SENATE BILL 395:
Grace for CCRC/Waive Time Limit for ABAWD.

2019-2020 General Assembly

Committee:	House Finance	**Date:**	June 21, 2020
Introduced by:	Sen. Daniel	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to Second Edition S395-CSRBf-40		Staff Attorney

OVERVIEW: : The House proposed committee substitute for Senate Bill 395 would do two things:

- ***It would direct the Department of Revenue to reduce by 75% a sales tax assessment imposed on a provider of continuing care for failure to collect and remit sales tax on taxable transactions. The relief would apply to assessments attributable to the failure to collect sales tax on items subject to State and local sales and use tax sold for a period beginning before January 1, 2021. It would also prohibit a provider of continuing care from recovering from its residents' sales and use tax that it failed to collect at the time of the sale.***
- ***It would authorize DHHS to seek a temporary waiver related to the Food and Nutrition Services Program in response to COVID-19. The House passed this identical provision in HB 1229 on June 4, 2020.***

PART I. GRACE FOR CERTAIN CCRCs

The Department of Revenue has imposed an assessment against at least one Continuing Care Retirement Community (CCRC) for failure to collect sales tax on items subject to the State and local sales and use tax sold to guests and residents who do not reside in a nursing home or adult care home. A continuing care retirement community provides various levels of care within one community to older adults. Typically, there are three levels of care: independent living, assisted living,[1] and skilled nursing care.[2] CCRCs are generally described as "a collection of apartments, town homes, or cottages, and include common activity areas such as a library, activity and craft rooms, a restaurant-like dining room, an assisted living facility, and a nursing home. Other amenities often include banking services, convenience stores, a golf course, walking trails, gardens, swimming pool, fitness center, beauty/barber shops, and guest accommodations."[3]

Examples of retail sales that would be taxable include prepared food, alcohol, medical supplies and equipment, laundry services, and repair, maintenance, and installation services. Some CCRCs have expressed confusion over the proper application of the current sales tax statutes. In view of that confusion, Part I of the House PCS for Senate Bill 395 would do three things:

- Require the Department of Revenue to reduce by 75% any assessment of sales or use tax against a CCRC for failure to collect sales tax on items subject to sales tax for any period prior to January 1, 2021, if all the following conditions are met:

[1] An adult care home licensed under Chapter 131D of the General Statutes.
[2] A nursing home licensed under Chapter 131E of the General Statutes.
[3] https://files.nc.gov/doi/documents/continuing-care-retirement-communities/2019-ccrc-reference-guide.pdf

  - The CCRC is registered as a retailer.
  - The CCRC remitted all the sales and use taxes it did collect.
  - The assessment is based on the failure to collect sales tax on items subject to State and local sales and use tax sold to guests or residents of a CCRC who do not reside in a nursing home or assistant living unit.
  - The CCRC has not been informed by the Department to collect sales tax in the circumstance that is the basis of the assessment through a prior audit, a Private Letter Ruling, or other specific written guidance.
  - The CCRC requests the reduction granted by this statute in writing by September 1, 2020 if the CCRC received a proposed assessment dated prior to June 1, 2020. A CCRC that received a proposed assessment after June 1, 2020 must request the reduction granted by this statute no later than 45 days from the date of the notice of the proposed assessment.
- Ease administration of the imposed tax by allowing a CCRC to determine a price for the taxable portion of the periodic fee based on a reasonable allocation of revenue that is supported by the provider's business records kept in the ordinary course of business. In lieu of an allocated price, a CCRC could choose to itemize each taxable item on the periodic billing. The taxable portion of the billing would have to be separately stated on the billing document.
- Clarify that a CCRC may not recover from its residents' sales and use tax that it fails to collect at the time of the sale.

The sales and use tax is a privilege tax imposed on a retailer but intended to be passed on to the purchaser of the taxable item. To recoup the tax from the purchaser, the retailer is required to collect the tax due on the item when it is sold, and the tax must be stated and charged separately on the billing document.[4] In an action to determine who was liable to the Secretary of Revenue for the sales tax from a transaction, the Court found a plaintiff retailer could not collect from defendant purchaser for sales tax on materials sold by plaintiff to defendant where plaintiff failed to add sales taxes to the sales price of the material at the "time of selling or delivering or taking an order" as required by law.[5]

The sales and use tax applies to the retail sale of tangible personal property unless the transaction is exempt from tax. The tax applies regardless of who the seller is, who the purchaser is, where or how the transaction occurred, or how the product is used. There is no sales tax exemption for items sold by a provider of continuing care services to its residents.

The sales and use tax applies only to those services upon which the tax is statutorily imposed under G.S. 105-164.4. The General Assembly has not imposed the sales tax on healthcare service.

The Department of Revenue provided Private Letter Rulings (PLR) to taxpayers who requested it in 2003 and 2007 on the applicability of sales tax to meals and food provided to residents of a retirement community. In both PLRs, the Department affirmed that the retirement community was a retailer of these taxable items sold to residents of the independent living level of care. The retirement community is not a retailer when it provides these items to residents of its assisted living level of care and skilled nursing care level of care. This application of the sales tax law mirrors the application of the income tax medical expense deduction as it applies to fees paid by residents to CCRCs: up to 100% of the fees imposed for

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[4] G.S. 105-164.3 and G.S. 105-164.4.
[5] *Carolina-Atlantic Distribs., Inc. v Teachey's Insulation, Inc.* 51 N.C.App.705, 277 S.E.2d 460 (1981).

assisted living and skilled nursing care may be deductible while only a small portion of the fees imposed for independent living may be deductible.

PART II. TEMPORARY WAIVER FROM THE TIME LIMITS FOR ABLE-BODIED ADULTS WITHOUT DEPENDENTS PARTICIPATING IN THE FOOD AND NUTRITION SERVICES PROGRAM IN RESPONSE TO THE COVID-19 PANDEMIC

Part II of the House PCS for Senate Bill 395 affects the Supplemental Nutrition Assistance Program (SNAP). SNAP is a federal food assistance program that provides low-income families food needed for a nutritionally adequate diet. North Carolina's SNAP program is called Food and Nutrition Services (FNS). The FNS benefits are 100% federally funded. Costs to administer FNS benefits at the State level are 50% federal/50% state funded and costs to administer benefits at the county level are 50% federal/50% county funded.

The federal Food and Nutrition Act of 2008 limits the time an ABAWD can receive benefits to three months in any 36-month period, unless the individual meets the ABAWD work requirements or is otherwise exempt. Generally, the work requirements can be met by working at least 80 hours a month, participating in a work program at least 80 hours a month, or participating in a combination of work and work program hours for a total of 80 hours a month. An ABAWD is a person in the program age 18-49 who has no dependents and is not disabled.

The ABAWD work requirements have been temporarily waived due to COVID-19 as a result of a blanket waiver provided to all states by USDA. The waiver is applicable from April 1, 2020 through the end of the federal public health emergency declaration. Under current law, DHHS is prohibited from seeking federal time limit wavers for FNS for ABAWD who have not met federal work requirements. Time limit waivers are temporary, and they are generally approved for a 12-month time period. This Part would become effective July 1, 2020, and expire a year from the date it becomes effective.

PART III. SEVERABILITY CLAUSE

Part III of House PCS for Senate Bill 395 provides a severability clause. If any provision of the act or its application is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provisions or application.

PART IV. EFFECTIVE DATE

Part IV of House PCS for Senate Bill 395 provides that except as otherwise provided under Part II of the act, the act is effective when it becomes law.