

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE BILL 1715

Short Title: Procedure for Tax Class Actions.

(Public)

Sponsors: Senators Clodfelter, Kerr, Dalton, Hartsell, Hoyle; and Jones.

Referred to: Judiciary I (Civil).

May 21, 2008

A BILL TO BE ENTITLED  
AN ACT TO ESTABLISH A PROCEDURE FOR TAXPAYERS TO JOIN A CLASS  
ACTION SEEKING A REFUND OF TAX PAID DUE TO AN  
UNCONSTITUTIONAL STATUTE.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 9 of Chapter 105 is amended by adding a new section to read:

**"§ 105-241.18. Class actions.**

(a) Requirements. – A taxpayer must meet the requirements set out in G.S. 105-241.17 to bring a class action seeking the refund of a tax paid due to an unconstitutional statute. A taxpayer who wants to become a member of a pending class action seeking the refund of a tax paid due to an unconstitutional statute must comply with all of the requirements in this section. A taxpayer who does not meet all of these requirements is not eligible for inclusion in the class. The requirements are:

(1) File a claim for refund in accordance with G.S. 105-241.7.

(2) Specify in the claim for refund that the sole basis for the claim is to obtain a refund of a tax paid due to an unconstitutional statute and identify the statute that is unconstitutional. If the taxpayer's claim for refund includes another basis, that basis is not subject to review unless the taxpayer files a separate claim for refund on that basis in accordance with G.S. 105-241.7.

(3) Specify in the claim for refund that the taxpayer seeks to become a member of a pending class action seeking the refund of a tax paid due to an unconstitutional statute and identify the pending class action.

(b) Procedure. – The procedures in G.S. 105-241.11 through G.S. 105-241.17 for administrative and judicial review of a request for refund and a proposed denial of a request for refund do not apply to a claim for refund that meets the requirements of this section. The Department must send a copy of a claim for refund that meets the requirements of this section to the court in which the class action specified in the claim

1 is pending. The Department must wait for direction from the court to take any other  
2 action on the claim for refund.

3 (c) Statute of Limitations. – The statute of limitations for filing a claim for refund  
4 is tolled for a taxpayer who could timely file a claim for refund on the date a class  
5 action commences seeking the refund of a tax paid due to an unconstitutional statute. A  
6 class action is considered to commence on the earlier of the date a complaint or motion  
7 is filed in a civil action seeking certification of a class. The statute of limitations is  
8 tolled for the limited purpose of giving a taxpayer an opportunity to become a member  
9 of the class action by filing a claim for refund that meets the requirements of this  
10 section. The statute of limitations for filing a claim for refund is not tolled for any other  
11 purpose.

12 The tolling of the statute of limitations under this section for filing a claim for refund  
13 ends when a court enters any of the following in a class action:

14 (1) A final order denying certification of the class.

15 (2) A final order dismissing the class action without an adjudication on the  
16 merits.

17 (3) A final judgment on the merits."

18 **SECTION 2.** G.S. 105-241.19 reads as rewritten:

19 **"§ 105-241.19. Declaratory judgments, injunctions, and other actions prohibited.**

20 The remedies in G.S. 105-241.11 through G.S. ~~105-241.17~~ 105-241.18 set out the  
21 exclusive remedies for disputing the denial of a requested refund, a taxpayer's liability  
22 for a tax, or the constitutionality of a tax statute. Any other action is barred. Neither an  
23 action for declaratory judgment, an action for an injunction to prevent the collection of a  
24 tax, nor any other action is allowed."

25 **SECTION 3.** This act is effective when it becomes law and applies to  
26 actions filed on or after that date.