



DIRECTIVE

Subject: When a North Carolina Tax Return or Other Document is Considered Timely Filed or a Tax is Considered Timely Paid if the Due Date Falls on a Saturday, Sunday, or Legal Holiday

Tax: All North Carolina Tax Schedules

Law: N.C. Gen. Stat. §§ 105-241.6, 105-241.8, 105-263, and 105-264

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The purpose of this Directive is to provide guidance as to when a North Carolina tax return or other document is considered timely filed or a tax is considered timely paid if the due date falls on a Saturday, Sunday, or legal holiday. For purposes of this Directive, “other document” includes an amended return, a claim for refund, and a request for review. The Directive also provides specific guidance on how the allowance of extra days to file a North Carolina tax return or other document or to pay a tax when the due date falls on a Saturday, Sunday, or legal holiday affects the application of the statute of limitations for refunds and assessments.

North Carolina Law

North Carolina General Statute (“N.C. Gen. Stat.”) § 1-593 provides “[t]he time within which an act is to be done, as provided by law, shall be computed in the manner prescribed by Rule 6(a) of the Rules of Civil Procedure.”

N.C. Gen. Stat. § 1A-1, Rule 6(a) provides, in pertinent part, when the last day of the time period for an act falls on a Saturday, Sunday, or a legal holiday, “the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday.”

N.C. Gen. Stat. § 105-113.109 provides, in pertinent part, “[t]he tax is payable within 48 hours after the dealer acquires actual or constructive possession of a non-tax-paid unauthorized substance, exclusive of Saturdays, Sundays, and legal holidays of this State, in which case the tax is payable on the next working day.”

N.C. Gen. Stat. § 105-164.43D(a) provides, “[w]hen the last day for doing an act required or permitted by this Article or Subchapter VIII of this Chapter falls on a Saturday, Sunday, or holiday, the act is considered to be done within the prescribed time limit if it is done on the next business day.”

N.C. Gen. Stat. § 105-164.43D(b) provides “[i]f the Federal Reserve Bank is closed on a due date that prohibits a person from making a payment by ACH debit or credit as required by this Article or Subchapter VIII of this Chapter, the payment is timely if made on the next day the Federal Reserve Bank is open.”

N.C. Gen. Stat. § 105-241.6(a) provides “[t]he general statute of limitations for obtaining a refund of an overpayment is the later of ... (1) [t]hree years after the due date of the return [or] (2) [t]wo years after payment of the tax.”

N.C. Gen. Stat. § 105-241.8(a) provides, in pertinent part, “[t]he general statute of limitations for proposing an assessment is the later of ... (1) [t]hree years after the due date of the return [or] (2) [t]hree years after the taxpayer files the return.”

N.C. Gen. Stat. § 105-263(a) provides, in pertinent part, “[s]ections 7502 and 7503 of the Code govern when a return, report, payment, or any other document that is mailed to the Department is timely filed.”

N.C. Gen. Stat. § 105-264(a) provides, in pertinent part, “[i]t is the duty of the Secretary to interpret all laws administered by the Secretary...”

N.C. Gen. Stat. § 105-395.1 provides, “[w]hen the last day for doing an act required or permitted by this Subchapter falls on a Saturday, Sunday, or holiday, the act is considered to be done within the prescribed time limit if it is done on the next business day.”

Administrative Rule 17 NCAC 01C .0503 provides the term “Holiday” for purposes of electronic funds transfer means a State Holiday or a Holiday recognized by the Federal Reserve District.

Administrative Rule 17 NCAC 01C .0509 provides, in pertinent part, “[t]axpayers who are required to remit tax payments through EFT must initiate the transfer so that the amount due settles into the Department's bank account on or before the due date under the appropriate General Statute. If a tax due date falls on a Saturday, a Sunday, or a legal holiday, the deposit by electronic funds transfer is required on or before the first banking day thereafter. If the date on which the taxpayer is required to initiate either an ACH Debit or an ACH Credit transfer (call-in day) falls on a Saturday, Sunday, or a holiday, the taxpayer must initiate the transaction on the preceding business day. Additionally, the administrative rule provides “[i]f a taxpayer is approved for the ACH Credit payment method, the taxpayer is responsible for ensuring the bank originating the transaction has the information necessary for timely completion of the transaction. Further the taxpayer is responsible for the correct completion of the transaction.”

Federal Law

Section 7502 of the Internal Revenue Code (“Code”) is commonly referred to as the “mailbox rule” and provides that a return is considered timely filed or a tax timely paid if the return or payment were timely mailed based on the postmark on the mailing or based on the electronic postmark if submitted electronically.

Code section 7503 is commonly referred to as the “weekend or holiday rule” and provides that an act is considered to be timely performed if the last date set by law for performing the act falls on a Saturday, Sunday or legal holiday and the act is performed on the next day that is not a Saturday, Sunday or legal holiday. The term ‘legal holiday’ means a legal holiday in the District of Columbia; and in the case of any federal return, statement, or other document required to be filed, or any other act required under authority of the internal revenue laws to be performed, at any Internal Revenue Service office. The term ‘legal holiday’ also means a Statewide legal holiday in the State where such office is located.”

IRS Regulation § 301.7502-1 provides, in pertinent part, that “[a] document filed electronically with an electronic return transmitter is deemed to be filed on the date of the electronic postmark given by the electronic return transmitter...[T]he term ‘electronic postmark’ means a record of the date and time that an authorized electronic return transmitter receives the transmission of a taxpayer’s electronically filed document on its host system...[I]f the taxpayer and the electronic return transmitter are located in different time zones, it is the taxpayer’s time zone that controls the timeliness of the electronically filed document.”

Application of Federal Law

Emancipation Day

Emancipation Day is a legal holiday in the District of Columbia and is celebrated annually on April 16. When April 16 falls on a Monday through Friday, Emancipation Day is observed on that day. When April 16 falls on a Saturday, the holiday is observed on Friday, April 15. When April 16 falls on a Sunday, the holiday is observed on Monday, April 17.

Patriot’s Day

The states of Maine and Massachusetts observe Patriot’s Day on the third Monday in April. When the third Monday of April falls on the day federal tax returns are due, persons, other than corporations, who are residents of Maine or Massachusetts have an extra day to timely file their income tax returns or pay their income tax. The extra day to timely file a tax return or pay a tax does not apply to estimated tax payments.

Application of North Carolina Law

The relief provided by N.C. Gen. Stat. § 105-263, as interpreted by the Secretary, or otherwise provided by the North Carolina General Statutes, is as follows:

Filing of Returns and Other Documents

North Carolina will consider any document with a due date on a Saturday, Sunday, or legal holiday as being timely filed if delivered in person or mailed or electronically submitted to the Department on or before the next business day after the Saturday, Sunday, or legal holiday.

Examples:

- Emancipation Day is observed on Friday, April 15, 2016. Any document due on April 15, 2016 must be mailed or electronically submitted to the Department on or before Monday, April 18, 2016 to be considered timely filed. Documents delivered to the Department in person on Monday, April 18, 2016 will also be considered timely filed.
- May 15, 2016 falls on a Sunday. Any document due on May 15, 2016, must be mailed or electronically submitted to the Department on or before Monday, May 16, 2016 to be considered timely filed. Documents delivered to the Department in person on Monday, May 16, 2016 will also be considered timely filed.
- Patriot's Day falls on Monday, April 18, 2016, the day federal returns are considered timely filed and taxes are considered timely paid because of Emancipation Day. Maine and Massachusetts residents may file their individual income tax returns due on April 18, 2016 with the Department on or before Tuesday, April 19, 2016 to be considered timely filed. This relief also applies to partnerships, limited liability companies filing as partnerships, trusts, and estates filing income tax returns. This relief does not apply to corporations filing income tax returns, any other tax schedules, any other documents, or payments other than the payment of tax due with an income tax return that is considered timely if filed on or before April 19, 2016 pursuant to this Directive. .
- The Department of Revenue mails a notice of proposed assessment to a taxpayer on Thursday, May 5, 2016. By statute, the taxpayer has forty-five days to request a review of the proposed assessment. The forty-fifth day is Sunday, June 19, 2016; therefore, the request for review will be considered timely filed if it is postmarked and mailed or electronically submitted to the Department or delivered to the Department in person on Monday, June 20, 2016.

Tax Payments

North Carolina will consider any tax payment with a due date on a Saturday, Sunday, or legal holiday as being timely paid if delivered in person or mailed to the Department on the next business day after the Saturday, Sunday, or legal holiday.

The Department has two methods for making electronic funds transfers – ACH Debit and ACH Credit. The guidelines for each method require the taxpayer to initiate the transfer of funds no later than the day before the due date of the payment (by 3:45 p.m., Eastern Time for ACH Debit; by the cut-off time established by the payer's financial institution for ACH Credit) to insure that the transfer of funds is accomplished on the due date. If a tax due date falls on a Saturday, Sunday, State-observed holiday, or Federal Reserve Bank holiday, the payment is considered timely if the Department receives the funds on or before the next federal reserve banking day.

Examples:

- Emancipation Day is observed on Friday, April 15, 2016. Because April 15, 2016, is neither a State-observed holiday nor a Federal Reserve Bank holiday, payments due on Monday, April 18, 2016 because of Emancipation Day that are made by electronic funds transfer must be initiated on or before Friday, April 15, 2016 to ensure payment is timely received on Monday, April 18, 2016. Payments with income tax returns of Maine and Massachusetts residents due on April 19, 2016 because of the combination of Emancipation Day and Patriot's Day that are made by electronic funds transfer must be initiated on or before Monday, April 18, 2016 to ensure payment is timely received on Tuesday, April 19, 2016.
- May 15, 2016 falls on a Sunday. All payments due on May 15, 2016 must be postmarked and mailed to the Department on or before Monday, May 16, 2016 to be considered timely paid. Payments delivered to the Department in person on or before Monday, May 16, 2016 will also be considered timely filed. Electronic funds transfers must be initiated by Friday, May 13, 2016 to ensure the transfer of funds is accomplished on Monday, May 16, 2016.

Statute of Limitations

The relief provided under the various statutes cited above allowing the Department to consider a return or payment as timely if the due date is on a Saturday, Sunday, or legal holiday and the return or payment is delivered, mailed, or electronically submitted on the next business day **does not** change the statutory due date of the document. The relief applies both to actions taken by a taxpayer and actions taken by the Department.

Examples:

- A taxpayer timely files a 2015 income tax return on April 18, 2016. Presuming that there are no subsequent payments of tax, the taxpayer will have until April 15, 2019 to obtain a refund of any overpayment of tax because April 15, 2019 is not a Saturday, Sunday, or legal holiday, nor will April 15, 2019 be impacted by Emancipation Day that year.
- A taxpayer timely files a fiscal year 2015 corporate income and franchise tax return on June 15, 2016. Presuming that there are no subsequent payments of tax, the taxpayer will have until June 17, 2019 to initiate a refund of any overpayment because June 15, 2019 is a Saturday.
- A taxpayer mails a 2015 income tax return on April 18, 2016. The Department may timely propose an assessment by April 18, 2019.
- A taxpayer timely files a withholding tax return for the month of May 2016 on June 15, 2016. Because June 15, 2019 is a Saturday, the Department must propose an assessment by Monday, June 17, 2019 to be timely.
- A taxpayer, on September 20, 2018, files and pays a sales and use tax return and tax due for the month of March 2016. The return and payment were due on April 20, 2016. Presuming there are no subsequent payments of tax, the taxpayer will have until September 21, 2020 to initiate a refund of any overpayment because September 20, 2020 is a Sunday.

Questions

Questions about this Directive may be directed to the Taxpayer Assistance Division at 1-877-252-3052.