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Local Taxes and Tax Collection

The major developments in the 1999 session concern legislation that was not enacted. Although numerous bills were introduced to amend the exclusion for the elderly and disabled, none passed. Major legislation that was enacted dealt with the exclusion for retirement centers, the appraisal date for motor vehicles, and tax lien advertising procedures.

Assessment

Listing

Statewide Permanent Listing. The Machinery Act's basic plan for listing real property makes it the duty of property owners to list all of their real property each year during the regular listing period. Failure to perform this duty subjects the owner to a 10 percent penalty for not listing. The duty to list arises each year even though the property has not changed hands and has not been improved in any way since it was last listed. As recently as 1973, when the Machinery Act underwent its most recent comprehensive revision, most counties followed this basic plan.

The Machinery Act provides an alternative listing plan for real property known as permanent listing. Under the permanent listing plan, it is the county assessor's duty to list all real property in the county. Owners are required to report any improvements on or separate rights in the property occurring in the previous year, but an owner whose property has undergone no change in the previous year is relieved of the duty to make any listing or report with respect to the property. Approval of the Department of Revenue is required for a county to adopt a permanent listing system.

Over the past quarter-century all but 6 of the state's 100 counties have obtained approval for a permanent listing system for real property. According to the Department of Revenue, the six counties still using the basic plan are Clay, Graham, Swain, Vance, Warren, and Yancey.

Session Law 1999-297 (S 817) requires all counties to install a permanent listing system approved by the Department of Revenue no later than the 2004 tax year. Thereafter the traditional basic listing system will not be an option. This mandate's most immediate impact is on the six counties still using the basic system, but also counties that have moved to permanent listing may not go back to the basic system. S.L. 1999-297 amends G.S. 105-312 to provide that the discovery penalty does not apply to real property that has not changed hands and has not been improved since it was last listed. This change affects only the six counties still using the basic system. It is repealed effective for the 2004 tax year, when it will become obsolete.

Exemptions and Exclusions

Art Objects. S.L. 1999-337 (S 55) transfers the exclusion from taxation of art objects held by the North Carolina Art Society from G.S. 140-15, which the act repeals, to new G.S. 105-275(41).

Continuing Care Retirement Homes. As concerns property taxation, residential retirement homes or communities in North Carolina can be grouped into four categories. The first category includes facilities that qualify under G.S. 105-278.6 as a charitable "home for the aged, sick, or infirm." A principal criterion for this exemption requires a substantial element of charity in that many, if not most, residents of the facility are subsidized by endowment income or charitable contributions. The second category includes facilities financed by revenue bonds issued by the North Carolina Medical Care Commission. These facilities are exempted from taxation by G.S. 131A-21 as long as the bonds issued to build them remain outstanding. The third category can be described as noncharitable, nonreligious. Facilities in this category have no ties to religious organizations and all residents pay the full cost of the services they receive. This category includes both nonprofit and for-profit facilities. Nonprofit facilities in this category have been held to be subject to property taxes.¹ The fourth category can be described as noncharitable religious in that the facility has current or historic ties to a religious organization but its operations cannot be fairly described as charitable. Many facilities in this category were established years ago and originally operated as bona fide charitable organizations. Typically these older facilities were granted exempt status long ago under G.S. 105-278.6 and have continued to enjoy that status without challenge.

Within the past two decades, major changes have occurred in the operation and financing of retirement homes. The traditional charitable "home for the aged, sick, or infirm" has been all but replaced by for-profit nursing homes and nonprofit residential retirement communities. Indeed, most of the older facilities that were originally established as charitable institutions by religious organizations and fraternal orders have converted their operations to the new model. On the whole, residents of modern residential retirement communities are financially independent and have no need for financial assistance or subsidy. This fundamental change in the operations of "homes for the aged" has meant that new facilities sponsored by religious organizations and fraternal orders have found it difficult to qualify for property tax exemption under G.S. 105-278.6. By the same token, many facilities that have enjoyed tax exemption for decades find their exempt status being questioned.²

In 1987 the General Assembly enacted G.S. 105-275(32) to classify and exclude from property taxation facilities in the fourth category (noncharitable religious). This brought about a degree of equity between old-line institutions that were already exempt and new ones being established. The General Assembly did not intend, however, to extend the exclusion to nonprofit facilities in the third category (noncharitable, nonreligious). To avoid that result the legislation fixed as one of the requirements for exclusion that the facility be owned, operated, and managed by a church or other religious organization, a Masonic organization, or a nonprofit corporation

1. *In re Chapel Hill Residential Retirement Ctr., Inc.*, 60 N.C. App. 294, 299 S.E.2d 782, *cert. denied*, 308 N.C. 386, 302 S.E.2d 249 (1983).

2. *In re Moravian Home, Inc.*, 95 N.C. App. 324, 382 S.E.2d 772, *appeal dismissed and cert. denied*, 325 N.C. 707, 388 S.E.2d 457 (1989), *cert. denied*, 498 U.S. 1047 (1991).

whose board of directors is controlled by a religious or Masonic organization. The exclusion also required that the facility have an active program to generate funds for residents who need financial assistance. On April 3, 1998, the North Carolina Supreme Court held that granting an exclusion to the fourth category of retirement facilities but not to nonprofit facilities in the third category is unconstitutional as an establishment of religion in violation of the First Amendment.³ As a result, nonprofit religious and Masonic retirement homes previously thought to be exempt from property taxes became taxable and were subject to discovery for 1998 taxes.⁴

The 1998 session of the General Assembly acted swiftly to preserve the status quo, at least temporarily. G.S. 105-275(32) was recodified as G.S. 105-278.6A and revised to eliminate the tie to religious organizations. The revised section was given an expiration date of July 1, 2000, and the Legislative Research Commission was directed to conduct a broad study of tax exemptions for all types of nonprofit institutions. Unfortunately the 1998 legislation also had a serious constitutional defect. One of the eligibility criteria specified by G.S. 105-278.6A was that the facility's charter or bylaws "as they existed on August 15, 1998" meet certain requirements. Defining the class by criteria as of a specific date in the past made this legislation unconstitutional. The courts have held that it is a violation of the Equal Protection Clause of the Fourteenth Amendment to enact classified legislation that conditions eligibility on facts as they existed on a specific date in the past.⁵

S.L. 1999-191 (S 325) rectifies the constitutional defect of the 1998 legislation and also cures an oversight that disqualified facilities established by Masonic organizations. As now configured G.S. 105-278.6A classifies and excludes from the tax base residential retirement communities that satisfy the following criteria:

- The buildings and grounds occupy a single site.
- The facility is designed for elderly residents, includes independent living units, and has either a skilled nursing facility or an adult care facility.
- The owner is exempt from North Carolina corporate income tax.
- The net revenues of the organization are applied to providing uncompensated goods and services to the elderly and the local community.
- The owner's charter provides that in the event of dissolution its assets will be conveyed to a tax-exempt charitable, educational, scientific, or religious organization.
- The owner has an active fund-raising program to assist the facility in serving persons who might not be able to reside there without financial assistance or subsidy.
- The owner's charter or bylaws provide that it is governed by a board of directors or trustees, a majority of whom are chosen by one or more nonprofit corporations, each of which is (a) exempt from federal income taxes under Section 501(c)(3), (8), or (10) of the Internal Revenue Code, (b) organized for a charitable purpose as defined in G.S. 105-278.6, and (c) not a private foundation as defined in Section 509 of the Internal Revenue Code.

The last bulleted paragraph expresses the 1999 changes in exclusion criteria. First, eligibility is no longer determined by charters or bylaws as of a specific date. Second, eligibility is extended to organizations controlled by entities exempt from federal income tax under Section 501(c)(8) and (10) as well as Section 501(c)(3). The latter change is apparently intended to qualify facilities sponsored by nonprofit fraternal associations, such as Masonic orders.

Because former G.S. 105-275(32) was invalidated in April 1998, continuing care retirement communities that qualified for exclusion only through its provisions became subject to discovery for the 1998 tax year and perhaps earlier years as well. S.L. 1999-191 includes a special provision making it disadvantageous for any taxing unit to attempt such a discovery. The reimbursements

3. *In re Appeal of Springmoor, Inc.*, 348 N.C. 1, 498 S.E.2d 177 (1998).

4. See William A. Campbell, "In re Appeal of Springmoor, Inc.: Classification and Exclusion of Retirement Homes from Taxation Held Unconstitutional," *Property Tax Bulletin* No. 114 (June 1998).

5. See William A. Campbell and Joseph S. Ferrell, "1998 Legislation Affecting Local Tax Administration," *Property Tax Bulletin* No. 115 (Nov. 1998).

received by counties and municipalities through repeal of the intangibles tax will be reduced by 110 percent of the amount of taxes collected on or after January 1, 1998, on any continuing care retirement community that qualifies for exclusion under G.S. 105-278.6A, as amended. Thus if a county or municipality were to discover a continuing care retirement community for 1998, or any prior tax year, and were to collect the tax assessed through discovery, the net effect would be a 10 percent revenue penalty against the taxing unit.

The 1999 legislation makes no change in the expiration date of G.S. 105-278.6A or the Legislative Research Commission study mandated in 1998.

Motor Vehicle Evaluation Date

S.L. 1999-353 (H 315) amends G.S. 105-320.2 to change the evaluation date for registered motor vehicles to January 1 of the year the taxes are due. The values of vehicles registered or renewed in September, October, November, and December will be determined as of the next January 1. For example, if a vehicle's registration is renewed in September 2000, it will be valued as of January 1, 2001.

The act's effective date provision states that the act is "effective for taxes imposed for taxable years beginning on or after July 1, 2000." Pursuant to G.S. 105-330.6(a), the tax year for a registered motor vehicle begins on "the first day of the first month following the date on which the registration expires or the new registration is applied for. . . ." Thus the act first applies to renewals and registrations made in June 2000.

Collection

Delinquent Taxes on Registered Land

The Torrens land title registration procedures, authorized by Chapter 43 of the General Statutes, are used for the most part in the eastern counties, where timber and paper companies own large tracts of land, but the procedures are available for use in every county of the state. A proceeding before the clerk of superior court is held before the title can be registered, and special recording and indexing rules apply to these titles in the office of the register of deeds.

S.L. 1999-59 (H 1088) makes numerous changes in these procedures to bring them up to date, and some of the changes involve property taxes. G.S. 43-46 currently directs the tax collector to file a memorandum of delinquency with the register of deeds by March 1 following the January 6 delinquency date for each delinquent tax on registered land. The act amends G.S. 43-46 to move the deadline for filing this memorandum to June 30. It further provides that the register of deeds is to enter the notice of delinquency on the record copy of the certificate of title, and the tax lien shall be valid against the registered estate only from that time. When the tax is paid, the register is directed to enter a notice of cancellation of tax lien on the record copy of the certificate of title. In place of the special procedure in G.S. 43-48 for foreclosing the tax lien on registered land, the act simply provides that the *in rem* foreclosure procedure contained in G.S. 105-375 shall be used. The act is effective January 1, 2000.

Acceptance of Electronic Payments

Effective July 21, 1999, S.L. 1999-434 (S 222) enacts new G.S. 159-32.1, which authorizes a local government to accept an electronic payment for any tax, assessment, fee, or charge. An *electronic payment*, as used in this statute, is defined by G.S. 147-86.29(2a) to include credit cards, debit cards, and electronic fund transfers. The statute further provides that a local government may pay any discount or transaction fee imposed by a credit card company or bank for handling the electronic payment and then impose a surcharge on the maker of the payment to recover this cost. The act amends G.S. 105-357 to authorize the tax collector to accept electronic

payments, as provided in G.S. 159-32.1, and changes all of the references to “credit cards” in G.S. 105-357 to “electronic payments.”

New G.S. 159-32.1 makes it clear that a city or county, in accepting a credit card in payment of property taxes, may pay the discount or transaction fee imposed by a bank or credit card company. This fee typically ranges from 3 to 6 percent of the payment. This legislation does not resolve the problem that banks and credit card companies prohibit making a surcharge to recoup the discount. Until this issue can be resolved, very few local governments are likely to accept electronic payments for property taxes as they likely will deem it fiscally irresponsible to pay the discount on each credit card transaction and not be able to recover it.

Advertisement of Tax Liens

Effective January 1, 2001, S.L. 1999-439 (H 120) significantly alters the procedures for advertising tax liens.

Notices by Mail. The act adds new G.S. 105-369(b1) to require that—after the governing board has ordered the advertisement of tax liens—the tax collector must send a notice of the advertisement to the listing owner by first-class mail at least thirty days before the date of the advertisement. If the listing owner has transferred the property, a notice by first-class mail must also be sent to the owner of record of the property as of December 31 preceding the advertisement. The mailed notice must state the principal amount of unpaid taxes that are a lien on the property and must further state that the owner’s name will appear in the newspaper advertisement if the taxes are not paid before the publication date. Although the statute does not expressly require that the notice state the advertisement date, this last requirement implies that it must be stated. The notices must be sent to the owners’ last known addresses. Failure to mail the notices, or mailing them to an incorrect address, does not affect the validity of the tax lien or any foreclosure action.

These new notice requirements have several consequences for tax assessors and collectors. First, the county assessor’s office must have completed all real estate transfers at least forty-five to sixty days before the lien advertisement date so the collector can mail any required notices to transferees. For taxing units that have customarily advertised in March, the transfers must be completed by no later than mid-February. Second, cities and counties that routinely send second notices to taxpayers after January 6 may wish to wait until after the governing board has set the advertising date, in February, before sending out second notices to taxpayers who owe taxes on real property. That way the second notice can serve as the notice of lien advertisement required by G.S. 105-369(b1), and a separate notice will not be required. Third, the new requirement of mailed notices will increase the cost of advertising the tax lien, but since these notice requirements are an integral part of the advertising procedure, they appear to be part of the “costs” of advertising within the meaning of G.S. 105-369(d) and should be added to the taxes. These costs must be collected when the taxes are paid: whether before the lien advertisement, after the advertisement, or as part of a foreclosure. Fourth, municipalities that collect their own taxes must arrange with the county assessor to obtain the list of record owners as of December 31. When the municipality is able to advertise depends on when it can obtain the list from the assessor. Each municipal collector should obtain from the assessor an estimate of when the list will be available before the governing board sets the advertising date in February. If the assessor will not have the transfers available until the end of March, it would be fruitless for the municipality to set a March advertising date.

Contents of the Notice of Lien Advertisement. The act amends G.S. 105-369(c) to change the way the notice of lien advertisement is set up. The advertisement will contain two lists, one for property that has not been transferred and another for property that has been transferred. The liens on property the title to which was not transferred prior to January 1 preceding the lien advertisement date are advertised alphabetically in the names of the listing owners. The liens on property the title to which was transferred are advertised alphabetically in the names of the record owners as of December 31 preceding the advertising date. The name of the record owner is to be followed by the phrase “by transfer from,” or some similar notation, followed by the name of the listing owner. For example, if John Brown was the listing owner and did not transfer the property, his name would be printed in the *Bs* in the list of untransferred property. If, however, he had

transferred the property to Shirley Green, the lien would be advertised in the following manner in the transferred property list: "Green, Shirley by transfer from Brown, John." The act makes no other changes in the contents of the lien advertisement.

Subdivided Property. The amended statute does not deal expressly with the situation in which a parcel of land is subdivided into two or more parcels after January 1 and one or more of the new parcels is transferred to a new owner. New G.S. 105-369(1a) appears to require that the name of the new owner, or owners, of the subdivided parcels be advertised because it requires that "the name of the record owner as of December 31 of each *parcel* on which the taxing unit has a lien for unpaid taxes . . ." (emphasis added) be listed in the advertisement. For example, A owns a twenty-acre parcel on January 1. In March A subdivides the parcel into four, five-acre parcels and sells a parcel each to B, C, D, and E. If the taxes are unpaid, then the names of B, C, D, and E will be advertised alphabetically in the list of transferees. If A sold only one parcel, to B, for example, and retained ownership of the rest, then A's name would be advertised in the list of January 1 owners and B's name would be advertised in the list of transferees.

In this situation the tax collector will have to estimate the amount of the tax lien on each parcel. One way of doing this is to divide the number of acres into the tax on the original parcel, obtaining a per acre tax, and multiplying this by the number of acres in each new parcel. In the above example, if the tax bill for the twenty-acre parcel was \$2,000, the estimated amount of the lien on each parcel would be \$500. If the collector makes such an estimate, the lien advertisement should contain a statement similar to the following one: "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 based on an estimate and is subject to adjustment when the taxes are paid or the lien is foreclosed." The notice letters to the listing owner and the transferee should contain a similar statement.

Foreclosures

Default Judgments. Attorneys bringing foreclosures pursuant to G.S. 105-374 frequently have occasion to move for a judgment by default against defendants who have not filed an answer in the case. S.L. 1999-187 (S 921) makes it easier to obtain a default judgment in certain circumstances. The act amends G.S. 1A-1, Rule 55(b) to provide that a motion for judgment by default may be decided by the court without a hearing if the motion specifically provides that the court will decide the motion without a hearing if the party against whom the judgment is sought fails to serve a written response stating the grounds for opposing the motion within thirty days of service of the motion, and if the party against whom the judgment is sought in fact fails to serve the response.

Appeals from the Clerk. S.L. 1999-216 (S 246) enacts new G.S. 1-301.1 to provide detailed rules for appeals to a judge of judgments and orders of the clerk of superior court in a civil action. The act amends G.S. 105-374(h), (k), and (p), subsections of the mortgage-style tax lien foreclosure statute to refer to the appeal procedures in G.S. 1-301.1. The act is effective January 1, 2000.

In Rem Foreclosures. Effective January 1, 2001, S.L. 1999-439 amends G.S. 105-375(b) to allow a judgment to be filed commencing an *in rem* foreclosure thirty days after the tax lien advertisement. This shortens the current six-month waiting period considerably. Note that G.S. 105-375(c) still requires that notices of the pending foreclosure be mailed to the listing taxpayer and others at least thirty days before the judgment is docketed. Thus as a practical matter, the waiting period between the advertising date and the docketing of the judgment is a minimum of sixty days. For collection purposes this is nevertheless an improvement over the six-month period.

Collection Percentages

G.S. 159-13(b)(6) requires that when a local government prepares its budget each year it must make an estimate of the percentage of property taxes it expects to collect, and this estimate cannot

exceed the percentage actually collected as of June 30 of the preceding fiscal year. Since 1993 this has caused a problem for local governments because it has been difficult to collect the taxes on registered motor vehicles that were levied in the last quarter of the fiscal year by June 30 of that year. As a result the collection percentages in most cities and counties have been lower than they were pre-1993, even though the greater part of the last-quarter taxes on motor vehicles are collected early in the next fiscal year. S.L. 1999-261 (S 484) addresses this issue by excluding from the percentage calculation taxes levied and collected on registered motor vehicles during the last quarter of the preceding fiscal year. For example, when a local government prepares its budget in 2000, it will refer to the collection percentage for 1998 taxes as of June 30, 1999. In making this calculation, however, registered motor vehicle taxes that were due in April, May, and June of 1999 will be excluded.

It is important to note that this exclusion is for budgeting purposes only. In the tax collector's settlement and in reports of collection percentages to the Local Government Commission, the levy and collection of taxes on registered motor vehicles during the fourth quarter of the fiscal year must be included.

Other Local Taxes

Privilege License Taxes

Circuses. S.L. 1999-337 repeals G.S. 105-38, the state privilege license tax on circuses and animal shows, and transfers its provisions to a rewritten G.S. 105-37.1, the state license tax on general amusements. This repeal and amendment makes no change in the city and county privilege license taxes on these businesses. Cities may levy a license tax of up to \$25 on general amusements and a tax of up to \$25 for each day, or part thereof, on circuses and animal shows. Counties may not levy a tax on general amusements but may levy a tax of up to \$25 for each day, or part thereof, on circuses and animal shows.

Pawnbrokers and Check-Cashing Businesses. The privilege license taxation of pawnbrokers is a complicated story. In 1997, G.S. 105-50, the statute levying a state, city, and county license tax on pawnbrokers, was repealed. The act that accomplished the repeal, however, at the same time amended G.S. 160A-211, for cities, and G.S. 153A-152, for counties, to provide that the repeal was to have no effect on city and county license taxes and that cities and counties could continue to levy privilege license taxes on pawnbrokers in an amount not to exceed \$275 annually. Effective July 1, 1999, S.L. 1999-438 (S 1112) amends G.S. 105-88 to authorize cities and counties to levy an annual license tax on pawnbrokers in an amount not to exceed \$100. But S.L. 1999-438 does not amend G.S. 160A-211 and G.S. 153A-152 to delete the reference to former G.S. 105-50 and the authorization to levy a tax in a maximum amount of \$275.

Thus effective for tax years beginning July 1, 1999, two statutes authorizing city and county license taxes are on the books, one with a maximum of \$100 and the other with a maximum of \$275. Which one is current law? Under accepted principles of statutory construction, when the legislature has enacted multiple statutes dealing with the same subject in an inconsistent manner, the most recent enactment is held to be the operative law. Following these principles, cities and counties should be guided by amended G.S. 105-88 and limit their license taxes on pawnbrokers to a maximum of \$100. Those units of local government that have already levied a license tax on pawnbrokers for 1999–2000 that exceeded \$100 will have to make a refund of any amount in excess of \$100 to any pawnbroker who requests it. This is regrettably a confusing situation. One positive outcome of the new legislation, however, is that amended G.S. 105-88 clarifies that the pawnbroker licensing provisions of Chapter 91A of the General Statutes have no effect on the authority of cities and counties to levy a privilege license tax on those businesses, which has not been clear in the past.

Amended G.S. 105-88 also authorizes cities and counties to levy a privilege license tax on check-cashing businesses in an amount not to exceed \$100.

Studies

North Carolina Tax Policy Commission

Section 3.1 of S.L. 1999-395 (H 163) creates a fifteen-member North Carolina Tax Policy Commission. The Governor, the Speaker of the House, and the President Pro Tempore of the Senate will each appoint five members from designated categories. The commission is instructed to “study, examine, and, if necessary, design a realignment of the State and local tax structure in accordance with a clear, consistent tax policy.” It is to submit its final report by March 1, 2001. The commission is funded from the General Assembly’s reserve funds in the amount of \$500,000.

Nonprofit Institutions

Section 29A.18 of S.L. 1998-212 directed the Legislative Research Commission to study property tax exemptions for nonprofit institutions, including the history and evolution of those exemptions, the reasons for them, the effect of the exemptions on local governments and other taxpayers, and the extent to which other states exempt nonprofit institutions. Although this study was prompted by a perceived need to address the tax status of residential retirement communities, it addresses a much broader range of exempt entities. This study was not begun in 1998 due to the unusually brief time between adjournment of the 1998 session and convening of the 1999 session. It is uncertain whether the study will be undertaken in 1999.

Elderly and Disabled Exclusion

Section 6.2 of S.L. 1999-237 (H 168) calls for a study of the homestead property tax relief for low-income elderly and disabled citizens. The Speaker of the House and the President Pro Tempore of the Senate are to designate an appropriate committee to conduct the study. Options to be considered include increasing the exclusion amount, increasing the income threshold, indexing the exclusion amount and income threshold, excluding social security from income in determining the income threshold, and amending the North Carolina Constitution to allow counties the option of making one or more of these changes at the local level. A report is required to the General Assembly by May 1, 2000, and any recommended proposals must be accompanied by an estimate of fiscal impact on the state and its local governments.

Bills Eligible for Consideration

Three tax bills are eligible for consideration in the 2000 session of the General Assembly because they passed the house in which they were introduced and were not disapproved by the other house. The first is S 1076, which would exclude short-term rental cars (Hertz, Avis, and so forth) from the property tax but allow cities and counties to levy a privilege license tax on businesses renting cars. This bill passed both chambers in different versions. The second is H 1290, which would limit the exclusion for recycling and resource recovery equipment to three years from the date the Department of Environment and Natural Resources (DENR) issues a certificate for the equipment. This bill passed the House and was in a Senate committee at adjournment. H 677 would require that, before a deed may be recorded in Graham, Jackson, Haywood, Madison, and Swain counties, all delinquent taxes on property described in the deed must have been paid. The bill passed the House and was in a Senate committee at adjournment.

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