

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1476
Committee Substitute Favorable 6/15/99
Third Edition Engrossed 6/24/99
Senate Finance Committee Substitute Adopted 7/7/99
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Short Title: Code Update/Criminal Deadline/Research.

(Public)

Sponsors:

Referred to:

May 13, 1999

A BILL TO BE ENTITLED

1 AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE
2 USED IN DEFINING AND DETERMINING CERTAIN STATE TAX
3 PROVISIONS, TO EARMARK PART OF THE RESULTING REVENUE GAIN
4 FOR TAX RESEARCH, TO CONFORM TO THE FEDERAL STATUTE OF
5 LIMITATIONS FOR WILLFUL FAILURE TO COMPLY WITH STATE TAX
6 LAWS, AND TO INCREASE THE AMOUNT OF TIME A TAXPAYER HAS TO
7 PROTEST THE PAYMENT OF A TAX.
8

9 The General Assembly of North Carolina enacts:

10 Section 1. G.S. 105-228.90(b)(1a) reads as rewritten:

11 "(b) Definitions. – The following definitions apply in this Article:

12 ...

13 (1a) Code. – The Internal Revenue Code as enacted as of ~~September 1, 1998,~~
14 June 1, 1999, including any provisions enacted as of that date which
15 become effective either before or after that date."
16

Section 2. G.S. 105-236(8) reads as rewritten:

1 "(8) Willful Failure to Collect, Withhold, or Pay Over Tax. – Any person
2 required to collect, withhold, account for, and pay over any tax who
3 willfully fails to collect or truthfully account for and pay over the tax
4 shall, in addition to other penalties provided by law, be guilty of a Class
5 1 misdemeanor. Notwithstanding any other provision of law, no
6 prosecution for a violation brought under this subdivision shall be
7 barred before the expiration of ~~three~~six years after the date of the
8 violation."

9 Section 3. G.S. 105-236(9) reads as rewritten:

10 "(9) Willful Failure to File Return, Supply Information, or Pay Tax. – Any
11 person required to pay any tax, to make a return, to keep any records, or
12 to supply any information, who willfully fails to pay the tax, make the
13 return, keep the records, or supply the information, at the time or times
14 required by law, or rules issued pursuant thereto, shall, in addition to
15 other penalties provided by law, be guilty of a Class 1 misdemeanor.
16 Notwithstanding any other provision of law, no prosecution for a
17 violation brought under this subdivision shall be barred before the
18 expiration of ~~three~~six years after the date of the violation."

19 Section 4. The Secretary of Revenue may draw the following amounts from
20 funds generated by Section 1 of this act that would otherwise be credited to the General
21 Fund, to fund four tax analyst positions in the Tax Research Division of the Department
22 of Revenue, effective January 1, 2000, as recommended by the Revenue Laws Study
23 Committee:

24 (1) One hundred seventy-eight thousand thirty-eight dollars (\$178,038) in
25 the 1999-2000 fiscal year.

26 (2) Two hundred eighty-three thousand two hundred seventy-five dollars
27 (\$283,275) in the 2000-2001 fiscal year.

28 Section 5. G.S. 105-267 reads as rewritten:

29 "**§ 105-267. Taxes to be paid; suits for recovery of taxes.**

30 No court of this State shall entertain a suit of any kind brought for the purpose of
31 preventing the collection of any tax imposed in this Subchapter. Whenever a person has a
32 valid defense to the enforcement of the collection of a tax, the person shall pay the tax to
33 the proper officer, and that payment shall be without prejudice to any defense of rights
34 the person may have regarding the tax. At any time within the applicable protest period,
35 the taxpayer may demand a refund of the tax paid in writing from the Secretary and if the
36 tax is not refunded within 90 days thereafter, may sue the Secretary in the courts of the
37 State for the amount demanded. The protest period for a tax levied in Article 2A, 2C, or
38 2D of this Chapter is 30 days after payment. The protest period for all other taxes is ~~one~~
39 year-three years after payment.

40 The suit may be brought in the Superior Court of Wake County, or in the county in
41 which the taxpayer resides at any time within three years after the expiration of the 90-
42 day period allowed for making the refund. If upon the trial it is determined that all or part
43 of the tax was levied or assessed for an illegal or unauthorized purpose, or was for any

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

6 Section 6. Sections 2 and 3 of this act become effective December 1, 1999,
7 and apply to prosecutions brought on or after that date for cases where the three-year
8 statute of limitations had not expired prior to December 1, 1999. Section 5 of this act is
9 effective for taxes paid on or after January 1, 1999. The remainder of this act is effective
10 when it becomes law.