

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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SENATE DRS15136-MC-149 (03/15)

Short Title: Stop Harsher Reinterpretation of Tax Penalty. (Public)

Sponsors: Senator Clodfelter (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT THE DEPARTMENT OF REVENUE DOES NOT CHANGE ITS LONGSTANDING INTERPRETATION OF THE FAILURE TO FILE PENALTY IN A MANNER THAT WOULD MAKE THE PENALTY HARSHER THAN THE COMPARABLE FEDERAL PENALTY AND WOULD IMPOSE A PENALTY ON A TAXPAYER EVEN WHEN THE TAXPAYER PAID TAX TIMELY AND IS DUE A REFUND.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 105-236(a)(3) reads as rewritten:

"§ 105-236. Penalties; situs of violations; penalty disposition.

(a) Penalties. – The following civil penalties and criminal offenses apply:

...

(3) Failure to File Return. – In case of failure to file any return on the date it is due, determined with regard to any extension of time for filing, the Secretary shall assess a penalty equal to five percent (5%) of the net amount of ~~the~~ tax due if the failure is for not more than one month, with an additional five percent (5%) for each additional month, or fraction thereof, during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate, or five dollars (\$5.00), whichever is the greater.

...."

**SECTION 2.** G.S. 105-236(a)(3), as amended by Section 1 of this act and Section 2.18(a) of S.L. 2012-79, reads as rewritten:

"§ 105-236. Penalties; situs of violations; penalty disposition.

(a) Penalties. – The following civil penalties and criminal offenses apply:

...

(3) Failure to File Return. – In case of failure to file any return on the date it is due, determined with regard to any extension of time for filing, the Secretary shall assess a penalty equal to five percent (5%) of the net amount of tax due if the failure is for not more than one month, with an additional five percent (5%) for each additional month, or fraction thereof, during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate."

**SECTION 3.** If the Department of Revenue has assessed a failure to file penalty under G.S. 105-236(a)(3) against a taxpayer based on a calculation that includes taxes that were timely paid, the Department must take the following actions:

(1) If the assessment is outstanding, the Department must cancel the assessment. The Department may then assess a penalty based on the net amount due.



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1                   (2)     If the assessment has been paid, the Department must refund the portion of  
2                   the assessment that was calculated based on taxes that were timely paid. If  
3                   all of the assessment is based on taxes that were timely paid, the Department  
4                   must also cancel the assessment so that the taxpayer's record does not reflect  
5                   the imposition of a penalty.

6                   **SECTION 4.** Section 2 of this act becomes effective on the same date as Section  
7                   2.18(a) of S.L. 2012-79. The remainder of this act is effective when it becomes law.