempt to thoroughly and fairly review the exemption and exclusion file for continued eligibility must have support from the board of county commissioners. Since the county commissioners will, by statute, have the final word at the county level, it is imperative that the board is fully aware and supportive of the positions and actions to be employed by the assessor in implementing the review process. Even the most thorough and well-founded process will fail if the local leaders do not support it. The Department of Revenue recommends documentation be presented to the county commissioners detailing the procedures and possible consequences, both positive and negative, of the review process.

As with all programs associated with the local property tax, it is the duty of all concerned to ensure that those properties properly qualifying for the preferential tax treatment afforded by the exemption and exclusion statutes continue to be so classified and to an equal extent, that those same benefits are not extended to those properties not properly meeting the program

requirements. It is only in this manner that the integrity desired within the local property tax system can be realized and that the administration of this program can be considered fair to all.

How Often to Review

Although the statutes specify a one-eighth annual review of exempted and excluded parcels, it is possible that the original intent was that all parcels be reviewed during each general reappraisal cycle. Therefore, if a county is conducting reappraisals more frequently than once every eight years, it might consider adjusting the compliance review frequency to the new schedule, but the county is not statutorily required to do so. For example, a county conducting four-year reappraisals would review one-fourth of the parcels every year.

When to Review

While the compliance review process will be performed under the provisions of discovery – G.S. 105-312, G.S. 105-282.1(c), G.S. 105-273(6a), (6b), and (7a) – and discovery can be performed at any time during the calendar year, a review schedule taking into consideration the totality of the tax year can help the process run more smoothly. The following calendar is a possible approach:

January	Regular listing period. Accept new exemption and exclusion applications. Prepare list of existing accounts to be reviewed for the year.
February	End of regular listing period. Mail compliance review questionnaires, include cover letter stating purpose and legal requirement for review, and request 60 day reply.
March to September	Review returned questionnaires for continued eligibility. On ongoing basis, mail notices of decision, both favorable and adverse, including information concerning the appeal process for the discovered properties. Owners may appeal to the appropriate board. Continue reasonable and time-limited attempts using various methods to contact owners who have not returned the questionnaire.
October to December	Consider setting early October as the last day to issue a discovery for this year for this round of compliance reviews. Hold off sending any subsequent discovery notices from pending review decisions until

	February of the next year. If you send your last discovery notices by October 1, the deadline to appeal the discovery will be the end of October. This should allow the county enough time to hold the assessors conference and send decision notices by the end of November or first of December. If the discovery is not appealed further, the bill can be issued in December in time for the taxpayer to pay the bill before it becomes delinquent on January 6. It is generally not recommended to issue a discovery that cannot realistically be worked through at least its first appeal step and be billed before the bill is already delinquent, absent extenuating circumstances.
January	Regular listing period. Applications for the current year may be made for property removed from exemption or exclusion status during the previous calendar year.
February	End of regular listing period. Send discovery notices for any held over from last year. Although a year of discovery will potentially be lost by holding until this year, it would be doubly costly to send it in January since the listing period would not have elapsed and you would not be able to add the additional penalty. Start next cycle of compliance reviews.

Implementation of the exemption and exclusion compliance review process may share some similarities with the present-use value compliance review process. However, it is important to remember that they are two separate and distinct programs with their own compliance review governing statutes. While the review processes may occur during roughly the same time frame and often be performed by the same person, they should be implemented as two separate review processes, such as using separate compliance review forms and cover letters to help keep the issues relevant to each program from becoming intertwined with each other.

Method for Selecting Parcels for Compliance Review

The *Machinery Act* only requires that a certain percentage of accounts be reviewed each year and does not list any specific method to do so. The best method will be one that is systematic, equitable, and will ensure that all accounts will be subject to the review process each reappraisal cycle.

Possible Methods:

- By type of exemption or exclusion
- Alphabetically
- Oldest to most recent
- Randomly generated, be sure all parcels will be selected during the review cycle

There are some definite benefits to performing compliance reviews by type of exemption or exclusion. Many similar questions will arise on different properties within the same category and performing the reviews of these properties together will help to define and clarify these issues. In doing so, it will be easier to achieve equitable treatment during the reviews by addressing these issues and uniformly applying the results across the entire exemption or exclusion property class.

The primary concern is to select a method that will enable a fair and non-discriminatory process for reviewing the accounts. The owners of property that are removed from exemption or exclusion status will quite often appeal the decision. A sound process for selecting accounts for compliance review will eliminate one possible reason for appeal.

Compliance Review Questionnaire

A cover letter should be included with the questionnaire and should fully explain the reason for the questionnaire. The cover letter should contain the statutory provision, G.S. 105-296(l), and the consequences for failure to return the questionnaire.

Per G.S. 105-296(l), the assessor may require the owner of exempt or excluded property to make available for inspection any information reasonably needed by the assessor to verify that the property continues to qualify for the exemption or exclusion.

The questionnaire should require sufficient information to make a well-informed decision as to the continued eligibility of the parcel. The owner has the burden of establishing that the property is entitled to the exemption or exclusion.

The questionnaire should closely resemble the initial application. The information needed to determine initial eligibility should basically be the same information needed to determine continued eligibility. Customized questionnaires may be developed for each type of exemption or exclusion in an effort to more fully capture the information needed to review each property type.

While the questionnaire may closely resemble the application, it should not be an application nor be called an application. The compliance review process is separate from the application process.

It is not proper to require a new application from an owner if a new application is not required by G.S. 105-282.1.

The ultimate goal of the compliance review process is to perform a complete and fair review of all properties receiving exemption or exclusion in order to maintain the integrity of the program. The compliance review process should not be used to more aggressively review a particular property owner or group of property owners. All property owners should be equally reviewed and decided upon based solely on their level of compliance with the applicable statutes.

6. Discovery

Discovery is the statutory method to reinstate taxable status whether it be through the annual compliance review process or due to information brought to light concerning a specific property outside of the annual review.

Prior to 1991, the statutes were not definitive as to the legal and proper steps for an assessor to take when attempting to remove the exempted or excluded status from a property which did not qualify. A Court of Appeals decision sought to clarify the existing situation through a decision which stated that the proper procedure, at that time, was to notify the owner before the next listing period that a new application would have to be filed during the next listing period. Only when a new application was filed which did not meet the requirements, or when a new application, upon request by the assessor, was not filed, could the assessor then remove the property's exempted or excluded status.[38] However, this position was not generally supported and was immediately changed by legislative action.

Legislation Clarifying Discovery of Non-Qualifying Exemptions and Exclusions

In a legislative effort to solve this problem, Senate Bill 128 of the 1991 session of the General Assembly was enacted and was titled: "An act to provide for the systematic review of property exempted or excluded from property taxation and to allow property that was erroneously exempted or excluded to be treated as discovered property."[39] The two main effects of this law were to add G.S. 105-296(l) which is the requirement for a one-eighth annual review of exempted and excluded property, and to revise the definition of discovered property. Discovered property is now defined in G.S. 105-273(6a)(3) to include property that has been granted an exemption or exclusion and does not qualify for the exemption or exclusion. The bill also included clarification of failure to list, as defined in G.S. 105-273(7a)(c), to include the failure to notify the assessor that property granted an exemption or exclusion under an application for exemption or exclusion does not qualify for the exemption or exclusion.

In a March 28, 1991 memorandum by Cindy Avrette, Committee Counsel, to members of the House Finance Committee, Avrette explained the purpose of the bill:

[38] *In re Church of Creator*, Macon County, 102 N.C. App. 507, 402 S.E.2d 874 (1991).
[39] General Assembly of North Carolina. (1991). *Senate Bill 128.* Available at: https://www.ncleg.net/EnactedLegislation/SessionLaws/PDF/1991-1992/SL1991-34.pdf.

> …to allow the assessor to discover property that has been granted an exemption or exclusion from taxation but does not in fact qualify for the exemption or exclusion. The assessor will be able to discover property any time during the year and the taxes will be due for not only the current year but also for preceding years, up to five, in which the property did not meet the requirements for exemption or exclusion.[40]

However, if an owner properly and timely files an updated application on a property that will no longer qualify, the property should be returned to taxable status and should not be considered discovered property for that year since the owner followed all proper procedures. This will not preclude the assessor from discovering the property for previous allowable years if the assessor determines that the property should not have been exempted or excluded for those years. The current year is the basis for determining the number of back years that are discoverable whether or not the current year is actually discoverable.

For example, a taxpayer stopped using the property for an exempt purpose in 2016. In January 2022 (the current year), the taxpayer listed the property and notified the assessor of the change. The property should be returned to taxable status for the current year and the preceding five years should be discovered: 2021, 2020, 2019, 2018, 2017. The current year is not to be considered discovered since it was properly listed and the assessor was notified of the disqualifying change in use. If the taxpayer had done nothing or reported the non-exempt use after the listing period, then all six years would be considered discovered, including the current year.

Discovery Basics

G.S. 105-273(6b) states that "to discover property" means to determine that:

a. Property has not been listed during a listing period.

b. A taxpayer made a substantial understatement of listed property.

c. Property was granted an exemption or exclusion and the property does not qualify for an exemption or exclusion.

Per G.S. 105-312(d), a discovery is deemed to be made on the date that the abstract is made or corrected.

[40] Avrette, Cindy. (1991). *Senate Bill 128.*

Alternatively, it is the opinion of the Department of Revenue that the date the notice of discovery is mailed to the taxpayer would serve as an adequate proxy for the discovery date.

Discovered property is taxed for the year in which it is discovered and for any of the preceding five years during which the property escaped taxation.

The presumption is that property should have been listed by the same taxpayer for the preceding five years.

Discovered property is taxed according to the tax rate imposed in each year and the assessed value that it should have been assigned in each year.

Penalties imposed are based on amount of tax owed.

The penalty is 10% of the amount of tax for the earliest year in which the property was not listed, plus an additional 10% of the same amount for each subsequent listing period that elapsed before the property was discovered.

Penalty is computed separately for each year in which the property was not listed.

The taxes and penalties for all years in which there was a failure to list are totaled on single tax receipt.

Taxes, including penalties, on discovered property are a tax for the fiscal year that begins on July 1 of the calendar year in which the property is discovered.

The schedule of discounts for prepayments apply to discovery taxes when the total taxes for the discovery are paid within the proper time period for prepayment for the above fiscal year.

7. Roster of Exempted and Excluded Property

G.S. 105-282.1(d) requires the county assessor to prepare and maintain a roster of all property in the county that has been granted tax relief by exemption or exclusion. The roster must contain the following information:

(1) The name of the owner of the property.

(2) A brief description of the property.

(3) A statement of the use to which the property is put.

(4) A statement of the value of the property.

(5) The total value of exempt property in the county and in each municipality therein.

The roster is to be kept available in the tax office but is only required to be sent to the Department of Revenue if requested to do so by the Department.

In lieu of sending an annual roster to the Department, the county must send a report annually to the Department summarizing the information contained in the roster. The report must be in the format required by the Department, which has specified two forms to comprise the annual report:

- Form AV-50 Annual Report of Tax Relief Granted by Exemption or Exclusion
- Form AV-50A Municipal Detail Report of Exemptions and Exclusions

The forms are due annually on or before November 1. Fillable Excel forms are provided to the counties by the Department of Revenue each year to facilitate the completion and submission of the forms.

8. Common Topics

In this chapter, we will discuss some terms or issues that arise in several locations throughout the exemption and exclusion statutes.

Nonprofit Organizations

The term nonprofit is used frequently to describe qualifying owners for exemptions and exclusions. Examples include:

- Nonprofit housing development entity
- Nonprofit postsecondary educational institution
- Nonprofit, life-saving, first aid, or rescue squad organization
- Nonprofit organization providing housing for individuals or families with low or moderate incomes
- Nonprofit community or neighborhood organization
- Nonstock, nonprofit, charitable institution
- Nonprofit homeowners' association
- Nonprofit land conservation organization

Note that the qualifying owner is seldom described as just a nonprofit corporation/organization/etc. It is usually followed by a more specific category such as housing development entity or charitable institution or similar, for instance. This section deals only with the nonprofit status.

The Machinery Act does not specifically define what constitutes a nonprofit organization. It does sometimes state, as in G.S. 105-278.4(a)(2), that the owner must not be "organized or operated for profit and no officer, shareholder, member, or employee of the owner or any other person is entitled to receive pecuniary profit from the owner's operations except reasonable compensation for services."

Elsewhere, in G.S. 55A-1-40(17) under the North Carolina Nonprofit Corporation Act, the General Assembly defines nonprofit as:

> (17) "Nonprofit corporation" means a corporation intended to have no income or intended to have income none of which is distributable to its members, directors, or officers, except as permitted by Article 13 of this Chapter, and includes all associations without capital stock formed under Subchapter V of Chapter 54 of the General Statutes or under any act or acts replaced thereby.

The two excerpts above should not be taken to mean that the leadership and staff of nonprofits cannot be paid. In fact, G.S. 55A-13-02(a) states that "[a] corporation may pay reasonable amounts to its members, directors, or officers for services rendered or other value received and may confer benefits upon its members in conformity with its purposes."

Per the North Carolina Center for Nonprofits, "All NC nonprofits must file articles of incorporation with the NC Secretary of State to operate as a nonprofit corporation."[41]

G.S. 55D-30(a) also requires that nonprofit corporations, both domestic and foreign, who are authorized to transact business or conduct affairs in North Carolina must continuously maintain in North Carolina a registered office and a registered agent with the NC Secretary of State.

Therefore, you can research whether an owner is registered as a nonprofit in North Carolina by searching for the nonprofit corporation name on the Business Registration section of the Secretary of State website:

https://www.sosnc.gov/online_services/search/by_title/_Business_Registration

If the corporation is nonprofit, it will be so designated on the detail page for the corporation.

If an organization asserts that they are a nonprofit but a nonprofit registration cannot be found on the Secretary of State website, the burden lies with the taxpayer to make the case that they are a nonprofit corporation, especially given the registration requirements discussed above.

However, see the discussion below on Effective Ownership where the deeded/legal ownership may be held by a for-profit corporation but the equitable ownership is held by a nonprofit corporation.

Charitable Organizations

Exemptions and exclusions frequently require ownership by a charitable organization.

[41] "*Legal Compliance Checklist for North Carolina Nonprofits*", North Carolina Center for Nonprofits, Accessed March 29, 2022. Available at: https://www.ncnonprofits.org/sites/default/files/resource_attachments/2018LegalComplianceChecklist.pdf

Nonprofit organizations (discussed above) are not necessarily charitable organizations, but charitable organizations are almost always nonprofit organizations.

Charitable organization is not defined in the Machinery Act, but there are a couple of instances where, instead of using the term "charitable organization", the statute references an entity that is organized for charitable purposes. An entity can seek to prove they are a charitable organization by showing they are organized and operated for a charitable purpose. Charitable purpose is defined multiple times in the Machinery Act and the language is similar. A typical definition is found in G.S. 105-278.7(f)(4):

> (4) A charitable purpose is one that has humane and philanthropic objectives; it is an activity that benefits humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward. The humane treatment of animals is also a charitable purpose.

The owner can also prove that they are both a nonprofit and charitable organization by showing proof that they are tax-exempt under section 501(c)(3) of the Internal Revenue Code.

Important: Having a 501(c)(3) designation does not automatically ensure that the property meets the statutory ownership requirements, but it does define the organization's purpose. Additionally, the property must meet any other statutory requirements such as a required use.

The Internal Revenue Service (IRS) states:

> Organizations described in section 501(c)(3) are commonly referred to as charitable organizations. Organizations described in section 501(c)(3), other than testing for public safety organizations, are eligible to receive tax-deductible contributions in accordance with Code section 170.
>
> The organization must not be organized or operated for the benefit of private interests, and no part of a section 501(c)(3) organization's net earnings may inure to the benefit of any private shareholder or individual. If the organization engages in an excess benefit transaction with a person having substantial influence over the organization, an excise tax may be imposed on the person and any organization managers agreeing to the transaction.[42]
>
> The exempt purposes set forth in section 501(c)(3) are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals. The term charitable is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science;

[42] IRS. *Exemption Requirements – 501(c)(3) Organizations*. Available at: https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-section-501c3-organizations.

> erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.[43]

If the owner cannot show that they are a 501(c)(3) organization, the burden is on the taxpayer, per G.S. 105-282.1(a), to show that they are a charitable organization, either through proof that they are organized and operated for a charitable purpose or by some other means satisfactory to the tax assessor.

Legal Title vs. Equitable Title

Exemptions and exclusions often include a requirement that the property be owned by a qualifying owner. Before you can determine if the owner qualifies, you first must be sure you are considering the proper owner. For the most part, that used to mean determining the owner of record. G.S. 105-303(b)(1) states that:

> (1) The assessor is responsible for listing all real property on the abstracts and tax records each year in the name of the owner of record as of the day as of which property is to be listed under G.S. 105-285.

Typically that would be the deeded owner or ownership transferred by will. The owner of record is considered the owner of legal title. Yet, there can also be an owner of equitable title. Due to increasingly complex ownership arrangements, several Court decisions have sought to determine if it is appropriate to look past the legal title owner and to consider the equitable title owner as the owner for exemption and exclusion qualification purposes.

This excerpt from an online source gives a good overview of both legal and equitable title:

> A legal title refers to the responsibilities and duties the owner has in maintaining, using, and controlling a property. Legal title is the actual ownership of the property. The documented name of the property owner, as visible through the public records, typically describes the person with legal title. Legal title grants true ownership of the property, and all that this entails – the bundle of rights that comes with land ownership.
>
> You have legal title if your name appears as the grantee on a deed. Legal title is "apparent" ownership, or ownership that is documented on paper. You may assume that your ownership of a property is complete with legal title, but this is not the case. Another party may have equitable title, restricting some of the ways you can use and enjoy the property.

[43] IRS. *Exempt Purposes – Internal Revenue Code Section 501(c)(3)*. Available at: https://www.irs.gov/charities-non-profits/charitable-organizations/exempt-purposes-internal-revenue-code-section-501c3.

> While a legal title focuses on the duties of the property owner, equitable title refers to the *enjoyment* of the property. Equitable title is the benefits the buyer will get to use and enjoy when he or she becomes the legal owner. Equitable ownership is not "true ownership." In other words, someone with equitable title could not argue that he or she was the legal owner or possessor of the property in a court of law. True ownership requires legal title. Equitable title does, however, grant the person more consistent control over the property. That's right – equitable title can be more important than legal title.
>
> With words like "benefit" and "enjoy," you may assume that having equitable title does not come with a lot of ownership rights. In fact, the opposite is true. For example, the person with equitable title is often in charge of financing the property. Equitable title gives the right to access the property, and – most importantly – the right to acquire formal legal title of the land. Keep in mind that equitable title does not actually transfer ownership of the property. It simply gives the individual or entity the right to the use and enjoyment of the property.[44]

The concept of equitable title can be found in the Machinery Act at least as far back as the early 1970's. G.S. 105-277.1(b)(1b) defines an owner as a person who holds legal or equitable title, and that language has been used in that definition since 1972 when the exclusion first became effective. Similar language referencing beneficial interest, a term which is sometimes used in place of equitable interest or title, can be found in the present-use value and wildlife conservation statutes that deal with trust ownership.

It has not always been clear, however, in situations other than those specifically mentioned in the Machinery Act, whether it was appropriate to consider any ownership other than legal title.

A number of Court decisions have helped to shed some light on the answer.

▪ In re Appeal of Appalachian Student Housing Corporation (ASHC)

One of the earliest modern-era cases, *In re ASHC* provided some interesting analysis.

ASHC was a 501(c)(3) nonprofit that owned student housing near Appalachian State University. In theory, the property could have qualified under ASHC's legal title if use was not in question. However, the County denied the exemption on the grounds that providing student housing for Appalachian State University was not an exempt use. While ASHC did argue that the use was exempt, they also put forth another argument that the property was owned by ASU, and thus

[44] "What's the Difference Between Legal Title and Equitable Title?", CourthouseDirect.com, Accessed April 1, 2020. Available at: https://info.courthousedirect.com/blog/bid/336876/what-s-the-difference-between-legal-title-and-equitable-title

was exempt regardless of use as being owned by a unit of government. Here are some relevant excerpts:

> After construction of the University Highlands complex was completed in September 2000, ASHC bought the real property and improvements from the developer for approximately $24 million. On 7 June 2001, ASHC and ASU executed a document entitled "Trust Agreement", which contained the following clause:
>
> > All funds and property received by ASHC shall be held in trust and used or expended for the benefit of ASU to the extent such expenditure is not inconsistent with lawful restrictions . . . ASHC may, from time to time, transfer any net revenue from its operations to ASU for support of student housing acquisition, development and operation. ASHC shall not transfer any funds or other assets to any person or entity other than ASU except in exchange for capital assets, goods or services at fair market value.
>
> …
>
> ASHC argues that while it holds legal title to the property, ASU holds equitable title to the property according to the terms of the 7 June 2001 Trust Agreement. This beneficial ownership, according to ASHC, is sufficient to trigger the exemption from taxation contained within the North Carolina Constitution and the General Statutes.
>
> …
>
> Here, the trust agreement specifically outlines the relationship between ASHC and ASU. ASHC is required to manage the daily operations of University Highlands apartments. When ASHC receives rents, it must expend that income only in exchange for capital assets or goods and services necessary for the maintenance of the apartment complex. Alternatively, ASHC's income may be directed to ASU, to support ASU student housing. Therefore, the trust agreement between ASHC and ASU is an active trust and ASU's equitable interest in the property remains separate from ASHC's legal interest.
>
> We hold that the equitable title held by ASU as beneficiary of this trust is sufficient to show that the property belongs to the State of North Carolina. Neither the North Carolina Constitution nor G.S. § 105-278.1(b) require the State to have legal title in order to exempt the property from taxation. Nor do we find persuasive Watauga County's argument that the *ad valorem* tax exemption law of North Carolina applies only to exempt property to which the taxpayer holds legal title.[45]

[45] *In re Appeal of Appalachian Student Housing Corp.*, Watauga County, 165 N.C. App. 379, 384, 598 S.E.2d 701, 704 (2004).

The Court clearly endorsed the view that the owner of equitable title can be considered the owner of the property for exemption and exclusion purposes. What it seems to have left unanswered is whether equitable title should always trump legal title. Later, *In re Blue Ridge Housing* will attempt to address the question.

▪ In re Fayette Place LLC (Fayette)

In re ASHC had a nonprofit as owner of legal title and a unit of government as owner of equitable title. *In re Fayette* takes it one step further in that a for-profit LLC was the owner of legal title. While the ownership structure was complex and the deeded owner was a for-profit LLC, ultimately all of the entities involved were directly or indirectly owned by the Durham Housing Authority, a unit of government. Given that the Housing Authority was indirectly the ultimate owner of the property, it was not surprising that the Court ruled the property was exempt as owned by a unit of government.

> In 2002, Fayette Place LLC (“ Fayette Place"), a North Carolina limited liability company, was organized for the purpose of redeveloping the Fayetteville Street public housing project (“ the property") as an Affordable Housing Community. Fayette Place was formed as a joint venture between Development Ventures, Inc. (“ DVI"), which owned 99% of the newly formed company, and Creative Housing Development Strategies, Inc. (“ CHD"), which owned 1% of the newly formed company. CHD, a North Carolina business corporation, is a wholly owned subsidiary of DVI. DVI, a North Carolina non-profit corporation, is itself wholly owned by The Housing Authority of the City of Durham, North Carolina (“ Housing Authority"), a quasi-governmental entity.
>
> …
>
> On review of the instant case, we hold the record contains sufficient evidence to show that the property belongs to the Housing Authority. Although legal title to the property is held by Fayette Place, we have previously held that the possession of legal title is not determinative as to the question of ownership. *See id.* Instead, this Court will focus its inquiry on the state's interest in the property. Where the state possesses a sufficient interest in the property, such as equitable title to the property, the property is said to belong to the state even where legal title to the property is held by another party. *See id.* Here, Fayette Place is wholly controlled by subsidiary corporations of the Housing Authority. Under this labyrinthine ownership structure, complete ownership of Fayette Place can be imputed to the Housing Authority. As the Housing Authority possesses complete ownership of Fayette Place, the possessor of legal title to the

> property, we hold that the property belongs to the Housing Authority for the purposes of N.C. Gen.Stat. § 105-278.1(b).[46]

Here the Court took a position that equitable title prevails when a unit of government possesses a sufficient interest in the property. It has not yet addressed whether and when equitable title prevails if a non-governmental owner possesses a sufficient interest…until the next two cases.

- **In re N.C. Yadkin House, LLC (Yadkin House)**

(*In re Yadkin House* is an unpublished opinion and does not constitute controlling legal authority. This reference is provided for illustrative purposes.)

In re Yadkin House involves a for-profit owner of legal title and a nonprofit owner of equitable title. The property is owned by N.C. Yadkin House, LLC which is wholly owned by the American Housing Foundation of North Carolina, LLC ("AHF-NC"),and AHF-NC is a wholly owned subsidiary of the American Housing Foundation, Inc. ("AHF"). AHF is a 501(c)(3) corporation.

> The County argues that NC Yadkin cannot avoid *ad valorem* taxation under subsection (8) because it is organized as a limited liability company ("LLC"). The County contends that, as an LLC, NC Yadkin is necessarily a for-profit organization and notes that the word "nonprofit" cannot be found within NC Yadkin's operating agreements. The County also contends that NC Yadkin should not be allowed to employ Section 105-278.6(a)(8) simply because its parent organization, AHF, is a 501(c)(3) nonprofit organization, citing the section's failure to explicitly allow for this sort of parent-subsidiary relationship in its provisions. We are not persuaded.
>
> …
>
> …this Court has determined that "ownership" of property may be imputed to a parent organization even though its subsidiary holds legal title.
>
> …
>
> Therefore, we hold that "ownership" of the apartment complex may be imputed to AHF despite the fact that legal title resides with NC Yadkin. Accordingly, we hold that NC Yadkin may qualify for exemption from *ad valorem* taxation under Section 105-278.6(a)(8) as a wholly owned subsidiary of AHF.[47]

[46] *In re Appeal of Fayette Place LLC*, Durham County, 193 N.C. App. 744, 668 S.E.2d 354, 2008 N.C. App. LEXIS 2027 (2008).
[47] *In re NC Yadkin House, LLC*, Rowan County, NO. COA12-630 (N.C. Ct. App. Dec. 18, 2012)

While not controlling case law, the Court decided that ownership "may" be imputed to the parent organization as owner of equitable title. It did not go quite so far as to say ownership must be imputed to the owner of equitable title.

- **In re the Appeal of Blue Ridge Housing of Bakersville LLC (Blue Ridge Housing)**

In re Blue Ridge Housing sought to provide criteria to determine when equitable title should take precedence over legal title.

> Blue Ridge Housing, a limited liability company ("LLC"), has two members. Its managing member, NHE [a nonprofit], owns 0.1% of Blue Ridge Housing. Its investor member, the North Carolina Equity Fund III Limited Partnership ("NCEFIII") owns 99.9%.
>
> …
>
> In the present case, Mitchell County argues NHE does not own Cane Creek Village because it only has a 0.1% ownership interest in Blue Ridge Housing.
>
> …
>
> …precedential cases illustrate that control of legal title is not determinative of ownership. As such, we are bound by that conclusion. *See Civil Penalty,* 324 N.C. at 384, 379 S.E.2d at 37. However, previous case law does not provide a readily-applicable standard for defining "ownership" in the absence of legal title. Therefore, we now establish a test to determine ownership for purposes of tax exemption. If 100% ownership interest ultimately vests in an entity otherwise satisfying statutory exemption requirements, then the property is exempt from taxation. *See Fayette Place, LLC,* 193 N.C.App. at 748, 668 S.E.2d at 357. When an otherwise-qualifying entity has an ownership interest in less than 100% of the property, we balance the actual ownership interest with other factors indicative of ownership. If other factors strongly suggest ownership, they can outweigh even a diminutive actual ownership interest. These factors may include, but are not limited to: (i) the entity's control of the venture's operations; (ii) the entity's status as trustee of LLC property; (iii) the possibility of future increased actual ownership interest; and (iv) the intent of the participating parties.
>
> …
>
> Ultimately, on balance we conclude that although NHE has a small legal percentage interest in Blue Ridge Housing, other substantial factors indicate NHE owns Cane Creek Village for tax

purposes. Since the circumstances satisfy the other requirements of N.C. Gen.Stat. § 105–278.6(a)(8), Cane Creek Village is exempt from taxation.[48]

▪ Legal vs. Equitable Ownership Test

The Court in *In re Blue Ridge Housing* decided to establish a test to determine ownership for exemptions and exclusions:

1. If 100% ownership interest ultimately vests in an entity otherwise satisfying statutory exemption requirements, then the property is exempt from taxation. This means that you must check the qualifications of both the legal title owner and the equitable title owner. If either one qualifies, then the ownership requirement is met.

2. If there is an entity that owns less than 100% of the ownership but would otherwise be a qualifying owner, you must consider other factors to determine if they "strongly suggest ownership". In other words, a judgment call will need to be made based on these factors to determine if the partial owner should be considered the owner for exemption and exclusion purposes:

    a. the entity's control of the venture's operations;
    b. the entity's status as trustee of LLC property;
    c. the possibility of future increased actual ownership interest; and
    d. the intent of the participating parties.

Based on the cases above, it is clear that both legal title and equitable title must be considered in determining ownership qualification for exemption and exclusion purposes.

Exclusive Use / Partial Use / Incidental Use

Many exemptions and exclusions have requirements that the property be wholly and exclusively used for the stated purpose in order to receive the benefit.

However, the General Assembly has created an exception for some exemptions and exclusions. If only a portion of a property satisfies the use requirements, that portion can be exempted or excluded and the rest of the property will be taxable. The language to allow this partial exemption or exclusion is worded almost identically in a number of statutes and typical language can be found in G.S. 105-278.7(d):

[48] *In re the Appeal of Blue Ridge Housing of Bakersville LLC,* Mitchell County, 738 S.E.2d 802, 226 N.C. App. 42 (N.C. Ct. App. 2013)

> (d) Notwithstanding the exclusive-use requirements of subsection (a), above, if part of a property that otherwise meets the subsection's requirements is used for a purpose that would require exemption if the entire property were so used, the valuation of the part so used shall be exempted from taxation.

This provision is best used when part of the property clearly qualifies and part of the property clearly does not qualify.

If the property has some incidental public patronage, there is a more appropriate route provided for some exemptions and exclusions which states that it is acceptable to disregard the incidental use. Typical language is found in G.S. 105-278.7(e):

> (e) The fact that a building or facility is incidentally available to and patronized by the general public, so long as there is no material amount of business or patronage with the general public, shall not defeat the exemption granted by this section.

While the incidental use language is not included in every exemption and exclusion, it seems a reasonable position for fair administration of the exemption and exclusion statutes. Note that a threshold for surpassing incidental use is not provided by the Machinery Act.

Some higher court decisions regarding use of the property include:

- "Not only the purpose for holding the real property but also its actual use determines whether it is to be exempted from or included in the tax base. Use, rather than ownership or objective, is the primary exempting characteristic of the Machinery Act…"[49]
- "The rule in North Carolina is that unless property is 'presently used' for tax exempt purposes, it is not tax exempt. Because no public purpose is served by permitting land to lie unused and untaxed, present use, not intended use, controls. Thus, property merely held for planned future religious purposes is not exempt."[50]

Gratuitous Occupation

G.S. 105-278.3, G.S. 105-278.4, and G.S. 105-278.7 all have provisions that allow the exemption if the property is occupied gratuitously by someone other than the owner and uses the property for an exempt purpose.

In everyday usage, it is not uncommon to view gratuitous as synonymous with free or without any cost. In property tax usage, the Courts have developed a more permissive interpretation as evidenced by the language of these two cases.

[49] *See id*.
[50] *In re* Worley, Alamance County, 93 N.C. App. 191, 377 S.E.2d 270 (1989).

> The word 'gratuitous' is defined in Black's Law Dictionary, 4th ed., as follows: 'Without valuable or legal consideration.' It is our opinion, and we so hold, that the fact that the church maintains and pays the expenses connected with its use of the leased property, which is a church building and its appurtenances on Rhamkatte Road, does not prevent the church from occupying this property gratuitously. It pays no rent for the leased property, and merely maintains and pays the expenses connected with its use of the leased property which it must do to use properly the leased property for religious purposes. If the church had owned this leased property and had used it, it would have had to maintain it and pay the expenses connected with its use as church property. To adopt a contrary construction would mean a narrow and stinting construction of the statute.[51]

The Court of Appeals have also held where a religious association made a loan to an affiliated nursing home that:

> As in Ingle, respondent's payment of an amount equivalent to the interest on the loan incurred by Carolina Conference Association of Seventh-Day Adventists, Inc. for expansion purposes and the depreciation on the property did not prevent the nursing home from occupying the property gratuitously, and we so hold.[52]

It is clear that the Courts view gratuitous as more than zero and may include normal expenses necessary for the operation of the property in its exempt use. The cases do not establish the upper allowable limit past which the use would no longer be gratuitous.

Incomplete Construction

Many exemption and exclusion statutes require that a property be wholly and exclusively used for the stated purpose before the exemption or exclusion can be granted.

There has been a decades-long discussion whether the property should be considered wholly and exclusively used for the stated purpose if it is under construction as of January 1.

Here are the watershed moments in the history of this discussion.

▪ 1960 - Seminary, Inc. v. Wake County

In 1960, the North Carolina Supreme Court considered an exemption case involving 16 properties owned by Southeastern Baptist Theological Seminary, Inc.

- Five properties were rented to married Seminary students.

[51] *Wake County v. Ingle* 273 N.C. 343, 346, 160 S.E. 2d 62, 64 (1968)
[52] *In re Taxable Status of Property*, Pasquotank County, 45 N.C. App. 632, 263 S.E.2d 838 (1980).

- Two properties were used as residences by instructors of the Seminary.
- One property was used as a residence by the Registrar of the Seminary.
- Three properties were rented to other employees of the Seminary.
- Two properties had vacant houses on them.
- One property was a vacant lot.
- Two properties contained a 20% complete cafeteria building for the Seminary.

Clearly this was not a case laser-focused only on the question of incomplete construction. That is not to say that the Court decision was necessarily incorrect, just that there were a lot of issues to consider and decide. With regards to the incomplete construction, the Court ruled:

> (6) The two properties on which construction of the cafeteria building had begun was in `actual use' within express terms of the statute. The problem created by the fact that the public patronized the cafeteria after it was completed some time later, would not arise until such use is made of the building. Any material amount of business done by the general public in the cafeteria would, in the opinion of the court change its tax status. However, as of January 1, 1957, a necessary Seminary building was being constructed on these lots and they are therefore exempt. Its status in later years depends on its use in later years.[53]

▪ 1974 – Pollution Abatement Legislation

Effective for 1974, as part of legislation titled "AN ACT TO REVISE THE STATUTES PROVIDING FOR PROPERTY TAX CLASSIFICATIONS AND EXEMPTIONS AND TO REPEAL THE AUTHORITY TO USE ASSESSMENT RATIOS IN THE TAXATION OF PROPERTY" and notably over a decade after the *Seminary* decision, the General Assembly expressly added language to the newly revised pollution abatement statute, G.S. 105-275(8), to make it apply to "[r]eal and personal property that is used or, <u>if under construction</u>, is to be used exclusively for" various pollution abatement purposes. [Emphasis added.]

Prior to this change, the statute in its previous location at G.S. 105-280(16) stated in part:

> (16) Air cleaning devices, sewage and waste treatment facilities, and air or water pollution abatement equipment designated to abate, reduce, or eliminate air or water pollution. <u>This exemption shall be allowed only upon the condition that a certificate is furnished</u> to the tax supervisor of the county, wherein such property is located, by the Board of Water and Air Resources, certifying that said Board has found as a fact that the air cleaning device or waste treatment plant or pollution abatement <u>equipment purchased or constructed or installed as above described has actually been constructed and installed</u> and that such plant or equipment complies with the requirements of said Board with respect to such devices, plants, or equipment, <u>that such device, plant or equipment is</u>

[53] *Seminary, Inc. v. Wake County*, 251 N.C. 775, 112 S.E.2d 528 (N.C. 1960)

being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Board of Water and Air Resources, and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. [Emphasis added.]

During this significant rewrite of the exemptions and exclusions statutes, the General Assembly added an "under construction" clause to only one exclusion.

▪ 2015 - Vienna Baptist Church v. Forsyth County

Vienna Baptist Church purchased some vacant land to build a church. As of January 1, 2012, the building was under construction. The owner filed an application for exemption for 2012 which was denied by the County, asserting that the property was not being used for religious purposes while under construction.

The Court of Appeals stated:

> …in order to qualify for the religious property tax exemption, Appellant has the burden of proving that it was using a building on the property wholly and exclusively used for religious purposes as of 1 January 2012.
>
> …
>
> It has been settled that the determination of tax exemption is not based on the existence of a building, but rather on whether the building is "wholly and exclusively used by its owner for religious purposes." See N.C. Gen. Stat. § 105-278.3. A building cannot be used or occupied "until the inspection department has issued a certificate of compliance." N.C. Gen. Stat. § 153A-363. Violation of this pronouncement constitutes a Class 1 misdemeanor. Id. Therefore, the property could not be used wholly and exclusively for religious purposes until the building was certified for occupancy, which was not until 16 March 2012. Thus, we cannot conclude that the property was used wholly and exclusively for religious purposes as of 1 January 2012. [54]

At this point in the decision it seems the Court is firmly against allowing an exemption or exclusion on any property where the statute requires that the building be used for the statutory purpose. G.S. 105-278.3 ties its exemption to buildings, the land they actually occupy, and additional adjacent land reasonably necessary for the convenient use of any such building. In this case, there was no completed building on the property in use, so the decision turned on "buildings" and "the land they actually occupy".

[54] *In re Vienna Baptist Church*, 241 N.C. App. 268 (N.C. Ct. App. 2015)

However, based on the taxpayer's arguments, the Court then considered that argument in light of Vienna's situation:

> Thus, although the specific lot in Worley did not have a building on it, this Court determined that the use of the lot was wholly and exclusively for religious purposes because it was reasonably necessary for the convenient use of the existing religious building. See id.
>
> Here, unlike Worley, there was no functional building being used by Appellant for religious purposes located on or adjacent to the property as of 1 January 2012. Rather, the purported building was under construction, and it could not legally be used or occupied. Without the existence of a building on adjacent property owned by Appellant that was also being used wholly and exclusively for religious purposes, the property in question does not qualify for tax exemption under Worley.[55] [Emphasis added.]

The last sentence above appears to indicate that the Court might have granted the exemption to the partial construction had there been a completed adjacent building being used for religious purposes.

Vienna is often portrayed as support for denying an exemption or exclusion to a partially complete building. That seems to hold true where there are no completed adjacent buildings in use for the stated purpose, but it may not hold true otherwise.

▪ 2015 – Legislative Change to G.S. 105-283

Following on the heels of the *Vienna Baptist* decision, the General Assembly passed Session Law 2015-185 which added an "under construction" provision to G.S. 105-278.3 (and only G.S. 105-278.3).

G.S. 105-278.3(g)(3) reads:

> (3) A building and the land occupied by the building is exempt from taxation if it is under construction and intended to be wholly and exclusively used by its owner for religious purposes upon completion. For purposes of this subdivision, a building is under construction starting when a building permit is issued and ending at the earlier of (i) 90 days after a certificate of occupancy is issued or (ii) 180 days after the end of active construction.

It is noteworthy that the General Assembly was clearly aware of the *Vienna Baptist* decision and did not seek to provide an "under construction" provision for all exemptions and exclusions that require the building to be used in order to qualify.

[55] Ibid.

▪ 2018 – Highwater Solar 1, LLC v. Wayne County

In an unpublished decision, the Court of Appeals ruled:

> Here, though the equipment was under construction, the taxpayers were using the equipment directly and exclusively for the purpose of conversion of solar energy to electricity and thus satisfied the statutory requirement set forth in N.C. Gen. Stat. §105-275(45) ("equipment used directly and exclusively for the conversion of solar energy to electricity").[56]

▪ Summary

Considering *Seminary* and *Vienna Baptist*, there is seemingly contradictory case law on this issue. The specific actions of the General Assembly, in full light of these existing Court decisions, implies that the General Assembly does not yet desire, or at least has not chosen, to proactively extend the "under construction" provision universally. On at least two occasions, the General Assembly had the chance to do so: (1) at the 1974 rewrite of the exemption and exclusion statutes, with the *Seminary* decision already published, and (2) at the 2015 legislative change to G.S. 105-278.3 in reaction to the *Vienna Baptist* decision. The Highwater Solar decision was unpublished, and it is at least open to discussion as to what weight should be given to the decision.

Given these factors and that the longstanding majority practice of the counties is to require a completed building as of January 1 and appropriate use before granting exemption or exclusion, the Department of Revenue currently sees no reason to recommend otherwise, except when specific statutes direct otherwise.

Multiple Exemptions and Exclusions on a Property

The question sometimes arises whether one parcel can benefit from multiple exemptions and exclusions. The answer depends on the situation.

The statutes actually provide the means to do so in one situation. The Elderly/Disabled exclusion and the Disabled Veteran exclusion allow for both exclusions to exist on the same permanent residence, subject to certain restrictions.

For other situations, while there is no statutory prohibition on combining exemptions and exclusions, the situational factors seem to indicate that it is sometimes possible and that, at other times, it is not likely the statutory intent.

[56] *In re Highwater Solar 1, LLC*, 262 N.C. App. 396 (N.C. Ct. App. 2018)

For example, there seems to be no statutory or practical reason why a person could not qualify for Disabled Veterans exclusion on their residence and also qualify for present-use value on their farmland, even if all are on the same parcel.

Likewise, it seems feasible for two buildings on the same parcel to separately qualify for the historic landmark deferment (building one) and the brownfields exclusion (building two).

However, it would be problematic in the above example if one or both of the buildings sought both exclusions: historic landmark deferment and brownfields exclusion. The statutes do not provide direction on how to coordinate the conflicting benefits and to determine which one takes precedence over the other.

The General Assembly has specifically addressed how to administer multiple exclusions on the same property on the same parcel in only one instance: Elderly/Disabled Exclusion and Disabled Veteran Exclusion. Absent similar direction from the General Assembly, it does not seem that the intent is to combine multiple exemptions or exclusions on the same property on the same parcel.

There does not appear to be issues with combining multiple exemptions or exclusions on the same parcel as long as each exemption or exclusion applies to separate property elements on that parcel. However, each situation should be judged based on its particular facts and circumstances.

9. Deferred Taxes

Deferred taxes can occur when a statute requires that qualifying properties be assessed and taxed at a value that is less than the appraised value. The taxes on the difference create a lien on the property and are carried forward in the collection records as deferred taxes. Some or all of the deferred taxes may become due and payable upon a future occurrence.

Prior to 2008, each statute that set forth a deferred tax program was self-contained and had to fully describe the mechanisms of a deferred tax program. In reality, new deferred programs were copying the essential language from existing programs and the result was a lot of duplicative language. Inaccurate copying also resulted in some inconsistencies. The legislative trend towards creating more deferred tax programs also highlighted the unwieldy nature of the existing method.

For 2008, the General Assembly sought to streamline the administration of the deferred tax programs. Common language and provisions were pulled out of each program and put into the new G.S. 105-277.1. Additionally, the new G.S. 105-365.1 solved the need to define the delinquency date for deferred taxes and to clarify against whom enforced collection could proceed against those taxes.

G.S. 105-277.1F lists nine deferred tax programs:

1. G.S. 105-275(12) Real property owned by a nonprofit corporation held as a protected natural area.
2. G.S. 105-275(29a) Historic district property held as future site of historic structure.
3. G.S. 105-277.1B Property tax homestead circuit breaker.
4. G.S. 105-277.4(c) Present-use value property.
5. G.S. 105-277.14 Working waterfront property.
6. G.S. 105-277.15 Wildlife conservation land.
7. G.S. 105-277.15A Site infrastructure land.
8. G.S. 105-278(b) Historic property.
9. G.S. 105-278.6(e) Nonprofit property held as future site of low- or moderate-income housing.

Due Date

Per G.S. 105-277.1F(b), deferred taxes are due and payable on the day the property loses its eligibility for the deferral program as a result of a disqualifying event.

If only a part of property for which taxes are deferred loses its eligibility for deferral, the assessor must determine the amount of deferred taxes that apply to that part and that amount is due and payable.

(Date of) Disqualifying Event

Each deferred tax program will set out its own parameters for when a disqualifying event occurs.

Date of Delinquency

For 2008, new G.S. 105-365.1 formalized and centralized, for all taxes, the dates of delinquency and against whom enforced collection could proceed.

The general rule for deferred taxes is found in G.S. 105-365.1(a)(2):

> (a) Date of Delinquency. – A tax collector may collect a tax using the remedies provided in G.S. 105-366 through G.S. 105-375 on or after the date the tax is delinquent. A tax is delinquent on the following date:
>
> …
>
> (2) For a deferred tax, other than a tax described in subdivision (3) of this subsection, the date a disqualifying event occurs.

The phrase "the date a disqualifying event occurs" is intentionally generic since each deferred tax program will set out its own parameters for when a disqualifying event occurs. Whenever that disqualifying event occurs, that is the date of delinquency.

▪ Circuit Breaker Exception – Death of Owner

The general rule applies to all deferred taxes except for one specific circuit breaker situation. The General Assembly opted to give additional time before taxes are delinquent for circuit breaker properties that lose their eligibility due to the death of the owner. Per G.S. 105-365.1(a)(3) the date of delinquency is the first day of the ninth month following the date of death.

Enforced Collections

All deferred programs are designed for real property only. Per G.S. 105-365.1(b)(1), for real property:

> (b) Enforced Collection. – For purposes of using the collection remedies provided in G.S. 105-366 through G.S. 105-375 to collect delinquent taxes, the taxing unit shall proceed against property of the following taxpayer:
>
> (1) To collect delinquent taxes assessed on real property, the **owner of record** of property on which tax is due **as of the date of delinquency** and any subsequent owner of record of the property. [Emphasis added.]

This seems pretty straightforward initially. However, the date of delinquency is the date of the disqualifying event, and the disqualifying event is sometimes a transfer of the property. In that case, who is to be considered the owner of record? Prior to the transfer, the transferor is the owner of record. After the transfer, the transferee is the owner of record. Are there, in fact, two owners of record on the date of delinquency?

Until there is further clarification from either from the General Assembly or the Courts, it seems difficult to deny that there are two owners of record on that date, and that both owners are likely subject to enforced collections.

Billing Factors

▪ Year of the Disqualifying Event

The tax for the fiscal year that begins in the calendar year in which the deferred taxes are due and payable is computed as if the property had not been classified for that year.

The deferred taxes are due and payable upon the occurrence of a disqualifying event. Thus, the taxes for the year in which the disqualifying event occurs are due and payable as if the property was not classified for that year.

▪ Number of Years of Deferred Taxes to Bill

The number of years of deferred taxes to bill upon a disqualifying event will vary by deferred tax program. Each program will specify the number of years.

- **Interest**

Interest accrues on deferred taxes as if they had been payable on the dates on which they would have originally become due.

- **Payment of Deferred Taxes**

A lien for deferred taxes is extinguished when the taxes are paid.

A partial payment is applied first to accrued interest.

All or part of the deferred taxes that are not due and payable may be paid to the tax collector at any time without affecting the property's eligibility for deferral. However, if the owner requests removal from the program, then the removal is final. There is no provision for a release or refund of taxes due as a result of a request for removal from the program. Absent an owner's request for removal, any payment of deferred taxes should not be considered to affect the property's eligibility for deferral.

The Process (A Generic Example)

Has a disqualifying event occurred as described in the particular deferred tax program?

Yes, on April 23, 20xx.

The deferred taxes are due and payable on April 23, 20xx.

The deferred taxes are delinquent on April 23, 20xx.

Taxes for tax year 20xx are computed as if the property was not in the program for that year.

Deferred taxes for prior years, as dictated by program requirements, are billed with accrued interest from the dates on which they would have originally become due.

If the taxes are paid, the lien is extinguished.

If the taxes are not paid, enforced collections can begin as early as April 23, 20xx, but standard practice is to send a notice of disqualification and the deferred tax bills, allowing the taxpayer a reasonable amount of time to pay before pursing enforced collections.

10. Property Tax Relief Programs

While exemptions and exclusions all provide property tax relief to varying extents, the Machinery Act has specifically defined Property Tax Relief to consist of three exclusions: Elderly or Disabled Property Tax Homestead, Disabled Veteran Property Tax Homestead Exclusion, and Property Tax Homestead Circuit Breaker. Property Tax Relief may be sometimes referenced in this Guide as "PTR" or similarly.

Brief Introduction to the Property Tax Relief Programs

Before discussing the details of these complex programs, a brief introduction might be helpful.

▪ Elderly or Disabled Property Tax Homestead

The Elderly or Disabled Property Tax Homestead is located in G.S. 105-277.1, and may sometimes be referenced in this Guide as "E/D" or similarly.

This program excludes the greater of the first $25,000 or 50% of the appraised value of the permanent residence of a qualifying owner. A qualifying owner must either be at least 65 years of age or be totally and permanently disabled. The owner cannot have an income amount for the previous year that exceeds the income eligibility limit for the current year.

▪ Disabled Veteran Property Tax Homestead Exclusion

The Disabled Veteran Property Tax Homestead Exclusion is located in G.S. 105-277.1C, and may sometimes be referenced in this Guide as "DV" or similarly.

This program excludes up to the first $45,000 of the appraised value of the permanent residence of a disabled veteran. A disabled veteran is defined as a veteran whose character of service at separation was honorable or under honorable conditions and who has a total and permanent service-connected disability or who received benefits for specially adapted housing under 38 U.S.C. 2101. There is no age or income limitation for this program. This benefit is also available to a surviving spouse (who has not remarried) of either (1) a disabled veteran as defined above, (2) a veteran who died as a result of a service-connected condition whose character of service at separation was honorable or under honorable conditions, or (3) a servicemember who died from a service-connected condition in the line of duty and not as a result of willful misconduct.

▪ Property Tax Homestead Circuit Breaker

The Property Tax Homestead Circuit Breaker is located in G.S. 105-277.1B, and may sometimes be referenced in this Guide as "CB" or similarly.

Under this program, taxes for each year are limited to a percentage of the qualifying owner's income. A qualifying owner must either be at least 65 years of age or be totally and permanently disabled. For an owner whose income amount for the previous year does not exceed the income eligibility limit for the current year, the owner's taxes will be limited to four percent (4%) of the owner's income. For an owner whose income exceeds the income eligibility limit but does not exceed 150% of the income eligibility limit, the owner's taxes will be limited to five percent (5%) of the owner's income.

Shared Definitions and Provisions

Some definitions or provisions are shared among two or even all of the programs. This section will cover:

- Permanent Residence (E/D, DV, CB)
- Dwelling (E/D, DV, CB)
- Temporary Absence (E/D, DV, CB)
- Totally and Permanently Disabled (E/D, CB)
- Income Eligibility Limit (E/D, CB)
- Income Determination (E/D, CB)
- Owner (E/D, DV, CB)
- Ownership by Spouses (E/D, DV,CB)
- Other Multiple Owners (E/D, DV)
- Trusts (E/D, DV, maybe CB)

▪ Permanent Residence (E/D, DV, CB)

All three PTR programs provide a benefit to the owner's permanent residence, which is defined in G.S. 105-277.1(b)(3) as:

> Permanent residence. – A person's legal residence. It includes the dwelling, the dwelling site, not to exceed one acre, and related improvements. The dwelling may be a single family residence, a unit in a multi-family residential complex, or a manufactured home.

"Legal residence" is not defined in the Machinery Act. Absent a specific definition, we are forced to look at the whole body of evidence and to make a judgment call.

Perhaps the best route is to try to determine if the person is a resident and has domicile in the location where the benefit is being claimed.

The American Foreign Service Association provides this clarification, "your residence is where you live at the moment, even if it is temporary. Thus you may have more than one residence. But, regardless of how many residences you may have under the law, it is generally considered possible to have only one domicile." They go on to clarify establishing a new domicile as "[t]he general rule is that to do so you must go to the new location, establish actual residence there, and concurrently have the intention of remaining there indefinitely or of returning there after any temporary absences. Although you may have many residences, you only have one domicile."[57]

There is not a clear-cut test for demonstrating that the applicant has established a dwelling as their permanent residence. However, the following can be considered in the determination:

- number of days per year living in the residence,
- the residence claimed on state tax return,
- place where their motor vehicles are registered,
- where they are registered to vote and actually voted,
- family and community ties, and
- any claims to residency elsewhere.

"In a strict and legal sense, that is properly the domicile of a person where he has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning."[58]

▪ Dwelling (E/D, DV, CB)

As stated in G.S. 105-277.1(b)(3), a permanent residence is a person's legal residence. It includes the dwelling, the dwelling site, land not to exceed one acre, and related improvements. The dwelling may be a single family residence, a unit in a multi-family residential complex, or a manufactured home.

While open to interpretation, it is the opinion of the Department of Revenue that, in addition to those structures provided in the statute, the term dwelling may also include houseboats, campers, and similar dwellings. While open to interpretation, it is also the opinion of the

[57] American Foreign Service Association. *Residence and Domicile.* Available at: http://www.afsa.org/residence-and-domicile.
[58] The Law Dictionary. *What is DOMICILE?*. Available at: https://thelawdictionary.org/domicile/.

Department of Revenue that any vehicle that is designed to travel on the road must no longer be registered with the Division of Motor Vehicles and must be the owner's legal residence.

Related improvements include items on the dwelling site that are used in conjunction with the residence, such as detached garages for personal transportation, gazebos, pools, etc. It would not include items such as barns used for farming purposes and improvements not used in conjunction with the residence.

It is not required that the applicant own the land for the structure for which they are seeking exclusion. As long as the structure is their legal residence and they meet the requirements of a qualifying owner, they can receive the exclusion for the dwelling. If they wish to seek the exclusion on both the land and the dwelling, it would be necessary for the owner to own both the land and the dwelling.

▪ Temporary Absence (E/D, DV, CB)

All three programs have a separate temporary absence provision but they are effectively identical. Using G.S. 105-277.1(a1) as the example, it defines temporary absence as both:

- temporary, for reasons of health, or
- extended, while confined to a rest home or nursing home.

Temporary absence from a residence due to health reasons would include hospital stays.

Extended absence, while in rest home or nursing home, implies that the exclusion can remain indefinitely as long as owner does not establish the care facility as their legal residence and the residence remains unoccupied or occupied by the owner's spouse or dependent.

The extended absence should likely not be limited to just a rest home or nursing home. It could also include living with relatives for the purposes of assistance. However, if the owner is residing in the alternate location for convenience and is capable of self-care, the benefit for the property will be lost.

Generally, if the owner is away because of health reasons, does not establish a new legal residence, and the residence remains unoccupied or occupied by the spouse or dependent, it seems reasonable to allow the benefit of the exclusion to remain in place.

▪ Totally and Permanently Disabled (E/D, CB)

Totally and permanently disabled is defined in G.S. 105-277.1(b)(4) and applies only to E/D and CB. Under this definition, a person is totally and permanently disabled if the person has a physical

or mental impairment that substantially precludes them from obtaining gainful employment and appears reasonably certain to continue without substantial improvement throughout their life.

Information about disabled applicants can be found in G.S. 105-277.1(c)(2). Persons who are totally and permanently disabled may apply for this exclusion by:

(1) entering the appropriate information on a form made available by the assessor under G.S. 105-282.1 (Form AV-9), and
(2) furnishing acceptable proof of their disability.

The proof must be in the form of a certificate (typically Form AV-9A) from a:

- physician licensed to practice medicine in North Carolina or
- governmental agency authorized to determine qualification for disability benefits.

To verify that the physician who submitted the proof of disability is licensed to practice in North Carolina, you can visit the website provided below. For a complete county list, select your county and select MD (Doctor of Medicine) and DO (Doctor of Osteopathic Medicine) in the License Type list or you can also search for the physician by name.

https://portal.ncmedboard.org/verification/search.aspx

Statutory support for limiting the physician search to MD and DO is found in G.S. 90-9.1 which sets forth the requirements for licensure as a physician.

There are no known governmental agencies that will certify disability for E/D and CB based on the Machinery Act definition of "totally and permanently disabled." A certification from the Social Security Administration should not be accepted because their personnel are not authorized to make this determination under the Machinery Act definition of totally and permanently disabled.[59]

The certification must state that the applicant was totally and permanently disabled as of January 1 of the year for which the benefit is claimed, even if the certification is completed after January 1 of that year.

After a disabled applicant has qualified for this classification, the applicant is not required to furnish any additional certification unless the applicant's disability is reduced to the extent that the applicant cannot be certified as totally and permanently disabled. Do not routinely require new certifications. It is only recommended that a new certification be required if there is a strong reason to question the disability.

[59] Baker, D. (2010). *Disability Certifications by the Social Security Administration*. Available at: https://www.ncdor.gov/disability-certification-and-social-security-administration-memorandum-2010

Income Eligibility Limit (E/D, CB)

The income eligibility limit is used to determine qualification for benefits in the E/D and CB programs. The limit is adjusted each year by the amount of the Social Security cost-of-living adjustment. On or before July 1 of each year, the Department of Revenue must determine the income eligibility limit to be in effect for the next year and must notify the assessor of the amount.

The income eligibility limit may or may not change annually and the adjustment percentage can also vary significantly.

Income Definition (E/D, CB)

There is no income requirement for DV. This discussion applies only to E/D and CB.

G.S. 105-277.1(b)(1a) defines income as:

> All moneys received from every source other than gifts or inheritances received from a spouse, lineal ancestor, or lineal descendant. For married applicants residing with their spouses, the income of both spouses must be included, whether or not the property is in both names.

The income definition has changed several times over the years which has resulted in some differing opinions on what constitutes income. The Department of Revenue agrees that some areas are not fully addressed by the current definition but that a contextual reading of the statute can address most situations. In full recognition that the statute is open to some interpretation, the Department of Revenue offers the following observations, guidance, and opinions for consideration in administration of the E/D and CB programs.

- The Machinery Act has its own definition of income for PTR purposes, which is ultimately controlling.
- However, the Machinery Act definition of income needs additional guidance in order to be fairly and equitably administered.
- The IRS Code is recognized as the primary underlying standard to assist in determining income under the Machinery Act definition. Because North Carolina determines income differently than the IRS, it is impossible to adhere to both standards. One has to be picked as the standard. The most recent Machinery Act standard has been the IRS Code. At one time, the homestead exclusion statute did reference North Carolina income definitions, but that standard was abandoned by the General Assembly in favor of the IRS Code.

- The IRS Code has standards for determining both taxable and nontaxable income.
- Items that are not reasonably considered taxable and nontaxable income should not be included as all moneys received. This specifically excludes items that reduce tax liability such as deductions and credits that are applied only after total income has been determined.
- Generally, varying from the IRS definitions of income (taxable and nontaxable) is undesirable except for considering special situations that may occur within the IRS income parameters that may be in disagreement with North Carolina property tax laws. (As mentioned above, this should not be interpreted that we should adopt the North Carolina income tax laws.) For instance, as dictated by North Carolina PTR statutes, gifts or inheritances from a spouse, lineal ancestor, or lineal descendant would not be included as income, regardless of the IRS income status.

Practical application of the guidance above leads to the following positions.

- The Department of Revenue believes the phrase "all moneys received from every source," should be held to mean all positive income that would be considered taxable income in the income section of the federal tax return, whether or not a tax return is actually filed, and all other nontaxable income.
- It is not advisable to venture below line 9 on the IRS 1040 (2021 edition) as that is the total income line.
- The Department of Revenue believes that the term "moneys received" only includes positive income and does not include losses because, while one can experience gains and losses, you only receive money from a gain. In addition, it is the understanding of the Department of Revenue that the change effective for 2008 to the definition of income was intended to disallow the inclusion of losses in the determination of income.
- Accordingly, it is appropriate to examine Lines 1-8 of Form 1040 and Part I (Additional Income) of Schedule 1 (Additional Income and Adjustments to Income) to determine if any negative income amounts exist which should be disregarded. (Note: Schedule 1, Part 1 includes less common income line items that used to be in the income section on the front of Form 1040 but were moved to Schedule 1 as part of a recent tax form re-design.)
- The Department of Revenue does not recommend referring to any associated IRS schedules (e.g. Schedule C, D, F) other than Schedule 1, Part 1 to determine moneys received. The very purpose of the schedules is to determine the amount of income to report on the main tax return. Examining the schedules to determine moneys received requires determining which adjustments you are willing to allow or disallow. It can be

difficult to defend allowing some adjustments without allowing others, such as allowing mileage but disallowing advertising or depreciation. If you allow all of them, then there is no need to examine the schedules in the first place. The simplest and most defensible position is to use the income number reported to the main tax return.

- For married applicants residing with their spouses, the income of both spouses must be included, whether or not the property is in both names. However, there does not seem to be prohibition on separating the income of the spouses if the spouses are living apart and have established separate permanent residences. The burden would be on the taxpayer to show the proper breakdown of the income between the spouses.
- For a trust, the appropriate income to consider is the income of the resident owners who are applying for the exclusion. The income of the trust itself is irrelevant.
- Even if an inheritance is not considered income at the time of inheritance, subsequent activity of the inherited asset can be considered income.

▪ Owner (E/D, DV, CB)

It is important to distinguish between "owner" and "qualifying owner". Owner describes the types of owners that can be eligible to qualify. Qualifying owner describes the additional requirements placed on the types of owners that can be eligible to qualify. In this section, we look at the definition of owner. For instance, all three programs share the definition of owner, that is, the types of owner that can be eligible to qualify. However, each program places different requirements on the owners before they can be a qualifying owner and potentially receive the benefit of the particular program.

G.S. 105-277.1(b)(1b) defines an owner as:

> A person who holds legal or equitable title, whether individually, as a tenant by the entirety, a joint tenant, or a tenant in common, or as the holder of a life estate or an estate for the life of another.

Limited liability companies, partnerships, and corporations would not fit this definition of ownership since they do not fit the "individual" intent and character inherent in G.S. 105-277.1(b)(1b). However, trust ownership fits well within the definition of owner, since trust ownership consists of trustees who have legal title and beneficiaries who have equitable title. Trust ownership will be discussed in a following section.

▪ Ownership by Spouses (E/D, DV, CB)

If the permanent residence is owned and occupied by husband and wife, whether as tenants by the entirety or as tenants in common, the permanent residence is entitled to the full benefit even if only one of the spouses meets the requirements.

▪ Trust Ownership (E/D, DV, maybe CB)

Property owned by a trust may qualify if one or more of the parties involved in the trust show they are a qualifying owner.

When property is owned by a trust, the property is deeded or transferred to a trustee who must manage the property for the benefit of the named beneficiaries in accordance with the terms of the trust document. The interested parties to a trust include:

- Settlor/Trustor – The person who sets up the trust. Usually contributes the property to the trust, but not always. May retain some controlling rights in the trust.
- Grantor – The person who contributes property to the trust. May or may not have any other relationship to the trust. For instance, a settlor could set up the trust and the grantor could deed property to the trust.
- Trustee – The entity who owns and manages the property for the benefit of the beneficiaries, in accordance with the provisions of the trust document. The settlor initially determines who the trustee is.
- Beneficiaries – Those persons who are entitled to receive benefits from the trust.
- Multiple Personalities – Under the trust agreement, a person may hold one or more designations. For example, a settlor may also be a grantor and a beneficiary, or a trustee may also be one of the beneficiaries.

The two main types of trust are:

- Irrevocable Trust – the settlor sets up the trust and retains no rights or privileges.
- Revocable Trust – the settlor sets up the trust but retains the right to amend or revoke the trust at the settlor's discretion.

Remember that the definition of owner in G.S. 105-277.1(b)(1b) states that an owner is a person who owns legal or equitable title.

Legal Title - In a trust, the trustee has legal title to the residence. Trust property must be transferred into the trust, by real property deed, to the trustee.

Equitable Title - A beneficiary may have equitable title to the residence. Merely being a beneficiary of the trust is not enough. However, a beneficiary who has a specific right to reside in the property, by the provisions of the trust document, has equitable title. To qualify for the exclusion the beneficiary must have been granted, by the trustee, the right to reside in the property.

Since the definition of owner includes both legal and equitable, how is the situation resolved when there is both a legal title and equitable title owner? Which one is used in making the PTR qualification determination?

Although both legal and equitable title control, legal title will almost always be a non-factor. Trustees have legal title, but must manage the trust assets for the benefit of the beneficiaries. As such, trustees will almost never be a resident of the property unless they are also a beneficiary and therefore also have equitable title.

Accordingly, we need only be concerned with the owners of equitable title to the residence. In other words, we need to know which beneficiaries have the right to reside in the residence.

The first step is to determine the owners of the residence. This should be the beneficiaries who have the right to reside in the residence. Ignore any residents who are not beneficiaries. Next, apply the qualification requirements and multiple ownership rules, if applicable, to any of these owners who chose to apply.

Multiple Owners of Equitable Title - The multiple ownership rules, discussed in a later section, such as those in G.S. 105-277.1(e), require that we know all of the co-owners of the residence and their percentage of ownership of the residence. This is easy to do when deeds are involved. But for trusts, it may be difficult to assign a percentage of ownership to the equitable title of each beneficiary, especially if some of the beneficiaries live in the residence and others do not.

A reasonable approach would be to determine those beneficiaries who have the right to reside in the residence. The owners of equitable title and only those owners, would be considered the owners of the permanent residence and the multiple ownership test would be applied to those owners. Unless it can be determined otherwise, assume equal undivided ownership interest between these owners.

Trusts and Circuit Breaker - Although a trust can qualify under the E/D and DV exclusions, it is unclear if a trust can qualify for the circuit breaker program. Only the circuit breaker program creates a lien on the property. That difference might be enough to warrant a position that trusts cannot qualify for the circuit breaker program. A beneficiary, if allowed to qualify, could encumber the property with a lien for deferred taxes even though the legal title resides with the trustee. The Department of Revenue believes the best course is to deny the circuit breaker

program to trust-owned properties, but, given the statutory uncertainty, we cannot offer an official recommendation.

However, if a county should be inclined to take a position that trust-owned properties can qualify for the circuit breaker program, it might choose to take a position that a trust-owned property can only qualify for the program if all the legal and equitable title owners live in the residence and all elect to participate in the program. This is just offered as an option by the Department of Revenue and not a recommendation.

Privacy Concerns - Trust documents are not required to be publicly recorded. One of the benefits of a trust is the level of privacy it affords the parties. Due to this private nature, applicants may often refuse to provide a copy of the trust documents to the tax department. It is vital to see the complete trust document to determine which parties have equitable title to the residence. As stated in G.S. 105-282.1(a), every owner of property claiming exemption or exclusion from property taxes has the burden of establishing that the property is entitled to it. Failure to provide the trust document should result in denial of the exclusion.

Elderly or Disabled Property Tax Homestead

▪ E/D - Qualifying Owner

A qualifying owner must meet all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

(1) Is at least 65 years of age or totally and permanently disabled.

(2) Has an income for the preceding calendar year of not more than the income eligibility limit.

(3) Is a North Carolina resident.

▪ E/D - Benefit

The exclusion amount is the greater of twenty five thousand dollars ($25,000) or fifty percent (50%) of the appraised value of the residence. An owner who receives an exclusion under this section may not receive other property tax relief.

▪ E/D - Application

One-time application is required. Applications may be timely filed up to and through June 1. Untimely applications may be filed until the end of the same calendar year, and may be approved by the local board upon showing of good cause for failure to timely file the application.

Disabled Veteran Property Tax Homestead Exclusion

▪ DV - Qualifying Owner

A qualifying owner must be a North Carolina resident and be one of the following:

a. A disabled veteran.

b. The surviving spouse of a disabled veteran who has not remarried.

There is no age or income requirement for the disabled veteran exclusion.

For the disabled veteran option, the veteran must show that the character of service at separation was honorable or under honorable conditions and either:

(a) be certified by the United States Department of Veterans Affairs (USDVA) indicating the veteran has a service-connected, permanent, and total disability, or

(b) be receiving benefits under 38 U.S.C. (United States Code) 2101 for specialty adapted housing.

For the surviving spouse option, the surviving spouse must show that the veteran's character of service at separation was honorable or under honorable conditions and provide certification by the United States Department of Veterans Affairs indicating that the veteran at the time of death met conditions (a) or (b) above or that the veteran's death was the result of a service-connected condition.

Additionally, the surviving spouse cannot have ever remarried since the death of the servicemember. This requirement will not be met if the surviving spouse remarried but subsequently became unmarried again for whatever reason, even if the VA reinstates the surviving spouse's benefits.

The Department of Revenue and the North Carolina Department of Military and Veterans Affairs (NCDMVA) agree that the safest and most reliable procedure is to require the Form NCDVA-9 as the only admissible verification of USDVA disability certification and discharge status. Both parties agree that they will support the decision of the assessor to require the Form NCDVA-9 as the proper verification of USDVA disability certification and discharge status for the disabled veteran exclusion.

Effective in 2022, the USDVA no longer wishes to complete the Form NCDVA-9, and the State is without authority to require the federal agency to do so. However, the information needed to verify the discharge status and disability certification status is available in the federal online database to both the State and County Veterans Service Officers (VSOs). Both State and County VSOs are required to be accredited by the NCDMVA. The NCDMVA has agreed to complete the Form NCDVA-9 either directly through its State VSOs or through the accredited County VSOs.

The VSOs will verify the needed information in the USDVA database and will complete the Form NCDVA-9 for the veteran or surviving spouse. Essentially, the NCDMVA is verifying that the USDVA has made the required disability certification. The NCDMVA is not making the disability certification.

Neither the NCDMVA nor the USDVA has the information on file to properly answer the marital status question. Instead, the application for property tax relief, Form AV-9, includes a requirement that the surviving spouse answer the question on marital status. Counties may also wish to independently verify this information, if possible.

▪ DV - Benefit

The first forty-five thousand dollars ($45,000) of appraised value of the residence is excluded from taxation. An owner who receives an exclusion under this section may not receive other property tax relief.

▪ DV - Application

One-time application is required. Applications may be timely filed up to and through June 1. Untimely applications may be filed until the end of the same calendar year, and may be approved by the local board upon showing of good cause for failure to timely file the application.

Property Tax Homestead Circuit Breaker

▪ CB - Qualifying Owner

The circuit breaker program requires all owners to qualify and elect to defer the taxes. The rationale is that, since the deferred taxes are a lien on the property, no one owner can independently subject the property to a lien. All owners must qualify and elect to defer taxes.

A qualifying owner must meet all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

(1) The owner has an income for the preceding calendar year of not more than one hundred fifty percent (150%) of the income eligibility limit.

(2) The owner has owned the property as a permanent residence for at least five consecutive years and has occupied the property as a permanent residence for at least five years.

(3) The owner is at least 65 years of age or totally and permanently disabled.

(4) The owner is a North Carolina resident.

▪ CB - Benefit

Tax Limitation - A qualifying owner may defer the portion of the principal amount of tax that is imposed for the current tax year on his or her permanent residence and exceeds the percentage of the qualifying owner's income set out in the table in this subsection.

If a permanent residence is subject to tax by more than one taxing unit and the total tax liability exceeds the tax limit imposed by this section, then both the taxes due under this section and the taxes deferred under this section must be apportioned among the taxing units based upon the ratio each taxing unit's tax rate bears to the total tax rate of all units.

Income Over	Income Up To	Percentage
-0-	Income Eligibility Limit	4.0%
Income Eligibility Limit	150% of Income Eligibility Limit	5.0%

▪ CB - Application

Annual application is required. Applications may be timely filed up to and through June 1. Untimely applications may be filed until the end of the same calendar year, and may be approved by the local board upon showing of good cause for failure to timely file the application.

The tax limitation is based on the owner's income, therefore, it is necessary to have the taxpayer file an annual application so that the owner's income can be determined for each tax year.

▪ CB - Income Confidentiality Concerns

If one knows the amount of taxes due under this program and the limitation percentage, they can determine the taxpayer's income. The privacy provisions in G.S. 153A-148.1 and G.S. 160A-208.1 were amended to specifically allow the property tax receipt to contain the amount of property taxes due and the amount of property taxes deferred under the circuit breaker program.

CB - Notification of Deferred Taxes Requirement

On or before September 1 of each year, the collector must send a notice of deferred taxes to the mailing address of the permanent residence. The notice must state the amount of deferred taxes and interest that would be due and payable upon the occurrence of a disqualifying event.

CB - Disqualifying Event

The deferred taxes for the preceding three fiscal years are due and when the property loses its eligibility for deferral as a result of a disqualifying event. There are three disqualifying events:

(1) The owner transfers the residence. Transfer of the residence is not a disqualifying event if (i) the owner transfers the residence to a co-owner of the residence or, as part of a divorce proceeding, to his or her spouse and (ii) that individual occupies or continues to occupy the property as his or her permanent residence.
(2) The owner dies. Death of the owner is not a disqualifying event if (i) the owner's share passes to a co-owner of the residence or to his or her spouse and (ii) that individual occupies or continues to occupy the property as his or her permanent residence.
(3) The owner ceases to use the property as a permanent residence.

The co-owner exceptions for death and transfer are essentially a moot point since the co-owner had to be a qualifying owner who also received the circuit breaker deferment for the property to qualify initially.

The spousal exception for death and transfer is needed because only one spouse must meet the age and disability requirements. If the surviving spouse does not meet these requirements, the property will not qualify for the circuit breaker, but the deferred taxes will not become due and payable until a disqualifying events occurs at some point in the future.

CB - Deferred Taxes

In the circuit breaker program, any tax amount over the tax limitation are deferred taxes, and are a lien on the property.

Both the taxes due and the taxes deferred must be apportioned among the taxing units based on the ratio each taxing unit's tax rate bears to the total tax of all the taxing units. An example would be if the county has a tax rate of $.40/$100 and the city has a rate of $.60/$100. The county will be apportioned 40% of the taxes due and 40% of the taxes deferred. The city will be apportioned 60%.

Interest accrues on deferred taxes as if they had been payable on the dates on which they would have originally become due.

The tax limitation and deferral applies only to the principal amount of the tax that is imposed for the current tax year on the owner's permanent residence. Interest, discovery penalties, returned check fees, service fees, advertising costs, special assessments, privilege license taxes, etc. are not capped.

The circuit breaker tax limitation for all of the owners is totaled to determine the tax limitation for the property. Ownership percentages are not considered when calculating the tax limitation. There is no provision that prohibits the application of both a 4% and a 5% circuit breaker on the same property when multiple owners qualify under different circuit breaker percentages.

Upon a disqualifying event, the last three years of deferred taxes preceding the tax year in which the disqualifying event occurred become due and payable.

Due to gaps in deferral, the last three years of deferred taxes may not be the last three consecutive years preceding the year of the disqualifying event.

The deferred taxes become due and payable on the date of the disqualifying event and are also delinquent on the date of the disqualifying event.

Exception: When the deferred taxes become due and payable as a result of the death of the owner, the date of delinquency is the first day of the ninth month following the date of death per G.S. 105-365.1(a)(3).

▪ CB - Gap in Deferral

A gap in deferral occurs when the property is removed from the program for any reason other than a disqualifying event. Examples include:

- Failure to file the annual application,
- Failure to qualify due to increase in income,
- Owner chooses to participate in another program, and
- Death/transfer disqualifying event exceptions.

A gap in deferral does not cause the deferred taxes to become due and payable. Only the occurrence of a disqualifying event causes the deferred taxes to become due and payable.

Gaps in deferral are disregarded when determining the last three preceding years of deferred taxes that become due and payable upon the occurrence of a disqualifying event.

Large gaps in deferral do not jeopardize enforced collection remedies. G.S. 105-378(a) bars the use of enforced collection remedies unless the action is instituted within 10 years from the date the taxes became due. However, the deferred taxes only become due on the date of the disqualifying event.

Examples:

- Taxpayers A, B, and C are brothers. Each made $25,000 last year and each qualifies for the circuit breaker exclusion and all choose to participate. Each brother falls in the 4% tax cap category, because all their incomes are all below the current elderly or disabled limit of $31,900 for 2022. Each brother has a tax cap of $1,000 ($25,000 * .04). Add together the tax caps for each brother and the sum is $3,000. That figure is the maximum property tax that can be collected on the property for 2022. Any taxes above the $3,000 cap will be deferred.
- Using the 2022 limit provided above of $31,900, the 150% income limit would be $47,850. Taxpayer A, B, and C all qualify and have chosen to participate in the circuit breaker program. Last year Taxpayer A made $42,000, Taxpayer B made $29,000 and Taxpayer C made $36,000. Taxpayer B falls into the 4% tax cap but Taxpayer A and C fall into the 5% tax cap. Taxpayer B tax cap is $1,160 ($29,000 * .04), Taxpayer A tax cap is $2,100 ($42,000 * .05), and Taxpayer C is $1,800 ($36,000 * .05). The maximum property tax that can be collected is $5,060. Any taxes above the $5,060 cap will be deferred.
- Gap in deferral example: Taxpayer A is in the circuit breaker program from 2015 to 2017. Taxpayer A experiences a temporary increase in income and does not quality for any property tax relief for 2018 and 2019. In 2020, Taxpayer A is again in the circuit breaker program. In 2021, Taxpayer A sells the house to an unrelated party. What are the years of the rollback?
    - 2020, 2017, and 2016. It's not always the three most consecutive years.

How the Programs Interact and Multiple Owners

As previously discussed, the CB program is an all or nothing proposition. All owners must be qualifying owners and all elect to defer taxes or no owners will be able to qualify. In that light, it is safe to say that the CB program does not interact with the E/D or DV. However, E/D and DV can be claimed on the same permanent residence when there are multiple owners. This section will deal with the interaction of those two programs.

When the property is owned by two or more persons, other than husband and wife as tenants by the entirety, each owner must apply separately. Therefore, each co-owner must qualify separately.

Both the E/D and the DV exclusions state that the owner can receive only one property tax relief.

Each co-owner is entitled to the full amount of the property benefit, not to exceed the co-owner's proportionate share of the valuation of the property. Note that the limiting factor is the proportionate share of the valuation of the property, not the proportionate share of the ownership of the property.

The total relief for the property cannot exceed the maximum amount allowed if owned by one owner.

When the elderly/disabled and disabled veteran both apply, the amount may not exceed the greater of the two benefits. The full amount of the benefit allowed on the property when only elderly or disabled is applied is $25,000 or 50% of the value, whichever is greater. For a disabled veteran the amount is $45,000. Therefore, the full amount of the benefit allowed, when both exist under multiple ownership, would be $45,000 or 50% of the value, whichever is greater.

To determine the amount of exclusion of multiple owners, you must:

1. Determine the amount of exclusion that each co-owner is entitled to receive. Each co-owner is entitled to the full amount of the property benefit, not to exceed the co-owner's proportionate share of the valuation of the property.
2. Sum up the benefits of all the qualifying co-owners. To sum the benefits, determine each owner's benefit separately and total those benefits.
3. Apply the maximum limit for the property to determine the final allowable exclusion amount. The total relief for the property cannot exceed the maximum amount allowed if owned by one owner. The actual benefit for the property under elderly/disabled and disabled veteran combinations will be the lesser of the total of the co-owner's benefits and the full amount of the properties benefit.

Examples:

- Taxpayer A and B are married. Taxpayer A qualifies for all three property tax relief exclusions. Taxpayer B is too young and doesn't qualify for any. Which of the three exclusions may they apply to their jointly owned home?
    - Any of them. Taxpayer A qualifies for all and as a married couple they are considered to be one owner.

- Taxpayer A and B are siblings. Taxpayer A qualifies for all three property tax relief exclusions. Taxpayer B is too young and doesn't qualify for any. Which of the three exclusions may they apply to their jointly owned home?
    - E/D or DV. CB is all or nothing and Taxpayer B doesn't qualify.
- Taxpayer A, B, and C are siblings. They jointly own a property which is assessed for $100,000. What's the exclusion amount?
    - If one sibling qualified for E/D, the benefit amount would be $33,333 or 1/3 of the value.
    - If two siblings qualified under the E/D exclusion, the benefit amount would be $50,000 or 50% of the value of the home. Although the two siblings together have 66% ownership in the home, the value benefit would cap out at 50% of the value.
    - Same goes if all three siblings qualified, $50,000 would be the maximum amount in this example.
- Taxpayer A and B are unrelated. Taxpayer A owns 10% and Taxpayer B owns 90% of a property assessed for $150,000.
    - If only A qualifies, the benefit amount would be $15,000.

11. Builders Inventory Exclusion

The builders inventory exclusion applies to improvements to residential and commercial properties that are held for sale by a builder.

The taxes from the improvements are not deferred, but are waived altogether.

The builders inventory exclusion does not include value increases due to rezoning.

Builder is defined in G.S. 105-273(3a) as a taxpayer engaged in the business of buying real property, making improvements to it, and then reselling it.

Residential Real Property

The builders inventory exclusion applies to residential real property held for sale by a builder.

"Residential real property" is real property that is intended to be sold and used as an individual's residence immediately or after construction of a residence.

Any increase in value of this property by the builder is excluded from taxation as long as the builder continues to hold the property for sale, and if the increase was attributable to:

1. Subdivision of the property,
2. Improvements other than buildings made on the property including grading or roads, or
3. Construction of a:
    a. New single-family residence,
    b. Townhouse, or
    c. Duplex.

The following uses and properties are not eligible for the exclusion:

1. Property that is leased or occupied by a tenant,
2. Property that is used for commercial purposes such as residences shown to prospective buyers as models,
3. Renovation of existing residences,
4. Structures housing three or more families, and
5. Condominiums.

The property would be locked into its original value, prior to the improvements, until the exclusion ends.

The exclusion would end at the earlier of:

- Three years from when the improvement was subject to being listed by the builder.
- When the property is sold.
- If the property is removed from the market.
- If the property is leased or occupied by a tenant.
- If the property is used as a model residence.
- If the property is used for any commercial purpose.

If the builder occupies the residence, the property can still qualify as long as it is still listed for sale and the builder is still actively trying to sell it.

Commercial Property

"Commercial real property" is real property that is intended to be sold and used for commercial purposes immediately or after improvement.

For commercial property, as long as the property continues to be held for sale by the builder, the exclusion includes increases in value due to subdivision of the land or improvements to the land.

The exclusion ends with the earlier of:

- issuance of a building permit,
- five years from the time the improvements were first subject to being listed, or
- sale of the property.

Application

A single application is required.

Improvements Made in Stages

While the statute is not completely clear on improvements made in stages, one possible interpretation is that there is one three-year exclusion period for:

- each subdivision,
- each improvement other than a building, and
- each construction of a new single-family residence, townhouse, or duplex.

Under that interpretation, each three-year exclusion period begins from the time each of the above was first subject to being listed for taxation by the builder.

Example: A builder buys a tract of land in June 2020 and subdivides the tract into two lots and installs water, sewer, and a road, all complete by January 1, 2021. The value increase is $100,000. The exclusion is available on the $100,000 increase for 2021, 2022, and 2023. A house is built on one lot and is 100% complete as of January 1, 2022, resulting in an additional $400,000 value increase. The exclusion is available for 2022, 2023, and 2024 on the additional $400,000 increase.

12. Historic Landmarks

G.S. 105-278 governs the tax deferral program for real property that is designated as a historic property by a local ordinance adopted pursuant to former G.S. 160A-399.4 or designated as a historic landmark by a local ordinance adopted pursuant to G.S. 160D-945 or former G.S. 160A-400.5.

Landmarks or Properties?

There has been some consolidation of the statutes governing historic properties and historic landmarks. Effective for 2020, the current controlling statutes for new designations are G.S. 160D-940 through 160D-951 and uses the term “landmark”.

A landmark can be both unimproved and improved properties as stated in G.S. 160D-942(2) which gives a preservation commission the power to:

> (2) Recommend to the governing board areas to be designated by ordinance as "Historic Districts" and individual structures, buildings, sites, areas, or objects to be designated by ordinance as "Landmarks." [Emphasis added.]

The designation statute is G.S. 160D-945 and states in part:

> Upon complying with G.S. 160D-946, the governing board may adopt and amend or repeal a regulation designating one or more historic landmarks. No property shall be recommended for designation as a historic landmark unless it is deemed and found by the preservation commission to be of special significance in terms of its historical, prehistorical, architectural, or cultural importance and to possess integrity of design, setting, workmanship, materials, feeling, and/or association.
>
> The regulation shall describe each property designated in the regulation, the name or names of the owner or owners of the property, those elements of the property that are integral to its historical, architectural, or prehistorical value, including the land area of the property so designated, and any other information the governing board deems necessary.

Properties previously and still designated as a historic property under repealed G.S. 160A-399.4 or as a historic landmark under repealed G.S. 160A-400.5 are still eligible for classification under G.S. 105-278.

Designations by other means or from other designating entities does not meet the statutory requirements.

Benefit and Deferral of Taxes

Classified property shall be taxed on the basis of fifty percent (50%) of the true value of the property as determined pursuant to G.S. 105-285 and 105-286, or 105-287.

The difference between the taxes due on the basis of fifty percent (50%) of the true value of the property and the taxes that would have been payable in the absence of the classification provided for in subsection (a) shall be a lien on the property of the taxpayer as provided in G.S. 105-355(a).

The taxes shall be carried forward in the records of the taxing unit or units as deferred taxes.

The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1F when the property loses the benefit of this classification as a result of a disqualifying event.

Disqualifying Event

A disqualifying event occurs when there is a change in an ordinance designating a historic property or a change in the property that causes the property's historical significance to be lost or substantially impaired.

Exception: When the property's historical significance is lost or substantially impaired due to fire or other natural disaster, no deferred taxes are due and all liens arising under this subsection are extinguished. Per G.S. 105-277.1F(b), the tax for the fiscal year that begins in the calendar year of the disqualifying event is computed as is the property had not been classified for that year. That means there are no deferred taxes computed for the year of disqualification and that the full amount of the taxes are due for that year.

Recapture of Deferred Taxes

The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1F when the property loses the benefit of this classification as a result of a disqualifying event.

Application

A single application is required.

It is the opinion of the Department of Revenue that a new application is required due to transfer of a historic property to a new owner. The Department of Revenue recommends proactively contacting the new owner with explanatory program information, including an application and an explanation of the results of failure to file the application. The Department of Revenue holds

that these proactive measures do not remove the burden of proof and duty to file imposed on the owner in G.S. 105-282.1.

If the new owner does not file an application or if an owner requests to be voluntarily removed from the program and there has been no change in the ordinance designating the historic property and there has been no change in the property that causes the property's historical significance to be lost or substantially impaired, then no disqualifying event has occurred.

In those situations, it is the opinion of the Department of Revenue that the property should be removed from the program for the applicable year but no deferred taxes for prior years should be billed. The deferred taxes should remain on the books in case a disqualifying event occurs within the next three years that would warrant billing the deferred taxes for any of the three years that are still within three years prior to the year of the disqualifying event.

13. Brownfields

Here is some general brownfields program information from the North Carolina Department of Environmental Quality (NCDEQ).

> A "brownfields site" is an abandoned, idled or underused property where the threat of environmental contamination has hindered its redevelopment. The North Carolina Brownfields Program, which is administered by the Division of Waste Management, is the state's effort to break this barrier to the redevelopment of these sites. The Brownfields Property Reuse Act of 1997 [NCGS 130A310.30 et seq.] sets forth the authority for the Department of Environment and Natural Resources to work with prospective developers to put these brownfields sites back into reuse. The prospective developer, as defined under the statute, is any person who desires to buy or sell a brownfields property for the purpose of redeveloping it and who did not cause or contribute to the contamination at the property.[60]
>
> At the heart of the program is the brownfields agreement -- in effect, a covenant not-to-sue offered to a prospective developer of a brownfields property. Under a brownfields agreement, a prospective developer agrees to perform those actions deemed by the department to be essential to make the property suitable for the proposed reuse.[61]

In return, NCDEQ:

> …agrees to limit the liability of the prospective developer to those actions described in the agreement. This allows the prospective developer to go to a lending institution with a defined, instead of an open-ended, liability for environmental cleanup. Through such agreements, redevelopment at these brownfields sites will be encouraged, lessening the incentive for developers to move into "greenfields" areas. While these defined liability benefits are extended to the prospective developer, the brownfields agreement in no way changes the legal liability for the responsible parties at the site.[62]

Definitions

The terms "qualifying improvements on brownfields properties" and "qualifying improvements" mean improvements made to real property that is subject to a brownfields agreement entered into by the Department of Environmental Quality and the owner pursuant to G.S. 130A-310.32.

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[60] *"Program Information",* NCDEQ, Accessed March 24, 2022. Available at: https://deq.nc.gov/about/divisions/waste-management/brownfields-program/program-information
[61] Ibid.
[62] Ibid.

Exclusion Details

An owner of land is entitled to a partial exclusion for the first five taxable years beginning after completion of qualifying improvements made after the date of the brownfields agreement.

The following table establishes the percentage of the appraised value of the qualified improvements that is excluded based on the taxable year:

Year	Percent of Appraised Value Excluded
Year 1	90%
Year 2	75%
Year 3	50%
Year 4	30%
Year 5	10%

Application

A single application is required.

It is the opinion of the Department of Revenue that a new application is required due to transfer of a brownfield property to a new owner. The Department of Revenue recommends proactively contacting the new owner with explanatory program information, including an application and an explanation of the results of failure to file the application. The Department of Revenue holds that these proactive measures do not remove the burden of proof and duty to file imposed on the owner in G.S. 105-282.1.

If the new owner does not file an application, the property should be removed from the program for the applicable year.

Considerations

- The land must be improved. The five-year period does not start unless there is a brownfields agreement in place, and the improvement is complete. The five-year period will not start if the county still considers the improvement incomplete.

- Once the improvement is complete, the five-year period must start on the next January 1 following the calendar year in which the improvement was completed. The owner cannot choose when the five-year period will start.

- Failure to file an application does not extend or change the five-year period.

- The statutes do not define "complete". When there is a difference in opinion between the owner and the County, the burden is on the taxpayer to convince the County of its position.

- Improvements designed with the intent of completing the exterior and interior at the same time should be fairly straightforward in determining completion. This might include improvements such as apartments, residential condominium buildings, grocery stores, etc.

- However, more problematic are improvements that are designed to construct a shell first and then to complete additional real property interior finish in various stages as the interior space is leased. It does not seem logical to define completion as when all interior finish is complete, as that may never happen or may take a number of years. It would also be arbitrary to pick a percentage of interior finish as the completion test. It seems the remaining option for these types of improvements is to define completion as when the shell is complete. The value of that improvement (shell plus any additional interior finish value) on the next January 1 would be eligible for the 90% exclusion. The value may change each subsequent year as more interior finish is completed, but the five-year period continues to run and the exclusion percentages continue to reduce based on the shell completion date. (This discussion does not apply to leasehold improvements taxable to the tenant, as that constitutes business personal property which is not subject to the brownfields exclusion.)

- Each standalone improvement can have its own five-year period. For example, five freestanding buildings on a single parcel are completed with one being completed each of five consecutive years. This project should have five separate five-year periods, one for each improvement.

14. Nonprofit Homeowners' Associations

G.S. 105-277.8 "Taxation of property of nonprofit homeowners' association" is a somewhat unique statute in that it creates, under the powers of Article V, Section 2(2) of the North Carolina Constitution, a special class of property which can be removed from the tax base under certain conditions, but does not remove the value from the tax base. The value must be retained and allocated to other properties. Thus, there is no net loss in tax base value due to G.S. 105-277.8.

The property in question is the real and personal property owned by a nonprofit homeowners' association. "Nonprofit homeowners' association" means a homeowners' association as defined in § 528(c) of the Internal Revenue Code.

The value of that property shall be included in the appraisals of property owned by members of the association and shall not be assessed against the association if all of the following is true:

(1) All property owned by the association is held for the use, benefit, and enjoyment of all members of the association equally.

(2) Each member of the association has an irrevocable right to use and enjoy, on an equal basis, all property owned by the association, subject to any restrictions imposed by the instruments conveying the right or the rules, regulations, or bylaws of the association.

(3) Each irrevocable right to use and enjoy all property owned by the association is appurtenant to taxable real property owned by a member of the association.

Allocation of Value

If the requirements are met, the assessor may allocate the value of the association's property among the property of the association's members on any fair and reasonable basis.

In practice, and in most instances, buyers of properties in the association's neighborhood are well aware of the amenities provided by the association, and both the buyers and sellers have priced any added value into the negotiated purchase price of the property. Thus, the market has already served to allocate the value of the association's property among the properties of the members.

But, you may ask, what is to be done with the value assigned to the association property?

Association Property Still Owned by Developer

Discussion continued from prior section…

If the association property is already in the name of the nonprofit homeowners' association, then the solution is straightforward. Remove the value from the association property. The buyers and sellers have already priced the value of the association property into the negotiated prices. If the assessor has sought to value the properties at full market value, then the value of the association property is being captured in the tax values.

However, if the association property is still owned by the developer, it seems that the provisions of G.S. 105-277.8 cannot be put in place. Developers commonly wish to maintain ownership of the association property until most of the development has been completed. This helps preserve their investment by ensuring proper management and maintenance of the amenities while the developer is still developing and marketing subdivision property. The subdivision declarations typically require the developer to deed the association property to the nonprofit homeowners' association once the subdivision reaches a stated completion percentage or some other milestone.

Therefore, some counties will seek to assess a full taxable value on the association property. Yet the assessor has already captured the value of the association property by valuing the member properties at full value. Essentially the value will be taxed twice, once on the association property, and once in the de facto allocation to the member properties due to the full assessed values of their properties. One might argue, as some developers have, that this creates a double-taxation scenario.

Here are two possible ways to handle this issue when the association property is still owned by the developer:

1. Put a full taxable value on the association property while it is still owned by the developer. Reduce the value of all the member properties accordingly. Raise the value of the member properties back up to full value once the property is deeded to the association.

2. If the subdivision declarations state that the property must be deeded from the developer to the association and it must be done so based on specific parameters, perhaps it could be argued that the developer is holding the property "in trust" for the association and that the association has some level of equitable title to the property. If that argument is adopted, then G.S. 105-277.8 can be put in place, assuming all other requirements are met. The value is removed from the association property and the member properties are valued at full market value (as of the last reappraisal date).

Option 1 is most clearly in line with the statutes but is not the most practical. Most counties would probably not be willing to reduce the value of the member properties just to raise them back up again in a few years.

Option 2 may also fall within the statutory requirements but would require some amount of interpretation regarding the ownership.

The Department of Revenue does not make a recommendation on which option should be taken. It wishes to highlight potential double-taxation argument, as the Department has encountered it on several occasions, and to share some possible options for handling the situation.

Additionally, the above discussion assumes that all other requirements of G.S. 105-277.8 were met, other than ownership still residing with the developer. If not met, the value of the association property should be assessed to the association.

Application

A single application is required per G.S. 105-277.8.

Extraterritorial Common Property

Occasionally, associations will own common property in a different tax jurisdiction from the subdivision and the remainder of the common property. For example, an inland coastal community might purchase an oceanfront lot in order to provide beach access to its members. The lot is in a different municipality. It would be unfair to the oceanfront municipality to allocate the value to the member lots, as that would be an erosion of the oceanfront municipality's tax base. It also raises further legal issues as to whether the oceanfront lot is now being taxed in a jurisdiction in which it is not located.

Effective for 2012, the General Assembly added provisions to handle extraterritorial common property.

1. The value of extraterritorial common property shall be subject to taxation only in the jurisdiction in which it is entirely contained.

2. The value of extraterritorial common property, as determined by the latest schedule of values, shall not be included in the appraisals of property owned by members of the association.

3. The assessor for the jurisdiction that imposes a tax on the extraterritorial common property shall provide notice of the property, the value, and any other information to the

assessor of any other jurisdiction so that the real properties owned by the members of the association are not subject to taxation for that value.

4. The governing board of a nonprofit homeowners' association with property subject to taxation under this subsection shall provide annually to each member of the association the amount of tax due on the property, the value of the property, and, if applicable, the means by which the association will recover the tax due on the property from the members.

15. Burial Property

G.S. 105-278.2 (Effective for taxes imposed for taxable years beginning on or after July 1, 2022)

(a) Commercial Property. - Real property set apart for burial purposes that is owned and held for purposes of (i) sale or rental or (ii) sale of burial rights therein is exempt from taxation. A single application is required under G.S. 105-282.1 for property exempt under this subsection.

(b) Other Property. - Real property set apart for burial purposes not owned and held for a purpose listed in subsection (a) of this section is exempt from taxation. No application is required under G.S. 105-282.1 for property exempt under this subsection. A local government cannot deny the exemption provided under this subsection to a taxpayer that lacks a survey or plat detailing the exempt property.

(c) Terms. - For purposes of this section, the term "real property" includes land, tombs, vaults, monuments, and mausoleums, and the term "burial" includes entombment.

Historically, private cemeteries (family cemeteries, church cemeteries, etc.) and the portions of commercial cemeteries that were set apart for burial purposes but not held for sale or rental were also exempt. The portion of commercial cemeteries that were held for sale or rental were taxable, however.

Effective for tax year 2022, G.S. 105-278.2 was rewritten by the General Assembly (Session Law 2021-180, s. 42.12(a)) to effectively exempt most cemetery real property. Two categories were created:

- Commercial property set apart for burial purposes that is owned and held for purposes of sale or rental of burial rights is now exempt. A single application is required for this category.

- Other real property set apart for burial purposes but not held for purpose of sale or rental remains exempt. This category includes private cemeteries and the portions of commercial cemeteries set apart for burial purpose but not held for sale or rental of burial rights. No application is required for this category.

It is questionable whether there is any other remaining taxable “cemetery” property. A couple of scenarios for taxation might exist:

- The phrase “set apart for burial purposes” is not defined. It might be possible that land which is unofficially held for future burial purposes but that has not yet been through all necessary regulatory approval and subjected to all necessary restrictions could be considered taxable land that does not fall clearly within the exemptions provided by G.S. 105-278.2(a) and (b).

  G.S. 65-55 does require certain things to be completed before an operating license can be issued, including a plat of the cemetery showing the number and location of all lots surveyed and permanently staked for sale. If the required steps for obtaining an operating license have not been completed, and an operating license has not yet been issued, it is likely that the land has not yet been “set apart for burial purposes” and would not yet qualify under G.S. 105-278.2.

- Ancillary buildings such as sales office and maintenance building and other ancillary land are possibly taxable as property that is not set apart for burial purposes.

The Department of Revenue does not offer an official opinion on the scenarios above. It is clear that the intent of the General Assembly was to exempt most cemetery property. Whether any ambiguity in the current law is sufficient to warrant taxation of any “cemetery” property is uncertain.

16. Hospital Property

For a number of years, hospital systems have been acquiring private practices in an effort to become more horizontally and vertically integrated. A major part of this effort has been the acquisition of private physician practices. Previously, physician practices were separately owned, and their real and personal property was typically taxable. The practices may have had agreements or affiliations with local hospitals, but the practices still retained varying levels of freedom to conduct their business as they wished. Hospitals have sought to bring these practices "in-house" by purchasing the practices and essentially making the practices part of the hospital business model.

The question arises whether these previously taxable properties should be exempted when purchased by the hospital, that is, whether they now are actually and exclusively used for charitable hospital purposes once they are owned by the hospital, where prior to that ownership the practices were not used for charitable hospital purposes.

Per G.S. 105-278.8 the exemption for charitable hospital purposes states:

- That the property be held for or owned by a hospital organized and operated as a nonstock, nonprofit, charitable institution, and

- That the property be actually and exclusively used for charitable hospital purposes. A charitable hospital purpose is a purpose that:

    - Has humane and philanthropic objectives;

    - Its hospital activity benefits humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward.

- The fact that a qualifying hospital charges patients who are able to pay for services rendered does not defeat the exemption granted by this section.

Two questions need to be addressed:

(1) Are the physician practices held for or owned by a nonprofit charitable hospital?
(2) Are the physician practices actually and exclusively used for charitable hospital purposes?

Regarding ownership, if the physician practice is owned under the same ownership as the exempt hospital, it seems the practice meets the ownership requirement. Further, the Courts have even allowed an outpatient surgical center owned in its separate ownership to be considered as owned by a hospital:

- In December 1989, the Court of Appeals heard the case of an outpatient surgical center. The appellant states they are "a non-profit outpatient facility and is owned and operated by a charitable, non-profit tax exempt corporation." The Court held that "[p]ursuant to the language of this statute, the test to determine whether an exemption may be granted is: (1) whether the applicant is a hospital organized and operated without profit to members, (2) exclusively used for humane and philanthropic objectives which benefit a significant segment of the community and (3) does so without expectation of reward or profit. Furthermore, an applicant which meets the requirements of this test will not be rejected simply because it charges those patients who are able to pay for their services." They went on to say "[s]ince the Commission concluded correctly that petitioner is a non-profit corporation, we therefore conclude that as a matter of law it meets the first part of the test set out in G.S. 105-278.8 and is in fact a hospital operated without profit to its members. Next, the Commission incorrectly concluded that petitioner is not wholly and exclusively operated for a charitable purpose or purposes. This conclusion is unsupported by any findings and is, in fact, directly contradicted by the finding that petitioner provides facilities for the treatment of emergency or urgent care patients without regard for their ability to pay and that it charges fees which are lower than those of Forsyth Memorial Hospital. Such findings fall within the definition of a charitable hospital purpose which is one that has humane and philanthropic objectives and that benefits humanity or a significant rather than a limited segment of the community without expectation of pecuniary profit or reward."[63]

Based on the above Court of Appeals decision, it seems it will be difficult to disqualify a property for ownership reasons as long as the ownership is a nonprofit organized for charitable hospital purposes.

The above Court of Appeals decision also ruled that the use of the facility as an outpatient surgical center qualified as a charitable hospital purpose. In another case, the Court ruled on a non-medical use:

- In February 1994, the Court of Appeals heard the case of a hospital child care center, only available to hospital employees. The Court held that "[w]e can find no evidence in the record that taxpayer's child care center competes directly with other area commercial day care centers. We conclude that there is no direct commercial competition between taxpayer's child care center and other commercial day care centers for two reasons. First, in order for there to be direct commercial competition, taxpayer's child care center must compete directly with other commercial day care centers for patrons from the general public. Second, taxpayer's child care center meets a need of its employees that could not

[63] *In re Found. Health Sys. Corp*., Forsyth County, 96 N.C. App. 571, 386 S.E.2d 588 (1989).

> be fulfilled by the other commercial day care centers. Here, taxpayer's child care center is not operated for the purpose of making money. [T]axpayer's child care center here is organized to meet the specific needs of hospital employees. Taxpayer's child care center is open seven days a week, including holidays, from 6:00 a.m. to 12:00 midnight. It accommodates the needs of employees who work rotating shifts or late night hours. Its hours of operation are longer and more flexible than other area commercial day care centers. Finally, taxpayer's child care center aids taxpayer in the recruitment and retention of hospital employees. Accordingly, we conclude that on these facts, taxpayer's child care center is reasonably necessary to accomplish taxpayer's charitable purpose. For the reasons stated, we hold that taxpayer's child care center is 'actually and exclusively used' for a charitable hospital purpose as required by G.S. 105-278.8 and accordingly, that taxpayer is entitled to an exemption from ad valorem taxes for its child care center."[64]

Based on the statutory language and the above cases, physician practices owned by a nonprofit hospital should likely be exempted as charitable hospital property. It should be noted that a case which challenges this position directly has not yet been heard and decided by the Courts.

Property owned by a nonprofit hospital but leased to tenants, whether medical-related or not, should be taxable. In this situation, the hospital is operating as a landlord, which is not an exempt use under G.S. 105-278.8.

[64] *In re Moses H. Cone Mem. Hosp.,* Guilford County, 113 N.C. App. 562, 439 S.E.2d 778 (1994), aff'd in part, cert. improvidently granted in part, 340 N.C. 93, 455 S.E.2d 431 (1995).

17. Computer Software

Computer software is defined in G.S. 105-275(40) as:

"…any program or routine used to cause a computer to perform a specific task or set of tasks. The term includes system and application programs and database storage and management programs."

G.S. 105-275(40) excludes computer software and any documentation related to the computer software.

That sounds simple enough. But then it gets a bit more complicated.

The General Assembly then states that some software is still taxable, despite the general exclusion of computer software.

These two categories are still taxable:

(a) Embedded software, which is computer instructions, known as microcode, that reside permanently in the internal memory of a computer system or other equipment and are not intended to be removed without terminating the operation of the computer system or equipment and removing a computer chip, a circuit, or another mechanical device.

(b) Software that is purchased or licensed from a person who is unrelated to the taxpayer and it is capitalized on the books of the taxpayer in accordance with generally accepted accounting principles, including financial accounting standards issued by the Financial Accounting Standards Board. A person is unrelated to a taxpayer if (i) the taxpayer and the person are not subject to any common ownership, either directly or indirectly, and (ii) neither the taxpayer nor the person has any ownership interest, either directly or indirectly, in the other.

Then it gets even more complicated.

Effective for 2014, with regards to item (b) above, the General Assembly amended G.S. 105-275(40)(b) to state that the taxable property in item (b) cannot include the development of software or any modifications to software, whether done internally by the taxpayer or externally by a third party, to meet the customer's specified needs.

The effect is that certain software costs from the taxable category is now excluded.

The generally accepted practice for assessment of business personal property is that "assessors do not tax individual cost components of the property, such as installation costs, by

themselves…any other costs that are part of the overall cost of putting personal property in place and in operation…become part of the cost of the taxable **property**."[65]

That practice remains the standard, but the 2014 amendment to G.S. 105-275(40)(b) effectively …"excludes the additional costs needed to put "the software" in its usable state for the customer's specified needs."[66]

The following chart summarizes the taxable or excluded status of different categories of software.

Taxable	a. Software purchased or licensed from an unrelated party and is capitalized on the books of the taxpayer.
Excluded	b. Cost of any modifications subsequently made to the software in a. above.
Excluded	Software developed from scratch, whether done internally or externally.
Taxable	Embedded software.
Excluded	All other software.

[65] Baker, D. (2011). *Assessment of Software*. Available at: https://www.ncdor.gov/software-taxability-certification-memorandum-2011
[66] Baker, D. (2013). *Senate Bill 490 – Customized Software*. Available at: https://www.ncdor.gov/exclusion-customized-software-memorandum-2013

18. Solar Energy Systems

There are two primary solar energy systems referenced in the exclusion statutes.

Solar Energy Heating and Cooling Systems

The more traditional systems are liquid-based or air-based and are used to directly heat or cool your home. There is no conversion to electricity. Examples would include solar thermal air conditioners and active solar heating systems.

Solar thermal air conditioners are not common. They "use solar collectors to heat a liquid, like water, that then passes through the system and evaporates. The evaporation and condensation of the water in the system produces cool air for your home."[67]

"Active solar heating systems use solar energy to heat a fluid -- either liquid or air -- and then transfer the solar heat directly to the interior space or to a storage system for later use."[68]

These are the types of systems referenced in G.S. 105-277(g) which provides that:

> Buildings equipped with a solar energy heating or cooling system, or both, … shall be assessed for taxation in accordance with each county's schedules of value for buildings equipped with conventional heating or cooling systems and no additional value shall be assigned for the difference in cost between a solar energy heating or cooling system and a conventional system typically found in the county.

This classification is pretty straightforward. The County should not recognize any additional value for these systems and should value the properties as if they were equipped with a conventional heating and cooling system.

Solar Energy Electric Systems

G.S. 105-275(45) excludes:

> (45) Eighty percent (80%) of the appraised value of a solar energy electric system. For purposes of this subdivision, the term "solar energy electric system" means all equipment used directly and exclusively for the conversion of solar energy to electricity.

[67] SolarReviews (2022). *Is Solar Air Conditioning Right for You?* Available at: https://www.solarreviews.com/blog/is-solar-air-conditioning-right-for-your-home
[68] EnergySaver (2022). Active Solar Heating. Available at: https://www.energy.gov/energysaver/active-solar-heating

These systems are often known as photovoltaic systems and convert solar energy directly to electricity. Most of these systems provide energy directly to the power grid and the energy from these systems are either sold to the electric company or the owner is given a credit or offset toward their electrical costs.

▪ Individuals

For individuals with photovoltaic systems installed on their residences, the taxability of the systems will hinge on the exclusion provided for non-business personal property in G.S. 105-275(16):

> (16) Non-business Property. - As used in this subdivision, the term "non-business property" means personal property that is used by the owner of the property for a purpose other than the production of income and is not used in connection with a business. The term includes household furnishings, clothing, pets, lawn tools, and lawn equipment. The term does not include motor vehicles, mobile homes, aircraft, watercraft, or engines for watercraft.

If the system is not used for the production of income and is not used in connection with a business, then the system will be excluded from taxation. Most of the residential installations are required to participate in "net metering". Dominion Energy describes it thusly:

> Net Metering allows customers to interconnect approved renewable generation systems (such as solar, wind, and geothermal) to the electric grid and provide electricity to their own residence or business facility.
>
> That electricity offsets the electricity that would have otherwise been delivered by Dominion Energy. And when you generate more energy than your residence or facility needs, you'll receive credit from Dominion for the electricity your generator produces and delivers onto the grid.[69]

Most residential systems participating in net metering will probably be excluded as non-business personal property.

In a February 15, 2011, memorandum by David B. Baker, former NCDOR Local Government Division Director, he provided clarification on solar electric energy systems.

> In determining if a photovoltaic system installed on residential property is taxable or not, the county must determine if it is used to produce income or in connection with a business. If the owner files a Schedule C on their income tax return and claims depreciation expense on the capital investment amount, the system is business personal property. If the owner is

[69] Dominion Energy (2022) *Net Metering*. Available at: https://www.dominionenergy.com/north-carolina-electric/save-energy/net-metering

recognizing income received from a utility company for the production of electricity, the system is business personal property. If the owner is not claiming depreciation on the system and is not recognizing income, but rather is receiving credit from their utility company through a net metering arrangement, the property is considered non-business personal property and is excluded from taxation pursuant to G.S. 105-275(16).[70]

- **Businesses**

Photovoltaic systems used in connection with a business cannot be excluded under G.S. 105-275(16) as non-business property. The systems will be taxable but at the 80% reduction to the valuation as provided in G.S. 105-275(45). The reduced valuation only applies to business personal property.

[70] Baker, D. (2011). *Solar Energy Electric Systems*. Available at: https://www.ncdor.gov/solar-energy-electric-systems-memorandum-2011

19. Servicemembers Civil Relief Act (SCRA)

50 United States Code (U.S.C.) Chapter 50 states:

§3902. The purposes of this chapter are –

(1) to provide for, strengthen, and expedite the national defense through protection extended by this chapter to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and

(2) to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.[71]

§3911. Definitions

The term 'servicemember' means a member of the uniformed services, as that term is defined in section 101(a)(5) of title 10.[72]

§4001. Residence for tax purposes

(a) Residence or domicile

(1) In General – A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

(2) Spouses –

(A) In general – A spouse of a servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the spouse by reason of being absent or present in any tax jurisdiction of the United States solely to be with the servicemember in compliance with the servicemember's military orders if the residence or domicile, as the case may be, is the same for the servicemember and the spouse.

(B) Election – For a taxable year of the marriage, the spouse of a servicemember may elect to use the same residence for purposes of taxation as the servicemember regardless of the date on which the marriage of the spouse and the servicemember occurred.

[71] United States Code, Title 50 - *Servicemembers Civil Relief*. Available at: http://uscode.house.gov/view.xhtml?path=/prelim@title50/chapter50&edition=prelim.
[72] *See id.*

(b) Military service compensation – Compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders.

(c) Income of a Military Spouse – Income for services performed by the spouse of a servicemember shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the spouse is not a resident or domiciliary of the jurisdiction in which the income is earned because the spouse is in the jurisdiction solely to be with the servicemember serving in compliance with military orders.

(d) Personal Property

(1) Relief from personal property tax – The personal property of a servicemember or the spouse of a servicemember shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders.

(2) Exception for property within member's domicile or residence – This subsection applies to personal property or its use within any tax jurisdiction other than the servicemember's or the spouse's domicile or residence.

(3) Exception for property used in trade or business – This section does not prevent taxation by a tax jurisdiction with respect to personal property used in or arising from a trade or business, if it has jurisdiction.

(4) Relationship to law of state of domicile – Eligibility for relief from personal property taxes under this subsection is not contingent on whether or not such taxes are paid to the State of domicile.

(e) Increase in tax liability – A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction.

(f) Federal Indian reservations – An Indian servicemember whose legal residence or domicile is a Federal Indian reservation shall be taxed by the laws applicable to Federal Indian reservations and not the State where the reservation is located.

(g) Definitions – For purposes of this section:

(1) Personal property – The term 'personal property' means intangible and tangible property (including motor vehicles).

(2) Taxation – The term 'taxation' includes licenses, fees, or excises imposed with respect to motor vehicles and their use, if the license, fee, or excise is paid by the servicemember in the servicemember's State of domicile or residence.

(3) Tax jurisdiction – The term 'tax jurisdiction' means a State or a political subdivision of a State.[73]

What Personal Property Is Included?

Based on the definition provided above, U.S.C. §4001, all personal property taxable in North Carolina would be exempted for qualifying servicemembers. G.S. 105-275(16) states that the following personal property items are not excluded from property tax: motor vehicles, mobile homes, aircraft, watercraft, or engines for watercraft. Mobile homes would not include those deemed real property under G.S. 105-273(13)(d). Also, not included is personal property used in connection with a business, per U.S.C. §4001, and leased vehicles. Leased vehicles are not owned by the servicemember, they are owned by a business entity. However, if the personal property's taxable situs is a military base exempt from property tax due to federal law, the personal property can be exempted.

Application Process

There is no application requirement for servicemembers who own personal property in North Carolina, but list another state of residency on their leave and earnings statement (LES). They will, however, need to provide a copy of their LES to the tax office. If the servicemembers personal property is titled solely in their name, no additional information is required. If the title also lists their spouse, additional information will be needed to insure that the spouse claims the same state of residency as the servicemember. Although additional information needs to be submitted, the spouse is not required to submit an application. The county may request an application, but if one is not provided, the exemption cannot be denied. Information proving residency is necessary to ensure qualification, but an application is not required.

In a January 2016 article by United States Army Captain Emily Moy, she discusses *State of Residence vs. Home of Record.* She states that "[a] person can change legal residence at almost any time; however, it is important to understand that legal residence is established, not chosen. One cannot simply choose a state that is particularly friendly to military income and decide it is the legal residence; rather, citizens must first meet three requirements. The three requirements to change your state of legal residence are: you must be physically present in the state, you must intend to remain indefinitely in the state; and you must intend to abandon your previous legal residence. '[L]egal residence' is not the same thing as Home of Record. Home of Record is a military administrative term used to determine specific military entitlements (e.g., calculation of transportation costs when you get out of the Army). It is typically the state where a person joined

[73] *See id.*

the military, and can only be changed if it was done incorrectly at the time of enlistment. Enlisted members may also change Home of Record at the time they sign a new enlistment contract. Nonetheless, Home of Record does not mean anything regarding current legal residence."[74]

Military Spouses Residency Relief Act

The Military Spouses Residency Relief Act allows for personal property, titled in both the name of the servicemember and their spouse, to be completely exempt from property taxation in North Carolina. The spouse needs to supply information to the tax office showing that they claim the same state of residency as the servicemember.

In a March 17, 2010, memorandum by David B. Baker, former NCDOR Property Tax Division Director, he provided clarification on the Military Spouses Residency Relief Act of 2009.

> Domicile in a particular state is not achieved by a simple election to choose a different state as a domicile, there must be an instance of physical presence in the state as well as other actions that indicate the person intends to make that state their permanent residence. A civilian citizen of North Carolina does not acquire domicile in another state merely due to a marriage to someone with domicile in that state. They must live in that state for some period of time and take actions that would indicate the adoption of that state as their domicile and the abandonment of North Carolina as their state of domicile.[75]

The spouse will need to provide their dependent military ID, a copy of the servicemembers LES, and proof of residency. Below are some examples, provided by Cumberland County, of information that may be requested from the spouse to ensure they qualify under this Act:

- North Carolina state income tax return with nonresident filing status and receipt of confirmation of electronic filing
- Voter registration card
- Motor vehicle registration or driver's license
- Jury summons dated within six months of registration renewal date
- Proof of payment of ad valorem property taxes
- Professional licenses
- Financial aid paperwork or college registration documents

[74] Moy, Emily. "*State of Residence vs. Home of Record: What does it all mean?*" www.army.mil, 7 Jan. 2016, www.army.mil/article/160640/state_of_residence_vs_home_of_record_what_does_it_all_mean.
[75] Baker, D. (2010). *Military Spouse Tax Relief*. Available at: https://files.nc.gov/ncdor/documents/bulletins/military_spouse_taxrelief_3-17-10.pdf?z909OhZJKxodFNoptzqQYHztUH3Kma9u.

- Insurance documents, such as life insurance policies
- Certificate of probate for a will filed in the state of domicile
- Current Non-appropriated Fund Earnings and Leave Statement (NAF ELS)

Appeal and Refund Process

There is no time restriction for obtaining the exemption or for requesting a refund for previous years. Federal law trumps all other taxation laws. The servicemember should be refunded if they can provide their LES for any previous years they incorrectly paid taxes in North Carolina.

Examples:

- A soldier owns a car and is stationed in North Carolina. Their declared state of residence on their leave and earnings statement (LES) is not North Carolina. Is the car taxable in North Carolina?
  - No, they are not a North Carolina resident. North Carolina is not their state of residency.
- A soldier whose declared state of residency is North Carolina is stationed in Kansas for three years. Where is the car taxable?
  - North Carolina
- A soldier and their spouse jointly own a vehicle. They are living in North Carolina, but their declared state of residence is not North Carolina. Is the car taxable in North Carolina?
  - Yes, at half of the value unless the spouse qualifies under the Military Spouses Residency Relief Act. If the spouse qualifies then the vehicle is 100% exempt from taxation in North Carolina.
- A soldier and their spouse own two vehicles. Both vehicles are titled in the soldiers name only. The soldiers declared state of residence is not North Carolina. Are the vehicles taxable?
  - No, the vehicles are only titled in soldiers name and they are not a North Carolina resident.
- A soldier, stationed in North Carolina, owns a vehicle. Their declared state of residence is New York, which does not tax motor vehicles. Is the vehicle taxable in North Carolina?
  - No, they are not a North Carolina resident. Whether the state of residency taxes personal property is irrelevant.

20. North Carolina General Statutes Exemptions

The Constitution of North Carolina Article V, § 2(3) states that:

> Property belonging to the State, counties, and municipal corporations shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, cultural, charitable, or religious purposes, and, to a value not exceeding $300, any personal property. The General Assembly may exempt from taxation not exceeding $1,000 in value of property held and used as the place of residence of the owner. Every exemption shall be on a State-wide basis and shall be made by general law uniformly applicable in every county, city and town, and other unit of local government. No taxing authority other than the General Assembly may grant exemptions, and the General Assembly shall not delegate the powers accorded to it by this subsection.[76]

With the exception of G.S. 105-278.1, the use of the property is a crucial component, along with the ownership. This concept has been tested numerous times over the years and the courts have held the importance of the use and ownership requirements. The following are provided in the case notes of the *Machinery Act*:

- In March 1989, the Court of Appeals stated "[t]he rule in North Carolina is that unless property is 'presently used' for tax exempt purposes, it is not tax exempt. Because no public purpose is served by permitting land to lie unused and untaxed, present use, not intended use, controls. Thus, property merely held for planned future religious purposes is not exempt."[77]
- In an April 1981 Court of Appeals decision, in regards to a university's football stadium parking lot being used by a commercial business for parking, the following was provided, "[t]he decisions of our appellate courts have consistently recognized and enunciated the principle that it is not the nature or characteristic of the owning entity which ultimately determines whether property shall be exempt from taxation, but it is the use to which the property is dedicated which controls."[78]

[76] *North Carolina State Constitution*. Available at: https://www.ncleg.net/Legislation/constitution/ncconstitution.pdf.
[77] *In re* Worley, Alamance County, 93 N.C. App. 191, 377 S.E.2d 270 (1989).
[78] *In re Wake Forest Univ.,* Forsyth County, 51 N.C. App. 516, 277 S.E.2d 91, cert. denied, 303 N.C. 544, 281 S.E.2d 391 (1981).

- In a March 1978, Supreme Court decision the following was determined, "[n]ot only the purpose for holding the real property but also its actual use determined whether it is to be exempted from or included in the tax base. Use, rather than ownership or objective, is the primary exempting characteristic of the Machinery Act, G.S. 105-271 through G.S. 105-395, which includes the statutes under consideration."[79]
- In a January 1960 Supreme Court decision, the following was held "[b]y the rule of strict construction, however, is not meant that the statute shall be stingingly or even narrowly construed . . . but it means that everything shall be excluded from its operation which does not clearly come within the scope of the language used".[80]
- In a 1940 Supreme Court decision, the following was held, "[s]tatutes exempting specific property from taxation because of the purposes for which such property is held and used, are and should be construed strictly, when there is room for construction, against exemption and in favor of taxation."[81]

The following is a summary of the different classes of property exempted from taxation in North Carolina. The summary also includes related higher court decisions, Attorney General Opinions, and additional useful information in regards to the exclusions.

Some of the cases and opinions cited below may have been decided under former similar provisions. They are provided for context and reference purposes.

[79] *In re North Carolina Forestry Found., Inc.,* Onslow County, 35 N.C. App. 414, 242 S.E.2d 492 (1978), aff'd, 296 N.C. 330, 250 S.E.2d 236 (1979).
[80] *Southeastern Baptist Theological Seminary, Inc. v. Wake County*, 251 N.C. 775, 112 S.E.2d 528 (1960) (quoting *Stacy, C.J., in State v. Whitehurst*, 212 N.C. 300, 193 S.E. 657, 659, 113 A.L.R. 740).
[81] *Harrison v. Guilford County*, 218 N.C. 718, 721, 12 S.E.2d 269, 272 (1940).

G.S. 105-278.1 – Exemption of Real and Personal Property Owned by Units of Government

Statute enacted:	1865 - 1866 session, Chapter 21
Statute revisions:	1935 session, Chapter 417; 1971 session, House bill 169; 1973 session, Senate bill 147; 1987 session, Senate bill 852; 2005 session, House bill 105; 2021 session, Senate bill 126
Application:	Not required
Requirement(s):	Ownership only, no use requirement. With the exception of certain situations in which the federal government agrees to be liable for the property tax.

Statute:

(a) Real and personal property owned by the United States and, by virtue of federal law, not subject to State and local taxes shall be exempted from taxation.

(b) Real and personal property belonging to the State, counties, and municipalities is exempt from taxation.

(c) For purposes of this section:

(1) A specified unit of government (federal, State, or local) includes its departments, institutions, and agencies.

(2) By way of illustration but not by way of limitation, the following boards, commissions, authorities, and institutions are units of State government:

a. **(Repealed effective July 22, 2021.)** The State Marketing Authority established by G.S. 106-529.

b. The Board of Governors of the University of North Carolina incorporated under the provisions of G.S. 116-3 and known as "The University of North Carolina."

c. The North Carolina Museum of Art made an agency of the State under G.S. 140-5.12.

(3) By way of illustration but not by way of limitation, the following boards, commissions, authorities, and institutions are units of local government of this State:

a. An airport authority, board, or commission created as a separate and independent body corporate and politic by an act of the General Assembly.

b. An airport authority, board, or commission created as a separate and independent body corporate and politic by one or more counties or municipalities or combinations thereof under the authority of an act of the General Assembly.

c. A hospital authority created under G.S. 131E-17.

d. A housing authority created under G.S. 157-4 or G.S. 157- 4.1.

e. A municipal parking authority created under G.S. 160-477.

f. A veterans' recreation authority created under G.S. 165-26.

Additional Statute Referenced:

- G.S. 116-16 The lands and other property belonging to the University of North Carolina shall be exempt from all kinds of public taxation.

Higher Court Decisions:

- In November 2008, the Court of Appeals heard the case of a public housing project. "Fayette Place was formed as a joint venture between Development Ventures, Inc. ('DVI'), which owned 99% of the newly formed company, and Creative Housing Development Strategies, Inc. ('CHD'), which owned 1% of the newly formed company. CHD, a North Carolina business corporation, is a wholly owned subsidiary of DVI. DVI, a North Carolina non-profit corporation, is itself wholly owned by The Housing Authority of the City of Durham, North Carolina…" The Court held that "[o]n review of the instant case, we hold the record contains sufficient evidence to show that the property belongs to the Housing Authority. Although legal title to the property is held by Fayette Place, we have previously held that the possession of legal title is not determinative as to the question of ownership. . . . Instead, this Court will focus its inquiry on the state's interest in the property. Where the state possesses a sufficient interest in the property, such as equitable title to the property, the property is said to belong to the state even where legal title to the property is held by another party."[82]

- In July 2004, the Court of Appeals examined the case of a student housing complex at Appalachian State University, owned and managed by a nonprofit corporation. "[T]he pertinent property belongs to the State through Appalachian Student Housing Corporation's (ASHC) holding title for the benefit of Appalachian State University [ASU] . . . ASHC limits rental availability to ASU students". The Court concluded that "the trust agreement specifically outlines the relationship between ASHC and ASU. . . . We hold that

[82] *In re Appeal of Fayette Place LLC*, Durham County, 193 N.C. App. 744, 668 S.E.2d 354, 2008 N.C. App. LEXIS 2027 (2008).

the equitable title held by ASU as beneficiary of this trust is sufficient to show that the property belongs to the State of North Carolina. Neither the North Carolina Constitution nor G.S. § 105-278.1(b) require the State to have legal title in order to exempt the property from taxation. Because the real property parcel in question here belongs to the State, it is exempted from ad valorem taxation according to both the constitutional exemption in Art. V, §2 and the statutory exemptions in G.S. §§ 116-16 and 105-278.1(b)."[83] Prior to the *Appalachian Student Housing* case, "one might have assumed that an equitable interest in property held by the state or one of its political subdivisions short of an out-right legal ownership interest would be insufficient to render property exempt from taxation as 'belonging to' the government."[84]

- In July 1980, the Supreme Court heard the case of a hotel on the campus of the University of North Carolina at Chapel Hill. The County assessed taxes because the hotel was used for commercial, not educational purposes. The court held that, "[b]ased on the language of Article V, Section 2(3) of our Constitution, which exempts State owned property from taxation without qualification, we adopt as the law of this jurisdiction the majority rule in States which have by constitution, as does North Carolina, unqualified tax exemption for State owned property. That is: State owned property is exempt from ad valorem taxation solely by reason of State ownership, regardless of the property's use."[85]

- However, there is a title requirement, just allowing access is not enough to classify the property as exempt. In a March 1978 Supreme Court decision, the following was determined, "[e]xamination of this record discloses that the University of North Carolina has no legal or equitable title to the land in question. Thus, the land simply does not belong to the University of North Carolina. We hold that the Court of Appeals correctly decided that the Foundation did not use the Forest exclusively for an exempt purpose and is not entitled to the exemption applicable to lands belonging to the University of North Carolina."[86]

Attorney General Opinions:

- In a March 28, 2000, Attorney General Opinion by Reginald L. Watkins, the question of property leased to a municipality was reviewed. "The Town contends the real estate was exempt under G.S. § 105-278.1(b) since it held substantially all rights to the property and

[83] *In re Appeal of Appalachian Student Housing Corp*., Watauga County, 165 N.C. App. 379, 384, 598 S.E.2d 701, 704 (2004).
[84] Denning, Shea Riggsbee. *A Guide to the Listing, Assessment, and Taxation of Property in North Carolina*. UNC School of Govt., 2009. p. 169.
[85] *In re University of N.C.,* Orange County, 300 N.C. 563, 268 S.E.2d 472 (1980).
[86] *In re North Carolina Forestry Found., Inc., Onslow County,* 35 N.C. App. 414, 242 S.E.2d 492 (1978), aff'd, 296 N.C. 330, 250 S.E.2d 236 (1979).

had assumed most burdens of ownership during the lease period." The following conclusion was made "G.S. § 105-278.1(b) exempts from taxation real property 'belonging to' municipalities. The words 'belonging to' suggest 'titled to' or 'owned by,' consistent with general listing requirements. G.S. § 105-302. Since the Town simply possessed a leasehold interest, the real estate was not exempt as property belonging to a municipality."[87]

- In a February 4, 1966, Attorney General Opinion by Thomas Wade Bruton, the question of are Chambers of Commerce exempt was examined. He concluded "I know of no provision of our statutes exempting chambers of commerce from ad valorem taxation; and, in my opinion, they are not entitled to exemption."[88]

G.S. 105-278.2 – Burial Property

Statute enacted:	1868 – 1869 session, Chapter 21
Statute revisions:	1935 session, Chapter 417; 1973 session, Senate bill 147; 1987 session, House bill 144; 2017 session, Senate bill 711; 2021 session, Senate bill 105
Application:	G.S. 105-278.2(a) Single, Form AV-10; G.S. 105-278.2(b) Not required
Requirement(s):	Use only, no ownership requirement

Statute: (Effective for taxes imposed for taxable years beginning before July 1, 2022)

(a) Real property set apart for burial purposes shall be exempted from taxation unless it is owned and held for purposes of (i) sale or rental or (ii) sale of burial rights therein. No application is required under G.S. 105-282.1 for property exempt under this subsection. A county cannot deny the exemption provided under this subsection to a taxpayer that lacks a survey or plat detailing the exempt property.

(b) Taxable real property set apart for human burial purposes is hereby designated a special class of property under authority of Article V, Section 2(2) of the North Carolina Constitution, and it shall be assessed for taxation taking into consideration the following:

(1) The effect on its value by division and development into burial plots;

[87] 2000 *N.C. AG* LEXIS 1 (3/28/2000).
[88] *N.C.A.G.* (1966).

(2) Whether it is irrevocably dedicated for human burial purposes by plat recorded with the Register of Deeds in the county in which the land is located; and

(3) Whether the owner is prohibited or restricted by law or otherwise from selling, mortgaging, leasing or encumbering the same.

(c) For purposes of this section, the term "real property" includes land, tombs, vaults, monuments, and mausoleums, and the term "burial" includes entombment.

Statute: (Effective for taxes imposed for taxable years beginning on or after July 1, 2022)

(d) Commercial Property. - Real property set apart for burial purposes that is owned and held for purposes of (i) sale or rental or (ii) sale of burial rights therein is exempt from taxation. A single application is required under G.S. 105-282.1 for property exempt under this subsection.

(e) Other Property. - Real property set apart for burial purposes not owned and held for a purpose listed in subsection (a) of this section is exempt from taxation. No application is required under G.S. 105-282.1 for property exempt under this subsection. A local government cannot deny the exemption provided under this subsection to a taxpayer that lacks a survey or plat detailing the exempt property.

(f) Terms. - For purposes of this section, the term "real property" includes land, tombs, vaults, monuments, and mausoleums, and the term "burial" includes entombment.

G.S. 105-278.3 – Real and Personal Property Used for Religious Purposes

Statute enacted:	1865 - 1866 session, Chapter 21
Statute revisions:	1935 session, Chapter 417; 1971 session, House bill 169; 1973 session, Senate bill 147; 1977 session, House bill 888; 2005 session, House bill 105; 2015 session, House bill 229
Application:	Single, Form AV-10
Requirement(s):	Ownership and use. Qualifying owner and qualifying exclusive use. Partially completed buildings qualify.

Statute:

(a) Buildings, the land they actually occupy, and additional adjacent land reasonably necessary for the convenient use of any such building shall be exempted from taxation if wholly owned by an agency listed in subsection (c), below, and if:

(1) Wholly and exclusively used by its owner for religious purposes as defined in subsection (d)(1), below; or

(2) Occupied gratuitously by one other than the owner and wholly and exclusively used by the occupant for religious, charitable, or nonprofit educational, literary, scientific, or cultural purposes.

(b) Personal property shall be exempted from taxation if wholly owned by an agency listed in subsection (c), below, and if:

(1) Wholly and exclusively used by its owner for religious purposes; or

(2) Gratuitously made available to one other than the owner and wholly and exclusively used by the possessor for religious, charitable, or nonprofit educational, literary, scientific, or cultural purposes.

(c) The following agencies, when the other requirements of this section are met, may obtain exemption for their properties:

(1) A congregation, parish, mission, or similar local unit of a church or religious body; or

(2) A conference, association, presbytery, diocese, district, synod, or similar unit comprising local units of a church or religious body.

(d) Within the meaning of this section:

(1) A religious purpose is one that pertains to practicing, teaching, and setting forth a religion. Although worship is the most common religious purpose, the term encompasses other activities that demonstrate and further the beliefs and objectives of a given church or religious body. Within the meaning of this section, the ownership and maintenance of a general or promotional office or headquarters by an owner listed in subdivision (2) of subsection (c), above, is a religious purpose and the ownership and maintenance of residences for clergy, rabbis, priests or nuns assigned to or serving a congregation, parish, mission or similar local unit, or a conference, association, presbytery, diocese, district, synod, province or similar unit of a church or religious body or residences for clergy on furlough or unassigned, is also a religious purpose. However, the ownership and maintenance of residences for other employees is not a religious purpose for either a local unit of a church or a religious body or a conference, association, presbytery, diocese, district, synod, or similar unit of a church or religious body. Provided, however, that where part of property which otherwise qualifies for the

exemption provided herein is made available as a residence for an individual who provides guardian, janitorial and custodial services for such property, or who oversees and supervises qualifying activities upon and in connection with said property, the entire property shall be considered as wholly and exclusively used for a religious purpose.

(2) A charitable purpose is one that has humane and philanthropic objectives; it is an activity that benefits humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward. The humane treatment of animals is also a charitable purpose.

(3) An educational purpose is one that has as its objective the education or instruction of human beings; it comprehends the transmission of information and the training or development of the knowledge or skills of individual persons.

(4) A literary purpose is one that pertains to letters or literature, especially writing, publishing, and the study of literature. It includes the literature of the stage and screen as well as the performance or exhibition of works based on literature.

(5) A cultural purpose is one that is conducive to the enlightenment and refinement of taste acquired through intellectual and aesthetic training, education, and discipline.

(6) A scientific purpose is one that yields knowledge systematically through research, experimentation or other work done in one or more of the natural sciences.

(e) Notwithstanding the exclusive-use requirement of subsection (a), above, if part of a property that otherwise meets that subsection's requirements is used for a purpose that would require exemption if the entire property were so used, the valuation of the part so used shall be exempted from taxation.

(f) The fact that a building or facility is incidentally available to and patronized by the general public, so long as there is no material amount of business or patronage with the general public, shall not defeat the exemption granted by this section.

(g) The following exceptions apply to the exclusive-use requirement of subsection (a) of this section:

(1) If part, but not all, of a property meets the requirements of subsection (a) of this section, the valuation of the part so used is exempt from taxation.

(2) Any parking lot wholly owned by an agency listed in subsection (c) of this section may be used for parking without removing the tax exemption granted in this section if the total charge for parking uses does not exceed that portion of the actual maintenance expenditures for the parking lot reasonably estimated to have

been made on account of parking uses. This subsection shall apply beginning with the taxable year that commences on January 1, 1978.

(3) A building and the land occupied by the building is exempt from taxation if it is under construction and intended to be wholly and exclusively used by its owner for religious purposes upon completion. For purposes of this subdivision, a building is under construction starting when a building permit is issued and ending at the earlier of (i) 90 days after a certificate of occupancy is issued or (ii) 180 days after the end of active construction.

Court of Appeals Decisions:

- In June 2015, the Court of Appeals heard the case of a church seeking exemption. The Court concluded that "[i]n order for property to qualify for the religious purposes tax exemption, there must have been a building on the property that was actually being used for religious purposes as of January 1 of the tax year in question. [T]he intermittent use of the property was not sufficient to constitute wholly and exclusive use for religious purposes as provided by N.C.G.S. § 105-278.3(a)."[89] After this case was heard, the General Assembly passed a bill changing the statute to allow buildings under construction to qualify for the exemption, if they met the other criteria set forth in the statute.

- In September 2003, the Court of Appeals heard the case of a church seeking exemption for a property with no building. "The church contends that real property owned by the Church should be exempt from taxation under § 105-278.3 even if the land has no buildings on it. The Church argues alternatively that if the tax exemption provided in § 105-278.3 requires that there be buildings on the land, then the statute is unconstitutional as applied to the Church because the Church's religious tenets prohibit members worshiping in buildings." The Court held that "[t]he focus of the exemption is on 'buildings.' Land is exempted only to the extent necessary for convenient use of the building. The Church's construction of the statute would significantly expand the scope of the exemption to cover not only buildings, but land used for religious purposes. It is for the General Assembly to determine what property should be exempt from taxation and when the General Assembly has intended to exempt land, as opposed to buildings, it has done so explicitly."

  The Court went on to say "[w]e hold that N.C Gen. Stat. § 105-278.3 does not provide for a tax exemption in the absence of buildings used by the owner 'for religious purposes.' Because the property has no buildings at all, it does not qualify for tax exemption under N.C. Gen. Stat. § 105-278.3. Because the Church is not barred by its

[89] *In re Vienna Baptist Church*, Forsyth County, 241 N.C. App. 268, 773 S.E.2d 97, 2015 N.C. App. LEXIS 443 (2015).

beliefs from constructing buildings to be used for non-worship related religious purposes and therefore may, without violating its religious beliefs, still qualify for the tax exemption under N.C. Gen. Stat. § 105-278.3, this case presents no constitutional issue."[90]

- In July 2001, the Court of Appeals heard the case of a day care center. The appellant "argues that the Tax Commission erred in concluding (I) that the educational activities the Center provides are merely incidental to its custodial services; (II) that the educational services the Center provides are not sufficient to meet the '[w]holly and exclusively' educational standard described in N.C. Gen. Stat. § 105-278.4 (a) (4); and (III) that CHDCC is not entitled to exemption from ad valorem taxation while independent, nonprofit day care centers located in church buildings are entitled to such an exemption." The Court held that "[t]he County correctly states that N.C. Gen. Stat. § 105-278.4 does not specifically mention an exemption for custodial institutions such as day care facilities. We are also persuaded by the County's argument that CHDCC's accreditation by the NAEYC [National Association for the Education of Young Children] is further evidence that CHDCC is custodial in nature, as the NAEYC does not accredit educational facilities."

  The Court went on to say "N.C. Gen. Stat. § 105-278.4 (a) (4) requires an institution to have a '[w]holly and exclusively' educational purpose in order to trigger a tax exemption. While we agree that some of CHDCC's activities serve to educate the children enrolled there, that is not enough to trigger tax exempt status under N.C. Gen. Stat. § 105-278.4. The Commission's findings of fact and conclusions of law are supported by competent evidence and are neither arbitrary nor capricious. Moreover, we find that N.C. Gen. Stat. § 105-278.3 (authorizing tax exemptions for real and personal property used for religious purposes) and N.C. Gen. Stat. § 105-278.4 (authorizing tax exemptions for real and personal property used for educational purposes) are constitutionally distinguishable from N.C. Gen. Stat. § 105-275 (32)."[91]

- In October 1995, the Court of Appeals heard the case of a church camp. The Court held that "[t]here is substantial evidence in this record that the primary purpose of the Camp was to serve the religious and spiritual needs of the members of the Methodist Church. The fact that others were permitted to use the Camp and that some were charged a fee is not determinative. Exempt property pursuant to N.C. Gen. Stat. § 105-278.3 includes not only buildings and the land the buildings occupy, but also any 'adjacent land reasonably necessary for the convenient use of any such building[s].' N.C.G.S. § 105-278.3(a) (1992). The Commission therefore did not err as a matter of law in concluding

[90] *In re Appeal of the Church of Yahshua the Christ at Wilmington*, Pender County, 160 N.C. App. 235, 238, 584 S.E.2d 827, 829 (2003).

[91] *In re Chapel Hill Day Care Ctr., Inc.,* Orange County, 144 N.C. App. 649, 551 S.E.2d 172, 2001 N.C. App. LEXIS 565 (2001), appeal dismissed, 355 N.C. 492, 563 S.E.2d 564 (2002).

that the natural areas of the Camp, where no improvements were located, were properly within the scope of section 105-278.3."[92]

- In March 1989, the Court of Appeals heard the case of a church seeking exemption for buffer land. Appellants contend on appeal that the Commission decision was unsupported by the evidence and that the Commission erred as a matter of law in denying the church an exemption for Lot 37. "Appellants assert that the activities occurring on the property, as well as the lot's function as a buffer, constituted sufficient 'present use' for 'religious purposes' to warrant exemption." The Court held that "[a]lthough the uncontradicted evidence presented at the hearing demonstrated the church's need for a buffer zone to protect it from encroaching industrial development, the Commission failed to consider that evidence. Accordingly, we hold that the decision was unsupported by competent, material, and substantial evidence appearing in the record. However, we emphasize the narrowness of our holding. We do not attempt here to draw bright lines or to quantify the amount of acreage a church reasonably may purchase for the purpose of establishing a buffer zone. Each case turns upon its unique facts, and appellate courts will view with a careful eye any acquisition of extensive acreage under less compelling facts."

  Some additional conclusions made in the Worley case, "[t]he rule in North Carolina is that unless property is 'presently used' for tax exempt purposes, it is not tax exempt. Because no public purpose is served by permitting land to lie unused and untaxed, present use, not intended use, controls. Thus, property merely held for planned future religious purposes is not exempt. Although it is not clear from the record in this case what community recreational use of the property was made, beyond hunting, it is undisputed that the church youth groups used Lot 37 for recreational church-related activities. . . . Lot 37 was not removed from the operation of the exemption statute simply because it was also being held for future use. Although we decline to hold that permitting hunting on Lot 37 was an exempt 'religious purpose,' we conclude that the other recreational activities that occurred there and the use of the property as a spiritual retreat together constituted sufficient 'present use wholly and exclusively for religious purposes' to warrant exemption."[93]

- In May 1983, the Court of Appeals heard the case of a church using a portion of their property for neighborhood recreational and Scout activities. "The County, while conceding that the property is held for religious purposes, maintains that petitioner is not entitled to have its land exempted because it is not 'used' for religious purposes and is

[92] *In re Mount Shepherd Methodist Camp*, Randolph County, 120 N.C. App. 388, 462 S.E.2d 229 (1995).
[93] *In re Worley*, Alamance County, 93 N.C. App. 191, 377 S.E.2d 270 (1989).

not reasonably necessary for the convenient use of petitioner's buildings." The Court held that "nevertheless, we are persuaded that petitioner is presently using the 15.56 acre portion of its property wholly and exclusively for religious purposes and that such use is reasonably necessary for the convenient use of its existing structures. The record shows that the uses to which the subject property is being put are for neighborhood recreation activities and for Boy Scout and Girl Scout activities such as camp-outs and athletics. We are persuaded that such activities qualify as activities that demonstrate and further the beliefs and objectives of Southview Presbyterian Church, see G.S. 105-278.3 (d)(1), and that the 15.56 acre tract is reasonably necessary for the convenient use of petitioner's church buildings."[94]

- In 1940, the Supreme Court heard the case of a church seeking exemption for an unimproved lot not directly connected to the improved parcel. "When given this ordinary meaning, adjacent land which is reasonably necessary for the convenient use of the building wholly and exclusively for religious purposes must lie close to, but not necessarily in contact with the land on which the building is situated. The lot in question is stated to be four or five blocks away, but other adjoining lands were not available. The agreed facts show that the lot is reasonably necessary for the convenient use of the church, and is wholly and exclusively used for religious worship."[95]

G.S. 105-278.4 – Real and Personal Property Used for Educational Purposes

Statute enacted:	1865 - 1866 session, Chapter 21
Statute revisions:	1935 session, Chapter 417; 1971 session, House bill 169; 1973 session, Senate bill 147; 1977 session, House bill 888; 1991 session, Senate bill 811; 2003 session, Senate bill 277; 2011 session, House bill 200
Application:	Single, Form AV-10
Requirement(s):	Ownership and use. Qualifying owner and qualifying exclusive use.

Statute:

(a) Buildings. - Buildings, the land they actually occupy, and additional land reasonably necessary for the convenient use of any such building shall be exempted from taxation if all of the following requirements are met:

[94] *In re Southview Presbyterian Church*, Cumberland County, 62 N.C. App. 45, 302 S.E.2d 298 (1983).
[95] *In re Harrison v. Guilford County*, 218 N.C. 718, 12 S.E.2d 269 (1940).

(1) Owned by either of the following:

a. An educational institution; or

b. A nonprofit entity for the sole benefit of a constituent or affiliated institution of The University of North Carolina, a nonprofit postsecondary educational institution as described in G.S. 116-280, a North Carolina community college, or a combination of these;

(2) The owner is not organized or operated for profit and no officer, shareholder, member, or employee of the owner or any other person is entitled to receive pecuniary profit from the owner's operations except reasonable compensation for services;

(3) Of a kind commonly employed in the performance of those activities naturally and properly incident to the operation of an educational institution such as the owner; and

(4) Wholly and exclusively used for educational purposes by the owner or occupied gratuitously by another nonprofit educational institution and wholly and exclusively used by the occupant for nonprofit educational purposes.

(b) Land. - Land (exclusive of improvements); and improvements other than buildings, the land actually occupied by such improvements, and additional land reasonably necessary for the convenient use of any such improvement shall be exempted from taxation if:

(1) Owned by an educational institution that owns real property entitled to exemption under the provisions of subsection (a), above;

(2) Of a kind commonly employed in the performance of those activities naturally and properly incident to the operation of an educational institution such as the owner; and

(3) Wholly and exclusively used for educational purposes by the owner or occupied gratuitously by another nonprofit educational institution (as defined herein) and wholly and exclusively used by the occupant for nonprofit educational purposes.

(c) Partial Exemption. - Notwithstanding the exclusive-use requirements of subsections (a) and (b), above, if part of a property that otherwise meets the requirements of one of those subsections is used for a purpose that would require exemption if the entire property were so used, the valuation of the part so used shall be exempted from taxation.

(d) Public Use. - The fact that a building or facility is incidentally available to and patronized by the general public, so long as there is no material amount of business or patronage with the general public, does not defeat the exemption granted by this section.

(e) Personal Property. - Personal property owned by a church, a religious body, or an educational institution shall be exempted from taxation if:

(1) The owner is not organized or operated for profit, and no officer, shareholder, member, or employee of the owner, or any other person is entitled to receive pecuniary profit from the owner's operations except reasonable compensation for services; and

(2) Used wholly and exclusively for educational purposes by the owner or held gratuitously by a church, religious body, or nonprofit educational institution other than the owner, and wholly and exclusively used for nonprofit educational purposes by the possessor.

(f) Definitions. - The following definitions apply in this section:

(1) Educational institution. - The term includes a university, a college, a school, a seminary, an academy, an industrial school, a public library, a museum, and similar institutions.

(2) Educational purpose. - A purpose that has as its objective the education or instruction of human beings; it comprehends the transmission of information and the training or development of the knowledge or skills of individual persons. The operation of a student housing facility, a student dining facility, a golf course, a tennis court, a sports arena, a similar sport property, or a similar recreational sport property for the use of students or faculty is also an educational purpose, regardless of the extent to which the property is also available to and patronized by the general public.

Higher Court Decisions:

- In June 2009, the Court of Appeals heard the case of a nonprofit foundation operating a summer camp and winter school. "The Foundation contends that it met its burden of proof under this statute because, inter alia, it 'exclusively dedicates its property to educational endeavors.'" The Court held that "[t]he record contains substantial evidence that the Foundation's property is not 'wholly and exclusively' used for educational purposes. Indeed, during the summer months when the Foundation operates Eagle's Nest Camp, the Foundation's property is primarily used for recreational purposes. As the Commission concluded, any educational aspect of these activities is incidental to the activities' recreational purposes."[96]

- In July 2004, the Court of Appeals examined the case of an apartment complex for Appalachian State University. "[T]he pertinent property belongs to the State through

[96] *In re Eagle's Nest Found*., Transylvania County, 194 N.C. App. 770, 671 S.E.2d 366, 2009 N.C. App. LEXIS 5 (2009).

Appalachian Student Housing Corporation's (ASHC) holding title for the benefit of Appalachian State University [ASU] . . . ASHC limits rental availability to ASU students". The Court concluded that "ASHC argues several other grounds for exemption of the property from taxation, including G.S. §§ 105-278.4 and 105-278.7. Because we have already determined that the property in question is owned by the State of North Carolina so as to exempt it from taxation, we need not reach ASHC's arguments on these points. However, we do write briefly to express our strong disagreement with the Commission's conclusion of law #4 that states 'student housing is not an activity that is naturally and properly incident to the operation of an educational institution.'"[97]

- In July 2003, the Court of Appeals heard the case of a non-accredited university operating a restaurant. "Taxpayer intended to use the restaurant as a learning environment 'for people to assimilate what they are learning in theory and be able to practice that effectively when they go out.' The objective was for students to work in an environment where people had to deal with issues of 'leadership, communication, time management, [and] money management, every single day.' Taxpayer argues that the Commission erred in concluding that the restaurant was not of the kind commonly employed or incidental to the operation of an educational institution." The Court concluded that "[w]e hold that the property was not used in a manner that was naturally and properly incidental to the operation of an educational purpose."[98]

- In September 2002, the Court of Appeals heard the case of a missionary training base. "The Assessor granted TMM an exemption for all structures used to house or train missionaries, as well as 100 acres of the 1,347 acre lot. It did not grant tax-exempt status for the remaining buildings and 1,247 acres. TMM argues that the owner's home, the guest house, office building, duplex, and storage building should also be exempt because these buildings are similarly necessary to the educational purposes of the institution." The Court held that "[w]e find nothing else in the whole record to indicate that all of the buildings are used 'wholly and exclusively' for educational purposes, and we agree with the conclusion that TMM has not met its burden of proving that its buildings are all entitled to an education exemption from ad valorem taxation." The Court also made a similar statement in regards to the camping area on the property. In regards to the buffer zone area the Court concluded that "TMM failed to show that it requires more than 100

[97] *In re Appeal of Appalachian Student Housing Corp*., Watauga County, 165 N.C. App. 379, 384, 598 S.E.2d 701, 704 (2004).
[98] *In re Univ. for the Study of Human Goodness & Creative Group Work*, Forsyth County, 159 N.C. App. 85, 582 S.E.2d 645, 2003 N.C. App. LEXIS 1423 (2003).

acres to buffer it from encroaching urbanization, development, or other forces that might compromise its educational purpose."[99]

- In August 2002, the Court of Appeals heard the case of a spiritual center, teaching meditation, that was seeking exemption. The Court held that "[t]he wording and the construction of N.C. Gen. Stat. § 105-278.4 make it clear that there are four separate and distinct requirements which the Spiritual Center must meet to qualify for an educational exemption. N.C. Gen Stat. § 105-278.4 does not require in the plain language of the statute that to be classified as an education institution, an organization must meet certain formalities such as a degree or certification, or accreditation. The statute expressly provides for partial exemption where a discrete part of a larger property is used for tax exempt purposes."[100]

- In July 2001, the Court of Appeals heard the case of a day care center. The appellant "argues that the Tax Commission erred in concluding (I) that the educational activities the Center provides are merely incidental to its custodial services; (II) that the educational services the Center provides are not sufficient to meet the '[w]holly and exclusively' educational standard described in N.C. Gen. Stat. § 105-278.4 (a) (4); and (III) that CHDCC is not entitled to exemption from ad valorem taxation while independent, nonprofit day care centers located in church buildings are entitled to such an exemption." The Court held that "[t]he County correctly states that N.C. Gen. Stat. § 105-278.4 does not specifically mention an exemption for custodial institutions such as day care facilities. We are also persuaded by the County's argument that CHDCC's accreditation by the NAEYC [National Association for the Education of Young Children] is further evidence that CHDCC is custodial in nature, as the NAEYC does not accredit educational facilities."

  The Court went on to say 'N.C. Gen. Stat. § 105-278.4 (a) (4) requires an institution to have a '[w]holly and exclusively' educational purpose in order to trigger a tax exemption. While we agree that some of CHDCC's activities serve to educate the children enrolled there, that is not enough to trigger tax exempt status under N.C. Gen. Stat. § 105-278.4. The Commission's findings of fact and conclusions of law are supported by competent evidence and are neither arbitrary nor capricious. Moreover, we find that N.C. Gen. Stat. § 105-278.3 (authorizing tax exemptions for real and personal property used for religious purposes) and N.C. Gen. Stat. § 105-278.4 (authorizing tax exemptions for

[99] *In re Master's Mission*, Graham County, 152 N.C. App. 640, 568 S.E.2d 208, 2002 N.C. App. LEXIS 964 (2002).
[100] *In re Maharishi Spiritual Ctr. of Am.*, Watauga County, 357 N.C. 152, 579 S.E.2d 249, 2003 N.C. LEXIS 424 (2003).

real and personal property used for educational purposes) are constitutionally distinguishable from N.C. Gen. Stat. § 105-275 (32)."[101]

- In October 1999, the Court of Appeals heard the case of a seminary seeking exemption for its 600 acres of land. "The County argues that the requirements of section 105-278.4 were not met in that the parcels at issue were not incidental to the operation of the Seminary, nor were they wholly and exclusively used for educational purposes." The Court concluded that "[t]his statute permits consideration of the nature of the particular educational institution in determining whether an educational exemption may be applied. Unimproved land may be educationally exempted if it is for the convenient use of improved land and '[o]f a kind commonly employed in the performance of those activities naturally and properly incident to the operation of an educational institution such as the owner[.]' N.C. Gen. Stat. § 105-278.4 (b) (2)."

  The Court went on to say "in light of the wording of the statute, which speaks of both improved land and land necessary for convenient use of improved land, we see no reason to exclude land from consideration for an educational exemption merely because it is undeveloped, so long as sufficient competent, material, and substantial evidence is presented to support the exemption. North Carolina courts have held that future planned use of exempted property does not override the present use. To be eligible for an educational exemption, there is no requirement that the party seeking the exemption have a positive intent to hold or use that property for some exempt purpose ad infinitum. . . . the four requirements of the statute are reasonably objective and do not result in any hostile or systematic discrimination. By contrast, section 105-278.4 enumerates within the body of the statute the requirements necessary to qualify for the exemption. No additional guidelines need be implemented to qualify property as exempt."[102]

- In a September 1993 Court of Appeals case, the Court stated that "the Commission held that the ACC was not a separate entity from its constituent schools and that since each member was an educational institution, exempt from taxation, then the ownership requirement was met. In support of this conclusion, the Commission found that the ACC was an unincorporated association consisting of eight member institutions."[103]

- In April 1981, the Court of Appeals heard the case of a university that allowed a business to use the football stadium parking. The "County contends that in order to qualify for exemption under the statute, Wake Forest must either (a) wholly and exclusively use all

[101] *In re Chapel Hill Day Care Ctr., Inc.*, Orange County, 144 N.C. App. 649, 551 S.E.2d 172, 2001 N.C. App. LEXIS 565 (2001), appeal dismissed, 355 N.C. 492, 563 S.E.2d 564 (2002).
[102] *In re Southeastern Baptist Theological Seminary, Inc*., Wake County, 135 N.C. App. 247, 520 S.E.2d 302 (1999).
[103] *In re Atl. Coast Conference*, 112 N.C. App. 1, 434 S.E.2d 865 (1993), Guilford County, aff'd, 336 N.C. 69, 441 S.E.2d 550 (1994).

of the property, or (b) wholly and exclusively use a portion of the property, in which case only that portion so used qualifies for exemption." The Court held that "[f]rom our review of the applicable law, the evidence and our findings of fact, we conclude and so decide that all of the subject property except the portion actually used by Reynolds is exempt from taxes under the provisions of G.S. 105-278.4."[104]

- In January 1979, the Supreme Court heard the case of a foundation owning forest land. "The Foundation stressfully contends that its use of the property brings it within the excluding language of the statute and argues that where the property is used for educational purposes, the general rule requiring a statute to be construed strictly must yield to a less narrow and stringent construction. The Foundation nevertheless contends that the term 'exclusively' is not to be construed literally and that in the statutes here considered the word refers to the primary and inherent activity and does not preclude incidental activities related to the primarily exempt activity." The Court held that "[w]e have already concluded that said property is not 'exclusively used' by the Foundation. Neither is it 'occupied gratuitously by another nonprofit educational institution . . . and wholly and exclusively used by the occupant [Paper Company] for nonprofit educational purposes.' On the contrary, the Forest is used by the Paper Company, obviously not a nonprofit educational institution, as a commercial enterprise."[105]

- A 1941 Supreme Court case held that "[p]roperty held for any of these purposes is supposed to be withdrawn from the competitive field of commercial activity, and hence it was not thought violative of the rule of equality or uniformity, to permit its exemption from taxation while occupying this favored position. But when it is thrust into the business life of the community, it loses its sheltered place, regardless of the character of the owner, for it is then held for profit or gain."[106] The case was referenced later stating "[h]olding the buildings owned by Elon [C]ollege and rented for business purposes were taxable despite the college's use of all the profits for educational purposes. The fact that a commercial enterprise devotes its entire profits to a charitable or other laudable purpose does not change the character of its business nor the purpose for which it is held. It is still a commercial enterprise, and is held as such."[107]

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[104] *In re Wake Forest Univ.*, Forsyth County, 51 N.C. App. 516, 277 S.E.2d 91, cert. denied, 303 N.C. 544, 281 S.E.2d 391 (1981).
[105] *In re North Carolina Forestry Found., Inc.*, Onslow County, 35 N.C. App. 414, 242 S.E.2d 492 (1978), aff'd, 296 N.C. 330, 250 S.E.2d 236 (1979).
[106] *Rockingham v. Elon College*, Rockingham County, 219 N.C. 342, 13 S.E.2d 618 (1941).
[107] *In re Grandfather Mt. Stewardship Found.*, Inc., Avery County, 235 N.C. App. 561, 762 S.E.2d 364, 2014 N.C. App. LEXIS 894 (2014) (quoting *Rockingham v. Elon College*, 219 N.C. 342, 13 S.E.2d 618 (1941).

G.S. 105-278.5 – Real and Personal Property of Religious Educational Assemblies Used for Religious and Educational Purposes

Statute enacted:	1865 - 1866 session, Chapter 21
Statute revisions:	1935 session, Chapter 417; 1971 session, House bill 169; 1973 session, Senate bill 147
Application:	Single, Form AV-10
Requirement(s):	Ownership and use. Qualifying owner and qualifying exclusive use.

Statute:

(a) Buildings, the land they actually occupy, and additional adjacent land reasonably necessary for the convenient use of any such building or for the religious educational programs of the owner, shall be exempted from taxation if:

(1) Owned by a religious educational assembly, retreat, or similar organization;

(2) No officer, shareholder, member, or employee of the owner, or any other person is entitled to receive pecuniary profit from the owner's operations except reasonable compensation for services; and

(3) Of a kind commonly employed in those activities naturally and properly incident to the operation of a religious educational assembly such as the owner; and

(4) Wholly and exclusively used for

a. Religious worship or

b. Purposes of instruction in religious education.

(b) Notwithstanding the exclusive-use requirement of subsection (a), above, if part of a property that otherwise meets the subsection's requirements is used for a purpose that would require exemption if the entire property were so used, the valuation of the part so used shall be exempted from taxation.

(c) The fact that a building or facility is incidentally available to and patronized by the general public, so long as there is no material amount of business or patronage with the general public, shall not defeat the exemption granted by this section.

(d) Personal property owned by a religious educational assembly, retreat, or similar organization shall be exempted from taxation if it is exclusively maintained and used in connection with real property granted exemption under the provisions of subsection (a) or (b), above.

G.S. 105-278.6 – Real and Personal Property Used for Charitable Purposes

Statute enacted:	1865 - 1866 session, Chapter 21
Statute revisions:	1935 session, Chapter 417; 1971 session, House bill 169; 1973 session, Senate bill 147; 1975 session, House bill 329; 1993 session, House bill 936; 2007 session, Senate bill 1876; 2009 session, House bill 1586; 2009 session, Senate bill 1177; 2011 session, House bill 417
Application:	Single, Form AV-10
Requirement(s):	Ownership and use. Qualifying owner and qualifying exclusive use. 10-year future site construction limit.

Statute:

(a) Real and personal property owned by:

(1) A Young Men's Christian Association or similar organization;

(2) A home for the aged, sick, or infirm;

(3) An orphanage or similar home;

(4) A Society for the Prevention of Cruelty to Animals;

(5) A reformatory or correctional institution;

(6) A monastery, convent, or nunnery;

(7) A nonprofit, life-saving, first aid, or rescue squad organization;

(8) A nonprofit organization providing housing for individuals or families with low or moderate incomes shall be exempted from taxation if: (i) As to real property, it is actually and exclusively occupied and used, and as to personal property, it is entirely and completely used, by the owner for charitable purposes; and (ii) the owner is not organized or operated for profit.

(b) A charitable purpose within the meaning of this section is one that has humane and philanthropic objectives; it is an activity that benefits humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward. The humane treatment of animals is also a charitable purpose.

(c) The fact that a building or facility is incidentally available to and patronized by the general public, so long as there is no material amount of business or patronage with the general public, shall not defeat the exemption granted by this section.

(d) Notwithstanding the exclusive-use requirements of this section, if part of a property that otherwise meets the section's requirements is used for a purpose that would require exemption under subsection (a), above, if the entire property were so used, the valuation of the part so used shall be exempted from taxation.

(e) Real property held by an organization described in subdivision (a)(8) for a charitable purpose under this section as a future site for housing for individuals or families with low or moderate incomes may be classified under this section for no more than 10 years. The taxes that would otherwise be due on real property exempt under this subsection shall be a lien on the property as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit as deferred taxes. The deferred taxes are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when the property was not used for low- or moderate-income housing within 10 years from the first day of the fiscal year the property was classified under this subsection. In addition to the provisions in G.S. 105-277.1F, all liens arising under this subdivision are extinguished when the property is used for low- or moderate-income housing within the time period allowed under this subsection.

Higher Court Decisions:

- In March 2013, the Court of Appeals heard the case of an apartment complex, Cane Creek Village, for low-income families. "It's managing member, NHE [Northwestern Housing Enterprises, Inc.] owns 0.1% of Blue Ridge Housing. Its investor member, the North Carolina Equity Fund III Limited Partnership ('NCEFIII') owns 99.9%." The County contended that the taxpayer "should never have received tax-exempt status because NHE did not have a sufficient ownership interest in Blue Ridge Housing to qualify Cane Creek Village for exemption under N.C. Gen. Stat. § 105-278.6 (a) (8)." The Court reviewed and concluded that "[s]ince NHE's actual ownership interest is small, it must present significant evidence of other factors suggesting ownership. We believe NHE meets this burden. Specifically, we consider: (i) NHE's control of Cane Creek Village's operations; (ii) NHE's role as trustee of Blue Ridge Housing's property; (iii) NHE's right of first refusal to purchase the NCEFIII's 99.9% ownership interest; and (iv) the intent of NHE and the NCEFIII. Ultimately, on balance we conclude that although NHE has a small legal percentage interest in Blue Ridge Housing, other substantial factors indicate NHE owns Cane Creek Village for tax purposes."

The above case also created a test for defining ownership. "When an otherwise-qualifying entity has an ownership interest in less than 100% of the property, we balance the actual ownership with other factors indicative of ownership. If other factors strongly suggest ownership, they can outweigh even a diminutive actual ownership interest. These factors may include, but are not limited to: (i) the entity's control of the venture's operations; (ii) the entity's status as trustee of LLC property; (iii) the possibility of future increased actual ownership interest; and (iv) the intent of the participating parties."[108]

- In September 1984, the Court of Appeals heard the case of a residential retirement center. The Court held that "[w]e cannot agree with LRM's contentions. As we stated in *In re Chapel Hill Residential Retirement Center*, supra: 'merely supplying care and attention to elderly persons cannot, alone constitute charity.' Here, as in *In re Chapel Hill Residential Retirement Center*, supra, the residents will be paying large sums of money for the services rendered. Further, LRM's screening procedures, admissions guidelines and admission and occupancy fees are at such a level that common sense tells us that only a small percentage of the elderly could feasibly participate in LRM's retirement center. We would also note that while LRM talks of a 'moral commitment' to furnish lifetime care to those residents who become unable to provide the fees mandated by the contract, LRM reserves the right to terminate any resident for non-payment of fees."[109]

- In January 1983, the Court of Appeals heard the case of a retirement center. The Court concluded that "[t]he concept of charity is not confined to the relief of the needy and destitute, for `aged people require care and attention apart from financial assistance, and the supply of this care and attention is as much a charitable and benevolent purpose as the relief of their financial wants.' While we recognize and applaud efforts similar to Carol Woods as being a progressive and desirable approach to the residential and health care and personal security of elderly persons, these laudable aspects of petitioner's operation do not suffice to bring it within the statutory classification of a charitable purpose."[110]

- In January 1979, the Supreme Court heard the case of a foundation owning forest land. "The Foundation stressfully contends that its use of the property brings it within the excluding language of the statute and argues that where the property is used for educational purposes, the general rule requiring a statute to be construed strictly must yield to a less narrow and stringent construction. The Foundation nevertheless contends that the term 'exclusively' is not to be construed literally and that in the statutes here considered the word refers to the primary and inherent activity and does not preclude

[108] *In re Blue Ridge Housing of Bakersville LLC*, Mitchell County, 747 S.E.2d 526 (2013).
[109] *In re Barham*, Alamance County, 70 N.C. App. 236, 319 S.E.2d 657 (1984).
[110] *In re Chapel Hill Residential Retirement Center, Inc*., Orange County, 60 N.C. App. 294, 299 S.E.2d 782, cert. denied, 308 N.C. 386, 302 S.E.2d 249 (1983).

incidental activities related to the primarily exempt activity." The Court held that "[w]e have concluded that the property in question is not 'exclusively used' by the Foundation. Furthermore, we disagree with the Foundation's contention that, due to the placement of commas, any nonprofit organization comes within the purview of this statute. Applying the rule of ejusdem generis, it is apparent that 'nonprofit' is limited to 'life-saving, first aid, or rescue squad organization.' Had the Legislature intended such a broad exemption so as to include all nonprofit organizations, it would have so stated without beclouding its intention by the use of the specific type organization set out in 105-278.6(a)(7)."[111]

G.S. 105-278.7 – Real and Personal Property Used for Educational, Scientific, Literary, or Charitable Purposes

Statute enacted:	1865 - 1866 session, Chapter 21
Statute revisions:	1935 session, Chapter 417; 1971 session, House bill 169; 1973 session, Senate bill 147; 1995 session, Senate bill 1178; 2005 session, House bill 105
Application:	Single, Form AV-10
Requirement(s):	Ownership and use. Qualifying owner and qualifying exclusive use.

Statute:

(a) Buildings, the land they actually occupy, and additional adjacent land necessary for the convenient use of any such building shall be exempted from taxation if wholly owned by an agency listed in subsection (c), below, and if:

(1) Wholly and exclusively used by its owner for nonprofit educational, scientific, literary, or charitable purposes as defined in subsection (f), below; or

(2) Occupied gratuitously by an agency listed in subsection (c), below, other than the owner, and wholly and exclusively used by the occupant for nonprofit educational, scientific, literary, charitable, or cultural purposes. Occupied gratuitously by an agency listed in subsection (c), below, other than the owner, and wholly and exclusively used by the occupant for nonprofit educational, scientific, literary, charitable, or cultural purposes.

[111] *In re North Carolina Forestry Found., Inc*., Onslow County, 35 N.C. App. 414, 242 S.E.2d 492 (1978), aff'd, 296 N.C. 330, 250 S.E.2d 236 (1979).

(b) Personal property shall be exempted from taxation if wholly owned by an agency listed in subsection (c), below, and if:

(1) Wholly and exclusively used by its owner for nonprofit educational, scientific, literary, or charitable purposes; or

(2) Gratuitously made available to an agency listed in subsection (c), below, other than the owner, and wholly and exclusively used by the possessor for nonprofit educational, scientific, literary, or charitable purposes.

(c) The following agencies, when the other requirements of this section are met, may obtain property tax exemption under this section:

(1) A charitable association or institution,

(2) An historical association or institution,

(3) A veterans' organization or association,

(4) A scientific association or institution,

(5) A literary association or institution,

(6) A benevolent association or institution, or

(7) A nonprofit community or neighborhood organization.

(d) Notwithstanding the exclusive-use requirements of subsection (a), above, if part of a property that otherwise meets the subsection's requirements is used for a purpose that would require exemption if the entire property were so used, the valuation of the part so used shall be exempted from taxation.

(e) The fact that a building or facility is incidentally available to and patronized by the general public, so long as there is no material amount of business or patronage with the general public, shall not defeat the exemption granted by this section.

(f) Within the meaning of this section:

(1) An educational purpose is one that has as its objective the education or instruction of human beings; it comprehends the transmission of information and the training or development of the knowledge or skills of individual persons.

(2) A scientific purpose is one that yields knowledge systematically through research, experimentation, or other work done in one or more of the natural sciences.

(3) A literary purpose is one that pertains to letters or literature, especially writing, publishing, and the study of literature. It includes the literature of the stage and screen as well as the performance or exhibition of works based on literature.

(4) A charitable purpose is one that has humane and philanthropic objectives; it is an activity that benefits humanity or a significant rather than limited segment of the

community without expectation of pecuniary profit or reward. The humane treatment of animals is also a charitable purpose.

(5) A cultural purpose is one that is conducive to the enlightenment and refinement of taste acquired through intellectual and aesthetic training, education, and discipline.

Court of Appeals Decisions:

- In August 2014, the Court of Appeals heard the case of tourist attraction, Grandfather Mountain. "Avery County argues that the Commission erred by exempting the property from taxation because the property is a self-described tourist attraction that is not 'wholly and exclusively used for educational or scientific purposes.'" The Court stated that "notwithstanding that such educational and scientific endeavors might be the primary uses of GMSF's subject property, we cannot hold that the property is wholly and exclusively used for educational and scientific endeavors. . . . There is support in the record that GMSF charges market-rate admission fees and operates to some extent as a for-profit tourist attraction. Located on the property are administrative offices from which GMSF manages Grandfather Mountain's retail and commercial services. Here, Parcel Three was found to be 'a buffer track to preserve the natural area and prevent encroaching development' upon Parcel Two which accommodates Grandfather Mountain tourist park, and as such, Parcel Three's status as a tax-exempt property is dependent upon the status of the main tract, Parcel Two."[112]

- In June 2009, the Court of Appeals heard the case of a nonprofit foundation operating a summer camp and winter school. "The Foundation contends that it met its burden of proof under this statute because, inter alia, it 'exclusively dedicates its property to educational endeavors.'" The Court held that "…although neither 'charitable association' nor 'charitable institution' are defined in Section 105-278.7, 'charitable purpose' is defined as a purpose 'that has humane and philanthropic objectives; it is an activity that benefits humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward.' N.C. Gen. Stat. § 105-278.7 (f) (4) (2005). The Commission's conclusion that the Foundation did not meet its burden of proving that it is a charitable association or institution is supported by substantial evidence in the record. The Foundation, therefore, is not entitled to a property tax exemption under Section 105-278.7."[113]

[112] *In re Grandfather Mt. Stewardship Found., Inc.,* Avery County, 235 N.C. App. 561, 762 S.E.2d 364, 2014 N.C. App. LEXIS 894 (2014).
[113] *In re Eagle's Nest Found*., Transylvania County, 194 N.C. App. 770, 671 S.E.2d 366, 2009 N.C. App. LEXIS 5 (2009).

- In November 2006, the Court of Appeals heard the case of a child care facility. "Beaufort County argues that Totsland's use of the subject property does not constitute a charitable purpose as defined by section 105-278.7." The Court held, "we do not agree with the County's assertion that a community day care center, particularly one primarily supported through government funding, should never be considered a charitable entity operating with a charitable purpose. Totsland's executive director testified before the Commission that the income generated by the parents' fees accounted for only ten percent of the organization's income, and that the government funding accounted for the bulk of the remaining ninety percent. Where, as in the present case, a nonprofit corporation receives government funding, which it in turn uses for a charitable purposes, we hold the purpose of the activities and the actual use of the funds to be the controlling factors, rather than the source of the funds."[114]

- In September 2004, the Court of Appeals heard the case of a residential treatment center. "Polk County asserts on appeal that the Commission erred in allowing the exemption because Pavillon (I) failed to show that its real and personal property is 'wholly and exclusively used' for charitable purposes, as required by N.C. Gen. Stat. § 105-278.7 (a) and (b), (II) failed to show that the property is owned by a 'charitable association or institution,' as required by N.C. Gen. Stat. § 105-278.7 (c), and (III) showed, at most, that only a part of its property is entitled to exemption due to whole and exclusive use for charitable purposes." The Court held that "[t]he Property Tax Commission did not err by determining that a Michigan nonprofit corporation that operated a residential treatment center in North Carolina for individuals with addictions, disorders, and life crises was exempt from ad valorem taxation even though Polk County asserts the company's property was not wholly owned by a charitable association or institution, because the county merely incorporated its previous argument that the company is not operated exclusively for charitable purposes, and the Court of Appeals already found this argument to be without merit."[115]

- In July 2004, the Court of Appeals examined the case of an apartment complex for Appalachian State University. "[T]he pertinent property belongs to the State through Appalachian Student Housing Corporation's (ASHC) holding title for the benefit of Appalachian State University [ASU] . . . ASHC limits rental availability to ASU students". The Court concluded that "ASHC argues several other grounds for exemption of the property from taxation, including G.S. §§ 105-278.4 and 105-278.7. Because we have already determined that the property in question is owned by the State of North Carolina

[114] *In re Totsland Preschool, Inc.,* Beaufort County, 180 N.C. App. 160, 636 S.E.2d 292, 2006 N.C. App. LEXIS 2249 (2006).
[115] *In re Pavillon International*, Polk County, 601 S.E.2d 307 (2004).

so as to exempt it from taxation, we need not reach ASHC's arguments on these points. However, we do write briefly to express our strong disagreement with the Commission's conclusion of law #4 that states 'student housing is not an activity that is naturally and properly incident to the operation of an educational institution.'"[116]

- In June 1984, the Court of Appeals heard the case of personal property used by a contractor, owned by a non-profit owner, for performing scientific studies. The Court concluded that "Jones maintains custody and care over EPRI's property and acts as the instrumentality for EPRI to use the property. The equipment on site and the subject of this controversy was acquired by EPRI under the terms of the master agreement for the performance of this project, and was shipped to the Charlotte facility by EPRI for educational purposes. EPRI does not lease the property or rent it to Jones. It receives no benefit or income from Jones for its use. In view of the substantial control exercised by EPRI over the property and Jones at the Mecklenburg facility, we hold that Jones was acting as agent for EPRI in its use of the personal property, and that EPRI controlled the ultimate purpose for which the property was used. We therefore conclude that the personal property was 'wholly and exclusively used' by EPRI as its owner and qualifies for exemption from ad valorem taxes under G.S. 105-278.7."[117]

- In January 1983, the Court of Appeals heard the case of a retirement center. The Court concluded that "[t]he concept of charity is not confined to the relief of the needy and destitute, for `aged people require care and attention apart from financial assistance, and the supply of this care and attention is as much a charitable and benevolent purpose as the relief of their financial wants.' While we recognize and applaud efforts similar to Carol Woods as being a progressive and desirable approach to the residential and health care and personal security of elderly persons, these laudable aspects of petitioner's operation do not suffice to bring it within the statutory classification of a charitable purpose."[118]

- In March 1980, the Court of Appeals heard the case of a nursing home. The Court held that the "nursing home affiliated with church — gratuitous occupation — property exempt from taxation [w]here a religious association made a loan to respondent nursing home, with which the association was affiliated, to expand its facilities, the nursing home's payment of an amount equivalent to the interest on the loan and the depreciation on the property did not prevent the nursing home from occupying the property gratuitously, and the property in question was exempt from ad valorem taxation in that

[116] *In re Appeal of Appalachian Student Housing Corp*., Watauga County, 165 N.C. App. 379, 384, 598 S.E.2d 701, 704 (2004).
[117] *In re Mecklenburg County*, 69 N.C. App. 133, 316 S.E.2d 330 (1984).
[118] *In re Chapel Hill Residential Retirement Center, Inc*., Orange County, 60 N.C. App. 294, 299 S.E.2d 782, cert. denied, 308 N.C. 386, 302 S.E.2d 249 (1983).

it was being used for a charitable purpose by a charitable institution within the meaning of G.S. 105-278.7(f)(4), G.S. 105-278.7(a)(2), and G.S. 105-278.7(c) (1)."[119]

Attorney General Opinions:

- In a February 5, 2002, Attorney General Opinion by Reginald L. Watkins, the question of does a corporation whose "goal is to demolish the buildings on the property, and to undertake environmental clean up and site development for commercial purposes", qualify for exemption under N.C. Gen. Stat. § 105-278.7 was examined. The following was concluded: "[i]t appears that it is not necessary to address the issue of whether CMDC will qualify as a charitable organization under G.S. § 105-278.7 because the property itself fails to qualify on two other grounds. First, the statute only exempts property 'used' wholly and exclusively for charitable purposes. Second, the property of CMDC is not exempt because the statute contemplates that the only property which will be exempt is the buildings and land they occupy used by the charity for its purposes."[120]

- In an October 22, 1980, Attorney General Opinion by Rufus L. Edmisten, the question of can a labor union be classified under 105-278.7 was examined. The following was determined "[t]he threshold question is whether the Union is a 'fraternal or civic organization' which is similar to Moose, Elks, Knights of Phthias or Odd Fellows lodges, and it seems an inescapable conclusion that it is not." He goes on to say the Court held that "[t]he main purpose of the Union being commercial precludes the idea that it is a benevolent institution".[121]

- In a June 3, 1980, Attorney General Opinion by Rufus L. Edmisten, the question of can the Electronic Power Research Institute be exempt under 105-278.7 was reviewed. The following was determined: "[r]eference to the purposes set out in the charter impels the conclusion that the corporation is non-profit and that its purposes are both charitable and scientific. This conclusion would of course be refuted and overcome if the corporation were found in actuality to serve other than eleemosynary purposes, but none of the information provided to us would suggest that such might be the case. We conclude that the corporation is indeed a nonprofit charitable and scientific institution, and for the purposes of this opinion we assume that it wholly owns the property about which it has inquired. Not only must such property be owned by such a corporation, but it must be used wholly and exclusively by the corporation for nonprofit charitable or scientific purposes. G.S. 105-278.7(a) and (b). Since the corporation is simply seeking information as to whether its property would be exempt if it were located in this State, no definitive

[119] *In re Taxable Status of Property*, Pasquotank County, 45 N.C. App. 632, 263 S.E.2d 838 (1980).
[120] 2002 *N.C. AG* LEXIS 1 (2/5/02).
[121] 50 *N.C.A.G.* 35 (1980).

answer can be given without knowing what the property would be and how it would be used. However, if the real property were limited to buildings, land occupied by buildings and necessary adjacent land, and if all real and personal property were used for the nonprofit scientific and charitable purposes set out in its charter, then such property would in our opinion be exempt from ad valorem taxation, if application therefor[e] were properly made as provided in G.S. 105-282.1."[122]

G.S. 105-278.8 – Real and Personal Property Used for Charitable Hospital Purposes

Statute enacted:	1865 - 1866 session, Chapter 21
Statute revisions:	1935 session, Chapter 417; 1971 session, House bill 169; 1973 session, Senate bill 147
Application:	Single, Form AV-10
Requirement(s):	Ownership and use. Qualifying owner and qualifying exclusive use.

Statute:

(a) Real and personal property held for or owned by a hospital organized and operated as a nonstock, nonprofit, charitable institution (without profit to members or their successors) shall be exempted from taxation if actually and exclusively used for charitable hospital purposes.

(b) Notwithstanding the exclusive-use requirements of subsection (a), above, if part of a property that otherwise meets that subsection's requirements is used for a purpose that would require exemption under that subsection if the entire property were so used, the valuation of the part so used shall be exempted from taxation.

(c) Within the meaning of this section, a charitable hospital purpose is a hospital purpose that has humane and philanthropic objectives; it is a hospital activity that benefits humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward. However, the fact that a qualifying hospital charges patients who are able to pay for services rendered does not defeat the exemption granted by this section.

Court of Appeals Decisions:

[122] *N.C.A.G.* (1980).

- In February 1994, the Court of Appeals heard the case of a hospital child care center, only available to hospital employees. The Court held that "[w]e can find no evidence in the record that taxpayer's child care center competes directly with other area commercial day care centers. We conclude that there is no direct commercial competition between taxpayer's child care center and other commercial day care centers for two reasons. First, in order for there to be direct commercial competition, taxpayer's child care center must compete directly with other commercial day care centers for patrons from the general public. Second, taxpayer's child care center meets a need of its employees that could not be fulfilled by the other commercial day care centers. Here, taxpayer's child care center is not operated for the purpose of making money. [T]axpayer's child care center here is organized to meet the specific needs of hospital employees. Taxpayer's child care center is open seven days a week, including holidays, from 6:00 a.m. to 12:00 midnight. It accommodates the needs of employees who work rotating shifts or late night hours. Its hours of operation are longer and more flexible than other area commercial day care centers. Finally, taxpayer's child care center aids taxpayer in the recruitment and retention of hospital employees. Accordingly, we conclude that on these facts, taxpayer's child care center is reasonably necessary to accomplish taxpayer's charitable purpose. For the reasons stated, we hold that taxpayer's child care center is 'actually and exclusively used' for a charitable hospital purpose as required by G.S. 105-278.8 and accordingly, that taxpayer is entitled to an exemption from ad valorem taxes for its child care center."[123]

- In December 1989, the Court of Appeals heard the case of an outpatient surgical center. The appellant states they are "a non-profit outpatient facility and is owned and operated by a charitable, non-profit tax exempt corporation." The Court held that "[p]ursuant to the language of this statute, the test to determine whether an exemption may be granted is: (1) whether the applicant is a hospital organized and operated without profit to members, (2) exclusively used for humane and philanthropic objectives which benefit a significant segment of the community and (3) does so without expectation of reward or profit. Furthermore, an applicant which meets the requirements of this test will not be rejected simply because it charges those patients who are able to pay for their services." They went on to say "[s]ince the Commission concluded correctly that petitioner is a non-profit corporation, we therefore conclude that as a matter of law it meets the first part of the test set out in G.S. 105-278.8 and is in fact a hospital operated without profit to its members. Next, the Commission incorrectly concluded that petitioner is not wholly and exclusively operated for a charitable purpose or purposes. This conclusion is unsupported

[123] *In re Moses H. Cone Mem. Hosp.,* Guilford County, 113 N.C. App. 562, 439 S.E.2d 778 (1994), aff'd in part, cert. improvidently granted in part, 340 N.C. 93, 455 S.E.2d 431 (1995).

by any findings and is, in fact, directly contradicted by the finding that petitioner provides facilities for the treatment of emergency or urgent care patients without regard for their ability to pay and that it charges fees which are lower than those of Forsyth Memorial Hospital. Such findings fall within the definition of a charitable hospital purpose which is one that has humane and philanthropic objectives and that benefits humanity or a significant rather than a limited segment of the community without expectation of pecuniary profit or reward."[124]

[124] *In re Found. Health Sys. Corp*., Forsyth County, 96 N.C. App. 571, 386 S.E.2d 588 (1989).

21. North Carolina General Statutes Exclusions

The Constitution of North Carolina Article V, § 2(2) states that "Only the General Assembly shall have the power to classify property for taxation, which power shall be exercised only on a State-wide basis and shall not be delegated. No class of property shall be taxed except by uniform rule, and every classification shall be made by general law uniformly applicable in every county, city and town, and other unit of local government." [125]

In May 1985, the Court of Appeals affirmed that "Sec. 2(2) of Article V of the North Carolina Constitution provides that [o]nly the General Assembly shall have the power to classify property for taxation, and it has been held that the only limitation upon this power is that the classification be founded upon reasonable, and not arbitrary, distinctions."[126]

Preferential tax treatment that does not fit under the Constitutional provision for exemptions must be accomplished under the Constitutional provision for the General Assembly to create special classes of property for taxation. These special classes are commonly called exclusions. The term exclusion is not used in the enabling Constitutional language but is used in G.S. 105-274 when the General Assembly distinguishes between exemptions and exclusions. Exclusions often, but not always, can be identified by language at the beginning of the exclusion stating that this property is "designated a special class of property under authority of Article V, Sec 2(2) of the North Carolina Constitution." Lack of this language does not invalidate the exclusion.

In 1971, G.S. 105-275 consisted of four property tax exclusions. Only one of those four still exists today. However, the statute has undergone numerous changes throughout the years. Many of the exclusions found today in G.S. 105-275 were previously listed under G.S. 105-278; including G.S. 105-275(7), (8), and (17). Also, G.S. 105-280 excluded certain types of personal property, including what is now 105-275(5). G.S. 105-275 now consists of over 40 exclusions. There are also several other statutes excluding property under Article V, Section 2(2).

The following is a summary of the different classes of property excluded from taxation in North Carolina. The summary also includes related higher court decisions, Attorney General Opinions, and additional useful information in regards to the exclusions.

Some of the cases and opinions cited below may have been decided under former similar provisions. They are provided for context and reference purposes.

[125] *North Carolina State Constitution*. Available at: https://www.ncleg.net/Legislation/constitution/ncconstitution.pdf.
[126] *In re Appeal of Champion Int'l Corp*., Jones and Onslow Counties, 74 N.C. App. 639, 329 S.E.2d 691 (1985).

G.S. 105-275(2) – Tangible Personal Property Imported from a Foreign Country through a North Carolina Seaport Terminal

Statute enacted:	1961 session, House bill 711
Statute revisions:	1971 session, House bill 169; 1973 session, Senate bill 147
Application:	Annual, after 12 months, individual or business personal property listing form (depending on the type of property)
Requirement(s):	No ownership requirement. Imported from foreign country, exclusion does not include domestic imports. Exclusion for personal property stored at a seaport terminal for the first 12 months following importation.

Statute: Tangible personal property that has been imported from a foreign country through a North Carolina seaport terminal and which is stored at such a terminal while awaiting further shipment for the first 12 months of such storage. (The purpose of this classification is to encourage the development of the ports of this State.)

Additional Information: There are two seaport terminals in North Carolina, Morehead City (Carteret County) and Wilmington (New Hanover County). G.S. 105-273(14) states that [t]angible personal property means all personal property that is not intangible and that is not permanently affixed to real property.

G.S. 105-275(3) – Nonprofit Water or Sewer Associations or Corporations

Statute enacted:	1971 session, House bill 275
Statute revisions:	1973 session, Senate bill 147
Application:	Single, Form AV-10
Requirement(s):	Ownership only, no use requirement

Statute: Real and personal property owned by nonprofit water or nonprofit sewer associations or corporations.

G.S. 105-275(5) – Vehicles the United States Gives Disabled World War II, Korean Conflict or Vietnam Era Veterans

Statute enacted:	1971 session, House bill 169
Statute revisions:	1973 session, Senate bill 147; 1995 session, Senate bill 590
Application:	Single, Form AV-10V
Requirement(s):	Motor vehicles given to disabled veterans of the specified military events only.

Statute: Vehicles that the United States government gives to veterans on account of disabilities they suffered in World War II, the Korean Conflict, or the Vietnam Era as long as they are owned by:

a. A person to whom a vehicle has been given by the United States government or
b. Another person who is entitled to receive such a gift under Title 38, section 252, United States Code Annotated.

Additional Information: Title 38, Section 252 of the United States Code has been repealed.

G.S. 105-275(5a) – Motor Vehicle Altered with Special Equipment to Accommodate a Service-Connected Disability

Statute enacted:	2000 session, House bill 133
Statute revisions:	N/A
Application:	Single, Form AV-10V
Requirement(s):	Motor vehicles altered to accommodate veterans with a service-connected disability.

Statute: A motor vehicle owned by a disabled veteran that is altered with special equipment to accommodate a service-connected disability. As used in this section, disabled veteran means a person as defined in 38 U.S.C. § 101(2) who is entitled to special automotive equipment for a service-connected disability, as provided in 38 U.S.C. § 3901.

Additional Information:

- 38 United States Code (U.S.C.) §101(2) "[t]he term 'veteran' means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable."[127]
- 38 U.S.C. § 3901(2) "[t]he term 'adaptive equipment' includes, but is not limited to, power steering, power brakes, power window lifts, power seats, and special equipment necessary to assist the eligible person into and out of the automobile or other conveyance. Such term also includes (A) air-conditioning equipment when such equipment is necessary to the health and safety of the veteran and to the safety of others, regardless of whether the automobile or other conveyance is to be operated by the eligible person or is to be operated for such person by another person; and (B) any modification of the size of the interior space of the automobile or other conveyance if needed because of the physical condition of such person in order for such person to enter or operate the vehicle."[128]

G.S. 105-275(6) – Special Nuclear Materials

Statute enacted:	1973 session, Senate bill 685
Statute revisions:	1973 session, Senate bill 892 and 1023; 1983 session, House bill 1682; 1989 session, House bill 480
Application:	Annual, Form AV-10
Requirement(s):	No ownership requirement. Exclusion for the specified nuclear materials only. Should be denied if buried or discharged in the air or into any water source.

Statute: Special nuclear materials held for or in the process of manufacture, processing, or delivery by the manufacturer or processor thereof, regardless whether the manufacturer or processor owns the special nuclear materials. The terms "manufacture" and "processing" do not include the use of special nuclear materials as fuel. The term "special nuclear materials" includes (i) uranium 233, uranium enriched in the isotope 233 or in the isotope 235; and (ii) any material artificially enriched by any of the foregoing, but not including source material. "Source material" means any material except special nuclear material which contains by weight one twentieth of one percent (0.05%) or more of (i) uranium, (ii) thorium, or (iii) any combination thereof.

[127] United States Code, Title 38 – *Veterans' Benefits*. Available at: http://uscode.house.gov/view.xhtml?path=/prelim@title38&edition=prelim.
[128] *See Id.*

Provided however, that to qualify for this exemption no such nuclear materials shall be discharged into any river, creek or stream in North Carolina. The classification and exclusion provided for herein shall be denied to any manufacturer, fabricator or processor who permits burial of such material in North Carolina or who permits the discharge of such nuclear materials into the air or into any river, creek or stream in North Carolina if such discharge would contravene in any way the applicable health and safety standards established and enforced by the Department of Environmental Quality or the Nuclear Regulatory Commission. The most stringent of these standards shall govern.

G.S. 105-275(7) – Public Parks and Drives

Statute enacted:	1971 session, House bill 169
Statute revisions:	1973 session, Senate bill 147 and House bill 973
Application:	Single, Form AV-10
Requirement(s):	Ownership and use

Statute: Real and personal property that is:

a. Owned either by a nonprofit corporation formed under the provisions of Chapter 55A of the General Statutes or by a bona fide charitable organization, and either operated by such owning organization or leased to another such nonprofit corporation or charitable organization, and

b. Appropriated exclusively for public parks and drives.

Additional Statute Referenced:

- G.S. 55A-1-40(17) – "Nonprofit corporation" means a corporation intended to have no income or intended to have income none of which is distributable to its members, directors, or officers, except as permitted by Article 13 of this Chapter, and includes all associations without capital stock formed under Subchapter V of Chapter 54 of the General Statutes or under any act or acts replaced thereby.

G.S. 105-275(7a) – Commercial or Industrial Land Damaged Significantly by Fire or Explosion

Statute enacted:	2011 session, House bill 206
Statute revisions:	2015 session, House bill 1030
Application:	Annual, Form AV-10
Requirement(s):	Ownership and use

Statute: (Expiring for taxes imposed for taxable years beginning on or after July 1, 2021) Real and personal property that meets each of the following requirements:

a. It is a contiguous tract of land previously (i) used primarily for commercial or industrial purposes and (ii) damaged significantly as a result of a fire or explosion.

b. It was donated to a nonprofit corporation formed under the provisions of Chapter 55A of the General Statutes by an entity other than an affiliate, as defined in G.S. 105-163.010.

c. No portion is or has been leased or sold by the nonprofit corporation.

Additional Statute Referenced:

- G.S. 105-163.010(1) Affiliate. - An individual or business that controls, is controlled by, or is under common control with another individual or business.

G.S. 105-275(8) – Air or Water Pollution Abatement, Animal Waste, Recycling or Resource Recovery, Solid Waste, Cotton Dust, Recycling Facilities

Statute enacted:	1971 session, House bill 169
Statute revisions:	1973 session, Senate bill 147 and House bill 1129; 1975 session, Senate bill 369; 1977 session, House bill 1119; 1981 session, House bill 31; 1983 session, House bill 502; 1989 session, Senate bill 523 and House bill 480; 1997 session, Senate bill 1569; 2001 session, Senate bill 1253; 2003 session, House bill 397; 2015 session, House bill 97, 2021 Session, Senate bill 605
Application:	Single, Form AV-10
Requirement(s):	Use only. Must provide certificate from the Department of Environmental Quality (DEQ), formally known as the Department of Environment and Natural Resources (DENR). Additional information can be found be visiting: https://deq.nc.gov/about/divisions/waste-management/solid-waste-section/tax-certification

Statute:

a. Real and personal property that is used or, if under construction, is to be used exclusively for air cleaning or waste disposal or to abate, reduce, or prevent the pollution of air or water (including, but not limited to, waste lagoons and facilities owned by public or private utilities built and installed primarily for the purpose of providing sewer service to areas that are predominantly residential in character or areas that lie outside territory already having sewer service), if the Department of Environmental Quality or a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 furnishes a certificate to the tax supervisor of the county in which the property is situated or to be situated stating that the Environmental Management Commission or local air pollution control program has found that the described property:

   1. Has been or will be constructed or installed;
   2. Complies with or that plans therefor which have been submitted to the Environmental Management Commission or local air pollution control program indicate that it will

comply with the requirements of the Environmental Management Commission or local air pollution control program;

3. Is being effectively operated or will, when completed, be required to operate in accordance with the terms and conditions of the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program; and
4. Has or, when completed, will have as its primary rather than incidental purpose the reduction of water pollution resulting from the discharge of sewage and waste or the reduction of air pollution resulting from the emission of air contaminants.

a1. Sub-subdivision a. of this subdivision shall not apply to an animal waste management system, as defined in G.S. 143-215.10B, unless the Environmental Management Commission determines that the animal waste management system will accomplish all of the following:

1. Eliminate the discharge of animal waste to surface waters and groundwater through direct discharge, seepage, or runoff.
2. Substantially eliminate atmospheric emissions of ammonia.
3. Substantially eliminate the emission of odor that is detectable beyond the boundaries of the parcel or tract of land on which the farm is located.
4. Substantially eliminate the release of disease-transmitting vectors and airborne pathogens.
5. Substantially eliminate nutrient and heavy metal contamination of soil and groundwater.

a2. Notwithstanding sub-subdivision a1. of this subdivision, sub-subdivision a. of this subdivision applies to a farm digester system as defined in G.S. 143-213(12a).

b. Real or personal property that is used or, if under construction, is to be used exclusively for recycling or resource recovering of or from solid waste, if the Department of Environmental Quality furnishes a certificate to the tax supervisor of the county in which the property is situated stating the Department of Environmental Quality has found that the described property has been or will be constructed or installed, complies or will comply with the rules of the Department of Environmental Quality, and has, or will have as its primary purpose recycling or resource recovering of or from solid waste.

c. Tangible personal property that is used exclusively, or if being installed, is to be used exclusively, for the prevention or reduction of cotton dust inside a textile plant for the protection of the health of the employees of the plant, in accordance with occupational safety and health standards adopted by the State of North Carolina pursuant to Article 16

of G.S. Chapter 95. Notwithstanding the exclusive use requirement of this sub-subdivision, all parts of a ventilation or air conditioning system that are integrated into a system used for the prevention or reduction of cotton dust, except for chillers and cooling towers, are excluded from taxation under this sub-subdivision. The Department of Revenue shall adopt guidelines to assist the tax supervisors in administering this exclusion.

d. Real or personal property that is used or, if under construction, is to be used by a major recycling facility as defined in G.S. 105-129.25 predominantly for recycling or resource recovering of or from solid waste, if the Department of Environmental Quality furnishes a certificate to the tax supervisor of the county in which the property is situated stating the Department of Environmental Quality has found that the described property has been or will be constructed or installed for use by a major recycling facility, complies or will comply with the rules of the Department of Environmental Quality, and has, or will have as a purpose recycling or resource recovering of or from solid waste.

Additional Statutes Referenced:

- G.S. 143-215.10B(3) – Animal waste management system means a combination of structures and nonstructural practices serving a feedlot that provide for the collection, treatment, storage, or land application of animal waste.
- G.S. 105-129.25(5) – Major recycling facility. - A recycling facility that qualifies under G.S. 105-129.26(a).
- G.S. 105-129.25(9) - Recycling facility. - A manufacturing plant at least three-fourths of whose products are made of at least fifty percent (50%) post-consumer waste material measured by weight or volume. The term includes real and personal property located at or on land in the same county and reasonably near the plant site and used to perform business functions related to the plant or to transport materials and products to or from the plant. The term also includes utility infrastructure and transportation infrastructure to and from the plant.
- G.S. 105-129.26(a) Major Recycling Facility. - A recycling facility qualifies for the tax benefits provided in this Article and in Article 5 of this Chapter for major recycling facilities if it meets all of the following conditions:
  (1) The facility is located in an area that, at the time the owner began construction of the facility, was a development tier one area as defined in G.S. 143B-437.08.
  (2) The Secretary of Commerce has certified that the owner will, by the end of the fourth year after the year the owner begins construction of the recycling facility,

invest at least three hundred million dollars ($300,000,000) in the facility and create at least 250 new, full-time jobs at the facility.

Court of Appeals Decision:

- In February 2002, the Court of Appeals heard the case of a tobacco company that was denied exclusion under 105-275(8)(b). The appellant claimed that "[r]ecovered tobacco stems, scrap and dust used in cigarette manufacturing are 'solid waste' within the meaning of the statutes providing tax benefits for equipment used in resource recovery or recycling. The stems, scrap, and dust used in this process would otherwise be discarded. N.C.G.S. §§ 130A-290(35), 105-275(8)(b). . . . DENR denied Reynolds' tax certification application, based upon its assertion that the materials processed by the equipment were not waste materials." The Court held that "there is no requirement that the materials actually be discarded. DENR's argument, carried to its logical conclusion, would mean that taxpayers who successfully recycle waste materials would no longer qualify for tax certification because they no longer discard the waste materials. Such a proposition would be absurd and clearly contrary to the legislative intent to encourage the recovery and recycling of solid waste. These findings merely show that Reynolds has successfully incorporated its recycling process into its manufacturing program; such findings have no bearing on whether the materials should be considered 'solid waste.'"[129]

Memorandum:

- In a December 13, 2006, memorandum to Alan W. Klimek, P.E., Director of the North Carolina Division of Water Quality, the following question was discussed: "[s]hould land application sites that receive waste be certified, and if so, are there any limitations as to when land application sites should be certified?" David Baker, former NCDOR Property Tax Division Director, concluded that "[i]f land application sites are required by the Division of Water Quality, are listed by either the permit or the application for the permit, and have as their primary purpose the reduction of the pollution in the waste, it is our [NCDOR] opinion that land application sites and the equipment needed to support this operation meet the requirements for tax certification. The land application sites must still be used exclusively as a land application site (as any other use would cause it to lose its certification) and must comply with the requirements of the Division of Water Quality. We do, however, find examples where land application sites should not be certified. These would include where the company producing the waste owns the land application site, but allows a farmer to tend and harvest the crop, or where the company applies the waste on land that a farmer owns and tends. In both of these situations the primary

[129] *R.J. Reynolds Tobacco Co. v. N.C. Dept. of Environmental & Natural Resources*, 148 N.C. App. 610, 560 S.E.2d 163 (2002).

purpose is no longer pollution abatement, but instead the harvesting of a marketable crop by the farmer."[130]

G.S. 105-275(12) – Nonprofit Corporation or Association for Conservation Purposes

Statute enacted:	1971-1973 sessions
Statute revisions:	2011 session, House bill 350
Application:	Single, Form AV-10
Requirement(s):	Ownership and use. Deferred taxes due subsequent to disqualification.

Statute: Real property that (i) is owned by a nonprofit corporation or association organized to receive and administer lands for conservation purposes, (ii) is exclusively held and used for one or more of the purposes listed in this subdivision, and (iii) produces no income or produces income that is incidental to and not inconsistent with the purpose or purposes for which the land is held and used. The taxes that would otherwise be due on land classified under this subdivision shall be a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit or units as deferred taxes. The deferred taxes for the preceding five fiscal years are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when the property (i) is no longer exclusively held and used for one or more of the purposes listed in this subdivision, (ii) produces income that is not incidental to and consistent with the purpose or purposes for which the land is held and used, or (iii) is sold or transferred without an easement recorded at the time of sale that requires perpetual use of the land for one or more of the purposes listed in this subdivision and that prohibits any use of the land that would generate income that is not incidental to and consistent with the purpose or purposes for which the land is held and used. In addition to the provisions in G.S. 105-277.1F, all liens arising under this subdivision are extinguished upon the real property being sold or transferred to a local, state, or federal government unit for conservation purposes or subject to an easement recorded at the time of sale that requires perpetual use of the land for one or more of the purposes listed in this subdivision. The purposes allowed under this subdivision are any of the following:

a. Used for an educational or scientific purpose as a nature reserve or park in which wild nature, flora and fauna, and biotic communities are preserved for observation and study.

[130] Baker, D. (2006) *Land Application Sites*. Available at: https://files.nc.gov/ncdor/documents/bulletins/denr_cert_landsites.pdf?Q_AHG_DRgxft0FViPVruvxg0ESvBG7Go.

For purposes of this sub-subdivision, the terms "educational purpose" and "scientific purpose" are defined in G.S. 105-278.7(f).

b. Managed under a written wildlife habitat conservation agreement with the North Carolina Wildlife Resources Commission.

c. Managed under a forest stewardship plan developed by the Forest Stewardship Program.

d. Used for public access to public waters or trails.

e. Used for protection of water quality and subject to a conservation agreement under the provision of the Conservation and Historic Preservation Agreements Act, Article 4, Chapter 121 of the General Statutes.

f. Held by a nonprofit land conservation organization for sale or transfer to a local, state, or federal government unit for conservation purposes.

Additional Statutes Referenced:

- 105-278.7(f)(1) An educational purpose is one that has as its objective the education or instruction of human beings; it comprehends the transmission of information and the training or development of the knowledge or skills of individual persons.
- 105-278.7(f)(2) A scientific purpose is one that yields knowledge systematically through research, experimentation, or other work done in one or more of the natural sciences.

Higher Court Decisions:

- In August 2014, the Court of Appeals heard the case of the tourist attraction Grandfather Mountain. "Avery County argues that the Commission erred by exempting the property from taxation because the property is a self-described tourist attraction that is not 'wholly and exclusively used for educational or scientific purposes.'" The Court stated that "notwithstanding that such educational and scientific endeavors might be the primary uses of GMSF's subject property, we cannot hold that the property is wholly and exclusively used for educational and scientific endeavors. . . . There is support in the record that GMSF charges market rate admission fees and operates to some extent as a for-profit tourist attraction. Located on the property are administrative offices from which GMSF manages Grandfather Mountain's retail and commercial services. Here, Parcel Three was found to be 'a buffer track to preserve the natural area and prevent encroaching development' upon Parcel Two which accommodates Grandfather Mountain tourist park, and as such, Parcel Three's status as a tax-exempt property is dependent upon the status of the main tract, Parcel Two."[131]

[131] *In re Grandfather Mt. Stewardship Found., Inc.*, Avery County, 235 N.C. App. 561, 762 S.E.2d 364, 2014 N.C. App. LEXIS 894 (2014).

- In January 1979, the Supreme Court heard the case of a foundation owning forest land. "The Foundation stressfully contends that its use of the property brings it within the excluding language of the statute and argues that where the property is used for educational purposes, the general rule requiring a statute to be construed strictly must yield to a less narrow and stringent construction. The Foundation nevertheless contends that the term 'exclusively' is not to be construed literally and that in the statutes here considered the word refers to the primary and inherent activity and does not preclude incidental activities related to the primarily exempt activity." The Court held that "[t]he Hofmann Forest does not come within the statutory definition of a 'protected natural area' due to the extensive program of road building, construction of drainage ditches and fire lanes, site preparation, including disking and burning, leasing of hunting rights to local hunting clubs, and the cutting of timber and pulpwood. While such activities may well constitute prudent management techniques, they certainly do not result in the preservation of 'all types of wild nature, flora and fauna'".[132]

G.S. 105-275(14) – Motor Vehicle Chassis

Statute enacted:	1973 session, Senate bill 705
Statute revisions:	1973 session, Senate bill 147
Application:	Annual, Form AV-10V
Requirement(s):	Ownership and use

Statute: Motor vehicles chassis belonging to nonresidents, which chassis temporarily enters the State for the purpose of having a body mounted thereon.

[132] *In re North Carolina Forestry Found., Inc.,* Onslow County, 35 N.C. App. 414, 242 S.E.2d 492 (1978), aff'd, 296 N.C. 330, 250 S.E.2d 236 (1979).

G.S. 105-275(15) – Forest Management

Statute enacted:	1973 session, Senate bill 426
Statute revisions:	N/A
Application:	Not required
Requirement(s):	Forest growth provided in the statute

Statute: Upon the date on which each county's next general reappraisal of real property under the provisions of G.S. 105-286(a) becomes effective, standing timber, pulpwood, seedlings, saplings, and other forest growth. (The purpose of this classification is to encourage proper forest management practices and to develop and maintain the forest resources of the State.)

Additional Statute Referenced:

- G.S. 105-286(a) Octennial Cycle. - Each county must reappraise all real property in accordance with the provisions of G.S. 105-283 and G.S. 105-317 as of January 1 of the year set out in the following schedule and every eighth year thereafter, unless the county is required to advance the date under subdivision (2) of this section or chooses to advance the date under subdivision (3) of this section.

G.S. 105-275(16) – Non-Business Property

Statute enacted:	1985 session, Senate bill 866
Statute revisions:	1987 session, Senate bill 852
Application:	Not required
Requirement(s):	Ownership and use

Statute: Non-business Property. - As used in this subdivision, the term “non-business property” means personal property that is used by the owner of the property for a purpose other than the production of income and is not used in connection with a business. The term includes household furnishings, clothing, pets, lawn tools, and lawn equipment. The term does not include motor vehicles, mobile homes, aircraft, watercraft, or engines for watercraft.

G.S. 105-275(17) – Veterans Organizations

Statute enacted:	1971 session, House bill 169
Statute revisions:	1973 session, House bill 2040
Application:	Single, Form AV-10
Requirement(s):	Ownership and use

Statute: Real and personal property belonging to the American Legion, Veterans of Foreign Wars, Disabled American Veterans, or to any similar veterans organizations chartered by the Congress of the United States or organized and operated on a statewide or nationwide basis, and any post or local organization thereof, when used exclusively for meeting or lodge purposes by said organization, together with such additional adjacent real property as may be necessary for the convenient and normal use of the buildings thereon. Notwithstanding the exclusive-use requirement hereinabove established, if a part of a property that otherwise meets this subdivision's requirements is used for a purpose that would require that it not be listed, appraised, assessed or taxed if the entire property were so used, that part, according to its value, shall not be listed, appraised, assessed or taxed. The fact that a building or facility is incidentally available to and patronized by the general public, so far as there is no material amount of business or patronage with the general public, shall not defeat the classification granted by this section.

Attorney General Opinion:

- In a February 28, 1980, Attorney General Opinion by Rufus L. Edmisten, the question of whether property owned by the American Legion but leased to the County can still be exempt under G.S. 105-275(17) was posed. The following was determined "[w]ith regard to the swimming pool property which is leased, I see no possibility that this property could be exempt from taxation, although I should think that the lease might be modified to make the tenant County liable for all taxes on the property. With regard to the baseball field . . . even if the property were not taxable otherwise I should think that use by the Parks and Recreation Commission and the High School would exceed the 'incidentally available' and 'no material . . . business or patronage' requirements, and that G.S. 105-275(17) would therefore not apply to this property. With regards to the building used by the Veterans' Service Office, the Ambulance Service and the Rescue Squad, . . . [i]t seems clear that the property is not used for 'lodge purposes' and thus G.S. 105-275(17) has no

application. As before, we should imagine that the County's use of the rest of the property could be conditioned upon payment of taxes."[133]

G.S. 105-275(18) – Fraternal Organizations

Statute enacted:	1973 session, House bill 2040
Statute revisions:	N/A
Application:	Single, Form AV-10
Requirement(s):	Ownership and use

Statute: Real and personal property belonging to the Grand Lodge of Ancient, Free and Accepted Masons of North Carolina, the Prince Hall Masonic Grand Lodge of North Carolina, their subordinate lodges and appendant bodies including the Ancient and Arabic Order Nobles of the Mystic Shrine, and the Ancient Egyptian Order Nobles of the Mystic Shrine, when used exclusively for meeting or lodge purposes by said organization, together with such additional adjacent real property as may be necessary for the convenient normal use of the buildings thereon. Notwithstanding the exclusive-use requirement hereinabove established, if a part of a property that otherwise meets this subdivision's requirements is used for a purpose that would require that it not be listed, appraised, assessed or taxed if the entire property were so used, that part, according to its value, shall not be listed, appraised, assessed or taxed. The fact that a building or facility is incidentally available to and patronized by the general public, so far as there is no material amount of business or patronage with the general public, shall not defeat the classification granted by this section.

[133] *N.C.A.G.* (1980).

G.S. 105-275(19) – Fraternal or Civic Organizations

Statute enacted:	1973 session, House bill 2040
Statute revisions:	1993 session, House bill 1725
Application:	Single, Form AV-10
Requirement(s):	Ownership and use

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

Attorney General Opinions:

- In an October 22, 1980, Attorney General Opinion by Rufus L. Edmisten, the question of can a labor union be classified under 105-275(19) was examined. The following was determined "[t]he threshold question is whether the Union is a 'fraternal or civic organization' which is similar to Moose, Elks, Knights of Phthias [sic] or Odd Fellows lodges, and it seems an inescapable conclusion that it is not." He goes on to say the Court held that "[t]he main purpose of the Union being commercial precludes the idea that it is a benevolent institution".[134]

- In a November 5, 1974, Attorney General Opinion by James H. Carson, Jr., the question of dining facilities and a swimming pool located on property owned by an Elks Club was analyzed. The following was determined "the structure, including the dining facilities, is intended to be classified out of the tax base by the applicable statute. The swimming pool, however, does not appear to be so classified, since it would be difficult to categorize

[134] 50 *N.C.A.G.* 35 (1980).

such property as being used exclusively as a meeting place for 'meeting or lodge purposes', or for transaction of lodge business, and it could not be fairly said to fall within the category of adjacent real property reasonably necessary for the convenient use of the lodge building."[135]

G.S. 105-275(19a) – Fraternities and Sororities

Statute enacted:	2013 session, Senate bill 485
Statute revisions:	N/A
Application:	Annual, Form AV-10
Requirement(s):	Ownership and use

Statute: Improvements to real property that are (i) owned by social fraternities, sororities, and similar college, university, or high school organizations and (ii) located on land owned by or allocated to The University of North Carolina or one if its constituent institutions.

G.S. 105-275(20) – Goodwill Industries and Other Charitable Organizations

Statute enacted:	1973 session, House bill 2040
Statute revisions:	N/A
Application:	Single, Form AV-10
Requirement(s):	Ownership and use

Statute: Real and personal property belonging to Goodwill Industries and other charitable organizations organized for the training and rehabilitation of disabled persons when used exclusively for training and rehabilitation, including commercial activities directly related to such training and rehabilitation.

[135] 44 *N.C.A.G.* 160 (1974).

G.S. 105-275(23) – Tangible Personal Property Imported and Held in a Foreign Trade Zone

Statute enacted:	1977 session, Senate bill 220
Statute revisions:	N/A
Application:	Annual, Form AV-10
Requirement(s):	No ownership requirement. Imported from outside of the United States for the listed purposes and held in a Foreign Trade Zone, in its original form, while awaiting exportation.

Statute: Tangible personal property imported from outside the United States and held in a Foreign Trade Zone for the purpose of sale, manufacture, processing, assembly, grading, cleaning, mixing or display and tangible personal property produced in the United States and held in a Foreign Trade Zone for exportation, either in its original form or as altered by any of the above processes.

Additional Information: There are four Foreign Trade Zones and seven sub-zones in North Carolina.[136] United States Customs and Border Control defines Foreign Trades Zones as "secure areas under U.S. Customs and Border Protection (CBP) supervision that are generally considered outside CBP territory upon activation. Located in or near CBP ports of entry, they are the United States' version of what are known internationally as free-trade zones."[137]

G.S. 105-275(24) – Cargo Containers

Statute enacted:	1979 session, House bill 407
Statute revisions:	N/A
Application:	Annual, Form AV-10
Requirement(s):	No ownership requirement. Used by vessel in ocean commerce.

Statute: Cargo containers and container chassis used for the transportation of cargo by vessels in ocean commerce.

[136] North Carolina's Southeast. *Foreign-Trade Zones*. Available at: http://files.www.ncse.org/industry-clusters/distribution-and-logistics/tabs/competitive-advantages/FTZFlyer_NC_Commerce_June_2014.pdf.
[137] United States Customs and Border Protection. *About Foreign-Trade Zones and Contact Info*. Available at: https://www.cbp.gov/border-security/ports-entry/cargo-security/cargo-control/foreign-trade-zones/about.

The term “container” applies to those nondisposable receptacles of a permanent character and strong enough for repeated use and specially designed to facilitate the carriage of goods, by one or more modes of transport, one of which shall be by ocean vessels, without intermediate reloadings and fitted with devices permitting its ready handling particularly in the transfer from one transport mode to another.

G.S. 105-275(24a) – Interstate Air Courier

Statute enacted:	1997 session, Senate bill 1569
Statute revisions:	N/A
Application:	Annual, Form AV-10
Requirement(s):	Ownership and use. For mail delivery services, not to include the United States Postal Service (USPS).

Statute: Aircraft that is owned or leased by an interstate air courier, is apportioned under G.S. 105-337 [Public Service Company] to the air courier's hub in this State, and is used in the air courier's operations in this State. For the purpose of this subdivision, the terms "interstate air courier" and "hub" have the meanings provided in G.S. 105-164.3.

Additional Statutes Referenced:

- G.S. 105-164.3(15) Interstate air courier. - A person whose primary business is the furnishing of air delivery of individually addressed letters and packages for compensation, in interstate commerce, except by the United States Postal Service.
- G.S. 105-164.3(13) Hub. - Either of the following:
    a. An interstate air courier's hub is the interstate air courier's principal airport within the State for sorting and distributing letters and packages and from which the interstate air courier has, or expects to have upon completion of construction, no less than 150 departures a month under normal operating conditions.
    b. An interstate passenger air carrier's hub is the airport in this State that meets both of the following conditions:
        1. The air carrier has allocated to the airport under G.S. 105-338 more than sixty percent (60%) of its aircraft value apportioned to this State.
        2. The majority of the air carrier's passengers boarding at the airport are connecting from other airports rather than originating at that airport.

G.S. 105-275(25) – Tangible Personal Property Being Repaired

Statute enacted:	1979 session, House bill 1544
Statute revisions:	1987 session, House bill 1142
Application:	Annual, Form AV-10
Requirement(s):	Ownership and use

Statute: Tangible personal property shipped into this State for the purpose of repair, alteration, maintenance or servicing and reshipment to the owner outside this State.

Additional Statute Referenced:

- G.S. 105-273(14) Tangible personal property. - All personal property that is not intangible and that is not permanently affixed to real property.

Court of Appeals Decision:

- In October 2009, the Court of Appeals heard the case of an airplane owned by a North Carolina corporation that was getting customizations outside of the state. The plane was purchased in November 2002, but did not fly into North Carolina until September 2003, after customization. The case was the inverse of 105-275(25). The Court held that "the default tax situs for SAS's plane was Wake County, which is SAS's principal place of business. In order to show that the plane had acquired a tax situs other than its principal place of business, SAS had to show that the plane was going to be used in Delaware 'in much the same manner as other property is used in' Delaware, or that the plane was in Delaware 'solely for use and profit there.' However, those definitions cut against SAS because the plane was only in Delaware for the purposes of installing an interior and flight certification. SAS presented no evidence that the plane was intended to remain in Delaware after the interior was completed. As such, the plane is properly classified as having been located in Delaware only for temporary maintenance or alteration-not for permanent use. Therefore, the default tax situs of the plane was SAS's principal place of business, Wake County."[138]

[138] *In re SAS Inst., Inc.,* Wake County, 200 N.C. App. 238, 684 S.E.2d 444, 2009 N.C. App. LEXIS 1624 (2009).

G.S. 105-275(26) – Tangible Personal Property Held by Manufacturer for Shipment, Bill and Hold Goods

Statute enacted:	1981 session, House bill 68
Statute revisions:	N/A
Application:	Not required
Requirement(s):	Ownership and use. Held by a manufacturer for shipment.

Statute: For the tax year immediately following transfer of title, tangible personal property manufactured in this State for the account of a nonresident customer and held by the manufacturer for shipment. For the purpose of this subdivision, the term "nonresident" means a taxpayer having no place of business in North Carolina.

Additional Statute Referenced:

- G.S. 105-273(10b) Manufacturer. - A taxpayer who is regularly engaged in the mechanical or chemical conversion or transformation of materials or substances into new products for sale or in the growth, breeding, raising, or other production of new products for sale. The term does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.

G.S. 105-275(29) – Nonprofit Historic Preservations

Statute enacted:	1983 session, House bill 1156
Statute revisions:	2007 session, Senate bill 1704
Application:	Annual, Form AV-10
Requirement(s):	Ownership and use

Statute: Real property and easements wholly and exclusively held and used for nonprofit historic preservation purposes by a nonprofit historical association or institution, including real property owned by a nonprofit corporation organized for historic preservation purposes and held by its owner exclusively for sale under an historic preservation agreement to be prepared and recorded, at the time of sale, under the provisions of the Conservation and Historic Preservation Agreements Act, Article 4, Chapter 121 of the General Statutes of North Carolina.

G.S. 105-275(29a) – Nonprofit Historic Preservations

Statute enacted:	1991 session, Senate bill 263
Statute revisions:	2007 session, Senate bill 1876; 2010 session, Senate bill 1177
Application:	Annual, Form AV-10
Requirement(s):	Ownership and use. Deferred taxes due subsequent to disqualification.

Statute: Land that is within an historic district and is held by a nonprofit corporation organized for historic preservation purposes for use as a future site for an historic structure that is to be moved to the site from another location. Property may be classified under this subdivision for no more than five years. The taxes that would otherwise be due on land classified under this subdivision shall be a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit or units as deferred taxes. The deferred taxes are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when an historic structure is not moved to the property within five years from the first day of the fiscal year the property was classified under this subdivision. In addition to the provisions in G.S. 105-277.1F, all liens arising under this subdivision are extinguished upon the location of an historic structure on the site within the time period allowed under this subdivision.

G.S. 105-275(31) – Intangible Personal Property

Statute enacted:	1997 session, House bill 295
Statute revisions:	2007 session, House bill 1889; 2017 session, Senate bill 561
Application:	Not required
Requirement(s):	Ownership and use

Statute: (Effective for taxes imposed for taxable years beginning before July 1, 2019) Intangible personal property other than a leasehold interest that is in exempted real property and is not excluded under subdivision (31e) of this section. This subdivision does not affect the taxation of software not otherwise excluded by subdivision (40) of this section.

Statute: (Effective for taxes imposed for taxable years beginning on or after July 1, 2019) Intangible personal property other than software not otherwise excluded by subdivision (40) of this section.

Additional Statute Referenced:

- G.S. 105-273(8) Intangible personal property. - Patents, copyrights, secret processes, formulae, good will, trademarks, trade brands, franchises, stocks, bonds, cash, bank deposits, notes, evidences of debt, leasehold interests in exempted real property, bills and accounts receivable, or other like property.

Court of Appeals Decisions:

- In December 2007, the Court of Appeals heard the case of membership fees included in the value of the property. The appellants argued that the membership fees should be considered intangible personal property and be excluded under G.S. 105-275(31). The Court concluded that "[m]embership in the Cedars Club is an express requirement of owning real property situated in the Cedars. The real property at issue cannot be purchased or sold apart from the inclusion of the non-refundable membership fee. The value of the membership fee was properly included in the real property's assessed value."[139]

- In August 2001, the Court of Appeals heard the case of homeowners contending that initiation/membership fees should be considered a form of intangible personal property. The Property Tax Commission concluded "[t]he country club memberships are rights and privileges 'belonging to' and 'appertaining to' the Taxpayers' real property, and as such, are not considered 'intangible personal property' within the meaning of G.S. 105-273(8)." The Court affirmed the Commission's order.[140]

[139] *In re Appeal of Tillman*, Durham County, 187 N.C. App. 739, 653 S.E.2d 911, 2007 N.C. App. LEXIS 2563 (2007).
[140] *In re Appeal of Bermuda Run Prop. Owners*, Davie County, 145 N.C. App. 672, 674-75, 551 S.E.2d 541, 543 (2001).

G.S. 105-275(31e) – Intangible Personal Property

Statute enacted:	2007 session, House bill 1889
Statute revisions:	2017 session, Senate bill 561
Application:	Single, Form AV-10
Requirement(s):	Ownership and use

Statute: (Repealed effective for taxes imposed taxable years beginning on or after July 1, 2019) A leasehold interest in real property that is exempt under G.S. 105-278.1 and is used to provide affordable housing for employees of the unit of government that owns the property.

G.S. 105-275(32a) – Contractor Inventory

Statute enacted:	1991 session, Senate bill 1003
Statute revisions:	N/A
Application:	Not required
Requirement(s):	Ownership and use

Statute: Inventories owned by contractors.

Additional Statutes Referenced:

- G.S. 105-273(5a) Construction contractor. - A taxpayer who is regularly engaged in building, installing, repairing, or improving real property.
- G.S. 105-273(8a)(b) Goods held by construction contractors to be furnished in the course of building, installing, repairing, or improving real property.

G.S. 105-275(33) – Manufacturer Inventory

Statute enacted:	1987 session, House bill 1155
Statute revisions:	1987 session, House bill 1142
Application:	Not required
Requirement(s):	Ownership and use

Statute: Inventories owned by manufacturers.

Additional Statutes Referenced:

- G.S. 105-273(10b) Manufacturer. - A taxpayer who is regularly engaged in the mechanical or chemical conversion or transformation of materials or substances into new products for sale or in the growth, breeding, raising, or other production of new products for sale. The term does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.
- G.S. 105-273(8a)(c) As to manufacturers, raw materials, goods in process, finished goods, or other materials or supplies that are consumed in manufacturing or processing or that accompany and become a part of the sale of the property being sold. The term does not include fuel used in manufacturing or processing and materials or supplies not used directly in manufacturing or processing.

Court of Appeals Decisions:

- In April 2016, the Court of Appeals heard the case of an aircraft tire testing facility. Testing was performed on new and used tires. The taxpayer argued that the tires are finished goods before they are used for testing. The Court held that "[a]s a result, 'finished goods' is not modified by materials or supplies consumed in manufacturing. Because the parties agree both the prototype tires and conformance production tires are finished goods within the meaning of the statute, the tires fall within the statutory definition of inventory. Thus, the tires are 'inventories owned by manufacturers' under N.C. Gen. Stat. § 105-275(33), and are excluded from taxation in North Carolina."[141]

[141] *In re Michelin North Am., Inc.,* Mecklenburg County, - N.C. App. –, 783 S.E.2d 775, 2016 N.C. App. LEXIS 357 (2016).

G.S. 105-275(34) – Retail or Wholesale Merchant Inventory

Statute enacted:	1987 session, House bill 1155
Statute revisions:	1987 session, House bill 1142
Application:	Not required
Requirement(s):	Ownership and use

Statute: Inventories owned by retail and wholesale merchants.

Additional Information: If the inventory is being leased while waiting to be sold, it is not wholly and exclusively being used as inventory. For example, if an airplane dealer lists private jets for sale but is leasing them out, then they are not considered inventory and are taxable. However, if the jets are being used for free then they would still be considered inventory. Dealership courtesy shuttles should not be considered inventory.

Additional Statutes Referenced:

- G.S. 105-273(13a) Retail merchant. - A taxpayer who is regularly engaged in the sale of tangible personal property, acquired by a means other than manufacture, processing, or producing by the merchant, to users or consumers.
- G.S. 105-273(19) Wholesale merchant. - A taxpayer who is regularly engaged in the sale of tangible personal property, acquired by a means other than manufacture, processing, or producing by the merchant, to other retail or wholesale merchants for resale or to manufacturers for use as ingredient or component parts of articles being manufactured for sale.
- G.S. 105-273(8a)(a) Goods held for sale in the regular course of business by manufacturers, retail and wholesale merchants, and construction contractors. As to retail and wholesale merchants and construction contractors, the term includes packaging materials that accompany and become a part of the goods sold.

Court of Appeals Decisions:

- In February 2019, the Court of Appeals heard the case of a company leasing household items to customers. "Taxpayer maintains that the transfer of its property to the possession of a lessee pursuant to a Lease Purchase Agreement effects a form of 'sale,' such as a conditional sale, and that such property thus constitutes exempt inventory under N.C. Gen. Stat. § 105-275(34)." The Court held that "we conclude that once

Taxpayer's property was in the possession of a lessee pursuant to the terms of a Lease Purchase Agreement, the property no longer constituted tax-exempt 'inventories'". [142]

- June 1994, the Court of Appeals examined the case of a wholesaler and retailer of heavy equipment who also rented the equipment. The taxpayer argued that the equipment did not lose the inventory exemption because it was rented to a third party. The Court concluded that "[w]hile Taxpayer contends that it holds all its equipment for the purpose of sale, the evidence shows that the equipment of Taxpayer in question is primarily used for rental purposes. We, therefore, agree with the Commission that Taxpayer, by renting the equipment to third parties, is not entitled to the inventory tax exclusion for the rented equipment." They go on to say "[t]he record reflects that defendant treats the equipment as income producing property rather than inventory for financial reporting purposes, depreciating only that part of its inventory of new and used equipment that it uses for rental purposes. We, therefore, agree with the Commission's finding that this treatment renders the equipment used for rental purposes ineligible for tax exclusion because its use and consumption as income producing property is incompatible with its character as inventory."[143]

- In November 1993, the Court of Appeals heard the case of a textile manufacturer who was selling machinery and equipment that they no longer used. The taxpayer argued that the machinery and equipment should be excluded from taxation as inventory. The Court held that "[a]fter reviewing the whole record, we conclude that the Property Tax Commission's decision was supported by substantial evidence. Taxpayer acquired the property primarily for use in its manufacture of textiles and only held the goods for sale after the property was no longer useful in taxpayer's textile business. The equipment and machinery at issue were not inventory held for sale in the regular course of business by a wholesale merchant. Consequently, the property is not excluded from ad valorem taxation".[144]

Property Tax Commission Decision:

- In June 1990, the Property Tax Commission heard the case of a car dealership stating that demonstrators should be considered inventory. "[T]he Commission employed a 'two-prong' test. The first prong consisted of determining whether the Taxpayer had bargained away his absolute right to possess and control the property; if so, the property could not be said to be 'held for sale'. The second prong involved an examination of all the

[142] *In re Aaron's, Inc.*, Sampson County, COA18-607 (2019). This case is pending before the Supreme Court.
[143] *In re R.W. Moore Equip. Co.*, Wake County, 115 N.C. App. 129, 443 S.E.2d 734, cert. denied, 337 N.C. 693, 448 S.E.2d 533 (1994).
[144] *In re Cone Mills Corp.,* Guilford County, 112 N.C. App. 539, 435 S.E. 2d 835 (1993), cert. denied, 335 N.C. 555, 441 S.E.2d 112 (1994).

surrounding facts and circumstances to determine whether the property, if it was held for sale, was held for sale in the regular course of business by a retail merchant. In the case of the demonstrator cars at issue in this case, the Taxpayer uses the cars for a short period of time, then sells them at a small discount from the price of a new car. If, on the other hand, a taxpayer kept demonstration units in service until they had relatively little value, the taxpayer would become the consumer of the units, and could not claim that they were held for sale."[145]

G.S. 105-275(35) – Severable Development Rights

Statute enacted:	1987 session, House bill 1211
Statute revisions:	N/A
Application:	Single, Form AV-10
Requirement(s):	Real property defined in the below statutes.

Statute: Severable development rights, as defined in G.S. 136-66.11(a), when severed and evidenced by a deed recorded in the office of the register of deeds pursuant to G.S. 136-66.11(c).

Additional Statute Referenced:

- G.S. 136-66.11(a) When used in this section and in G.S. 136-66.10, the term "severable development right" means the potential for the improvement or subdivision of part or all of a parcel of real property, as permitted under the terms of a zoning and/or subdivision ordinance, expressed in dwelling unit equivalents or other measures of development density or intensity or a fraction or multiple of that potential that may be severed or detached from the parcel from which they are derived and transferred to one or more other parcels located in receiving districts where they may be exercised in conjunction with the use or subdivision of property, in accordance with the provisions of this section.
- G.S. 136-66.11(c) City or county zoning or subdivision control provisions adopted pursuant to this authority shall provide that if right-of-way area is dedicated and severable development rights are provided pursuant to G.S. 136-66.10(a)(2) and this section, within 10 days after the approval of the final subdivision plat or issuance of the building permit, the city or county shall convey to the dedicator a deed for the severable development rights that are attributable to the right-of-way area dedicated under those subdivisions. If the deed for the severable development rights conveyed by the city or

[145] *In re Moore Buick-Pontiac, Inc.*, Onslow County, 89 PTC 53, (1991).

county to the dedicator is not recorded in the office of the register of deeds within 15 days of its receipt, the deed shall be null and void.

G.S. 105-275(37) – Poultry and Livestock

Statute enacted:	2001 session, Senate bill 920
Statute revisions:	N/A
Application:	Not required
Requirement(s):	Use only, no ownership requirement

Statute: Poultry and livestock and feed used in the production of poultry and livestock.

G.S. 105-275(39) – Financing Projects for Public Use

Statute enacted:	1989 session, House bill 457
Statute revisions:	2001 session, Senate bill 25
Application:	Single, Form AV-10
Requirement(s):	Ownership and use

Statute: Real and personal property that is: (i) owned by a nonprofit corporation organized upon the request of a State or local government unit for the sole purpose of financing projects for public use, (ii) leased to a unit of State or local government whose property is exempt from taxation under G.S. 105-278.1, and (iii) used in whole or in part for a public purpose by the unit of State or local government. If only part of the property is used for a public purpose, only that part is excluded from the tax. This subdivision does not apply if any distributions are made to members, officers, or directors of the nonprofit corporation.

G.S. 105-275(39a) – Correctional Facility

Statute enacted:	2001 session, House bill 232
Statute revisions:	N/A
Application:	Annual, Form AV-10
Requirement(s):	Ownership and use

Statute: A correctional facility, including construction in progress, that is located on land owned by the State and is constructed pursuant to a contract with the State, and any leasehold interest in the land owned by the State upon which the correctional facility is located.

G.S. 105-275(40) – Computer Software

Statute enacted:	1993 session, Senate bill 658
Statute revisions:	1997 session, House bill 295; 2000 session, Senate bill 1335; 2013 session, Senate bill 490
Application:	Not required
Requirement(s):	No ownership or use requirement. The software must meet the definition.

Statute: Computer software and any documentation related to the computer software. As used in this subdivision, the term "computer software" means any program or routine used to cause a computer to perform a specific task or set of tasks. The term includes system and application programs and database storage and management programs.

The exclusion established by this subdivision does not apply to computer software and its related documentation if the computer software meets one or more of the following descriptions:

a. It is embedded software. "Embedded software" means computer instructions, known as microcode, that reside permanently in the internal memory of a computer system or other equipment and are not intended to be removed without terminating the operation of the computer system or equipment and removing a computer chip, a circuit, or another mechanical device.

b. It is purchased or licensed from a person who is unrelated to the taxpayer and it is capitalized on the books of the taxpayer in accordance with generally accepted

accounting principles, including financial accounting standards issued by the Financial Accounting Standards Board. A person is unrelated to a taxpayer if (i) the taxpayer and the person are not subject to any common ownership, either directly or indirectly, and (ii) neither the taxpayer nor the person has any ownership interest, either directly or indirectly, in the other. The foregoing does not include development of software or any modifications to software, whether done internally by the taxpayer or externally by a third party, to meet the customer's specified needs.

This subdivision does not affect the value or taxable status of any property that is otherwise subject to taxation under this Subchapter.

The provisions of the exclusion established by this subdivision are not severable. If any provision of this subdivision or its application is held invalid, the entire subdivision is repealed.

Memorandums:

- In a November 5, 2013, memorandum by David B. Baker, former NCDOR Local Government Division Director, the additional phrase added to 105-275(40), from Senate bill 490, was discussed. The addition to the statute was "[t]he foregoing does not include development of software or any modifications to software, whether done internally by the taxpayer or externally by a third party, to meet the customer's specified needs." Mr. Baker provided the following clarification "[w]hat about software that is purchased by the taxpayer and then modified for the taxpayer's specified needs? In this case, the purchased software is taxable if it meets the requirements of 105-275(40), but the modifications would be excluded."[146]

- In a July 21, 2011, memorandum by David B. Baker, former NCDOR Local Government Division Director, he discussed the assessment of software. He made the following statement "our [North Carolina Department of Revenue] position is that software property is either taxable or excluded. This position is consistent with the similar treatment of other personal property. We do not hold the position that parts of the software cost can be taxable while other parts of the software cost can be excluded. In North Carolina, property is taxable, not costs."[147]

[146] Baker, D. (2013). *Senate Bill 490 – Customized Software*. Available at: https://files.nc.gov/ncdor/documents/bulletins/customizedsoftwarememo.pdf?Kg1sdexzlBl6WsGmBgLlpJ7EI2s3yE3B.
[147] Baker, D. (2011). *Assessment of Software*. Available at: https://files.nc.gov/ncdor/documents/bulletins/memo_7-11.pdf?BEHlNt5_VGE7raU0pspS8eLyGSpOvpVx.

G.S. 105-275(42) – Vehicle Offered at Retail for Short-Term Lease or Rental

Statute enacted:	2000 session, Senate bill 1076
Statute revisions:	2000 session, Senate bill 1335
Application:	Not required
Requirement(s):	Ownership and use

Statute: A vehicle that is offered at retail for short-term lease or rental and is owned or leased by an entity engaged in the business of leasing or renting vehicles to the general public for short-term lease or rental. For the purposes of this subdivision, the term "short-term lease or rental" shall have the same meaning as in G.S. 105-187.1, and the term "vehicle" shall have the same meaning as in G.S. 153A-156(e) and G.S. 160A-215.1(e). A gross receipts tax as set forth by G.S. 153A-156 and G.S. 160A-215.1 is substituted for and replaces the ad valorem tax previously levied on these vehicles.

Additional Statutes Referenced:

- G.S. 105-187.1(7) Short-term lease or rental. - A lease or rental that is not a long-term lease or rental.
- G.S. 105-187.1(3) Long-term lease or rental. - A lease or rental made under a written agreement to lease or rent property to the same person for a period of at least 365 continuous days.
- G.S. 153A-156(e)(2) and G.S. 160A-215.1(e)(2) Vehicle. - Any of the following:
    a. A motor vehicle of the passenger type, including a passenger van, minivan, or sport utility vehicle.
    b. A motor vehicle of the cargo type, including cargo van, pickup truck, or truck with a gross vehicle weight of 26,000 pounds or less used predominantly in the transportation of property for other than commercial freight and that does not require the operator to possess a commercial drivers license.
    c. A trailer or semitrailer with a gross vehicle weight of 6,000 pounds or less.
- G.S. 153A-156(a) and G.S. 160A-215.1(a) As a substitute for and in replacement of the ad valorem tax, which is excluded by G.S. 105-275(42), a county may levy a gross receipts tax on the gross receipts from the short-term lease or rental of vehicles at retail to the general public. The tax rate shall not exceed one and one-half percent (1.5%) of the gross receipts from such short-term leases or rentals.

G.S. 105-275(42a) – Heavy Equipment with Gross Receipts Tax

Statute enacted:	2007 session, Senate bill 1852
Statute revisions:	N/A
Application:	Annual, Form AV-10
Requirement(s):	Ownership and use

Statute: Heavy equipment on which a gross receipts tax may be imposed under G.S. 153A-156.1 and G.S. 160A-215.2.

Additional Statutes Referenced:

- G.S. 105-187.1(7) Short-term lease or rental. - A lease or rental that is not a long-term lease or rental.
- G.S. 105-187.1(3) Long-term lease or rental. - A lease or rental made under a written agreement to lease or rent property to the same person for a period of at least 365 continuous days.
- G.S. 153A-156.1(a)(1) Heavy equipment. - Earthmoving, construction, or industrial equipment that is mobile, weighs at least 1,500 pounds, and meets any of the descriptions listed in this subdivision. The term includes an attachment for heavy equipment, regardless of the weight of the attachment.
    a. It is a self-propelled vehicle that is not designed to be driven on a highway.
    b. It is industrial lift equipment, industrial material handling equipment, industrial electrical generation equipment, or a similar piece of industrial equipment.

G.S. 105-275(43) – Capital Lease

Statute enacted:	2007 session, House bill 63
Statute revisions:	N/A
Application:	Annual, Form AV-10
Requirement(s):	Ownership and use

Statute: Real or tangible personal property that is subject to a capital lease pursuant to G.S. 115C-531.

Additional Statute Referenced:

- G.S. 115C-531(a)(1) Capital lease. - A capital lease as defined by generally accepted accounting principles, regardless of how the parties describe the agreement.

G.S. 105-275(44) – Free Drug Samples

Statute enacted:	2007 session, Senate bill 1878
Statute revisions:	N/A
Application:	Not required
Requirement(s):	Ownership and use

Statute: Free samples of drugs that are required by federal law to be dispensed only on prescription and are given to physicians and other medical practitioners to dispense free of charge in the course of their practice.

G.S. 105-275(44a) – Vaccines

Statute enacted:	2021 session, Senate bill 105
Statute revisions:	N/A
Application:	Annual
Requirement(s):	Ownership and use

Statute: Vaccines.

G.S. 105-275(45) – Solar Energy Electric System

Statute enacted:	2007 session, Senate bill 1878
Statute revisions:	N/A
Application:	Single, Form AV-10
Requirement(s):	Use only, no ownership requirement. Partial exclusion.

Statute: Eighty percent (80%) of the appraised value of a solar energy electric system. For purposes of this subdivision, the term "solar energy electric system" means all equipment used directly and exclusively for the conversion of solar energy to electricity.

Court of Appeals Decision:

- In November 2018, the Court of Appeals heard the case of under construction solar energy equipment. "The counties contend that because the taxpayers' solar energy systems were under construction on 1 January 2016, they were not "used" for the conversion of solar energy to electricity on the assessment date, and thus, the taxpayer' solar energy systems were not eligible for tax exemption under N.C. Gen. Stat. § 105-275(45)." The Court held that "[w]here taxpayer equipment was used 'directly and exclusively for the conversion of solar energy to electricity,' though under construction, the use of the equipment was within the criteria set forth in General Statutes, section 105-275(45), a tax exemption statute. Accordingly, we affirm the order of the Property Tax Commission concluding the equipment was exempt from taxation to the extent set forth in the statute."[148]

Memorandum:

- In a February 15, 2011, memorandum by David B. Baker, former NCDOR Local Government Division Director, he provided clarification on solar electric energy systems. "In determining if a photovoltaic system installed on residential property is taxable or not, the county must determine if it is used to produce income or in connection with a business. If the owner files a Schedule C on their income tax return and claims depreciation expense on the capital investment amount, the system is business personal property. If the owner is recognizing income received from a utility company for the production of electricity, the system is business personal property. If the owner is not claiming depreciation on the system and is not recognizing income, but rather is receiving

[148] *In re the Appeal of: Snow Camp LLC*, COA18-388 (2018). This is an unpublished opinion and does not constitute controlling legal authority.

credit from their utility company through a net metering arrangement, the property is considered non-business personal property and is excluded from taxation pursuant to G.S. 105-275(16)."[149]

G.S. 105-275(46) – Charter Schools

Statute enacted:	2013 session, Senate bill 337
Statute revisions:	2017 session, Senate bill 99; 2017 session, House bill 374
Application:	Single, Form AV-10
Requirement(s):	Use only, no ownership requirement

Statute: (Effective for taxes imposed for taxable years beginning before July 1, 2018) Real property that is occupied by a charter school and is wholly and exclusively used for educational purposes as defined in G.S. 105-278.4(f) regardless of the ownership of the property.

Statute: (Effective for taxes imposed for taxable years beginning on or after July 1, 2018) Real and personal property that is occupied by a charter school and is wholly and exclusively used for educational purposes as defined in G.S. 105-278.4(f), regardless of the ownership of the property.

Additional Statute Referenced:

- 105-278.4(f)(2) Educational purpose. - A purpose that has as its objective the education or instruction of human beings; it comprehends the transmission of information and the training or development of the knowledge or skills of individual persons. The operation of a student housing facility, a student dining facility, a golf course, a tennis court, a sports arena, a similar sport property, or a similar recreational sport property for the use of students or faculty is also an educational purpose, regardless of the extent to which the property is also available to and patronized by the general public.

[149] Baker, D. (2011). *Solar Energy Electric Systems*. Available at: https://files.nc.gov/ncdor/documents/bulletins/solar_energy.pdf?xHMcMi5SgMUDJQmpG.YMNsdyFmK0W5q8.

G.S. 105-275(47) – Energy Mineral Interest

Statute enacted:	2013 session, Senate bill 786
Statute revisions:	2017 session, Senate bill 99
Application:	Single, Form AV-10
Requirement(s):	Use only, no ownership requirement

Statute: **E**nergy mineral interest in property for which a permit has not been issued under G.S. 113-395. For the purposes of this subdivision, "energy mineral" has the same meaning as in G.S. 105-187.76.

Additional Statutes Referenced:

- G.S. 113-395 Permit, fees, and notices required for oil and gas activities.
  - (a) Before any well, in search of oil or gas, shall be drilled, the person desiring to drill the same shall submit an application for a permit to the Department upon such form as the Department may prescribe and shall pay a fee of three thousand dollars ($3,000) for the first well to be drilled on a pad and fifteen hundred dollars ($1,500) for each additional well to be drilled on the same pad. The drilling of any well is prohibited unless the Department has issued a permit for the activity.
  - (b) Any person desiring to use hydraulic fracturing treatments in conjunction with oil and gas operations or activities shall submit an application for a permit to the Department upon such form as the Department may prescribe. The use of hydraulic fracturing treatments is prohibited unless the Department has issued a permit for the activity.
  - (c) Each abandoned well and each dry hole shall be plugged promptly in the manner and within the time required by rules prescribed by the Commission, and the owner of such well shall give notice, upon such form as the Commission may prescribe, of the abandonment of each dry hole and of the owner's intention to abandon, and shall pay a fee of four hundred fifty dollars ($450.00). No well shall be abandoned until such notice has been given and such fee has been paid.
- G.S. 105-187.76(4) Energy mineral. - All forms of natural gas, oil, and related condensates.

G.S. 105-275(48) – Eastern Band of Cherokee Indians

Statute enacted:	2015 session, House bill 912
Statute revisions:	2017 session, Senate bill 99
Application:	Single, Form AV-10 or Form AV-10V
Requirement(s):	Ownership only, no use requirement

Statute: Real and personal property located on lands held in trust by the United States for the Eastern Band of Cherokee Indians, regardless of ownership.

G.S. 105-275(49) – Mobile Classroom or Modular Unit Occupied by a School for Educational Purposes

Statute enacted:	2017 session, Senate bill 628
Statute revisions:	2017 session, Senate bill 99; 2017 session, House bill 374
Application:	Single, Form AV-10
Requirement(s):	Use only, no ownership requirement

Statute: A mobile classroom or modular unit that is occupied by a school and is wholly and exclusively used for educational purposes, as defined in G.S. 105-278.4(f), regardless of the ownership of the property. For the purposes of this subdivision, the term "school" means a public school, including any school operated by a local board of education in a local school administrative unit; a regional school; a nonprofit nonpublic school regulated under Article 39 of Chapter 115C of the General Statutes; or a community college established under Article 2 of Chapter 115D of the General Statutes.

Additional Statute Referenced:

- 105-278.4(f)(2) Educational purpose. - A purpose that has as its objective the education or instruction of human beings; it comprehends the transmission of information and the training or development of the knowledge or skills of individual persons. The operation of a student housing facility, a student dining facility, a golf course, a tennis court, a sports arena, a similar sport property, or a similar recreational sport property for the use of students or faculty is also an educational purpose, regardless of the extent to which the property is also available to and patronized by the general public.

G.S. 105-277 – Property Classified for Taxation at Reduced Rates

Statute enacted:	1971 session, House bill 169
Statute revisions:	(g) 1977 session, House bill 607; (h) 1979 session, House bill 1242; (g) 1985 session, House bill 664
Application:	(g) not required; (h) single, Form AV-10
Requirement(s):	(g) use only; (h) ownership and use, partial exclusion

Statute:

(g) Buildings equipped with a solar energy heating or cooling system, or both, are hereby designated a special class of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution. Such buildings shall be assessed for taxation in accordance with each county's schedules of value for buildings equipped with conventional heating or cooling systems and no additional value shall be assigned for the difference in cost between a solar energy heating or cooling system and a conventional system typically found in the county. As used in this classification, the term "system" includes all controls, tanks, pumps, heat exchangers and other equipment used directly and exclusively for the conversion of solar energy for heating or cooling. The term "system" does not include any land or structural elements of the building such as walls and roofs nor other equipment ordinarily contained in the structure.

(h) Private Water Companies. - Contributions in aid of construction and acquisition adjustments. In assessing the property of any private water company, there shall be excluded that portion of the investment of the company represented by contributions in aid of construction and by acquisition adjustments which is designated a special class of property under Article V, Sec. 2(2) of the Constitution. "Investment," "contributions in aid of construction" and "acquisition adjustment" shall have the meanings as those terms are defined in the Uniform System of Accounts specified by the North Carolina Utilities Commission for use by such private water company.

Court of Appeals Decision:

- In February 2016, the Court of Appeals heard the case of a textile manufacturing facility using a solar thermal system to provide hot water in their manufacturing process. The county valued the equipment as business personal property, using the cost approach. The taxpayer contended that based on G.S. 105-277(g) the equipment "should be valued no more than a non-solar alternative." The Court held that "[i]n sum, the County used a

press release from Governor Perdue's website to determine the system's value, failed to follow statutory guidelines for appraisal, and did not 'consider the obsolescence of the equipment due to the equipment being overbuilt, the income produced by the equipment, and [the] transfer of tax credits prior to valuation[.]'"[150]

G.S. 105-277.01 – Farm Products Classified for Taxation at Reduced Valuation

Statute enacted:	1973 session, Senate bill 147
Statute revisions:	N/A
Application:	Annual, Form AV-10
Requirement(s):	Ownership and use, partial exclusion

Statute: Farm products (including crops but excluding poultry and other livestock) held by or for a cooperative stabilization or marketing association or corporation to which they have been delivered, conveyed, or assigned by the original producer for the purpose of sale are hereby designated a special class of property under authority of Article V, Sec. 2(2), of the North Carolina Constitution. Before being assessed for taxation the appraised valuation of farm products so classified shall be reduced by the amount of any unpaid loan or advance made or granted thereon by the United States government, an agency of the United States government, or a cooperative stabilization or marketing association or corporation.

G.S. 105-277.02 – Builders Inventory - Real Property Held for Sale Classified for Taxation at Reduced Valuation

Statute enacted:	2015 session, House bill 168
Statute revisions:	Session 2019, House bill 492; Session 2021, House bill 273
Application:	Annual, Form AV-65
Requirement(s):	Ownership and use

Statute:

[150] *In re Appeal of: FLS Owner II, LLC*, Randolph County, - N.C. App. -, 781 S.E.2d 300, 2016 N.C. App. LEXIS 38 (2016).

(a) Residential Real Property. - Residential real property held for sale by a builder is designated a special class of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution. For purposes of this subsection, "residential real property" is real property that is intended to be sold and used as an individual's residence immediately or after construction of a residence, and the term excludes property that is either occupied by a tenant or used for commercial purposes such as residences shown to prospective buyers as models. Any increase in value of this classified property attributable to subdivision of the property, improvements other than buildings made on the property, or the construction of a new single-family residence, a townhouse, or a duplex on the property by the builder is excluded from taxation under this Subchapter as long as the builder continues to hold the property for sale. In no event shall this exclusion extend for more than three years from the time the improved property was first subject to being listed for taxation by the builder.

(b) Commercial Property. - Commercial real property held for sale by a builder is designated a special class of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution. For purposes of this subsection, "commercial real property" is real property that is intended to be sold and used for commercial purposes immediately or after improvement. Any increase in value of this classified property attributable to subdivision of or other improvements made to the property, by the builder, is excluded from taxation under this Subchapter as long as the builder continues to hold the property for sale. The exclusion authorized by this subsection ends at the earlier of the following:

(1) Five years from the time the improved property was first subject to being listed for taxation by the builder.

(2) Issuance of a building permit.

(3) Sale of the property.

(c) The builder must apply for any exclusion under this section as provided in G.S. 105-282.1.

(d) In appraising property classified under this section, the assessor shall specify what portion of the value is an increase attributable to subdivision or other improvement by the builder.

Additional Information: A more detailed definition of the builders inventory exclusion can be found in another section.

G.S. 105-277.1 – Elderly or Disabled Property Tax Homestead Exclusion

Statute enacted:	1971 session, Senate bill 120
Statute revisions:	1973 session, Senate bill 387; 1975 session, House bill 254; 1977 session, House bill 21; 1979 session, Senate bill 203 and House bill 22; 1981 session, Senate bill 39 and House bill 5; 1985 session, House bill 222 and Senate bill 866; 1987 session, House bill 34; 1993 session, House bill 105; 1996 session, House bill 53; 2001 session, House bill 42; 2007 session, Senate bill 613 and 1876, House bill 1449 and 2436; 2009 session, Senate bill 509
Application:	Single, Form AV-9 and Form AV-9A for disabled applicants
Requirement(s):	Partial exclusion for owner's age 65 or older or totally and permanently disabled. Must meet the income requirement and be a North Carolina resident. No age restriction for disabled applicants.

Statute:

(a) Exclusion. - A permanent residence owned and occupied by a qualifying owner is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and is taxable in accordance with this section. The amount of the appraised value of the residence equal to the exclusion amount is excluded from taxation. The exclusion amount is the greater of twenty five thousand dollars ($25,000) or fifty percent (50%) of the appraised value of the residence. An owner who receives an exclusion under this section may not receive other property tax relief.

A qualifying owner is an owner who meets all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

(1) Is at least 65 years of age or totally and permanently disabled.

(2) Has an income for the preceding calendar year of not more than the income eligibility limit.

(3) Is a North Carolina resident.

(a1) Temporary Absence. - An otherwise qualifying owner does not lose the benefit of this exclusion because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

(a2) Income Eligibility Limit. - For the taxable year beginning on July 1, 2008, the income eligibility limit is twenty-five thousand dollars ($25,000). For taxable years beginning on or after July 1, 2009, the income eligibility limit is the amount for the preceding year, adjusted by the same percentage of this amount as the percentage of any cost-of-living adjustment made to the benefits under Titles II and XVI of the Social Security Act for the preceding calendar year, rounded to the nearest one hundred dollars ($100.00). On or before July 1 of each year, the Department of Revenue must determine the income eligibility amount to be in effect for the taxable year beginning the following July 1 and must notify the assessor of each county of the amount to be in effect for that taxable year.

(b) Definitions. - The following definitions apply in this section:

(1) Code. - The Internal Revenue Code, as defined in G.S. 105-228.90.

(1a) Income. - All moneys received from every source other than gifts or inheritances received from a spouse, lineal ancestor, or lineal descendant. For married applicants residing with their spouses, the income of both spouses must be included, whether or not the property is in both names.

(1b) Owner. - A person who holds legal or equitable title, whether individually, as a tenant by the entirety, a joint tenant, or a tenant in common, or as the holder of a life estate or an estate for the life of another. A manufactured home jointly owned by husband and wife is considered property held by the entirety.

(3) Permanent residence. - A person's legal residence. It includes the dwelling, the dwelling site, not to exceed one acre, and related improvements. The dwelling may be a single family residence, a unit in a multi-family residential complex, or a manufactured home.

(3a) Property tax relief. - The property tax homestead exclusion provided in this section, the property tax homestead circuit breaker provided in G.S. 105-277.1B, or the disabled veteran property tax homestead exclusion provided in G.S. 105-277.1C.

(4) Totally and permanently disabled. - A person is totally and permanently disabled if the person has a physical or mental impairment that substantially precludes him or her from obtaining gainful employment and appears reasonably certain to continue without substantial improvement throughout his or her life.

(c) Application. - An application for the exclusion provided by this section should be filed during the regular listing period, but may be filed and must be accepted at any time up to and through June 1 preceding the tax year for which the exclusion is claimed. When property is owned by two or more persons other than husband and wife and one or more

of them qualifies for this exclusion, each owner must apply separately for his or her proportionate share of the exclusion.

(1) Elderly Applicants. - Persons 65 years of age or older may apply for this exclusion by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1.

(2) Disabled Applicants. - Persons who are totally and permanently disabled may apply for this exclusion by (i) entering the appropriate information on a form made available by the assessor under G.S. 105-282.1 and (ii) furnishing acceptable proof of their disability. The proof must be in the form of a certificate from a physician licensed to practice medicine in North Carolina or from a governmental agency authorized to determine qualification for disability benefits. After a disabled applicant has qualified for this classification, the applicant is not required to furnish an additional certificate unless the applicant's disability is reduced to the extent that the applicant could no longer be certified for the taxation at reduced valuation.

(d) Ownership by Spouses. - A permanent residence owned and occupied by husband and wife is entitled to the full benefit of this exclusion notwithstanding that only one of them meets the age or disability requirements of this section.

(e) Other Multiple Owners. - This subsection applies to co-owners who are not husband and wife. Each co-owner of a permanent residence must apply separately for the exclusion allowed under this section.

When one or more co-owners of a permanent residence qualify for the exclusion allowed under this section and none of the co-owners qualifies for the exclusion allowed under G.S. 105-277.1C, each co-owner is entitled to the full amount of the exclusion allowed under this section. The exclusion allowed to one co-owner may not exceed the co-owner's proportionate share of the valuation of the property, and the amount of the exclusion allowed to all the co-owners may not exceed the exclusion allowed under this section.

When one or more co-owners of a permanent residence qualify for the exclusion allowed under this section and one or more of the co-owners qualify for the exclusion allowed under G.S. 105-277.1C, each co-owner who qualifies for the exclusion under this section is entitled to the full amount of the exclusion. The exclusion allowed to one co-owner may not exceed the co-owner's proportionate share of the valuation of the property, and the amount of the exclusion allowed to all the co-owners may not exceed the greater of the exclusion allowed under this section and the exclusion allowed under G.S. 105-277.1C.

Additional Information: A more detailed definition of the elderly or disabled property tax homestead exclusion can be found in another section.

Attorney General Opinions:

- In a March 23, 1973, Attorney General Opinion by Robert Morgan, the question of whether an executor can file for exclusion for someone who passed away on January 3 was examined. The following was determined "[w]hile it is true that one's eligibility is determined as of January 1, that in itself is not determinative, for once eligibility is established, the exclusion must still be affirmatively claimed by the taxpayer 'at the time he lists his property for taxation.' The exclusion once initially established is not automatically continued and those who qualify must affirmatively assert their eligibility each listing year. We can read these requirements only as providing a special property tax exclusion, personal to the owner thereof which, if not claimed by him, may not be passed to his estate to be claimed on his behalf by his executor. Statutory construction and legislative intent aside, we note also the obvious consideration that G.S. 105-277.1 is available only to legal and equitable title owners, and by the time an executor lists a decedent's property, title thereto would already have vested in his devisees or heirs at law."[151]

- In a January 26, 1972, Attorney General Opinion by Robert Morgan, the question of whether taxpayers can qualify for the exclusion if in a nursing home and away from the residence for more than six months was reviewed. The following conclusion was made: "[b]earing in mind that the purpose of the statute was to provide some measure of tax relief to certain 'aged and indigent persons', according to the title of the act (c. 932, S. L. 1971), we believe that that purpose is accomplished by a reasonable construction which would, as here, permit a person to maintain his principal place of residence at that place where he formally physically resided, and where, but for age and infirmity, he would continue to physically reside, assuming of course that he meets all of the other conditions imposed by the law. Therefore, we are of the opinion that a person, who would otherwise qualify for the beneficial tax treatment provided by G.S. 105-277.1, is entitled to that beneficial treatment if, due to age and infirmity, he is required to live in a nursing home and therefore cannot actually occupy his home for more than six months of the year."[152]

Memorandum:

- In a July 1, 2010, memorandum by David B. Baker, former NCDOR Property Tax Division Director, he provided clarification on the disability certification. The Social Security

[151] 42 *N.C.A.G.* 198 (1973).
[152] 41 *N.C.A.G.* 725 (1972).

Administration (SSA) was contacted for their position on the SSA certifying disabilities under G.S. 105-277.1(c)(2). Their response: "SSA employees cannot certify an individual meets the NC Statute (NCGS 105-277.1) definition of disability. Because the criteria for entitlement to benefits based upon a disability determined for SSA purposes differs from that of the North Carolina statute, SSA employees should not be completing the State of North Carolina Certification for Property Tax Exclusion".[153]

G.S. 105-277.1B – Property Tax Homestead Circuit Breaker

Statute enacted:	2007 session, House bill 1499
Statute revisions:	2007 session, Senate bill 613 and 1876; 2009 session, Senate bill 509
Application:	Annual, Form AV-9
Requirement(s):	Age 65 or older or totally and permanently disabled. Must meet the income requirement, be a North Carolina resident, and have owned or occupied residence for at least five years. Deferred taxes due subsequent to disqualification.

Statute:

(a) Classification. - A permanent residence owned and occupied by a qualifying owner is designated a special class of property under Article V, Section 2(2) of the North Carolina Constitution and is taxable in accordance with this section.

(b) Definitions. - The definitions provided in G.S. 105-277.1 apply to this section.

(c) Income Eligibility Limit. - The income eligibility limit provided in G.S. 105-277.1(a2) applies to this section.

(d) Qualifying Owner. - For the purpose of qualifying for the property tax homestead circuit breaker under this section, a qualifying owner is an owner who meets all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

(1) The owner has an income for the preceding calendar year of not more than one hundred fifty percent (150%) of the income eligibility limit specified in subsection (c) of this section.

[153] Baker, D. (2010). *Disability Certifications by the Social Security Administration*. Available at: https://files.nc.gov/ncdor/documents/bulletins/disability_cert_2010.pdf?MWQVk8vbcNQLnXhDaw.Sprgxi9OzrdUW.

(2) The owner has owned the property as a permanent residence for at least five consecutive years and has occupied the property as a permanent residence for at least five years.

(3) The owner is at least 65 years of age or totally and permanently disabled.

(4) The owner is a North Carolina resident.

(e) Multiple Owners. - A permanent residence owned and occupied by husband and wife is entitled to the full benefit of the property tax homestead circuit breaker notwithstanding that only one of them meets the length of occupancy and ownership requirements and the age or disability requirement of this section. When a permanent residence is owned and occupied by two or more persons other than husband and wife, no property tax homestead circuit breaker is allowed unless all of the owners qualify and elect to defer taxes under this section.

(f) Tax Limitation. - A qualifying owner may defer the portion of the principal amount of tax that is imposed for the current tax year on his or her permanent residence and exceeds the percentage of the qualifying owner's income set out in the table in this subsection. If a permanent residence is subject to tax by more than one taxing unit and the total tax liability exceeds the tax limit imposed by this section, then both the taxes due under this section and the taxes deferred under this section must be apportioned among the taxing units based upon the ratio each taxing unit's tax rate bears to the total tax rate of all units.

Income Over	Income Up To	Percentage
-0-	Income Eligibility Limit	4.0%
Income Eligibility Limit	150% of Income Eligibility Limit	5.0%

(g) Temporary Absence. - An otherwise qualifying owner does not lose the benefit of this circuit breaker because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

(h) Deferred Taxes. - The difference between the taxes due under this section and the taxes that would have been payable in the absence of this section are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes must be carried forward in the records of each taxing unit as deferred taxes. The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral as a result of a disqualifying event described in subsection (i) of this section. On or before September 1 of each year, the collector must send to the mailing address of a residence on which taxes have been deferred a

notice stating the amount of deferred taxes and interest that would be due and payable upon the occurrence of a disqualifying event.

(i) Disqualifying Events. - Each of the following constitutes a disqualifying event:

(1) The owner transfers the residence. Transfer of the residence is not a disqualifying event if (i) the owner transfers the residence to a co-owner of the residence or, as part of a divorce proceeding, to his or her spouse and (ii) that individual occupies or continues to occupy the property as his or her permanent residence.

(2) The owner dies. Death of the owner is not a disqualifying event if (i) the owner's share passes to a co-owner of the residence or to his or her spouse and (ii) that individual occupies or continues to occupy the property as his or her permanent residence.

(3) The owner ceases to use the property as a permanent residence.

(j) Gap in Deferral. - If an owner of a residence on which taxes have been deferred under this section is not eligible for continued deferral for a tax year, the deferred taxes are carried forward and are not due and payable until a disqualifying event occurs. If the owner of the residence qualifies for deferral after one or more years in which he or she did not qualify for deferral and a disqualifying event occurs, the years in which the owner did not qualify are disregarded in determining the preceding three years for which the deferred taxes are due and payable.

(l) Creditor Limitations. - A mortgagee or trustee that elects to pay any tax deferred by the owner of a residence subject to a mortgage or deed of trust does not acquire a right to foreclose as a result of the election. Except for requirements dictated by federal law or regulation, any provision in a mortgage, deed of trust, or other agreement that prohibits the owner from deferring taxes on property under this section is void.

(m) Construction. - This section does not affect the attachment of a lien for personal property taxes against a tax-deferred residence.

(n) Application. - An application for property tax relief provided by this section should be filed during the regular listing period, but may be filed and must be accepted at any time up to and through June 1 preceding the tax year for which the relief is claimed. Persons may apply for this property tax relief by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1.

Additional Information: A more detailed definition of the property tax homestead circuit breaker exclusion can be found in another section.

G.S. 105-277.1C – Disabled Veteran Property Tax Homestead Exclusion

Statute enacted:	2007 session, House bill 2436
Statute revisions:	2009 session, Senate bill 509, 1177, and 1165
Application:	Single, Form AV-9 and Form NCDVA-9
Requirement(s):	Partial exclusion for disabled veterans or unmarried surviving spouses of disabled veterans. No age or income restrictions.

Statute:

(a) Classification. - A permanent residence owned and occupied by a qualifying owner is designated a special class of property under Article V, Section 2(2) of the North Carolina Constitution and is taxable in accordance with this section. The first forty-five thousand dollars ($45,000) of appraised value of the residence is excluded from taxation. A qualifying owner who receives an exclusion under this section may not receive other property tax relief.

(b) Definitions. - The following definitions apply in this section:

(1) Disabled veteran. - A veteran of any branch of the Armed Forces of the United States whose character of service at separation was honorable or under honorable conditions and who satisfies one of the following requirements:

a. As of January 1 preceding the taxable year for which the exclusion allowed by this section is claimed, the veteran had received benefits under 38 U.S.C. § 2101.

b. The veteran has received a certification by the United States Department of Veterans Affairs or another federal agency indicating that, as of January 1 preceding the taxable year for which the exclusion allowed by this section is claimed, he or she has a service-connected, permanent, and total disability.

c. The veteran is deceased and the United States Department of Veterans Affairs or another federal agency has certified that, as of January 1 preceding the taxable year for which the exclusion allowed by this section is claimed, the veteran's death was the result of a service-connected condition.

(3) Permanent residence. - Defined in G.S. 105-277.1.

(4) Property tax relief. - Defined in G.S. 105-277.1.

(4a) Qualifying owner. - An owner, as defined in G.S. 105-277.1, who is a North Carolina resident and one of the following:

a. A disabled veteran.

b. The surviving spouse of a disabled veteran who has not remarried.

(7) Service-connected. - Defined in 38 U.S.C. § 101.

(c) Temporary Absence. - An owner does not lose the benefit of this exclusion because of a temporary absence from his or her permanent residence for reasons of health or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

(d) Ownership by Spouses - A permanent residence owned and occupied by husband and wife is entitled to the full benefit of this exclusion notwithstanding that only one of them meets the requirements of this section.

(e) Other Multiple Owners. - This subsection applies to co-owners who are not husband and wife. Each co-owner of a permanent residence must apply separately for the exclusion allowed under this section.

When one or more co-owners of a permanent residence qualify for the exclusion allowed under this section and none of the co-owners qualifies for the exclusion allowed under G.S. 105-277.1, each co-owner is entitled to the full amount of the exclusion allowed under this section. The exclusion allowed to one co-owner may not exceed the co-owner's proportionate share of the valuation of the property, and the amount of the exclusion allowed to all the co-owners may not exceed the exclusion allowed under this section.

When one or more co-owners of a permanent residence qualify for the exclusion allowed under this section and one or more of the co-owners qualify for the exclusion allowed under G.S. 105-277.1, each co-owner who qualifies for the exclusion allowed under this section is entitled to the full amount of the exclusion. The exclusion allowed to one co-owner may not exceed the co-owner's proportionate share of the valuation of the property, and the amount of the exclusion allowed to all the co-owners may not exceed the greater of the exclusion allowed under this section and the exclusion allowed under G.S. 105-277.1.

(f) Application. - An application for the exclusion allowed under this section should be filed during the regular listing period, but may be filed and must be accepted at any time up to and through June 1 preceding the tax year for which the exclusion is claimed. An applicant for an exclusion under this section must establish eligibility for the exclusion by providing a copy of the veteran's disability certification or evidence of benefits received under 38 U.S.C. § 2101.

Additional Information:

- A more detailed definition of the disabled veteran property tax homestead exclusion can be found in another section.
- 38 U.S.C. §101(16) "the term 'service-connected' means, with respect to disability or death, that such disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in line of duty in the active military, naval, or air service."[154]

G.S. 105-277.2 through 105-277.7 – Present-Use Value Program for Agricultural, Horticultural and Forestland

Statute enacted:	
Statute revisions:	
Application:	
Requirement(s):	

The present-use value program is discussed in G.S. 105-277.2, 105-277.3, 105-277.4, 105-277.5, 105-277.6, and 105-277.7. Additional information about the present-use value program can be found by visiting https://www.ncdor.gov/documents/present-use-valuation-program-guide .

G.S. 105-277.8 – Nonprofit Homeowners' Association

Statute enacted:	1979 session, House bill 1198
Statute revisions:	1987 session, House bill 403; 2011 session, House bill 1105
Application:	Single, Form AV-10
Requirement(s):	Ownership and use

Statute:

(a) Except as provided in subsection (a1) of this section, the value of real and personal property owned by a nonprofit homeowners' association shall be included in the

[154] United States Code, Title 38 – *Veterans' Benefits*. Available at: http://uscode.house.gov/view.xhtml?path=/prelim@title38&edition=prelim.

appraisals of property owned by members of the association and shall not be assessed against the association if each of the following requirements is met:

(1) All property owned by the association is held for the use, benefit, and enjoyment of all members of the association equally.

(2) Each member of the association has an irrevocable right to use and enjoy, on an equal basis, all property owned by the association, subject to any restrictions imposed by the instruments conveying the right or the rules, regulations, or bylaws of the association.

(3) Each irrevocable right to use and enjoy all property owned by the association is appurtenant to taxable real property owned by a member of the association.

The assessor may allocate the value of the association's property among the property of the association's members on any fair and reasonable basis.

(a1) The value of extraterritorial common property shall be subject to taxation only in the jurisdiction in which it is entirely contained and only in the amount of the local tax of the jurisdiction in which it is entirely contained. The value of any property taxed pursuant to this subsection, as determined by the latest schedule of values, shall not be included in the appraisals of property owned by members of the association that are referenced in subsection (a) of this section or otherwise subject to taxation. The assessor for the jurisdiction that imposes a tax pursuant to this subsection shall provide notice of the property, the value, and any other information to the assessor of any other jurisdiction so that the real properties owned by the members of the association are not subject to taxation for that value. The governing board of a nonprofit homeowners' association with property subject to taxation under this subsection shall provide annually to each member of the association the amount of tax due on the property, the value of the property, and, if applicable, the means by which the association will recover the tax due on the property from the members.

(b) As used in this section, "nonprofit homeowners' association" means a homeowners' association as defined in § 528(c) of the Internal Revenue Code, and "extraterritorial common property" means real property that is (i) owned by a nonprofit homeowners association that meets the requirements of subdivisions (1) through (3) of subsection (a) of this section and (ii) entirely contained within a taxing jurisdiction that is different from that of the taxable real property owned by members of the association and providing the appurtenant rights to use and enjoy the association property.

Additional Information: The value of property owned by the homeowners' association is attributed to the properties owned by the members of the homeowners' association. Each member must have an equal and irrevocable right to use the homeowners' association property.

G.S. 105-277.9 – Taxation of Property Inside Certain Roadway Corridors

Statute enacted:	1987 session, House bill 1211
Statute revisions:	1997 session, Senate bill 1291; 2011 session, Senate bill 107
Application:	Not required.
Requirement(s):	Use only. Partial exclusion.

Statute: Real property that lies within a transportation corridor marked on an official map filed under Article 2E of Chapter 136 of the General Statutes is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and is taxable at twenty percent (20%) of the appraised value of the property if each of the following requirements is met:

(1) As of January 1, no building or other structure is located on the property.

(2) The property has not been subdivided, as defined in G.S. 153A-335 or G.S. 160A-376, since it was included in the corridor.

G.S. 105-277.10 – Precious Metals Used or Held for Use Directly in Manufacturing or Processing by a Manufacturer

Statute enacted:	1989 session, Senate bill 1146
Statute revisions:	N/A
Application:	Single, Form AV-10
Requirement(s):	Ownership and use. Partial exclusion.

Statute: Precious metals, including rhodium and platinum, used or held for use directly in manufacturing or processing by a manufacturer as part of industrial machinery is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be assessed for taxation in accordance with this section. The classified property shall be assessed at the lower of its true value or the manufacturer's original cost less depreciation. The original cost of the classified property shall be adjusted by the index factor, if any, that applies in assessing the industrial machinery with which the property is used, and the depreciable life of the classified property shall be the life assigned to the industrial machinery with which the property is

used. The residual value of the classified property may not exceed twenty-five percent (25%) of the manufacturer's original cost.

G.S. 105-277.11 – Taxation of Property Subject to a Development Financing District Agreement

Statute enacted:	2003 session, Senate bill 725
Statute revisions:	N/A
Application:	Annual
Requirement(s):	Assess at greater of true value or minimum agreed value.

Statute: Property that is in a development financing district established pursuant to G.S. 160A-515.1 or G.S. 158-7.3 and that is subject to an agreement entered into pursuant to G.S. 159-108, shall, pursuant to Article V, Section 14 of the North Carolina Constitution, be assessed for taxation at the greater of its true value or the minimum value established in the agreement.

Additional Information: In 2004, North Carolina voters approved a constitutional amendment which led to special financing laws. Under the laws, local governments can finance certain public improvements within a development district without voter approval, as long as the financing is secured solely by the added tax value resulting from the improvements. The owners of property in the district are permitted to agree in advance on a minimum tax value for their property.

G.S. 105-277.12 – Antique Airplanes

Statute enacted:	1997 session, House bill 1158
Statute revisions:	N/A
Application:	Annual, Form AV-10
Requirement(s):	Ownership and use. Assessed at lower of true value or $5,000.

Statute:

(a) For the purpose of this section, the term "antique airplane" means an airplane that meets all of the following conditions:

(1) It is registered with the Federal Aviation Administration and is a model year 1954 or older.

(2) It is maintained primarily for use in exhibitions, club activities, air shows, and other public interest functions.

(3) It is used only occasionally for other purposes.

(4) It is used by the owner for a purpose other than the production of income.

(b) Antique airplanes are designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be assessed for taxation in accordance with this section. An antique airplane shall be assessed at the lower of its true value or five thousand dollars ($5,000).

G.S. 105-277.13 – Improvements on Brownfields

Statute enacted:	1999 session, Senate bill 1252
Statute revisions:	2015 session, House bill 97
Application:	Single, Form AV-10
Requirement(s):	Brownfield agreement by the Department of Environmental Quality (DEQ). Partial exclusion.

Statute:

(a) Qualifying improvements on brownfields properties are designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be appraised, assessed, and taxed in accordance with this section. An owner of land is entitled to the partial exclusion provided by this section for the first five taxable years beginning after completion of qualifying improvements made after the later of July 1, 2000, or the date of the brownfields agreement. After property has qualified for the exclusion provided by this section, the assessor for the county in which the property is located shall annually appraise the improvements made to the property during the period of time that the owner is entitled to the exclusion.

(b) For the purposes of this section, the terms "qualifying improvements on brownfields properties" and "qualifying improvements" mean improvements made to real property that is subject to a brownfields agreement entered into by the Department of Environmental Quality and the owner pursuant to G.S. 130A-310.32.

(c) The following table establishes the percentage of the appraised value of the qualified improvements that is excluded based on the taxable year:

Year	Percent of Appraised Value Excluded
Year 1	90%
Year 2	75%
Year 3	50%
Year 4	30%
Year 5	10%

Additional Information: Brownfields are properties which are not used to their full potential because of actual or suspected environmental contamination and which are eligible for certain cleanup programs. If the owner first enters into a brownfield agreement with the Department of Environmental Quality (DEQ), then improvements made to the property are assessed at a reduced rate for five years. Additional information can be found be visiting: https://deq.nc.gov/about/divisions/waste-management/brownfields-program .

Additional Statute Referenced:

- G.S. 130A-310.32 Brownfields Agreement

(a) The Department may, in its discretion, enter into a brownfields agreement with a prospective developer who satisfies the requirements of this section. A prospective developer shall provide the Department with any information necessary to demonstrate that:

(1) The prospective developer, and any parent, subsidiary, or other affiliate of the prospective developer has substantially complied with:

a. The terms of any brownfields agreement or similar agreement to which the prospective developer or any parent, subsidiary, or other affiliate of the prospective developer has been a party.

b. The requirements applicable to any remediation in which the applicant has previously engaged.

c. Federal and state laws, regulations, and rules for the protection of the environment.

(2) As a result of the implementation of the brownfields agreement, the brownfields property will be suitable for the uses specified in the agreement while fully protecting public health and the environment instead of being remediated to unrestricted use standards.

(3) There is a public benefit commensurate with the liability protection provided under this Part.

(4) The prospective developer has or can obtain the financial, managerial, and technical means to fully implement the brownfields agreement and assure the safe use of the brownfields property.

(5) The prospective developer has complied with or will comply with all applicable procedural requirements.

(b) In negotiating a brownfields agreement, parties may rely on land-use restrictions that will be included in a Notice of Brownfields Property required under G.S. 130A-310.35. A brownfields agreement may provide for remediation standards that are based on those land-use restrictions.

(c) A brownfields agreement shall contain a description of the brownfields property that would be sufficient as a description of the property in an instrument of conveyance and, as applicable, a statement of:

(1) Any remediation to be conducted on the property, including:

a. A description of specific areas where remediation is to be conducted.

b. The remediation method or methods to be employed.

c. The resources that the prospective developer will make available.

d. A schedule of remediation activities.

e. Applicable remediation standards.

f. A schedule and the method or methods for evaluating the remediation.

(2) Any land-use restrictions that will apply to the brownfields property.

(3) The desired results of any remediation or land-use restrictions with respect to the brownfields property.

(4) The guidelines, including parameters, principles, and policies within which the desired results are to be accomplished.

(5) The consequences of achieving or not achieving the desired results.

(d) Any failure of the prospective developer or the prospective developer's agents and employees to comply with the brownfields agreement constitutes a violation of this Part by the prospective developer.

G.S. 105-277.14 – Working Waterfront Property

Statute enacted:	2007 session, Senate bill 646
Statute revisions:	2007 session, Senate bill 1876; 2009 session, Senate bill 509
Application:	Single, Form AV-10
Requirement(s):	Use only, no ownership requirement. Taxed at present-use value, deferred taxes due subsequent to disqualification.

Statute:

(a) Definitions. - The following definitions apply in this section:

(1) Coastal fishing waters. - Defined in G.S. 113-129.

(2) Commercial fishing operation. - Defined in G.S. 113-168.

(3) Fish processing. - Processing fish, as defined in G.S. 113-129, for sale.

(4) Working waterfront property. - Any of the following property that has, for the most recent three-year period, produced an average gross income of at least one thousand dollars ($1,000):

a. A pier that extends into coastal fishing waters and limits access to those who pay a fee.

b. Real property that is adjacent to coastal fishing waters and is primarily used for a commercial fishing operation or fish processing, including adjacent land that is under improvements used for one of these purposes.

(b) Classification. - Working waterfront property is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution and must be appraised, assessed, and taxed on the basis of the value of the property in its present use rather than on its true value. Working waterfront property includes land reasonably necessary for the convenient use of the property.

(c) Deferred Taxes. - The difference between the taxes that are due on working waterfront property taxed on the basis of its present use and that would be due if the property were taxed on the basis of its true value is a lien on the property. The difference in taxes must be carried forward in the records of each taxing unit as deferred taxes. The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when the property no longer qualifies as working waterfront property.

Additional Information: Applies to pay-to-fish piers at the coast, real property used in commercial fishing, or a fish processing operation. Fish includes marine mammals, crustaceans, and shellfish. Although it is taxed at its present-use value, it is not a part of the present-use value program.

Additional Statutes Referenced:

- G.S. 113-129(4) Coastal Fishing Waters. - The Atlantic Ocean; the various coastal sounds; and estuarine waters up to the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission. Except as provisions in this Subchapter or changes in the agreement between the Marine Fisheries Commission and the Wildlife Resources Commission may make such reference inapplicable, all references in statutes, regulations, contracts, and other legal or official documents to commercial fishing waters apply to coastal fishing waters.
- G.S. 113-168(1) "Commercial fishing operation" means any activity preparatory to, during, or subsequent to the taking of any fish, the taking of which is subject to regulation by the Commission, either with the use of commercial fishing equipment or gear, or by any means if the purpose of the taking is to obtain fish for sale. Commercial fishing operation does not include (i) the taking of fish as part of a recreational fishing tournament, unless commercial fishing equipment or gear is used, (ii) the taking of fish under a RCGL, or (iii) the taking of fish as provided in G.S. 113-261.
- G.S. 113-129(4) Coastal Fishing Waters. – The Atlantic Ocean; the various coastal sounds; and estuarine waters up to the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission. Except as provisions in this Subchapter or changes in the agreement between the Marine Fisheries Commission and the Wildlife Resources Commission may make such reference inapplicable, all references in statutes, regulations, contracts, and other legal or official documents to commercial fishing waters apply to coastal fishing waters.
- G.S. 113-129(7) Fish; Fishes. – All finfish; all shellfish; and all crustaceans.

G.S. 105-277.15 – Wildlife Conservation Land

Statute enacted:	2007 session, House bill 1889
Statute revisions:	2017 session, House bill 320
Application:	Single, Form AV-10
Requirement(s):	Ownership and use, wildlife habitat conservation agreement with the North Carolina Wildlife Resources Commission. Taxed at present-use value, deferred taxes due subsequent to disqualification.

Statute:

(a) Definitions. - The following definitions apply in this section:

(1) Business entity. - Defined in G.S. 105-277.2.

(2) Family business entity. - A business entity whose members are, directly or indirectly, individuals and are relatives. An individual is indirectly a member of a business entity if the individual is a member of a business entity or a beneficiary of a trust that is part of the ownership structure of the business entity.

(3) Family trust. - A trust that was created by an individual and whose beneficiaries are, directly or indirectly, individuals who are the creator of the trust or a relative of the creator. An individual is indirectly a beneficiary of a trust if the individual is a beneficiary of another trust or a member of a business entity that has a beneficial interest in the trust.

(4) Member. - Defined in G.S. 105-277.2.

(5) Relative. - Defined in G.S. 105-277.2.

(b) Classification. - Wildlife conservation land is designated a special class of property under Article V, Section 2(2) of the North Carolina Constitution and must be appraised, assessed, and taxed in accordance with this section. Wildlife conservation land classified under this section must be appraised and assessed as if it were classified under G.S. 105-277.3 as agricultural land.

(c) Requirements. - Land qualifies as wildlife conservation land if it meets the following size, ownership, and use requirements:

(1) Size. - The land must consist of at least 20 contiguous acres.

(2) Ownership. - The land must be owned by an individual, a family business entity, or a family trust and must have been owned by the same owner for the previous five years, except as follows:

a. If the land is owned by a family business entity, the land meets the ownership requirement if the land was owned by one or more members of the family business entity for the required time.

b. If the land is owned by a family trust, the land meets the ownership requirement if the land was owned by one or more beneficiaries of the family trust for the required time.

c. If an owner acquires land that was classified as wildlife conservation land under this section when it was acquired and the owner continues to use the land as wildlife conservation land, then the land meets the ownership requirement if the new owner files an application and signs the wildlife habitat conservation agreement in effect for the property within 60 days after acquiring the property.

(3) Use. - The land must meet all of the following requirements:

a. The land must be managed under a written wildlife habitat conservation agreement with the North Carolina Wildlife Resources Commission that is in effect as of January 1 of the year for which the benefit of this section is claimed and that requires the owner to do one or more of the following:

1. Protect an animal species that lives on the land and, as of January 1 of the year for which the benefit of this section is claimed, is on a North Carolina protected animal list published by the Commission under G.S. 113-333.

2. Conserve any of the following priority animal wildlife habitats: longleaf pine forest, early successional habitat, small wetland community, stream and riparian zone, rock outcrop, or bat cave.

3. Create and actively and regularly use as a reserve for hunting, fishing, shooting, wildlife observation, or wildlife activities, provided that the land is inspected by a certified wildlife biologist at least quintennially to ensure that at least three of the seven activities listed in this sub-sub-subdivision are maintained to propagate a sustaining breeding, migrating, or wintering population of indigenous wild animals for human use, including food, medicine, or recreation. The Commission shall adopt rules needed to administer the inspection requirements of and activities mandated by this sub-sub-subdivision.

I. Supplemental food.

II. Supplemental water.

III. Supplemental shelter.

IV. Habitat control.

V. Erosion control.

VI. Predator control.

VII. Census of animal population on the land.

b. For land used pursuant to sub-sub-subdivisions 1. or 2. of sub-subdivision a. of this subdivision, it must have been classified under G.S. 105-277.3 when the wildlife habitat conservation agreement was signed or the owner must demonstrate to both the Wildlife Resources Commission and the assessor that the owner used the land for a purpose specified in the signed wildlife habitat conservation agreement for three years preceding the January 1 of the year for which the benefit of this section is claimed.

(d) Restrictions. - The following restrictions apply to the classification allowed under this section:

(1) For land used pursuant to sub-sub-subdivision 3. of sub-subdivision a. of subdivision (3) of subsection (c) of this section, no more than 800 acres of an owner's land in a county may be classified under this section. For all other land classified under this section, no more than 100 acres of an owner's land in a county may be classified under this section.

(2) Land owned by a business entity is not eligible for classification under this section if the business entity is a corporation whose shares are publicly traded or one of its members is a corporation whose shares are publicly traded.

(e) Deferred Taxes. - The difference between the taxes that are due on wildlife conservation land classified under this section and that would be due if the land were taxed on the basis of its true value is a lien on the property. The difference in taxes must be carried forward in the records of each taxing unit as deferred taxes. The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1F when the land loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when the property no longer qualifies as wildlife conservation land.

(f) Exceptions to Payment. - No deferred taxes are due in the following circumstances and the deferred taxes remain a lien on the land:

(1) When the owner of wildlife conservation land that was previously classified under G.S. 105-277.3 before the wildlife habitat conservation agreement was signed does not transfer the land and the land again becomes eligible for classification

under G.S. 105-277.3. In this circumstance, the deferred taxes are payable in accordance with G.S. 105-277.3.

(2) When land that is classified under this section is transferred to an owner who signed the wildlife habitat conservation agreement in effect for the land at the time of the transfer and the land remains classified under this section. In this circumstance, the deferred taxes are payable in accordance with this section.

(g) Exceptions to Payment and Lien. - Notwithstanding subsection (e) of this section, if land loses its eligibility for deferral solely due to one of the following reasons, no deferred taxes are due and the lien for the deferred taxes is extinguished:

(1) The property is conveyed by gift to a nonprofit organization and qualifies for exclusion from the tax base under G.S. 105-275(12) or G.S. 105-275(29).

(2) The property is conveyed by gift to the State, a political subdivision of the State, or the United States.

(h) Administration. - An owner who applies for the classification allowed under this section must attach a copy of the owner's written wildlife habitat agreement required under subsection (c) of this section. An owner who fails to notify the county assessor when land classified under this section loses its eligibility for classification is subject to a penalty in the amount set in G.S. 105-277.5.

Additional Information: Taxed at agricultural present-use value but it is not a part of the present-use value program. Additional information about this program can be found in the *Present-Use Value Program Guide*.

G.S. 105-277.15A – Site Infrastructure Land

Statute enacted:	2013 session, House bill 439
Statute revisions:	2013 session, Senate bill 790
Application:	Annual, Form AV-10
Requirement(s):	Use and size, no ownership requirement. Partial exclusion, deferred taxes due subsequent to disqualification.

Statute:

(a) Classification. - Site infrastructure land is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution and must be appraised, assessed, and taxed in accordance with this section.

(b) Land qualifies as site infrastructure land if it meets the following size and use requirements:

(1) Size. - The land must consist of at least 100 contiguous acres.

(2) Use. - The land must meet all of the following requirements:

a. It must be zoned for industrial use, office use, or both.

b. A building permit for a primary building or structure must not have been issued for the land, and there is no primary building or structure on the land.

(c) Deferred Taxes. - An owner may defer a portion of tax imposed on site infrastructure land that represents the sum of the following: (i) the increase in value of the property attributable solely to improvements made to the site infrastructure land, if any, and (ii) the difference between the true value of the site infrastructure land as it is currently zoned and the value of the site infrastructure land as if it were zoned the same as it was in the calendar year prior to the time the application for property tax relief under this section was filed.

The difference between the taxes due under this section and the taxes that would have been payable in the absence of this section is a lien on the site infrastructure land as provided in G.S. 105-355(a). The difference in taxes must be carried forward in the records of each taxing unit as deferred taxes. The deferred taxes are due and payable in accordance with G.S. 105-277.1F when the site infrastructure land loses its eligibility for deferral because of the occurrence of a disqualifying event as follows:

(1) The deferred taxes for the preceding five fiscal years are due and payable when an amount equal to the deferred taxes is not invested in improvements to make the land suitable for industrial use, office use, or both within five years from the first day of the fiscal year the property was classified under this section.

(2) The deferred taxes for the preceding five fiscal years are due and payable when the minimum investment required by subdivision (1) of this subsection is timely made, but the land has been classified under this section for 10 years.

(3) All deferred taxes are due and payable when some or all of the site infrastructure land is rezoned for a use other than for industrial use, office use, or both.

(4) The deferred taxes for the preceding year are due and payable when the land is transferred or when a building permit for a primary building or structure for the land is issued.

(d) Notice. - On or before September 1 of each year, the collector shall notify each owner to whom a tax deferral has previously been granted of the accumulated sum of deferred

taxes and interest. An owner who fails to notify the county assessor when land classified under this section loses its eligibility for classification is subject to a penalty in the amount set in G.S. 105-277.5.

(e) Exception to Payment. - No deferred taxes are due in the following circumstances, and the deferred taxes remain a lien on the land:

(1) When the owner of site infrastructure land that was previously classified under G.S. 105-277.3 does not transfer the land, and the land again becomes eligible for classification under G.S. 105-277.3. In this circumstance, the deferred taxes are payable in accordance with G.S. 105-277.3.

(2) When a portion of the site infrastructure land is transferred for industrial use, office use, or both or has issued for the land a building permit for a primary building or structure for industrial use, office use, or both, and the remainder of the site infrastructure land no longer meets the size requirement of this section. In this circumstance, the deferred taxes for the remainder are payable in accordance with this section without application of the size requirement of subdivision (b)(1) of this section.

(f) Application. - An application for property tax relief provided by this section should be filed during the regular listing period but may be filed after the regular listing period upon a showing of good cause by the applicant for failure to make a timely application, as determined and approved by the board of equalization and review or, if that board is not in session, by the board of county commissioners. An untimely application approved under this subsection applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed. Decisions of the county board may be appealed to the Property Tax Commission. Persons may apply for this property tax relief by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1. An application for property tax relief provided by this section may not be approved for any portion of site infrastructure land which has previously lost eligibility for the program.

(g) Report. - On August 1 of each year, the Secretary shall report to the Department of Commerce the number and location of site infrastructure lands qualified under this section.

Memorandum:

- In an August 9, 2013, memorandum by David B. Baker, former NCDOR Local Government Division Director, he discussed House Bill 439. "The Act creates a new section, G.S. 105-277.15A, within the Machinery Act. While there is some relation between the new program and the Present-Use Value program, the Infrastructure program is not a part of

PUV, but rather a separate program available for certain properties that are either already in PUV, or have been in PUV within six months prior to application. It appears to be designed to permit a property owner to convert PUV property to a potential industrial park, without losing the property tax benefits of PUV classification."[155]

G.S. 105-277.16 – Low-Income Housing Property

Statute enacted:	2007 session, Senate bill 1878
Statute revisions:	2007 session, Senate bill 1632
Application:	None required, affirmative duty on assessor to appraise according to the statutory requirements.
Requirement(s):	Assessors must use the income approach and rent restrictions to value property, income tax credits cannot be considered.

Statute: A North Carolina low-income housing development to which the North Carolina Housing Finance Agency allocated a federal tax credit under section 42 of the Code is designated a special class of property under Article V, Section 2(2) of the North Carolina Constitution and must be appraised, assessed, and taxed in accordance with this section. The assessor must use the income approach as the method of valuation for property classified under this section and must take rent restrictions that apply to the property into consideration in determining the income attributable to the property. The assessor may not consider income tax credits received under section 42 of the Code or under G.S. 105-129.42 in determining the income attributable to the property.

[155] Baker, D. (2013). *House Bill 439 (now Session Law 2013-130) Infrastructure Property Tax Deferral Program*. Available at: https://files.nc.gov/ncdor/documents/bulletins/siteinfrastructuredeferralprogrammemo_2013.pdf?aPHYyVYaLOyl_nvTp6TQZ0qZPWlueFta.

G.S. 105-277.17 – Community Land Trust Property

Statute enacted:	2009 session, House bill 1586
Statute revisions:	N/A
Application:	Single, Form AV-10
Requirement(s):	Ownership and use

Statute:

(a) Classification. - Community land trust property is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution and must be appraised, assessed, and taxed in accordance with this section.

(b) Definitions. - The following definitions apply in this section:

(1) Community land trust developer. - A nonprofit housing development entity that is an exempt organization under section 501(c)(3) of the Code and that transfers community land trust property to a qualifying owner.

(2) Community land trust property. - Improvements to real property that meet all of the following conditions:

a. A fee or leasehold interest in the improvements is transferred subject to resale restrictions contained in a long-term ground lease of not less than 99 years.

b. The community land trust developer retains an interest in the property pursuant to the deed of conveyance or the long-term ground lease.

(3) Ground lease. - A lease between the community land trust developer of a dwelling site, as landlord, and the owner or lessee of a permanent residence constructed on the dwelling site, as tenant. The leasehold interest of the tenant in the dwelling site includes an undivided interest and nonexclusive easement for ingress and egress to the dwelling site and for the use and enjoyment of the common areas and community facilities, if any.

(4) Income. - Defined in G.S. 105-277.1(b).

(5) Initial investment basis. - The most recent sales price, excluding any silent mortgage amount, of community land trust property.

(6) Qualifying owner. - A North Carolina resident who (i) occupies, as owner or lessee, community land trust property as a permanent residence and (ii) is part of a household, the annual income of which at the time of transfer and adjusted for

family size is not more than one hundred percent (100%) of the local area median family income as defined by the most recent figures published by the U.S. Department of Housing and Urban Development.

(7) Resale restrictions. - Binding restrictions that affect the price at which a qualifying owner's interest in community land trust property can be transferred for value to a subsequent qualifying owner or the community land trust developer.

(8) Silent mortgage amount. - The amount of debt incurred by a qualifying owner that is represented by a deed of trust or leasehold deed of trust on community land trust property and that earns no interest and requires no repayment prior to satisfaction of any interest-earning mortgage or a subsequent transfer of the property, whichever occurs first.

(9) Transfer. - Any method of disposing of an interest in real property.

(c) Valuation. - The initial appraised value of community land trust property in the year the property first qualifies for classification under this section is the initial investment basis. In subsequent general reappraisals, the value of the community land trust property shall not exceed the sum of the restricted capital gain amount and the initial investment basis. The restricted capital gain amount is the market value of the community land trust property that would be established for the current general reappraisal if not for this classification (i) adjusted to the maximum sales price permitted pursuant to the resale restrictions effective for a hypothetical sale occurring on the date of reappraisal, if less, and (ii) subtracting the initial investment basis and any silent mortgage amount.

Additional Information: Properties owned by certain home ownership programs geared toward providing housing to lower-income residents. The properties are not actually sold, but are conveyed to the homeowner by a long-term lease. The lease generally only permits the properties to be returned back to the community land trust, at a pre-determined rate of annual property value appreciation. Both the terms of the lease and the terms of certain special financing will limit the assessed value.

G.S. 105-278 – Historic Properties

Statute enacted:	1977 session, House bill 1281
Statute revisions:	1981 session, Senate bill 332; 1989 session, Senate bill 139; 2005 session, House bill 105 and 1963; 2007 session, Senate bill 1876; 2009 Session, Senate bill 1177, 2021 session, Senate bill 105
Application:	Single, Form AV-10
Requirement(s):	Designated a historic property. Deferred taxes due subsequent to disqualification.

Statute:

(a) Real property designated as a historic property by a local ordinance adopted pursuant to former G.S. 160A-399.4 or designated as a historic landmark by a local ordinance adopted pursuant to G.S 160D-945 or former G.S. 160A-400.5 is designated a special class of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution. Property so classified shall be taxed uniformly as a class in each local taxing unit on the basis of fifty percent (50%) of the true value of the property as determined pursuant to G.S. 105-285 and 105-286, or 105-287.

(b) The difference between the taxes due on the basis of fifty percent (50%) of the true value of the property and the taxes that would have been payable in the absence of the classification provided for in subsection (a) shall be a lien on the property of the taxpayer as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit or units as deferred taxes. The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1F when the property loses the benefit of this classification as a result of a disqualifying event. A disqualifying event occurs when there is a change in an ordinance designating a historic property or a change in the property, other than by fire or other natural disaster, that causes the property's historical significance to be lost or substantially impaired. In addition to the provisions in G.S. 105-277.1F, no deferred taxes are due and all liens arising under this subsection are extinguished when the property's historical significance is lost or substantially impaired due to fire or other natural disaster.

Additional Information: This program applies only to certain historic properties. There must be a certain type of municipal ordinance which designates the property as historic. A change in the ordinance is considered a disqualifying event and deferred taxes become due, with the exception of fire or natural disaster.

G.S. 105-278.6A – Qualified Retirement Facility

Statute enacted:	1987 session, House bill 318
Statute revisions:	1997 session, Senate bill 1366; 1999 session, Senate bill 325; 2001 session, House bill 193; 2011 session, Senate bill 252
Application:	Annual, Form AV-10 and Form AV-11
Requirement(s):	Ownership and use, offers both total and partial exclusion

Statute:

(a) Classification. - Buildings, the land they actually occupy, additional adjacent land reasonably necessary for the convenient use of the buildings, and personal property owned by a qualified retirement facility and used in the operation of that facility are designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution and are excluded from taxation to the extent provided in this section.

(b) Definitions. - The following definitions apply in section:

(1) Charity care. - The unreimbursed costs to the facility of providing health care, housing, or other services to a resident who is uninsured, underinsured, or otherwise unable to pay for all or part of the services rendered.

(2) Community benefits. - The unreimbursed costs to the facility of providing the following:

a. Services, including health, recreation, community research, and education activities provided to the community at large, including the elderly.

b. Charitable donations.

c. Donated volunteer services.

d. Donations and voluntary payments to government agencies.

(3) Financial reporting period. - The calendar year or tax year ending prior to the date the retirement facility applies for an exclusion under this section.

(4) Resident revenue. - Annual revenue paid by a resident for goods and services and one year's share of the initial resident fee amortized in accordance with generally accepted accounting principles.

(5) Retirement facility. - A community that meets all of the following conditions:

a. It is licensed under Article 64 of Chapter 58 of the General Statutes.

b. It is designed for elderly residents.

c. It includes independent living units for elderly residents.

d. It includes a skilled nursing facility or an adult care facility.

(6) Unreimbursed costs. - The costs a facility incurs for providing charity care or community benefits after subtracting payment or reimbursement received from any source for the care or benefits. Unreimbursed costs include costs paid from funds generated by a program described in subdivision (c)(5) of this section.

(c) Total Exclusion. - A retirement facility qualifies for total exclusion under this section if it meets all of the following conditions:

(1) It is exempt from tax under Article 4 of this Chapter and private shareholders do not benefit from its operations.

(2) All of its revenues, less operating and capital expenses, are applied to providing uncompensated goods and services to the elderly and to the local community, or are applied to an endowment or a reserve for these purposes.

(3) Its charter provides that in the event of dissolution, its assets will revert or be conveyed to an entity that is organized exclusively for charitable, educational, scientific, or religious purposes, and is an exempt organization under section 501(c)(3) of the Code.

(5) It has an active program to generate funds through one or more sources, such as gifts, grants, trusts, devises, endowment, or an annual giving program, to assist the retirement facility in serving persons who might not be able to reside there without financial assistance or subsidy.

(6) It meets at least one of the following conditions:

a. The facility serves all residents without regard to the residents' ability to pay.

b. At least five percent (5%) of the facility's resident revenue for the financial reporting period is provided in charity care to its residents, in community benefits, or in both.

(d) Partial Exclusion. - A retirement facility qualifies for a partial exclusion under this subsection if it meets conditions under subdivisions (c) (1) through (c)(5) of this section and at least one percent (1%) of the facility's resident revenue for the financial reporting period is provided in charity care to its residents, in community benefits, or in both. The percentage of the retirement facility's assessed value that is excluded from taxation is the applicable percentage provided in the following table, based on the minimum percentage

of the facility's resident revenue that it provides in charity care to its residents, in community benefits, or in both:

Partial Exclusion	Minimum Percentage of Resident Revenue
80%	4%
60%	3%
40%	2%
20%	1%

(e) Application for Exclusion. - The application requirements of G.S. 105-282.1 apply to this section.

Additional Information: Must be a licensed continuing care retirement community, designed for elderly residents, with independent living units, and a skilled nursing or adult care facility. Must be exempt from state income tax, provide no benefit to private shareholders from its operation, provide for assets to go to another qualifying entity on dissolution, and actively raise funds to assist in serving lower-income residents. This statute was created after G.S. 105-275(32) was deemed unconstitutional.

G.S. 105-330.3 – Classified Motor Vehicle Exemption or Exclusion

Statute enacted:	1991 session, House bill 20
Statute revisions:	2007 session, Senate bill 1704; 2009 session, Senate bill 509; 2011 session, Senate bill 826; 2013 session, House bill 14
Application:	Not required for units of government under G.S. 105-278.1; Otherwise Annual, Form AV-10V for all other claims
Requirement(s):	Ownership and use

Statute:

(b) Exemption or Exclusion. - The owner of a classified motor vehicle who claims an exemption or exclusion from tax under this Subchapter has the burden of establishing that the vehicle is entitled to the exemption or exclusion. The owner may establish prima facie entitlement to exemption or exclusion of the classified motor vehicle by filing an application for exempt status with the assessor within 30 days of the date taxes on the vehicle are due. When an approved application is on file, the assessor must omit from the tax records the classified motor vehicles described in the application. An application is not required for vehicles qualifying for the exemptions or exclusions listed in G.S. 105-

282.1(a)(1). The remaining provisions of G.S. 105-282.1 do not apply to classified motor vehicles.

Additional Statute Referenced:

- G.S. 105-330.1(a) Classification. - All motor vehicles other than the motor vehicles listed in subsection (b) of this section are designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and are considered classified motor vehicles. Classified motor vehicles must be listed and assessed as provided in this Article and taxes on classified motor vehicles must be collected as provided in this Article.

G.S. 105-330.9 – Antique Automobiles

Statute enacted:	1995 session, House bill 1001
Statute revisions:	2009 session, Senate bill 509; 2013 session, House bill 14; 2017 Session, Senate bill 131
Application:	Single, Form AV-66
Requirement(s):	Ownership and use. Assessed at lower of true value or $500.

Statute:

(a) Definition. - For the purpose of this section, the term "antique automobile" means a motor vehicle that meets all of the following conditions:

(1) It is registered with the Division of Motor Vehicles and has an historic vehicle special license plate under G.S. 20-79.4.

(2) It is maintained primarily for use in exhibitions, club activities, parades, and other public interest functions.

(3) It is used only occasionally for other purposes.

(4) It is owned by an individual, or owned directly or indirectly through one or more pass-through entities, by an individual.

(5) It is used by the owner for a purpose other than the production of income and is not used in connection with a business.

(b) Classification. - Antique automobiles are designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and must be assessed for taxation in accordance with this section. An antique automobile must be assessed at the lower of its true value or five hundred dollars ($500.00).

22. Public Service Companies

G.S. 69-25.16 – Rural Fire Protection Districts	
Statute enacted:	1971 session, Senate bill 276
Statute revisions:	N/A
Application:	Not required
Requirement(s):	Use requirement only

Statute: There shall be excluded from any rural fire protection district, and the provisions of this Article shall not apply to, an electric generating plant, together with associated land and facilities, which provides electricity to the public; provided that this section shall not apply to any rural fire protection district in existence on May 1, 1971.

G.S. 160A-544 – Personal Property	
Statute enacted:	1977 session, House bill 1263
Statute revisions:	N/A
Application:	Not required
Requirement(s):	Ownership and use

Statute: There shall be excluded from any service district and the provisions of this Article shall not apply to the personal property of any public service corporation as defined in G.S. 160A-243(c); provided that this section shall not apply to any service district in existence on January 1, 1977.

G.S. 117-33 – Telephone Membership Corporation

Statute enacted:	1965 session, Senate bill 96
Statute revisions:	2011 session, House bill 989
Application:	Not required
Requirement(s):	Ownership and use

Statute: A telephone membership corporation heretofore or hereafter organized under this Article shall be, and is hereby declared to be a public agency, and shall have within its limits for which it was formed the same rights as any other political subdivision of the State, and all property owned by said telephone membership corporation and used exclusively for the purpose of said corporation shall be held in the same manner and subject to the same taxes and assessments as property owned by any county or municipality of the State so long as said property is owned by said telephone membership corporation and is used for the purposes for which the corporation was formed. Notwithstanding the foregoing, a telephone membership corporation shall not be eligible to receive a permanent registration plate issued under G.S. 20-84.

23. Health Care Facilities Health Care Act

G.S. 131A-21 – Tax Exemption	
Statute enacted:	1975 session, Senate bill 408
Statute revisions:	1995 session, Senate bill 120; 1999 session, House bill 1573; 2001 session, Senate bill 162; 2019 Session, Senate bill 537
Application:	Single, Form AV-10
Requirement(s):	Bonds to provide or improve a health care facility

Statute: The exercise of the powers granted by this Article will be in all respects for the benefit of the people of the State and will promote their health and welfare. If bonds or notes are issued by the Commission to provide or improve a health care facility, then until the bonds or notes are retired, the facility for which bonds or notes are issued is exempt from property taxes to the extent provided in this section. If refunding bonds or notes are issued to refund bonds or notes issued to provide or improve a health care facility, the facility will continue to be exempt from property taxes as provided in this section until such time as the refunding bonds or notes are retired, provided that the final maturity of the refunding bonds or notes does not extend beyond the final maturity of the original bonds or notes.

Property may be exempt from property taxes as provided in this section if a timely application for the exemption is filed with the assessor of the county in which the property is located as required under G.S. 105-282.1. The property tax exemption under this section shall not exceed the lesser of the original principal amount of the bonds or notes or the assessed value for ad valorem tax purposes of the facility. If bonds or notes are issued to finance more than one health care facility, only that portion of the principal amount of the bonds or notes used to provide or improve the particular facility, including any allocable reserves and financing costs, may be considered for the purpose of determining the amount of the exemption allowable under this section. The exemption authorized by this section shall begin with the first full tax year of the taxpayer following the issuance of the bonds and notes. This section does not affect a health care facility's eligibility for a property tax exemption under Subchapter II of Chapter 105 of the General Statutes.

Any bonds or notes issued by the Commission under the provisions of this Article shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance, estate, or gift taxes, income taxes on the gain

from the transfer of the bonds and notes, and franchise taxes. The interest on the bonds and notes is not subject to taxation as income.