



North Carolina Reforms Law on Forced Combination; Department of Revenue Responds With Its Interpretation

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The Revenue Laws Study Committee met on November 2 to review the status of recent legislation dealing with the Department of Revenue's authority to require corporations to file combined corporate income tax returns ("forced combination") and make other discretionary adjustments. HB 619, passed by the General Assembly in June, comprehensively revised the framework for forced combination cases. As amended by SB 580 in September, HB 619 repeals the existing forced combination statute (G.S. 105-130.6) effective for tax years beginning on or after January 1, 2012 and replaces it with G.S. 105-130.5A, which has revised standards for forced combination cases. For previous tax years, G.S. 105-130.6 continues to govern. The two principal issues the committee has on the agenda are (1) whether to make G.S. 105-130.5A applicable to all tax years, including prior open years, and (2) whether there need to be changes to the royalty reporting provision in HB 619 or the royalty reporting statute, G.S. 105-130.7A.

The committee heard extended presentations by Jonathan Tart of the Fiscal Research Division, Canaan Huie, general counsel for the Department of Revenue, and Todd Lard of the Council on State Taxation on the recent history of forced combination and the issues that the committee is addressing.

Canaan Huie gave an extended presentation on how the Department interprets the new G.S. 105-130.5A and provided a forecast of the directive that the Department is drafting to provide guidance on how it applies the current law, which is applicable to all open tax years beginning prior to January 1, 2012, as well as guidance on how it will implement the new legislation and its effect on existing combined filing settlement agreements. He speculated that the directive would be published by the end of next week.

Mr. Huie also addressed the issue of royalties from intangible property under the new legislation. The Department had speculated in June that a provision in the new legislation which preserved a taxpayer's royalty reporting options under G.S. 105-130.7A would cost the state \$32 million. He provided a brief explanation for the figure, as well as the potential lost revenue from making G.S. 105-130.5A applicable to open tax periods, which he suggested could be as high as \$133 million in refunds plus \$226 million in lost revenues from pending assessments.

The committee will consider these matters further at its December 7 meeting and will hear from the

Department of Revenue again after the publication of the directive addressing the new legislation.

For more information about this topic, please contact the authors or any member of the Williams Mullen State & Local Tax Team. A PDF of the full article, which was published in the July 2012 Journal of Multi State Taxation and Incentives, is available [here](#).

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