Coates' Canons Blog: Discoveries, Deferred Taxes, and the New Year

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One of the most basic yet most misunderstood facets of North Carolina property taxes is the year for which those taxes are levied. Contrary to popular belief, property taxes are not levied for the calendar year. All local governments are required to budget and finance their operations on the basis of a fiscal year that runs from July 1 to June 30.

So why is it that so many property tax actions are tied to the start of the calendar year? I've blogged before about the importance of January 1 for determining taxability and about how record ownership as of January 6 determines personal liability for delinquent taxes on real property. Today I focus on two more property tax determinations that turn on January 1: the billing of discoveries and deferred taxes.

Discoveries and January 1

A discovery occurs when the county learns of property that (i) was not listed, (ii) was listed at a substantial understatement, or (iii) received an exemption or exclusion for which it did not qualify. G.S. 105-273(6a) and (6b).

January 1 is key to billing and collecting discoveries because the calendar year determines what prior tax years may be included in a discovery bill and when that discovery bill will become delinquent. G.S. 105-312(g) authorizes counties to tax the discovered property for a maximum of six years: the current year (meaning the tax year that opened in the calendar year the discovery is made) plus the previous five years. G.S. 105-312(i) requires that discovery bills become delinquent with the "regular" property taxes that are levied for the tax year that opens in the calendar year in which the discovery is made.

Those two provisions mean that a discovery made on December 31 will be treated much differently from a discovery made on January 1. For our purposes, we can assume a discovery is "made" on the date that the county sends notice to the taxpayer of the discovery bill.

Let's assume Tom Tarheel owned a boat in Carolina County from 2005 to 2015. Tommy never listed the boat for taxation.

Late on a Saturday night in December 2015, Tommy burns his boat in protest over the offside call against UNC at the end of the ACC championship game. (Side note: don't talk to me about bad calls, Tar Heel fans. Go watch the end of the Duke-Miami game again if you want to see what truly terrible officiating looks like.) When Tommy's tomfoolery makes local headlines, the county realizes that Tommy has never been taxed for his boat.

Scenario A: The county issues a discovery bill to Tommy in December 2015. The county include on that bill taxes for the 2015-2016 tax year (the tax year that opened in the calendar year the discovery was made) plus the previous five tax years (2010-2011 thru 2014-2015). The county may not tax Tommy's boat for 2009 or prior years. The entire discovery bill will be considered part of the 2015-2016 tax levy, meaning it becomes delinquent and begins accruing interest on January 6, 2016.

Scenario B: The county issues a discovery bill to Tommy in January 2016. The "current" tax year is the 2016-2017 tax year, because the discovery was made in 2016. Tommy does not owe taxes on the boat for 2016-2017 because the boat no longer existed as of January 1, 2016. (Even if it did, the county could not yet discover the boat for 2016-2017 taxes because the 2016 listing period does not end until January 31 at the earliest.) As a result, the only years of taxation that may be included on the discovery bill are the previous five years: 2011-2012 thru 2015-2016. The county may not tax Tommy's boat for 2010 or prior years. The entire discovery bill will be considered part of the 2016-2017 tax levy, meaning

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it becomes delinquent and accrues interest on January 6, 2017.

Note the difference between Scenario A and Scenario B: issuing the discovery bill after January 1 changes the tax years that may be included on that bill and moves the delinquency date by an entire year.

For more on discoveries, see this bulletin.

Deferred Taxes and January 1

Just as it does for discoveries, January 1 plays a large role in determining which prior years' taxes may be recaptured under deferred tax exclusions such as the circuit breaker (G.S. 105-277.1B) and present-use value (G.S. 105-277.4).

The uniform provisions for payment of deferred taxes in G.S. 105-277.1F state that taxes for the tax year that begins in the calendar year in which the property loses eligibility for the deferral must be calculated as if the property had never been eligible for the deferral that year. Clear as mud, right?

Here's how that provision works: if property loses eligibility for a deferral in calendar year 2015, then the 2015-2016 taxes are calculated (or perhaps re-calculated) as if the property had never been eligible for the deferral for 2015. Recapture of deferred taxes begins with the 2014 tax year.

But if the property loses eligibility for the deferral on or after January 1, 2016, then the property retains the deferral for 2015 and the 2016-2017 taxes are calculated as if the property was not eligible for the deferral for 2016. Recapture of deferred taxes begins with the 2015 tax year.

For example, consider property that is in the present use value ("PUV") program. That exclusion provides for a 3-year recapture of deferred taxes. Assume the property suffers a "disqualifying event" that terminates eligibility for PUV on December 31, 2015 and that the property will no longer be eligible for the deferral going forward due to a change in use or an ineligible owner. The 2015 taxes on the property should be re-calculated and rebilled without the deferral. If the taxpayer has already paid the non-deferred taxes for 2015, then the taxpayer will be billed just for the additional taxes that were originally deferred. Those additional taxes will become delinquent on January 6, 2016. The recapture of deferred taxes will cover the years 2012, 2013, and 2014.

Assume instead that the disqualifying event occurs just one day later on January 1, 2016 (and as before the property will no longer be eligible for the deferral going forward). In this case the property retains the deferral for the 2015 tax year, meaning the first year taxes will be calculated without the deferral will be the 2016-2017 year. The recapture of deferred taxes will cover the 2013, 2014 and 2015 tax years.

For more on deferred taxes, please see this bulletin.

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