
Coates' Canons Blog: Local Taxation of Private Property on Federal Land

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There's no dispute that property owned by the federal government is exempt from local property taxes. Cumberland County cannot levy property taxes on the Army tanks, helicopters, and munitions at Fort Bragg. Nor can Swain County tax the many acres of Great Smoky Mountains National Park that lie within the county borders.

But what about *privately owned* property located on federal land? There are big dollars riding on this question, considering the mini-cities that have developed at Fort Bragg, Camp Lejeune, and other large military bases in the state. Can a county tax the personal property owned by McDonald's or Boeing or one of the hundreds of other private companies that operate on those bases? What about registered motor vehicles belonging to the thousands of people who reside on those bases?

The answer is the perennial favorite of lawyers everywhere: "It depends." It depends on when and how the federal government obtained title to the land in question and whether Congress has specifically authorized local taxation of the property in question.

The most likely answer is no, local governments may not tax privately owned property on federal land. But these questions are tough to answer, because they involve a patchwork of state and federal laws and are extremely fact specific.

For readers who want to dive into the details, click here for a white paper¹ prepared last year or check out my colleague Shea Denning's excellent analysis in her book, *A Guide to the Listing, Assessment, and Taxation of Property in North Carolina* (pages 170-176).

For everyone else, here's a quick overview.

Some states (Maryland, Georgia) have reserved all taxation authority over federal lands to the fullest extent permitted by the United States Constitution. North Carolina is not one of these states.

For the first 100 or so years of our state's existence, the retention of state and local taxation authority over lands transferred to the federal government varied from transaction to transaction.

In 1887, the N.C. General Assembly passed the first of several laws that gave blanket approval of the transfer of land to the federal government *without* the retention of state or local taxation authority.

A federal court recently relied on one these laws, N.C.G.S. 104-7, to prohibit two counties from taxing privately owned residential buildings situated on several Marine bases near the coast. *Atlantic Marine Corps. Communities, LLC v. Onslow and Craven Counties*, 497 F.Supp. 2d 743 (E.D.N.C. 2007). While not binding on other courts, this ruling would likely control any county's effort to tax privately owned real or personal property on federal land acquired under the same statute.

In 1940, Congress required the federal government to formally accept exclusive jurisdiction over land acquired from the states. If no formal acceptance occurs, then the state retains all jurisdiction, including taxation authority, over the acquired land.

In 1979, the General Assembly decreed that the state would retain taxation authority over land transferred to the federal government for use as a national park.

Oh, don't forget that Congress can specifically authorize local taxation of privately owned property on certain federal lands, as it did in 10 U.S.C. 2667 (permitting property taxes on certain privately held leasehold interests in federal military property).

Clear as mud, right?

Actually, I think there only three basic questions facing N.C. local governments who wish to levy property taxes on privately owned property situated on federal land.

1. Is there a federal law that specifically authorizes local taxes on this property?

If yes, then the inquiry ends and taxation can begin. If no, then ask . . .

2. When did the federal government acquire the property?

If prior to 1887, then look to the state law that authorized the transaction to determine if the state retained taxation authority.

If between 1887 and 1940, then no taxation authority exists.

If after 1979 and the land is used for a national park, then taxation authority exists.

If after 1940 and the land is not used for a national park, then ask . . .

3. Did the federal government formally accept exclusive jurisdiction?

If not, then taxation authority exists.

Links

- www.sog.unc.edu/publications/books/guide-listing-assessment-and-taxation-property-north-carolina
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=104-7
- www.leagle.com/xmlResult.aspx?xmlDoc=20071240497FSupp2d743_11176.xml&docbase=CSLWAR3-2007-CURR
- www.law.cornell.edu/uscode/40/usc_sec_40_00003112---000-.html
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=104-32
- www.law.cornell.edu/uscode/usc_sec_10_00002667---000-.html