

§ 105-264. Effect of Secretary's interpretation of revenue laws.

(a) Interpretation. – It is the duty of the Secretary to interpret all laws administered by the Secretary. The Secretary's interpretation of these laws shall be consistent with the applicable rules. An interpretation by the Secretary is prima facie correct. When the Secretary interprets a law by adopting a rule or publishing a bulletin or directive on the law, the interpretation is a protection to the officers and taxpayers affected by the interpretation, and taxpayers are entitled to rely upon the interpretation. If the Secretary changes an interpretation, a taxpayer who relied on it before it was changed is not liable for any penalty or additional assessment on any tax that accrued before the interpretation was changed and was not paid by reason of reliance upon the interpretation.

(b) Advice. – If a taxpayer requests specific advice from the Department and receives erroneous advice in response, the taxpayer is not liable for any penalty or additional assessment attributable to the erroneous advice furnished by the Department to the extent that the following conditions are all satisfied:

- (1) The advice was reasonably relied upon by the taxpayer.
- (2) The penalty or additional assessment did not result from the taxpayer's failure to provide adequate or accurate information.
- (3) The Department provided the advice in writing or the Department's records establish that the Department provided erroneous verbal advice.

(c) Revised Interpretations. – This section does not prevent the Secretary from changing an interpretation, and it does not prevent a change in an interpretation from applying on and after the effective date of the change. An interpretation that revises a prior interpretation by expanding the scope of a tax or otherwise increasing the amount of tax due may not become effective sooner than the following:

- (1) For a tax that is payable on a monthly or quarterly basis, the first day of a month that is at least 90 days after the date the revised interpretation is issued.
- (2) For a tax that is payable on an annual basis, the first day of a tax year that begins after the date the revised interpretation is issued.

(d) Fee. – The Secretary may charge a fee for providing a written determination at the request of a taxpayer. The fee is a receipt of the Department and must be applied to the costs of providing the written determination. The proceeds of the fee must be credited to a special account within the Department and do not revert but remain in the special account until spent by the Department for the costs of providing the written determination. The Secretary may adopt a tiered fee structure based on the taxpayer's income or gross receipts, the relative complexity of the advice requested, or the tax schedule for which advice is requested. The fee shall not be less than one hundred dollars (\$100.00) or more than five thousand dollars (\$5,000). The fee may be waived by the Secretary. The term "written determination" has the same meaning as defined in G.S. 105-264.2. (1939, c. 158, s. 933; 1955, c. 1350, s. 4; 1957, c. 1340, s. 14; 1973, c. 476, s. 193; 1991, c. 45, s. 29; 1993, c. 532, s. 9; 1998-98, s. 21; 2008-107, s. 28.16(e); 2010-31, s. 31.7A(a); 2011-390, s. 6; 2016-103, s. 6.)