



HOUSE BILL 259: Finance Provisions in the 2023 Appropriations Act.

2023-2024 General Assembly

Committee: Senate Finance
Introduced by: Reps. Lambeth, Saine, Arp
Analysis of: PCS to Third Edition
H259-CSNEx-2

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OVERVIEW: *The finance provisions in the Senate Proposed Committee Substitute to House Bill 259 (2023 Appropriations Act) include various fee changes as described in the chart below and the following tax-related changes contained in Part 42 of the bill (p. 378-386):*

- *Personal income tax changes that include reducing the personal income tax rate beginning in 2024 and for the next 6 years until it reaches 2.49% in 2030.*
- *Sales tax changes that include:*
 - *Aligning the sales tax exemption for parts and accessories used in the repair and maintenance of certain aircraft with the existing sales tax exemption for labor on the same aircraft.*
 - *Extending by 6 years the sunset on the exemption for aviation gasoline and jet fuel for use in commercial aircraft.*
 - *Expanding the exemption on fuels and consumables used by boats engaged in the transportation of freight on the ocean to also include transport in intracoastal waterways, sounds, or rivers (currently limited to oceangoing vessels on the high seas).*
 - *Exempting breast pumps, including repair and replacement parts, and breast pump collection and storage supplies.*
- *Expansion of the 8% alternate highway use tax, which is applicable to short-term car rentals, to include peer-to-peer motor vehicle rentals. The optional local taxes on short-term car rentals would also apply.*
- *Excise tax change that modifies the way in which smokeless tobacco is taxed from being cost-based to weight-based and an expansion of the tax base to include alternative nicotine products.*

Tax Policy Provisions

Personal Income Tax Changes		
Section	Description	Effective Date
42.1	<u>Reduce Personal Income Tax Rate</u> This section would reduce the personal income tax rate beginning in the 2024 taxable year and for the following 6 years as follows:	When law.

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	<u>Taxable Years Beginning</u>	<u>Current Tax Rate</u>	<u>Proposed Tax Rate</u>	
	In 2022	4.99%	No change	
	In 2023	4.75%	No change	
	In 2024	4.60%	4.50%	
	In 2025	4.50%	3.99%	
	In 2026	4.25%	3.99%	
	In 2027	3.99%	3.50%	
	In 2028	3.99%	3.25%	
	In 2029	3.99%	2.99%	
	After 2029	3.99%	2.49%	
	<i>The House budget accelerated the reduction for the 2024 tax year to 4.5%, but made no rate reductions beyond that.</i>			
Sales Tax Changes				
42.12	<u>Expand Aviation Sales Tax Exemption so that Parts and Accessories Exemption Aligns with Labor Exemption for Same Types of Aircraft</u> This section would align the tax treatment of parts and accessories used in the repair and maintenance of certain aircraft with the tax treatment of the repair and maintenance services for the same type of aircraft. Generally, repair, maintenance, and installation services and service contracts are subject to sales and use tax. There are numerous exceptions, including one for services performed on the following types of aircraft: • Qualified aircraft (MTOW¹ >9,000 but <15,000 pounds). • Aircraft with an MTOW of more than 2,000 pounds. • Qualified jet engine. Parts and accessories used in the repair and maintenance of the following types of aircraft are also exempt from sales and use tax: • Commercial aircraft. • General aviation aircraft with a MTOW >9,000 but <15,000 pounds and over 100,000 pounds. • Qualified jet engine. As such, sales of parts and accessories for general aviation aircraft with a MTOW of 2,000-9,000 pounds and 15,000-100,000 pounds are subject to sales and use tax, but repair services for those same aircraft are currently exempt. Subsection (b) of this section makes a technical and conforming change to the labor exemption. Currently, sales tax does not apply to repair, maintenance, and installation services and service contracts for following categories: 1. A qualified aircraft. 2. A qualified jet engine.			For sales occurring on or after July 1, 2023.

¹ Maximum take-off weight.

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	3. An aircraft with a gross take-off weight of more than 2,000 pounds. The third category is no longer needed because it will be subsumed within the newly amended definition of "qualified aircraft." <i>The House budget contains an identical provision.</i>	
42.13	<u>Extend Sunset for Sales Tax Exemption for Aviation Gasoline and Jet Fuel for Use in Commercial Aircraft</u> This section would extend from January 1, 2024, to January 1, 2030, the sunset of the sales and use tax exemption for sales of aviation gasoline and jet fuel to an interstate air business for use in a commercial aircraft. Aviation gasoline and jet fuel are subject to a 7% State sales tax rate, and the revenue generated by the tax is earmarked to the Division of Aviation, Department of Transportation. <i>The House budget extended this sunset by four years.</i>	When law.
42.14	<u>Expand Sales Tax Exemption for Fuel & Consumables Used by Boats Transporting Freight on Inland and Intracoastal Waterways</u> Under current law, sales of fuel and other tangible personal property for use or consumption by or on oceangoing vessels that "ply the high seas" in interstate or foreign commerce in the transport of freight or passengers for hire exclusively, when delivered to an officer or agent of the vessel for the use of the vessel, are exempt from sales and use tax. Those same items are not exempt when delivered to officers, agents, crew members, or passengers for their personal use. This section would expand the exemption to include those same items for use on vessels engaged in the transportation of freight in intrastate, interstate, or foreign commerce when in the intracoastal waterways, sounds, or rivers. <i>The House budget contains an identical provision.</i>	For sales occurring on or after October 1, 2023.
42.16	<u>Exempt Breast Pumps, Breast Pump Collection and Storage Supplies, and Breast Pump Repair and Replacement Parts</u> This section would exempt from sales tax purchases of breast pumps, including repair and replacement parts, breast pump collection and storage supplies, and breast pump kits. With respect to collection and storage supplies, the term is defined to <u>include</u> items such as breast shields, breast shield connectors, tubes, valves and membranes, backflow protectors, bottles and bottle caps that are specific to the operation of the breast pump, and breast milk storage bags. The term would <u>not include</u> items such as bottles and bottle caps not specific to the operation of the breast pump, breast pump travel bags	For sales occurring on or after October 1, 2023.

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	and ice packs, breast pump cleaning supplies, nursing bras, bra pads, creams ointments, and similar products that relieve breastfeeding-related symptoms. <i>The House budget contains no similar provision.</i>	
Highway Use Tax Changes		
42.17	<u>Expand 8% Short-Term Car Rental Tax to Include Peer-to-Peer Rentals</u> This section would subject short-term motor vehicle rentals through a peer-to-peer vehicle sharing provider to the 8% alternate highway use tax and to the applicable local taxes.² Peer-to-peer vehicle sharing is an alternative business model to traditional car rental companies. Under this model, a business entity operates an online platform that facilitates the short-term use of motor vehicles between registered vehicle owners and users. Owners register and list their vehicles on the entity's website for use by others for a fee. It is similar in concept to Airbnb, which facilitates accommodation rentals between homeowners and travelers. Peer-to-peer vehicle rentals are not currently subject to tax whereas short-term rentals by traditional car rental companies are subject to an 8% gross receipts tax, plus applicable local taxes ranging from 1.5% to 8%. For vehicle rentals at an airport, rental car companies collect an additional 11.11% airport concession gross receipts fee plus a \$5.00/day customer facility charge. Airport operators may charge peer-to-peer vehicle sharing providers a "reasonable fee" for use of the airport's facility. A person who purchases a vehicle must pay a 3% highway use tax. When a traditional car rental company purchases vehicles for its fleet, it has an option to pay either the 3% highway use tax or, if the vehicles will be used only for lease or rental, to collect an 8% tax on the gross receipts derived from the leases or rentals. This election is referred to as the "alternate highway use tax." The highway use tax and the alternate highway use tax are triggered when a person applies for a certificate of title upon the purchase of a car. Since peer-to-peer vehicle sharing providers do not own the cars listed on their website, neither tax is triggered. This provision would become effective October 1, 2023, and apply to gross receipts derived from rentals or leases billed on or after that date. <i>The House budget contains no similar provision.</i>	Effective October 1, 2023, and applies to gross receipts derived from rentals or leases billed on or after that date.

² 93 counties levy a 1.5% local gross receipts tax on short-term vehicle rentals, 144 municipalities levy a 1.5% local gross receipts tax on short-term vehicle rentals, and 2 regional public transportation authorities, spanning 13 counties, levy a 5% gross receipts tax on short-term vehicle rentals.

Excise Tax Changes		
42.18	<u>Change Method of Taxing Smokeless Tobacco from Cost-Based to Weight-Based and Expand Base to Include Alternative Nicotine Products</u> This section would change the method for taxing smokeless tobacco from a cost-based method to a weight-based method at a rate of 43 cents per ounce and would add alternative nicotine products to the tax base. Under current law, "other tobacco products," (exclusive of cigarettes, cigars, and vapor products), are taxed at the rate of 12.8% of the cost price. The tax is typically collected at the wholesale level but may also be collected by remote sellers. At the federal level, smokeless tobacco products are taxed based on weight. Alternative nicotine products, which are a relatively new product, are not currently subject to tax. They do not contain tobacco but contain natural or synthetic nicotine. <i>The House budget contains no similar provision.</i>	Effective January 1, 2025, for sales or purchases occurring on or after that date.

FEE PROVISIONS

Section	Description
DHHS 9F.2-9F.8 (p. 173-179)	These sections establish various exemptions to certificate of need (CON) review as follows: • For physician office-based vascular access for hemodialysis. • For kidney disease treatment centers, including freestanding dialysis units. • For linear accelerators. • For the relocation of an existing institutional health service or health service facility within the same county. • For the conversion of specialty ambulatory surgical programs to multispecialty programs and for the addition of a specialty to a specialty ambulatory surgical program. These sections also include CON reforms for MRI scanners and ambulatory surgical facilities.
DEQ 12.7 (p. 250) 12.11(d) (p. 256)	Makes the following DEQ fee changes: • Section 12.7 removes the requirement for an emissions test for vehicle registrations from 18 counties. Mecklenburg would be the only county with the requirement remaining and limited to vehicles manufactured between 2003 and 2017. This change would not become effective until 60 days after approval by the EPA. • Section 12.11 authorizes the Environmental Management Commission to establish rules for the expedited processing of air permit applications, including setting fees, which may be up to 200% of the otherwise applicable air permit fee set by the Commission.

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12.13 (p. 259) 12.14 (p. 260)	• Section 12.13 makes changes to the express permitting statute and increases the fees for express permitting. These fees were last changed in 2005. • Section 12.14 does the following: ○ Subsection (a): ▪ Increases various water resources fees: NPDES³ water quality fees, sewer system extension permit fee, and pre-construction notification fees. These fees were last increased in 2007. ▪ Increases the fees for NPDES and State stormwater permits. These fees were last increased in 2007. ○ Subsection (b) increases the annual fee for small quantity hazardous waste generators from \$175 to \$300. This fee was last increased in 2010. ○ Subsection (c) increases several solid waste management facilities fees and adds three new categories. These fees were last updated in 2015. ○ Subsection (d) increases the fees for pumper trucks operated by septage management firms. Current annual fees are \$550 for the operation of one truck and \$800 for the operation of two or more trucks. The proposed fees are \$800 for one truck, \$950 for two trucks, and \$1,500 for three or more trucks. These fees were last increased in 2001. ○ Subsection (e) changes the fee for coal ash impoundments from 0.022% to 0.03% (the original fee was 0.03%). The statute expressly prohibits the Utilities Commission from allowing public utilities to pass the cost for the fee on to the ratepayers. This fee was last updated in 2016. ○ Subsection (f) increases the operating permit fee and the plan review fee for public water supply systems, which are based on the number of persons served by the system. These fees were last increased in 2006. ○ Subsection (g) increases the fee for wastewater operator certifications. This fee was last increased in 2007. ○ Subsection (h) increases the fee for animal waste system operator certifications. These fees were last updated in 1998. ○ Subsections (i) through (n) increase the fees for lab certifications. These fees were last increased in 2001. ○ Subsections (o) and (p) change the fee for a wind energy facility permit from \$3,500 to 1.25% of the actual cost of construction and add an annual renewal fee of \$400 per permitted turbine.
AOC 16.25 (p. 291)	Provides a fee waiver for military-trained individuals or military spouses who apply for an attorney's license in certain circumstances. Specifically, if the individual is licensed in a reciprocity state and then practices law in NC under the supervision of a licensed attorney for 3 years, the individual shall be granted an NC law license at the end of the 3-year supervisory period. The individual is not required to pay a licensure fee to the State Bar until the 3-year period ends.
ADMIN 20.1 (p. 315)	Codifies the 1.75% fee charged to vendors for sales of material goods transacted through the Department of Administration's e-Procurement System. The proceeds of the fee help maintain the system. The fee hasn't changed since it was established. With this change, the Department would not be able to change the fee without legislative approval.

³ National Pollutant Discharge Elimination System.

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INSUR 30.1 (p. 323)	Temporarily reduces the insurance regulatory fee from 6.5% to 2% for 2024 and 2025. The revenue from the insurance regulatory fee supports the operation of the Department of Insurance. The balance in the Insurance Regulatory Fund exceeds what is necessary to defray the Department's cost of operations, including a reasonable margin for a reserve. The temporary rate reduction will spend down the excessive cash balance.
SEC 35.1 (p. 337)	Increase from \$250 to \$500 the fee lobbyists and lobbyist principals pay.
TRANS 41.11C (p. 371) 41.14D-F (p. 376-77)	Makes the following DMV/DOT fee changes: • Section 41.11C requires the establishment of tolls on all ferry routes, beginning FY 2024-25. This impacts 4 ferry routes, which are currently free. These funds are deposited in the Ferry Capital Special Fund, a special fund separate from HF/HTF. • Section 41.14D does the following: ○ Increases the electric vehicle registration fee from \$140.25 to \$180 annually, to be deposited into the Highway Fund, effective January 1, 2024. ○ Creates a new additional registration fee for plug-in hybrid vehicles of \$90 annually, to be deposited into the Highway Fund, effective January 1, 2024. • Section 41.14E authorizes DMV to add a fee not to exceed 2% of the payment for electronic payment transactions (e.g., debit card, credit card, automated clearinghouse.) Currently, DMV absorbs the cost of merchant fees for electronic transactions, paid through the Highway Fund. • Section 41.14F establishes a special permit for the transport and delivery of storage sheds 16 feet wide.