



SENATE BILL 99: Appropriations Act of 2018, Sec. 38.10: Other Tax Changes

2017-2018 General Assembly

Committee:		Date:	July 11, 2018
Introduced by:		Prepared by:	Trina Griffin Staff Attorney
Analysis of:	Sec. 38.10 of S.L. 2018-5		

OVERVIEW: *Sec. 38.10 of S.L. 2018-5 makes several miscellaneous tax changes, including the following:*

- *Clarifies that when a corporation's articles of incorporation or a limited liability company's articles of organization are suspended, the entity is nevertheless liable for its tax obligations.*
- *Provides that meals other than breakfast served at a bed and breakfast home or inn must be separately stated rather than added to the room rate. The change more accurately reflects the intended result when the General Assembly changed the law in 2017 to allow bed and breakfast inns to serve lunch and dinner. The effect of this change means that those meals will be subject to State and local sales tax and the prepared food tax, if there is one, but not the occupancy tax.*
- *Repeals a provision enacted last year that inadvertently created a double tax benefit for funds placed in a Personal Education Savings Account. The deduction will remain in place, but the exclusion from income is repealed. This provision is effective for taxable years beginning on or after January 1, 2018.*
- *Authorizes the Secretary of Revenue (Secretary) to make provisions for the electronic filing of returns and modifies the penalties related to informational returns in an effort to combat refund fraud and identity theft.*

This section has various effective dates. Please see the full summary for more detail.

CURRENT LAW, BILL ANALYSIS, AND EFFECTIVE DATE:

Subsection	Explanation	Effective Date
(a) and (b)	Clarifies that the imposition of a revenue suspension, which is an act done by the Secretary of State at the direction of the Department of Revenue (Department), does not mean that the suspended corporation or LLC ceases to be liable following the suspension for accrued, current, or subsequent State taxes; rather the tax liability remains unaffected by the suspension.	June 12, 2018
(c)	Clarifies the expiration date of a provision that allows the Secretary to compromise the liability of a retailer who is assessed for failure to properly collect sales tax on admission charges, service contracts, prepaid meal plans, or aviation gasoline and jet fuel. The language is being adjusted to mirror the language in G.S. 105-237.1(a)(7) because the intent was for the provision to be tied to a	June 12, 2018

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

Senate Bill 99

Page 2

	certain reporting period and not for the expiration to be tied to when assessments are issued.	
(d)	<p>Adds references to recently created property tax exemptions to the list of those for which a property owner must file a single application. Generally speaking, a property owner seeking a property tax exemption must file an annual application. There are some exceptions, under which either no application is required or only a one-time application is required. This section adds the following exemptions to the single application requirement; these exemptions were established in recent years but corresponding changes were not made to the application statute:</p> <ul style="list-style-type: none">• Real and personal property occupied by charter schools that is wholly and exclusively used for educational purposes.• Energy mineral interest in property for which a permit has not been issued under G.S. 113-395.• Real and personal property located on lands held in trust by the United State for the Eastern Band of Cherokee Indians, regardless of ownership.• A mobile classroom or modular unit that is occupied by a school and used exclusively for educational purposes.	June 12, 2018
(e) and (f)	Corrects a cross-reference.	June 12, 2018
(g)	<p>Requires that lunch and dinner meals, served at the option of guests staying at a bed and breakfast home or inn, be charged separately on the guest's bill and, therefore, are not included in the room rate. This change corrects a provision enacted last year to more accurately reflect the General Assembly's intent. The effect of this change means that those meals will be subject to State and local sales tax and the prepared food tax, if there is one, but not the occupancy tax. This treatment is consistent with how traditional room service meals are taxed at hotels. By contrast, the room rental and the breakfast, which is typically included as part of the room rental, is subject to State and local sales tax and occupancy tax.</p> <p>Subsection 38.10(s), the effective date provisions for this section, provide that a retailer is not liable for an undercollection of sales tax, occupancy tax, or prepared food and beverage tax if the retailer made a good-faith effort to comply with the law and collect the proper amount of tax; this provision applies only to the period beginning January 1, 2018, and ending July 1, 2018.</p>	Effective July 1, 2018, and applies to gross receipts derived from the rental of an accommodation that a consumer occupies or has a right to occupy on or after that date.
(h)	<p>Waives an antiquated restriction regarding sales and use tax revenue distributed to a municipality for water and sewer capital outlay purposes.</p> <p>G.S. 105-487(b) required a municipality to use a percentage of the sales and use tax revenue distributed to it under Article 40 of</p>	June 12, 2018

Senate Bill 99

Page 3

	<p>Chapter 105 of the General Statutes, First One-Half Cent (½¢) Local Government Sales and Use Tax, only for water and sewage capital outlay purposes. This restriction was time-limited. Prior to the sunset of the restriction, a municipality could petition the Local Government Commission to waive part or all of the restriction if the municipality demonstrated that its water and sewer needs could be met without the use of the restricted sales tax revenue. A similar restriction existed under Article 42, Second One-Half Cent (½¢) Local Government Sales and Use Tax. The restrictions on this use expired more than 20 years ago. The General Assembly repealed the obsolete restrictions in S.L. 1998-98: G.S. 105-487(b) and G.S. 105-504.</p> <p>Some municipalities have monies in their enterprise funds received from sales and use tax distributions prior to the expiration of the restrictions. Those funds must be expended as provided in the statute that existed at the time of the distributions, unless the municipality petitions the Local Government Commission to waive the restriction and the petition is approved. Under 20-NCAC 03.0112, the Local Government Commission charges a fee of \$625.00 for services rendered to obtain this approval. There are some municipalities who do not own or operate a water or sewer system. In at least once instance, the amount of revenue subject to the restriction is less than \$1,500. This section would allow a municipality that does not own or operate a water or sewer system to expend those funds for any public purpose without the necessity of petitioning the Local Government Commission for approval.</p>	
(i)	Repeals an obsolete provision.	June 12, 2018
(j) and (k)	<p>Provides more specificity with regard to the expiration of the Historic Rehabilitation Tax Credits.</p> <p>The State historic tax credit under Article 3D expired for expenditures incurred on or after January 1, 2015. However, the taxable year for which the credit is taken is not the year in which the expenditures are incurred, but the taxable year in which the certified historic structure is placed in service.</p> <p>Generally speaking, “placed in service” is the earlier of the taxable year in which the period for depreciation with respect to the property begins, or the taxable year in which the property is available for a specifically assigned function (ie, trade or business, production of income, personal activity, tax-exempt activity).</p> <p>The purpose of these subsections is to give more specificity with regard to the expiration of the tax credit, so the Department will know with certainty when it may remove the tax credit from the tax forms.</p> <p>Under subsection (j), the property for which an expenditure was incurred prior to January 1, 2015, must be placed in service by</p>	June 12, 2018

Senate Bill 99

Page 4

	January 1, 2023. Subsection (k) makes a similar clarification to the prospective sunset of the existing historic rehabilitation tax credit under Article 3L – the credit expires for expenditures incurred on or after January 1, 2020, and the historic structure for which those expenses were incurred must be placed in service by January 1, 2028.	
(l)	Deletes a reference to an expired credit that is not permitted to be claimed by an estate or trust. G.S. 105-153.10 is the child credit that is repealed for tax years beginning on or after January 1, 2018.	June 12, 2018
(m)	<p>Repeals a provision that creates a double income tax benefit for funds in a Personal Education Savings Account (PESA).</p> <p>A PESA is a bank account provided to a parent for the purpose of holding scholarship funds awarded by the State Education Assistance Authority for an eligible student to be used for certain qualifying education expenses. The General Assembly enacted the program in Section 10A.4 of S.L. 2017-57. As part of the program’s provisions, it provides that funds deposited in a PESA are not taxable income. In addition, the legislation provided an income tax deduction from adjusted gross income for amounts deposited in a PESA, to the extent those funds are included in adjusted gross income. To prevent a double tax deduction, this subsection removes the language from the PESA statute stating that funds deposited into a PESA are not taxable income, and leaves the applicable deduction in the tax statutes.</p>	For taxable years beginning on or after January 1, 2018.
(n)	<p>Restores the "out of business" provision, which directs employers as to when they must file the withholding reconciliation informational return if the employer terminates its business during the calendar year.</p> <p>In 2015, the General Assembly changed the due date for filing the NC-3 Form from "the same date the employer's federal information return of federal income taxes withheld from wages is due under the Code" to "January 31." Under the Code, an employer that goes out of business is required to file the federal reconciliation report with the IRS within 30 days from the last day the taxpayer has payroll. An unintended consequence of changing the due date without reference to the Code was the loss of this 30-day provision. This change restores that requirement for NC tax purposes.</p> <p>This section also moves existing language from another statute into this statute. This language is not new but is being relocated. (See summary for subsection (p) of this section).</p>	June 12, 2018
(o)	Corrects a typographical error and strikes penalty language for failure to timely file an information request because the penalty language is being modified and addressed in another statute. (See summary of Section 38.10(p)).	June 12, 2018

Senate Bill 99

Page 5

(p)	<p>Modifies the existing penalty for failure to file an informational return and creates a \$200.00 penalty for failure to file an informational return in the proper format.</p> <p>The current penalty for failure to file an NC-3 is \$50.00; the current penalty for failure to file an informational return under G.S. 105-251.2, which applies to occupational licensing boards, alcohol vendors, and payment settlement entities, is \$1,000. This subsection tries to better align these penalties by changing both to \$50.00 per day with a maximum penalty of \$1,000.</p> <p>This issue was studied by the Revenue Laws Study Committee during the 2017-2018 interim and links to the Department and staff presentations can be found here and here.</p>	June 12, 2018
(q)	<p>Provides that the Secretary will prescribe when a return, report, payment, or any other document that is electronically submitted to the Department is considered timely filed.</p>	June 12, 2018
(r)	<p>Provides a framework for the Department to offer and prescribe the format for electronic filings. This statute includes authority to waive an electronic submission requirement and requires the Department to publish annually on its website a list of returns that are <i>required</i> to be filed electronically and those that are <i>permitted</i> to be filed electronically during the next calendar year.</p>	June 12, 2018