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## Coates' Canons Blog: Levying the Property Tax: Earmarking Tax Revenue for Specific Purposes

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***UPDATE August 2013: Note that if a local unit's governing board adopts multiple tax rates to support its general fund activities, the board is not legally bound by those designations. For example, as discussed in the post, a board could adopt separate property tax rates for each activity that it wishes to fund with property tax proceeds—for example, \$0.19 per \$100 valuation for Administration, \$0.15 per \$100 valuation for Police (or Law Enforcement); \$0.06 per \$100 valuation for Parks and Recreation, \$0.09 per \$100 valuation for Planning, \$0.03 per \$100 valuation for Fire Protection, etc. The board is not bound legally by these property rate earmarks, though. It would be free to move money from one purpose to another in the General Fund during the fiscal year.***

Local government officials often ask me two questions related to their property tax authority—(1) whether a unit may impose property taxes only for specific, designated purposes; and (2) whether a unit may impose property taxes only on specific properties within their jurisdictions. The answer to the first question is “yes.” The answer to the second question is either “yes, but only under limited circumstances,” or “no, except under limited circumstances” (depending on whether you subscribe to a glass half full or half empty philosophy). I explain the answer to the first question below. You will have to await my next post for an analysis of the second.

### ***Authority to Levy Property Taxes***

Pursuant to **Article V, Section 2(5) of the North Carolina Constitution, G.S. 153A-149** (counties), and **G.S. 160A-209** (cities), local units are authorized to levy property taxes to fund certain, specified local government activities. The activities are divided into three groups.

**Group I.** Local governments may levy property taxes for Group I functions without restriction on tax rate or amount. For cities, this group includes revenue to meet debt service on general obligation debt, to cover certain unforeseen deficits, and to meet the cost of additional law enforcement and equipment necessitated because of civil disorders. For counties the group also includes the most important state-mandated functions: schools and social services.

**Group II.** Counties and cities may levy property taxes for Group II functions without a vote, to a maximum combined rate of \$1.50 per \$100.00 valuation of taxable property. The list of Group II functions includes most activities in which counties and cities engage. A local government may hold a referendum on the levy of property taxes for any Group II function. If such a referendum passes, the tax levied under it does not count against the \$1.50 limitation. A local government may also hold a referendum to raise the \$1.50 limitation.

**Group III.** Group III functions include all authorized activities that the General Assembly has not specified as either Group I or Group II functions. The statute does not identify Group III functions. If the voters approve the levy of property taxes for a Group III function, any tax levied for that function does not count against the \$1.50 rate limitation.

### ***Adopting Multiple Property Tax Rates***

Each year, a county and municipality's governing board must adopt a balanced budget ordinance. And, the governing board sets its “property tax rate” in the budget ordinance.

In many jurisdictions, a unit adopts one property tax rate to support its General Fund (and maybe even some Enterprise Fund) expenditures. Some units then adopt additional property tax rates for special purposes, such as voted supplemental school taxes, rural fire protection district taxes, or county or municipal service district taxes.

But, what if a unit wishes to adopt multiple property tax rates to support individual General Fund (and Enterprise Fund)

activities? May a governing board assign specific property tax rates to specific expenditure items? The answer is yes, as long as the expenditure items are included in the listed Group I or Group II functions described above, or have been approved by the voters as Group III functions. Furthermore, a local unit may adopt a property tax rate for each activity or adopt a general rate for most activities and separate rates for one or more select activities.

To illustrate, assume that the unit requires a (combined) property tax rate of \$0.75 per \$100 valuation to balance its budget.

- The governing board could simply adopt a single property tax rate of \$0.75 per \$100 valuation. The proceeds of the tax are then applied by the unit to the authorized (Group I, Group II or voted Group III) activities during the course of the fiscal year as needed.
- Alternatively, the governing board could adopt separate property tax rates for each activity that it wishes to fund with property tax proceeds—for example, \$0.19 per \$100 valuation for Administration, \$0.15 per \$100 valuation for Police (or Law Enforcement); \$0.06 per \$100 valuation for Parks and Recreation, \$0.09 per \$100 valuation for Planning, \$0.03 per \$100 valuation for Fire Protection, etc.
- Finally, the governing board could adopt a general property tax rate of \$0.65 per \$100 valuation and then adopt separate rates for certain activities, such as \$0.05 per \$100 valuation for Libraries and \$0.05 per \$100 valuation for Arts Programs and Museums.

### **Limitations on Property Tax Rate Amendments**

If a governing board adopts multiple property tax rates—corresponding to separate local government activities—is it bound by its designations? According to the North Carolina Supreme Court the answer is no. In *Long v. Comm'rs of Richmond Cnty.*, 76 N.C. 273, 280 (1877), the court indicated that a local governing board has discretion to divert property tax proceeds levied for a particular purpose to a different purpose during the fiscal year. Thus, as long as the total combined property tax rate stays the same, a governing board is free to change individual property tax rates corresponding to specific functions at will. (For example, reducing the Parks and Recreation allocation from \$0.09 to \$0.07 per \$100 valuation and, correspondingly, increasing the Fire Protection allocation from \$0.03 to \$0.05 per \$100 valuation.)

### **Justification for Adopting Multiple Rates**

Finally, why would a governing board wish to adopt multiple property tax rates in the budget ordinance? There likely are many different reasons, but the two I hear most often is to provide greater transparency to taxpayers or to justify property tax rate increases. To the extent that a governing board is concerned with accountability and public perception, one alternative to adopting multiple property tax rates in the budget ordinance, is simply to designate portions of the property tax levy to specific activities and list these designations on the property tax bill. This demonstrates to the public what projects and activities are being funded by the unit's tax revenue and likely has the same legal effect as adopting multiple tax rates.

## **Links**

- [www.ncga.state.nc.us/Legislation/constitution/article5.html](http://www.ncga.state.nc.us/Legislation/constitution/article5.html)
- [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_153A/GS\\_153A-149.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-149.html)
- [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_160A/GS\\_160A-209.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-209.html)