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## Coates' Canons Blog: May Counties Charge Cities for Distributing RMV Taxes?

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Have you paid your “Tag and Tax Together” yet? If you haven’t, you soon will.

As of September 1, 2013, everyone who registers a motor vehicle in North Carolina will be required to pay at the time of registration not only the registration fees but also the property taxes owed on that vehicle for the coming year. I’ve discussed some of the unique property tax collection issues created by the new system in this blog post and this bulletin.

Today I focus on a question that lots of counties are asking now that the new system is in place: are counties authorized to charge municipalities a fee for distributing municipal property taxes on registered motor vehicles collected by the N.C. Division of Motor Vehicles and delivered to the counties?

The answer to this question is . . . unclear. The relevant statutes don’t provide an easy answer.

My view is that a county cannot force municipalities to pay the county solely for the service of distributing taxes owed to those municipalities. But counties *might* be able to charge municipalities for additional services relating to those taxes such as processing refunds and releases. Here’s my reasoning:

Under the old property tax system for registered motor vehicles (“RMVs”), counties were statutorily obligated to bill and collect municipal property taxes on RMVs and explicitly authorized to retain 1.5% of those taxes as a collection fee. G.S. 105-330.5(b). This authorization disappeared when the Tag & Tax Together system took effect.

Under the new system, all local property taxes on registered motor vehicles are collected by the Division of Motor Vehicles (“DMV”) at the time of registration. G.S. 105-330.5 requires that these local taxes be remitted at least once per month. Problem is, the statute doesn’t say *to whom* those taxes must be remitted.

For those details, we need to look at the Memorandum of Understanding (the “MOU”) signed this year by representatives from the DMV, the Department of Transportation (the “DOT”), the DOT’s Financial Management Division, the Department of Revenue’s Local Government Division, the N.C. Association of County Commissioners, and the N.C. League of Municipalities.

The MOU commits the DOT to distributing local taxes to the county level and expressly eliminates any obligation on behalf of the DOT to distribute local taxes to municipalities or taxing units other than counties.

Another section of the MOU states, “Each county is responsible for distributing the revenue collections to all local taxing units within its boundaries *as agreed upon between the county and the local taxing units.*” (emphasis added)

Read together, what does all of this mean?

The MOU language italicized above that references “agreements” between counties and municipalities concerning the distribution of municipal RMV property taxes by counties seems to leave open the door for counties to charge a fee for that distribution.

But the MOU is not law, nor is it a binding contract between individual counties and municipalities. And even if it were, it doesn’t specifically authorize distribution fees. From what I’ve been told by people involved in the negotiations, the county-municipal agreements referenced by the MOU were intended to cover details such as the timing and mechanism of the distributions. Collection and distribution fees were not on the drafters’ radar screens.

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We're left in an unusual situation. The duty for counties to distribute RMV taxes to their municipalities seems to lie somewhere between mandatory and voluntary.

Were the distribution of city RMV taxes mandatory, counties could not charge for the service unless state law explicitly authorized such fees. Consider the office of the Register of Deeds. G.S. Chapter 161 requires counties to create this office and provide deed registration services to all residents of the county. A county could not charge its municipalities for the service of registering deeds that convey land within those municipalities beyond the standard fee charged to all parties wishing to register deeds.

Were the distribution of city RMV taxes voluntary, counties could negotiate fees from their municipalities for the service. Consider the very common agreements between counties and municipalities for the billing and collection of (non-RMV) municipal property taxes. Because no statute requires counties to provide this service, counties that are willing to do so are free to negotiate whatever fee they deem appropriate from their municipalities.

My view is that a county may not force its municipalities to pay for the distribution of the municipalities' RMV taxes from the county to the municipalities. I think this duty is implicit in the new statutory framework and therefore mandatory on behalf of counties. Cities are without question entitled to their share of the local property tax funds. They have no ability to get their money directly from the DMV and instead are entirely dependent on the counties for this service.

But . . . I think any *additional* services related to RMV taxes that the county might provide its cities are voluntary and could be subject to a fee that a court would enforce.

For example, the new RMV statutes do not mention anything about processing refunds and releases of RMV taxes. I think a county could demand that its cities pay a fee for this service—and I think a court would approve of the county's refusal to provide such services if the cities refused to pay. Cities that don't want to pay can process refunds and releases themselves.

I've heard that some counties are already charging cities for the distribution of their RMV taxes. If cities agree to these fees, I have no objection. But those counties should be aware that those fees may not be enforceable if their cities refuse to pay.

Let's say a county demanded that its cities pay 1.5% for the distribution of their RMV taxes and that the cities refused to pay. If those cities were to sue the county to recover their RMV taxes, it's difficult to imagine that a judge would allow the county to keep the cities' money based on the cities' failure to pay a distribution fee. I think the county would be ordered to turn over those taxes asap.

Were a city to sue its county over RMV taxes, the county could attempt to rely on an immunity defense to block the suit. The doctrine of governmental immunity generally shields local governments from tort claims arising from the performance of governmental functions.

However, my governmental liability expert colleague Trey Allen thinks that a city could probably avoid the governmental immunity defense in a lawsuit over the distribution of RMV taxes by seeking relief outside of tort law. One option might be to file a declaratory judgment action to determine whether counties have authority to charge collection fees under G.S. 105-330.5.

The bottom line is that counties should think twice before attempting to force their cities to pay a fee for the distribution of city RMV taxes.

Please note that the above analysis concerns only fees that the county might charge its cities for services provided by the county. It does not concern the allocation of fees charged by the DMV for the collection of RMV taxes. These fees, which will include merchant fees for taxpayers' use of credit cards and debit cards, are explicitly authorized by the new statutory scheme (G.S. 105-330.5(d)). The DMV will deduct these fees from the local RMV taxes it distributes to the counties. According to the MOU, counties are expected to allocate the DMV fees between themselves and their cities pro-rata based the amount of RMV taxes collected for each jurisdiction each month.



## Links

- [www.ncdot.gov/dmv/vehicle/tagtax/](http://www.ncdot.gov/dmv/vehicle/tagtax/)
- [canons.sog.unc.edu/?p=7253](http://canons.sog.unc.edu/?p=7253)
- [sogpubs.unc.edu/electronicversions/pdfs/ptb165.pdf](http://sogpubs.unc.edu/electronicversions/pdfs/ptb165.pdf)
- [www.ncga.state.nc.us/gascritps/statutes/statutelookup.pl?statute=105-330.5](http://www.ncga.state.nc.us/gascritps/statutes/statutelookup.pl?statute=105-330.5)
- [canons.sog.unc.edu/wp-content/uploads/2013/12/MOU-Final-10-02-13.pdf](http://canons.sog.unc.edu/wp-content/uploads/2013/12/MOU-Final-10-02-13.pdf)
- [www.ncga.state.nc.us/gascritps/Statutes/StatutesTOC.pl?Chapter=0161](http://www.ncga.state.nc.us/gascritps/Statutes/StatutesTOC.pl?Chapter=0161)
- [www.sog.unc.edu/user/281](http://www.sog.unc.edu/user/281)