

PROPERTY TAX

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2004 PROPERTY TAX LEGISLATION

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The 2004 Session of the General Assembly made no sweeping overhauls of the laws and procedures governing local taxation, but enacted several provisions of local interest, including the authorization of an additional one cent sales and use tax to be used for beach nourishment. The 2004 Session also amended the provisions of G.S. 105-278.4 to exempt from property taxation certain educational property owned by non-profit entities and held for the benefit of educational institutions. The N.C. Court of Appeals' subsequent holding relating to institutions' equitable ownership of such non-profit property indicated, however, that the amendments did not significantly expand the categories of educational property exempted from taxation.

Listing and Assessment

Economic Development and Training Districts

Section 37 of S.L. 2004-170 (S 1145) adds "County Economic Development and Training Districts" to the title of Article 16 of Chapter 153A, which pertains to county service districts. Section 38 of S.L. 2004-170 (S 1145) amends G.S. 153A-317.11 to clarify that economic development and training districts are special tax areas under Section 2(4) of Article V of the N.C. Constitution. Section 39 of S.L. 2004-170 (S 1145) amends G.S. 153A-317.17 to expand the purposes for which property taxes may be levied in an economic development and training district. While property taxes formerly were only authorized for funding a skills training center, the amended provisions permit those funds to be used for any of the purposes listed in G.S. 153A-317.11, which include providing education, training and related services, facilities, or functions, and promoting economic development in the county.

Exemption for Educational Property

S.L. 2004-173 (S 277) amends G.S. 105-278.4 to explicitly provide for the exemption of educational property owned by a nonprofit entity "for the sole benefit of" a University of North Carolina-affiliated institution, a North Carolina community college and/or an institution as defined by G.S. 116-22, which includes accredited private colleges and universities with main campuses in North Carolina. In addition, the operation of student housing and dining facilities is added to the list of specific educational purposes. These amendments arose out of

Watauga County's denial of a property tax exemption for an apartment complex owned by the non-profit Appalachian Student Housing Corp ("ASHC"), which was designed and built to supplement student housing at Appalachian State University ("ASU"). ASHC held the property in trust for ASU.

Subsequent to the statutory amendment, the N.C. Court of Appeals held that ASU's equitable interest in the property as beneficiary of the trust rendered the apartment complex state-owned property exempt from taxation pursuant to G.S. 105-278.1(b).¹ The court's finding of state ownership mooted the inquiry into whether operation of the facility qualified as an educational purpose under G.S. 105-278.4. The court nonetheless described student housing as "one of the more traditional accoutrements of an educational facility" and opined that it "should be considered incidental to the educational institution."² The court and legislature thus appear to be of one mind regarding this particular educational purpose.

The court of appeals' statements regarding the integral relationship between student housing and an institution's educational mission indicate that even before G.S. 105-278.4 was amended, a student housing facility owned by a nonprofit entity and held in trust for a public or private institution of higher education was exempt from taxation. This is so because such a facility held in trust for a private institution presumably would be considered "owned" by the private institution and "naturally and properly incident to [its] operation." G.S. 105-278.4. Thus, while the 2004 amendments may have narrowly expanded the exemption of educational property by requiring only that the nonprofit entity's educational property be owned "for the sole benefit of" an educational institution, rather than requiring the specific trust arrangement present in *In re Appalachian Student Housing Corp.*, the amendments do not significantly expand the scope of the G.S. 105-278.4 exemption.

Motor Vehicles

S.L. 2004-167 (S 1083) amends various provisions of Article 3 of Chapter 20 of the General Statutes by providing for registration renewal for commercial and dealer-owned vehicles at staggered monthly intervals and by eliminating provisions applicable to calendar-year vehicle plates. Formerly, dealer license plates were issued on a fiscal year basis and commercial

vehicles were registered on a calendar year basis. The changes to registration renewal dates affect the due date for property taxes on such vehicles pursuant to G.S. 105-330.4. Taxes for vehicles registered under the staggered system are due on the first day of the fourth month following the date the registration expires or the new registration is applied for.

Present-Use Value

S.L. 2004-8 (H 1465) amends G.S. 105-277.2 to permit land owned by a family business that is leased for farming, forestry, or horticultural purposes to qualify for taxation at present-use, rather than fair market, value. Previously, family-owned businesses had to be actively engaged in farming, forestry, or horticultural production for their land to qualify for present-use valuation.

Collection

Debt Setoff

S.L. 2004-21 (H 1497) reduces the collection assistance fee under G.S. 105A-13(a) for debts collected through setoff from "a fee of no more than \$15" to a flat fee of \$5. The act is effective for fees assessed on or after January 1, 2005.

Garnishment Fees

G.S. 105-368(g) provides that "[t]he fee for serving a notice of garnishment shall be the same as that charged in a civil action." S.L. 2004-113 (H 918) increases the uniform fee for civil process codified in G.S. 7A-311 from \$5 to \$15. The increase applies to service of process fees assessed or collected on or after September 1, 2004. Thus, a tax collector may now collect a fee of \$15 for each separately served notice of garnishment. As G.S. 105-368(b) requires that notice of garnishment be served on the garnishee *and* the taxpayer, the total fee for separate service on the garnishee and taxpayer is \$30. If, however, the tax collector serves several notices of garnishment simultaneously upon one garnishee, she may collect only *one* \$15 service of process fee for service of these notices upon the garnishee. G.S. 7A-311(a)(1)(a). She may still collect a \$15 fee from each taxpayer for separate service on these individuals.

1. See *In re Appeal of Appalachian Student Housing Corp.*, -N.C. App.-, 598 S.E.2d 701 (July 20, 2004).

2. *Id.* at ___; 598 S.E.2d at 707.

An example may serve to illustrate the point. If a tax collector simultaneously serves ten notices of garnishment upon a bank and then separately serves notice upon the ten delinquent taxpayers whose accounts are attached by way of garnishment, the amount of taxes owed by each taxpayer increases by \$16.50 (\$15 for service on the taxpayer and \$1.50 for the taxpayer's portion of the fee for service on the bank).

Local Acts

Cabarrus County. G.S. 105-322(g) defines the powers and duties of boards of equalization and review. S.L. 2004-100 amends those powers with respect to Cabarrus County's board of equalization and review ("board") by permitting separate panels of the board to exercise the decision-making authority of the full board during a reappraisal year. The act also empowers the board after adjournment to accept late-filed applications for exemption or exclusion from property taxes and to make the changes in abstracts and tax records authorized by G.S. 105-325.

City of Durham. S.L. 2004-103 (H 1700) amends S.L. 2003-329, which authorizes the City of Durham for a period of one year to levy a municipal vehicle tax of \$10 per vehicle—\$5 more than the amount authorized by G.S. 20-97(b) for other municipalities. S.L. 2004-103 extends the period for Durham's increased vehicle tax to five years, eliminates restrictions on the expenditure of those funds, and removes the one-year expiration date set forth in S.L. 2003-329.

Columbus County. S.L. 2004-33 (H 1569) removes Columbus County and its water, sewer, and service districts from the taxing units authorized by S.L. 2003-270 to adopt ordinances permitting the remedies for collection of property taxes to be used for collection of delinquent water and sewer bills. Municipalities located wholly or partially within Columbus County retain the power to adopt an ordinance authorizing such collection procedures.

Occupancy Taxes

Reporting Requirements

Section 36 of S.L. 2004-170 (S 1145) amends G.S. 153A-155(d) to make occupancy tax returns due to counties on the twentieth of each month. However, the due date for paying county occupancy taxes remains the fifteenth of each month. The act also amends G.S. 160A-215(d) to make occupancy taxes due to cities on

the twentieth, but does not amend the provision that makes the returns due to the city on the fifteenth. The inconsistent dates appear to be drafting errors. Making occupancy taxes and returns due on the twentieth conforms to the monthly sales tax reporting and payment deadline.

Use of Proceeds

Section 42 of S.L. 2004-170 (S 1145) amends G.S. 153A-155 and G.S. 160A-215 to prohibit the use of occupancy tax proceeds for development or construction of a hotel or another transient lodging facility.

Currituck County

S.L. 2004-95 (H 1721) amends Section 1 of Chapter 209, 1987 N.C. Sess. Laws, to permit Currituck County to levy a third room occupancy tax of up to 2 percent of the gross receipts derived from the rental of accommodations. The act amends earlier provisions governing occupancy tax expenditures and provides that net proceeds of the first occupancy tax may be used only for "tourism-related expenditures, including beach nourishment." At least two-thirds of the net proceeds of the second and third occupancy taxes must be used to "promote travel and tourism," and the remaining proceeds must be used for tourism-related expenditures. Section 3 of the act amends Chapter 209, 1987 N.C. Sess. Laws, as amended by 1991 N.C. Sess. Laws Ch. 155 and S.L. 1999-155, to require the Currituck County board of commissioners in adopting a third room occupancy tax to adopt a resolution creating a Tourism Development Authority responsible for expenditures of room occupancy tax proceeds.

Alleghany County

S.L. 2004-106 (S 1181) adds Alleghany County to the counties governed by the uniform room occupancy tax provisions of G.S. 153A-155 and amends Chapter 162, 1991 N.C. Sess. Laws, to reflect adoption of these uniform procedures. The act provides that when the proceeds of the room occupancy tax exceed \$100,000, the Alleghany County board of commissioners must create a Tourism Development Authority responsible for expending the proceeds of the tax.

Privilege License Taxes

S.L. 2004-84 (H 1303) expands the categories of amusements exempted from privilege license taxes pursuant to G.S. 105-40 to include youth athletic contests sponsored by tax-exempt entities as well as exhibitions, performances, and entertainments, other than athletic events, that are managed by nonprofit arts organizations.

Local Sales and Use Tax

S.L. 2004-123 (H 142) amends Subchapter VIII of Chapter 105 to add an Article 45 authorizing a one-cent local sales and use tax for beach nourishment. Counties levying the one-cent Article 39 sales and use tax and the three one-half cent sales and use taxes authorized by Articles 40, 42 and 44 may levy the additional one-cent tax. A county's authority to levy this tax expires eight years after the tax is first levied, even if the tax does not remain in effect for the entire eight-year period. Each county receives the net proceeds of the tax it collects unless the tax cannot be identified as proceeds of a particular county. In that case, taxes are to be allocated among the taxing counties in proportion to the amount of Article 45 additional one-cent taxes collected in each county.

Studies

Section 35 of S.L. 2004-170 (S 1145) amends G.S. 120-70.108(a) to increase the number of members of

the Property Tax Subcommittee from six to eight. The Senate co chairperson of the committee is to designate one of the additional members; the House co chairperson, the other.

Part XIV of S.L. 2004-161 (S 1152) directs the Revenue Laws Study Committee to study several issues related to local taxation and to report its findings and any recommended legislation to the 2005 General Assembly upon its convening. The committee is directed to study: (1) the valuation of partially improved, undeveloped lots in subdivisions; (2) allowing local school administrative units a sales and use tax exemption instead of a sales and use tax refund; (3) the comparative tax burden on residents of South Carolina and North Carolina; and (4) whether tax expenditures should be reviewed at least once every ten years. The act also directs the Property Tax Subcommittee of the Revenue Laws Study Committee to study tax lien foreclosures, including proposals for expediting foreclosure actions.

Part XLVI of S.L. 2004-161 creates the "Legislative Study Commission on a 21st Century Revenue System," charged with establishing principles of taxation upon which state and local tax structures should be based and recommending changes in the current state and local tax structure. The commission's interim report is due to the 2005 General Assembly not later than its convening. The commission's final report must be made to the 2006 Regular Session of the 2005 General Assembly upon its convening.

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