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## Coates' Canons Blog: Government Property and Property Taxes

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Property owned by a government—local, state, or federal—is exempt from property taxes in North Carolina. That's one of the most simple, straightforward provisions in the entire Machinery Act. (You can find it in G.S. 105-278.1). So why do we need to spend an entire blog post talking about government property? Because the topic isn't as simple as it appears at first glance. Here are a few of the more common—and complex—tax questions that arise when a government purchases property in North Carolina.

*Does it matter how the government uses the property?*

No. All government property is exempt from local property taxes, regardless of how it is used. That is very different from the other major property tax exemptions—religious, educational, charitable—all of which require both ownership by an eligible taxpayer AND use for an exempt purpose. (See this blog post for more.)

For example, both Duke University and UNC-Chapel Hill own property that is used as an upscale hotel, the Washington Duke Inn and the Carolina Inn, respectively. The Washington Duke Inn is taxable but the Carolina Inn is not. Why? Because Duke is a private educational institution subject to the use requirement under G.S. 105-278.4. The Washington Duke Inn is not used for educational purposes, therefore it cannot qualify an exemption under that statute. UNC-Chapel Hill is a public university, meaning it is a government agency. All government property is exempt, even property that is used for commercial purposes such as a hotel.

*What if a government leases property to another party?*

Government-owned property is always exempt from property taxes, even if it is leased to a taxable party. For example, assume that UNC-Chapel Hill leased the Carolina Inn to a private company. The hotel itself would remain exempt. Until 2019, the private company's leasehold interest in that exempt property would be taxable (to the private company, not to UNC-Chapel Hill). However, that changed due to S.L. 2018-98 , which exempts leasehold interests in exempt government property beginning with the 2019 tax year. As of 2019, leases in government property will no longer be taxable to the lessee.

*What if a government leases property from another party?*

Property leased by a government (rather than owned by a government) is not automatically exempt. The taxability of that property depends on who owns it, not who leases it.

For example, assume the federal government leases two parcels: Parcel A from Billy Blue Devil, a taxable owner; and, Parcel B from Carolina County. The federal government's leases would not affect the taxability of either parcel. Parcel A still would be taxable (to Billy) because it is not owned by a government. Parcel B would still be exempt because it is owned by a government.

*What if a private party constructs a building on government land?*

The land itself would remain tax exempt because it is owned by a government. Assuming the building is owned by the builder, that building would be taxable to that private party. The building owner would also be liable for any taxes owed on the leasehold interest in the government land on which the privately owned building sits. This is the arrangement in place for the Carolina Panther's home turf, Bank of America Stadium in Charlotte.

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### *What happens to existing tax liens when a government obtains real property?*

Existing property tax liens remain in place when a government obtains property, assuming that the government did not purchase the property at a tax foreclosure sale (which extinguishes all existing liens on the property). See this post and this one for more on when a government purchases property at a tax foreclosure sale.

But if existing property tax liens are not paid at closing, it's likely they will never be paid because enforced collection remedies (attachment and garnishment, levy and sale, foreclosure) cannot be used against other governments. (See page 170 of my property tax collection book for more.)

Existing taxes should be paid at closing if the land is acquired by a local government or by the state of North Carolina thanks to G.S. 105-385. Local governments who learn of a pending purchase (or condemnation) of property by another local government or the state should be proactive and remind the purchasing government of its obligations under G.S. 105-385. But if that purchasing government fails to pay the taxes at closing, the taxing government's only collection remedy is to sue the purchasing government. It cannot use Machinery Act remedies against the purchasing government.

G.S. 105-385 does not apply to acquisitions by the federal government. In some instances, the federal government has obligated its agencies itself to pay local property taxes or those agencies will do so voluntarily. For example, from what I've been told by several county tax collectors the U.S. Marshall's office often pays existing property taxes on property it obtains in drug proceeds forfeiture cases. But as with other government owners, there is no practical way for a local government to force the federal government to pay off existing property tax liens if it does not do so voluntarily.

Local tax collectors should not lose all hope if another government obtains property and neglects to pay off old tax liens on that property. Those tax liens remain in place, and if the property is later sold to a private party then the old liens may be enforced against that new owner under G.S. 105-365.1(b)(1) (assuming the government did not obtain the property in a tax foreclosure sale and that the 10-year statute of limitations on those liens did not expire).

Consider this example: Carolina County purchases Parcel A from Tommy TarHeel in February 2016, with the intent of creating a county park on the property. Parcel A sits in Blue Devil City. The property is taxable for 2016 because it was owned by a taxable owner as of January 1, 2016. Under G.S. 105-385, the county should pay off the 2016 city tax lien on Parcel A when it closes on the purchase.

Let's pretend the county does not pay those 2016 taxes. The city's only option to force payment from the county is to sue the county, which seems unlikely. But that tax lien will remain on the property despite the city's inability to enforce it.

Assume that in March 2018 the county decides it no longer wants to create a park on Parcel A. It then sells the property to Wanda Wolfpack, a taxable property owner. The city can now enforce its 2016 against Wanda using its standard enforcement remedies (foreclosure, attachment and garnishment, levy and sale, or debt set-off). There would be no 2017 taxes on the property because it was owned by the county for that entire year. 2018 county and city taxes should be levied on the property because it was sold to a taxable owner prior to July 1, 2018. Those taxes will not be subject to enforced collections until January 6, 2019.

## Links

- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-278.1](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-278.1)
- [canons.sog.unc.edu/the-two-key-questions-for-property-tax-exemptions/](http://canons.sog.unc.edu/the-two-key-questions-for-property-tax-exemptions/)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-278.4](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-278.4)
- [www.ncleg.net/Sessions/2017/Bills/Senate/PDF/S561v5.pdf](http://www.ncleg.net/Sessions/2017/Bills/Senate/PDF/S561v5.pdf)
- [www.tampabay.com/news/politics/stateroundup/politifact-florida-dolphins-arent-only-nfl-team-to-pay-property-taxes/2117585](http://www.tampabay.com/news/politics/stateroundup/politifact-florida-dolphins-arent-only-nfl-team-to-pay-property-taxes/2117585)
- [canons.sog.unc.edu/when-a-local-government-purchases-property-at-a-tax-foreclosure-part-i/](http://canons.sog.unc.edu/when-a-local-government-purchases-property-at-a-tax-foreclosure-part-i/)
- [canons.sog.unc.edu/when-a-local-government-purchases-property-at-a-tax-foreclosure-part-ii/](http://canons.sog.unc.edu/when-a-local-government-purchases-property-at-a-tax-foreclosure-part-ii/)
- [www.sog.unc.edu/publications/books/fundamentals-property-tax-collection-law-north-carolina](http://www.sog.unc.edu/publications/books/fundamentals-property-tax-collection-law-north-carolina)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-385](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-385)



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- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-365.1](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-365.1)
  - [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-378](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-378)
  - [canons.sog.unc.edu/property-taxes-and-new-years-day/](https://canons.sog.unc.edu/property-taxes-and-new-years-day/)