

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

2

HOUSE BILL 1028
Committee Substitute Favorable 6/24/93

Short Title: Taxpayer Rights.

(Public)

Sponsors:

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
16 collection of a tax, including assessment, jeopardy assessment,
17 enforcement of 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 a
38 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, other than an in-person interview concerning any of the following:

4 (1) A criminal investigation.

5 (2) The determination or collection of a tax imposed by Article 2D of this
 6 Chapter.

7 (3) The assessment under G.S. 105-241.1(g) of a tax whose collection is in
 8 jeopardy.

9 (4) The levy or execution under G.S. 105-241.2(e) of an assessment whose
 10 collection is in jeopardy.

11 (b) Recording of Interview. – The Department shall allow a taxpayer to make an
 12 audio recording of an interview at the taxpayer's expense and using the taxpayer's
 13 equipment. The Department may make an audio recording of an interview at its own
 14 expense and using its own equipment. The Department shall, upon request of the
 15 taxpayer, provide the taxpayer a transcript of an interview recorded by the Department;
 16 the Department may charge the taxpayer for the cost of the requested transcription and
 17 reproduction of the transcript.

18 (c) Disclosure of Procedure. – At or before an initial interview relating to the
 19 determination of a tax, the Department shall provide the taxpayer a written explanation
 20 of the audit process and the taxpayer's rights in the process. At or before an initial
 21 interview relating to the collection of a tax, the Department shall provide the taxpayer a
 22 written explanation of the collection process and the taxpayer's rights in the process.

23 (d) Right of Consultation. – A taxpayer may authorize a person to represent the
 24 taxpayer in an interview if the person has a written power of attorney executed by the
 25 taxpayer. The Department may not require a taxpayer to accompany the taxpayer's
 26 representative to the interview unless the Secretary has summoned the taxpayer
 27 pursuant to G.S. 105-258.

28 (e) Suspension of Interview. – The Department shall suspend an interview
 29 relating to the determination of a tax if, at any time during the interview, the taxpayer
 30 expresses the desire to consult with a person permitted to represent the taxpayer before
 31 the Department."

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

33 "**§ 105-264. Effect of ~~interpretation, regulation, or ruling.~~ Secretary's interpretation**
 34 **of revenue laws.**

35 It shall be the duty of the Secretary of Revenue to ~~construe-interpret~~ interpret all sections of this
 36 ~~Subchapter that are laws~~ administered by the Secretary and all sections of Subchapter V.
 37 Secretary. The Secretary's interpretation of these ~~sections-laws~~ laws shall be consistent with
 38 the applicable ~~regulations. Interpretations~~ rules.

39 ~~An interpretation by the Secretary of Revenue shall be is~~ **prima facie** ~~correct, and a~~
 40 ~~protection to the officers and taxpayers affected thereby. Whenever~~ correct. When the
 41 Secretary of Revenue shall ~~construe~~ any provisions of the revenue laws administered by
 42 him and shall issue or publish to taxpayers in writing any regulation or ruling so
 43 ~~construing the effect or operation of any such laws, such ruling or regulation shall be~~
 44 interprets a law by adopting a rule or publishing a bulletin on the law, the interpretation

1 is a protection to the officers and taxpayers affected thereby by the interpretation, and
2 taxpayers shall be are entitled to rely upon such regulation or ruling. In the event the
3 interpretation. If the Secretary of Revenue shall change, modify, repeal, abrogate, or
4 alter any such regulation or ruling any changes a rule or a bulletin, a taxpayer who has
5 relied upon the construction or interpretation contained in the Secretary's previous
6 ruling or regulation shall not be rule or bulletin before it was changed is not liable for
7 any penalty or additional assessment on account of any tax that accrued before the rule
8 or bulletin was changed and was not paid by reason of reliance upon such accrued prior
9 to the date of the change, modification, repeal, abrogation, or alteration by the
10 Secretary, and during the effective period of such prior ruling or regulation. Provided,
11 that nothing herein contained shall prevent any such change in construction or
12 interpretation of the provisions of this Chapter by the Secretary of Revenue from being
13 effective from and after the date of its issuance or promulgation, or the assessment of
14 any tax thereunder. the rule or bulletin. If a taxpayer requests in writing specific advice
15 from the Department and receives in response erroneous written advice, the taxpayer is
16 not liable for any penalty or additional assessment attributable to the erroneous advice
17 furnished by the Department to the extent the advice was reasonably relied upon by the
18 taxpayer and the penalty or additional assessment did not result from the taxpayer's
19 failure to provide adequate or accurate information.

20 This section does not prevent the Secretary from changing an interpretation and it
21 does not prevent a change in an interpretation from applying on and after the effective
22 date of the change."

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

24 **"§ 105-260. Deputies and clerks. Evaluation of Department personnel.**

25 The Secretary may appoint such deputies, clerks and assistants under his direction as
26 may be necessary to administer the laws relating to the assessment and collection of all
27 taxes provided for in this Subchapter; may remove and discharge same at his discretion,
28 and shall fix their compensation within the rules and regulations prescribed by law. not
29 use records of tax enforcement results, or production goals based on these records, as
30 the sole criteria in evaluating employees of the Department who are directly involved in
31 tax collection activities or in evaluating the immediate supervisors of these employees.
32 The Secretary must consider records of taxpayer complaints that named an employee as
33 discourteous, unresponsive, or incompetent in evaluating the employee."

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

35 **"§ 105-241.1. Additional taxes; assessment procedure.**

36 (a) If the Secretary of Revenue discovers from the examination of any return or
37 otherwise that any tax or additional tax is due from any taxpayer, he shall give notice to
38 the taxpayer in writing of the kind and amount of tax which is due and of his intent to assess the
39 same, which notice shall contain advice to the effect that unless application for a hearing is
40 made within the time specified in subsection (c), the proposed assessment will become
41 conclusive and final. the Secretary shall notify the taxpayer in writing of the proposed
42 assessment. The notice shall describe the basis for the proposed assessment and shall
43 identify the amounts of any tax, interest, additions to tax, and penalties included in the
44 proposed assessment. The notice shall advise the taxpayer that unless the taxpayer

1 requests a hearing as provided in this section, the proposed assessment shall become
2 final.

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

7 (b) The notice required to be given in subsection (a) may be delivered to the
8 taxpayer by an agent of the Secretary or may be sent by mail to the last known address
9 of the taxpayer and such notice will be deemed to have been received in due course of
10 the mail unless the taxpayer shall make an affidavit to the contrary within 90 days after
11 such notice is mailed, in which event the taxpayer shall be heard by the Secretary in all
12 respects as if he had made timely application.

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

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

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

35 (d1) The Secretary shall notify the taxpayer when a proposed assessment becomes
36 final and is therefore collectible. The notice shall identify the amounts of any tax,
37 interest, additions to tax, and penalties included in the assessment. The notice shall
38 include or be accompanied by a brief statement in simple and nontechnical terms of all
39 of the following:

40 (1) The Department's authority to, and procedure for, levy on and sale of
41 the taxpayer's property.

42 (2) The taxpayer's available administrative appeals regarding the levy and
43 sale of property, including the procedures for appeal.

1 (3) Other options available to the taxpayer that could prevent levy on the
2 property.

3 (4) Procedures to redeem property and obtain release of a lien on property.

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

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

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

27 (g) Notwithstanding any other provision of this section, the Secretary of Revenue
28 shall have authority at any time within the applicable period of limitations to proceed at
29 once to assess any tax or additional tax which he finds is due from a taxpayer if, in his
30 opinion, the collection of such tax is in jeopardy and immediate assessment is necessary
31 in order to protect the interest of the State, ~~provided, however, that if an assessment is made~~
32 ~~pursuant to the authority set forth in this subsection before the notice required by subsection (a)~~
33 ~~is given, such assessment shall not be valid unless the notice required by subsection (a) shall be~~
34 ~~given within 30 days after the date of such assessment.~~ State. For a jeopardy assessment,
35 the Secretary may give the taxpayer the notice of proposed assessment required by
36 subsection (a) any time within 30 days after the jeopardy assessment is made. The
37 taxpayer may request a hearing on the assessment by following the procedure described
38 in the notice.

39 In addition, within five days after a jeopardy assessment is made under this
40 subsection that is not the result of a criminal investigation or of a liability for a tax
41 imposed under Article 2D of this Chapter, the Secretary must provide the taxpayer with
42 a written statement of the information upon which the Secretary relied in making the
43 assessment. Within 30 days after receipt of this written statement or, if no statement is
44 received, within 30 days after the statement was due, the taxpayer may request the

1 Secretary to review the action taken. After receipt of this request, the Secretary shall
2 determine whether making the jeopardy assessment was reasonable under all the
3 circumstances and whether the amount assessed is reasonable under all the
4 circumstances. The Secretary must give the taxpayer written notice of this
5 determination within 30 days after the request. The taxpayer may seek judicial review
6 of this determination as provided in G.S. 105-241.5.

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

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

21 From and after January 1, 1978, interest upon assessments and upon additional taxes
22 shall be computed at the rate established by G.S. 105-241.1(i) and shall be computed
23 without regard to any former rate of interest which might have been established by G.S.
24 105-241.1 for the taxable period for which said assessment was made, or for the period
25 within which said taxes were due to be paid.

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

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

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

33 "**§ 105-237. Discretion of Secretary over penalties. Waiver of penalties; installment**
34 **payments.**

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

38 (b) Installment Payments. — After a proposed assessment of a tax becomes final,
39 the Secretary may enter into an agreement with the taxpayer for payment of the tax in
40 installments if the Secretary determines that the agreement will facilitate collection of
41 the tax. The agreement may include a waiver of penalties but may not include a waiver
42 of liability for tax or interest due. The Secretary may modify or terminate the
43 agreement if one or more of the following findings is made:

- 1 (1) Information provided by the taxpayer in support of the agreement was
2 inaccurate or incomplete.
- 3 (2) Collection of tax to which the agreement applies is in jeopardy.
- 4 (3) The taxpayer's financial condition has changed.
- 5 (4) The taxpayer has failed to pay an installment when due or to pay
6 another tax when due.
- 7 (5) The taxpayer has failed to provide information requested by the
8 Secretary.

9 The Secretary must give a taxpayer who has entered into an installment agreement at
10 least 30 days' written notice before modifying or terminating the agreement on the
11 grounds that the taxpayer's financial condition has changed unless the taxpayer failed to
12 disclose or concealed assets or income when the agreement was made or the taxpayer
13 has acquired assets since the agreement was made that can satisfy all or part of the tax
14 liability. A notice must specify the basis for the Secretary's finding of a change in the
15 taxpayer's financial condition."

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

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

21 **"§ 105-242. Warrants for collection of taxes; garnishment and attachment;**
22 **certificate or judgment for taxes.**

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

- 28 (1) The Secretary may issue a warrant or an order under the Secretary's
29 hand and official seal, directed to the sheriff of any county of the State,
30 commanding him to levy upon and sell the real and personal property
31 of the taxpayer found within the county for the payment of the tax,
32 including penalties and interest, and the cost of executing the warrant
33 and to return to the Secretary the money collected, within a time to be
34 specified in the warrant, not less than 60 days from the date of the
35 warrant; the sheriff upon receipt of the warrant shall proceed in all
36 respects with like effect and in the same manner prescribed by law in
37 respect to executions issued against property upon judgments of a
38 court of record, and shall be entitled to the same fees for his services in
39 executing the warrant, to be collected in the same manner.
- 40 (2) The Secretary may issue a warrant or order under the Secretary's hand
41 and seal to any revenue officer or other employee of the Department of
42 Revenue charged with the duty to collect taxes, commanding the
43 officer or employee to levy upon and sell the taxpayer's personal
44 property, including that described in G.S. 105-366(d), found within the

1 State for the payment of the tax, including penalties and interest.
2 Except as otherwise provided in this subdivision, the levy upon the
3 sale of personal property shall be governed by the laws regulating levy
4 and sale under execution. The person to whom the warrant is directed
5 shall proceed to levy upon and sell the personal property subject to
6 levy in the same manner and with the same powers and authority
7 normally exercised by sheriffs in levying upon and selling personal
8 property under execution, except that the property may be sold in
9 Wake County or in the county in which it was seized, in the discretion
10 of the Secretary. In addition to the notice of sale required by the laws
11 governing sale of property levied upon under execution, the Secretary
12 may advertise the sale in any reasonable manner and for any
13 reasonable period of time to produce an adequate bid for the property.
14 Levy and sale fees, plus actual advertising costs, shall be added to and
15 collected in the same manner as taxes.

16 (b) Garnishment and Attachment. – Bank deposits, rents, salaries, wages, and all
17 other choses in action or property incapable of manual levy or delivery, including
18 property held in the Escheat Fund, hereinafter called the intangible, belonging, owing,
19 or to become due to any taxpayer subject to any of the provisions of this Subchapter, or
20 which has been transferred by such taxpayer under circumstances which would permit it
21 to be levied upon if it were tangible, shall be subject to attachment or garnishment as
22 herein provided, and the person owing said intangible, matured or unmatured, or having
23 same in his possession or control, hereinafter called the garnishee, shall become liable
24 for all sums due by the taxpayer under this Subchapter to the extent of the amount of the
25 intangible belonging, owing, or to become due to the taxpayer subject to the setoff of
26 any matured or unmatured indebtedness of the taxpayer to the garnishee; provided,
27 however, the garnishee shall not become liable for any sums represented by or held
28 pursuant to any negotiable instrument issued and delivered by the garnishee to the
29 taxpayer and negotiated by the taxpayer to a bona fide holder in due course, and
30 whenever any sums due by the taxpayer and subject to garnishment are so held or
31 represented, the garnishee shall hold such sums for payment to the Secretary of Revenue
32 upon the garnishee's receipt of such negotiable instrument, unless such instrument is
33 presented to the garnishee for payment by a bona fide holder in due course in which
34 event such sums may be paid in accordance with such instrument to such holder in due
35 course. To effect such attachment or garnishment the Secretary of Revenue shall serve
36 or cause to be served upon the taxpayer and the garnishee a notice as hereinafter
37 provided, which notice may be served by any deputy or employee of the Secretary of
38 Revenue or by any officer having authority to serve summonses or may be served in any
39 manner provided in Rule 4 of the North Carolina Rules of Civil Procedure. The notice
40 shall:

- 41 (1) Show the name of the taxpayer, and if known his Social Security
42 number or federal tax identification number and his address;

- 1 (2) Show the nature and amount of the tax, and the interest and penalties
2 thereon, and the year or years for which the same were levied or
3 assessed, and
4 (3) Be accompanied by a copy of this subsection, and thereupon the
5 procedure shall be as follows:

6 If the garnishee has no defense to offer or no setoff against the taxpayer, he shall
7 within 10 days after service of said notice, answer the same by sending to the Secretary
8 of Revenue by registered or certified mail a statement to that effect, and if the amount
9 due or belonging to the taxpayer is then due or subject to his demand, it shall be
10 remitted to the Secretary with said statement, but if said amount is to mature in the
11 future, the statement shall set forth that fact and the same shall be paid to the Secretary
12 upon maturity, and any payment by the garnishee hereunder shall be a complete
13 extinguishment of any liability therefor on his part to the taxpayer. If the garnishee has
14 any defense or setoff, he shall state the same in writing under oath, and, within 10 days
15 after service of said notice, shall send two copies of said statement to the Secretary by
16 registered or certified mail; if the Secretary admits such defense or setoff, he shall so
17 advise the garnishee in writing within 10 days after receipt of such statement and the
18 attachment or garnishment shall thereupon be discharged to the amount required by
19 such defense or setoff, and any amount attached or garnished hereunder which is not
20 affected by such defense or setoff shall be remitted to the Secretary as above provided
21 in cases where the garnishee has no defense or setoff, and with like effect. If the
22 Secretary shall not admit the defense or setoff, he shall set forth in writing his objections
23 thereto and shall send a copy thereof to the garnishee within 10 days after receipt of the
24 garnishee's statement, or within such further time as may be agreed on by the garnishee,
25 and at the same time he shall file a copy of said notice, a copy of the garnishee's
26 statement, and a copy of his objections thereto in the superior court of the county where
27 the garnishee resides or does business where the issues made shall be tried as in civil
28 actions.

29 If judgment is entered in favor of the Secretary of Revenue by default or after
30 hearing, the garnishee shall become liable for the taxes, interest and penalties due by the
31 taxpayer to the extent of the amount over and above any defense or setoff of the
32 garnishee belonging, owing, or to become due to the taxpayer, but payments shall not be
33 required from amounts which are to become due to the taxpayer until the maturity
34 thereof, nor shall more than ten percent (10%) of any taxpayer's salary or wages be
35 required to be paid hereunder in any one ~~month~~ month as provided in subdivision (e)(4)
36 of this section. The garnishee may satisfy said judgment upon paying said amount, and
37 if he fails to do so, execution may issue as provided by law. From any judgment or
38 order entered upon such hearing either the Secretary of Revenue or the garnishee may
39 appeal as provided by law. If, before or after judgment, adequate security is filed for
40 the payment of said taxes, interest, penalties, and costs, the attachment or garnishment
41 may be released or execution stayed pending appeal, but the final judgment shall be
42 paid or enforced as above provided. The taxpayer's sole remedies to question his
43 liability for said taxes, interest, and penalties shall be those provided in this Subchapter,
44 as now or hereafter amended or supplemented. If any third person claims any intangible

1 attached or garnished hereunder and his lawful right thereto, or to any part thereof, is
2 shown to the Secretary, he shall discharge the attachment or garnishment to the extent
3 necessary to protect such right, and if such right is asserted after the filing of said copies
4 as aforesaid, it may be established by interpleader as now or hereafter provided by law
5 in cases of attachment and garnishment. In case such third party has no notice of
6 proceedings hereunder, he shall have the right to file his petition under oath with the
7 Secretary at any time within 12 months after said intangible is paid to him and if the
8 Secretary finds that such party is lawfully entitled thereto or to any part thereof, he shall
9 pay the same to such party as provided for refunds by G.S. 105-266.1, and if such
10 payment is denied, said party may appeal from the determination of the Secretary under
11 the provisions of G.S. 105-241.4; provided, that in taking an appeal to the superior
12 court, said party may appeal either to the Superior Court of Wake County or to the
13 superior court of the county wherein he resides or does business. The intangibles of a
14 taxpayer shall be paid or collected hereunder only to the extent necessary to satisfy said
15 taxes, interest, penalties, and costs. Except as hereinafter set forth, the remedy provided
16 in this section shall not be resorted to unless a warrant for collection or execution
17 against the taxpayer has been returned unsatisfied: Provided, however, if the Secretary
18 is of opinion that the only effective remedy is that herein provided, it shall not be
19 necessary that a warrant for collection or execution shall be first returned unsatisfied,
20 and in no case shall it be a defense to the remedy herein provided that a warrant for
21 collection or execution has not been first returned unsatisfied.

22 This subsection shall be applicable with respect to the wages, salary or other
23 compensation of officials and employees of this State and its agencies and
24 instrumentalities, officials and employees of political subdivisions of this State and their
25 agencies and instrumentalities, and also officials and employees of the United States
26 and its agencies and instrumentalities insofar as the same is permitted by the
27 Constitution and laws of the United States. In the case of State or federal employees,
28 the notice shall be served upon such employee and upon the head or chief fiscal officer
29 of the department, agency, instrumentality or institution by which the taxpayer is
30 employed. In case the taxpayer is an employee of a political subdivision of the State,
31 the notice shall be served upon such employee and upon the chief fiscal officer, or any
32 officer or person charged with making up the payrolls, or disbursing funds, of the
33 political subdivision by which the taxpayer is employed. Such head or chief officer or
34 fiscal officer or other person as specified above shall thereafter, subject to the
35 limitations herein provided, make deductions from the salary or wages due or to become
36 due the taxpayer and remit same to the Secretary until the tax, penalty, interest and costs
37 allowed by law are fully paid. Such deductions and remittances shall, **pro tanto**,
38 constitute a satisfaction of the salary or wages due the taxpayer.

39 (c) Certificate or Judgment for Taxes. – In addition to the remedy herein
40 provided, the Secretary of Revenue is authorized and empowered to make a certificate
41 setting forth the essential particulars relating to the said tax, including the amount
42 thereof, the date when the same was due and payable, the person, firm, or corporation
43 chargeable therewith, and the nature of the tax, and under his hand and seal transmit the
44 same to the clerk of the superior court of any county in which the delinquent taxpayer

1 resides or has property; whereupon, it shall be the duty of the clerk of the superior court
2 of the county to docket the said certificate and index the same on the cross index of
3 judgments, and execution may issue thereon with the same force and effect as an
4 execution upon any other judgment of the superior court (said tax shall become a lien on
5 realty only from the date of the docketing of such certificate in the office of the clerk of
6 the superior court and on personalty only from the date of the levy on such personalty
7 and upon the execution thereon no homestead or personal property exemption shall be
8 ~~allowed~~ allowed except as provided in subdivision (e)(1) of this section).

9 Except as provided in ~~subsection (e) of G.S. 105-241.2,~~ G.S. 105-241.2(e) for
10 jeopardy levies, no sale of real or personal property shall be made under any execution
11 issued on a certificate docketed pursuant to the provisions of this subsection before the
12 administrative action of the Secretary of Revenue or the Tax Review Board is
13 completed when a hearing has been requested of the Secretary or a petition for review
14 has been filed with the Tax Review Board, nor shall such sale be made before the
15 assessment on which the certificate is based becomes final when there is no request for
16 a hearing before the Secretary or petition for review by the Tax Review Board. Neither
17 the title to real estate nor to personal property sold under execution issued upon a
18 certificate docketed under this subsection shall be drawn in question upon the ground
19 that the administrative action contemplated by this paragraph was not completed prior to
20 the sale of such property under execution. Nothing in this paragraph shall prevent the
21 sheriff to whom an execution is issued from levying upon either real or personal
22 property pending an administrative determination of tax liability and, in the case of
23 personal property, the sheriff may hold such property in his custody or may restore the
24 execution defendant to the possession thereof upon the giving of a sufficient
25 forthcoming bond. Upon a final administrative determination of the tax liability being
26 had, if the assessment or any part thereof is sustained, the sheriff shall, upon request of
27 the Secretary of Revenue, proceed to advertise and sell the property under the original
28 execution notwithstanding the original return date of the execution may have expired.

29 The owner of tangible property seized under this section may request the Secretary
30 to authorize the sale of the property under execution within 60 or more days after the
31 request is made. The Secretary shall authorize the sale unless the Secretary finds that
32 selling the property would not be in the best interests of the State. When property is
33 sold at the request of the owner, the Department shall receive from the sale of the
34 property the administrative expenses it incurred in having the property sold.

35 A certificate or judgment in favor of the State or the Secretary of Revenue for taxes
36 payable to the Department of Revenue, whether docketed before or after the effective
37 date of this paragraph, shall be valid and enforceable for a period of 10 years from the
38 date of docketing. When any such certificate or judgment, whether docketed before or
39 after the effective date of this paragraph, remains unsatisfied for 10 years from the date
40 of its docketing, the same shall be unenforceable and the tax represented thereby shall
41 abate. Upon the expiration of said 10-year period, the Secretary of Revenue or his duly
42 authorized deputy shall cancel of record said certificate or judgment. Any such
43 certificate or judgment now on record which has been docketed for more than 10 years
44 shall, upon the request of any interested party, be canceled of record by the Secretary of

1 Revenue or his duly authorized deputy; provided, in the event of the death of the
 2 judgment debtor or his absence from the State before the expiration of the 10-year
 3 period herein provided, the running of said 10-year period shall be stopped for the
 4 period of his absence from the State or during the pendency of the settlement of the
 5 estate and for one year thereafter, and the time elapsed during the pendency of any
 6 action or actions to set aside the judgment debtor's conveyance or conveyances as
 7 fraudulent, or the time during the pendency of any insolvency proceeding, or the time
 8 during the existence of any statutory or judicial bar to the enforcement of the judgment
 9 shall not be counted in computing the running of said 10-year period. And, provided
 10 further, that any execution sale which has been instituted upon any such judgment
 11 before the expiration of the 10-year period may be completed after the expiration of the
 12 10-year period, notwithstanding the fact that resales may be required because of the
 13 posting of increased bids. Provided further, that, notwithstanding the expiration of the
 14 10-year period provided and notwithstanding the fact that no proceedings to collect the
 15 judgment by execution or otherwise has been commenced within the 10-year period, the
 16 Secretary of Revenue may accept any payments tendered upon said judgments after the
 17 expiration of said 10-year period.

18 (c1) Release of Lien. – The Secretary shall release the State tax lien on a
 19 taxpayer's property if the liability for which the lien attached has been satisfied. The
 20 Secretary may release the State tax lien on all or part of a taxpayer's property if one or
 21 more of the following findings is made:

- 22 (1) The liability for which the lien attached has become unenforceable due
 23 to lapse of time.
- 24 (2) The lien is creating an economic hardship due to the financial
 25 condition of the taxpayer.
- 26 (3) The fair market value of the property exceeds the tax liability and
 27 release of the lien on part of the property would not hinder collection
 28 of the liability.
- 29 (4) Release of the lien will probably facilitate, expedite, or enhance the
 30 State's chances for ultimately collecting a tax due the State.

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

43

44

1 Revenue ~~Collector~~ Officer, N.C. Department of Revenue

2 WITNESS:

3 42 C.S.C.'

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

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

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

11 (1) The taxpayer's principal residence, unless the Secretary approves of
12 the levy in writing or the Secretary finds that collection of the tax is in
13 jeopardy.

14 (2) Tangible personal property that is exempt from federal levy as
15 provided in section 6334 of the Code.

16 (3) Intangible personal property that is exempt from federal levy under
17 section 6334 of the Code.

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

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

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

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

28 "(e) At any time the Secretary of Revenue shall have authority, if in his opinion,
29 such action is necessary for the protection of the interest of the State, to proceed at once
30 to levy the assessment for the amount of the tax against the property of the taxpayer
31 seeking the administrative review. In levying said assessment the Secretary shall make
32 a certificate setting forth the essential parts relating to the tax, including the amount
33 thereof asserted to be due, the date when same is asserted to have become due and
34 payable, the person, firm, or corporation chargeable therewith, and the nature of the tax.
35 Under his hand and seal the Secretary shall transmit said certificate to the clerk of the
36 superior court of any county in which the taxpayer resides or has property; whereupon,
37 it shall be the duty of the clerk of the superior court of the county to docket the said
38 certificate and to index the same on the cross index of judgments. When so docketed
39 and indexed, said certificate of tax liability shall constitute a lien upon the property of
40 the taxpayer to the same extent as that provided for by G.S. 105-241. No execution
41 shall issue on said certificate before final determination of the administrative review by
42 the Tax Review Board; provided, however, if the Secretary determines that the
43 collection of the tax would be jeopardized by delay, he may cause execution to be
44 issued, as provided in this Chapter, immediately against the personal property of the

1 taxpayer unless the taxpayer files with the Secretary a bond in the amount of the
2 asserted liability for tax, penalty and interest. If upon such final administrative
3 determination the tax asserted or any part thereof is sustained, execution may issue on
4 said certificate at the request of the Secretary of Revenue, and the sheriff shall proceed
5 to advertise and sell the property of the taxpayer.

6 Within five days after a jeopardy levy is made under this subsection that is not the
7 result of a criminal investigation or of a liability for a tax imposed under Article 2D of
8 this Chapter, the Secretary must provide the taxpayer with a written statement of the
9 information upon which the Secretary relied in making the levy. Within 30 days after
10 receipt of this statement or, if no statement was received, within 30 days after the
11 statement was due, the taxpayer may request the Secretary to review the action taken.
12 After receipt of this request, the Secretary shall determine whether the levy was
13 reasonable under the circumstances. The Secretary shall give the taxpayer written
14 notice of this determination within 30 days after the request. The taxpayer may seek
15 judicial review of this determination as provided in G.S. 105-241.5."

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

18 **"§ 105-241.5. Appeal of certain jeopardy actions.**

19 Within 90 days after the earlier of the date a taxpayer received or should have
20 received a determination of the Secretary concerning a jeopardy assessment under G.S.
21 105-241.1(g) or a jeopardy levy under G.S. 105-241.2(e), the taxpayer may bring a civil
22 action, in the Superior Court of Wake County or of the county in North Carolina in
23 which the taxpayer resides, seeking review of the jeopardy action. Within 20 days after
24 the action is filed, the court shall determine:

- 25 (1) In the case of a jeopardy assessment, whether the assessment is
26 reasonable under the circumstances and whether the amount assessed
27 is appropriate under the circumstances.
28 (2) In the case of a jeopardy levy, whether the levy is reasonable under the
29 circumstances.

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

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