



2017-2018 General Assembly

# SENATE BILL 99: Appropriations Act of 2018, Sec. 38.4: Automatic Extension of Time to File Tax Returns

<b>Committee:</b>		<b>Date:</b>	July 11, 2018
<b>Introduced by:</b>		<b>Prepared by:</b>	Cindy Avrette Staff Attorney
<b>Analysis of:</b>	Sec. 38.4 of S.L. 2018-5		

**OVERVIEW:** *Sec. 38.4 of S.L. 2018-5 provides that a taxpayer who is granted an automatic extension to file a federal income tax return is granted an automatic extension to file a State income and franchise tax return.*

*This section applies to taxable years beginning on or after January 1, 2019.*

**CURRENT LAW:** A taxpayer must file an extension application form to receive an extension of time to file a North Carolina income or franchise tax return. The application requirement applies to all income tax filers: individual, corporate, partnership, as well as estates and trust. An application for an extension of time to file must be submitted by the due date of the return; if it is received after the due date, the extension is denied. An extension of time to file an income or franchise tax return does not extend the time for paying the tax due or the time when a penalty attaches for failure to pay the tax.<sup>1</sup>

The law does not permit the Department of Revenue to accept a federal extension form in lieu of the North Carolina extension form. Therefore, if a taxpayer files for an extension of time to file a federal income tax return, but fails to file a North Carolina extension application, the State tax return is delinquent and subject to interest and all applicable penalties. The penalty for failure to file is equal to 5% of the amount of the tax due if the failure is for not more than one month, with an additional 5% for each additional month, not to exceed 25%. The failure to pay tax when due, without intent to evade the tax, is equal to 10% of the tax due. The revenue generated from civil penalties is credited to the Civil Penalty and Forfeiture Fund, and the proceeds in the Fund are used exclusively for maintaining free public schools.

**BILL ANALYSIS:** Sec. 38.4 of S.L. 2018-5 provides that a taxpayer who is granted an automatic extension to file a federal income tax return is granted an automatic extension to file a State income and franchise tax return. A failure to file penalty will not be assessed if the taxpayer files the return within six months from the original due date and the taxpayer filed a timely federal extension form.<sup>2</sup> An extension of time to file an income or franchise tax return will not extend the time for paying the tax due.

**EFFECTIVE DATE:** This section applies to taxable years beginning on or after January 1, 2019.

**BACKGROUND:** Sec. 1.14 of S.L. 2017-204 required the Department of Revenue to report to the Revenue Laws Study Committee on options to eliminate the Department's mandatory extension form.<sup>3</sup> The Department recommended that a taxpayer not be required to file a North Carolina extension form if no tax is due and the taxpayer files a timely federal extension. The Department recommended that a

<sup>1</sup> The failure to pay penalty applies for income and franchise tax purposes when the taxpayer fails to pay 90% of the tax owed by the original due date.

<sup>2</sup> States do not receive information from the IRS regarding federal extensions filed with it.

<sup>3</sup> [DOR Mandatory Extension Report](#) and [DOR Presentation on Mandatory Extension Report](#).

Karen Cochrane-Brown  
Director



Legislative Analysis  
Division  
919-733-2578

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taxpayer continue to be required to file a North Carolina extension form when the taxpayer has a tax liability. The North Carolina Association of CPAs disagreed with that recommendation, citing that oftentimes a taxpayer seeking a federal extension does not know the exact amount of tax that may or may not be due. Therefore, this recommendation would offer little relief in most instances since it would only apply to situations where no tax was due. The Revenue Laws Study Committee did not make any recommendations concerning this issue.