

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

1

SENATE BILL 1234

Short Title: Refund Intangibles Tax.

(Public)

Sponsors: Senators Odom; Plexico, Plyler, Blackmon, Ballantine, Hoyle, Speed, Conder, Ballance, Albertson, Warren, Soles, Perdue, and Smith.

Referred to: Finance.

May 21, 1996

A BILL TO BE ENTITLED

AN ACT TO REFUND THE UNCONSTITUTIONAL INTANGIBLES TAX PAID
ON STOCK FOR THE PAST TWO YEARS.

The General Assembly of North Carolina enacts:

Section 1. Effective retroactively for the 1993 and 1994 tax years, G.S. 105-203 is repealed.

Sec. 2. G.S. 105-266(c) is amended by adding a new subdivision to read:

"(5) Repealed Tax. – If an act of the General Assembly repeals a tax retroactively, each taxpayer's payment of the repealed tax is an overpayment for the purpose of this section. On the date the act becomes law, the Secretary shall discover these overpayments of the repealed tax; the Secretary's discoveries are timely for the purposes of this section."

Sec. 3. (a) Notwithstanding the provisions of G.S. 105-266(a), before refunding taxpayers for the tax repealed by this act, the Secretary of Revenue shall send to each taxpayer who is entitled to a refund a written notice of the amount of the refund to which the taxpayer is entitled and the estimated amount of interest on the refund. The notice shall state that the taxpayer may choose to (i) receive a check for the amount of the refund; (ii) apply the amount of the refund as a credit against the taxpayer's State income tax for the 1996 taxable year; or (iii) direct the Secretary to contribute the refund to one of the following:

(1) The Parks and Recreation Trust Fund established under G.S. 113-44.15, for State parks.

- 1 (2) The Natural Heritage Trust Fund established under G.S. 113-77.7, for
2 the preservation and conservation of natural areas in the State.
- 3 (3) The North Carolina Zoological Society, Incorporated, for educational
4 programs and conservation programs at the North Carolina Zoo at
5 Asheboro and for operating expenses of the North Carolina Zoo at
6 Asheboro.
- 7 (4) The Trust Fund created within the Department of State Treasurer for
8 acquisition of land for riparian buffers and conservation easements to
9 preserve the quality of North Carolina's surface water and drinking
10 water, if enacted by the 1996 Session of the 1995 General Assembly
11 upon the recommendation of the Senate Select Committee on River
12 Water Quality and Fish Kills.

13 The notice shall also state that, to the extent the taxpayer deducted the tax
14 paid under G.S. 105-203 in an earlier year, the amount refunded must be included in the
15 taxpayer's gross income for federal income tax purposes for the year in which it is
16 received and, if the taxpayer elects a tax credit which results in a refund of State income
17 taxes, the amount of that refund must be included in gross income for federal income
18 tax purposes for the year in which it is received. The notice shall state that an election
19 to contribute the refund to one of the entities listed in this subsection is deductible for
20 federal income tax purposes to the extent the taxpayer did not deduct the tax paid under
21 G.S. 105-203 in an earlier year.

22 The notice shall include a preaddressed, postage-paid postcard on which the
23 taxpayer can make the election and shall state that, unless the taxpayer returns the
24 postcard within 90 days, the taxpayer will be considered to have elected a refund by
25 check.

26 (b) The Secretary of Revenue shall issue checks to those taxpayers who elect
27 to receive a refund or who do not make an election within the 90-day period. For those
28 taxpayers who elect to apply the amount of the refund as a credit against their State
29 income tax, the Secretary shall credit the amount of the refund against the taxpayer's
30 income tax for the 1996 taxable year as provided in Section 4 of this act. For the
31 purpose of calculating interest under G.S. 105-266(b), a refund that the taxpayer elects
32 to take as a credit is considered paid 180 days after the notice required by subsection (a)
33 of this section was mailed. For those taxpayers who elect to contribute their refund to
34 one of the entities listed in subdivision (a), the Secretary shall credit the refunds to the
35 designated entity.

36 Sec. 4. There is allowed as a credit against the tax imposed by Article 4 of
37 Chapter 105 of the General Statutes for the 1996 taxable year an amount equal to the
38 amount of a refund to which the taxpayer is entitled due to the repeal of G.S. 105-203
39 by this act and which the taxpayer has elected to receive in the form of a credit as
40 provided in this act. No credit is allowed for any amount that has been refunded to the
41 taxpayer. The credit allowed by this section may not exceed the amount of tax imposed
42 by Article 4 of Chapter 105 for the taxable year reduced by the sum of all credits
43 allowed, except payments of tax by or on behalf of the taxpayer. Any unused portion of

1 the credit may be carried forward to the succeeding taxable years. Articles 4 and 9 of
2 Chapter 105 of the General Statutes apply to the credit allowed by this section.

3 Sec. 5. There is appropriated from the General Fund to the Department of
4 Revenue the sum of \$X for the 1996-97 fiscal year to pay for the costs of implementing
5 this act. These funds shall not revert until the Director of the Budget certifies that the
6 Department of Revenue has completed all duties necessary to implement this act,
7 including processing of the escheat of refund checks that have not been cashed.

8 Sec. 6. Section 1 of this act is effective retroactively for the 1993 and 1994
9 tax years. The remainder of this act is effective upon ratification.