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## Coates' Canons Blog: Taxes on Transferred Personal Property

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If I sell you my house, you need to worry about old property taxes on that house. If those taxes aren't paid, you will become personally responsible for them. Your wages, bank accounts and cars may become targets of enforced collections actions by the county.

But if I sell you my boat, you don't need to worry about old property taxes on that boat. You will never be personally responsible for those taxes.

That's because G.S. 105-365.1 creates different rules for personal responsibility based on the type of property—real or personal—involved. (By “personal responsibility,” I mean being subject to attachment and garnishment or levy and sale.)

For real property, the owner on the delinquency date (January 6) and all subsequent owners are personally responsible for delinquent property taxes. (See this blog post for more). New owners of real property are on the hook for old taxes.

But for personal property, it's the listing taxpayer and only the listing taxpayer that can be held personally responsible for old taxes. New owners are never on the hook for old taxes.

Well, *almost* never. G.S. 105-366 creates a few exceptions to the general rule.

### *The “fixtures” exception*

G.S. 105-366(d) states that liability for taxes on “goods, materials, supplies, or fixtures” that are transferred “other than in the ordinary course of business” follows the property to the new owner. What exactly does that mean?

First let's examine the type of property the provision covers. “Goods”—meaning inventory—are exempt under current law (see this blog post), so that category of property is no longer relevant because there would never be any property tax liability on goods. Similarly, “materials” and “supplies” would be free from property taxes if they are used in the production of goods. G.S. 105-273(8a). (I believe inventory was taxable when this provision was first drafted, hence the reason these terms were included in the exception.)

That leaves us with “fixtures.” The Machinery Act doesn't define that term. Black's Law Dictionary declares a fixture to be a tangible item that is “substantially affixed to the land, but which may afterwards be lawfully removed therefrom by the party affixing it, or his representative, without the consent of the owner of the freehold.”

Portable business equipment not attached to real property such as lawn mowers, computers and copy machines clearly would not qualify as fixtures. But determining when large, more-or-less permanently installed equipment becomes fixtures is not easy.

My SOG colleague Kirk Boone, our in-house appraisal expert, reports that courts in other states have set a fairly high bar for determining when equipment becomes a fixture: it must become an “integral” part of the building so much so that it could not easily be removed without damaging the equipment or the building.

Perhaps the best examples of fixtures are custom shelving and signs installed by a tenant retailer in a mall or freestanding store. It's possible that equipment such as commercial refrigerators and ovens or factory equipment could also be fixtures if they were truly built-in to the building. But the fact that equipment is hard-wired to a building's electrical system or is

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bolted to the floor probably would not by itself be sufficient to transform that equipment into a fixture.

When dealing with these difficult scenarios, the assessor likely needs to make a visual inspection of the equipment before deciding whether the equipment qualifies as a fixture (and therefore may create tax liability for the new owner).

Second, let's consider what types of transfers the special rule covers. Only transactions that are not in the "ordinary course of business" are covered. "Regular" sales of the type normally made by the taxpayer are not covered.

For example, assume the Crate & Barrel store in Durham's Southpoint Mall decides to upgrade its store design and layout. It removes all of the existing shelving and displays and sells them to a retail construction firm. This transaction would be outside the ordinary course of business because Crate & Barrel sells home furnishings, not retail displays.

Assuming that the shelving and related display items were fixtures (because they were affixed to the building), then G.S. 105-366(d) would apply. The business that purchased the equipment from Crate & Barrel may be held responsible any old taxes on the property.

If G.S. 105-366(d) applies to a transaction, then local governments have six months to use Machinery Act collection remedies (attachment & garnishment, levy & sale) against the new owner. If they wait longer than six months, the only remedy against the new owner is to sue that party in state court. Either way, the old owner remains responsible for the old taxes on the transferred property under G.S. 105-365.1.

#### *The "transferred-property" exceptions*

Even if the fixtures provision doesn't apply to a particular transfer, the county may still be able to go after the property that was transferred. G.S. 105-366(b) lists a number of situations in which a local government may levy on transferred property held by a new owner for old taxes on that property. Property transferred to a relative of the original owner, property repossessed by a secured creditor, and property given away or sold for below market value are all fair game for local tax collector.

This provision allows the local government to target the specific property that was transferred but does not create general personal liability for the new owner. The local government could not go after the new owner's bank account or other property owned by that new owner.

For example, assume Coach K's Koffee Shop owes delinquent taxes on all of its business personal property. In October 2016, the shop sells its industrial-grade espresso machine to Coach Larry's Lattes, a rival coffee shop across town. The espresso machine qualifies as a fixture because it was built into the shop's walls and directly connected to the shop's electrical and water supply. Later that month the shop's computers and cash registers are repossessed by Big Bank, which obtained a security interest in the equipment after loaning the purchase money. The Koffee Shop closes the next day and quickly sells its tables and chairs to Roy's Restaurant, the lunch place next door.

When the 2016 taxes become delinquent in January 2017, the county has a number of collection options.

It can always go after Coach K's Koffee Shop directly, if it can find a bank account or if the business has any remaining personal property worth levying upon and selling.

The county could also hold Coach Larry's Lattes personally responsible for the taxes on the espresso machine under G.S. 105-366(d). Remedies against Coach Larry's Lattes would include (i) levying on the espresso machine or any other personal property owned by the business and (ii) attaching the business's bank accounts.

Finally, the county could levy upon and sell the computers and cash registers now owned by Big Bank for the taxes owed on that property. G.S. 105-366(b) permits the county to go after repossessed property. The county cannot go after Big Bank's bank accounts or other property, however, because Big Bank is not personally responsible for the taxes on that property. G.S. 105-366(d) does not apply to the computers and cash registers because they were not fixtures.

The county would have no remedies against Roy's Restaurant for the taxes owed on the tables and chairs assuming that they were sold for something close to market value. Just like the computers and cash registers, the tables and chairs



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were not fixtures and therefore G.S. 105-366(b) does not apply.

## Links

- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-365.1](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-365.1)
- [canons.sog.unc.edu/january-6-record-ownership-and-delinquent-property-taxes/](http://canons.sog.unc.edu/january-6-record-ownership-and-delinquent-property-taxes/)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-366](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-366)
- [canons.sog.unc.edu/court-appeals-continues-expand-inventory-exclusion/](http://canons.sog.unc.edu/court-appeals-continues-expand-inventory-exclusion/)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-273](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-273)
- [thelawdictionary.org/fixture/](http://thelawdictionary.org/fixture/)