

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE BILL 1715  
Judiciary I (Civil) Committee Substitute Adopted 6/26/08

Short Title: Procedure for Tax Class Actions.

(Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PROCEDURE FOR CLASS ACTIONS SEEKING THE  
REFUND OF STATE TAX PAID DUE TO AN ALLEGED  
UNCONSTITUTIONAL STATUTE.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 1A-1, Rule 23, is amended by adding a new subsection to  
read:

"(d) Tax class actions. – In addition to all of the requirements set out in this rule, a  
class action seeking the refund of a State tax paid due to an alleged unconstitutional  
statute may be brought and maintained only as provided in G.S. 105-241.18."

**SECTION 2.** Article 9 of Chapter 105 of the General Statutes is amended by  
adding a new section to read:

**"§ 105-241.18. Class actions.**

(a) Authority. – A class action may be maintained against the State for the refund  
of a tax paid only on the grounds of an alleged unconstitutional statute and only if the  
requirements of Rule 23 of the North Carolina Rules of Civil Procedure and the  
requirements of this section are met. For purposes of this section, a class action  
commences upon the later of the following:

(1) The date a complaint is filed in accordance with G.S. 105-241.17  
alleging the existence of a class pursuant to Rule 23 of the North  
Carolina Rules of Civil Procedure.

(2) The date a complaint filed in accordance with G.S. 105-241.17 is  
amended to allege the existence of a class.

(b) Class. – To serve as a class representative of a class action brought under this  
section, a taxpayer must comply with all of the conditions in G.S. 105-241.17 and the  
taxpayer's claims must be typical of the claims of the class members. A taxpayer who is  
not a class representative is eligible to become a member of a class if the taxpayer could  
have filed a claim for refund under G.S. 105-241.7 as of the date the class action  
commenced, whether or not the taxpayer actually filed a claim for refund as of that date.

1 An eligible class member who is not a class representative and who indicates a desire to  
2 be included in the class in accordance with the procedure approved by the court under  
3 subsection (c) of this section is not required to follow the procedures in G.S. 105-241.11  
4 through G.S. 105-241.17 for the administrative and judicial review of a request for  
5 refund or a proposed denial of a request for refund.

6 (c) Procedure. – To become a member of a class action brought under this  
7 section, an eligible taxpayer must affirmatively indicate a desire to be included in the  
8 class in response to a notice of the class action. If the court so orders, the Department  
9 must provide to a class representative a list of names and last known addresses of all  
10 taxpayers who are readily determinable by the Department and who are eligible to  
11 become a member of the class. The court must approve the content of a notice of a class  
12 action, the method for distributing the notice, and the procedure by which an eligible  
13 taxpayer affirmatively indicates a desire to be included in the class. The class  
14 representative must advance the costs of notifying eligible taxpayers of the class action.

15 (d) Statute of Limitations. – The statute of limitations for filing a claim for refund  
16 of tax paid due to an alleged unconstitutional statute is tolled for a taxpayer who could  
17 timely file a claim for refund on the date a class action is commenced under this section.  
18 The statute of limitations is tolled for the limited purpose of allowing a taxpayer to  
19 become a member of the class. The tolling of the statute of limitations ends for a  
20 specific eligible taxpayer when the taxpayer does not affirmatively indicate a desire to  
21 be included in the class within the time and in accordance with the procedure approved  
22 by the court under subsection (c) of this section. The tolling of the statute of limitation  
23 ends for all taxpayers when a court enters any of the following in a class action:

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

25 (2) A final order decertifying the class.

26 (3) A final order dismissing the class action without an adjudication on the  
27 merits.

28 (4) A final judgment on the merits.

29 (e) No Benefit. – No benefit may accrue to an eligible taxpayer who does not  
30 affirmatively indicate a desire to be included in the class within the time and in  
31 accordance with the procedure approved by the court under subsection (c) of this  
32 section."

33 **SECTION 3.** G.S. 105-241.19 reads as rewritten:

34 **"§ 105-241.19. Declaratory judgments, injunctions, and other actions prohibited.**

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

40 **SECTION 4.** This act becomes effective October 1, 2008, and applies to  
41 actions filed on or after that date.