

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 80
Committee Substitute Favorable 7/15/93
Senate Finance Committee Substitute Adopted 7/21/93

Short Title: Federal Determination/Withholding.

(Public)

Sponsors:

Referred to:

February 9, 1993

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE TIME ALLOWED THE DEPARTMENT OF REVENUE TO MAKE ASSESSMENTS OF TAXES FOLLOWING A FEDERAL DETERMINATION, 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

1 ~~income for any year as reported or as reportable to the United States Treasury Department, is~~
2 ~~changed, corrected, or otherwise determined for federal income tax purposes, the statute of~~
3 ~~limitations shall not apply to assessments under this section.—The Secretary shall proceed to~~
4 ~~determine from such all available evidence as may have been brought to his attention the~~
5 ~~correct North Carolina taxable income of the taxpayer for the taxable year, and if there is any~~
6 ~~additional tax due from the taxpayer it shall be assessed and collected; and if the taxpayer's~~
7 ~~correct tax liability for the taxable year. As used in this section, the term 'all available~~
8 ~~evidence' means evidence of any kind that becomes available to the Secretary from any~~
9 ~~source, whether or not the evidence was considered in the federal correction or~~
10 ~~determination.~~

11 The Secretary shall assess and collect any additional tax due from the taxpayer as
12 provided in Article 9 of this Chapter. The Secretary shall refund any overpayment of
13 tax as provided in Article 9 of this Chapter. ~~there has been an overpayment of the tax the~~
14 ~~Secretary shall, within 30 days after the final determination of the North Carolina taxable~~
15 ~~income of the taxpayer, refund the amount of the excess: Provided, that any A taxpayer who~~
16 ~~fails to comply with this section within the time specified shall be is subject to all the~~
17 ~~penalties as provided in G.S. 105-236, in case of additional tax due, and shall forfeit in G.S.~~
18 ~~105-236 and forfeits the right to any refund due by reason of the change-determination.~~

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

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

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

34 "**§ 105-130.20. Corrections and changes.—Federal corrections.**

35 If a taxpayer's federal taxable income is corrected or otherwise determined by the
36 federal government, the taxpayer must, within two years after being notified of the
37 correction or final determination by the federal government, file an income tax return
38 with the Secretary reflecting the corrected or determined taxable income. (a) If ~~the~~
39 ~~amount of the taxable income for any year of any corporation subject to taxation under this~~
40 ~~Division, as reported or as reportable to the United States Treasury Department, is changed,~~
41 ~~corrected, or otherwise determined by the Commissioner of Internal Revenue or other officer of~~
42 ~~the United States of competent authority, such taxpayer, within two years after receipt of a~~
43 ~~final determination reflecting the changed, corrected or determined taxable income shall make~~
44 ~~return under oath or affirmation to the Secretary of Revenue of such taxable income.—The~~
45 Secretary shall determine from all available evidence the taxpayer's correct tax liability

1 for the income year. As used in this section, the term 'all available evidence' means
2 evidence of any kind that becomes available to the Secretary from any source, whether
3 or not the evidence was considered in the federal correction or determination.

4 The Secretary shall assess and collect any additional tax due from the taxpayer as
5 provided in Article 9 of this Chapter. The Secretary shall refund any overpayment of
6 tax as provided in Article 9 of this Chapter. of Revenue shall thereupon proceed to
7 determine, from such facts or evidence as he may have brought to his attention or shall
8 otherwise acquire, whether or not the same were considered or taken into account in the federal
9 determination, the correct tax liability of such corporation for the year. If there shall be any
10 additional tax due from such corporation, the same shall be assessed and collected; and if there
11 shall have been an overpayment of the tax, the Secretary shall, within 30 days after the final
12 determination of the tax liability, refund the amount of such overpayment. (b) Any
13 corporation which—A taxpayer that fails to comply with this section as to making return of
14 federally determined taxable income within the time specified shall be is subject to all the
15 penalties provided in G.S. 105-236, in the case of additional tax due, and shall forfeit in G.S.
16 105-236 and forfeits its rights to any refund due by reason of federal changes. the
17 determination.

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

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

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

34 "**§ 105-160.8. Corrections and changes. Federal corrections.**

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

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

41 "**§ 105-163.6A. Federal corrections.**

42 If the amount of taxes an employer is required to withhold and pay under the Code is
43 corrected or otherwise determined by the federal government, the employer must,
44 within two years after being notified of the correction or final determination by the
45 federal government, file a return with the Secretary reflecting the corrected or

1 determined amount. The Secretary shall determine from all available evidence the
2 correct amount the employer should have paid under this Article for the period covered
3 by the federal determination. As used in this section, the term 'all available evidence'
4 means evidence of any kind that becomes available to the Secretary from any source,
5 whether or not the evidence was considered in the federal correction or determination.

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

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

15 **"§ 105-241.1. Additional taxes; assessment procedure.**

16 (a) If the Secretary of Revenue discovers from the examination of any return or
17 otherwise that any tax or additional tax is due from any taxpayer, he shall give notice to
18 the taxpayer in writing of the kind and amount of tax which is due and of his intent to
19 assess the same, which notice shall contain advice to the effect that unless application
20 for a hearing is made within the time specified in subsection (c), the proposed
21 assessment will become conclusive and final.

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

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

38 (c) Any taxpayer who objects to a proposed assessment of tax or additional tax
39 shall be entitled to a hearing before the Secretary of Revenue provided application
40 therefor is made in writing within 30 days after the mailing or delivery of the notice
41 required by subsection (a). If application for a hearing is made in due time, the
42 Secretary of Revenue shall set a time and place for the hearing and after considering the
43 taxpayer's objections shall give written notice of his decision to the taxpayer. The
44 amount of tax or additional tax due from the taxpayer as finally determined by the

1 Secretary shall thereupon be assessed and upon assessment shall become immediately
2 due and collectible.

3 Provided, the taxpayer may request the Secretary at any time within 30 days of
4 notice of such proposed assessment for a written statement, or transcript, of the
5 information and the evidence upon which the proposed assessment is based, and the
6 Secretary of Revenue shall furnish such statement, or transcript, to the taxpayer.
7 Provided, further, after request by the taxpayer for such written statement, or transcript,
8 the taxpayer shall have 30 days after the receipt of the same from the Secretary of
9 Revenue to apply in writing for such hearing, explaining in detail his objections to such
10 proposed assessment. If no request for such hearing is so made, such proposed
11 assessment shall be final and conclusive.

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

16 (e) Statute of Limitations. – The Secretary may propose an assessment of tax due
17 from a taxpayer at any time if (i) the taxpayer did not file a proper application for a
18 license or did not file a return, (ii) the taxpayer filed a false or fraudulent application or
19 return, or (iii) the taxpayer attempted in any manner to fraudulently evade or defeat the
20 tax. If a taxpayer files a return reflecting a federal determination as provided in G.S.
21 105-130.20, 105-159, 105-160.8, 105-163.6A, or 105-197.1, the Secretary must propose
22 an assessment of any tax due within one year after the return is filed or within three
23 years of when the original return was filed or due to be filed, whichever is later. If there
24 is a federal determination and the taxpayer does not file the required return, the
25 Secretary must propose an assessment of any tax due within three years after the date
26 the Secretary received the final report of the federal determination. In all other cases,
27 the Secretary must propose an assessment of any tax due from a taxpayer within three
28 years after the date the taxpayer filed an application for a license or a return or the date
29 the application or return was required by law to be filed, whichever is later. If the
30 Secretary proposes an assessment of tax within the time provided in this section, the
31 final assessment of the tax is timely.

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

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

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

7 (f) Except as hereinafter provided in subsection (g), the Secretary of Revenue
8 shall have no authority to assess any tax or additional tax under this section until the
9 notice required by subsection (a) shall have been given and the period within which an
10 application for a hearing may be filed has expired, or if a timely application for a
11 hearing is filed, until written notice of the Secretary's decision has been given to the
12 taxpayer, provided, however, that if the notice required by subsection (a) shall be mailed
13 or delivered within the limitation prescribed in subsection (e), such limitation shall be
14 deemed to have been complied with and the proceeding may be carried forward to its
15 conclusion.

16 (g) Notwithstanding any other provision of this section, the Secretary of Revenue
17 shall have authority at any time within the applicable period of limitations to proceed at
18 once to assess any tax or additional tax which he finds is due from a taxpayer if, in his
19 opinion, the collection of such tax is in jeopardy and immediate assessment is necessary
20 in order to protect the interest of the State, provided, however, that if an assessment is
21 made pursuant to the authority set forth in this subsection before the notice required by
22 subsection (a) is given, such assessment shall not be valid unless the notice required by
23 subsection (a) shall be given within 30 days after the date of such assessment.

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

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

39 ~~From and after January 1, 1978, interest upon assessments and upon additional taxes~~
40 ~~shall be computed at the rate established by G.S. 105-241.1(i) and shall be computed~~
41 ~~without regard to any former rate of interest which might have been established by G.S.~~
42 ~~105-241.1 for the taxable period for which said assessment was made, or for the period~~
43 ~~within which said taxes were due to be paid.~~

1 (i1) 'Tax' and 'additional tax,' for the purposes of this Subchapter and for the
2 purposes of Subchapters V and VIII of this Chapter, include penalties and interest, as
3 well as the principal amount of such tax or additional tax.

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

7 Sec. 6. G.S. 105-197.1 reads as rewritten:

8 "**§ 105-197.1. Corrections and changes. Federal corrections.**

9 If the amount of a taxpayer's net gifts is corrected or otherwise determined by the
10 federal government, the taxpayer must, within two years after being notified of the
11 correction or final determination by the federal government, file a gift tax return with
12 the Secretary of Revenue reflecting the corrected or determined net gifts. If the amount of
13 the net gifts of any taxpayer for any year, subject to the provisions of this Article and as
14 reported or as reportable to the United States Treasury Department, is changed, corrected, or
15 otherwise determined by the Commissioner of Internal Revenue or other officer of the United
16 States having authority to do so, such taxpayer, within 30 days after receipt of any Internal
17 Revenue agent's report or supplemental report reflecting the corrected or determined net gifts
18 shall make return under oath or affirmation to the Secretary of Revenue of such corrected,
19 changed or determined net gifts. In making any assessment or refund under this section, the
20 Secretary shall consider all facts or evidence brought to his attention, whether or not the same
21 were considered or taken into account in the federal assessment or correction. If the taxpayer
22 fails to notify the Secretary of Revenue of assessment of additional tax by the Commissioner
23 of Internal Revenue, the statute of limitations shall not apply. The Secretary of Revenue shall
24 thereupon proceed to determine, from such evidence as he may have brought to his attention or
25 shall otherwise acquire, determine from all available evidence the taxpayer's correct net
26 gifts of such taxpayer for the calendar year, and if there shall be any additional tax due from
27 such taxpayer the same shall be assessed and collected; and if there shall have been an
28 overpayment of the tax the said Secretary shall, within 30 days after the final determination of
29 the net gifts of such taxpayer, refund the amount of such excess: Provided, that any tax
30 liability for the taxable year. As used in this section, the term 'all available evidence'
31 means evidence of any kind that becomes available to the Secretary from any source,
32 whether or not the evidence was considered in the federal correction or determination.

33 The Secretary shall assess and collect any additional tax due from the taxpayer as
34 provided in Article 9 of this Chapter. The Secretary shall refund any overpayment of
35 tax as provided in Article 9 of this Chapter. A taxpayer who fails to comply with this
36 section as to making report of such change as made by the federal government within the time
37 specified shall be is subject to all the penalties as provided in G.S. 105-236, in case of
38 additional tax due, and shall forfeit his rights in G.S. 105-236 and forfeits the right to any
39 refund due by reason of such change. the determination.

40 ~~When the taxpayer makes the return reflecting the corrected net gifts as required by~~
41 ~~this section, the Secretary of Revenue shall make assessments or refunds based thereon~~
42 ~~within three years from the date the return required by this section is filed, and not~~
43 ~~thereafter. When the taxpayer does not make the return reflecting the corrected net gifts~~
44 ~~as required by this section but the Department of Revenue receives from the United~~
45 ~~States government or one of its agents a report reflecting such corrected net gifts, the~~

1 ~~Secretary of Revenue shall make assessments for taxes due based on such corrected net~~
2 ~~gifts within five years from the date the report from the United States government or its~~
3 ~~agent is actually received, and not thereafter.~~

4 ~~Nothing in this section shall be construed as preventing the Secretary of Revenue~~
5 ~~from making an assessment immediately following the receipt from any source of~~
6 ~~information concerning the correcting, change in, or determination of net gifts of a~~
7 ~~taxpayer by the United States government. The assessment of tax or additional tax under~~
8 ~~this section shall not be subject to any statute of limitations except as provided in this~~
9 ~~section."~~

10 Sec. 7. This act is effective upon ratification and applies to assessments of
11 taxes for which the statute of limitations had not expired on or before the date of
12 ratification.