
Coates' Canons Blog: “Good Cause” and Late Property Tax Exemption Applications

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The Machinery Act rarely gives local governments much discretion. Most often our property tax statutes proscribe exactly what should happen in a given situation.

There are a few tax collection situations in which local governments have flexibility, however. Consider the unfettered authority of tax collectors to waive the 10% penalty for bad checks (G.S. 105-358) or the option for local government boards to waive discovery bills. G.S. 105-312(k).

Another of these discretionary situations is the topic of today's blog post: decisions by governing boards to allow late exemption applications for “good cause.” G.S. 105-282.1(a1). That statute does not define “good cause”, leaving it up to local governments to decide for themselves what facts justify late applications.

The rules concerning exemption and exclusion applications are happily confined to a single statute, G.S. 105-282.1. (For our purposes, the terms “exemptions” and “exclusions” are interchangeable. To keep it simple, I'll just call them all “exemptions.”)

A precious few exemptions are automatic, meaning that the taxpayer is entitled to a property tax break without the need to file an application or take any other action. These “automatic” exemptions include government property (G.S. 105-278.1), inventories (G.S. 105-275(32a), (33) & (34)), and, importantly, our 75-inch flat-screen televisions and Coach K bobblehead collections (non-business personal property, G.S. 105-275(15)).

A larger number of exemptions require only a single application. Once approved, the exemption remains in place until the county learns of a change in the property's use or ownership or other criterion for eligibility. Sometimes that information comes voluntarily from the taxpayer, but more often it comes in the form of a discovery made by the county.

The list of single-application exemptions include religious property (G.S. 105-278.3), educational property (G.S. 105-278.4), charitable property (G.S. 105-278.6), residential property owned by seniors with limited incomes (the elderly and disabled exclusion, G.S. 105-277.1), and a couple dozen more.

Exemptions that are not automatic or single-application exemptions are, by default, *annual*-application exemptions. Examples include the circuit breaker (G.S. 105-277.1B) and the new provisions covering unsold improvements to residential and commercial property discussed here.

Most exemptions applications are due by the close of the listing period, which ends January 31 absent an extension by the county commissioners. G.S. 105-282.1(a). Residential property tax relief exclusion applications (circuit breaker, disabled veterans, and elderly & disabled) are due June 1. G.S. 105-277.1(c).

But those deadlines are not written in stone. G.S. 105-282.1(a1) states that “upon a showing of good cause by the applicant for failure to make a timely application” the governing board may accept late exemption applications up to the close of the calendar year.

What exactly is “good cause”? That definition can vary from county to county. Some governments may choose to accept “I forgot” or “I didn't know” as good cause for late applications. Others may be more strict. Governments might even be able to adopt different standards for different types of taxpayers. Commercial taxpayers who are expected to be more aware of the financial obligations of running a business might be held to a more demanding definition of “good cause” than elderly residential taxpayers, for example.

I say “might” because we haven’t received much guidance from the Property Tax Commission or the state courts on this topic.

In late 2010 and early 2011, the Property Tax Commission decided two similar appeals involving churches that had submitted exemption applications after December 31 for the tax year in question. Surprisingly, the PTC ordered the county to accept these very late applications. The PTC apparently decided that the churches had good cause for their late applications because they never received tax bills for the disputed property. Had the churches been billed properly, the PTC reasoned, they would have remembered to submit the application prior to the close of the year.

As I wrote in this blog post, I strongly disagree with these PTC decisions. The December 31 deadline created by G.S. 105-282.1 is absolute regardless of whether the taxpayer might have had good cause for the late application.

In a 2012 case involving the multi-million-dollar North Carolina Research Campus in Kannapolis, the state court of appeals found the county’s rejection of a late application to be arbitrary and capricious in part because that decision was based largely on the amount of tax dollars implicated by the potential exemption. Equally troubling in the court’s eyes was the fact that the county was well aware of the taxpayer’s exempt status after the two parties had worked closely on the creation of a unique tax-increment financing deal. Read more about this case here.

Add to this short list of “good cause” decisions two recent PTC rulings involving solar farms. Both *In re: DG Solar Lessee, LLC* and *In re: Rock Solar Energy Plant LLC* involved appeals by taxpayers who had late applications for the solar energy electricity property exclusion (G.S. 105-275(45)) denied by their respective counties.

The taxpayers’ only arguments in support of “good cause” for their tardiness were, “We didn’t know we had to file applications!” and “Other counties have accepted late applications.” As the PTC correctly pointed out, those two arguments are inherently contradictory. If you fought for and received permission to file late exemption applications in other counties, you obviously were aware of the application requirement. The PTC rejected the taxpayers’ appeals and upheld the counties’ decision to reject the late applications.

While I agree with the result, I think the PTC missed a more fundamental point. In one of the appeals, the taxpayer submitted its exemption application for tax year 2013 in May 2014. The absolute deadline for 2013 exemption applications was December 31, 2013, meaning that the May 2014 application should have been rejected for 2013 taxes without the need to consider good cause. As in the church appeals mentioned above, the PTC continues to ignore or misread the explicit statutory requirement that exemption applications be filed by the end of the calendar year.

Read together, what guidance do these appellate decisions give counties when they interpret the “good cause” standard in G.S. 105-282.1? Not much, really. Here are the best lessons I can glean from these cases:

1. Don’t base the definition of “good cause” on the amount of tax dollars involved with the potential exclusion. The sophistication of the taxpayer (global corporation vs. elderly homeowner) might be a reasonable basis for applying different “good cause” requirements to different cases. But the bar for late applications should not be set higher simply because the requested exemption involves a lot of money.
2. It’s fine to reject late applications if the best argument the taxpayer offers is, “I didn’t know I had to file an application.” This is especially true for commercial taxpayers who face similar exemption questions in multiple counties.
3. One county need not reach the same decision as did another county on a similar exemption application from a similar (or the same) taxpayer.
4. While the failure to receive a tax bill is not an excuse to avoid paying taxes (see this blog post), it might be an acceptable excuse for a late exemption application.
5. Be consistent. If the county routinely accepts all late applications, it may be tough for the county to justify a sudden switch to a more strict definition of good cause. Ideally, the board should develop a written policy on how it defines good cause in these situations and then apply that policy in all appeals. A written policy will be especially important if your county has been lenient on late applications in the past but wishes to apply a more demanding standard going forward. Adopting a written policy describing the board’s new understanding of “good cause” (and applying that new policy consistently going forward) will help protect the county’s decisions on appeal to the PTC or the state courts.

Mary Helen Norton, the Scotland County tax administrator, just shared with me her county's late application policy, which I like a lot. Ms. Norton reports that the policy has been in place since early 2014 and has worked well so far. Here is a lightly edited version of Scotland County's policy:

Inherent in owning property is the obligation of property owners to understand their rights and obligations including paying taxes and applying for all exclusion and exemptions from property taxes in a timely manner. With that principle in mind, taxpayer neglect or oversight will not constitute "good cause" for a late exemption or exclusion application.

Good cause for considering a late application may include situations in which:

- **The taxpayer was given incorrect information in writing regarding the matter from the tax office or the N.C. Department of Revenue;**
- **The taxpayer's request would have been timely but for the late delivery or failure to deliver by USPS, UPS, FedEx, etc.; and,**
- **The taxpayer was incompetent or incapacitated or deployed in military service out of the country during the period in which the application should have been submitted.**

The burden of proving both good cause for the late application and eligibility for the requested exemption or exclusion falls on the taxpayer.

I'd love to hear how your county interprets the good cause standard in G.S. 105-282.1. Does your board always accept late applications? Never? Use the comment section below to share your experience with our readers.

Links

- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-385
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-312
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