
Coates' Canons Blog: What is the Statute of Limitations for Special Assessments?

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Assume that in 2000 Blue Devil City levies a special assessment on the 100 residents of Coach K Way to pay for an extension of city sewer and water service along that road. The city provides documentation of the assessment to Carolina County, which by contract collects the city's taxes and assessments. Unfortunately this documentation disappears and the assessments are never entered into the county's tax records. As a result, for the next decade neither the city nor the county makes any effort to collect the assessments.

In 2011 the city's new finance office stumbles across records of the assessments and calls the county tax office to ask why they remain unpaid. The county tax collector sheepishly explains that a mistake was made back in 2000 and then concludes that the assessments are now uncollectible because more than 10 years have passed since the assessments were levied.

Is the collector correct? I think so, but the issue is not entirely clear.

Before focusing on the statute of limitations issue, here's a quick primer on special assessments. Both cities (GS 160A, Articles 10 and 10A) and counties (GS 153A, Articles 9 and 9A) are authorized to levy special assessments on the owners of real property to pay for public works projects such as water and sewer system construction or street paving and improvement. In 2009 the General Assembly expanded local government special assessment authority, a change that was analyzed by my colleague Kara Millonzi [here](#).

The cost of the public works project is allocated among the property owners who will benefit from the project through the governing board's confirmation of the "assessment roll." The resulting special assessments are then handed to the city or county tax collector for collection "in the same manner as property taxes." GS 160A-228 (cities), GS 153A-195 (counties).

Nearly 30 years ago the N.C. Court of Appeals concluded that the phrase "in the same manner as property taxes" means that special assessments may be collected using all of the remedies available for property tax collection: foreclosure, attachment and garnishment, and levy and sale. *City of Durham v. Herndon*, 61 N.C. App. 275 (1983).

For how long are these remedies available? Were we using them to collect property taxes, we'd look to the Machinery Act's 10-year statute of limitation found in GS 105-378(a). But subsection (b) of that statute expressly states that it does not apply to special assessments.

Instead, we need to look back to the special assessment provisions in the municipal and county statute chapters. GS 160A-233(d) and GS 153A-200(d) both prohibit local governments from maintaining "an action or proceeding to foreclose any special assessment lien unless the action or proceeding is begun within 10 years from the date that the assessment or the earliest installment thereof included in the action or proceeding became due."

Problem is, I'm not sure these provisions completely answer the question. Both provisions create a 10-year limit on actions to *foreclose* special assessments liens. But as the *Herndon* case made clear, foreclosure of the taxpayer's real property is not the only collection remedy available for special assessments.

Do GS 160A-233 and GS 153A-200 also limit collection actions aimed at the taxpayer's personal property? If so, then bank account attachments, wage garnishments, and levies and sale of taxpayers' cars must be completed within that 10-year limitation.

But if not, then there may be *no* statutory time limitation on those remedies. The general statutes of limitations found in Chapter 1 of the General Statutes don't limit the collection of taxes, costs and fees levied by a local government under the

common law doctrine of *nullum tempus occurrit regi*. In case your Latin is a bit rusty, that means “time does not run against the king.” In other words, a statute of limitations does not apply to government actions unless the statute says so explicitly. See *Rowan County Bd. of Education v. U.S. Gypsum Co.*, 332 N.C. 1 (1992).

There are no court decisions interpreting GS 160A-233 and GS 153A-200, so nobody really knows how these two statutes of limitations should be applied. In my view, the best approach is a conservative one: assume that the 10-year limitation applicable to special assessment foreclosures also applies to special assessment collection remedies aimed at personal property.

GS 160A-233 and GS 153A-200 were drafted long before the *Herndon* decision. I don't think the legislators and staff who drafted those provisions ever contemplated the use of attachments and garnishments to collect special assessments. It seems likely that the intent of GS 160A-233 and GS 153A-200 was to bar all collection efforts for special assessments after 10 years.

But the fact remains that the statutes limit themselves to “foreclosure.” And courts are hesitant to interpret a statute in a way contrary to the plain meaning of its terms. A judge certainly could rely on the *nullum tempus occurrit regi* doctrine to conclude that because personal property remedies are not specifically covered by GS 160A-233 and GS 153A-200, those remedies escape the 10-year limitation. With these thoughts in mind, depending on the dollar amount involved a local government may consider it worth the risk to pursue collection efforts for a special assessment that is more than a decade old.

Two final points. First, if a special assessment is payable in installments then each installment is subject to its own distinct 10-year limitation running from the date that particular installment was due. Just because one or more installments have been delinquent for more than ten years does not mean the local government should abandon efforts to collect later installments.

Second, tax collection statutes of limitations are regarded as affirmative defenses. *Iredell County v. Crawford*, 262 N.C. 720 (1964). Unless the taxpayer raises the limitation as a defense, the statute does not bar the government's collection action. If your local government is faced with an installment or full special assessment that is more than a decade old, one option would be to proceed with a collection action unless and until the taxpayer raises the 10-year limitation. Some might view this approach as preying on the ill-informed and therefore unfair to taxpayers, however. Attorneys and tax officials would be wise to seek prior guidance from their government boards so that its members can weigh in on the issue before problems arise.

For more details on the collection of special assessments and other costs and fees levied by local governments, please see this bulletin.

Links

- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_160A/Article_10.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_160A/Article_10A.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_153A/Article_9.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_153A/Article_9A.html
- canons.sog.unc.edu/?p=714
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-228
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-195.html
- scholar.google.com/scholar_case?case=12342134191733503016&hl=en&as_sdt=2&as_vis=1&oi=scholar
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-378
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-233
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-200.html
- ncinfo.iog.unc.edu/pubs/electronicversions/pdfs/ptb162.pdf