

---

## Coates' Canons Blog: Refunding Other Taxes and Fees

By Chris McLaughlin

Article: <https://canons.sog.unc.edu/refunding-taxes-fees/>

This entry was posted on December 07, 2016 and is filed under Finance & Tax, Solid Waste Finance, Special Assessments

---

Time for a pop quiz: G.S. 105-381 governs refunds and releases (aka waivers) of which of these local government taxes and fees?

- A. Property taxes.
- B. Occupancy taxes.
- C. Solid waste fees.
- D. Water & sewer fees.
- E. All of the above.

The answer is . . . **A. Property taxes.**

The only local government tax or fee that must conform to the refund and release rules created by G.S. 105-381 is the property tax.

Local governments may choose to apply G.S. 105-381 to other taxes and fees, but they are not required to do so. (Read this post or this one for more on G.S. 105-381.) The authorizing statutes for occupancy taxes, solid waste fees, water and sewer fees, ambulance and EMS fees, and others that may be levied by local governments do not specifically incorporate the provisions of G.S. 105-381. (For details about all of these taxes and fees, see this bulletin.)

Of the many taxes and fees that a local government may levy outside of property taxes, only one has its own refund and release rules. Special assessments are a method of funding public works projects such as streets, sidewalks, and sewer systems by charging only the property owners benefiting from such projects. These assessments may be modified only in cases of "irregularity, omission, error, or lack of jurisdiction." (G.S. 153A-198 for counties and G.S. 160A-231 for municipalities.)

I think this means that a local government may not refund or release a special assessment unless one of those situations exists, because refunding or releasing a special assessment would modify that special assessment. Absent an error in the levying process (perhaps the wrong amount was charged to the wrong property owner), a special assessment may not be refunded or released.

But for other taxes and fees, the local government is permitted to develop its own refund and release rules.

A local government may choose to apply the rules created by G.S. 105-381 to all of its taxes and fees, meaning occupancy taxes, solid waste fees and the like could be refunded or released only in cases of clerical error or illegality and even then only for a maximum of five years.

Or the local government may create its own rules. Some might choose to adopt more stringent refund and release standards for some taxes and fees, perhaps limiting them to a maximum of three years to match the three-year statute of limitations that applies to contract-based service fees such as sewer and storm water. (G.S. 1-52(1) Note that water fees are subject to the four-year statute of limitation that applies to the sale of goods. G.S. 25-2-725(1)) Others might extend

---

refunds and releases to up to ten years, matching the statute of limitations for property taxes. (G.S. 105-378)

Local governments do not need to adopt the same rules for every tax and fee that they levy. It's perfectly fine to have different rules for different taxes and fees.

But it's not fine to have no rules at all. City and county departments should not just wing it whenever they get requests for refunds and releases. Every local government should create objective procedures for refunds and releases of their taxes and fees and publicize those rules to their employees, elected officials, taxpayers, and utility customers. Without objective policies in place, local governments increase the risk of inconsistent practices and accusations of favoritism or bias.

With this guidance in mind, here are my thoughts on a few of the more common refund and release questions I've received.

***A local hotel says it misreported its rental income on its occupancy tax returns for the past several months. What's the time limitation for filing amended occupancy tax returns?***

What the taxpayer really seeks here is a refund, not just the opportunity to amend its returns. While occupancy tax law does not mention refunds or amended returns, it seems reasonable for occupancy taxpayers to have some opportunity to correct their filings and obtain refunds if they can provide adequate evidence of the need for corrections. (Read this and this for more on occupancy taxes.)

If a local government levies occupancy taxes, it should develop objective policies for amended returns and refunds. The local government must decide whether it accepts amended occupancy returns and if so for how many months or years it will consider them. Two reasonable refund time periods for local governments to consider would be three years (the limitation on state income tax refunds) or five years (the limitation on property tax refunds).

***The city just realized it was charging multiple solid waste fees to the same property for many years. Can we refund these excess fees? If so, for how many years?***

Even though solid waste fees may be billed with property taxes and collected through property tax remedies, the refunding of solid waste fees is not automatically governed by G.S. 105-381. The local government may decide for itself how it processes refund requests for mistakes such as this one. That process might allow for up to five years of refunds, as is permitted for property taxes or it might limit those refunds to a different time period.

***A non-profit wants to buy a property to build low-income housing. The property is subject to unpaid special assessments and delinquent taxes. Can the county waive these liens to help the non-profit?***

The county may be able to help the non-profit but not by waiving these liens. As discussed above, the release of both special assessments and property taxes are limited by law. The desire to assist a non-profit does not satisfy the legal requirements for a release of either special assessments or property taxes. Instead, the local government might be able to provide the non-profit with a grant that could be used to acquire the property. Or the local government might consider foreclosing on the delinquent liens, purchasing the property at the foreclosure sale, and then conveying it to the non-profit.

## Links

- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-381](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-381)
- [canons.sog.unc.edu/property-tax-refunds/](https://canons.sog.unc.edu/property-tax-refunds/)
- [canons.sog.unc.edu/tricky-refund-release-questions/](https://canons.sog.unc.edu/tricky-refund-release-questions/)
- [sogpubs.unc.edu/electronicversions/pdfs/ptb162.pdf](https://sogpubs.unc.edu/electronicversions/pdfs/ptb162.pdf)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153a-198](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153a-198)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160a-231](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160a-231)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=1-52](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=1-52)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=25-2-725](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=25-2-725)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-378](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-378)
- [canons.sog.unc.edu/occupancy-tax-101/](https://canons.sog.unc.edu/occupancy-tax-101/)



- 
- [canons.sog.unc.edu/occupancy-taxes-continued/](https://canons.sog.unc.edu/occupancy-taxes-continued/)
  - [www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_105/GS\\_105-241.6.pdf](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_105/GS_105-241.6.pdf)
  - [canons.sog.unc.edu/the-nuts-and-bolts-of-property-tax-bills/](https://canons.sog.unc.edu/the-nuts-and-bolts-of-property-tax-bills/)
  - [canons.sog.unc.edu/local-government-support-privately-constructed-affordable-housing/](https://canons.sog.unc.edu/local-government-support-privately-constructed-affordable-housing/)
  - [canons.sog.unc.edu/conveyance-local-government-property-affordable-housing/](https://canons.sog.unc.edu/conveyance-local-government-property-affordable-housing/)