Coates' Canons Blog: Attachment and Garnishment 101

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In anticipation of next week's attachment and garnishment webinar, today's post offers a summary of the basic rules governing this extremely effective and popular tax collection remedy. Join us at the webinar for a more in-depth discussion of the A&G procedure and for lots of practical tips from experienced collectors.

What is attachment and garnishment?

A&G is a method of satisfying a debt for delinquent property taxes from money owed to the responsible taxpayer. A&G also may be used to collect other local taxes (occupancy taxes, food and beverage taxes, etc.) and a variety of fees and debts owed to local governments such as special assessments and nuisance abatement fees. See chapter 15 of my property tax collection book for more details about these other fees and debts.

The funds being attached are usually bank accounts or wages, but they could also be rent payments, real property closing settlements, or other funds owed to the taxpayer. Absent a state or federal law exempting a particular payment from A&G, tax collectors should assume that all funds can be targeted using A&G.

The one type of payment that is usually off limits is government benefits. Social Security payments, military veteran benefits, and state unemployment compensation are among those government benefits that are exempt from A&G both before payment (meaning the tax collector cannot order the government agency in question to direct the benefit payment to the tax collector instead of to the taxpayer) and after payment (meaning the tax collector may not attach a bank account if it contains only exempt benefit payments). See page 93 my property tax collection book for a full list of exempt benefit payments and this blog post for more on how banks are now required to determine if a bank account contains exempt Social Security payments.

Tax collectors are not limited to funds held in their own counties. A&G can target funds anywhere in the state. Bank accounts opened in other states are fair game so long as the bank in question has a branch in North Carolina. Employers (and wages) from other counties are subject to A&G, but not employers in other states. You are free to send A&G notices to out-of-state banks and employers and hope that they comply. But if they don't you have no authority to force them to cough up the cash.

How do you find those funds? Prior checks submitted by the delinquent taxpayer for taxes, building permits, utilities, and other debts owed to the local government are the best places to start for bank accounts. Employee lists obtained from employers and info available at the state Employment Security Commission are great sources for wage garnishments. (Read more about those topics here.)

Another good source can be the North Carolina escheats fund which holds unclaimed money. If that fund holds money owed to your responsible taxpayer, you may use A&G to grab it before the taxpayer does.

When may a tax collector use A&G?

The usual trigger date for any enforced collection is January 6, the delinquency date for property taxes. As of January 6, 2016, unpaid property taxes levied for the 2015-2016 fiscal year became delinquent and subject to A&G and other enforced collection methods.

Early enforced collections are permitted by G.S. 105-366 in limited situations: when the tax collector has reason to believe that the taxpayer is about to become insolvent, is about to remove property from the city or county, or is selling its assets to another business.

Other costs and fees that may be collected using A&G are not tied to the delinquency date for property taxes. Special assessments become delinquent and subject to A&G collection efforts according to the dates specified in the assessment resolution. Nuisance abatement costs and minimum housing enforcement demolition costs are immediately delinquent and can be subject of A&G at any time after the costs were incurred.

Whose money may be targeted using A&G?

Whoever is the responsible taxpayer for the delinquent taxes in question. For taxes on personal property, that is the listing taxpayer and only the listing taxpayer. For taxes on real property, that is the record owner as of the delinquency date (Jan. 6) and all subsequent owners. G.S. 105-365.1. Read this post for more details. Heir property, meaning property for which the owner is deceased but there has been no probate proceeding to determine current ownership, can be problematic for A&G. See this blog post for help.

Remember that only funds owed to the responsible taxpayer may be the target of A&G. If the property is owned by a corporation, then the tax collector may target only funds owed to the corporation and not funds owed to individual shareholders or members of that corporation. For real property owned by a married couple as tenants by the entirety, technically the tax collector may target only funds owed jointly to the married couple and not the assets of an individual spouse. In other words, the county is not supposed to garnish the wages of one spouse to satisfy taxes owed on real property jointly owned by both spouses. I know that happens all of the time across the state, and that's fine so long as the spouse doesn't object. If the spouse does object, I think the tax collector should release the A&G and try to find jointly owned funds instead.

How do I start an A&G?

All it takes is two pieces of paper. Notice must be sent to the taxpayer who owes the taxes and to the party that holds the funds owed the taxpayer (the "garnishee") such as an employer, a bank, a tenant, or a closing attorney. See page 111 of my property tax collection book for a sample notice.

Notice should be sent using certified mail, return receipt requested, or delivered by hand. If you routinely garnish the wages of multiple employees from a particular employer, that employer might prefer that you provide notice electronically. That's fine, but best practice is to also send notice via certified mail so that you satisfy the technical requirements of G.S. 105-368.

The Machinery Act does not mandate the timing of A&G notices. Each county may decide for itself how best to time the required notices. For bank account attachments, notice probably should be given first to the bank so that the taxpayer doesn't have the opportunity to withdraw all of the funds from the account before it is frozen by the bank. For wage garnishments, it makes sense to give notice first to the taxpayer to give her an opportunity to resolve the matter before her boss learns of her delinquent tax problem.

Regardless of timing, the tax collector should charge the taxpayer $30 fee for each notice, meaning most A&G will produce an additional $60 in fees added to the delinquent taxes and interest owed by the taxpayer.

For more details on the A&G process, read this bulletin and join us for our webinar on February 23 (which will be available for on-demand viewing shortly after that date).

Links

- www.sog.unc.edu/courses/attachment-and-garnishment-webinar
- www.sog.unc.edu/publications/books/fundamentals-property-tax-collection-law-north-carolina
- www.nctreasurer.com/upp/Pages/default.aspx
- sogpubs.unc.edu/electronicversions/pdfs/ptb152.pdf