

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

SESSION LAW 2022-13
HOUSE BILL 83

AN ACT TO MAKE VARIOUS TECHNICAL, CLARIFYING, AND ADMINISTRATIVE
CHANGES TO THE REVENUE LAWS, AS RECOMMENDED BY THE DEPARTMENT
OF REVENUE.

The General Assembly of North Carolina enacts:

PART I. BUSINESS TAX CHANGES

SECTION 1.1.(a) G.S. 105-122(b) reads as rewritten:

"(b) Determination of Net Worth. – A corporation taxed under this section shall determine the total amount of its net worth on the basis of the books and records of the corporation as of the close of its income year. The net worth of a corporation is its total assets without regard to the deduction for accumulated depreciation, depletion, or amortization less its total liabilities, computed in accordance with generally accepted accounting principles as of the end of the corporation's taxable year. If the corporation does not maintain its books and records in accordance with generally accepted accounting principles, then its net worth is computed in accordance with the accounting method used by the entity for federal tax purposes. A corporation's net worth is subject to the following adjustments:

...
(2b) The net worth of a foreign entity filing a federal income tax return is based on the value of assets deemed to be in the United States.

...."

SECTION 1.1.(b) This section is effective for taxable years beginning on or after January 1, 2023, and applicable to the calculation of franchise tax reported on the 2022 and later corporate income tax return.

SECTION 1.2. G.S. 105-122(b)(2) reads as rewritten:

"(2) An addition for the amount of indebtedness the corporation owes ~~that creates net interest expense, as defined in G.S. 105-130.7B(b)(3), but does not create to a parent, a subsidiary, an affiliate, or a noncorporate entity in which the corporation or group of corporations owns directly or indirectly more than fifty percent (50%) of the capital interest of the noncorporate entity, unless the indebtedness creates~~ qualified interest expense, as defined in G.S. 105-130.7B(b)(4)."

SECTION 1.3. G.S. 105-130.7B(b) reads as rewritten:

"(b) Definitions. – The definitions in G.S. 105-130.7A apply in this section. In addition, the following definitions apply in this section:

...
(4) Qualified interest expense. – The amount of net interest expense paid or accrued to a related member in a taxable year with the amount limited to the taxpayer's proportionate share of interest paid or accrued to a person who is not a related member during the same taxable year. This limitation does not apply to the proportionate share of interest paid or accrued to a related member that is the ultimate payee if one or more of the following applies:



- ...
- (6) Ultimate payee. – A related member that receives or accrues interest directly from a related member or indirectly through related members."

SECTION 1.4. G.S. 105-130.8A reads as rewritten:

"§ 105-130.8A. Net loss provisions.

...

(c) Mergers and Acquisitions. – The Secretary must apply the standards contained in regulations adopted under sections 381 and 382 of the Code on a separate entity basis in determining the extent to which a loss survives a merger or an acquisition. For mergers and acquisitions occurring prior to January 1, 2015, the Secretary must apply the standards under G.S. 105-130.8 for taxable years beginning before January 1, 2015, and the standards of this section for taxable years beginning on or after January 1, 2015.

...

(e) Net Economic Loss Carryforward. – For taxable years beginning before January 1, 2015, a taxpayer is allowed a net economic loss as calculated under G.S. 105-130.8. In determining and verifying the amount of a net economic loss incurred or carried forward for taxable years beginning before January 1, 2015, the provisions of G.S. 105-130.8 apply. ~~Any~~ Except as provided for in subsection (c) of this section, any unused portion of a net economic loss carried forward to taxable years beginning on or after January 1, 2015, is administered in accordance with this section. This subsection expires for taxable years beginning on or after January 1, 2030."

SECTION 1.5. G.S. 105-130.11(a) reads as rewritten:

"(a) Exempt Organizations. – Except as provided in subsections (b) and (c), the following organizations and any organization that is exempt from federal income tax under the Code are exempt from the tax imposed under this Part.

- ...
- (10) Insurance companies ~~paying~~ subject to the tax on gross premiums as specified in G.S. 105-228.5.

...."

SECTION 1.6. G.S. 105-228.5(d)(3) reads as rewritten:

- "(3) Additional Rate on Property Coverage Contracts. – An additional tax at the rate of seventy-four hundredths percent (0.74%) applies to gross premiums on insurance contracts for property coverage. The tax is imposed on ten percent (10%) of the gross premiums from insurance contracts for automobile physical damage coverage and on one hundred percent (100%) of the gross premiums from all other contracts for property coverage. Twenty percent (20%) of the net proceeds of this additional tax must be credited to the Volunteer Fire Department Fund established in Article 87 of Chapter 58 of the General Statutes. Twenty percent (20%) of the net proceeds must be credited to the Department of Insurance for disbursement pursuant to G.S. 58-84-25. Up to twenty percent (20%), as determined in accordance with ~~G.S. 58-87-10(f),~~ G.S. 58-87-10(g), must be credited to the Workers' Compensation Fund. The remaining net proceeds must be credited to the General Fund. The additional tax imposed on property coverage contracts under this subdivision is a special purpose assessment based on gross premiums and not a gross premiums tax.

...."

SECTION 1.7. Except as otherwise provided, this Part is effective when this act becomes law.

PART II. PERSONAL INCOME TAX CHANGES

SECTION 2.1.(a) G.S. 105-153.5(c2) reads as rewritten:

"(c2) Decoupling Adjustments. – In calculating North Carolina taxable income, a taxpayer must make the following adjustments to the taxpayer's adjusted gross income:

...

- (22) For taxable years 2021 through 2025, a taxpayer must add ~~the~~an amount ~~excluded~~equal to the amount by which the taxpayer's exclusion from the taxpayer's gross income for the discharge of a student loan under section 108(f)(5) of the Code. Code exceeds the exclusion that would have been allowed under the Internal Revenue Code as enacted as of May 1, 2020. The purpose of this subdivision is to decouple from the exclusion from income for the discharge of a student loan under section 9675 of the American Rescue Plan Act of 2021. If the taxpayer is insolvent, as defined in section 108(d)(3) of the Code, then the addition required under this subdivision is limited to the amount of discharge of student loan indebtedness excluded from adjusted gross income under section 108(f)(5) of the Code that exceeds the amount of discharge of indebtedness that would have been excluded under section 108(a)(1)(B) of the Code.

...."

SECTION 2.1.(b) This section is effective for taxable years beginning on or after January 1, 2021.

SECTION 2.2.(a) G.S. 105-153.5A(a) reads as rewritten:

"(a) State Net Operating Loss. – A taxpayer's State net operating loss for a taxable year is the amount by which business deductions for the year exceed gross ~~business~~ income for the year as determined under the Code adjusted as provided in G.S. 105-153.5 and G.S. 105-153.6. The amount of a taxpayer's State net operating loss must also be determined in accordance with the following modifications:

...."

SECTION 2.2.(b) This section is effective for taxable years beginning on or after January 1, 2022.

SECTION 2.3. G.S. 105-154(d) reads as rewritten:

"(d) Payment of Tax on Behalf of Nonresident Owner or Partner. – If a business conducted in this State is owned by a nonresident individual or by a partnership having one or more nonresident members, the ~~manager of the~~ business shall report information concerning the earnings of the business in this State, the distributive share of the income of each nonresident owner or partner, and any other information required by the Secretary. The distributive share of the income of each nonresident partner includes any guaranteed payments made to the partner. The ~~manager of the~~ business shall pay with the return the tax on each nonresident owner or partner's share of the income computed at the rate levied on individuals under G.S. 105-153.7. The business may deduct the payment for each nonresident owner or partner from the owner or partner's distributive share of the income of the business in this State. The Secretary may enforce the business's liability for the tax on each nonresident owner or partner's share of the income by sending the business a notice of proposed assessment in accordance with G.S. 105-241.9.

If the nonresident partner is not an individual and the partner has executed an affirmation that (i) the partner will pay the tax with its corporate, partnership, trust, or estate income tax return, or (ii) the partner is not subject to State income tax under this Article, the ~~manager of the~~ business is not required to pay the tax on the partner's share. In this case, the ~~manager business~~ shall include a copy of the affirmation with the report required by this subsection. The affirmation must be annually filed by the nonresident partner and submitted ~~by the manager~~ by the due date of the report required in this subsection. Otherwise, the ~~manager of the~~ business is required to pay the tax on the nonresident partner's share. Notwithstanding the provisions of G.S. 105-241.7(b), the ~~manager of the~~ business may not request a refund of an overpayment made

on behalf of a nonresident owner or partner if ~~the manager of the business~~ has previously filed the return and paid the tax due. The nonresident owner or partner may, on its own income tax return, request a refund of an overpayment made on its behalf by ~~the manager of the business~~ within the provisions of G.S. 105-241.6.

This subsection does not apply to a partnership with respect to any taxable period for which it is a taxed partnership."

SECTION 2.4. G.S. 105-163.39(d) reads as rewritten:

"(d) Taxed Pass-Through Entity. – This Article applies to every taxed pass-through entity in the same manner as a corporation subject to tax under Article 4 of this Chapter, except that ~~G.S. 105-163.41(d)(5)~~ this Article shall not apply with respect to a taxable year of a taxed pass-through entity if it was not a taxed pass-through entity during its preceding taxable year."

SECTION 2.5. Except as otherwise provided, this Part is effective when this act becomes law.

PART III. SALES TAX CHANGES

SECTION 3.1. G.S. 105-164.3(161) is repealed.

SECTION 3.2. G.S. 105-164.3(259) reads as rewritten:

"(259) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement as amended as of ~~December 14, 2018~~ December 21, 2021."

SECTION 3.3. G.S. 105-164.42B(8) reads as rewritten:

"(8) State. – The term "this State" means the State of North Carolina. Otherwise, the term "state" means any state of the United ~~States and States~~, the District of ~~Columbia~~ Columbia, and any territory of the United States including American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands."

SECTION 3.4. G.S. 105-164.4F(c1) is repealed.

SECTION 3.5. This Part is effective when this act becomes law.

PART IV. EXCISE TAX CHANGES

SECTION 4.1. Part 1 of Article 2A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-113.4L. Federal tobacco tax reporting.

A person required to be licensed under this Article and who files a report with the Department in accordance with 15 U.S.C. § 376 must file in the form required by the Secretary."

SECTION 4.2. G.S. 105-449.37(a)(1) reads as rewritten:

"(1) International Fuel Tax Agreement. – The Articles of Agreement adopted by the International Fuel Tax Association, Inc., as amended as of ~~December 1, 2018~~ January 1, 2022."

SECTION 4.3. This Part is effective when this act becomes law.

PART V. ADMINISTRATIVE TAX CHANGES

SECTION 5.1. G.S. 105-236(a)(10) reads as rewritten:

"(10) Penalties Regarding Informational Returns. – The following penalties apply with regard to an informational return or report required by Article 2A, 2C, 4, 4A, 5, 9, 36C, or 36D of this Chapter:

- a. Repealed by Session Laws 1998-212, s. 29A.14(m), effective January 1, 1999.
- b. Repealed by Session Laws 2018-5, s. 38.10(p), effective June 12, 2018.

- c. For failure to file with the Secretary by the date the return or report is due, the Secretary shall assess a penalty of fifty dollars (\$50.00) per day, up to a maximum penalty of one thousand dollars (\$1,000).
- d. For failure to file in the format prescribed by the Secretary, the Secretary shall assess a penalty of two hundred dollars (\$200.00)."

SECTION 5.2. G.S. 105-241.6(a) reads as rewritten:

"(a) General. – The general statute of limitations for obtaining a refund of an overpayment applies unless a different period applies under subsection (b) of this section. The general statute of limitations for obtaining a refund of an overpayment is the later of the following:

- (1) Three years after the due date of the return.
- (2) Two years after payment of the tax. The amount refunded under this subdivision shall not exceed the portion of the tax paid during the two years immediately preceding the taxpayer's request for refund."

SECTION 5.3. G.S. 105-241.13A(a) reads as rewritten:

"(a) Consequence of Inaction. – Inaction by a taxpayer after timely filing a request for review shall result in the proposed ~~denial of a refund or the proposed assessment~~ Departmental action becoming final as provided in this section. As used in this section, "inaction" means that the taxpayer made no response to the Department's initial request for additional information or to the reissuance of the request by the requested response date as provided under G.S. 105-241.13(a). A partial response, a request for additional time, or any other contact by the taxpayer with the Department does not constitute inaction under this section. The Department must send the taxpayer a notice of inaction stating that the proposed ~~denial of a refund or the proposed assessment~~ Departmental action becomes final 10 days from the date of the notice unless the taxpayer responds to the Department. A proposed ~~denial of a refund or a proposed assessment~~ Departmental action that becomes final is not subject to further administrative or judicial review. A taxpayer may not file another amended return or claim for refund to obtain denied refund. Upon payment of the tax, the taxpayer may request a refund of the tax. As used in this section, "proposed Departmental action" refers to any of the following:

- (1) Proposed denial of a refund.
- (2) Proposed assessment.
- (3) Proposed revocation of a certificate of registration issued pursuant to G.S. 105-164.28."

SECTION 5.4.(a) G.S. 105-241.21(c) reads as rewritten:

"(c) Accrual on Refund. – Interest accrues on an overpayment of tax from the time set in the following subdivisions until the refund is paid.

- (1) Franchise, income, and gross premiums. – Interest on an overpayment of a tax levied under Article 3 of this Chapter and payable on an annual basis or of a tax levied under Article 4 or 8B of this Chapter accrues from a date 45 days after the latest of the following dates:
 - a. The date the final return was filed.
 - b. The date the final return was due to be ~~filed~~ filed, determined without regard to extensions.
 - c. The date of the overpayment. The date of an overpayment of a tax levied under Article 4 or Article 8B of this Chapter is determined in accordance with section 6611(d), (f), (g), and (h) of the Code.

...."

SECTION 5.4.(b) This section is effective when it becomes law and applies to refunds issued on or after that date.

SECTION 5.5.(a) G.S. 105-249.2(b) reads as rewritten:

"(b) Disaster. – The penalties in G.S. 105-236(a)(2), (3), and (4) may not be assessed for any period in which the time for filing a federal return or report or for paying a federal tax is

extended under section 7508A of the Code because of a presidentially declared disaster. The extension of time granted by the Internal Revenue Service under section 7508A of the Code only applies to the corresponding State tax return or payment. For State returns and payments without a corresponding federal return and payment, the extension granted for individual income tax returns and payments by the Internal Revenue Service under section 7508A of the Code applies. For the purpose of this section, "presidentially declared disaster" has the same meaning as in section 1033(h)(3) of the Code."

SECTION 5.5.(b) G.S. 105-263(c) reads as rewritten:

"(c) Automatic Extension. – A person who is granted an automatic extension to file a federal income tax return, including a return of partnership income, is granted an automatic extension to file the corresponding State income tax return and franchise tax return. The person must certify on the State tax return that the person was granted a federal extension. This subsection only applies to extension applications filed by a person with the Commissioner of Internal Revenue. This section does not apply to extensions granted under section 7508A of the Code because of a presidentially declared disaster, as allowed under G.S. 105-249.2(b)."

SECTION 5.6.(a) Section 42.11 of S.L. 2021-180 is repealed.

SECTION 5.6.(b) G.S. 105-236(a)(4) reads as rewritten:

"(4) Failure to Pay Tax When Due. – In the case of failure to pay any tax when due, without intent to evade the tax, the Secretary shall assess a penalty equal to ~~ten percent (10%)~~ five percent (5%) of the tax. This penalty does not apply in any of the following circumstances:
..."

SECTION 5.6.(c) G.S. 105-236(a)(4), as amended by subsection (b) of this section, reads as rewritten:

"(4) Failure to Pay Tax When Due. – In the case of failure to pay any tax when due, without intent to evade the tax, the Secretary shall assess a penalty equal to ~~five~~ two percent (5%) (2%) of the ~~tax~~ amount of the tax if the failure is for not more than one month, with an additional two percent (2%) for each additional month, or fraction thereof, during which the failure continues, not exceeding ten percent (10%) in aggregate. This penalty does not apply in any of the following circumstances:
..."

SECTION 5.6.(d) Section 8.1(b) of S.L. 2019-246, as enacted by Section 34.4 of S.L. 2021-180, reads as rewritten:

"SECTION 8.1.(b) By January 1, 2022, and monthly thereafter, the Department of Revenue shall submit a written report ~~on the status of the power of attorney registration project required by subsection (a) of this section~~ to the chairs of the House Appropriations Committee on General Government and the Senate Appropriations Committee on General Government and Information Technology and the Fiscal Research Division. The monthly report shall ~~also~~ include an update on the ~~status~~ following:

- (1) The status of the power of attorney registration project required by subsection (a) of this section.
- (2) The status of the Collections Case Management system implementation and the IBM 4100 replacement project currently underway in the Department.
- (3) 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 or after July 1, 2024."

SECTION 5.6.(e) Subsection (a) of this section becomes effective June 30, 2022. Subsection (b) of this section becomes effective January 1, 2023, and applies to tax assessed on or after that date. Subsection (c) of this section becomes law July 1, 2024, and applies to tax assessed on or after that date. The remainder of this section is effective when this act becomes law.

SECTION 5.7. Except as otherwise provided, this Part is effective when this act becomes law.

PART VI. OTHER TAX CHANGES

SECTION 6.1. G.S. 105-277.3(d1) reads as rewritten:

"(d1) Conservation Exception. – Property that is appraised at its present-use value under G.S. 105-277.4(b) shall continue to qualify for appraisal, assessment, and taxation as provided in G.S. 105-277.2 through G.S. 105-277.7 without regard to actual production or income requirements of this section as long as (i) the property is subject to a qualifying conservation easement that meets the requirements of ~~G.S. 113A-232, without regard to actual production or income requirements of this section;~~ G.S. 113A-235(a); and (ii) the taxpayer received no more than seventy-five percent (75%) of the fair market value of the donated property interest in compensation. Notwithstanding G.S. 105-277.3(b) and (b1), subsequent transfer of the property does not extinguish its present-use value eligibility as long as the property remains subject to a qualifying conservation easement. The exception provided in this subsection applies only to that part of the property that is subject to the easement."

SECTION 6.2. This Part is effective when this act becomes law.

PART VII. EFFECTIVE DATE

SECTION 7.1. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of June, 2022.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 3:32 p.m. this 29th day of June, 2022