

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1028

Short Title: Taxpayer Rights.

(Public)

Sponsors: Representatives Hackney; and Bowman.

Referred to: Finance.

April 19, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR STATE TAXPAYERS' RIGHTS.

3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 105-256 reads as rewritten:

5 **"§ 105-256. Reports prepared by Secretary of Revenue.**

6 (a) Reports. – The Secretary of Revenue shall prepare and publish the following:

7 (1) At least every two years, statistics concerning taxes imposed by this
8 Chapter, including amounts collected, classifications of taxpayers,
9 geographic distribution of taxes, and other facts considered pertinent
10 and valuable.

11 (2) At least every two years, a tax expenditure report that lists the tax
12 expenditures made by a provision in this Chapter other than a
13 provision in Subchapter II and, when possible to do without impairing
14 other duties of the Secretary or the Department of Revenue, the
15 amount by which revenue is reduced by each expenditure. A 'tax
16 expenditure' is an exemption, an exclusion, a deduction, an allowance,
17 a credit, a refund, a preferential tax rate, or another device that reduces
18 the amount of tax revenue that would otherwise be available to the
19 State.

20 (3) As often as required, a report that is not listed in this subsection but is
21 required by another law.

22 (4) As often as the Secretary determines is needed, other reports
23 concerning taxes imposed by this Chapter.

- 1 (5) At least once a year, a statement of the taxpayer's bill of rights, which
2 sets forth in simple and nontechnical terms the following:
3 a. The taxpayer's right to have the taxpayer's tax information kept
4 confidential.
5 b. The rights of a taxpayer and the obligations of the Department
6 during an audit.
7 c. The procedure for a taxpayer to appeal an adverse decision of
8 the Department at each level of determination.
9 d. The procedure for a taxpayer to claim a refund for an alleged
10 overpayment.
11 e. The procedure for a taxpayer to request information, assistance,
12 and interpretations or to make complaints.
13 f. Penalties and interest that may apply and the basis for
14 requesting waiver of a penalty.
15 g. The procedures the Department may use to enforce the Revenue
16 Act, including assessment, jeopardy assessment, enforcement of
17 liens, and garnishment and attachment.

18 (b) Information. – The Secretary of Revenue may require a unit of State or local
19 government to furnish the Secretary statistical information the Secretary needs to
20 prepare a report under this section. Upon request of the Secretary, a unit of government
21 shall submit statistical information on one or more forms provided by the Secretary.

22 (c) Distribution. – The Secretary of Revenue shall distribute reports prepared by
23 the Secretary as follows without charge:

- 24 (1) Five copies to the Division of State Library of the Department of
25 Cultural Resources, as required by G.S. 125-11.7.
26 (2) Five copies to the Legislative Services Commission for the use of the
27 General Assembly.
28 (3) Upon request, one copy to each entity and official to which a copy of
29 the reports of the Appellate Division of the General Court of Justice is
30 furnished under G.S. 7A-343.1.
31 (4) Upon request, one copy to each member of the General Assembly.
32 (5) One copy of the taxpayer's bill of rights to each taxpayer the
33 Department contacts regarding determination or collection of a tax,
34 other than by providing tax forms.
35 (6) Upon request, one copy of the taxpayer's bill of rights to each
36 taxpayer.

37 The Secretary of Revenue may charge a person not listed in this subsection a fee for
38 a report prepared by the Secretary in an amount that covers publication or copying costs
39 and mailing costs."

40 Sec. 2. Article 9 of Chapter 105 of the General Statutes is amended by
41 adding a new section to read:

42 "**§ 105-258.1. Taxpayer interviews.**

1 (a) Scope. – This section applies to in-person interviews between a taxpayer and
2 an officer or employee of the Department relating to the determination or collection of a
3 tax.

4 (b) Recording of Interview. – The Department shall allow a taxpayer to make an
5 audio recording of an interview at the taxpayer's expense and using the taxpayer's
6 equipment if the taxpayer gives the Department at least 24 hours' advance notice of the
7 taxpayer's intent to record the interview. The Department may make an audio recording
8 of an interview at its own expense and using its own equipment if the Department gives
9 the taxpayer at least 24 hours' advance notice of its intent to record the interview. The
10 Department shall, upon request of the taxpayer, provide the taxpayer a transcript of an
11 interview recorded by the Department; the Department may charge the taxpayer for the
12 cost of the requested transcription and reproduction of the transcript.

13 (c) Disclosure of Procedure. – At or before an initial interview relating to the
14 determination of a tax, the Department shall provide the taxpayer written and oral
15 explanation of the audit process and the taxpayer's rights in the process. At or before an
16 initial interview relating to the collection of a tax, the Department shall provide the
17 taxpayer written and oral explanation of the collection process and the taxpayer's rights
18 in the process.

19 (d) Right of Consultation. – The Department shall suspend an interview if, at any
20 time during the interview, the taxpayer expresses the desire to consult with a person
21 permitted to represent the taxpayer before the Department. A taxpayer may authorize a
22 person to represent the taxpayer in an interview if the person is permitted to represent
23 taxpayers before the Department and has a written power of attorney executed by the
24 taxpayer. The Department may not require a taxpayer to accompany the taxpayer's
25 representative to the interview unless the Secretary has summoned the taxpayer
26 pursuant to G.S. 105-258."

27 Sec. 3. G.S. 105-264 reads as rewritten:

28 "**§ 105-264. Effect of interpretation, regulation, or ruling.**

29 It shall be the duty of the Secretary of Revenue to construe all sections of this
30 Subchapter that are administered by the Secretary and all sections of Subchapter V. The
31 Secretary's interpretation of these sections shall be consistent with the applicable
32 regulations. Interpretations by the Secretary of Revenue shall be **prima facie** correct,
33 and a protection to the officers and taxpayers affected thereby.

34 Whenever the Secretary of Revenue shall ~~construe~~ construes any provisions of the
35 revenue laws ~~administered by him and shall issue or publish~~ and publishes to taxpayers in
36 writing any regulation or ruling ~~so-construing the revenue effect or operation of any such~~
37 laws, ~~such the~~ such the ruling or regulation shall be a protection to the officers and taxpayers
38 affected thereby and taxpayers shall be entitled to rely upon ~~such the~~ such the regulation or
39 ruling. ~~In the event~~ If the Secretary of Revenue shall ~~change, modify, repeal, abrogate, or~~
40 ~~alter any such regulation or ruling~~ changes or repeals a regulation or ruling, any taxpayer
41 who has relied upon the construction or interpretation contained in the Secretary's
42 previous ruling or regulation shall not be liable for any additional assessment on
43 account of any tax not paid by reason of reliance upon ~~such the~~ such the ruling or regulation and
44 which might have accrued prior to the date of the ~~change, modification, repeal, abrogation,~~

1 ~~or alteration~~ change or repeal by the Secretary, and during the effective period of ~~such the~~
2 prior ruling or regulation. If a taxpayer requests in writing specific advice from the
3 Department and receives in response erroneous written advice, the taxpayer is not liable
4 for any penalty or additional assessment attributable to the erroneous advice furnished
5 by the Department to the extent the advice was reasonably relied upon by the taxpayer
6 and the penalty or additional assessment did not result from the taxpayer's failure to
7 provide adequate or accurate information. Provided, that ~~nothing herein contained shall~~
8 prevent any such ~~this section does not prevent~~ a change in construction or interpretation
9 of the provisions of this Chapter by the Secretary of Revenue from being effective from
10 and after the date of its issuance or promulgation, or the assessment of any tax
11 thereunder."

12 Sec. 4. G.S. 105-260 reads as rewritten:

13 "**§ 105-260. ~~Deputies and clerks.~~ Department personnel.**

14 (a) The Secretary ~~of Revenue~~ may appoint such ~~deputies, clerks and assistants~~ under
15 his ~~direction as may be~~ employees necessary to administer the laws relating to the
16 assessment and collection of all taxes provided for in this ~~Subchapter,~~ Subchapter, may
17 remove and discharge ~~same at his~~ the employees at the Secretary's discretion, and shall
18 fix their compensation ~~within the rules and regulations prescribed as~~ by law.

19 (b) Evaluation. – The Secretary may not use records of tax enforcement results,
20 or production goals based on these records, to evaluate employees directly involved in
21 tax collection activities or to evaluate the immediate supervisors of these employees.
22 The Secretary shall use records of taxpayer complaints that named Department
23 employees are discourteous, unresponsive, or incompetent to evaluate those
24 employees."

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

26 "**§ 105-241.1. Additional taxes; assessment procedure.**

27 (a) If the Secretary ~~of Revenue~~ discovers from the examination of any return or
28 otherwise that any tax or additional tax is due from any taxpayer, ~~he shall give notice to~~
29 the taxpayer in writing of the kind and amount of tax which is due and of his intent to assess the
30 same, which notice shall contain advice to the effect that unless application for a hearing is
31 made within the time specified in subsection (c), the proposed assessment will become
32 eoneclusive and final. ~~the~~ Secretary shall notify the taxpayer in writing of the proposed
33 assessment. The notice shall describe the basis for the proposed assessment and shall
34 identify the amounts of any tax, interest, additions to tax, and penalties included in the
35 proposed assessment. The notice shall advise the taxpayer that unless the taxpayer
36 requests a hearing as provided in this section, the proposed assessment shall become
37 final.

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

42 (b) The notice required to be given in subsection (a) may be delivered to the
43 taxpayer by an agent of the Secretary or may be sent by mail to the last known address
44 of the taxpayer and such notice will be deemed to have been received in due course of

1 the mail unless the taxpayer shall make an affidavit to the contrary within 90 days after
2 such notice is mailed, in which event the taxpayer shall be heard by the Secretary in all
3 respects as if he had made timely application.

4 (c) Any taxpayer who objects to a proposed assessment of tax or additional tax
5 shall be entitled to a hearing before the Secretary of Revenue provided application
6 therefor is made in writing within 30 days after the mailing or delivery of the notice
7 required by subsection (a). If application for a hearing is made in due time, the
8 Secretary of Revenue shall set a time and place for the hearing and after considering the
9 taxpayer's objections shall give written notice of his decision to the taxpayer. The
10 amount of tax or additional tax due from the taxpayer as finally determined by the
11 Secretary shall thereupon be assessed and upon assessment shall become immediately
12 due and collectible.

13 Provided, the taxpayer may request the Secretary at any time within 30 days of
14 notice of such proposed assessment for a written statement, or transcript, of the
15 information and the evidence upon which the proposed assessment is based, and the
16 Secretary of Revenue shall furnish such statement, or transcript, to the taxpayer.
17 Provided, further, after request by the taxpayer for such written statement, or transcript,
18 the taxpayer shall have 30 days after the receipt of the same from the Secretary of
19 Revenue to apply in writing for such hearing, explaining in detail his objections to such
20 proposed assessment. If no request for such hearing is so made, such proposed
21 assessment shall be final and conclusive.

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

26 (d1) The Secretary shall notify the taxpayer when a proposed assessment becomes
27 final and collectible. The notice shall describe the basis for the assessment and shall
28 identify the amounts of any tax, interest, additions to tax, and penalties included in the
29 assessment. The notice shall include a brief statement in simple and nontechnical terms
30 of (i) the Department's authority to, and procedure for, levy on and sell the taxpayer's
31 property, (ii) the taxpayer's available administrative appeals regarding the levy and sale,
32 including the procedures for appeal, (iii) other options available to the taxpayer that
33 could prevent levy on the property, (iv) procedures to redeem property and obtain
34 release of a lien on property.

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

43 Provided, the taxpayer may make a written waiver of any of the limitations of time
44 set out in this section, for either a definite or indefinite time, and if such waiver is

1 accepted by the Secretary he may institute assessment procedures at any time within the
2 time extended by such waiver. This proviso shall apply to assessments made or
3 undertaken under any provision of all schedules of the Revenue Act, and to assessments
4 under Subchapter V of Chapter 105 and Chapter 18 of the General Statutes.

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

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

22 Within five days after a jeopardy assessment is made under this subsection, the
23 Secretary shall provide the taxpayer with a written statement of the information upon
24 which the Secretary relies in making the assessment. Within 30 days after receipt of
25 this written statement or, if no statement is received, within 30 days after the statement
26 was due, the taxpayer may request the Secretary to review the action taken. After
27 receipt of this request, the Secretary shall determine whether making the jeopardy
28 assessment is reasonable under all the circumstances and whether the amount assessed
29 is reasonable under all the circumstances. The Secretary shall give the taxpayer written
30 notice of this determination within 30 days after the request. The taxpayer may seek
31 judicial review of this determination as provided in G.S. 105-241.5.

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

35 (i) All assessments of taxes or additional taxes, exclusive of penalties assessed
36 thereon, shall bear interest from the time the taxes or additional taxes were due until
37 paid. On or before June 1 and December 1 of each year, the Secretary of Revenue shall
38 establish the interest rate to be in effect during the six-month period beginning on the
39 next succeeding July 1 and January 1, respectively, after giving due consideration to
40 current market conditions and to the rate that will be in effect on that date pursuant to
41 the Internal Revenue Code. If no new rate is established, the rate in effect during the
42 preceding six-month period shall continue in effect. The rate established by the
43 Secretary may not be less than five percent (5%) per year and may not exceed sixteen

1 percent (16%) per year. For refunds and assessments made between July 1, 1982, and
2 December 31, 1982, the rate shall be twelve percent (12%) per year.

3 From and after January 1, 1978, interest upon assessments and upon additional taxes
4 shall be computed at the rate established by G.S. 105-241.1(i) and shall be computed
5 without regard to any former rate of interest which might have been established by G.S.
6 105-241.1 for the taxable period for which said assessment was made, or for the period
7 within which said taxes were due to be paid.

8 (il) 'Tax' and 'additional tax,' for the purposes of this Subchapter and for the
9 purposes of Subchapters V and VIII of this Chapter, include penalties and interest, as
10 well as the principal amount of such tax or additional tax.

11 (j) This section is in addition to and not in substitution of any other provision of
12 the General Statutes relative to the assessment and collection of taxes and shall not be
13 construed as repealing any other provision of the General Statutes."

14 Sec. 6. G.S. 105-237 reads as rewritten:

15 "**§ 105-237. Discretion of Secretary over penalties. Waiver of penalties; installment**
16 **payments.**

17 (a) ~~The Secretary of Revenue shall have power, may, upon making a record of~~
18 ~~his the reasons therefor, ~~to~~ reduce or waive any penalties provided for in this~~
19 Subchapter, except the penalty provided in G.S. 105-236 relating to unpaid checks.

20 (b) The Secretary may enter into an agreement with a taxpayer for payment of tax
21 in installments if the Secretary determines that the agreement will facilitate collection of
22 the tax. The agreement may include a waiver of penalties but may not include a waiver
23 of liability for tax or interest due. The Secretary may modify or terminate the
24 agreement if one or more of the following findings is made:

25 (1) Information provided by the taxpayer in support of the agreement was
26 inaccurate or incomplete.

27 (2) Collection of tax to which the agreement applies is in jeopardy.

28 (3) The taxpayer's financial condition has changed significantly.

29 (4) The taxpayer has failed to pay an installment when due or to pay
30 another tax when due.

31 (5) The taxpayer has failed to provide information requested by the
32 Secretary.

33 The Secretary must give the taxpayer at least 30 days' written notice before modifying
34 or terminating the agreement on the grounds that the taxpayer's financial condition has
35 changed significantly. This notice must specify the basis for the Secretary's finding of a
36 significant change in the taxpayer's financial condition."

37 Sec. 7. The Department of Revenue shall report annually to the Joint
38 Legislative Commission on Governmental Operations on the quality of services
39 provided to taxpayers, including telephone and walk-in assistance and taxpayer
40 education.

41 Sec. 8. G.S. 105-242 reads as rewritten:

42 "**§ 105-242. Warrants for collection of taxes; garnishment and attachment;**
43 **certificate or judgment for taxes.**

1 (a) Warrants for Collection of Taxes. – If any tax imposed by this Subchapter, or
2 any other tax levied by the State and payable to the ~~Secretary of Revenue~~, Secretary, has
3 not been paid within 30 days after it became due and payable, and after ~~it was assessed,~~
4 30 days after the taxpayer was given the notice of final assessment required by G.S.
5 105-241.1(d1), the ~~Secretary of Revenue~~ may take either of the following actions to
6 collect the tax:

7 (1) The Secretary may issue a warrant or an order under the Secretary's
8 hand and official seal, directed to the sheriff of any county of the State,
9 commanding him to levy upon and sell the real and personal property
10 of the taxpayer found within the county for the payment of the tax,
11 including penalties and interest, and the cost of executing the warrant
12 and to return to the Secretary the money collected, within a time to be
13 specified in the warrant, not less than 60 days from the date of the
14 warrant; the sheriff upon receipt of the warrant shall proceed in all
15 respects with like effect and in the same manner prescribed by law in
16 respect to executions issued against property upon judgments of a
17 court of record, and shall be entitled to the same fees for his services in
18 executing the warrant, to be collected in the same manner.

19 (2) The Secretary may issue a warrant or order under the Secretary's hand
20 and seal to any revenue officer or other employee of the Department of
21 Revenue charged with the duty to collect taxes, commanding the
22 officer or employee to levy upon and sell the taxpayer's personal
23 property, including that described in G.S. 105-366(d), found within the
24 State for the payment of the tax, including penalties and interest.
25 Except as otherwise provided in this subdivision, the levy upon the
26 sale of personal property shall be governed by the laws regulating levy
27 and sale under execution. The person to whom the warrant is directed
28 shall proceed to levy upon and sell the personal property subject to
29 levy in the same manner and with the same powers and authority
30 normally exercised by sheriffs in levying upon and selling personal
31 property under execution, except that the property may be sold in
32 Wake County or in the county in which it was seized, in the discretion
33 of the Secretary. In addition to the notice of sale required by the laws
34 governing sale of property levied upon under execution, the Secretary
35 may advertise the sale in any reasonable manner and for any
36 reasonable period of time to produce an adequate bid for the property.
37 Levy and sale fees, plus actual advertising costs, shall be added to and
38 collected in the same manner as taxes.

39 (b) Garnishment and Attachment. – Bank deposits, rents, salaries, wages, and all
40 other choses in action or property incapable of manual levy or delivery, including
41 property held in the Escheat Fund, hereinafter called the intangible, belonging, owing,
42 or to become due to any taxpayer subject to any of the provisions of this Subchapter, or
43 which has been transferred by such taxpayer under circumstances which would permit it
44 to be levied upon if it were tangible, shall be subject to attachment or garnishment as

1 herein provided, and the person owing said intangible, matured or unmatured, or having
2 same in his possession or control, hereinafter called the garnishee, shall become liable
3 for all sums due by the taxpayer under this Subchapter to the extent of the amount of the
4 intangible belonging, owing, or to become due to the taxpayer subject to the setoff of
5 any matured or unmatured indebtedness of the taxpayer to the garnishee; provided,
6 however, the garnishee shall not become liable for any sums represented by or held
7 pursuant to any negotiable instrument issued and delivered by the garnishee to the
8 taxpayer and negotiated by the taxpayer to a bona fide holder in due course, and
9 whenever any sums due by the taxpayer and subject to garnishment are so held or
10 represented, the garnishee shall hold such sums for payment to the Secretary of Revenue
11 upon the garnishee's receipt of such negotiable instrument, unless such instrument is
12 presented to the garnishee for payment by a bona fide holder in due course in which
13 event such sums may be paid in accordance with such instrument to such holder in due
14 course. To effect such attachment or garnishment the Secretary of Revenue shall serve
15 or cause to be served upon the taxpayer and the garnishee a notice as hereinafter
16 provided, which notice may be served by any deputy or employee of the Secretary of
17 Revenue or by any officer having authority to serve summonses or may be served in any
18 manner provided in Rule 4 of the North Carolina Rules of Civil Procedure. The notice
19 shall:

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

27 If the garnishee has no defense to offer or no setoff against the taxpayer, he shall
28 within 10 days after service of said notice, answer the same by sending to the Secretary
29 of Revenue by registered or certified mail a statement to that effect, and if the amount
30 due or belonging to the taxpayer is then due or subject to his demand, it shall be
31 remitted to the Secretary with said statement, but if said amount is to mature in the
32 future, the statement shall set forth that fact and the same shall be paid to the Secretary
33 upon maturity, and any payment by the garnishee hereunder shall be a complete
34 extinguishment of any liability therefor on his part to the taxpayer. If the garnishee has
35 any defense or setoff, he shall state the same in writing under oath, and, within 10 days
36 after service of said notice, shall send two copies of said statement to the Secretary by
37 registered or certified mail; if the Secretary admits such defense or setoff, he shall so
38 advise the garnishee in writing within 10 days after receipt of such statement and the
39 attachment or garnishment shall thereupon be discharged to the amount required by
40 such defense or setoff, and any amount attached or garnished hereunder which is not
41 affected by such defense or setoff shall be remitted to the Secretary as above provided
42 in cases where the garnishee has no defense or setoff, and with like effect. If the
43 Secretary shall not admit the defense or setoff, he shall set forth in writing his objections
44 thereto and shall send a copy thereof to the garnishee within 10 days after receipt of the

1 garnishee's statement, or within such further time as may be agreed on by the garnishee,
2 and at the same time he shall file a copy of said notice, a copy of the garnishee's
3 statement, and a copy of his objections thereto in the superior court of the county where
4 the garnishee resides or does business where the issues made shall be tried as in civil
5 actions.

6 If judgment is entered in favor of the Secretary of Revenue by default or after
7 hearing, the garnishee shall become liable for the taxes, interest and penalties due by the
8 taxpayer to the extent of the amount over and above any defense or setoff of the
9 garnishee belonging, owing, or to become due to the taxpayer, but payments shall not be
10 required from amounts which are to become due to the taxpayer until the maturity
11 thereof, nor shall more than ten percent (10%) of any taxpayer's salary or wages be
12 required to be paid hereunder in any one ~~month~~ month as provided in subsection (e).
13 The garnishee may satisfy said judgment upon paying said amount, and if he fails to do
14 so, execution may issue as provided by law. From any judgment or order entered upon
15 such hearing either the Secretary of Revenue or the garnishee may appeal as provided
16 by law. If, before or after judgment, adequate security is filed for the payment of said
17 taxes, interest, penalties, and costs, the attachment or garnishment may be released or
18 execution stayed pending appeal, but the final judgment shall be paid or enforced as
19 above provided. The taxpayer's sole remedies to question his liability for said taxes,
20 interest, and penalties shall be those provided in this Subchapter, as now or hereafter
21 amended or supplemented. If any third person claims any intangible attached or
22 garnished hereunder and his lawful right thereto, or to any part thereof, is shown to the
23 Secretary, he shall discharge the attachment or garnishment to the extent necessary to
24 protect such right, and if such right is asserted after the filing of said copies as aforesaid,
25 it may be established by interpleader as now or hereafter provided by law in cases of
26 attachment and garnishment. In case such third party has no notice of proceedings
27 hereunder, he shall have the right to file his petition under oath with the Secretary at any
28 time within 12 months after said intangible is paid to him and if the Secretary finds that
29 such party is lawfully entitled thereto or to any part thereof, he shall pay the same to
30 such party as provided for refunds by G.S. 105-266.1, and if such payment is denied,
31 said party may appeal from the determination of the Secretary under the provisions of
32 G.S. 105-241.4; provided, that in taking an appeal to the superior court, said party may
33 appeal either to the Superior Court of Wake County or to the superior court of the
34 county wherein he resides or does business. The intangibles of a taxpayer shall be paid
35 or collected hereunder only to the extent necessary to satisfy said taxes, interest,
36 penalties, and costs. Except as hereinafter set forth, the remedy provided in this section
37 shall not be resorted to unless a warrant for collection or execution against the taxpayer
38 has been returned unsatisfied: Provided, however, if the Secretary is of opinion that the
39 only effective remedy is that herein provided, it shall not be necessary that a warrant for
40 collection or execution shall be first returned unsatisfied, and in no case shall it be a
41 defense to the remedy herein provided that a warrant for collection or execution has not
42 been first returned unsatisfied.

43 This subsection shall be applicable with respect to the wages, salary or other
44 compensation of officials and employees of this State and its agencies and

1 instrumentalities, officials and employees of political subdivisions of this State and their
2 agencies and instrumentalities, and also officials and employees of the United States
3 and its agencies and instrumentalities insofar as the same is permitted by the
4 Constitution and laws of the United States. In the case of State or federal employees, the
5 notice shall be served upon such employee and upon the head or chief fiscal officer of
6 the department, agency, instrumentality or institution by which the taxpayer is
7 employed. In case the taxpayer is an employee of a political subdivision of the State, the
8 notice shall be served upon such employee and upon the chief fiscal officer, or any
9 officer or person charged with making up the payrolls, or disbursing funds, of the
10 political subdivision by which the taxpayer is employed. Such head or chief officer or
11 fiscal officer or other person as specified above shall thereafter, subject to the
12 limitations herein provided, make deductions from the salary or wages due or to become
13 due the taxpayer and remit same to the Secretary until the tax, penalty, interest and costs
14 allowed by law are fully paid. Such deductions and remittances shall, **pro tanto**,
15 constitute a satisfaction of the salary or wages due the taxpayer.

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

30 Except as provided in ~~subsection (e) of G.S. 105-241.2,~~ G.S. 105-241.2(e) for
31 jeopardy levies, no sale of real or personal property shall be made under any execution
32 issued on a certificate docketed pursuant to the provisions of this subsection before the
33 administrative action of the Secretary of Revenue or the Tax Review Board is
34 completed when a hearing has been requested of the Secretary or a petition for review
35 has been filed with the Tax Review Board, nor shall such sale be made before the
36 assessment on which the certificate is based becomes final when there is no request for
37 a hearing before the Secretary or petition for review by the Tax Review Board. Neither
38 the title to real estate nor to personal property sold under execution issued upon a
39 certificate docketed under this subsection shall be drawn in question upon the ground
40 that the administrative action contemplated by this paragraph was not completed prior to
41 the sale of such property under execution. Nothing in this paragraph shall prevent the
42 sheriff to whom an execution is issued from levying upon either real or personal
43 property pending an administrative determination of tax liability and, in the case of
44 personal property, the sheriff may hold such property in his custody or may restore the

1 execution defendant to the possession thereof upon the giving of a sufficient
2 forthcoming bond. Upon a final administrative determination of the tax liability being
3 had, if the assessment or any part thereof is sustained, the sheriff shall, upon request of
4 the Secretary of Revenue, proceed to advertise and sell the property under the original
5 execution notwithstanding the original return date of the execution may have expired.

6 The owner of tangible property seized under this section may request that the
7 Secretary sell the property within 60 or more days after the request. The Secretary shall
8 comply with such a request unless the Secretary finds that compliance would not be in
9 the best interests of the State.

10 A certificate or judgment in favor of the State or the Secretary of Revenue for taxes
11 payable to the Department of Revenue, whether docketed before or after the effective
12 date of this paragraph, shall be valid and enforceable for a period of 10 years from the
13 date of docketing. When any such certificate or judgment, whether docketed before or
14 after the effective date of this paragraph, remains unsatisfied for 10 years from the date
15 of its docketing, the same shall be unenforceable and the tax represented thereby shall
16 abate. Upon the expiration of said 10-year period, the Secretary of Revenue or his duly
17 authorized deputy shall cancel of record said certificate or judgment. Any such
18 certificate or judgment now on record which has been docketed for more than 10 years
19 shall, upon the request of any interested party, be canceled of record by the Secretary of
20 Revenue or his duly authorized deputy; provided, in the event of the death of the
21 judgment debtor or his absence from the State before the expiration of the 10-year
22 period herein provided, the running of said 10-year period shall be stopped for the
23 period of his absence from the State or during the pendency of the settlement of the
24 estate and for one year thereafter, and the time elapsed during the pendency of any
25 action or actions to set aside the judgment debtor's conveyance or conveyances as
26 fraudulent, or the time during the pendency of any insolvency proceeding, or the time
27 during the existence of any statutory or judicial bar to the enforcement of the judgment
28 shall not be counted in computing the running of said 10-year period. And, provided
29 further, that any execution sale which has been instituted upon any such judgment
30 before the expiration of the 10-year period may be completed after the expiration of the
31 10-year period, notwithstanding the fact that resales may be required because of the
32 posting of increased bids. Provided further, that, notwithstanding the expiration of the
33 10-year period provided and notwithstanding the fact that no proceedings to collect the
34 judgment by execution or otherwise has been commenced within the 10-year period, the
35 Secretary of Revenue may accept any payments tendered upon said judgments after the
36 expiration of said 10-year period.

37 (c1) The Secretary may release the State tax lien on all or part of a taxpayer's
38 property if one or more of the following findings is made:

39 (1) The liability for which the lien attached has been satisfied or has
40 become unenforceable due to lapse of time.

41 (2) The lien is creating an economic hardship due to the financial
42 condition of the taxpayer.

1 (3) The fair market value of the property exceeds the tax liability and
2 release of the lien on part of the property would not hinder collection
3 of the liability.

4 (4) Release of the lien will probably facilitate, expedite, or enhance the
5 State's chances for ultimately collecting a tax due the State.

6 If the Secretary of Revenue shall find that it will be for the best interest of the State
7 in that it will probably facilitate, expedite or enhance the State's chances for ultimately
8 collecting a tax due the State, he may authorize a deputy or agent to release the lien of a
9 State tax judgment or certificate of tax liability upon a specified parcel or parcels of real
10 estate by noting such release upon the judgment docket where such certificate of tax
11 liability is recorded. Such release shall be signed by the deputy or agent and witnessed
12 by the clerk of court or his deputy or assistant and shall be in substantially the following
13 form: 'The lien of this judgment upon (insert here a short description of the property to
14 be released sufficient to identify it, such as reference to a particular tract described in a
15 recorded instrument) is hereby released, but this judgment shall continue in full force
16 and effect as to other real property to which it has heretofore attached or may hereafter
17 attach. This day of, 19.....

18
19
20 Revenue Collector N.C. Department of Revenue

21 WITNESS:

22 42 C.S.C.'

23 The release shall be noted on the judgment docket only upon conditions prescribed
24 by the Secretary and shall have effect only as to the real estate described therein and
25 shall not affect any other rights of the State under said judgment.

26 (d) Remedies Cumulative. – The remedies herein given are cumulative and in
27 addition to all other remedies provided by law for the collection of said taxes.

28 (e) Exempt Property. – Only the following property is exempt from levy,
29 attachment, and garnishment under this Article:

30 (1) Real property and tangible personal property to the extent exempt from
31 federal levy as provided in section 6334 of the Code.

32 (2) Intangibles to the extent exempt from federal levy under section
33 6334(a)(4), (6), (7), (8), (10), (11), and (12).

34 (3) Ninety percent (90%) of the taxpayer's salary or wages per month.

35 (f) Uneconomical Levy. – The Secretary shall not levy against any property if
36 the Secretary estimates before levy that the expenses the Department would incur in
37 levying against the property would exceed the fair market value of the property.

38 (g) Erroneous Lien. – A taxpayer may appeal to the Secretary after a certificate is
39 filed under subsection (c) of this section if the taxpayer alleges an error in the filing of
40 the lien. The Secretary shall make a determination of such an appeal as quickly as
41 possible. If the Secretary finds that the filing of the certificate was erroneous, the
42 Secretary shall issue a certificate of release of the lien as quickly as possible."

43 Sec. 9. G.S. 105-241.2(e) reads as rewritten:

1 "(e) At any time the Secretary of Revenue shall have authority, if in his opinion,
2 such action is necessary for the protection of the interest of the State, to proceed at once
3 to levy the assessment for the amount of the tax against the property of the taxpayer
4 seeking the administrative review. In levying said assessment the Secretary shall make a
5 certificate setting forth the essential parts relating to the tax, including the amount
6 thereof asserted to be due, the date when same is asserted to have become due and
7 payable, the person, firm, or corporation chargeable therewith, and the nature of the tax.
8 Under his hand and seal the Secretary shall transmit said certificate to the clerk of the
9 superior court of any county in which the taxpayer resides or has property; whereupon,
10 it shall be the duty of the clerk of the superior court of the county to docket the said
11 certificate and to index the same on the cross index of judgments. When so docketed
12 and indexed, said certificate of tax liability shall constitute a lien upon the property of
13 the taxpayer to the same extent as that provided for by G.S. 105-241. No execution shall
14 issue on said certificate before final determination of the administrative review by the
15 Tax Review Board; provided, however, if the Secretary determines that the collection of
16 the tax would be jeopardized by delay, he may cause execution to be issued, as provided
17 in this Chapter, immediately against the personal property of the taxpayer unless the
18 taxpayer files with the Secretary a bond in the amount of the asserted liability for tax,
19 penalty and interest. If upon such final administrative determination the tax asserted or
20 any part thereof is sustained, execution may issue on said certificate at the request of the
21 Secretary of Revenue, and the sheriff shall proceed to advertise and sell the property of
22 the taxpayer.

23 Within five days after a jeopardy levy is made under this subsection, the Secretary
24 shall provide the taxpayer with a written statement of the information upon which the
25 Secretary relies in making the levy. Within 30 days after receipt of this statement or, if
26 no statement was received, within 30 days after the statement was due, the taxpayer may
27 request the Secretary to review the action taken. After receipt of this request, the
28 Secretary shall determine whether the levy is reasonable under the circumstances. The
29 Secretary shall give the taxpayer written notice of this determination within 30 days
30 after the request. The taxpayer may seek judicial review of this determination as
31 provided in G.S. 105-241.5."

32 Sec. 10. Article 9 of Chapter 105 of the General Statutes is amended by
33 adding a new section to read:

34 **"§ 105-241.5. Appeal of jeopardy actions.**

35 Within 90 days after the earlier of (i) a taxpayer's receipt of the Secretary's
36 determination under G.S. 105-241.1(g) or G.S. 105-241.2(e) or (ii) the date the
37 Secretary's determination under G.S. 105-241.1(g) or G.S. 105-241.2(e) was due, the
38 taxpayer may bring a civil action in the Superior Court of Wake County seeking review
39 of the jeopardy action. Within 20 days after the action is filed, the court shall
40 determine:

- 41 (1) In the case of a jeopardy assessment, whether the assessment is
42 reasonable under the circumstances and whether the amount assessed
43 is appropriate under the circumstances.

1 (2) In the case of a jeopardy levy, whether the levy is reasonable under the
2 circumstances.

3 If the court determines that an action of the Secretary is unreasonable or
4 inappropriate, the court may order the Secretary to take any action the court finds
5 appropriate. If the taxpayer shows reasonable grounds why the 20-day limit should be
6 extended, the court may grant an extension of not more than 40 additional days."

7 Sec. 11. This act becomes effective January 1, 1994.