

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 730  
Finance Committee Substitute Adopted 5/19/11

Short Title: Taxpayer Action if No DOR Determination.

(Public)

Sponsors:

Referred to:

April 20, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE THAT FAILURE BY THE DEPARTMENT OF REVENUE TO  
3 ISSUE A FINAL DETERMINATION WITHIN THE REQUIRED TIME IS GROUNDS  
4 FOR A TAXPAYER TO SEEK A COURT ORDER COMPELLING THE ISSUANCE OF  
5 THE FINAL DETERMINATION.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 105-241.14(c) reads as rewritten:

8 "(c) Time Limit. – The process set out in G.S. 105-241.13 for reviewing and attempting  
9 to resolve a proposed denial of a refund or a proposed assessment must conclude, and a final  
10 determination must be issued within nine months after the date the taxpayer files a request for  
11 review. The Department and the taxpayer may extend this time limit by mutual agreement.  
12 Failure to issue a notice of final determination within the required time does not affect the  
13 validity of a proposed denial of a refund or proposed ~~assessment~~ assessment, but it is grounds  
14 under G.S. 150B-44 for a taxpayer to seek a court order compelling the Department to issue a  
15 notice of final determination."

16 **SECTION 2.** G.S. 150B-44 reads as rewritten:

17 "**§ 150B-44. Right to judicial intervention when agency action or decision unreasonably**  
18 **delayed.**

19 (a) Court Order. – Unreasonable delay on the part of any agency or administrative law  
20 judge in taking any required action ~~shall be is~~ justification for any person whose rights, duties,  
21 or privileges are adversely affected by ~~such the~~ delay to seek a court order compelling action by  
22 the agency or administrative law judge. The venue for obtaining a court order to compel the  
23 Department of Revenue to issue a notice of final determination is the Superior Court of Wake  
24 County. An order compelling the Department of Revenue to issue a notice of final  
25 determination must specify the date by which the Department must issue the notice. If the  
26 Department fails to issue the notice by the specified date, the court may order the Department  
27 to grant the refund or remove the proposed assessment.

28 (b) Time Limits. – An agency that is subject to Article 3 of this Chapter and is not a  
29 board or commission has 60 days from the day it receives the official record in a contested case  
30 from the Office of Administrative Hearings to make a final decision in the case. This time limit  
31 may be extended by the parties or, for good cause shown, by the agency for an additional  
32 period of up to 60 days. An agency that is subject to Article 3 of this Chapter and is a board or  
33 commission has 60 days from the day it receives the official record in a contested case from the  
34 Office of Administrative Hearings or 60 days after its next regularly scheduled meeting,  
35 whichever is longer, to make a final decision in the case. This time limit may be extended by  
36 the parties or, for good cause shown, by the agency for an additional period of up to 60 days. If



1 an agency subject to Article 3 of this Chapter has not made a final decision within these time  
2 limits, the agency is considered to have adopted the administrative law judge's decision as the  
3 agency's final decision. Failure of an agency subject to Article 3A of this Chapter to make a  
4 final decision within 120 days of the close of the contested case hearing is justification for a  
5 person whose rights, duties, or privileges are adversely affected by the delay to seek a court  
6 order compelling action by the agency or, if the case was heard by an administrative law judge,  
7 by the administrative law judge. The Board of Trustees of the North Carolina State Health Plan  
8 for Teachers and State Employees is a "board" for purposes of this section."

9 **SECTION 3.** This act is effective when it becomes law.