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## Coates' Canons Blog: Waiving Interest on Property Taxes

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Here's a simple rule to remember: local governments can't waive interest on property taxes whenever they want.

Where do you find this simple rule? GS 105-381. Plus GS 105-380. But you really need to read those sections in conjunction with GS 105-273(15) otherwise you won't know that GS 105-380 and GS 105-381 apply to interest as well as taxes. GS 105-348 also plays a role. And don't forget that GS 105-312(k) allows for the waiver of interest on unpaid discovery bills.

Okay, maybe this rule isn't as simple as it first appears.

I know that you know that a local government cannot waive property taxes whenever it so chooses—probably because you've read this post, or this one, or this one.

But those posts don't answer the question about waiving interest, right? All of those posts and the related statutes (GS 105-380 and -381) create restrictions on releasing or refunding *principal* property taxes. They don't mention interest at all.

Here's where GS 105-273 comes into play. That statute provides definitions for many of the terms used throughout the Machinery Act. One of those terms is "taxes", which is defined in subsection -273(k) as "the principal amount of any property tax or dog license tax and costs, penalties, and interest." That means whenever a Machinery Act statute refers to "taxes" it also refers to interest on those taxes.

So . . . those restrictions on waiving taxes created by GS 105-380 and -381 also apply to interest. A local government may waive interest only if that interest was accrued illegally or due to clerical error by the tax office.

And remember that GS 105-348 makes all property tax obligations—including the obligation to pay interest on those taxes—binding even if the taxpayer never receives actual notice of those obligations. In other words, a taxpayer can't obtain a waiver of taxes or interest simply by claiming, "But I never got the bill!"

Most situations in which a taxpayer seeks to waive interest do not involve illegal taxes or clerical errors. Tax bills that were mailed late or mailed to the wrong address don't justify waiving interest. Property tax allocation agreements between real property buyers and sellers don't justify waiving interest. Mistakenly assuming that a mortgage lender is escrowing and paying interest doesn't justify waiving interest. Sympathy for a taxpayer's unemployment or similar economic misfortune doesn't justify waiving interest.

Are there any situations that might justify waiving interest? Sure. I can think of a few:

**Payment applied to wrong account by tax office:** If the tax office mistakenly applied a payment from Taxpayer A to property owned by Taxpayer B, any interest that later accrued on Taxpayer A's property that would have been avoided if the payment had been applied properly should be eligible for a release or refund as an illegal tax or clerical error.

**Successful appeal by taxpayer:** If the Board of Equalization and Review, the Property Tax Commission, or the state courts reduce a taxpayer's assessment on appeal, any interest that accrues on the portion of the assessment that was eliminated as a result of the appeal should be refunded as an illegal tax.

**Property Never Taxed By City:** If property that is located within a city's borders is never taxed by the city by mistake



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(perhaps all parties thought it was located outside of the city or perhaps the city annexed it but the county failed to code it as subject to city taxes) then the city might justify a release of the interest that accrued on the omitted taxes when they are billed retroactively under GS 105-394. (I'm not saying the city *must* waive the interest, just that it likely could. Read this for more.)

**Discovery bills:** A local government has unfettered discretion to waive some or all of a discovery bill for any reason. GS 105-312(k). That discretion includes the authority to waive interest on unpaid discovery bills. (See this post for more.)

**Military members deployed in Iraq or Afghanistan:** S.L. 2001-508 and S.L. 2003-300 waive all tax deadlines for military members serving in post-9/11 actions until 90 days after their return stateside. If a local government charged interest on a tax account and later learned that the taxpayer was serving in Iraq or Afghanistan then the county should release that interest as an illegal tax.

I'm sure there are few other scenarios that would justify the waiving of interest. But they aren't common.

Bottom line: unless a taxpayer can prove illegality or clerical error, a local government cannot waive disputed property tax interest.

## Links

- [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)
- [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=105-273](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-273)
- [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)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-312](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-312)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-394](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-394)
- [www.ncga.state.nc.us/EnactedLegislation/SessionLaws/HTML/2001-2002/SL2001-508.html](http://www.ncga.state.nc.us/EnactedLegislation/SessionLaws/HTML/2001-2002/SL2001-508.html)
- [www.ncga.state.nc.us/EnactedLegislation/SessionLaws/HTML/2003-2004/SL2003-300.html](http://www.ncga.state.nc.us/EnactedLegislation/SessionLaws/HTML/2003-2004/SL2003-300.html)