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## Coates' Canons Blog: Writing Off Old Property Taxes

By Chris McLaughlin

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Quick poll question: does your local government annually write off all property taxes that are more than 10 years old? (I bet everyone reading this post just nodded yes.) Okay, second poll question: where in the Machinery Act are local governments authorized to write off all taxes that are more than 10 years old? (I bet everyone reading this post just shrugged.)

It's true that most local governments remove old taxes from their books after 10 years. It's also true that the Machinery Act doesn't explicitly authorize this approach. Here's my analysis of the very common question about what to do with old taxes.

The desire to write off taxes after 10 years is tied to the 10-year statute of limitations on enforced collections. Local governments are prohibited from using any enforced collection procedure for delinquent property taxes unless that procedure begins within 10 years of the date the taxes were due. G.S. 105-378(a). Taxes on real property and personal property other than registered motor vehicles become due each September 1. G.S. 105-360(a). (The due dates for taxes on registered motor vehicles relate to taxpayers' vehicle registration dates which are staggered throughout the year.)

For example, a tax levied in 2005 was due on September 1, 2005. Enforced collection actions for 2005 taxes must have begun on or before September 1, 2015. A county could continue a wage garnishment for 2005 taxes that began before that date, but it could not initiate a new wage garnishment for 2005 taxes today.

While G.S. 105-378 bars new collection actions after 10 years, that provision does not authorize writing off those old taxes. The only authority in the Machinery Act for writing off or otherwise removing old taxes is found in the settlement provisions of G.S. 105-373.

The settlement is the annual report that the tax collector must make to the governing board. In addition to reporting on the current year's tax collections in the settlement, the tax collector may also ask the board to add certain taxes to the "insolvents list." Once taxes are added to the insolvents list and are at least five years past due (one year past due for taxes on registered motor vehicles), the tax collector may be relieved of the responsibility of collecting those taxes. In other words, the taxes may be "written off" and removed from the taxing unit's books.

However, the insolvents list is limited to taxes on personal property listed by taxpayers who did not also list real property in the jurisdiction—meaning personal property taxes that are not a lien on real property. Neither taxes on real property nor taxes on personal property that are a lien on real property may be placed on the insolvents list. If a tax cannot be added to the insolvents list, then it cannot be written off under G.S. 105-373.

To sum it up: the only formal method to write off taxes under the Machinery Act is thru the insolvents list. And the insolvents list is only for taxes on personal property that are not a lien on real property.

It's clear the insolvents list process does not offer legal justification for writing off all property taxes after 10 years. Technically, taxes that are a lien on real property may *never* be written off, presumably because the Machinery Act assumes local governments will foreclose on those tax liens if all other collection remedies fail. A handful of local governments (Henderson County, for one) faithfully follow the Machinery Act and only use the insolvents list to write off personal property taxes that were never a lien on real property.

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But most governments want to clean up their tax rolls and use the 10-year write off approach for *all* property taxes, even those that are liens on real property and therefore eligible for a foreclosure action.. How do these local governments justify their actions under the Machinery Act?

I'm not sure they can, frankly. But here's one argument: Each year the governing board must charge the tax collector with responsibility for collecting that year's property taxes using an "order of collection." G.S. 105-321(b). I believe that some jurisdictions charge the collector each year with the responsibility for taxes from the current year plus the previous nine years. Taxes from earlier years would not be included in the order of collection and not be charged to the collector. For example, in 2015 the collector would be charged with responsibility for the new 2015 taxes plus all delinquent taxes from 2006 to 2014. Under this approach, taxes ten years and older could be written off and removed from the books because there is no longer any obligation to collect those old taxes.

My problem with this approach is that an order of collection does not expire after one year. When the tax collector is charged with responsibility for the current year's taxes, the obligation to collect those taxes remains effective indefinitely. It does not need to be renewed annually. A local government cannot relieve a tax collector of the responsibility for collecting old taxes simply by choosing not to "renew" an old order of collection. The only method of relieving a tax collector for the responsibility to collect taxes for a prior year is thru the insolvents list.

Not for the first time, we're faced with a conflict between the technical requirements of the Machinery Act and common property tax practices. Ideally, the General Assembly would amend the Machinery Act to reflect the reasonable desire of local governments to write off taxes for which no collection remedies remain.

But until that happens, local governments using the 10-year write-off approach should at least make an effort to comply with the Machinery Act by modifying their orders of collection to exclude taxes that are more than 10 years past due. It's not a perfect solution, but likely the best available under the circumstances.

## Links

- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-378](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-378)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-360](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-360)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-373](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-373)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-321](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-321)