

§ 105-241.1. Additional taxes; assessment procedure.

(a) Proposed Assessment. – If the Secretary discovers that any tax is due from a taxpayer, the Secretary **must** notify the taxpayer in writing of the kind and amount of tax due and of the Secretary's intent to assess the taxpayer for the tax. The notice **must** describe the basis for the proposed assessment and identify the amounts of any tax, interest, additions to tax, and penalties included in the proposed assessment. The notice **must** also advise the taxpayer that the proposed assessment will become final unless the taxpayer requests a hearing within the time set in subsection (c) of this section.

The Secretary **must** base a proposed assessment on the best information available. A proposed assessment of the Secretary is presumed to be correct.

(b) Delivery of Notice. – The Secretary shall deliver the notice of a proposed assessment to a taxpayer either in person or by United States mail sent to the taxpayer's last known address. A notice mailed to a taxpayer is presumed to have been received by the taxpayer unless the taxpayer makes an affidavit to the contrary within 90 days after the notice was mailed. If the taxpayer makes this affidavit, the time limitations in subsection (c) apply as if the notice had been delivered on the date the taxpayer makes the affidavit.

(c) Hearing. – A taxpayer who objects to a proposed assessment of tax is entitled to a hearing before the Secretary as provided in this subsection. To obtain a hearing, the taxpayer **must** file a written request either for a hearing or for a written statement of the information and evidence upon which the proposed assessment is based. If the notice of a proposed assessment was mailed, the taxpayer's request **must** be filed within 30 days after the date the notice was mailed; if the notice of a proposed assessment was delivered in person, the taxpayer's request **must** be filed within 30 days after the date the notice was delivered.

When a taxpayer files a timely request for a written statement of the information and evidence upon which a proposed assessment is based, the Secretary **must** give the written statement to the taxpayer within 45 days after the taxpayer filed the request. A taxpayer who files a timely request for a written statement concerning a proposed assessment and who desires to have a hearing on the proposed assessment **must** file a written request for a hearing within 30 days after the written statement was mailed.

When a taxpayer files a timely request for a hearing, the Secretary **must** set the time and place at which the hearing will be conducted and **must** notify the taxpayer of the designated time and place within 60 days after the taxpayer filed the request for a hearing and at least 10 days before the date set for the hearing. The date set for the hearing **must** be within 90 days after the timely request for a hearing was filed or at a later date mutually agreed upon by the taxpayer and the

Secretary. The date set for the hearing may be postponed once at the request of the taxpayer and once at the request of the Secretary for a period of up to 90 days or for a longer period mutually agreed upon by the taxpayer and the Secretary.

The taxpayer may present any objections to the proposed assessment at the hearing. The rules of evidence do not apply at the hearing.

Within 90 days after the Secretary conducts a hearing on a proposed assessment, the Secretary **must** make a decision on the proposed assessment and notify the taxpayer of the decision. The decision **must** assess the taxpayer for the amount of any tax the Secretary determined to be due.

(d) Assessment. – If a taxpayer does not apply for a hearing in accordance with subsection (c) of this section, a proposed assessment becomes final without further notice. If a taxpayer applies for a hearing in accordance with subsection (c) of this section, a proposed assessment becomes final when the taxpayer is notified of the decision made after the hearing. An assessment that is final is immediately due and collectible. G.S. 105-241.2, 105-241.3, and 105-241.4 apply to a tax assessed under this section.

Except in the case of a jeopardy assessment, the Secretary may not assess a taxpayer for a tax until the notice required by subsection (a) has been given and one of the following has occurred:

- (1) The time for applying for a hearing has expired.
- (2) The Secretary and the taxpayer have agreed upon a settlement.
- (3) The taxpayer has filed a timely application for a hearing and the Secretary, after conducting the hearing, has given the taxpayer written notice of the decision.

(d1) Notice of Assessment. – The Secretary **must** notify the taxpayer when a proposed assessment becomes final and is therefore collectible. The notice **must** identify the amounts of any tax, interest, additions to tax, and penalties included in the assessment. The notice **must** include or be accompanied by a brief statement in simple and nontechnical terms of all of the following:

- (1) The Department's authority to, and procedure for, levy on and sale of the taxpayer's property.
- (2) The taxpayer's available administrative appeals regarding the levy and sale of property, including the procedures for appeal.
- (3) Other options available to the taxpayer that could prevent levy on the property.
- (4) Procedures to redeem property and obtain release of a lien on property.

(e) Statute of Limitations. – There is no statute of limitations and the Secretary may propose an assessment of tax due from a taxpayer at any time if (i) the taxpayer did not file a proper application for a license or did not file a return, (ii) the taxpayer filed a false or fraudulent application or return, or (iii) the taxpayer attempted in any manner to fraudulently evade or defeat the tax.

If a taxpayer files a return reflecting a federal determination as provided in G.S. 105-32.8, 105-130.20, 105-159, 105-160.8, 105-163.6A, or 105-197.1, the Secretary **must** propose an assessment of any tax due within one year after the return is filed or within three years of when the original return was filed or due to be filed, whichever is later. If there is a federal determination and the taxpayer does not file the required return, the Secretary **must** propose an assessment of any tax due within three years after the date the Secretary received the final report of the federal determination.

If a taxpayer forfeits a tax credit or tax benefit pursuant to forfeiture provisions of this Chapter, the Secretary **must** assess any tax due as a result of the forfeiture within three years after the date of the forfeiture. If a taxpayer elects under section 1033(a)(2)(A) of the Code not to recognize gain from involuntary conversion of property into money, the Secretary **must** assess any tax due as a result of the conversion or election within the applicable period provided under section 1033(a)(2)(C) or section 1033(a)(2)(D) of the Code. If a taxpayer sells at a gain the taxpayer's principal residence, the Secretary **must** assess any tax due as a result of the sale within the period provided under section 1034(j) of the Code.

In all other cases, the Secretary **must** propose an assessment of any tax due from a taxpayer within three years after the date the taxpayer filed an application for a license or a return or the date the application or return was required by law to be filed, whichever is later.

If the Secretary proposes an assessment of tax within the time provided in this section, the final assessment of the tax is timely.

A taxpayer may make a written waiver of any of the limitations of time set out in this subsection, for either a definite or an indefinite time. If the Secretary accepts the taxpayer's waiver, the Secretary may propose an assessment at any time within the time extended by the waiver.

(f) Repealed by Session Laws 1993, c. 532, s. 2.

(g) Jeopardy Assessments. – Notwithstanding any other provision of this section, the Secretary may at any time within the applicable period of limitations immediately assess any tax the Secretary finds is due from a taxpayer if the Secretary determines that collection of the tax is in jeopardy and immediate assessment is necessary in order to protect the interest of the State. For

a jeopardy assessment, the Secretary may give the taxpayer the notice of proposed assessment required by subsection (a) any time within 30 days after the jeopardy assessment is made. The taxpayer may request a hearing on the jeopardy assessment by following the procedure described in the notice.

Within five days after a jeopardy assessment is made under this subsection that is not the result of a criminal investigation or of a liability for a tax imposed under Article 2D of this Chapter, the Secretary **must** provide the taxpayer with a written statement of the information upon which the Secretary relied in making the assessment. Within 30 days after receipt of this written statement or, if no statement is received, within 30 days after the statement was due, the taxpayer may request the Secretary to review the action taken. After receipt of this request, the Secretary **must** determine whether making the jeopardy assessment was reasonable under all the circumstances and whether the amount assessed is reasonable under all the circumstances. The Secretary **must** give the taxpayer written notice of this determination within 30 days after the request. The taxpayer may seek judicial review of this determination as provided in G.S. 105-241.5.

(h) Repealed by Session Laws 1993, c. 532, s. 2.

(i) Interest. – All assessments of tax, exclusive of penalties assessed on the tax, shall bear interest at the rate established pursuant to this subsection from the time the tax was due until paid. On or before June 1 and December 1 of each year, the Secretary shall establish the interest rate to be in effect during the six-month period beginning on the next succeeding July 1 and January 1, respectively, after giving due consideration to current market conditions and to the rate that will be in effect on that date pursuant to the Code. If no new rate is established, the rate in effect during the preceding six-month period shall continue in effect. The rate established by the Secretary may not be less than five percent (5%) per year and may not exceed sixteen percent (16%) per year.

(i1) Repealed by Session Laws 1993, c. 532, s. 2.

(j) Construction. – This section is in addition to and not in substitution of any other provision of the General Statutes relative to the assessment and collection of taxes. (1949, c. 392, s. 6; 1951, c. 643, s. 9; 1955, c. 1350, s. 23; 1957, c. 1340, s. 10; 1959, c. 1259, s. 8; 1969, c. 1132, s. 1; 1973, c. 476, s. 193; c. 1287, s. 13; 1977, c. 657, s. 6; c. 1114, ss. 1, 11; 1981 (Reg. Sess., 1982), c. 1211, s. 2; c. 1223, s. 4; 1987, c. 827, s. 21; 1989, c. 530; 1993, c. 443, s. 6; c. 532, s. 2; 1993 (Reg. Sess., 1994), c. 582, s. 5; c. 745, s. 14; 1995, c. 17, s. 18; c. 468, s. 2; 1995 (Reg. Sess., 1996), c. 646, s. 11; 1996, 2nd Ex. Sess., c. 13, s. 3.7; 1999-360, s. 16; 2000-140, s. 88; 2005-435, s. 36.)