
Coates' Canons Blog: Waiving Fees and Costs

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More than a few local government taxes, fees, and costs can be collected using some or all of the remedies available for the collection of property taxes. As I've blogged before, property taxes can be waived or refunded only in very limited circumstances. Do these same stringent waiver and refund rules apply to those taxes, fees and costs that can be collected using property tax remedies? I don't think so, meaning there may be room for creativity by local governments in this area.

For instance, consider the recent proposal by the city of Durham to forgive demolition costs incurred when enforcing minimum housing standards if the owner of the demolished property agrees to make it available for low-income housing. Under GS 160A-443, these demolition costs are a lien on the affected property that can be collected using property tax remedies of attachment and garnishment, levy, or foreclosure. (Actually, GS 160A-443 states that demolition liens may be collected as special assessments, but because special assessments are collected as property taxes it is as if GS 160A-443 directly referenced property taxes.) Does it follow that liens for demolition costs can be waived only under the waiver and refund provisions for property taxes found in GS 105-381? If so, then Durham's proposal would be problematic because property taxes can only be waived if the taxes were illegal or were imposed due to clerical error. There is no provision for waiving property taxes because the owner agrees to make the property available for a use favored by the city.

I think Durham's proposal is on solid legal ground because GS 105-381 applies only to property taxes, not to other taxes, fees or costs that can be collected as property taxes. The fact that the General Assembly made property tax collection remedies available for demolition liens does not lead to the conclusion that the General Assembly intended for *all* property tax provisions to apply to demolition liens.

The Machinery Act contains nearly 200 property tax provisions on issues ranging from exemption to appraisal to collection. Clearly not all of these provisions should or could apply to demolitions liens. For example, the fact that property owned by a church or a school can be exempt from property taxes does not mean that such property is exempt from demolition liens. Because GS 160A-443 references only the *collection* of demolitions liens as property taxes, then I think it is reasonable to conclude that only the *collection* provisions relating to property taxes apply to demolition liens.

In my view, GS 105-381 is not a collection provision. It is found in the "Refunds and Remedies" section of the Machinery Act, not the collection section of that act. It restrains the governing board's authority to effectively amend a particular property tax assessment, not the tax collector's authority to collect property taxes in general. It is a provision for forgiving a property tax because it never should have been levied, not for waiving collection of a valid property tax. For all of these reasons, I conclude that GS 105-381 does not apply to demolition liens or other taxes, costs and fees that can be "collected as" property taxes.

If Durham wishes to develop its own waiver and refund provisions for demolition liens, I don't think the Machinery Act stands in the way. Nor do I think the Machinery Act prohibits a local government from developing its own waiver and refund provisions for privilege licenses taxes or ambulance fees or any other tax, fee or cost that can be collected as a property tax. Assuming that the tax, fee or cost is not subject to its own waiver, refund or amendment provisions, of course.

For more details on the levy, collection and waiver of other taxes, fees and costs, please see this bulletin.

Links

- heraldsun.com/view/full_story/7384984/article-Demolition-lien-option-considered?instance=most_commented
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-443.html



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- www.sog.unc.edu/pubs/electronicversions/pdfs/ptb152.pdf
 - www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_105/GS_105-381.html
 - www.sog.unc.edu/pubs/electronicversions/pdfs/ptb154.pdf