
Coates' Canons Blog: What Didn't Happen

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For those of us who work with local taxes, the most important news out of the General Assembly this summer was what *didn't* happen.

The legislature did not create any major new property tax exemptions. The long-awaited overhaul of the registered motor vehicle property tax system was not postponed (again) beyond July 2013. The seemingly annual threat to eliminate or radically revise local privilege license taxes did not gain traction. Despite support from the governor, a bill that would have authorized both state and local taxation of internet sweepstakes died in committee.

Even relatively minor changes to local tax provisions were abandoned during the short session that focused mostly on the state budget. For example, one bill would have required a local property tax collector to release the tax lien on a subdivided parcel regardless of whether current taxes on the parent parcel were unpaid. The existing provision in GS 105-362 law gives collectors the option of releasing those liens. The bill died in committee.

Let's go back to that failed internet sweepstakes tax bill for a moment. Although it didn't become law, the bill deserves some discussion because we are almost certain to see similar proposals down the road if these sweepstakes remain legal.

The bill would have ended the debate currently working its way through state appellate courts about whether and at what level cities may tax internet sweepstakes businesses. (See my blog posts on that litigation [here](#) and [here](#).) Local taxes on sweepstakes businesses would have been set at \$1,000 per location and \$500 per machine for both cities and counties.

These local tax caps are lower than the taxes currently levied by many cities and therefore would have reduced revenues for those cities. But many cities do not tax these businesses at all or do so at much lower levels, meaning their revenue opportunities would have increased. And the bill would have created a new revenue stream for counties, which cannot tax internet sweepstakes under current law absent special permission from the General Assembly.

The legislature's fiscal analysis of the bill estimated that the state would eventually host between 800 and 2,200 sweepstakes businesses and between 60,000 and 170,000 sweepstakes machines. Using figures at the lower end of these ranges (1,000 businesses and 100,000 machines), the local taxes would have produced between \$75 and \$100 million per year statewide depending on how many of those businesses were located in municipalities. Assuming the criminal ban on internet sweepstakes remains unenforceable, cities can continue to capture tax revenue from these businesses under current law. But counties will be out of luck unless the law changes.

Enough about what didn't happen. What did happen with local taxes at the General Assembly this year? Not much.

I think the most significant new law is the one my colleague Kara Millonzi blogged about last week, S.L. 2012-152, which bans the use of contingent fees for tax audits conducted by outside firms. This bill, which was made effective July 1, 2013, by Senate Bill 847, will eliminate the standard practice of paying audit firms a percentage of the taxes they discover. These audits must now be paid for with flat fees, meaning that a local government will be on the hook for a fee even if the audit does not produce additional tax revenue.

Less important but still interesting is S.L. 2012-157, which tweaked the special rules concerning taxation of property owned by a homeowners association (“HOA”).

Under prior law, the value of HOA property that is held for the use and enjoyment of all HOA members was not taxed to the HOA. Instead, the value of that HOA property (or at least the value of the right to use that property) was included in the value of the individual homes that make up the HOA. However, this special rule created the possibility that real property could be virtually transported from one jurisdiction to another for taxation purposes. Suppose that property in County A is owned by an HOA in County B. If that property were held for the use of all HOA members, County A would lose the right to tax the property because its value would be included in the assessments of the individual homes in County B.

Although not common, this situation apparently occurred a few times on the coast where oceanfront property in a town was owned by an HOA situated outside of that town. The town was not happy to lose the ability to tax that valuable property.

S.L. 2012-157 eliminates the possibility of real property being moved from one jurisdiction to another. The new law requires that HOA property be taxed only by the jurisdiction in which the property is located. If that is the same jurisdiction in which the individual homes are located, then the value of the HOA property may be included in the value of the individual homes as was previously the case. But if the HOA property is located in a different jurisdiction than that of the individual homes, then the HOA property should be taxed as is all other property in that jurisdiction. The HOA may pass along that tax to the homeowners in the other jurisdiction, but the jurisdiction in which the HOA property is located will be the only jurisdiction to tax that property.

Beyond these two laws, the General Assembly didn’t meddle much with local taxes on a statewide basis.

On the local level, the usual tweaks to collection remedies and occupancy taxes occurred. Two counties (Sampson and Stokes) were added to list of the seventy-some counties in G.S. 161-31 that are authorized to refuse to record deeds unless property taxes are paid. More local governments were authorized to collect stormwater utility fees using property tax collection remedies. Henderson County and the new town of Fontana Dam were authorized to levy occupancy taxes or increase their existing occupancy taxes.

But otherwise, it was a quiet year for local taxes at the Capitol. And from the perspective of local governments, I suppose that’s a good thing.

Links

- www.ncga.state.nc.us/Sessions/2011/Bills/House/HTML/H1180v1.html
- www.ncga.state.nc.us/sessions/2011/bills/senate/html/s486v4.html
- nccriminallaw.sog.unc.edu/?p=3382
- canons.sog.unc.edu/?p=6638
- canons.sog.unc.edu/?p=6399
- www.ncga.state.nc.us/Sessions/2011/FiscalNotes/House/PDF/HFN1180v1.pdf
- canons.sog.unc.edu/?p=6750
- www.ncga.state.nc.us/Sessions/2011/Bills/House/PDF/H462v5.pdf
- www.ncga.state.nc.us/Sessions/2011/Bills/Senate/HTML/S847v5.html
- www.ncga.state.nc.us/Sessions/2011/Bills/House/PDF/H1105v5.pdf
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=161-31
- www.ncga.state.nc.us/enactedlegislation/sessionlaws/html/2011-2012/sl2012-55.html
- www.ncga.state.nc.us/enactedlegislation/sessionlaws/html/2011-2012/sl2012-144.html
- www.ncga.state.nc.us/enactedlegislation/sessionlaws/html/2011-2012/sl2012-107.html