

## North Carolina Tax Legislation Enacted

### Overview

On June 21, 2017, North Carolina Governor Roy Cooper signed House Bill 59 (H.B. 59).<sup>1</sup> H.B. 59 as enacted impacts state income, franchise, sales and use, and excise taxes. In addition, on June 28, 2017, the North Carolina General Assembly overrode Governor Cooper's veto of Senate Bill 257 (S.B. 257)<sup>2</sup> – thereby enacting S.B. 257 into law – which includes further modifications to North Carolina tax law.

This Tax Alert highlights some of the more notable North Carolina tax law changes (which have various effective dates as specified in the discussion that follows) that were contained in these two bills, including:

#### Corporate Income and Franchise Tax:

- Updates the North Carolina income tax code to conform to the Internal Revenue Code (IRC) as of January 1, 2017;
- Provides guidance on the Railroad Intermodal Facility Credit;
- Decreases the corporate income tax rate from 3 percent to 2.5 percent effective for tax years beginning on or after January 1, 2019;
- Amends the franchise tax to include a flat minimum tax of \$200 for the first \$1 million of an S corporation's tax base;

#### Sales and Use Tax:

- Enacts significant sales and use tax exemptions for certain sales of equipment, repeals the 1 percent "mill machinery" privilege tax, and makes sales of mill machinery, mill machinery parts and accessories exempt from sales tax, effective July 1, 2018; and
- Adds a sales tax exemption for certain fulfillment facilities and a sales tax refund for transformative projects, effective July 1, 2017.

### Corporate Income and Franchise Tax

#### Conformity to Internal Revenue Code

H.B. 59 updates North Carolina's general conformity to the IRC "as enacted as of January 1, 2017, including any provisions enacted as of that date that become effective either before or after that date"<sup>3</sup> for state income tax purposes.

#### Lower Corporate Income Tax Rate

S.B. 257 lowers the state corporate income tax rate from three percent (3%) to two and one-half percent (2.5%) for taxable years beginning on or after January 1, 2019.<sup>4</sup> Note that this tax rate previously had been decreased from four percent (4%) to three percent (3%) for taxable years beginning on or after January 1, 2017.<sup>5</sup>

#### Flat Minimum Franchise Tax for S Corporations

S.B. 257 implements a flat minimum tax of two hundred dollars (\$200) for the first \$1 million of an S corporation's tax base, and an additional tax of one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) of an S

<sup>1</sup> Session Law 2017-39 (H.B. 59). A copy of the adopted law is accessible [here](#).

<sup>2</sup> Session Law 2017-57, (S.B. 257). A copy of the adopted law is accessible [here](#).

<sup>3</sup> H.B. 59, Sec. 1, amending N.C. G.S. §105-228.90(b)(1b).

<sup>4</sup> S.B. 257, Sec. 38.5.(b), amending N.C. G.S. § 105-130.3.

<sup>5</sup> S.B. 257, Sec. 38.5.(d).

corporation's tax base that exceeds \$1 million.<sup>6</sup> This tax may not be lower than two hundred dollars (\$200.00). These changes are effective for taxable years beginning on or after January 1, 2019, and are applicable to the calculation of state franchise tax reported on the 2018 and later North Carolina corporate income tax returns.<sup>7</sup>

### **Credit for Constructing a Railroad Intermodal Facility**

H.B. 59 further defines North Carolina's "Railroad Intermodal Facility Credit" and provides that no such credit is allowed to the extent the cost of the eligible railroad intermodal facility was provided by public funds.<sup>8</sup> H.B. 59 also adds that a taxpayer may not take such credit allowed for a leased facility unless the taxpayer (*i.e.*, the lessee) obtains the lessor's written certification that the lessor will not claim the credit with respect to the same facility.<sup>9</sup>

## **Sales and Use Tax**

### **Retail Sales and Use Tax Exemptions**

Sales of mill machinery to manufacturers and certain industrial processors have historically enjoyed preferential tax treatment in North Carolina, including a 1% privilege tax with an \$80 cap per article.<sup>10</sup> S.B. 257 repeals the 1% privilege tax on mill machinery, mill machinery parts and accessories<sup>11</sup> and substitutes a state sales and use tax exemption for these items effective July 1, 2018.<sup>12</sup> The sales tax statute does not define "manufacturer" or "mill machinery"; however, the North Carolina Revenue Laws Study Committee has been tasked with defining these terms.<sup>13</sup>

### **Sales Tax Exemption for Fulfillment Facilities and Refund for Transformative Projects**

S.B. 257 adds a new subsection that exempts a qualified large fulfillment facility from sales tax if it satisfies specific delineated conditions.<sup>14</sup> S.B. 257 also provides additional exemptions for certain sales of equipment, or an accessory, an attachment, or a repair part for equipment that meets specific requirements.<sup>15</sup> This new subsection took effect July 1, 2017.<sup>16</sup> In addition, S.B. 257 includes a sales tax refund for qualified transformative projects<sup>17</sup> that became effective July 1, 2017.<sup>18</sup>

## **Additional changes**

This Tax Alert does not provide a comprehensive summary of all tax law changes contained in H.B. 59 and S.B. 257. Accordingly, taxpayers may want to note that in addition to the various changes highlighted above, H.B. 59 amends other state sales and use tax provisions, as well as certain excise tax and corporate income tax provisions that are beyond the scope of this Tax Alert. Taxpayers also may want to note that S.B. 257 provides the following state individual income tax law changes that have various effective dates: a lower personal income tax rate, an increase to the standard deduction, the conversion of the Child Tax Credit to a deduction, and an extension of the Renewable Energy Tax Credit.

## **ASC 740 treatment**

The tax effects of a change in tax laws or rates on taxes currently payable or refundable for the current year are reflected in the computation of the annual effective tax rate (AETR) after the effective dates prescribed in the statutes or after the new legislation becomes administratively effective, beginning no earlier than the first interim period that includes the

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<sup>6</sup> S.B. 257, Sec. 38.6.(a), adding N.C. G.S. § 105-122(d)(d2).

<sup>7</sup> S.B. 257, Sec. 38.6.(b).

<sup>8</sup> H.B. 59, Sec. 3.(a), amending N.C. G.S. §105-129.96(a).

<sup>9</sup> H.B. 59, Sec. 3.(a), adding N.C. G.S. §105-129.96(c).

<sup>10</sup> S.B. 257, Sec. 38.8.(e).

<sup>11</sup> S.B. 257, Sec. 38.8.(e).

<sup>12</sup> S.B. 257, Sec. 38.8.(b), adding N.C. G.S. § 105-164.13(5e) through (5n).

<sup>13</sup> S.B. 257, Sec. 38.8.(e).

<sup>14</sup> S.B. 257, Sec. 38.9.(a), adding N.C. G.S. § 105-164.3(16f).

<sup>15</sup> S.B. 257, Sec. 38.9.(b), adding N.C. G.S. § 105-164.13(5o).

<sup>16</sup> S.B. 257, Sec. 38.9.(c).

<sup>17</sup> S.B. 257, Sec. 38.9A.(a), adding N.C. G.S. § 105-164.14A(a).

<sup>18</sup> S.B. 257, Sec. 38.9A.(b).

## External Multistate Tax Alert

enactment date of the new legislation (*i.e.*, June 21, 2017 for H.B. 59 and June 28, 2017 for S.B. 257). The effect of a change in tax laws or rates on a deferred tax liability (DTL) or deferred tax asset (DTA) is recognized as a discrete item in the interim period that includes the enactment date and accordingly is not allocated among interim periods remaining in the fiscal year by an adjustment of the AETR.

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