



HOUSE BILL 228: Rev. Laws Tech., Clarifying, & Admin. Chngs.

2023-2024 General Assembly

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| Committee: | House Rules, Calendar, and Operations of the House | Date: | May 21, 2024 |
| Introduced by: | Reps. Bradford, Setzer, Kidwell, Wray | Prepared by: | Trina Griffin Staff Attorney |
| Analysis of: | Second Edition | | |

OVERVIEW: House Bill 228 would make various technical, clarifying, and administrative changes to the revenue laws as recommended by the Department of Revenue, would make technical changes to the Medicaid hospital assessment statutes, and would replace an expiring unit of measure used by Fannie Mae referenced in NC statutes setting certain restrictions on high-cost home loans.

This bill has various effective dates. Please see the full summary for more detail.

CURRENT LAW, BILL ANALYSIS, & EFFECTIVE DATES:

| Section | Explanation | Effective Date |
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| PART I. CORPORATE AND INDIVIDUAL INCOME TAX CHANGES | | |
| 1.1 | Repeals unnecessary sections allowing a taxed pass-through entity to obtain a tax credit for taxes paid to another state or country because taxed pass-through entities no longer include this income in the computation of NC taxable income. | For taxable years beginning on or after January 1, 2023. |
| 1.2 | Adds the definitions of "income attributable to the State" and "income not attributable to the State" to the Individual Income Tax statutes, which are identical to those same definitions in the Corporation Income Tax statutes. Beginning with the 2023 tax year, and as a part of the SALT cap workaround changes, a taxed partnership and a taxed S Corporation are only required to include each partner's or shareholder's distributive share of the taxed partnership's/S Corp's income or loss attributable to North Carolina in its computation of North Carolina taxable income. Therefore, these definitions are necessary to make that determination. | For taxable years beginning on or after January 1, 2023. |
| 1.3 | Updates terminology in the statute related to the filing of joint returns by referring to married individuals and codifies existing Department of Revenue administrative practice. | When law. |
| 1.4 | Modifies language regarding how a taxpayer obtains an extension to file a return because the Department of Revenue now grants an automatic extension if the taxpayer is granted an extension of time to file the corresponding federal return. Therefore, a taxpayer is no longer | When law. |

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| | required to ask the Secretary for an extension because the State extension is automatic. | |
| PART II. SALES TAX CHANGES | | |
| 2.1 | <p>Repeals the transaction-based threshold for purposes of requiring remote retailers to collect and remit North Carolina sales and use tax.</p> <p>Remote sellers are required to collect and remit tax if they meet the economic nexus threshold. Currently, that threshold is either (i) gross sales in excess of \$100,000 from remote sales sourced to this State for the previous or calendar year, or (ii) 200 or more separate transactions.</p> <p>To reduce burdens on small business and conform to the Streamlined Sales Tax Agreement's best practice, this change would eliminate the 200 transactions as a threshold and leave only the gross sales threshold. Less than half the states currently have the transaction-based threshold.</p> | July 1, 2024. |
| 2.2 | Updates the reference to the Streamlined Sales Tax Agreement from December 22, 2022, to November 7, 2023. | When law. |
| 2.3 | Provides a statute of limitations for purposes of permitting the Department of Revenue to propose an assessment for a sales and use tax customer refund of three years after the date of the refund. | July 1, 2024, and applies to assessments not barred by the statute of limitations prior to that date. |
| 2.4 | Clarifies that the \$250 penalty for misuse of exemption certificates also applies to affidavits of capital improvement and exemption certificates issued for a service or certain digital property. | When law. |
| 2.5 | Specifies a time period for a person to obtain an affidavit of capital improvement. The law currently requires a contractor to obtain an affidavit, but it does not state the applicable time period. The time period is within 90 days of the sale or within 120 days of a substantiation request by the Department. This time period matches the period required to obtain an exemption certificate, which provides similar preferential tax treatment. | When law. |
| PART III. EXCISE TAX CHANGES | | |
| 3.1 | Clarifies the due dates for returns and payment of alcohol excise tax. Currently, there is no explicit return requirement for local ABC boards and distilleries, only for payment of the tax. Moreover, the statute for a wine shipper permittee does not set a due date for the tax, and the statute is unclear whether a resident wholesaler or importer must submit a report if tax is not due. Under this section, the timing for when tax must be paid is now uniform for all taxpayers and is based on when the alcoholic beverage is first sold or otherwise disposed of in this State. | When law. |

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| | This section also allows the Department to request the agreement between breweries and wineries with their wholesalers to ensure that the breweries and wineries are meeting their statutory requirements of transferring the tax remittance obligation to the wholesaler. | |
| 3.2 | Clarifies that regardless of whether a licensed motor carrier operates a qualified motor vehicle during the reporting period, a return must be filed. This is consistent with current Departmental interpretation and with the requirement under the International Fuel Tax Agreement. | When law. |
| 3.3 | Adds "renewable fuel" as a defined term under Article 36C of Chapter 105. The Department currently interprets renewable diesel as falling within the scope of the definition of "diesel fuel." However, to the extent renewable fuel is becoming more prevalent in the market, the Department seeks to clarify that it should be treated the same as diesel fuel for excise taxation purposes. | When law. |
| PART IV. TAX ADMINISTRATION CHANGES | | |
| 4.1 | <p>Delays by 3 years changes to the penalty for failure to pay a tax, originally made in Section 42.11 of S.L. 2021-180 and extended in Section 5.6(c) of S.L. 2022-13. 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 and not to exceed 10% in the aggregate, on July 1, 2022. Beginning January 1, 2023, the penalty was reduced to 5% of the tax. Beginning July 1, 2024, the penalty is scheduled to return to the graduated system.</p> <p>However, due to difficulties with incorporating this change programmatically with the Department's current legacy system, the start date needs to be delayed until the Department's new tax modernization system is fully implemented.</p> <p>With this delay, the penalty will remain 5% of the tax due until the graduated rate is implemented, beginning July 1, 2027.</p> | When law. |
| PART V. MEDICAID HOSPITAL ASSESSMENTS TECHNICAL CORRECTIONS | | |
| 5.1 | Clarifies the reference to the Consumer Price Index (CPI) that is used to annually adjust certain components of the Medicaid hospital assessments. To correctly use the CPI to make the annual adjustments, the statute needed to reference the "change" in the CPI rather than the CPI itself. | The first day of the next assessment quarter after the date this act becomes law and applies to assessments on or after that date. |

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| 5.2 | <p>Rebalances the distribution of the assessment collections between public and private hospitals due to a hospital closure since the passage of the original act.</p> <p>Under G.S. 108A-146.17(c), the Department of Health and Human Services (DHHS) must report to the General Assembly when a hospital has closed or changed its status as either a public or private hospital, and DHHS must propose the changes to the hospital assessments that are needed as a result. In response to the closure of Martin General Hospital, DHHS submitted a report proposing the statutory changes that are included in this section.</p> | The first day of the next assessment quarter after the date this act becomes law and applies to assessments on or after that date. |
| 5.3 | Treats federally-designated "rural emergency hospitals" the same as critical access hospitals under the assessments due to the fact that critical access hospitals may be eligible to convert to this new federal designation of "rural emergency hospital," which was not accounted for in the assessment statutes. | The first day of the next assessment quarter after the date this act becomes law and applies to assessments on or after that date. |
| PART VI. UPDATE DEFINITION OF THRESHOLD EXCLUSION FOR HIGH-COST HOME LOAN PURPOSES | | |
| 6 | <p>Replace an expiring unit of measure provided by Fannie Mae that is referenced in NC statutes for purposes of setting out certain restrictions and limitations on high-cost home loans.</p> <p>Currently, State law in G.S. 24-1.1E references an interest rate published by Fannie Mae called the required net yield (RNY). On June 3, 2024, Fannie Mae will stop posting the RNY and the historical daily RNY website will be retired. Section 6 of House Bill 228 would replace the RNY with the average prime offer rate (APOR). The APOR is published by the US Consumer Financial Protection Bureau (CFPB) under 12 C.F.R. 1026.36 and applies to comparable transactions. Georgia recently replaced a statutory reference to the RNY with the APOR. South Carolina is considering similar legislation.</p> | June 1, 2024 |