Coates' Canons Blog: Interlocal Agreements for Property Tax Collection

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What percentage of North Carolina cities and towns rely on their counties for the collection of municipal property taxes? 60%? 80%? I don't know the exact figure, but I'm certain it's much closer to 100% than it is to 0%. And I think it's far more common today than it was fifty years ago.

G.S. 160A-461 authorizes any and all North Carolina local governments to "enter into contracts or agreements with each other in order to execute any undertaking." Thanks to this statute, a city is free to contract with the county for it to provide the city property tax billing and collection services and to reimburse the county for those services. Today's blog answers several common questions about these type of city/county agreements.

Is there a cap on the fee that a county may charge a municipality for tax collection services?

No.

Neither G.S. 160A-461, the general authorizing statute for interlocal agreements, nor the Machinery Act make any reference to the rates that may be charged for tax collection services. As a result, the fee charged by the county to a municipality for these services is completely up for negotiation between the two local governments.

While these agreements are public records that must be made available upon request, I don't know of any resource that lists all of the fees charged by different counties to different municipalities. Anecdotally, I think most agreements require the municipalities to pay between 1% and 2% of the total amount collected to the counties. But there is plenty of variation across the state. According to this article, Hertford County regularly charges its towns a collection fee of 4%. In contrast, Wake County charges Raleigh only 0.2%.

The parties are free to get creative with the compensation that the city pays the county. For example, the fees paid by the city of Durham to Durham County were at one point based in part on the county's tax collection rate. The better the collection rate, the higher percentage fee paid by the city. Another approach would be for the city to agree to pay one commission fee on taxes paid voluntarily by taxpayers and pay a higher commission fee on taxes that require the county to use enforced collections remedies. (Hat tip to my SOG colleague Kirk Boone for the latter idea.)

If the city contracts with the county for tax collection services, which local government makes the decisions about when and how to use enforced collection remedies for city taxes?

The county, unless the agreement states otherwise.

While contracting with the county for tax collection services may be more cost effective for the city than collecting its own taxes, there is one potential negative to this approach. The city will cede control over enforced collection decisions to the county tax collector. Unless the interlocal agreement states otherwise, the county will decide how aggressively it will employ enforced collection remedies such as wage garnishment, levy and sale of motor vehicles, or foreclosure on real property. The decisions made by the county tax collector may not be the same as the city would have made if it were responsible for its own enforced collections.

For example, I've heard of city officials who become upset a few years into an interlocal tax collection agreement because they believe that their county tax collector is too slow or too quick to start foreclosures. Those concerns could have been minimized if during the negotiation stage each party made the effort to learn the other's enforced collection expectations

and policies (*Do we garnish wages? How many years must a tax be delinquent before we start a foreclosure?*). If one party wants to create requirements for the use of certain remedies (e.g., "foreclosures will be begin no later than three years after taxes become delinquent" or "the city must receive prior notice of all tax foreclosures and has the right to veto the use of that remedy on a particular property") then those requirements should be made explicit in the agreement.

In addition to the *control* of tax collection actions, the *costs* of collection actions might also be a good topic to cover in a collection agreement. The Machinery Act permits the costs of many enforced collection actions to be charged directly to the taxpayers involved (advertising costs, charges for service of attachment notices, towing and storage costs for a levy). But in some cases the tax unit is forced to eat the costs, and the collection agreement could (perhaps should) spell out if and how the two governments will split them.

Consider a foreclosure action in which the only bidder is the government, In that situation, there are no sales funds available to pay the attorneys fees. Should the county be solely responsible for that cost? Should the two governments split that cost? If so, how? Evenly? Pro-rata based on the amount of county/city taxes involved in the foreclosure? Better for the two governments to negotiate this issue before signing the agreement rather than arguing about it after the costs have been incurred.

One final foreclosure issue that should also be mentioned in a collection agreement: will the two governments jointly submit opening bids at tax foreclosures? If so, then the two governments could wind up jointly owning the property. If they do not submit initial bids, then a third-party bidder (or the taxpayer!) could wind up buying the property free and clear of all tax liens. (For more on this foreclosure issue, click here and here.)

Must tax collection agreements be reapproved annually?

No.

G.S. 160A-461 states only that interlocal agreements "shall be of reasonable duration, as determined by the participating units, and shall be ratified by resolution of the governing board of each unit." Local governments are free to negotiate multi-year agreements that need to be approved only once by each governing board.

Is the municipality still required to appoint a tax collector if it contracts with the county to collect municipal property taxes?

Yes.

G.S. 105-349 requires every local government that levies property taxes to appoint a tax collector. It makes no exceptions for those governments that contract with other governments for tax collection services. If the municipality fails to appoint a tax collector, then technically no one has the authority to use the collection remedies available under the Machinery Act (attachment, levy, foreclosure) for the municipality's property taxes.

The best approach in this situation is for the interlocal agreement to contain a provision that appoints the county tax collector as the municipal tax collector. The agreement can state that the appointment is for the same term as that of the county tax collector. The county tax collector's bond should be large enough to cover municipal taxes as well as county taxes.

May the agreement cover the collection of current and future municipal property taxes but make the municipality responsible for the collection of existing delinquent taxes?

Yes.

As discussed above, the two governments are free to be as creative as they wish in the crafting of an interlocal agreement. If the municipality will retain authority for the collection of certain taxes, the municipality should appoint one of its own employees as tax collector for those specific taxes and appoint the county tax collector as the tax collector for all future municipal taxes.

Does an interlocal property tax collection agreement also cover other taxes and fees that can be collected in the same manner as property taxes?

No, not automatically.

As this Property Tax Bulletin describes in detail, there are a variety of other taxes and fees that may be collected using Machinery Act remedies, including occupancy taxes, special assessments, nuisance abatement expenses, and housing code enforcement costs ("demolition liens"). If the municipality wants the county to collect these other taxes and fees, then it must specifically include them in the interlocal agreement. Simply making the agreement apply to "property taxes" does not automatically give the county the authority or obligation to collect other municipal charges that may be collected using property tax remedies.

Counties are under no obligation to agree to collect these other taxes and fees, of course. Counties may decline entirely or may require a higher compensation percentage for these charges because of the additional clerical or programing work that they may require.

If the county does agree to collect other taxes and fees, do those charges accrue interest in the same manner as do property taxes?

No, not automatically.

As this bulletin explains, some municipal charges such as occupancy taxes and special assessments have their own interest and penalty schedules. Others do not, meaning that municipalities have the discretion to determine what and when interest and late-payment penalties apply. For these discretionary charges, municipalities may decide simply to follow the Machinery Act interest rate and schedule, an approach that likely would be the easiest for the county to apply. But that's up for the municipality to decide for each specific type of charge that does not already have a statutory interest and penalty schedule, perhaps after consulting with the county to determine what is feasible under the county's tax collection software.

Links

- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-461.html
- m.roanoke-chowannewsherald.com/2018/11/26/town-tax-collection-rate-lowered-in-hc/
- www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/20171048%20PTB%20174%202018-01-25.pdf