

## Coates' Canons Blog: New Rules for Small Overpayments of Property Taxes

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Article: <https://canons.sog.unc.edu/new-rules-for-small-overpayments-of-property-taxes/>

This entry was posted on October 22, 2015 and is filed under Finance & Tax, Property Taxes

After posts on the new builders' inventory exclusion (here and here) and on new rules for the waiver of interest on old motor vehicle taxes, one final new property tax law deserves its own blog post. S.L. 2015-266 creates new procedures for resolving small overpayments.

In a nutshell, the new law permits a local government to apply overpayments of less than \$15 to the taxpayer's account for the following year's taxes unless the taxpayer requests payment of the refund prior to the end of the fiscal year. I've blogged on the existing rules for overpayments here; today I explain how the new law on overpayments interacts with those rules.

Previously, the only overpayments mentioned in the Machinery Act were those under one dollar. Local governments were authorized to retain these very small overpayments assuming the taxpayer did not demand a refund. G.S. 105-357(c).

Prior to S.L. 2015-266 the Machinery Act didn't mention overpayments greater than one dollar, but I think it's clear that taxing units could not unilaterally decide to keep them. Keeping an overpayment without giving the taxpayer the option of a refund would amount to an illegal tax under G.S. 105-381.

That said, my advice concerning larger overpayments was to consider applying them to future taxes. Although the Machinery Act does not specifically authorize this approach, I think it would be feasible so long as the tax office gives the taxpayer notice and the opportunity to receive a refund check instead.

S.L. 2015-266 essentially codifies this approach for overpayments less than \$15. The new law allows local governments to keep these overpayments and apply them to the taxpayer's future tax bills unless the taxpayer requests a refund in person by the end of the fiscal year. The tax office is not required to give the taxpayer notice of the overpayment or of the intent to apply the overpayment to next year's taxes. This approach is optional and must be adopted by the board of county commissioners if the tax office wishes to use it.

The new law does not affect the rules for very small (\$1 or less) overpayments. Nor does it eliminate the ability of local governments to use the informal method of applying larger overpayments (\$15 or greater) to subsequent taxes after giving notice to the taxpayer. As a result, we now have three categories of overpayments that require three different procedures:

Amount of Overpayment	Procedure
\$1 or less	No refund required unless requested by taxpayer by end of fiscal year. No requirement to apply to future taxes. No notice of overpayment required. Resolution required to adopt this procedure.
Between \$1 and \$15	No refund required unless requested in person by taxpayer by end of fiscal year. Overpayment applied to future taxes. No notice of overpayment required. Resolution required to adopt this procedure. G.S. 105-321(g).
\$15 and greater	Tax office may give taxpayer notice of overpayment and apply overpayment to taxpayer's other tax bills unless taxpayer objects and requests refund. Resolution adopting this procedure is required.

A few follow-up questions:

*Is the taxpayer entitled to a refund if she requests one via telephone or email?*

Technically no. S.L. 2015-266 requires that request to be made *in person* at the tax office. That said, I could imagine the

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taxpayer reacting poorly when told of the in-person requirement. (I know I would!) Counties could decide to make refunds available upon any type of request (in person, telephone, email). Doing so might avoid some unpleasant taxpayer interactions.

*How should an overpayment be applied if the taxpayer transfers the property before next year's tax bill is issued?*

S.L. 2015-266 requires the overpayment be applied "as a credit against the tax liability of the taxpayer for taxes due to the taxing unit for the next succeeding year."

That requirement is easy to satisfy if the same taxpayer continues to own the property for which the overpayment was made. Assume Billy BlueDevil overpays his 2015 taxes on Parcel A by \$10. The county tax office keeps the overpayment and Billy does not request a refund. When the 2016 tax bill for Parcel A is created in July 2016, Billy still owns Parcel A. The county should apply the \$10 overpayment to Billy's 2016 tax bill for Parcel A.

But what if Billy sells Parcel A to Tina TarHeel before the 2016 tax bills are created? Should the overpayment be applied to Tina's tax bill for Parcel A? Should it be applied to other tax bills owed by Billy? Should it be refunded to Billy?

The new law requires the refund to be applied to the overpaying taxpayer's "tax liability," not simply to the property for which the overpayment was made. It doesn't answer the question of what to do if the property in question is transferred.

I think the correct approach is to first attempt to apply the overpayment to taxes owed on the same property owned by the same taxpayer. If the taxpayer no longer owns that property, then the tax office should apply the overpayment to taxes owed on other property owned by the same taxpayer. If the taxpayer no longer owns any property in the jurisdiction, then the overpayment may be applied to the property that generated the overpayment and is now owned by another taxpayer.

While the new law does not explicitly authorize the application of an overpayment to property subsequently owned by a different taxpayer, I don't see any other option. Refunding the overpayment to the taxpayer will likely be impossible; if the taxpayer no longer owns property in the jurisdiction then the tax office is unlikely to have an accurate address for that taxpayer.

To sum it up, here's my advice as to the order in which an overpayment should be applied in the following year:

1. Same property owned by same taxpayer.
2. Different property owned by same taxpayer.
3. Same property owned by different taxpayer.

*Despite the new law, may a tax office apply an overpayment to delinquent taxes owed by the same taxpayer instead of waiting to apply it to next year's taxes?*

Yes. The tax office may "attach" the overpayment just as it may do attach any funds owed to the taxpayer that are held by any party. G.S. 105-368. Notice should be given to the taxpayer, although I don't think the tax office should apply the usual \$60 fee for service of the attachment notices. While likely legal, it seems a bit of overkill to add \$60 to the delinquent tax bill simply to retain funds the tax office already has. The tax office does not need to serve itself with notice of this "attachment." At most the tax office might want to add \$30 for service of notice on the taxpayer.

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