

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 80

Short Title: Federal Determination/Withholding.

(Public)

Sponsors: Representatives Gamble, Jarrell, Justus, Luebke, and Tallent.

Referred to: Finance.

February 9, 1993

A BILL TO BE ENTITLED

AN ACT TO REINSTATE AN INADVERTENTLY DELETED PROVISION
RELATING TO ASSESSMENTS FOR EMPLOYER WITHHOLDING BASED
ON FEDERAL DETERMINATIONS AND TO CLARIFY THE ASSESSMENT
STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-159 reads as rewritten:

"§ 105-159. ~~Corrections and changes.~~ Federal corrections.

If a taxpayer's federal taxable income is corrected or otherwise determined by the federal government, the taxpayer must, within two years 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. ~~If the amount of the taxable income for any year of any taxpayer under this Division, as reported or as reportable to the United States Treasury Department, is changed, corrected, or otherwise determined by the Commissioner of Internal Revenue or other officer of the United States of competent authority, the taxpayer, within two years after receipt of the internal revenue agent's report or supplemental report reflecting the corrected or determined taxable income shall make return under oath or affirmation to the Secretary of the corrected, changed, or determined taxable income. In making an assessment or refund under this section, the Secretary shall consider all evidence brought to his attention, whether or not it was considered in the federal assessment or correction. If the taxpayer fails to notify the Secretary that the taxpayer's taxable income for any year as reported or as reportable to the United States Treasury Department, is changed, corrected, or otherwise determined for federal income tax purposes, the statute of limitations shall not apply to assessments under this section.—The Secretary shall proceed to determine from such all available evidence as may have been brought to his attention the~~

1 correct North Carolina taxable income of the taxpayer for the taxable year, and if there is any
2 additional tax due from the taxpayer it shall be assessed and collected; and if the taxpayer's
3 correct tax liability for the taxable year. As used in this section, the term 'all available
4 evidence' means evidence of any kind that becomes available to the Secretary from any
5 source, whether or not the evidence was considered in the federal correction or
6 determination.

7 The Secretary shall assess and collect any additional tax due from the taxpayer as
8 provided in Article 9 of this Chapter. The Secretary shall refund any overpayment of
9 tax as provided in Article 9 of this Chapter. ~~there has been an overpayment of the tax the~~
10 ~~Secretary shall, within 30 days after the final determination of the North Carolina taxable~~
11 ~~income of the taxpayer, refund the amount of the excess: Provided, that any A taxpayer who~~
12 ~~fails to comply with this section within the time specified shall be is subject to all the~~
13 ~~penalties as provided in G.S. 105-236, in case of additional tax due, and shall forfeit in G.S.~~
14 ~~105-236 and forfeits the right to any refund due by reason of the change. determination.~~

15 ~~When the taxpayer makes the return reflecting the corrected taxable income as~~
16 ~~required by this section, the Secretary shall make assessments or refunds based thereon~~
17 ~~within three years after the date the return required by this section is filed and not~~
18 ~~thereafter. When the taxpayer does not make the return reflecting the corrected taxable~~
19 ~~income as required by this section but the Department receives from the United States~~
20 ~~government or one of its agents a report reflecting corrected taxable income, the~~
21 ~~Secretary shall make assessments for taxes due based on the corrected taxable income~~
22 ~~within five years after the date the report from the United States government or its agent~~
23 ~~is actually received and not thereafter.~~

24 ~~Nothing in this section prevents the Secretary from making an assessment~~
25 ~~immediately following the receipt from any source of information concerning the~~
26 ~~correction, change in, or determination of taxable income of a taxpayer by the United~~
27 ~~States government. The assessment of tax or additional tax under this section shall not~~
28 ~~be subject to any statute of limitations except as provided in this section."~~

29 Sec. 2. G.S. 105-130.20 reads as rewritten:

30 **"§ 105-130.20. Corrections and changes. Federal corrections.**

31 If a taxpayer's federal taxable income is corrected or otherwise determined by the
32 federal government, the taxpayer must, within two years after being notified of the
33 correction or final determination by the federal government, file an income tax return
34 with the Secretary reflecting the corrected or determined taxable income. (a) If the
35 amount of the taxable income for any year of any corporation subject to taxation under this
36 Division, as reported or as reportable to the United States Treasury Department, is changed,
37 corrected, or otherwise determined by the Commissioner of Internal Revenue or other officer of
38 the United States of competent authority, such taxpayer, within two years after receipt of a
39 final determination reflecting the changed, corrected or determined taxable income shall make
40 return under oath or affirmation to the Secretary of Revenue of such taxable income.—The
41 Secretary shall determine from all available evidence the taxpayer's correct tax liability
42 for the income year. As used in this section, the term 'all available evidence' means
43 evidence of any kind that becomes available to the Secretary from any source, whether
44 or not the evidence was considered in the federal correction or determination.

1 The Secretary shall assess and collect any additional tax due from the taxpayer as
2 provided in Article 9 of this Chapter. The Secretary shall refund any overpayment of
3 tax as provided in Article 9 of this Chapter. of Revenue shall thereupon proceed to
4 determine, from such facts or evidence as he may have brought to his attention or shall
5 otherwise acquire, whether or not the same were considered or taken into account in the federal
6 determination, the correct tax liability of such corporation for the year. If there shall be any
7 additional tax due from such corporation, the same shall be assessed and collected; and if there
8 shall have been an overpayment of the tax, the Secretary shall, within 30 days after the final
9 determination of the tax liability, refund the amount of such overpayment. (b) Any
10 corporation which ~~A taxpayer that fails to comply with this section as to making return of~~
11 ~~federally determined taxable income within the time specified shall be~~ is ~~subject to all the~~
12 ~~penalties provided in G.S. 105-236, in the case of additional tax due, and shall forfeit in G.S.~~
13 ~~105-236 and forfeits its rights to any refund due by reason of federal changes. the~~
14 ~~determination.~~

15 ~~(e) When the corporation makes the return of federally determined taxable~~
16 ~~income the Secretary of Revenue shall make assessments or refunds based thereon~~
17 ~~within three years from the date the return required by this section is filed and not~~
18 ~~thereafter. If the corporation fails to make such return, no statute of limitations shall~~
19 ~~apply. Provided, that if the Department of Revenue receives from the United States~~
20 ~~government or any of its agents a report reflecting such federally determined taxable~~
21 ~~income, the Secretary of Revenue shall make assessment for taxes due based on such~~
22 ~~taxable income within five years from the date the report from the United States~~
23 ~~government or its agent is actually received and not thereafter. The assessment of tax or~~
24 ~~additional tax under this section shall not be subject to any statute of limitations except~~
25 ~~as provided in this section.~~

26 ~~(d) Nothing in this section shall be construed as preventing the Secretary of~~
27 ~~Revenue from making an assessment immediately following the receipt from any source~~
28 ~~of information concerning the correction, change in, or determination of net income of a~~
29 ~~taxpayer by the United States government."~~

30 Sec. 3. G.S. 105-160.8 reads as rewritten:

31 **"§ 105-160.8. Corrections and changes. Federal corrections.**

32 For purposes of this Division, the provisions of G.S. 105-159 requiring an individual
33 to report ~~changes, corrections, or the~~ the correction or determination of net taxable income
34 by the ~~Internal Revenue Service shall~~ federal government apply to fiduciaries required to
35 file returns for estates and trusts."

36 Sec. 4. Article 4A of Chapter 105 of the General Statutes is amended by
37 adding a new section to read:

38 **"§ 105-163.6A. Federal corrections.**

39 If the amount of taxes an employer is required to withhold and pay under the Code is
40 corrected or otherwise determined by the federal government, the employer must,
41 within two years after being notified of the correction or final determination by the
42 federal government, file a return with the Secretary reflecting the corrected or
43 determined amount. The Secretary shall determine from all available evidence the
44 correct amount the employer should have paid under this Article for the period covered
45 by the federal determination. As used in this section, the term 'all available evidence'

1 means evidence of any kind that becomes available to the Secretary from any source,
2 whether or not the evidence was considered in the federal correction or determination.

3 The Secretary shall assess and collect any additional tax due from the employer as
4 provided in Article 9 of this Chapter. If there has been an overpayment of the tax the
5 Secretary shall either refund the overpayment to the employer in accordance with G.S.
6 105-163.9 or credit the amount of the overpayment to the individual in accordance with
7 G.S. 105-163.10. An employer who fails to comply with this section is subject to the
8 penalties in G.S. 105-236 and forfeits the right to any refund due by reason of the
9 determination. Failure of an employer to comply with this section does not, however,
10 affect an individual's right to a credit under G.S. 105-163.10."

11 Sec. 5. G.S. 105-241.1 reads as rewritten:

12 **"§ 105-241.1. Additional taxes; assessment procedure.**

13 (a) Proposed Assessment. – If the Secretary discovers that any tax is due from a
14 taxpayer, the Secretary shall notify the taxpayer in writing of the kind and amount of tax
15 due and of the Secretary's intent to assess the tax. This notice shall state that the
16 proposed assessment will become final unless the taxpayer applies for a hearing within
17 the time specified in subsection (c). The Secretary's proposed assessment shall be based
18 upon the best information available and shall be presumed correct. If the Secretary of
19 Revenue discovers from the examination of any return or otherwise that any tax or additional
20 tax is due from any taxpayer, he shall give notice to the taxpayer in writing of the kind and
21 amount of tax which is due and of his intent to assess the same, which notice shall contain
22 advice to the effect that unless application for a hearing is made within the time specified in
23 subsection (c), the proposed assessment will become conclusive and final.

24 If the Secretary is unable to obtain from the taxpayer adequate and reliable
25 information upon which to base such assessment, the assessment may be made upon the
26 basis of the best information available and, subject to the provisions hereinafter made,
27 such assessment shall be deemed correct.

28 (b) Delivery of Notice. – The Secretary shall deliver the notice of a proposed
29 assessment to a taxpayer either in person or by United States mail sent to the taxpayer's
30 last known address. A notice mailed to a taxpayer is presumed to have been received by
31 the taxpayer unless the taxpayer makes an affidavit to the contrary within 90 days after
32 the notice was mailed. If the taxpayer makes this affidavit, the time limitations in
33 subsection (c) apply as if the notice had been delivered on the date the taxpayer makes
34 the affidavit. The notice required to be given in subsection (a) may be delivered to the
35 taxpayer by an agent of the Secretary or may be sent by mail to the last known address of the
36 taxpayer and such notice will be deemed to have been received in due course of the mail unless
37 the taxpayer shall make an affidavit to the contrary within 90 days after such notice is mailed,
38 in which event the taxpayer shall be heard by the Secretary in all respects as if he had made
39 timely application.

40 (c) Hearing. – A taxpayer who objects to a proposed assessment of tax is entitled
41 to a hearing before the Secretary as provided in this subsection. To obtain a hearing, the
42 taxpayer must file a written request either for a hearing or for a written statement of the
43 information and evidence upon which the proposed assessment is based. If the notice of
44 a proposed assessment was mailed, the taxpayer's request must be filed within 30 days
45 after the date the notice was postmarked; if the notice of a proposed assessment was

1 delivered in person, the taxpayer's request must be filed within 30 days after the date the
2 notice was delivered.

3 Upon the taxpayer's timely request, the Secretary shall furnish a written statement of
4 the information and evidence upon which the proposed assessment is based. A taxpayer
5 who requests a written statement in accordance with this subsection must, to obtain a
6 hearing, file a written request for a hearing within 30 days after receiving the written
7 statement.

8 Upon receipt of a timely application for a hearing, the Secretary shall conduct the
9 hearing at a time and place chosen by the Secretary. The taxpayer may present any
10 objections to the proposed assessment at the hearing. The rules of evidence do not
11 apply to a hearing conducted under this subsection.

12 ~~Any taxpayer who objects to a proposed assessment of tax or additional tax shall be~~
13 ~~entitled to a hearing before the Secretary of Revenue provided application therefor is~~
14 ~~made in writing within 30 days after the mailing or delivery of the notice required by~~
15 ~~subsection (a). If application for a hearing is made in due time, the Secretary of~~
16 ~~Revenue shall set a time and place for the hearing and after considering the taxpayer's~~
17 ~~objections shall give written notice of his decision to the taxpayer. The amount of tax or~~
18 ~~additional tax due from the taxpayer as finally determined by the Secretary shall~~
19 ~~thereupon be assessed and upon assessment shall become immediately due and~~
20 ~~collectible.~~

21 ~~Provided, the taxpayer may request the Secretary at any time within 30 days of~~
22 ~~notice of such proposed assessment for a written statement, or transcript, of the~~
23 ~~information and the evidence upon which the proposed assessment is based, and the~~
24 ~~Secretary of Revenue shall furnish such statement, or transcript, to the taxpayer.~~
25 ~~Provided, further, after request by the taxpayer for such written statement, or transcript,~~
26 ~~the taxpayer shall have 30 days after the receipt of the same from the Secretary of~~
27 ~~Revenue to apply in writing for such hearing, explaining in detail his objections to such~~
28 ~~proposed assessment. If no request for such hearing is so made, such proposed~~
29 ~~assessment shall be final and conclusive.~~

30 (d) Assessment. – If a taxpayer does not apply for a hearing in accordance with
31 subsection (c), a proposed assessment becomes final without further notice and is
32 immediately due and collectible. After the Secretary conducts a hearing under
33 subsection (c), the Secretary shall make a decision on the proposed assessment, notify
34 the taxpayer of the decision, and assess the taxpayer for the amount of tax determined to
35 be due. Upon assessment, the tax becomes immediately due and collectible. G.S. 105-
36 241.2, 105-241.3, and 105-241.4 apply to a tax assessed under this section. Except in
37 the case of a jeopardy assessment, the Secretary may not assess a taxpayer for a tax until
38 the notice required by subsection (a) has been given and one of the following has
39 occurred:

- 40 (1) The time for applying for a hearing has expired.
- 41 (2) The Secretary and the taxpayer have agreed upon a settlement.
- 42 (3) The taxpayer has filed a timely application for a hearing and the
43 Secretary, after conducting the hearing, has given the taxpayer written
44 notice of the decision.

1 If no timely application for a hearing is made within 30 days after notice of a proposed
2 assessment of tax or additional tax is given pursuant to subsection (a), such proposed
3 tax or additional tax assessment shall become final without further notice and shall be
4 immediately due and collectible.

5 (e) Statute of Limitations. – The Secretary may propose an assessment of tax due
6 from a taxpayer at any time if (i) the taxpayer did not file a proper application for a
7 license or did not file a return, (ii) the taxpayer filed a false or fraudulent application or
8 return, or (iii) the taxpayer attempted in any manner to fraudulently evade or defeat the
9 tax. If a taxpayer files a return reflecting a federal determination as provided in G.S.
10 105-130.20, 105-159, 105-160.8, or 105-163.6A, the Secretary must propose an
11 assessment of any tax due within three years after the return is filed. If there is a federal
12 determination and the taxpayer does not file the return required by G.S. 105-130.20,
13 105-159, 105-160.8, or 105-163.6A, the Secretary must propose an assessment of any
14 tax due within five years after the date the Secretary received the final report of the
15 federal determination. In all other cases, the Secretary must propose an assessment of
16 any tax due from a taxpayer within three years after the date the taxpayer filed an
17 application for a license or a return or the date the application or return was required by
18 law to be filed, whichever is later. If the Secretary proposes an assessment of tax within
19 the time provided in this section, the final assessment of the tax is timely.

20 A taxpayer may make a written waiver of any of the limitations of time set out in
21 this subsection, for either a definite or an indefinite time. If the Secretary accepts the
22 taxpayer's waiver, the Secretary may propose an assessment at any time within the time
23 extended by the waiver.

24 ~~Where a proper application for a license or a return has been filed and in the absence~~
25 ~~of fraud, the Secretary of Revenue shall assess any tax or additional tax due from a~~
26 ~~taxpayer within three years after the date upon which such application or return is filed~~
27 ~~or within three years after the date upon which such application or return was required~~
28 ~~by law to be filed, whichever is the later. Any tax or additional tax due from the~~
29 ~~taxpayer may be assessed at any time if (i) no proper application for a license or no~~
30 ~~return has been filed, (ii) a false or fraudulent application or return has been filed, or~~
31 ~~(iii) there has been an attempt in any manner to fraudulently defeat or evade tax.~~

32 ~~Provided, the taxpayer may make a written waiver of any of the limitations of time~~
33 ~~set out in this section, for either a definite or indefinite time, and if such waiver is~~
34 ~~accepted by the Secretary he may institute assessment procedures at any time within the~~
35 ~~time extended by such waiver. This proviso shall apply to assessments made or~~
36 ~~undertaken under any provision of all schedules of the Revenue Act, and to assessments~~
37 ~~under Subchapter V of Chapter 105 and Chapter 18 of the General Statutes.~~

38 ~~(f) Except as hereinafter provided in subsection (g), the Secretary of Revenue~~
39 ~~shall have no authority to assess any tax or additional tax under this section until the~~
40 ~~notice required by subsection (a) shall have been given and the period within which an~~
41 ~~application for a hearing may be filed has expired, or if a timely application for a~~
42 ~~hearing is filed, until written notice of the Secretary's decision has been given to the~~
43 ~~taxpayer, provided, however, that if the notice required by subsection (a) shall be mailed~~
44 ~~or delivered within the limitation prescribed in subsection (e), such limitation shall be~~

1 ~~deemed to have been complied with and the proceeding may be carried forward to its~~
2 ~~conclusion.~~

3 (g) Jeopardy Assessments. – Notwithstanding any other provision of this section,
4 the Secretary of Revenue ~~shall have authority~~ may at any time within the applicable period
5 of limitations ~~to proceed at once to immediately~~ assess any tax or additional tax which he
6 ~~finds~~ the Secretary finds is due from a taxpayer if, in ~~his opinion,~~ the opinion of the
7 Secretary, the collection of ~~such~~ the tax is in jeopardy and immediate assessment is
8 necessary in order to protect the interest of the State. An assessment under this
9 subsection is invalid if the Secretary does not give the notice required by subsection (a)
10 either before or within 30 days after the assessment is made. ~~State, provided, however,~~
11 ~~that if an assessment is made pursuant to the authority set forth in this subsection before the~~
12 ~~notice required by subsection (a) is given, such assessment shall not be valid unless the notice~~
13 ~~required by subsection (a) shall be given within 30 days after the date of such assessment.~~

14 (h) ~~The rules of evidence do not apply in a hearing before the Secretary of~~
15 ~~Revenue under this section. G.S. 105-241.2, 105-241.3, and 105-241.4 apply to a tax or~~
16 ~~additional tax assessed under this section.~~

17 (i) Interest. – All assessments of taxes or additional taxes, tax, exclusive of
18 penalties assessed thereon, on the tax, shall bear interest at the rate established pursuant
19 to this subsection from the time the taxes or additional taxes were tax was due until paid.
20 On or before June 1 and December 1 of each year, the Secretary of Revenue shall
21 establish the interest rate to be in effect during the six-month period beginning on the
22 next succeeding July 1 and January 1, respectively, after giving due consideration to
23 current market conditions and to the rate that will be in effect on that date pursuant to
24 the Internal Revenue Code. If no new rate is established, the rate in effect during the
25 preceding six-month period shall continue in effect. The rate established by the
26 Secretary may not be less than five percent (5%) per year and may not exceed sixteen
27 percent (16%) per year. For refunds and assessments made between July 1, 1982, and
28 December 31, 1982, the rate shall be twelve percent (12%) per year.

29 ~~From and after January 1, 1978, interest upon assessments and upon additional taxes~~
30 ~~shall be computed at the rate established by G.S. 105-241.1(i) and shall be computed~~
31 ~~without regard to any former rate of interest which might have been established by G.S.~~
32 ~~105-241.1 for the taxable period for which said assessment was made, or for the period~~
33 ~~within which said taxes were due to be paid.~~

34 (i1) "Tax" and "additional tax," for the purposes of this Subchapter and for the
35 purposes of Subchapters V and VIII of this Chapter, include penalties and interest, as
36 well as the principal amount of such tax or additional tax.

37 (j) Construction. – This section is in addition to and not in substitution of any
38 other provision of the General Statutes relative to the assessment and collection of taxes.
39 taxes and shall not be construed as repealing any other provision of the General Statutes."

40 Sec. 6. This act is effective upon ratification and applies to assessments of
41 taxes for which the statute of limitations had not expired on or before the date of
42 ratification.