
Coates' Canons Blog: BPP Can Be a Real PITA

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Article: <https://canons.sog.unc.edu/bpp-can-real-pita/>

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Personal property often creates way more problems than real property does. Situs, ownership, and valuation questions are almost always tougher to answer for personal property than for real property. Because G.S. 105-275(16) exempts most non-business personal property (think of your couch and 60-inch flat screen TV), when we talk about taxation problems with personal property we are almost always talking about business personal property (“BPP”).

This blog focuses on two controversial issues involving BPP. The first is the practice of “auto-listing” BPP, also called “rolling over” BPP listings, in which a county lists BPP annually without obtaining a listing from the taxpayer. The second is the resolution of late appeals and refund requests by taxpayers who belatedly claim that they never owned BPP for some of the time it was taxed by the county.

Auto-Listing

I don’t know exactly how many counties auto-list or roll-over BPP from year to year, but based on the number of questions Kirk Boone and I receive about the practice I bet it’s more than a handful.

I understand the motivation behind the practice: once a business lists certain BPP, why shouldn’t the county continue to list that BPP every year until the business speaks up to correct that listing?

Why? Because this approach violates the Machinery Act.

GS 105-308 places the obligation to list all property for taxation on the *taxpayer*. Real property is removed from that blanket obligation by the “permanent listing” requirement in GS 105-303(b) and the “carrying forward” procedure in GS 105-312(c). Combined, those two provisions obligate the assessor to automatically list real property in the name of the record owner each year. But the obligation to list both BPP and taxable non-business personal property such as planes and boats remains with the taxpayer.

The only authority the assessor has to list personal property on behalf of a taxpayer is through the discovery process in GS 105-312. There is no authority to list property on behalf of the taxpayer without a discovery.

Because auto-listing isn’t authorized by the Machinery Act, the practice calls into question the enforceability of the resulting bills. A taxpayer might reasonably claim that a bill for personal property that they never listed isn’t enforceable if it was produced by auto-listing rather than by the discovery process.

Bottom-line: don’t auto-list BPP. Use discovery bills instead. If you have been auto-listing for prior years, considering releasing those bills under the “illegal tax” category in GS 105-381 and replace them with discovery bills.

Late Appeals and Refund Requests for BPP Bills

What should a county do if a taxpayer belatedly challenges a BPP bill on the grounds that the taxpayer did not own that BPP on the relevant listing date (January 1)?

One response is to reply, “Too late and too bad. You didn’t raise this issue during the appeal process so you waived your right to challenge anything related to this bill.”

Another possible response is, “Your appeal is late but we will accept your protest as a request for a refund under GS 105-381 as an illegal tax. Because it is illegal for the county to tax property that did not have situs in the county as of January

1 of the year in question, if you can prove that you sold or otherwise transferred the BPP out of the county prior to January 1 then we will refund the taxes on that BPP.”

I think the first response is better, but I could craft a reasonable argument in support of the second. It is definitely illegal for a county to tax property that did not have situs within its borders. Consider the example in which property that was long assumed to be located within a city's borders is determined to reside outside the city limits. The owner of the property could justifiably request a refund of city taxes under GS 105-381 due to the illegality of the city taxing property that lies outside of its borders.

But I don't think GS 105-381 was intended to cover disputes over BPP ownership. Allowing belated refunds for these types of tax protests would effectively eliminate the deadline for appeals and make it much more difficult for local governments to finalize their tax bases. Similar reasoning prohibits taxpayers from using GS 105-381 to belatedly challenge the appraisal values assigned to personal property.

That said, neither the assessor nor the tax collector has the right to deny a refund request. All refund requests under GS 105-381 must be passed along to the county commissioners. (The commissioners may delegate the authority to approve small refunds less than \$100 to the county manager, attorney or finance officer, but that authority may never be delegated to the tax office.) The most the tax office can do is share its opinion that the refund request should be denied. The ultimate decision will be made by the commissioners.

Links

- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-308
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-303
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-312
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-381