

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 514*

Short Title: Property Tax Clerical Error.

(Public)

Sponsors: Representative McMahan.

Referred to: Finance.

March 13, 1997

A BILL TO BE ENTITLED

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

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.

20 e. An error similar to the ones listed in this subdivision.

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

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

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

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

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

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

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

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

42 a. List, appraise, and assess any taxable real or personal property
43 that has been omitted from the tax lists.

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

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

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

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

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

1 and an opportunity to be heard before the appraisal or reappraisal
2 shall become final.

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

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

6 **"§ 105-381. Taxpayer's remedies.**

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

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

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

14 b. An illegal ~~tax;~~tax.

15 c. A tax levied for an illegal purpose.

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

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

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

35 The governing body may, by resolution, delegate its authority to determine requests
36 for a release or refund of tax of less than one hundred dollars (\$100.00) to the finance
37 officer, manager, or attorney of the taxing unit. A finance officer, manager, or attorney to
38 whom this authority is delegated shall monthly report to the governing body the actions
39 taken by him on requests for release or refund. All actions taken by the governing body
40 or finance officer, manager, or attorney on requests for release or refund shall be recorded
41 in the minutes of the governing body. If a release is granted or refund made, the tax
42 collector shall be credited with the amount released or refunded in his annual settlement.

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

- 1 (1) Request for Release before Payment. – If within 90 days after receiving
2 a taxpayer's request for release of an unpaid tax claim under (a) above,
3 the governing body of the taxing unit has failed to grant the release, has
4 notified the taxpayer that no release will be granted, or has taken no
5 action on the request, the taxpayer shall pay the tax. ~~He~~ The taxpayer
6 may then within three years ~~from~~ after the date of payment bring a civil
7 action against the taxing unit for the amount claimed.
- 8 (2) Request for Refund. – If within 90 days after receiving a taxpayer's
9 request for refund under (a) above, the governing body has failed to
10 refund the full amount requested by the taxpayer, has notified the
11 taxpayer that no refund will be made, or has taken no action on the
12 request, the taxpayer may bring a civil action against the taxing unit for
13 the amount claimed. ~~Such~~ The action may be brought at any time within
14 three years ~~from~~ after the expiration of the period in which the
15 governing body is required to act.
- 16 (d) Civil Actions. – Civil actions brought pursuant to subsection (c) ~~above~~ of this
17 section shall be brought in the appropriate division of the general court of justice of the
18 county in which the taxing unit is located. If, upon the trial, it is determined that the tax
19 or any part of it was illegal or levied for an illegal purpose, or excessive as the result of a
20 clerical or mathematical error, judgment shall be rendered therefor with interest thereon
21 at six percent (6%) per annum, plus costs, and the judgment shall be collected as in other
22 civil actions."
- 23 Section 6. This act is effective for taxes imposed for taxable years beginning
24 on or after July 1, 1997.