

## North Carolina Tax Legislation Enacted in the 2024 Short Session

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This Alert summarizes all the material amendments to Chapter 105 of the North Carolina General Statutes ratified to date during the General Assembly's 2024 short session.

With budget negotiations between the two chambers at an impasse, the General Assembly adjourned on June 28, just before the end of the state's fiscal year. The legislature has ratified only nine bills amending Chapter 105 during the short session thus far. Seven of these were signed by the Governor,<sup>1</sup> one became law by the Governor's inaction for ten days after presentment as provided in Article II, section 22(7) of the State Constitution,<sup>2</sup> and one became law by the legislature overriding the Governor's veto.<sup>3</sup>

The General Assembly's June 28 adjournment resolution calls for the legislature to reconvene monthly until year-end. Most of these sittings will consider only select matters, but when the legislature meets in November it will be authorized to consider the budget and adjustments to the 2024-25 spending plan. We will issue another Alert if additional tax legislation is adopted.

This Alert covers the following topics:

- Franchise Tax
- Corporate Income Tax
- Taxed Pass-through Entities
- Sales Tax
- Property Tax
- Captive Insurance Tax
- Excise Taxes
- License Taxes
- Penalties

### Franchise Tax

#### *Clarification of Minimum Franchise Tax*

Under current law, the franchise tax rate is \$1.50 per \$1,000 of tax base. For S corporations, the franchise tax on the first \$1 million of tax base is capped at \$200.<sup>4</sup> In 2023, the General Assembly enacted legislation to cap the franchise tax on the first \$1 million of tax base for C corporations and holding companies, effective for the 2025 franchise tax year. For these entities, the 2023 legislation provided that "the tax rate is five hundred dollars (\$500) for the first

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<sup>1</sup> House Bill 199, S.L. 2024-30; House Bill 228, S.L. 2024-28; Senate Bill 319, S.L. 2024-29; Senate Bill 355, S.L. 2024-32; Senate Bill 508, S.L. 2024-1; Senate Bill 527, S.L. 2024-41; and Senate Bill 802, S.L. 2024-44.

<sup>2</sup> Senate Bill 607, S.L. 2024-45.

<sup>3</sup> House Bill 198, S.L. 2024-15.

<sup>4</sup> N.C. Gen. Stat. §105-122(d2).

on million dollars (\$1,000,000)” of tax base.<sup>5</sup> Senate Bill 508 clarifies that the general rate of \$1.50 per \$1,000 of tax base applies to the first \$1,000,000 of tax base for C corporations and holding companies and that \$500 is the maximum tax on the first \$1 million.<sup>6</sup> Thus, C corporations and holding companies with a tax base of less than \$333,333 will pay less than \$500 in franchise tax. This change is effective for franchise tax years beginning on or after January 1, 2025 (reported on 2024 and later income tax returns).<sup>7</sup>

## Corporate Income Tax

### *Real Property Conservation Credit*

Before its repeal in 2013 as part of the Tax Simplification and Reduction Act, corporate and individual taxpayers were allowed a nonrefundable income tax credit equal to 25% of the fair market value of real property located in North Carolina that was donated in perpetuity to the state, a local government or a charitable conservation organization. The amount of the credit was capped at \$250,000 for individuals and \$500,000 for corporations. To be eligible for the credit, the land was required to be useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, (iv) forestland or farmland conservation, (v) watershed protection, (vi) conservation of natural or scenic river areas, (vii) conservation of predominantly natural parkland, or (viii) historic landscape conservation.

Senate Bill 355 (the annual farm bill) reenacts the tax credit for two years with the same percentages and caps for both individuals and corporations as under the old law but with a number of additional modifications and limitations.

First, the legislation modifies the property eligibility requirements. To be eligible for the new credit, property must be donated (i) for forestland or farmland preservation, (ii) for fish and wildlife conservation, (iii) as a buffer to limit land use activities that would restrict or interfere with military training, testing, or operation on a military installation or training area, (iv) for floodplain protection, (v) for historic landscape conservation, or (vi) for public trails or access to public trails.<sup>8</sup>

Second, the maximum amount of credits that may be used by all taxpayers (corporate and individual) in a given taxable year is capped at \$5 million, of which \$3,250,000 is reserved for forestland or farmland conservation donations.<sup>9</sup> To implement the cap, taxpayers are required to file an application for the credit with the Secretary by April 15 of the year following the year the donation is made. If applications for forestland and farmland donation credits do not exhaust the amount reserved for such credits, the excess availability will be allocated among the other classes of eligible donations. If credits applied for exceed the cap, the applications will be reduced pro rata. If credits applied for do not exhaust the available credits, the Secretary may reopen the credit application process.<sup>10</sup> The credit is taken in the year the application becomes

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<sup>5</sup> S.L. 2023-134, §42.6A; N.C. Gen. Stat. §§105-120.2(b) and 105-122(d2).

<sup>6</sup> S.L. 2024-1, §§11.2.(a) and (b).

<sup>7</sup> S.L. 2024-1, §11.2.(c).

<sup>8</sup> N.C. Gen. Stat. §§105-130.34 and 105-153.11.

<sup>9</sup> N.C. Gen. Stat. §§105-130.34(e) and 105-153.11(g).

<sup>10</sup> N.C. Gen. Stat. §§105-130.34(e) and (f) and 105-153.11(g) and (h).

effective (i.e., the year it is timely filed).<sup>11</sup> The Secretary is not allowed to accept late applications.<sup>12</sup> The application process means that taxpayers must make their donations before they know how much of a credit the donation will produce.

The legislation also provides that (1) the taxpayer must maintain and make available to the Secretary records the Secretary considers necessary to substantiate the credit or the credit will not be allowed,<sup>13</sup> (2) if a taxed pass-through entity qualifies for the credit, the credit is not taken at the entity level but is passed through to the owners according to their distributive shares,<sup>14</sup> and (3) to prevent double tax benefits, the portion of a donation that is the basis for an individual conservation credit may not be deducted as a charitable contribution.<sup>15</sup>

These changes are effective for donations made on or after January 1, 2025, and expire for donations made on or after January 1, 2027.<sup>16</sup>

## **Taxed Pass-through Entities**

### *Extension of Time for Making 2022 PTE Election*

In 2021, North Carolina enacted a pass-through entity (“PTE”) tax, effective for the 2022 tax year, to help owners of PTEs reduce their federal tax liability.<sup>17</sup> The original NC legislation limited the availability of this provision to PTEs owned exclusively by individuals, estates, and trusts eligible to be S corporation shareholders. Legislation enacted in 2023 added partnerships and S corporations to the list of persons who may be owners of a taxed PTE.<sup>18</sup> The 2023 budget bill further amended the law to add ordinary trusts and C corporations to the list of persons who may be owners of a taxed PTE.<sup>19</sup> These changes were made retroactive to 2022, allowing the election to be made on an extended or amended return filed by October 15, 2023.<sup>20</sup> Senate Bill 508 further extended the date for making a taxed-PTE election for 2022 from October 15, 2023 to July 1, 2024.<sup>21</sup>

### *PTE Tax Base Clarification*

The North Carolina taxable income of a taxed PTE is defined to include each owner’s distributive share of the PTE’s income “attributable to the State.”<sup>22</sup> However, neither the original 2021 legislation nor the 2023 amending legislation included a definition of this term. House Bill 228 defines this term as income apportioned and allocated to North Carolina under the corporate income tax principles.<sup>23</sup>

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<sup>11</sup> N.C. Gen. Stat. §§105-130.4(a) and (a2) and 105-153.11(a) and (a2).

<sup>12</sup> N.C. Gen. Stat. §§105-130.4(a2) and 105-153.11(a2).

<sup>13</sup> N.C. Gen. Stat. §§105-130.34(a3) and 105-153.11(a3).

<sup>14</sup> N.C. Gen. Stat. §105-153.11(a6).

<sup>15</sup> N.C. Gen. Stat. §105-153.11(d).

<sup>16</sup> S.L. 2024-32, §15.(c).

<sup>17</sup> S.L. 2021-180, §42.5.(h).

<sup>18</sup> S.L. 2023-12, §1.5.(b) and (c).

<sup>19</sup> S.L. 2023-134, §42.21.(a).

<sup>20</sup> S.L. 2023-134, §42.21.(b).

<sup>21</sup> S.L. 2024-1, §11.3.

<sup>22</sup> N.C. Gen. Stat. §§105-154.1(b)(1)(a) and 105-131.1A(b)(1)(a).

<sup>23</sup> S.L. 2024-28, §1.2; N.C. Gen. Stat. §105-153.3(7a) and (7b).

### *Clean-up Repeal of Unneeded Provisions*

Under the original 2021 PTE legislation, an electing PTE paid tax on its owners' pro rata shares of its income attributable to North Carolina plus each resident owners' pro rata share of its income not attributable to North Carolina.<sup>24</sup> The PTE's owners were allowed a deduction for income taxed at the PTE level, and the PTE (and not the owners) was entitled to a credit for entity-level taxes the PTE paid to other states.<sup>25</sup>

The 2023 amendments limited the taxed PTE's tax base to income attributable to North Carolina so that an electing PTE no longer pays tax on the non-North Carolina income allocable to its resident owners. As a result, the 2023 amendments repealed the provisions of the original legislation that granted the taxed PTE an entity-level credit for taxes paid to other states and that prohibited the individual owners of the PTE from taking such a credit.<sup>26</sup> However, the 2023 legislation failed to repeal similar other-state tax credit provisions applicable to trusts and estates that are owners of a taxed PTE. House Bill 228 repeals these provisions effective January 1, 2023.<sup>27</sup>

## **Sales Tax**

### *Economic Nexus Threshold*

The Supreme Court's 2018 decision in *South Dakota v. Wayfair, Inc.*<sup>28</sup> authorized states to require remote sellers to collect sales taxes on sales to in-state customers if the sellers had economic nexus with the state based on the dollar volume or number of sales to in-state customers. Shortly after the *Wayfair* decision was released, the Department issued a directive establishing economic thresholds similar to those considered in *Wayfair*, *i.e.*, either more than \$100,000 in North Carolina sales or at least 200 separate sales transactions sourced to North Carolina.<sup>29</sup> The General Assembly codified the directive's two thresholds in 2019.<sup>30</sup>

Following a national trend to reduce compliance burdens on small retailers, House Bill 228 repeals the 200-transaction threshold for both retailers and marketplace facilitators.<sup>31</sup> Accordingly, a remote seller (or facilitator) that makes \$100,000 or less in gross sales sourced to North Carolina can avoid sales tax economic nexus regardless of the number of its transactions with North Carolina customers. This change is effective July 1, 2024. A taxpayer that registered with the Department solely because it met the 200-transaction threshold of prior law may cancel its certificate but must continue to collect tax and file returns until it does so.<sup>32</sup>

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<sup>24</sup> S.L. 2021-180, §§42.5.(c) and (h).

<sup>25</sup> S.L. 2021-180, §§42.5(i) and (j).

<sup>26</sup> S.L. 2023-12, §1.6.(a)(3) and (4).

<sup>27</sup> S.L. 2024-28, §1.1.

<sup>28</sup> 585 U.S. 162 (2018).

<sup>29</sup> See Directive SD-18-6.

<sup>30</sup> See S56, S.L. 2019-6, §5.2; N.C. Gen. Stat. §105-164.8(b)(9).

<sup>31</sup> N.C. Gen. Stat. §105-164.8(b)(9) and (10).

<sup>32</sup> S.L. 2024-28, §2.1.(b).

### *Streamlined Sales and Use Tax Agreement Reference Update*

House Bill 228 updates the reference to the Streamlined Sales and Use Tax Agreement in the sales tax law from December 22, 2022, to November 7, 2023.<sup>33</sup>

### *Statute of Limitations on Assessments of Refunded Sales Taxes*

House Bill 228 creates a new statute of limitations for assessing tax against purchasers who have received refunds of sales taxes from their sellers. If a retailer collects sales tax on a sale and later refunds that tax to the purchaser, the Department may propose an assessment against the purchaser within three years of the date of the refund.<sup>34</sup> The change is effective for assessments not barred by the statute of limitations before July 1, 2024.<sup>35</sup>

### *Luxury Liquor Sales*

For sales and use taxes on luxury spirituous liquors, see the discussion of that topic under “Excise Taxes” below.

### *Affidavits of Capital Improvement*

The sales tax on repair, maintenance and installation services does not apply to services rendered in connection with a capital improvement to real property.<sup>36</sup> Persons rendering services with respect to real property may rely on an affidavit of capital improvement issued by the property owner or contractor to avoid charging tax on such services.<sup>37</sup> Current law does not limit when a service provider may obtain an affidavit of capital improvement with respect to a project. House Bill 228 provides that the service provider must obtain the affidavit within 90 days of the sale or within 120 days of a request by the Department to substantiate the exemption.<sup>38</sup> This change is effective July 1, 2024.<sup>39</sup>

### *Penalty for Misuse of Certificates*

Under current law, the Department may assess a penalty of up to \$250 for misuse of an exemption certificate for tangible personal property.<sup>40</sup> House Bill 228 permits the Department to assess the same penalty for the misuse of exemption certificates for digital property or services as well as for the misuse of affidavits of capital improvement.<sup>41</sup> This change is effective July 1, 2024.<sup>42</sup>

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<sup>33</sup> S.L. 2024-28, §2.2; N.C. Gen. Stat. §105-164.3(259). For a summary of changes made to the Agreement through June 30, 2023, see *2023 Report of Amendments to the Streamlined Sales and Use Tax Agreement (SSUTA) and Streamlined Sales Tax Governing Board (SSTGB) Rules and Interpretive Opinions Through June 30, 2023*, available at [streamlinedsalestax.org](http://streamlinedsalestax.org).

<sup>34</sup> S.L. 2024-28, §2.3.(a); N.C. Gen. Stat. §105-241.8(b)(5).

<sup>35</sup> S.L. 2024-28, §2.3.(b).

<sup>36</sup> See N.C. Gen. Stat. §§105-164.4H, 105-164.3(225) and (207).

<sup>37</sup> N.C. Gen. Stat. §105-164.4H(a1).

<sup>38</sup> S.L. 2024-28, §2.5; N.C. Gen. Stat. §105-164.4H(a1).

<sup>39</sup> S.L. 2024-28, §2.6.

<sup>40</sup> N.C. Gen. Stat. §105-236(a)(5a).

<sup>41</sup> S.L. 2024-28, §2.4.

<sup>42</sup> S.L. 2024-28, §2.6.

## Property Tax

### *Advertisement of Tax Liens*

County tax collectors are required to post notices of tax liens at the county courthouse and publish notices of tax liens at least once in a newspaper that circulates in the county. Similarly, municipal tax collectors must post notices of tax liens at the city or town hall and publish notices of tax liens at least once in a newspaper that circulates in the city or town.<sup>43</sup> Senate Bill 607 requires tax collectors also to post a notice of the tax lien in a conspicuous place on the taxed parcel.<sup>44</sup> This change is effective for taxes imposed for taxable years beginning on or after January 1, 2025.<sup>45</sup>

### *C-PACE Liens*

Senate Bill 802<sup>46</sup> established the “commercial property assessed capital expenditure” or “C-PACE” program to be administered by the Economic Development Partnership of North Carolina (“EDPNC”). Under the C-PACE program, owners of qualifying commercial property can apply to EDPNC to be approved for long-term financing provided by private lenders to pay for property improvements that include energy efficiency, water conservation, renewable energy, and resilience measures. Repayment of the amount financed is secured by a voluntary assessment imposed on the improved property by a participating local government pursuant to an assessment agreement with the property owner. Upon recordation of a notice of the C-PACE assessment, a C-PACE lien arises and remains in place until the financed amount is repaid in full. The C-PACE lien is inferior to all prior and subsequent state, local, and federal taxes or liens but is superior to all other liens on the property. A property owner applying for the program is required to obtain written consent to the C-PACE assessment from holders of any existing mortgages, deeds of trust, or other liens upon the property.<sup>47</sup>

North Carolina property tax law allows property tax liens to be enforced through regular mortgage-style foreclosure or through simpler *in rem* foreclosure proceedings. Purchasers of property in either type of foreclosure generally take title free and clear of all liens except liens for other taxes or special assessments that are not paid from the proceeds of the foreclosure sale.<sup>48</sup> The C-PACE legislation provides that such purchasers also take title subject to the C-PACE lien.<sup>49</sup> These changes are effective July 1, 2024.<sup>50</sup>

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<sup>43</sup> N.C. Gen. Stat. §105-369(c). Note, however, that failure to post the required notice does not affect the validity of the tax or the tax lien. *Id.*

<sup>44</sup> S.L. 2024-45, §22.(a).

<sup>45</sup> S.L. 2024-45, §22.(b).

<sup>46</sup> S.L. 2024-41, §20.

<sup>47</sup> *See generally*, S.L. 2024-44 adding Article 10B to Chapter 160A of the General Statutes.

<sup>48</sup> *See* N.C. Gen. Stat. §§105-374(k), 105-375(i) and 105-376(b).

<sup>49</sup> S.L. 2024-44, §§2, 3 and 3.1.

<sup>50</sup> S.L. 2024-44, §6.

## Captive Insurance Tax

### *Redomestications*

In 2022, the General Assembly enacted legislation providing that foreign captive insurance companies that redomesticated in North Carolina before the end of 2022 with the approval of the North Carolina Insurance Commissioner would be exempt from the captive insurance company gross premiums tax for the year in which the redomestication occurred and the following calendar year. The last year of exemption was the captive's tax year beginning in 2023.<sup>51</sup> This provision has been extended to cover redomestications occurring in 2023 and 2024. The last year that a redomesticated captive can be exempt from tax is now the tax year that begins in 2025.<sup>52</sup> This change was effective July 2, 2024.<sup>53</sup>

## Excise Taxes

### *Alcoholic Beverage Excise Tax - Luxury Liquor Exemption*

Under current law, sales of spiritous liquor are subject to a 30% excise tax and a 7% sales tax. Senate Bill 527, which made a number of changes to North Carolina's alcohol laws, creates a spiritous liquor excise tax exemption for spiritous liquor sold for at least \$50,000 per single container. The purchase instead is subject to use tax with a \$1,000 cap. The purchaser may obtain a direct pay permit to purchase the liquor without the seller charging sales tax. The purchaser instead must file a use tax return and remit the tax directly to the Department. Alternatively, the seller may voluntarily collect and remit the tax and provide the purchaser a receipt showing the correct tax collected.<sup>54</sup> The direct pay permit arrangement is necessary to comply with the Streamlined Sales and Use Tax Agreement, which prohibits caps on sales taxes. This change is effective for purchases occurring on or after January 1, 2025.<sup>55</sup>

### *Alcoholic Beverage Excise Tax - Distillery Estate Districts*

Senate Bill 257 also authorized the establishment of "distillery estate districts," defined as a single parcel of land or several contiguous parcels with commonly owned and controlled distilleries, wineries and other establishments holding mixed beverage licenses. Unfortified wine permittees located in such a district and under common control with the district's distillery are permitted to sell liquor produced at the distillery as if it were sold at the distillery at the end of a distillery tour. The new law subjects sales of spiritous liquors by unfortified wine licensees located in a distillery estate district to the 30% excise tax on spiritous liquors.<sup>56</sup> This change is effective July 1, 2024.

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<sup>51</sup> S.L. 2022-7; N.C. Gen. Stat. §105-228.4A.

<sup>52</sup> S.L. 2024-29, §3.8.(a).

<sup>53</sup> S.L. 2024-29, §3.8.(b).

<sup>54</sup> N.C. Gen. Stat. §§105-113.81(f) and 105-164.27A(a4)..

<sup>55</sup> S.L. 2024-41, §23.(c).

<sup>56</sup> N.C. Gen. Stat. §105-133.80(c).

### *Alcoholic Beverage Excise Tax - Return Due Dates and Wholesaler Agreements*

Under current law, there is a statutory due date for the payment of the alcoholic beverage excise tax but no express return requirement for local ABC boards or distilleries. In addition, it is unclear under current law whether a resident wholesaler or importer is required to submit a report if no tax is due. Senate Bill 527 creates uniform monthly (annually for wine shipper permittees) reporting requirements for payors of the excise taxes on malt beverages, wine and liquor and clarifies that reports are due even if no products were sold or disposed of in North Carolina during the reporting period.<sup>57</sup>

Under current law, a brewery or winery may shift the responsibility to remit the excise tax on malt beverages or wine to their wholesalers by agreement. Senate Bill 527 requires the wholesaler to provide the Department a copy of the agreement upon request.<sup>58</sup>

These changes were effective July 8, 2024.<sup>59</sup>

### *Tobacco Products Excise Tax - Substantiation Requirements*

Under current law, if a person subject to the tobacco products tax cannot document the cost price of tobacco products to the Secretary's satisfaction, the Secretary may determine the value of the products based on the cost of comparable items.<sup>60</sup> Senate Bill 2024-1 provides that the taxpayer must also document the weight, count or volume of products subject to tax (as well as the cost of such items) to the Secretary's satisfaction and if it fails to do so the Secretary may determine the value of the products based on the weight, count or volume (as well as the cost) of comparable item.<sup>61</sup> This change is effective for sales or purchases occurring after July 1, 2025.<sup>62</sup>

### *Motor Fuels Excise Tax - Reporting Requirements*

House Bill 228 codified the Department's interpretation of the International Fuels Tax Agreement to provide that licensed motor carriers required to file quarterly reports must do so even if they did not operate a qualified motor vehicle during the reporting period.<sup>63</sup> This change was effective June 28, 2024.<sup>64</sup>

### *Transportation Commerce Excise Tax - Exemption for Public Transportation*

Last year, the General Assembly enacted a transportation commerce excise tax on ride-share and taxi services when the passenger boards the vehicle in North Carolina. The tax becomes effective July 1, 2025. The rate is 1% for shared ride services and 1.5% for exclusive ride services.<sup>65</sup> Senate Bill 508 created an exemption for otherwise taxable transport services if

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<sup>57</sup> N.C. Gen. Stat. §105-113.83. Note that amendments identical to those contained in Senate Bill 527 were also included in House Bill 228. S.L. 2024-28, §3.1.

<sup>58</sup> N.C. Gen. Stat. §105-113.83(b1). See also S.L. 2024-28, §3.1, containing the same amendment.

<sup>59</sup> S.L. 2024-41, §38.(b).

<sup>60</sup> N.C. Gen. Stat. §105-113.36A(f).

<sup>61</sup> S.L. 2024-1, §11.4.(a).

<sup>62</sup> S.L. 2024-1, §11.4.(b).

<sup>63</sup> S.L. 2024-28, §3.2; N.C. Gen. Stat. §105-449.45(a).

<sup>64</sup> S.L. 2024-28, §9.

<sup>65</sup> S.L. 2023-134, §42.19.



the service is provided by as a public transportation on behalf of a state agency, a local board of education or any one of the state or local government agencies entitled to annual sales tax refunds under Section 105-164.4(c) of the General Statutes. The exemption also becomes effective on July 1, 2025.<sup>66</sup>

## **License Taxes**

### *Transit Authority License Tax - Increase in Per-vehicle Tax Cap*

Various regional and municipal transit authorities are authorized to levy annual license taxes on motor vehicles with a tax situs within their jurisdictions.<sup>67</sup> The cap on the per vehicle license tax has been increased from \$8.00 to \$10.00, effective July 1, 2024.<sup>68</sup>

## **Penalties**

### *Further Delay of Graduated Late Payment Penalty Structure*

In 2021, the General Assembly enacted legislation to replace the flat 10% late payment penalty with a graduated penalty starting at 2% for delinquencies of not more than one month and increasing by an additional 2% per month but not to exceed 10% in the aggregate. This change was to be effective July 1, 2022.<sup>69</sup> The Department's computer system, however, was not able to implement the graduated penalty regime, and the General Assembly reinstated the 10% flat rate penalty, effective June 30, 2022, but decreasing the penalty rate to 5% beginning on January 1, 2023, and postponing the graduated rate structure until July 1, 2024.<sup>70</sup> Due to continuing difficulties with the Department's computer systems, House Bill 228 further delays the effective date of the graduated rate structure by three years, until July 1, 2027.<sup>71</sup>

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<sup>66</sup> S.L. 2024-1, §11.1.

<sup>67</sup> See N.C. Gen. Stat. §105-560 *et seq.*

<sup>68</sup> S.L. 2024-30, §30.

<sup>69</sup> S.L. 2021-180, §42.11.

<sup>70</sup> S.L. 2022-13, §5.6.(a), (b), (c) and (e).

<sup>71</sup> S.L. 2024-28, §4.1.