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## Coates' Canons Blog: Did the General Assembly Repeal City Privilege License Tax Authority Last Year?

By Chris McLaughlin

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Yes. But they didn't mean to. And the repeal doesn't affect privilege license taxes levied for the current fiscal year. (We think.) And they will (probably) fix the mistake this session. At the same time they might drastically change (in other words, limit) cities' authority to levy these taxes. Or they might do nothing and let the (mistaken) repeal stand.

Does that all makes sense? If not, join the club. It's been a confusing few months for folks who work in the area of municipal privilege license taxes. Here's my best effort to explain where we are now, how we got here, and where we might go next.

You might remember lots of debate last summer about a major overhaul for state taxes. Most of that debate focused on state income and sales taxes, but some of the proposals would have repealed or limited municipal privilege license taxes ("PLTs").

S.L. 2013-316, the tax bill that became law, essentially maintained the status quo for local PLTs. The law retained the broad authority in G.S. 160A-211 for cities to levy PLTs on all businesses except those covered by certain caps and exemptions known in the trade as "Schedule B." (Read this post for more on Schedule B.)

At least that was what was *supposed* to happen. Problems arose when the General Assembly passed S.L. 2013-414, a technical corrections bill related to S.L. 2013-316, the principal tax bill. Technical correction bills are intended to tie up loose ends created by other more substantive bills. They are not intended to enact major policy changes.

In this case, the only impact on local PLTs intended by S.L. 2013-414 was to add one line to G.S. 160A-211 to maintain the \$25 cap on PLTs for the sale of tickets to live events. Here's why that line was needed: The principal tax bill made ticket sales subject to state sales taxes and eliminated *state* PLTs on those sales. But repealing the provision for state PLTs on ticket sales also eliminated the \$25 cap for municipal PLTs on ticket sales, which was not what the General Assembly intended.

To solve this problem, S.L. 2013-414 added a reference to the now-repealed \$25 cap in G.S. 160A-211 to make the cap still effective on municipal PLTs. (Yes, repealed statutes still matter in the strange world of local privilege license taxes.)

But thanks to a drafting error, S.L. 2013-414 did more than just add a line to G.S. 160A-211. It repealed all of G.S. 160A-211(a), the subsection that creates the authority for cities to levy PLTs. Without that subsection, cities have *no* authority to levy these taxes.

When I first read S.L. 2013-414, I assumed that the repeal of G.S. 160A-211(a) was a non-issue because a few lines later the bill added back G.S. 160A-211(a) with the addition of the reference to ticket sales as was originally intended.

But the General Assembly and its staff concluded otherwise, and I'm inclined to agree with them after spending more time analyzing the issue. The addition of the extra line to 211(a) occurred after 211(a) had already been repealed by S.L. 2013-414. Rather than add back the repealed subsection, the bill attempted to amend a repealed subsection. The repealed subsection remained repealed.

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Assuming that the General Assembly is correct that 211(a) was eliminated (albeit unintentionally), the big question is when do or did cities lose their authority to levy PLTs? Section 58 of S.L. 2013-414, the portion of the technical corrections bills that accidentally repealed G.S. 160A-211(a), became effective "January 1, 2014, and applies to taxable years that begin on or after that date and to purchases made on or after that date."

I *think* that means that the unintended repeal of G.S. 160A-211(a) bars municipal PLTs for the 2014-2105 tax year (and future years) but that municipal PLTs levied for the 2013-2014 tax year remain valid and enforceable.

Most cities levy PLTs in conjunction with their fiscal year, July 1 to June 30. So long as the General Assembly corrects its unintentional repeal of G.S. 160A-211(a) before July 1, most city PLTs would remain unaffected by the mistake.

But if a city levies PLTs for a tax year that begins earlier in the calendar year, the unintended repeal may be a concern. Those cities technically would not have authority to levy PLTs for 2014-2015 if their PLT tax years begin before the General Assembly corrects its mistake. Then again, the General Assembly could make its correction retroactive in which case all city PLTs for 2014 and future years would be legal and enforceable. (I told you this was confusing.)

A bill to correct the mistaken repeal has already been introduced. House Bill 1050 would re-enact G.S. 160A-211(a) along with the new reference to ticket sales.

But H.B. 1050 doesn't stop there. The bill then (intentionally!) repeals all of G.S. 160A-211 and creates a new provision, G.S. 160A-211.2, that dramatically changes city PLT authority. Under this new provision, cities would be able to tax nearly all businesses in their jurisdiction without regard to the old Schedule B caps and exemptions. But those city PLTs would be capped at \$100 for all businesses.

First discussed at legislative committee meetings a few months ago, this \$100 cap on city PLTs would substantially reduce PLT revenues for cities that calculate these taxes on a gross receipts basis. The N.C. League of Municipalities believes that statewide this change would cost cities more than \$25 million in annual PLT revenue.

H.B. 1050 also repeals G.S. 153A-152, which authorizes counties to levy privilege license taxes. Because current county PLT authority is extremely limited this change would not have a substantial financial impact on counties.

As always, there's no guarantee that H.B. 1050 will become law. But General Assembly seems intent on taking some action on city PLTs this session. I'll pass along updates as they become available.

## Links

- [www.ncga.state.nc.us/Sessions/2013/Bills/House/PDF/H998v8.pdf](http://www.ncga.state.nc.us/Sessions/2013/Bills/House/PDF/H998v8.pdf)
- [canons.sog.unc.edu/?p=7106](http://canons.sog.unc.edu/?p=7106)
- [www.ncga.state.nc.us/EnactedLegislation/SessionLaws/HTML/2013-2014/SL2013-414.html](http://www.ncga.state.nc.us/EnactedLegislation/SessionLaws/HTML/2013-2014/SL2013-414.html)
- [www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2013&BillID=h1050](http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2013&BillID=h1050)
- [canons.sog.unc.edu/?p=6903](http://canons.sog.unc.edu/?p=6903)