

VIII. GENERAL ADMINISTRATION
(Article 9)

A. Statute of Limitations; Assessment Procedure; Appeal and Recovery Actions (G.S. 105-241.1, G.S. 105-241.2, G.S. 105-241.3, G.S. 105-266, G.S. 105-267)

1. Statute of Limitations for Assessments (G.S. 105-241.1(e))

If a return is filed and no fraud is involved, the statute of limitations for an assessment is three years from the date the return was filed or the date the return was due to have been filed, whichever is later.

Any tax or additional tax due from the taxpayer may be assessed at any time if (1) no proper application for a license or no return has been filed, (2) a false or fraudulent application or return has been filed, or (3) there has been an attempt in any manner to fraudulently defeat or evade tax.

2. Procedure for Proposing Assessment and Filing Objection Thereto (G.S. 105-241.1(a), (b) & (c))

The Secretary and his agents have the power to examine the books, records, and other relevant data to determine the taxes owed by a corporation. Where it is impossible to obtain accurate and reliable information, an assessment may be made from the best information available.

Upon determining that the taxpayer owes tax or additional tax, the Secretary notifies the taxpayer in writing of the kind and amount of tax due. The assessment thus proposed becomes final at the expiration of 30 days and the tax is collectible at that time, **UNLESS:**

- The taxpayer objects to the proposed assessment and makes written request for a hearing (See “Hearing Before the Secretary of Revenue” below) before the Secretary of Revenue within 30 days after the mailing or delivery of the notice of proposed assessment, or
- The taxpayer within the 30 day period requests of the Secretary a written statement of the information and evidence upon which the proposed assessment is based. *This information must be furnished to the taxpayer within 45 days after the request is filed.* If at this time a hearing is desired, the taxpayer must file a written request for a hearing (See “Hearing Before the Secretary of Revenue” below) within 30 days after the written statement was mailed.

3. Hearing Before the Secretary of Revenue

a. Place, Date & Time Requirements

The Secretary must set the time and place for the hearing and notify the taxpayer of the time and place within 60 days after the request for a hearing and at least 10 days before the date set for the hearing. The date set for the hearing must be within 90 days after the timely request for the hearing was filed or at a later date mutually agreed upon by the taxpayer and the Secretary. The date set for the hearing may be postponed once at the request of the taxpayer and once at the request of the Secretary for a period of up to 90 days or for a longer period mutually agreed upon by the taxpayer and the Secretary.

b. Hearing Decision

The Secretary, within 90 days after a hearing is conducted on a proposed assessment, must make a decision on the proposed assessment and notify the taxpayer of the decision. When a taxpayer requests a hearing, the proposed assessment does not become due and collectible until the Secretary has held a hearing and rendered a decision affirming the assessment; **However**, if the Secretary feels that the immediate assessment of a tax is necessary to protect the State's interest, the Secretary may make a jeopardy assessment under G.S. 105-241.1(g).

4. Appeal and Recovery Actions

a. Civil Suit, Recovery of Taxes

Within 30 days after the Secretary's decision affirming the assessment, the corporation may pay the assessment and bring civil suit for its recovery as provided in Section 105-267 of the General Statutes.

b. Administrative Review by Tax Review Board

Without paying the assessment, the corporation may obtain an administrative review with respect to the corporation's liability for the tax or additional tax assessed by the Secretary. This review may be obtained only if the corporation has obtained a hearing before the Secretary and the Secretary has rendered a final decision on the corporation's tax liability. To obtain this review the corporation must take the following actions:

- Within 30 days of the Secretary's final decision, file with the Board a notice of intent to file a petition for review, with a copy furnished to the Secretary of Revenue.
- Within 60 days after filing a notice of intent with the Board, file with the Board a petition requesting an administrative review and stating in concise terms the basis upon which the review is sought, with a copy furnished to the Secretary of Revenue.

c. Place, Date and Time Requirements for Tax Review Board

Within 60 days after a timely petition for administrative review has been filed and at least 10 days before the date set for the hearing, the Board will notify the corporation and the Secretary in writing of the time and place of the hearing. The hearing will be held in Raleigh and the date set for the hearing shall be within 90 days after the petition for administrative review was filed or at a later day mutually agreed upon by the corporation and the Secretary. The hearing may be postponed once at the request of the corporation and once at the request of the Secretary for a period of up to 90 days or for a longer period agreed upon by the corporation and the Secretary.

d. Decision of Tax Review Board

Within 90 days after conducting a hearing, the Board shall confirm, modify, reverse, reduce, or increase the assessment or decision of the Secretary. In the event the Board's decision does not result in the reduction of the tax liability or if the Board dismisses the petition as a frivolous petition under G.S. 105-241.2(c), the costs of the proceedings shall be added to and become a part of the tax liability to be collected by the Secretary.

e. Appeal of Tax Review Board Decision

The corporation may choose to pay the assessment sustained by the Tax Review Board (or file a bond with the Secretary on the amount of the assessment) and appeal the Board's decision to the Superior Court under Article 4 of Chapter 150B of the General Statutes; or it may choose to pay the assessment and bring civil action for recovery as provided in Section 105-267 of the General Statutes.

5. Statute of Limitations for Refunds (G.S. 105-266)

The statute of limitations for filing a claim for refund of overpayment of taxes is three years from the statutory due date of the applicable return or six months from the date of overpayment whichever is later. Refund claims must be submitted in writing.

6. Protective Refund Claim

A taxpayer can file a protective refund claim to protect his/her right to a potential refund based on a contingent event for a taxable period for which the statute of limitations is about to expire. A protective claim is usually based on contingencies such as pending litigation or an ongoing tax audit in another state.

The Department of Revenue will accept a protective claim for refund if

- it is filed before the expiration of the statutory refund claim period;
- it identifies and describes the contingencies affecting the claim;
- it is sufficiently clear and definite to alert the Department of Revenue as to the essential nature of the claim; and
- it identifies the tax schedule and the specific year for which the protective claim is filed.

There is no special form for filing a protective claim. The Department of Revenue will accept any written submission *if* it meets all the required elements. Upon conclusion of the contingency, a taxpayer may finalize the claim for refund by filing an amended return for the tax year at issue.

It is not necessary for a taxpayer to file a protective refund claim for a year under examination by the Internal Revenue Service since, under North Carolina law, a taxpayer has two years after being notified of the federal changes to file an amended return to report the changes.