



# Bill Draft 2019-RBfz-20: COVID-19 Response Act - Economic Support.

2019-2020 General Assembly

<b>Committee:</b>	House Select Committee on COVID-19 Economic Support Working Group	<b>Date:</b>	April 8, 2020
<b>Introduced by:</b>		<b>Prepared by:</b>	Cindy Avrette
<b>Analysis of:</b>	2019-RBfz-20		Staff Attorney

## OVERVIEW: Bill draft 2019-RBfz-20 does the following:

- *Waives the accrual of interest on individual income tax and corporate income and franchise tax returns due on or before April 15, 2020, from April 15 until July 15. The relief applies to partnership and estate and trust tax returns, as well as estimated tax payments for 2020 due on or before April 15, 2020. This Part also extends certain tax-related deadlines, similar to the relief provided by the IRS in a notification published last Thursday, April 9th.*
- *Affirms the flexibility in administering the State's unemployment compensation laws, as provided in Executive Orders 118 and 131, and provides a SUTA credit equal to the amount of contributions payable by the employer on the SUTA report due on or before April 30, 2020.*
- *Makes three changes recommended by the Division of Employment Security and removes the July 1, 2023, date that would sunset the Joint Legislative Oversight Committee on Unemployment Insurance.*

## PART I. WAIVE ACCRUAL OF INTEREST ON DEFERRED PAYMENT OF CORPORATE INCOME AND FRANCHISE TAX AND INDIVIDUAL INCOME TAX

The Department of Revenue is statutorily required to waive the penalty for late filing and payment of taxes for any period in which the time for filing a federal return or report or for paying a federal tax is extended because of a presidentially declared disaster. The Department does not have the statutory authority to waive the accrual of interest. In the wake of past disasters, although the late filing and payment penalties have been waived, the accrual of interest has not.

On March 13, 2020, the POTUS declared a national emergency concerning the COVID-19 outbreak under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. As part of that declaration, he instructed Secretary Mnuchin to provide relief from tax deadlines. On March 20, 2020, the United States Department of Treasury and the Internal Revenue Service announced that the time for filing federal income tax returns, as well as estimated tax payments for tax year 2020 that are due on April 15, 2020, was extended to July 15, 2020. The announcement provided that penalties and interest will begin to accrue on any unpaid balances as of July 16, 2020.

On April 9, 2020, the IRS extended the following tax deadlines:

- The time for filing estimated tax payments due on or before June 15 to July 15.
- The time to request a refund of 2016 tax overpayments extended to July 15.

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- The time to file certain petitions and requests for review due to be performed on or after April 1, 2020, and before July 15, 2020, extended to July 15.

On March 10, 2020, the Governor signed Executive Order 116 declaring a state of emergency in response to COVID-19. On March 17, the Department of Revenue announced penalty relief for taxpayers. On March 21, in response to the federal action, the Department announced it would extend the April 15 tax filing deadline to July 15 for individual income tax and corporate income and franchise taxes to mirror the announced deadline change from the IRS. The Department will not assess late action penalties if the returns are filed and payments made on or before July 15.

On March 31, 2020, the Department expanded penalty relief for failure to obtain a license, file a return, or pay tax that is due on March 15, 2020, through July 15, 2020, if the corresponding license is obtained, return is filed, or tax is paid on or before July 15, 2020. The tax relief applies to the following tax types:

- Withholding tax
- Sales and use tax
- Scrap tire disposal tax, White goods disposal tax, Solid waste disposal tax, Dry-cleaning solvent tax
- Motor vehicle lease and subscription tax
- 911 service charge for prepaid telecommunications tax
- Primary forest product tax
- Freight car line companies
- Excise tax on alcohol, tobacco products, installment paper dealers
- Privilege tax
- Excise tax on motor carrier, motor fuel, alternative fuel and inspection tax

**Part I of the bill draft** would do the following:

- Waive the accrual of interest on an underpayment of income and franchise tax due on or before July 15, 2020.
- Give additional time to request a refund of 2016 tax overpayments.
- Give additional time to take certain procedural actions.

Subsection (a) would waive the accrual of interest to the same extent as allowed under the federal announcement. It would waive the accrual of interest from April 15, 2020, through July 15, 2020, on an underpayment of tax imposed on a franchise, corporate income, or individual income tax return, including a partnership and estate and trust tax return, due from April 15, 2020, through July 15, 2020. The relief from accrual of interest would also include estimated tax payments due on April 15, 2020. The bill draft does not waive the accrual of interest on the tax payment extension of the other tax types.

Subsection (b) would give taxpayers additional time to request an overpayment of individual income taxes and corporate income and franchise taxes for which the statute of limitations to seek a refund expires on or after April 15, 2020 and before July 15, 2020. Under G.S. 105-241.6, the general statute of limitations for obtaining a refund of an overpayment is the later of (i) three years after the due date of the return, or (ii) two years after payment of the tax. Under the general statute of limitations, the time for requesting an overpayment of a tax due on or before April 15, 2017, would be April 15, 2020. This subsection would provide an exception to the general rule by allowing a taxpayer to make the request on or before July 15, 2020.

Subsection (c) would give taxpayers additional time to meet certain administrative and judicial action dates if those dates for action are due to be performed on or after April 1, 2020, and before July 15, 2020. Those actions include requests for a Departmental review of a proposed denial of a refund or a proposed

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assessment of tax, a petition for a contested case hearing at the Office of Administrative Hearings when a taxpayer disagrees with a notice of final determination issued by the Department, and a petition seeking judicial review of a party aggrieved by the final decision in a contested case. The actions would be considered timely if filed on or before July 15, 2020.

## **PART II. FLEXIBILITY TO ADMINISTER UNEMPLOYMENT COMPENSATION AND SUTA TAX CREDIT**

The unemployment insurance program provides unemployment compensation (UC) to eligible claimants who have lost their job through no fault of their own. To be eligible, an individual must have earned sufficient wages to establish a claim, register for work with NC Works Online, and weekly certify that the following work search requirements have been met: physically able to work, available to work, and actively seeking work. North Carolina's duration of benefits may vary every six months, depending upon the seasonally adjusted statewide unemployment rate that applies to the six-month base period in which the claim is filed. The current maximum duration is 12 weeks, and it is expected to remain at 12 weeks through the end of this calendar year. The weekly benefit amount is one-half of the employee's wage, not to exceed \$350.

Congress enacted the *Families First Coronavirus Response Act*, the second of three COVID-19 federal response bills. This legislation provided emergency grant funding to the states in anticipation of the rapid influx of unemployment claims and encouraged states to ease eligibility requirements and access to UC, including waiving work search requirements and the waiting week, and non-charging employers directly impacted by COVID-19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers. In response to that legislation, the US Department of Labor (USDOL) issued guidance on the following UC issues related to COVID-19:

- Determining whether an individual is "unemployed".
- Determining if the individual is able to work, available to work, and actively seeking work.
- Employer charging.
- Impact of eliminating the waiting week.

On March 17, 2020, the Governor issued Executive Order 118 broadening unemployment insurance (UI) benefits in response to COVID-19 to the maximum extent permitted by federal law. It directed the Division of Employment Security (DES) to interpret flexibly or waive, as appropriate, the following:

- The one-week waiting period for benefits.
- The able to work and available to work requirements.
- The work search requirements.
- The actively seeking work requirements.
- The "lack of work" requirements for partially unemployed claimants.

On April 9, 2020, the Governor issued Executive Order 131 authorizing DES to establish an automated process that allows employers to file attached claims for employees without the restrictions imposed on attached claims under G.S. 96-15(a1). This section of the Executive Order is effective April 1, 2020, and remains in effect for 60 days unless repealed, replaced, or rescinded by another applicable Executive Order, or unless a Public Law is enacted that codifies this Executive Order.

**Part II of this bill draft** affirms the ability of DES to interpret flexibly or waive, as appropriate, the eligibility requirements for employees to receive access to UC, as provided in Executive Order 118,

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executed on March 17, 2020. It provides that benefits may be payable in any of the following circumstances:

- An employer temporarily ceases operations due to the coronavirus.
- An employer reduces the hours of employment due to the coronavirus.
- An individual has a current diagnosis of coronavirus.
- An individual is quarantined at the instruction of a health care provider or local State or federal official.

Part II also codifies the ability of employers to file attached claims, as provided in Executive Order 131, executed on April 9, 2020. An attached claim is one an employer may file on behalf of employees that will remain "attached" to the employer's business. It is a process customarily used by employers who are temporarily laying off employees. Allowing an employer to file an attached claim for employees simplifies the process because each claimant does not need to file a separate claim, and it expedites the process because DES is able to forego the customary 10-14 days it takes to contact and receive a response from an employer concerning the reason for separation. It also mitigates overpayments that may result when a claimant returns to work, and fails to properly notify DES, thereby continuing to receive UC while working.

Under general law, an employer may only use the attached claim process once during a benefit year, and the period of partial unemployment may not exceed six weeks. To be able to use this process, the employer must have a positive Trust Fund balance, and must pay to DES an amount equal to the full cost of unemployment benefits payable to the employee under the attached claim at the time the attached claim is filed.

This section gives an employer the ability to file an attached claim without the restrictions imposed under general law, if the reasons for the work separation are COVID-19 related. The employer does not need to have a positive Trust Fund balance and the employer does not need to pay DES the full amount of the benefits payable in advance. The funds to pay the claims would be drawn from the Trust Fund and the employer's account would not be charged. The period of unemployment would not be limited to six weeks, and the employer's use of the attached claim process under this section would not be counted as a use of the process for purposes of G.S. 96-15(a1).

Lastly, this Part allows a tax credit against the employer's contributions in an amount equal to the amount of contributions payable on the report filed by the employer on or before April 30, 2020. If an employer paid the contributions payable with the report due on or before April 30, 2020, the credit will be applied to the contributions payable on the report due on or before July 31, 2020. If the amount of the credit exceeds the amount of contributions due on the report, the excess credit amount is considered an overpayment and will be refunded to the employer.

This Part applies for unemployment benefits filed for periods beginning on or after March 10, 2020 and expires for unemployment benefits filed for periods beginning on or after the earlier of the following: (i) the date the Governor signs an Executive Order rescinding Executive Order 116, or (ii) December 31, 2020.

Congress subsequently enacted the third COVID-19 relief legislation, *Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020*, also known as the CARES Act. This legislation created three federal programs to provide additional UC benefits. No state legislation is required to implement these programs. The State signed an agreement with USDOL to accept and administer them. The programs are as follows:

- FPUC, Federal Pandemic Unemployment Compensation

- This program provides \$600 of additional compensation to anyone receiving State unemployment benefits, regardless whether the reasons for unemployment are related to COVID-19. The relief is provided concurrently with regular UI benefits.
- It is paid for weeks between March 29, 2020, and July 31, 2020.
- It is 100% federally funded.
- PEUC, Pandemic Emergency Unemployment Compensation
  - This program provides up to 13 additional weeks of regular UI benefits to individuals who have exhausted their regular UI Benefits with respect to their benefit year, have no rights to regular UI benefits, and are able, available and actively seeking work. It applies to all individuals receiving UC, regardless of whether the reasons for unemployment are related to COVID-19.
  - It is 100% federally funded.
- PUA, Pandemic Unemployment Assistance
  - This program provides UC to individuals who do not qualify for regular UI benefits. Examples of individuals who do not qualify for regular UI benefits are individuals who have exhausted their regular UI benefits (regular State program benefits and PEUC benefits), are self-employed or independent contractors, or otherwise do not qualify for any other UI programs. An individual may not qualify for a UI program because the individual has non-covered employment or has insufficient wages or work history to establish an eligible claim.
  - It is payable for weeks of unemployment, partial unemployment, or inability to work caused by COVID-19 related reasons beginning on or after January 27, 2020. It expires for any week of unemployment ending after December 31, 2020.
  - It provides benefits for up to 39 weeks, minus any other weeks claimed under regular UI or extended UI benefits, if extended benefits are triggered. It does not include PEUC weeks.

## **PART III. CHANGES TO THE UNEMPLOYMENT INSURANCE LAWS, AS RECOMMENDED BY THE DIVISION OF EMPLOYMENT SECURITY AND THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON UNEMPLOYMENT INSURANCE**

This Part would do the following:

- Allow a claimant to satisfy one of the weekly job contacts by attending a reemployment activity offered by a local career center that the Division has verified as a suitable credit toward the work search requirement. The claimant will have to verify attendance at the activity to DES.
- Allow an employer to initiate an unemployment claim for employees when the unemployment is due directly to a disaster covered by a federal disaster declaration.
- Provide that a lien for county property taxes does not take priority over a previously filed lien for past due contributions.
- Repeal the sunset of the Joint Legislative Oversight Committee on Unemployment Insurance.

Work Search Requirements. – An individual's eligibility for a weekly benefit amount is determined on a week-to-week basis. One of the requirements for eligibility is that the individual must be able to work, available to work, actively seeking work, and accepts suitable work when offered. The Division's determination of whether an individual is actively seeking work is based, among other things, on whether the individual has made at least three job contacts during the week.

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**Section 3.1** would allow an individual to satisfy one of the weekly job contacts by attending a reemployment activity offered by a local career center and verified by the Division as a suitable credit toward the work search requirement. The Division would determine, educate, and communicate the types of reemployment activities that would be a suitable credit. The Division would also have to verify the claimant's attendance at the activity. An example of a reemployment activity that may be determined suitable would be one that helped an individual create a resume. This section would become effective on July 1, 2020.

Federal Disaster Declaration. – For purposes of the employment security laws, a federal disaster declaration is a declaration of a major natural disaster by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, provided that the declaration allows disaster unemployment assistance under the federal act. The employment security laws already allow certain exceptions in these instances:

- Benefits paid to an individual may not be charged to any base period employer, G.S. 96-11.3(b)(2).
- An individual does not need to serve a one-week waiting period before receiving benefits, G.S. 96-14.1(b).
- An unemployed individual is deemed to have satisfied the work search requirements, unless the Division requires the individual to conduct a work search, G.S. 96-14.9(I).

**Section 3.2** would provide one more exception in the case of unemployment due to a disaster declaration, it would allow the employer to file claims for employees. One of the weekly requirements an individual must meet to be eligible for benefits is to file a valid claim. This section would allow this requirement to be met by the employer on behalf of the employee. Allowing an employer to file a claim on an employee's behalf would simplify and expedite the process. It would eliminate multiple individual filings, it would eliminate the need for DES to verify the reason for separation with the employer, and it would allow DES to quickly know when the employee has gone back to work. This change would become effective when the act becomes law.

Priority of Tax Liens. – Under G.S. 96-10(b), the Division may seek collection of a delinquent contribution payment, after due notice and an opportunity for a hearing to the employer, by placing a lien on the delinquent taxpayer's property. Under the general law, the priority of liens is determined by when they are docketed and indexed on the cross index of judgements in the county. However, county property tax liens may take priority over previously recorded liens, except for previously recorded liens for State taxes. Although contributions payable under Chapter 96 are State unemployment taxes, it is unclear whether a lien for delinquent contributions is considered a State tax lien under Chapter 105.

**Section 3.3** would clarify that a lien for delinquent contributions is treated the same as other liens for delinquent State tax debts. That means a tax lien for delinquent contributions would have priority over a subsequently filed tax lien for delinquent property taxes. This section would become effective when it becomes law.

Repeal Study Committee Sunset. – The General Assembly created the Joint Legislative Oversight Committee on Unemployment Insurance in 2013 when it reformed the employment security laws. The purpose of the committee is to study the unemployment insurance laws and review them to determine which ones need clarification, technical amendment, repeal, or other change to make the laws concise, intelligible, and easy to administer. It is also charged with monitoring the Unemployment Trust Fund balance, and with studying workforce development programs and reemployment assistance efforts. The original legislation contained a ten-year sunset on the committee. **Section 3.4** would remove that sunset, ensuring that the committee is permanent. This section would become effective when it becomes law.

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