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Local Taxes and Tax Collection

The most significant local tax legislation enacted by the 2006 General Assembly affects the collection of delinquent property taxes. Beginning with the 2006–07 tax year, changes to Machinery Act provisions governing the collection of delinquent taxes on transferred property eliminate the enforced collection of taxes from sellers who owned property as of the date of assessment but transferred the property before the taxes became delinquent. The 2006 legislation aligned taxpayer liability under the Machinery Act with property sellers’ expectations that their property tax liabilities were satisfied upon transfer of property and resulted in amendments to several statutes, including the statutes governing in rem and mortgage-style foreclosure proceedings. The General Assembly further amended the statutory notice requirements for in rem tax foreclosure proceedings in response to a United States Supreme Court opinion, rendered a few weeks before the convening of the 2006 legislative session, holding that the State of Arkansas failed to provide due process before foreclosing on a home for delinquent property taxes.¹

Legislation enacted in 2005 to fully integrate the registration and taxation of motor vehicles survived the 2006 session largely intact, notwithstanding the introduction of bills to repeal the 2005 act altogether or, alternatively, to render its provisions inapplicable to vehicles sold by dealers. Ultimately, the General Assembly postponed the deadline for implementation of the new system for one year, until July 1, 2010.

The 2006 General Assembly enacted relatively limited legislation affecting the listing and assessment of property for ad valorem taxation. Statutory amendments expand the electronic listing provisions to permit the electronic listing of non-business personal property, redefine “inventories” to include display modular homes, and permit late applications for continued present-use taxation upon the transfer of property. The legislature also directed the Revenue Laws Study Committee to study and report its recommendations on whether wildlife and other conservation land should be classified for taxation at present-use value.

1. Jones v. Flowers, 126 S. Ct. 1708 (2006).

Collection of Property Taxes

“Taxpayer” Redefined for Purposes of Enforced Collection

For years, many property owners have mistakenly assumed that upon the transfer of real property to another party, they transferred any liability for unpaid taxes levied on the property, particularly if the seller’s or transferor’s prorated portion of property taxes was deducted from the proceeds at closing. In circumstances in which the new owner did not pay property taxes levied for the current year, former owners were unpleasantly surprised to receive a notice from the tax collector informing them that their names would be advertised in the newspaper for nonpayment of taxes. Former owners’ dismay was even greater upon learning that their bank accounts, wages, and personal property were subject to attachment, garnishment, and levy for the unpaid taxes. These unpleasant and, many argued, inequitable outcomes resulted from two circumstances. First, though property taxes are routinely accounted for in the closing of a real estate transaction, when the tax bill has not yet been issued the accounting is frequently accomplished by a balance sheet reduction and credit rather than the actual payment of taxes from the proceeds of a real estate transaction. Second, the Machinery Act defined the “taxpayer” whose personal property could be attached or levied upon for nonpayment of taxes as any person whose property was subject to property taxation, determined as of January 1 preceding the fiscal year for which the property taxes were levied. The Machinery Act likewise provided for the advertising of unpaid taxes that were liens on real property in the names of both the owner as of January 1 and the owner as of December 31. Though legislation enacted by the General Assembly in 2006 did not affect the practice of accounting for property taxes by way of a balance sheet deduction and credit, it did change the Machinery Act’s tax liability provisions by redefining the term “taxpayer” for purposes of collecting delinquent taxes assessed on real property as “the owner of record on the date the taxes become delinquent and any subsequent owner of record” and by providing for advertising only in the name of the record owner of property as of the date the taxes become delinquent. A discussion of the specific statutory amendments bringing about these changes follows.

G.S. 105-366 authorizes tax collectors to levy upon and sell or attach personal property “owned by the taxpayer” at any time after taxes are delinquent and before the filing of a tax foreclosure complaint under G.S. 105-374 or the docketing of a tax foreclosure judgment under G.S. 105-375. The term “taxpayer” is defined in G.S. 105-273(17) as “any 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.” S.L. 2006-106 (S 1451) amends that definition by adding the following provision: “For purposes of collecting delinquent ad valorem taxes assessed on real property under G.S. 105-366 through G.S. 105-375, ‘taxpayer’ means the owner of record on the date the taxes become delinquent and any subsequent owner of record of the real property if conveyed after that date.” The term “owner of record” means the owner as reflected in the public record, generally the office of the register of deeds or the clerk of superior court, in the county in which the real property is situated. The amended definition of taxpayer in G.S. 105-273(17) applies to taxes imposed for 2006–07 and subsequent fiscal years.

An example may assist in illustrating the practical effect of this statutory change. Suppose that on January 1, 2006, Martha Jones is the owner of Lot 54 in the Hazelwood subdivision, at 411 Pinetree Road, in unincorporated Carolina County. Martha Jones conveys Lot 54 to Sam Smith by warranty deed, recorded by the Carolina County Register of Deeds on May 1, 2006. On January 6, 2007, the 2006–07 property taxes assessed on Lot 54 remain unpaid. The Carolina County tax collector may levy upon or attach personal property owned by Sam Smith, but not personal property owned by Martha Jones, to secure payment of the 2006–07 taxes assessed on Lot 54, because Sam Smith was the owner of record on the date the taxes became delinquent.

If Sam Smith conveys the property to Debra Lane by warranty deed recorded by the Carolina County Register of Deeds on January 30, 2007, the Carolina County tax collector may elect, *after the recording of the deed to Debra Lane*, to levy upon or attach the personal property of either Sam Smith or Debra Lane to secure payment of the 2006–07 property taxes on Lot 54.

Suppose that as of January 1, 2006, Martha Jones also owned a boat with a tax situs of Carolina County upon which the 2006–07 property taxes remained unpaid as of February 1, 2007. Pursuant to G.S. 105-355, property taxes assessed on the boat are a lien on all real property owned by the taxpayer in the taxing unit as of the listing date. Since Martha Jones owned Lot 54 on January 1, 2006, the taxes assessed on the boat are a lien on Lot 54. The tax collector may not, however, levy upon or attach personal property of Sam Smith or Debra Lane to secure payment of the taxes assessed on Martha Jones’s boat. This is the case because the amended definition of taxpayer applies only for purposes of collecting *delinquent ad valorem taxes assessed on real property*, rather than for purposes of collecting *all taxes that are a lien on real property*. This may be of little consolation to Debra Lane, however, since the tax collector may foreclose upon Lot 54 to enforce the lien for the unpaid taxes assessed on Martha Jones’s boat.

Amendments to G.S. 105-369 change the name in which property tax liens are advertised for taxes levied in 2006–07 and subsequent years. G.S. 105-369 requires that tax collectors report to the governing body in February of each year the total amount of unpaid taxes for the current fiscal year that are liens on real property. The governing body then orders the tax collector to advertise the tax liens. G.S. 105-369 formerly required that property transferred after January 1 be advertised in the name of the record owner as of December 31 with a notation that the property was transferred and a notation of the name of the listing owner. Thus, in the above example, the advertisement under former law would have been: Smith, Sam, by transfer from Jones, Martha, Lot 54, 411 Pinetree Road, \$1,200. As amended by S.L. 2006-106, G.S. 105-369 requires that all tax liens on real property for 2006–07 and subsequent years be advertised solely in the name of the record owner as of the date the taxes became delinquent. Amended G.S. 105-369 also requires that advance notice of the advertisement be mailed to the record owner as of the date the taxes became delinquent rather than to the listing and December 31 owners. Again referring to the Lot 54 example, the advertisement (which will be published after the transfer from Sam Smith to Debra Lane) will be: Smith, Sam, Lot 54, \$1,200. Martha Jones’s name will not be advertised since the provision for noting a transfer from the January 1 owner has been deleted from G.S. 105-369. Debra Lane’s name will not appear in the advertisement because she was not the owner of record as of the date of delinquency, January 6, 2007.² As noted above, the tax collector may, however, levy upon and attach Debra Lane’s personal property for non-payment of the taxes once she becomes a subsequent owner of record. Again, it bears mentioning that the taxes assessed on the boat owned by Martha Jones as of January 1, 2006, are a lien on Lot 54. These taxes would be included in the total amount of the lien advertised for Lot 54.

G.S. 105-369, as amended, does not specify how a tax lien should be advertised if a parcel is subdivided into two or more parcels after January 1, 2006, and one or more of those parcels is transferred to a new owner. Given the lack of specific guidance in the Machinery Act on this point, it appears that the tax collector may advertise tax liens on such parcels in one of two ways.³ First, the tax collector may assign a portion of the lien on the listed parcel to each of the new parcels. The tax collector may do this by apportioning the lien among the subdivided parcels based

2. While January 6 is generally the date on which taxes become delinquent, this is not always the case. G.S. 105-360 provides that taxes are payable without interest if paid before January 6 following the September 1 on which the taxes became due, and taxes paid on or after January 6 following the due date are delinquent. *Id.* Yet, G.S. 105-395.1 states that when the last day for doing an act required or permitted by the Machinery Act falls on a Saturday, Sunday, or public holiday, the act is considered to be done within the prescribed time limit if it is done the next business day. Thus, when January 5 falls on a Saturday or Sunday, taxpayers may pay taxes without interest on the following Monday. In this situation, the taxes do not become delinquent until Tuesday. For example, in 2002, January 5 was a Saturday. Because the last day for paying 2001–02 taxes without interest was Monday, January 7, 2002, taxes did not become delinquent until Tuesday, January 8. Tax collectors must, therefore, determine the actual date of delinquency for a particular year before they can identify the owner of record as of that date.

3. These are the same options that were available under the previous version of G.S. 105-369, which required advertisement of transferred property in the name of the December 31 owner as well as the January 1 owner. See WILLIAM A. CAMPBELL, PROPERTY TAX COLLECTION IN NORTH CAROLINA 12–13 (4th ed. 2000 Supp.) (setting forth the options under the previous version of G.S. 105-369 that are applied in this chapter to amended G.S. 105-369).

upon the acreage of each parcel. For example, suppose a 20-acre parcel upon which there is a \$10,000 tax lien for 2006 taxes is subdivided into five 4-acre parcels on April 1. Suppose further that A, the January 1 owner of the entire 20-acre parcel, retains ownership of one subdivided parcel. The other parcels are transferred to B, C, D, and E, who each pay \$2,000 in 2006 taxes to the tax office in December 2006, leaving a balance of \$2,000. The tax collector may apportion the tax lien among the subdivided parcels in the amount of \$2,000 per parcel. An apportionment based solely on acreage will, of course, be only an estimate of the lien attributable to each parcel, because factors other than acreage, such as road frontage and topographical features, may result in differing valuations of parcels that have the same acreage. The remaining lien may then be advertised in the name of A alone. If the tax collector elects to follow this approach, the lien advertisement should include a statement similar to the following:

When a parcel was subdivided after January 1, 2xxx, and ownership of one or more of the resulting parcels was transferred, the amount of the tax lien on each parcel, as shown in the advertisement, is based on an estimate and is subject to adjustment when the taxes are paid or the lien is foreclosed.

The notice letters to the owner or owners of record should contain a similar statement. Alternatively, the collector may decide *not* to apportion the lien among the subdivided parcels. In that case, the tax collector will advertise all of the subdivided parcels as being subject to the entire tax lien imposed upon the parcel as it existed January 1. In the above example, owners A, B, C, D, and E each would be advertised. The advertisement would list a lien of \$2,000 (the unpaid portion of the initial \$10,000 lien) for *each* parcel. The advertisement should reflect that the parcels were subdivided from the January 1 tract by including an entry of "(subd.)" next to each parcel. If the tax collector advertises the liens on subdivided parcels in this manner, the advertisement and notices should include a statement similar to the following:

When a parcel was subdivided after January 1, 2xxx, and ownership of one or more of the resulting parcels was transferred, the amount of the tax lien on each parcel, as shown in this advertisement, is the amount of the lien on the original parcel as it existed on January 1, 2xxx, and is subject to adjustment when the taxes are paid or the lien is foreclosed.

Though it does not affect the levy and collection of taxes, tax collectors may wish to note that real estate attorneys' longstanding practice of prorating fiscal year taxes on a calendar year basis has been codified in new G.S. 39-60, enacted as part of S.L. 2006-106.

Notice Procedures in Foreclosures for Delinquent Property Taxes

A few weeks before the General Assembly convened for the 2006 session, the United States Supreme Court issued its opinion in *Jones v. Flowers*,⁴ a case in which a property owner challenged a tax foreclosure sale by the state of Arkansas on the basis that he was not afforded the notice required by the Due Process Clause of the Fourteenth Amendment of the United States Constitution. The Court agreed with the property owner, holding that the return by the post office of the foreclosure notice as unclaimed obligated the state to take additional reasonable steps, beyond newspaper publication of the notice, to notify the owner before taking the property.

The Court's holding cast into doubt the constitutionality of the notice procedures set forth in G.S. 105-375 providing for the in rem foreclosure of property for nonpayment of property taxes. At the time *Jones* was decided, G.S. 105-375 required that notice of intent to docket a judgment and issue an execution for sale of the property be served upon the listing and current owner of the property and lienholders by registered or certified mail, return receipt requested. In the event that a tax collector did not receive a return receipt from any of these parties within ten days,

4. 126 S. Ct. 1708 (2006).

G.S. 105-375(c) required that the tax collector publish a notice—naming the taxpayer and all unnotified lienholders—that the judgment would be docketed but mandated no further efforts to notify interested parties.

S.L. 2006-106 amends G.S. 105-375 to require additional reasonable efforts to notify interested parties of an impending foreclosure proceeding if the tax collector does not receive a return receipt within ten days following the mailing of the notice. New G.S. 105-375(c)(4)(a) states that “[r]easonable efforts may include posting the notice in a conspicuous place on the property, or, if the property has an address to which mail may be delivered, mailing the notice by first-class mail to the attention of the occupant.” While a tax collector may employ other or different reasonable efforts, a tax collector should make such efforts in addition to those listed in the statute because the codified examples of reasonable efforts reflect the Supreme Court’s view of additional efforts that would have afforded the taxpayer in *Jones* due process.

S.L. 2006-106 also amends G.S. 105-375 to provide for notice to the taxpayer as that term was redefined by G.S. 105-273(17) and to remove the requirement for notice to a listing owner who transfers the property to another party before the date on which the taxes become delinquent and who no longer has an interest in the property. These amendments are effective for taxes imposed for 2006-07 and subsequent years. Thus, a taxing unit utilizing in rem foreclosure proceedings for taxes levied before 2006 along with taxes levied in 2006–07 and subsequent years must comply with the notice provisions set forth in the former and current versions of the statute. When pre-2006 taxes are the basis for an in rem foreclosure action, the listing owner as of January 1 for the year in which the taxes were levied will continue to be served with notice regardless of whether the listing owner continues to have any legal interest in the property. Given the Supreme Court’s holding in *Jones*, a taxing unit would be well-advised to employ the additional reasonable notification efforts required by amended G.S. 105-375 even if all of the delinquent taxes for which the property is foreclosed were levied before 2006.

S.L. 2006-106 also changes the requirements for service of the notice of the issuance of execution in an in rem foreclosure proceeding. That notice is subsequent to the initial notice of docketing of a judgment and must be mailed at least thirty days before the date set for sale of the property. Before the 2006 amendments, G.S. 105-375 required that the sheriff, who conducts execution sales of property in an in rem proceeding, send notice of the issuance of the execution to the listing, or January 1, owner. Amended G.S. 105-375 requires that the sheriff send notice to the taxpayer as that term has been redefined by 105-273(13). In addition, before the 2006 amendments, G.S. 105-375 required that notice be sent by registered or certified mail but did not require that a return receipt be requested. For in rem foreclosures conducted to secure payment of taxes for 2006 and subsequent years, the sheriff must request a return receipt upon mailing notices of the issuance of the execution. Amended G.S. 105-375(i)(2) also requires that the sheriff make additional efforts to locate and notify the taxpayer and all lienholders of record of the sale under execution if the sheriff has not received a return receipt indicating receipt of the notice within ten days following the mailing of the notice. Given that the amended statute requires proof that lienholders also were served with notice of the issuance of the execution, it is only reasonable to assume that the sheriff must serve lienholders, in addition to the taxpayer, with notice of the issuance of execution. The additional efforts that the sheriff must undertake upon failure to receive confirmation that the requisite parties received notice are the reasonable efforts required of the tax collector pursuant to G.S. 105-375(c)(4) upon the tax collector’s failure to receive confirmation that all required parties received the initial notice of docketing. Amendments to G.S. 105-375(c) other than those already mentioned simply reorganize material without substantively changing the statute.

S.L. 2006-106 also amends the procedures that a taxing unit must follow in carrying out a mortgage-style foreclosure proceeding pursuant to G.S. 105-374. Because G.S. 105-374 already incorporates the service of process requirements set forth in the North Carolina Rules of Civil Procedure—which require additional measures, such as personal service of process, upon failure to notify a party by certified mail—the Supreme Court’s opinion in *Jones* did not necessitate significant changes to the statute. Instead, S.L. 2006-106 amends G.S. 105-374 to remove for foreclosures for taxes for years 2006 and later the requirement that a listing owner who no longer

has an interest in the property be served. Amended G.S. 105-374 requires that the owner of record as of the date the taxes became delinquent and any subsequent owner be made parties to a mortgage-style foreclosure action and specifies that the fact that such a party is a minor, is incompetent, or suffers from any other disability does not prevent or delay the tax lien sale.

Collection of Taxes on Assessments Appealed to the Property Tax Commission

S.L. 2006-30 (H 2097) repeals G.S. 105-321(d), which prohibited the delivery to the tax collector of a tax receipt for an assessment appealed to the Property Tax Commission until the appeal was finally adjudicated. In practice, many such receipts were delivered to the tax collector and corresponding tax bills were mailed before an appeal was filed with the Property Tax Commission. New G.S. 105-378(d) permits the delivery of tax receipts and the billing of taxes for assessments appealed to the Property Tax Commission but prohibits a tax collector from seeking collection of taxes or enforcement of the tax lien until the appeal is finally adjudicated. Corresponding amendments to G.S. 105-373, the statute requiring annual settlement from a tax collector and prescribing the form of settlement, credit a tax collector with the principal amount of taxes for any assessment appealed to the Property Tax Commission when the appeal has not been finally adjudicated, because those taxes now are part of the tax collector's charge.

Payment before Deed Recordation or Issuance of Building Permit

S.L. 2006-150 (H 2339) and S.L. 2006-16 (H 1806) amend G.S. 161-31 to add Davie, Lincoln, and Tyrrell counties to the list of counties that may adopt resolutions requiring that the register of deeds not accept a deed transferring real property unless the county tax collector certifies that no delinquent ad valorem county taxes, ad valorem municipal taxes, or other taxes with which the collector is charged are a lien on the property described in the deed.

S.L. 2006-150 also amends S.L. 2005-433 to permit Davie and Lincoln counties to adopt ordinances providing that a building permit may not be issued to a person who owes delinquent property taxes.

Annexation

When an annexation becomes effective during a fiscal year, property taxes are due for only part of the year. S.L. 2006-72 (S 1372) permits the governing body of a taxing unit to adopt a resolution permitting property taxes for the partial fiscal year of October 1, 2005, through June 30, 2006, to be collected over a three-year period with one-third due and payable on September 1, 2006, one-third due and payable on September 1, 2007, and the remaining one-third due and payable on September 1, 2008. The resolution may provide that interest accrues on unpaid property taxes only to the extent that the taxes have become due and payable under the payment schedule set out in the resolution. Such a resolution is permitted only for property taxes for the partial fiscal year of October 1, 2005, through June 30, 2006, for which the effective date of the annexation was set by judicial order. This legislation permits the City of Fayetteville to bill in three installments the 2005 property taxes for an annexation made effective September 30, 2005, by judicial order. Without this authorizing legislation, pursuant to G.S. 160A-58.10 the prorated municipal property taxes for 2005 would have been due and payable September 1, 2006, along with the 2006 municipal property taxes.

Assessment

Electronic Listing

S.L. 2006-30 amends G.S. 105-304(a1) to authorize a board of county commissioners to adopt a resolution providing for the electronic listing of all personal property. Formerly, counties could provide only for the electronic listing of *business* personal property. S.L. 2006-30 makes conforming amendments to G.S. 105-307 to permit only the period for electronic listing of *business* personal property, rather than the electronic listing of any personal property, to be extended until June 1.

Display Modular Homes Defined as Inventory

S.L. 2006-106 amends the definition of “inventories” in G.S. 105-273(8a) to include “a modular home as defined in G.S. 105-164.3(21b) that is used exclusively as a display model and held for eventual sale at the retail merchant’s place of business.” This amendment renders these display homes non-taxable pursuant to G.S. 105-275(34), which excludes from taxation inventories owned by retail and wholesale merchants.

Present-Use Value

S.L. 2006-30 amends G.S. 105-277.4 to permit the filing of a late application for taxation of property based upon its present-use value. Initial applications for present use value are due during the regular listing period of the year for which the benefit is first claimed or within thirty days after a notice of change in valuation made pursuant to G.S. 105-286 or 105-287. Applications for continued present-use taxation notwithstanding a transfer of ownership must be submitted within the calendar year in which the transfer occurs and within sixty days after the transfer. New G.S. 105-277.4(a1) permits a county board of equalization and review or board of commissioners to approve a late application for initial or continued present use taxation upon an applicant’s showing of good cause for failure to timely apply. A late-filed application approved by the county board applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed.

S.L. 2006-106 requires the Revenue Laws Study Committee to study and recommend in a report to the 2007 General Assembly whether any changes should be made to the special class of property taxed at its present-use value. The committee is specifically directed to evaluate whether wildlife and other conservation land should be taxed at its present-use value and whether more specific land resource management criteria should be added to the sound management programs required for land in the present-use program.

Motor Vehicles

Combined System for Taxation and Registration

Section 31.5 of S.L. 2006-259 (S 1523) amends S.L. 2005-294 to postpone until July 1, 2010 (or upon earlier certification by the Division of Motor Vehicles and the Department of Revenue), the launching of the combined system for registration and taxation of motor vehicles, which was initially set to occur by July 1, 2009. This amendment was minor compared to changes proposed in other bills introduced during the 2006 session. A committee substitute to Senate Bill 600, which was reported favorably in the House of Representatives late in the 2006 session, would have repealed S.L. 2005-294. Three days before the General Assembly adjourned, Senate Bill 600 was re-referred to the Rules Committee, where it remained. A less drastic but still significant proposal to amend S.L. 2005-294 was embodied in Senate Bill 1893 and the identical House Bill 2461,

which would have preserved the existing system for billing property taxes four month in arrears for vehicles purchased from motor vehicle dealers. Both bills failed to emerge from the Finance Committees to which they were referred.

S.L. 2006-30 enacted a clarifying amendment to G.S. 105-330.10 to specify that 60 percent of only the first month's interest (rather than 60 percent of all interest) on delinquent motor vehicle taxes must be transferred on a monthly basis to the Combined Motor Vehicle and Registration Account within the Office of the State Treasurer. Counties, which collect all registered motor vehicle taxes, were already remitting 60 percent of only the first month's interest pursuant to previous instructions from the State Treasurer.

Privilege License Taxes

S.L. 2006-216 (H 143) amends G.S. 105-40 to exempt from privilege license taxes imposed under Article 2 of Chapter 105 of the General Statutes all farm-related exhibitions, shows, attractions, or amusements offered on land used for bona fide farm purposes as defined in G.S. 153A-340. Thus, these farm-related amusements are exempt from state and local privilege license taxes on amusements, which are levied pursuant to G.S. 105-37.1. S.L. 2006-216 is effective retroactively to activities occurring on or after January 1, 1999.

Occupancy Taxes

S.L. 2006-162 (H 1963) amends G.S. 153A-155 and G.S. 160A-215, the uniform administrative provisions governing local occupancy taxes, to provide that occupancy taxes are due and payable on the 20th day of the month following the month in which the tax accrues. Both statutes were amended in 2004 to make occupancy tax returns due on the 20th day of each month, which conforms to the sales tax reporting and payment deadline. The 2006 amendments were necessary to clarify that the taxes do not become due before the due date for filing the return.

S.L. 2006-196 amends G.S. 105-259(b)(5) to permit the Department of Revenue to provide to a city or county, on an annual basis, the name, address, and identification number of a retailer that may be engaged in a business subject to a local occupancy tax when the city or county needs the information for the administration of its occupancy tax. As amended, G.S. 105-259(b)(5) also permits the Department of Revenue to share the name, address, and identification number of a retailer audited regarding sales and use taxes when the department determines that the audit results may be of interest to the county or city in the administration of its local occupancy tax.

Local Legislation

Occupancy Taxes

The 2006 General Assembly authorized several cities and counties to levy new or additional occupancy taxes.

Town of Ahoskie. S.L. 2006-164 (H 2445) authorizes the Town of Ahoskie to levy an occupancy tax of up to 3 percent pursuant to the uniform administrative provisions of G.S. 160A-215. The town must remit net proceeds of the tax to the Ahoskie Tourism Development Authority, which must use at least two-thirds of the funds to promote travel and tourism in Ahoskie and the remainder for tourism-related expenditures in Ahoskie.

Town of Benson. S.L. 2006-120 (H 945) authorizes the Town of Benson to levy an occupancy tax of up to 3 percent pursuant to the uniform administrative provisions of G.S. 160A-215. The town must remit net proceeds of the tax to the Johnston County Tourism Development Authority, which must use at least two-thirds of the funds to promote travel and

tourism in Benson and the remainder for tourism-related expenditures in Benson. The town's occupancy tax must supplement rather than supplant any proceeds used in the town from Johnston County's occupancy tax.

Town of Boiling Springs. S.L. 2006-148 (S 1804) authorizes the Town of Boiling Springs to levy an occupancy tax of up to 3 percent pursuant to the uniform administrative provisions of G.S. 160A-215. Net proceeds of the tax must be remitted to the Boiling Springs Tourism Development Authority, which the town council must create upon levy of the tax. The Authority must use at least two-thirds of the funds to promote travel and tourism in Boiling Springs and the remainder for tourism-related expenditures.

Town of Dobson. S.L. 2006-118 (H 2259) authorizes the Town of Dobson to levy an occupancy tax of up to 6 percent pursuant to the uniform administrative provisions of G.S. 160A-215. Net proceeds of the tax must be remitted to the Dobson Tourism Development Authority, which the Dobson Board of Commissioners must create upon levy of the tax. The Authority must use at least two-thirds of the funds to promote travel and tourism in Dobson and the remainder for tourism-related expenditures.

Town of Elkin. S.L. 2006-118 (H 2259) authorizes the Town of Elkin to levy an occupancy tax of up to 6 percent pursuant to the uniform administrative provisions of G.S. 160A-215. Net proceeds of the tax must be remitted to the Elkin Tourism Development Authority, which the town council must create upon levy of the tax. The Authority must use at least two-thirds of the funds to promote travel and tourism in Elkin and the remainder for tourism-related expenditures.

Town of Kenly. S.L. 2006-120 (H 945) authorizes the Town of Kenly to levy an occupancy tax of up to 2 percent pursuant to the uniform administrative provisions of G.S. 160A-215. The town must remit net proceeds of the tax to the Johnston County Tourism Development Authority, which must use at least two-thirds of the funds to promote travel and tourism in Kenly and the remainder for tourism-related expenditures in Kenly. Kenly's occupancy tax must supplement rather than supplant any proceeds used in the town from Johnston County's occupancy tax.

Ocracoke Township. S.L. 2006-128 (H 882) creates the Ocracoke Township Taxing District, which is coterminous with the Ocracoke Township in Hyde County, and provides that the Hyde County Board of Commissioners is to serve ex officio as the governing body of the district. The governing body of the newly created district is authorized to levy an occupancy tax of up to 2 percent pursuant to the uniform administrative provisions of G.S. 153A-155, which normally governs occupancy taxes levied by counties, and must adopt a resolution creating the Ocracoke Township Tourism Development Authority. The taxing district must distribute net proceeds of the tax to the Authority, which must use at least two-thirds of the proceeds to promote travel and tourism in the district and the remainder for tourism-related expenditures in the district.

Town of Pilot Mountain. S.L. 2006-118 (H 2259) authorizes the Town of Pilot Mountain to levy an occupancy tax of up to 6 percent pursuant to the uniform administrative provisions of G.S. 160A-215. Net proceeds of the tax must be remitted to the Pilot Mountain Tourism Development Authority, which the Pilot Mountain Board of Commissioners must create upon levy of the tax. The Authority must use at least two-thirds of the funds to promote travel and tourism in Pilot Mountain and the remainder for tourism-related expenditures.

Town of Selma. S.L. 2006-120 (H 945) amends S.L. 2001-439 to authorize the Town of Selma to levy a room occupancy tax of up to 1 percent in addition to the 1 percent previously authorized. The 2006 amendments also eliminate the sunset provisions applicable to the initial 1 percent occupancy tax.

Town of Smithfield. S.L. 2006-120 (H 945) amends S.L. 2001-439 to authorize the Town of Smithfield to levy a room occupancy tax of up to 1 percent in addition to the 1 percent previously authorized. The 2006 amendments also eliminate the sunset provisions applicable to the initial 1 percent tax.

Town of Tryon. S.L. 2006-148 (S 1804) authorizes the Town of Tryon to levy an occupancy tax of up to 3 percent pursuant to the uniform administrative provisions of G.S. 160A-215. Net proceeds of the tax must be remitted to the Tryon Tourism Development Authority, which the town council must create upon levy of the tax. The Tryon Tourism Development Authority must

use at least two-thirds of the funds to promote travel and tourism in Tryon and the rest for tourism-related expenditures.

Chowan County. S.L. 2006-129 (H 1269) amends Chapter 174 of the 1989 Session Laws to permit Chowan County to levy an occupancy tax of 2 percent in addition to the 3 percent previously authorized and to make the uniform administrative provisions of G.S. 153A-155 apply to Chowan County. The 2006 amendments require the Chowan Tourism Development Authority to use at least two-thirds of the net proceeds of the tax to promote travel and tourism in the county and the remainder for tourism-related expenditures. In addition, the amendments alter the composition of the Chowan Tourism Development Authority, require that the Authority expend the net proceeds of the tax, redefine “net proceeds” to limit the percentage of gross proceeds that may be deducted for the costs of administering and collecting the tax, and clarify that the tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations *only* when those accommodations are furnished in furtherance of the organization’s nonprofit purpose.

Clay County. S.L. 2006-120 (H 945) amends Chapter 969 of the 1985 Session Laws, as amended by Chapter 195 of the 1987 Session Laws, to make the uniform administrative provisions of G.S. 153A-155 apply to occupancy taxes levied by Clay County. The 2006 amendments change the method for distribution of proceeds of the tax, requiring that the county or the Tourism Development Authority, which must be established if the proceeds of the tax exceed \$150,000 annually, use at least two-thirds of the net proceeds of the tax to promote travel and tourism in the county and the remainder for tourism-related expenditures. The 2006 amendments redefine “net proceeds” to limit the percentage of gross proceeds that may be deducted for the costs of administering and collecting the tax and clarify that the tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations *only* when those accommodations are furnished in furtherance of the organization’s nonprofit purpose.

Halifax County. S.L. 2006-164 (H 2445) amends Chapter 377 of the 1987 Session Laws, as amended by S.L. 2005-46, to alter the membership requirements for the Halifax County Tourism Development Authority and to authorize the county board of commissioners rather than the Authority to designate the chair of the Authority. The amendments also provide for the board of commissioners to determine the compensation, if any, paid to the members of the Authority, designate the county finance officer as ex officio finance officer of the Authority, and mandate quarterly reports from the Authority to the county board.

Martin County. S.L. 2006-127 (H 350) amends S.L. 1991-80 to permit Martin County to levy an occupancy tax of 3 percent in addition to the 3 percent previously authorized and to make the uniform administrative provisions of G.S. 153A-155 apply to occupancy taxes levied by Martin County. The 2006 amendments redefine “net proceeds” by limiting the percentage of gross proceeds that may be deducted for costs of administering and collecting the tax and provide that the Martin County Tourism Development Authority (formerly the Martin County Travel and Tourism Authority) must use at least two-thirds of the net proceeds of the tax to promote travel and tourism in Martin County and must use the rest for tourism-related expenditures. S.L. 2006-127 repeals provisions of S.L. 1991-80 that permitted the Authority to contract with other persons and entities for assistance in carrying out the purposes for which the occupancy tax proceeds could be expended. The 2006 amendments require that the Authority spend the proceeds of the tax and require that the Authority promote travel, tourism, and conventions in the county; sponsor tourist-related events and activities in the county; and finance tourist-related capital projects in the county. The 2006 amendments repeal provisions of former law permitting the board of commissioners to abolish the Authority and itself carry out the duties of the Authority.

Vehicle Rental Tax

Section 30 of S.L. 2006-162 authorizes a county that imposes an additional half-cent sales and use tax for public transportation to also levy a vehicle rental tax. Mecklenburg County is the only county with authority to levy a public transportation sales tax (S.L. 1997-417) and has levied the tax. Thus, this provision applies only to Mecklenburg County.

Article 50 of G.S. Chapter 105, also enacted by S.L. 1997-417, authorizes regional public transportation authorities to levy a gross receipts tax of up to 5 percent on retailers within the region engaged in the business of renting private passenger vehicles and motorcycles. The vehicle rental tax applies only to short-term rentals (rentals for a period of less than one year). Each authority may use the proceeds of the tax for public transportation purposes.

S.L. 2006-162 provides that a county that imposes the public transportation sales tax is considered a regional public transportation authority under Article 50 and may therefore levy the vehicle rental tax. The county must allocate the proceeds of the vehicle rental tax it imposes to the largest city in the county that operates a public transportation system. The city must use the proceeds to finance, construct, operate, and maintain local public transportation systems. However, unlike the tax proceeds from a vehicle rental tax levied by a public transportation authority, the proceeds of a vehicle rental tax levied by a county may be used to supplant existing revenues allocated for a public transportation system.

Prepared Food and Beverage Tax

S.L. 2006-171 (S 350) amends Section 1(a) of S.L. 2005-261 to permit the City of Monroe to submit to the voters during any election in 2006 or 2007 the question of whether to levy a 1 percent local prepared food and beverage tax. Before the 2006 amendments, S.L. 2005-61 authorized only a 2006 ballot measure on the issue.

Technical Corrections

Section 28 of S.L. 2006-162 makes technical corrections to G.S. 105-278 (classifying certain historic property as a special class of property to be taxed at 50 percent of its true value). These changes appear to have no substantive effect.

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