

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H

1

HOUSE BILL 1281*

Short Title: Repeal 30-Day Rule.

(Public)

Sponsors: Representatives Wainwright; Nichols, Hensley, Hill, R. Hunter, and Warner.

Referred to: Finance.

May 22, 1996

A BILL TO BE ENTITLED

1 AN ACT TO REPEAL THE THIRTY-DAY RULE FOR DEMANDING A REFUND
2 OF AN ILLEGAL TAX.
3

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 105-267 is repealed.

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

8 "**§ 105-266.2. Post-deprivation remedy for illegal or invalid taxes.**

9 No court of this State shall entertain a suit of any kind brought for the purpose of
10 preventing the collection of any tax. Whenever a person has a valid defense to the
11 enforcement of the collection of a tax, the person shall pay the tax to the proper officer,
12 and that payment shall be without prejudice to any defense of rights the person may have
13 regarding the tax. At any time within the period set by the statute of limitations in G.S.
14 105-266(c), the taxpayer may demand a refund of the tax paid in writing from the
15 Secretary and if the tax is not refunded within 90 days thereafter, may sue the Secretary
16 in the courts of the State for the amount demanded. The suit may be brought in the
17 Superior Court of Wake County, or in the county in which the taxpayer resides at any
18 time within three years after the expiration of the 90-day period allowed for making the
19 refund. If after trial it is determined that all or part of the tax was levied or assessed for
20 an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment

1 shall be rendered therefor, with interest, and the judgment shall be collected as in other
2 cases. The amount of taxes for which judgment is rendered in such an action shall be
3 refunded by the State. G.S. 105-241.2 provides an alternate procedure for a taxpayer to
4 contest a tax and is not in conflict with or superseded by this section."

5 Sec. 3. This act becomes effective July 1, 1996, and applies to taxes paid on or
6 after that date.