



**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**

**Forms, Filings, & Operational Procedures**

**Partnership, LLC, and Fiduciary Returns**

1. When will we be able to e-file fiduciary returns?

The Department is currently testing e-File for Estates and Trusts and plans to begin testing with software providers within the next week. We expect to open for filings in January 2021.

2. Please address the state of mandatory electronic filing of state form 1099-MISC information.

Employers and other payers who are required to or voluntarily withhold NC income taxes are required to file the following information electronically, using the eNC3 and Information Reporting Application:

- Form NC-3
- W-2 Statements
- 1099 Statements

However, until further notice, the Secretary of Revenue will continue the automatic waiver of the penalty for failure to file Form NC-3 in the format prescribed by the Secretary.

3. How is this impacted by the new federal form 1099-NEC?

A payer who is required to withhold North Carolina income tax from non-wage compensation paid to a payee, can report the non-wage compensation paid to a payee for services performed in North Carolina, and the North Carolina tax withheld from that income, on North Carolina Form NC-1099M. (The terms "payer" and "payee" are defined in G.S. 105-163.1.)

If a payer is required to complete a federal Form 1099-MISC or Form 1099-NEC to report the non-wage compensation paid to a payee, the payer does not have to complete Form NC-1099M.

As a part of the payer's Form NC-3 filing requirement, Federal Form 1099-MISC or Form 1099-NEC are required to be filed with the Department only if the form reports North Carolina tax withheld.

For additional details see Important Notice dated October 2, 2020:

<https://www.ncdor.gov/documents/important-notice-various-updates-north-carolina-withholding-tax-informational-returns-due-2021>.

4. When E-filing fiduciary returns are available, will the taxpayer be able to directly pay and directly deposit to bank accounts?

e-File for Estates and Trusts will have the same electronic options as e-File for Corporate and Partnership. Payments can be made via bank draft; however, refunds cannot be direct deposited.

5. Will other e-Services be available for fiduciary returns similar to other returns?

Currently, the Department is not adding any additional eService options for fiduciary returns other than the ability to e-File using the Modernized E-file (MeF) Program.

6. Please discuss timetable and what practitioners should expect this coming tax season related to Fiduciary returns.

The Department plans to begin providing eFiling for Estates and Trust in January 2021. In addition to the return, payments and extensions can also be made electronically. The opening date is TBD and may be later in January than Corporate and Partnership eFile since this is a new offering and additional work is involved. Ten software providers have shown interest in testing with the Department. We will begin posting approved vendors in early January.

7. We have observed multiple tax notices on fiduciary returns filed just prior to the July 15th due date where the tax payment was made but not properly applied to the account. In all these cases, the trustee mailed the check with form D-407. Can you address if there were any issues specific to processing these returns this year?

We are not aware of any issues this year. If you have some examples, we are happy to research. Examples can be provided to Garrett Smith at [garrett.smith@ncdor.gov](mailto:garrett.smith@ncdor.gov).

8. Are there any suggestions you would make to ensure proper credit to the account and avoid future issues?

Promote electronic paying even when you file a client's return electronically. Example: TP can go on the website on March 1st and warehouse the payment until 4/15 even if the CPA filed return electronically and a paper stub was given. It also provides a confirmation that the payment was received unlike a paper check.

- Payments can also be made by Visa or MasterCard via the website. Card payments cannot be post-dated and there is convenience fee.
- Benefits of paying electronically include:
  - Secure
  - Confirmation # so they know payment has been received
  - More accurate posting
  - Can control when drafted
  - If they do send a paper check or money order, make sure to fill in the payable to line and include either a payment voucher or your name, social security number, the type of tax, and the applicable tax year/period with your check or money order. Including this information will ensure the payment is applied to the correct liability and will expedite processing.

Paying online is the most secure and efficient way to make a payment. However, if you are paying by check or money order, keep the following in mind:

- Make the check or money order payable to N.C. Department of Revenue. If you don't, your payment may not be processed or delayed.
- The check or money order must be drawn on a U.S. (domestic) bank and the funds payable in U.S. dollars.
- Include either a payment voucher or your name, social security number, the type of tax, and the applicable tax year/period with your check or money order. Including this information will ensure the payment is applied to the correct liability.
- Remember, don't mail a cash payment.

9. Any consideration for adding a form D-407 voucher similar to individual and corporate returns?

Yes. Beginning with tax year 2020, new Form D-407V, Estates and Trusts Payment Voucher, will be available on the Department's website.

### **Individual Income Tax**

1. The CARES Act allows employers to make tax-free payments up to \$5250 towards their employees' student loans. For purposes of Form W-2 reporting, is this amount also exempted from Box 16 (State wages)?

Yes

2. The CARES Act allows employers to make tax-free payments up to \$5250 towards their employees' student loans. How is the NC DOR proposing to be notified of the additional income to be reported on the taxpayers' income tax return? May I suggest requiring the amount in Box 14 from employers. There does not seem to be a Box 12 code that applicable. Perhaps the NC DOR could work with our Washington D.C. delegation to get a Box 12 code that software programmers could code to automatically create the additional income on the multitudes of software. Donna Powell

The employer should report all educational assistance payments, including any qualified educational loan payments, on Box 14 of federal form W-2. If the employer does not report educational assistance payments on Box 14, the employer must provide sufficient information to the employee that allows the employee to determine the amount of educational assistance payments made by the employer that is taxable for North Carolina individual income tax purposes and not included in Box 1 of federal form W-2. The Department plans to work with software developers to suggest the developer include information in their product related to the State's nonconformity to the exclusion of qualified educational loan payments from North Carolina taxable income.

## **Taxpayer Audits, Enforcement, & Collection Actions**

1. Does NCDOR have the ability to produce a transcript of activity for a taxpayer account? In a recent interaction with collections, all that could be produced was the current remaining balance. Taxpayer had made several payments in the previous 8 months and did not understand how those payments had been applied, or how the remaining balance due was being determined. Eventually, the NC Taxpayer Advocate was able to manually produce a spreadsheet from 30 payment confirmations that we provided. This revealed key data that influenced the installment arrangement, specifically, 1) the collector said he only saw record of \$20,000 in extra payments being made in the previous year, when in reality there was \$80,000+ made and. 2) we were able to determine the total amount of penalties and interest that had been assessed on the taxpayer's account.

The Department's Integrated Tax Administration System (ITAS) does not have the capability of a system generated account transcript. However, a manual transcript can be produced if a taxpayer has concerns about the application of payments for specific periods. Manual transcripts could potentially be time-consuming to produce depending on the taxpayer's history and/or multiple accounts with the Department. To minimize the relatively low risk of misapplied payments, it is always recommended to electronically file and pay in full on or before the due date of the return. If taxpayers and/or their representative that has a properly executed Power of Attorney has question or concerns regarding their account, they should contact the Revenue Officer assigned the specific account or the service center collection section manager closest to the taxpayer with the tax debt.

2. The NC DOR has a practice of sending bills including interest and penalties for non-filing in situations where a taxpayer previously lived in NC, moved away and then moved back. I have had many taxpayers, including my own son, who lived in NC during childhood and college then lived and filed in another state for years. Upon returning they are sent a bill for back NC taxes for the years they lived away. In one egregious situation, notices were sent to an address the taxpayer had not held in 8 years that then led to her wages at a new job being garnished for the phantom taxes. This taxpayer had other complications with the job that led to extreme stress over the situation. I suggested that a letter of inquiry should be sent to help determine if filing was required before bills are issued.

As part of our Data Exchange Program with the Internal Revenue Service, the Agency receives information whereby taxpayers have an income source within North Carolina and the latest address reflected within the information received by the Internal Revenue Service and other data sources is a North Carolina address. The Agency utilizes this data to identify taxpayers that are potential non-filers for North Carolina individual income tax. Our long standing practice within this program is to issue a Notice to File a Return letter to the taxpayer requesting the taxpayer respond within 30 days. Included with the Notice to file a return letter is an insert with additional instructions on where to file the return, how to pay any liability, contact information and what is needed if the taxpayer believes they have no filing requirement. Taxpayer should contact the Agency and/or provide the required information if the taxpayer believes there is no North Carolina filing requirement. As noted above, a taxpayer may potentially be a non-resident of North Carolina but still utilizes a North Carolina address and still has an active North Carolina driver's license. This taxpayer would need to provide appropriate documentation as reflected in the insert or use the contact information included in the insert to discuss with an auditor to substantiate non-resident status. Failure of the taxpayer to respond to the Notice to file a return will result in issuance of a Notice of Proposed Assessment based on the best information available to the Agency. Failure to respond to the proposed assessment will result in the issuance of a Notice of Collection.

3. Is there any thought of allowing a payment plan OIC like the IRS? With the IRS you can pay your OIC amount over 24 months, although it will be a higher settlement amount.

The Department administers the tax laws in a fair, uniform, and impartial manner. In the event a taxpayer is financially unable to remit the full amount of taxes due the State upon the due date of the specific tax schedule return, the Collection section has a specific policy which allows installment agreements for taxpayers meeting certain criteria with specific terms and conditions. If the taxpayer cannot pay the liability in full through an installment agreement in accordance with the terms and conditions, the taxpayer should consider submitting an Offer in Compromise. During the review of an offer in compromise, the Department evaluates the taxpayer's assets, liabilities, income, and expenses to determine their reasonable collection potential. In order for an offer to be recommended for acceptance, the reasonable collection potential must be greater than the Department could expect to collect over the life of the liability. The current offer in compromise policy requires payment to be made with thirty days of acceptance of the offer; however, the Agency welcomes any suggestions and further discussion from the NCACPA regarding potential modifications of the current Offer in Compromise policy which enhances the efficiency of collection of tax debts owed the State and accommodates the taxpayer subject to the provisions of the revenue statutes. If there are questions or concerns about a specific taxpayer, please contact Cale Johnson at (919) 814-1175.

### **Communications with the Department of Revenue**

1. Why does NC DOR not have an online login account for Taxpayer and for us as CPAs? Online access to Taxpayer data (with of course a POA in place) is such a great tool, and so efficient. Is there a timeline for this type of system to be added?

This functionality is included in the DOR e-Services roadmap. These functional enhancements are scheduled in future releases of e-Services. Unfortunately, we do not have an estimated timeline for implementing this feature but we understand the value this will add for taxpayers and their representatives.

It appears that the tax notices on underpayment assessments seem to have become more vague with no description of the additional interest and penalties. This required phone calls to NCDOR. Two specific examples – 1) NCDOR assessed underpayment penalty for 2019 1st quarter estimate; 2) NCDOR assessment of penalty and interest on a bad check. Both notices provide no detail on specific assessment. Can the NCDOR expand and provide more detail on future notices?

"NCDOR recently identified a certain portion of assessment notices that are not listing a clear explanation. We are pursuing an analysis of this issue to implement a resolution. NCDOR has identified clarity of our outbound communications and notices as a strategic priority for the agency. We will continue to review and revise our communications and notices for readability and actionable understanding to better service our customers."

### **Forms, Filings, & Operational Procedures**

1. A common issue is that of NC amended returns, or NC originally filed returns after assessment based on an IRS substitute for return. NC requires that we provide a copy of the IRS account transcript, and sometimes closes the "file" before that can be obtained, requiring us to start all over. Is there a way to mitigate this issue?

The Department of Revenue (DOR) receives Revenue Agent Reports (RAR) based on a substitute federal return when a taxpayer has not responded timely to an Internal Revenue Service (IRS) inquiry to file a federal return and they are NC residents. When the DOR receives the federal Non-filer RAR audit, and the

taxpayer is a non-filer, a Notice to File a Return is sent to the taxpayer for that specific tax year requesting the taxpayer to file a tax return or contact the auditor within 30 days. If there is no response from the taxpayer a Notice of Proposed assessment is generated based on the federal RAR and any NC3 data we have available. If the taxpayer had previously filed a NC return, adjustments are made to reflect the changes from the federal assessment.

If the taxpayer files a North Carolina return or an amended return after the assessment has been generated, the DOR will review the return and all documentation provided with the return to confirm accuracy. If the return is accurate, the DOR will make any appropriate adjustments to the non-filer assessment to match the return filed. To expedite the processing of an amended or original return, all supporting documents, forms and schedules should be attached with a clear explanation of the changes. DOR also request the taxpayer provide any other federal correspondence received to verify the taxpayer has submitted the federal return to the IRS.

If the documentation provided by the taxpayer is insufficient to accept the changes without confirming the IRS accepted the changes originally proposed by the IRS, the auditor will send a letter requesting the taxpayer provide a complete copy of their federal return along with the corresponding account transcripts. The letter also notifies the taxpayer that their account will be placed on hold for 60 days to allow time for the taxpayer to submit the appropriate documentation. We will extend the hold for an additional 30 days at the taxpayer request.

2. What progress is being made on mailing of notices, assessments, installment agreements, etc. to POAs. Recently, CPA with a POA asked that installment agreement be mailed to him to facilitate getting the agreement signed and returned but was told it can only be mailed to the taxpayer address.

DOR has contracted a new Document Management System (DMS) for implementation during the second quarter of 2021. The Powers of Attorney GEN-58 form will be the first form implemented for virtual submission in the DMS application. In addition, DOR has finalized a new POA policy to assist and educate staff for when a POA form is required, explains the various types of POA forms and authority to help us better serve our POA/representative community. Once the POA is implemented in the document management system, we can then consider the next step, which is to send notices to the registered POA.

3. When I call NC DOR Tax Practitioner Hotline with a Gen 58 in hand and need account balances to help resolve the account, I am told I cannot fax it to them directly. I must call the general customer service #, submit the Gen 58 and then wait for it to update in their system before I can talk to the folks at Tax Practitioner. Some matters are urgent and waiting a couple business days is not realistic. Is there a work around?

Employees answering the Tax Practitioner Hotline can receive a GEN-58 directly from a practitioner via e-mail for urgent matters. The Department is currently working to speed up the processing times for GEN-58 submissions. This issue has been addressed with staff to ensure timely assistance is provided.

## **Suggestions (areas that you feel need improvement or would like to see changed)**

1. Recently we received a tax notice requesting payment on an individual return. The return was E-filed on October 8th with a balance due. The tax was drafted from the bank on October 13th. The tax notice was dated October 14th. We had contacted the practitioner priority line which confirmed that the payment was received by NCDOR and was told that the payment and notice must have crossed. We were surprised by NCDOR's quick notice related to this taxpayer and provided no time for receipt and processing by the department. Is this a new policy to generate notices promptly upon a balance due on a return?

The Department did not intend to generate notices this quickly after receiving a return; however, an issue was discovered this year with the process to generate notices when a return is filed without payment. The problem has now been corrected.

2. In the past, it seemed the department provided more of a grace period for processing. It is our suggestion to provide several weeks, perhaps up to 30 days for these matters to clear.

The Department's notice schedule allows time for payments to post after a return was filed; however, an issue was discovered this year with the process to generate notices when a return is filed without payment. The problem has now been corrected.