

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1100

Short Title: Property Tax Clerical Error.

(Public)

Sponsors: Senator Odom.

Referred to: Finance.

April 15, 1999

A BILL TO BE ENTITLED

1 AN ACT TO EXTEND THE NUMBER OF YEARS FOR WHICH A TAXPAYER
2 CAN REQUEST A PROPERTY TAX REFUND FOR TAXES IMPOSED AS THE
3 RESULT OF A CLERICAL OR MATHEMATICAL ERROR AND TO ALLOW
4 LOCAL UNITS OF GOVERNMENT TO INCREASE THE ASSESSED VALUE OF
5 PROPERTY FOR THE SAME NUMBER OF YEARS WHEN THE VALUE WAS
6 DETERMINED BY ERROR.
7

8 The General Assembly of North Carolina enacts:

9 Section 1. Article 21 of Chapter 105 of the General Statutes is amended by
10 adding a new section to read:

11 "**§ 105-325.2. Clerical and mathematical errors.**

12 (a) Scope. – This section governs changes in the appraised value of, or the amount
13 of tax due on, real and personal property resulting from the correction of a clerical or
14 mathematical error.

15 (b) Definition. – As used in this section, the term 'clerical or mathematical error'
16 means any of the following errors that result in a material overstatement or
17 understatement of value or tax:

18 (1) An error in calculating units of measurement, such as square footage,
19 linear footage, or acreage.

- 1 (2) An error in the transposition or recording of numbers for real or
2 personal property.
3 (3) An error in determining the zoning classification of real property.
4 (4) An error in the description or calculation of component parts of real
5 property improvements.
6 (5) An error in listing or appraising categories of personal property such as
7 machinery and equipment, computers, molds and dies, or other similar
8 categories.
9 (6) An objective error in listing or appraising real or personal property,
10 similar to the errors listed in this subdivision.

11 The term does not include an error that results from an appraisal judgment in applying
12 the schedules, standards, and rules used in a county's most recent general reappraisal or
13 horizontal adjustment, or from an appraisal judgment in calculating costs, in making
14 comparative sales analyses, in applying capitalization rates, in determining obsolescence
15 and depreciation factors, in determining actual or effective ages, in determining base
16 rates, in determining the highest and best use of property, or in applying other similar
17 valuation methods used in the appraisal process.

18 (c) Tax Increase. – A correction of a clerical or mathematical error that results in
19 an increase in tax due is considered a discovery under G.S. 105-312. In the case of
20 personal property, no late listing penalty applies unless the error was made by the
21 taxpayer or by an agent or officer of the taxpayer and the error resulted in the property
22 being listed at a substantial understatement of value, quantity, or other measurement. In
23 the case of real property, the discovery does not apply to any year that precedes the year
24 of the county's most recent general reappraisal or horizontal adjustment, or to any year
25 that precedes January 1 of the year the current owner acquired title to the property. In the
26 case of real property, the provisions of G.S. 105-303(b) apply to a county that has
27 adopted a permanent listing system under that section.

28 (d) Tax Decrease. – A correction of a clerical or mathematical error that results in
29 a decrease in tax due entitles the taxpayer to a release or refund of the principal amount
30 of the decrease for the tax year in which the correction is made and for up to five prior
31 tax years. In the case of real property, the release or refund is not allowed for any year in
32 that five-year period that precedes the year of the county's most recent general reappraisal
33 or horizontal adjustment, or for any year that precedes January 1 of the year the current
34 owner acquired title to the property.

35 (e) Procedure. – Errors concerning real property may be corrected under G.S.
36 105-287 and errors concerning both real and personal property may be corrected under
37 G.S. 105-322 and G.S. 105-325. If a taxpayer seeking a refund or release of tax due to a
38 clerical or mathematical error is denied relief under those provisions, the taxpayer may
39 proceed under G.S. 105-381.

40 A release or refund on taxes due to correction of a clerical or mathematical error
41 under G.S. 105-287 or G.S. 105-325 must be approved by the governing body of the
42 taxing unit. The governing body may, however, delegate this authority to the assessor. A
43 release or refund of taxes due to correction of a clerical or mathematical error under G.S.

1 105-322(g) must be approved by the board of equalization and review. When directed
2 by the governing body, the board of equalization and review, or an assessor to whom the
3 authority was delegated, the finance officer of the taxing unit must refund or release the
4 taxes."

5 Section 2. G.S. 105-273 is amended by adding a new subdivision to read:

6 "(4a) Clerical or mathematical error. – Defined in G.S. 105-325.2."

7 Section 3. G.S. 105-287(c) reads as rewritten:

8 "(c) An increase or decrease in the appraised value of real property authorized by
9 this section shall be made in accordance with the schedules, standards, and rules used in
10 the county's most recent general reappraisal or horizontal adjustment. An increase or
11 decrease in appraised value due to correction of a clerical or mathematical error is
12 governed by G.S. 105-325.2. Any other increase or decrease in appraised value made
13 under this section is effective as of January 1 of the year in which it is made and is not
14 retroactive. This section does not modify or restrict the provisions of G.S. 105-312
15 concerning the appraisal of discovered property."

16 Section 4. G.S. 105-322(g)(1) reads as rewritten:

- 17 "(g) (1) Powers and Duties. ~~—It shall be the duty of the~~ The board of
18 equalization and review shall examine and review the tax lists of
19 the county for the current year to the end that all taxable property
20 shall be listed on the abstracts and tax records of the county and
21 appraised according to the standard required by G.S. 105-283, and
22 the board shall correct the abstracts and tax records to conform to the
23 provisions of this Subchapter. In carrying out its responsibilities
24 under this subdivision (g)(1), the board, on its own motion or on
25 sufficient cause shown by any person, shall:
- 26 a. List, appraise, and assess any taxable real or personal property
27 that has been omitted from the tax lists.
 - 28 b. Correct all errors in the names of persons and in the description
29 of properties subject to taxation.
 - 30 c. Increase or reduce the appraised value of any property that, in the
31 board's opinion, ~~shall have~~ has been listed and appraised at a
32 figure that is below or above the appraisal required by G.S. 105-
33 283; however, the board shall not change the appraised value of
34 any real property from that at which it was appraised for the
35 preceding year except in accordance with the terms of G.S. 105-
36 286 and 105-287.
 - 37 c1. Correct appraisals, assessments, and amounts of taxes appearing
38 erroneously on the abstracts or tax records as the result of a
39 clerical or mathematical error. Changes in the amount of tax due
40 resulting from the correction of these errors are governed by G.S.
41 105-325.2.

- 1 d. Cause to be done whatever else ~~shall be~~ is necessary to make the
2 lists and tax records comply with the provisions of this
3 Subchapter.
- 4 e. Embody actions taken under the provisions of subdivisions
5 (g)(1)a through (g)(1)d, above, in appropriate orders and have the
6 orders entered in the minutes of the board.
- 7 f. Give written notice to the taxpayer at ~~his~~ the taxpayer's last-
8 known address in the event the ~~board shall,~~ board, by appropriate
9 order, ~~increase~~ increases the appraisal of any property or ~~list~~ lists
10 for taxation any property omitted from the tax lists under the
11 provisions of this subdivision (g)(1)."

12 Section 5. G.S. 105-325(a) reads as rewritten:

13 "(a) After the board of equalization and review has finished its work and the
14 changes it effected or ordered have been entered on the abstracts and tax records as
15 required by G.S. 105-323, the board of county commissioners shall not authorize any
16 changes to be made on the abstracts and tax records except as follows:

- 17 (1) To give effect to decisions of the Property Tax Commission on
18 appeals taken under G.S. 105-290.
- 19 (2) To add to the tax records any valuation certified by the Department
20 of Revenue for property appraised in the first instance by the
21 Department or to give effect to corrections made in ~~such~~ these
22 appraisals by the Department.
- 23 (3) Subject to the provisions of subdivisions (a)(3)a and (a)(3)b, below,
24 to correct the name of any taxpayer appearing on the abstract or tax
25 records erroneously; to substitute the name of the person who should
26 have listed property for the name appearing on the abstract or tax
27 records as having listed the property; and to correct an erroneous
28 description of any property appearing on the abstract or tax records.
- 29 a. Any correction or substitution made under the provisions of this
30 subdivision (a)(3) shall have the same force and effect as if the
31 name of the taxpayer or description of the property had been
32 correctly listed in the first instance, but the provisions of this
33 subdivision (a)(3)a shall not be construed as a limitation on the
34 taxation and penalization of discovered property required by G.S.
35 105-312.
- 36 b. If a correction or substitution under this subdivision (a)(3) will
37 adversely affect the interests of any taxpayer, ~~he~~ the taxpayer
38 shall be given written notice thereof and an opportunity to be
39 heard before the change is entered on the abstract or tax records.
- 40 (4) To correct appraisals, assessments, and amounts of taxes appearing
41 erroneously on the abstracts or tax records as the result of clerical or
42 mathematical errors. Changes in the amount of tax due resulting
43 from the correction of these errors are governed by G.S. 105-325.2.

1 ~~(If the clerical or mathematical error was made by the taxpayer, his agent,~~
2 ~~or an officer of the taxpayer and if the correction demonstrates that the~~
3 ~~property was listed at a substantial understatement of value, quantity, or~~
4 ~~other measurement, the provisions of G.S. 105-312 shall apply.)~~

5 (5) To add to the tax records and abstracts or to correct the tax records
6 and abstracts to include property discovered under the provisions of
7 G.S. 105-312 or property exempted or excluded from taxation
8 pursuant to G.S. 105-282.1(a)(4).

9 (6) Subject to the provisions of subdivisions (a)(6)a, (a)(6)b, (a)(6)c, and
10 (a)(6)d, below, to appraise or reappraise property when the assessor
11 reports to the board that, since adjournment of the board of
12 equalization and review, facts have come to ~~his~~the assessor's
13 attention that render it advisable to raise or lower the appraisal of
14 some particular property of a given taxpayer in the then current
15 calendar year.

16 a. The power granted by this subdivision (a)(6) ~~shall~~does not
17 authorize appraisal or reappraisal because of events or
18 circumstances that have taken place or arisen since the day as of
19 which property is to be listed.

20 b. No appraisal or reappraisal shall be made under the authority of
21 this subdivision (a)(6) unless it could have been made by the
22 board of equalization and review had the same facts been brought
23 to the attention of that board.

24 c. If a reappraisal made under the provisions of this subdivision
25 (a)(6) demonstrates that the property was listed at a substantial
26 understatement of value, quantity, or other measurement, the
27 provisions of G.S. 105-312 ~~shall~~ apply.

28 d. If an appraisal or reappraisal made under the provisions of this
29 subdivision (a)(6) will adversely affect the interests of any
30 taxpayer, ~~he~~the taxpayer shall be given written notice thereof
31 and an opportunity to be heard before the appraisal or reappraisal
32 ~~shall become~~becomes final.

33 (7) To give effect to decisions of the board of county commissioners on
34 appeals taken under G.S. 105-322(a)."

35 Section 6. G.S. 105-381 reads as rewritten:

36 "**§ 105-381. Taxpayer's remedies.**

37 (a) Statement of Defense. – Any taxpayer asserting a valid defense to the
38 enforcement of the collection of a tax assessed upon ~~his~~the taxpayer's property shall
39 proceed as ~~hereinafter provided.~~provided in this section.

40 (1) For the purpose of this subsection, a valid defense ~~shall~~
41 ~~include~~includes any of the following:

1 a. A tax imposed ~~through~~ as the result of a clerical error;
2 or mathematical error in appraisal, assessment, or calculation
3 of tax.

4 b. An illegal ~~tax;~~ tax.

5 c. A tax levied for an illegal purpose.

6 (2) If a tax has not been paid, the taxpayer ~~may~~ may, at any time
7 before paying the tax, make a demand for the release of the tax claim
8 by submitting to the governing body of the taxing unit a written
9 statement of ~~his~~ the defense to payment or enforcement of the tax
10 and a request for release of the ~~tax at any time prior to payment of the~~
11 ~~tax.~~

12 (3) If a tax has been paid, the taxpayer, at any time within five
13 years after ~~said~~ the tax first became due or within six months ~~from~~
14 after the date of payment of ~~such~~ the tax, whichever is ~~the later date,~~
15 later, may make a demand for a refund of the tax paid by submitting
16 to the governing body of the taxing unit a written statement of ~~his~~ the
17 defense and a request for refund ~~thereof.~~ of the tax.

18 (b) Action of Governing Body. – Upon receiving a taxpayer's written statement of
19 defense and request for release or refund, the governing body of the taxing unit shall
20 within 90 days after receipt of such request determine whether the taxpayer has a valid
21 defense to the tax imposed or any part thereof and shall either release or refund that
22 portion of the amount that is determined to be in excess of the correct tax liability or
23 notify the taxpayer in writing that no release or refund will be made. The provisions of
24 G.S. 105-325.2 govern a release or refund of tax under subdivision (a)(1) of this
25 subsection.

26 The governing body may, by resolution, delegate its authority to determine requests
27 for a release or refund of tax of less than one hundred dollars (\$100.00) to the finance
28 officer, manager, or attorney of the taxing unit. A finance officer, manager, or attorney to
29 whom this authority is delegated shall monthly report to the governing body the actions
30 taken by him on requests for release or refund. All actions taken by the governing body
31 or finance officer, manager, or attorney on requests for release or refund shall be recorded
32 in the minutes of the governing body. If a release is granted or refund made, the tax
33 collector shall be credited with the amount released or refunded in his annual settlement.

34 (c) Suit for Recovery of Property Taxes. –

35 (1) Request for Release before Payment. – If within 90 days after
36 receiving a taxpayer's request for release of an unpaid tax claim
37 under (a) above, the governing body of the taxing unit has failed to
38 grant the release, has notified the taxpayer that no release will be
39 granted, or has taken no action on the request, the taxpayer shall pay
40 the tax. ~~He~~ The taxpayer may then within three years ~~from~~ after the
41 date of payment bring a civil action against the taxing unit for the
42 amount claimed.

1 (2) Request for Refund. – If within 90 days after receiving a taxpayer's
2 request for refund under (a) above, the governing body has failed to
3 refund the full amount requested by the taxpayer, has notified the
4 taxpayer that no refund will be made, or has taken no action on the
5 request, the taxpayer may bring a civil action against the taxing unit
6 for the amount claimed. ~~Such~~ The action may be brought at any time
7 within three years ~~from~~ after the expiration of the period in which the
8 governing body is required to act.

9 (d) Civil Actions. – Civil actions brought pursuant to subsection (c) ~~above of this~~
10 section shall be brought in the appropriate division of the general court of justice of the
11 county in which the taxing unit is located. If, upon the trial, it is determined that the tax
12 or any part of it was illegal or levied for an illegal purpose, or excessive as the result of a
13 clerical or mathematical error, judgment shall be rendered therefor with interest thereon
14 at six percent (6%) per annum, plus costs, and the judgment shall be collected as in other
15 civil actions."

16 Section 7. This act is effective for taxes imposed for taxable years beginning
17 on or after July 1, 1999.