

**Tax Alert**  
**North Carolina Tax Legislation Enacted in the 2022 Short Session**  
**July 1, 2022**

The North Carolina General Assembly ended its 2022 short session on July 1. While the legislature is scheduled to reconvene on July 26, no additional tax legislation is expected to be considered. The session was remarkable for the absence of major tax legislation. Only bills amending Chapter 105 of the General Assembly were ratified. Three of these have been signed by the Governor,<sup>1</sup> and the remaining three, including the 2022 Appropriations Act, are awaiting gubernatorial action.<sup>2</sup>

The tax changes the legislature did adopt were exceedingly modest. Robust revenue surpluses had fueled hopes that the General Assembly would accelerate the phased reduction in the corporate and individual income tax rates adopted last year or reduce the franchise tax rate or cap the franchise tax base. These hopes were not fulfilled and, with some exception, most of the changes made can be described as technical or clarifying.

This Alert summarizes all the material amendments ratified during the session.<sup>3</sup> Readers should be mindful that there is no certainty that the three ratified bills awaiting the Governor's signature will become law.

## **Franchise Tax Changes**

### Foreign Entities

Under current law, a corporation's franchise tax base is its net worth, defined as its total assets (without regard to depreciation, amortization or depletion) less its total liabilities.<sup>4</sup> This definition has been amended to permit a foreign entity subject to the franchise tax and filing a federal income tax return to exclude from the calculation of its total assets the value of any assets deemed to be outside the United States.<sup>5</sup> This provision is effective for 2023 franchise taxes reported on 2022 income tax returns.<sup>6</sup>

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<sup>1</sup> H83 (S.L. 2022-13), H243 (S.L. 2022-6) and S347 (S.L. 2022-7).

<sup>2</sup> H103, S388 and S762.

<sup>3</sup> In addition to the changes summarized in this Alert, the following provisions were ratified: (i) a cross reference was corrected in N.C. Gen. Stat. §105-228.5(d)(3) (H83, §1.6); (ii) changes were made to the tobacco products tax reporting requirements (H83, §4.1); (iii) a reference to the International Fuel Tax Agreement was updated (H83, §4.2); (iv) references to "returns" in the penalty statute were replaced with references to "returns or reports" (H83, §5.1); (v) a reference to "Medicaid/Health Choice" in a sales tax exemption provision was changed to "Medicaid" (H103, §9D.15.(e)); (vi) a reference in the gross premiums tax to insurance companies "paying" the tax was changed to insurance companies "subject to" the tax (H83, §1.5); (vii) a reference to "gross business income" in the individual state net operating loss provision was changed to "gross income" (H83, §2.2); (viii) a reference to the Streamlined Sales and Use Tax Agreement was updated (H83, §3.3); (ix) the definition of "state" in the Uniform Sales and Use Tax Administration Act was amended to include U.S. territories because the Streamlined Sales and Use Tax Agreement has been amended to permit territories to join (H83, §3.3); (x) two drafting errors in the present use valuation provisions of the Machinery Act were corrected (H83, §6.1); and (xi) a refund of motor fuels taxes was passed for fuel purchased for off-highway use (H103, §42.4).

<sup>4</sup> N.C. Gen. Stat. §105-122(b),

<sup>5</sup> H83, §1.1.(a).

<sup>6</sup> H83, §1.1.(b).

### Affiliated Indebtedness

Under current law, the franchise tax addback for affiliated indebtedness is tied to the corporate income tax limitation on interest paid to an affiliate. For income tax purposes, a corporation may only deduct “qualified interest expense” paid to an affiliate, i.e., interest proportional to the amount of interest paid by the affiliate to an unrelated lender.<sup>7</sup> For franchise tax purposes, a corporation must add back to its net worth an amount equal to the amount of indebtedness that “creates net interest expense” that is not “qualified interest expense” for income tax purposes.<sup>8</sup> Because the franchise tax add-back language only applied to indebtedness that created interest expense, corporations may avoid the addback by borrowing from affiliates on an interest-free basis. The franchise tax addback provision has therefore been amended to require the addback of the amount of debt owed to a parent, subsidiary, affiliate or a more than 50%-owned noncorporate entity unless the indebtedness creates qualified interest expense for income tax purposes.<sup>9</sup> This provision was effective June 29, 2022.<sup>10</sup>

## **Corporate Income Tax Changes**

### Qualified Interest Expense

As discussed above, for corporate income tax purposes, the deduction for interest paid to an affiliate is limited to the borrower’s proportionate share of the affiliated lender’s interest expense paid or accrued to an unrelated party.<sup>11</sup> There are exceptions to this limitation for interest paid to an affiliate that is subject to income tax on the interest income by North Carolina, another state or a United States treaty partner.<sup>12</sup> The Department of Revenue (the “Department”) was concerned that a taxpayer could circumvent the limitation by borrowing from an affiliate that fell within one of the exceptions but which in turn borrowed from an affiliate that did not fall within any exception. The law has therefore been amended to provide that an exception will apply only if the ultimate payee falls within the exception.<sup>13</sup> This change was effective June 29, 2022.<sup>14</sup>

### Net Operating Losses

Current law provides that the Treasury Regulations promulgated under Sections 381 and 382 of the Internal Revenue Code (the “Code”) apply for purposes of determining how much of a corporation’s net operating loss survives a merger or acquisition.<sup>15</sup> The federal rules also apply in determining how much of a net economic loss carryover from years before 2015 survives a merger or acquisition.<sup>16</sup> These provisions have been amended to provide that the federal rules under Sections 381 and 382 must be applied on a separate entity basis even when the

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<sup>7</sup> N.C. Gen. Stat. §105-130.7B.

<sup>8</sup> N.C. Gen. Stat. §105-122(b)(2).

<sup>9</sup> H83, §1.2.

<sup>10</sup> H83, §1.7.

<sup>11</sup> N.C. Gen. Stat. §105-130.7B(4)

<sup>12</sup> N.C. Gen. Stat. §105-130.7B(4).

<sup>13</sup> H83, §1.3.

<sup>14</sup> H83, §1.7.

<sup>15</sup> N.C. Gen. Stat. §105-130.8A(c).

<sup>16</sup> N.C. Gen. Stat. §105-130.8A(e).

taxpayers filed a consolidated federal return.<sup>17</sup> This change was effective June 29, 2022.<sup>18</sup>

## **Personal Income Tax Changes**

### *Decoupling Adjustments*

The federal Tax Cuts and Jobs Act of 2017 amended Section 108 of the Code to permit taxpayers to exclude from gross income any income resulting from the forgiveness of a student loan due to the death or disability of the taxpayer, and North Carolina conformed to this federal provision. The federal American Rescue Plan Act of 2021 further amended Section 108 to permit taxpayers to exclude from gross income almost all student loan forgiveness if the discharge occurs after 2020 and before 2026. North Carolina decoupled from this provision.<sup>19</sup> However, in doing so, the General Assembly inadvertently decoupled from the Tax Cuts and Jobs Act amendments to section 108. The General Assembly has now corrected this error and restored North Carolina's conformity to the federal rules for forgiveness on account of death or disability.<sup>20</sup> This change is effective retroactively to tax years beginning on or after January 1, 2021.<sup>21</sup>

### *Debt Discharge Income on Student Loans*

Code Section 108(a)(1)(B) permits a taxpayer to exclude from gross income the amount of debt discharged when the taxpayer is insolvent. The new law provides that, if a taxpayer elects to apply the federal exclusion for the discharge of a student loan at a time when the taxpayer is insolvent, the North Carolina add-back is limited to the amount of the federal exclusion in excess of the amount that would have been allowed under Code section 108(a)(1)(B).<sup>22</sup> This change is effective retroactively to tax years beginning on or after January 1, 2021.<sup>23</sup>

### *Composite Returns*

Current law provides that, if a business operating in North Carolina has a nonresident owner or partner, the "manager" of the business must report and pay the tax on the nonresident owner's or partner's share of the business's income. The manager can avoid this liability if the nonresident owner or partner executes an affidavit that it will pay the tax itself.<sup>24</sup> Three changes have been made to these provisions. First, the reference to the business's "manager" has been removed in order to clarify that the obligations to make the report and pay the tax fall on the business itself. Second, language has been added to provide that the Department may enforce the business's liability for the tax on the nonresident owner or partner by sending a notice of proposed assessment directly to the business. Finally, language has been added to provide that the business can avoid liability if the nonresident owner or partner executes an affidavit stating

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<sup>17</sup> H83, §1.4.

<sup>18</sup> H83, §1.7.

<sup>19</sup> S.L. 2021-180, §42.4.(c).

<sup>20</sup> H83, §2.1; N.C. Gen. Stat. §105-153.5(c2).

<sup>21</sup> H83, §2.1.(b).

<sup>22</sup> H83, 2.2.(a).

<sup>23</sup> H83, §2.1.(b).

<sup>24</sup> N.C. Gen. Stat. §105-154(d).

either that it will pay the tax or that it is not subject to the state income tax.<sup>25</sup> These changes were effective June 29, 2022.<sup>26</sup>

### Pass-Through Entities Tax

In 2021, the General Assembly enacted legislation to permit a pass-through entity to elect, on an annual basis, to pay income tax on its owners' distributive shares of its income so as to permit the owners to avoid the federal \$10,000 cap on the individual deduction for state and local taxes. A pass-through entity making the election to be taxed is subject to estimated taxes.<sup>27</sup> The pass-through entity tax provisions have been amended to clarify that a pass-through entity that makes the election to be taxed is not required to pay estimated taxes if it did not elect to be taxed during the previous year.<sup>28</sup> This change was effective June 29, 2022.<sup>29</sup>

### Exclusion of Military Retirement Pay

In 2021 the General Assembly enacted legislation that permits military retirees with at least 20 years of service (or who were medically retired) to exclude retirement pay for services in the Armed Forces from income.<sup>30</sup> This benefit has been expanded to cover retirement pay for services in the "uniformed services" of the United States.<sup>31</sup> This term, which is defined by reference to 10 U.S.C. §101(a)(5), includes the commissioned corps of the National Oceanic and Atmospheric Administration and the Public Health Service as well as the armed forces. This change is effective for taxable years beginning on or after January 1, 2022.<sup>32</sup>

## **Covid-Related Tax Changes**

### Deductions from Federal Taxable Income

In 2021, in response to the COVID-19 pandemic, the General Assembly established a Business Recovery Grant Program, which used American Rescue Plan Act funds to provide relief to North Carolina businesses that suffered substantial economic damage from the pandemic.<sup>33</sup> North Carolina also maintains a grant program known as ReTOOLNC that provides grants to "historically underutilized businesses" and "disadvantaged business enterprises" that were adversely affected by the COVID-19 pandemic. In 2020, the General Assembly also allocated funds to provide rent and utility assistance to North Carolinians during the pandemic.<sup>34</sup> All of these grants are includable in gross income for federal income tax purposes. New legislation permits both individual and corporate taxpayers to deduct these grants from federal adjusted gross income (for individuals) or federal taxable income (for corporations) in computing North

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<sup>25</sup> H83, 2.3.

<sup>26</sup> H83, §2.5.

<sup>27</sup> N.C. Gen. Stat. §105-163.39(d).

<sup>28</sup> H83, §2.4.

<sup>29</sup> H83, §2.5.

<sup>30</sup> S.L. 2021-180, §42.1A; N.C. Gen. Stat. §105-153.5(b)(5a).

<sup>31</sup> H103, §42.1.(a).

<sup>32</sup> H103, §42.1.(b).

<sup>33</sup> S.L. 2021-180, §34.3A.(a) and (b).

<sup>34</sup> See S.L. 2020-4, §3.3, as amended by S.L. 2020-97, §1.2.

Carolina taxable income.<sup>35</sup> This change is effective retroactively to taxable years beginning on or after January 1, 2020 and applies to grants received on or after that date.<sup>36</sup>

### Deductions for Employers Taking Federal Payroll Tax Credit

The federal CARES Act included an employee retention credit to help businesses maintain their workforces during the pandemic. The credit allowed an employer to reduce its federal payroll taxes by a portion of the wages it paid to employees. To prevent a double benefit, the CARES Act also required the employer to reduce its income tax deduction for wages paid by the amount of the credit claimed. This reduction in the employer's income tax deduction increased federal taxable or adjusted gross income and so increased the employer's North Carolina taxable income even though the employer did not receive a state credit corresponding to the federal credit. Under current law, when a taxpayer claims a federal income tax credit in lieu of a deduction, the taxpayer is allowed to take the deduction in computing its state taxable income.<sup>37</sup> The employee retention credit, however, was a payroll tax credit rather than an income tax credit. The law has been amended to permit both individual and corporate employers to subtract from federal taxable income (for corporations) or federal adjusted gross income (for individuals) the amount by which their federal deductions were decreased as a result of claiming the employee retention credit.<sup>38</sup> This change is effective retroactively for taxable years beginning on or after January 1, 2020.<sup>39</sup>

## **Sales Tax Changes**

### Repeal of Operator Definition

In 2015, the General Assembly enacted a sales tax exemption for sales of engines to a motor sports team if the engine was "provided with an operator." The enacting legislation included a definition of the term "operator."<sup>40</sup> The General Assembly later eliminated the requirement that the engine be provided with an operator but failed to repeal the definition of "operator."<sup>41</sup> The term "operator" is used in other parts of the sales tax law.<sup>42</sup> To avoid any suggestion that the lingering definition might apply in these other contexts, the definition has been repealed.<sup>43</sup> This change was effective June 29, 2022.

### Accommodation Facilitators

The gross receipts from the rental of an accommodation are subject to the sales tax.<sup>44</sup> Under current law, persons who contract with the owner of a rented accommodation to assist with marketing or listing are referred to as "accommodation facilitators" and are required to file an

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<sup>35</sup> H243, §20.7.

<sup>36</sup> H243, §20.7.(c).

<sup>37</sup> See N.C. Gen. Stat. §§105-153.5(b)(11) and 105-130.5(b)(11).

<sup>38</sup> H243, §20.15.(a) and (b); N.C. Gen. Stat. §§105-130.5(b) and 105-153.5(b).

<sup>39</sup> H243, §20.15.(c).

<sup>40</sup> N.C. Gen. Stat. §105-164.3(161).

<sup>41</sup> S.L. 2015-261.

<sup>42</sup> See, e.g., N.C. Gen. Stat. §105-164.3(121).

<sup>43</sup> H83, §3.1.

<sup>44</sup> N.C. Gen. Stat. §105-164.4F.

annual report of information concerning the accommodations they manage.<sup>45</sup> In 2019, the General Assembly enacted broad provisions relating to all “marketplace facilitated” sales.<sup>46</sup> These broader provisions have diminished the utility of the accommodation facilitator reports, and the General Assembly has repealed the requirement that accommodation facilitators file these reports.<sup>47</sup> This change was effective June 29, 2022.<sup>48</sup>

### Exemption for Interstate Air and Ground Couriers

The General Assembly has enacted a new sales tax exemption for sales of various items to an interstate air and ground courier for use at its package sorting facility. The new exemption will benefit UPS which is constructing a large sorting facility in Mebane. An interstate air and ground courier is a person whose primary business is the furnishing of air and ground delivery of individually addressed letters and packages for compensation in interstate commerce (excluding the U.S. Postal Service). A package sorting facility is a facility used primarily for sorting and distributing letters and packages for an interstate air and ground courier. To qualify for the exemption, the Secretary of Commerce must determine that the facility will attract at least 400 employees and \$100 million in private investments within five years. The exempt items include materials handling equipment, automated conveyor systems, racking systems and related parts and accessories. The exemption also applies to purchases by contractors in fulfillment of a contract with an interstate air and ground courier. If the required investment level or employment level is not achieved, the exemptions on all purchases are forfeited. If the investment and employment levels are achieved but the employment level is not maintained, the exemption is forfeited for purchases made after the maintenance failure occurred.<sup>49</sup> This change was effective July 1, 2022 and applies to purchases made on or after that date.<sup>50</sup>

### Qualifying Farmers

Qualifying farmers are entitled to purchase various items free of sales and use tax if the items are used primarily in farming operations. A qualifying farmer is a farmer that has annual income from farming operations of at least \$10,000.<sup>51</sup> New legislation would expand the exemption for a qualifying farmer that operates a zoo in addition to farming operations. The same items that may be purchased free of tax for use in farming operations could be purchased free of tax for use in the zoo operation. However, the farmer may not use income from the zoo operation to meet the annual income test required to be a qualifying farmer.<sup>52</sup> This change would be effective January 1, 2023 and would apply to sales made on or after that date.<sup>53</sup>

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<sup>45</sup> N.C. Gen. Stat. §105-164.4(c1).

<sup>46</sup> N.C. Gen. Stat. §105-164.4J.

<sup>47</sup> H83, 3.4.

<sup>48</sup> H83, §3.5.

<sup>49</sup> H103, §42.2; N.C. Gen. Stat. §§105-164.3(108) and (166) and 105-164.13(45e).

<sup>50</sup> H103, §42.2.(c).

<sup>51</sup> N.C. Gen. Stat. §105-164.13E(a).

<sup>52</sup> S388, §1.(a).

<sup>53</sup> S388, §1.(b).

Wildlife Conservation Land

Under current law, if certain size, ownership and use requirements are satisfied, land can be classified as wildlife conservation land and be appraised and assessed at its present use value rather than its fair market value.<sup>54</sup> New legislation would create a new sales tax exemption for purchases of certain items used primarily for one or more of the activities for which wildlife conservation land must be used to qualify for present use valuation. The items covered by the exemption include feed, insecticides, fertilizers, seedlings, certain machinery, certain fuel and fuel storage tanks, certain construction material and supplies and repair, maintenance and installation services. To qualify for the exemption, a purchase must be made by the owner of the wildlife conservation land who must first obtain an exemption certificate from the Department. The exemption also applies to items purchased by a person to fulfill a contract with or provide a service to the holder of the exemption certificate.<sup>55</sup> These changes would be effective October 1, 2022 and apply to sales made on or after that date.<sup>56</sup>

**Captive Insurance Tax Changes**Taxation of Protected Cells

Current law provides that two or more captive insurance companies under common ownership and control are treated as a single captive insurance company for purposes of captive insurance company gross premiums tax.<sup>57</sup> New legislation provides that this rule does not apply to a protected cell captive insurance company or to a special purpose captive insurance company with a cell or series structure.<sup>58</sup> This change is effective for premium taxes imposed for taxable years beginning on or after January 1, 2022.<sup>59</sup>

Current law also provides upper and lower limits on the aggregate gross premiums taxes payable by protected cell captive insurance companies with more than ten cells.<sup>60</sup> The new legislation extends these limits on aggregate tax liability to special purpose captive insurance companies with a cell or series structure and with more than ten cells or series.<sup>61</sup> This change is effective for premium taxes imposed for taxable years beginning on or after January 1, 2022.<sup>62</sup>

Redomesticated Captives

New legislation includes a special provision applicable to a foreign captive insurance company that redomesticates in North Carolina before the end of this year under the approval of the North Carolina Insurance Commissioner. Such a captive is exempt from the captive insurance company gross premiums tax for the year in which the redomestication occurs and the following calendar year.<sup>63</sup> This change is effective for premium taxes imposed for taxable years

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<sup>54</sup> N.C. Gen. Stat. §105-277.15.

<sup>55</sup> S388, §2.(a); N.C. Gen. Stat. §105-164.13F.

<sup>56</sup> S388, §2.(b).

<sup>57</sup> N.C. Gen. Stat. §105-228.4A(a).

<sup>58</sup> S347, §5.(a).

<sup>59</sup> S347, §10.

<sup>60</sup> N.C. Gen. Stat. §105-228.4A(f).

<sup>61</sup> S347, §5.(a).

<sup>62</sup> S347, §10.

<sup>63</sup> S347, §5.(b).

beginning on or after January 1, 2021 and expires for taxable years beginning on or after January 1, 2024.<sup>64</sup>

## Property Tax Changes

### Agricultural Land Present Use Valuation

Land that meets certain requirements may be classified as “agricultural land” entitled to be appraised and assessed at present use valuation rather than its fair market value. “Agricultural land” is defined as land that is part of a farm unit that is actively engaged in the production or growing of crops, plants or animals under a sound management program. The commercial production or growing of animals is further defined to include “the rearing, feeding, training, caring and managing of horses.”<sup>65</sup> New legislation would amend this definition to clarify that the commercial production and growing of animals includes boarding horses.<sup>66</sup> This change would be effective for taxable years beginning on or after July 1, 2022.<sup>67</sup>

### Wildlife Conservation Land

Under current law, wildlife conservation land is assessed at its present use value rather than its fair market value in the same manner as agricultural land. To qualify as wildlife conservation land, property must (i) consist of at least 20 contiguous acres, (ii) have been owned by an individual, a family business entity or a family trust for five years (with certain exceptions) and (iii) be managed under a written wildlife habitat conservation agreement with the North Carolina Wildlife Resources Commission that meets certain requirements.<sup>68</sup> New legislation would make the following changes to the wildlife conservation land program:<sup>69</sup>

- Require the 20 contiguous acres to be in the same county.
- Provide that once the initial 20-acre requirement has been satisfied, additional acreage may be added if the additional acreage satisfies the ownership and use requirements. If the additional acreage is used for wildlife habitat protection, the additional acreage must be in the same county as the original 20-acre tract. If the land is used for wildlife species protection or wildlife reserve, the additional acreage does not need to be in the same county.
- Increase the maximum acreage of an owner in a county that may qualify as wildlife species protection or wildlife habitat protection from 100 to 200 acres.
- Decrease the length of time an owner must own the land to qualify as wildlife conservation land from five to four years.
- Expand the qualifying ownership requirement to permit individuals, family business entities or family trusts to hold the land as tenants in common.
- Provide that, if the land is owned by tenants in common, the four-year ownership requirement is satisfied if one or more of the tenants has owned the property for four years.

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<sup>64</sup> S347, §§5.(b) and 10.

<sup>65</sup> N.C. Gen. Stat. §105-277.2(1).

<sup>66</sup> S762, §6.(a).

<sup>67</sup> S762, §6.(b).

<sup>68</sup> N.C. Gen. Stat. §105-277.15.

<sup>69</sup> S388, §3.(b).

- Create exceptions to the four-year ownership requirement if the land is used as the owner's residence, if the owner acquires additional contiguous property and if the land is acquired through transfer or inheritance from a relative who held the land for the required length of time.
- Eliminate the requirement that wildlife species protection land or wildlife habitat protection land have first been classified as agricultural land when the conservation agreement was signed.
- Clarify that a transferee of land classified as wildlife conservation land can continue the classification by filing an application with the county assessor within 60 days after the transfer.

These changes would be effective for taxable years beginning on or after July 1, 2022.<sup>70</sup>

## **Administrative Changes**

### Limitation on Refunds

The statute of limitations on refunds is the later of three years from the due date of the return or two years from the date the tax was paid.<sup>71</sup> New legislation provides that, if a taxpayer fails to file a refund request within three years of the due date of the return but instead files the request within two years of the date the tax was paid, the amount refunded may not exceed the portion of the tax paid during the two-year period prior to the date the refund request was filed.<sup>72</sup> This change was effective June 29, 2022.<sup>73</sup> The change, which is consistent with the federal law,<sup>74</sup> was intended to prevent taxpayers from extending the statute indefinitely by paying the tax due over a long period of time, since the Department's policy is that the two-year statute does not begin to run until the tax is paid in full.

### Administrative Review Procedures for Registration Revocations

Current law provides that, when a taxpayer files a request for administrative review of a proposed assessment or proposed denial of a refund, the Department may request additional information from the taxpayer. If the taxpayer fails to respond to a request for additional information by the requested response date, the Department must reissue the request. If the taxpayer makes no response within 30 days of the reissued request, the proposed assessment or refund denial becomes final.<sup>75</sup>

Current law also provides that retail and wholesale merchants and facilitators must obtain a certificate of registration from the Department. If the merchant or facilitator fails to comply with the sales and use tax law, the Department may revoke its registration. Objection and review procedures similar to those that apply to a proposed assessment apply to a proposed revocation of registration.<sup>76</sup> The law regarding the consequences of taxpayer inaction to a

<sup>70</sup> S388, §3.(c).

<sup>71</sup> N.C. Gen. Stat. §105-241.6(a).

<sup>72</sup> H83, §.2.

<sup>73</sup> H83, §5.7.

<sup>74</sup> See Code §6511.

<sup>75</sup> N.C. Gen. Stat. §§105-241.13(a) and 105-241.13A

<sup>76</sup> N.C. Gen. Stat. §105-164.29(d).

proposed assessment or proposed refund denial have therefore been amended to apply to proposed revocations of registration certificates.<sup>77</sup> This change was effective June 29, 2022.<sup>78</sup>

### Interest Accruals

Under current law, interest on overpayments begins to accrue 45 days after the latest of (i) the date the return was filed, (ii) the date of the overpayment or (iii) the date the return was due.<sup>79</sup> The statute has been amended, consistent with federal law,<sup>80</sup> to provide that the last of these events is the date the return was due “without regard to extensions.”<sup>81</sup> This means that a taxpayer who receives an automatic extension from April 15 to October 15 would receive interest on an overpayment 45 days after April 15, rather than 45 days after October 15. This change was effective June 29, 2022 and applies to refunds issued on or after that date.<sup>82</sup>

### Disaster-Related Penalty Waivers

Under current law, when the period in which to file federal returns has been extended due to a presidentially-declared disaster, the penalties for failure to file a return, failure to pay tax when due and failure to obtain a license are waived.<sup>83</sup> The statute has been amended to clarify, in accordance with existing Departmental policy, that the federal extension only applies to corresponding state returns or payments. Where there is a state filing or payment obligation that does not have a corresponding federal obligation, the federal extension for individual income tax returns and payments applies.<sup>84</sup> In a related amendment, the statute granting an automatic state income tax return extension to a taxpayer who has been granted an automatic federal extension has been amended to clarify that it does not apply to extensions granted as a result of presidentially-declared disasters.<sup>85</sup> These changes were effective June 29, 2022.<sup>86</sup>

### Repeal of Graduated Penalty Provision

Under former law, a taxpayer who failed to pay a tax when due was subject to a 10% penalty regardless of the period of delinquency. In 2021, the General Assembly replaced the flat rate penalty with a graduated penalty starting at 2% for delinquencies of not more than one month and increasing by an additional 2% per month but not to exceed 10% in the aggregate. This change was to be effective July 1, 2022 and apply to taxes assessed on or after that date.<sup>87</sup> The Department’s computer system, however, is not yet able to implement a graduated penalty regime. The General Assembly has therefore reinstated the 10% flat rate penalty, effective June 30, 2022.<sup>88</sup> The flat rate penalty is reduced to 5% effective January 1, 2023 and applicable to

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<sup>77</sup> H83, §5.3.

<sup>78</sup> H83, §5.7.

<sup>79</sup> N.C. Gen. Stat. §105-241.21(c).

<sup>80</sup> See Code §6611.

<sup>81</sup> H83, §5.4.

<sup>82</sup> H83, §5.4.(b).

<sup>83</sup> N.C. Gen. Stat. §105-249.2(b).

<sup>84</sup> H83, §5.5

<sup>85</sup> H83, §5.5; N.C. Gen. Stat. §105-263(c).

<sup>86</sup> H83, §5.7.

<sup>87</sup> S.L. 2015-261, §42.11; N.C. Gen. Stat. §105-236(a)(4).

<sup>88</sup> H83, §5.6.(a) and (e).

taxes assessed on or after that date.<sup>89</sup> The graduated penalty structure originally enacted in 2021 will now become effective July 1, 2024.<sup>90</sup>

### Conservation Land Tax Foreclosures

The Conservation and Historic Preservation Agreements Act was enacted in 1979 and provides for the validity and enforcement of conservation agreements. Conservation agreements are deed or other restrictions granted by a land holder in favor of a governmental unit or agency or nonprofit organization to protect the natural scenic or open condition of land or its agricultural, farming or forest use.<sup>91</sup> New legislation would provide for the preservation of such agreements if the land they burden is sold in a tax foreclosure sale.<sup>92</sup> This change would become effective when it becomes law.<sup>93</sup>

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<sup>89</sup> H83, §5.6.(b) and (e).

<sup>90</sup> H83, §5.6(c) and (e).

<sup>91</sup> See N.C. Gen. Stat. §121-34 et seq.

<sup>92</sup> S762, §4; N.C. Gen. Stat. §§105-374(k) and 105-375(i).

<sup>93</sup> S762, §9.