
Coates' Canons Blog: New(er) County Revenue Sources – Local Land Transfer Tax and Local Sales and Use Tax

By Kara Millonzi

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UPDATE August 2013: The authority to levy the local land transfer tax discussed in this post was repealed by the General Assembly in 2011. The legislature also made changes to the effective date of a new Article 46 local sales and use tax. The Article 46 tax becomes effective on the “first day of a calendar quarter, as set by the board of county commissioners in the resolution levying the tax. In no event may the tax be imposed, or the tax rate changed, earlier than the first day of the second succeeding calendar month after the date of the adoption of the resolution.” Furthermore, a county must give the Secretary of Revenue “at least 90 days advance notice of a new tax levy or tax rate change.” The new tax applies to purchases from printed catalogs only after 120 days’ notice from the Secretary of Revenue of the tax rate change. **G.S. 105-466.**

As I discussed in a previous **post**, the General Assembly made significant changes to counties’ sales and use tax authority in 2007 and 2008, pursuant to comprehensive Medicaid funding reform legislation. Specifically, the legislation repealed counties’ authority to levy a one-half cent local option sales and use tax (local sales tax), and made certain other changes to counties’ remaining local sales tax authority, in exchange for the State assuming the counties’ share of Medicaid costs (commonly referred to as the “Medicaid swap”). The legislation further guarantees that each county experience a financial gain from the Medicaid swap of at least \$500,000 each year.

The state’s assumption of the county Medicaid share provided financial relief to many of North Carolina’s smaller and economically distressed counties. Local officials from several larger, growing counties did not feel that the Medicaid swap, alone, adequately addressed their needs, though. Thus, in addition to the Medicaid swap, the legislation authorized two new local option revenue sources for counties. These new(er) county revenue sources are the subject of this post.

As of July 1, 2007, the Medicaid funding reform legislation allows counties to adopt **either** *up to a 0.4 percent land transfer tax* **or** an *additional one-quarter cent local sales tax*. (A county may not adopt both. See **G.S. 105-537(d)**; **G.S. 105-601(e)**.) The new(er) revenue sources are intended to help counties fund additional services and facilities necessitated by growth, but the proceeds actually may be used for any public purpose. Counties are neither required, nor authorized, to share the proceeds of either of these revenue sources with municipalities.

Local Land Transfer Tax

Adoption of Tax

The adoption, administration and repeal of the local land transfer tax is governed by **G.S. Ch. 105, Art. 60**. Before levying a local land transfer tax, a board of county commissioners must seek voter approval. Specifically, the board must call for a referendum on whether to levy the tax and up to what maximum amount. **G.S. 105-601**. Before the referendum, a board of county commissioners may indicate what it intends to spend the proceeds on; but the board may not legally earmark the proceeds for any particular purpose.

If a majority of those voting at the referendum vote for the levy of the tax, the board of county commissioners may adopt a resolution levying the tax. The board must first provide ten days public notice, though. The board may adopt a tax rate of up to 0.4 percent, in 0.1 percent increments, unless a lower maximum rate is approved by the voters in the referendum. **G.S. 105-601.**

To date, twenty-two counties have held voter referendums on the levy of the local land transfer tax, but none have been successful.

Effective Date of Tax

The levy of the land transfer tax may become effective no earlier than the first day of the second succeeding calendar month after the date the resolution is adopted. **G.S. 105-602.** (For example, if, after a successful referendum, a board of county commissioners adopts a resolution to levy the tax in June 2010, the tax may not become effective until August 1, 2010.)

Application of Tax

The local land transfer tax applies to transfers of interests in real property located within the county. It is payable by the seller of the interest and applies to the consideration or value, whichever is greater, of the interest conveyed, including the value of any lien or encumbrance remaining on the property at the time of the conveyance. If the property is located in two or more counties, a transfer of an interest in the property is taxable only by the county in which the part with the greater value lies. **G.S. 105-602.**

G.S. 105-602 specifically exempts certain transferors, specifically governmental units and instrumentalities of governmental units. It also exempts certain conveyances of interests in real property to the same extent that they are exempt from the **state land transfer excise tax** —transfers that are required by operation of law; leases for a term of years; transfers by or pursuant to the provisions of a will, by intestacy, or by gift; transfers where no consideration in property or money is due or paid by the transferee to the transferor; transfers that are accomplished by merger, conversion, or consolidation; and transfers made by an instrument securing indebtedness. Unlike the **state land transfer excise tax**, the local land transfer tax does not apply to contracts for the sale of standing timber, although it is unclear whether it applies to timber deeds.

Administration of Tax

The administrative provisions for the state land transfer excise tax, codified in **G.S. 105-228.32 through G.S. 105-228.37**, apply to the local land transfer tax.

A county may repeal or reduce the rate of the local land transfer tax by resolution, but the repeal or reduction may not become effective until the end of the fiscal year in which the repeal or reduction resolution is adopted. **G.S. 105-604.**

Local Sales Tax

Adoption of Tax

The adoption, administration and repeal of the additional quarter-cent local sales tax are governed by **G.S. Ch. 105, Art. 46**. It is commonly referred to as the Article 46 local sales tax. Before levying the Article 46 local sales tax, a board of county commissioners must seek voter approval. Specifically, the board must call for a referendum on whether to levy the tax. **G.S. 105-537.** Before the referendum, a board of county commissioners may indicate what it intends to spend the proceeds on; but the board may not legally earmark the proceeds for any particular purpose.

If a majority of those voting at the referendum vote for the levy of the tax, the board of county commissioners may adopt a resolution levying the tax. The board must first provide ten days public notice, though. **G.S. 105-537.**

Effective Date of Tax

The Article 46 local sales tax only may become effective on the first day of the month of either January or July, as set by the board of county commissioners in the resolution levying the tax. Furthermore, the tax may not be imposed earlier than the first day of the second succeeding calendar month after the date of the adoption of the resolution. And, the county must give the Secretary of Revenue at least 90 days advance notice of a new tax levy or tax rate change. **G.S. 105-538; G.S. 105-466.** (For example, if, after a successful referendum, a board of county commissioners adopts a resolution levying the Article 46 local sales tax in June 2010, the tax may not become effective until January 1, 2011. And, the county must provide the Secretary of Revenue at least 90 days notice.)

Application of Tax

The Article 46 local sales tax applies to all sales transactions to which the other local sales and use taxes (Articles 39, 40 and 42) apply, except that it does not apply to the sales price of food products that are exempt from the state's sales and use tax or to the sales price of a bundled transaction in which the price of the food exceeds 10 percent of the price of the bundle. **G.S. 105-538.** Furthermore, the Article 46 local sales tax does not apply to certain building materials, in accordance with **G.S. 105-468.1.**

Administration of Tax

The Article 46 local sales tax is administered in accordance with the provisions of **Chapter 105, Article 39.** The proceeds of the tax are allocated to counties on a point of origin basis—that is, the proceeds are distributed to the county where the goods were delivered. **G.S. 105-538.**

Links

- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_105/GS_105-466.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_105/GS_105-601.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_105/Article_60.html
- www.ncacc.org/revenueoptions.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_105/GS_105-602.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_105/Article_8E.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_105/GS_105-604.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_105/Article_46.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_105/GS_105-537.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_105/GS_105-538.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_105/GS_105-468.1.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_105/Article_39.html