

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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SENATE BILL 395
Judiciary Committee Substitute Adopted 4/17/19
PROPOSED HOUSE COMMITTEE SUBSTITUTE S395-PCS45490-RBf-40

Short Title: Grace for CCRC/Waive Time Limit for ABAWD.

(Public)

Sponsors:

Referred to:

March 28, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO REDUCE SALES TAX ASSESSMENT AGAINST CERTAIN CONTINUING
3 CARE RETIREMENT COMMUNITIES AND TO ALLOW THE DEPARTMENT OF
4 HEALTH AND HUMAN SERVICES TO SEEK A TEMPORARY WAIVER FROM THE
5 TIME LIMITS FOR ABLE-BODIED ADULTS WITHOUT DEPENDENTS
6 PARTICIPATING IN THE FOOD AND NUTRITION SERVICES PROGRAM IN
7 RESPONSE TO THE COVID-19 PANDEMIC.

8 The General Assembly of North Carolina enacts:

9
10 **PART I. GRACE FOR CERTAIN CCRC**

11 **SECTION 1.(a)** Article 9 of Subchapter I of Chapter 105 of the General Statutes is
12 amended by adding a new section to read:

13 **"§ 105-244.4B. Reduction of certain sales tax assessments of CCRCs.**

14 (a) Reduction. – The Secretary must reduce by seventy-five percent (75%) a sales and
15 use tax assessment against a taxpayer who requests relief for State and local sales and use taxes
16 and waive any penalties imposed as part of the assessment when the assessment is the result of
17 an audit of the taxpayer by the Department, and all of the following apply:

- 18 (1) The taxpayer is a provider of continuing care. The terms "continuing care"
19 and "provider" have the same meanings as defined in G.S. 105-164.3.
20 (2) The taxpayer has a certificate of registration from the Department as required
21 under G.S. 105-164.4.
22 (3) The taxpayer remitted to the Department during the period under audit all the
23 sales and use taxes it collected during that period.
24 (4) The taxpayer had not been informed by the Department in a prior audit to
25 collect sales and use taxes in the circumstance that is the basis of the
26 assessment, as reflected in the written audit comments of the prior audit.
27 (5) The taxpayer had not requested and received from the Department a private
28 letter ruling advising to collect sales and use taxes in the circumstance that is
29 the basis of the assessment.
30 (6) The taxpayer had not received other specific written guidance from the
31 Department advising it to collect sales and use tax in the circumstances that is
32 the basis of the assessment for which it seeks reduction.
33 (7) The assessment is based on the failure to collect sales tax on items subject to
34 State and local sales and use tax sold to guests or residents of a continuing
35 care facility owned or operated by the taxpayer who do not reside in a nursing



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1 home licensed under Chapter 131E of the General Statutes or an adult care
 2 home licensed under Chapter 131D of the General Statutes.

3 (8) The taxpayer meets one of the following:

4 a. The taxpayer received a proposed assessment dated on or before June
 5 1, 2020, timely filed a request for review, and files a written request
 6 with the Secretary on or before September 1, 2020, to request the
 7 amount of sales or use taxes be reduced as provided in this section
 8 citing the specific reasons therefor. The Department does not need to
 9 take further action on the taxpayer's request for review unless the
 10 taxpayer states in writing, when filing a request for reduction under
 11 this section, that the reduction does not resolve the taxpayer's objection
 12 to the proposed assessment and that the taxpayer wishes to continue
 13 the Departmental review.

14 b. The taxpayer received a proposed assessment dated on or before June
 15 1, 2020, did not file a request for review, paid the tax due, and files a
 16 written request with the Secretary on or before September 1, 2020, to
 17 request the amount of sales or use taxes be reduced as provided in this
 18 section citing the specific reasons.

19 c. The taxpayer receives a proposed assessment after June 1, 2020, and
 20 timely files a request for review as provided in G.S. 105-241.11 and
 21 files a written request with the Secretary no later than 45 days from the
 22 date of the notice of the proposed assessment to request the amount of
 23 sales or use taxes be reduced as provided in this section citing the
 24 specific reasons therefor.

25 (b) Application. – This section does not authorize a refund for sales or use taxes that were
 26 originally collected and remitted to the Department. This section applies to the following for a
 27 tax period ending prior to January 1, 2021:

28 (1) A proposed assessment or portion of a proposed assessment.

29 (2) An assessment that becomes collectible under G.S. 105-241.22.

30 (3) A pending request for review case.

31 (4) A pending contested case hearing at the Office of Administrative Hearings.

32 (c) Hold Residents Harmless. – A continuing care provider may not recover from its
 33 residents sales and use taxes that it failed to collect at the time of the sale.

34 (d) Expiration. – This section is not applicable to an assessment attributable to the failure
 35 to collect sales tax on items subject to State and local sales and use tax sold for a period beginning
 36 on or after January 1, 2021."

37 **SECTION 1.(b)** G.S. 105-164.3 reads as rewritten:

38 "**§ 105-164.3. Definitions.**

39 The following definitions apply in this Article:

40 (#) Continuing care. – Defined in G.S. 58-64-1.

41 ...

42 (#) Facility. – Defined in G.S. 58-64-1.

43 ...

44 (#) Provider. – Defined in G.S. 58-64-1.

45 ...

46 (#) Resident. – Defined in G.S. 58-64-1."

47 **SECTION 1.(c)** Article 5 of Subchapter I of Chapter 105 of the General Statutes is
 48 amended by adding a new section to read:

49 "**§ 105-164.4L. Provider of continuing care.**

50 (a) Tax. – A provider of continuing care must collect and remit sales tax on items subject
 51 to State and local sales and use tax sold to guests or residents of the facility who do not reside in

1 a nursing home licensed under Chapter 131E of the General Statutes or an adult care home
2 licensed under Chapter 131D of the General Statutes. The tax applies to the sales price of or gross
3 receipts derived from the sale of taxable items. Examples of taxable items include prepared
4 meals, alcohol, medical supplies and equipment, laundry services, and repair, maintenance, and
5 installation services.

6 (b) Allocation. – If a provider imposes a periodic fee that includes both taxable and
7 nontaxable items, the provider must determine an allocated price for the taxable portion of the
8 periodic fee based on a reasonable allocation of revenue that is supported by the provider's
9 business records kept in the ordinary course of business. In this circumstance, the tax applies to
10 the allocated price of the taxable portion of the periodic fee. The allocated price must be
11 separately stated on the invoice or other document given to the resident. The taxpayer's
12 substantiation for the allocation of revenues attributable to the taxable portion of the periodic fee
13 must be contemporaneously provided for each billing or invoice period and maintained in the
14 business records.

15 (c) Hold Residents Harmless. – A continuing care provider may not recover from its
16 residents sales and use taxes that it failed to collect at the time of the sale."

17 **SECTION 1.(d)** G.S. 58-64-25 reads as rewritten:

18 "**§ 58-64-25. Contract for continuing care; specifications.**

19 ...

20 (c) A provider shall not adjust entrance fees, periodic charges, or any other recurring fee
21 to recoup from a resident any tax assessment collected by the North Carolina Department of
22 Revenue against the provider for failure to collect sales tax on items subject to State and local
23 sales and use tax. Any provision in a continuing care contract to the contrary is unenforceable.
24 The disclosure statement required under G.S. 58-64-20 and any annual disclosure statement
25 revision under G.S. 58-64-30 provided to a resident shall describe the limitation on fees under
26 this subsection."

27 **SECTION 1.(e)** The Revisor of Statutes is authorized to renumber the subdivisions
28 of G.S. 105-164.3 to ensure that the subdivisions are listed in alphabetical order and in a manner
29 that reduces the current use of alphanumeric designations, to make conforming changes, and to
30 reserve sufficient space to accommodate future additions to the statutory section.

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32 **PART II. TEMPORARY WAIVER FROM THE TIME LIMITS FOR ABLE-BODIED**
33 **ADULTS WITHOUT DEPENDENTS PARTICIPATING IN THE FOOD AND**
34 **NUTRITION SERVICES PROGRAM IN RESPONSE TO THE COVID-19 PANDEMIC**

35 **SECTION 2.(a)** Notwithstanding G.S. 108A-51.1, the Department of Health and
36 Human Services may seek a temporary waiver from the U.S. Department of Agriculture (USDA)
37 for time limits established by federal law for able-bodied adults without dependents (ABAWD)
38 participating in the Food and Nutrition Services Program in this State.

39 **SECTION 2.(b)** This section becomes effective July 1, 2020, and expires one year
40 from the effective date.

41
42 **PART III. SEVERABILITY CLAUSE**

43 **SECTION 3.** If any provision of this act or its application is held invalid, the
44 invalidity does not affect other provisions or applications of this act that can be given effect
45 without the invalid provisions or application, and to this end the provisions of this act are
46 severable.

47
48 **PART IV. EFFECTIVE DATE**

49 **SECTION 4.** Except as otherwise provided, this act is effective when it becomes
50 law.