



SENATE BILL 56: Revenue Laws Technical Changes.

2019-2020 General Assembly

Committee: Senate Rules and Operations of the Senate	Date: February 21, 2019
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Analysis of: Second Edition	Staff Attorney

OVERVIEW: Senate Bill 56 makes various technical changes to revenue laws as recommended by the Department of Revenue.

CURRENT LAW, BILL ANALYSIS, AND EFFECTIVE DATE:

Section	Explanation	Effective Date
PART I. IRC UPDATE		
1.1	Updates the reference to the Code from February 9, 2018, to January 1, 2019. North Carolina's tax law tracks many provisions of the federal Internal Revenue Code by reference to the Code. ¹ The General Assembly determines each year whether to update its reference to the Code. ² Updating the reference makes recent amendments to the Code applicable to the State to the extent that State law previously tracked federal law.	When Law.
PART II. CORPORATE INCOME TAX		
2.1	Corrects an incorrect statutory reference.	When Law.
2.2	Corrects an incorrect reference in the statute. In S.L. 2018-5, North Carolina decoupled from the decision of the federal government to defer gains from investments in Opportunity Zones. Due to this, a taxpayer is required to include any gain deferred or excluded from the taxpayer's federal taxable income pursuant to the provisions of section 1400Z-2 of the Code. To prevent double taxation, the General Assembly provided taxpayers with a deduction from federal taxable income for the amount of gain previously required to be included in the calculation of State net income. Currently, the statute refers to gain that was included in the taxpayer's federal taxable income in a prior year. For federal purposes, these gains are deferred and, therefore, have never been included in the	When Law.

¹North Carolina first began referencing the Internal Revenue Code in 1967, the year it changed its taxation of corporate income to a percentage of federal taxable income.

²The North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Article V, Section 2(1) of the Constitution provides in pertinent part that the “power of taxation ... shall never be surrendered, suspended, or contracted away.” Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General’s Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a “statute which adopts by reference future amendments to the Internal Revenue Code would ... be invalidated as an unconstitutional delegation of legislative power.”

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	taxpayer's federal income in a prior year, only in the computation of State net income.	
PART III. PERSONAL INCOME TAX		
3.1	Corrects an effective date in the 2018 budget. Subsection (a) of Section 38.1(c) in S.L. 2018-5 removed language that would have otherwise prohibited an individual taxpayer from claiming a State itemized deduction if the taxpayer claimed the federal standard deduction after the federal standard deduction was increased to be greater than the State standard deduction. Therefore, subsection (a) of Section 38.1(c) should have been effective for taxable years beginning on or after January 1, 2018 to conform to the federal change, rather than when law.	When Law.
3.2	Conforms a statutory term to mirror the federal Code. North Carolina allows a taxpayer to claim a deduction at the State level if the taxpayer qualifies for a child tax credit under section 24 of the federal code. Section 24 of the federal code uses the term "qualifying child" rather than "dependent child." This change would conform the State statute to the federal code by changing "dependent child" to "qualifying child." This will not change the current practice of the Department when determining if a taxpayer qualifies for a child tax deduction.	When Law.
3.3	Subdivision (5) corrects an incorrect statutory reference. Subdivision (6) corrects an incorrect reference in the statute. In S.L. 2018-5, North Carolina decoupled from the decision of the federal government to defer gains from investments in Opportunity Zones. Due to this, a taxpayer is required to include any gain deferred or excluded from the taxpayer's adjusted gross income pursuant to the provisions of section 1400Z-2 of the Code. To prevent double taxation, the General Assembly provided taxpayers with a deduction from federal adjusted gross income for the amount of gain previously required to be included in the calculation of State taxable income. Currently, the statute refers to gain that was included in the taxpayer's federal adjusted gross income in a prior year. For federal purposes, these gains are deferred and, therefore, have never been included in the taxpayer's federal adjusted gross income in a prior year, only in the computation of State taxable income.	When Law.
PART IV. EXCISE TAX CHANGES		
4.1	Clarifies that use tax on non-tax-paid cigarettes brought into this State is borne by persons other than those licensed as a distributor. Licensed distributors are already responsible for paying the tobacco products tax on cigarettes.	When Law.
4.2	Clarifies that licensed distributors engaged in interstate business are allowed to set aside stock of non-tax-paid cigarettes necessary to conduct interstate business, and not pay taxes on these cigarettes, if certain conditions are met.	When Law.

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4.3	Clarifies that licensed distributors are required to be bonded or furnish an irrevocable letter of credit.	When Law.
4.4 to 4.6	Corrects the catch line to reflect proper terminology used throughout the statute. The term “beer” is used in the catch line of several statutes, but those statutes use the term “malt beverage” throughout. This would conform the catch line to the terminology used throughout the statute.	When Law.
4.7	Removes certain language referencing distilleries in regard to computing the excise tax for liquor. Distilleries are exempt from the freight and bailment charges and the markup for local ABC boards and, therefore, should not be included in that part of the provision.	When Law.
4.8	Removes reference to wine shipper permittees as these permit holders are annual filers, not monthly filers.	When Law.
4.9	Corrects and updates an incorrect statutory reference. The statute currently lists undyed kerosene, which has no provision for deducting sales and use tax from the excise tax refund. The change would replace the reference to undyed kerosene with special mobile equipment, which does allow for sales and use tax to be deducted from the excise tax refund.	When Law.
4.10	Adds reference to the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury to the list of entities permitted to receive disclosures of tax information.	When Law.
4.11	Currently, a licensee may voluntarily cancel a license issued under Article 36C (Gasoline, Diesel, and Blends) upon written request of the licensee. This provision would also require the immediate return of the license to the Department. Changes the mailing requirement for a notice of summary license revocation and notice of hearing from registered mail to certified mail.	When Law.
4.12	Removes unnecessary language.	When Law.
PART V. SALES TAX CHANGES		
5.1	Corrects an effective date issue. S.L. 2017-57, effective July 1, 2018, made similar changes to G.S. 105-164.13(5e), but electricity was not excluded from the term "accessory." S.L. 2018-5 corrected this oversight, but became effective June 12, 2018. This correction will ensure the changes made through S.L. 2018-5 are properly reflected in statute.	When Law.
5.2	Codifies the directive issued by the Department of Revenue ³ following the United States Supreme Court decision in <i>South Dakota v. Wayfair, Inc.</i> , ⁴ which would require a seller who, in the previous or current calendar year, made gross sales of more than \$100,000 sourced to North Carolina or who made 200 or more separate sales transactions sourced to this State to collect and remit North Carolina sales and use tax.	When Law.

³ [North Carolina Department of Revenue Directive SD-18-6.](#)

⁴ *South Dakota v. Wayfair, Inc., et al.*, 585 U. S. ____ (2018).

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5.3	Corrects an incorrect reference to a federal program. The Food Stamp Program is now called the Supplemental Nutrition Assistance Program (SNAP).	When Law.
5.4	Clarifies that items purchased by a qualifying farmer or conditional farmer must be used a majority of the time in farming operations in order to qualify for an exemption of sales and use taxes and requires the name of the farmer to be included on the exemption certificate. Also makes conforming changes to the statute.	When Law.
5.5	Corrects an incorrect cross-reference.	When Law.
5.6	Removes reference to a preferential tax rate as there is no longer a 1% mill machinery rate of tax.	When Law.
5.7	Clarifies that an assessment is still a proposed assessment until a final determination is sent to the taxpayer.	When Law.
5.8	Conforms statutory language and corrects an omission.	When Law.
5.9	Updates G.S. 105-269.14(b) to consolidate the sales and use tax distribution language for the consumer use tax collected on the D-400 (Individual Income Tax Return). This update will also indirectly incorporate a reference to Article 46 (One-Quarter Cent County Sales and Use Tax), which is not currently included the statute, but is included for purposes of current distributions.	When Law.