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## Coates' Canons Blog: Chasing Nickels and Dimes: Small Overpayments, Small Underpayments, and Tiny Tax Bills

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[UPDATE 10/16/15: S.L. 2015-266 slightly changed the rules governing overpayments. See this blog post for more details.]

Does a tax office need to collect every penny of every tax bill? Usually the answer is yes, because GS 105-380 and -381 prohibit local governments from waiving a valid tax. If a tax office decides not to collect part of tax, that action would be an unauthorized tax waiver in violation of the Machinery Act.

But from a practical standpoint, it doesn't make much sense to spend scarce public resources chasing down a few nickels and dimes. The fact that Aunt Mabel wrote "\$123.45" on her tax payment check when she actually owed \$123.46 in taxes probably doesn't justify the county foreclosing on her doublewide. Likewise, the \$3 in taxes owed on Uncle Ernie's beat-up old row boat probably isn't worth the cost of printing and mailing that bill. Happily the Machinery Act provides local governments with the opportunity to avoid collecting Aunt Mabel's missing penny and Uncle Ernie's tiny tax bill.

### **G.S. 105-357(c): Small Underpayments and Overpayments**

This provision authorizes local governments to adopt a resolution that eliminates the need to collect small underpayments or refund small overpayments. The statute defines "small" to be \$1 or less.

If a county or city were to adopt this resolution, then it would consider a tax bill paid in full so long as the payment was within \$1 of the total amount. In the example above, Aunt Mabel's tax bill would be marked as paid in full despite the fact she underpaid by one cent.

The resolution also eliminates the need to send refunds for small overpayments of \$1 or less. If Aunt Mabel rounded up and paid \$124 when she really owed \$123.46, the county would not need to refund her the 54-cent overpayment unless Aunt Mabel specifically requests a refund. If the taxpayer does request a refund, the local government must send a refund check no matter how small the overpayment.

Local governments cannot change the definition of "small" in this context; they are stuck with \$1 as the maximum amount of underpayment or overpayment they can (essentially) ignore.

### **Applying Overpayments to Other Debts or Future Taxes**

Lots of local governments want to know if they may apply an overpayment to other taxes or debts owed by the same taxpayer or to next year's taxes for the same account. The answer is yes, with a few caveats.

*Applying overpayments to other taxes or debts:* this action is essentially an attachment of the overpayment refund by the local government for another outstanding debt under GS 105-368. So long as that other debt may be collected using property tax remedies, then this attachment is legal and may be done without consent of the taxpayer.

Other property taxes of course can be collected using attachment and garnishment, as can other local taxes, special assessments, and nuisance abatement costs, just to name a few types of debts. Importantly, water and sewer bills may NOT be collected using attachments. For solid waste (garbage) fees, it depends on how they are billed. See this bulletin for more details.

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Remember that a local government may attach a taxpayer's overpayment only for another debt owed by that same taxpayer. If Billy Blue Devil overpays the taxes on his home, the tax office may not apply that overpayment to business personal property taxes owed by Billy's Burger Joint, Inc. unless Billy consents.

If a local government plans to apply an overpayment to another debt, the local government should send a formal attachment notice to the taxpayer just as it would if it were attaching the taxpayer's bank account or wages. While the local government probably could add to the delinquent debt the \$60 service of notice fee that usually accompanies an attachment, my advice is to waive that fee seeing as the local government is attaching funds it already possesses.

*Applying overpayments to next year's taxes:* this approach is fine so long as the tax office gives the taxpayer the opportunity to object and demand a refund. My advice is for the tax office to send a letter to the taxpayer explaining that the overpayment will be applied as a pre-payment to next year's property taxes unless the taxpayer requests a refund in a reasonable amount of time (30 days?).

### **G.S. 105-321(f): Minimal Tax Bills**

Counties need not bill or collect minimal tax bills if they adopt the resolution authorized by this provision. A "minimal" tax bill is defined as any bill for which the combined taxes of the taxing unit and any other local government for which it collects taxes is \$5 or less.

Technically the maximum amount of a "minimal" tax bill is supposed to be tied to the actual cost of printing and mailing a tax bill, meaning the billing threshold could be set lower than \$5. But from what I've seen most counties set their thresholds at \$5.

Once the "minimal taxes" resolution is adopted, the local government doesn't need to bill any taxpayer for initial tax assessments of \$5 or less. However, the tax collector must keep record of all minimal tax bills that were waived and report on the total amount of these taxes as part of her settlement.

If a county collects taxes on behalf of its towns, it must combine all taxes included on the same bill when determining if the bill falls under the \$5 threshold. Assume Carolina County bills taxes for Blue Devil City and that the taxes on Uncle Ernie's old row boat are \$4 for the county and \$1.50 for the city. Because the total taxes on that bill are greater than \$5, the county must send and collect the bill.

### **Language for the Resolutions**

No magic words are needed to adopt the resolutions for small over- and underpayments or for minimal taxes. Both can be accomplished in one resolution with language that mirrors the two statutes:

*Pursuant to G.S. 105-321(f), the county hereby directs its assessor and tax collector not to collect minimal taxes. Minimal taxes for these purposes are defined as the total principal amount of ad valorem taxes on a tax receipt billed and collected by the county that amount to \$5.00 or less.*

*Pursuant to G.S. 105-357(c), the county hereby directs its tax collector to treat small underpayments of \$1.00 or less as fully paid and not to refund small overpayments of \$1.00 or less unless the taxpayer requests a refund of the overpayment before the end of the fiscal year in which the small overpayment is made.*

Both resolutions remain in effect until repealed and need not be re-adopted annually. The small under- and overpayment resolution must be adopted prior to June 15 for it to apply to the taxes levied in that calendar year. It automatically applies to all prior years' taxes.

## **Links**

- [www.ncga.state.nc.us/Sessions/2015/Bills/Senate/PDF/S159v8.pdf](http://www.ncga.state.nc.us/Sessions/2015/Bills/Senate/PDF/S159v8.pdf)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-380](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-380)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-381](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-381)



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- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-357](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-357)
  - [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-368](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-368)
  - [sogpubs.unc.edu/electronicversions/pdfs/ptb162.pdf](http://sogpubs.unc.edu/electronicversions/pdfs/ptb162.pdf)
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