

§ 105-241.18. Class actions.

(a) Authority. – A class action against the State for the refund of a tax paid may be maintained 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 or as of a subsequent date set by the court, whether or not the taxpayer actually filed a claim for refund as of that date. An eligible class member who is not a class representative and who indicates a desire to be included in the class in accordance with the procedure approved by the court under subsection (c) of this section is not required to follow the procedures in G.S. 105-241.11 through G.S. 105-241.17 for the administrative and judicial review of a request for refund or a proposed denial of a request for refund.

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

(d) Statute of Limitations. – The statute of limitations for filing a claim for refund of tax paid due to an alleged unconstitutional statute is tolled for a taxpayer who is eligible to become a member of a class action. The tolling begins on the date the class action is commenced. For a taxpayer who does not join the class, the tolling ends when the taxpayer does not affirmatively indicate a desire to be included in the class within the time and in accordance with the procedure approved by the court under subsection (c) of this section. For a taxpayer who joins the class, the tolling ends when a court enters any of the following in the class action:

- (1) A final order denying certification of the class.
- (2) A final order decertifying the class.
- (3) A final order dismissing the class action without an adjudication on the merits.
- (4) A final judgment on the merits.

(e) Effect on Nonparticipating Taxpayers. – A taxpayer who does not become a member of a class may file and prosecute a claim for refund, if the statute of limitations has not otherwise expired for filing the claim, or may contest a pending assessment in accordance with the procedures in G.S. 105-241.11 through G.S. 105-241.17. Except as otherwise provided in this subsection, the effect of an adjudication in a class action on a nonparticipating taxpayer's

claim for refund or contest of an assessment is governed by the normal rules relating to claim preclusion and issue preclusion.

If a final judgment on the merits is entered in a class action in favor of the class, the following applies to an eligible taxpayer who did not become a member of the class:

- (1) The taxpayer is not entitled to receive any monetary relief awarded to the class on account of taxes previously paid by the taxpayer.
- (2) If the taxpayer has been assessed for failure to pay the tax at issue in the class action and the taxpayer has not paid the assessment, then the assessment is abated.
- (3) The taxpayer is relieved of any future liability for the tax that is the subject of the class action. (2008-107, s. 28.28(b).)