2021-2022 General Assembly

SENATE BILL 105: 2021 Appropriations Act, Sec. 42.13A-F: Revenue Laws Technical, Clarifying, and Administrative Changes

Committee: | **Date:** January 26, 2022
Introduced by: | **Prepared by:** Trina Griffin
Analysis of: Sec. 42.13A-F of S.L. 2021-180 | Staff Attorney

OVERVIEW: Section 42.13A-F makes various technical, clarifying, and administrative changes to the Revenue Laws, most of which were recommended by the Department of Revenue.

Please see the individual provisions for the applicable effective dates.

CURRENT LAW, BILL ANALYSIS, AND EFFECTIVE DATES:

Section	Description	Effective Date
SUBPART A: PERSONAL INCOME TAX CHANGES		
42.13A(a)	This subsection does two things: • Makes technical correction by renumbering a subdivision. • Extends the sunset of the deduction from federal AGI of any amounts the taxpayer received from the State as an Extra Credit grant amount from January 1, 2021 to January 1, 2022. The grant program was extended into the 2021 taxable year.	Effective July 1, 2021, when the act became law.
42.13A(b)	Corrects an unintended consequence when NC decoupled from a provision in the CARES Act by allowing a taxpayer to fully deduct the applicable amount of business interest expense over time. NC conformed to the federal TCJA in 2017. Part of the TCJA limited the interest expense deduction under section 163(j) of the Code for taxpayers with $25M or more in receipts per year to 30% of the taxpayer's AGI. Under the CARES Act, Congress increased the interest expense limitation from 30% to 50% for the 2019 and 2020 taxable years. NC decoupled from this change and remains at 30%. To decouple from the federal provision, State law requires a taxpayer to addback the difference. This subsection does two things: • It provides that the add-back is not required to the extent the amount was added back under another provision of State law to avoid a double add-back. • It provides a taxpayer may deduct over a five-year period the amount of interest expense allowed under federal law that exceeds the State's 30% limit. Without this change, the	Effective July 1, 2021, when the act became law.

	taxpayer would be permanently disallowed the full amount of the deduction.	
42.13A(c)	Makes technical correction by deleting a reference to a repealed statute.	Effective July 1, 2021, when the act became law.
42.13A(d)	Increases the time allowed for an employer to file an informational return reporting wages (Form NC-3) when the employer terminates its business. Under current law, an employer who terminates its business or permanently ceases paying wages must file an informational return within 30 days of the last payment of wages. Informational returns will now be due the month after the end of the calendar quarter when the employer terminates its business (but no later than January 31 of the succeeding year). This subsection also removes the duty to file when an employer permanently ceases paying wages. This section matches federal filing requirements for IRS Forms W-2, W-3, and 1099.	Effective July 1, 2021, when the act became law.
42.13A(e)	Explicitly states the Secretary of Revenue can assess a withholding agent based on an estimate of the tax due when the withholding agent fails to file a return or files a grossly incorrect, false, or fraudulent return. New G.S. 105-163.8(c) mirrors existing G.S. 105-164.32, which has the same language for sales and use tax.	Effective July 1, 2021, when the act became law.
42.13A(f)	Clarifies that a request for a tax refund is due 6 months after the contingent event concludes. Under current law, refund claims delayed due to litigation or a state tax audit are due 6 months after the litigation or audit concludes. This subsection clarifies that the same period applies to other contingent events that prevent the taxpayer from filing an accurate and definite request for a refund.	Effective July 1, 2021, when the act became law.
42.13A(g)	Authorizes the Secretary of Revenue to allow the use of truncated taxpayer identification numbers (TTIN) on tax returns and other documents. TTIN helps prevent identity theft by using only the last 4 digits of a Social Security number (e.g., XXX-XX-9999). Under current law, the General Assembly must authorize the use of a TTIN on each type of tax form. The Secretary wants to avoid repeated law changes as IRS forms, payroll forms, and tax return forms change. For example, for the 2020 tax year, the IRS allows payroll providers to submit IRS Form W-2 with TTIN to prevent identity theft. The NC Department of Revenue lacks the authority to conform to the use of the TTIN.	Effective July 1, 2021, when the act became law.
42.13A(h)	S.L. 2021-16 provided for the nonaccrual of interest on individual income tax returns due on or before April 15, 2021, from April 15 through May 17, 2021. This subsection clarifies that for the purposes of the nonaccrual of interest, an individual income tax return includes partnership and estate and trust tax returns.	Effective July 1, 2021, when the act became law.
SUBPART B: CORPORATE INCOME TAX CHANGES		

42.13B(a)	Corrects an omission from 2015 when the General Assembly made the policy decision to tax banks in the same manner as other corporations. As part of that legislation, the General Assembly repealed the privilege license tax on banks[1] but it failed to make a corresponding change to the exemption for banks from the privilege license tax on installment paper dealers. This subsection makes that change.	Effective retroactively to the 2016 taxable year.
42.13B(b)	Prevents a double denial of interest expenses. Substantially the same explanation as Section 42.13A(b), while considering the limitation that may be required under G.S. 105-130.7B.	Effective July 1, 2021, when the act became law.
42.13B(c) and (d)	Prevents a double denial of nondeductible interest expenses. Both State and federal tax law limit the deduction amount allowed for net business interest expenses. Therefore, it is possible that a partial limitation has been imposed on the intercompany interest under section 163(j) of the Code, and if that is the case, that deduction needs to be recognized by G.S. 105-130.7B. Otherwise, the taxpayer may have to add back more interest than it actually incurred in total.	Effective retroactively to taxable years beginning on or after January 1, 2018.[2]
42.13B(e)	Clarifies that, for taxable years beginning on or after January 1, 2015, the limitations of Code sections 381 and 382 apply to all losses from mergers and acquisitions regardless of the date of the merger or acquisition. The clarification takes the position most favorable to the taxpayer. It also provides parity among taxpayers and eases the administration of the carry-forward for both the taxpayer and the Department.	Effective July 1, 2021, when the act became law.
42.13B(f)	This subsection requires a taxpayer to provide financial or tax documentation necessary for the Department to make the appropriate adjustments and determinations under G.S. 105-130.5A. G.S. 105-130.5A requires the Secretary to adjust net income or require a combined report when the Secretary has reason to believe a corporation fails to accurately report its State net income using intercompany transactions. This change provides that if the Secretary requests information or documentation needed under G.S. 105-130.5A, and the information is not timely provided, the Secretary may propose any allowable adjustment, including the filing of a combined return. All tax information is protected by the tax secrecy provisions of G.S. 105-259.[3]	Effective July 1, 2021, when the act became law.
SUBPART C: SALES AND USE TAX CHANGES		
42.13C(a)	Expands the sales and use tax exemptions for certain purchases made by qualifying farmers and conditional farmers to include fowl. Currently, livestock, baby chicks, and poults are exempt from sales and use tax when purchased by a qualifying farmer or conditional farmer and used primarily in farming operations. This subsection	Effective retroactively to July 1, 2020, and applies to purchases

[1] The corporate income tax change resulted in an increased tax burden on banks. The repeal of the privilege tax on banks helped to offset this tax burden.
[2] The taxable year the federal law changes under section 163(j) became effective.
[3] Violation of the tax secrecy provisions is a Class 1 misdemeanor and dismissal of the employee from public employment.

	expands the types of animals that are exempt from sales and use taxes to include, among other things, adult chickens, and turkeys.	made on or after that date.
42.13C(b)	Removes obsolete language. The statutes referenced G.S. 105-259(b)(5b) have been repealed, and the subdivision is no longer needed.	Effective July 1, 2021, when the act became law.
SUBPART D: EXCISE TAX HEARING CHANGES		
This Subpart represents a comprehensive restructuring of the license revocation and hearing procedures across all excise tax schedules to streamline and make consistent these procedures. The affected schedules are tobacco products, motor carriers, motor fuels, and alternative fuels. Below is a summary of the current law. This Subpart maintains the two distinct methods for revocation – summary and non-summary – but provides more specificity with respect to the process and makes them more consistent across all excise tax schedules. **License Revocation for Tobacco, Motor Fuels, and Alternative Fuels Licensees.** – The license revocation and hearing procedures under the tobacco product, motor fuel, and alternative fuel schedules share similar features. Specifically, the Secretary of Revenue may revoke a license in two ways: ***Summary Revocation.*** – The Secretary may summarily revoke a license, which means that the license is revoked prior to a hearing, if the Secretary discovers that a licensee is incurring tax liability after failing to pay a tax when due. The Secretary must hold a hearing within 10 days of the revocation after sending notice to the revoked licensee. Summary revocation is not often used by the Department and is reserved for extraordinary circumstances. ***Non-Summary Revocation.*** – The more common method for revoking a license is after holding a hearing, regardless of whether the licensee has requested one. The Secretary must provide the licensee with at least 10 days' written notice of the hearing. If the licensee fails to attend the hearing, the license revocation is effective 15 days after the noticed hearing. The statutes are silent as to when the Secretary must issue a final decision and the content of that decision if the licensee attends the hearing. The Department asserts that holding a hearing even if a licensee has not requested one is an inefficient use of its resources because it requires them to fully prepare and conduct a hearing whether the licensee has expressed their intention to maintain the license or attend the hearing. **License Revocation for Motor Carriers.** – Not only is the revocation and hearings procedure for motor carriers different than the other excise tax schedules, but it is also not set out in statute. G.S. 105-449.57 permits the Secretary to enter into cooperative agreements with other jurisdictions regarding the administration of the motor carrier tax. To the extent our statutes are silent, the Department follows the IFTA Rules for revocation. These rules differ from the other revocation procedures in the three primary ways: (1) a taxpayer can only request a hearing after revocation; (2) a licensee must request a hearing within 30 days; and (3) 20 days' hearing notice is required. Unlike the procedures for other excise tax schedules, the Department does not perform	Effective January 1, 2022 and applies to summary revocations and non-summary revocations initiated by the Department on or after that date.

summary revocations or provide a hearing before revocation. Instead, the Department notifies the motor carrier taxpayer of the intent to revoke the license and then revokes it if the taxpayer does not come into compliance. There is an opportunity for a hearing after the revocation.		
SUBPART E: OTHER EXCISE TAX CHANGES		
42.13E(a)-(f)	Recodifies various statutes to a more appropriate place and makes technical and conforming changes.	Effective July 1, 2021, when the act became law.
42.13E(g)	Clarifies that non-licensed distributors must file a use tax report when acquiring non-tax-paid cigarettes.	Effective July 1, 2021, when the act became law.
42.13E(h)	Removes unnecessary language. "Vapor products" are included in the definition of "tobacco products" and, therefore, makes the language being removed redundant and unnecessary.	Effective July 1, 2021, when the act became law.
42.13E(i)	Provides that non-licensed wholesale dealers and non-licensed retail dealers must file a use tax report on non-tax-paid tobacco products, other than cigarettes, and pay the tax due within 96 hours after acquisition. This mirrors the requirements for use tax payments and reports for cigarettes and provides consistency regarding use tax payments and reports for all tobacco products. Currently, the use tax reporting and payment requirements for cigarettes and other tobacco products are different.	Effective July 1, 2021, when the act became law.
42.13E(j)	Codifies the current practice of the Department and industry and makes a clarifying change. Generally, the wholesaler or importer who first handles the alcoholic beverage in the State is required to pay the excise tax on the product. However, the Department, by policy, authorizes an exception to this rule. The Department authorizes an ABC permitted wholesaler to remit the excise tax when a brewery or winery transfers their product to the wholesaler for distribution and the wholesaler agrees to pay the excise tax on the product. This subsection codifies this practice. This subsection also moves language pertaining to wine shipper permittees to a more appropriate place.	Effective July 1, 2021, when the act became law.
42.13E(k)	Requires distilleries to be bonded. Generally, any ABC permittee that can incur excise tax liability must be bonded. Distilleries are authorized to incur excise tax liability but are not currently required to be bonded. This subsection requires distilleries to be bonded and treat them similarly to other ABC permittees that are authorized to incur excise tax liability.	Effective July 1, 2021, when the act became law.

42.13E(l)	Changes the penalties for engaging in business as a distributor, wholesale dealer, or retail dealer without first obtaining the appropriate license. Currently, the maximum penalty is $6.25 for failing to obtain a distributor license or wholesale dealer license, and $5.00 for failing to obtain a retail dealer license. The Department has had some issues with compliance due to the current penalty not providing an effective deterrent. This subsection increases the potential penalty to $1,000 for failing to obtain the respective license, which is on par with the penalties for failing to obtain various motor fuel licenses. To assess the penalty, the Department must provide written notification to the taxpayer of their noncompliance, and the taxpayer must fail to comply after receiving the notification.	Effective January 1, 2022 and applies to penalties assessed on or after that date.
42.13E(m)	Codifies the current authority to assess a failure to pay penalty on motor carriers that fail to pay tax when due under the International Fuel Tax Agreement (IFTA), provides exceptions to the penalty, and authorizes the Department to waive failure to file and failure to pay penalties on motor carriers. IFTA is an agreement between member taxing jurisdictions to assist each other in the collection and administration of taxes paid by interstate motor carriers on their use of motor fuel. North Carolina has been a member of IFTA since 1992. This subsection codifies the current practice of the Department when assessing failure to pay penalties for motor carriers authorized under IFTA as well as exceptions to the penalty provided for under North Carolina law. The penalty is $50.00 or 10% of the tax due, whichever is greater. This subsection also provides authority for the Department to waive any failure to file or failure to pay penalty assessed against a motor carrier.	Effective July 1, 2021, when the act became law.
42.13E(n)	Creates a definition of "fuel grade ethanol" and adjusts the definition of "gasohol" to continue to capture gasohol in the same manner as it is currently. Currently, there is no definition of "fuel grade ethanol" but it is considered a taxable motor fuel. Without a proper definition of fuel grade ethanol, the Department has had difficulty assessing liability on taxpayers. The Department requested this change to aid in compliance by providing certainty as to what fuel grade ethanol is. The definition of "gasohol" refers to fuel grade ethanol, but currently captures more than what the new definition of fuel grade ethanol covers. Therefore, the Department requested an update to the definition of gasohol to continue to capture gasohol as it is captured currently.	Effective January 1, 2022.

42.13E(o) and (p)	Aligns the shipping document requirements when transporting motor fuel by railroad tank cars, transport trucks, and tank wagons. This will reduce confusion and aid in compliance when motor fuel is diverted to a state other than the state listed on the shipping document.	Effective January 1, 2022.
42.13E(q)	Changes the penalty for failing to properly mark certain dyed, nontaxable, motor fuel storage facilities. Dyed motor fuel is not for use on the highway and therefore is not taxable. A person who is a retailer of dyed motor fuel or anyone who stores both dyed and undyed motor fuel must properly mark the storage tanks of dyed motor fuel or be assessed a penalty. Currently the penalty is equal to the motor fuel rate multiplied by the inventory held in the storage tank or, if the inventory cannot be determined, the penalty is calculated on the capacity of the storage tank. This subsection removes the requirement that the Department determine inventory or capacity and make the penalty a flat $250.00 per offense. Each inspection resulting in non-compliance will be a separate offense. The Department requested this change to ease administrative burden as it is often difficult to ascertain the tank size and amount of fuel in the tank. The Department estimates this change will decrease the average penalty assessed under this section.	Effective January 1, 2022 and applies to penalties assessed on or after that date.
SUBPART F: LOCAL GOVERNMENT CHANGES		
42.13F(a)	Makes an update to reflect the proper statutory reference. Local planning and development regulation statutes in Chapters 153A and 160A were recodified to Chapter 160D. This section updates the statutory reference as historic landmarks are now designated as such under a local ordinance adopted pursuant to G.S. 160D-945 (which was previously G.S. 160A-400.5).	Effective retroactively to June 19, 2020.