

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1544

Short Title: Refund Overpayment of Deed Stamp Tax.

(Public)

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Sponsors: Representatives Pope, Luebke, Allen, Gray, Hill, Jarrell, Miller, and Tucker.

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Referred to: Finance.

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May 16, 2000

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT A TAXPAYER IS ENTITLED TO A REFUND OF AN  
OVERPAYMENT OF THE STATE EXCISE TAX ON CONVEYANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.35 reads as rewritten:

**"§ 105-228.35. Administrative provisions.**

~~The~~ Except as otherwise provided in this Article, the provisions of Article 9 of this Chapter apply to this Article."

Section 2. Article 8E of Chapter 105 of the General Statutes is amended by adding a new section to read:

**"§ 105-228.37. Refund of overpayment of tax.**

(a) Refund Request. – A taxpayer who pays more tax than is due under this Article may request a refund of the overpayment by filing a written request for a refund with the board of county commissioners of the county where the tax was paid. The request must be filed within six months after the date the tax was paid and must explain why the taxpayer believes a refund is due.

(b) Hearing by County. – A board of county commissioners must review a request for refund and must follow the time limitations set in G.S. 105-266.1 for holding a hearing and making a decision. If the board decides that a refund is due, it must refund the overpayment, together with any applicable interest, to the taxpayer. If the board finds

1 that no refund is due, the written decision of the board must inform the taxpayer that the  
2 taxpayer may ask the Secretary to review the decision. The board must send the  
3 Secretary a copy of a decision on a request for refund.

4 (c) Review by Secretary. – A taxpayer whose request for a refund is denied by a  
5 board of county commissioners may obtain a review of the board's decision by the  
6 Secretary. The request must be made in writing and must be filed within 30 days after  
7 the taxpayer receives the board's decision denying the refund. The Secretary must send  
8 the board of county commissioners a copy of the Secretary's decision made on the  
9 request. If the Secretary determines that a refund is due, the board of county  
10 commissioners must refund the overpayment, together with any applicable interest, to the  
11 taxpayer. A decision of the Secretary is binding on a board of county commissioners.

12 (d) Judicial Review. – A taxpayer who disagrees with a decision of the Secretary  
13 may bring an action against the county and the State to recover the disputed  
14 overpayment. The action may be brought in the Superior Court of Wake County or in the  
15 superior court of the county where the tax was paid.

16 (e) Recording Correct Deed. – Before a tax is refunded, the taxpayer must record a  
17 new instrument reflecting the correct amount of tax due. If no tax is due because an  
18 instrument was recorded in the wrong county, then the taxpayer must record a document  
19 stating that no tax was owed because the instrument being corrected was recorded in the  
20 wrong county. The taxpayer must include in the document the names of the grantors and  
21 grantees and the deed book and page number of the instrument being corrected.

22 When a taxpayer records a corrected instrument, the taxpayer must inform the register  
23 of deeds that the instrument being recorded is a correcting instrument. The taxpayer must  
24 give the register of deeds a copy of the decision granting the refund that shows the correct  
25 amount of tax due. The correcting instrument must include the deed book and page  
26 number of the instrument being corrected. The register of deeds must notify the county  
27 finance officer and the Secretary when the correcting instrument has been recorded.

28 (f) Interest. – An overpayment of tax bears interest at the rate established in G.S.  
29 105-241.1(i) from the date that interest begins to accrue. Interest begins to accrue on an  
30 overpayment 90 days after the tax was paid."

31 Section 3. Notwithstanding G.S. 105-228.37, as enacted by this act, a refund  
32 request filed by a taxpayer who paid the tax imposed by Article 8E of Chapter 105 of the  
33 General Statutes on or after July 1, 1997, and whose time limit for requesting a refund  
34 expires on or before August 1, 2000, is considered timely if the request is filed with the  
35 board of county commissioners by October 1, 2000.

36 Section 4. This act is effective when it becomes law, and applies retroactively  
37 to taxes paid on or after July 1, 1997.