

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 948*

Short Title: Conform Tax Refund Period.

(Public)

Sponsors: Senators Harris; Albertson, Allran, Carpenter, Carter, Clodfelter, Cochrane, Dalton, Dannelly, Foxx, Garrou, Hagan, Horton, Lucas, Martin of Guilford, Martin of Pitt, Metcalf, Moore, Perdue, Phillips, Plyler, Purcell, Rand, Reeves, Robinson, and Weinstein.

Referred to: Finance.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO CONFORM TO FEDERAL LAW REGARDING THE TIME PERIOD
FOR REFUNDING TAXES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-267 reads as rewritten:

"§ 105-267. Taxes to be paid; suits for recovery of taxes.

No court of this State shall entertain a suit of any kind brought for the purpose of preventing the collection of any tax ~~imposed in this Subchapter. to which this Article applies.~~ Whenever a person has a valid defense to the enforcement of the collection of a tax, the person shall pay the tax to the proper officer, and that payment shall be without prejudice to any defense of rights the person may have regarding the tax. At any time within the applicable protest period, the taxpayer may demand a refund of the tax paid in writing from the Secretary and if the tax is not refunded within 90 days thereafter, may sue the Secretary in the courts of the State for the amount demanded. The protest period for a tax levied in Article 2A, 2C, or 2D of this Chapter is 30 days after payment. The protest period for all other taxes is ~~one year after payment.~~ the period set in G.S. 105-266(c).

1 The suit may be brought in the Superior Court of Wake County, or in the superior
2 court of the county in which the taxpayer resides at any time within three years after the
3 expiration of the 90-day period allowed for making the refund. If upon the trial it is
4 determined that all or part of the tax was levied or assessed for an illegal or unauthorized
5 purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor,
6 with interest, and the judgment shall be collected as in other cases. The amount of taxes
7 for which judgment is rendered in such an action shall be refunded by the State. G.S.
8 105-241.2 provides an alternate procedure for a taxpayer to contest a tax and is not in
9 conflict with or superseded by this section."

10 Section 2. G.S. 105-266(c) reads as rewritten:

11 "(c) Statute of Limitations. – The period in which a refund must be
12 demanded or discovered under this section is determined as follows:

13 (1) General Rule. – No overpayment shall be refunded, whether upon
14 discovery or receipt of written demand, if the discovery is not made or
15 the demand is not received within three years ~~after the date set by the~~
16 ~~statute for the filing of the return or within six months~~ after the time the
17 return was filed or within two years after the payment of the tax alleged
18 to be an overpayment, whichever is later.

19 (2) Worthless Debts or Securities. – Section 6511(d)(1) of the Code applies
20 to an overpayment of the tax levied in Part 2 or 3 of Article 4 of this
21 Chapter to the extent the overpayment is attributable to either of the
22 following:

23 a. The deductibility by the taxpayer under section 166 of the Code
24 of a debt that becomes worthless, or under section 165(g) of the
25 Code of a loss from a security that becomes worthless.

26 b. The effect of the deductibility of a debt or loss described in
27 subpart a. of this subdivision on the application of a carryover to
28 the taxpayer.

29 (3) Capital Loss and Net Operating Loss Carrybacks. – Section 6511(d)(2)
30 of the Code applies to an overpayment of the tax levied in Part 2 or 3 of
31 Article 4 of this Chapter to the extent the overpayment is attributable to
32 a capital loss carryback under section 1212(c) of the Code or to a net
33 operating loss carryback under section 172 of the Code.

34 (4) Federal Determination. – When a taxpayer files with the Secretary a
35 return that reflects a federal determination and the return is filed within
36 the required time, the period in which a refund must be demanded or
37 discovered is one year after the return reflecting the federal
38 determination is filed or three years after the original return was filed or
39 due to be filed, whichever is later."

40 Section 3. This act becomes effective November 1, 1999, and applies to taxes
41 paid on or after that date.