

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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SENATE BILL 668

Short Title: Uniform Tax Refund Procedure.

(Public)

Sponsors: Senator Hartsell.

Referred to: Finance.

March 17, 2005

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.** The first sentence of G.S. 105-267 is recodified as the first  
6 sentence of G.S. 105-266.1(a). The remainder of G.S. 105-267 is repealed.

7 **SECTION 2.** G.S. 105-266.1, as amended by Section 1 of this act, reads as  
8 rewritten:

9 "**§ 105-266.1. Contesting a tax; Refunds**~~refunds~~ **of overpayment of taxes.**

10 (a) Contesting a Tax. – No court of this State shall entertain a suit of any kind  
11 brought for the purpose of preventing the collection of any tax imposed in this  
12 Subchapter.

13 (a1) Request for Refund. – A taxpayer may request a refund of tax paid by the  
14 taxpayer by making a written request to the Secretary for a refund. The refund request  
15 must explain why the refund is due and must be submitted within the period of the  
16 statute of limitations established in G.S. 105-266. The Secretary must review a request  
17 for refund within 90 days after it is received and determine whether the refund is due. If  
18 the Secretary requests the taxpayer to provide additional information needed to make a  
19 determination, the time allowed for making the determination is extended until 30 days  
20 after the Secretary received the information. The Secretary must notify the taxpayer of a  
21 determination and adjust the refund, if needed, in accordance with the determination. A  
22 taxpayer who disagrees with the Secretary's determination may request a hearing under  
23 subsection (a2) of this section or bring a civil action under subsection (c) of this section.

24 A request for a refund by one taxpayer constitutes sufficient notice to the Secretary  
25 of the disputed issue. It is unnecessary for any other similarly situated taxpayer to  
26 request a refund on the same issue in order to preserve the right to a refund. If the  
27 protesting taxpayer prevails on the contested issue, all other similarly situated taxpayers  
28 are entitled to a refund notwithstanding the fact they failed to follow the procedural  
29 requirements of this section or other applicable law. If a taxpayer claims that a tax or an

1 additional tax paid by the taxpayer was excessive or incorrect, the taxpayer may apply  
2 to the Secretary for refund of the tax or additional tax at any time within the period set  
3 by the statute of limitations in G.S. 105-266.

4 (a2) Hearing. – A taxpayer may obtain a hearing on a refund determination by  
5 filing a written request for a hearing within 90 days after notification of the  
6 determination. ~~The Secretary shall grant a hearing on each timely request for a refund.~~  
7 Within 60 days after a timely request for a ~~refund~~ hearing has been filed and at least 10  
8 days before the date set for the hearing, the Secretary shall notify the taxpayer in writing  
9 of the time and place at which the hearing will be conducted. The date set for the  
10 hearing shall be within 90 days after the timely request for a hearing was filed or at a  
11 later date mutually agreed upon by the taxpayer and the Secretary. The date set for the  
12 hearing may be postponed once, at the request of the taxpayer or the Secretary, for a  
13 period of up to 90 days or for a longer period mutually agreed upon by the taxpayer and  
14 the Secretary.

15 Within 90 days after conducting a hearing under this subsection, the Secretary shall  
16 make a decision on the requested refund, notify the taxpayer of the decision, and adjust  
17 the computation of the tax in accordance with the decision. ~~The Secretary shall refund~~  
18 ~~to the taxpayer in accordance with G.S. 105-266 the amount of any tax the Secretary~~  
19 ~~finds was paid incorrectly or paid in excess of the tax due.~~

20 (b) Procedure. – The rules of evidence do not apply in a hearing before the  
21 Secretary of Revenue under this section. G.S. 105-241.2, 105-241.3, and 105-241.4  
22 apply to a tax or additional tax assessed under this section. G.S. 105-266 governs a  
23 refund issued under this section.

24 (c) Civil Action. – A taxpayer may bring a civil action against the Secretary to  
25 recover the amount a taxpayer claims is an overpayment as a result of the determination  
26 denying the request for refund. The taxpayer must bring the civil action within 90 days  
27 after notification of the determination. ~~Within 90 days after notification of the~~  
28 ~~Secretary's decision with respect to a demand for refund of any tax or additional tax~~  
29 ~~under this section, an aggrieved taxpayer may, instead of petitioning for administrative~~  
30 ~~review by the Tax Review Board under G.S. 105-241.2, bring a civil action against the~~  
31 ~~Secretary for recovery of the alleged overpayment.~~ If the alleged overpayment is more  
32 than two hundred dollars (\$200.00), the taxpayer may bring the action either in the  
33 Superior Court of Wake County or in the superior court of the county in which the  
34 taxpayer resides; if the alleged overpayment is two hundred dollars (\$200.00) or less,  
35 the taxpayer may bring the action in any State court of competent jurisdiction in Wake  
36 County. If upon trial it is determined that ~~there has been an overpayment of tax or~~  
37 ~~additional tax,~~ the taxpayer is entitled to a refund of tax or an additional tax paid by the  
38 taxpayer, judgment shall be rendered therefor, with interest, and the State shall refund  
39 the amount due. If a taxpayer successfully pursues a class action suit to obtain a refund  
40 under this section, then each class member is entitled to a refund regardless of whether  
41 that taxpayer filed taxes under protest or otherwise preserved rights to a refund.

42 (d) Appeal. – Either party may appeal to the appellate division from the judgment  
43 of the superior court under the rules and regulations prescribed by law for appeals,  
44 except that ~~the Secretary, if he should appeal, shall not be if the Secretary appeals, the~~

1 Secretary is not required to give any undertaking or make any deposit to secure the cost  
2 of ~~such~~ the appeal.

3 (e) Alternative Procedure. – Nothing in this section shall be construed to conflict  
4 with or supersede the provisions of G.S. 105-241.2, and, with respect to tax paid to the  
5 Secretary of Revenue, the rights granted by this section are in addition to the rights  
6 provided by G.S. ~~105-267.105-241.2.~~"

7 **SECTION 3.** G.S. 105-113.113(a) reads as rewritten:

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

13 (1) The tax has been fully paid and the taxpayer has no current right under  
14 ~~G.S. 105-267~~ Article 9 of this Chapter to seek a refund.

15 (2) The taxpayer has been notified of the final assessment of the tax under  
16 G.S. 105-241.1 and has neither fully paid nor timely contested the tax  
17 under ~~G.S. 105-241.1 through G.S. 105-241.4 or G.S. 105-267.~~ Article  
18 9 of this Chapter."

19 **SECTION 4.** G.S. 105-239.1(c) reads as rewritten:

20 "(c) The provisions of G.S. 105-241.1, 105-241.2, 105-241.3, 105-241.4,  
21 ~~105-266.1 and 105-267~~ and 105-266.1 with respect to assessment procedure, demand for  
22 refund, review, and appeal ~~shall~~ apply to the liability of any transferee assessed under  
23 this section or of any property subject to the liability imposed by this section and to the  
24 assertion of a lien upon property in the hands of the transferee."

25 **SECTION 5.** G.S. 105-241.4 reads as rewritten:

26 **"§ 105-241.4. Action to recover tax paid.**

27 Within 30 days after notification of the Secretary's decision with respect to liability  
28 under this Subchapter or Subchapter V, any taxpayer aggrieved ~~thereby,~~ by the decision,  
29 in lieu of petitioning for administrative review thereof by the Tax Review Board under  
30 G.S. 105-241.2, may pay the tax and bring a civil action for its recovery as provided in  
31 ~~G.S. 105-267.105-266.1.~~

32 Any taxpayer who has obtained an administrative review by the Tax Review Board  
33 as provided by G.S. 105-241.2 and who is aggrieved by the decision of the Board may,  
34 in lieu of appealing pursuant to the provisions of G.S. 105-241.3, within 30 days after  
35 notification of the Board's decision with respect to liability pay the tax and bring a civil  
36 action for its recovery as provided in ~~G.S. 105-267.105-266.1.~~

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

41 Any taxes, interest or penalties paid and found by the court to be in excess of those  
42 which can be properly assessed shall be ordered refunded to the taxpayer with interest  
43 from time of payment."

44 **SECTION 6.** G.S. 105-266(e) reads as rewritten:

1       "(e) Scope. – ~~This section does not apply to interest required under G.S. 105-267.~~  
2 This section applies to a refund payable to a husband and wife who filed a joint return."

3       **SECTION 7.** G.S. 1-52(15) reads as rewritten:

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

6       **SECTION 8.** G.S. 20-99(b)(3) reads as rewritten:

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

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

38       If judgment is entered in favor of the Commissioner of Motor  
39       Vehicles by default or after hearing, the garnishee shall become liable  
40       for the taxes, interest and penalties due by the taxpayer to the extent of  
41       the amount over and above any defense or setoff of the garnishee  
42       belonging, owing, or to become due to the taxpayer, but payments  
43       shall not be required from amounts which are to become due to the  
44       taxpayer until the maturity thereof, nor shall more than ten percent

1 (10%) of any taxpayer's salary or wages be required to be paid  
2 hereunder in any one month. The garnishee may satisfy said judgment  
3 upon paying said amount, and if he fails to do so, execution may issue  
4 as provided by law. From any judgment or order entered upon such  
5 hearing either the Commissioner of Motor Vehicles or the garnishee  
6 may appeal as provided by law. If, before or after judgment, adequate  
7 security is filed for the payment of said taxes, interest, penalties, and  
8 costs, the attachment or garnishment may be released or execution  
9 stayed pending appeal, but the final judgment shall be paid or enforced  
10 as above provided. The taxpayer's sole remedies to question his  
11 liability for said taxes, interest, and penalties shall be those provided in  
12 G.S. 105-267, as now or hereafter amended or supplemented. Article 9  
13 of Chapter 105 of the General Statutes. If any third person claims any  
14 intangible attached or garnished hereunder and his lawful right thereto,  
15 or to any part thereof, is shown to the Commissioner, he shall  
16 discharge the attachment or garnishment to the extent necessary to  
17 protect such right, and if such right is asserted after the filing of said  
18 copies as aforesaid, it may be established by interpleader as now or  
19 hereafter provided by the General Statutes in cases of attachment and  
20 garnishment. In case such third party has no notice of proceedings  
21 hereunder, he shall have the right to file his petition under oath with  
22 the Commissioner at any time within 12 months after said intangible is  
23 paid to him and if the Commissioner finds that such party is lawfully  
24 entitled thereto or to any part thereof, he shall pay the same to such  
25 party as provided for refunds by G.S. 105-407 and if such payment is  
26 denied, said party may appeal from the determination of the  
27 Commissioner to the Superior Court of Wake County or to the  
28 superior court of the county wherein he resides or does business. The  
29 intangibles of a taxpayer shall be paid or collected hereunder only to  
30 the extent necessary to satisfy said taxes, interest, penalties, and costs.  
31 Except as hereinafter set forth, the remedy provided in this section  
32 shall not be resorted to unless a warrant for collection or execution  
33 against the taxpayer has been returned unsatisfied: Provided, however,  
34 if the Commissioner is of opinion that the only effective remedy is that  
35 herein provided, it shall not be necessary that a warrant for collection  
36 or execution shall be first returned unsatisfied, and in no case shall it  
37 be a defense to the remedy herein provided that a warrant for  
38 collection or execution has not been first returned unsatisfied:  
39 Provided, however, that no salary or wage at the rate of less than two  
40 hundred dollars (\$200.00) per month, whether paid weekly or monthly,  
41 shall be attached or garnished under the provisions of this section."

42 **SECTION 9.** This act becomes effective January 1, 2006, and applies to  
43 taxes paid on or after that date.