

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1350
Committee Substitute Favorable 7/14/89
Finance Senate Committee Substitute Adopted 6/13/90

Short Title: Extend Tax Refund Deadline.

(Public)

Sponsors:

Referred to:

April 19, 1989

A BILL TO BE ENTITLED

AN ACT TO EXTEND TO THREE YEARS THE TIME PERIOD IN WHICH A TAXPAYER MAY FILE FOR A REFUND OF INDIVIDUAL INCOME 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.

1 No court of this State shall entertain a suit of any kind brought for the purpose of
2 preventing the collection of any tax imposed in this Subchapter. Whenever a person
3 ~~shall have~~ has a valid defense to the enforcement of the collection of a tax assessed or
4 charged against him or his property, ~~such the~~ person shall pay ~~such the~~ tax to the proper
5 officer, and ~~such the~~ payment shall be without prejudice to any defense of rights he may
6 have in the premises. The taxpayer may demand a refund of individual income tax at
7 any time within three years after payment; the taxpayer may demand a refund of any
8 other tax within 30 days after payment. The demand shall be made in writing to the
9 Secretary of Revenue. At any time within 30 days after payment, the taxpayer may demand a
10 refund of the tax paid in writing from the Secretary of Revenue and if the same shall not be
11 if the tax is not refunded within 90 days thereafter, after a timely demand, the taxpayer
12 may sue the Secretary of Revenue in the courts of the State for the amount so
13 demanded. Such The suit may be brought in the Superior Court of Wake County, or in
14 the county in which the taxpayer resides at any time within three years after the
15 expiration of the 90-day period allowed for making the refund. If upon the trial it ~~shall~~
16 ~~be is~~ determined that ~~such a tax or any part thereof~~ any tax was levied or assessed for an
17 illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment
18 shall be rendered ~~therefor~~, with interest, and ~~the same~~ shall be collected as in other cases.
19 The amount of taxes for which judgment ~~shall be is~~ rendered in ~~such the~~ action shall be
20 refunded by the State; provided, nothing in this section shall be construed to conflict
21 with or supersede the provisions of G.S. 105-241.2."

22 Sec. 3. This act is effective retroactively for taxable years beginning on or
23 after January 1, 1988.