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Local Taxes and Tax Collection

During the 2001 legislative session, the General Assembly tackled a number of different issues concerning property taxation. Most notably, the General Assembly finally addressed the inadequacy of the homestead exclusion for the low-income elderly and the inequity of the blanket exemption for continuing care retirement centers. In addition, the legislature tinkered with several different provisions in the Machinery Act, creating more uniformity in some instances and addressing issues raised in recent court cases in others. Overall, the session was a productive one for property taxation, generating legislation that tied up quite a few statutory loose ends.

Assessment

Listing

Electronic Listing

In 1998 the General Assembly adopted the Electronic Commerce in Government Act [S.L. 1998-127 (H 1356)]. Two years later the Uniform Electronic Transactions Act (S 1266) was enacted and codified as S.L. 2000-152. Clearly the General Assembly has shown an increasing interest in the use of advanced technology for conducting business in North Carolina. In the 2001 session, this interest was further demonstrated in the tax arena by the introduction of electronic listing bills in each house and by the enactment of one of the bills as S.L. 2001-279 (S 365). S.L. 2001-279 amends G.S. 105-304 by adding a provision that would allow boards of county commissioners to pass a resolution permitting taxpayers to list business personal property electronically. *Electronic* is defined in G.S. 66-312(6) as any means "relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities." S.L. 2001-279 also amends G.S. 105-307 to provide that, if the county has passed such a resolution, the

normal listing period, which runs from January 1 to January 31, may be extended to June 1 for electronic listings.

Reappraisal in a Nonrevaluation Year

S.L. 2001-139 (S 162) makes numerous changes to the Machinery Act. One significant amendment applies to G.S. 105-287(a), which allows tax assessors to reappraise property in a nonrevaluation year under certain circumstances. The new statute adds two new circumstances under which the assessor may perform such a reappraisal. The first occurs when it is necessary to recognize a value increase or decrease resulting from a physical change in the land or improvements made to the subject property. The second occurs when it is necessary to recognize a value increase or decrease resulting from a zoning change for the subject property. It is important to note that S.L. 2001-139 adds language to the statute to clarify that "the reason necessitating a change in the property's value need not be under the control of or at the request of the owner of the affected property." This clarification settles a question raised by two recent court decisions. The North Carolina Supreme Court stated in *In re Allred*[1] that the qualifying factors that would trigger a reappraisal under G.S. 105-287(a)(3) "would include, for example, a rezoning, a relocation of a road or utility, or other such occurrence directly affecting the specific property, which falls outside the control of the owner."[2] The North Carolina Court of Appeals subsequently relied on this "control of the owner" principle in its decision in *In re Corbett*,[3] finding that a change in value resulting from a parcel split was not a qualifying factor within the meaning of G.S. 105-287(a)(3) since the division and transfer of the property was completely within the control of the owner. The statutory language added by S.L. 2001-139 makes it clear that the fact that the property owner initiates the event that causes a change in value is completely irrelevant. For an event to trigger a reappraisal in a nonrevaluation year, it need only be listed among the statutory justifications for doing so.

Treatment of Manufactured Homes As Real Property

S.L. 2001-506 (H 253) amends G.S. 105-273(13) by redefining *real property*. Under the previous version of the statute, the terms "real property," "real estate," and "land" included a manufactured home if the home was a multisectional residential structure; had the moving hitch, wheels, and axles removed; and was placed upon a permanent enclosed foundation on land belonging to the owner of the manufactured home. S.L. 2001-506 eliminates the requirements that a manufactured home consist of two or more sections and that the permanent foundation be enclosed in order for the home to be classified as real property. Thus a single-section manufactured home, or "single-wide," can, for tax years beginning on or after July 1, 2002, be considered real property once the owner has taken appropriate steps to have it so classified. If the home meets all of the criteria of G.S. 105-273(13), the owner *must* take steps to have the property registered as real property. If the home does not meet all of the criteria for real property in G.S. 105-273(13), and the owner does not otherwise have it registered as real property, then it is to be taxed as tangible personal property. Further details regarding the registration process for manufactured housing are provided in Chapter 14, "Land Records and Registers of Deeds."

Transportation Corridor Maps

S.L. 2001-139 also creates new G.S. 105-296(m), which requires the tax assessor to conduct an annual review of the transportation corridor official maps on file in the register of deeds' office. The assessor must indicate on city and county tax maps the portion of property lying within a transportation corridor. The new section directs the assessor to tax property within a transportation corridor in accordance with G.S. 105-277.9.

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1. 351 N.C. 1, 519 S.E.2d 52 (1999).
2. 351 N.C. at 12, 519 S.E.2d at 58.
3. 138 N.C. App. 534, 530 S.E.2d 90 (2000).

Exemptions and Exclusions

Exemption or Exclusion Application Process

S.L. 2001-139 reorganizes G.S. 105-282.1, which governs the application process for claiming exemption or exclusion from property taxes. As a result of this reorganization, taxpayers will now be required to file an application to claim property tax exclusion under G.S. 105-275(5), which provides an exemption for vehicles given to disabled veterans by the federal government. This property classification was previously exempt from the application requirement. All other classifications that were previously exempt from the application requirement remain exempt; subject property owners do not have to apply to receive these tax exclusions.

Certain exclusions require that the taxpayer file an application for exclusion only once. Once the exclusion has been granted to the property, the taxpayer does not need to apply for exclusion again unless there is a physical change in the property or a change in its use. S.L. 2001-139 adds to the list of "single application" classifications:

- exclusions granted pursuant to G.S. 105-275(41) for works of art owned by the North Carolina Art Society, Inc.;
- exclusion under G.S. 105-277(h) for the property of private water companies;
- the homestead exclusion as provided in G.S. 105-277.1;
- the reduced valuation extended to precious metals used in manufacturing and processing as provided in G.S. 105-277.10;
- the partial exclusion for improvements to brownfields as provided in G.S. 105-277.13;
- exemptions granted pursuant to G.S. 131A-21 for health care facilities undertaken by the North Carolina Medical Care Commission;
- the historic properties exemption governed by G.S. 105-278; and
- the "transfer" of value from a nonprofit homeowners' association to the individual properties of the members of the association as determined by G.S. 105-277.8.

In addition, S.L. 2001-139 significantly changes G.S. 105-282.1(d) by requiring county tax assessors to forward to the Department of Revenue (DOR) a summary report of the roster of exempted and excluded property in their jurisdictions by November 1 of each year. The statute previously required that the assessor provide DOR a list of only the changes made to the roster. The new provision also requires the assessor to send a copy of the actual roster if DOR requests it. Finally, the provision reiterates the directive given in G.S. 105-296(l) that the assessor conduct an annual review of at least one-eighth of the parcels in the county that are exempted or excluded from taxation. In conjunction with imposing the audit requirement, S.L. 2001-139 also amends both G.S. 105-296(j), which governs audits performed on properties classified for present-use valuation, and G.S. 105-296(l), which governs audits of all other exemptions and classifications, by imposing a sixty-day time limit within which the property owner must provide information requested by the assessor to evaluate a property's eligibility for a particular exemption or classification. If the property owner fails to provide the requested information within sixty days of the assessor's written request, the property will lose the applicable classification; in the case of use-value property, deferred taxes will become due and payable immediately. If the property owner subsequently provides the requested information, the assessor must reinstate the classification and refund any deferred taxes that were paid due to the revocation of the classification.

Homestead Exclusion

For several years both taxpayers and tax officials have sought to change the criteria that determine eligibility for the homestead exclusion. The exclusion is intended to provide tax relief to the low-income elderly and to disabled individuals, and, to qualify for it, a taxpayer must have an income at or below the statutory threshold. The qualifying taxpayer then has a certain amount excluded from the valuation when his or her property is appraised for tax purposes. Over the past few years, however, this exclusion has been increasingly ineffective in reaching the population of taxpayers that it was intended to help. One major problem has been that the income threshold of

$15,000 per year has not been changed in several years, and many taxpayers who greatly need the relief no longer qualify for the exclusion. Another issue has been the skyrocketing real estate values in various parts of the state. In the last decade, unprecedented population growth and a healthy economy have led to dramatic increases in appraised values. As a result, the statutory exclusion amount of $20,000 has provided increasingly inadequate relief for those who qualify for it, particularly those living in the urban and rapidly growing areas of the state.

With the passage of S.L. 2001-308 (H 42), the General Assembly has taken a step toward making the homestead exclusion an attainable and effective measure of relief for taxpayers who need it. S.L. 2001-308 amends G.S. 105-277.1 by increasing the income eligibility limit from the current level of $15,000 to $18,000 for the 2002–2003 tax year. For subsequent tax years, the statute sets the income eligibility limit at the amount for the previous tax year with a cost-of-living adjustment equivalent to any cost-of-living adjustments made for benefits drawn under Titles II and XVI of the Social Security Act. The law provides that DOR bears the responsibility of determining the income eligibility limit each year and that it must do so at least one year before the July 1 beginning the taxable year to which the limit applies. Thus DOR must notify all county tax assessors of the applicable income eligibility limit on or before July 1, 2002, for the 2003–2004 tax year, on or before July 1, 2003, for the 2004–2005 tax year, and so forth.

S.L. 2001-308 also changes the exclusion amount available to a qualifying taxpayer to the greater of $20,000 or 50 percent of the appraised value of the residence. This change should make a tremendous difference for property owners living in areas with high property values. In addition the statute extends the deadline for filing an application for the exclusion from April 15 to June 1.

Present-Use Valuation

After grappling nearly the entire session with various proposals to reform the present-use valuation program for agricultural, horticultural, and forest land, the legislature enacted a bill that has very little current effect. The new statute does, however, set up a study commission whose work ultimately could result in a complete overhaul of the property tax system in North Carolina. S.L. 2001-499 (H 1427) amends G.S. 105-277.3(b2) so that property having a present-use classification can be transferred to a new owner—even if the new owner does not meet the ownership requirements—as long as he or she acquires the land for the purposes and uses for which it was classified. This amendment makes it possible for farms and forestland to be transferred from one farmer to another without destroying the use-value classification of the land and triggering the deferred taxes, even if the farmers are not relatives. S.L. 2001-499 also amends G.S. 105-277.3(b2) by adding language which makes the new owner in these farmer-to-farmer conveyances liable for the deferred taxes if he or she causes or allows the property to fail to meet a condition or requirement for the use-value classification. Finally, S.L. 2001-499 amends G.S. 105-277.4(c) by adding language that will allow a qualifying tract of land to retain eligibility for deferred status, even if the owner pays the deferred taxes.

The remainder of S.L. 2001-499 is devoted to establishing the Property Tax Study Commission. Specifics on the commission are provided below in the section entitled "Study Commissions."

Retirement Home Exclusion

This session the General Assembly also addressed the long-standing inequity problem existing in the exclusion for continuing care retirement facilities. S.L. 2001-17 (H 193) begins by limiting the types of retirement home property eligible for exclusion from taxation. G.S. 105-278.6A previously provided that "real and personal property owned by a qualified retirement facility" would not be listed, assessed, or taxed. Effective July 1, 2001, property falling under this exclusion will include only "[b]uildings, the land they actually occupy, additional adjacent land reasonably necessary for the convenient use of the buildings, and personal property" owned by a qualifying retirement facility. This provision should prevent retirement homes from sheltering inordinate amounts of real property from taxation.

Secondly, S.L. 2001-17 amends G.S. 105-278.6A(c) to provide that a retirement facility cannot qualify for total exclusion unless it meets all of the following conditions:

- It is exempt from state income taxation and its operations do not benefit private shareholders.
- All revenues in excess of operating and capital expenses are dedicated to providing goods and services to the elderly and to the local community.
- Upon dissolution of the corporation, the assets of the qualifying retirement facility would revert or be conveyed to a qualifying 501(c)(3).
- It maintains an active charitable gift program that assists the facility in extending services to individuals who could not obtain the services without financial assistance or subsidy.
- It serves all residents regardless of ability to pay, or, in the alternative, it designates at least 5 percent of resident revenue each year to providing charity care to its residents, to community benefits, or both.

S.L. 2001-17 also establishes a partial exclusion for those facilities that meet all conditions for total exclusion but contribute only 1 to 4 percent of resident revenue to charity care. When the retirement facility contributes only 1 percent, it is entitled to an exclusion of 20 percent of its property value. If the contribution is 2 percent of resident revenue, the partial exclusion is 40 percent. The exclusion is 60 percent of the property value for contributing 3 percent of resident revenue for charity care and 80 percent for contributing 4 percent of resident revenue to charity care.

The "charity care" condition is the only new requirement among the conditions listed for exclusion eligibility. It is obviously intended to force retirement facilities to contribute tangibly to their communities before they can obtain any property tax relief. Retirement facilities that refuse to serve indigent persons or designate revenues to providing charity care or community benefits will no longer receive any exclusion of property value for tax purposes.

Board of Equalization and Review

S.L. 2001-139 expands the powers and duties of county boards of equalization and review by creating new G.S. 105-322(g)(5). This new section allows boards of equalization and review to continue to meet after adjournment:

- to hear and decide discovery appeals,
- to hear and decide motor vehicle tax appeals, or
- to hear and decide appeals related to an audit conducted on property classified under the present-use program or under another classification for exclusion or exemption.

Motor Vehicle Taxation

Interest Rate

S.L. 2001-139 amends G.S. 105-330.4(b) by changing the interest rate on unpaid taxes on classified motor vehicles from .75 percent to 2 percent for the first month that the taxes are delinquent. Thereafter the interest accrues at the rate of .75 percent per month until the taxes are paid.

Motor Vehicle Tax Credit

Session Law 2001-406 (H 1431) creates new G.S. 105-330.6(a1), which addresses the situation in which a change in a motor vehicle registration results in double taxation on the vehicle for some period of time. The new section provides that if the registration of a motor vehicle changes for a reason other than for the transfer of the plates to another classified vehicle and if the new tax year begins before the vehicle's original tax year has expired, the owner of the vehicle may obtain a credit for a proportion of the taxes paid for the original tax year. The proportion is calculated by determining the number of full calendar months remaining in the original tax year as of the first day of the new tax year and dividing it by twelve. The tax assessor grants the credit by issuing a release in the amount of the credit from the tax obligation for the new tax year.

Taxpayers wanting to obtain this credit must apply within thirty days of the due date of the taxes for the new tax year and must give the tax collector information that establishes the original tax year of the vehicle, the amount of taxes paid on the vehicle for that tax year, and the reason for the change in registration.

Refunds for Motor Vehicle Taxes

G.S. 105-330.6 grants releases and refunds to the owner of a motor vehicle when he or she surrenders its registration plates to the Division of Motor Vehicles because the vehicle has been transferred to a new owner or because the owner has moved out of the state and has registered the subject vehicle in a new jurisdiction. S.L. 2001-497 amends this statute by extending the time the taxpayer has to file the application for release or refund from 120 days to one year from the date the plates are surrendered. This change is effective December 5, 2001, and applies for plates surrendered on or after that date.

Collection

Foreclosures

In Rem Executions

S.L. 2001-139 amends G.S. 105-375 by reducing the amount of time that must elapse before execution can be issued on a judgment for taxes in an in rem foreclosure action. Previously tax collectors had to wait six months after docketing the tax certificate before execution could be issued. The new statute reduces this time period to three months. Executions must continue to be issued within two years of the docketing of the tax certificate.

In addition, S.L. 2001-139 imposes the requirement that any notice of a sale conducted pursuant to G.S. 105-375(i) must be sent to the listing owner's last known address and to the current owner by registered or certified mail at least thirty days before the sale date.

Procedures for Judicial and Execution Sales

Collectors, attorneys, and paralegals who deal with enforced collections should be aware of the changes enacted by S.L. 2001-271 (S 681). This new law amends various provisions of Articles 29A and 29B of Chapter 1 of the General Statutes, which govern procedures for tax foreclosure sales. Article 29A concerns judicial sales and applies to mortgage-style foreclosure actions brought under G.S. 105-374. Article 29B governs execution sales and applies to in rem actions implemented pursuant to G.S. 105-375. Because S.L. 2001-271 makes identical changes and additions to both articles, the modifications in sales procedure are discussed generally rather than as they relate to either judicial or execution sales. The changes and additions discussed are effective when the order of sale or the execution is issued on or after January 1, 2002.

S.L. 2001-271 makes important changes to the notice of sale provisions. Conducting a judicial or execution sale currently requires that a notice of sale be posted at the courthouse or some other area designated by the clerk of superior court for at least thirty days before the sale and run in a newspaper of general circulation for at least four successive weeks before the sale. The new statute reduces the time required for posting to twenty days and the time for publication to two successive weeks.

S.L. 2001-271 also creates a "rolling" upset bid process. Previously, if an upset bid was made following a sale or resale of property, the commissioner or sheriff had to reinstitute the sale process by obtaining an order for resale and going through the entire process again. Some cunning taxpayers had learned to take advantage of this system by developing the practice of filing upset bids and then reneging on those bids in order to stymie the sale of their property. S.L. 2001-271 enacts provisions that will curb such abuse and streamline the bid process. These provisions

should ultimately shorten the length of time needed to sell property in a judicial or execution sale. The act also provides that a resale of property will no longer be triggered solely because an upset bid is made. Rather, successive upset bids may be filed. If at any time ten days elapse without the filing of a subsequent upset bid or a motion for resale by an interested party, the rights of the parties to the sale or resale will become fixed. Whoever holds the highest bid or upset bid at that time is obligated to complete the purchase of the property. The amendments allow deposits and compliance bonds posted by upset bidders to be held by the clerk of court to ensure that the bidders follow through and complete sales where they are obligated to do so.

The only circumstance in which a resale will be ordered as a result of an upset bid being filed is when an interested party has filed a motion for resale with the clerk of superior court within ten days after a sale or upset bid and "for good cause."

Tax Certification

S.L. 2001-464 (H 108) gives certain counties another "enforcement measure" that should increase property tax collection rates in those counties that choose to implement the measure. This chapter authorizes the boards of commissioners in twenty-five counties[4] to pass a resolution requiring the register of deeds to refuse to accept for registration any deed transferring real property unless the county tax collector has certified that there is no lien against the subject property as a result of delinquent county, municipal, or other taxes that the collector is charged with collecting. The authority is established in a new statute, G.S. 161-31, which also assigns to the board of commissioners the task of prescribing the form that the certification must take.

Collection of Other Liens As Taxes

S.L. 2001-448 (S 352) amends G.S. 160A-193 to give municipalities added ammunition in fighting threats to public health or safety that arise within their jurisdictions. The statute provides that if a city has to remove, abate, or otherwise remedy a public health nuisance and the expense of that action is not reimbursed to the city, the expense will be a lien on the real property where the nuisance occurred. The amendment then provides that such a lien shall have the same priority and be collected in the same manner as unpaid property taxes.[5] S.L. 2001-448 also extends the nuisance abatement lien so that it applies to any other real property owned by the defaulting party within the city limits or within one mile of the city limits, except for the party's primary residence. A lien established under this provision, however, is inferior to all prior liens and may only be collected as a money judgment. Also, the lien cannot be extended to other property within the city if the defaulting party can show that the nuisance was wholly attributable to another person's actions.

Other Important Legislation

State Privacy Act

S.L. 2001-256 (H 998) adds new Article 3F to Chapter 143 of the North Carolina General Statutes. This new article, entitled the State Privacy Act, makes it unlawful as of October 1, 2001, for a state or local government agency to deny any privileges or services to an individual because he or she refuses to disclose his or her social security number. Such denial or refusal of privileges or services is expressly allowed in circumstances where (1) federal law requires the disclosure of

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4. Alleghany, Anson, Beaufort, Cabarrus, Camden, Cherokee, Chowan, Currituck, Forsyth, Graham, Granville, Harnett, Haywood, Jackson, Lee, Madison, Montgomery, Pasquotank, Perquimans, Pitt, Stanly, Swain, Vance, Warren, and Yadkin.

5. This expressly alters the terms of G.S. 105-356(a)(1), which provides that the lien for property taxes is "superior to all other liens, assessments, charges, rights, and claims." Pursuant to the terms of G.S. 160A-193, liens for the abatement of public health nuisances are now of equal dignity with liens for property taxes.

the social security number or (2) the disclosure is being made to a state or local agency and the agency has maintained a system of records at least since January 1, 1975, and a pre-1975 statute or regulation mandated the disclosure of the individual's social security number to verify identity. S.L. 2001-256 further provides that any state or local government agency that requests disclosure of an individual's social security number must inform the individual of whether the disclosure is mandatory or voluntary and of the statutory or other authority under which the agency solicits the disclosure of the number.

Other Local Taxes

Prepared Food and Drink Taxes

S.L. 2001-264 (H 1448) adds new sections to Chapters 153A and 160A of the General Statutes to provide for uniform penalties for local prepared food and drink taxes, also referred to as "meals taxes." New G.S. 153A-154.1 and G.S. 160A-214.1 provide that, effective October 1, 2001, the civil and criminal penalties applicable to state sales and use taxes under Chapter 105 shall also apply to local meals taxes. The new sections apply to every county and city authorized by the General Assembly to levy a local meals tax. The new provisions also give the governing board of the taxing county or city the same authority to waive penalties on local meals taxes that the Secretary of Revenue has to waive the penalties for state sales and use taxes.

Study Commissions

As previously mentioned, S.L. 2001-499 establishes a Property Tax Study Commission, which is charged with the task of investigating and recommending changes to the property tax system. The sixteen-member commission is to include in its study an examination of the various exclusions and exemptions that currently remove property from the tax base and is given specific directives for assessing the present-use value system in particular. The commission is to submit a final written report of findings and recommendations to the 2003 General Assembly but may submit its report as early as the 2002 regular session of the 2001 General Assembly.

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