



NCDOR

**NORTH
CAROLINA
DEPARTMENT
OF REVENUE**

Transfer Pricing Resolution Initiative Frequently Asked Questions

- Q1. If a taxpayer is currently under audit and decides to participate in the initiative, who handles the case?
- A. *Audit will facilitate the case if the auditor has contacted the taxpayer and engaged in work on the audit. If a taxpayer has only received notice of an impending audit, taxpayer may submit its participation to either audit or tax administration. Regardless, the Department will coordinate a resolution in these cases.*
- Q2. If a taxpayer is currently in a Request for Review, may they participate in the initiative? If so and the taxpayer and the Department do not come to an agreement, what happens next?
- A. *Yes, taxpayers in the review process may participate. If no agreement is reached, the existing statutory procedures (e.g., issuance of a Notice of Final Determination) will apply.*
- Q3. If a taxpayer is currently under audit and elects to participate in the initiative, but the Department and the taxpayer do not come to an agreement, does the case just return to audit without further opportunity to settle or waive penalties?
- A. *If the taxpayer elects to participate while in audit, and no agreement is reached, the audit process will resume under normal audit procedures.*
- Q4. Will taxpayers currently under audit that do not participate in the initiative be allowed to request waiver of penalties?
- A. *Taxpayers that elect not to participate in the initiative still can request a waiver of penalties, but the Department does not intend to grant a special circumstances waiver.*
- Q5. Are rights to appeal being impacted by this initiative?
- A. *Any resolution agreement reached by the Department and a taxpayer through the initiative process will require the taxpayer to waive its right to appeal. If the taxpayer and the Department do not reach an agreement, the taxpayer's statutory rights to appeal will not be affected in any way by the initiative.*

- Q6. Does a taxpayer have to participate in all open years?
- A. *No. A taxpayer may participate in years under review or under audit if it chooses.*
- Q7. How will non-filing affiliates to the intercompany transaction be looked at or handled? Will an administrative look-back period be applied?
- A. *The rules of voluntary disclosure will apply to non-filing affiliates that qualify under the [voluntary disclosure program](#). This typically covers the audit or review period. For cases in tax administration, the years will be limited to those under review, including any future years subject to a closing agreement.*
- Q8. After the Department makes their proposal and it is within the 15-day window, will back and forth negotiations be allowed?
- A. *Yes, to the extent time allows.*
- Q9. What is the extent of the review of the intercompany transactions?
- A. *For participants in the program, the Department intends to review intercompany transactions per its standard procedure, including any relevant reciprocal adjustments. However, documentation regarding the economic substance requirement will not be requested or evaluated.*
- Non-transfer pricing items will be reviewed according to normal audit or request for review procedures.*
- Q10. How long does each side have to pay a refund/additional tax due at the end of a resolution?
- A. *The Settlement Agreement will determine timing of payment; however, appropriate interest will apply to any underpayment or overpayment in accordance with G.S. 105-241.21*
- Q11. Does the Department intend on using third party consultants?
- A. *The Department intends to use its existing transfer pricing software, but will also use existing consultants to the extent necessary in reaching a fair resolution.*
- Q12. If resolution cannot be reached by December 1st will extension of time be allowed?
- A. *No. The regular process for audit and request for review will apply for any resolution not reached by the December 1, 2020 deadline.*

- Q13. Will taxpayers be allowed to present facts anonymously?
- A. *Taxpayers need to disclose their identity and sign an agreement to participate by September 15, 2020. Voluntary redetermination procedures will still apply.*
- Q14. If a Taxpayer does not participate in the initiative, opts out, or does not successfully complete the TPRI, will a “good compliance penalty waiver” still be available if the taxpayer otherwise qualifies?
- A. *Good compliance waivers will apply if a taxpayer qualifies under the Department’s [penalty waiver policy](#), but special circumstances waivers will not be granted.*
- Q15. If a taxpayer has intercompany transactions and strongly believes and has support for its intercompany pricing structure (regardless of whether they are under audit and regardless of whether the taxpayer is already in the appeals process), could they participate in the program to propose that the pricing which is currently in place for such transactions is appropriate? In other words, the Taxpayer’s proposal would be that no adjustment to intercompany transfer pricing is appropriate.
- A. *Yes. A taxpayer currently under audit, not under audit, or in the request for review may participate. That a taxpayer believes that no adjustment is necessary is not a barrier to participating. The Department will consider all relevant evidence the taxpayer puts forward in support of its position.*
- Q16. It appears that it is the Department’s desire to close out all open years through this process with respect to all issues, except federal RAR adjustments. If there is agreement between the Department and the taxpayer with respect to transfer pricing, but disagreement on one or two other issues or areas, will the agreement close out the year except for those other issues or areas where there is disagreement as well as federal RAR adjustments?
- A. *Our objective is to settle all issues, except those related to a subsequent federal determination that affects State tax payable, but the Department can agree to settle the transfer pricing issue and allow for the process to continue for any other issues per statute and according to the terms of the settlement agreement.*