

February 20, 2007

S 242. UNIFORM TAX REFUND PROCEDURE. Filed 2/20/07. *TO ESTABLISH A UNIFORM PROCEDURE FOR TAX REFUND CLAIMS.* Repeals GS 105-266 and GS 105-266.1, which provide for tax refunds because the tax paid was incorrect. Deletes those provisions of GS 105-267.1 that govern the procedure for tax refunds because the tax paid was illegal or unconstitutional. Enacts new GS 105-265.1 (refunds of overpayments of taxes), GS 105-265.2 (statute of limitations for refunds), and GS 105-265.3 (interest on refunds) to govern all tax refunds without regard to the reason for the refund. The new statutes contain many of the same provisions as the repealed statutes, but they change the limitations periods for requesting a refund and for filing a civil action for a refund. In addition, new GS 105-265.1(f) provides that no class action may be filed for a refund unless each taxpayer in the class has requested a refund in accordance with the requirements of new GS 105-265.1(b).

Under new GS 105-265.2, a taxpayer may request a refund at any time within three years after the date the return was due or within six months after the date the tax was paid, whichever is later. GS 105-265.1(b) that the request be in writing and specifies the information to be included in the request. GS 105-265.1(c) provides that if the request for a refund is denied by the Secretary of Revenue, the taxpayer may request a hearing before the Secretary within 30 days after a written denial or within 60 days after a request is considered denied because it was not granted within six months. GS 105-265.1(c) also sets the times within which the Secretary must hold the hearing, notify the taxpayer, and make a decision. GS 105-265.1(d) provides that the taxpayer may forego the hearing and instead file a civil action within 90 days after the refund is denied.

Makes conforming changes to statutory references in GS 105-113.113(a), 105-239.1(c), 1-52(15), and 20-99(b)(3). Effective for taxes paid on or after January 1, 2008.

Intro. by Clodfelter.

GS 1, 20, 105

June 21, 2007

S 242. REFORM TAX APPEALS/CLOSE REIT LOOPHOLE (NEW). Filed 2/20/07. Senate committee substitute deletes all provisions of the 1st edition and replaces it with *AN ACT TO REFORM THE PROCESS FOR ADMINISTRATIVE AND JUDICIAL REVIEW OF DISPUTED TAX MATTERS AND TO LIMIT A CORPORATION'S ABILITY TO USE REAL ESTATE INVESTMENT TRUSTS TO AVOID STATE TAXES.*

Real Estate Investment Trusts (REITs). Effective beginning with the 2007 tax year, Sections 44 through 46 amend GS 105-130.5 and GS 105-130.12 to define a captive REIT, prohibit a captive REIT from taking the dividends paid deduction, and allow a dividends received deduction for dividends received from a captive REIT.

Tax Administration. The act enacts a series of new statutes in Article 9 of GS Chapter 105 substantially revising the law governing tax refunds, tax assessments, administrative and judicial review of an assessment or a denial of a refund, delivery of notice to a taxpayer, interest on taxes, when the Department of Revenue may collect a tax, and jeopardy assessment and collection. Proposed new GS 105-241.6 sets the general statute of limitations for obtaining a tax refund at the later of three years after the due date of the return or two years after payment of the tax. Proposed new GS 105-241.8 sets the general statute of limitations for proposing a tax assessment at the later of three years after the due date of the return or three years after the taxpayer filed the return. Proposed new GS 105-241.10 provides limitations for refunds and assessments following a federal determination when a taxpayer files a timely return reflecting the determination and the general statute of limitations has expired. The act makes conforming changes by amending and repealing statutes in GS Chapters 1, 7A, 20, 105, 143A, and 150B. The act directs the Revenue Laws Study Committee to study the use of class actions to challenge the constitutionality of a tax and report its findings and recommendations to the 2008 session of the 2007 General Assembly.

Effective Dates. The provisions relating to REITs and to federal determinations become effective beginning with the 2007 tax year. The study provision is effective when it becomes law. The remaining provisions become effective January 1, 2008. The act specifies circumstances when it may apply to tax matters pending as of January 1, 2008.

June 26, 2007

S 242. REFORM TAX APPEALS/CLOSE REIT LOOPHOLE. Filed 2/20/07. Senate amendment makes the following changes to 2nd edition. Removes the proposed amendments to GS 7A-45.4 and makes the following changes instead. Brings within a mandatory complex business case an action that involves a material issue related to tax law, when (1) the dispute has been the subject of a contested tax case for which judicial review is requested or (2) the dispute is a civil action. Provides that any party may designate a petition for judicial review under GS 105-241.16 and makes conforming changes. Deletes section 5, amending GS 7A-305(a)(2). Makes conforming changes to the effective date.

June 28, 2007

S 242. REFORM TAX APPEALS/CLOSE REIT LOOPHOLE. Filed 2/20/07. Senate amendment makes the following changes to 2nd edition, as amended. Adds a new section providing that the act does not require the establishment of new positions or the appropriation of funds for those positions. Also requires the Office of the Attorney General to report the staffing needs of the Revenue Section as a result of tax hearings that are being conducted at the Office of Administrative Hearings to the Revenue Laws Study Committee and the Fiscal Research Division by January 1, 2009. Makes technical renumbering changes and a conforming change to the effective date.

July 3, 2007

S 242. REFORM TAX APPEALS/CLOSE REIT LOOPHOLE. Filed 2/20/07. Senate amendment makes the following changes to 3rd edition. Requires the Department of Revenue to report to the Revenue Laws Study Committee by May 1, 2009, on the amount of corporate income tax revenue generated in the 2007 taxable year by the closure of the captive REIT loophole. Requires the Study Committee to determine the revenue neutral corporate income tax rate based on the report, to be included in the Study Committee's report to the 2010 Session of the General Assembly. Makes conforming changes to the effective date and renumbers sections.

July 26, 2007

S 242. REFORM TAX APPEALS (NEW). Filed 2/20/07. House committee substitute makes the following changes to the 4th edition. Deletes the proposed amendments to GS 105-130.5 and GS 105-130.12, which would have defined a captive REIT, prohibited a captive REIT from taking the dividends paid deduction, and allowed a dividends received deduction for dividends received from a captive REIT. Also deletes a related report requirement.

Modifies proposed GS 105-241.13 to allow taxpayer conferences to be conducted by telephone. Effective beginning with the 2008 tax year, amends GS 105-122 (corporate franchise tax) and GS 105-130.17 (corporate income tax) to change the due date of the return from the 15th of the third month to the 15th of the fourth month after the end of the income year. Also clarifies and modernizes the language of GS 105-122. Modifies the proposed amendment to GS 105-259(b) to allow disclosure of confidential tax information to comply with an administrative law judge's order (was, to comply with a discovery request) in a contested tax case. Conforms the effective date and the title.

September 4, 2007

SL 2007-491 (S 242). REFORM TAX APPEALS. AN ACT TO REFORM THE PROCESS FOR ADMINISTRATIVE AND JUDICIAL REVIEW OF DISPUTED TAX MATTERS. Summarized in *Daily Bulletin* 2/20/07, 6/21/07, 6/26/07, 6/28/07, 7/3/07, and 7/26/07. Enacted August 30, 2007. GS 105-241.10, as enacted by this act, and Sections 6, 15-17, and 22 are effective for taxable years beginning on or after January 1, 2007. Section 14 is effective for taxable years beginning on or after January 1, 2008. Sections 45-47 are effective August 30, 2007. The remainder is effective January 1, 2008.

