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## Coates' Canons Blog: The Final Four of Tax Questions

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With this week's men's and women's championship games (neither of which featured my beloved Blue Devils, alas), the college basketball season came to a close. But don't despair—you won't need to wait a full year for another Final Four.

After much number crunching and bracketology, I've identified the four most popular tax questions I get from local governments across the state. Here they are, listed along with the "region" they won to make it to my version of the Final Four

*Champion of the "[Ir]responsible Taxpayer" Region:*

Can a shareholder be held responsible for taxes owed on a corporation's property?

*Champion of the "But I Never Owned That Property!" Region:*

When should the tax lien on subdivided lots be released?

*Champion of the "Uh Oh, We Really Messed Up" Region:*

How may a local government recapture property taxes that were never billed?

*Champion of the "I Hate Privilege License Taxes" Region:*

Are non-profit businesses exempt from privilege license taxes?

The short answers are: probably not, maybe, likely through immaterial irregularity, and maybe. What's that you say, a bit more detail would be helpful?

Read on for my more complete answers to each regional champion question. And feel free to use the comment section to vote for your favorite or offer up another common tax question that you think should be in the running for the overall championship.

### **Question 1: Can a shareholder be held responsible for taxes owed on a corporation's property?**

Usually not. Corporations are distinct legal entities from their shareholders, members (for limited liability corporations), officers, directors, employees, and incorporators. That means a corporation is a distinct taxpayer from those individuals, and vice-versa. Just as I cannot be held responsible for your property tax obligations, a shareholder or other individuals related to a corporation cannot be held liable for a corporation's property tax obligations.

Sometimes this result will seem patently unfair, especially when one individual completely controls a corporation that repeatedly ignores its property tax obligations. Or when a corporation dissolves or simply stops operating without formally transferring its property to another owner. I describe how a tax office might be able to "pierce the corporate veil" and hold an individual responsible for corporate tax debts on page 7 of this bulletin. But tax collectors who pursue this option must proceed with caution and recognize that courts are usually very hesitant to allow creditors to ignore the corporate structure.

### **Question 2: When should the tax lien on subdivided lots be released?**

Here's how this question usually arises: Parcel A is subdivided in Parcels 1 and 2 sometime after January 1, 2013, the

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date on which the 2013 property tax lien attaches. Taxpayer buys Parcel 1 at a point when the taxes on Parcel A, the parent parcel, remain outstanding. Taxpayer wants to extinguish the 2013 tax lien on Parcel 1 by paying only the portion of the Parcel A taxes that relate to Parcel 1. How should the tax collector respond?

This issue is one of the very few for which the Machinery Act grants the tax collector discretion. GS 105-362(a)(2) states that the collector “may” release the lien on a subdivided parcel in return for payment of only the taxes owed on that subdivided parcel and not on the entire parent parcel “after the assessed valuation of the part to be released has been determined.” In other words, the release can occur only if the assessor has determined how much of the taxes on the parent parcel are attributable to each of the subdivided parcels.

But remember that the statute says “may” and not “must.” It’s fine for a local government to decide it will never release liens on subdivided parcels, or will always do so, or will do so only when certain factors are present (owner of parent parcel owes no delinquent taxes, sufficient security exists for the rest of the taxes on the parent parcel, etc.). My only advice is for the tax office to develop some objective procedures for this decision so that the tax office is less likely to be accused of playing favorites when it makes these decisions.

**Question 3: How may a local government recapture property taxes that were never billed?**

If the taxes were never billed because the property was never listed (or received an exemption for which it did not qualify), then the tax office should use the discovery rules in GS 105-312 to recover the lost taxes. But if the property was listed by the assessor but for some reason some or all of the property taxes that should have been levied on the property were not, then the tax office should not and may not use the discovery process. Instead, the lost taxes can be retroactively billed (plus interest!) under the “immaterial irregularity” provisions of GS 105-394.

The most common situation in which “immaterial irregularity” retroactive billing arises is when a city learns that a parcel that everyone assumed was outside of its borders is in fact part of the city. Similar issues arise in counties for property that was inappropriately omitted from a rural fire district or a special service district. Whenever these situations occur, the tax office should bill all of the lost taxes without regard to the five-year limitation on discoveries (because these situations are not discoveries).

I discuss the “discovery vs. immaterial irregularity” issue at length in this bulletin and in chapter 11 of my property tax collection book.

**Question 4: Are non-profit businesses exempt from privilege license taxes?**

Is a church bookstore liable for privilege license taxes? How about those cute little Girl Scouts selling cookies outside of the grocery store? As is often true with privilege license tax questions the answer is, “Check your ordinance.”

State law does not exempt churches, schools, charities or other non-profits from local privilege license taxes. The fact that a business may be exempt from federal and state income taxes or local property taxes does not automatically mean that the business is also exempt from local privilege license taxes.

Instead, the question depends entirely on whether the city or county in question created an exemption for non-profits in its privilege license tax ordinance. The model ordinance included in Bill Campbell’s privilege license treatise (the “blue book”) includes such an exemption, but not every local government adopted that model ordinance in its entirety.

So . . . check your local ordinance. If you don’t see an exemption for non-profits, they are not exempt. If your elected officials want non-profits to be exempt, suggest to them that they amend the ordinance to include this type of exemption.

## Links

- [sogpubs.unc.edu/electronicversions/pdfs/ptb152.pdf](http://sogpubs.unc.edu/electronicversions/pdfs/ptb152.pdf)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-362](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-362)
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