



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

2019-2020 General Assembly

Committee: House Finance	Date: October 21, 2019
Introduced by: Reps. Ross, Bell, Warren, Adams	Prepared by: Trina Griffin
Analysis of: Fifth Edition	Staff Attorney

OVERVIEW: House Bill 399, 5th edition, would make several finance law changes, all of which were included in House Bill 966, the 2019 Appropriations Act. The bill is in House Finance for a recommendation on concurrence. The changes are:

- Allow an income exclusion for distributions from IRAs to charities by taxpayers age 70½ or older.
- Allow an income tax deduction for amounts received as a JDIG, JMAC, or OneNC grant.
- Extend the following sunsets for four years:
 - 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.
- Expand the Mill Rehabilitation Tax Credit for an eligible railroad station that meets certain conditions.¹ This provision would expire for rehabilitation projects that are not completed and placed in service by January 1, 2022.
- Extend for 10 years the dry cleaning solvent tax and the corresponding transfer of funds derived from the tax to the Dry Cleaning Solvent Cleanup Fund.
- Set the insurance regulatory charge at 6.5% for the 2020 calendar year.

The bill would also appropriate to the Department of Revenue from the Collections Assistance Fee Special Fund the following amounts:

- \$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.

SECTION 1: INCOME EXCLUSION FOR IRA DISTRIBUTIONS TO CHARITIES BY TAXPAYERS AGE 70 ½ OR OLDER

BILL ANALYSIS: Section 1 would conform to the income exclusion for a qualified charitable distribution from an individual retirement plan by a person who has attained the age of 70½, beginning prospectively with the 2019 tax year. The treatment is capped at a maximum of \$100,000 per taxpayer. 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.

¹ This provision has been modified from the version that appears in HB 966 to correct any unintended consequences for rehabilitated mill property that qualified for the credit prior to the January 1, 2015.

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CURRENT LAW: 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. 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. North Carolina conformed to this provision for tax years 2006 through 2013, but decoupled for tax years 2014 through 2018. Currently, a taxpayer who makes this election for federal tax purposes must include the distribution in State taxable income. The taxpayer may include the amount contributed as part of the itemized deduction for charitable contributions at the State level 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.

SECTION 2: DEDUCTION FOR AMOUNTS RECEIVED AS ECONOMIC INCENTIVES

BILL ANALYSIS: Section 2 would decouple from a 2017 federal tax law change by creating 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.

EFFECTIVE DATE: This section would become effective for taxable years beginning on or after January 1, 2019, and would apply to amounts received by a taxpayer pursuant to an economic incentive agreement entered into on or after that date.

BACKGROUND: 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.

SECTION 3: EXTEND HISTORIC REHABILITATION TAX CREDIT AND EXPAND THE MILL REHABILITATION TAX CREDIT

BILL ANALYSIS: Section 3 would do two things:

- Extend the sunset of the existing Historic Rehabilitation Tax Credit from January 1, 2020, to January 1, 2024.

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.

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- Expand the Mill Rehabilitation Tax Credit³ for an "eligible railroad station" 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 eighty percent (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 one or tier two 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 taxpayer would be allowed a credit equal to 40% of the qualified rehabilitation expenditures, which must be incurred on or after January 1, 2019, and before January 1, 2022. The credit, as reenacted, would expire for any projects not completed and placed in service by January 1, 2022.

SECTION 4: EXTEND SALES TAX EXEMPTION FOR QUALIFYING AIRLINES

BILL ANALYSIS: Section 4 would extend 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.

SECTION 5: EXTEND SALES TAX EXEMPTIONS FOR PROFESSIONAL MOTORSPORTS TEAMS

BILL ANALYSIS: Section 5 would extend 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. This section would extend the sunset for the provisions from January 1, 2020, to January 1, 2024. The General Assembly first enacted sales tax preferences in this area in 2005; they have been extended many times. The sales tax preferences that would be 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."

³The Mill Rehabilitation Tax Credit was established in 2006 and expired January 1, 2015. It provided a tax credit for 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.

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- 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.

SECTION 6: DRY-CLEANING SOLVENT PROGRAM EXTENSION

BILL ANALYSIS: Section 6 would extend for 10 years the dry cleaning solvent tax and the corresponding transfer of funds from the State sales tax on dry cleaning services.

CURRENT LAW: State sales tax applies to the gross receipts derived from dry cleaning, laundering services, and linen rentals. Fifteen percent (15%) 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 transfer will sunset as of July 1, 2020.

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 tax will sunset on January 1, 2020.

The Fund is used to assess and clean up dry-cleaning solvent contamination at dry-cleaning and wholesale distribution facilities and to prevent dry-cleaning solvent releases at operating facilities. The Dry Cleaning Solvent Cleanup Act program is wholly funded by receipts from taxes on dry-cleaning sales and dry-cleaning solvents.

SECTION 7: INSURANCE REGULATORY FEE

BILL ANALYSIS: Section 7 would set 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.

CURRENT LAW: 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).

SECTION 8: DEPARTMENT OF REVENUE APPROPRIATIONS

BILL ANALYSIS: Section 8 of the bill would appropriate to the Department of Revenue the following amounts from the Collections Assistance Fee Special Fund:

- \$12,500,000 in nonrecurring funds for the 2019-2020 fiscal year to be used for costs associated with tax systems operations and maintenance upgrades.

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- \$4,400,000 in nonrecurring funds for both FY 2019-20 and FY 2020-21 to be used to contract with a vendor to perform identity theft and tax fraud analysis using the Government Data Analytics Center (GDAC).

EFFECTIVE DATE: Except as otherwise provided, this act is effective when it becomes law.