

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 365*

Short Title: Property Tax Clerical Error.

(Public)

Sponsors: Senators Rucho; Ballantine, Clark, Cochrane, Conder, Dannelly, Forrester, Garwood, Horton, Hoyle, Ledbetter, Odom, Rand, Shaw of Guilford, Weinstein, and

Referred to: Finance.

March 11, 1997

A BILL TO BE ENTITLED

1
2 AN ACT TO EXTEND THE NUMBER OF YEARS FOR WHICH A TAXPAYER
3 CAN REQUEST A PROPERTY TAX REFUND FOR TAXES IMPOSED AS THE
4 RESULT OF A CLERICAL OR MATHEMATICAL ERROR AND TO ALLOW
5 LOCAL UNITS OF GOVERNMENT TO INCREASE THE ASSESSED VALUE OF
6 PROPERTY FOR THE SAME NUMBER OF YEARS WHEN THE VALUE WAS
7 DETERMINED BY ERROR.

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 105-273 is amended by adding a new subdivision to read:

10 "§ 105-273. Definitions.

11 When used in this Subchapter (unless the context requires a different meaning):

12 (4a) 'Clerical or mathematical error' means any of the following errors that
13 result in a material overstatement or understatement of value or tax:

14 a. An error in calculating units of measurement, such as square
15 footage, linear footage, or acreage.

16 b. An error in the transposition or recording of numbers.

17 c. An error in determining the zoning classification of real property.

18 d. An error in the description or calculation of component parts of
19 real property improvements.

1 e. An error similar to the ones listed in this subdivision.
2 The term does not include an error that results from the misapplication
3 of the schedules, standards, and rules used in a county's most recent
4 general reappraisal or horizontal adjustment or from an appraisal
5 judgment in applying the schedules, standards, and rules, in calculating
6 costs, in making comparative sales analyses, in applying capitalization
7 rates, or in determining obsolescence and depreciation factors, actual or
8 effective ages, or the highest and best use, or in other similar valuation
9 methods used in the appraisal process."

10 Section 2. G.S. 105-287(c) reads as rewritten:

11 "(c) An increase or decrease in the appraised value of real property authorized by
12 this section shall be made in accordance with the schedules, standards, and rules used in
13 the county's most recent general reappraisal or horizontal adjustment. An increase or
14 decrease in appraised value made under this ~~section~~ section, other than under subdivision
15 (a)(1) of this section, is effective as of January 1 of the year in which it is made and is not
16 retroactive.

17 An increase in appraised value made under subdivision (a)(1) of this section is
18 considered a discovery under G.S. 105-312 except that the discovery does not apply to
19 any year that precedes the year of the county's most recent general reappraisal or
20 horizontal adjustment. In addition, no late listing penalty applies unless the clerical or
21 mathematical error was made by the taxpayer or an agent or officer of the taxpayer and
22 resulted in the property being listed at a substantial understatement of value, quantity, or
23 other measurement.

24 A decrease in appraised value made under subdivision (a)(1) of this section entitles
25 the taxpayer to a release or refund of the principal amount of the tax for the current tax
26 year in which the decrease is made and for up to five prior tax years; the release or refund
27 is not allowed for any year in that five-year period that precedes the year of the county's
28 most recent general reappraisal or horizontal adjustment.

29 The appropriate finance officer of a taxing unit must make the refund required by this
30 subsection when notified by the assessor. ~~This~~ Except as stated in this section, this
31 section does not modify or restrict the provisions of G.S. 105-312 concerning the
32 appraisal of discovered property."

33 Section 3. G.S. 105-322(g)(1) reads as rewritten:

34 "(g) (1) Powers and Duties. – It shall be the duty of the board of
35 equalization and review to examine and review the tax lists of the
36 county for the current year to the end that all taxable property shall be
37 listed on the abstracts and tax records of the county and appraised
38 according to the standard required by G.S. 105-283, and the board
39 shall correct the abstracts and tax records to conform to the provisions
40 of this Subchapter. In carrying out its responsibilities under this
41 subdivision (g)(1), the board, on its own motion or on sufficient cause
42 shown by any person, shall:

- 1 a. List, appraise, and assess any taxable real or personal property
2 that has been omitted from the tax lists.
- 3 b. Correct all errors in the names of persons and in the description
4 of properties subject to taxation.
- 5 c. Increase or reduce the appraised value of any property that, in the
6 board's opinion, ~~shall have~~ has been listed and appraised at a
7 figure that is below or above the appraisal required by G.S. 105-
8 283; however, the board shall not change the appraised value of
9 any real property from that at which it was appraised for the
10 preceding year except in accordance with the terms of G.S. 105-
11 286 and 105-287.
- 12 c1. Correct appraisals, assessments, and amounts of taxes appearing
13 erroneously on the abstracts or tax records as the result of a
14 clerical or mathematical error. Changes in the amount of tax due
15 resulting from the correction of these errors are to be treated the
16 same as those under G.S. 105-287(a)(1).
- 17 d. Cause to be done whatever else shall be necessary to make the
18 lists and tax records comply with the provisions of this
19 Subchapter.
- 20 e. Embody actions taken under the provisions of subdivisions
21 (g)(1)a through (g)(1)d, above, in appropriate orders and have the
22 orders entered in the minutes of the board.
- 23 f. Give written notice to the taxpayer at his last-known address in
24 the event the board shall, by appropriate order, increase the
25 appraisal of any property or list for taxation any property omitted
26 from the tax lists under the provisions of this subdivision (g)(1)."

27 Section 4. G.S. 105-325(a) reads as rewritten:

28 "(a) After the board of equalization and review has finished its work and the
29 changes it effected or ordered have been entered on the abstracts and tax records as
30 required by G.S. 105-323, the board of county commissioners shall not authorize any
31 changes to be made on the abstracts and tax records except as follows:

- 32 (1) To give effect to decisions of the Property Tax Commission on appeals
33 taken under G.S. 105-290.
- 34 (2) To add to the tax records any valuation certified by the Department of
35 Revenue for property appraised in the first instance by the Department
36 or to give effect to corrections made in such appraisals by the
37 Department.
- 38 (3) Subject to the provisions of subdivisions (a)(3)a and (a)(3)b, below, to
39 correct the name of any taxpayer appearing on the abstract or tax
40 records erroneously; to substitute the name of the person who should
41 have listed property for the name appearing on the abstract or tax
42 records as having listed the property; and to correct an erroneous
43 description of any property appearing on the abstract or tax records.

- 1 a. Any correction or substitution made under the provisions of this
2 subdivision (a)(3) shall have the same force and effect as if the
3 name of the taxpayer or description of the property had been
4 correctly listed in the first instance, but the provisions of this
5 subdivision (a)(3)a shall not be construed as a limitation on the
6 taxation and penalization of discovered property required by G.S.
7 105-312.
- 8 b. If a correction or substitution under this subdivision (a)(3) will
9 adversely affect the interests of any taxpayer, he shall be given
10 written notice thereof and an opportunity to be heard before the
11 change is entered on the abstract or tax records.
- 12 (4) To correct appraisals, assessments, and amounts of taxes appearing
13 erroneously on the abstracts or tax records as the result of clerical or
14 mathematical errors. Changes in the amount of tax due resulting from
15 the correction of these errors are to be treated the same as those under
16 G.S. 105-287(a)(1). ~~(If the clerical or mathematical error was made by the~~
17 ~~taxpayer, his agent, or an officer of the taxpayer and if the correction~~
18 ~~demonstrates that the property was listed at a substantial understatement of~~
19 ~~value, quantity, or other measurement, the provisions of G.S. 105-312 shall~~
20 ~~apply.)~~
- 21 (5) To add to the tax records and abstracts or to correct the tax records and
22 abstracts to include property discovered under the provisions of G.S.
23 105-312 or property exempted or excluded from taxation pursuant to
24 G.S. 105-282.1(a)(4).
- 25 (6) Subject to the provisions of subdivisions (a)(6)a, (a)(6)b, (a)(6)c, and
26 (a)(6)d, below, to appraise or reappraise property when the assessor
27 reports to the board that, since adjournment of the board of equalization
28 and review, facts have come to his attention that render it advisable to
29 raise or lower the appraisal of some particular property of a given
30 taxpayer in the then current calendar year.
- 31 a. The power granted by this subdivision (a)(6) shall not authorize
32 appraisal or reappraisal because of events or circumstances that
33 have taken place or arisen since the day as of which property is to
34 be listed.
- 35 b. No appraisal or reappraisal shall be made under the authority of
36 this subdivision (a)(6) unless it could have been made by the
37 board of equalization and review had the same facts been brought
38 to the attention of that board.
- 39 c. If a reappraisal made under the provisions of this subdivision
40 (a)(6) demonstrates that the property was listed at a substantial
41 understatement of value, quantity, or other measurement, the
42 provisions of G.S. 105-312 shall apply.

1 d. If an appraisal or reappraisal made under the provisions of this
2 subdivision (a)(6) will adversely affect the interests of any
3 taxpayer, ~~he~~the taxpayer shall be given written notice thereof
4 and an opportunity to be heard before the appraisal or reappraisal
5 shall become final.

6 (7) To give effect to decisions of the board of county commissioners on
7 appeals taken under G.S. 105-322(a)."

8 Section 5. G.S. 105-381 reads as rewritten:

9 **"§ 105-381. Taxpayer's remedies.**

10 (a) Statement of Defense. – Any taxpayer asserting a valid defense to the
11 enforcement of the collection of a tax assessed upon ~~his~~the taxpayer's property shall
12 proceed as ~~hereinafter provided.~~provided in this section.

13 (1) For the purpose of this subsection, a valid defense ~~shall~~
14 ~~include~~includes any of the following:

15 a. A tax imposed ~~through~~as the result of a clerical error;
16 or mathematical error in appraisal, assessment, or calculation
17 of tax.

18 b. An illegal ~~tax;~~tax.

19 c. A tax levied for an illegal purpose.

20 (2) If a tax has not been paid, the taxpayer ~~may~~may, at any time
21 before paying the tax, make a demand for the release of the tax claim
22 by submitting to the governing body of the taxing unit a written
23 statement of ~~his~~the defense to payment or enforcement of the tax and
24 a request for release of the ~~tax at any time prior to payment of the tax.~~

25 (3) If a tax has been paid, the taxpayer, at any time within five
26 years after ~~said~~the tax first became due or within six months ~~from~~
27 after the date of payment of ~~such~~the tax, whichever is ~~the later date,~~
28 later, may make a demand for a refund of the tax paid by submitting
29 to the governing body of the taxing unit a written statement of ~~his~~the
30 defense and a request for refund ~~thereof.~~of the tax."

31 (b) Action of Governing Body. – Upon receiving a taxpayer's written statement of
32 defense and request for release or refund, the governing body of the taxing unit shall
33 within 90 days after receipt of such request determine whether the taxpayer has a valid
34 defense to the tax imposed or any part thereof and shall either release or refund that
35 portion of the amount that is determined to be in excess of the correct tax liability or
36 notify the taxpayer in writing that no release or refund will be made. A release or refund
37 made under subdivision (a)(1) of this subsection may not apply to a year that precedes the
38 year of the county's most recent general reappraisal or horizontal adjustment.

39 The governing body may, by resolution, delegate its authority to determine requests
40 for a release or refund of tax of less than one hundred dollars (\$100.00) to the finance
41 officer, manager, or attorney of the taxing unit. A finance officer, manager, or attorney to
42 whom this authority is delegated shall monthly report to the governing body the actions
43 taken by him on requests for release or refund. All actions taken by the governing body

1 or finance officer, manager, or attorney on requests for release or refund shall be recorded
2 in the minutes of the governing body. If a release is granted or refund made, the tax
3 collector shall be credited with the amount released or refunded in his annual settlement.

4 (c) Suit for Recovery of Property Taxes. –

5 (1) Request for Release before Payment. – If within 90 days after receiving
6 a taxpayer's request for release of an unpaid tax claim under (a) above,
7 the governing body of the taxing unit has failed to grant the release, has
8 notified the taxpayer that no release will be granted, or has taken no
9 action on the request, the taxpayer shall pay the tax. ~~He~~The taxpayer
10 may then within three years ~~from~~after the date of payment bring a civil
11 action against the taxing unit for the amount claimed.

12 (2) Request for Refund. – If within 90 days after receiving a taxpayer's
13 request for refund under (a) above, the governing body has failed to
14 refund the full amount requested by the taxpayer, has notified the
15 taxpayer that no refund will be made, or has taken no action on the
16 request, the taxpayer may bring a civil action against the taxing unit for
17 the amount claimed. ~~Such~~The action may be brought at any time within
18 three years ~~from~~after the expiration of the period in which the
19 governing body is required to act.

20 (d) Civil Actions. – Civil actions brought pursuant to subsection (c) ~~above~~of this
21 section shall be brought in the appropriate division of the general court of justice of the
22 county in which the taxing unit is located. If, upon the trial, it is determined that the tax
23 or any part of it was illegal or levied for an illegal purpose, or excessive as the result of a
24 clerical or mathematical error, judgment shall be rendered therefor with interest thereon
25 at six percent (6%) per annum, plus costs, and the judgment shall be collected as in other
26 civil actions."

27 Section 6. This act is effective for taxes imposed for taxable years beginning
28 on or after July 1, 1997.