

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1013\*

Short Title: Conform Tax Refund Period.

(Public)

Sponsors: Representatives Cansler; Arnold, Capps, Church, Davis, Russell, and Walend.

Referred to: Finance.

April 13, 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).

The suit may be brought in the Superior Court of Wake County, or in the superior court of 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 is

1 determined that all or part of the tax was levied or assessed for an illegal or unauthorized  
2 purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor,  
3 with interest, and the judgment shall be collected as in other cases. The amount of taxes  
4 for which judgment is rendered in such an action shall be refunded by the State. G.S.  
5 105-241.2 provides an alternate procedure for a taxpayer to contest a tax and is not in  
6 conflict with or superseded by this section."

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

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

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

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

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

23 b. The effect of the deductibility of a debt or loss described in  
24 subpart a. of this subdivision on the application of a carryover to  
25 the taxpayer.

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

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

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