

**§ 105-241.17. Civil action challenging statute as unconstitutional.**

A taxpayer who claims that a tax statute is unconstitutional may bring a civil action in the Superior Court of Wake County to determine the taxpayer's liability under that statute if all of the conditions in this section are met. In filing an action under this section, a taxpayer must follow the procedures for a mandatory business case set forth in G.S. 7A-45.4(b) through (f). The conditions for filing a civil action are:

- (1) The taxpayer exhausted the prehearing remedy by receiving a final determination after a review and a conference.
- (2) The taxpayer commenced a contested case at the Office of Administrative Hearings.
- (3) The Office of Administrative Hearings dismissed the contested case petition for lack of jurisdiction because the sole issue is the constitutionality of a statute and not the application of a statute.
- (4) The taxpayer has paid the amount of tax, penalties, and interest the final determination states is due.
- (5) The civil action is filed within two years of the dismissal. (2007-491, s. 1.)