

---

## Coates' Canons Blog: Tricky Refund and Release Questions

By Chris McLaughlin

Article: <https://canons.sog.unc.edu/tricky-refund-release-questions/>

This entry was posted on June 17, 2016 and is filed under Finance & Tax, Property Taxes

---

My in-box is usually filled with tough property tax questions from across the state, which I love because they educate me about the issues I need to cover in my blogs and classes. Today I offer my thoughts on two recent brain-busters concerning refunds and releases (aka waivers).

Before we get to the questions, here's a quick refresher on when and how property taxes can be refunded or waived.

GS 105-380 and -381 combine to prohibit all refunds and releases of property taxes unless the tax in question was levied due to clerical error by the local government or was levied illegally. The governing board (county commissioners or city council) must approve all refunds, although they can delegate that approval authority to the manager, attorney, or finance office for refunds less than \$100. (Note that this authority may not be delegated to the tax collector!)

Many counties obtain after-the-fact approval for routine refunds and releases (overpayments, double listings, etc.) from their boards via the consent calendar at the next board meeting. This approach seems fine to me, but tax collectors should always get clear instructions from their boards on when and how they want to review refunds and releases.

For more on this topic, click [here](#) and [here](#).

On to the questions . . .

### 1. Rezoning Mistake

Board of county commissioners approves a rezoning for Parcel A in April 2014 that limited potential uses of the property and therefore should have lowered the property's tax appraisal value. For some reason the county never makes the required changes to zoning records. As a result the assessor remains unaware of the zoning change and does not lower Parcel A's tax appraisal for 2015.

Taxpayer pays the 2015 tax bill on Parcel A. In June 2016 taxpayer realizes that her property is still being appraised under the old zoning. She immediately demands a refund of the "excess" property taxes she paid for 2015 and a reduction in the property's appraisal for 2016 and beyond.

Is a refund for 2015 justified? I think so. The excessive appraisal was caused by the county's failure to properly record the zoning change. This error wasn't made by the tax department, but that shouldn't matter. GS 105-381 does not require that the clerical error that leads to an excessive tax originate in the tax office; a clerical error by any county department that leads to an excessive tax justifies a refund GS 105-381.

I don't think this issue was a judgment question that the taxpayer waived by failing to appeal her 2015 appraisal. The parties are not in disputing the impact of the zoning change on the appraisal. Had the county communicated the correct zoning information to the tax office, there's no question the assessor would have lowered the property's appraisal. In my view, this mistake constitutes a clerical error that may be corrected retroactively and not a judgment error that had to be appealed in 2015.

The taxpayer's request that the 2016 appraisal be adjusted should also be granted. GS 105-325, the statute that authorizes changes to the current year's tax appraisals by the BOCC, uses "clerical error" language similar to that used in GS 105-381. If the mistake justifies a refund of 2015 taxes then it also justifies a change in the 2016 appraisal.

### 2. Mailing Mistake After Foreclosure

---

County forecloses on Parcel B for unpaid taxes and nuisance abatement costs in 2014. Sale is held in October 2014 but the upset bid period continues to February 2015. Winning bidder records deed to property in March 2015.

County fails to update ownership records and new owner never receives a 2015 tax bill for Parcel B. County corrects the ownership records in early 2016. When taxpayer receives delinquency notice for 2015 taxes on Parcel B, taxpayer objects and claims (i) Parcel B was sold free and clear of 2015 taxes at the foreclosure; (ii) if 2015 taxes were not extinguished by the foreclosure, then those taxes should be released due to the county's mailing error; and (iii) if the 2015 taxes are not extinguished or released, 2015 taxes should be lowered by a substantial amount because the property was not livable until renovations were made in late 2015.

That's a lot of claims! Let's address them one by one.

First, it's true that all taxes included in a foreclosure are extinguished by a foreclosure sale regardless of the selling price. It's also true that foreclosures may and should include taxes that are not yet delinquent. But for a tax to be included in a foreclosure, they must be a lien on the property at the time of judgment. In this situation, the county used the in rem foreclosure process which begins with the docketing of a judgment for taxes owed. That occurred in 2014, meaning the 2015 taxes were not yet a lien on the property and could not have been included in the foreclosure judgment. This means the property was sold subject to the 2015 taxes. The county should have made that clear to all bidders before the sale began, but its failure to do so would not waive the 2015 taxes. Bottom line: the property remains subject to 2015 taxes.

Second, the county's failure to send a 2015 tax bill to the new owners does not waive the 2015 taxes. As this blog post discusses, GS 105-348 charges all taxpayers with notice of their tax obligations even if they never get a bill. Failure to mail a tax bill does not satisfy the "clerical error" justification for a release under GS 105-381.

That said, this is a somewhat unique situation in which (i) the taxpayer was operating under the (incorrect) assumption that the property was sold free and clear of 2015 taxes (perhaps caused by the county's failure to disclose that fact at the foreclosure sale) AND (ii) the county failed to send a tax bill to the taxpayer. This comedy of errors leads me to conclude the wisest course of action might be for the county to agree to waive the interest on the disputed 2015 taxes under the "clerical error" justification in GS 105-381. I've recommended this approach in similar situations when a city fails to bill property that was annexed into its boundaries. The principal taxes must be levied and collected, but I think the county has some flexibility with the interest.

Finally, I don't think the taxpayer has the right to retroactively appeal the 2015 appraisal for Parcel B. The appeal deadline for 2015 taxes passed long ago, whenever the board of equalization and review adjourned for 2015. Arguably the taxpayer didn't think it was necessary to appeal the 2015 appraisal because he thought the parcel was sold free and clear of 2015 taxes. But that misconception cannot justify a retroactive appeal, which is never permitted under the Machinery Act. The only remedy available is a release request under GS 105-381, which should be rejected because the issue is a valuation judgment (which must be appealed in the year the tax is levied) and not a clerical error or illegal taxes.

## Links

- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-380](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-380)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-381](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-381)
- [canons.sog.unc.edu/property-tax-refunds/](http://canons.sog.unc.edu/property-tax-refunds/)
- [canons.sog.unc.edu/when-does-an-appraisal-error-justify-a-refund/](http://canons.sog.unc.edu/when-does-an-appraisal-error-justify-a-refund/)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-325](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-325)
- [canons.sog.unc.edu/tax-bills-we-dont-need-no-stinkin-tax-bills/](http://canons.sog.unc.edu/tax-bills-we-dont-need-no-stinkin-tax-bills/)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-348](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-348)
- [canons.sog.unc.edu/what-to-do-when-property-that-should-be-taxed-isnt/](http://canons.sog.unc.edu/what-to-do-when-property-that-should-be-taxed-isnt/)