

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE DRS75073-SVz-2A (12/06)

Short Title: Uniform Tax Refund Procedure.

(Public)

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

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Referred to:

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A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A UNIFORM PROCEDURE FOR TAX REFUND CLAIMS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 105-266 and G.S. 105-266.1 are repealed.

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

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

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

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

(c) Hearing. – A taxpayer who receives a written decision from the Secretary denying a refund demand may file a written request for a hearing before the Secretary at any time within 30 days after the date the decision was mailed. A taxpayer whose

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

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

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

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

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

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

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

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

- 42 (1) An overpayment set off under Chapter 105A of the General Statutes,  
43 the Setoff Debt Collection Act, or under another setoff debt collection  
44 program authorized by law.

- 1           (2) An income tax overpayment the taxpayer has elected to apply to  
2           another purpose as provided in this Article.
- 3           (3) An individual income tax overpayment of less than one dollar (\$1.00)  
4           or another tax overpayment of less than three dollars (\$3.00), unless  
5           the taxpayer makes a written demand for the refund."

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

8 **"§ 105-265.2. Statute of limitations for refunds.**

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

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

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

42 **"§ 105-265.3. Interest on refunds.**

43           An overpayment of tax bears interest at the rate established in G.S. 105-241.1(i)  
44 from the date that interest begins to accrue until a refund is paid. A refund sent to a

1 taxpayer is considered paid on a date determined by the Secretary that is no sooner than  
2 five days after a refund check is mailed.

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

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

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

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

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

20 "**§ 105-267. ~~Taxes to be paid;~~ Limitation on suits for recovery of taxes.**

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

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

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

42 "(a) Special Account. – The Secretary shall credit the proceeds of the tax levied  
43 by this Article to a special nonreverting account, to be called the State Unauthorized  
44 Substances Tax Account, until the tax proceeds are unencumbered. The Secretary shall

1 remit the unencumbered tax proceeds as provided in this section on a quarterly or more  
2 frequent basis. Tax proceeds are unencumbered when either of the following occurs:

- 3 (1) The tax has been fully paid and the taxpayer has no current right under  
4 ~~G.S. 105-267~~ Article 9 of this Chapter to seek a refund.  
5 (2) The taxpayer has been notified of the final assessment of the tax under  
6 G.S. 105-241.1 and has neither fully paid nor timely contested the tax  
7 under ~~G.S. 105-241.1 through G.S. 105-241.4 or G.S. 105-267~~. Article  
8 9 of this Chapter."

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

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

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

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

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

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

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

1 by the garnishee, and at the same time he shall file a copy of said  
2 notice, a copy of the garnishee's statement, and a copy of his  
3 objections thereto in the superior court of the county where the  
4 garnishee resides or does business where the issues made shall be tried  
5 as in civil actions.

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

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

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