State and Local Taxation of Private Property on Federal Land

Christopher B. McLaughlin, UNC School of Government

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In general, states and localities cannot tax privately owned property sited on land that was ceded to the federal government without the reservation of taxation rights. *Humble Pipeline Co. v. Waggoner*, 376 US 369 (1964)(rejecting Louisiana's attempt to levy property taxes on privately owned drilling equipment and pipelines on land that was ceded to federal government subject only to state's reservation of civil and criminal process rights). The conclusion reached in this case presumably also prohibits taxation of private *non-business* property such as cars and boats owned by active-duty or retired military personnel that have situs on federal land ceded by the state without the reservation of taxation rights.

Reservation of Taxation Rights by the State

Some states have reserved taxation rights on land ceded to the federal government. See Maryland Code, State Government Article §14-102(a)(reserving "jurisdiction and authority over the land and over persons, property and transactions on the land to the fullest extent that is permitted by the United States Constitution"); *IBM Corp. v. Evans* 99 S.E.2d 220 (Ga. 1957)(concluding that the Georgia constitution prohibits the state from ceding right of taxation of private property on federal lands). Other states have retained the right to reassert jurisdiction if federal land is sold or leased to a private party and used for private business or industry. See Virginia 1940 Acts, ch. 422, §19-c-(6).

North Carolina is not among these states.

Until 1887 the N.C. General Assembly authorized the sale of public land to the federal government by individual public laws under which the retention of state jurisdiction could vary from transaction to transaction. As a result, to determine what state jurisdiction, if any, was retained in federal land acquisitions prior to 1887 one must locate the specific state legislation that authorized the transfer.

In 1887 the General Assembly gave blanket approval to the sale of land to the federal government without retaining any specific jurisdiction over the land. 1887 P.L. ch. 136. The N.C. Supreme Court subsequently ruled that the 1887 act granted exclusive federal jurisdiction over lands transferred in accordance with the act and with the federal enclaves clause of the U.S. Constitution. See *State v. De Berry*, 224 N.C. 834 (1945).

In 1905, North Carolina expressly ceded to the federal government all jurisdiction over land transferred to the federal government except the right to serve civil and criminal process and to punish criminal offenses concurrently with the federal government. N.C.G.S. § 104-1. In 1907, the General Assembly passed another bill which again granted exclusive jurisdiction to the federal government, this time retaining only the right to serve criminal and civil process. This bill expressly waived the right of taxation over such lands so long as they are owned by the federal government. 1907 S.L. ch. 25, now codified as N.C.G.S. § 104-7. See also *State v. Smith*, 328 N.C. 161 (1991)(affirming that under the original version of N.C.G.S. § 104-7 the state waived all jurisdiction over federal lands acquired under that statute except for service of process). In the *DeBerry* case cited above, the court held that these statutes are effective prospectively, meaning that the N.C.G.S. § 104-1 covers transactions from 1905 to 1907 and N.C.G.S. § 104-7 covers transactions from 1907 forward.

N.C.G.S. §104-7 was amended in 2005 to expand state jurisdiction over land acquired by the federal government to permit enforcement of state laws concerning crime, public health, the environment, marriage, and probate matters. But the amended law continues to exempt federal land from state and local taxes. S.L. 2005-69.

The scope of N.C.G.S. §104-7 was litigated in the *Atlantic Marine Corps Communities, LLC v. Onslow and Craven Counties* case. 497 F.Supp.2d 743 (E.D.N.C. 2007). Although this case involved the attempted taxation of improvements on real property rather than personal property, the court's analysis of N.C.G.S. §104-7 is directly applicable to the personal property question as well. While ruling that the counties did not possess the authority to tax certain buildings subject to long-term private leases, the court held that the original version of N.C.G.S. §104-7 ceded all state jurisdiction but for service of process over land acquired by the federal government for *any* purpose including use as military training grounds. The court based its conclusion on the broad catch-all language included in the original version of the statute that is italicized below.

> The consent of the state is hereby given, in accordance with the [federal enclave clause] to the acquisition by the United States, by purchase, condemnation or otherwise, of any land in the state required for customhouses, courthouses, post offices, arsenals or other public buildings whatever, *or for any other purposes of the government*.

The *Atlantic Marine* decision technically is not binding on other courts, but it would be persuasive and likely decisive were N.C. local governments to litigate the same taxation issue concerning other military bases.

In 1979 the scope of jurisdiction retained by N.C. concerning land ceded to the federal government for use as a national park was expanded to include the power of taxation. N.C.G.S. §104-32. But this provision clearly would not apply to land acquired for other federal purposes such as military bases.

Federal Acceptance of Exclusive Jurisdiction

Beginning in 1940, Congress required the federal government to formally accept exclusive jurisdiction over land acquired from the states. 40 U.S.C. §255, now codified as 40 U.S.C. §3112. If the federal government fails to accept jurisdiction as required by this statute, then North Carolina retains jurisdiction over the land for all purposes including taxation. See *State v. Burell*, 256 N.C. 288 (1961)(concluding that N.C.G.S. §104-7 does not waive state jurisdiction if the federal government does not accept jurisdiction pursuant to 40 U.S.C. §255 for lands acquired after 1940).

In *Atlantic Marine,* Onslow and Craven Counties conceded that the appropriate acceptance occurred for all federal lands now part of Marine Corps Air Station New River and Marine Corps Base Camp Lejuene. The parties disputed federal acceptance of the lands now part of Marine Corps Air Station Cherry Point, but the court found that such acceptance did occur. As a result, the court held that all of the Marine Corps land in both counties was exempt from state and local taxation.

Grainger Barrett's 1999 memo references several documents indicating federal acceptance of exclusive jurisdiction over Fort Bragg in 1942. Assuming these documents exist, then Fort Bragg would be exempt from local taxation as well.

Shea Denning neatly summarized the interplay of the various state and federal laws in the following table excerpted from her listing and assessing book.

Date Acquired	Nature of Jurisdiction	Power to Impose Property Taxes	Controlling Authority
Before March 2, 1887	Depends upon language in grant	Depends upon language in grant	See particular act granting property
March 2, 1887 and July 31, 1905	Exclusive Federal Jurisdiction, if acquired pursuant to federal enclaves clause	No	GS 104-1; Art. 1, Sec. 8, cl. 17
August 1, 1905 through January 31, 1940	Exclusive Federal Jurisdiction	No	GS 104-1; GS 104-7
February 1, 1940 through present	Exclusive Federal Jurisdiction if acceptance filed with Governor	No, unless the federal government did not formally accept exclusive jurisdiction	40 USC s 3112 (former 40 USC s 255); GS 104-7

Local Taxation by Federal Statute

Congress always has the power to permit state and local governments to tax certain property or transactions on federal lands regardless of how or when those lands were acquired. For example, since 1940 Congress has authorized the levying of state and local sale, use and income taxes on transactions occurring on federal lands that are otherwise subject to exclusive federal jurisdiction. 4 U.S.C. §§ 105 & 106. Certain military housing construction leases have also been made subject to state and local taxation by federal statute. See *Offutt Housing Co. v. County of Sarpy, Nebraska*, 351 U.S. 253 (1956), the holding of which was applied to the same housing program on Fort Bragg in *Bragg Investment Co. v. Cumberland County*, 245 N.C. 492 (1957). Similarly, 10 U.S.C. §2667 authorizes "Enhanced Use Leases" under which land leased to private parties is subject to state and local taxation.

I do not believe that Congress has ever authorized by statute the taxation of private non-business property owned by active or retired military personnel on land subject to exclusive federal jurisdiction.

Next Steps for the Affected Counties

The first step for any county wishing to levy taxes on property sited on federal lands is to determine exactly when and how those lands were acquired by the federal government. A good starting point for that investigation seems to be the 1962 inventory report on federal lands issued by the U.S. General Services Administration. Shea Denning provided me copies of the portion of this report concerning the Marine Corps lands at Camp Lejuene, Cherry Point, and New River that were at issue in the *Atlantic Marine* case, but neither she nor I have the full report.

Based on the above, I think the timing of a federal acquisition matters only if it occurred prior to 1887 or after 1940. If the acquisition occurred before the 1887 state law discussed above took effect, North Carolina may have reserved taxation authority in the individual authorization bill. If the acquisition took place after 1940, it is possible that the federal government may have failed to accept exclusive jurisdiction as required by 40 U.S.C. §255. But if the acquisition took place between 1887 and 1940, North Carolina and its local governments did not retain the right to tax private property on that federal land.

The next step would be to determine if private parties have leased a portion of the acquired land under federal statutes that explicitly authorize local taxation. The *Atlantic Marine* case made clear that the "military housing privatization initiative" program at issue in that case does not permit local taxation. But some private parties may be operating on military bases pursuant to other federal statutes that are more permissible with regard to local property taxes such as the enhanced use lease statute cited above.