
Coates' Canons Blog: Taxes in Troubling Times

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[Updated May 2020 to reflect the impact of the COVID-19 relief bill, S.L. 2020-3.]

Tax administration is obviously not at the top of any local government's list of pandemic concerns. But social distancing and other remedial measures made necessary by this public health crisis are creating some unusual challenges for tax offices, and some of those challenges relate to community and economic development. This post addresses a few of the pandemic-related questions I've received from tax officials recently.

Are local governments required to keep their tax offices open to accept property tax payments in person?

No.

The only statute that deals with the location of tax payment is GS 105-353. The main requirement of that provision is its first sentence, "Taxes shall be payable at the office of the tax collector or at a financial institution with which the taxing unit has contracted for receipt of payment of taxes." The provision also gives the governing board the option of requiring the tax collector "to be present in person or by deputy at other designated places within the taxing unit"

I do not interpret GS 105-353 as requiring taxpayers to be able to pay property taxes in person via interaction with tax office staff. I think a local government could satisfy the requirements of this statute by continuing to accept payments by mail and/or offering a physical drop box at its tax office.

May local governments refuse to accept cash as payment for property taxes?

No.

Although local governments are not required to offer in-person payment options, I do believe they need to continue to accept cash as payment for property taxes. GS 105-357(a) requires payment of taxes in "existing national currency." It goes on to state that tax offices may, at their discretion, accept check or electronic payments (credit cards). I think this provision means that tax offices must accept cash (including coins, as I discuss here) if offered by the taxpayer. Tax offices should of course provide appropriate protection (gloves, hand sanitizer, etc.) for employees who handle cash as part of their duties.

Note that the same is not true for utility payments. Governing boards are free to amend their utility ordinances to specify how utility bills may or must be paid. Presumably this would permit a local government to refuse to accept cash as payment for utility bills. But such a decision should not be made lightly as it may have a substantial negative impact on some residents.

May a local government waive interest or penalties on delinquent property tax payments due to the governor's state of emergency declaration?

No.

On April 1, all delinquent taxes will accrue an additional .75% interest. Local tax collectors may not waive this additional interest or that which accrues in future months without action of the General Assembly.

GS 105-381 permits the waiving of property taxes only if the tax in question was illegal or levied due to clerical error. The term "property taxes" is defined by GS 105-273 to include interest and penalties, meaning the restriction on waiving taxes

also restricts the waiver of interest and penalties.

A state of emergency declaration by the governor does not automatically waive property tax payment deadlines or expand a local government's authority to waive interest or penalties. That would take action by the General Assembly, as it did two years ago in response to a major snow storm that hit coastal North Carolina right around the delinquency date for 2017 taxes. Unless and until the General Assembly takes similar action for the current public health crisis, local governments may not waive interest or penalties on property taxes.

The COVID-19 relief bill passed by the General Assembly in early May extended for five months all deadlines and waived all related penalties and interest for motor vehicle registration renewals that expire from March thru July. This includes both registration fees and property taxes on those vehicles. (See Sect. 4.7 of that bill.) However, that provision does not affect "regular" property taxes on property other than registered motor vehicles. Accordingly, local governments are still prohibited from waiving penalties and interest on those taxes.

May a local government waive interest or penalties on occupancy taxes? Could it temporarily waive or eliminate occupancy taxes entirely?

Yes.

The restriction on waiving property taxes and interest on property taxes in GS 105-381 does not automatically apply to other taxes. This is true even though other local taxes such as occupancy taxes may be collected using property tax collection remedies.

The lack of an explicit prohibition on the waiving of occupancy tax interest and penalties means that local governments are free to develop their own rules on this issue. Many local governments have informally or formally adopted the restrictive GS 105-381 rules for occupancy taxes, but that is not required. And even if a local government had previously been applying GS 105-381 to occupancy taxes, it could change its policies on this issue at will.

Occupancy taxes may also be reduced or eliminated entirely by a local government. However, under the boilerplate occupancy tax provisions in GS 153-155 and GS 160A-215, any reduction or repeal of an occupancy tax does not take effect until the end of the fiscal year in which the repeal or reduction occurs. This means that **any reduction or repeal a local government's occupancy tax that occurs at any time between now and June 30, 2020 will not take effect until July 1, 2020. It is not possible to reduce or eliminate occupancy taxes for the rest of this fiscal year (March, April, May and June).** The board may waive interest and penalties for late payment of those taxes, but it cannot eliminate the tax entirely until July 1, 2020.

Also note that if a local government were to wait until July or afterward to reduce or repeal its occupancy tax, that reduction or repeal would not take effect until July 1, 2021. As a result, if a board wants to reduce or repeal its occupancy taxes in the short term, it should act before July 1, 2020.

A board that chooses to reduce or eliminate its occupancy taxes as of July 1, 2020 could later restore those taxes simply by adopting a new resolution or ordinance. (Note that the reinstatement of those taxes could take effect no sooner than the second month after the resolution is adopted.) Those taxes would then have to remain in place for the full fiscal year in which they were re-levied. See this one and this post for more details on the ordinance adoption and repeal process.

Remember that any actions concerning the waiver of occupancy tax interest and penalties or the lowering or elimination of occupancy taxes must be accomplished by the governing board (the county commissioners or the municipal council) and not by the tourism development authority that spends occupancy tax revenues.

Could a local government choose not to levy or to reduce property taxes for the 2020 tax year?

Yes.

As mentioned above, property taxes are levied annually as part of the budget ordinance. There is no requirement that a local government levy property taxes. While a local government cannot waive the 2019-2020 property taxes that were levied as part of the 2019-2020 budget ordinance, it could choose to lower or eliminate property taxes as part of its 2020-

2021 budget that covers the period July 1, 2020 to June 30, 2021.

How does the limit on large gatherings affect requirements for the county board of equalization and review (“BOER”)?

County BOERs are required to hold their first meetings by the first Monday in May (May 4, 2020). They are required to adjourn and therefore close the appeal window for 2020 property taxes, by July 1. BOERs are then permitted to meet at their discretion to hear appeals submitted prior to adjournment. There are no requirements for monthly or otherwise regularly scheduled BOER meetings.

My colleague Frayda Bluestein blogged on the open meetings impact of the pandemic here. As her blog post suggests, it is unclear whether all local government bodies may meet electronically. However, it seems likely that a BOER may do so, especially for a BOER that is appointed by the board of county commissioners. The General Assembly made that official, at least during states of emergency, in Section 4.31(a) of the COVID-19 relief bill. Given Frayda’s analysis and this new bill, it should be acceptable for a BOER to satisfy the May 4 deadline by convening its initial meeting electronically and then immediately recessing. Later it could re-convene electronically to adjourn and close the appeal window for 2020 property taxes. Adjournment must occur by July 1 for counties that did not have a reappraisal in 2020 and by December 1 for counties that did. Note that when holding such meetings, the board must provide regular notice and comply with the requirements for providing electronic access to the public.

However, the main obligation of the BOER is to hear taxpayer appeals. These hearing are quasi-judicial proceedings, and as my colleague Adam Lovelady opined here there are many reasons to be concerned about holding a quasi-judicial hearing remotely via Zoom or similar technology. But thanks to Section 4.31(a) of the COVID-19 relief bill, quasi-judicial proceedings may be held electronically during a state of emergency if all parties consent. Regardless, my friends at the DOR and I still believe the best practice would be to postpone BOE hearings until after your county’s stay-at-home order ends and some version of in-person hearings are permitted.

May enforced collections (attachment & garnishment, levy & sale) and tax foreclosure sales continue during the state of emergency?

Yes.

The state of emergency has no impact on collection actions that do not involve the courts such as attachment & garnishment and levy and sale. Legally they may proceed as usual. However, local governments may exercise their discretion concerning the use of these remedies and are free to defer enforced collections during the crisis as they see fit.

The courts are involved in tax foreclosures, of course. Most state court hearings have been postponed until mid-April under newly announced restrictions on state court operations. But hearings are not required for in rem foreclosures under GS 105-375 and are sometimes not needed for “mortgage-style” foreclosures under GS 105-374. Assuming that a local government can obtain the required judgments and executions from their local courts, then those governments may proceed with the related foreclosure sales on their courthouse steps. Previously scheduled foreclosure sales may also continue. These sales should be possible even given social distancing concerns, assuming they are held outside in large-enough spaces.

That said, just because it is legal to hold a foreclosure during the pandemic does not mean it is a wise choice. Public health concerns may drastically limit potential bidders, meaning the eventual selling price of the properties might be reduced. The taxpayers who own the properties prior to the sales may complain that they lost money due to the decisions to go forward with the sales. Local governments that submit initial bids (aka minimum bids) on the foreclosure properties may be much more likely to wind up owning those properties. While delaying foreclosure sales until the crisis subsides will force local governments (and their attorneys) to wait to be compensated, that may be the wisest approach.

Links



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- www.ncleg.gov/Sessions/2019/Bills/Senate/PDF/S704v6.pdf
 - www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_105/GS_105-353.pdf
 - www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_105/GS_105-357.pdf
 - www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_105/GS_105-381.pdf
 - www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_105/GS_105-273.pdf
 - www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/2019-2020/SL2020-3.pdf
 - www.merriam-webster.com/dictionary/quasi-judicial
 - www.nccourts.gov/news/tag/press-release/nc-courts-largely-closed-in-response-to-covid-19-coronavirus
 - www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_105/GS_105-375.pdf
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