

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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SENATE BILL 538  
PROPOSED COMMITTEE SUBSTITUTE S538-PCS85267-SV-38

Short Title: Result from DOR Inaction on Review Requests.

(Public)

Sponsors:

Referred to:

April 1, 2013

1 A BILL TO BE ENTITLED  
2 AN ACT TO GRANT A TAXPAYER'S REQUEST FOR A REFUND OR TO REMOVE A  
3 PROPOSED ASSESSMENT BY OPERATION OF LAW IF THE DEPARTMENT OF  
4 REVENUE HAS NOT ISSUED A FINAL DETERMINATION WITHIN THE  
5 STATUTORY TIME FRAME.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 105-241.11 is amended by adding a new subsection to read:

8 "(d) Basis. – A request for review of a proposed denial of a refund or a proposed  
9 assessment must include a detailed explanation, including any supporting documentation,  
10 setting forth the specific grounds of the request for review. The inability to pay an assessment  
11 is not a sufficient basis for requesting review of a proposed assessment. Failure to comply with  
12 the requirements of this subsection results in an automatic denial of the request for a refund or  
13 the request to remove a proposed assessment. In the case of an automatic denial, the  
14 Department is not required to schedule a conference with the taxpayer and must send the  
15 taxpayer notification that the automatic denial is final and is not subject to further  
16 administrative or judicial review. In the case of an automatic denial of a request for review of a  
17 proposed assessment, the notice must include a statement that the assessment is collectible  
18 under G.S. 105-241.22."

19 **SECTION 2.** G.S. 105-241.13(a)(3) reads as rewritten:

20 "(3) Request additional information from the taxpayer concerning the requested  
21 refund or proposed assessment. The Department may make multiple requests  
22 for information. All requests for information must be made prior to 60 days  
23 before the final determination must be issued as required under  
24 G.S. 105-241.14(c)."

25 **SECTION 3.** G.S. 105-241.14 reads as rewritten:

26 **"§ 105-241.14. Final determination after Departmental review.**

27 (a) Refund. – If a taxpayer files a timely request for a Departmental review of a  
28 proposed denial of a refund and the Department and the taxpayer are unable to resolve the  
29 taxpayer's objection to the proposed denial, the Department must send the taxpayer a notice of  
30 final determination concerning the refund. The notice of final determination must state the basis  
31 for the determination and inform the taxpayer of the procedure for contesting the determination.  
32 The statement of the basis for the determination does not limit the Department from changing  
33 the basis.

34 (b) Assessment. – If a taxpayer files a timely request for a Departmental review of a  
35 proposed assessment and the Department and the taxpayer are unable to resolve the taxpayer's  
36 objection to the proposed assessment, the Department must send the taxpayer a notice of final



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1 determination concerning the assessment. A notice of final determination concerning an  
2 assessment must contain the following information:

- 3 (1) The basis for the determination. This information may be stated on the  
4 notice or be set out in a separate document. The statement of the basis for the  
5 determination does not limit the Department from changing the basis.
- 6 (2) The amount of tax, interest, and penalties payable by the taxpayer.
- 7 (3) The procedure the taxpayer must follow to contest the final determination.
- 8 (4) A statement that the amount payable stated on the notice is collectible by the  
9 Department unless the taxpayer contests the final determination.
- 10 (5) An explanation of the collection options available to the Department if the  
11 taxpayer does not pay the amount shown due on the notice and any remedies  
12 available to the taxpayer concerning these collection options.

13 (c) Time Limit. – The process set out in G.S. 105-241.13 for reviewing and attempting  
14 to resolve a proposed denial of a refund or a proposed assessment must conclude, and a final  
15 determination must be issued within nine months after the date the taxpayer files a request for  
16 review. The Department and the taxpayer may extend this time limit by mutual agreement.  
17 ~~Failure to issue a notice of final determination within the required time does not affect the~~  
18 ~~validity of a proposed denial of a refund or proposed assessment.~~ The Secretary and the  
19 taxpayer may mutually agree to reduce the nine-month period in an effort to expedite the  
20 issuance of a final determination.

21 (d) Consequences of Inaction. – Failure to issue a notice of final determination within  
22 the time limit set in subsection (c) of this section is considered a grant of a requested refund or  
23 the removal of a proposed assessment by operation of law, unless one or more of the  
24 circumstances listed in this subsection apply. When a refund is granted by operation of law, the  
25 Department must send the taxpayer the refund. When an assessment is removed by operation of  
26 law, the Department must notify the taxpayer that the assessment is removed. The  
27 circumstances that negate this result are:

- 28 (1) The Department and the taxpayer extended the time limit set in subsection  
29 (c) of this section by mutual agreement, and that time has not expired.
- 30 (2) The Department made a written request to the taxpayer for additional  
31 information, and the taxpayer has not responded to the request or has not  
32 responded in a complete manner as determined by the Secretary.
- 33 (3) The Department received information from the taxpayer pursuant to a  
34 written request for additional information, and the time set in this  
35 subdivision for further action has not expired. If the time limit set in  
36 subsection (c) of this section will expire within 60 days of receipt of the  
37 requested information from the taxpayer, the Department must review the  
38 information and either grant the requested refund, remove the proposed  
39 assessment, or issue a final determination within 90 days of receipt of the  
40 requested information.
- 41 (4) The Department received a request for review based upon a proposed denial  
42 of refund, and the denied refund is based on a contingent event defined in  
43 G.S. 105-241.6(b)(5)a. that has not been finalized."

44 **SECTION 4.** This act becomes effective January 1, 2014, and applies to requests  
45 for review filed on or after that date.