HOUSE BILL 259:
2023 Appropriations Act, Part 42: Finance

2023-2024 General Assembly

Committee:		**Date:**	December 11, 2023
Introduced by:		**Prepared by:**	Trina Griffin Staff Attorney
Analysis of:	Part 42 of S.L. 2023-134		

***OVERVIEW:** Part 42 of S.L. 2023-134 (2023 Appropriations Act) includes the following tax-related changes:*

- ***Personal income tax changes that include accelerating the currently scheduled rate reductions for 2024, 2025, and 2026 with successive rate reductions of .5% if General Fund revenues hit certain triggers in certain fiscal years with a floor of 2.49%. (Section 42.1)***
- ***Business tax changes that include:***
  - ***Capping the franchise tax at $500 for the first one million dollars of a C Corporation's tax base. (Section 42.6A)***
  - ***Repealing the State privilege tax on professionals, effective for taxable years beginning on or after July 1, 2024. (Section 42.7)***
  - ***Allowing certain trusts and corporations to be partners of a taxed partnership. (Section 42.21)***
- ***Sales tax changes that include:***
  - ***Prospectively exempting from sales tax goods and services, other than alcoholic beverages, sold by a provider of continuing care to its independent living residents. The exemption would not apply to sales of alcoholic beverages, and a provider of continuing care must pay sales and use tax on the purchase price of an item that would be exempt under this provision. (Section 42.10)***
  - ***Extending the sunsets on exemptions and refunds for professional motorsports teams. (Section 42.11)***
  - ***Aligning the sales tax exemption for parts and accessories used in the repair and maintenance of certain aircraft with the existing sales tax exemption for labor on the same aircraft. (Section 42.12)***
  - ***Extending by 5 years the sunset on the exemption for aviation gasoline and jet fuel for use in commercial aircraft. (Section 42.13)***
  - ***Expanding the exemption on fuels and consumables used by boats engaged in the transportation of freight on the ocean to also include transport in intracoastal waterways, sounds, or rivers (currently limited to oceangoing vessels on the high seas). (Section 42.14)***
  - ***Exempting breast pumps, including repair and replacement parts, and breast pump collection and storage supplies. (Section 42.16)***

- ***Excise tax change that modifies the way in which snuff is taxed from being cost-based to weight-based and an expansion of the tax base to include alternative nicotine products. (Section 42.18)***
- ***Creation of a new excise tax applicable to the gross receipts derived from each ride using a for-hire ground transportation service provider, such as Uber, Lyft, or a taxi service, effective July 1, 2025. The rate will be 1.5% for exclusive ride service and 1% for shared ride service. The proceeds of the tax will be credited to the Highway Fund. (Section 42.19)***
- ***Prohibiting a regional transportation authority from levying the short-term car rental tax in a county that has withdrawn from the authority. This provision applies only to Surry County. (Section 42.20)***
- ***Clarification of the motor fuel tax formula. (Section 42.22)***
- ***Property tax exclusion for real and personal property located at a legacy airport, effective for taxable years beginning on or after July 1, 2024. (Section 42.23)***

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<tr><th colspan="3">Personal Income Tax Changes</th></tr>
<tr><th>Section</th><th>Description</th><th>Effective Date</th></tr>
<tr><td>42.1</td><td><u>Personal Income Tax Rate Reductions</u>

This section reduces the personal income tax rate beginning in the 2024 taxable year as follows:

<u>Taxable Years Beginning</u> | <u>Current Law</u> | <u>New Tax Rate</u>
In 2024 | 4.60% | 4.50%
In 2025 | 4.50% | 4.25%
In 2026 | 4.25% | 3.99%

For future tax years, this section provides additional rate reductions of one-half percentage point (.50%) (for future rates of 3.49%, 2.99%, and 2.49%) but only if General Fund revenue meets certain amounts in certain fiscal years. In no instance would the rate drop below 2.49%.

The House budget accelerated the reduction for the 2024 tax year to 4.5%, but made no rate reductions beyond that.

The Senate budget reduced the personal income tax rate beginning in 2024 and for the next 6 years until it would have reached 2.49% in 2030.</td><td>When law.</td></tr>
<tr><th colspan="3">Business Tax Changes</th></tr>
<tr><td>42.6A</td><td><u>Cap the Franchise Tax on First $1M of C Corporation Tax Base</u>

This section caps the tax at $500[1] for the first $1 million of a C corporation's tax base, plus $1.50 per $1,000 of its tax base that exceeds $1 million.

The franchise tax is imposed on C corporations and S corporations for the privilege of engaging in business in this State. The tax does not apply to</td><td>For taxable years beginning on or after January 1, 2025, and</td></tr>
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[1] $500 is intended to be a maximum tax, not a flat tax. The amount due could be less than $500 depending on the corporation's tax base.

	a business organized as a limited liability company, unless the LLC elects to be taxes as a corporation for franchise tax purposes, or to a general partnership or sole proprietorship. The rate of tax is $1.50 per $1,000, subject to a minimum tax of $200. For an S Corporation, the tax is capped at $200 for the first $1 million of it tax base, but there is currently no similar cap for C Corporations. For both types of corporations, the tax rate applies to the entity's net worth as computed in accordance with generally accepted accounting principles. *The House budget would have reduced the franchise tax by 33% over a five-year period through 10-cent rate reductions in each of those years.* *The Senate budget had no provision related to franchise tax.*	applicable to the calculation of franchise tax reported on the 2024 and later corporate income tax return.
42.7	***<u>Repeal State Privilege Tax on Professionals</u>*** This section repeals the State privilege tax on professionals, which is an annual tax for the privilege of carrying on the identified business or profession. The tax is $50 for all professionals, except that accountants must pay an additional $12.50 for each person who is engaged in supervising or handling the work of auditing, devising, or installing systems of accounts. The professionals currently subject to this tax are as follows: • Attorneys • Physicians, veterinarians, surgeons, osteopaths, chiropractors, chiropodists, dentists, ophthalmologists, opticians, optometrists, massage and bodywork therapists, or another person who practices a professional art of healing. • Professional engineers. • Registered land surveyors • Architects and landscape architects. • Photographers, a canvasser for any photographer, or an agent of a photographer in transmitting photographs to be copied, enlarged, or colored. • Real estate brokers. • Real estate appraisers. • A person who solicits or negotiates loans on real estate as agent for another for a commission, brokerage, or other compensation. • Funeral directors, embalmers, or funeral service licensees. • Home inspectors. *The House budget had this same provision with an earlier effective date. The Senate budget had no similar provision.*	For taxable years beginning on or after July 1, 2024
42.21	***<u>Allow Certain Trusts and Corporations to be Partners of a Taxed Partnership</u>*** This section adds certain trusts and all corporations to the list of permissible owners of a partnership electing to be taxed at the entity level for the SALT cap workaround. The SALT cap workaround allows a partnership to pay State income tax at the partnership level (i.e., pay the tax on behalf of partners). The partners can deduct the full amount of the State tax payment on the partners' federal income tax returns – avoiding the federal state and local tax (SALT) cap of $10,000. The changes are	Effective for taxable years beginning on or after January 1, 2022.

	effective for the 2022 tax year, and partnerships that could not make the election at the time of filing their returns are allowed to file an amended return on or before October 15, 2023. Section 1.5(b) of S.L. 2023-12 previously added partnerships (i.e., tiered partnerships) and S corporations to the list of permissible owners of a partnership electing to be taxed at the entity level for the SALT cap workaround. *There was no similar provision in either the House or Senate budgets.*	
Sales Tax Changes		
42.10	***Sales Tax Exemption for Continuing Care Retirement Communities*** This section prospectively exempts from sales tax goods and services, other than alcoholic beverages, sold by a provider of continuing care to its independent living residents. The exemption does not apply to sales of alcoholic beverages, and a provider of continuing care must pay sales and use tax on the purchase price of an item that would be exempt under this provision. The exemption is effective for goods and services sold on or after November 1, 2023. North Carolina law imposes a sales tax on most goods and services, including prepared food, laundry, medical supplies, over-the-counter medicines, and certain home maintenance services. The tax is imposed regardless of who provides the goods and services unless the law provides a specific entity-based exemption. For purposes of North Carolina's sales tax law, a continuing care retirement community (CCRC) falls within the definition of retailer except for when it provides certain goods or services as part of healthcare services provided to its member-patients at a medical facility. *The House budget had a broader provision that also included 100% forgiveness of an assessment against a CCRC for failure to collect sales tax on taxable items provided by the CCRC to its residents (there are at least two assessments pending) and a provision that would allow CCRCs that had collected sales tax during the most recent 3-year period to apply for a refund of those taxes.* *The Senate budget had no similar provision.*	For sales or purchases on or after November 1, 2023.
42.11	***Extend Sunset on Exemptions and Refunds for Professional Motorsports Teams*** This section extends from January 1, 2024, to January 1, 2028, the sunset of the sales and use tax preferences for certain sales to professional motorsports racing teams or a related member of the team for use in competition in a sanctioned race series, except for the sales tax refund for aviation gasoline and jet fuel used to travel to motorsports events, which is extended by 5 years.	When law.

	The General Assembly first enacted sales tax preferences in this area in 2005; they have been extended many times. The sales tax preferences that are extended by this section are as follows: ***<u>Sales Tax Exemptions</u>*** • A sales tax exemption for the sale, lease, or rental of an engine. *The sunset is being extended from 2024 to 2028.* • A sales tax exemption for the gross receipts derived from a service contract on or repair, maintenance, and installation services for a transmission, engine, rear-end gears, and any other item that is purchased, leased, or rented and that is exempt from sales tax. *The sunset is being extended from 2024 to 2028.* • A sales tax exemption for the gross receipts derived from an agreement to provide an engine, where the agreement does not meet the definition of a "service contract." *The sunset is being extended from 2024 to 2028.* • A sales tax exemption for an engine or a part to build or rebuild an engine for the purpose of providing an engine under an agreement to a professional motorsports racing team or a related member of a team for use in competition in a sanctioned race series. *The sunset is being extended from 2024 to 2028.* ***<u>Sales Tax Refunds</u>*** • A sales tax refund for sales taxes paid on aviation gasoline or jet fuel used to travel to or from a motorsports event in North Carolina, to a motorsports event in another state from North Carolina, or to North Carolina from a motorsports event in another state. *The sunset is being extended from 2024 to 2029.* • A sales tax refund equal to 50% of the sales taxes paid on tangible personal property, other than tires and accessories, which comprises any part of the motorsports vehicle. *The sunset is being extended from 2024 to 2028.* *The House budget extended the sunsets for four years. The Senate budget had no similar provision.*	
42.12	***<u>Expand Aviation Sales Tax Exemption so that Parts and Accessories Exemption Aligns with Labor Exemption for Same Types of Aircraft</u>*** This section aligns the tax treatment of parts and accessories used in the repair and maintenance of certain aircraft with the tax treatment of the repair and maintenance services for the same type of aircraft. Generally, repair, maintenance, and installation services and service contracts are subject to sales and use tax. There are numerous exceptions, including one for services performed on the following types of aircraft:	For sales occurring on or after November 1, 2023.

	• Qualified aircraft (MTOW[2] >9,000 but <15,000 pounds). • Aircraft with an MTOW of more than 2,000 pounds. • Qualified jet engine. Parts and accessories used in the repair and maintenance of the following types of aircraft are also exempt from sales and use tax: • Commercial aircraft. • General aviation aircraft with a MTOW >9,000 but <15,000 pounds and over 100,000 pounds. • Qualified jet engine. As such, sales of parts and accessories for general aviation aircraft with a MTOW of 2,000-9,000 pounds and 15,000-100,000 pounds are subject to sales and use tax, but repair services for those same aircraft are currently exempt. Subsection (b) of this section makes a technical and conforming change to the labor exemption. Currently, sales tax does not apply to repair, maintenance, and installation services and service contracts for following categories: 1. A qualified aircraft. 2. A qualified jet engine. 3. An aircraft with a gross take-off weight of more than 2,000 pounds. The third category is no longer needed because it will be subsumed within the newly amended definition of "qualified aircraft." *The House and Senate budgets both had this provision, but with different effective dates due to the timing of passage of the respective budgets.*	
42.13	***Extend Sunset for Sales Tax Exemption for Aviation Gasoline and Jet Fuel for Use in Commercial Aircraft*** This section extends for 5 years, from January 1, 2024, to January 1, 2029, the sunset of the sales and use tax exemption for sales of aviation gasoline and jet fuel to an interstate air business for use in a commercial aircraft. Aviation gasoline and jet fuel are subject to a 7% State sales tax rate, and the revenue generated by the tax is earmarked to the Division of Aviation, Department of Transportation. *The House budget extended this sunset by four years. The Senate budget extended this sunset by six years.*	When law.
42.14	***Expand Sales Tax Exemption for Fuel & Consumables Used by Boats Transporting Freight on Inland and Intracoastal Waterways*** Under current law, sales of fuel and other tangible personal property for use or consumption by or on oceangoing vessels that "ply the high seas" in interstate or foreign commerce in the transport of freight or passengers	For sales occurring on or after November 1, 2023.

[2] Maximum take-off weight.

	for hire exclusively, when delivered to an officer or agent of the vessel for the use of the vessel, are exempt from sales and use tax. Those same items are not exempt when delivered to officers, agents, crew members, or passengers for their personal use. This section expands the exemption to include those same items for use on vessels engaged in the transportation of freight in intrastate, interstate, or foreign commerce when in the intracoastal waterways, sounds, or rivers. *The House and Senate budgets had identical provisions with an earlier effective date.*	
42.16	This section exempts from sales tax purchases of breast pumps, including repair and replacement parts, breast pump collection and storage supplies, and breast pump kits. With respect to collection and storage supplies, the term is defined to <u>include</u> items such as breast shields, breast shield connectors, tubes, valves and membranes, backflow protectors, bottles and bottle caps that are specific to the operation of the breast pump, and breast milk storage bags. The term would <u>not include</u> items such as bottles and bottle caps not specific to the operation of the breast pump, breast pump travel bags and ice packs, breast pump cleaning supplies, nursing bras, bra pads, creams ointments, and similar products that relieve breastfeeding-related symptoms. *The Senate budget had this provision with an earlier effective date, but the House budget had no similar provision.*	Effective for sales occurring on or after November 1, 2023.
Excise Tax Changes		
42.18	***<u>Change Method of Taxing Snuff from Cost-Based to Weight-Based and Expand Base to Include Alternative Nicotine Products</u>*** This section changes the method for taxing snuff, defined as a tobacco product consisting of finely cut, ground, or powdered tobacco that is not intended to be smoked, from a cost-based method to a weight-based method at a rate of $0.40 cents per ounce. It also adds alternative nicotine products to the tax base to be taxed at the rate of $.10 per container containing up to 20 units, and $.005 per unit for any amount in a container over 20 units. Under current law, "other tobacco products," (exclusive of cigarettes, cigars, and vapor products), are taxed at the rate of 12.8% of the cost price. The tax is typically collected at the wholesale level but may also be collected by remote sellers. At the federal level, smokeless tobacco products, which includes snuff, are taxed based on weight.	Effective July 1, 2025, for sales or purchases occurring on or after that date.

	Alternative nicotine products, which are a relatively new product, are not currently subject to tax. They do not contain tobacco but contain natural or synthetic nicotine. *The House budget contains no similar provision.* *The Senate budget changed the rate on smokeless tobacco from 12.8% of the cost price to $0.43 per ounce and expanded the base to include alternative nicotine products.*	
42.19	***Enact New Tax on For-Hire Ground Transport Services*** This section creates a new excise tax applicable to the gross receipts derived from each for-hire ground transport service provided by a for-hire ground transport service provider, which includes a transportation network company, such as Uber and Lyft, and taxi services. The rate of tax is 1.5% for exclusive ride services and 1% for shared ride services. The tax applies to the extent a passenger boards the vehicle in this State and regardless of whether the service is completed. The tax will operate and be administered like a sales tax wherein it will be collected and remitted by the for-hire ground transport provider and paid for by the customer. For-hire ground transport providers must register with the Department of Revenue. The proceeds of this tax will be credited to the Highway Fund. *The House budget had no similar provision.* *The Senate budget had a similar provision except that the rate for exclusive ride services was 2%.*	Effective July 1, 2025, and applies to for-hire ground transport services occurring on or after that date.
Additional Changes		
42.20	***Prohibit Regional Transportation Authority from Levying Short-Term Car Rental Tax in a County That Has Withdrawn from Authority*** This provision applies only to Surry County and the Piedmont Authority for Regional Transportation (PART). A regional transportation authority is authorized to create special tax districts comprised of one or more of their member counties for the purpose of levying a tax of up to 5% on short-term car rentals, the proceeds of which are used to fund the Authority. Although there is no statutory mechanism or provision for withdrawal, in February of 2022, Surry County adopted a resolution withdrawing from the Authority, effective June 30, 2022. Since there is no provision for withdrawal, it's unclear whether this unilateral action by Surry County results in repeal of the tax. While PART has ceased operating commuter bus service in the county, there are Authority assets within the county that require maintenance. PART has asserted that the tax should remain in place to cover these costs but agreed to lower the tax to 2%. This section requires PART to repeal the tax levied by retailers that provide short-term car rentals in Surry County.	Effective November 1, 2023, and applies to the gross receipts derived from short-term leases or rentals billed on or after that date.

	This provision was not included in either the House or Senate budgets.	
42.22	***Clarification of Motor Fuel Tax Formula*** The motor fuel tax rate is calculated every year by the Department of Revenue using a statutory formula and becomes effective on January 1 of each calendar year for that year. The formula is a combination of population growth and an inflationary adjustment based on the Consumer Price Index for energy contained in the detailed report released in the October prior to the applicable calendar year by the Bureau of Labor Statistics of the United States Department of Labor. Since 2017, the Department of Revenue has used the report released in November rather than October. This section changes the statutory formula statute so that it reflects the actual practice. The provision is retroactive to 2017, but it does not result in any substantive change; it simply aligns the statute with how the calculation has been done since that time. *This provision was not included in either the House or Senate budgets.*	Effective January 1, 2017.
See "Business Tax Changes" above for summary of Section 42.21.		
42.23	***Property Tax Exclusion for Property at Legacy Airport*** This section excludes 50% of the appraised value of any real and personal property located at a qualifying airport that is customarily used for aviation purposes or commercial activities typically located at and associated with an airport. Aircraft must have situs at the qualifying airport to receive the exclusion. A qualifying airport would be an airport that meets the following criteria: • Is designated as a legacy airport[3] by the North Carolina Department of Transportation. • Is a general aviation airport.[4] • Is located within the corporate limits of a municipality. • Had an economic output of at least $850 million in the Division of Aviation of the North Carolina Department of Transportation's biennial economic impact study dated January 2023.	Effective for taxable years beginning on or after July 1, 2024.

[3] A legacy airport is any airport located in North Carolina that meets the following requirements and is designated as such by the North Carolina Department of Transportation:

1. Is owned and operated by a county or airport authority.
2. Was established as an airport or military facility before 1945.
3. Contains a terminal building or runway that was built before 1945.
4. Has an actively used runway that is at least 6,500 feet long.
5. Has contributed significantly to the development of aviation in this State.

[4] A general aviation airport is a public-use airport that is located in a State and that, as determined by the United States Secretary of Transportation, meets either of the following criteria:

1. Does not have scheduled service.
2. Has scheduled service with less than 2,500 passenger boardings each year.

	Currently, the only airport that would qualify under the above criteria is Smith Reynolds Airport in Winston-Salem. Since legacy airports are owned by governmental entities, property owned by a legacy airport is not taxable. Therefore, the exclusion would instead apply to certain property associated with airports that is owned by a person or business and located at a qualifying airport. If the property meets the requirements for the exclusion, the appraised value of such property would be reduced by 50% for purposes of both county and municipal property tax assessments. *This provision was not included in either the House or Senate budgets.*	