

C. Penalties and Interest (G.S. 105-228.90 through G.S. 105-236, G.S. 105-241.1, G.S. 105-253)

1. General

The North Carolina Statutes provide both civil and criminal penalties for failure to comply with the tax laws.

In addition to any applicable penalty, all assessments of taxes or additional taxes bear interest at the rate established pursuant to G.S. 105-241.1(i).

2. Failure to File and Failure to Pay Penalties

Under the provisions of G.S. 105-236, both the late filing and late payment penalties can be applied for the same month. If the return is filed late without payment of the tax shown due, both the late filing and late payment penalties will be assessed at the same time.

The penalty for failing to file any return on the date it is due, is 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, until the return is filed. If the return is filed under extension, the late filing penalty will be assessed from the extended filing date rather than from the original due date. The penalty shall not exceed twenty-five percent (25%) of the tax due or be less than five dollars (\$5.00). Failure to file any return by the date it is due could result in the suspension of the taxpayer's Articles of Incorporation or Certificate of Authority.

The late payment penalty is the greater of five dollars (\$5.00) or ten percent (10%) of the tax not paid by the original due date of the return and will apply on any remaining balance due if the tax paid by the original due date of the return is less than ninety percent (90%) of the total amount of tax due. If the ninety percent (90%) rule is met, any remaining balance due, including interest, must be paid with the tax return on or before the expiration of the extension period to avoid the late payment penalty.

The late payment penalty will not be assessed if the amount shown due on an amended return is paid with the return. Proposed assessments of additional tax due are subject to the ten percent (10%) late payment penalty if payment of the tax is not received within 30 days of the assessment.

The failure of officers, trustees and receivers to pay taxes due or accrued before allowing funds in their custody to be paid out is subject to the penalty policy of the Department.

3. Penalty for Bad Check

When any uncertified check submitted to the Department of Revenue by a taxpayer is returned because of insufficient funds or the nonexistence of an account of the drawer, a penalty equal to ten percent (10%) of the check is assessed. The penalty shall not be less than one dollar (\$1.00) or more than one thousand dollars (\$1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, inadvertently, failed to draw the check on the account that had sufficient funds.

4. Penalty for Bad Electronic Funds Transfer

When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, a penalty equal to ten percent (10%) of the amount of the transfer will be assessed. The penalty shall not be less than one dollar (\$1.00) or greater than one thousand dollars (\$1,000).

5. Making Payment in Wrong Form

If a taxpayer makes a payment of tax in a form other than the form required by the Secretary a penalty equal to five percent (5%) of the amount of the tax will be assessed. The penalty shall not be less than one dollar (\$1.00) or greater than one thousand dollars (\$1,000).

6. Negligence Penalties

If a taxpayer fails to comply with the tax laws, without intent to defraud, a penalty equal to ten percent (10%) of any tax deficiency is assessed. However, if the tax liability is understated by twenty-five percent (25%) or more, the penalty is twenty-five percent (25%) of the tax deficiency.

A negligence penalty cannot be assessed when the fraud penalty has been assessed with respect to the same deficiency. There is no minimum dollar amount of negligence penalty.

7. Failure to Report Federal Changes

Any taxpayer that receives a federal revenue agent's report or other final determination of taxable income and fails to report these federal changes within two years from the date of receipt of the federal report or determination is subject to the failure to file penalty and forfeits the right to any refund as a result of the federal changes. The failure to file penalty begins at the expiration of the two-year period.

8. Fraud

If there is a deficiency or delinquency in payment of any tax because of fraud with intent to evade the tax, a penalty equal to fifty percent (50%) of the total deficiency is assessed.

9. Criminal Penalties

Any taxpayer that willfully attempts, or any person who aids or abets any taxpayer to attempt in any manner, to evade or defeat a tax or its payment, shall, in addition to other penalties provided by law, be guilty of a Class H felony.

Any taxpayer required to pay any tax, to file any return, to keep any records, or to supply any information, that willfully fails to pay the tax, file the return, keep the records, or supply the information, at the time or times required by law, or rules pursuant thereto, shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of six years after the date of the violation.

Any person, pursuant to or in connection with the revenue laws, who willfully aids, assists in, procures, counsels, or advises the preparation of a return, affidavit, claim, or any other document that the person knows is fraudulent or false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required

to present or file the return, affidavit, claim, or other document, shall be guilty of a Class H felony.

Any officer, agent, and/or employee of any person, firm or corporation subject to the revenue laws of this State, who willfully fails, refuses, or neglects to make out, file, and/or deliver any reports or blanks, as required, or to answer any question in the reports or blanks, or who knowingly and willfully gives a false answer to any question that is within the scope of his/her knowledge, or refuses to make any information requested available shall be guilty of a Class 3 misdemeanor and assessed a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) for each offense.

10. Collection Assistance Fee

Any tax, penalty, and interest not paid within 90 days after a final notice of assessment has been mailed is subject to a twenty percent (20%) collection assistance fee. The fee will not apply if payments are being made pursuant to an installment agreement that became effective within 90 days after the final notice was mailed.

11. Interest

Interest accrues on tax not paid by the original due date even though a taxpayer may have an extension of time for filing the return. Interest on overpayments accrues beginning 45 days after the latest of (1) the date the final return was filed, (2) the date the final return was due to be filed, or (3) the date of the overpayment. The law requires the interest rate to be determined on or before June 1, for the following six-month period beginning on July 1 and on or before December 1 for the following six-month period beginning January 1. The current rate of interest may be obtained by contacting the Department of Revenue.

12. Underpayment of Estimated Income Tax

The computation of interest due for underpayment of estimated income tax should be made on Form CD-429B. A taxpayer does not need to file this form with the return to which it pertains, but should include any interest due in the payment of tax due.

13. Waiver of Penalty

Any penalty may be waived by the Secretary of Revenue pursuant to the Department of Revenue penalty policy. A request for waiver or reduction of penalty must be in writing and must include an explanation for the request. The Department's Penalty Waiver Policy and form to request waiver (Form NC-5500) are available on the Department's website, www.dorn.com. Interest on the tax cannot be waived or reduced.

Exception: Penalties assessed as the result of a taxpayer engaging in tax strategies whereby income that would otherwise be taxable in North Carolina is shifted out-of-state or in other tax shelter activities that reduce or eliminate North Carolina state laws will not be waived for any reason.