

## Frequently Asked Questions Regarding State Tax Relief for Victims of Hurricane Ian

In response to Hurricane Ian, President Biden declared a major disaster on October 1, 2022, and ordered federal aid to supplement State, tribal, and local recovery efforts in the areas affected by Hurricane Ian beginning on September 28, 2022. On October 5, 2022, the [Internal Revenue Service \(“IRS”\) announced tax relief](#) available to victims of Hurricane Ian that reside or have a business located anywhere in North Carolina.

On October 7, 2022, the North Carolina Department of Revenue (“Department”) issued an [Important Notice](#) explaining State tax relief for certain persons affected by Hurricane Ian (“Affected Taxpayers”). These FAQs are intended to accompany the Important Notice. Please refer to the Important Notice for a definition of terms.

**Q1. I am an Affected Taxpayer. I file my North Carolina income tax return (“NC Income Tax Return”) on a calendar year basis. In April 2022, I was granted an extension to file my 2021 NC Income Tax Return, which extended the due date to file my return to October 15, 2022.<sup>1</sup>**

**Did the Secretary automatically extend the due date to file the 2021 NC Income Tax Return to February 15, 2023?**

A1: No. The extension to file the 2021 federal income tax return did not extend the date to file the NC Income Tax Return.<sup>2</sup>

Therefore, for the Affected Taxpayer, the due date to file the 2021 NC Income Tax Return remains October 15, 2022.

**Q2: I am an Affected Taxpayer. I file my NC Income Tax Return on a calendar year basis. In April 2022, I was granted an extension to file my 2021 NC Income Tax Return, which extended the due date to file my NC Income Tax Return to October 15, 2022.<sup>3</sup>**

**If I file my 2021 NC Income Tax Return on February 15, 2023, will I owe a penalty for failure to file the return on the date it is due?**

A2: No. As outlined in the Important Notice, the Department will generally remove any Late Action Penalties assessed against an Affected Taxpayer for licenses, returns, or payments due from September 28, 2022, through February 15, 2023 (“Postponement

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<sup>1</sup> Because October 15, 2022, was a Saturday, the Department will consider a NC Income Tax Return filed on Monday, October 17, 2022, as timely. See [Directive TA-16-1](#).

<sup>2</sup> See HB 83, s. 5.5.(b), [S.L. 2022-13](#).

<sup>3</sup> See [Directive TA-16-1](#).

Period”), if the license is obtained, the return is filed, or the tax is paid by February 15, 2023.

Therefore, if the Affected Taxpayer files a 2021 NC Income Tax Return on February 15, 2023, with a net tax due<sup>4</sup>, the Department will remove the penalty for failure to file a return on the date it is due that is assessed against the Affected Taxpayer.

**Q3: I am an Affected Taxpayer. I file my NC Income Tax Return on a calendar year basis. In April 2022, I was granted an extension to file my 2021 NC Income Tax Return, which extended the due date to file my NC Income Tax Return to October 15, 2022.**

**If I file my NC Income Tax Return on February 15, 2023, will I owe a penalty for failure to pay the tax when due?**

A3: Yes. Under North Carolina law, an extension of time to file a franchise tax return or an income tax return does not extend the time to pay the tax due.<sup>5</sup> Importantly, however, [Administrative Rule 06B .0107](#) provides:

A late payment penalty applies to an income tax due if less than 90% of the total amount of tax due is paid by the due date. If the 90% requirement is met, any remaining balance due must be paid with the income tax return **before the expiration of the extension period to avoid the late payment penalty.** (Emphasis added.)

Therefore, if the Affected Taxpayer files a 2021 NC Income Tax Return on February 15, 2023 (four months after the expiration of the extension period), with a net tax due, the Department will not remove the penalty for failure to pay a tax when due assessed against the Affected Taxpayer. The Affected Taxpayer may, however, request the penalty be waived pursuant to the [Department’s Penalty Waiver Policy](#).

**Note:** If the Affected Taxpayer files a 2021 NC Income Tax Return on February 15, 2023, but paid at least 90% of the net income tax due by April 15, 2022, the Department will remove the penalty for failure to pay a tax when due assessed against the Affected Taxpayer if the Affected Taxpayer paid the remaining balance by October 15, 2022.

**Q4: I am an Affected Taxpayer. I file my NC Income Tax Return on a calendar year basis. In April 2022, I was granted an extension to file my 2021 NC Income Tax Return, which extended the due date to file my NC Income Tax Return to October 15, 2022.**

**If I file my NC Income Tax Return on February 15, 2023, will I owe interest?**

A4: Yes. Under North Carolina law, an extension of time to file a franchise tax return or an income tax return does not extend the time to pay the tax due.<sup>6</sup> Moreover, interest accrues on an underpayment of tax from the date the payment is due until the tax is paid.<sup>7</sup>

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<sup>4</sup> Net tax due is the amount of tax due that exceeds the amount of timely tax payments and allowable credits.

<sup>5</sup> See [G.S. 105-263\(b\)](#).

<sup>6</sup> See *Id.*

<sup>7</sup> See [G.S. 105-241.21\(b\)](#).

Therefore, if the Affected Taxpayer files a 2021 NC Income Tax Return on February 15, 2023, with a net tax due, the Affected Taxpayer will owe interest on the tax due from April 15, 2022, until the tax is paid.

**Q5: I am an Affected Taxpayer. I file my NC Income Tax Return on a calendar year basis. I did not request an extension to file my 2021 NC Income Tax Return.**

**If I file my NC Income Tax Return on February 15, 2023, am I eligible for State tax relief?**

A5: No. As outlined in the Important Notice, the Department will generally remove any Late Action Penalties assessed against an Affected Taxpayer for licenses, returns, or payments due during the Postponement Period, if the license is obtained, the return is filed, or the tax is paid by February 15, 2023.

Therefore, if the Affected Taxpayer files a 2021 NC Income Tax Return on February 15, 2023 (10 months after the due date of the NC Tax Return), the Affected Taxpayer is not eligible for State tax relief.

**Q6. I am an Affected Taxpayer. I file my NC Income Tax Return on a calendar year basis. Because of Hurricane Ian, I did not make estimated tax payments due to be filed during the Postponement Period.**

**Am I eligible for State tax relief?**

A6: No. Under North Carolina law, the liability for failure to pay estimated income tax timely is interest.<sup>8</sup> Importantly, the Secretary is only authorized to waive interest if the interest accrued on taxes imposed prior to or during a period for which the taxpayer has declared bankruptcy.<sup>9</sup>

Therefore, if the Affected Taxpayer is assessed interest for failure to pay estimated income tax during the Postponement Period, the Department cannot waive the interest.

**Q7. I am a partner in a partnership doing business in North Carolina. The partnership is an Affected Taxpayer. The partnership files its North Carolina partnership income tax return (“NC Partnership Return”) on a calendar year basis. In April 2022, the partnership was granted an extension to file its 2021 NC Partnership Return, which extended the due date to file the NC Partnership Return to October 15, 2022.**

**If the partnership files its 2021 NC Partnership Return on February 15, 2023, is the partnership eligible for State tax relief?**

A7: It depends. As outlined in the Important Notice, the Department will generally remove any Late Action Penalties assessed against an Affected Taxpayer for licenses, returns, or payments due during the Postponement Period, if the license is obtained, the return is filed, or the tax is paid by February 15, 2023.

<sup>8</sup> See [G.S. 105-163.15\(a\)](#) and [G.S. 105-163.41\(a\)](#).

<sup>9</sup> See [G.S. 105-237\(a\)\(2\)](#).

Therefore, if the Affected Taxpayer files its 2021 NC Partnership Return on February 15, 2023, with a net tax due,<sup>10</sup> the Department will:

- (1) Remove the penalty for failure to file a return on the date it is due that is assessed against the Affected Taxpayer.
- (2) Not remove the penalty for failure to pay a tax when due assessed against the Affected Taxpayer. The Affected Taxpayer may, however, request the penalty be waived pursuant to the [Department’s Penalty Waiver Policy](#).
- (3) Not remove the informational return penalty<sup>11</sup> assessed against the Affected Taxpayer because the informational return penalty is not a Late Action Penalty. The Affected Taxpayer may, however, request the penalty be waived pursuant to the [Department’s Penalty Waiver Policy](#).

**Q8. I am a retailer located in North Carolina. I am an Affected Taxpayer. How does the State tax relief impact North Carolina sales & use tax returns (“NC Sales & Use Tax Returns”) and payments?**

A8: It depends. As outlined in the Important Notice, the Department will generally remove any Late Action Penalties assessed against an Affected Taxpayer for licenses, returns, or payments due during the Postponement Period, if the license is obtained, the return is filed, or the tax is paid by February 15, 2023.

Therefore, if the Affected Taxpayer is required to file a NC Sales & Use Tax Return during the Postponement Period, the Department will remove any Late Action Penalties assessed against the Affected Taxpayer if the NC Sales and Use Tax Return is filed and the associated tax is paid by February 15, 2023. An Affected Taxpayer may use the following chart to determine whether an NC Sales & Use Tax Return is eligible for State tax relief:

<b>Monthly Returns &amp; Payments</b> (Includes Monthly with Prepayment Filing Frequency)		
<b>Month</b>	<b>Due Date</b>	<b>File and Pay By</b>
September 2022	10/20/22	2/15/23
October 2022	11/20/22	2/15/23
November 2022	12/20/22	2/15/23
December 2022	1/20/23	2/15/23

<b>Quarterly Returns &amp; Payments</b>		
<b>Quarter</b>	<b>Due Date</b>	<b>File and Pay By</b>
July 1 - Sept. 30, 2022	10/31/23	2/15/23
Oct. 1 - Dec. 31, 2022	1/31/23	2/15/23

**Note:** The State tax relief did not extend the due date to file the NC Sales & Use Tax

<sup>10</sup> Net tax due” is the amount of tax due that exceeds the amount of timely tax payments and allowable credits.

<sup>11</sup> See [G.S. 105-236\(a\)\(10\)\(c\)](#).

Return or to make the associated tax payment.<sup>12</sup> As a result, an Affected Taxpayer will owe interest on the tax payment from the due date of NC Sales & Use Tax Return until the tax is paid.

**Q9: I own a business with employees located in North Carolina. I am an Affected Taxpayer. How does the State tax relief impact my North Carolina withholding tax returns (“NC Withholding Tax Return”) and payments (“NC Withholding Payments”)?**

**A9:** It depends. As outlined in the Important Notice, the Department will generally remove any Late Action Penalties assessed against an Affected Taxpayer for licenses, returns, or payments due during the Postponement Period, if the license is obtained, the return is filed, or the tax is paid by February 15, 2023.

Therefore, if the Affected Taxpayer is required to file a NC Withholding Tax Return on a quarterly or monthly basis during the Postponement Period, the Department will remove Late Action Penalties assessed against the Affected Taxpayer if the NC Withholding Tax Return is filed and the associated NC Withholding Payment is made by February 15, 2023. If, however, the Affected Taxpayer is required to make NC Withholding Payments on a semiweekly basis,<sup>13</sup> the Department will only remove the penalty for failure to pay a tax when due on an NC Withholding Payment that was due on or after September 28, 2022, and before October 13, 2022, if the NC Withholding Payment was paid on or before October 13, 2022.

An Affected Taxpayer may use the following charts to determine whether an NC Withholding Tax Return or NC Withholding Payment is eligible for State tax relief:

<b>Monthly Returns &amp; Payments</b>		
<b>Month</b>	<b>Due Date</b>	<b>File and Pay By</b>
September 2022	10/15/22	2/15/23
October 2022	11/15/22	2/15/23
November 2022	12/15/22	2/15/23
December 2022	1/31/23	2/15/23

<b>Quarterly Returns &amp; Payments</b>		
<b>Quarter</b>	<b>Due Date</b>	<b>File and Pay By</b>
Jul. 1 - Sep. 30, 2022	10/31/22	2/15/23
Oct. 1 - Dec. 31, 2022	1/31/23	2/15/23

<sup>12</sup> See HB 83, s. 5.5.(a), [S.L. 2022-13](#).

<sup>13</sup> See [G.S. 105-163.6\(d\)](#).

Semiweekly Payments		
Payroll Period	Due Date	Pay By
Sep. 21 - Sep. 23, 2022	9/28/22	10/13/22
Sep. 24 - Sep. 27, 2022	9/30/22	10/13/22
Sep. 28 - Sep. 30, 2022	10/5/22	10/13/22
Oct. 1 - Oct. 4, 2022	10/7/22	10/13/22
Oct. 5 - Oct. 7, 2022	10/13/22	10/13/22

Semiweekly Returns (Reports Semiweekly Payments Made During the Quarter)		
Quarter	Due Date	File By
Jul. 1 - Sep. 30, 2022	10/31/22	2/15/23
Oct. 1 - Dec. 31, 2022	1/31/23	2/15/23

**Note:** The State tax relief did not extend the due date to file the NC Withholding Tax Return or make NC Withholding Payments. As a result, an Affected Taxpayer will owe interest on the NC Withholding Payment from the due date of the payment until the tax is paid.

In addition, the Department will not remove the informational return penalty<sup>14</sup> assessed against the Affected Taxpayer if the Affected Taxpayer does not file an annual withholding reconciliation form ([Form NC-3](#)) on or before January 31, 2023. The Affected Taxpayer may, however, request the penalty be waived pursuant to the [Department's Penalty Waiver Policy](#).

**Q10: How does the State tax relief impact North Carolina excise tax returns and payments for the privilege tax, tobacco products tax, alcoholic beverages tax, motor fuel tax, alternative fuel tax, and inspection tax?**

A10: It depends. The State tax relief as outlined in the Important Notice applies to the following tax areas:

- Privilege Tax ([Chapter 105, Article 2](#))
- Tobacco Products Tax ([Chapter 105, Article 2A](#))
- Alcoholic Beverages Tax ([Chapter 105, Article 2C](#))
- Motor Fuel Tax ([Chapter 105, Article 36C](#))
- Alternative Fuel Tax ([Chapter 105, Article 36D](#))
- Inspection Tax ([Chapter 119, Article 3](#))

As outlined in the Important Notice, the Department will generally remove any Late Action Penalties assessed against an Affected Taxpayer for licenses, returns, or payments due during the Postponement Period, if the license is obtained, the return is filed, or the tax is paid by February 15, 2023. As noted

<sup>14</sup> See [G.S. 105-236\(a\)\(10\)\(c\) and \(d\)](#).

above, the State tax relief did not extend the due date to file a return or pay tax. Therefore, interest will be assessed on any tax due from the date the tax was due until the date the tax is paid.

**Note:** The State tax relief is limited to the Late Action Penalties as defined in the Important Notice. Therefore, persons operating without a license may still be subject to other civil and criminal penalties for operating without a license (e.g., [G.S. 105-449.52](#)). Similarly, motor carriers who do not timely file a report or pay a tax remain subject to failure to file penalties and failure to pay penalties in accordance with [G.S. 105-449.45\(d\)](#) and [G.S. 105-449.45\(d1\)](#).

### **Assistance**

If you have any questions about this notice, you may call the North Carolina Department of Revenue Customer Interaction Center at 1-877-252-3052 (8:00 am until 4:30 pm Eastern Time, Monday through Friday), or write the Department at PO Box 25000, Raleigh, NC 27640-0640.

*To the extent there is any change to a statute or regulation, or new case law subsequent to the date of this notice, the provisions in this notice may be superseded or voided. To the extent that any provisions in any other notice, directive, technical bulletin, or published guidance regarding the subject of this notice and issued prior to this notice conflict with this notice, the provisions contained in this Important Notice supersede the previous guidance.*