

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 315
HOUSE BILL 173

AN ACT TO PROVIDE THAT THE STATE SHALL PAY INTEREST ON INCOME TAX REFUNDS NOT REFUNDED TO THE TAXPAYER WITHIN FORTY-FIVE DAYS AFTER THE RETURN WAS FILED OR DUE TO BE FILED, WHICHEVER IS LATER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-163.43 reads as rewritten:

"§ 105-163.43. Overpayment refunded.

~~Any overpayment of estimated tax shall be credited to the taxpayer and applied to the tax imposed upon the taxpayer by Article 4. The Secretary shall not refund any overpayment before the corporation files its annual return. If, upon examining the annual return, the Secretary finds that the estimated tax paid by the corporation exceeds the amount of tax imposed upon the corporation under Article 4, the Secretary shall refund the amount of the overpayment in accordance with the provisions of Article 9.~~

If the amount of estimated tax paid under this Article exceeds the taxes against which the estimated tax is credited pursuant to this Article, the excess is considered an overpayment by the taxpayer and shall be refunded as provided in Article 9 of this Chapter."

Sec. 2. G.S. 105-163.16 reads as rewritten:

"§ 105-163.16. Overpayment refunded.

(a) ~~Where~~If the amount of wages withheld at the source under G.S. 105-163.2 exceeds the tax imposed by Article 4 of this Chapter against which the ~~tax so withheld may be withheld~~tax is credited under G.S. 105-163.10, the excess ~~shall be~~is considered an overpayment by the employee. (b) ~~If~~ the amount of estimated tax paid under G.S. 105-163.15 exceeds the taxes imposed by Article 4 of this Chapter against which the estimated tax ~~so paid~~may beis credited under the provisions of this Article, the excess ~~shall be~~is considered an overpayment by the taxpayer. An overpayment shall be refunded as provided in Article 9 of this Chapter.

(c) ~~Notwithstanding G.S. 105-266 and G.S. 105-266.1, an overpayment of any tax imposed under Article 4 of this Chapter, as disclosed by the taxpayer's annual return required to be filed by Article 4, shall be refunded to the taxpayer subject to the following exceptions:~~

- (1) ~~The taxpayer may elect to apply the overpayment to another purpose as provided in Article 9 of this Chapter.~~
- (2) ~~If the amount of the overpayment is less than one dollar (\$1.00), it will be refunded only upon the taxpayer's written demand for a refund.~~

(3) ~~There will be no refund of any part of the overpayment set off under the Setoff Debt Collection Act, Chapter 105A.~~

~~Every refund authorized by this section shall be made as expeditiously as possible after the taxpayer files the final return, and within six months after the date on which the final return is filed or due to be filed, whichever is later, insofar as practical. No interest shall be paid with respect to any refund made within this six month period. Refunds made after the end of the six month period shall bear interest computed at the rate established in G.S. 105-241.1(i) for assessments from the end of the six month period until paid. It is not necessary for the Attorney General to approve the refund. The making of the refund does not absolve any taxpayer of any income tax liability which may in fact exist and the Secretary may make any assessment for any deficiency in the manner provided in Article 9 of this Chapter. No overpayment of tax by the taxpayer shall be refunded irrespective of whether upon discovery or receipt of written demand if the discovery is not made or the demand is not received within three years from the date set by the statute for the filing of the annual return by the taxpayer or within six months of the payment of the tax alleged to be an overpayment, whichever date is the later.~~

(d) ~~to (f) Repealed by Session Laws 1991, c. 45, s. 22."~~

Sec. 3. G.S. 105-266 reads as rewritten:

"§ 105-266. Overpayment of taxes to be refunded with interest.

(a) Refund. – If the Secretary of Revenue discovers from the examination of any return, or otherwise, that any discovers that a taxpayer has overpaid the correct amount of tax (including penalties, interest and costs if any), a tax, that overpayment if the amount of three dollars (\$3.00) or more, shall be refunded to the taxpayer within 60 days after it is ascertained together with interest at the rate established in G.S. 105-241.1(i) for assessments; provided, that interest on the refund shall be computed from a date 90 days after the date the tax was originally paid by the taxpayer; except that there shall be no refund to the taxpayer of any sum set off under the provisions of Chapter 105A, the Set off Debt Collection Act, as soon as possible together with any applicable interest. The Secretary shall not refund an overpayment before the taxpayer has filed the final return for the tax period. The Secretary may not refund any of the following:

(1) An overpayment set off under Chapter 105A, the Setoff Debt Collection Act, or under another setoff debt collection program authorized by law.

(2) An income tax overpayment the taxpayer has elected to apply to another purpose as provided in this Article.

(3) An individual income tax overpayment of less than one dollar (\$1.00) or another tax overpayment of less than three dollars (\$3.00), unless the taxpayer makes a written demand for the refund.

(b) Interest. – An overpayment of tax bears interest at the rate established in G.S. 105-241.1(i) from the date that interest begins to accrue until a refund is paid. A refund is considered paid on a date determined by the Secretary that is no sooner than five days after a refund check is mailed.

Interest on an overpayment of a tax, other than a tax levied under Article 4 of this Chapter, accrues from a date 90 days after the date the tax was originally paid by the

taxpayer until the refund is paid. Interest on an overpayment of a tax levied under Article 4 of this Chapter accrues from a date 45 days after the latest of the following dates until the refund is paid:

- (1) The date the final return was filed.
- (2) The date the final return was due to be filed.
- (3) The date of the overpayment.

The date of an overpayment of a tax levied under Article 4 of this Chapter is determined in accordance with section 6611(d), (f), (g), and (h) of the Code.

(c) Statute of Limitations. ~~If the overpayment is less than three dollars (\$3.00) the overpayment shall be refunded only upon receipt by the Secretary of Revenue of a written demand for the refund from the taxpayer. Provided, however, that no~~ No overpayment shall be ~~refunded irrespective of refunded,~~ whether upon discovery or receipt of written ~~demand demand~~, if the discovery is not made or the demand is not received within three years ~~from after~~ the date set by the statute for the filing of the return or within six months ~~of after~~ the payment of the tax alleged to be an overpayment, whichever date is the later.

(d) Effect of Refund. – A refund made under this section does not absolve the taxpayer of a tax liability that may in fact exist; the Secretary may make an assessment for any deficiency as provided in this Article.

(e) Scope. – This section does not apply to interest required under G.S. 105-267. This section applies to a refund payable to a husband and wife who filed a joint return."

Sec. 4. This act is effective upon ratification and applies to overpayments reflected in final returns filed on or after the date of ratification.

In the General Assembly read three times and ratified this the 9th day of July, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives