

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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SENATE BILL 523

Short Title: Returns W/Refunds Filed Late Penalty. (Public)

Sponsors: Senators Rucho, Rabon, Rabin (Primary Sponsors); and Meredith.

Referred to: Finance.

April 1, 2013

1 A BILL TO BE ENTITLED  
2 AN ACT TO CLARIFY AND REDUCE THE PENALTIES FOR A TAXPAYER'S FAILURE  
3 TO FILE A RETURN FOR WHICH A REFUND IS DUE.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 105-236(a)(3) reads as rewritten:

6 "**§ 105-236. Penalties; situs of violations; penalty disposition.**

7 (a) Penalties. – The following civil penalties and criminal offenses apply:

8 ...

9 (3) Failure to File Return. – In case of failure to file any return on the date it is  
10 due, determined with regard to any extension of time for filing, the Secretary  
11 shall assess a penalty as provided in this subdivision. For purposes of this  
12 subdivision, the "amount of the tax" means the net amount of tax imposed  
13 under Subchapters I, V, and VIII of this Chapter after subtracting the credits  
14 against the tax allowed by this Chapter other than the credits allowed by  
15 Articles 4A and 4C of this Chapter.

16 a. If there is a refund due on the date the return is due, a penalty equal  
17 to five percent (5%) of the amount of the tax if the failure is for not  
18 more than one month, with an additional five percent (5%) for each  
19 additional month, or fraction thereof, during which the failure  
20 continues, not exceeding ten percent (10%) in the aggregate, or five  
21 dollars (\$5.00), whichever is the greater.

22 b. If there is a no refund due on the date the return is due, a penalty  
23 equal to five percent (5%) of the amount of the tax if the failure is for  
24 not more than one month, with an additional five percent (5%) for  
25 each additional month, or fraction thereof, during which the failure  
26 continues, not exceeding twenty-five percent (25%) in the aggregate,  
27 or five dollars (\$5.00), whichever is the greater.

28 ...."

29 **SECTION 2.** G.S. 105-236(a), as amended by Section 1 of this act, reads as  
30 rewritten:

31 "**§ 105-236. Penalties; situs of violations; penalty disposition.**

32 (a) Penalties. – The following civil penalties and criminal offenses apply:

33 ...

34 (3) Failure to File Return. – In case of failure to file any return on the date it is  
35 due, determined with regard to any extension of time for filing, the Secretary  
36 shall assess a penalty as provided in this subdivision. For purposes of this



1 subdivision, the "amount of the tax" means the net amount of tax imposed  
2 under Subchapters I, V, and VIII of this Chapter after subtracting the credits  
3 against the tax allowed by this Chapter other than the credits allowed by  
4 Articles 4A and 4C of this Chapter.

5 a. If there is a refund due on the date the return is due, a penalty equal  
6 to five percent (5%) of the amount of the tax if the failure is for not  
7 more than one month, with an additional five percent (5%) for each  
8 additional month, or fraction thereof, during which the failure  
9 continues, not exceeding ten percent (10%) in the ~~aggregate, or five~~  
10 ~~dollars (\$5.00), whichever is the greater aggregate.~~

11 b. If there is a no refund due on the date the return is due, a penalty  
12 equal to five percent (5%) of the amount of the tax if the failure is for  
13 not more than one month, with an additional five percent (5%) for  
14 each additional month, or fraction thereof, during which the failure  
15 continues, not exceeding twenty-five percent (25%) in the ~~aggregate,~~  
16 ~~or five dollars (\$5.00), whichever is the greater aggregate.~~

17 (4) Failure to Pay Tax When Due. – In the case of failure to pay any tax when  
18 due, without intent to evade the tax, the Secretary shall assess a penalty  
19 equal to ten percent (10%) of the ~~tax, subject to a minimum of five dollars~~  
20 ~~(\$5.00) tax.~~ This penalty does not apply in any of the following  
21 circumstances:

22 a. When the amount of tax shown as due on an amended return is paid  
23 when the return is filed.

24 b. When the Secretary proposes an assessment for tax due but not  
25 shown on a return and the tax due is paid within 45 days after the  
26 later of the following:

27 1. The date of the notice of proposed assessment of the tax, if  
28 the taxpayer does not file a timely request for a Departmental  
29 review of the proposed assessment.

30 2. The date the proposed assessment becomes collectible under  
31 one of the circumstances listed in G.S. 105-241.22(3) through  
32 (6), if the taxpayer files a timely request for a Departmental  
33 review of the proposed assessment.

34 c. When a taxpayer timely files a consolidated or combined return at  
35 the request of the Secretary under Part 1 of Article 4 of this Chapter  
36 and the tax due is paid within 45 days after the latest of the  
37 following:

38 1. The date the return is filed.

39 2. The date of a notice of proposed assessment based on the  
40 return, if the taxpayer does not file a timely request for a  
41 Departmental review of the proposed assessment.

42 3. The date the Departmental review of the proposed assessment  
43 ends as a result of the occurrence of one of the actions listed  
44 in G.S. 105-241.22(3) through (6), if the taxpayer files a  
45 timely request for a Departmental review.

46 ...."

47 **SECTION 3.** Section 2.18 of S.L. 2012-79 is repealed.

48 **SECTION 4.** Section 1 of this act is effective for taxable years beginning on or  
49 after January 1, 2013. Section 2 of this act is effective for taxable years beginning on or after  
50 January 1, 2014. The remainder of this act is effective when it becomes law.