

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2007-491
SENATE BILL 242**

**AN ACT TO REFORM THE PROCESS FOR ADMINISTRATIVE AND JUDICIAL
REVIEW OF DISPUTED TAX MATTERS.**

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 105 is amended by adding the following new sections to read:

"§ 105-241.6. Statute of limitations for refunds.

(a) General. – The general statute of limitations for obtaining a refund of an overpayment applies unless a different period applies under subsection (b) of this section. The general statute of limitations for obtaining a refund of an overpayment is the later of the following:

- (1) Three years after the due date of the return.
- (2) Two years after payment of the tax.

(b) Exceptions. – The exceptions to the general statute of limitations for obtaining a refund of an overpayment are as follows:

- (1) Federal Determination. – If a taxpayer files a return reflecting a federal determination and the return is filed within the time required by this Subchapter, the period for requesting a refund is one year after the return reflecting the federal determination is filed or three years after the original return was filed or due to be filed, whichever is later.
- (2) Waiver. – A taxpayer's waiver of the statute of limitations for making a proposed assessment extends the period in which the taxpayer can obtain a refund to the end of the period extended by the waiver.
- (3) Worthless Debts or Securities. – Section 6511(d)(1) of the Code applies to an overpayment of the tax levied in Part 2 or 3 of Article 4 of this Chapter to the extent the overpayment is attributable to either of the following:
 - a. The deductibility by the taxpayer under section 166 of the Code of a debt that becomes worthless, or under section 165(g) of the Code of a loss from a security that becomes worthless.
 - b. The effect of the deductibility of a debt or loss described in subpart a. of this subdivision on the application of a carryover to the taxpayer.
- (4) Capital Loss and Net Operating Loss Carrybacks. – Section 6511(d)(2) of the Code applies to an overpayment of the tax levied in Part 2 or 3 of Article 4 of this Chapter to the extent the overpayment is

attributable to a capital loss carryback under section 1212(c) of the Code or to a net operating loss carryback under section 172 of the Code.

"§ 105-241.7. Procedure for obtaining a refund.

(a) Initiated by Department. – The Department must refund an overpayment made by a taxpayer when the Department processes a return and finds all of the following:

- (1) The statute of limitations for obtaining a refund has not expired.
- (2) The amount shown due on the return is not correct.
- (3) The correction of the amount due shows that the taxpayer has overpaid the tax.

(b) Initiated by Taxpayer. – A taxpayer may request a refund of an overpayment made by the taxpayer by taking one of the following actions within the statute of limitations for obtaining a refund:

- (1) Filing an amended return reflecting an overpayment due the taxpayer.
- (2) Filing a claim for refund. The claim must identify the taxpayer, the type and amount of tax overpaid, the filing period to which the overpayment applies, and the basis for the claim. The taxpayer's statement of the basis of the claim does not limit the taxpayer from changing the basis.

(c) Action on Request. – When a taxpayer files an amended return or a claim for refund, the Department must take one of the actions listed in this subsection within six months after the date the amended return or claim for refund is filed. If the Department does not take one of these actions within this time limit, the inaction is considered a proposed denial of the requested refund.

- (1) Send the taxpayer a refund of the amount shown due on the amended return or claim for refund.
- (2) Adjust the amount of the requested refund by increasing or decreasing the amount shown due on the amended return or claim for refund and send the taxpayer a refund of the adjusted amount. If the adjusted amount is less than the amount shown due on the amended return or claim for refund, the adjusted refund must include a reason for the adjustment. The adjusted refund is considered a notice of proposed denial for the amount of the requested refund that is not included in the adjusted refund.
- (3) Deny the refund and send the taxpayer a notice of proposed denial.
- (4) Send the taxpayer a letter requesting additional information concerning the requested refund. If a taxpayer does not respond to a request for information, the Department may deny the refund and send the taxpayer a notice of proposed denial. If a taxpayer provides the requested information, the Department must take one of the actions listed in this subsection within the later of the following:
 - a. The remainder of the six-month period.
 - b. 30 days after receiving the information.

- c. A time period mutually agreed upon by the Department and the taxpayer.
- (d) Notice. – A notice of a proposed denial of a request for refund must contain the following information:
 - (1) The basis for the proposed denial. The statement of the basis of the denial does not limit the Department from changing the basis.
 - (2) The circumstances under which the proposed denial will become final.
- (e) Restrictions. – The Department may not refund any of the following:
 - (1) Until a taxpayer files a final return for a tax period, an amount paid before the final return is filed.
 - (2) An overpayment setoff under Chapter 105A, the Setoff Debt Collection Act, or under another setoff debt collection program authorized by law.
 - (3) An income tax overpayment the taxpayer has elected to apply to another purpose as provided in this Article.
 - (4) 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 files a written claim for the refund.
- (f) Effect of Denial or Refund. – A proposed denial of a refund by the Secretary is presumed to be correct. A refund does not absolve a taxpayer of a tax liability that may in fact exist. The Secretary may propose an assessment for any deficiency as provided in this Article.

"§ 105-241.8. Statute of limitations for assessments.

- (a) General. – The general statute of limitations for proposing an assessment applies unless a different period applies under subsection (b) of this section. The general statute of limitations for proposing an assessment is the later of the following:
 - (1) Three years after the due date of the return.
 - (2) Three years after the taxpayer filed the return.
- (b) Exceptions. – The exceptions to the general statute of limitations for proposing an assessment are as follows:
 - (1) Federal determination. – If a taxpayer files a return reflecting a federal determination and the return is filed within the time required by this Subchapter, the period for proposing an assessment of any tax due is one year after the return is filed or three years after the original return was filed or due to be filed, whichever is later. If there is a federal determination and the taxpayer does not file the return within the required time, the period for proposing an assessment of any tax due is three years after the date the Secretary received the final report of the federal determination.
 - (2) Failure to file or filing false return. – There is no statute of limitations and the Secretary may propose an assessment of tax due from a taxpayer at any time if any of the following applies:
 - a. The taxpayer did not file a return.
 - b. The taxpayer filed a fraudulent return.

- c. The taxpayer attempted in any manner to fraudulently evade or defeat the tax.
- (3) Tax forfeiture. – If a taxpayer forfeits a tax credit or tax benefit pursuant to forfeiture provisions of this Chapter, the period for proposing an assessment of any tax due as a result of the forfeiture is three years after the date of the forfeiture.
- (4) Nonrecognition of gain. – If a taxpayer elects under section 1033(a)(2)(A) of the Code not to recognize gain from involuntary conversion of property into money, the period for proposing an assessment of any tax due as a result of the conversion or election is the applicable period provided under section 1033(a)(2)(C) or section 1033(a)(2)(D) of the Code.

"§ 105-241.9. Procedure for proposing an assessment.

(a) Authority. – The Secretary may propose an assessment against a taxpayer for tax due from the taxpayer. The Secretary must base a proposed assessment on the best information available. A proposed assessment of the Secretary is presumed to be correct.

(b) Time Limit. – The Secretary must propose an assessment within the statute of limitations for proposed assessments unless the taxpayer waives the limitations period in writing. A taxpayer may waive the limitations period for either a definite or an indefinite time. If the taxpayer waives the limitations period, the Secretary may propose an assessment at any time within the time extended by the waiver.

(c) Notice. – The Secretary must give a taxpayer written notice of a proposed assessment. The notice of a proposed assessment must contain the following information:

- (1) The basis for the proposed assessment. The statement of the basis for the proposed assessment does not limit the Department from changing the basis.
- (2) The amount of tax, interest, and penalties included in the proposed assessment. The amount for each of these must be stated separately.
- (3) The circumstances under which the proposed assessment will become final and collectible.

"§ 105-241.10. Limit on refunds and assessments after a federal determination.

The limitations in this section apply when a taxpayer files a timely return reflecting a federal determination that affects the amount of State tax payable and the general statute of limitations for requesting a refund or proposing an assessment of the State tax has expired. A federal determination is a correction or final determination by the federal government of the amount of a federal tax due. A return reflecting a federal determination is timely if it is filed within the time required by G.S. 105-32.8, 105-130.20, 105-159, 105-160.8, 105-163.6A, or 105-197.1, as appropriate. The limitations are:

- (1) Refund. – A taxpayer is allowed a refund only if the refund is the result of adjustments related to the federal determination.

- (2) Assessment. – A taxpayer is liable for additional tax only if the additional tax is the result of adjustments related to the federal determination. A proposed assessment may not include an amount that is outside the scope of this liability.

"§ 105-241.11. Requesting review of proposed denial of refund or proposed assessment.

(a) Procedure. – A taxpayer who objects to a proposed denial of a refund or a proposed assessment of tax may request a Departmental review of the proposed action by filing a request for review. The request must be filed with the Department within 45 days after the following:

- (1) The date the notice of the proposed denial of the refund or proposed assessment was mailed to the taxpayer, if the notice was delivered by mail.
- (2) The date the notice of the proposed denial of the refund or proposed assessment was delivered to the taxpayer, if the notice was delivered in person.
- (3) The date that inaction by the Department on a request for refund was considered a proposed denial of the refund.

(b) Filing. – A request for a Departmental review of a proposed denial of a refund or a proposed assessment is considered filed on the following dates:

- (1) For a request that is delivered in person, the date it is delivered.
- (2) For a request that is not delivered in person, the date the Department receives it.

"§ 105-241.12. Result when taxpayer does not request a review.

(a) Refund. – If a taxpayer does not file a timely request for a Departmental review of a proposed denial of a refund, the proposed denial is final and is not subject to further administrative or judicial review. A taxpayer whose proposed denial becomes final may not file another amended return or claim for refund to obtain the denied refund.

(b) Assessment. – If a taxpayer does not file a timely request for a Departmental review of a proposed assessment, the proposed assessment is final and is not subject to further administrative or judicial review. Upon payment of the tax, the taxpayer may request a refund of the tax.

Before the Department collects a proposed assessment that becomes final when the taxpayer does not file a timely request for a Departmental review, the Department must send the taxpayer a notice of collection. A notice of collection must contain the following information:

- (1) A statement that the proposed assessment is final and collectible.
- (2) The amount of tax, interest, and penalties payable by the taxpayer.
- (3) An explanation of the collection options available to the Department if the taxpayer does not pay the amount shown due on the notice and any remedies available to the taxpayer concerning these collection options.

"§ 105-241.13. Action on request for review.

(a) Action on Request. – If a taxpayer files a timely request for a Departmental review of a proposed denial of a refund or a proposed assessment, the Department must conduct a review of the proposed denial or proposed assessment and take one of the following actions:

- (1) Grant the refund or remove the assessment.
- (2) Schedule a conference with the taxpayer.
- (3) Request additional information from the taxpayer concerning the requested refund or proposed assessment.

(b) Conference. – When the Department reviews a proposed denial of a refund or a proposed assessment and does not grant the refund or remove the assessment, the Department must schedule a conference with the taxpayer. The Department must set the time and place for the conference, which may include a conference by telephone, and must send the taxpayer notice of the designated time and place. The Department must send the notice at least 30 days before the date of the conference or, if the Department and the taxpayer agree, within a shorter period.

The conference is an informal proceeding at which the taxpayer and the Department must attempt to resolve the case. Testimony under oath is not taken, and the rules of evidence do not apply. A taxpayer may designate a representative to act on the taxpayer's behalf. The taxpayer may present any objections to the proposed denial of refund or proposed assessment at the conference.

(c) After Conference. – One of the following must occur after the Department conducts a conference on a proposed denial of a refund or a proposed assessment:

- (1) The Department and the taxpayer agree on a settlement.
- (2) The Department and the taxpayer agree that additional time is needed to resolve the taxpayer's objection to the proposed denial of the refund or proposed assessment.
- (3) The Department and the taxpayer are unable to resolve the taxpayer's objection to the proposed denial of the refund or proposed assessment. If a taxpayer fails to attend a scheduled conference on the proposed denial of a refund or a proposed assessment without prior notice to the Department, the Department and the taxpayer are considered to be unable to resolve the taxpayer's objection.

"§ 105-241.14. Final determination after Departmental review.

(a) Refund. – If a taxpayer files a timely request for a Departmental review of a proposed denial of a refund and the Department and the taxpayer are unable to resolve the taxpayer's objection to the proposed denial, the Department must send the taxpayer a notice of final determination concerning the refund. The notice of final determination must state the basis for the determination and inform the taxpayer of the procedure for contesting the determination. The statement of the basis for the determination does not limit the Department from changing the basis.

(b) Assessment. – If a taxpayer files a timely request for a Departmental review of a proposed assessment and the Department and the taxpayer are unable to resolve the taxpayer's objection to the proposed assessment, the Department must send the taxpayer

a notice of final determination concerning the assessment. A notice of final determination concerning an assessment must contain the following information:

- (1) The basis for the determination. This information may be stated on the notice or be set out in a separate document. The statement of the basis for the determination does not limit the Department from changing the basis.
- (2) The amount of tax, interest, and penalties payable by the taxpayer.
- (3) The procedure the taxpayer must follow to contest the final determination.
- (4) A statement that the amount payable stated on the notice is collectible by the Department unless the taxpayer contests the final determination.
- (5) An explanation of the collection options available to the Department if the taxpayer does not pay the amount shown due on the notice and any remedies available to the taxpayer concerning these collection options.

(c) Time Limit. – The process set out in G.S. 105-241.13 for reviewing and attempting to resolve a proposed denial of a refund or a proposed assessment must conclude, and a final determination must be issued within nine months after the date the taxpayer files a request for review. The Department and the taxpayer may extend this time limit by mutual agreement. Failure to issue a notice of final determination within the required time does not affect the validity of a proposed assessment.

"§ 105-241.15. Contested case hearing on final determination.

A taxpayer who disagrees with a notice of final determination issued by the Department may contest the determination by filing a petition for a contested case hearing at the Office of Administrative Hearings in accordance with Article 3 of Chapter 150B of the General Statutes. A taxpayer may file a petition for a contested case hearing only if the taxpayer has exhausted the prehearing remedy. A taxpayer's prehearing remedy is exhausted when the Department issues a final determination after conducting a review and a conference.

"§ 105-241.16. Judicial review of decision after contested case hearing.

A taxpayer aggrieved by the final decision in a contested case commenced at the Office of Administrative Hearings may seek judicial review of the decision in accordance with Article 4 of Chapter 150B of the General Statutes. Notwithstanding G.S. 150B-45, a petition for judicial review must be filed in the Superior Court of Wake County and in accordance with the procedures for a mandatory business case set forth in G.S. 7A-45.4(b) through (f). A taxpayer who files a petition for judicial review must pay the amount of tax, penalties, and interest the final decision states is due. A taxpayer may appeal a decision of the Business Court to the appellate division in accordance with G.S. 150B-52.

"§ 105-241.17. Civil action challenging statute as unconstitutional.

A taxpayer who claims that a tax statute is unconstitutional may bring a civil action in the Superior Court of Wake County to determine the taxpayer's liability under that statute if all of the conditions in this section are met. In filing an action under this section, a taxpayer must follow the procedures for a mandatory business case set forth in G.S. 7A-45.4(b) through (f). The conditions for filing a civil action are:

- (1) The taxpayer exhausted the prehearing remedy by receiving a final determination after a review and a conference.
- (2) The taxpayer commenced a contested case at the Office of Administrative Hearings.
- (3) The Office of Administrative Hearings dismissed the contested case petition for lack of jurisdiction because the sole issue is the constitutionality of a statute and not the application of a statute.
- (4) The taxpayer has paid the amount of tax, penalties, and interest the final determination states is due.
- (5) The civil action is filed within two years of the dismissal.

"§ 105-241.18. Reserved for future codification purposes.

"§ 105-241.19. Declaratory judgments, injunctions, and other actions prohibited.

The remedies in G.S. 105-241.11 through G.S. 105-241.17 set out the exclusive remedies for disputing the denial of a requested refund, a taxpayer's liability for a tax, or the constitutionality of a tax statute. Any other action is barred. Neither an action for declaratory judgment, an action for an injunction to prevent the collection of a tax, nor any other action is allowed.

"§ 105-241.20. Delivery of notice to the taxpayer.

(a) Scope. – This section applies to the following notices:

- (1) A proposed denial of a refund.
- (2) A proposed assessment.
- (3) A notice of collection.
- (4) A final determination.

(b) Method. – The Secretary must deliver a notice listed in subsection (a) of this section to a taxpayer either in person or by United States mail sent to the taxpayer's last known address. A notice mailed to a taxpayer is presumed to have been received by the taxpayer unless the taxpayer makes an affidavit to the contrary within 90 days after the notice was mailed. If the taxpayer makes this affidavit, the notice is considered to have been delivered on the date the taxpayer makes the affidavit, and any time limit affected by the notice is extended to the date the taxpayer makes the affidavit.

"§ 105-241.21. Interest on taxes.

(a) Rate. – The interest rate set by the Secretary applies to interest that accrues on overpayments and assessments of tax. On or before June 1 and December 1 of each year, the Secretary must establish the interest rate to be in effect during the six-month period beginning on the next succeeding July 1 and January 1, respectively. In determining the interest rate, the Secretary must give due consideration to current market conditions and to the rate that will be in effect on that date pursuant to the Code. If no new rate is established, the rate in effect during the preceding six-month period continues in effect. The rate established by the Secretary may not be less than five percent (5%) per year and may not exceed sixteen percent (16%) per year.

(b) Accrual on Underpayments. – Interest accrues on an underpayment of tax from the date set by statute for payment of the tax until the tax is paid. Interest accrues only on the principal of the tax and does not accrue on any penalty.

(c) Accrual on Refund. – Interest accrues on an overpayment of tax from the time set in the following subdivisions until the refund is paid.

- (1) Franchise, income, and gross premiums. – Interest on an overpayment of a tax levied under Article 3 of this Chapter and payable on an annual basis or of a tax levied under Article 4 or 8B of this Chapter accrues from a date 45 days after the latest of the following dates:
 - a. The date the final return was filed.
 - b. The date the final return was due to be filed.
 - c. The date of the overpayment. The date of an overpayment of a tax levied under Article 4 or Article 8B of this Chapter is determined in accordance with section 6611(d), (f), (g), and (h) of the Code.
- (2) All other taxes. – Interest on an overpayment of a tax that is not included in subdivision (1) of this subsection accrues from a date that is 90 days after the date the tax was paid.

(d) When Refund Is Paid. – A refund sent to a taxpayer is considered paid on a date determined by the Secretary that is no sooner than five days after a refund check is mailed. A refund set off against a debt pursuant to Chapter 105A of the General Statutes is considered paid five days after the Department mails the taxpayer a notice of the setoff, unless G.S. 105A-5 or G.S. 105A-8 requires the agency that requested the setoff to return the refund to the taxpayer. In this circumstance, the refund that was set off is not considered paid until five days after the agency that requested the refund mails the taxpayer a check for the refund.

"§ 105-241.22. Collection of tax.

The Department may collect a tax in the following circumstances:

- (1) When a taxpayer files a return showing tax due with the return and does not pay the amount shown due.
- (2) When the Department sends a notice of collection after a taxpayer does not file a timely request for a Departmental review of a proposed assessment of tax.
- (3) When a taxpayer and the Department agree on a settlement concerning the amount of tax due.
- (4) When the Department sends a notice of final determination concerning an assessment of tax and the taxpayer does not file a timely petition for a contested case hearing on the assessment.
- (5) When a final decision is issued on a proposed assessment of tax after a contested case hearing.
- (6) When the Office of Administrative Hearings dismisses a petition for a contested case for lack of jurisdiction because the sole issue is the constitutionality of a statute and not the application of a statute.

"§ 105-241.23. Jeopardy assessment and collection.

(a) Action. – The Secretary may at any time within the statute of limitations immediately assess and collect any tax the Secretary finds is due from a taxpayer if the Secretary determines that collection of the tax is in jeopardy and immediate assessment

and collection are necessary in order to protect the interest of the State. In making a jeopardy collection, the Secretary may use any of the collection remedies in G.S. 105-242 and is not required to wait any period of time before using these remedies. Within 30 days after initiating a jeopardy collection, the Secretary must give the taxpayer the notice of proposed assessment required by G.S. 105-241.9.

(b) Review by Department. – Within five days after initiating a jeopardy collection that is not the result of a criminal investigation or of a liability for a tax imposed under Article 2D of this Chapter, the Secretary must provide the taxpayer with a written statement of the information upon which the Secretary relied in initiating the jeopardy collection. Within 30 days after receipt of this written statement or, if no statement is received, within 30 days after the statement was due, the taxpayer may request the Secretary to review the action taken. After receipt of this request, the Secretary must determine whether initiating the jeopardy collection was reasonable under all the circumstances and whether the amount assessed and collected was reasonable under all the circumstances. The Secretary must give the taxpayer written notice of this determination within 30 days after the request.

(c) Judicial Review. – Within 90 days after the earlier of the date a taxpayer received or should have received a determination of the Secretary concerning a jeopardy collection under subsection (b) of this section, the taxpayer may bring a civil action seeking review of the jeopardy collection. The taxpayer may bring the action in the Superior Court of Wake County or in the county in North Carolina in which the taxpayer resides. Within 20 days after the action is filed, the court must determine whether the initiation of the jeopardy collection was reasonable under the circumstances. If the court determines that an action of the Secretary was unreasonable or inappropriate, the court may order the Secretary to take any action the court finds appropriate. If the taxpayer shows reasonable grounds why the 20-day limit on the court should be extended, the court may grant an extension of not more than 40 additional days."

SECTION 2. The following statutes are repealed:

- (1) G.S. 20-91.1
- (2) G.S. 20-91.2
- (3) G.S. 20-98
- (4) G.S. 20-99
- (5) G.S. 105-104
- (6) G.S. 105-122(c)
- (7) G.S. 105-130.4(t)
- (8) G.S. 105-164.43
- (9) G.S. 105-239
- (10) G.S. 105-241.1
- (11) G.S. 105-241.2
- (12) G.S. 105-241.3
- (13) G.S. 105-241.4
- (14) G.S. 105-241.5
- (15) G.S. 105-266

- (16) G.S. 105-266.1
- (17) G.S. 105-267
- (18) G.S. 105-269.2
- (19) G.S. 143A-38
- (20) G.S. 150B-1(e)(6)
- (21) G.S. 150B-28(b).

SECTION 3. G.S. 1-52(15) reads as rewritten:

"§ 1-52. Three years.

Within three years an action –

...

- (15) For the recovery of taxes paid as provided in ~~G.S. 105-267~~ and G.S. 105-381.

...."

SECTION 4. G.S. 7A-45.4 reads as rewritten:

'§ 7A-45.4. Designation of mandatory complex business cases.

(a) A mandatory complex business case is an action that involves a material issue related to:

- (1) The law governing corporations, except charitable and religious organizations qualified under G.S. 55A-1-40(4) on the grounds of religious purpose, partnerships, limited liability companies, and limited liability partnerships, including issues concerning governance, involuntary dissolution of a corporation, mergers and acquisitions, breach of duty of directors, election or removal of directors, enforcement or interpretation of shareholder agreements, and derivative actions.
- (2) Securities law, including proxy disputes and tender offer disputes.
- (3) Antitrust law, except claims based solely on unfair competition under G.S. 75-1.1.
- (4) State trademark or unfair competition law, except claims based solely on unfair competition under G.S. 75-1.1.
- (5) Intellectual property law, including software licensing disputes.
- (6) The Internet, electronic commerce, and biotechnology.
- (7) Tax law, when the dispute has been the subject of a contested tax case for which judicial review is requested under G.S. 105-241.16 or the dispute is a civil action under G.S. 105-241.17.

(b) Any party may designate a civil action or a petition for judicial review under G.S. 105-241.16 as a mandatory complex business case by filing a Notice of Designation in the Superior Court in which the action has been filed and simultaneously serving the notice on each opposing party or counsel and on the Special Superior Court Judge for Complex Business Cases who is then the senior Business Court Judge. A copy of the notice shall also be sent contemporaneously by e-mail or facsimile transmission to the Chief Justice of the Supreme Court for approval of the designation of the action as a mandatory complex business case and assignment to a specific Business Court Judge.

(c) The Notice of Designation shall, in good faith and based on information reasonably available, succinctly state the basis of the designation and include a certificate by or on behalf of the designating party that the civil action meets the criteria for designation as a mandatory complex business case pursuant to subsection (a) of this section.

(d) The Notice of Designation shall be filed:

- (1) By the ~~plaintiff or third party plaintiff~~ plaintiff, the third-party plaintiff, or the petitioner for judicial review contemporaneously with the filing of the ~~complaint or third party complaint~~ complaint, third-party complaint, or the petition for judicial review in the action.
- (2) By any intervenor when the intervenor files a motion for permission to intervene in the action.
- (3) By any defendant or any other party within 30 days of receipt of service of the pleading seeking relief from the defendant or party.

(e) Within 30 days after service of the Notice of Designation, any other party may, in good faith, file and serve an opposition to the designation of the action as a mandatory business case. Based on the opposition or ex mero motu, the Business Court Judge may determine that the action should not be designated as a mandatory complex business case. If a party disagrees with the decision, the party may appeal to the Chief Justice of the Supreme Court.

(f) Once a designation is filed under subsection (d) of this section, and after preliminary approval by the Chief Justice, a case shall be designated and administered a complex business case. All proceedings in the action shall be before the Business Court Judge to whom it has been assigned unless and until an order has been entered under subsection (e) of this section ordering that the case not be designated a mandatory complex business case or the Chief Justice revokes approval. If complex business case status is revoked or denied, the action shall be treated as any other civil action, unless it is designated as an exceptional civil case or a discretionary complex business case pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts."

SECTION 5. G.S. 20-64(f) reads as rewritten:

"(f) The owner or transferor of a registered vehicle who surrenders the registration plate to the division may secure a refund for the unexpired portion of such plate prorated on a monthly basis, beginning the first day of the month following surrender of the plate to the division, provided the annual fee of such surrendered plate is sixty dollars (\$60.00) or more. This refund may not exceed one half of the annual license fee. No refund shall be made unless the owner or transferor furnishes proof of financial responsibility on the registered vehicle effective until the date of the surrender of the plate. Proof of financial responsibility shall be furnished in a manner prescribed by the Commissioner. ~~Any unauthorized refund may be recovered in the manner set forth in G.S. 20-99.~~"

SECTION 6. G.S. 105-32.8 reads as rewritten:

"§ 105-32.8. Federal determination that changes the amount of tax payable to the State.

If the federal government corrects or otherwise determines the gross estate tax imposed under section 2001 of the Code or the amount of the maximum state death tax credit allowed an estate under section 2011 of the Code, the personal representative must, within six months after being notified of the correction or final determination by the federal government, file an estate tax return with the Secretary reflecting the correct amount of tax payable under this Article. If the federal government corrects or otherwise determines the amount of the maximum state generation-skipping transfer tax credit allowed under section 2604 of the Code, the person who made the transfer must, within six months after being notified of the correction or final determination by the federal government, file a tax return with the Secretary reflecting the correct amount of tax payable under this Article.

The Secretary must ~~assess and collect~~ propose an assessment for any additional tax due as provided in Article 9 of this Chapter and must refund any overpayment of tax as provided in Article 9 of this Chapter. A person who fails to report a federal correction or determination in accordance with this section is subject to the penalties in G.S. 105-236 and forfeits the right to any refund due by reason of the determination."

SECTION 7. G.S. 105-109(b) reads as rewritten:

"(b) License Required. – Before a person may engage in a business, trade, or profession for which a license is required under this Article, the person must be licensed by the ~~Department pursuant to G.S. 105-104.~~ Department. To obtain a license, a person must submit an application to the Department for the license and pay the required tax. An application for a license is considered a return.

The Department must issue a license to a person who files a completed application and pays the required tax. A license must be displayed conspicuously at the location of the licensed business, trade, or profession."

SECTION 8. G.S. 105-113.111 reads as rewritten:

"§ **105-113.111. Assessments.**

Notwithstanding any other provision of law, an assessment against a dealer who possesses an unauthorized substance to which a stamp has not been affixed as required by this Article shall be made as provided in this section. The Secretary shall assess a tax, applicable penalties, and interest based on personal knowledge or information available to the Secretary. The Secretary shall notify the dealer in writing of the amount of the tax, penalty, and interest due, and demand its immediate payment. The notice and demand shall be either mailed to the dealer at the dealer's last known address or served on the dealer in person. If the dealer does not pay the tax, penalty, and interest immediately upon receipt of the notice and demand, the Secretary shall collect the tax, penalty, and interest pursuant to the ~~procedure set forth in jeopardy collection procedures~~ in G.S. 105-241.23 or the general collection procedures in G.S. 105-242, 105-241.1(g) ~~for jeopardy assessments or the procedure set forth in G.S. 105-242,~~ including causing execution to be issued immediately against the personal property of the dealer, unless the dealer files with the Secretary a bond in the amount of the asserted liability for the tax, penalty, and interest. The Secretary shall use all means available to collect the tax, penalty, and interest from any property in which the dealer has a legal, equitable, or

beneficial interest. The dealer may seek review of the assessment as provided in Article 9 of this Chapter."

SECTION 9. G.S. 105-113.113 reads as rewritten:

"§ 105-113.113. Use of tax proceeds.

(a) Special Account. – The Unauthorized Substances Tax Account is established as a special nonreverting account. ~~The Secretary shall credit the proceeds of the tax levied by this Article to a special nonreverting account, to be called the State Unauthorized Substances Tax Account, until the tax proceeds are unencumbered. The Secretary shall remit the unencumbered tax proceeds as provided in this section on a quarterly or more frequent basis. Tax proceeds are unencumbered when either of the following occurs:~~

- (1) ~~The tax has been fully paid and the taxpayer has no current right under G.S. 105-267 to seek a refund.~~
- (2) ~~The taxpayer has been notified of the final assessment of the tax under G.S. 105-241.1 and has neither fully paid nor timely contested the tax under G.S. 105-241.1 through G.S. 105-241.4 or G.S. 105-267.~~

the Account.

(b) Distribution. – The Secretary shall distribute unencumbered tax proceeds in the Unauthorized Substances Tax Account on a quarterly or more frequent basis. Tax proceeds in the Account are unencumbered when they are collectible under G.S. 105-241.22. The Secretary shall remit-distribute seventy-five percent (75%) of the part-of-the-unencumbered tax proceeds in the Account that was-were collected by assessment to the State or local law enforcement agency that conducted the investigation of a dealer that led to the assessment. If more than one State or local law enforcement agency conducted the investigation, the Secretary shall determine the equitable share for each agency based on the contribution each agency made to the investigation. The Secretary shall credit the remaining unencumbered tax proceeds in the Account to the General Fund.

(c) Refunds. – The refund of a tax that has already been distributed shall be drawn initially from the State-Unauthorized Substances Tax Account. The amount of refunded taxes that had-been-were distributed to a law enforcement agency under this section and any interest shall be subtracted from succeeding distributions from the Account to that law enforcement agency. The amount of refunded taxes that had-been-were credited to the General Fund under this section and any interest shall be subtracted from succeeding credits to the General Fund from the Account."

SECTION 10. G.S. 105-122(a) reads as rewritten:

"(a) An annual franchise or privilege tax is imposed on a corporation doing business in this State. A corporation subject to the tax must file a return under affirmation with the Secretary at the place and in the manner prescribed by the Secretary. The return must be signed by the president, vice-president, treasurer, or chief financial officer of the corporation. The return is due on or before the fifteenth day of the fourth month following the end of the corporation's income year. Every corporation, domestic and foreign, incorporated, or, by an act, domesticated under the laws of this State or doing business in this State, except as otherwise provided in this Article, shall,

~~on or before the fifteenth day of the third month following the end of its income year, annually make and deliver to the Secretary in the form prescribed by the Secretary a full, accurate, and complete report and statement signed by either its president, vice president, treasurer, assistant treasurer, secretary or assistant secretary, containing the facts and information required by the Secretary as shown by the books and records of the corporation at the close of the income year.~~

~~There shall be annexed to the return required by this subsection the affirmation of the officer signing the return."~~

SECTION 11. G.S. 105-122 is amended by adding a new subsection to read:

"(c1) Apportionment. – A corporation that is doing business in this State and in one or more other states must apportion its capital stock, surplus, and undivided profits to this State. A corporation must use the apportionment method set out in subdivision (1) of this subsection unless the Department has authorized it to use a different method under subdivision (2) of this subsection. The portion of a corporation's capital stock, surplus, and undivided profits determined by applying the appropriate apportionment method is considered the amount of capital stock, surplus, and undivided profits the corporation uses in its business in this State.

(1) Statutory. – A corporation that is subject to income tax under Article 4 of this Chapter must apportion its capital stock, surplus, and undivided profits by using the fraction it applies in apportioning its income under that Article. A corporation that is not subject to income tax under Article 4 of this Chapter must apportion its capital stock, surplus, and undivided profits by using the fraction it would be required to apply in apportioning its income if it were subject to that Article. The apportionment method set out in this subdivision is considered the statutory method of apportionment and is presumed to be the best method of determining the amount of a corporation's capital stock, surplus, and undivided profits attributable to the corporation's business in this State.

(2) Alternative. – A corporation that believes the statutory apportionment method set out in subdivision (1) of this subsection subjects a greater portion of its capital stock, surplus, and undivided profits to tax under this section than is attributable to its business in this State may make a written request to the Secretary for permission to use an alternative method. The request must set out the reasons for the corporation's belief and propose an alternative method. The corporation has the burden of establishing by clear, cogent, and convincing proof that the statutory apportionment method subjects a greater portion of the corporation's capital stock, surplus, and undivided profits to tax under this section than is attributable to its business in this State and that the proposed alternative method is a better method of determining the amount of the corporation's capital stock, surplus, and undivided profits attributable to the corporation's business in this State.

The Secretary must issue a written decision on a corporation's request for an alternative apportionment method. If the decision grants the request, it must describe the alternative method the corporation is authorized to use and state the tax years to which the alternative method applies. A decision may apply to no more than three tax years. A corporation may renew a request to use an alternative apportionment method by following the procedure in this subdivision. A decision of the Secretary on a request for an alternative apportionment method is final and is not subject to administrative or judicial review. A corporation authorized to use an alternative method may apportion its capital stock, surplus, and undivided profits in accordance with the alternative method or the statutory method."

SECTION 12. G.S. 105-130.4 is amended by adding a new subsection to read:

"(t1) Alternative Apportionment Method. – A corporation that believes the statutory apportionment method that otherwise applies to it under this section subjects a greater portion of its income to tax than is attributable to its business in this State may make a written request to the Secretary for permission to use an alternative method. The request must set out the reasons for the corporation's belief and propose an alternative method.

The statutory apportionment method that otherwise applies to a corporation under this section is presumed to be the best method of determining the portion of the corporation's income that is attributable to its business in this State. A corporation has the burden of establishing by clear, cogent, and convincing proof that the proposed alternative method is a better method of determining the amount of the corporation's income attributable to the corporation's business in this State.

The Secretary must issue a written decision on a corporation's request for an alternative apportionment method. If the decision grants the request, it must describe the alternative method the corporation is authorized to use and state the tax years to which the alternative method applies. A decision may apply to no more than three tax years. A corporation may renew a request to use an alternative apportionment method by following the procedure in this subsection. A decision of the Secretary on a request for an alternative apportionment method is final and is not subject to administrative or judicial review. A corporation authorized to use an alternative method may apportion its income in accordance with the alternative method or the statutory method."

SECTION 13. G.S. 105-130.6A(e) reads as rewritten:

"(e) Cap for Bank Holding Companies. – After calculating the expense adjustment as provided in subsection (c) of this section, each bank holding company must calculate the amount of additional tax that results from the expense adjustments for the holding company and for every corporation in the holding company's affiliated group for the taxable year. If the expense adjustments result in additional tax exceeding eleven million dollars (\$11,000,000) for a taxable year for the affiliated group, the affiliated group may reduce the amount of the expense adjustment so that the resulting additional tax does not exceed this maximum. This maximum applies once to each affiliated group

each taxable year, whether or not the group includes more than one bank holding company.

The members of the affiliated group may allocate this reduction among themselves in their discretion. In order to take this reduction, each member of the affiliated group that is required to file a return under this Part and that has dividends for the taxable year must provide a schedule with its return that lists every member of the group that has dividends, the amount of the dividends, and whether the member is a bank holding company. In addition, the schedule must show the expense adjustments for those members whose additional tax as a result of the expense adjustment constitutes the maximum amount. In addition, each member must provide any other documentation required by the Secretary.

If the expense adjustment for an affiliated group is reduced under this subsection, and the return of a member of the group is later changed in a manner that reduces below the maximum the amount of additional tax for the group resulting from the expense adjustment, the Secretary may increase the expense adjustment for any member of the group in order to increase to the maximum the amount of additional tax for the group resulting from the expense adjustment. In this situation, the amount of the increase is considered a forfeited tax benefit with respect to the affiliated group for the purposes of ~~G.S. 105-241.1(e)~~, G.S. 105-241.8. The date of the forfeiture is the date of the change that triggers the Secretary's authority to increase the expense adjustment. Any member whose expense adjustment the Secretary increases is liable for interest on the amount of the increase at the rate established under ~~105-241.1(i)~~, G.S. 105-241.21 computed from the date the taxes would have been due if the expense adjustment had been calculated correctly on the original return. The amount of the increase and the interest are due 60 days after the date of the forfeiture. A taxpayer that fails to pay the amount of the increase and interest by the due date is subject to the penalties provided in G.S. 105-236."

SECTION 14. G.S. 105-130.17 reads as rewritten:

"§ 105-130.17. Time and place of filing returns.

(a) Returns must be filed as prescribed by the Secretary at the place prescribed by the Secretary. Returns must be in the form prescribed by the Secretary. The Secretary ~~shall~~ must furnish forms in accordance with G.S. 105-254.

(b) Except as otherwise provided in this section, the return of a corporation shall be filed on or before the fifteenth day of the ~~third~~ fourth month following the close of its income year. An income year ending on any day other than the last day of the month shall be deemed to end on the last day of the calendar month ending nearest to the last day of a taxpayer's actual income year.

(c) In the case of mutual associations formed under G.S. 54-111 through 54-128 to conduct agricultural business on the mutual plan and marketing associations organized under G.S. 54-129 through 54-158, which are required to file under subsection (a)(9) of G.S. 105-130.11, a return made on the basis of a calendar year shall be filed on or before the fifteenth day of the September following the close of the calendar year, and a return made on the basis of a fiscal year shall be filed on or before the fifteenth day of the ninth month following the close of the fiscal year.

(d) A taxpayer may ask the Secretary for an extension of time to file a return under G.S. 105-263.

(d1) Organizations described in G.S. 105-130.11(a)(1), (3), (4), (5), (6), (7) and (8) that are required to file a return under G.S. 105-130.11(b) shall file a return made on the basis of a calendar year on or before the fifteenth day of May following the close of the calendar year and a return made on the basis of a fiscal year on or before the fifteenth day of the fifth month following the close of the fiscal year.

(e) Any corporation that ceases its operations in this State before the end of its income year because of its intention to dissolve or to withdraw from this State, or because of a merger, conversion, or consolidation or for any other reason whatsoever shall file its return for the then current income year within ~~75~~105 days after the date it terminates its business in this State.

(f) Repealed by Session Laws 1998-217, s. 42, effective October 31, 1998.

(g) A corporation that files a federal return pursuant to section 6072(c) of the Code shall file its return on or before the fifteenth day of the ~~sixth~~seventh month following the close of its income year."

SECTION 15. G.S. 105-130.20 reads as rewritten:

"§ 105-130.20. Federal corrections.

If a taxpayer's federal taxable income is corrected or otherwise determined by the federal government, the taxpayer must, within six months after being notified of the correction or final determination by the federal government, file an income tax return with the Secretary reflecting the corrected or determined taxable income. The Secretary ~~shall determine from all available evidence the taxpayer's correct tax liability for the income year. As used in this section, the term "all available evidence" means evidence of any kind that becomes available to the Secretary from any source, whether or not the evidence was considered in the federal correction or determination.~~

~~The Secretary shall assess and collect~~ must propose an assessment for any additional tax due from the taxpayer as provided in Article 9 of this Chapter. The Secretary ~~shall~~ must refund any overpayment of tax as provided in Article 9 of this Chapter. A taxpayer that fails to comply with this section is subject to the penalties in G.S. 105-236 and forfeits its rights to any refund due by reason of the determination."

SECTION 16. G.S. 105-159 reads as rewritten:

"§ 105-159. Federal corrections.

If a taxpayer's federal taxable income is corrected or otherwise determined by the federal government, the taxpayer must, within six months after being notified of the correction or final determination by the federal government, file an income tax return with the Secretary reflecting the corrected or determined taxable income. The Secretary ~~shall determine from all available evidence the taxpayer's correct tax liability for the taxable year. As used in this section, the term "all available evidence" means evidence of any kind that becomes available to the Secretary from any source, whether or not the evidence was considered in the federal correction or determination.~~

~~The Secretary shall assess and collect~~ must propose an assessment for any additional tax due from the taxpayer as provided in Article 9 of this Chapter. The Secretary ~~shall~~ must refund any overpayment of tax as provided in Article 9 of this Chapter. A taxpayer

who fails to comply with this section is subject to the penalties in G.S. 105-236 and forfeits the right to any refund due by reason of the determination."

SECTION 17. G.S. 105-163.6A reads as rewritten:

"§ 105-163.6A. Federal corrections.

If the amount of taxes an employer is required to withhold and pay under the Code is corrected or otherwise determined by the federal government, the employer must, within ~~two years~~ six months after being notified of the correction or final determination by the federal government, file a return with the Secretary reflecting the corrected or determined amount. The Secretary ~~shall determine from all available evidence the correct amount the employer should have paid under this Article for the period covered by the federal determination. As used in this section, the term "all available evidence" means evidence of any kind that becomes available to the Secretary from any source, whether or not the evidence was considered in the federal correction or determination.~~

~~The Secretary shall assess and collect~~ must propose an assessment for any additional tax due from the employer as provided in Article 9 of this Chapter. If there has been an overpayment of the tax, the Secretary ~~shall~~ must either refund the overpayment to the employer in accordance with G.S. 105-163.9 or credit the amount of the overpayment to the individual in accordance with G.S. 105-163.10. An employer who fails to comply with this section is subject to the penalties in G.S. 105-236 and forfeits the right to any refund due by reason of the determination. Failure of an employer to comply with this section does not, however, affect an individual's right to a credit under G.S. 105-163.10."

SECTION 18. G.S. 105-163.9 reads as rewritten:

"§ 105-163.9. Refund of overpayment to withholding agent.

A withholding agent who pays the Secretary more under this Article than the Article requires the agent to pay may obtain a refund of the overpayment by filing ~~an application~~ a request for a refund with the Secretary. No refund is allowed, however, if the withholding agent withheld the amount of the overpayment from the wages or compensation of the agent's employees or contractors. A withholding agent must file ~~an application~~ a request for a refund within the time period set in G.S. ~~105-266.~~ G.S. 105-241.6. Interest accrues on a refund as provided in ~~G.S. 105-266.~~ G.S. 105-241.21."

SECTION 19. G.S. 105-164.29(d) reads as rewritten:

"(d) Revocation. ~~Whenever~~ The failure of a wholesale merchant or retailer fails to comply with this Article or ~~violates G.S. 14-401.18, the Secretary, upon hearing, after giving 10 days' notice in writing, specifying the time and place of hearing and requiring the wholesale merchant or retailer to show cause why the certificate of registration should not be revoked, may revoke or suspend the certificate of registration. The notice may be served personally or by registered mail directed to the last known address of the wholesale merchant or retailer. All provisions with respect to review and appeals of the Secretary's decisions as provided by G.S. 105-241.2, 105-241.3, and 105-241.4 apply to this section. G.S. 14-401.18 is grounds for revocation of the wholesale merchant's or retailer's certificate of registration. Before the Secretary revokes a wholesale merchant's or retailer's certificate of registration, the Secretary must notify the wholesale merchant~~

or retailer that the Secretary proposes to revoke the certificate of registration and that the proposed revocation will become final unless the wholesale merchant or retailer objects to the proposed revocation and files a request for a Departmental review within the time set in G.S. 105-241.11 for requesting a Departmental review of a proposed assessment. The notice must be sent in accordance with the methods authorized in G.S. 105-241.20. The procedures in Article 9 of this Chapter for review of a proposed assessment apply to the review of a proposed revocation."

SECTION 20. G.S. 105-164.38(c) reads as rewritten:

"(c) Assessment. – The period of limitations for assessing liability against the buyer of a business or the stock of goods of a business and for enforcing the lien against the property expires one year after the end of the period of limitations for assessment against the person who sold the business or the stock of goods. Except as otherwise provided in this section, the assessment procedures in Article 9 of this Chapter apply to a person who buys a business or the stock of goods of a business and that person's liability for unpaid taxes are subject to the provisions of G.S. 105-241.1, 105-241.2, 105-241.3, and 105-241.4 and to other remedies for the collection of taxes to the same extent as if the person had incurred the original tax liability."

SECTION 21. G.S. 105-187.10(b) reads as rewritten:

"(b) Unpaid Taxes. – The remedies for collection of taxes in ~~G.S. 20-99~~ Article 9 of this Chapter apply to the taxes levied by this Article and collected by the Commissioner. In applying these remedies, the Commissioner has the same authority as the Secretary."

SECTION 22. G.S. 105-197.1 reads as rewritten:

"§ 105-197.1. Federal corrections.

If the amount of a taxpayer's net gifts is corrected or otherwise determined by the federal government, the taxpayer must, within six months after being notified of the correction or final determination by the federal government, file a gift tax return with the Secretary of Revenue reflecting the corrected or determined net gifts. ~~The Secretary of Revenue shall determine from all available evidence the taxpayer's correct tax liability for the taxable year. As used in this section, the term "all available evidence" means evidence of any kind that becomes available to the Secretary from any source, whether or not the evidence was considered in the federal correction or determination.~~

~~The Secretary shall assess and collect~~ must propose an assessment for any additional tax due from the taxpayer as provided in Article 9 of this Chapter. The Secretary ~~shall~~ must refund any overpayment of tax as provided in Article 9 of this Chapter. A taxpayer who fails to comply with this section is subject to the penalties in G.S. 105-236 and forfeits the right to any refund due by reason of the determination."

SECTION 23. G.S. 105-228.5(f) reads as rewritten:

"(f) **(Effective for taxable years beginning on or after January 1, 2008)** Installment Payments Required. – Taxpayers that are subject to the tax imposed by this section and have a premium tax liability of ten thousand dollars (\$10,000) or more for business done in North Carolina during the immediately preceding year shall remit three equal quarterly installments with each installment equal to at least thirty-three and one-third percent (33 1/3%) of the premium tax liability incurred in the immediately

preceding taxable year. The quarterly installment payments shall be made on or before April 15, June 15, and October 15 of each taxable year. The company shall remit the balance by the following March 15 in the same manner provided in this section for annual returns.

The Secretary of Revenue may permit an insurance company to pay less than the required estimated payment when the insurer reasonably believes that the total estimated payments made for the current year will exceed the total anticipated tax liability for the year.

An underpayment or an overpayment of an installment payment required by this subsection shall bear interest at the rate established under G.S. 105-241.1(i). Any overpayment shall bear interest as provided in G.S. 105-266(b) and, together with the interest, accrues interest in accordance with G.S. 105-241.21. An overpayment of tax shall be credited to the company and applied against the taxes imposed upon the company under this Article."

SECTION 24. G.S. 105-228.37 reads as rewritten:

"§ 105-228.37. Refund of overpayment of tax.

(a) Refund Request. – A taxpayer who pays more tax than is due under this Article may request a refund of the overpayment by filing a written request for a refund with the board of county commissioners of the county where the tax was paid. The request must be filed within six months after the date the tax was paid and must explain why the taxpayer believes a refund is due.

(b) Hearing by County. – A board of county commissioners must ~~review~~ conduct a hearing on a request for refund and must follow the time limitations set in G.S. 105-266.1 for holding a hearing and making a decision. in accordance with the procedures that apply to a hearing held by a board of equalization and review on an appeal concerning the listing or appraisal of property. If the board decides that a refund is due, it must refund the county's portion of the overpayment, together with any applicable interest, to the taxpayer. If the board finds that no refund is due, the written decision of the board must inform the taxpayer that the taxpayer may ask the Secretary to review the decision. ~~The board must send the Secretary a copy of a decision on a request for refund.~~ appeal the decision to the Property Tax Commission.

(c) Review by Secretary. ~~Commission.~~ – ~~A taxpayer whose request for a refund is denied by a board of county commissioners may obtain a review of the board's decision by the Secretary. The request must be made in writing and must be filed within 30 days after the taxpayer receives the board's decision denying the refund. The Secretary must send the board of county commissioners a copy of the Secretary's decision made on the request. If the Secretary~~ The procedure in G.S. 105-290 for the appeal to the Property Tax Commission of a decision of a board of equalization and review concerning the listing or appraisal of property applies to the appeal of a denial by a board of county commissioners of a request for a refund of tax paid under this Article. If the Commission determines that a refund is due, the board of county commissioners must refund the county's portion of the overpayment, together with any applicable interest, to the taxpayer. A decision of the Commission is binding on the Secretary is binding and on a board of county commissioners.

(d) ~~Judicial Review. – A taxpayer who disagrees with a decision of the Secretary Property Tax Commission may bring an action against the county and the State to recover the disputed overpayment. The action may be brought in the Superior Court of Wake County or in the superior court of the county where the tax was paid.~~ is subject to judicial review in accordance with G.S. 7A-29.

(e) Recording Correct Deed. – Before a tax is refunded, the taxpayer must record a new instrument reflecting the correct amount of tax due. If no tax is due because an instrument was recorded in the wrong county, then the taxpayer must record a document stating that no tax was owed because the instrument being corrected was recorded in the wrong county. The taxpayer must include in the document the names of the grantors and grantees and the deed book and page number of the instrument being corrected.

When a taxpayer records a corrected instrument, the taxpayer must inform the register of deeds that the instrument being recorded is a correcting instrument. The taxpayer must give the register of deeds a copy of the decision granting the refund that shows the correct amount of tax due. The correcting instrument must include the deed book and page number of the instrument being corrected. The register of deeds must notify the county finance officer and the Secretary when the correcting instrument has been recorded.

(f) Interest. – An overpayment of tax bears interest at the rate established in G.S. ~~105-241.1(i)~~ 105-241.21 from the date that interest begins to accrue. Interest begins to accrue on an overpayment 30 days after the request for a refund is filed by the taxpayer with the board of county commissioners."

SECTION 25. G.S. 105-228.90(b) reads as rewritten:

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

...

(7) Tax. – A tax levied under Subchapter I, V, or VIII of this Chapter, the primary forest product assessment levied under Article 12 of Chapter 113A of the General Statutes, or an inspection tax levied under Article 3 of Chapter 119 of the General Statutes. Unless the context clearly requires otherwise, the ~~terms "tax" and "additional tax" include term~~ "tax" includes penalties and interest as well as the principal amount.

...."

SECTION 26. G.S. 105-236(a)(4) reads as rewritten:

"(4) Failure to Pay Tax When Due. – In the case of failure to pay any tax when due, without intent to evade the tax, the Secretary shall assess a penalty equal to ten percent (10%) of the tax, ~~except that the penalty shall in no event be less than~~ subject to a minimum of five dollars (\$5.00). This penalty does not apply in any of the following circumstances:

- a. When the amount of tax shown as due on an amended return is paid when the return is filed.
- b. ~~When a tax due but not shown on a return is assessed by the~~ Secretary proposes an assessment for tax due but not shown on

a return and the tax due ~~and is~~ paid within ~~30~~⁴⁵ days after the date of the ~~proposed~~ notice of proposed assessment of the tax."

SECTION 27. G.S. 105-239.1 reads as rewritten:

"§ 105-239.1. Transferee liability.

(a) Lien and Liability. – Property transferred for an inadequate consideration to a donee, heir, legatee, devisee, distributee, stockholder of a liquidated corporation, or any other person at a time when the transferor is insolvent or is rendered insolvent by reason of the transfer ~~shall be~~ is subject to a lien for any taxes owing by the transferor to the State of North Carolina at the time of the transfer whether or not the amount of the taxes has been ascertained or assessed at the time of the transfer. G.S. 105-241 applies to this tax lien. In the event the transferee has disposed of the property so that it cannot be subjected to the State's tax lien, the transferee ~~shall be~~ is personally liable for the difference between the fair market value of the property at the time of the transfer and the actual consideration, if any, paid to the transferor by the transferee.

~~Upon a foreclosure of the State's tax lien upon property in the hands of a transferee, the value of any consideration that the transferee proves has been given to the transferor shall be paid to the transferee out of the proceeds of the foreclosure sale before applying the proceeds toward the satisfaction of the State's tax lien.~~

~~In order to proceed against the transferee or property in the transferee's hands, the Secretary shall cause to be docketed in the office of the clerk of the superior court of the county wherein the transferee resides or the property is located, as the case may be, a certificate of tax liability as provided in G.S. 105-242 or a lien certificate which shall set forth the amount of the lien as determined by the Secretary or as finally determined upon appeal and a description of the property subject to the lien. Thereafter, execution may be issued against the transferee as in the case of other money judgments except that no homestead or personal exemption shall be allowable or, upon a lien certificate, an execution may be issued directing the sheriff to seize the property subject to the lien and sell same in the same manner as property is sold under execution. Such procedure and collection shall be subject to the provisions of subsection (c) of this section.~~

(b) Procedure. – The Department may proceed to enforce a lien that arises under this section against property transferred by a taxpayer to another person or to hold that person liable for the tax due by sending the person a notice of proposed assessment in accordance with G.S. 105-241.9. The Department has the burden of establishing that a person to whom property was transferred is liable. The period of limitations for assessment of any liability against a transferee or enforcing the lien against the transferred property shall ~~expire~~ expires one year after the expiration of the period of limitations for assessment against the transferor.

(c) Proceeds. – When property transferred by a taxpayer to another person is sold to satisfy the lien that arises under this section, the person is entitled to receive from the proceeds of the sale the amount of consideration, if any, the person paid for the property. The proceeds must be applied for this purpose before they are applied to satisfy the lien. The provisions of G.S. 105-241.1, 105-241.2, 105-241.3, 105-241.4, 105-266.1 and 105-267 with respect to assessment procedure, demand for refund, review, and appeal shall apply to the liability of any transferee assessed under this

~~section or of any property subject to the liability imposed by this section and to the assertion of a lien upon property in the hands of the transferee.~~

~~(d) In any proceeding before the Tax Review Board or in any court of the State the burden of proof shall be upon the Secretary of Revenue to show that a person is liable as a transferee of property of a taxpayer under this section."~~

SECTION 28. G.S. 105-242(a) reads as rewritten:

"(a) ~~Warrants for Collection of Taxes. Levy and Sale. — If any tax levied by the State and payable to the Secretary has not been paid within 30 days after the taxpayer was given a notice of final assessment of the tax under G.S. 105-241.1(d1),~~ If a taxpayer does not pay a tax within 30 days after it is collectible under G.S. 105-241.22, the Secretary may take either of the following actions to collect the tax:

- (1) ~~The Secretary may issue~~ Issue a warrant ~~or an order under the Secretary's hand and official seal, directed to directing~~ the sheriff of any county of the State, ~~commanding him~~ State to levy upon and sell the real and personal property of the taxpayer found within the county for the payment of the tax, ~~including penalties and interest,~~ tax and the cost of executing the warrant and to return to the Secretary the money collected, within a time to be specified in the ~~warrant,~~ warrant but not less than 60 days from the date of the ~~warrant;~~ the sheriff upon receipt of the warrant shall proceed in all respects with like effect and in the same manner prescribed by law in respect to warrant. ~~The procedure for executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for services in executing the warrant, to be collected in the same manner.~~ court apply to executions under a warrant.
- (2) ~~The Secretary may issue~~ Issue a warrant ~~or order under the Secretary's hand and seal~~ to any revenue officer or other employee of the Department of Revenue charged with the duty to collect taxes, commanding the officer or employee to levy upon and sell the taxpayer's personal property, ~~including that described in G.S. 105-366(d),~~ property found within the State for the payment of the tax, ~~including penalties and interest.~~ tax. Except as otherwise provided in this subdivision, the levy upon ~~the~~ and sale of personal property shall be governed by by an officer or employee of the Department is subject to and must be conducted in accordance with the laws regulating levy and governing the sale of property levied upon under execution. ~~The person to whom the warrant is directed shall proceed to levy upon and sell the personal property subject to levy in the same manner and with the same powers and authority normally exercised by sheriffs in levying upon and selling personal property under execution, except that the property may be sold in any county, in the discretion of the Secretary. In addition to the notice of sale required by the laws governing sale of property levied upon under execution,~~ the Secretary may sell the property levied upon in any county and may

advertise the sale in any reasonable manner and for any reasonable period of time to produce an adequate bid for the property. Levy and sale fees, plus actual advertising costs, shall ~~must~~ be added to and collected in the same manner as taxes. The Secretary is not required to file a report of sale with the clerk of superior court, ~~as required by the laws governing sale of property levied upon under execution,~~ if the sale is otherwise publicly reported."

SECTION 29. G.S. 105-242(b) reads as rewritten:

~~"(b) Garnishment and Attachment. – Bank deposits, rents, salaries, wages, and all other choses in action or property incapable of manual levy or delivery, including property held in the Escheat Fund, hereinafter called the intangible, belonging, owing, or to become due to any taxpayer subject to any of the provisions of this Subchapter, or which has been transferred by such taxpayer under circumstances which would permit it to be levied upon if it were tangible, shall be subject to attachment or garnishment as herein provided, and the person owing said intangible, matured or unmatured, or having same in his possession or control, hereinafter called the garnishee, shall become liable for all sums due by the taxpayer under this Subchapter to the extent of the amount of the intangible belonging, owing, or to become due to the taxpayer subject to the setoff of any matured or unmatured indebtedness of the taxpayer to the garnishee; provided, however, the garnishee shall not become liable for any sums represented by or held pursuant to any negotiable instrument issued and delivered by the garnishee to the taxpayer and negotiated by the taxpayer to a bona fide holder in due course, and whenever any sums due by the taxpayer and subject to garnishment are so held or represented, the garnishee shall hold such sums for payment to the Secretary of Revenue upon the garnishee's receipt of such negotiable instrument, unless such instrument is presented to the garnishee for payment by a bona fide holder in due course in which event such sums may be paid in accordance with such instrument to such holder in due course. To effect such attachment or garnishment the Secretary of Revenue shall serve or cause to be served upon the taxpayer and the garnishee a notice as hereinafter provided, which notice may be served by any deputy or employee of the Secretary of Revenue or by any officer having authority to serve summonses or may be served in any manner provided in Rule 4 of the North Carolina Rules of Civil Procedure. The notice shall:~~

- ~~(1) Show the name of the taxpayer, and if known his Social Security number or federal tax identification number and his address;~~
- ~~(2) Show the nature and amount of the tax, and the interest and penalties thereon, and the year or years for which the same were levied or assessed, and~~
- ~~(3) Be accompanied by a copy of this subsection, and thereupon the procedure shall be as follows:~~

~~If the garnishee has no defense to offer or no setoff against the taxpayer, he shall within 10 days after service of said notice, answer the same by sending to the Secretary of Revenue by registered or certified mail a statement to that effect, and if the amount due or belonging to the taxpayer is then due or subject to his demand, it shall be~~

~~remitted to the Secretary with said statement, but if said amount is to mature in the future, the statement shall set forth that fact and the same shall be paid to the Secretary upon maturity, and any payment by the garnishee hereunder shall be a complete extinguishment of any liability therefor on his part to the taxpayer. If the garnishee has any defense or setoff, he shall state the same in writing under oath, and, within 10 days after service of said notice, shall send two copies of said statement to the Secretary by registered or certified mail; if the Secretary admits such defense or setoff, he shall so advise the garnishee in writing within 10 days after receipt of such statement and the attachment or garnishment shall thereupon be discharged to the amount required by such defense or setoff, and any amount attached or garnished hereunder which is not affected by such defense or setoff shall be remitted to the Secretary as above provided in cases where the garnishee has no defense or setoff, and with like effect. If the Secretary shall not admit the defense or setoff, he shall set forth in writing his objections thereto and shall send a copy thereof to the garnishee within 10 days after receipt of the garnishee's statement, or within such further time as may be agreed on by the garnishee, and at the same time he shall file a copy of said notice, a copy of the garnishee's statement, and a copy of his objections thereto in the superior court of the county where the garnishee resides or does business where the issues made shall be tried as in civil actions.~~

~~If judgment is entered in favor of the Secretary of Revenue by default or after hearing, the garnishee shall become liable for the taxes, interest and penalties due by the taxpayer to the extent of the amount over and above any defense or setoff of the garnishee belonging, owing, or to become due to the taxpayer, but payments shall not be required from amounts which are to become due to the taxpayer until the maturity thereof, nor shall more than ten percent (10%) of any taxpayer's salary or wages be required to be paid hereunder in any one month as provided in subdivision (e)(4) of this section. The garnishee may satisfy said judgment upon paying said amount, and if he fails to do so, execution may issue as provided by law. From any judgment or order entered upon such hearing either the Secretary of Revenue or the garnishee may appeal as provided by law. If, before or after judgment, adequate security is filed for the payment of said taxes, interest, penalties, and costs, the attachment or garnishment may be released or execution stayed pending appeal, but the final judgment shall be paid or enforced as above provided. The taxpayer's sole remedies to question his liability for said taxes, interest, and penalties shall be those provided in this Subchapter, as now or hereafter amended or supplemented. If any third person claims any intangible attached or garnished hereunder and his lawful right thereto, or to any part thereof, is shown to the Secretary, he shall discharge the attachment or garnishment to the extent necessary to protect such right, and if such right is asserted after the filing of said copies as aforesaid, it may be established by interpleader as now or hereafter provided by law in cases of attachment and garnishment. In case such third party has no notice of proceedings hereunder, he shall have the right to file his petition under oath with the Secretary at any time within 12 months after said intangible is paid to him and if the Secretary finds that such party is lawfully entitled thereto or to any part thereof, he shall pay the same to such party as provided for refunds by G.S. 105-266.1, and if such~~

~~payment is denied, said party may appeal from the determination of the Secretary under the provisions of G.S. 105-241.4; provided, that in taking an appeal to the superior court, said party may appeal either to the Superior Court of Wake County or to the superior court of the county wherein he resides or does business. The intangibles of a taxpayer shall be paid or collected hereunder only to the extent necessary to satisfy said taxes, interest, penalties, and costs. Except as hereinafter set forth, the remedy provided in this section shall not be resorted to unless a warrant for collection or execution against the taxpayer has been returned unsatisfied: Provided, however, if the Secretary is of opinion that the only effective remedy is that herein provided, it shall not be necessary that a warrant for collection or execution shall be first returned unsatisfied, and in no case shall it be a defense to the remedy herein provided that a warrant for collection or execution has not been first returned unsatisfied.~~

~~This subsection shall be applicable with respect to the wages, salary or other compensation of officials and employees of this State and its agencies and instrumentalities, officials and employees of political subdivisions of this State and their agencies and instrumentalities, and also officials and employees of the United States and its agencies and instrumentalities insofar as the same is permitted by the Constitution and laws of the United States. In the case of State or federal employees, the notice shall be served upon such employee and upon the head or chief fiscal officer of the department, agency, instrumentality or institution by which the taxpayer is employed. In case the taxpayer is an employee of a political subdivision of the State, the notice shall be served upon such employee and upon the chief fiscal officer, or any officer or person charged with making up the payrolls, or disbursing funds, of the political subdivision by which the taxpayer is employed. Such head or chief officer or fiscal officer or other person as specified above shall thereafter, subject to the limitations herein provided, make deductions from the salary or wages due or to become due the taxpayer and remit same to the Secretary until the tax, penalty, interest and costs allowed by law are fully paid. Such deductions and remittances shall, pro tanto, constitute a satisfaction of the salary or wages due the taxpayer. Intangible property that belongs to a taxpayer, is owed to a taxpayer, or has been transferred by a taxpayer under circumstances that would permit it to be levied upon if it were tangible property is subject to attachment and garnishment in payment of a tax that is due from the taxpayer and is collectible under G.S. 105-241.22. Intangible personal property includes bank deposits, rent, salaries, wages, property held in the Escheat Fund, and any other property incapable of manual levy or delivery. A person who is in possession of intangible property that is subject to attachment and garnishment is the garnishee and is liable for the amount the taxpayer owes. The liability applies only to the amount of the taxpayer's property in the garnishee's possession, reduced by any amount the taxpayer owes the garnishee. G.S. 105-242.1 sets out the procedure for attachment and garnishment of intangible property.~~

~~No more than ten percent (10%) of a taxpayer's wages or salary is subject to attachment and garnishment. The wages or salary of an employee of the United States, the State, or a political subdivision of the State are subject to attachment and garnishment."~~

SECTION 30. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-242.1. Procedure for attachment and garnishment.

(a) Notice. – G.S. 105-242 specifies when intangible property is subject to attachment and garnishment. Before the Department attaches and garnishes intangible property in payment of a tax, the Department must send the garnishee a notice of garnishment. The notice must be sent in accordance with the methods authorized in G.S. 105-241.20 or by registered or certified mail. The notice must contain all of the following information:

- (1) The taxpayer's name, address, and social security number or federal identification number.
- (2) The type of tax the taxpayer owes and the tax periods for which the tax is owed.
- (3) The amount of tax, interest, and penalties the taxpayer owes.
- (4) An explanation of the liability of a garnishee for tax owed by a taxpayer.
- (5) An explanation of the garnishee's responsibility concerning the notice.

(b) Action. – Within 30 days after receiving a notice of garnishment, a garnishee must comply with the garnishment or file a written response to the notice. A written response must explain why the garnishee is not subject to garnishment and attachment. Upon receipt of the written response, the Department must contact the garnishee and schedule a conference to discuss the response or inform the garnishee of the Department's position concerning the response. If the Department does not agree with the garnishee on the garnishee's liability, the Department may proceed to enforce the garnishee's liability for the tax by sending the garnishee a notice of proposed assessment in accordance with G.S. 105-241.9.

(c) Release. – When the Department releases a garnishee from liability, the Department must send the garnishee a letter of release. The letter must identify the taxpayer to whom the release applies and contain the identifying information about the taxpayer that is required under subsection (a) on a notice of garnishment."

SECTION 31. G.S. 105-242(c) reads as rewritten:

~~"(c) Certificate or Judgment for Taxes. of Tax Liability. – In addition to the remedy herein provided, the Secretary of Revenue is authorized and empowered to make a certificate setting forth the essential particulars relating to the said tax, including the amount thereof, the date when the same was due and payable, the person, firm, or corporation chargeable therewith, and the nature of the tax, and under his hand and seal transmit the same to the clerk of the superior court of any county in which the delinquent taxpayer resides or has property; whereupon, it shall be the duty of the clerk of the superior court of the county to docket the said certificate and index the same on the cross index of judgments, and execution may issue thereon with the same force and effect as an execution upon any other judgment of the superior court (said tax shall become a lien on realty only from the date of the docketing of such certificate in the office of the clerk of the superior court and on personalty only from the date of the levy on such personalty and upon the execution thereon no homestead or personal property~~

exemption shall be allowed except as provided in subdivision (e)(1) of this section). The Department may file a certificate of tax liability to collect a tax that is owed by a taxpayer and is collectible under G.S. 105-241.22. A certificate of tax liability must state the taxpayer's name and the type and amount of tax owed. If the taxpayer resides in this State or has property in this State, the Department must file the certificate of tax liability with the clerk of the superior court of a county in which the taxpayer resides or has property. If the taxpayer does not reside in this State or have property in this State, the Department must file the certificate of tax liability in Wake County.

The clerk of court must record a certificate of tax liability in the same manner as a judgment. A recorded certificate of tax liability is considered a judgment and is enforceable in the same manner as other judgments. The legal rate of interest set in G.S. 24-1 applies to the principal amount of tax stated on the certificate of tax liability. The tax stated on a certificate of tax liability is a lien on real and personal property from the date the certificate is recorded.

~~Except as provided in G.S. 105-241.2(e) for jeopardy levies, no sale of real or personal property shall be made under any execution issued on a certificate docketed pursuant to the provisions of this subsection before the administrative action of the Secretary of Revenue or the Tax Review Board is completed when a hearing has been requested of the Secretary or a petition for review has been filed with the Tax Review Board, nor shall such sale be made before the assessment on which the certificate is based becomes final when there is no request for a hearing before the Secretary or petition for review by the Tax Review Board. Neither the title to real estate nor to personal property sold under execution issued upon a certificate docketed under this subsection shall be drawn in question upon the ground that the administrative action contemplated by this paragraph was not completed prior to the sale of such property under execution. Nothing in this paragraph shall prevent the sheriff to whom an execution is issued from levying upon either real or personal property pending an administrative determination of tax liability and, in the case of personal property, the sheriff may hold such property in his custody or may restore the execution defendant to the possession thereof upon the giving of a sufficient forthcoming bond. Upon a final administrative determination of the tax liability being had, if the assessment or any part thereof is sustained, the sheriff shall, upon request of the Secretary of Revenue, proceed to advertise and sell the property under the original execution notwithstanding the original return date of the execution may have expired.~~

~~The owner of tangible property seized under this section may request the Secretary to authorize the sale of the property under execution within 60 or more days after the request is made. The Secretary shall authorize the sale unless the Secretary finds that selling the property would not be in the best interests of the State. When property is sold at the request of the owner, the Department shall receive from the sale of the property the administrative expenses it incurred in having the property sold.~~

~~A certificate or judgment in favor of the State or the Secretary of Revenue for taxes payable to the Department of Revenue, whether docketed before or after the effective date of this paragraph, shall be valid and enforceable for a period of 10 years from the date of docketing. When any such certificate or judgment, whether docketed before or~~

~~after the effective date of this paragraph, remains unsatisfied for 10 years from the date of its docketing, the same shall be unenforceable and the tax represented thereby shall abate. Upon the expiration of said 10 year period, the Secretary of Revenue or his duly authorized deputy shall cancel of record said certificate or judgment. Any such certificate or judgment now on record which has been docketed for more than 10 years shall, upon the request of any interested party, be canceled of record by the Secretary of Revenue or his duly authorized deputy; provided, in the event of the death of the judgment debtor or his absence from the State before the expiration of the 10 year period herein provided, the running of said 10 year period shall be stopped for the period of his absence from the State or during the pendency of the settlement of the estate and for one year thereafter, and the time elapsed during the pendency of any action or actions to set aside the judgment debtor's conveyance or conveyances as fraudulent, or the time during the pendency of any insolvency proceeding, or the time during the existence of any statutory or judicial bar to the enforcement of the judgment shall not be counted in computing the running of said 10 year period. And, provided further, that any execution sale which has been instituted upon any such judgment before the expiration of the 10 year period may be completed after the expiration of the 10 year period, notwithstanding the fact that resales may be required because of the posting of increased bids. Provided further, that, notwithstanding the expiration of the 10 year period provided and notwithstanding the fact that no proceedings to collect the judgment by execution or otherwise has been commenced within the 10 year period, the Secretary of Revenue may accept any payments tendered upon said judgments after the expiration of said 10 year period.~~A certificate of tax liability is enforceable for a period of 10 years from the date it is recorded. If the certificate is not satisfied within this period, the remaining liability of the taxpayer is abated and the Department must cancel the certificate. An execution sale initiated before the end of the 10-year period may be completed after the end of this period, regardless of whether resales are required because of the posting of increased bids. The Secretary may accept tax payments made after a certificate has expired, regardless of whether any collection actions were taken before the certificate expired. A taxpayer may waive the 10-year period for enforcement of the certificate for either a definite or an indefinite time.

The 10-year period in which a certificate of tax liability is enforceable is tolled during the following periods:

- (1) While the taxpayer is absent from the State. The period is tolled during the taxpayer's absence plus one year after the taxpayer returns.
- (2) Upon the death of the taxpayer. The period is tolled while the taxpayer's estate is administered plus one year after the estate is closed.
- (3) While an action is pending to set aside a conveyance made by the taxpayer as a fraudulent conveyance.
- (4) While an insolvency proceeding against the taxpayer is pending.
- (5) During the period of any statutory or judicial bar to the enforcement of the certificate.
- (6) The period for which a taxpayer has waived the 10-year period."

SECTION 32. G.S. 105-243 reads as rewritten:

"§ 105-243. Taxes recoverable by action.

~~Upon the failure of any corporation to pay the taxes, fees, and penalties prescribed by this Subchapter, the Secretary of Revenue may certify same to the sheriff of the county in which such company may own property, for collection as provided in this Subchapter; and if collection is not made, such taxes or fees and penalties thereon may be recovered in an action in the name of the State, which may be brought in the Superior Court of Wake County, or in any county in which such corporation is doing business, or any county in which such corporation owns property. The Attorney General, on request of the Secretary of Revenue, shall institute such action in the Superior Court of Wake County, or of any such county as the Secretary of Revenue may direct. In any such action it shall be sufficient to allege that the tax, fee, or penalty sought to be recovered is delinquent, and that the same has been unpaid for the period of 30 days after due date. When requested by the Secretary, the Attorney General must bring an action to recover the amount of tax that is due from a taxpayer and is collectible under G.S. 105-241.22. In the action, the taxpayer may not challenge the liability for the tax. A judgment in the action has the same priority as a tax lien. The judgment is not subject to a claim for a homestead exemption. The action must be brought in one of the following:~~

- ~~(1) The Superior Court of Wake County.~~
- ~~(2) The taxpayer's county of residence.~~
- ~~(3) A county where the taxpayer owns real property.~~
- ~~(4) The county in which the taxpayer has its principal place of business.~~
- ~~(5) A court of competent jurisdiction of another state."~~

SECTION 33. G.S. 105-243.1 reads as rewritten:

"§ 105-243.1. Collection of tax debts.

(a) Definitions. – The following definitions apply in this section:

- (1) Overdue tax debt. – Any part of a tax debt that remains unpaid 90 days or more after ~~the notice of final assessment was mailed to the taxpayer.~~ it becomes collectible under G.S. 105-241.22. The term does not include a tax debt, ~~however, if debt for which the taxpayer entered into an installment agreement for the tax debt under G.S. 105-237 within 90 days after the notice of final assessment was mailed and the tax debt became collectible, if the taxpayer has not failed to make any payments due under the installment agreement.~~
- (2) Tax debt. – The total amount of tax, penalty, and interest ~~due for which a notice of final assessment has been mailed to a taxpayer after the taxpayer no longer has the right to contest the debt.~~ collectible under G.S. 105-241.22.

(b) Outsourcing. – The Secretary may contract for the collection of tax debts owed by nonresidents and foreign entities. At least 30 days before the Department submits a tax debt to a contractor for collection, the Department must notify the taxpayer by mail that the debt may be submitted for collection if payment is not received within 30 days after the notice was mailed.

(c) Secrecy. – A contract for the collection of tax debts is conditioned on compliance with G.S. 105-259. If a contractor violates G.S. 105-259, the contract is

terminated, and the Secretary must notify the contractor of the termination. A contractor whose contract is terminated for violation of G.S. 105-259 is not eligible for an award of another contract under this section for a period of five years from the termination. These sanctions are in addition to the criminal penalties set out in G.S. 105-259.

(d) Fee. – A collection assistance fee is imposed on an overdue tax debt that remains unpaid 30 days or more after the fee notice required by this subsection is mailed to the taxpayer. In order to impose a collection assistance fee on a tax debt, the Department must notify the taxpayer that the fee will be imposed if the tax debt is not paid in full within 30 days after the date the fee notice was mailed to the taxpayer. The Department may not mail the fee notice earlier than 60 days after ~~the notice of final assessment for the tax debt was mailed to the taxpayer.~~ the tax debt becomes collectible under G.S. 105-241.22. The fee is collectible as part of the debt. The Secretary may waive the fee pursuant to G.S. 105-237 to the same extent as if it were a penalty.

The amount of the collection assistance fee is twenty percent (20%) of the amount of the overdue tax debt. If a taxpayer pays only part of an overdue tax debt, the payment is credited proportionally to fee revenue and tax revenue.

(e) Use. – The fee is a receipt of the Department and must be applied to the costs of collecting overdue tax debts. The proceeds of the fee must be credited to a special account within the Department and may be expended only as provided in this subsection. The proceeds of the fee may not be used for any purpose that is not directly and primarily related to collecting overdue tax debts. The Department may apply the proceeds of the fee for the purposes listed in this subsection. The remaining proceeds of the fee may be spent only pursuant to appropriation by the General Assembly. The fee proceeds do not revert but remain in the special account until spent for the costs of collecting overdue tax debts. The Department and the Office of State Budget and Management must account for all expenditures using accounting procedures that clearly distinguish costs allocable to collecting overdue tax debts from costs allocable to other purposes and must demonstrate that none of the fee proceeds are used for any purpose other than collecting overdue tax debts.

The Department may apply the fee proceeds for the following purposes:

- (1) To pay contractors for collecting overdue tax debts under subsection (b) of this section.
- (2) To pay the fee the United States Department of the Treasury charges for setoff to recover tax owed to North Carolina.
- (3) To pay for taxpayer locator services, not to exceed one hundred fifty thousand dollars (\$150,000) a year.
- (4) To pay for postage or other delivery charges for correspondence directly and primarily relating to collecting overdue tax debts, not to exceed three hundred fifty-three thousand dollars (\$353,000) a year.
- (5) To pay for operating expenses for Project Collection Tax and the Taxpayer Assistance Call Center.
- (6) To pay for expenses of the Examination and Collection Division directly and primarily relating to collecting overdue tax debts.

(f) Reports. – The report of Department activities required by G.S. 105-256 contains information on the Department's efforts to collect tax debts and its use of the proceeds of the collection assistance fee."

SECTION 34. G.S. 105-253(b) reads as rewritten:

"(b) Each responsible officer is personally and individually liable for all of the following:

- (1) All sales and use taxes collected by a corporation or a limited liability company upon its taxable transactions.
- (2) All sales and use taxes due upon taxable transactions of a corporation or a limited liability company but upon which it failed to collect the tax, but only if the person knew, or in the exercise of reasonable care should have known, that the tax was not being collected.
- (3) All taxes due from a corporation or a limited liability company pursuant to the provisions of Articles 36C and 36D of Subchapter V of this Chapter and all taxes payable under those Articles by it to a supplier for remittance to this State or another state.
- (4) All income taxes required to be withheld from the wages of employees of a corporation or a limited liability company.

The liability of the responsible officer is satisfied upon timely remittance of the tax by the corporation or the limited liability company. If the tax remains unpaid after it is due and payable, the Secretary may ~~assess the tax against and collect the tax from any responsible officer in accordance with the procedures in this Article for assessing and collecting tax from a taxpayer.~~ proceed to enforce the responsible officer's liability for the tax by sending the responsible officer a notice of proposed assessment in accordance with G.S. 105-241.9. As used in this section, the term "responsible officer" means the ~~president and the treasurer~~ president, treasurer, and chief financial officer of a corporation, the manager of a limited liability company, and any other officer of a corporation or member of a limited liability company who has a duty to deduct, account for, or pay taxes listed in this subsection. Any penalties that may be imposed under G.S. 105-236 and that apply to a deficiency also apply to an assessment made under this section. ~~The provisions of this Article apply to an assessment made under this section to the extent they are not inconsistent with this section.~~

The period of limitations for assessing a responsible officer for unpaid taxes under this section expires one year after the expiration of the period of limitations for assessment against the corporation or limited liability company."

SECTION 35. The caption for G.S. 105-256 reads as rewritten:

"§ **105-256. Reports-Publications prepared by Secretary of Revenue.**"

SECTION 36. G.S. 105-256(a) reads as rewritten:

"(a) ~~Reports.~~ Publications. – The Secretary shall prepare and publish the following:

- ...
- (9) A final decision of the Secretary in a contested tax case. The Secretary must redact identifying taxpayer information from a final decision prior to publication."

SECTION 37. G.S. 105-258.1(a) reads as rewritten:

"(a) Scope. – This section applies to in-person interviews between a taxpayer and an officer or employee of the Department relating to the determination or collection of a tax, other than an in-person interview concerning any of the following:

- (1) A criminal investigation.
- (2) The determination or collection of a tax imposed by Article 2D of this Chapter.
- ~~(3) The assessment under G.S. 105-241.1(g) of a tax whose collection is in jeopardy.~~
- ~~(4) The levy or execution under G.S. 105-241.2(e) of an assessment whose collection is in jeopardy.~~ A jeopardy assessment and collection."

SECTION 38. G.S. 105-259(b) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

- (1) To comply with a court ~~order~~ order, an administrative law judge's order in a contested tax case, or a law.

...."

SECTION 39. G.S. 105-262(a) reads as rewritten:

"(a) The Secretary of Revenue may adopt rules needed to administer a tax collected by the Secretary or to fulfill another duty delegated to the Secretary. ~~The Tax Review Board shall review a new rule or a change to a rule before it is filed in the North Carolina Administrative Code. G.S. 150B-1 and Article 2A of Chapter 150B of the General Statutes set out the procedure for the adoption of rules by the Secretary.~~"

SECTION 40. G.S. 105-449.39 reads as rewritten:

"§ 105-449.39. Credit for payment of motor fuel tax.

Every motor carrier subject to the tax levied by this Article is entitled to a credit on its quarterly report for tax paid by the carrier on fuel purchased in the State. The amount of the credit is determined using the flat cents-per-gallon rate plus the variable cents-per-gallon rate of tax in effect during the quarter covered by the report. To obtain a credit, the motor carrier must furnish evidence satisfactory to the Secretary that the tax for which the credit is claimed has been paid.

If the amount of a credit to which a motor carrier is entitled for a quarter exceeds the motor carrier's liability for that quarter, ~~the Secretary must refund the excess to the motor carrier in accordance with G.S. 105-266(a)(3).~~ excess is refundable in accordance with G.S. 105-241.7."

SECTION 41. G.S. 105-449.119 reads as rewritten:

"§ 105-449.119. Hearing on Review of civil penalty assessment.

A person who denies liability for a penalty imposed under this Part must pay the penalty ~~under protest and make a written demand to the Department of Revenue for a refund. The written demand must be made within 30 days after the penalty is imposed and must explain why the person is not liable for the penalty. Upon receiving a demand for a refund, the Secretary must schedule a hearing on the matter before an employee or~~

~~an agent of the Department. The hearing must be held within 30 days after receiving the written demand for a refund. If, after the hearing, the Department determines that the person was not liable for the penalty, the amount collected must be refunded. If, after the hearing, the Department determines that the person was liable for the penalty, the person paying the penalty may appeal the imposition of the penalty in accordance with G.S. 105-241.2, 105-241.3, and 105-241.4. file a request for a Departmental review of the penalty. The request must be filed within the time set in G.S. 105-241.11 for requesting a Departmental review of a proposed assessment. The procedures in Article 9 of this Chapter for review of a proposed assessment apply to the review of the penalty. The date the penalty was imposed is considered the date the notice of proposed assessment was delivered to the taxpayer."~~

SECTION 42. Article 3 of Chapter 150B of the General Statutes is amended by adding the following new section:

"§ 150B-31.1. Contested tax cases.

(a) Application. – This section applies only to contested tax cases. A contested tax case is a case involving a disputed tax matter arising under G.S. 105-241.15. To the extent any provision in this section conflicts with another provision in this Article, this section controls.

(b) Simple Procedures. – The Chief Administrative Law Judge may limit and simplify the procedures that apply to a contested tax case involving a taxpayer who is not represented by an attorney. An administrative law judge assigned to a contested tax case must make reasonable efforts to assist a taxpayer who is not represented by an attorney in order to assure a fair hearing.

(c) Venue. – A hearing in a contested tax case must be conducted in Wake County, unless the parties agree to hear the case in another county.

(d) Law Enforcement Reports. – A report of a law enforcement agency is admissible without testimony from personnel of the law enforcement agency.

(e) Confidentiality. – The record, proceedings, and decision in a contested tax case are confidential until the final decision is issued in the case."

SECTION 43. G.S. 150B-45 reads as rewritten:

"§ 150B-45. Procedure for seeking review; waiver.

(a) Procedure. – To obtain judicial review of a final decision under this Article, the person seeking review must file a petition within 30 days after the person is served with a written copy of the decision. The petition must be filed as follows:

(1) Contested tax cases. – A petition for review of a final decision in a contested tax case arising under G.S. 105-241.15 must be filed in the Superior Court of Wake County.

(2) Other final decisions. – A petition for review of any other final decision under this Article must be filed in the Superior Court of Wake County or in the superior court of the county where the person resides.

~~The person seeking review must file the petition within 30 days after the person is served with a written copy of the decision.~~

(b) Waiver. – A person who fails to file a petition within the required time waives the right to judicial review under this Article. For good cause shown, however, the superior court may accept an untimely petition."

SECTION 44. In the General Statutes, references to the following statutes repealed by this act are deleted and substituted as provided in this section. The Revisor of Statutes is authorized to change the references in accordance with this section.

- (1) References to the following statutory provisions repealed by this act are substituted with a reference to G.S. 105-241.21:
 - a. G.S. 105-241.1(i).
 - b. G.S. 105-241.1 in G.S. 105-160.4, 105-187.10, and 150B-2.
 - c. G.S. 105-266 in G.S. 105-266.2, 105A-5, and 105A-8.
- (2) References to former G.S. 105-241.1(g) and G.S. 105-241.2(e) are substituted with a reference to G.S. 105-241.23.

SECTION 45. The Revenue Laws Study Committee is directed to study whether any legislative changes should be made regarding the use and scope of class actions to challenge the constitutionality of a tax in light of the decision reached by the North Carolina Supreme Court in *Dunn v. State of North Carolina*. The Committee must report its findings, along with any legislative recommendations, to the 2007 General Assembly, 2008 Regular Session.

SECTION 46. This act does not require the establishment of new positions or the appropriation of funds for those positions. The Office of the Attorney General must report on or before January 1, 2009 to the Revenue Laws Study Committee and to the Fiscal Research Division of the North Carolina General Assembly concerning the staffing needs of the Revenue Section as the result of tax hearings being conducted at the Office of Administrative Hearings.

SECTION 47. G.S. 105-241.10, as enacted by Section 1 of this act, and Sections 6, 15, 16, 17, and 22 are effective for taxable years beginning on or after January 1, 2007. Section 14 is effective for taxable years beginning on or after January 1, 2008. Sections 45, 46, and 47 are effective when they become law. The remainder of this act becomes effective January 1, 2008. The procedures for review of disputed tax matters enacted by this act apply to assessments of tax that are not final as of the effective date of this act and to claims for refund pending on or filed on or after the effective date of this act. This act does not affect matters for which a petition for review was filed with the Tax Review Board under G.S. 105-241.2 before the effective date of this act. The repeal of G.S. 105-122(c) and G.S. 105-130.4(t) and Sections 11 and 12 apply to requests for alternative apportionment formulas filed on or after the effective date of this act. A petition filed with the Tax Review Board for an apportionment formula before the effective date of this act is considered a request under G.S. 105-122(c1) or G.S. 105-130.4(t1), as appropriate.

In the General Assembly read three times and ratified this the 2nd day of August, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 12:41 p.m. this 30th day of August, 2007