

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1350
Committee Substitute Favorable 7/14/89

Short Title: Extend Tax Refund Deadline.

(Public)

Sponsors:

Referred to:

April 19, 1989

A BILL TO BE ENTITLED

AN ACT TO EXTEND TO ONE YEAR THE TIME PERIOD IN WHICH A TAXPAYER MAY FILE FOR A REFUND OF TAXES PAID WHEN THE TAXPAYER ASSERTS A VALID DEFENSE TO THE ENFORCEMENT OF THE COLLECTION OF THE TAX.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly finds that on March 28, 1989, the United States Supreme Court, in Davis v. Michigan, held that retirement income of federal retirees may not be taxed if comparable income of State and local retirees is exempt from income taxation. The General Assembly finds that under G.S. 105-267, refunds due federal retirees for taxes paid upon retirement income may not be granted by the Department of Revenue unless demand for the refund was made within 30 days after payment of the taxes. The General Assembly finds that numerous groups of federal retirees were unaware of the Davis decision until 30 days had elapsed since their payment of taxes upon retirement income, or were otherwise unable to comply with the 30-day demand requirement of G.S. 105-267. Therefore, in order to allow more time for taxpayers to demand refunds of taxes paid, the General Assembly desires to amend the provisions of G.S. 105-267 and ensure that Davis be extended to as many federal retirees as reasonably practicable.

Sec. 2. G.S. 105-267 reads as rewritten:

"§ 105-267. Taxes to be paid; suits for recovery of taxes.

No court of this State shall entertain a suit of any kind brought for the purpose of preventing the collection of any tax imposed in this Subchapter. Whenever a person

1 ~~shall have~~ has a valid defense to the enforcement of the collection of a tax assessed or
2 charged against him or his property, ~~such the person shall pay such the tax to the proper~~
3 officer, and ~~such the payment shall be without prejudice to any defense of rights he may~~
4 have in the premises. At any time within ~~30 days~~ one year after payment, the taxpayer
5 may demand a refund of the tax paid in writing from the Secretary of Revenue and if the
6 ~~same shall not be tax is not~~ tax is not refunded within 90 days thereafter, may sue the Secretary of
7 Revenue in the courts of the State for the amount so demanded. ~~Such~~ The suit may be
8 brought in the Superior Court of Wake County, or in the county in which the taxpayer
9 resides at any time within three years after the expiration of the 90-day period allowed
10 for making the refund. If upon the trial it ~~shall be~~ is determined that ~~such a tax or any part~~
11 ~~thereof~~ any tax was levied or assessed for an illegal or unauthorized purpose, or was for
12 any reason invalid or excessive, judgment shall be rendered ~~therefor,~~ with interest, and
13 ~~the same~~ shall be collected as in other cases. The amount of taxes for which judgment
14 ~~shall be~~ is rendered in ~~such the~~ action shall be refunded by the State; provided, nothing in
15 this section shall be construed to conflict with or supersede the provisions of G.S. 105-
16 241.2."

17 Sec. 3. This act is effective upon ratification and shall apply retroactively to
18 returns timely filed on or after October 31, 1988.