

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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HOUSE BILL 1448

Short Title: Notice Period for Sales and Use Tax Refunds. (Public)

Sponsors: Representatives Luebke; G. Allen, Wainwright, Miner, Brubaker, Hill, Wood, and McGee.

Referred to: Finance.

May 17, 2004

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT SELLERS BE PROVIDED WITH NOTICE AND A SIXTY-DAY PERIOD TO RESPOND TO A REQUEST FOR A REFUND OF OVER-COLLECTED SALES OR USE TAXES BEFORE A PURCHASER MAY BRING A CAUSE OF ACTION AGAINST THE SELLER.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 105-164.11 reads as rewritten:

**"§ 105-164.11. Excessive and erroneous collections.**

(a) Remittance of Over-Collections to Secretary. – When the tax collected for any period is in excess of the total amount that should have been collected, the total amount collected must be paid over to the Secretary. When tax is collected for any period on exempt or nontaxable sales the tax erroneously collected shall be remitted to the Secretary and no refund shall be made to a taxpayer unless the purchaser has received credit for or has been refunded the amount of tax erroneously charged. This provision shall be construed with other provisions of this Article and given effect so as to result in the payment to the Secretary of the total amount collected as tax if it is in excess of the amount that should have been collected.

(b) Refund Procedures First Remedy. – The first course of remedy available to purchasers seeking a refund of over-collected sales or use taxes from the seller are the customer refund procedures provided in this Chapter or otherwise provided by administrative rule, bulletin, or directive on the law issued by the Secretary.

(c) Cause of Action Against Seller. – A cause of action against the seller for over-collected sales or uses taxes does not accrue until a purchaser has provided written notice to a seller and the seller has had 60 days to respond. The notice to the seller must contain the information necessary to determine the validity of the request.

(d) Presumption of Reasonable Business Practice. – In connection with a purchaser's request from the seller of over-collected sales or use taxes, a seller shall be presumed to have a reasonable business practice if, in the collection of sales and use

1 taxes, the seller uses either a provider or a system, including a proprietary system, that is  
2 certified by the State and the seller has remitted to the State all taxes collected less any  
3 deductions, credits, or collection allowances."

4 **SECTION 2.** This act is effective when it becomes law.