

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1999

HOUSE BILL 1476  
RATIFIED BILL

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS, TO EARMARK PART OF THE RESULTING REVENUE GAIN FOR TAX RESEARCH, TO DIRECT THE STATE AUDITOR TO CONDUCT A PERFORMANCE AUDIT OF THE DEPARTMENT OF REVENUE, TO CONFORM TO THE FEDERAL STATUTE OF LIMITATIONS FOR WILLFUL FAILURE TO COMPLY WITH STATE TAX LAWS, AND TO INCREASE THE AMOUNT OF TIME A TAXPAYER HAS TO PROTEST THE PAYMENT OF A TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.90(b)(1a) reads as rewritten:

"(b) Definitions. – The following definitions apply in this Article:

.. (1a) Code. – The Internal Revenue Code as enacted as of ~~September 1, 1998~~, June 1, 1999, including any provisions enacted as of that date which become effective either before or after that date."

Section 2. G.S. 105-236(8) reads as rewritten:

"(8) Willful Failure to Collect, Withhold, or Pay Over Tax. – Any person required to collect, withhold, account for, and pay over any tax who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of ~~three~~-six years after the date of the violation."

Section 3. G.S. 105-236(9) reads as rewritten:

"(9) Willful Failure to File Return, Supply Information, or Pay Tax. – Any person required to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay the tax, make the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of ~~three~~-six years after the date of the violation."

Section 4.(a) The Secretary of Revenue may draw the following amounts from funds generated by Section 1 of this act that would otherwise be credited to the General Fund, to fund four tax analyst positions in the Tax Research Division of the Department of Revenue, effective January 1, 2000, as recommended by the Revenue Laws Study Committee. The four tax analyst positions shall be classified as recommended by the Office of State Personnel:

(1) One hundred fifty thousand dollars (\$150,000) in the 1999-2000 fiscal year to fund four tax analyst positions in the Tax Research Division of the Department of Revenue.

- (2) Two hundred fifty thousand dollars (\$250,000) in the 2000-2001 fiscal year to continue funding for four tax analysts in the Tax Research Division of the Department of Revenue.

Section 4.(b) The Office of the State Auditor shall conduct a performance audit of the Department of Revenue. The audit shall address the following areas: (i) tax collection and tax auditing activity, with particular attention to the cost, efficiency, and effectiveness of the Integrated Tax Administration System (ITAS) and subsequent automation projects; (ii) current methods of processing tax returns and payments and the ability to employ the latest technology in this processing; (iii) internal organization and management structure; (iv) budgeting and fiscal management; (v) current and future staffing requirements; and (vi) such other issues as may be deemed necessary or desirable by the State Auditor.

The Office of the State Auditor shall submit an interim progress report to the Senate and House Appropriations Subcommittee on General Government and the Fiscal Research Division on or before May 30, 2000, and a final report to the General Assembly by January 1, 2001.

The Secretary of Revenue shall draw one hundred thousand dollars (\$100,000) from funds generated by Section 1 of this act that would otherwise be credited to the General Fund, to defray costs associated with the performance audit required by this subsection. The funds shall be remitted to the Office of the State Auditor in the 1999-2000 fiscal year for costs associated with this performance audit.

Section 5. G.S. 105-267 reads as rewritten:

**"§ 105-267. Taxes to be paid; suits for recovery of taxes.**

No court of this State shall entertain a suit of any kind brought for the purpose of preventing the collection of any tax imposed in this Subchapter. Whenever a person has a valid defense to the enforcement of the collection of a tax, the person shall pay the tax to the proper officer, and that payment shall be without prejudice to any defense of rights the person may have regarding the tax. At any time within the applicable protest period, the taxpayer may demand a refund of the tax paid in writing from the Secretary and if the tax is not refunded within 90 days thereafter, may sue the Secretary in the courts of the State for the amount demanded. The protest period for a tax levied in Article 2A, 2C, or 2D of this Chapter is 30 days after payment. The protest period for all other taxes is ~~one year~~ three years after payment.

The suit may be brought in the Superior Court of Wake County, or in the county in which the taxpayer resides at any time within three years after the expiration of the 90-day period allowed for making the refund. If upon the trial it is determined that all or part of the tax was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the judgment shall be collected as in other cases. The amount of taxes for which judgment is rendered in such an action shall be refunded by the State. G.S. 105-241.2 provides an alternate procedure for a taxpayer to contest a tax and is not in conflict with or superseded by this section."

Section 6. Sections 2 and 3 of this act become effective December 1, 1999, and apply to prosecutions brought on or after that date for cases where the three-year statute of limitations had not expired prior to December 1, 1999. Section 5 of this act is effective for taxes paid on or after January 1, 1999. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

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Dennis A. Wicker  
President of the Senate

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James B. Black  
Speaker of the House of Representatives

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James B. Hunt, Jr.  
Governor

Approved \_\_\_\_\_ .m. this \_\_\_\_\_ day of \_\_\_\_\_ , 19