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## Coates' Canons Blog: Who Gets the Refund?

By Chris McLaughlin

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Usually the most difficult question about a refund is whether that refund is lawful. We've talked a bunch about how the Machinery Act limits refunds to taxes levied due to clerical error and illegality (read this and this). But we haven't discussed the question that arises after deciding that a refund is lawful: who should get the refund check?

If the tax payment being refunded was made by the owner of the property and the property hasn't changed hands, the "who gets the check?" question is easy to answer. The property owner gets the check.

But what if the refund is for a prior tax year and the property is now owned by a new party? What if the payment being refunded was made by somebody other than the property owner? The question of "who gets the check?" suddenly becomes much more difficult.

The Machinery Act doesn't explicitly answer the question. G.S. 105-381, the statute that defines when refunds are permitted, is silent about who gets the check. It simply tells us when a "taxpayer" is entitled to a refund. G.S. 105-273(17) defines "taxpayer" as the "person whose property is subject to ad valorem property taxation by any county or municipality and any person who . . . has a duty to list property for taxation."

How does this guidance apply to multi-year refunds on transferred property? In that case there can be more than one "taxpayer." The refund can and should be broken down by tax year, with the taxpayer (owner) for each year receiving the refund for that year.

Assume Tommy Tarheel owns Parcel A until March 2017, when he sells it to Wanda Wolfpack. The property has always been taxed by both the county and by Blue Devil City. In early 2019 Wanda learns that Parcel A has always been located outside of the city limits and should never have been taxed by Blue Devil City. She requests a refund of all city taxes paid on Parcel A under the "illegal tax" justification. Her request is justified under G.S. 105-381, meaning the city would owe a refund of taxes paid on Parcel A for the years 2014 thru 2018 (refunds are limited to five years from the tax's original due date).

Should that entire refund check go to Wanda because she is the current taxpayer? No. Tommy was the owner of Parcel A (the "taxpayer" referred to in G.S. 105-381) until March 2017, meaning he should get the refund check for tax years 2014, 2015, and 2016. The refund for 2018 is clearly payable to Wanda, the taxpayer for that year.

The 2017 refund is more difficult to resolve, as both Tommy and Wanda could qualify as the 2017 taxpayer under G.S. 105-381. The refund could go to Tommy, who was the listing owner (owner as of Jan. 1, 2017), or to Wanda, the owner on the date of delinquency (Jan. 6, 2018).

Because both Tommy and Wanda qualify as "taxpayers" for Parcel A, I think the county could send the refund to either person. If the county still has a copy of the check from 2017, the best course of action is to make the refund to the person who made the 2017 tax payment. If not, the county should choose either the January 1 owner or the January 6 owner and be consistent when resolving similar refund situations in the future.

The same approach should apply when the refund request results from an appeal that was initiated before the property transfer. Assume Suzie Seahawk owns Parcel B and appeals its value in 2017. She loses her appeal at the Board of Equalization and Review and appeals the case to the Property Tax Commission. The PTC rules in favor of Suzie in 2019, lowering the tax value of Parcel B for 2017 and future years.

A refund is now due for the excess taxes paid on Parcel B. Suzie sold the property to Chris Camel in early 2018. Chris

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has never requested a refund and might not even know the property value has been appealed. What years should the refund cover? Who gets the refund?

I think a refund for all tax years affected by the PTC decision needs to be made regardless of whether the current owner is involved with the appeal. That refund should be broken down by tax year. Suzie should get the 2017 refund and Chris should get the 2018 refund (assuming he paid the 2018 taxes on Parcel B).

What if the tax being refunded was paid by someone other than the property owner? Mortgage banks pay the property taxes on hundreds of thousands of parcels across the state. Can tax offices send refund checks to these third parties instead of to the taxpayer?

I think so. A strict reading of the Machinery Act implies that refunds must be paid only to the "taxpayer" as defined in G.S. 105-273(17). But the mortgage companies are acting as the taxpayers' agents in these situations. They've been authorized to hold the taxpayers' money in escrow, receive copies of the tax bills, and pay those bills on behalf of the taxpayers. It seems more than reasonable to treat them as the "taxpayers" for refund purposes.

What's more, there are a pile of practical reasons to sending refund checks to mortgage companies instead of property owners.

Consider this common situation. Big Bank is escrowing Billy BlueDevils' property taxes on parcel C. The bank mistakenly pays the 2017 taxes twice, once in early December and again in early January. The county deposits both checks. When the bank learns of its mistake and demands a refund, must the county pay that refund to taxpayer (Billy) rather than the party that paid the taxes (Big Bank)?

I don't think so. True, Big Bank is not the taxpayer, but it is acting as the taxpayer's agent. Making a refund to the taxpayer's agent, which made the payment being refunded, satisfies the intent of the Machinery Act's refund provisions. Sending the refund to Billy would put the county at risk of a successful lawsuit by Big Bank.

Change the facts a bit and the question gets even more difficult. Assume again that Billy BlueDevil is escrowing his tax payments on Parcel C with Big Bank. Unfortunately Billy forgets this fact when he receives the 2017 property tax bill for Parcel C in August 2017 and immediately sends payment in full to the county. In December 2017, Big Bank pays the same bill for 2017 taxes on Parcel C with Billy's escrowed funds. The county deposits Big Bank's check. A few weeks later Billy realizes his mistake and demands a refund from the county.

A refund is clearly justified here under the "illegal tax" category because a county may not collect the same tax obligation twice. But to whom should the refund be paid? The second payment was the "illegal" tax, which would lead the county to send the refund check to Big Bank, which made the payment and was acting as Billy's agent.

Billy might argue otherwise, claiming that he's paid the tax twice: once to the county, and once with his escrow payments to the bank. But the county has no way of confirming that Billy in fact is up-to-date on his escrow payments. It's far preferable for the county refund the second payment to Big Bank and let it and Billy resolve the escrow issue directly with Big Bank. The county does not want to referee a dispute between a taxpayer and his bank or any other party.

What about payments from other third parties that are not mortgage companies? Are they entitled to refunds of their payment too? Let's say my father pays my 2017 property taxes (Feel free to write that check whenever you'd like, Dad!). If the county later determines that a portion of that tax must be refunded, should the refund go to me or my father?

My father isn't the taxpayer for my property, but I bet most counties would send him the refund check because he was the party who paid the tax being refunded. I'm not sure that practice is consistent with the Machinery Act, in part because it's tougher to argue that my father is acting as my agent for those taxes than we could were it my mortgage company sending the payment. (Did I really authorize my father to pay those taxes for me or did he decide to pay those taxes as a surprise birthday present?)

Regardless, I think it's okay to send the refund check to my father. That approach might not technically conform to the Machinery Act's guidance, but the risk of liability for the county seems awfully low. Am I really going to sue the county for a refund on taxes I didn't pay? It seems much more likely that a third-party payor might sue the county (and win!) if a

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refund check for taxes paid by that third party were mailed to the property owner instead of to the payor.

## Links

- [canons.sog.unc.edu/tricky-refund-release-questions/](https://canons.sog.unc.edu/tricky-refund-release-questions/)
- [canons.sog.unc.edu/when-does-an-appraisal-error-justify-a-refund/](https://canons.sog.unc.edu/when-does-an-appraisal-error-justify-a-refund/)
- [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=105-273](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-273)