



HOUSE BILL 1080: Revenue Laws Recommendations.

2019-2020 General Assembly

| | | | |
|-----------------------|--|---------------------|----------------|
| Committee: | Senate Finance. If favorable, re-refer to Rules and Operations of the Senate | Date: | June 23, 2020 |
| Introduced by: | Reps. Howard, Ross, Setzer, Szoka | Prepared by: | Cindy Avrette |
| Analysis of: | Third Edition | | Staff Attorney |

OVERVIEW: *House Bill 1080 would make the following changes:*

- *Updates the reference to the Internal Revenue Code from January 1, 2019 to May 1, 2020.*
 - *It conforms to the reduction of the threshold amount for the medical expense deduction from 10% to 7.5% for 2019 and 2020.*
 - *It conforms to the exclusion from gross income of any amount of indebtedness forgiven on a loan covered under the Paycheck Protection Program.*
- *Sets and codifies the insurance regulatory charge used to fund the Department of Insurance at 6.5%*
- *Extends JDIG from January 1, 2021 to January 1, 2030.*
- *Extends the Natural Gas Economic Development Infrastructure Cost Recovery program from July 1, 2021 to July 1, 2026.*
- *Makes various other tax law changes recommended by the Department of Revenue and approved by the Revenue Laws Study Committee*

CURRENT LAW, BILL ANALYSIS, AND EFFECTIVE DATE:

| Section | Explanation | Effective Date |
|---|--|----------------------|
| PART I. IRC UPDATE | | |
| Part I would update North Carolina's Code reference from January 1, 2019, to May 1, 2020. Congress enacted two bills since January 1, 2019 that change the federal tax laws: Public Law 116-94, enacted on December 20, 2019, and Public Law 116-136, enacted on March 27, 2020. Public Law 116-94 incorporated the <i>Taxpayer Certainty and Disaster Tax Relief Act of 2019</i> . The Act extended certain individual and business-related tax provisions. Public Law 116-136, the Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act, provided tax relief to individuals and businesses. | | |
| 1(a) | Updates North Carolina's Code reference from January 1, 2019, to May 1, 2020. This would conform the State to the reduction of the threshold amount for the medical expense deduction ¹ from 10% to | When it becomes law. |

¹ North Carolina decoupled from many of the federal income tax deductions and credits when it reformed its tax laws in 2013. One of the federal deductions the State continues to piggy-back is the medical expense deduction that allows a taxpayer to deduct unreimbursed medical expenses for the year that exceed 10% of the taxpayer's adjusted gross income. In December,

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

House Bill 1080

Page 2

| | | |
|----------|---|----------------------|
| | 7.5% for the 2019 and 2020 tax years and to the exclusion from gross income of any amount of indebtedness forgiven on a loan covered under the Paycheck Protection Program. It would also conform State law with changes made by Congress to retirement funds and 529 plans. | |
| 1(b) | Directs the Revisor of Statutes to renumber the subdivisions of G.S. 105-228.90(b) to ensure that the subdivisions are listed in alphabetical order. | |
| 1(c) | Decouples from the increase of the percentage of a taxpayer's adjusted taxable income that factors into the calculation of the limitation on deduction of business interest from 30% to 50% for taxable years 2019 and 2020 by requiring a taxpayer to add the excess amount deducted under the Code; ie, the limitation on deduction of business expense in NC remains 30%. It also requires a taxpayer to add the amount of any expense deducted under the Code to the extent that payment of the expense resulted in forgiveness of a loan covered under the Paycheck Protection Program so that a taxpayer does not receive a double tax benefit by receiving a deduction for expenses paid with tax exempt income. | When it becomes law. |
| 1(d) | Decouples from the federal tax provision that provides for a temporary suspension of the limitations on charitable contributions during 2020. | When it becomes law. |
| 1(e)-(f) | <p>Decouples from the following provisions, which the State has historically decoupled from:</p> <ul style="list-style-type: none">• Income exclusion for forgiveness of debt on primary residence.• Mortgage insurance deductible as mortgage interest.• Deduction for tuition and expenses. <p>Section 1(f) also decouples from the following federal tax provisions, requiring these items to be added to federal adjusted gross income when determining individual taxable income at the State level:</p> <ul style="list-style-type: none">• Modifications for net operating losses, including the suspension of the 80% taxable income limitation and the five-year carryback period. | When it becomes law. |

Congress changed the threshold amount to 7.5% for taxable years 2019 and 2020. However, under our Code reference date, the threshold amount for State tax purposes continues to be 10%.

House Bill 1080

Page 3

| | | |
|------------------------------------|--|----------------------|
| | <ul style="list-style-type: none">• Exclusion from wages and gross income of employer-provided payments on student loans for the 2020 tax year.• Increase of the percentage of a taxpayer's adjusted taxable income that factors into the calculation of the limitation on deduction of business interest from 30% to 50% for taxable years 2019 and 2020.• \$300 above-the-line deduction for charitable contributions. <p>It also requires a taxpayer to add the amount of any expense deducted under the Code to the extent that payment of the expense resulted in forgiveness of a loan covered under the Paycheck Protection Program so that a taxpayer does not receive a double tax benefit by receiving a deduction for expenses paid with tax exempt income.²</p> | |
| PART II. EXCISE TAX CHANGES | | |
| 2.1 | Clarifies that a sale of a tobacco product applies to the transfer of the product, regardless of whether it is a transfer of possession, a transfer of ownership, or both. The excise tax on tobacco products is levied on the sale or possession for sale in this State. | When it becomes law. |
| 2.2 | <p>More accurately describes the Department administrative obligation to provide licensees a list of other licensees' names, addresses, and identifying information. In the future, the Department plans to make this information available by electronic, automated distribution. The change from "must provide" to "make available" more accurately describes the Department's obligation in these circumstances.</p> <p>Subsection (a) would apply to the list of licensees under Article 2A, Tobacco Products Excise Tax. This subsection also clarifies that a license must be conspicuously displayed at each place of business for which the license is issued. This language is consistent with the language in the motor fuel excise tax statute under G.S. 105-449.74.</p> <p>Subsection (b) would make a change in the list of tax information the Department may provide under the tax secrecy statute to conform to the change made in subsection (a). This subsection also limits the dissemination of this list to entities licensed under Article 2A, consistent with the statute under Article 2A.</p> <p>Subsection (c) would apply to the list of licensees under Article 36C, the Motor Fuels Excise Tax. This subsection also provides that the list must be updated monthly. This requirement conforms with the Department's current practice.</p> <p>Subsection (d) would apply to the list of licensees under Article 36D, Excise Tax on Alternative Fuel.</p> | When it becomes law. |

² IRS Notice 2020-32.

House Bill 1080

Page 4

| | | |
|-----|--|----------------------|
| 2.3 | <p>Makes the differentiation between cancellation and revocation of a license issued under Article 2A or under Article 36C clearer by placing cancellation of a license under one subsection, and the revocation of a license under a different one.</p> <p>A licensee may request the Department to cancel a license upon written request and the return of the license to the Department. This subsection provides clarity as to the effective date of a canceled license. The effective date of the cancellation would be the date proposed by the licensee or, if the licensee does not propose a cancellation date, 15 days after the Department receives the written request from the licensee to cancel the license. The Department must notify the licensee of the cancellation date. It also provides that a licensee who is unable to return the license may include with the cancellation notice a written statement of the reasons why the license cannot be returned.</p> | When it becomes law. |
| 2.4 | <p>Requires the manufacturer of a modified risk tobacco product, not the taxpayer, to substantiate that a tobacco product is a modified risk tobacco product, and to notify the Department if the product becomes unqualified. The change streamlines the reporting process, eliminates duplicative notifications, and treats taxpayers equally based on the product sold. The tax rate on a modified risk tobacco product is substantially reduced. The tax is paid by the distributor of the product, which may not be the manufacturer of the product.</p> <p>A modified risk tobacco product is a tobacco product sold or distributed for use to reduce the harm or risk of tobacco-related disease. To qualify as a modified risk tobacco product, the product must be issued a risk modification order, or an exposure modification order, by the United States Food and Drug Administration.</p> | When it becomes law. |
| 2.5 | <p>Consolidates the record-keeping requirements for cigarettes and other tobacco products (OTP) into one statute because the requirements are substantially the same. Subsection (a) places the record-keeping requirements in the general provisions that apply to all tobacco products. Subsection (b) eliminates the duplicative statutes that are no longer needed.</p> | When it becomes law. |
| 2.6 | <p>Clarifies that a bond or irrevocable letter of credit is required in all circumstances, which is the current practice of the Department. The purpose of the bond or letter of credit is to protect the State from a person's failure to pay the tax due. Subsection (a) applies to a licensed distributor of cigarettes and subsection (b) applies to a wholesale dealer or a retail dealer of OTP.</p> | When it becomes law. |
| 2.7 | <p>Clarifies that manufacturers may be exempt from paying tax on cigarettes, as provided in G.S. 105-113.10.</p> | When it becomes law. |

House Bill 1080

Page 5

| | | |
|------|---|----------------------|
| 2.8 | Replaces the name "Mining and Energy Commission" with the correct name "Oil and Gas Commission". | When it becomes law. |
| 2.9 | Updates the reference to the International Fuel Tax Agreement (IFTA) from January 1, 2017, to December 1, 2018. IFTA is an agreement between member taxing jurisdictions to assist each other in the collection and administration of taxes paid by interstate motor carriers on their use of motor fuel. NC has been a member of IFTA since 1992. The update in the reference does not make any substantive changes to the tax laws concerning motor carriers. | When it becomes law. |
| 2.10 | Clarifies that a qualified motor vehicle may operate in this State without displaying decals when the motor carrier is operating under a temporary permit issued under G.S. 105-449.19 or under the IFTA Articles of Agreement. The motor carrier must keep a copy of the temporary permit in the vehicle when the vehicle is in this State. | When it becomes law. |
| 2.11 | <p>Provides clarity to the temporary license to import, export, distribute, or transport motor fuel in this State during a disaster response period. The General Assembly enacted legislation allowing the issuance of the temporary permit in S.L. 2019-187. The temporary permit allows a person to operate in this State without requiring the applicant to file a bond or irrevocable letter of credit with the Secretary, and without requiring the applicant to be authorized to transact business in this State with the Secretary of State. This section makes the following changes to ensure the temporary permit accomplishes its intent:</p> <ul style="list-style-type: none">• It allows the Secretary to issue the temporary permit in response to a state of emergency, as well as a disaster declaration. A disaster declaration may include a state of emergency, but a state of emergency may not rise to the level of a disaster declaration.• A person may file an application for a temporary permit within seven days of engaging in business in this State, as opposed to within seven days from the date of the disaster declaration.• A temporary permit expires 30 days after its effective date, rather than the expiration of the disaster declaration. Disaster declarations may last for an indefinite period of time, and may end without notice to the licensee. This change provides certainty.• A temporary permit maybe extended for an additional 30 days, if the state of emergency or disaster declaration remains in effect. To be extended, the licensee must request an extension from the Secretary prior to the expiration of the license. | When it becomes law. |

House Bill 1080

Page 6

| | | |
|------------------------------------|--|--|
| 2.12 | Clarifies that the process for cancelling a license under Article 36C (Motor Fuels) also applies to the process for cancelling a license under Article 36D (Alternative Fuels). | When it becomes law. |
| 2.13 | Requires a notice of hearing for revocation of a kerosene license be sent by certified mail rather than registered mail. The General Assembly made the same procedural change in S.L. 2019-6 and S.L. 2019-169 for tobacco products license revocations and motor fuel license revocations. | When it becomes law. |
| PART III. SALES AND USE TAX | | |
| 3.1 | <p>Allows nonprofit and governmental entities to apply for a State and local sales tax refund for sales tax paid on certain digital property, to the same extent as allowed for local school administrative units.</p> <p>Nonprofit and governmental entities may apply for a sales tax refund of sales tax paid on tangible personal property and services. Effective October 1, 2019, the General Assembly expanded the taxability of certain digital property. (S.L. 2019-169). That legislation changed the term “tangible personal property and services” to “items” in most instances and defined the term “items” as “tangible personal property, certain digital property, or services.” This change was made for the local sales tax refund allowed to local school administrative units, but it was not changed for the sales tax refund allowed for nonprofit and governmental entities.</p> <p>This section would provide consistency in the applicability of the sales tax refund allowed to nonprofit and governmental entities and local school administrative units.</p> | July 1, 2020, and applicable to purchases made on or after that date. |
| 3.2 | Removes obsolete language. Under current law, a retailer making remote sales into North Carolina must collect and remit the State's use tax if the retailer meets the statutory minimum level of remote sales into North Carolina: 200 transactions or gross sales in excess of \$100,000. | When it becomes law. |
| 3.3 | Clarifies that the economic nexus threshold applies only to remote marketplace facilitators. Marketplace facilitators that have a physical presence in North Carolina are required to collect and remit sales tax on the first dollar of sales sourced to this State. | July 1, 2020, and applicable to sales occurring on or after that date. |
| 3.4 | Clarifies that a digital code is taxed in the same manner as the certain digital property for which the digital code relates. | When law it becomes law. |
| 3.5 | Requires marketplace facilitators who transact retail sales of prepared food and beverage to collect and remit local meals tax to the taxing city or county and codifies into the General Statutes the | July 1, 2020, and applicable to sales occurring on or after that date. |

House Bill 1080

Page 7

| | | |
|-------------------------------------|--|----------------------|
| | <p>existing definition of "prepared food and beverages" used by the five localities with a meals tax.</p> <p>Last year, the General Assembly enacted marketplace facilitator language requiring entities that facilitate sales for third party sellers to collect and remit sales tax. There are two types of transactions where an additional local tax applies: the rental of accommodations and the sale of prepared food and beverages. The rental of accommodations is subject to sales and use tax as well as local occupancy tax. The sale of prepared food and beverages is subject to sales and use tax and local meals tax. A marketplace facilitator is required to collect and remit both types of taxes because they are deemed the "retailer" for these transactions.</p> <p>The General Assembly initially addressed accommodation facilitators in 2010 and added corresponding language to the "Uniform provisions for room occupancy taxes" statute stating that, to the extent a retailer is required to remit sales tax on accommodations to the Department of Revenue, the retailer must also remit local occupancy tax on that transaction to the taxing city or county, as applicable.</p> <p>Similar language is needed to require marketplace facilitators that transact sales of prepared food and beverage to collect and remit local meals tax. This requirement will apply only in the localities that levy a meals tax, which are: Dare County, Wake County, Mecklenburg County, Cumberland County, and the Town of Hillsborough. Examples of marketplace facilitators that might be impacted would be Grub Hub, Uber Eats, Door Dash, and Postmates.</p> | |
| 3.6 | <p>Makes the following technical changes to S.L. 2020-6:</p> <ul style="list-style-type: none">• Inserts a missing word.• Clarifies that the grace period from sales and use tax enforcement actions with respect to the sale of certain digital property by certain continuing education and professional development providers also applies to works required by an occupational licensing board. Not all licensing boards approve the continuing education courses required by them. | When it becomes law. |
| PART IV. PERSONAL INCOME TAX | | |
| 4.1 | Corrects a statutory cite. S.L. 2013-316 recodified G.S. 105-151 as G.S. 105-153.9. | When it becomes law. |
| 4.2 | Repeals an obsolete deduction. In 2009, federal law allowed certain taxpayers to elect to defer reporting cancellation of debt income in 2009 and 2010, and instead report the income ratably over a five-year period beginning in 2014. North Carolina decoupled from this provision. For State individual income tax purposes, taxpayers recognized the income in 2009 and 2010, and could deduct the | When it becomes law. |

House Bill 1080

Page 8

| | | |
|--------------------------------------|---|---|
| | amount recognized as income for federal tax purposes for tax years 2014-2018 so the income was not taxed twice for State tax purposes. The need for this deduction has expired. | |
| 4.3 | Codifies an existing Departmental practice. A nonresident partner that is not an individual may execute a nonresident partner affirmation to affirm that the nonresident partner will timely file a separate income tax return and report the partner's share of the partnership income to North Carolina. The statute does not give a due date for the affirmation to be filed. The Secretary has published guidance to taxpayers that requires the affirmation to be filed by the due date of the original return. (<i>See North Carolina Personal Taxes Bulletins, Nonresident Partners</i>) | When it becomes law. |
| 4.4 | Requires full taxpayer identification numbers when tax documents are filed with the Department of Revenue. The IRS allows truncated identification numbers on certain tax documents to protect taxpayer identity. A truncated taxpayer identification number (TTIN) is a social security number or other identification number where the first 5 digits are omitted (e.g., XXX-XX-1234). The IRS requires full identification numbers when tax documents are filed with the IRS. | When it becomes law. |
| 4.5 | Clarifies that a taxpayer conference may only be rescheduled upon mutual agreement of the Department and the taxpayer. This section also moves a sentence to the more appropriate place in the statute; it does not make a substantive difference. | When it becomes law. |
| PART V. CORPORATE TAX CHANGES | | |
| 5.1 | Simplifies the affiliated indebtedness addback to conform to the calculation already required in computing the interest deduction for income tax purposes. | Taxable years beginning on or after January 1, 2021, and applicable to the calculation of franchise tax on the 2020 and later corporate income tax returns. |
| 5.2 | Clarifies that the amount of receipts sourced to NC for a wholesale content distributor may not be less than 2% of the receipts received from advertising and licensing. Subsection (a) replaces the term "income apportioned" with the more appropriate term "receipts sourced". Subsection (b) removes the reference to this floor in the franchise tax statute because the general law is sufficient. The general law provides that a company subject to | Taxable years beginning on or after January 1, 2020. |

House Bill 1080

Page 9

| | | |
|--|---|--|
| | income tax in this State must apportion its net worth by using the fraction it applies in apportioning its income to the State. | |
| 5.3 | Repeals obsolete income tax adjustments. <i>See explanation of the same individual income tax change in Section 4.2.</i> | When it becomes law. |
| 5.4 | Prevents refunds based on a proposed adjustment for intercompany transactions to be issued prior to the resolution of the corresponding proposed assessment, and the loss of the statute of limitations for the refund to be adjusted consistent with the settlement of the assessment amount. | When it becomes law. |
| 5.5 | Repeals obsolete tax provision. The federal Tax Cut and Jobs Act of 2017 imposed the unrelated business income tax on certain transportation fringe benefits, including parking, provided by nonprofit organizations to their employees. North Carolina enacted this exclusion to ensure the expenses would not be taxable for State tax purposes. The Taxpayer Certainty and Disaster Relief Act of 2019 repealed the federal tax provision retroactively. The provision is no longer needed. | When it becomes law. |
| PART VI. TAX ENFORCEMENT AND ADMINISTRATIVE CHANGES | | |
| 6.1 | Adds the responsibility and subject-matter jurisdiction to enforce violations and criminal offenses concerning taxpayer information security to the Department's Criminal Investigations Division. | When it becomes law. |
| 6.2 | Provides that there is a ten-year statute of limitations applicable to a tax assessment for trust taxes collected but not remitted to the State. Trust taxes include sales and use tax and income tax withholdings. Under current law, the Department cannot assess a taxpayer for any tax collected but not remitted beyond three years unless the Department can prove the taxpayer "attempted in any manner to fraudulently evade or defeat the tax" and fraud is difficult to prove. | When it becomes law and applicable to assessments not barred by the statute of limitations prior to that date. |
| 6.3 | Distinguishes between the criminal and civil liability of a responsible person in a business entity. G.S. 105-242.2 provides that each responsible person in a business entity is personally and individually liable for the principal amount of taxes owed by the business entity. G.S. 105-236.1 provides that certain offenses, such as embezzlement of funds, identity theft, and forgery, are crimes under the jurisdiction of the Department. This section clarifies that the civil tax liability statute has no applicability to the criminal liability of a person. In the past, criminal defendants have argued that the civil liability statute is a bar to a criminal prosecution for a crime. An example of how a defendant would use the statute is as follows: An employee of a company filed fraudulent returns and aided and abetted the business in embezzling sales tax. The employee's attorney would | When it becomes law. |

House Bill 1080

Page 10

| | | |
|---|---|---|
| | argue the employee is not an officer, not subject to 105-242.2, and therefore cannot be prosecuted for the crimes. The Department instead focuses on the employee's conduct and whether it violates the criminal provisions. | |
| 6.4 | <p>Conforms the definition of an overdue tax debt to the changes made last session in S.L. 2019-169, and changes the effective date of the provision enacted last session so that the conforming change made in subsection (a) of this section and the changes made last session become effective at the same time.</p> <p>For purposes of collections, there is a tax debt and an overdue tax debt. A tax debt is the amount of tax, penalty, and interest collectible under G.S. 105-241.22. A tax debt that remains unpaid for 90 days becomes an overdue tax debt, and a 20% collection assistance fee is added to the total amount collectible. The proceeds of the fee are Departmental receipts and are applied to the cost of collecting and reducing the incidence of overdue tax debts.</p> <p>Prior to the change made last session, the Department had to send a 30-day fee notice, and the notice could not be mailed until at least 60 days after the tax debt remained unpaid; this timeline coincided with the definition of an overdue tax debt, which is a tax debt that remained unpaid for 90 days. S.L. 2019-169 removed the requirement that the fee notice be sent 60 days after the tax debt remained unpaid, thereby allowing it to be sent with the notice of final assessment. And it allowed the fee to be imposed 60 days after the tax debt became collectible, rather than 90 days. However, the changes made last session did not change the definition of an overdue tax debt. This section provides internal consistency within the statute to accomplish the change intended last session.</p> | August 1, 2020, and applies to tax debts collectible on or after that date. |
| 6.5 | Removes the Department of Revenue from the new licensing procedures, data collection, and reporting requirements for State agencies that issue licenses. S.L. 2019-91 made changes to the occupational licensing laws that appear to clarify standards for a licensing board's use of an applicant's criminal history in making licensing determinations. | When it becomes law. |
| 6.6 | Allows the Department of Revenue to use up to \$500,000 of the collection assistance fee to update its electronic tax systems to store and recognize power of attorney registrations. Last session, in S.L. 2019-246, the General Assembly directed the Department to update its electronic tax systems to ensure that notices generated by the Department are simultaneously sent to both the taxpayer and the person designated in the taxpayer's power of attorney registration. | When it becomes law. |
| PART VII. EXTEND CERTAIN SUNSETS | | |

House Bill 1080

Page 11

| | | |
|---|--|----------------------|
| 7.1 | Extends the sunset for individual taxpayers to donate all or a portion of their State tax refunds to aid in the early detection of breast cancer and cervical cancer to January 1, 2026. | When it becomes law. |
| 7.2 | <p>Extends the sunset on the ability of cities to finance certain infrastructure needs through special assessments to July 1, 2025.</p> <p>In 2008, the General Assembly allowed counties and cities to finance certain infrastructure needs through special assessments. The sunsets have been extended several times. Currently, the sunsets are as follows:</p> <ul style="list-style-type: none">• Counties: July 1, 2025 (per S.L. 2019-215)• Counties, dam repair: July 1, 2022• Cities: July 1, 2020 <p>Special assessment district (SAD) financings are rare. Only two towns and one county have used SAD financing since its enactment in 2008. There are no known projects being considered for which this financing is proposed. These bonds are often sold publicly without a rating. The LGC adopted special guidelines for review and approval of these bonds.</p> | When it becomes law. |
| 7.3 | Extends the sunset on the Natural Gas Economic Development Infrastructure Cost Recovery program from July 1, 2021, to July 1, 2026. This program allows natural gas local distribution companies to recover the infeasible portion of a line extension through its rates for line extensions to companies that will invest at least \$200 million in improvements and employ at least 1,500 employees. The General Assembly enacted this program in 2016. | When it becomes law. |
| 7.4 | Extends the sunset on the Jobs Development Investment Grant Program (JDIG) from January 1, 2021, to January 1, 2030. JDIG is the State's signature economic development incentive and can be used to incent a company to expand or locate in the North Carolina. | When it becomes law. |
| PART VIII. INSURANCE REGULATORY CHARGE | | |
| 8 | Sets the insurance regulatory charge at 6.5% statutorily. The General Assembly will not need to address it each year unless it is necessary to change the percentage. The charge has been set at 6.5% since 2015. The proceeds of the charge are credited to the Insurance Regulatory Fund and used to reimburse the General Fund for appropriations made to the Department of Insurance and other agencies to pay the expenses incurred in regulating the insurance industry. The insurance regulatory charge was first enacted in 1991 to defray the State's cost of regulating the insurance industry. The charge is a percentage of each insurance company's gross premiums tax liability. | When it becomes law. |

House Bill 1080

Page 12

| PART IX. EFFECTIVE DATE | | |
|-------------------------|--|----------------------|
| 9 | Except as otherwise provided, this act is effective when it becomes law. | When it becomes law. |