
Coates' Canons Blog: Interest(ing) Questions

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Article: <https://canons.sog.unc.edu/interesting-questions/>

This entry was posted on June 21, 2019 and is filed under Finance & Tax, Property Taxes

Pardon the pun, but I couldn't resist that title for a blog post on the subject of property tax interest. Usually when we think of interest we think of the additional amount owed by taxpayers who fail to pay their taxes by January 6, the delinquency date. But today I'm writing about interest that might be owed by a local government to a taxpayer on a refund.

Confusingly, there is no one firm interest rate that applies to all property tax refunds. Some refunds accrue 10% interest per year, some 5% per year, and some must not accrue any interest at all. Here are the details:

Appeal Refunds:

Some refunds result from successful appeals by taxpayers who have already paid their initial bills. Assume taxpayer Theresa is denied an elderly & disabled homestead exclusion. Theresa might choose to pay the full tax bill on her house while her appeal of the exclusion denial is pending. If Theresa wins her appeal then she will be entitled to a refund in the amount of her new exclusion, which could be 50% of her initial bill. If so, then interest might apply to that refund.

I say "might" because it depends on when the refund is issued. Interest accrues on appeal refunds only when the refunds are paid after the delinquency date of the tax, which is usually January 6.

(For 2019 taxes, the delinquency date is January 7, 2020, thanks to the weekend and holiday rule in G.S. 105-395.1. January 5, the last day to pay 2019 taxes without interest, is a Sunday, which moves to Monday, January 6. The delinquency date then moves to Tuesday, January 7.)

If an appeal refund is paid before the delinquency date, no interest accrues. If an appeal refund is made on or after the delinquency date, then interest must apply to the refund. The interest would be calculated from the date of delinquency (or the date the taxpayer paid the full bill, if that occurred after the date of delinquency) until **five days after** the refund check is mailed (to allow time for the check to actually be received by the taxpayer).

The rate of interest depends on which appellate body decides the appeal.

Board of Equalization and Review (BOER) decisions: an appeal resolved by a county BOER accrues interest at the Machinery Act rate of 2% for January and .75% for every month thereafter. GS 105-360(e).

Again, this interest accrues only if the refund is made after the delinquency date. Most BOER appeals will be resolved long before that date, given the fact that the BOER will begin hearing appeals in April or May and the delinquency date is not until the following January. But in large counties following reappraisals it's not uncommon for BOER decisions to extend into the following calendar year.

Consider again our friend taxpayer Theresa from the example above. Thanks to a backlog of appeals at the county BOER, Theresa's case is not heard until early 2020. She wins her appeal and is entitled to a 50% refund of her initial 2019 tax bill. The county mails Theresa's refund check on February 25, 2020. Adding the five-day mailing period, that refund check must include 3.5% interest, representing 2% for January and .75% each for February and March (because the five-day mailing period would extend until March 1). Note that each month's Machinery Act interest accrues in full on the first day of that month; it is not calculated on daily basis.

Property Tax Commission (PTC) and state appellate court decisions: refunds resulting from PTC decisions in favor of the taxpayer accrue interest at the rate set every six months by the N.C. Department of Revenue (DOR) for late state income tax refunds. GS 105-290(b)(4). This interest rate also applies to refunds that result from appeals of PTC

decisions to the state appellate courts, because technically those appellate court rulings send the cases back to the PTC for final judgments.

The DOR interest rate is currently at 6% but will drop to 5% for the second half of 2019. Unlike Machinery Act interest, interest on PTC refunds is calculated on a daily basis. Return to the taxpayer Theresa example. Assume Theresa's appeal is heard by the BOER in April 2019, which rules in favor of the county. She appeals to the state PTC in Raleigh and wins in early 2020. If the county mails her refund check on February 25, 2020, it must include interest at a 5% annual rate calculated on a daily basis: $61/366 \times .05 = .83\%$ interest. That calculation includes the 5 extra days for mailing, taking us to March 1 which is the 61st day of the year, and 366 total days because 2020 is a leap year.

Note the dramatic difference in interest rates for two different refund checks mailed on the same date. The county would owe over four times more interest if the refund results from a BOER decision as compared to a refund resulting from a PTC decision. While I'm not certain why the General Assembly created this discrepancy, I think it was intended in part to motivate counties to resolve their BOER appeals more quickly.

Settlements: is interest owed when a refund results from the settlement of an appeal before a final decision is issued by the BOER, the PTC, or a state appellate court?

I think the answer is yes, if the appeal is pending before the PTC or state courts because such a settlement should be approved and finalized by an order from the PTC. (I'm not sure that settlements during pending court of appeals proceedings are always resolved with PTC orders. But they should be. Without a PTC order, I'm not sure that the county would have the authority to change the property value as agreed upon in the settlement.)

But if an appeal is resolved by settlement prior to a BOER decision, then that matter does not require a BOER order and no interest is owed on the resulting refund.

GS 105-381 Refunds:

Many refunds are not related to appeals but instead are for illegal taxes or taxes levied due to clerical error. These refund decisions are made by the county commissioners or town council under GS 105-381. (Read more about GS 105-381 refund and release decisions [here](#) and [here](#).)

No interest is permitted on refunds under GS 105-381. Why? There is no statutory authority for interest on GS 105-381 refunds. A local government that voluntarily pays interest on a such a refund would be making an illegal gift of public funds to a private party.

The same is true for refunds of overpayments, which technically are refunds of illegal taxes under GS 105-381. (Remember that if the county applies an overpayment of up to \$15 to the following year's taxes, then Machinery interest must apply for the six months from January 6 to July 1. See this [blog post](#) for more on overpayments.)

This chart summarizes the rules for interest on refunds:

Type of Refund	Interest Rate
Board of Equalization and Review order	Machinery Act interest (2% for January, .75% for every month thereafter)
Property Tax Commission order (including settlements and state court appellate decisions)	Department of Revenue interest (currently 5%, calculated on a daily basis)
Refunds under GS 105-381	No interest



Links

- www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_105/ga_105-395.1.html
- www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_105/ga_105-360.html
- www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_105/ga_105-290.html
- www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_105/ga_105-381.html