
Coates' Canons Blog: Property Tax Refunds

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Which of these taxpayers is entitled to a property tax refund?

1. Jane forgets that she is escrowing her property taxes with her mortgage company and pays the taxes herself in September. Two weeks later she demands a refund because her insurance company will pay the taxes with her escrow funds in December.
2. Sam moves to Virginia but still owns property in NC. The tax office continues to mail Sam's bills to his old NC address. The bills never reach Sam. When Sam finally learns of the outstanding tax bills three years later, he demands that the taxes be waived because of the mailing error.
3. Susan decides to build a home on her lakefront lot, but learns that the lot is unbuildable due to size and slope issues. Susan demands a refund of the "excess" taxes she's paid due to the fact that her lot has been valued as a buildable lot for over a decade.

I think the answer is, "none of the above." Here's why.

The collection of property tax laws known as the Machinery Act permits tax refunds or releases only in very limited circumstances. GS 105-381 authorizes the governing board (in other words, the county commissioners or the town council) to refund a tax payment or to waive a tax obligation only if the tax was illegal or if the tax was imposed due to a clerical error.

An illegal tax could be one that was not approved by the governing board in the required manner or one that was levied on property that was never in the jurisdiction. For example, if a city has been taxing a property for years but then learns that the property lies outside of the city limits, GS 105-381 would authorize a refund of the city property taxes.

A clerical error is more difficult to define. It's clear that the error must be made by the government, not by the taxpayer. The statute requires that the tax be "imposed through clerical error," and only the government can "impose" a tax. Beyond that, the issue gets murky.

The only appellate case to examine "clerical error" in detail is *Ammons v. Wake County*, 127 N.C. App. 426 (1997), in which the NC Court of Appeals concluded that a "clerical error" must be that one produces an unintended result and is apparent from the face of the documents, such as a transcription mistake. The term does not include judgment errors like the one in *Ammons* when the assessor mistakenly told the taxpayer that his property would not qualify for reduced taxation under the present-use-value program. (Click here for a terrific analysis of *Ammons* by our former colleague Bill Campbell.)

I don't think any of the three scenarios above involve an illegal tax or a tax imposed due to clerical error.

In Scenario 1, Jane made the error, not the tax office. Her claim is against the insurance company for a refund of her escrow funds, not against the tax office.

In Scenario 2, the error by the tax office delayed the bills from reaching Sam but it didn't "impose" the underlying taxes or render them invalid. See GS 105-394, which states that "immaterial irregularities" in the tax process do not invalidate an otherwise valid tax. Under GS 105-348, Sam is charged with notice of his taxes even if he never receives a bill. Sam has a slightly stronger argument for a release of the interest on those taxes, but I think that too is a loser.

In Scenario 3, both the tax office and Susan made a judgment error, not a clerical error, when they assumed that the lot was buildable. To constitute a clerical error, the resulting tax must be different from that intended by the tax office. That is not the case here: the assessor intended that the lot be taxed as a buildable lot, and it was. The assessor should correct the lot's valuation going forward, but not for prior years. Susan's opportunity to appeal the value of her lot for past years is long gone.

Tax officials and governing boards who think these refund provisions are too restrictive should remember that it's more than just the county's finances that could be on the line if they are too generous with tax refunds. GS 105-380 makes the governing board members personally liable for refunds or releases that violate the Machinery Act.

For more details about the refund and release of property taxes, please see this bulletin.

Links

- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_105/GS_105-381.html
- caselaw.findlaw.com/nc-court-of-appeals/1235512.html
- www.sog.unc.edu/pubs/electronicversions/pdfs/ptb111.pdf
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_105/GS_105-394.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_105/GS_105-348.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_105/GS_105-380.html
- www.sog.unc.edu/publications/bulletins/refunds-and-releases