

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 946
HOUSE BILL 141

AN ACT TO AMEND ARTICLES 9 AND 27 OF CHAPTER 105 OF THE GENERAL
STATUTES PROVIDING FOR RELEASES, REFUNDS AND SUITS FOR RECOVERY
OF TAXES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-267 is hereby rewritten as follows:

"§ 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. Whenever a person shall have a valid defense to the enforcement of the collection of a tax assessed or charged against him or his property, such person shall pay such tax to the proper officer, and such payment shall be without prejudice to any defense of rights he may have in the premises. At any time within 30 days after payment, the taxpayer may demand a refund of the tax paid in writing from the Secretary of Revenue and if the same shall not be refunded within 90 days thereafter, may sue the Secretary of Revenue in the courts of the State for the amount so demanded. Such suit may be brought in the Superior Court of Wake County, or in the county in which the taxpayer resides at any time within three years after the expiration of the 90-day period allowed for making the refund. If upon the trial it shall be determined that such tax or any part thereof was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the same shall be collected as in other cases. The amount of taxes for which judgment shall be rendered in such action shall be refunded by the State; provided, nothing in this section shall be construed to conflict with or supersede the provisions of G.S. 105-241.2."

Sec. 2. G.S. 105-381 is hereby rewritten to read as follows:

"§ 105-381. **Taxpayer's remedies.** — (a) Statement of defense. Any taxpayer asserting a valid defense to the enforcement of the collection of a tax assessed upon his property shall proceed as hereinafter provided.

- (1) For the purpose of this subsection, a valid defense shall include the following:
 - a. a tax imposed through clerical error;
 - b. an illegal tax;
 - c. a tax levied for an illegal purpose.
- (2) 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 at any time prior to payment of the tax.
- (3) If a tax has been paid, the taxpayer, at any time within three years after said tax first became due or within six months from the date of payment of such tax, whichever is the later date, may make a demand for a refund of the tax paid by submitting to the governing body of the taxing unit a written statement of his defense and a request for 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 within 90 days after receipt of such request determine whether the taxpayer has a valid defense to the tax imposed or any part thereof and shall either release or refund that portion of the amount that is determined to be in excess of the correct tax liability or notify the taxpayer in writing that no release or refund will be made. The action of the governing body on each application shall be recorded in its minutes. 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 (a) 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. He may then within three years from the date of payment bring a civil action against the taxing unit for the amount claimed.

(2) Request for refund. If within 90 days after receiving a taxpayer's request for refund under (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 claimed. Such action may be brought at any time within three years from the expiration of the period in which the governing body is required to act.

(d) Civil actions. Civil actions brought pursuant to subsection (c) above 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, or excessive as the result of a clerical error, 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. 3. G.S. 105-382 is repealed.

Sec. 4. G.S. 1-52, as the same appears in the 1975 Cumulative Supplement to Replacement Volume 1A of the General Statutes, is amended by adding a new subsection 14 to read as follows:

"(14). For the recovery of taxes paid as provided in G.S. 105-267 and G.S. 105-381."

Sec. 5. This act shall become effective upon ratification but shall not affect pending litigation.

In the General Assembly read three times and ratified, this the 1st day of July, 1977.