

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 2000-170
HOUSE BILL 1544

AN ACT TO CLARIFY THAT A TAXPAYER IS ENTITLED TO A REFUND OF
AN OVERPAYMENT OF THE STATE EXCISE TAX ON CONVEYANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.35 reads as rewritten:

"§ 105-228.35. Administrative provisions.

~~The~~ Except as otherwise provided in this Article, the provisions of Article 9 of this Chapter apply to this Article."

Section 2. Article 8E of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 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 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. 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.

(c) Review by Secretary. – 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 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 Secretary is binding on a board of county commissioners.

(d) Judicial Review. – A taxpayer who disagrees with a decision of the Secretary 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.

(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) 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 3. Notwithstanding G.S. 105-228.37, as enacted by this act, a refund request filed by a taxpayer who paid the tax imposed by Article 8E of Chapter 105 of the General Statutes on or after January 1, 2000, and whose time limit for requesting a refund expires on or before August 1, 2000, is considered timely if the request is filed with the board of county commissioners by October 1, 2000.

Section 4. This act is effective when it becomes law, and applies retroactively to taxes paid on or after January 1, 2000.

In the General Assembly read three times and ratified this the 11th day of July, 2000.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 9:58 a.m. this 2nd day of August, 2000