

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 1011

Short Title: Taxpayer Bill of Rights. (Public)

Sponsors: Representatives Blust; Capps, Creech, Ellis, Lewis, McHenry, McMahan, Mitchell, Moore, Stam, and Starnes.

Referred to: Judiciary III.

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR REIMBURSEMENT OF EXPENSES TO A PREVAILING TAXPAYER IN AN ADMINISTRATIVE APPEAL OR A LAWSUIT IF THE STATE WAS NOT SUBSTANTIALLY JUSTIFIED IN MAINTAINING ITS POSITION AGAINST THE TAXPAYER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-241.2 is amended by adding a new subsection to read:

"(b3) Payment of Taxpayer's Costs. – The Tax Review Board shall award costs, including reasonable attorneys' fees, to a taxpayer if the Board finds that the taxpayer is the prevailing party and that the Secretary was not substantially justified in the position asserted against the taxpayer. A taxpayer is considered to be the prevailing party if the taxpayer substantially prevailed with respect to the amount in controversy or with respect to the most significant issue or set of issues presented."

SECTION 2. 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. 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 three years after payment.

The 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

1 90-day period allowed for making the refund. If upon the trial it is determined that all or
2 part of the tax was levied or assessed for an illegal or unauthorized purpose, or was for
3 any reason invalid or excessive, judgment shall be rendered therefor, with interest, and
4 the judgment shall be collected as in other cases. The court shall award costs, including
5 reasonable attorneys' fees, to a taxpayer if the court finds that the taxpayer is the
6 prevailing party and that the Secretary was not substantially justified in the position
7 asserted against the taxpayer. A taxpayer is considered to be the prevailing party if the
8 taxpayer substantially prevailed with respect to the amount in controversy or with
9 respect to the most significant issue or set of issues presented. The amount of taxes for
10 which judgment is rendered in such an action shall be refunded by the State. G.S.
11 105-241.2 provides an alternate procedure for a taxpayer to contest a tax and is not in
12 conflict with or superseded by this section."

13 **SECTION 3.** This act becomes effective September 1, 2003.