



HOUSE BILL 83: Revenue Laws Technical, Clarifying, & Administrative Changes.

2021-2022 General Assembly

Committee:	Date:	July 13, 2022
Introduced by:	Prepared by:	Trina Griffin Staff Attorney
Analysis of:	S.L. 2022-13	

OVERVIEW: *S.L. 2022-13 makes various technical, clarifying, and administrative changes to the revenue laws as recommended by the Department of Revenue.*

CURRENT LAW, BILL ANALYSIS, & EFFECTIVE DATES:

Section	Explanation	Effective Date
PART I. BUSINESS TAX CHANGES		
1.1	Clarifies how a taxpayer accounts for foreign attributes in its franchise tax base. The federal Tax Cut and Jobs Act enacted in 2017 substantially changed the way foreign income is taxed for federal purposes. This change created an inconsistency that is potentially unfavorable to taxpayers. Currently, the taxpayer's net worth base for franchise tax purposes includes foreign attributes while the statutorily required apportionment only permits the inclusion of domestic attributes. The change made by this section removes this inconsistency by basing the value of assets only on those assets deemed to be in the United States.	Effective for taxable years beginning on or after January 1, 2023. ¹
1.2	Clarifies that a corporation may not artificially reduce its franchise tax base by making a no-interest loan to an affiliate.	June 29, 2022.
1.3	Clarifies that a corporation cannot claim a qualified interest expense by creating multiple layers of affiliated debt that meets one of the exceptions from the limitation when, in the end, the ultimate payee is a related member that would not have met the exception. In 2015, the General Assembly closed a loophole some corporations had attempted to use to artificially reduce their North Carolina taxable income through interest expense deductions on loans from affiliates and related members by limiting the amount of the deduction to a "qualified interest expense" amount. The limitation amount is proportionate to the share of interest paid or accrued to a nonrelated member. There are a handful of exceptions to the limitation.	June 29, 2022.

¹ The change is applicable to the calculation of franchise tax on the 2022 corporate income tax return.

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1.4	Clarifies that provisions of North Carolina's State net loss calculations that are based on federal consolidated income tax filings must be computed on a separate entity basis.	June 29, 2022.
1.5	Makes a grammatical change in the corporate income tax statute so that it reads the same as the corresponding language in the franchise tax statute.	June 29, 2022.
1.6	Corrects a statutory reference.	June 29, 2022.
PART II. PERSONAL INCOME TAX CHANGES		
2.1	<p>Corrects a drafting error to ensure taxpayers are allowed the benefits of student debt forgiveness to the extent allowed under NC law. NC conformed to the Tax Cut and Jobs Act (TCJA) exclusion from gross income for the discharge of a student loan if the loan was discharged on account of the death or disability of the taxpayer. However, when the State decoupled from the American Rescue Plan Act (ARPA) exclusion for essentially all student loan discharges, it inadvertently eliminated the exclusion due to death or disability as well. This section returns the exclusion to the previously allowed amount by referencing the Code as enacted as of May 1, 2020.</p> <p>This section also makes a technical change to clarify that taxpayers who elect on their federal return to use a section of 108 that is not followed by NC are still allowed the benefit of sections that are followed by NC when calculating their required NC add-back. Similar language is already included in the NC provision re: the discharge of qualified principal residence indebtedness.</p>	Effective for taxable years beginning on or after January 1, 2021.
2.2	Removes a modifier that is unnecessary and contrary to the calculation provisions for determining State net loss.	Effective for taxable years beginning on or after January 1, 2022.
2.3	Clarifies that the obligation to pay the tax on each nonresident owner or partner's share of the income with the partnership return is an obligation of the business entity.	June 29, 2022.
2.4	Clarifies that the SALT provisions enacted in 2021 are effective for the 2022 taxable year. A pass-through entity may elect to pay tax at the entity level – a Taxed Pass-Through Entity (TPTE). By paying tax at the entity level, members of the TPTE can avoid the federal cap on the state and local tax (SALT) deduction amount. As a TPTE, it must pay estimated tax. This section provides that a TPTE does not have to pay estimated tax with respect to a taxable year of a TPTE if it was not a TPTE during its preceding taxable year.	June 29, 2022.
PART III. SALES TAX CHANGES		

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3.1	<p>Makes a technical and clarifying change by repealing the definition of "operator" in the sales and use tax statutes, which is no longer needed.</p> <p>In 2015, the General Assembly created an exemption for certain sales to a motorsports team. Specifically, sales of an engine "provided with an operator" were exempted. In conjunction, the legislation created a definition of "operator." The definition of operator, set out below, appears to have been intended to apply in the context of engines provided with operators as it relates to motorsports teams:</p> <p><i>(161) Operator. – A person provided with the lease or rental of tangible personal property or a motor vehicle to operate, drive, or maneuver the tangible personal property or motor vehicle and whose presence, skill, knowledge, and expertise are necessary to bring about a desired or appropriate effect. The person must do more than calibrate, test, analyze, research, probe, or monitor the tangible personal property or motor vehicle.</i></p> <p>However, the term "operator" is used in other contexts throughout the sales tax statutes, such as an operator of an eligible internet datacenter², the operator of a venue³, and the operator of a for-hire vessel.⁴ In addition, the definition conflicts of tangible personal property provided along with an operator contained within the definition of "lease or rental."</p> <p>In S.L. 2015-261, the General Assembly expanded the exemption for motorsports teams and eliminated the requirement that an engine be provided with an operator. Despite the expansion, the definition of operator remained in the statutes.</p>	June 29, 2022.
3.2	Updates the reference date to the Streamlined Sales Tax Agreement, which was most recently amended on December 21, 2021. Updating the reference date makes no substantive change to the law.	June 29, 2022.
3.3	Amends the definition of "state" as used in the Uniform Sales and Use Tax Administration Act to include any territory of the United States, including American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. The reason for this change is because the Streamlined Sales Tax Agreement has been updated to allow territories to join.	June 29, 2022.
3.4	Repeals the accommodation facilitator report requirement because it is no longer necessary. The utility of the report has diminished in light of the marketplace facilitator law enacted in 2019.	June 29, 2022.
PART IV. EXCISE TAX CHANGES		
4.1	Requires persons who are required to be licensed under the Tobacco Products Tax article and who file a report with the Department, as required under federal law, to file in the form required by the Secretary.	June 29, 2022.

² G.S. 105-164.3(79).

³ G.S. 105-164.4G.

⁴ G.S. 105-164.13(9).

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	The volume of reports received has increased significantly since vapor products were added to the list of products required to be reported and receiving the reports in a consistent format will reduce processing time and improve enforcement.	
4.2	Updates the reference to the International Fuel Tax Agreement to January 1, 2022. Updating the reference date makes no substantive changes to the law.	June 29, 2022.
PART V. ADMINISTRATIVE CHANGES		
5.1	Clarifies that penalties for failure to file applies to informational returns and reports alike.	June 29, 2022.
5.2	<p>Corrects a refund provision that would provide a greater benefit to a taxpayer who failed to pay the full amount of tax due better than a taxpayer who did. This section provides that the amount of overpayment available for refund after payment of the tax may not exceed the portion of the tax paid during the 2 years immediately preceding the taxpayer's request for refund when the taxpayer does not file the claim for refund within the 3-year period after the due date of the return.</p> <p>The general statute of limitations for requesting a refund of an overpayment is the later of the following:</p> <ul style="list-style-type: none">• Three years after the due date of the return.• Two years after payment of the tax. <p>The Department's current policy provides that the 2-year statute of limitations does not begin to run until the final payment of the tax. Under this policy, a taxpayer who fails to pay the full amount of tax due has an infinite period to request a refund while a taxpayer who pays the full amount of tax due is limited to 2-years. The change is consistent with federal tax law statute of limitations, which specifically provides that "if the claim was not filed within such 3-year period, [after the due date of the return] the amount of the credit or refund shall not exceed the portion of the tax paid during the 2-years immediately preceding the filing of the claim." IRC § 6511.</p>	June 29, 2022.
5.3	Adds "proposed revocation of a certificate of registration" to the statute dealing with what happens when a taxpayer requests review of an action by the Department but then fails to respond or act within the required time frame. The statute currently includes only proposed denials of a refund and proposed assessments, but since taxpayers may request review of other actions, the proposed revocation is being added.	June 29, 2022.
5.4	Corrects a refund provision that would provide a greater benefit to a taxpayer who submitted a return prior to the extension date of October 15 than someone who filed on October 15. This section provides that interest begins to accrue on an overpayment 45 days after the date the final return was due to be filed, <i>without regard to extensions</i> . This change means a taxpayer who receives an automatic extension of time	June 29, 2022, and applies to refunds issued on or after that date.

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	to file from April 15 to October 15 will receive interest on an overpayment beginning 45 days after April 15 rather than October 15. This change mirrors the federal tax provision in IRC § 6611.	
5.5	<p>Clarifies the applicability to State tax schedules of tax extensions granted by the IRS. Subsection (a) provides that an extension granted by the IRS due to a presidentially declared disaster applies to the corresponding State tax schedules, and it specifies that the extension granted for individual income tax returns and payments under such declaration applies to NC tax schedules without a corresponding federal schedule, such as sales tax returns and payments. The Department currently administers the statute in this manner.</p> <p>Subsection (b) differentiates an extension granted because of a presidentially declared disaster from an extension granted to a person, such as the automatic extension that allows a taxpayer to file an individual income tax return on or before October 15 rather than April 15.</p>	June 29, 2022.
5.6	<p>Delays by 2 years the changes that were made to the penalty for failure to pay a tax in Section 42.11 of S.L. 2021-180. In that section, the penalty for failure to pay a tax was scheduled to go from a flat 10% of the tax to a graduated system, beginning at 2% for each month, on July 1, 2022.</p> <p>This section reinstates the flat 10% penalty, effective June 30, 2022. Beginning January 1, 2023, the penalty is reduced to 5% of the tax. Finally, beginning July 1, 2024, the penalty will return to the graduated system originally set in S.L. 2021-180, that being 2% of the tax if the failure to pay is no longer than 1 month with an additional 2% for each additional month, not to exceed 10% in the aggregate.</p> <p>Subsection (d) of this section requires the Department of Revenue to update in the form of a monthly report the chairs of House Appropriations Committee on General Government and the Senate Appropriations Committee on General Government and Information Technology and the Fiscal Research Division on the status of the Department's ability to make the programmatic changes necessary to implement the graduated penalty for failure to pay tax when due that will apply to tax assessed on and after July 1, 2024. This provision became effective June 29, 2022.</p>	See Explanation.
PART VI. OTHER CHANGES		
6.1	Makes two technical changes to the conservation exception in the present-use value statutes. The first corrects an error that occurred in S.L. 2008-171 . At the time, the phrase "without regard to actual production or income requirements of this section" was at the end of the sentence but got moved between (i) and (ii) when (ii) was added to the end. This phrase should have been in front of or at the end but not	June 29, 2022.

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	<p>in between (i) and (ii). This section moves it so that it appears before (i) and (ii).</p> <p>The second change is correcting a statutory reference. G.S. 113A-232 deals with the creation of the Conservation Grant Fund. G.S. 113A-235(a) specifically lists the requirements for the property to be eligible.</p>	
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