

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S

1

SENATE BILL 242

Short Title: Uniform Tax Refund Procedure. (Public)

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

Referred to: Finance.

February 21, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A UNIFORM PROCEDURE FOR TAX REFUND
3 CLAIMS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 105-266 and G.S. 105-266.1 are repealed.

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

8 "**§ 105-265.1. Refunds of overpayment of taxes.**

9 (a) Without Demand. – If the Secretary discovers that a taxpayer has overpaid
10 the correct amount of a tax, the overpayment must be refunded to the taxpayer as soon
11 as possible together with any applicable interest. The Secretary may issue a refund of an
12 overpayment only after the taxpayer has filed the final return for the tax period.

13 (b) Upon Demand. – A taxpayer who claims to have overpaid a tax may file a
14 demand for a refund with the Secretary. The taxpayer must file the demand within the
15 statute of limitations set out in G.S. 105-265.2. A demand for refund must be in a form
16 prescribed by the Secretary and must identify the taxpayer, the type and amount of tax
17 overpaid, the period included, and the reasons for the refund, including law or other
18 authority upon which the taxpayer relies. The Secretary must either grant or deny the
19 demand for a refund within six months from the date the demand is filed, unless this
20 period is extended by written agreement of the taxpayer and the Secretary. The
21 Secretary must notify the taxpayer of the decision to grant or deny the refund demand
22 and must issue or adjust the refund, if applicable, in accordance with the decision. If the
23 Secretary fails to grant a refund within the six-month period, the demand for refund is
24 deemed denied.

25 (c) Hearing. – A taxpayer who receives a written decision from the Secretary
26 denying a refund demand may file a written request for a hearing before the Secretary at
27 any time within 30 days after the date the decision was mailed. A taxpayer whose
28 demand for refund is deemed denied may file a written request for a hearing at any time
29 within 60 days after the expiration of the six-month period set out in subsection (b) of

1 this section. The Secretary must grant a hearing on each timely demand for a hearing.
2 Within 60 days after a timely demand for a hearing has been filed and at least 10 days
3 before the date set for the hearing, the Secretary shall notify the taxpayer in writing of
4 the time and place at which the hearing will be conducted. The date set for the hearing
5 shall be within 90 days after the timely request for a hearing was filed or at a later date
6 mutually agreed upon by the taxpayer and the Secretary. The date set for the hearing
7 may be postponed once, at the request of the taxpayer or the Secretary, for a period of
8 up to 90 days or for a longer period mutually agreed upon by the taxpayer and the
9 Secretary. The rules of evidence do not apply in a hearing before the Secretary under
10 this section.

11 Within 90 days after conducting a hearing under this subsection, the Secretary must
12 make a decision on the refund demand, notify the taxpayer of the decision, and adjust
13 the computation of the tax in accordance with the decision. The Secretary must refund
14 to the taxpayer in accordance with this Article the amount of any overpayment of tax.

15 (d) Civil Action. – Instead of requesting a hearing in accordance with subsection
16 (c) of this section, a taxpayer may within 90 days of the denial of a refund demand bring
17 a civil action against the Secretary for recovery of the alleged overpayment. No suit
18 shall be maintained in any court for the recovery of any overpayment of tax unless the
19 taxpayer seeking a refund has filed a written demand for a refund in accordance with
20 subsection (b) of this section and the Secretary has denied the demand for refund.

21 If upon the trial it is determined that all or part of the tax constituted an
22 overpayment, judgment shall be rendered therefor, with interest, and the judgment shall
23 be collected as in other cases. The amount of taxes for which judgment is rendered shall
24 be refunded by the State. The court may not order in its judgment the issuance of a
25 refund to any taxpayer who has not filed a written request for a refund in accordance
26 with this section.

27 (e) Venue. – If the alleged overpayment is more than two hundred dollars
28 (\$200.00), the taxpayer may bring the action either in the Superior Court of Wake
29 County or in the superior court of the county in which the taxpayer resides; if the
30 alleged overpayment is two hundred dollars (\$200.00) or less, the taxpayer may bring
31 the action in any State court of competent jurisdiction in Wake County.

32 (f) Limitation on Class Actions. – No class action for a refund of overpayment of
33 tax may be maintained in any court unless each taxpayer in the class has filed a written
34 demand for a refund in accordance with subsection (b) of this section.

35 (g) Appeal. – Either party may appeal to the appellate division from the judgment
36 of the superior court under the rules and regulations prescribed by law for appeals,
37 except that if the Secretary appeals, the Secretary is not required to give any
38 undertaking or make any deposit to secure the cost of the appeal.

39 (h) Refunds Prohibited. – The Secretary may not refund any of the following:

- 40 (1) An overpayment set off under Chapter 105A of the General Statutes,
41 the Setoff Debt Collection Act, or under another setoff debt collection
42 program authorized by law.
- 43 (2) An income tax overpayment the taxpayer has elected to apply to
44 another purpose as provided in this Article.

- 1 (3) An individual income tax overpayment of less than one dollar (\$1.00)
2 or another tax overpayment of less than three dollars (\$3.00), unless
3 the taxpayer makes a written demand for the refund."

4 **SECTION 3.** Article 9 of Chapter 105 of the General Statutes is amended by
5 adding a new section to read:

6 **"§ 105-265.2. Statute of limitations for refunds.**

7 The period in which a refund must be demanded or discovered under this Article is
8 determined as follows:

- 9 (1) General rule. – No overpayment shall be refunded, whether upon
10 discovery or receipt of written demand, if the discovery is not made or
11 the demand is not received within three years after the date set by the
12 statute for the filing of the return or within six months after the
13 payment of the tax alleged to be an overpayment, whichever is later.
14 An agreement by a taxpayer to extend the time in which the
15 Department can assess the taxpayer for an underpayment automatically
16 extends the time in which the taxpayer can demand a refund.
- 17 (2) Worthless debts or securities. – Section 6511(d)(1) of the Code applies
18 to an overpayment of the tax levied in Part 2 or 3 of Article 4 of this
19 Chapter to the extent the overpayment is attributable to either of the
20 following:
- 21 a. The deductibility by the taxpayer under section 166 of the Code
22 of a debt that becomes worthless, or under section 165(g) of the
23 Code of a loss from a security that becomes worthless.
- 24 b. The effect of the deductibility of a debt or loss described in sub-
25 subdivision a. of this subdivision on the application of a
26 carryover to the taxpayer.
- 27 (3) Capital loss and net operating loss carrybacks. – Section 6511(d)(2) of
28 the Code applies to an overpayment of the tax levied in Part 2 or 3 of
29 Article 4 of this Chapter to the extent the overpayment is attributable
30 to a capital loss carryback under section 1212(c) of the Code or to a
31 net operating loss carryback under section 172 of the Code.
- 32 (4) Federal determination. – When a taxpayer files with the Secretary a
33 return that reflects a federal determination and the return is filed within
34 the required time, the period in which a refund must be demanded or
35 discovered is one year after the return reflecting the federal
36 determination is filed or three years after the original return was filed
37 or due to be filed, whichever is later."

38 **SECTION 4.** Article 9 of Chapter 105 of the General Statutes is amended by
39 adding a new section to read:

40 **"§ 105-265.3. Interest on refunds.**

41 An overpayment of tax bears interest at the rate established in G.S. 105-241.1(i)
42 from the date that interest begins to accrue until a refund is paid. A refund sent to a
43 taxpayer is considered paid on a date determined by the Secretary that is no sooner than
44 five days after a refund check is mailed.

1 A refund set off against a debt pursuant to Chapter 105A of the General Statutes is
2 considered paid five days after the Department mails the taxpayer a notice of the setoff,
3 unless G.S. 105A-5 or G.S. 105A-8 requires the agency that requested the setoff to
4 return the refund to the taxpayer. In this circumstance, the refund that was set off is not
5 considered paid until five days after the agency that requested the refund mails the
6 taxpayer a check for the refund.

7 Interest on an overpayment of a tax, other than a tax levied under Article 4 or Article
8 8B of this Chapter, accrues from a date 90 days after the date the tax was originally paid
9 by the taxpayer until the refund is paid. Interest on an overpayment of a tax levied under
10 Article 4 or Article 8B of this Chapter accrues from a date 45 days after the latest of the
11 following dates until the refund is paid:

- 12 (1) The date the final return was filed.
- 13 (2) The date the final return was due to be filed.
- 14 (3) The date of the overpayment.

15 The date of an overpayment of a tax levied under Article 4 or Article 8B of this
16 Chapter is determined in accordance with section 6611(d), (f), (g), and (h) of the Code.

17 **SECTION 5.** G.S. 105-267 reads as rewritten:

18 **"§ 105-267. ~~Taxes to be paid;~~ Limitation on suits for recovery of taxes.**

19 No court of this State shall entertain a suit of any kind brought for the purpose of
20 preventing the collection of any tax imposed in this Subchapter. Whenever a person has
21 a valid defense to the enforcement of the collection of a tax, the person shall pay the tax
22 to the proper ~~officer,~~ officer and demand a refund in accordance with G.S. 105-265.1,
23 ~~and that payment~~ The payment of the tax shall be without prejudice to any defense of
24 rights the person may have regarding the tax. At any time within the applicable protest
25 period, the taxpayer may demand a refund of the tax paid in writing from the Secretary
26 and if the tax is not refunded within 90 days thereafter, may sue the Secretary in the
27 courts of the State for the amount demanded. The protest period for a tax levied in
28 Article 2A, 2C, or 2D of this Chapter is 30 days after payment. The protest period for all
29 other taxes is three years after payment.

30 The suit may be brought in the Superior Court of Wake County, or in the county in
31 which the taxpayer resides at any time within three years after the expiration of the
32 90-day period allowed for making the refund. If upon the trial it is determined that all or
33 part of the tax was levied or assessed for an illegal or unauthorized purpose, or was for
34 any reason invalid or excessive, judgment shall be rendered therefor, with interest, and
35 the judgment shall be collected as in other cases. The amount of taxes for which
36 judgment is rendered in such an action shall be refunded by the State. G.S. 105-241.2
37 provides an alternate procedure for a taxpayer to contest a tax and is not in conflict with
38 or superseded by this section."

39 **SECTION 6.** G.S. 105-113.113(a) reads as rewritten:

40 "(a) Special Account. – The Secretary shall credit the proceeds of the tax levied
41 by this Article to a special nonreverting account, to be called the State Unauthorized
42 Substances Tax Account, until the tax proceeds are unencumbered. The Secretary shall
43 remit the unencumbered tax proceeds as provided in this section on a quarterly or more
44 frequent basis. Tax proceeds are unencumbered when either of the following occurs:

- 1 (1) The tax has been fully paid and the taxpayer has no current right under
2 ~~G.S. 105-267~~ Article 9 of this Chapter to seek a refund.
- 3 (2) The taxpayer has been notified of the final assessment of the tax under
4 G.S. 105-241.1 and has neither fully paid nor timely contested the tax
5 under ~~G.S. 105-241.1 through G.S. 105-241.4 or G.S. 105-267~~. Article
6 9 of this Chapter."

7 **SECTION 7.** G.S. 105-239.1(c) reads as rewritten:

8 "(c) The provisions of G.S. 105-241.1, 105-241.2, 105-241.3, 105-241.4,
9 ~~105-266.1 and 105-267~~ and ~~105-265.1~~ with respect to assessment procedure, demand for
10 refund, review, and appeal shall apply to the liability of any transferee assessed under
11 this section or of any property subject to the liability imposed by this section and to the
12 assertion of a lien upon property in the hands of the transferee."

13 **SECTION 8.** G.S. 1-52(15) reads as rewritten:

14 "(15) For the recovery of taxes paid as provided in ~~G.S. 105-267~~ and
15 G.S. 105-381."

16 **SECTION 9.** G.S. 20-99(b)(3) reads as rewritten:

17 "(3) Shall be accompanied by a copy of this subsection, and thereupon the
18 procedure shall be as follows:

19 If the garnishee has no defense to offer or no setoff against the
20 taxpayer, he shall, within 10 days after service of said notice, answer
21 the same by sending to the Commissioner of Motor Vehicles by
22 registered mail a statement to that effect, and if the amount due or
23 belonging to the taxpayer is then due or subject to his demand, it shall
24 be remitted to the Commissioner with said statement, but if said
25 amount is to mature in the future, the statement shall set forth that fact
26 and the same shall be paid to the Commissioner upon maturity, and
27 any payment by the garnishee hereunder shall be a complete
28 extinguishment of any liability therefor on his part to the taxpayer. If
29 the garnishee has any defense or setoff, he shall state the same in
30 writing under oath, and, within 10 days after service of said notice,
31 shall send two copies of said statement to the Commissioner by
32 registered mail; if the Commissioner admits such defense or setoff, he
33 shall so advise the garnishee in writing within 10 days after receipt of
34 such statement and the attachment or garnishment shall thereupon be
35 discharged to the amount required by such defense or setoff, and any
36 amount attached or garnished hereunder which is not affected by such
37 defense or setoff shall be remitted to the Commissioner as above
38 provided in cases where the garnishee has no defense or setoff, and
39 with like effect. If the Commissioner shall not admit the defense or
40 setoff, he shall set forth in writing his objections thereto and shall send
41 a copy thereof to the garnishee within 10 days after receipt of the
42 garnishee's statement, or within such further time as may be agreed on
43 by the garnishee, and at the same time he shall file a copy of said
44 notice, a copy of the garnishee's statement, and a copy of his

1 objections thereto in the superior court of the county where the
2 garnishee resides or does business where the issues made shall be tried
3 as in civil actions.

4 If judgment is entered in favor of the Commissioner of Motor
5 Vehicles by default or after hearing, the garnishee shall become liable
6 for the taxes, interest and penalties due by the taxpayer to the extent of
7 the amount over and above any defense or setoff of the garnishee
8 belonging, owing, or to become due to the taxpayer, but payments
9 shall not be required from amounts which are to become due to the
10 taxpayer until the maturity thereof, nor shall more than ten percent
11 (10%) of any taxpayer's salary or wages be required to be paid
12 hereunder in any one month. The garnishee may satisfy said judgment
13 upon paying said amount, and if he fails to do so, execution may issue
14 as provided by law. From any judgment or order entered upon such
15 hearing either the Commissioner of Motor Vehicles or the garnishee
16 may appeal as provided by law. If, before or after judgment, adequate
17 security is filed for the payment of said taxes, interest, penalties, and
18 costs, the attachment or garnishment may be released or execution
19 stayed pending appeal, but the final judgment shall be paid or enforced
20 as above provided. The taxpayer's sole remedies to question his
21 liability for said taxes, interest, and penalties shall be those provided in
22 ~~G.S. 105-267, as now or hereafter amended or supplemented.~~ Article 9
23 of Chapter 105 of the General Statutes. If any third person claims any
24 intangible attached or garnished hereunder and his lawful right thereto,
25 or to any part thereof, is shown to the Commissioner, he shall
26 discharge the attachment or garnishment to the extent necessary to
27 protect such right, and if such right is asserted after the filing of said
28 copies as aforesaid, it may be established by interpleader as now or
29 hereafter provided by the General Statutes in cases of attachment and
30 garnishment. In case such third party has no notice of proceedings
31 hereunder, he shall have the right to file his petition under oath with
32 the Commissioner at any time within 12 months after said intangible is
33 paid to him and if the Commissioner finds that such party is lawfully
34 entitled thereto or to any part thereof, he shall pay the same to such
35 party as provided for refunds by G.S. 105-407 and if such payment is
36 denied, said party may appeal from the determination of the
37 Commissioner to the Superior Court of Wake County or to the
38 superior court of the county wherein he resides or does business. The
39 intangibles of a taxpayer shall be paid or collected hereunder only to
40 the extent necessary to satisfy said taxes, interest, penalties, and costs.
41 Except as hereinafter set forth, the remedy provided in this section
42 shall not be resorted to unless a warrant for collection or execution
43 against the taxpayer has been returned unsatisfied: Provided, however,
44 if the Commissioner is of opinion that the only effective remedy is that

1 herein provided, it shall not be necessary that a warrant for collection
2 or execution shall be first returned unsatisfied, and in no case shall it
3 be a defense to the remedy herein provided that a warrant for
4 collection or execution has not been first returned unsatisfied:
5 Provided, however, that no salary or wage at the rate of less than two
6 hundred dollars (\$200.00) per month, whether paid weekly or monthly,
7 shall be attached or garnished under the provisions of this section."

8 **SECTION 10.** This act becomes effective January 1, 2008, and applies to
9 taxes paid on or after that date.