

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 564
SENATE BILL 523

AN ACT TO MAKE CLARIFYING AMENDMENTS TO THE LEVY AND RELEASE-
REFUND PROVISIONS OF THE MACHINERY ACT OF 1971.

The General Assembly of North Carolina enacts:

Section 1. Subdivision (d)(3) of G.S. 105-366 is rewritten to read as follows:

"(3) Whenever any wholesale or retail merchant (as defined in Schedule E of the Revenue Act) sells or transfers the major part of his stock of goods, materials, supplies, or fixtures, other than in the ordinary course of business, or goes out of business, and the taxes due or to become due on the transferred property on the first day of September of the current calendar year are unpaid, the tax collector, to enforce collection of the unpaid taxes, may:

- a. levy on or attach any personal property of the seller; or
- b. if the taxes remain unpaid 30 days after the date of the transfer or termination of business, levy on or attach any of the property transferred in the hands of the transferee or successor in business, or any other personal property of the transferee or successor in business, but in either case the levy or attachment must be made within six months of the transfer or termination of business."

Sec. 2. G.S. 105-380 is rewritten to read as follows:

"§ 105-380. **No taxes to be released, refunded, or compromised.** — (a) The governing body of a taxing unit is prohibited from releasing, refunding, or compromising all or any portion of the taxes levied against any property within its jurisdiction except as expressly provided in this Subchapter.

(b) Taxes that have been released, refunded, or compromised in violation of this section shall be deemed to be unpaid and shall be collectible by any means provided by this Subchapter, and the existence and priority of any tax lien on property shall not be affected by the unauthorized release, refund, or compromise of the tax liability.

(c) Any tax that has been released, refunded, or compromised in violation of this section may be recovered from any member or members of the governing body who voted for the release, refund, or compromise by civil action instituted by any resident of the taxing unit, and when collected, the recovered tax shall be paid to the treasurer of the taxing unit. The costs of bringing the action, including reasonable attorneys' fees, shall be allowed the plaintiff in the event the tax is recovered.

(d) The provisions of this section are not intended to restrict or abrogate the powers of a board of equalization and review or any agency exercising the powers of such a board."

Sec. 3. G.S. 105-381 is rewritten to read as follows:

"§ 105-381. **Taxpayer's remedies.** — (a) Statement of Defense. Any taxpayer asserting a defense to the payment or enforcement of a tax upon his property shall proceed as follows:

- (1) If a tax has not been paid, the taxpayer may make a demand for the release of the tax claim by submitting to the governing body of the taxing unit a

written statement of his defense to payment or enforcement of the tax and a request for release of the tax claim.

- (2) If a tax has been paid, the taxpayer, at any time within 30 days after payment, may make a demand for refund of the tax paid by submitting to the governing body of the taxing unit a written statement of his defense to payment or enforcement of the tax and a request for a refund thereof.

(b) **Action of Governing Body.** Upon receiving a taxpayer's written statement of defense and request for release or refund, the governing body of the taxing unit shall determine whether the tax, or any part of it, was illegal or levied for an illegal purpose and take one of the following actions:

- (1) If the tax has not been paid, the governing body shall release the amount determined to be illegal or levied for an illegal purpose, or it shall disallow the taxpayer's request for release.
- (2) If the tax has been paid, the governing body shall refund the amount determined to be illegal or levied for an illegal purpose, or it shall disallow the taxpayer's request for refund.

The governing body shall take action on each request for release or refund within 90 days after the date on which it is received. The action taken on each such request shall be entered in the minutes of the governing body, and notice of the action shall be mailed to the person who made the request. If a release is granted or refund made, the tax collector shall be credited with the amount released or refunded in his annual settlement.

(c) **Suit for Recovery of Property Taxes.**

- (1) **Request for Release before Payment.** If within 90 days after receiving a taxpayer's request for release of an unpaid tax claim under subsection(a)(1), above, the governing body of the taxing unit has failed to grant the release, has notified the taxpayer that no release will be granted, or has taken no action on the request, the taxpayer shall pay the tax when due. He may then follow the procedure provided in subsection (a)(2), above, or without making demand for refund, he may bring a civil action against the taxing unit for the portion of the amount paid which he asserts to be illegal or levied for an illegal purpose.
- (2) **Request for Refund.** If within 90 days after receiving a taxpayer's request for refund under subsection (a), above, the governing body has failed to refund the full amount requested by the taxpayer, has notified the taxpayer that no refund will be made, or has taken no action on the request, the taxpayer may bring a civil action against the taxing unit for the amount requested.
- (3) **Civil Actions.** Civil actions brought pursuant to this subsection (c) shall be brought in the appropriate division of the General Court of Justice of the county in which the taxing unit is located. If, upon the trial, it is determined that the tax or any part of it was illegal or levied for an illegal purpose, judgment shall be rendered therefor, with interest thereon at six percent (6%) per annum, plus costs, and the judgment shall be collected as in other civil actions.

Sec. 4. G.S. 105-355, as it appears in 1972 Replacement Volume 2D of the General Statutes of North Carolina, is amended by changing the reference to "G.S. 105-307" in line five thereof to read "G.S. 105-285".

Sec. 5. This act shall become effective upon its ratification.

In the General Assembly read three times and ratified, this the 17th day of May, 1973.