

- 1 b. The net worth for an estate shall not exceed two million dollars
2 (\$2,000,000) as of the date of the decedent's death.
- 3 c. Charities and cooperatives shall not have more than 500
4 employees as of the filing date of the petition for administrative
5 review.
- 6 d. As to all other taxpayers, the net worth shall not exceed seven
7 million dollars (\$7,000,000), and there should be no more than
8 500 employees as of the filing date of the petition for
9 administrative review.
- 10 (4) The taxpayer did not unreasonably delay the proceedings.
- 11 (5) The taxpayer provides the information requested by the Department of
12 Revenue in a timely manner.
- 13 (6) The taxpayer applies for the administrative costs within 90 days of the
14 date that the administrative decision of the Tax Review Board was
15 mailed to the parties.
- 16 (7) The Tax Review Board makes the final determination of the
17 reasonable administrative costs including all of the following:
- 18 a. Any administrative fees or similar charges imposed by the
19 Department of Revenue.
- 20 b. Reasonable expenses of expert witnesses in connection with an
21 administrative review, except that no expert witness shall be
22 compensated at a rate in excess of the highest rate of
23 compensation for expert witnesses paid by the Department of
24 Revenue.
- 25 c. The reasonable cost of any study, analysis, engineering report,
26 test, or project which is found by the Tax Review Board to be
27 necessary for preparation of the party's case.
- 28 d. As to attorneys' fees, a rate of one hundred fifty dollars
29 (\$150.00) per hour is deemed appropriate.
- 30 (8) The costs awarded to the taxpayer shall be paid from the General Fund
31 as provided for in G.S. 143C-1-3(a)(3)."

32 **SECTION 2.** G.S. 105-267 reads as rewritten:

33 **"§ 105-267. Taxes to be paid; suits for recovery of taxes.**

34 (a) No court of this State shall entertain a suit of any kind brought for the
35 purpose of preventing the collection of any tax imposed in this Subchapter. Whenever a
36 person has a valid defense to the enforcement of the collection of a tax, the person shall
37 pay the tax to the proper officer, and that payment shall be without prejudice to any
38 defense of rights the person may have regarding the tax. At any time within the
39 applicable protest period, the taxpayer may demand a refund of the tax paid in writing
40 from the Secretary and if the tax is not refunded within 90 days thereafter, may sue the
41 Secretary in the courts of the State for the amount demanded. The protest period for a
42 tax levied in Article 2A, 2C, or 2D of this Chapter is 30 days after payment. The protest
43 period for all other taxes is three years after payment.

1 The suit may be brought in the Superior Court of Wake County, or in the county in
2 which the taxpayer resides at any time within three years after the expiration of the
3 90-day period allowed for making the refund. If upon the trial it is determined that all or
4 part of the tax was levied or assessed for an illegal or unauthorized purpose, or was for
5 any reason invalid or excessive, judgment shall be rendered therefor, with interest, and
6 the judgment shall be collected as in other cases. The amount of taxes for which
7 judgment is rendered in such an action shall be refunded by the State. G.S. 105-241.2
8 provides an alternate procedure for a taxpayer to contest a tax and is not in conflict with
9 or superseded by this section.

10 (b) Payment of Taxpayer's Costs. – The court shall award costs, including
11 reasonable attorneys' fees, to a taxpayer if all of the following requirements are met:

12 (1) The taxpayer is the prevailing party. For the purposes of this
13 subsection, a taxpayer is the prevailing party if the taxpayer
14 substantially prevailed with respect to the amount in controversy or on
15 the most significant tax issue or set of tax issues presented. A taxpayer
16 is not the prevailing party if the Department of Revenue establishes
17 that its position was substantially justified. The position of the
18 Department of Revenue is presumed to be substantially justified if the
19 Department of Revenue follows the applicable published guidelines in
20 the proceeding or has prevailed in the courts on substantially similar
21 issues.

22 (2) The taxpayer exhausts all administrative remedies.

23 (3) The following net worth requirements are satisfied:

24 a. The net worth for individual taxpayers shall not exceed two
25 million dollars (\$2,000,000) as of the filing date of the suit. For
26 the purposes of this sub-subdivision, individuals filing a joint
27 return are treated as separate individuals.

28 b. The net worth for an estate shall not exceed two million dollars
29 (\$2,000,000) as of the date of the decedent's death.

30 c. Charities and cooperatives shall not have more than 500
31 employees as of the filing date of the suit.

32 d. As to all other taxpayers, the net worth shall not exceed seven
33 million dollars (\$7,000,000), and there should be no more than
34 500 employees as of the filing date of the suit.

35 (4) The taxpayer did not unreasonably delay the proceedings.

36 (5) The taxpayer provides the information requested by the Department of
37 Revenue in a timely manner.

38 (6) The taxpayer applies for the costs within 90 days of the date that the
39 court rendered its decision.

40 (7) The court makes the final determination of the reasonable costs
41 including all of the following:

42 a. Reasonable court costs.

43 b. Reasonable expenses of expert witnesses in connection with a
44 court proceeding, except that no expert witness shall be

1 compensated at a rate in excess of the highest rate of
2 compensation for expert witnesses paid by the Department of
3 Revenue.

4 c. The reasonable cost of any study, analysis, engineering report,
5 test, or project which is found by the court to be necessary for
6 preparation of the party's case.

7 d. As to attorneys' fees, a rate of one hundred fifty dollars
8 (\$150.00) per hour is deemed appropriate.

9 (8) The costs awarded to the taxpayer shall be paid from the General Fund
10 as provided for in G.S. 143C-1-3(a)(3)."

11 **SECTION 3.** This act becomes effective September 1, 2007.