

## Burgos, Alexander N

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**Subject:** FW: [External] Request for Changes Response for 17 NCAC 05C .2004

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**From:** Ascher, Seth M <[seth.ascher@oah.nc.gov](mailto:seth.ascher@oah.nc.gov)>  
**Sent:** Tuesday, October 15, 2024 11:01 AM  
**To:** Gossett, Michael N <[Michael.Gossett@ncdor.gov](mailto:Michael.Gossett@ncdor.gov)>; Rules, Oah <[oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov)>  
**Cc:** Day, April B <[april.day@ncdor.gov](mailto:april.day@ncdor.gov)>; Puckett, Brian L <[Brian.Puckett@ncdor.gov](mailto:Brian.Puckett@ncdor.gov)>; Mcghee, Ashley R <[ashley.mcghee@ncdor.gov](mailto:ashley.mcghee@ncdor.gov)>; Lansford, Laura L <[Laura.Lansford@ncdor.gov](mailto:Laura.Lansford@ncdor.gov)>  
**Subject:** Re: [External] Request for Changes Response for 17 NCAC 05C .2004

Thank you for your responses. At this point, I anticipate recommending approval of the rule as filed. I'll let you know if anything comes up before October's meeting.

**Seth Ascher**

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

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## Burgos, Alexander N

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**Subject:** FW: [External] Request for Changes Response for 17 NCAC 05C .2004  
**Attachments:** DOR Response - RFC Department of Revenue October 2024.docx; 17 NCAC 05C .2004 - Extension of Filing Date.docx

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**From:** Michael N. Gossett <[Michael.Gossett@ncdor.gov](mailto:Michael.Gossett@ncdor.gov)>  
**Sent:** Monday, October 14, 2024 5:00 PM  
**To:** Rules, Oah <[oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov)>  
**Cc:** Ascher, Seth M <[seth.ascher@oah.nc.gov](mailto:seth.ascher@oah.nc.gov)>; Day, April B <[april.day@ncdor.gov](mailto:april.day@ncdor.gov)>; Puckett, Brian L <[Brian.Puckett@ncdor.gov](mailto:Brian.Puckett@ncdor.gov)>; Mcghee, Ashley R <[ashley.mcghee@ncdor.gov](mailto:ashley.mcghee@ncdor.gov)>; Lansford, Laura L <[Laura.Lansford@ncdor.gov](mailto:Laura.Lansford@ncdor.gov)>  
**Subject:** [External] Request for Changes Response for 17 NCAC 05C .2004

Some people who received this message don't often get email from [michael.gossett@ncdor.gov](mailto:michael.gossett@ncdor.gov).  
[Learn why this is important](#)

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On behalf of the Department of Revenue ("Department"), Corporate Tax Division, I am responding to the Request for Changes document. Both inquiries in the document were answered, but please let me know if any more explanation is needed, and I will quickly respond. Thank you!

Warmest regards,  
**Michael N. Gossett, Esq.**, Administrative Officer  
Corporate Tax Division  
North Carolina Department of Revenue  
Phone: 919-814-1171  
Fax: 919-733-1821

17 NCAC 05C .2004 is amended with substantive changes without notice pursuant to G.S. 150B-1(d)(4) as follows:

**17 NCAC 05C .2004      EXTENSION OF FILING DATE**

(a) ~~For tax years beginning before January 1, 2008, a~~ A corporation ~~will~~ shall receive an ~~seven month~~ extension of time to file its corporate franchise and income tax return either:

(1) In accordance with G.S. 105-263(c), or

(2) if the corporation timely files Form CD-419, Application for Extension for of Time To File Corporate Franchise and Income Tax Return, on or before the original due date of the return.

(b) Form CD-419 shall include the following elements:

(1) total franchise tax due;

(2) franchise tax credits taken;

(3) net franchise tax due;

(4) total corporate income tax due;

(5) estimated income tax payments;

(6) corporate income tax credits taken;

(7) net corporate income tax due;

(8) total franchise and corporate income tax due with this application;

(9) beginning and ending tax year;

(10) Federal Employer ID Number;

(11) N.C. Secretary of State ID Number;

(12) legal name;

(13) address;

(14) designation if tax exempt or non U.S./foreign entity, or cooperative or mutual association;

(15) franchise tax paid;

(16) corporate income tax paid; and

(17) total tax paid with application.

(c) Length of Extension of Time to File:

(1) For tax years beginning on or after January 1, 2008, and before January 1, 2025, the extension of time is six months from the original due date of the return.

(2) For tax years beginning on or after January 1, 2025, the extension of time is seven months from the original due date of the return.

(d) Payment of tax is not required to obtain an extension; however, interest accrues at the rate set under G.S. 105-241.21(a) on the amount not paid by the original due date of the corporate franchise and income tax return and the failure to pay penalty in G.S. 105-236(4) applies to the amount not paid by the original due date of the return.

*History Note:      Authority G.S. 105-262; 105-263;  
Eff. April 1, 1999;*

1                    *Amended Eff. January 1, 2025; January 1, 2009; July 1, 1999; January 1, 1994;*  
2                    *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19,*  
3                    *2017.*  
4  
5

## **Request for Changes Pursuant to N.C. Gen. Stat. § 150B-21.10**

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

If the request includes questions, please contact the reviewing attorney to discuss.

In order to properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

### **Note the following general instructions:**

1. You must submit the revised rule via email to [oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov). The electronic copy must be saved as the official rule name (XX NCAC XXXX).
2. For rules longer than one page, insert a page number.
3. Use line numbers; if the rule spans more than one page, have the line numbers reset at one for each page.
4. Do not use track changes. Make all changes using manual strikethroughs, underlines and highlighting.
5. You cannot change just one part of a word. For example:
  - Wrong: “~~a~~Association”
  - Right: “~~association~~ Association”
6. Treat punctuation as part of a word. For example:
  - Wrong: “day,~~;~~ and”
  - Right: “~~day,~~ day, and”
7. Formatting instructions and examples may be found at:  
<https://www.oah.nc.gov/rule-format-examples>

**If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.**

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Department of Revenue

RULE CITATION: 17 NCAC 05C .2004

DEADLINE FOR RECEIPT: **October 15, 2024**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*In the cover memo, you reference S.L 2018-5. It appears that this is when G.S. 105-263(c) was added to the code. Is this the only change you are referencing or is there something else?*

*No. You are correct that the first change to the rule is to reflect the addition of G.S. 105-263(c) to the code per S.L. 2018-5. However, there is also a second change made to assist corporations filing in North Carolina, which was done in response to a request made by the North Carolina Chamber of Commerce. It extends the due date for filing North Carolina corporate income tax returns from six to seven months, which guarantees it's at least one month later than the federal extended due date. Doing so alleviates the current problems caused by having the due date of both the federal return and the state return on the same day. Since the State's corporate income tax returns cannot accurately be filed until after the federal return is completed, this allows sufficient time for taxpayer compliance – creating a win-win situation by reducing the need for corporations to file amended returns.*

*For context, and I recognize that this is likely in a different rule or statute, what is the benefit of filing an extension? I see from subparagraph (d) that there is still a late fee and accrued interest even when the extension is granted.*

*The benefit is that a taxpayer is extending the time for which the failure to file penalty will apply under G.S. § 105-236(a)(3).*

*You are correct that interest accrues and a failure to pay penalty occurs if a taxpayer does not pay the tax amount due by the original due date of the return, even if a taxpayer obtains an extension under G.S. § 105-263; however, G.S. § 105-236(a)(3) requires a taxpayer to pay a failure to file penalty if the taxpayer does not file the return on the date it is due, and they do not obtain an extension. G.S. § 105-236(a)(3) states that "[i]n case of failure to file any return on the date it is due, **determined with regard to any extension of time for filing**, the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax if the failure is for not more than one*

Seth Ascher

Commission Counsel

Date submitted to agency: October 1, 2024

*month, with an additional five percent (5%) for each additional month, or fraction thereof, during which the failure continues, not exceeding twenty-five percent (25%) in aggregate.” [Bold added]. After obtaining an extension under G.S. § 105-263, a taxpayer will ultimately avoid the failure to file penalty as long as they file their return on or before the extended seven months date from the original due date of the return*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

## Burgos, Alexander N

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**Subject:** FW: [External] Request to offer oral comments

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**From:** Michael N. Gossett <[Michael.Gossett@ncdor.gov](mailto:Michael.Gossett@ncdor.gov)>

**Sent:** Thursday, October 17, 2024 11:16 AM

**To:** Ascher, Seth M <[seth.ascher@oah.nc.gov](mailto:seth.ascher@oah.nc.gov)>; Rules, Oah <[oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov)>

**Cc:** Puckett, Brian L <[Brian.Puckett@ncdor.gov](mailto:Brian.Puckett@ncdor.gov)>; Day, April B <[april.day@ncdor.gov](mailto:april.day@ncdor.gov)>; Mcghee, Ashley R <[ashley.mcghee@ncdor.gov](mailto:ashley.mcghee@ncdor.gov)>; Lansford, Laura L <[Laura.Lansford@ncdor.gov](mailto:Laura.Lansford@ncdor.gov)>

**Subject:** [External] Request to offer oral comments

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Mr. Ascher,

I am submitting this request to offer oral comments regarding a Rule proposed for amendment by the Department of Revenue, Corporate Tax Division at the 10/30/2024 Rules Review Commission meeting.

As the Corporate Tax Division's rule coordinator, I may wish to address the RRC to speak in favor of a Rule proposed for amendment on the Commission's 10/30/2024 agenda. Brian Puckett, the Director of the Corporate Tax Division, will be attending the meeting with me.

Please let me know if you need any additional information.

Thank you.

Warmest regards,

**Michael N. Gossett, Esq.**, Administrative Officer

Corporate Tax Division

North Carolina Department of Revenue

Phone: 919-814-1171

Fax: 919-733-1821

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## **Burgos, Alexander N**

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**From:** Ascher, Seth M  
**Sent:** Tuesday, October 1, 2024 3:11 PM  
**To:** Gossett, Michael N; Mcghee, Ashley R  
**Cc:** Burgos, Alexander N  
**Subject:** RFC for DOR rule October 2024  
**Attachments:** RFC Department of Revenue October 2024.docx

Good afternoon,

I'm the attorney who reviewed the Rule submitted by the Department of Revenue for the October 2024 RRC meeting. The RRC will formally review these Rules at its meeting on Wednesday, October 30, 2024, at 10:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get close to the meeting. If there are any other representatives from your agency who want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Attached is the Request for Changes Pursuant to G.S. 150B-21.10. Please submit your responses, the revised Rules, and forms to me via email, no later than 5 p.m. on October 15, 2024. Note that it may not be necessary to revise the rule based on the questions I had.

Please let me know if you have any questions of concerns.

### **Seth Ascher**

Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984) 236-1934

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