

GENERAL ASSEMBLY OF NORTH CAROLINA  
1993 SESSION

CHAPTER 532  
SENATE BILL 832

AN ACT TO PROVIDE A TIMETABLE WITHIN WHICH THE DEPARTMENT OF REVENUE AND THE TAX REVIEW BOARD MUST HOLD ADMINISTRATIVE HEARINGS AND RENDER DECISIONS AND TO PROVIDE FOR STATE TAXPAYERS' RIGHTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-237 reads as rewritten:

"§ 105-237. ~~Discretion of Secretary over penalties.~~ **Waiver of penalties; installment payments.**

(a) ~~Waiver.~~ – The Secretary of Revenue ~~shall have power, may,~~ upon making a record of ~~his~~ the reasons therefor, ~~to~~ reduce or waive any penalties provided for in this Subchapter, except the penalty provided in G.S. 105-236 relating to unpaid checks.

(b) Installment Payments. – After a proposed assessment of a tax becomes final, the Secretary may enter into an agreement with the taxpayer for payment of the tax in installments if the Secretary determines that the agreement will facilitate collection of the tax. The agreement may include a waiver of penalties but may not include a waiver of liability for tax or interest due. The Secretary may modify or terminate the agreement if one or more of the following findings is made:

- (1) Information provided by the taxpayer in support of the agreement was inaccurate or incomplete.
- (2) Collection of tax to which the agreement applies is in jeopardy.
- (3) The taxpayer's financial condition has changed.
- (4) The taxpayer has failed to pay an installment when due or to pay another tax when due.
- (5) The taxpayer has failed to provide information requested by the Secretary.

The Secretary must give a taxpayer who has entered into an installment agreement at least 30 days' written notice before modifying or terminating the agreement on the grounds that the taxpayer's financial condition has changed unless the taxpayer failed to disclose or concealed assets or income when the agreement was made or the taxpayer has acquired assets since the agreement was made that can satisfy all or part of the tax liability. A notice must specify the basis for the Secretary's finding of a change in the taxpayer's financial condition."

Sec. 2. G.S. 105-241.1 reads as rewritten:

"§ 105-241.1. **Additional taxes; assessment procedure.**

(a) Proposed Assessment. – If the Secretary discovers that any tax is due from a taxpayer, the Secretary must notify the taxpayer in writing of the kind and amount of tax due and of the Secretary's intent to assess the taxpayer for the tax. The notice must describe the basis for the proposed assessment and identify the amounts of any tax, interest, additions to tax, and penalties included in the proposed assessment. The notice must also advise the taxpayer that the proposed assessment will become final unless the taxpayer requests a hearing within the time set in subsection (c) of this section.

~~The Secretary must base a proposed assessment on the best information available. A proposed assessment of the Secretary is presumed to be correct. If the Secretary of Revenue discovers from the examination of any return or otherwise that any tax or additional tax is due from any taxpayer, he shall give notice to the taxpayer in writing of the kind and amount of tax which is due and of his intent to assess the same, which notice shall contain advice to the effect that unless application for a hearing is made within the time specified in subsection (c), the proposed assessment will become conclusive and final.~~

~~If the Secretary is unable to obtain from the taxpayer adequate and reliable information upon which to base such assessment, the assessment may be made upon the basis of the best information available and, subject to the provisions hereinafter made, such assessment shall be deemed correct.~~

(b) The notice required to be given in subsection (a) may be delivered to the taxpayer by an agent of the Secretary or may be sent by mail to the last known address of the taxpayer and such notice will be deemed to have been received in due course of the mail unless the taxpayer shall make an affidavit to the contrary within 90 days after such notice is mailed, in which event the taxpayer shall be heard by the Secretary in all respects as if he had made timely application.

(c) Hearing. – A taxpayer who objects to a proposed assessment of tax is entitled to a hearing before the Secretary as provided in this subsection. To obtain a hearing, the taxpayer must file a written request either for a hearing or for a written statement of the information and evidence upon which the proposed assessment is based. If the notice of a proposed assessment was mailed, the taxpayer's request must be filed within 30 days after the date the notice was mailed; if the notice of a proposed assessment was delivered in person, the taxpayer's request must be filed within 30 days after the date the notice was delivered.

When a taxpayer files a timely request for a written statement of the information and evidence upon which a proposed assessment is based, the Secretary must give the written statement to the taxpayer within 45 days after the taxpayer filed the request. A taxpayer who files a timely request for a written statement concerning a proposed assessment and who desires to have a hearing on the proposed assessment must file a written request for a hearing within 30 days after the written statement was mailed.

When a taxpayer files a timely request for a hearing, the Secretary must set the time and place at which the hearing will be conducted and must notify the taxpayer of the designated time and place within 60 days after the taxpayer filed the request for a hearing and at least 10 days before the date set for the hearing. The date set for the hearing must be within 90 days after the timely request for a hearing was filed or at a

later date mutually agreed upon by the taxpayer and the Secretary. The date set for the hearing may be postponed once at the request of the taxpayer and once at the request of the Secretary for a period of up to 90 days or for a longer period mutually agreed upon by the taxpayer and the Secretary.

The taxpayer may present any objections to the proposed assessment at the hearing. The rules of evidence do not apply at the hearing.

Within 90 days after the Secretary conducts a hearing on a proposed assessment, the Secretary must make a decision on the proposed assessment and notify the taxpayer of the decision. The decision must assess the taxpayer for the amount of any tax the Secretary determined to be due.

~~Any taxpayer who objects to a proposed assessment of tax or additional tax shall be entitled to a hearing before the Secretary of Revenue provided application therefor is made in writing within 30 days after the mailing or delivery of the notice required by subsection (a). If application for a hearing is made in due time, the Secretary of Revenue shall set a time and place for the hearing and after considering the taxpayer's objections shall give written notice of his decision to the taxpayer. The amount of tax or additional tax due from the taxpayer as finally determined by the Secretary shall thereupon be assessed and upon assessment shall become immediately due and collectible.~~

~~Provided, the taxpayer may request the Secretary at any time within 30 days of notice of such proposed assessment for a written statement, or transcript, of the information and the evidence upon which the proposed assessment is based, and the Secretary of Revenue shall furnish such statement, or transcript, to the taxpayer. Provided, further, after request by the taxpayer for such written statement, or transcript, the taxpayer shall have 30 days after the receipt of the same from the Secretary of Revenue to apply in writing for such hearing, explaining in detail his objections to such proposed assessment. If no request for such hearing is so made, such proposed assessment shall be final and conclusive.~~

~~(d) Assessment. – If no timely application for a hearing is made within 30 days after notice of a proposed assessment of tax or additional tax is given pursuant to subsection (a), such proposed tax or additional tax assessment shall become final without further notice and shall be immediately due and collectible. If a taxpayer does not apply for a hearing in accordance with subsection (c) of this section, a proposed assessment becomes final without further notice. If a taxpayer applies for a hearing in accordance with subsection (c) of this section, a proposed assessment becomes final when the taxpayer is notified of the decision made after the hearing. An assessment that is final is immediately due and collectible. G.S. 105-241.2, 105-241.3, and 105-241.4 apply to a tax assessed under this section.~~

Except in the case of a jeopardy assessment, the Secretary may not assess a taxpayer for a tax until the notice required by subsection (a) has been given and one of the following has occurred:

- (1) The time for applying for a hearing has expired.
- (2) The Secretary and the taxpayer have agreed upon a settlement.

- (3) The taxpayer has filed a timely application for a hearing and the Secretary, after conducting the hearing, has given the taxpayer written notice of the decision.

(d1) Notice of Assessment. – The Secretary must notify the taxpayer when a proposed assessment becomes final and is therefore collectible. The notice must identify the amounts of any tax, interest, additions to tax, and penalties included in the assessment. The notice must include or be accompanied by a brief statement in simple and nontechnical terms of all of the following:

- (1) The Department's authority to, and procedure for, levy on and sale of the taxpayer's property.
- (2) The taxpayer's available administrative appeals regarding the levy and sale of property, including the procedures for appeal.
- (3) Other options available to the taxpayer that could prevent levy on the property.
- (4) Procedures to redeem property and obtain release of a lien on property.

(e) Where a proper application for a license or a return has been filed and in the absence of fraud, the Secretary of Revenue shall assess any tax or additional tax due from a taxpayer within three years after the date upon which such application or return is filed or within three years after the date upon which such application or return was required by law to be filed, whichever is the later. Any tax or additional tax due from the taxpayer may be assessed at any time if (i) no proper application for a license or no return has been filed, (ii) a false or fraudulent application or return has been filed, or (iii) there has been an attempt in any manner to fraudulently defeat or evade tax.

Provided, the taxpayer may make a written waiver of any of the limitations of time set out in this section, for either a definite or indefinite time, and if such waiver is accepted by the Secretary he may institute assessment procedures at any time within the time extended by such waiver. This proviso shall apply to assessments made or undertaken under any provision of all schedules of the Revenue Act, and to assessments under Subchapter V of Chapter 105 and Chapter 18 of the General Statutes.

~~(f) Except as hereinafter provided in subsection (g), the Secretary of Revenue shall have no authority to assess any tax or additional tax under this section until the notice required by subsection (a) shall have been given and the period within which an application for a hearing may be filed has expired, or if a timely application for a hearing is filed, until written notice of the Secretary's decision has been given to the taxpayer, provided, however, that if the notice required by subsection (a) shall be mailed or delivered within the limitation prescribed in subsection (e), such limitation shall be deemed to have been complied with and the proceeding may be carried forward to its conclusion.~~

(g) Jeopardy Assessments. – Notwithstanding any other provision of this section, the Secretary of Revenue shall have authority may at any time within the applicable period of limitations to proceed at once to immediately assess any tax or additional tax which he the Secretary finds is due from a taxpayer if, in his opinion, the if the Secretary determines that collection of such the tax is in jeopardy and immediate assessment is necessary in order to protect the interest of the State, provided, however,

~~that if an assessment is made pursuant to the authority set forth in this subsection before the notice required by subsection (a) is given, such assessment shall not be valid unless the notice required by subsection (a) shall be given within 30 days after the date of such assessment. State. For a jeopardy assessment, the Secretary may give the taxpayer the notice of proposed assessment required by subsection (a) any time within 30 days after the jeopardy assessment is made. The taxpayer may request a hearing on the jeopardy assessment by following the procedure described in the notice.~~

~~Within five days after a jeopardy assessment is made under this subsection that is not the result of a criminal investigation or of a liability for a tax imposed under Article 2D of this Chapter, the Secretary must provide the taxpayer with a written statement of the information upon which the Secretary relied in making the assessment. Within 30 days after receipt of this written statement or, if no statement is received, within 30 days after the statement was due, the taxpayer may request the Secretary to review the action taken. After receipt of this request, the Secretary must determine whether making the jeopardy assessment was reasonable under all the circumstances and whether the amount assessed is reasonable under all the circumstances. The Secretary must give the taxpayer written notice of this determination within 30 days after the request. The taxpayer may seek judicial review of this determination as provided in G.S. 105-241.5.~~

~~(h) The rules of evidence do not apply in a hearing before the Secretary of Revenue under this section. G.S. 105-241.2, 105-241.3, and 105-241.4 apply to a tax or additional tax assessed under this section.~~

(i) All assessments of taxes or additional taxes, exclusive of penalties assessed thereon, shall bear interest from the time the taxes or additional taxes were due until paid. On or before June 1 and December 1 of each year, the Secretary of Revenue shall establish the interest rate to be in effect during the six-month period beginning on the next succeeding July 1 and January 1, respectively, after giving due consideration to current market conditions and to the rate that will be in effect on that date pursuant to the Internal Revenue Code. If no new rate is established, the rate in effect during the preceding six-month period shall continue in effect. The rate established by the Secretary may not be less than five percent (5%) per year and may not exceed sixteen percent (16%) per year. For refunds and assessments made between July 1, 1982, and December 31, 1982, the rate shall be twelve percent (12%) per year.

From and after January 1, 1978, interest upon assessments and upon additional taxes shall be computed at the rate established by G.S. 105-241.1(i) and shall be computed without regard to any former rate of interest which might have been established by G.S. 105-241.1 for the taxable period for which said assessment was made, or for the period within which said taxes were due to be paid.

~~(i1) 'Tax' and 'additional tax,' for the purposes of this Subchapter and for the purposes of Subchapters V and VIII of this Chapter, include penalties and interest, as well as the principal amount of such tax or additional tax.~~

(j) This section is in addition to and not in substitution of any other provision of the General Statutes relative to the assessment and collection of taxes and shall not be construed as repealing any other provision of the General Statutes."

Sec. 3. G.S. 105-241.2 reads as rewritten:

**"§ 105-241.2. Administrative review.**

(a) Petition for Administrative Review. – Without having to pay the tax or additional tax assessed by the Secretary under this Chapter, any taxpayer may ~~secure~~ obtain from the Tax Review Board an administrative review with respect to ~~his~~ the taxpayer's liability for the tax or additional tax assessed by the Secretary. Such a review may be obtained only if the taxpayer has obtained a hearing before the Secretary and the Secretary has rendered a final decision with respect to the taxpayer's liability. If a taxpayer has made a timely written demand for refund of an alleged overpayment and the Secretary has issued a decision denying part or all of the claimed refund, the taxpayer may obtain from the Tax Review Board an administrative review of the Secretary's decision. To obtain ~~such~~ administrative review the taxpayer ~~shall~~ must take the following actions:

- (1) ~~File~~ Within 30 days after the Secretary's final decision is issued, file with the Tax Review Board, with a copy to the Secretary, notice of intent to file a petition for review, such notice to be filed within 30 days after notice of the Secretary's final decision is issued; and review.
- (2) ~~File~~ Within 60 days after the Secretary's final decision is issued, file with the Tax Review Board, with a copy to the Secretary, a petition requesting administrative review and stating in concise terms the grounds upon which review is sought, such petition to be filed within 60 days after the expiration of the period provided in subdivision (1) for filing of notice of intent to petition for review. sought.

(b) Secretary to Provide Records. – Upon receipt by the Secretary of the taxpayer's petition, the Secretary shall transmit to the Tax Review Board all of the records, data, ~~evidence~~ evidence, and other materials ~~which he has in the Secretary's possession~~ pertaining to the matters which the Tax Review Board is being requested by the taxpayer to review. ~~He~~ The Secretary shall also transmit to the Board a copy of ~~his~~ the decision respecting such of the Board on the matters.

(b1) Hearing. – Within 60 days after a timely petition for administrative review has been filed and at least 10 days before the date set for the hearing, the Tax Review Board shall notify the taxpayer and the Secretary in writing of the time and place at which the hearing will be conducted. The hearing shall be held in Raleigh and the date set for the hearing shall be within 90 days after the timely petition for administrative review was filed or at a later date mutually agreed upon by the taxpayer and the Secretary. The date set for the hearing may be postponed once at the request of the taxpayer and once at the request of the Secretary for a period of up to 90 days or for a longer period mutually agreed upon by the taxpayer and the Secretary. The Tax Review Board shall fix a time for reviewing the Secretary's decision and shall hear the same in the City of Raleigh. The Board shall give notice of the time and place of such hearing to the petitioner and to the Secretary at least 10 days prior thereto. Officers and employees of the Revenue Department, when so requested by the Board, shall attend hearings on ~~such reviews~~ petitions for review and shall furnish the Board with all information they have respecting the asserted liability. The Tax Review Board may establish ~~by regulation~~ the procedure to be followed in hearings before it and is authorized to may

establish by regulations a schedule of costs of the proceedings. At least two members of the Board shall sit at the hearing and all members shall consider and decide the matters on review.

(b2) Decision of Tax Review Board. ~~The~~ Within 90 days after conducting a hearing under this section, the Board shall confirm, modify, reverse, reduce, or increase the assessment or decision of the Secretary, and it shall furnish a written copy of its order to the Secretary and shall Secretary, and serve a written copy of its order upon the taxpayer by personal service or by registered mail (return receipt requested). ~~In the event~~ If the decision of the Tax Review Board should does not result in a reduction of the tax liability asserted by the Secretary to be due, or if the Tax Review Board should dismiss the petition under the provisions of dismisses the petition under subsection (c) of this section, the costs of the proceeding shall be added to and shall become a part of the tax liability to be collected by the Secretary. ~~In the event~~ If the decision of the Tax Review Board should result in a reduction of the tax liability asserted by the Secretary to be due, due or in a refund to the taxpayer, no costs shall be taxed against the taxpayer. Any overpayment of tax determined by the decision of the Tax Review Board, together with interest thereon at the rate and for the period provided under G.S. 105-266, shall be refunded by the State.

(c) Frivolous Petitions. ~~—~~ Upon receipt of a petition requesting administrative review as provided in the preceding subsection, the Tax Review Board shall examine the petition and the records and other data transmitted by the Secretary pertaining to the matter for which review is sought, and if it should appear from such records and data that the petition is frivolous or filed for purpose of delay, the Tax Review Board shall dismiss the petition for review and, in addition, is authorized, in its discretion, to impose a penalty not to exceed one hundred dollars (\$100.00), which penalty shall be in addition to the tax, penalties, interests, and costs, and shall be collected in the same manner as the principal tax liability.

(d) ~~Any taxpayer may also apply to the Tax Review Board under the provisions of this section for administrative review of the decision of the Secretary of Revenue with respect to an alleged overpayment of tax imposed by this Chapter provided such taxpayer has filed a demand in writing for refund of such overpayment within the time allowed by law for the filing of such demand and the Secretary has issued a decision denying the claimed refund. To obtain such review the taxpayer shall file notice of intent to petition for review with the Tax Review Board, with copy to the Secretary, within 30 days after issuance of the Secretary's decision. The taxpayer shall also perfect the application for review by filing with the Tax Review Board, with a copy to the Secretary, a petition requesting administrative review and stating in concise terms the grounds upon which review is sought. Such petition shall be filed within 60 days after expiration of the period provided for filing notice of intent to petition for review. The Tax Review Board shall consider and dispose of the petition for review in the manner provided in subsection (b) for the consideration and disposition of petitions for review of any tax or additional tax assessed by the Secretary. No costs shall, however, be taxed against the taxpayer if the decision of the Tax Review Board results in a refund to the taxpayer. Any overpayment of tax determined by the decision of the Tax Review Board,~~

together with interest thereon at the rate and for the period provided under G.S. 105-266, shall be refunded by the State.

(e) Jeopardy Assessments. – At any time the Secretary of Revenue shall have authority, if in his may, if in the Secretary's opinion, such action is necessary for the protection of the interest of the State, to proceed at once to levy the assessment for the amount of the tax against the property of the taxpayer seeking the administrative review. In levying said the assessment the Secretary shall make a certificate ~~setting forth~~ verifying the essential parts relating to the tax, including the amount thereof asserted to be due, the date when same is asserted to have become due and payable, the person, firm, or corporation chargeable therewith, and the nature of the tax. ~~Under his hand and seal the~~ The Secretary shall transmit ~~said this~~ certificate to the clerk of the superior court of any county in which the taxpayer resides or has property; whereupon, it shall be the duty of the clerk of the superior court of the county to docket the ~~said~~ certificate and to index ~~the same it~~ on the cross index of judgments. When so docketed and indexed, ~~said the~~ certificate of tax liability shall constitute a lien upon the property of the taxpayer to the same extent as that provided for by G.S. 105-241. No execution shall issue on ~~said the~~ certificate before final determination of the administrative review by the Tax Review Board; provided, however, if the Secretary determines that the collection of the tax would be jeopardized by delay, ~~he the~~ Secretary may cause execution to be issued, as provided in this Chapter, immediately against the personal property of the taxpayer unless the taxpayer files with the Secretary a bond in the amount of the asserted liability for tax, penalty and interest. If upon ~~such~~ final administrative determination the tax asserted or any part thereof is sustained, execution may issue on ~~said the~~ certificate at the request of the Secretary of Revenue, and the sheriff shall proceed to advertise and sell the property of the taxpayer.

Within five days after a jeopardy levy is made under this subsection that is not the result of a criminal investigation or of a liability for a tax imposed under Article 2D of this Chapter, the Secretary must provide the taxpayer with a written statement of the information upon which the Secretary relied in making the levy. Within 30 days after receipt of this statement or, if no statement was received, within 30 days after the statement was due, the taxpayer may request the Secretary to review the action taken. After receipt of this request, the Secretary shall determine whether the levy was reasonable under the circumstances. The Secretary shall give the taxpayer written notice of this determination within 30 days after the request. The taxpayer may seek judicial review of this determination as provided in G.S. 105-241.5.

~~(f) Taxpayers seeking administrative review of liability decisions of the Commissioner of Insurance under Article 8B of this Subchapter shall follow the procedure prescribed in subsection (a) of this section for taxpayers seeking administrative review of decisions of the Secretary of Revenue. In such cases all provisions of this section referring to the Secretary of Revenue shall be considered as applying to the Commissioner of Insurance."~~

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

**"§ 105-241.5. Appeal of certain jeopardy actions.**



Within 90 days after the earlier of the date a taxpayer received or should have received a determination of the Secretary concerning a jeopardy assessment under G.S. 105-241.1(g) or a jeopardy levy under G.S. 105-241.2(e), the taxpayer may bring a civil action, in the Superior Court of Wake County or of the county in North Carolina in which the taxpayer resides, seeking review of the jeopardy action. Within 20 days after the action is filed, the court shall determine:

- (1) In the case of a jeopardy assessment, whether the assessment is reasonable under the circumstances and whether the amount assessed is appropriate under the circumstances.
- (2) In the case of a jeopardy levy, whether the levy is reasonable under the circumstances.

If the court determines that an action of the Secretary is unreasonable or inappropriate, the court may order the Secretary to take any action the court finds appropriate. If the taxpayer shows reasonable grounds why the 20-day limit on the court should be extended, the court may grant an extension of not more than 40 additional days."

Sec. 5. G.S. 105-242 reads as rewritten:

**"§ 105-242. Warrants for collection of taxes; garnishment and attachment; certificate or judgment for taxes.**

(a) Warrants for Collection of Taxes. – If any tax imposed by this Subchapter, or any other tax levied by the State and payable to the Secretary of Revenue, Secretary has not been paid within 30 days after it became due and payable, and after it was assessed, the taxpayer was given a notice of final assessment of the tax under G.S. 105-241.1(d1), the Secretary of Revenue may take either of the following actions to collect the tax:

- (1) The Secretary may issue a warrant or an order under the Secretary's hand and official seal, directed to the sheriff of any county of the State, commanding him to levy upon and sell the real and personal property of the taxpayer found within the county for the payment of the tax, including penalties and interest, and the cost of executing the warrant and to return to the Secretary the money collected, within a time to be specified in the warrant, not less than 60 days from the date of the warrant; the sheriff upon receipt of the warrant shall proceed in all respects with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner.
- (2) The Secretary may issue a warrant or order under the Secretary's hand and seal to any revenue officer or other employee of the Department of Revenue charged with the duty to collect taxes, commanding the officer or employee to levy upon and sell the taxpayer's personal property, including that described in G.S. 105-366(d), found within the State for the payment of the tax, including penalties and interest. Except as otherwise provided in this subdivision, the levy upon the sale of personal property shall be governed by the laws regulating levy

and sale under execution. The person to whom the warrant is directed shall proceed to levy upon and sell the personal property subject to levy in the same manner and with the same powers and authority normally exercised by sheriffs in levying upon and selling personal property under execution, except that the property may be sold in Wake County or in the county in which it was seized, in the discretion of the Secretary. In addition to the notice of sale required by the laws governing sale of property levied upon under execution, the Secretary may advertise the sale in any reasonable manner and for any reasonable period of time to produce an adequate bid for the property. Levy and sale fees, plus actual advertising costs, shall be added to and collected in the same manner as taxes.

(b) Garnishment and Attachment. – Bank deposits, rents, salaries, wages, and all other choses in action or property incapable of manual levy or delivery, including property held in the Escheat Fund, hereinafter called the intangible, belonging, owing, or to become due to any taxpayer subject to any of the provisions of this Subchapter, or which has been transferred by such taxpayer under circumstances which would permit it to be levied upon if it were tangible, shall be subject to attachment or garnishment as herein provided, and the person owing said intangible, matured or unmatured, or having same in his possession or control, hereinafter called the garnishee, shall become liable for all sums due by the taxpayer under this Subchapter to the extent of the amount of the intangible belonging, owing, or to become due to the taxpayer subject to the setoff of any matured or unmatured indebtedness of the taxpayer to the garnishee; provided, however, the garnishee shall not become liable for any sums represented by or held pursuant to any negotiable instrument issued and delivered by the garnishee to the taxpayer and negotiated by the taxpayer to a bona fide holder in due course, and whenever any sums due by the taxpayer and subject to garnishment are so held or represented, the garnishee shall hold such sums for payment to the Secretary of Revenue upon the garnishee's receipt of such negotiable instrument, unless such instrument is presented to the garnishee for payment by a bona fide holder in due course in which event such sums may be paid in accordance with such instrument to such holder in due course. To effect such attachment or garnishment the Secretary of Revenue shall serve or cause to be served upon the taxpayer and the garnishee a notice as hereinafter provided, which notice may be served by any deputy or employee of the Secretary of Revenue or by any officer having authority to serve summonses or may be served in any manner provided in Rule 4 of the North Carolina Rules of Civil Procedure. The notice shall:

- (1) Show the name of the taxpayer, and if known his Social Security number or federal tax identification number and his address;
- (2) Show the nature and amount of the tax, and the interest and penalties thereon, and the year or years for which the same were levied or assessed, and
- (3) Be accompanied by a copy of this subsection, and thereupon the procedure shall be as follows:

If the garnishee has no defense to offer or no setoff against the taxpayer, he shall within 10 days after service of said notice, answer the same by sending to the Secretary of Revenue by registered or certified mail a statement to that effect, and if the amount due or belonging to the taxpayer is then due or subject to his demand, it shall be remitted to the Secretary with said statement, but if said amount is to mature in the future, the statement shall set forth that fact and the same shall be paid to the Secretary upon maturity, and any payment by the garnishee hereunder shall be a complete extinguishment of any liability therefor on his part to the taxpayer. If the garnishee has any defense or setoff, he shall state the same in writing under oath, and, within 10 days after service of said notice, shall send two copies of said statement to the Secretary by registered or certified mail; if the Secretary admits such defense or setoff, he shall so advise the garnishee in writing within 10 days after receipt of such statement and the attachment or garnishment shall thereupon be discharged to the amount required by such defense or setoff, and any amount attached or garnished hereunder which is not affected by such defense or setoff shall be remitted to the Secretary as above provided in cases where the garnishee has no defense or setoff, and with like effect. If the Secretary shall not admit the defense or setoff, he shall set forth in writing his objections thereto and shall send a copy thereof to the garnishee within 10 days after receipt of the garnishee's statement, or within such further time as may be agreed on by the garnishee, and at the same time he shall file a copy of said notice, a copy of the garnishee's statement, and a copy of his objections thereto in the superior court of the county where the garnishee resides or does business where the issues made shall be tried as in civil actions.

If judgment is entered in favor of the Secretary of Revenue by default or after hearing, the garnishee shall become liable for the taxes, interest and penalties due by the taxpayer to the extent of the amount over and above any defense or setoff of the garnishee belonging, owing, or to become due to the taxpayer, but payments shall not be required from amounts which are to become due to the taxpayer until the maturity thereof, nor shall more than ten percent (10%) of any taxpayer's salary or wages be required to be paid hereunder in any one ~~month~~ month as provided in subdivision (e)(4) of this section. The garnishee may satisfy said judgment upon paying said amount, and if he fails to do so, execution may issue as provided by law. From any judgment or order entered upon such hearing either the Secretary of Revenue or the garnishee may appeal as provided by law. If, before or after judgment, adequate security is filed for the payment of said taxes, interest, penalties, and costs, the attachment or garnishment may be released or execution stayed pending appeal, but the final judgment shall be paid or enforced as above provided. The taxpayer's sole remedies to question his liability for said taxes, interest, and penalties shall be those provided in this Subchapter, as now or hereafter amended or supplemented. If any third person claims any intangible attached or garnished hereunder and his lawful right thereto, or to any part thereof, is shown to the Secretary, he shall discharge the attachment or garnishment to the extent necessary to protect such right, and if such right is asserted after the filing of said copies as aforesaid, it may be established by interpleader as now or hereafter provided by law in cases of attachment and garnishment. In case such third party has no notice of

proceedings hereunder, he shall have the right to file his petition under oath with the Secretary at any time within 12 months after said intangible is paid to him and if the Secretary finds that such party is lawfully entitled thereto or to any part thereof, he shall pay the same to such party as provided for refunds by G.S. 105-266.1, and if such payment is denied, said party may appeal from the determination of the Secretary under the provisions of G.S. 105-241.4; provided, that in taking an appeal to the superior court, said party may appeal either to the Superior Court of Wake County or to the superior court of the county wherein he resides or does business. The intangibles of a taxpayer shall be paid or collected hereunder only to the extent necessary to satisfy said taxes, interest, penalties, and costs. Except as hereinafter set forth, the remedy provided in this section shall not be resorted to unless a warrant for collection or execution against the taxpayer has been returned unsatisfied: Provided, however, if the Secretary is of opinion that the only effective remedy is that herein provided, it shall not be necessary that a warrant for collection or execution shall be first returned unsatisfied, and in no case shall it be a defense to the remedy herein provided that a warrant for collection or execution has not been first returned unsatisfied.

This subsection shall be applicable with respect to the wages, salary or other compensation of officials and employees of this State and its agencies and instrumentalities, officials and employees of political subdivisions of this State and their agencies and instrumentalities, and also officials and employees of the United States and its agencies and instrumentalities insofar as the same is permitted by the Constitution and laws of the United States. In the case of State or federal employees, the notice shall be served upon such employee and upon the head or chief fiscal officer of the department, agency, instrumentality or institution by which the taxpayer is employed. In case the taxpayer is an employee of a political subdivision of the State, the notice shall be served upon such employee and upon the chief fiscal officer, or any officer or person charged with making up the payrolls, or disbursing funds, of the political subdivision by which the taxpayer is employed. Such head or chief officer or fiscal officer or other person as specified above shall thereafter, subject to the limitations herein provided, make deductions from the salary or wages due or to become due the taxpayer and remit same to the Secretary until the tax, penalty, interest and costs allowed by law are fully paid. Such deductions and remittances shall, **pro tanto**, constitute a satisfaction of the salary or wages due the taxpayer.

(c) Certificate or Judgment for Taxes. – In addition to the remedy herein provided, the Secretary of Revenue is authorized and empowered to make a certificate setting forth the essential particulars relating to the said tax, including the amount thereof, the date when the same was due and payable, the person, firm, or corporation chargeable therewith, and the nature of the tax, and under his hand and seal transmit the same to the clerk of the superior court of any county in which the delinquent taxpayer resides or has property; whereupon, it shall be the duty of the clerk of the superior court of the county to docket the said certificate and index the same on the cross index of judgments, and execution may issue thereon with the same force and effect as an execution upon any other judgment of the superior court (said tax shall become a lien on realty only from the date of the docketing of such certificate in the office of the clerk of

the superior court and on personalty only from the date of the levy on such personalty and upon the execution thereon no homestead or personal property exemption shall be ~~allowed~~. allowed except as provided in subdivision (e)(1) of this section).

Except as provided in ~~subsection (e) of G.S. 105-241.2,~~ G.S. 105-241.2(e) for jeopardy levies, no sale of real or personal property shall be made under any execution issued on a certificate docketed pursuant to the provisions of this subsection before the administrative action of the Secretary of Revenue or the Tax Review Board is completed when a hearing has been requested of the Secretary or a petition for review has been filed with the Tax Review Board, nor shall such sale be made before the assessment on which the certificate is based becomes final when there is no request for a hearing before the Secretary or petition for review by the Tax Review Board. Neither the title to real estate nor to personal property sold under execution issued upon a certificate docketed under this subsection shall be drawn in question upon the ground that the administrative action contemplated by this paragraph was not completed prior to the sale of such property under execution. Nothing in this paragraph shall prevent the sheriff to whom an execution is issued from levying upon either real or personal property pending an administrative determination of tax liability and, in the case of personal property, the sheriff may hold such property in his custody or may restore the execution defendant to the possession thereof upon the giving of a sufficient forthcoming bond. Upon a final administrative determination of the tax liability being had, if the assessment or any part thereof is sustained, the sheriff shall, upon request of the Secretary of Revenue, proceed to advertise and sell the property under the original execution notwithstanding the original return date of the execution may have expired.

The owner of tangible property seized under this section may request the Secretary to authorize the sale of the property under execution within 60 or more days after the request is made. The Secretary shall authorize the sale unless the Secretary finds that selling the property would not be in the best interests of the State. When property is sold at the request of the owner, the Department shall receive from the sale of the property the administrative expenses it incurred in having the property sold.

A certificate or judgment in favor of the State or the Secretary of Revenue for taxes payable to the Department of Revenue, whether docketed before or after the effective date of this paragraph, shall be valid and enforceable for a period of 10 years from the date of docketing. When any such certificate or judgment, whether docketed before or after the effective date of this paragraph, remains unsatisfied for 10 years from the date of its docketing, the same shall be unenforceable and the tax represented thereby shall abate. Upon the expiration of said 10-year period, the Secretary of Revenue or his duly authorized deputy shall cancel of record said certificate or judgment. Any such certificate or judgment now on record which has been docketed for more than 10 years shall, upon the request of any interested party, be canceled of record by the Secretary of Revenue or his duly authorized deputy; provided, in the event of the death of the judgment debtor or his absence from the State before the expiration of the 10-year period herein provided, the running of said 10-year period shall be stopped for the period of his absence from the State or during the pendency of the settlement of the estate and for one year thereafter, and the time elapsed during the pendency of any

action or actions to set aside the judgment debtor's conveyance or conveyances as fraudulent, or the time during the pendency of any insolvency proceeding, or the time during the existence of any statutory or judicial bar to the enforcement of the judgment shall not be counted in computing the running of said 10-year period. And, provided further, that any execution sale which has been instituted upon any such judgment before the expiration of the 10-year period may be completed after the expiration of the 10-year period, notwithstanding the fact that resales may be required because of the posting of increased bids. Provided further, that, notwithstanding the expiration of the 10-year period provided and notwithstanding the fact that no proceedings to collect the judgment by execution or otherwise has been commenced within the 10-year period, the Secretary of Revenue may accept any payments tendered upon said judgments after the expiration of said 10-year period.

(c1) Release of Lien. – The Secretary shall release the State tax lien on a taxpayer's property if the liability for which the lien attached has been satisfied. The Secretary may release the State tax lien on all or part of a taxpayer's property if one or more of the following findings is made:

- (1) The liability for which the lien attached has become unenforceable due to lapse of time.
- (2) The lien is creating an economic hardship due to the financial condition of the taxpayer.
- (3) The fair market value of the property exceeds the tax liability and release of the lien on part of the property would not hinder collection of the liability.
- (4) Release of the lien will probably facilitate, expedite, or enhance the State's chances for ultimately collecting a tax due the State.

If the Secretary of Revenue shall find that it will be for the best interest of the State in that it will probably facilitate, expedite or enhance the State's chances for ultimately collecting a tax due the State, he may authorize a deputy or agent to release the lien of a State tax judgment or certificate of tax liability upon a specified parcel or parcels of real estate by noting such release upon the judgment docket where such certificate of tax liability is recorded. Such release shall be signed by the deputy or agent and witnessed by the clerk of court or his deputy or assistant and shall be in substantially the following form: 'The lien of this judgment upon (insert here a short description of the property to be released sufficient to identify it, such as reference to a particular tract described in a recorded instrument) is hereby released, but this judgment shall continue in full force and effect as to other real property to which it has heretofore attached or may hereafter attach. This \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

\_\_\_\_\_  
Revenue ~~Collector~~ Officer, N.C. Department of Revenue

WITNESS:

\_\_\_\_\_  
42 C.S.C.'

The release shall be noted on the judgment docket only upon conditions prescribed by the Secretary and shall have effect only as to the real estate described therein and shall not affect any other rights of the State under said judgment.

(d) Remedies Cumulative. – The remedies herein given are cumulative and in addition to all other remedies provided by law for the collection of said taxes.

(e) Exempt Property. – Only the following property is exempt from levy, attachment, and garnishment under this Article:

(1) The taxpayer's principal residence, unless the Secretary approves of the levy in writing or the Secretary finds that collection of the tax is in jeopardy.

(2) Tangible personal property that is exempt from federal levy as provided in section 6334 of the Code.

(3) Intangible personal property that is exempt from federal levy under section 6334 of the Code.

(4) Ninety percent (90%) of the taxpayer's salary or wages per month.

(f) Uneconomical Levy. – The Secretary shall not levy against any property if the Secretary estimates before levy that the expenses the Department would incur in levying against the property would exceed the fair market value of the property.

(g) Erroneous Lien. – A taxpayer may appeal to the Secretary after a certificate is filed under subsection (c) of this section if the taxpayer alleges an error in the filing of the lien. The Secretary shall make a determination of such an appeal as quickly as possible. If the Secretary finds that the filing of the certificate was erroneous, the Secretary shall issue a certificate of release of the lien as quickly as possible."

Sec. 6. G.S. 105-256 reads as rewritten:

**"§ 105-256. Reports prepared by Secretary of Revenue.**

(a) Reports. – ~~The Secretary of Revenue~~ shall prepare and publish the following:

(1) At least every two years, statistics concerning taxes imposed by this Chapter, including amounts collected, classifications of taxpayers, geographic distribution of taxes, and other facts considered pertinent and valuable.

(2) At least every two years, a tax expenditure report that lists the tax expenditures made by a provision in this Chapter other than a provision in Subchapter II and, when possible to do without impairing other duties of the Secretary or the Department of Revenue, the amount by which revenue is reduced by each expenditure. A 'tax expenditure' is an exemption, an exclusion, a deduction, an allowance, a credit, a refund, a preferential tax rate, or another device that reduces the amount of tax revenue that would otherwise be available to the State.

(3) As often as required, a report that is not listed in this subsection but is required by another law.

(4) As often as the Secretary determines is needed, other reports concerning taxes imposed by this Chapter.

- (5) At least once a year, a statement of the taxpayer's bill of rights, which sets forth in simple and nontechnical terms the following:
- a. The taxpayer's right to have the taxpayer's tax information kept confidential.
  - b. The rights of a taxpayer and the obligations of the Department during an audit.
  - c. The procedure for a taxpayer to appeal an adverse decision of the Department at each level of determination.
  - d. The procedure for a taxpayer to claim a refund for an alleged overpayment.
  - e. The procedure for a taxpayer to request information, assistance, and interpretations or to make complaints.
  - f. Penalties and interest that may apply and the basis for requesting waiver of a penalty.
  - g. The procedures the Department may use to enforce the collection of a tax, including assessment, jeopardy assessment, enforcement of liens, and garnishment and attachment.

(b) Information. – The Secretary ~~of Revenue~~ may require a unit of State or local government to furnish the Secretary statistical information the Secretary needs to prepare a report under this section. Upon request of the Secretary, a unit of government shall submit statistical information on one or more forms provided by the Secretary.

(c) Distribution. – The Secretary ~~of Revenue~~ shall distribute reports prepared by the Secretary as follows without charge:

- (1) Five copies to the Division of State Library of the Department of Cultural Resources, as required by G.S. 125-11.7.
- (2) Five copies to the Legislative Services Commission for the use of the General Assembly.
- (3) Upon request, one copy to each entity and official to which a copy of the reports of the Appellate Division of the General Court of Justice is furnished under G.S. 7A-343.1.
- (4) Upon request, one copy to each member of the General Assembly.
- (5) One copy of the taxpayer's bill of rights to each taxpayer the Department contacts regarding determination or collection of a tax, other than by providing a tax form.
- (6) Upon request, one copy of the taxpayer's bill of rights to each taxpayer.

The Secretary ~~of Revenue~~ may charge a person not listed in this subsection a fee for a report prepared by the Secretary in an amount that covers publication or copying costs and mailing costs."

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

**"§ 105-258.1. Taxpayer interviews.**



(a) Scope. – This section applies to in-person interviews between a taxpayer and an officer or employee of the Department relating to the determination or collection of a tax, other than an in-person interview concerning any of the following:

- (1) A criminal investigation.
- (2) The determination or collection of a tax imposed by Article 2D of this Chapter.
- (3) The assessment under G.S. 105-241.1(g) of a tax whose collection is in jeopardy.
- (4) The levy or execution under G.S. 105-241.2(e) of an assessment whose collection is in jeopardy.

(b) Recording of Interview. – The Department shall allow a taxpayer to make an audio recording of an interview at the taxpayer's expense and using the taxpayer's equipment. The Department may make an audio recording of an interview at its own expense and using its own equipment. The Department shall, upon request of the taxpayer, provide the taxpayer a transcript of an interview recorded by the Department; the Department may charge the taxpayer for the cost of the requested transcription and reproduction of the transcript.

(c) Disclosure of Procedure. – At or before an initial interview relating to the determination of a tax, the Department shall provide the taxpayer a written explanation of the audit process and the taxpayer's rights in the process. At or before an initial interview relating to the collection of a tax, the Department shall provide the taxpayer a written explanation of the collection process and the taxpayer's rights in the process.

(d) Right of Consultation. – A taxpayer may authorize a person to represent the taxpayer in an interview if the person has a written power of attorney executed by the taxpayer. The Department may not require a taxpayer to accompany the taxpayer's representative to the interview unless the Secretary has summoned the taxpayer pursuant to G.S. 105-258.

(e) Suspension of Interview. – The Department shall suspend an interview relating to the determination of a tax if, at any time during the interview, the taxpayer expresses the desire to consult with a person permitted to represent the taxpayer before the Department."

Sec. 8. G.S. 105-260 reads as rewritten:

**"§ 105-260. Deputies and clerks. Evaluation of Department personnel.**

The Secretary may appoint such deputies, clerks and assistants under his direction as may be necessary to administer the laws relating to the assessment and collection of all taxes provided for in this Subchapter; may remove and discharge same at his discretion, and shall fix their compensation within the rules and regulations prescribed by law. not use records of tax enforcement results, or production goals based on these records, as the sole criteria in evaluating employees of the Department who are directly involved in tax collection activities or in evaluating the immediate supervisors of these employees. The Secretary must consider records of taxpayer complaints that named an employee as discourteous, unresponsive, or incompetent in evaluating the employee."

Sec. 9. G.S. 105-264 reads as rewritten:

**"§ 105-264. Effect of interpretation, regulation, or ruling. Secretary's interpretation of revenue laws.**

~~It shall be the duty of the Secretary of Revenue to construe interpret all sections of this Subchapter that are laws administered by the Secretary and all sections of Subchapter V. Secretary. The Secretary's interpretation of these sections laws shall be consistent with the applicable regulations. Interpretations rules.~~

~~An interpretation by the Secretary of Revenue shall be is prima facie correct, and a protection to the officers and taxpayers affected thereby. Whenever correct. When the Secretary of Revenue shall construe any provisions of the revenue laws administered by him and shall issue or publish to taxpayers in writing any regulation or ruling so construing the effect or operation of any such laws, such ruling or regulation shall be interprets a law by adopting a rule or publishing a bulletin on the law, the interpretation is a protection to the officers and taxpayers affected thereby by the interpretation, and taxpayers shall be are entitled to rely upon such regulation or ruling. In the event the interpretation. If the Secretary of Revenue shall change, modify, repeal, abrogate, or alter any such regulation or ruling any changes a rule or a bulletin, a taxpayer who has relied upon the construction or interpretation contained in the Secretary's previous ruling or regulation shall not be rule or bulletin before it was changed is not liable for any penalty or additional assessment on account of any tax that accrued before the rule or bulletin was changed and was not paid by reason of reliance upon such ruling or regulation and which might have accrued prior to the date of the change, modification, repeal, abrogation, or alteration by the Secretary, and during the effective period of such prior ruling or regulation. Provided, that nothing herein contained shall prevent any such change in construction or interpretation of the provisions of this Chapter by the Secretary of Revenue from being effective from and after the date of its issuance or promulgation, or the assessment of any tax thereunder. the rule or bulletin. If a taxpayer requests in writing specific advice from the Department and receives in response erroneous written advice, the taxpayer is not liable for any penalty or additional assessment attributable to the erroneous advice furnished by the Department to the extent the advice was reasonably relied upon by the taxpayer and the penalty or additional assessment did not result from the taxpayer's failure to provide adequate or accurate information.~~

~~This section does not prevent the Secretary from changing an interpretation and it does not prevent a change in an interpretation from applying on and after the effective date of the change."~~

~~Sec. 10. G.S. 105-266.1(a) reads as rewritten:~~

~~"(a) If a taxpayer claims that a tax or an additional tax paid by the taxpayer was excessive or incorrect, the Any taxpayer may apply to the Secretary of Revenue for refund of the tax or additional tax paid by him at any time within three years after the date set by the statute for the filing of the return or application for a license or within six months from after the date of payment of such the tax or additional tax, whichever is later.~~

~~The Secretary shall grant a hearing on each timely request for a refund. Within 60 days after a timely request for a refund has been filed and at least 10 days before the~~

date set for the hearing, the Secretary shall notify the taxpayer in writing of the time and place at which the hearing will be conducted. The date set for the hearing shall be within 90 days after the timely request for a hearing was filed or at a later date mutually agreed upon by the taxpayer and the Secretary. The date set for the hearing may be postponed once, at the request of the taxpayer or the Secretary, for a period of up to 90 days or for a longer period mutually agreed upon by the taxpayer and the Secretary.

Within 90 days after conducting a hearing under this subsection, the Secretary shall make a decision on the requested refund, notify the taxpayer of the decision, and adjust the computation of the tax in accordance with the decision. The Secretary shall ~~The Secretary shall grant a hearing thereon, and if upon such hearing he shall determine that the tax is excessive or incorrect, he shall resettle the same according to the law and the facts, and adjust the computation of tax accordingly. The Secretary shall notify the taxpayer of his determination, and shall refund to the taxpayer the amount, if any, paid amount of any tax the Secretary finds was paid incorrectly or paid in excess of the tax found by him to be due: due,~~ except that there shall be no refund to the taxpayer of any sum set off under the provisions of Chapter 105A, the Set-off Debt Collection Act."

Sec. 11. G.S. 105-122(c)(2) reads as rewritten:

"(2) If any corporation believes that the method of allocation or apportionment hereinbefore described as administered by the Secretary ~~of Revenue~~ has operated or will so operate as to subject it to taxation on a greater portion of its capital stock, surplus and undivided profits than is reasonably attributable to business within the State, it ~~shall be entitled to~~ may file with the Tax Review Board a petition setting forth the facts upon which its belief is based and its argument with respect to the application of the allocation formula. This petition shall be filed in such form and within such time as the Tax Review Board may prescribe. The Board shall grant a hearing ~~thereon~~ on the petition. The time limitations set in G.S. 105-241.2 for the date of the hearing, notification to the taxpayer, and a decision following the hearing apply to a hearing held pursuant to this subdivision.

At least three members of the Tax Review Board shall attend any hearing pursuant to such petition. In such cases the Tax Review Board's membership shall be augmented by the addition of the ~~Secretary of Revenue,~~ Secretary, who shall sit as a member of ~~said the~~ Board with full power to participate in its deliberations and decisions with respect to petitions filed under the provisions of this section. An informal record containing in substance the evidence, contentions and arguments presented at the hearing shall be made. All members of the augmented Tax Review Board shall consider such evidence, contentions and arguments, and the decision thereon shall be made by a majority vote of the augmented Board. ~~If the Board shall find that the application of the allocation formula subjects the corporation to taxation on a greater portion of its capital stock, surplus and undivided profits than is reasonably attributable to its business within this State:~~

a.—If the corporation ~~shall employ~~ employs in its books of account a detailed allocation of receipts and expenditures which reflects more clearly than the applicable allocation formula or alternative formulas prescribed by this section the portion of the capital stock, surplus and undivided profits attributable to the business within this State, application for permission to base the return upon the taxpayer's books of account shall be considered by the Tax Review Board. The Board ~~shall be authorized to may~~ may permit such separate accounting method in lieu of applying the applicable allocation formula if the Board ~~deems such method proper as best reflecting~~ finds that method best reflects the portion of the capital stock, surplus and undivided profits attributable to this State.

b.—If the corporation ~~shall show~~ shows that any other method of allocation than the applicable allocation formula or alternative formulas prescribed by this section reflects more clearly the portion of the capital stock, surplus and undivided profits attributable to the business within this State, application for permission to base the return upon such other method shall be considered by the Tax Review Board. The application shall be accompanied by a statement setting forth in detail, with full explanations, the method the taxpayer believes will more nearly reflect the portion of its capital stock, surplus and undivided profits attributable to the business within this State. If the Board ~~shall conclude~~ concludes that the allocation formula and the alternative formulas prescribed by this section allocate to this State a greater portion of the capital stock, surplus and undivided profits of the corporation than is reasonably attributable to business within this State, it shall determine the allocable portion by such other method as it ~~shall find~~ finds best calculated to assign to this State for taxation the portion reasonably attributable to its business within this State.

There shall be a presumption that the appropriate allocation formula reasonably attributes to this State the portion of the corporation's capital stock, surplus and undivided profits reasonably attributable to its business in this State and the burden shall rest upon the corporation to show the contrary. The relief herein authorized shall be granted by the Board only in cases of clear, cogent and convincing proof that the petitioning taxpayer is entitled thereto. No corporation shall use any alternative formula or method other than the applicable allocation formula provided by statute in making a franchise tax report or return to this State except upon order in writing of the Board and any return in which any alternative formula or other method other than the applicable allocation formula prescribed by statute is used without the permission of the Board, shall not be a lawful return.

When the Board determines, pursuant to the provisions of this Article, that an alternative formula or other method more accurately

reflects the portion of the capital stock, surplus and undivided profits allocable to North Carolina and renders its decision with regard thereto, the corporation shall allocate its capital stock, surplus and undivided profits for future years in accordance with such determination and decision of the Board so long as the conditions constituting the basis upon which the decision was made remain unchanged or until such time as the business method of operation of the corporation changes. Provided, however, that the Secretary of Revenue ~~may, in his discretion,~~ may, with respect to any subsequent year, require the corporation to furnish information relating to its property, operations and activities.

A corporation which proposes to do business in this State may file a petition with the Board setting forth the facts upon which it contends that the applicable allocation formula will allocate a greater portion of the corporation's capital stock, surplus and undivided profits to North Carolina than will be reasonably attributable to its proposed business within the State. Upon a proper showing in accordance with the procedure described above for determination by the Board, the Board may authorize such corporation to allocate its capital stock, surplus and undivided profits to North Carolina on the basis prescribed by the Board under the provisions of this section for such future years as the conditions constituting the basis upon which the Board's decision is made remain unchanged and the business operations of the corporation continue to conform to the statement of proposed methods of business operations presented by the corporation to the Board.

When the Secretary of Revenue asserts liability under the formula adjustment decision of the Tax Review Board, an aggrieved taxpayer may pay the tax under protest and bring a civil action for recovery under the provisions of G.S. 105-241.4."

Sec. 12. G.S. 105-130.4(t) reads as rewritten:

- "(t) (1) If any corporation believes that the method of allocation or apportionment as administered by the Secretary of Revenue has operated or will so operate as to subject it to taxation on a greater portion of its income than is reasonably attributable to business or earnings within the State, it ~~shall be entitled to~~ may file with the Tax Review Board a petition setting forth the facts upon which its belief is based and its argument with respect to the application of the allocation formula. This petition shall be filed in such form and within such time as the Tax Review Board may prescribe. The Board shall grant a hearing ~~thereon~~ on the petition. The time limitations set in G.S. 105-241.2 for the date of the hearing, notification to the taxpayer, and a decision following the hearing apply to a hearing held pursuant to this subsection. At least three members of the Tax Review Board shall attend any hearing pursuant to such petition. In such cases, the Tax

Review Board's membership shall be augmented by the addition of the ~~Secretary of Revenue~~ Secretary, who shall sit as a member of ~~said the~~ Board with full power to participate in its deliberations and decisions with respect to petitions filed under the provisions of this ~~section~~ subsection. An informal record containing in substance the evidence, contentions and arguments presented at the hearing shall be made. All members of the augmented Tax Review Board shall consider such evidence, contentions and arguments and the decisions thereon shall be made by a majority vote of the augmented Board.

- (2) If the corporation ~~shall employ~~ employs in its books of account a detailed allocation of receipts and expenditures which reflects more clearly than the applicable allocation formula prescribed by this section the income attributable to the business within this State, application for permission to base the return upon the taxpayer's books of account shall be considered by the Tax Review Board. The Board ~~shall be authorized to~~ may permit such separate accounting method in lieu of applying the applicable allocation formula if the Board ~~deems such method proper as best reflecting~~ finds that method best reflects the income and earnings attributable to this State.
- (3) If the corporation ~~shall show~~ shows that any other method of allocation than the applicable allocation formula prescribed by this section reflects more clearly the income attributable to the business within this State, application for permission to base the return upon such other method shall be considered by the Tax Review Board. The application shall be accompanied by a statement setting forth in detail, with full explanations, the method the corporation believes will more nearly reflect its income from business within this State. If the Board ~~shall conclude~~ concludes that the allocation formula prescribed by this section allocates to this State a greater portion of the net income of the corporation than is reasonably attributable to business or earnings within this State, it shall determine the allocable net income by such other method as it ~~shall find~~ finds best calculated to assign to this State for taxation the portion of the corporation's net income reasonably attributable to its business or earnings within this State.
- (4) There shall be a presumption that the appropriate allocation formula reasonably attributes to this State the portion of the corporation's income earned in this State, and the burden shall rest upon the corporation to show the contrary. The relief herein authorized shall be granted by the Board only in cases of clear, cogent and convincing proof that the petitioning corporation is entitled thereto. No corporation shall use any alternative formula or method other than the applicable allocation formula provided by statute in making a report or return of its income to this State except upon order in writing of the Board, and any return in which any alternative formula or other

method, other than the applicable allocation formula prescribed by statute, is used without permission of the Board shall not be a lawful return.

When the Board determines, pursuant to the provisions of this subsection, that an alternative formula or other method more accurately reflects the income allocable to North Carolina and renders its decision with regard thereto, the corporation shall allocate its net income for future years in accordance with such determination and decision of the Board so long as the conditions constituting the basis upon which the decision was made remain unchanged or until such time as the business method of operation of the corporation changes. Provided, however, that the Secretary of Revenue ~~may, in his discretion,~~ may, with respect to any subsequent year, require the corporation to furnish information relating to its property, operations, and activities.

- (5) A corporation which proposes to do business in this State may file a petition with the Board setting forth the facts upon which it contends that the applicable allocation formula will allocate a greater portion of the corporation's future income to North Carolina than will be reasonably attributable to its proposed business or contemplated earnings within the State. Upon a proper showing in accordance with the procedure described above for determinations by the Board, the Board may authorize such corporation to allocate income from its future business to North Carolina on the basis prescribed by the Board under the provisions of this section for such future years if the conditions constituting the basis upon which the Board's decision is made remain unchanged and the business operations of the corporation continue to conform to the statement of proposed methods of business operation presented by the corporation to the Board.
- (6) When the Secretary of Revenue asserts liability under the formula adjustment decision of the Tax Review Board, an aggrieved corporation may pay the tax and bring a civil action for recovery under the provisions of Article 9."

Sec. 13. The Department of Revenue shall report annually to the Joint Legislative Commission on Governmental Operations on the quality of services provided to taxpayers, including telephone and walk-in assistance and taxpayer education.

Sec. 14. This act becomes effective January 1, 1994. The time limits on administrative hearings apply to requests for a hearing and petitions for administrative review filed under G.S. 105-241.1 or G.S. 105-242.2, as amended by this act, on or after that date.

In the General Assembly read three times and ratified this the 24th day of July, 1993.

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Dennis A. Wicker  
President of the Senate

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Daniel Blue, Jr.  
Speaker of the House of Representatives