
Coates' Canons Blog: Court of Appeals Opines on Ptax Appeals

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If you could change one provision in the Machinery Act, which would it be? Near the top of my list would be standardizing the deadline for property tax appeals to county boards of equalization and review (“BOERs”).

The Machinery Act generally succeeds at creating a transparent, consistent system of taxation. Sadly the deadline for appeals to the BOER is neither transparent nor consistent, a situation that leads to taxpayer confusion and complaints. It also led to a recent Court of Appeals ruling on a dispute over the timeliness of a Guilford County taxpayer’s BOER appeal.

This blog post describes the current law, explains the Court of Appeals decision, and offers a simple statutory solution.

Current Law

Machinery Act deadlines are usually clearly defined and easily explained. When must discounts end? September 1, the date property taxes are due. G.S. 105-360(c). When does interest begin? January 6 following the due date. G.S. 105-360(a). How long is the statute of limitations for enforced collections? 10 years from the date the tax was due. G.S. 105-378(a). (But don’t forget that taxpayer deadlines move to the next business day if they fall on a weekend or holiday. G.S. 105-395.1.)

Sadly, there is no clearly defined deadline for taxpayers to submit appeals to their county BOER. The only reference to a BOER appeal deadline you’ll find in the Machinery Act is in G.S. 105-322(g)(2): “A request for a hearing under this subdivision shall be made in writing to or by personal appearance before the board [of equalization and review] prior to its adjournment.”

Relatedly, G.S. 105-322(e) states that a BOER “may not sit” later than July 1 in non-reappraisal years and December 1 in reappraisal years, “except to hear and determine requests made under the provisions of subdivision (g)(2) when such requests are made within the time prescribed by law.”

What the heck does all of that mean? It means that each county gets to pick its own BOER appeal deadline, which can vary from year to year.

Here’s how it works in most counties: the BOER announces and publishes in advance its adjournment date for purposes of receiving taxpayer appeals. The adjournment date serves as the deadline for taxpayer appeals, despite the fact that (if necessary) the BOER will continue to meet after the adjournment date to resolve appeals filed before the adjournment date. For an example of how this works in practice, see this BOER adjournment and appeal date notice from Orange County.

One problem with this arrangement is that taxpayers don’t know for certain when the appeal deadline will fall in a particular county each year. Another is that taxpayers with property in multiple counties will face different appeal deadlines across different counties.

Yet another problem involves statutory interpretation. What does the statute mean by “adjournment”? The generally accepted definition of “adjournment” is to “suspend proceedings to another time or place.” The practice of a BOER continuing to meet after “adjourning” for purposes of an appeal deadline seems inconsistent with that definition. If a BOER continues to meet to resolve the current year’s appeals, has it really “adjourned”?

This conflict between the definition and the practice of adjournment led to the recent Court of Appeals ruling out of Guilford County.

Dixie Building, LLC v. Guilford County

The facts of this dispute are simple and undisputed.

Guilford County conducted a reappraisal effective January 1, 2012 and announced that the deadline for filing appeals of 2012 reappraisals with the BOER was July 2, 2012. Dixie Building did not file a written notice of appeal until November 30, 2012. In January of 2013 its attorney appeared in person to file a 2012 appeal with the Guilford BOER, which was still meeting to hear 2012 appeals.

The Guilford BOER denied Dixie's 2012 appeal because it was late. Dixie appealed to the state Property Tax Commission, which agreed that Dixie's appeal was not timely and ruled in favor of Guilford County. Dixie then appealed to the state court of appeals, which just announced its decision last week.

The court of appeals agreed with the Guilford BOER and the Property Tax Commission and concluded that Dixie's appeal was late. The opinion confirms that a county has the right to set a deadline for BOER appeals even if the BOER continues to hear appeals after that deadline.

Dixie had argued that under G.S. 105-322(g)(2), a taxpayer should have the right to file an appeal with the BOER at any point up to the day that the BOER stops hearing appeals for the current year and actually adjourns. Dixie suggested that the statute does not give the county the authority to arbitrarily pick an earlier date to serve as the BOER appeal deadline.

Not true, said the court. If we interpreted the statute as Dixie proposed, a BOER might never actually adjourn. A taxpayer could file an appeal on the last day the BOER was hearing appeals, which would cause the BOER to postpone its adjournment so that it could prepare for and hear the new appeal. Then another taxpayer could file another appeal when the BOER was hearing the recently filed appeal. And so on, and so on, and so on . . . This continued need for new adjournment dates would also violate the notice requirements of G.S. 105-322(f).

The court rejected Dixie's argument and concluded that "the legislature intended for a local BOER to have the authority to set a reasonable deadline prior to its [actual] adjournment for accepting requests for revaluation appeals."

This decision resolves the "When-is-an-adjournment-really-an-adjournment?" question. But it does not eliminate the problem of different BOER appeal deadlines in different counties in different years. For that, we'll need a statutory change.

A Simple Statutory Solution

The General Assembly could eliminate much of the confusion surrounding BOER appeals by amending G.S. 105-322 to include a specific statewide deadline for filing an appeal with a BOER, with additional time granted to taxpayers who receive late notices of value changes. I don't think it matters much which date the legislature chooses, so long as BOER deadlines become consistent from county to county. It might make sense to choose one deadline for non-reappraisal years and another (later) deadline for reappraisal years: April 1 and July 1, perhaps?

I think it's unlikely that the General Assembly would address this issue in the remaining few days of the 2014 "short" legislative session (although some members jokingly hung Christmas decorations in a committee room to suggest that they'd still be in session for that holiday due to the deadlocked budget negotiations). Next year seems more realistic for a change to the BOER provisions, especially if the legislature follows up on its earlier interest in addressing property tax appraisal standards.

Links

- appellate.nccourts.org/opinions/?c=2&pdf=31253
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-360



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- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-378
 - www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-395.1
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