



The Daily Bulletin: 2019-05-14

PUBLIC/SENATE BILLS

S 622 (2019-2020) **TAX REDUCTION ACT OF 2019**. Filed Apr 3 2019, *AN ACT TO INCREASE THE STANDARD DEDUCTION, TO SIMPLIFY THE FRANCHISE TAX BASE, TO LOWER THE FRANCHISE TAX RATE, TO REQUIRE MARKETPLACE FACILITATORS TO COLLECT AND REMIT SALES AND USE TAX ON MARKETPLACE FACILITATED SALES, AND TO MAKE OTHER TAX LAW CHANGES.*

Senate committee substitute to the 1st edition makes the following changes.

Part III. Market-based Sourcing for Multistate Income Tax Apportionment

Corrects a statutory reference in the proposed changes to GS 105-130.4, concerning the allocation and apportionment of income for corporations. Further amends the statute to provide that, for companies subject to rate regulation by the Federal Energy Regulatory Commission, receipts from the transportation or transmission of petroleum-based liquids or natural gas are to be apportioned using traffic units, defined as barrel miles or cubic foot miles, in the State during the tax year (previously limited to petroleum-based liquids pipeline companies with income apportioned by barrel miles). Adds a new subsection to allow a corporate taxpayer with a State net loss balance as of the end of its 2019 taxable year, as computed under GS 105-130.8A, to elect to apportion receipts from services based on the percentage of its income-producing activities performed in the State, rather than under the apportionment provisions of subsection (l)(4), as amended. Deems the election binding and irrevocable until the earlier of the tax year in which the existing State net loss balance is fully utilized or has expired. Requires the election to be made on the 2020 tax return. Defines State net loss balance to mean the total amount of State net losses computed under GS 105-130.8A for taxable years beginning before January 1, 2020, and available to carry forward to taxable years beginning on or after January 1, 2020.

Amends GS 105-122(c1) to require a corporate taxpayer electing to apportion its receipts from services based on the percentage of its income-producing activities performed in the State to use the statutory apportionment method under the subsection unless the Department of Revenue authorizes an alternative method.

Makes conforming changes.

Part IV. Marketplace Facilitators to Collect Sales Tax

Amends the proposed definition of marketplace facilitator in GS 105-164.3, which requires that the person list or make available for sale a marketplace seller's items through a marketplace owned or operated by the marketplace facilitator and does one or more of the three specified actions; removes from those actions transmitting the offer or acceptance for the sale of the items, leaving in place collecting payment for the sale of the items or making payment processing services available to purchasers.

Amends proposed GS 105-164.4J, marketplace facilitated sales, as follows. No longer requires a marketplace seller to treat a sale made through a marketplace facilitator as a wholesale sale. Requires a marketplace facilitator to make available to each marketplace seller the gross sales and number of separate transaction with respect to marketplace facilitated sales that are made on behalf of the marketplace seller and that are sourced to this State (previously required the facilitator to report on the same information to each marketplace seller for whom it makes marketplace facilitated sales). Adds that the information may be provided in any format.

Deletes proposed GS 105-237.1(a)(8) which allowed the Secretary of Revenue to compromise a taxpayer's liability when the failure to collect the correct amount of tax was due to incorrect information given to the marketplace facilitator by a marketplace seller.

Makes clarifying changes to the definition of accommodation facilitator in GS 105-164.3.

Amends GS 105-164.4F as follows. Amends the provisions related to the calculation of tax on accommodation rentals by providing that the sales price of the rental of an accommodation made by an accommodation facilitator includes any charges or fees, by whatever name, that are charged by the accommodation facilitator to the purchaser that are necessary to complete the rental (was, the sales price of the rental of an accommodation made by an accommodation facilitator includes charges designated as facilitation fees, service fees, listing fees, and any other charges necessary to complete the rental). Changes the definition of retailer to now provide that the retailer of the rental of an accommodation is the provider of the accommodation or an accommodation facilitator, who collects the payment, or a portion thereof, for the rental of the accommodation. Makes the retailer liable for reporting and remitting the tax due on the portion of the gross receipts derived from the rental of the accommodation that the retailer collects. Provides that subsection (c) which concerns accommodation facilitator transactions applies only to an accommodation facilitator that is operated by or on behalf of a hotel or a hotel corporation, that facilitates the rental of hotel accommodations solely for the hotel or the hotel corporation's owned or managed hotels and franchisees, and that collects payment, or a portion thereof, for the accommodation rental. Specifies that an accommodation facilitator subject to (c) is not considered the retailer of the rental of the accommodation. No longer requires a facilitator to report the sales price paid by the consumer to the retailer. No longer requires a retailer to notify a facilitator when an accommodation rental marketed by the facilitator is completed. Requires the accommodation facilitator to send the retailer the tax due on the sales price, or the portion of the sales price, the accommodation facilitator collected (previously, did not account for when only a portion of the sales price is collected); makes conforming changes. Deletes the provision considering the requirements under (c) as terms of the contract between the retailer and the facilitator. Amends the requirements of the accommodation facilitator's annual report to require that it be filed by March 31 of each year for the prior calendar year for accommodation rentals it makes (was, limited to the prior calendar year for accommodation rentals for which it was not considered the retailer). No longer requires the annual report to include rental activity detail or any other information deemed necessary by the Secretary). Amends the exemptions from the tax to exempt a private residence or similar accommodation rented for fewer than 15 days in a calendar year unless the rental of the accommodation is made by an accommodation facilitator (previously required the accommodation facilitator to be considered the retailer).

Amends GS 160A-215 and GS 153A-155, concerning occupancy taxes, to give an accommodation facilitator, as defined in the act under GS 105-164.3 (was, a rental agent or a facilitator), the same responsibility and liability under the room occupancy tax as the accommodation facilitator has under the State sales tax on accommodations.

Part VI. Facilitate Critical Infrastructure Disaster Relief (was, Facilitate Response to Disasters)

Makes the following changes to proposed GS 166A-19.70A. Retitles the statute, Facilitate Critical Infrastructure Disaster Relief. Amends the statute's purpose to modify the legislative finding by listing the state tax laws and regulatory requirements which nonresident businesses and nonresident employees are exempt from when providing temporary disaster-related work in the State during a disaster response period at the request of a critical infrastructure company. Exemptions include corporate and individual income tax, franchise tax, unemployment tax, workers' compensation, and certificates of authority from the Secretary of State (previously set forth separate subsections for nonresident businesses and employees, and included exemptions from S-corporation income tax and information return requirements). Modifies and adds to the definitions provided. Amends *disaster response period*, now defined to expire on the earlier of 60 days following the expiration of the disaster declaration or 180 days following the disaster declaration's issuance (previously, extended 60 days following the declaration's expiration only). Replaces the term *out-of-state business* with the term *nonresident business*, defining the term to mean an entity that has not been required to file an income or franchise tax return with the State for three years prior to the disaster response period, other than those arising from the performance of disaster-related work during a tax year prior to the statute's enactment, that is a nonresident entity and/or a nonresident individual who owns an unincorporated business as a sole proprietor. Similarly, replaces the term *out-of-state employee* with *nonresident employee*. Adds the terms *corporation*, *employee*, *nonresident entity*, and *nonresident individual*. Modifies the terms *registered public communications provider* and *registered public utility* to refer to corporations doing business in the State rather than a person registered to conduct business in the State. Further amends *registered public utility* to include corporations subject to the control of the NC Rural Electrification Authority. Now requires a critical infrastructure company to provide notification to the Department of Revenue (Department) within 90 days of the expiration of the disaster response period (previously required notification of the State Emergency Response Team within 30 days of the business's entry into the State). Adds a requirement for a nonresident business to provide notification to the Department within 90 days of the date the nonresident business concludes its disaster-related work. Requires the notifications to be in the form and manner required by the Department Secretary, and details each notification's required content. Makes clarifications to the statute's limitations, specifying that the statute only provides

exemptions for nonresident businesses and nonresident employees who would not be subject to state tax and regulatory requirements but for their performance of disaster-related work and only during a disaster response period.

Amends the following statutes to implement the intended exceptions for nonresident businesses and nonresident employees performing requested disaster related work: GS 57D-1-24, GS 96-1, GS 97-13, GS 105-114, GS 105-130.1, GS 105-130.5, GS 105-131.7, GS 105-154, GS 105-153.2, GS 105-153.8, GS 105-163.1, GS 105-163.3, and GS 105-163.7. Eliminates the proposed conforming changes to GS 96-9.2, GS 105-125, GS 105-130.11, GS 105-153.4, and GS 105-163.2.

Deletes proposed GS 55-1-51, which provided exemptions from certificate of authority requirements for certain disaster relief activities (critical infrastructure work and motor fuel transport) and instead enacts GS 55-15-01(d), providing for substantively identical exemptions.

Makes conforming modifications to the proposed changes to GS 105-130.5, now adding to the required additions to federal taxable income in determining state net income payments made to an affiliate or subsidiary not subject to tax in accordance with the policy in new GS 166A-19.70A, to the extent the payments are deducted in determining federal taxable income.

Adds to GS 105-163.3, establishing that businesses are exempt from state withholding requirements for wages paid to nonresident employees or compensation paid to a nonresident ITIN contractor when derived from disaster-related work performed during a disaster response period at the request of a critical infrastructure company.

Further amends GS 105-131.7, GS 105-154, and GS 105-163.7 to require nonresident entities and employers exempt under the policy in new GS 166A-19.70A to provide information to their shareholders, partners and employees, as applicable, even though they are not required to file a return with the Department, so that the shareholders, partners, and employees may properly file a state income tax return.

Maintains proposed GS 105-449.69A, allowing the issuance of a temporary license to import, export, distribute, or transport motor fuel in the state in response to a disaster declaration.

Changes the effective date provisions of Part VI, now applicable to taxable years beginning on or after the date the act becomes law (was, January 1, 2019).

Intro. by Tillman, Hise, Newton.

GS 55, GS 96, GS 97, GS 105, GS 166A

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Banking and Finance, Business and Commerce, Government, Public Safety and Emergency Management, State Agencies, Department of Revenue, Tax, Public Enterprises and Utilities

ACTIONS ON BILLS

PUBLIC BILLS

S 416: RECRUIT/RETAIN VOL. FIREFIGHTERS.

Senate: Withdrawn From Com

Senate: Re-ref to State and Local Government. If fav, re-ref to Finance. If fav, re-ref to Rules and Operations of the Senate

S 622: TAX REDUCTION ACT OF 2019.

Senate: Reptd Fav Com Substitute

Senate: Com Substitute Adopted

Senate: Re-ref Com On Rules and Operations of the Senate

No local actions on bills

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