
Coates' Canons Blog: Statement of Taxes Due

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When I decided to blog about the “statement of taxes due” required by G.S. 105-361, I assumed that tax offices were issuing them all of the time. My thought was that every closing attorney requested one of these binding documents for every real estate closing. I was wrong. (Perhaps not as wrong as I was about how good the Duke football team would be this season, but still pretty wrong.)

Some counties do receive lots of requests for these statements. Brunswick and Union counties issue several hundred a month. But other counties report that requests for G.S. 105-361 statements are pretty rare. Carteret County gets only a few requests a month. Mecklenburg County reports they normally receive only 10 or 15 requests a year (although that has increased since the kerfluffle over their 2011 reappraisal). Bertie County said that only a single attorney has requested these statements in the past 15 years! It seems that many closing attorneys rely on county tax websites or informal telephone calls to tax offices to determine if there are any outstanding taxes owed on property being sold.

Regardless of whether your county routinely or rarely issues G.S. 105-361 statements, they remain a sensitive issue because they are one of the very few types of documents that are binding upon the tax collector. If the tax collector fails to include a tax or special assessment in a statement and a buyer or lender relies on that incorrect statement, the lien for those taxes or special assessments is waived and may never be enforced against the property. (See this post for a discussion of the other types of mistakes that can bind the tax office.)

Here’s what you need to know about statements of taxes due issued under G.S. 105-361.

Who may request a statement?

The statute essentially permits anyone with an actual or potential interest in the property to request a binding statement of taxes due on the property. Owners, lien holders, tenants, buyers, lenders, and attorneys for these parties are all authorized to obtain binding statements.

What must information must the requestor provide?

The requestor will need to have completed at least a basic title search prior to requesting the statement because G.S. 105-361(a)(2) requires that the requestor “specify the name of the person who listed the real property for taxation for each year for which the information sought.” Most requestors will want to know tax information for at least ten years, in light of the ten-year statute of limitations for property tax enforced collections. See G.S. 105-378.

G.S. 105-361 also requires the requestor to “identify the real estate in the manner required by the tax collector.” Most often, tax offices require a parcel ID number (“PIN”) and/or the deed book and page numbers. While the statute gives the tax collector discretion about what info is required, that discretion should not be abused by placing unreasonable demands on the requestor. For example, it’s likely a judge would not approve of a requirement that all requestors provide complete copies of all deeds to the property for the past 20 years.

Is a particular form required for G.S. 105-361 statements?

No. The statute does not require a specific form nor does it mandate that the tax collector sign the statement. That said, best practice is for tax office to do both. By requiring that all G.S. 105-361 statements be issued on a specific form and be signed by the tax collector or a deputy before release, tax offices decrease the likelihood of errors that can come back to

haunt them. I offer a sample form from Gaston County on page 55 of my property tax collection book. Rockingham County's form is here.

How quickly must a tax collector respond to a request under G.S. 105-361?

The statute imposes a \$50 penalty if a tax collector fails to furnish a statement "when requested." I don't think that means the tax collector must drop whatever he or she is doing and immediately produce the requested statement. But a tax collector probably can't file the request and get back to it in a week or two. In my view the best approach is for tax collectors to produce the statement as promptly as reasonably possible, the same standard that applies to public records requests.

From what I hear, most tax collectors respond to G.S. 105-361 within a few days absent unusual circumstances. Some counties try to respond within 24 hours. Mecklenburg and Orange counties produce the statements within five business days. If a tax office routinely makes requestors wait longer, it should be prepared to explain exactly what activities are involved with the production of the statements and why they contribute to the longer response times.

What liens must be included in a statement?

G.S. 105-361 mandates that the statement list all property taxes that are owed for the current and prior years as well as any deferred taxes that would become due if the property is transferred. I think this requirement covers only taxes levied by or collected by the local government that receives the request. If the county collects property taxes for a town, the county must include that town's taxes on all statements issued under G.S. 105-361 else it will waive that town's tax liens. But if a county does not collect property taxes for a particular town, then the statements issued by that county need not include that town's taxes. The requestor will need a separate statement from the town.

Statements must also include all special assessments levied by or collected by the government that receives the request. Special assessments are charges for public improvements (streets, sidewalks, sewer lines, etc.) that are charged to the property owners benefiting from those improvements. They are liens on real property and may be collected using the same remedies available for property taxes (foreclosure, attachment & garnishment, levy & sale). If a county has agreed to collect a town's property taxes but not that town's special assessments, it should make clear on all G.S. 105-361 statements that they do not cover municipal special assessments. The requestor will need to contact the town for a statement covering those debts.

The statements do not need to include other debts that are liens on real property and may be collected as property taxes such as nuisance abatement liens, housing code enforcement repair and demolition costs, ambulance and EMS fees, and solid waste fees. (See this bulletin for how and when these other debts can be collected as property taxes.) While it might be good practice to include these liens on all statements so that purchasers are on notice of them, the failure to do so would not waive the liens.

What happens if a lien is mistakenly omitted from a statement?

Covered liens are waived if the tax office fails to include them on a statement. If a lien is waived, the tax office loses the foreclosure remedy for the omitted lien.

For example, assume that Carolina County issues a statement of taxes due on Parcel A. That statement includes delinquent taxes from the years 2012, 2013, and 2014. Delinquent taxes from 2011 were also owed on the property but the tax office failed to list them on the statement. If the party who receives the statement purchases the property, she will take the property free of the lien for 2011 delinquent taxes. The county could no longer foreclose on the property for the 2011 taxes.

What about other collection remedies for the omitted 2011 taxes? Clearly the county could use its remedies aimed at personal property (attachment & garnishment or levy & sale) against the seller. That party's personal responsibility for the old taxes under G.S. 105-365.1 was not affected by the incorrect statement.

It's unclear whether the county could use personal property remedies against the buyer who relied on the incorrect statement. I think the best answer is no, the county loses all collection remedies against the buyer for taxes erroneously

omitted from a G.S. 105-361 statement. The county should write off these taxes as uncollectible using the insolvents list if they cannot collect from the old owner rather than try to collect them from the new owner after an incorrect G.S. 105-361 statement issued.

What about subsequent discoveries?

A G.S. 105-361 statement does not prevent the tax office from later issuing a discovery bill for the property that was the subject of the statement. Subsequent discoveries are not waived by G.S. 105-361 statements because the discoveries were not liens on the property at the time the statements were issued.

Assume Billy Blue Devil buys Parcel B after receiving a statement of taxes due under G.S. 105-361 that stated there were no outstanding taxes on the property. Three months later the county discovers a detached garage that was built five years ago by the previous owner but had never been listed for taxation.

When Billy gets the discovery bill, he complains to the tax office about the back taxes on the garage. Billy claims that the county can't enforce the old taxes on his property because the county failed to include those taxes on his G.S. 105-361 statement.

Billy's anger about the back taxes is understandable, but his argument is incorrect. The county did not know of the detached garage at the time the statement was issued, therefore the taxes on the garage were not a lien on the property at the time the statement was issued. The lien for the taxes arose later, when the discovery bill was issued. Therefore the county's failure to be aware of and include the taxes on the garage as part of the statement does not waive the lien for those taxes.

Billy's anger over the discovery is more properly directed at the former owner, who failed to list the garage and left Billy holding the bag for taxes on that structure from years before Billy purchased the property. Billy might be able to sue the former owner to contribute to the discovery bill, but the county has no collection remedies against that party.

Are oral statements about old taxes by the tax office binding? How about county tax web pages?

No and no. Only written statements issued under G.S. 105-361 are binding. Errors in oral statements or on county property tax web pages do not waive liens. But they do produce really angry taxpayers, of course, so tax offices should work hard to make sure they are not issuing inaccurate information from any source.

Are statements issued under G.S. 105-361 the same as deed certifications?

No. Deed certifications are intended to assist in the collection of delinquent taxes and are not binding on the tax office. See [here](#) and [here](#) for more.

Links

- www.ncga.state.nc.us/gascritps/statutes/statutelookup.pl?statute=105-361
- www.espn.com/blog/acc/post/_/id/94665/acc-week-3-power-rankings-louisville-vaults-to-the-top
- canons.sog.unc.edu/to-err-is-human-but-probably-not-binding/
- www.sog.unc.edu/publications/books/fundamentals-property-tax-collection-law-north-carolina
- www.ustaxdata.com/rocktaxsite/Documents/DOC080912.pdf
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