



**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. If there is a refund to be applied for next year, is it possible to send a notice if the amount is changed?

DOR will look into this to see if we can make system updates that will allow us to send a notice in this situation.

2. Hurricane Florence created a federal disaster area for several counties in North Carolina. We had several clients who were unable to file their returns before the extended due date. Couldn't the Department, by using zip codes, find a way to not send out these late filing notices? The notices cause expense and anxiety for taxpayers on top of trying to recover from the hurricane.

In the aftermath of Hurricane Florence, the Department stopped issuing delinquent notices the week of September 22, 2018. Additionally, the Department suspended certain collection and examination efforts in counties that had been impacted by the storm.

Not only were the notices sent out, the State was very efficient in sending collection notices when the original notice was not replied to within 30 days. Is there a way to streamline this in light of the fact that hurricanes occur every few years and tend to impact a large number of taxpayers?

Although a Notice of Collection was issued, the Department suspended forced collection efforts in counties that were impacted by the hurricane. The Department has an obligation to notify taxpayers of outstanding liability in the event they would like to pay rather than accrue additional interest.

3. Is the consumer use tax calculation still relevant in light of the Wayfair decision and expanded state collection of sales tax from online sales?

Yes, the consumer use tax calculation is still relevant. Retailers making remote sales who do not have gross sales in excess of one hundred thousand dollars (\$100,000) sourced to North Carolina or two hundred (200) or more separate transactions sourced to North Carolina in the previous or current calendar year are not required to register, collect, and remit sales and use tax to this State if they do not have a physical presence in North Carolina. If a retailer does not collect and remit the correct North Carolina sales or use tax on a taxable sale, the purchaser is liable for the North Carolina use tax due pursuant to NC Gen. Stat. § 105-164.6. Therefore, the Department will continue to have the Consumer Use Tax Line on the Form D-400, NC Individual Income Tax Return. The Department will also continue to have the consumer use tax table and consumer use tax worksheets within the Form D-401, NC Individual Income Tax Instructions, for taxpayers who have no records or incomplete records.

4. If the calculation stated in question 3 above will stay in effect for D400 filing, will the tables at least be updated for the expanded collection of sales tax from online purchases?

The Department will be evaluating whether the consumer use tax tables on the 2020 Form D-400 need to be updated.

5. How long does it take the IRS to update a 1040X to a taxpayer's file? There seems to be a significant amount of issues where NC-amended returns are delayed for considerable amount of time until the IRS accepts and posts the change to the taxpayer's account. This was a comment from a member: "I filed a client's 1040X a year ago, and the client received a refund check. Now NCDOR is assessing the client for taxes, penalty, and interest based on the original 1040 filing. A year later, and the IRS reported the original return to NCDOR. The NCDOR agent I spoke to yesterday told me she is seeing this frequently. She even had the IRS transcript hotline number readily available."

DOR has no way of knowing the timeframe the IRS takes to accept a taxpayer's 1040X. It is our goal to expedite the processing of the North Carolina amended return. If you continue to have issues, please bring it to our attention so that we can address it going forward. 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. There may be additional instances where a transcript will be requested to determine if the IRS has accepted the changes. To help accelerate the process, the taxpayer or representative can submit IRS transcripts with their amended return reflecting the accepted changes. Unfortunately, if amended federal and state returns are submitted around the same period of time, there is a delay in waiting for the IRS transcript to reflect any changes.

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 from a non-federal issue, 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.

6. Is there a specific way to request withholding and tax payment information for a taxpayer since there is no formal transcript system? We have reports of some agents are unable to pull this information for taxpayers, and some where there was no issue at all.

To the extent an employer has timely reported withholding and tax information to the Department, an authorized DOR employee can provide withholding and tax payment information to a taxpayer or a taxpayer's representative if the taxpayer or taxpayer's representative requests the information in writing.

Sales and Use Tax Issues

1. Can the NCDOR have a user login like TN or SC, which has all tax types assigned to the user ID? You essentially do not have to fill out the paper coupon every time you want to pay a tax or report a tax.

The Department has defined enhancements that will be part of the eService Modernization project and a taxpayer portal is one of the enhancements. The taxpayer portal will provide access to taxpayer filing history and demographics, along with the ability to store payment information for future filings.

2. The NC ESC allows practitioners to act as a remitter to file and pay for multiple taxpayers at once. Can the NCDOR not also make this possible to streamline filing and payment for practitioners on the taxpayer's behalf?

As mentioned in #1 above, the Department is working on an eService Modernization project, which includes a taxpayer portal. This type of functionality can be considered as part of the taxpayer portal.

3. The current sales & use tax bulletin states that a real property contractor is jointly and severally liable with several other parties for sales & use tax, but the vendor is not one of those other parties. What is the DOR's position during use tax audits when sales tax has not been properly collected by a vendor that is in the sales & use tax registry, and are there different positions regarding in-state and out-of-state vendors? Is the position supported by statute or case law? Describe any changes to this position over the last few years.

Sales tax is a privilege tax imposed on a retailer's sale of a taxable item purchased for storage, use or consumption in North Carolina and is intended to be passed on to the purchaser and borne by the purchaser rather than by the retailer. A retailer is acting as a trustee when it collects sales tax from a purchaser on a taxable item on behalf of the State.

Use tax is an excise tax imposed on the person who purchases, leases, or rents taxable tangible personal property, certain digital property, and services, inside or outside North Carolina for storage, use or consumption in North Carolina. An item is subject to use tax only if the item is also subject to sales tax under N.C. Gen. Stat. 105-164.4. A purchaser who pays the correct amount of tax to a retailer has extinguished its tax liability provided there are records that show payment of the tax to the retailer. A retailer is liable for sales tax on the sales price of a taxable item pursuant to N.C. Gen. Stat. § 105-164.4 but the purchaser can be liable for the use tax pursuant to N.C. Gen. Stat. § 105-164.6.

A credit is allowed against the use tax due for the following:

- a. The amount of sales or use tax paid on a taxable item provided the tax is separately stated on the invoice or other document of the retailer given to the purchaser at the time of the sale, except as otherwise provided in G.S. 105-164.7, or provided the retailer remitted the tax subsequent to the sale and the purchaser obtains such documentation. Payment of sales or use tax to this State on an item by a retailer extinguishes the liability of a purchaser for the use tax
- b. The amount of sales or use tax due and paid on a taxable item to another state. If the amount of tax paid to the other state is less than the amount of use tax due to North Carolina, the purchaser is liable for the difference. This credit provision does not apply to tax paid to a state that does not grant a similar credit for sales or use taxes paid in North Carolina.

Communications with the DOR

1. What is the status of the system upgrades that will allow CPAs with NC power of attorney (GEN-58) on file to receive copies of NCDOR correspondence?

The Department is conducting a pilot using the DocuSign platform to collect the POA and other forms electronically. If the pilot is successful, we will pursue broadening the service to interface with our tax management system for notice copies.

2. The NCDOR will occasionally request that NC POAs be submitted days in advance to speak with the NCDOR instead of being authenticated immediately over the phone after submitting by fax. This is not

consistent and adds substantial delay to resolving our issues. Is there an official policy on this or improvements coming?

By statute, a DOR employee is prohibited from disclosing tax information to unauthorized persons. Depending on call volumes and employee workload, a DOR employee may not be able to authenticate a Power of Attorney ("POA") immediately. However, the Department generally processes a POA form submitted to the Department within 24 to 48 hours of receipt.

Importantly, in light of [Session Law 2019-246 \(SB 557\)](#), the Department is currently reviewing its POA process for improvement. Under the new law, the Department is required to update its electronic tax systems to store and recognize power of attorney registrations. By January 31, 2020, the Department must report to the General Assembly its progress in updating its electronic tax systems to store and recognize power of attorney registrations.

3. Will the NCDOR consider providing electronic transcripts like the IRS? It is an extremely inefficient use of taxpayer resources to have to verbally obtain account detail over the phone. For example, if I need to find payment dates related to an installment agreement, I must verbally request each date. Similarly, if I need the composition of a balance (i.e., tax, interest, penalty, etc.) I need to verbally obtain that information as well. This is very time-consuming, especially when multiple years are involved.

The Department has defined enhancements that will be part of the eService Modernization project and a taxpayer portal is one of the enhancements. The taxpayer portal will provide access to taxpayer filing and paying history, demographics, and payment information for future filings.

Taxpayer Audits, Enforcement, & Collection Actions

1. Are there any plans to streamline your lien discharge process? The process seems to be inconsistent based on the collections agent you are working with.

The Department is currently working to standardize this process. In most cases a certificate of tax liability is valid for 10 years from the date the lien is filed. If you discover a lien that is over 10 years old, please contact Cale Johnson at (919) 814-1175.

Partnership, LLC, and Fiduciary Returns

1. Will new guidance be issued on taxation of Trusts in light of the Kaestner decision?

In early January, the Department will publish an important notice notifying taxpayers who timely filed a request for refund after the United States Supreme Court's decision in *North Carolina Department of Revenue v. The Kimberly Rice Kaestner 1992 Family Trust* ("Kaestner") ("impacted taxpayers") that the Department will begin requesting additional information from those taxpayers to determine whether they are entitled to a refund.

In addition, the Department will update the North Carolina estate and trust tax instructions, Form D-407A for tax year 2019, and the 2019 Personal Taxes Bulletin to include Kaestner information.

Electronic Payment/Filing

1. The federal system EFTPS is very fast and efficient. You register a client with the system, give EFTPS a routing and account number and then sign on with login and password. The NCDOR system allows online payment with less of a security process and you have to enter routing and account number on each access. This process allows for much less of a control feature and a one-digit mistake could translate, in some cases, to thousands of dollars in late payment penalties. Is there some way NCDOR could develop a similar program?

The Department has defined enhancements that will be part of the eService Modernization project and a taxpayer portal is one of the enhancements. The taxpayer portal will provide access to taxpayer filing and paying history, demographics, and payment information for future filings.

2. Why is an employer not allowed to make a payment for sales tax or withholding tax more than one time in their filing frequency? We had an issue where a monthly filer wished to make their NC5 payment online after each payroll, but this generated notices that the payments were not matched up appropriately. Surely, they can pay the tax due more frequently than required, especially if this would further ensure that a taxpayer paid at all instead of forgetting to go back after the final payroll of the month to submit online.

If a withholding filer wants to make multiple payments during the month/quarter they should use the eBusiness center's payment only option. At the end of the month/quarter they can file a return without payment. This option is not available with our online file and pay application; however, we can consider this as part of our eService Modernization project.

If a sales and use tax filer would like to make multiple payments, they can make payments via EFT or use the payment only option in the online file and pay application. At the end of the month/quarter, they can file a return using the online file and pay application and indicate that they paid using EFT. Note: The paid using EFT option is available even if they paid using the online file and pay application.

3. I recently had feedback from Gusto (large payroll service provider) that the NCDOR was difficult to work with for payroll providers submitting payments/NC-5s, as well as trying to confirm filing frequencies. Other states will automatically send them the filing frequency of the account number, or if it changes, inform them. They asked NCDOR to do the same and were sent back a sheet of notebook paper handwritten with their processes.

There are two questions here: why is it hard to submit payments and why is it hard to confirm filing frequencies?

For payments, most Payroll Service Providers (PSPs) pay by ACH credit but NCDOR has an enrollment process (other states do not). The "notebook paper" referred to above is the process that NCDOR ePay uses for the "Payroll Add List." NCDOR ePay receives a faxed list of new clients from a PSP and pulls them up in the system to see if they were enrolled in ACH credit. If not, they enroll them in ACH credit (or send to registrations to register them). Then the "notebook paper" (most likely a print-out of what was faxed) is faxed back to the PSP with a handwritten response of whether it was completed or not. When ACH credit payments come in and the business is not registered in EFT for ACH credit, an "Unauthorized" error is generated. NCDOR ePay has to enroll them in order for the payment to flow into the EFT system.

For filing frequencies, NCDOR is aware of the need for this and have explored projects to work on reporting filing frequencies to PSPs, but they have not been completed.

4. Is there a reason you cannot choose a future period for making NC5 payments online? This is an issue when a payroll is run on the last few days of one month for a pay day the next month (run July 31 but

pay day August 1). An employer cannot go ahead and schedule the tax payment for the next month until the current month closes. Could the drop-down option just include all 12 months?

Our systems are set up this way, but we are aware of the request. As we move through the eServices modernization project, this is a request that will be considered.

5. When will the NC Estate and Trust tax returns be available for electronic filing? Corporations have been able to eFile since 2015.

The Department has started a project to implement electronic filing for Estates and Trust Income. The project is currently in the strategy phase and we will know more in mid-2020 as to whether we will be able to implement this for TY 2020.

6. NCDoR website should take note of the EFTPS website. Today, as of the writing of this question, is a federal holiday and since NC DoR isn't open, I can't initiate income, extension, or payroll tax payments that are due to draft tomorrow. I would have had to initiate the draft on Friday in order to draft tomorrow. A payment can be mailed and postmarked tomorrow and NC won't have use of that money until the end of the week, but the payment is timely. However, payments that are due tomorrow I can't do on their website today and be considered timely. I would like to strongly encourage NCDoR to change the way their website operates to be available everyday and not just the days they are open.

Payments submitted through our online web applications are not charged penalty and interest if filed on the due date with the next available draft date.

7. Will the NCDoR accept the federal extension under the new rules for all form types that have a correlating federal tax form (1040, 1120, 1065, 1041, etc.)? Or is there a specific list of forms for which the federal extension will be accepted?

DOR Response: During the 2018 session, the North Carolina General Assembly enacted [Session Law 2018-5](#), which includes a provision that grants a person who is granted an automatic extension to file a federal income tax return, including a partnership income tax return, with an automatic extension to file the corresponding State income tax return and franchise tax return, provided the person certifies on the State tax return that the person was granted a federal extension. See examples below.

Example 1:

Taxpayer John Doe files a federal Form 4868, Application for Automatic Extension of Time to File a U.S. Individual Income Tax Return, and is granted an automatic extension to file his federal individual income tax form, federal Form 1040. John Doe will be granted an automatic extension to file his corresponding North Carolina individual income tax return, Form D-400, provided John Doe certifies on Form D-400 that John Doe was granted a federal extension.

Example 2:

Taxpayer ABC Corporation files a federal Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns, and is granted an automatic extension to file its federal corporate income tax form, federal Form 1120. ABC Corporation will be granted an automatic extension to file its corresponding North Carolina franchise and corporate income tax return, Form CD-405, provided ABC Corporation certifies on Form CD-405 that ABC Corporation was granted a federal extension.

Example 3:

Taxpayer XYZ Partnership files a federal Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns, and is granted an automatic extension to file its federal partnership tax form, federal Form 1065. XYZ Partnership will be granted an automatic extension to file its corresponding North Carolina partnership tax return, Form D-403, provided XYZ Partnership certifies on Form D-403 that XYZ Partnership was granted a federal extension.

Optional Retirement Payment

1. After the Bailey decision, the NCDOR allowed for some state pensioners to opt out of leaving funds in the NC system and allowed them to leave their funds in certain private retirement systems. The NCDOR spells out which particular companies (Lincoln, Prudential, etc.) carried the retirement funds. In order to claim the Bailey exclusion, the NCDOR accepted 1099R forms that indicated which pensioners were vested as of a certain date and thus allowed to claim the exclusion. The only private 1099R form that I have seen that indicated vesting status on the form was Prudential. Lincoln 1099 R form does not indicate, and in this situation, I have had to contact the UNC system and NC Treasurer, and they are uncertain. Could NCDOR develop a reporting process with these optional carriers like Lincoln to indicate on their 1099 R forms if these taxpayers are vested?

DOR Response: The Department is not aware of any agreement or instruction by the court that requires an Optional Retirement Program (ORP) carrier to indicate a taxpayer's vesting status on federal form 1099-R. Moreover, a determination of whether retirement benefits received from the ORP are exempt from State income tax is not as simple as the determination of vesting. The answer depends on the participant's investment history. As such, a reporting process by which the ORP determines whether retirement funds are exempt from State taxation may not be in the best interest of all parties.

Exempt Entities

Can the NCDOR do one of two things in relation to the unrelated business income tax of exempt entities:

Create a form specific to UBIT (whether taxable as a trust or corporation); or,

Give specific guidance on how to prepare the respective return in light of the new IRC Sec. 512(a)(6).

Background – The TCJA created a rule for exempt organizations, which requires all unrelated business activities to be treated separately. Losses from one activity cannot offset the income of another. NOLs carry forward to offset the future income of the specific activity that created the loss. The CD-405 is set up under the assumption that all activities are netted together as one normally would with a standard C-Corp. Exempt entities with separate activities have no clear way of reporting those activities separately on the CD-405.

I would prefer a separate form that piggybacks off the 990-T without a balance sheet requirement. 990-T attachment required.

The Department will consider more detail in the Department's instructions for Form CD-405 or another type of specific guidance for this issue. The Department is certainly willing to meet with stakeholders to gain an enhanced understanding of this concern.