Questions for Discussion with NC Department of Revenue Submitted by the NC Association of CPAs Committee on Taxation and the Tax Section of the NC Bar Association

Individual income tax issues

1. The due date for filing 2016 federal individual returns will be Tuesday April 18, 2017 due to Emancipation Day falling on Sunday, April 16 in District of Colombia (observed Monday, April 17). When will NCDR announce this to be the due date for NC individual returns as well?

Response: The NCDOR issued Directive TA-16-1 on April 12, 2016. The directive sets standing policy on when a North Carolina tax return or other document is considered timely filed or a tax is considered timely paid if the due date falls on a Saturday, Sunday or legal holiday. Specific examples about Emancipation Day and Patriot's Day are included in the directive. Because the directive sets standing policy, the NCDOR does not plan to make annual announcements about the due date of returns or payments. For further information, please review:

www.dornc.com/practitioner/individual/directives/TA-16-1.pdf

2. A phone number is required to e-file a NC personal extension. Why is this? What are the circumstances under which the NCDR would call the taxpayer? This seems like a bad idea given all the IRS phone scams that are occurring these days. Additionally, it seems unnecessary since there is immediate acceptance or rejection with e-filing, unlike the paper remittance vouchers that now also ask for a phone number.

Response: At this point I can confirm that the Department does require a telephone number when an individual income tax extension is filed electronically. I do know that the e-filing system synchs up with our operating system and a taxpayer's failure to enter a telephone number when filing the extension electronically can cause issues with the taxpayer demographic information in the operating system. The Department will look closer at this issue as it begins its next processing season and hopefully we can at least answer why it is required next year.

3. What is the Department's policy on attachments required to support credits claimed for payment of foreign taxes, particularly for foreign taxes paid on dividends and for composite returns filed in other states?

Response: A receipt or other evidence of payment of income tax to the other state or country and a copy of the return filed with the other state or country must be submitted with the North Carolina return. Some foreign countries do not require individuals to file income tax returns. Instead, their income tax liability is paid through withholding. The NCDOR will accept evidence of the withholding to substantiate the tax credit.

4. Please discuss and describe your cyber security procedures and protections in place for taxpayers. Also, what plans are there for requiring the use of Driver's License numbers on returns and alternative procedures will be available for taxpayers who do not have a Driver's License.

Response: The NCDOR adheres to either IRS 1075 or NIST 800-53 Moderate level controls for all taxpayer information that is stored, processed or transmitted. These controls are audited both internally and externally on a frequent basis to ensure compliance.

Currently, the NCDOR is evaluating additional security measures to prevent fraud and identity theft.

5. What information can you provide concerning NC's offer in compromise procedures, guidelines for information to submit, and criteria necessary to obtain approval of an offer?

The Secretary may compromise a taxpayer's liability for a tax that is collectible under G.S. 105-241.22 when the Secretary determines that the compromise is in the best interest of the State and makes one or more of the following findings:

- There is a reasonable doubt as to the amount of the liability of the taxpayer under the law and the facts.
- The taxpayer is insolvent and the Secretary probably could not otherwise collect an amount equal to or in excess of the amount offered in compromise. A taxpayer is considered insolvent only in one of the following circumstances:

- a. It is plain and indisputable that the taxpayer is clearly insolvent and will remain so in the reasonable future.
- b. The taxpayer has been determined to be insolvent in a judicial proceeding.
- Collection of a greater amount than that offered in compromise is improbable, and the funds or a substantial portion of the funds offered in the settlement come from sources from which the Secretary could not otherwise collect.
- A federal tax assessment arising out of the same facts has been compromised with the federal government on the same or a similar basis as that proposed to the State and the Secretary could probably not collect an amount equal to or in excess of that offered in compromise.
- Collection of a greater amount than that offered in compromise would produce an unjust result under the circumstances.
- **(Effective until March 1, 2016)** The taxpayer is a retailer or a person under Article 5 of this Chapter; the assessment is for sales or use tax the retailer failed to collect or the person failed to pay on an item taxable under G.S. 105-164.4(a)(10) and (a)(11), and the retailer or person made a good-faith effort to comply with the sales and use tax laws. This subdivision expires for assessments issued after July 1, 2020.
- **(Effective March 1, 2016)** The taxpayer is a retailer or a person under Article 5 of this Chapter; the assessment is for sales or use tax the retailer failed to collect or the person failed to pay on an item taxable under G.S. 105-164.4(a)(10) through (a)(15), and the retailer or person made a goodfaith effort to comply with the sales and use tax laws. This subdivision expires for assessments issued after July 1, 2020.
- Complete instruction booklet can be found at: http://www.dornc.com/collect/offer.html
- 6. Please provide a brief outline of the DOR's current parameters for installment agreements.

A taxpayer must have <u>received a notice</u> to request an installment payment agreement. If a taxpayer has not received a notice, they can still make a payment through our <u>eServices</u> page.

Taxpayers can set up an installment payment agreements based on the following parameters:

Тах Туре	Balance Due	Period
Individual Income	Less than \$1,000	15 months
Individual Income	\$1,000 to \$6,999	30 months
Individual Income	\$7,000 to \$49,999	40 months
Individual Income	\$50,000 or more	50 months
Business	Less than \$7,000	6 months

Businesses with a balance of trust taxes greater than \$7,000 may be required to complete financial statements to be eligible for installment agreements longer than 6 months.

7. What would be required for NC to change its rules so that an individual income tax extension form is not required to be filed where there is no tax due? In other words, NC would accept the federal extension filed? We understand the attached letter and analysis of procedures followed by other states was previously submitted to Mr. Epstein. Can you address this information and the Department's position on this matter? (The information and analysis provided in the attached letter to Mr. Epstein from Mr. Heath has not been verified for inclusion herewith.)

Response: Tax year 2000 was the last year that the NCDOR allowed individuals to provide copies of the federal extension form in lieu of filing the North Carolina extension form. The requirement to use the North Carolina form allows the department to use automated means to process the application for extension and connect the extension request with the taxpayer's tax account in the department's operating system. The extension being matched up with the taxpayer's account is important for more than one reason. First, it prevents the erroneous assessment of a late filing penalty when the taxpayer has timely applied for an extension. If the original return is a no tax due or refund return, there would be no penalty since the late filing penalty is assessed on the net tax due (the tax calculated as due less all timely payments of tax and tax credits).

However, if the taxpayer makes an error on the return and the correction results in additional tax, the additional tax would be subject to the late filing penalty without the extension being linked to the tax account. Second, the extension changes the due date of the return for statute of limitations purposes. The matching up of the extension gives the taxpayer until three years from the extended due date to request a refund of tax for that tax period. We do not foresee a change in that requirement.

8. This was submitted by e-mail from a Tax Committee member: I was just reading an article on the US Supreme Court's Maryland v. Wynne case and the author says that many states may need to change their out of state tax credit regime after this case. The case basically concludes that local income taxes and state income taxes should all be considered the same when it comes to out of state tax credits.

Here is a real life example of how a client got burned on this in 2015 (I will round all tax rates for simplicity): Client is now working in Philadelphia pretty much full time, but it is clear that his domicile is still in NC. PA has a 3% state tax rate and Philly has a 3% city tax rate. NC taxes all of his income at 6%, but he only gets a credit for the 3% PA state tax. There is no relief for the 3% Philly city tax. Therefore his overall non-federal income tax rate is 9% (net 6% to NC after credits, plus the 3% city tax). This is unfair because if he worked in NC, he would only have an overall 6% rate.

So the question is: What is the NCDOR's opinion on this case and would they support allowing a credit for out of state local taxes in addition to state taxes?

Response: Wynne addressed Maryland's laws regarding allowing a tax credit for taxes paid to another state. Maryland's state income tax return collects both the state income tax and local income tax. Maryland allowed a tax credit for taxes paid to another state against its state income tax but not the local income tax. The U.S. Supreme Court, in a 5 to 4 decision, found that Maryland's tax scheme violated the U.S. Constitution's dormant commerce clause. North Carolina's statutes are different than Maryland's; there is no local income tax in North Carolina. There has not been a precedential court decision to date that requires a state to give a tax credit for taxes paid to another state and its local governments.

The NCDOR did make legislative staff aware of the Wynne decision. To date, North Carolina's law that allows a tax credit to another state or country has not been revised to allow a tax credit for taxes paid to another state's local

government. It is the department's responsibility to enforce the laws as written and we will do so until the law is changed or a precedential court decision requires otherwise.

Business income tax issues

1. When will partnership and fiduciary returns be eligible for electronic filing?

Response: The 2016 partnership returns will be available for electronic filing in 2017. The go-live date for Partnership eFile is currently scheduled for early January 2017. Currently, fiduciary tax returns are not a part of the Department's eFile program. It is hoped that the Department's fiduciary tax returns will be a part of the eFile program sometime in the future.

2. The 2015 S Corporation tax forms do not have lines to indicate excess franchise tax payments be applied to estimated taxes for the following year. Can the forms be changed or is there a manner to indicate excess franchise tax payments should be applied to estimated tax for the following year?

Response: Pursuant to N.C. Gen. Stat. § 105-163.39(a), every corporation subject to taxation under Article 4 must submit a declaration of estimated tax to the Secretary. N.C. Gen. Stat. § 105-131.1 provides that an S Corporation is not subject to the tax levied under N.C. Gen. Stat. § 105-130.3 (Part 1, of Article 4), but instead, the shareholder's pro rata share of the S Corporation's income attributable to North Carolina is subject to Article 4, Parts 2 and 3.

An overpayment of franchise tax is for the corporation, not for the individual shareholders. In 2015, the Department changed the S Corporation tax form to be consistent with the partnership tax form and to properly reflect the law. Based on the information available to the Department at the time the franchise tax overpayment occurs, the Department cannot properly attribute the franchise tax overpayment to the entity's shareholders. Upon receipt of the franchise tax refund, any individual shareholder who is required to file an estimated income tax under Article 4A can submit its portion of the overpayment to the Department using Form NC-40.

3. See attached sheet with Question 3.

Response: The NCDOR appreciates your input. Unfortunately, this scenario is not unique. During the 2015 e-file filing season, the department rejected many

S-Corporation tax returns due to the business rules designed for the schedules associated with Form CD-401S, including rules related to Schedule M-2.

To assist taxpayers and to make the e-file process easier for tax year 2016, the department has decided to inactivate many of the associated business rules for Form CD-401S. As a result, in the upcoming filing season, taxpayers should experience less rejected tax forms.

4. Does the NCDOR have any plans for a new small business penalty waiver program, like in previous years, to allow small businesses to catch up on trust taxes (sales, withholding) and waive penalties? Are there guidelines for expedited processing of applications?

Response: Currently, there are no plans to initiate any trust tax recovery programs that would allow taxpayers an automatic waiver of penalties.

5. Can e-Business Center be updated to allow cancellation of scheduled online payments?

Response: Cancellation of online payments through the eBusiness Center is expected to be available when payment history is restored. Payments may also be canceled by calling 1-877-308-9103.

6. When will e-Business Center be updated to show a history of filings and payments similar to the IRS EFTPS system? This would allow us to confirm what is submitted to the NCDOR.

Response: History of filings and payments for tax types included as part of the eBusiness Center is expected to be available during the first quarter of 2017.

7. It would be much more convenient if the Secretary of State Annual Report could be included with electronically filed corporate (and LLC) income tax returns. Is there any movement in place to make this a reality?

Response: Currently, NCDOR can only accept paper annual reports in accordance NC General Statute. There are ongoing discussions between NCDOR and Secretary of State to determine the best practices for the filing of the annual report for future years. For the 2016 tax year, the taxpayer will not be able to remit the \$25 annual report fee on corporate returns filed electronically with NCDOR.

Sales and use tax issues

1. With respect to the new good faith waiver of collection for RMI tax from 3/1-12/31/2016, what will the DOR be looking for in determining if taxpayers qualify? Upon audit, what will be the process for obtaining a waiver? Will there be a voluntary disclosure type process where taxpayers can come forward voluntarily to present the deficit and good faith prior to an audit? How will "good faith effort" be defined/interpreted for these purposes?

Response: The term "good faith effort" was discussed by the General Assembly but was not defined. Rather, the General Assembly decided the Department would be better suited to make that determination. Additionally, it should be noted that, as part of S.L. 2016-94, Section 38.5(b) provides that G.S. 105-237.1(a) is amended by adding a new subdivision to read:

- "(a) Authority. The Secretary may compromise a taxpayer's liability for a tax that is collectible under G.S. 105-241.22 when the Secretary determines that the compromise is in the best interest of the State and makes one or more of the following findings:
- (7) The assessment is for sales tax the taxpayer failed to collect or use tax the taxpayer failed to pay as a result of the change in the definition of retailer or the sales tax base expansion to (i) service contracts, (ij) repair, maintenance, and installation services, or (iii) sales transactions for a person in retail trade. The Secretary must determine that the taxpayer made a good-faith effort to comply with the sales and use tax laws. This subdivision applies to assessments for any reporting period beginning March 1, 2016, and ending December 31, 2022."

Factors that may be considered to determine if a person made a good faith effort to comply with the sales and use tax laws include, but are not limited to, the following:

- Was the person a registered taxpayer; therefore, a recipient of tax law changes provided by the Department? Did a person request a private letter ruling or letter of general applicability from the Department?
- Did the person consult with an accounting professional for tax advice or assistance regarding the changes and is able to document such activity?
- Does the Department have a record in its system that the person contacted the Department with questions relevant to the tax law changes?

- Other information that a person can provide for consideration or review by the Department.
- 2. Taxpayer sells high end electronics across the country. If a customer breaks an item it can generally only be repaired at the taxpayer's NC facility which requires the customer to ship the item and the taxpayer to ship it back after the repair is completed. As you can imagine this creates a long downtime for the customer. In order to get customer's up and running sooner, the taxpayer will often ship a replacement item (generally a used but operational item) to the customer. The customer will then return the damaged item to the taxpayer and the taxpayer charges the customer for the repairs necessary to get the damaged item in working order. The taxpayer will often not trade back the equipment. In other words, the customer will keep the replacement that it was sent and the taxpayer will keep the now repaired item that was returned by the customer. If the repaired item was returned to an out-of-state customer, it appears this would not be a NC repair. However, given that the repaired item remained in NC and was never returned, there is not a scenario in SD 16-1 that fits this situation. It still does not appear to be a sales taxable transaction, but we would appreciate the DOR's opinion on how this would be taxed.

Response: Based on the example above and without review of any agreements that may exist between the taxpayer and the customer for repair costs or for a replacement item, if the customer is charged for either a replacement item or a repaired item and either are sent by the Taxpayer to the customer outside of North Carolina, the sales price or the gross receipts from such are not subject to North Carolina State, applicable local, and applicable transit sales and use taxes. Rather, the transaction is sourced to the location where the customer receives the item.

3. Why are we still not able to make sales & use tax payments through e-Business Center?

Response: File and pay options for Sales and Use are available online and will be considered as an addition to the eBusiness Center as part of the eServices future enhancements.

- 4. In the process of drafting the guidance issued last month, what technical corrections did you identify as being necessary?
 - Clarification for the exemption for a fee or service required by "law" to ensure the exemptions is consistent with General Assembly's intent regarding the term "law."
 - Legislation to establish a bright line between "remodeling" as versus "repair, maintenance, and installation services."
 - Clarity as to the General Assembly's intent regarding leased property due to leases of varying length (Examples: 99, 25, etc.)
 - Clarification as it relates to the use of the term "fixture."
 - Addition of other services to the exemptions for RMI where such taxed as a capital improvement, by definition.

Other questions and issues

- 1. It would be helpful if NCDR had more forms that can be completed online that can be printed and filed.
 - Response: The agency provides web-fill forms for the highest volume forms. The agency is willing to consider adding forms based on customer need.
- 2. Currently when taxpayers and preparers submit sales and use and withholding returns and payments online, the NCDR's system generates a confirmation number upon submission and an email is sent with a matching confirmation number to notify the taxpayer or preparer that the payment or return has been processed successfully. When submitting payments and returns for multiple taxpayers, it is very time consuming to match each process confirmation to the submission confirmation. This two-fold system would be much more user friendly and effective if the process confirmation that is sent via email included the taxpayer name in addition to the confirmation number. Can the name of the entity be included in the email confirmation received?

Response: For security reasons we are unable to provide that information via email. However we will continue to monitor this request to see if new tools or procedures will allow for this in the future.

3. Taxpayers that are registered with the e-Business Center are currently unable to use the "Tax Payment History" option. This is a very useful option that once worked, but after recent updates it is no longer enabled. Can this option be "reenabled" so that taxpayers and preparers can be more self-efficient?

Response: History of filings for tax types included as part of the eBusiness Center is expected to be available during the first quarter of 2017.

4. Practitioners have received automated calls from the NCDR in the evening requesting that we call the NCDR because there is some issue. When we call no one knows what client the call related to because our phone number is attached to so many files. This could be resolved if the automated phone call included the company name or individual name that the call relates to. Answer:

Response: The Department is no longer using a predictive dialer that makes automated calls.

5. Can you provide a list of approved vendors (i.e., UPS, FedEx, USPS, etc.) that constitute timely filing when a return is placed with them on the due date?

Response: "The mailbox rule law only references United States Postal Service, however, we accept filing via UPS and FedEx and I'm sure we use their equivalent of a "post mark" date. We are not aware of any other mail carrier or package delivery vendors." N.C. Gen. Stat. 105-263 addresses the timely filing of mailed documents. It ties DOR to IRC sections 7502 and 7503. Specifically, 7502(f) states that any reference to the United States mail includes designated delivery services ("PDS"). The statute authorizes the IRS to designate certain PDS for the timely filing/paying rule of section 7502 and sets forth the criteria for eligibility for designation as a PDS. In Internal Revenue Bulletin: 2016-18, Notice 2016-30, effective April 11, 2016, certain services of FedEx, UPS and DHL qualify. Please refer to that notice for a detailed list. https://www.irs.gov/irb/2016-18 IRB/ar07.html

6. Will the federal "Highway Funding Bill" which changed some due dates for filing federal partnership, fiduciary and C Corporation tax returns result in any changes

to the filing dates for NC returns (regular due dates as well as extended due dates)?

Response: The due dates for filing partnership, fiduciary, and C corporation returns are set by statute. Unless and until the Legislature amends those laws, the due dates will remain the same. As for extensions, G.S. 105-263 authorizes the Secretary to grant extensions of time to file; that statute does not specify the length of time the filing date shall be extended. Currently, the automatic extensions of time to file all income tax returns is six months and we plan to continue to allow a six-month extension unless someone can make a compelling case for a different period. 17 NCAC .05C .2004 & 17 NCAC .06B .0107

7. When will NCDOR have e-Services like the IRS where practitioners can get account transcripts and wage & income (1099) information? In lieu of this, will ROs get practitioners the account transcripts etc. that practitioners need?

Response: Transcripts and wage/income information will be considered as an addition to the eBusiness Center as part of the eServices future enhancements.

8. Will the NC taxpayer advocate ever be given powers similar to the federal advocate (particularly being able to issue a taxpayer assistance order to prevent hardship)?

Response: The taxpayer advocate works with each taxpayer based on the facts of their case. The NCDOR utilizes the offer in compromise program administered by the Collection division to offer relief to taxpayers experiencing hardship events. Please refer to our offer in comprise section on our website for additional details.

9. Is the e-filing system completely up-to-date and bug free?

Response: The Modernized eFile (MeF) filing solution is updated and tested each year prior to tax season. Currently, the agency is open for testing with software vendors for Individual Income, Corporate Income and Franchise, and Partnership Income.

10. Will the ROs stop ignoring the AIF under a filed POA?

Response: When discussing a matter that involves federal tax information with anyone other than the taxpayer, the NCDOR must have written, signed authorization from the taxpayer. When speaking with a licensed attorney or Certified Public Accountant (CPA) who states that he/she represents the taxpayer, a Revenue Officer/Agent may discuss non-federal tax information with the licensed attorney or CPA without obtaining a written power of attorney. However, the Revenue Officer/Agent may always insist on speaking directly with the taxpayer if there is no POA on file or require a written POA to be given before discussing non-federal tax information."

11. How do we get a breakdown of tax, penalty and interest paid on an account so that the taxpayer may appropriately deduct the tax paid?

Response: Customers may write to PO Box 1168, Raleigh, NC 27602 or fax request to 919-733-4024 for a breakdown of tax, penalty and interest paid. The request should include the customer name, tax identification number, and tax period. If the response is to be mailed to someone other than the taxpayer, then please include a Power of Attorney, name and address for whom the request should be forwarded.

12. Will ROs discuss filing tax liens with representatives PRIOR to filing?

Response: The NCDOR's current policy regarding Certificates of Tax Liability requires that a lien be filed to protect the State's interest on any case larger than \$30,000. Taxpayers are advised through the Taxpayer Bill of Rights that the Department may file a Certificate of Tax Liability if the amount due on the Notice of Collection is not paid in full.

13. Does DOR expect to meet the 120 day time limit for publishing redacted copies of all written determinations issued since January 1, 2010? Where will these be located on the DOR website?

Response: The written determinations are available on the department's website. Additionally, the private letter ruling policy has been updated and renamed as "Written Determination Policy" and is also available on the website.

14. Practitioners continue to inquire about when NCDR will be able to send copies of notices to the practitioner designated as representative of the taxpayer on the NC power of attorney form?

Response: Currently the Integrated Tax Administration System does not support this capability; however, the NCDOR continues to research a solution for this business need.

15. Please describe the process and target time frames for processing of amended returns. Practitioners continue to feel the time period for processing such returns is too long. In addition, it seems that NCDR representatives often indicate NCDR is waiting for transcripts or other information from the IRS indicating a federal amended return has been accepted and certain federal amounts have been adjusted. Why is this necessary? What can we do to speed up this processing? Can we submit copies of transcripts we obtain from the IRS e-Services system?

Response: The Examination Division reviews all individual income tax amended returns filed with the department, which now averages 74,000 amended returns each year. This is down from an average of 100,000 returns a few years ago. The Examination Division has a dedicated group of 22 tax auditors reviewing individual income tax amended returns. Average turnaround time for an individual income tax amended return is 4 months. However, if a taxpayer's account is in a forced collection status, and the amended return will reconcile the collection case; the collection division notifies the Exam division and the amended return will be pulled and reviewed within 48 hours. Pursuant to G.S. 105-241.7, the department must approve the refund, in whole or in part, deny the refund in its entirety, or request additional information from the taxpayer within six months from the date the department received the amended return. In some instances where additional documentation is needed to process the amended return, the department and taxpayer may enter into a mutually agreed upon extended amount of time to process the return.

To expedite the processing of an amended return, all supporting documents, forms and schedules should be attached with a clear explanation of the changes. If the changes are applicable to the federal return, a copy of the federal form 1040X should also be included. Corrected W-2's or 1099's should be attached for changes to wages or state withholding. Failure to provide the necessary information delays the processing of the return. If additional documentation is needed to support the return, the auditor will mail the taxpayer a letter requesting specific information. The letter allows the taxpayer 30 days to provide the requested information and the auditor's contact information is furnished within the letter.

The department will require a federal transcript when a taxpayer has submitted an amended return that would modify an IRS audit or an automated federal adjustment. To help accelerate the process, the taxpayer or representative can submit IRS transcripts with their amended return reflecting the accepted changes.

16. Can you discuss the results of the accelerated filing of the NC Form NC-3E on verification of income tax amounts withheld? What changes to these filing requirements do you anticipate for the 2016 return filing season? Can you summarize what the rules for filing 2016 information returns will be and specifically what procedures should be followed if there is no state income tax withheld on the information returns to be submitted.

Response: We do not have anything to share at this time about the impact of the law change requiring annual reconciliations to be filed by January 31 and to be filed electronically. We were not completely successful in providing the tools to taxpayers to allow them to file electronically and the Secretary granted an automatic waiver of the electronic submission requirement. We are still gathering data with respect to those taxpayers that did file electronically.

There are no changes to the filling requirements for the 2016 filing season. The law requires all businesses to file electronically. However, the Secretary is again granting an automatic waiver for businesses that can't meet the electronic filing requirement for NC-3s, W-2s, and 1099s due in calendar year 2017. **This is an automatic waiver - no action is required.** If a business cannot meet the electronic filing requirement, the business may file using the CD or paper options previously used to file annual reconciliations with the Department. The technical requirements for Web File Upload (an electronic filing option) are the same as the

technical requirements for the CD option; as a result, if a business has previously filed using a CD, the business should be able to file via the eNC3 application using Web File Upload. Previously, there was no option to upload the NC-3, NC-3x, or W-2C. To facilitate file upload, there are new file layouts for the NC-3, NC-3X, and W-2C (http://dornc.com/electronic/enc3/uploadoption.html).