
Coates' Canons Blog: Big Changes for Immaterial Irregularity Billing?

By Chris McLaughlin

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G.S. 105-394, the immaterial irregularities provision, functions much like a giant “reset” button for local tax offices. It allows a tax collector to issue retroactive bills (plus interest) for all property taxes that were omitted due to a mistake by the tax office.

Assume Blue Devil City annexed Parcel A twenty years ago but for some reason never levied taxes on Parcel A. Perhaps the county assessor failed to code the property as city property or perhaps mistakes were made by the city when it finalized the annexation. Regardless, under G.S. 105-394 the city can send to the owner of Parcel A twenty years of retroactive tax bills with interest from the date each of those year’s bills would have become delinquent had they been billed correctly.

This result would change if Senate Bill 616 becomes law. The bill would amend G.S. 105-394 to require a tax office to fix its own mistakes in the same way it fixes taxpayers’ failures to list property under the discovery provisions in G.S. 105-312.

As I describe in this post, under current law mistakes by a taxpayer and mistakes by a tax office are resolved very differently. G.S. 105-312 discoveries, which must be used when a taxpayer fails to list her property for taxation, are limited to six years (the current tax year plus the previous five). Interest does not retroactively accrue on discovery bills. Instead, penalties of 10% per year apply to discovered taxes on improvements and personal property. But a governing board has complete discretion to waive any or all of a discovery bill, including penalties, for any reason whatsoever.

In contrast, retroactive tax bills under G.S. 105-394 are not time-limited, must accrue interest from their original date of delinquency, and can be released (waived) only under the very restrictive limitations in G.S. 105-381, which permits waiver only if the taxes were illegal or levied due to clerical error.

In a nutshell, Senate Bill 616 would make G.S. 105-394 mirror G.S. 105-312. Retroactive tax bills issued under G.S. 105-394 to resolve a mistake by the tax office would be subject to the same time-limitations, interest accrual, and waiver provisions that currently apply to discovery bills.

I think the motivation behind this bill is to ensure that taxpayers are treated similarly when being billed for back taxes regardless of who made the mistake that resulted in those taxes not being billed originally. The disparity can be substantial.

For example, assume that in 2007 Tommy Tar Heel completed a major renovation to his Carolina County house, doubling its square footage from 3,000 sq. ft. to 6,000 sq. ft. and upgrading his kitchen and bathrooms. The county of course needs to tax the increase in value created by Tommy’s renovation. Let’s pretend that the county fails to catch the renovations and continues taxing Tommy’s home at its unrenovated, much lower value. If the county learns of this mistake in 2017, its remedy will depend on the cause of that mistake.

If Tommy failed to list the renovations, the discovery provisions in G.S. 105-312 will apply and the county will be limited to taxing the current year (2017) and the previous five years (2012 thru 2016), plus 10% penalties for each year. The county will not be able to recapture the taxes on the renovated house for 2008 thru 2011. It will have complete discretion to waive any or all of the taxes and penalties in the discovery bill, which will not accrue interest until January 6, 2018.



But if Tommy did list the renovations with the county and the county for some reason failed to re-assess and tax the larger, more valuable home, then G.S. 105-394 applies and the county should issue retroactive tax bills, plus interest, from 2008 to the present. The county would not have the discretion to waive these bills.

That's four more years of back tax bills for Tommy with no opportunity for a waiver despite the fact he tried to do the right thing by listing the renovation with county. If he had just kept quiet and never listed the renovations, he would have been far better off.

That discrepancy would disappear under Senate Bill 616, which would mandate similar resolutions to Tommy's situation regardless of whether it was Tommy or the county who caused the renovated home to avoid taxation. The back taxes would be limited to the years 2012 thru 2017 under both G.S. 105-312 or G.S. 105-394, with no interest until January 6, 2018. The county commissioners could waive any or all of the bill under either statute for any reason, without concern for the restrictions in G.S. 105-381. The only difference would be that the 10%-per-year penalties would apply under G.S. 105-312 if the original problem was Tommy's failure to list the renovation back in 2007. (But remember that the county could always choose to waive those penalties for any reason whatsoever.)

Senate Bill 616 was approved by the Senate and sent to the House, but there's still no guarantee that it will become law. I'll be sure to update this post if the bill is approved by both chambers and sent to the governor's desk.

Links

- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-394
- www.ncga.state.nc.us/Sessions/2017/Bills/Senate/PDF/S616v2.pdf
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-312