
Coates' Canons Blog: A powerful (and often overlooked) collection remedy

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Few things can get the attention of a business owner as effectively as can the sight of that business' inventory being loaded into a truck by a deputy sheriff to pay off outstanding taxes. Most local government officials know that the levy, seizure and sale remedy is available for delinquent property taxes. But can this remedy be used for occupancy taxes? Privilege license taxes? Demolition liens?

Yes, yes, and yes. The levy, seizure and sale remedy may be used to collect *any* tax levied by a local government. It can also be used to collect those debts that are the equivalent of property taxes for collection purposes, which include special assessments, nuisance abatement costs, and minimum housing standard enforcement expenses, a.k.a. demolition liens. (Click here for more details about these non-tax debts.)

N.C.G.S. §153-147 and §160A-207 permit counties and cities to rely on both the attachment and garnishment remedy and the levy and sale remedy for all local taxes they assess. These statutes incorporate the expedited procedures for the two remedies found in the Machinery Act, as the collection of property tax statutes is known. Attachment and garnishment targets a taxpayer's intangible personal property such as bank accounts, wages, rents or other debts owed to the taxpayer. Levy and sale targets the taxpayer's tangible personal property, which could literally be anything that the taxpayer owns: a car, a boat, a computer, inventory, factory equipment, or even a collection of mint condition Village People old-school vinyl albums.

Tax collectors usually turn to attachment and garnishment first because that remedy avoids many of the practical concerns involved with the levy and sale remedy: no need to rent a truck or a storage space or worry about exactly how much those Village People albums will fetch at auction. As this bulletin explains, all that is required to start an attachment is a notice mailed to both the taxpayer and the taxpayer's bank or employer. But there's the rub. What if the taxpayer is a corporate entity and therefore has no employer? What if the collector has no idea where the taxpayer banks?

In such cases, the levy and sale remedy is likely the collector's best option. (Set-off debt collection is always available, too, but that can take months and only works if the taxpayer gets a state income tax refund or hits the lottery.) The beauty of levy and sale is that the mere threat of a seizure of the taxpayer's property is often enough to produce a prompt payment. This is especially true for business taxpayers, who will quickly realize that operations may cease during and after the levy. It's tough for a store to remain open if the tax collector has seized all of its inventory or cash registers.

Consider the many internet sweepstakes businesses that have opened across the state in the past year. Quite a few of these businesses have not paid the privilege license taxes levied by the cities in which they operate. But because these businesses are so new, the cities have had no opportunity to learn where they bank. Attachment and garnishment isn't an option to collect the outstanding taxes, but levy and sale might be. If the businesses own the computers used to run the sweepstakes, they can be seized to satisfy the taxes. So could their cash registers, their telephones, even their tables and chairs.

One caveat: many businesses lease their equipment, of course, and leased equipment isn't subject to levy and sale because it isn't owned by the delinquent taxpayer. But unless and until a taxpayer provides proof that certain equipment is leased and therefore exempt from levy, a tax collector can proceed with a seizure of business equipment located in the taxpayer's business on the good faith assumption that such property is owned by the taxpayer.

While there can be some practical difficulties depending on the type of property being seized (I don't recommend levying on pit bulls or pythons), the legal requirements are minimal. No court order or formal notice is required before can property be seized. Tax collectors and their deputies can make levies themselves, although it makes sense from a security perspective to involve a law enforcement officer. Once property is seized, the sale can take place as quickly as



ten days later. If the sale doesn't produce enough cash to satisfy the outstanding taxes, the tax collector can seize more of the taxpayer's property and conduct multiple sales until the taxpayer's debt is repaid.

To learn more about the mechanics of the levy and sale remedy, take a look at this new bulletin.

Links

- www.sog.unc.edu/pubs/electronicversions/pdfs/ptb154.pdf
- www.sog.unc.edu/pubs/electronicversions/pdfs/ptb152.pdf
- canons.sog.unc.edu/?p=2906
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