

April 13, 2016

IMPACT OF THE FEDERAL PROTECTING AMERICANS FROM TAX HIKES ACT OF 2015 ON NORTH CAROLINA'S CORPORATE AND INDIVIDUAL INCOME TAX RETURNS FOR TAX YEAR 2015

North Carolina's corporate income tax law uses federal taxable income as the starting point in determining North Carolina taxable income. North Carolina's individual income tax law uses federal adjusted gross income as the starting point in determining North Carolina taxable income. In both cases, the reference to federal law is to the Internal Revenue Code ("Code") as of a certain date. Currently, that reference is to the Code as of January 1, 2015. Each year the General Assembly determines whether to update its reference to the Code. Doing so would make recent amendments to the Code applicable for North Carolina income tax purposes. In some cases, the General Assembly chooses not to follow ("decouples" from) certain amendments to federal law.

On December 18, 2015, President Obama signed into law the Protecting Americans From Tax Hikes Act of 2015 ("PATH"). The Act extended several provisions in federal law that had sunset at the end of 2014. Some provisions were extended through the end of 2016 while other provisions were made permanent. The Act also included new tax reduction provisions. If the General Assembly does not update the reference to the Code to December 18, 2015 or later, neither the extension of those provisions that had sunset at the end of 2014 nor the new tax reduction provisions will apply for North Carolina income tax purposes.

The Revenue Laws Study Committee is charged with studying North Carolina's revenue laws and making recommendations with respect to those laws to the General Assembly. On March 8, 2016, the Revenue Laws Study Committee adopted a recommendation to update the reference to the Code to January 1, 2016 but to decouple from specific provisions in PATH. The recommended bill may be viewed [here](#).

If the General Assembly enacts legislation to update the Code reference as recommended, North Carolina will require additions on the tax year 2015 corporate and individual income tax returns for (a) 85% of the amount deducted as bonus depreciation on the federal return and (b) 85% of the difference between the amount deducted on the federal return for Code section 179 expenses, using the federal dollar and federal investment limitations, and the amount that would be deductible for Code section 179 expenses using the North Carolina dollar and North Carolina investment limitations for 2015. For tax year 2015 individual income tax returns, additions would also be required for (a) the amount excluded from gross income for the discharge of qualified principal residence indebtedness, (b) the amount deducted in arriving at adjusted gross income for qualified tuition and related expenses, and (c) the amount excluded from gross income for a qualified charitable distribution from an individual retirement plan by a person who has attained age 70 ½. In lieu of the exclusion from gross income, an individual can include the amount of the qualified charitable distribution in the deduction for charitable contributions if the taxpayer elects to deduct itemized deductions on the North Carolina individual income tax return. In addition, an individual would also be required to exclude amounts paid for mortgage insurance premiums from the deduction for qualified residence interest if the taxpayer claims itemized deductions on the North Carolina return.

Any person required to file a North Carolina income tax return whose 2015 federal taxable income or federal adjusted gross income is impacted by the amendments to federal law included in PATH should consider waiting to file the 2015 North Carolina income tax return until the General Assembly takes action. A taxpayer who files the 2015 income tax return before the General Assembly takes action may have to amend the return to reflect the General Assembly's action. Please note that the General Assembly is scheduled to convene on April 25, 2016. A taxpayer whose income tax return is statutorily due on Friday, April 15, 2016 has until Monday, April 18, 2016 to timely file the return and pay any income tax due because Emancipation Day is observed on April 15, 2016. A taxpayer with a tax return due on April 15, 2016 who chooses to wait for legislation to be enacted should, by April 18, 2016, file an application for an extension of six months to file the income tax return. If a timely application for an extension is filed, the return will be considered timely filed if filed by Monday, October 17, 2016.

If the General Assembly enacts legislation to update the Code reference, the Department will provide additional guidance, including how to report any required additions or deductions on the 2015 return.

The references to line numbers and form numbers on federal income tax forms were correct at the time of printing. If they have changed and you are unable to determine the proper line to use, please contact the Department of Revenue. These instructions are to be used as a guide in the preparation of a North Carolina partnership income tax return and are not intended to cover all provisions of the law.

A. Who must file Form D-403 - Every partnership doing business in North Carolina must file a partnership income tax return, Form D-403, for the taxable year if a federal partnership return was required to be filed. (**Exception:** A partnership whose only activity is as an investment partnership is not considered to be doing business in North Carolina. Consequently, an investment partnership is not required to file an income tax return in North Carolina nor pay income tax to North Carolina on behalf of its nonresident partners. Please refer to the Department's website at www.dornrc.com/practitioner/individual/directives/PD-04-2.pdf for more information.) A limited liability company classified as a partnership for federal income tax purposes is also classified as a partnership for State income tax purposes and is required to file a partnership income tax return if a federal partnership return is required to be filed. A partnership which elects to be taxed as a corporation for federal income tax purposes will also be taxed as a corporation for North Carolina income tax purposes. The partnership must file a corporation income tax return, Form CD-405, in lieu of filing Form D-403.

B. Time and place for filing - The return of a partnership on a calendar year basis must be filed with the North Carolina Department of Revenue on or before April 15 following the close of the calendar year. However, for tax year 2015, the due date is Monday, April 18, 2016, because April 15 is the Emancipation Day holiday observed in the District of Columbia. If on a fiscal year basis, the return must be filed on or before the 15th day of the fourth month following the close of the fiscal year. A fiscal year return should be filed on a form for the year in which the fiscal year begins. (For example, a 2015 form should be used for a fiscal year beginning in 2015.)

C. Signature - The partnership return must be signed by the managing partner. If the return is prepared by a person or firm other than a partner, it must be signed also by the one preparing the return. If the partnership is a limited partnership, the return must be signed by a general partner. The managing partner should provide a telephone number where he may be reached during the day if we need additional information to process the return.

D. Extensions - If the partnership return cannot be filed by the due date, the partnership may apply for an automatic 6-month extension of time to file the return. **To receive the extension, the partnership must file Form D-410P, Application for Extension for Filing Partnership, Estate, or Trust Tax Return, by the original due date of the return.**

A partnership is not required to send a payment of tax it estimates as due to receive the extension; however, it will benefit the partnership to pay as much as it can with the extension request. An extension of time for filing the partnership return does not extend the time for paying the tax due. A partnership may file the return at any time within the extension period but it must be filed on or before the end of the extension period to avoid the late filing penalty.

E. Penalties - If a partnership return on which tax is due is not filed by the due date, the partnership will have to pay a penalty of 5

percent of the tax for each month, or part of a month, the return is late. The maximum penalty is 25 percent of the unpaid tax. Returns filed after April 15 without a valid extension are subject to a late payment penalty of 10 percent of the unpaid tax. If a partnership has an extension of time for filing its return, the 10 percent late payment penalty will apply on the remaining balance due if the tax paid by the due date of the return is less than 90 percent of the total amount of tax due. If the 90 percent rule is met, any remaining balance due must be paid with the partnership return on or before the expiration of the extension period to avoid the late payment penalty. In addition, penalties are provided by law for willful failure to file a return on time and for willful attempt to evade or defeat the tax.

F. Manager's Responsibility - In a partnership having one or more nonresident partners, the managing partner is responsible for reporting the share of the income of nonresident partners and is required to compute and pay the tax due for each nonresident partner. If the nonresident partner is a corporation, partnership, trust or estate, the managing partner is not required to pay the tax on that partner's share of the partnership income provided the partner files Form NC-NPA, Nonresident Partner Affirmation. Form NC-NPA affirms that the partner will pay the tax with its corporation, partnership, trust or estate income tax return. (**Note:** This provision does not extend to grantor trusts because no tax is paid on grantor trust returns.) In such cases, a copy of NC-NPA must be attached to the partnership return when it is filed. **Important:** A nonresident partner that is an individual cannot file Form NC-NPA and the managing partner is required to compute and pay the tax due for all nonresident partners that are individuals. A nonresident individual partner is not required to file a North Carolina income tax return when the only income from North Carolina sources is the nonresident's share of income from a partnership doing business in North Carolina, and the manager of the partnership pays the tax due for the nonresident partner. Payment of the tax due by the managing partner on behalf of corporations, partnerships, trusts or estates that are partners does not relieve the partner from filing a North Carolina tax return. Credit for the tax paid by the managing partner may be claimed on the partner's income tax return. The manager is authorized by statute to withhold the tax due from each nonresident partner's share of the partnership income. **Note:** If a nonresident partner is a tax-exempt organization as described in Section 501 of the Internal Revenue Code, the managing partner is not required to pay the tax unless the partnership income is from a business enterprise not related to the organization's tax-exempt purpose. Also, the managing partner is not required to pay the tax for nonresident partners who serve as investment vehicles for investing in IRAs and other qualified retirement plans.

Publicly Traded Partnerships - Effective for taxable years beginning on or after January 1, 2008, a publicly traded partnership that is described in section 7704(c) of the Code is exempt from the payment and filing requirements under G.S. 105-154(c) and (d). The filing requirement is limited to partners whose distributive share of the partnership's net income during the tax year was more than five hundred dollars (\$500.00) and the payment requirements do not apply.

G. Estimated income tax - A partnership is not required to make estimated income tax payments; however, if the partnership makes any prepayments of tax, include the prepayment on Line 14. A resident individual partner who meets the statutory requirements must file estimated tax on Form NC-40. (See Individual Income Tax Instructions for Form D-400 for information on the requirements for paying estimated income tax.) A nonresident individual partner is not required to pay estimated tax on his distributive share of partnership income.

H. Tax Credits - All tax credits allowed to individuals are allowed to partnerships except the tax credit for income taxes paid to other states and the tax credit for children.

A partnership may pass through to each of its partners the partner's distributive share of an income tax credit for which the partnership qualifies. Any dollar limit on the amount of a tax credit applies to the partnership as a whole instead of to the individual partners. Maximum dollar limits and other limitations that apply in determining the amount of tax credit available to a taxpayer apply to the same extent in determining the amount of tax credit for which a partnership qualifies, with one exception. The exception is a limitation that the tax credit cannot exceed the tax liability of the taxpayer.

If there are nonresident partners whose share of tax is being paid by the manager of the partnership, and the partnership claims a tax credit, complete Form D-403TC, Partnership Tax Credit Summary, and include the form with the partnership return. Attach a separate schedule showing the computation of any tax credits and the allocation of the credits among the partners. If claiming any credit that is limited to 50 percent of the partnership's tax, less the sum of all other credits claimed, complete Form NC-478 and attach it to the front of the partnership return. The partnership must provide sufficient information about the tax credits to allow the partner to complete the Form NC-478 series.

I. Attachments - Attachments may be used in preparing the partnership return. Attachments may not be used as a substitute for completing the partnership return. Do not enter "See Attached" instead of completing the applicable spaces on the return. The attachments must contain all required information, follow the format of the official schedules, and must be attached in the same sequence as the schedules appear on the partnership return. List the partnership's federal identification number on each attachment.

J. Specific instructions for Schedule NC K-1 - Schedule NC K-1 is used by the partnership to report each partner's share of the partnership's income, adjustments, tax credits, etc. The NC K-1 must reflect the net tax paid by the partnership. Prepare and give a Schedule NC K-1 to each person who was a partner in the partnership at any time during the year. Schedule NC K-1 must be provided to each partner on or before the day on which the partnership return is required to be filed. When reporting the distributive share of tax credits, provide a list of the amount and type of tax credits. Any amount reported as tax paid by the manager of the partnership should include amounts paid with extension and by other partnerships, if applicable.

Part 1 - Computation of Income Tax Due or Refund

Line Instructions

Line 1 - Enter on Line 1 the total income or loss from Schedule K, Federal Form 1065. The total income or loss is the combined total of lines 1 through 11 of Schedule K.

Line 2 - Enter the amount of salaries, interest, or other "guaranteed payments" made to a partner for services or for the use of capital. Salaries to partners and retirement payments to partners who are not active are treated as part of a partner's distributive share of ordinary income and must be apportioned or allocated to North Carolina on the same basis as other partnership distributive income.

Line 4 - The following additions to income are required in calculating North Carolina partnership income to the extent the additions are not included in income. Complete Part 4, Lines 1 through 4 and enter the total additions on Part 1, Line 4. Allocate the total additions on Line 4 to the individual partners in Part 3, Line 6.

Additions to income:

- (1) Interest on bonds and other obligations of states and political subdivisions other than North Carolina, if not included in income
- (2) Any state, local, or foreign income taxes deducted on the federal partnership return
- (3) Other additions to income

Line 6 - The following deductions from income are required in calculating North Carolina partnership income to the extent the deductions are included in income. The total deductions from Part 4, Line 9 should be entered on Part 1, Line 6 and allocated to the individual partners in Part 3, Line 7.

Deductions from income:

- (1) Interest from obligations of the United States or United States' possessions
- (2) State, local, or foreign income tax refunds included on the federal partnership return
- (3) North Carolina law did not adopt the 50 percent bonus depreciation provisions in IRC sections 168(k) or 168(n) for tax year 2010. Similarly, North Carolina did not adopt the provisions of the Small Business Jobs Act of 2010 which extended the 50 percent bonus depreciation through 2011 or the Tax Relief Act of 2010 which doubled and extended bonus depreciation from 50 percent to 100 percent for qualified property acquired and placed in service after September 8, 2010, and before January 1, 2012. In addition, North Carolina did not adopt the provisions of the Tax Relief Act which makes 50 percent bonus depreciation available for qualified property placed in service after December 31, 2011, and before January 1, 2013. Certain long-lived property and transportation property is eligible for 100 percent expensing if placed in service before January 1, 2013. The Tax Increase Prevention Act of 2014 extended the 50 percent bonus depreciation for property placed in service in 2014. North Carolina did not adopt the bonus depreciation provisions under IRC sections 168(k) or 168(n). Any amount added to income on the 2010, 2011, 2012, 2013, and 2014 State partnership returns may be deducted in five equal installments beginning with the 2011, 2012, 2013, 2014, and 2015 State partnership returns, respectively. Therefore, enter 20 percent of the bonus depreciation added back on the 2010, 2011, 2012, 2013, and 2014 State partnership returns.
- (4) Other deductions from income

Line 8 - Nonapportionable Net Distributive Partnership Income – When a partnership has income from sources within North Carolina as well as sources outside North Carolina a determination of apportionable and nonapportionable income must be made. If the partnership's business is both within and outside of North Carolina, complete Part 5, Nonapportionable Net Distributive Partnership Income on Page 4 and enter the total amount of nonapportionable income on Line 8. If the amount on Line 8 is negative, enter the amount and fill in the circle located next to Line 8 to indicate the amount is negative.

Line 9 - Apportionable Net Distributive Partnership Income – All income apportionable under the U.S. Constitution is apportioned to North Carolina and to other states based on the apportionment factor. Subtract Line 8 from Line 7 and enter the amount on Line 9. If the amount on Line 9 is negative, enter the amount and fill in the circle located next to Line 9 to indicate the amount is negative.

Line 10 - Nonapportionable Net Distributive Partnership Income Allocated to North Carolina – Complete Part 5, Nonapportionable Net Distributive Partnership Income on Page 4. Enter on Line 10 the amount of nonapportionable income allocated directly to this State. If the amount on Line 10 is negative, enter the amount and fill in the circle located next to Line 10 to indicate the amount is negative.

Line 11 - Complete Parts 2 and 3 to determine the tax for nonresident partners.

Line 12 - Enter the total tax credits allocated to nonresident partners.

Line 13 - Enter the net tax due for nonresident partners.

Line 14 - If Form D-410P was filed to request an extension of time to file the partnership return, enter any tax paid with the extension form. Also, enter any other prepayments of tax that were made prior to filing this partnership return. If filing an amended return, include on Line 14 any amount paid with the original partnership return.

Line 15 - If tax was paid by other partnerships or by S corporations, enter the amount paid. Include with the return a copy of the information furnished by the partnership(s) or S corporation(s) to verify the amount claimed.

Line 16 - North Carolina income tax is required to be withheld from the compensation paid to a nonresident partnership or limited liability company for services performed in North Carolina in connection with a performance, an entertainment or athletic event, a speech, or the creation of a film, radio, or television program. Include only the portion of tax withheld that is attributable to nonresident partners on whose behalf the managing partner is required to pay the tax. Attach Form NC-1099PS to the front of the return to verify the North Carolina income tax withheld.

Line 20 - Add Lines 18 and 19c to determine the total due for nonresident partners. The manager of the partnership must pay this amount with the return. The tax may be paid by check or money order payable in U.S. dollars to the North Carolina Department of Revenue. **Important:** The Department will not accept a check, money order, or cashier's check unless it is drawn on a U.S. (domestic) bank and the funds are payable in U.S. dollars.

Line 21 - If total payments on Line 17 exceed the net tax due for nonresident partners on Line 13, subtract and enter the amount to be refunded.

Part 2A - Apportionment Percentage For Partnerships Having One or More Nonresident Partners and Operating in North Carolina and in One or More Other States

(See S Corporation Tax Return Instructions for more detailed information on the Apportionment Percentage.)

Method to be Used in Apportioning Partnership Income:

A partnership with one or more nonresident partners whose business activities in North Carolina are unified and integrated with its business activities in other states is required to apportion its partnership income to North Carolina by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four. If the sales factor does not exist, the denominator is the number of existing factors. If the sales factor exists, but the payroll or the property factor does not exist, the denominator is the number of existing factors plus one.

Property Factor: The property factor is the percentage determined by dividing the average value of the partnership's real and tangible personal property owned or rented and used in this State during the year by the average value of all of the partnership's real and tangible personal property owned or rented and used during the year. With respect to rentals, assign values for property rented by the partnership at 8 times the net annual rental rate. The net annual rental rate is the annual rental rate paid less any annual rental rate received by the partnership from subrentals.

Payroll Factor: The payroll factor is the percentage determined by dividing the total compensation paid by the partnership in this State during the income year by the total compensation paid everywhere during the income year.

Sales Factor: The sales factor is determined by dividing the total sales of the partnership in this State during the income year by the total sales of the partnership everywhere during the income year. For purposes of the formula used for apportioning partnership income to North Carolina, the sales factor is doubled.

Part 2B – Partnerships Apportioning Income to N.C. and to Other States Using Single Sales Factor

Special apportionment provisions apply to partnerships that would meet the definition of "excluded corporation" or the definition of "capital intensive corporation" in G.S. 105-130.4 if they were corporations and certain public utilities treated as partnerships. These partnerships must apportion North Carolina income tax using the sales factor alone. For any partnership engaged in business as a building or construction contractor, a securities dealer, a loan company or for a partnership which receives more than 50 percent of its ordinary gross income from investments in and/or dealing in intangible property, the partnership's income shall be apportioned by the use of only the sales factor. The Department refers to the North American Industry Classification System (NAICS) as a means of determining whether a taxpayer's business operations require the corporation to utilize North Carolina's special apportionment provisions.

Part 2C - Special Apportionment

Special apportionment provisions apply to certain types of partnerships such as telephone companies, motor carriers, and railroad companies. G.S. 105-130.4 should be consulted for definitions and specific allocation requirements.

Telephone Companies - All income of a telephone company must be apportioned by multiplying the income by a fraction, the numerator of which is gross operating revenues earned in this State plus other revenue items attributed to this State specifically listed in G.S. 105-130.4(n) and the denominator of which is the total gross operating revenue from all business done by the company everywhere less uncollectible revenue. (Complete the worksheet below.)

Computation of Apportionment Factor for Telephone Companies - Gross Operating Revenue Factor	
1. Gross Operating Revenues in North Carolina	
a. Gross operating revenue from local service in N.C.	_____
b. Gross operating revenue from toll services within N.C.	_____
c. N.C. portion of revenue from interstate toll services.....	_____
d. Gross operating revenues in N.C. from other services.....	_____
e. Total gross operating revenues assignable to N.C. (Add Lines 1a - 1d)	_____
f. N.C. uncollectible revenue	(_____)
g. Total adjusted gross operating revenues assignable to N.C. (Line 1e minus Line 1f).....	_____
2. Gross Operating Revenues Everywhere	
a. Total gross operating revenues	_____
b. Total uncollectible revenue	(_____)
c. Total adjusted gross revenues everywhere (Line 2a minus 2b).....	_____
3. Gross Operating Revenue Factor (Divide Line 1g by Line 2c; enter amount here and on Part 2c)..... _____ %	

Motor Carriers – All income of a motor carrier of property or passengers must be apportioned by multiplying the income by a fraction, the numerator of which is the number of vehicle miles in this State and the denominator of which is the total number of vehicle miles of the company everywhere. The words “vehicle miles” mean miles traveled by vehicles owned or operated by the company hauling property for a charge, carrying passengers for a fare, or traveling on a scheduled route. (Complete the worksheet below.)

Computation of Apportionment Factor for Motor Carriers - Vehicle Miles Factor	
1. Number of vehicle miles traveled in N.C. ...	_____
2. Total number of vehicle miles traveled everywhere	_____
3. Percentage of Mileage in N.C. Factor (Divide Line 1 by Line 2; enter amount here and on Part 2c)..... _____ %	

Part 3A - Partners' Shares of Income, Adjustments, Tax Credits and Other Items

Line-by-Line Instructions:

Line 4 - Enter the same percentage used for federal income tax purposes. (Line 4 is designed for partners whose share percentages for profits and losses are the same. If one or more partners have different share percentages for profits and losses, write “various” on Line 4 for that partner and attach a schedule to the return that explains the share percentages for that partner.)

Line 6 - Enter each partner’s share of the additions to income from Part 1, Line 4.

Line 7 - Enter each partner’s share of the deductions from income from Part 1, Line 6.

Line 8 - Enter each partner’s share of allowable tax credits. See the individual income tax instructions for a detailed explanation of available tax credits and attach a separate schedule showing the computation of any tax credits claimed.

Part 3B - Computation of North Carolina Taxable Income for Nonresident Partners

Line 9 - Enter each nonresident partner’s distributive share of the guaranteed payments that are applicable to the income reported on Part 1, Line 9.

Line 14 - Enter each nonresident partner’s distributive share of the guaranteed payments that are applicable to the income reported on Part 1, Line 10.

Line 16 - Partnerships must identify each nonresident partner’s share of separately stated income items and enter that amount on Form D-403, Page 3, Part 3, Line 16.

For example, special rules apply for gain from the sale, exchange, or disposition of Internal Revenue Code section 1231 property on which a Code section 179 expense deduction was previously claimed. For federal purposes, the gain is not included at the entity level but instead is passed through separately to the individual partners. As a result, the gain is included in income on the partner’s income tax return but is not included as part of the partner’s share of the partnership’s income. The partnership should assume that the partner claimed all Code section 179 expense allocated to the partner.

Part 3C - Computation of Tax Due for Nonresident Partners on Whose Behalf the Partnership Pays the Tax

Line 18 - Compute the tax due for each nonresident partner and enter the amounts for each partner on Line 18.

Line 20 - If the total amount of tax for each nonresident partner shown on Line 18 is more than each nonresident partner’s tax credits shown on Line 19, subtract and enter the result on Line 20, Net Tax Due. Enter the net tax due for nonresident partners on Line 13, Page 1. The manager of the partnership is responsible for payment of the total tax, penalties, and interest due for each nonresident partner and must furnish each nonresident partner information to be included with his individual income tax return verifying the tax paid on his share of the partnership earnings in North Carolina.