

North Carolina Budget Bill Enacted Into Law

On June 30, 2010, Governor Bev Perdue signed the budget for fiscal year 2010-2011. NC Senate Bill 897 includes the following key items that may be of interest to many of you:

Annual Reports

The due date for the annual report required to be filed with the Secretary of State's office is moved from the 15th day of the third month following the close of the corporation's fiscal year to the 15th day of the fourth month.

IRC Conformity and Net Operating Losses

The enacted law updates North Carolina's Internal Revenue Code conformity date for personal and corporate income tax purposes from May 1, 2009, to May 1, 2010. As a result, it incorporates most of the amendments made by the Patient Protection and Affordable Care Act; the Health Care and Education Reconciliation Act of 2010; the Hiring Incentives to Restore Employment (HIRE) Act; and the Worker, Homeownership, and Business Assistance Act of 2009.

However, the bill requires an addback adjustment for the 2003 - 2005 tax years for any 2008 NOL, and an addback adjustment for the 2004 - 2006 tax years for any 2009 NOL, other than an NOL incurred by an "eligible small business", that was carried back to such tax years on a taxpayer's federal return. "Eligible small business" is defined as a corporation or partnership whose average annual gross receipts of such entity for the 3-taxable-year period ending with such prior taxable year does not exceed \$15,000,000. The bill does allow for a subtraction adjustment during the 2011 - 2013 tax years for taxpayers who were required to make the NOL carryback addback adjustment. The subtraction is equal to one-third of the taxpayer's NOL absorbed on the taxpayer's 2003 - 2006 federal returns that was attributable to the 5-year carryback.

Tax Credit

Small businesses that make contributions during taxable years 2010 and 2011 to the State Unemployment Insurance Fund are allowed a corporate income tax credit. The credit amount is 25% of the contributions made to the fund. Eligible small businesses are those whose cumulative gross receipts from business activity for the taxable year do not exceed \$1 million.

Franchise Tax Imposed Against Construction Companies

Taxpayers that paid franchise tax in taxable years 2007, 2008 or 2009, and that included billings in excess of costs in its capital base are allowed to apply to the Department of Revenue ("Department") for a refund of any excess tax paid to the extent the refund is the result of the change in the law that allowed taxpayers to exclude such costs from the taxable base. **Requests for refunds must be "received" by the Department on or before January 1, 2011 either by filing amended corporate franchise tax returns or by filing the Form NC-19, Claim for Refund of Taxes.**

Tax Penalties

Various tax penalty provisions are amended, effective July 1, 2010. A penalty for failure to pay taxes when due will not apply when the Secretary of Revenue proposes an assessment for tax due but not shown on a return, and the tax due is paid within 45 days after the later of:

- the date of the notice of proposed assessment of the tax, if the taxpayer does not file a timely request for a departmental review of the proposed assessment; or
- the date the proposed assessment becomes collectible, if the taxpayer files a timely request for a departmental review of the proposed assessment.

A penalty also will not apply when a taxpayer files a consolidated return at the request of the Secretary, and the tax due is paid within 45 days after the later of:

- the date the return is filed;
- the date of a notice of proposed assessment based on the return, if the taxpayer does not file a timely request for a departmental review of the tax; or
- the date the departmental review of the tax ends, if the taxpayer files a timely request for a departmental review.

Sales and Use Tax

Effective October 1, 2010, prepayments of sales and use taxes are no longer required from taxpayers who are consistently liable for less than \$15,000 per month (currently \$10,000). Effective October 1, 2011, the amount is increased to \$20,000. Taxpayers exempt from the prepayment requirements are still subject to the monthly reporting and payment requirements.

Tax Interpretations by the Secretary of Revenue

Effective July 1, 2010, any interpretation of law that revises a prior interpretation by expanding the scope of a tax or otherwise increasing the amount of tax due, may not become effective sooner than (1) the first day of a month that is at least 90 days after the date the revised interpretation is issued, for taxes that are payable on a monthly or quarterly basis; or (2) the first day of a tax year that begins after the date the revised interpretation is issued, for taxes that are payable on an annual basis.

For more information, please contact your Dixon Hughes tax advisor or John Iannotti at jiannotti@dixon-hughes.com.

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