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## Coates' Canons Blog: To Err is Human, But Probably Not Binding.

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Despite rumors to the contrary, tax collectors are human. Sometimes they make mistakes. Can those mistakes ever bind the taxing unit and eliminate a tax obligation?

Consider this scenario. Taxpayer Terry visits the tax collector and asks what property taxes are outstanding on Parcel A. "\$1,000," replies the tax collector. Terry pays the \$1,000 and later that week buys Parcel A. Two months later Terry is shocked to receive a letter from the tax collector threatening foreclosure on Parcel A if \$500 in taxes from last year are not paid within 30 days. When Terry calls the tax office seeking an explanation, the tax collector says, "Sorry. I thought you just wanted to know about *this* year's taxes." Terry says, "No, I asked you for *all* property taxes owed on Parcel A. You screwed up. I'm not paying this extra \$500." Does Terry have a legal leg to stand on?

No, much to the relief of local tax officials. *Oral* (mis)statements by tax offices such as the one Terry relied upon can never serve as the basis for escaping an otherwise valid tax obligation. And the Machinery Act allows taxpayers to rely on *written* (mis)statements by tax offices only in three specific situations:

1. When the tax office accepts a check or electronic payment, issues a receipt indicating the taxes have been paid, and the check or electronic payment is later dishonored (GS 105-357(b)(1));
2. When the tax office issues an incorrect certificate of taxes and special assessments owed (GS 105-361(b)); and,
3. When the governing board adopts an ordinance allowing taxpayers to rely on information concerning taxes owed on specific properties provided on the tax office's Internet web site (GS 105-361(e)).

Each of these situations is subject to plenty of qualifications and requirements, which I describe below. But even if the taxpayer satisfies those qualifications and requirements, all is not lost for the tax office.

Justified reliance on misstatements in one of these situations affects only the enforceability of the tax lien on the *real property* in question. Basically, justified reliance can eliminate foreclosure on real property as a collection option for the misstated taxes. The tax office would still retain enforced collection remedies against the taxpayer's *personal property* through the attachment and garnishment of bank accounts and wages or the levy and sale of cars, boats, and the like. For details about the attachment and garnishment process, read this bulletin.

Here are the qualifications and requirements for taxpayer reliance in each scenario.

1. **Dishonored check/electronic payment.** The tax lien on real property will be unenforceable against purchasers and lienholders who obtain their interest in the property after actual examination of the incorrect tax receipt and without knowledge that the check or electronic payment was subsequently dishonored. If the purchaser or lienholder never sees the incorrect receipt or is told that the receipt is incorrect prior to obtaining an interest in the property, then reliance is not justified and the mistake has no effect.
2. **Incorrect certificate of taxes owed.** Tax offices have an obligation to provide a written statement of taxes and special assessments owed on a specific property only to parties with a legal interest in the property or under contract to obtain a legal interest in the property. If such a party relies on the certificate by paying the taxes, purchasing the property, or lending money secured by the property, then the lien on the real property is unenforceable against that party and all subsequent owners. The Machinery Act does not specify the form required for such a certificate, but it is good practice for tax offices to develop one similar to this example from Gaston County to formalize the process and minimize confusion over exactly what was included or omitted from such a certificate.
3. **Inaccurate tax office web sites.** Most counties now make property tax information easily accessible via the web. But few (perhaps zero) governing boards have adopted the ordinance necessary to justify taxpayer reliance on



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these websites. Even if such an ordinance is adopted, it can provide for disclaimers on the web site limiting the accuracy of the information to certain dates or timeframes. And a taxpayer attempting to rely on a web site must keep a copy of the information relied upon for presentation to the tax office “as necessary or appropriate.”

Outside of these three limited situations, taxpayers cannot rely on mistakes by tax officials to avoid valid tax obligations.

## Links

- [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_105/GS\\_105-357.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_105/GS_105-357.html)
- [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_105/GS\\_105-361.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_105/GS_105-361.html)
- [www.sog.unc.edu/pubs/electronicversions/pdfs/ptb152.pdf](http://www.sog.unc.edu/pubs/electronicversions/pdfs/ptb152.pdf)