



North Carolina Passes Budget Bill

On August 5, 2009, the North Carolina General Assembly passed a budget bill (S202) that imposes corporate and personal income surcharges, raises sales and use, alcohol beverage, cigarette and tobacco tax rates, updates IRC conformity and adopts an *Amazon* clause, similar to the provision currently in effect in New York, requiring out-of-state online retailers to collect tax on purchases made as a result of referrals from North Carolina-based websites.

The bill was ratified and signed by Governor Bev Perdue August 7, 2009, and is now the Appropriations Act of 2009 S.L. 2009-451.

Some of the notable provisions of the bill include:

Corporate income surcharge. The legislation imposes a surcharge on corporate income taxpayers equal to 3% of the income tax due for the year. The surcharge expires for tax years beginning on or after January 1, 2011.

Personal income tax surcharge. A 2% personal income tax surcharge is imposed on joint filers with income over \$100,000 up to \$250,000%; heads of household with income over \$80,000 up to \$200,000 single filers with income over \$60,000 up to \$150,000, and married filing separately taxpayers with income over \$50,000 up to \$125,000. The surcharge is equal to 3% of personal income tax paid for the year for joint filers with income over \$250,000; heads of household with income over \$200,000; single filers with income over \$150,000 and married filing separately taxpayers with income over \$125,000. The surcharge sunsets for tax years beginning on or after January 1, 2011.

Sales and use tax rate. The state sales and use tax rate is increased to 5.5% (currently 4.5%) applicable to sales made on or after September 1, 2009. As a result of the increase on September 1, the combined state and county tax rate will increase to 8.25 percent in Mecklenburg County, 8 percent in Alexander, Catawba, Cumberland, Haywood, Martin, Pitt, Sampson, and Surry Counties, and 7.75 percent in the remaining 91 counties.

Digital property subject to sales and use tax. Effective January 1, 2010, the legislation applies the sales and use tax to digital property, such as an audio work (including ring tones), an audiovisual work, book, magazine, newspaper, newsletter, report or other publication; photograph or greeting card, that is delivered or accessed electronically, is not considered tangible personal property, and would be taxable if sold in a tangible medium. The tax applies regardless of whether the purchaser of the item has a right to use it permanently or to use it without making continued payments. The tax does not apply to a service that is otherwise subject to sales and use tax or to an information service.

Cigarette and tobacco tax increases

Beginning Sept. 1, 2009 the state excise tax on cigarettes will increase to 2.25 cents per individual cigarette (45 cents per pack of 20), and the state excise tax on "other tobacco products" will increase to 12.8 percent of the cost price of the products.

In addition, every person subject to the tobacco products tax increase must also file a complete inventory by Sept. 21 and pay an additional tax equal to the difference between the former tax rate and the increased tax rate.

Note: unlike the tobacco tax increase in 2007, retailers that sell tobacco products and **are not subject to the tobacco excise taxes** are not subject to the additional tax on their inventories of tobacco products (includes cigarettes and other products like cigars and chewing tobacco).

Alcoholic beverage tax rates. Effective September 1, 2009, the alcoholic beverage tax rate on malt beverages increases to 61.71¢ per gallon (currently 53.177¢). The rate on unfortified wine increases to 26.34¢ per liter (currently 21¢), while the rate on fortified wine is raised to 29.34¢ per liter (currently 24¢). An excise tax of 30% (currently 25%) is imposed on liquor sold in ABC stores.

Amazon clause added. Effective July 1, 2009, the legislation expands nexus for sales and use tax purposes by providing that a retailer who makes a remote sale is engaged in business in North Carolina and is subject to sales and use tax if a retailer solicits or transacts business in North Carolina using employees, independent contractors, agents, or other representatives, whether the remote sales result from or are related in any other way to the solicitation or transaction of business. A retailer is presumed to be soliciting or transacting business by an independent contractor, agent, or other representative if the retailer enters into an agreement with a North Carolina resident under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an Internet web site or otherwise, to the retailer. This presumption applies only if the cumulative gross receipts from sales by the retailer to purchasers in North Carolina who are referred to the retailer by all residents with this type of agreement with the retailer is in excess of \$10,000 during the preceding four quarterly periods. This presumption may be rebutted by proof that the resident with whom the retailer has an agreement did not engage in any solicitation in North Carolina on behalf of the seller that would satisfy the nexus requirement of the U.S. Constitution during the four quarterly periods in question. "Remote sale" is defined as a sale of tangible personal property or digital property ordered by mail, by telephone, via the Internet, or by another similar method, to a purchaser who is in North Carolina at the time the order is remitted, from a retailer who receives the order in another state and delivers the property or causes it to be delivered to a person in North Carolina. It is presumed that a resident of North Carolina who remits an order was in North Carolina at the time the order was remitted. A nonresident retailer who purchases advertising to be delivered by television, by radio, in print, on the Internet, or by any other medium is not considered to be engaged in business in North Carolina based solely on the purchase of the advertising.

For more details, refer to the Appropriations Act of 2009 S.L. 2009-451

<http://www.ncleg.net/Sessions/2009/Bills/Senate/PDF/S202v8.pdf>