
Coates' Canons Blog: Challenging Discovery Bills

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Discoveries are confusing, thanks to lots of special rules that apply only to these types of tax bills. I explain the basic process here. It's not just the calculation of discovery bills that can get complex; so too are the methods that taxpayers may use to seek relief from those bills. In today's post, I discuss the three (!) different ways a taxpayer may challenge a discovery bill.

1. REQUEST A COMPROMISE FROM THE BOARD OF COUNTY COMMISSIONERS

The most unique feature of discovery bills is the authority for the county commissioners to "compromise" (waive) these bills. G.S. 105-312(k) creates no standards for this decision. As a result, the board's discretion to compromise a discovery bill is unfettered. (Side note: Has anything other than discretion been described as unfettered? And has anything ever been described as fettered? Okay, back to taxes.)

That statute does not expressly place a time limitation on a board's discretion to compromise, but its wording suggests that this authority ends when the discovery bill is paid. G.S. 105-312(k) states, "[T]he board . . . may compromise, settle or adjust the county's claim for taxes arising therefrom." It seems to me that the county no longer has a "claim" for discovery taxes once they are paid. If so, then the board loses its broad authority to waive that bill once it is paid. If a discovery bill is partially paid, I think the board loses the authority to waive only that portion of the bill.

For example, assume a taxpayer receives a discovery bill totaling \$1,000. The taxpayer pays \$400 of that bill, then requests that the board compromise (waive) the entire bill. I think at that point the most the board could waive would be the unpaid amount of \$600.

What appeal rights do taxpayers possess if their requests for compromise are denied by the board? I think the answer is "none." Because there are no statutory standards for the board's decision on a compromise request, the only way for a taxpayer to demonstrate that the denial of a compromise request was unlawful would be to prove illegal discrimination or bias against the taxpayer by the board. As the Property Tax Commission stated in the only case (I think) in which it addressed this issue, "Where the board acts in good faith, its decision must stand." *In re: Popkin Bros. Enterprises, Inc.*, 90 P.T.C. 82 (rejecting taxpayer's challenge to the county's refusal to waive the discovery penalty for a listing that was submitted two days after the listing period closed).

Given that decision, I don't think the county needs to provide the taxpayer with the right to appeal the denial of a compromise request to the Property Tax Commission. The taxpayer's remedy would be to sue to county for discrimination or lack of due process or some other non-Machinery Act misconduct in state or federal court.

2. APPEAL THE BILL TO THE BOARD OF EQUALIZATION AND REVIEW / PROPERTY TAX COMMISSION

The taxpayer has the right to appeal all aspects of a discovery bill (value, situs, ownership, taxability) just as a taxpayer may appeal a "regular" tax bill. This appeal must be filed within the statutorily required 30-day appeal period for discovery bills. Paying some or all of a discovery bill does not waive the right to raise an appeal within that 30-day window.

The 30-day appeal period runs from the date of the initial discovery notice sent to the taxpayer. That notice must inform the taxpayer of the right to appeal and the timeline for such an appeal.

Discovery appeals proceed along the same path as "regular" appeals: first to the local board of equalization and review, then to the state Property Tax Commission, then to the state appellate courts.



3. REQUEST A REFUND OR RELEASE FROM THE BOARD OF COUNTY COMMISSIONERS

A taxpayer's last resort is to seek a refund (if the discovery bill was paid) or a release (if the bill was not paid) under G.S. 105-381. That statute allows refunds and releases only when the taxpayer can demonstrate that the tax was illegal or levied due to clerical error. See this post for more on refunds and releases.

The time limit for a request for relief under G.S. 105-381 depends on whether the taxpayer is seeking a refund, in which case the request must be filed within 5 years of the discovery bill's due date (which is September 1 of the calendar year in which the discovery is made), or a release, in which case there is no time limit on when the request must be filed.

If the board denies a request for a refund or release, the taxpayer cannot appeal that decision to the state Property Tax Commission. The taxpayer's only remedy is to sue the county in state court.

Links

- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=105-312
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=105-381