

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 730
PROPOSED COMMITTEE SUBSTITUTE S730-PCS55305-SV-17

Short Title: Taxpayer Action if No DOR Determination.

(Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT FAILURE BY THE DEPARTMENT OF REVENUE TO
ISSUE A FINAL DETERMINATION WITHIN THE REQUIRED TIME IS GROUNDS
FOR A TAXPAYER TO SEEK A COURT ORDER COMPELLING THE ISSUANCE OF
THE FINAL DETERMINATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-241.14(c) reads as rewritten:

"(c) Time Limit. – The process set out in G.S. 105-241.13 for reviewing and attempting to resolve a proposed denial of a refund or a proposed assessment must conclude, and a final determination must be issued within nine months after the date the taxpayer files a request for review. The Department and the taxpayer may extend this time limit by mutual agreement. Failure to issue a notice of final determination within the required time does not affect the validity of a proposed denial of a refund or proposed ~~assessment~~ assessment, but it is grounds under G.S. 150B-44 for a taxpayer to seek a court order compelling the Department to issue a notice of final determination."

SECTION 2. G.S. 150B-44 reads as rewritten:

"§ 150B-44. Right to judicial intervention when agency action or decision unreasonably delayed.

(a) Court Order. – Unreasonable delay on the part of any agency or administrative law judge in taking any required action ~~shall be~~ is justification for any person whose rights, duties, or privileges are adversely affected by ~~such the~~ delay to seek a court order compelling action by the agency or administrative law judge. The venue for obtaining a court order to compel the Department of Revenue to issue a notice of final determination is the Superior Court of Wake County. An order compelling the Department of Revenue to issue a notice of final determination must specify the date by which the Department must issue the notice. If the Department fails to issue the notice by the specified date, the court may order the Department to grant the refund or remove the proposed assessment.

(b) Time Limits. – An agency that is subject to Article 3 of this Chapter and is not a board or commission has 60 days from the day it receives the official record in a contested case from the Office of Administrative Hearings to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 60 days. An agency that is subject to Article 3 of this Chapter and is a board or commission has 60 days from the day it receives the official record in a contested case from the



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1 Office of Administrative Hearings or 60 days after its next regularly scheduled meeting,
2 whichever is longer, to make a final decision in the case. This time limit may be extended by
3 the parties or, for good cause shown, by the agency for an additional period of up to 60 days. If
4 an agency subject to Article 3 of this Chapter has not made a final decision within these time
5 limits, the agency is considered to have adopted the administrative law judge's decision as the
6 agency's final decision. Failure of an agency subject to Article 3A of this Chapter to make a
7 final decision within 120 days of the close of the contested case hearing is justification for a
8 person whose rights, duties, or privileges are adversely affected by the delay to seek a court
9 order compelling action by the agency or, if the case was heard by an administrative law judge,
10 by the administrative law judge. The Board of Trustees of the North Carolina State Health Plan
11 for Teachers and State Employees is a "board" for purposes of this section."

12 **SECTION 3.** This act is effective when it becomes law.