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Coates' Canons Blog: Five Common Property Tax Collection Questions & Answers

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Are property taxes levied for the calendar year or a fiscal year?

Property taxes seem tied to the calendar year, given the January 1 listing date. But property taxes are actually levied for the fiscal year running from July 1 to June 30 each year. It's especially confusing because you won't find any definition of the fiscal year in the Machinery Act. Instead, you'll need to look at the Local Government Budget and Fiscal Control Act, which is Article 3 of GS Chapter 159. Section 159-8(b) states that the budget ordinance required annually for all local governments must detail all revenues and expenditures for the July 1 to June 30 fiscal year. GS 159-13 states that the annual budget ordinance, based on the fiscal year, is the legal vehicle for levying property taxes. Put those two provisions together, and it leads to the conclusion that all local property taxes are levied for the fiscal year that runs from July 1 to June 30.

Are we allowed to waive interest?

Only if that interest was levied illegally or due to clerical error. GS 105-381 applies to the refund or release (waiver) of taxes, and the Machinery Act defines "taxes" to include both principal taxes and interest. That means the restrictions in GS 105-381 apply to interest. For more on GS 105-381, see this post. For a discussion of when it might be justified to release interest on a retroactive tax bill, see this post. For a discussion of compromising a discovery bill, including interest on that bill, see this post.

If one co-owner of a property is in bankruptcy, can we used enforced collections against another co-owner of the property for delinquent taxes owed on that property?

Yes. The automatic stay that arises during a bankruptcy proceeding protects only the actual debtor—the individual or entity named on the bankruptcy filing—and not parties that might be related to the debtor or own property with the debtor.

Assume Donald and Melania jointly own a yacht on which delinquent taxes are owed. Donald is in bankruptcy (again!). The tax office is free to use enforced collections against Melania's assets (perhaps attaching an individual bank account or her wages or levying on and selling her car) despite the fact that Donald is protected by the automatic stay. This is true regardless of whether Donald and Melania are married.

The tax office could not sell the yacht to satisfy the delinquent taxes owed on the yacht. Donald owns half of the yacht, and his assets are protected by the automatic stay. The tax office might be able to sell only Melania's half interest in the yacht, but I would not recommend that for two reasons. First, I'm not certain that action would avoid conflict with the automatic stay because it affects property owned by the debtor. Second, that levy and sale would be unlikely to attract many bidders because who wants to own a half of a yacht with a stranger? (I leave it to the reader to decide whether bidders would be more or less interested in such a scenario if the other co-owner were a Trump.)

Which raises a related question . . .

Can we use enforced collections against one co-owner of property for the full amount of delinquent taxes owed on that property?

Yes. Co-owners are jointly and severally liable for taxes on the co-owned property. The tax office may use enforced collections to force one of the co-owners to pay the entire amount of delinquent taxes on the property. That may give the

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co-owner a legal right to collect some of those taxes from the other co-owners, but that is an issue between co-owners and not between the taxpayer and the tax office.

If the property involved is real property, GS 105-363 applies. That provision states that if a co-owner pays more than her proportionate share of the taxes owed on the property then that co-owner obtains a lien on the other co-owners' interests in the amount of the "excess" taxes paid by the first co-owner. Again, that is an issue between co-owners and not one that the tax office needs to worry about.

GS 105-363 also states that a co-owner of real property may pay her proportionate share of the taxes owed on the property and remove her ownership interest from any subsequent foreclosure action initiated by the tax office. For example, assume Don Jr. and Eric co-own a beach house in Dare County. Don Jr. pays half of the taxes owed on the beach house. If the other half of the taxes remain unpaid and Dare County moves to foreclose on the house, the county could foreclose only on Eric's one-half interest in the house. Don Jr.'s interest would not be affected by the foreclosure.

But as mentioned above, it seems unlikely the county would ever decide to foreclose on a partial interest. Few bidders would be interested in becoming a co-owner of a house with a stranger. Instead, I think the county could use enforced collections against Don Jr. for the full amount of the taxes owed on the house and let him go after Eric for the excess amount he pays involuntarily.

Who is responsible for unpaid deferred taxes after a transfer?

Assume Roy owns Parcel A, which is receiving the present use value exclusion for farmland. Roy decides to retire from farming and because his kids have no interest in working the land he sells the property to Big Bad Development Corp. on May 1, 2017. That transfer is a disqualifying event, meaning the three most recent years of deferred PUV taxes become delinquent. GS 105-365.1(a)(2) If those taxes are not paid at closing, whom may the tax office hold personally responsible?

GS 105-365.1(b) states that for taxes on real property the personally responsible owner is the owner on the date of delinquency (the transfer date, in this situation) plus all subsequent owners. Seems to me that BOTH the old owner (Roy) and new owner (Big Bad) were owners on the date of delinquency. Roy owned the property as of the morning of May 1 and the new owner (Big Bad) owned it as of the end of the day. That means the tax office may go after any tangible personal property (cars, boats, etc.) or any intangible personal property (wages, bank accounts, etc.) of either Roy or Big Bad. The tax office may also choose to foreclosure on the property, of course.

The result is the same regardless of the type of deferred taxes at issue. A variety of exclusions create deferred taxes, including the property tax homestead circuit breaker (GS 105-277.1B), working waterfront property (GS 105-277.14), and historic property (GS 105-278(b)). If a transfer is the disqualifying event for any of those exclusions, either the old or the new owner may be held personally responsible for the delinquent deferred taxes.

Remember that if your county requires the tax collector to certify a deed before it may be recorded, that certification should include all deferred taxes that will become delinquent because of a transfer. See this blog post for more on deed certification.

Links

- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=159-8
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=159-13
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-381
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-363
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- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-277.1B
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