

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE DRS35249-MC_x-128 (03/12)

Short Title: Returns W/Refunds Filed Late Penalty. (Public)

Sponsors: Senators Rucho, Rabon, and Rabin (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY AND REDUCE THE PENALTIES FOR A TAXPAYER'S FAILURE
3 TO FILE A RETURN FOR WHICH A REFUND IS DUE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 105-236(a)(3) reads as rewritten:

6 "§ 105-236. Penalties; situs of violations; penalty disposition.

7 (a) Penalties. – The following civil penalties and criminal offenses apply:

8 ...

9 (3) Failure to File Return. – In case of failure to file any return on the date it is
10 due, determined with regard to any extension of time for filing, the Secretary
11 shall assess a penalty as provided in this subdivision. For purposes of this
12 subdivision, the "amount of the tax" means the net amount of tax imposed
13 under Subchapters I, V, and VIII of this Chapter after subtracting the credits
14 against the tax allowed by this Chapter other than the credits allowed by
15 Articles 4A and 4C of this Chapter.

16 a. If there is a refund due on the date the return is due, a penalty equal
17 to five percent (5%) of the amount of the tax if the failure is for not
18 more than one month, with an additional five percent (5%) for each
19 additional month, or fraction thereof, during which the failure
20 continues, not exceeding ten percent (10%) in the aggregate, or five
21 dollars (\$5.00), whichever is the greater.

22 b. If there is a no refund due on the date the return is due, a penalty
23 equal to five percent (5%) of the amount of the tax if the failure is for
24 not more than one month, with an additional five percent (5%) for
25 each additional month, or fraction thereof, during which the failure
26 continues, not exceeding twenty-five percent (25%) in the aggregate,
27 or five dollars (\$5.00), whichever is the greater.

28"

29 SECTION 2. G.S. 105-236(a), as amended by Section 1 of this act, reads as
30 rewritten:

31 "§ 105-236. Penalties; situs of violations; penalty disposition.

32 (a) Penalties. – The following civil penalties and criminal offenses apply:

33 ...

34 (3) Failure to File Return. – In case of failure to file any return on the date it is
35 due, determined with regard to any extension of time for filing, the Secretary
36 shall assess a penalty as provided in this subdivision. For purposes of this



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subdivision, the "amount of the tax" means the net amount of tax imposed under Subchapters I, V, and VIII of this Chapter after subtracting the credits against the tax allowed by this Chapter other than the credits allowed by Articles 4A and 4C of this Chapter.

- a. If there is a refund due on the date the return is due, a penalty equal to five percent (5%) of the amount of the tax if the failure is for not more than one month, with an additional five percent (5%) for each additional month, or fraction thereof, during which the failure continues, not exceeding ten percent (10%) in the ~~aggregate, or five dollars (\$5.00), whichever is the greater aggregate.~~
- b. If there is a no refund due on the date the return is due, a penalty equal to five percent (5%) of the amount of the tax if the failure is for not more than one month, with an additional five percent (5%) for each additional month, or fraction thereof, during which the failure continues, not exceeding twenty-five percent (25%) in the ~~aggregate, or five dollars (\$5.00), whichever is the greater aggregate.~~

(4) Failure to Pay Tax When Due. – In the case of failure to pay any tax when due, without intent to evade the tax, the Secretary shall assess a penalty equal to ten percent (10%) of the ~~tax, subject to a minimum of five dollars (\$5.00) tax.~~ This penalty does not apply in any of the following circumstances:

- a. When the amount of tax shown as due on an amended return is paid when the return is filed.
- b. When the Secretary 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 following:
 - 1. 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.
 - 2. The date the proposed assessment becomes collectible under one of the circumstances listed in G.S. 105-241.22(3) through (6), if the taxpayer files a timely request for a Departmental review of the proposed assessment.
- c. When a taxpayer timely files a consolidated or combined return at the request of the Secretary under Part 1 of Article 4 of this Chapter and the tax due is paid within 45 days after the latest of the following:
 - 1. The date the return is filed.
 - 2. 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 proposed assessment.
 - 3. The date the Departmental review of the proposed assessment ends as a result of the occurrence of one of the actions listed in G.S. 105-241.22(3) through (6), if the taxpayer files a timely request for a Departmental review.

...."

SECTION 3. Section 2.18 of S.L. 2012-79 is repealed.

SECTION 4. Section 1 of this act is effective for taxable years beginning on or after January 1, 2013. Section 2 of this act is effective for taxable years beginning on or after January 1, 2014. The remainder of this act is effective when it becomes law.