HOUSE BILL 399:
Extend Tax Credits/Other Finance Changes.

2019-2020 General Assembly

Committee:		**Date:**	November 15, 2019
Introduced by:		**Prepared by:**	Cindy Avrette
Analysis of:	S.L. 2019-237		Staff Attorney

OVERVIEW: S.L. 2019-237 makes the following finance law changes:

- ***Allows an income exclusion for distributions from IRAs to charities by taxpayers age 70½ or older, effective for taxable years beginning on or after January 1, 2019.***
- ***Allows an income tax deduction for amounts received as a JDIG, JMAC, or OneNC grant, effective for taxable years beginning on or after January 1, 2020.***
- ***Extends the following sunsets for four years, from January 1, 2020, until January 1, 2024:***
  - ***Historic Rehabilitation Tax Credit.***
  - ***Sales tax exemption and refund for professional motorsports racing teams or related members of a team.***
  - ***Sales tax exemption for aviation gasoline and jet fuel sold to an interstate air business.***
- ***Extends the Mill Rehabilitation Tax Credit for an eligible railroad station that meets certain conditions.***
- ***Extends the Dry-Cleaning Solvent Cleanup program, and the revenues used to fund the program, for 10 years.***
- ***Sets the insurance regulatory charge at 6.5% for the 2020 calendar year.***

S.L. 2019-237 appropriates the following amounts to the Department of Revenue from the Collections Assistance Fee Special Fund: [1]

- ***$12.5 million for critical costs associated with tax systems operations and maintenance upgrades for the 2019-20 fiscal year.***
- ***$4.4 million to contract with a vendor to perform identity theft and tax fraud analysis using the Government Data Analytics Center (GDAC) for the 2019-20 and the 2020-21 fiscal years.***

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

INCOME EXCLUSION FOR IRA DISTRIBUTIONS TO CHARITIES BY TAXPAYERS AGE 70 ½ OR OLDER

Section 1 conforms North Carolina tax law to federal tax law, thus allowing an income exclusion from State taxable income for a qualified charitable distribution from an individual retirement plan by a person

[1] S.L. 2019-250, section 5.5, provides that if House Bill 966, 2019 Regular Session, becomes law, then the provisions of this act that appropriate funds to the Department of Revenue are repealed. House Bill 966 is the 2019 Appropriations Act.

who has attained the age of 70½, beginning prospectively to the 2019 tax year. Since 2006,[2] federal law permits taxpayers age 70½ or older to contribute up to $100,000 from their IRA account to a charity tax-free, meaning the distribution is excluded from the taxpayer's gross income.[3] North Carolina conformed to this provision for tax years 2006 through 2013, but decoupled for tax years 2014 through 2018. Generally, a taxpayer must include in gross income distributions made from a traditional or Roth IRA account except to the extent they represent a return of nondeductible contributions or are rolled over into another qualified retirement plan.

DEDUCTION FOR AMOUNTS RECEIVED AS ECONOMIC INCENTIVES

Section 2 decouples from a 2017 federal tax law change by allowing a corporate and individual income tax deduction for amounts received by a taxpayer as an economic incentive under the Job Maintenance and Capital Development Fund (JMAC), the Jobs Development Investment Grant Program (JDIG), or the One North Carolina Fund. This section becomes effective for taxable years beginning on or after January 1, 2019, and applies to amounts received by a taxpayer pursuant to an economic incentive agreement entered into on or after that date.

Prior to 2017, IRC §118 excluded from gross income "any contribution to the capital of the taxpayer." Historically, this exclusion extended to contributions made by a "governmental unit or by a civic group for the purpose of inducing the corporation to locate its business in a particular community, or for the purpose of enabling the corporation to expand its operating facilities."

The Tax Cuts and Jobs Act, enacted by Congress in 2017, made a significant change to the treatment of certain incentives offered to corporate taxpayers by state and local governments. Specifically, IRC §118 was amended to expressly provide that the term "contribution to the capital of the taxpayer" does not include "any contribution by any governmental entity or civic group (other than a contribution made by a shareholder as such)." Accordingly, contributions of money or property to a corporation by a governmental entity made on or after December 22, 2017, are includible in gross income.

When the General Assembly enacted its IRC Update legislation in 2018, it did not specifically address this provision. The updated Code date resulted in North Carolina conforming to this provision, thereby making those cash grants included in taxable income. Cash grants from sources other than JMAC, JDIG, and One North Carolina Fund will continue to be includable in gross income.

EXTEND HISTORIC REHABILITATION TAX CREDIT AND EXTEND MILL REHABILITATION TAX CREDIT FOR CERTAIN PROJECTS

Section 3(a) extends the sunset of the existing historic rehabilitation tax credit for four years. The credit will expire for qualified rehabilitation expenditures and rehabilitation expenses incurred on or after January 1, 2024. A taxpayer may claim a tax credit on a return filed for the taxable year in which the certified historic structure is placed in service. The property must be placed in service by January 1, 2032. The credit may be claimed against the franchise tax, the income tax, or the gross premiums tax. Any carry-forwards of a credit must be claimed against the same tax.

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[2] This exclusion was originally authorized by the Pension Protection Act of 2006. The law was extended through 2009 by the Emergency Economic Stabilization Act of 2008, and through 2011, by the 2010 Tax Relief Act. The PATH Act made the exclusion permanent in 2015.

[3] A taxpayer who elects the income exclusion and contributes more than the capped amount may deduct as a charitable deduction the excess amount to the extent the amount would have been allowed as a charitable deduction under the Code had the taxpayer not elected to take the income exclusion.

The tax credit amount varies depending upon whether the property is income producing or non-income producing:

- The tax credit for income-producing property is capped at $4.5 million, and is equal to 15% of the first $10 million in qualified rehabilitation expenditures, plus 10% of the next $10 million, plus 5% for the first $20 million if the structure is located in a Tier 1 or Tier 2 area, plus 5% for the first $20 million if the structure is located on an eligible targeted investment site.
- The tax credit for non-income-producing property is capped at $22,500, and is equal to 15% of expenses to rehabilitate a building listed in the National Register of Historic Places or certified by the State Historic Preservation Officer as contributing to the historic significance of a National Register Historic District or a locally designated historic district certified by the United States Department of the Interior. The taxpayer must have at least $10,000 in expenses to qualify for the non-income-producing credit.

Section 3(b) extends the Mill Rehabilitation Tax Credit for a taxpayer who is allowed a credit under section 47 of the Code for making qualified rehabilitation expenditures of at least $10 million with respect to a certified rehabilitation of an eligible railroad station. The credit extension only applies to an eligible project that is completed and placed in service prior to January 1, 2022. The amount of the credit is equal to 40% of the qualified rehabilitation expenditures incurred in taxable years 2019, 2020, and 2021. The tax credit must be taken in two installments on returns filed for taxable years 2021 and 2022.

An "eligible railroad station" is one that meets all of the following conditions:

- It was used as a manufacturing facility and either (i) was used as a railroad station or (ii) is located adjacent to a site that is or was used as a railroad station.
- It is a certified historic structure or a State certified historic structure.
- It has been at least 80% vacant for a period of at least two years immediately preceding the date the eligibility certification is made.
- It is a designated local landmark as certified by a city on or before June 30, 2019.
- It is located in a development Tier 1 or Tier 2 area, determined as of the date of the eligibility certification.
- It is located in a designated qualified opportunity zone under sections 1400Z 1 and 1400Z 2 of the Code, determined as of the date of the eligibility certification.
- It is issued a certificate of occupancy on or before December 31, 2021.

The Mill Rehabilitation Tax Credit was established in 2006.[4] The tax credit may be taken against the franchise tax, the income tax, or the gross premiums tax. The tax credit may be claimed in the year in which the eligible site is placed in service. Any carryforwards of the credit must be claimed against the same tax. Except as otherwise provided by this section, the credit expired for rehabilitation projects for which an application for an eligibility certification was submitted on or after January 1, 2015; and eligibility certifications, under which a credit may be claimed, expire January 1, 2023.

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[4] The expired Mill Rehabilitation Tax Credit applied to rehabilitating vacant, historic manufacturing sites if the taxpayer spent at least $3 million to rehabilitate the site. The amount of the credit was a percentage of the qualified rehabilitation expenditures, and the percentage varied depending on the development tier in which the site is located and the eligibility of the site for a federal credit.

EXTEND SALES TAX EXEMPTION FOR QUALIFYING AIRLINES

Section 4 extends the sunset of the sales and use tax exemption for sales of aviation gasoline and jet fuel to an interstate air business for use in a commercial aircraft from January 1, 2020, to January 1, 2024. Aviation gasoline and jet fuel are subject to a 7% State sales tax rate, and the revenue generated by the tax is earmarked to the Division of Aviation, Department of Transportation.

To comply with Federal Aviation Administration policies, the State changed its taxation of aviation gasoline and jet fuel in 2015.[5] Effective January 1, 2016, the State began imposing the combined general rate of sales tax[6] on aviation gasoline and jet fuel and using all of the proceeds from the tax for aviation purposes. It also changed the sales tax refund, initially enacted in 2004 and extended multiple times, to a sales tax exemption. The previous sales tax refund applied only to sales tax paid on fuel in excess of $2.5 million by an interstate passenger air carrier with a hub in the State. The exemption applies to all interstate air businesses at all airports in the State.

EXTEND SALES TAX EXEMPTIONS FOR PROFESSIONAL MOTORSPORTS TEAMS

Section 5 extends the sunset of the sales and use tax preferences for certain sales to professional motorsports racing teams or a related member of the team for use in competition in a sanctioned race series from January 1, 2020, to January 1, 2024. The General Assembly first enacted sales tax preferences for motorsports racing teams in 2005, and the sunsets have been extended many times. The sales tax preferences extended by this section are as follows:

- A sales tax exemption for the sale, lease, or rental of an engine.
- A sales tax exemption for the gross receipts derived from a service contract on or repair, maintenance, and installation services for a transmission, engine, rear-end gears, and any other item that is purchase, leased, or rented and that is exempt from sales tax.
- A sales tax exemption for the gross receipts derived from an agreement to provide an engine, where the agreement does not meet the definition of a "service contract."
- A sales tax exemption for an engine or a part to build or rebuild an engine for the purpose of providing an engine under an agreement to a professional motorsports racing team or a related member of a team for use in competition in a sanctioned race series.
- A sales tax refund for sales taxes paid on aviation gasoline or jet fuel used to travel to or from a motorsports event in North Carolina, to a motorsports event in another state from North Carolina, or to North Carolina from a motorsports event in another state.
- A sales tax refund equal to 50% of the sales taxes paid on tangible personal property, other than tires and accessories, which comprises any part of the motorsports vehicle.

DRY-CLEANING SOLVENT PROGRAM EXTENSION

Section 6 extends the Dry-Cleaning Solvent Cleanup Act program for 10 years, from January 1, 2022, to January 1, 2032. The Dry-Cleaning Solvent Cleanup Act program, created in 1997, established a fund to assess and clean up dry-cleaning solvent contamination at dry-cleaning and wholesale distribution

[5] S.L. 2015-259, House Bill 117.
[6] The combined general rate is a State-only sales tax that is equal to the general rate (4.75%) plus the highest authorized local option sales tax rate available to all counties (2.25%).

facilities and to prevent dry-cleaning solvent releases at operating facilities. The program is wholly funded by receipts from taxes on dry-cleaning sales and dry-cleaning solvents:

- State sales tax applies to the gross receipts derived from dry cleaning, laundering services, and linen rentals. Fifteen percent of the revenue attributable to the State's sales tax on these services is transferred to the Dry-Cleaning Solvent Cleanup Fund. The total annual transfer is estimated to be $8 million. This section extends the sunset on this transfer for 10 years, from July 1, 2020, to July 1, 2030.
- There is also an additional State sales tax on each gallon of dry cleaning solvent sold by a retailer to a dry cleaning facility. The rate is $10 per gallon of halogenated hydrocarbon-based dry-cleaning solvent and $1.35 per gallon of hydrocarbon-based dry-cleaning solvent. The net proceeds of this tax are also credited to the Dry-Cleaning Solvent Cleanup Fund. This section extends the sunset on this tax for 10 years, from January 1, 2020, to January 1, 2030.

INSURANCE REGULATORY FEE

Section 7 sets the percentage rate of the insurance regulatory charge at 6.5% for the 2020 calendar year. The charge has been set at 6.5% each year since the 2015 calendar year.

North Carolina law requires an annual insurance regulatory charge be levied on each insurance company, other than a captive insurance company. The percentage rate for each taxable year must be established by the General Assembly. The charge levied is in addition to all other fees and taxes and is applied to the company's premium tax liability for the taxable year. The proceeds of the charge go to the Insurance Regulatory Fund which is under the control of the Office of State Budget and Management. All money credited to the Fund must be used to reimburse the General Fund for the appropriations identified in G.S. 58-6-25(d). The General Assembly established this funding mechanism for many of the expenses of the Department of Insurance in 1991.