Coates' Canons Blog: Making Changes to Prior Years' Tax Values

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"Don't make retroactive changes to property tax values." As general rules go, that's a pretty good one for county assessors to follow. Absent unusual circumstances, any changes to property tax values should apply to the current tax year and not to prior tax years. When a taxpayer appeals the value of his or her real property, that appeal should focus only on the tax value for the *current* tax year. When an assessor increases the tax value of a parcel of real property due to improvements added to that parcel last year, the increase should affect only the tax value for the *current* tax year.

Problem is, those unusual circumstances that could justify retroactive changes to property tax values seem to pop up pretty frequently. Unlisted improvements, inappropriate exemptions, and just plain old failures to appraise property can all lead to situations in which it might be appropriate to change tax values for prior years.

At least three different Machinery Act provisions could possibly justify retroactive changes to tax values: the discovery provisions in GS 105-312, the provisions concerning the powers of the board of county commissioners in GS 105-325, and the "immaterial irregularity" provisions in GS 105-394.

Here's a quick look at how these provisions should be applied. For more detailed analysis, please see this Property Tax Bulletin.

Discovery (GS 105-312):

These provisions apply two situations: when property is not listed for taxation or when property receives an exemption or exclusion for which it was not eligible. The provisions should *not* apply to situations that involve appraisal or assessment errors.

The most basic example of a discovery is when the assessor learns of an improvement that was added to real property years ago but never listed for taxation by the taxpayer. GS 105-312 would apply, requiring the assessor to list, appraise and bill the omitted improvement for the current tax year and the five prior tax years. The assessor must also add a 10%-per-year penalty for each year of the discovery bill.

If the discovery were made in 2011, the 2006 taxes would be assessed with a 60% penalty for the six listing period missed by the taxpayer. The 2007 taxes would be assessed with a 50% penalty, and so on, up to a 10% penalty for the 2011 taxes. The taxpayer would retain the opportunity to appeal the tax value of the discovered property for all of the tax years covered by the discovery. The entire discovery bill, including penalties, would become part of the 2011-2012 tax levy and would become delinquent and accrue interest if not paid by January 6, 2012.

Another example of a discovery is when the assessor learns that a property has been receiving an exemption or exclusion for which is not eligible. For example, assume that in 2011 the assessor learns that property benefiting from the elderly and disabled exemption since 2005 should have lost eligibility for that exemption as of 2008 because the owner was no longer using the property as her permanent residence. The assessor should issue a discovery bill for the years 2008, 2009, 2010, and 2011, plus the appropriate 10% penalties: 40% for 2008, 30% for 2009, etc. Normally disovery penalties do not apply to taxes on land, but in the case of inappropriate exemptions/exclusions the penalties apply to the full amount of omitted taxes even if some of those taxes are on land.

Remember that under GS 105-312(k) the governing board has unfettered discretion to waive some or all of a discovery bill, including penalties.

Powers of the Board of County Commissioners (GS 105-325)

This provision describes how and when the commissioners may change property tax values after the board of equalization and review has adjourned for the year. Subsection (a)(4) authorizes the board "To correct appraisals, assessments, and amounts of taxes appearing erroneously on the abstracts or tax records as the result of clerical or mathematical errors." The statute does not expressly limit this authority to the current year's tax value. However, when acting under these provisions the county commissioners are stepping into the shoes of the board of equalization and review, which would have addressed the issue but for the fact that it had already adjourned. It follows that the restrictions applicable to the board of equalization and review should also apply to the commissioners when acting under 325(a)(4). Because GS 105-322 limits the board of equalization and review to actions affecting the current tax year's tax value, so too must the commissioners be limited when acting under 325(a)(4).

Immaterial Irregularities (GS 105-394)

The most wide-reaching of all three provisions allows a tax office to correct almost any mistake in the taxation process and proceed to appraise, assess and collect the resulting taxes.

The statute covers only "immaterial" mistakes but does not define that term. State courts have applied this provision liberally. Tax offices have been permitted to correct mistakes such as a transposed number in an assessment value, the lack of notice in a discovery proceeding, the inadvertent destruction of a listing form, a drainage district's failure to levy special assessments in a timely fashion, and, most recently in the *In re: Morgan (*362 N.C. 339 (2008)) case, the unexplained failure to assess a prop-erty that was properly listed by the taxpayer.

The only type of error that seems too substantial to qualify as "immaterial" is the failure to give proper notice to parties subject to a foreclosure action. See *Henderson County v. Osteen*, 292 N.C. 692, 235 S.E.2d 166 (1977). Otherwise, tax offices should assume that any errors they make will "not invalidate the tax imposed upon any property or any process of listing, appraisal, assessment, levy, collection, or any other proceeding under this Subchapter."

To correct an error under GS 105-394, the tax office should simply re-appraise, assess, levy or bill the taxes as if the process had been done correctly from the beginning. The resulting taxes should carry interest from the original date of delinquency.

For example, consider facts similar to the *Morgan* case. The taxpayer began a major expansion of her home in 1993, at which time she dutifully listed the new improvement with the assessor's office. For some reason, the assessor's office failed to appraise or assess the new improvement. When a new assessor took office in 2003, he realized the office's mistake and attempted to retroactively appraise, assess and bill the (no longer so new) improvement. After several years of litigation, the N.C. Supreme Court ruled that the county could rely on GS 105-394 to recapture the lost taxes on Mrs. Morgan's expanded home. What's more, interest had to be added to those taxes from their original delinquency dates.

Note that the governing board does not have unfettered discretion to waive taxes billed under GS 105-394. The taxes and interest levied after correcting an "immaterial irregularity" can be released only under the limited provisions of GS 105-381 . See this post for more on refunds and releases.

Besides errors in the foreclosure process, the only mistakes that should not be corrected under GS 105-394 are those that fall under the GS 105-312 discovery provisions: property that was never listed or property that inappropriately received an exemption or exclusion. The *Morgan* case made clear that those types of errors must be resolved under the 5-year limitation contained in the discovery provisions.

Links

- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-312
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-325
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-394
- ncinfo.iog.unc.edu/pubs/electronicversions/pdfs/ptb147.pdf

- appellate.nccourts.org/opinions/?c=1&pdf=MjAwOC81ODJBMDctMS5wZGY=
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-381
- canons.sog.unc.edu/?p=1861