

# Discovery & Immaterial Irregularity

2019



UNC  
SCHOOL OF GOVERNMENT

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Chris McLaughlin  
Associate Professor  
UNC School of Government

Gwendolyn Nicholson  
Appraisal/Collection Manager  
Wake County Revenue Department

Tina Stone  
Personal Property Division Manager  
North Carolina Department of Revenue  
Local Government Division

“Hey, we didn’t tax this property.  
What should we do?”

1. Discovery (GS 105-312)
2. Retroactive Billing under  
Immaterial Irregularity (GS 105-394)

# Discovery

- Listing mistakes
  - Not listed
  - Substantial understatement of value
  - Improper exemption
- 6-year recapture
- Penalties
  - 10% per listing period

# Immaterial Irregularity

- Other mistakes
  - Billing
- Unlimited\* recapture
- Interest
  - From original DQ date

# Discovery vs. Immaterial Irregularity

- Parcel A was annexed by Blue Devil City in 2000.
- For some reason the property was never coded as lying within the city limits.
- Mike's property was always billed for county taxes but was never billed for city taxes.
- The city tax collector learns of the mistake in 2019.

# POLL

- How may the Blue Devil City tax collector recover the past taxes on Mike's property?
  - She may not.
  - Discovery for 2014 – 2019.
  - Retroactive billing under I.I. for all years

# ***“Taxes? What Taxes??”***

G.S. 105-348

**“ All persons who have or who may acquire any interest in any real or personal property that may be or may become subject to a lien for taxes are hereby charged with notice that such property is or should be listed for taxation . . .**

**This notice shall be conclusively presumed, whether or not such persons have actual notice.”**

# Discovery

GS 105-312

- Covers only listing errors
- If property was listed for taxation, discovery cannot apply



# Discovery

- Property that was **not listed** during a listing period.
- Property that was listed but the listing included a **substantial understatement.**
- Property that was listed under an **exemption or exclusion for which it did not qualify.**

*GS 105-273(6a)*

# Immaterial Irregularity

Excuses defects in the listing,  
appraisal, assessment, levy, or  
collection of property tax

GS 105-394

# Immaterial Irregularity

“Specific trumps general”

If listing error, must use discovery.

Any other type of error: must use I.I.

# Discoveries

*GS 105-312*

- Discovery bill included in the tax levy for the tax year that begins in the calendar year the discovery was made
- Discovery made **December 26, 2018**
  - Which tax levy?
  - When delinquent:
- Discovery made in **January 2, 2019**
  - Which tax levy?
  - When delinquent?

# Discoveries

*GS 105-312*

- How many tax years may be included on a discovery bill?

*Current year plus 5 (6 max)*

- Discovery made **December 26, 2018**
  - Which years included?
- Discovery made in **January 2, 2019**
  - Which years included?

# When is the discovery made?

- In November 2018, Carolina County learns of a new barn that Farmer Fred built in 2008 but never listed.
- Carolina County sends a discovery notice to Fred in December. He immediately appeals the value of the discovery.
- In February 2019, Fred and the assessor agree to reduce the value of the discovery by 25%.
- **What tax years should be included in the discovery bill?**

# POLL

- **What tax years should be included in the discovery bill?**
  - 2008 to 2018
  - 2013 to 2018
  - 2014 to 2019

# Discoveries

*GS 105-312*

- Penalties:
  - **Not** for land (permanent listing)
  - Only for:
    - Improvements to real property
    - Personal property



# Discoveries

*GS 105-312*

- Penalties:
- 10% of the amount of tax for the earliest year in which property not listed
- plus an additional 10% of the same amount for each subsequent listing period that elapsed before property was discovered
- Penalty is computed separately for each year in which property was not listed

# Discoveries

*GS 105-312*

- Tom Tarheel fails to list his boat for 2017 taxes.
- In May 2019, Carolina County issues a discovery to Tom for the 2017 taxes on his boat.
- What are the penalties on that discovery bill?

# POLL

- What are the penalties on that discovery bill for 2017 taxes?
  - 10%
  - 20%
  - 30%

# Discoveries

*GS 105-312*

Billing:

Use tax value and tax rate from the year the property was not listed

If not listed for multiple years, then must calculate principal amount and penalty **separately for each year**

Interest?

In May of 2018, the business personal property section of the Carolina County Assessor's Office determines that ABC Corporation has failed to list any of its taxable machinery and equipment since 2011. You have determined the fair market value of the machinery and equipment for the years in question. Those amounts are set forth in the below table.

Compute the maximum allowable tax and penalty that will be due upon a discovery of ABC's property.

Year	Value	Tax Rate	Tax Owed	Penalty %	Penalty \$	Totals
2018	\$300,000	\$.50	1,500	10%	150	1,650
2017	\$200,000	\$.60	1,200	20%	240	1,440
2016	\$300,000	\$.70	2,100	30%	630	2,730
2015	\$400,000	\$.50	2,000	40%	800	2,800
2014	\$300,000	\$.50	1,500	50%	750	2,250
2013	\$200,000	\$.50	1,000	60%	600	1,600
2012	\$300,000	\$.55				
<b>Totals:</b>			9,300		3,170	12,470

Account Number	Tax Year/Year For	Bill Type	Bill Date	Due Date	Interest Begins
0006852752	2018/2018	000000	11/05/2018	09/01/2018	01/08/2019
<b>Description:</b> VALUATIONS ARE BASED ON AUDIT <b>Class:</b> 1 <b>Plate Expiration:</b> <b>Physical Location:</b> 5511 CAPITAL CENTER DR 480, RALEIGH 27606-3545 <b>Acres:</b> <b>Vin Number:</b> <b>Municipality:</b> RALEIGH <b>PIN #:</b> 0783.13 04 6376 000 <b>Months Billed:</b> <b>Fire District:</b> <b>REID:</b> 0192273 <b>Special District:</b> <b>Recycle Units:</b>					

Assessed Value	Orig	Adj	Tax Rate	Taxing Unit	Amt Billed	Adj Billed	Payment Allocation
Real	0.00		0.4183	Raleigh	1,299.85	0.00	Raleigh 0.00
Deferred				Special District	0.00	0.00	Special District 0.00
Use	0.00		30.00%	Late List Penalty	389.95	0.00	Late List Penalty 0.00
Personal	310,745.00			Vehicle Fee	0.00	0.00	Vehicle Fee 0.00
Exclusion	0.00			<b>Total Raleigh</b>	<b>1,689.80</b>	<b>0.00</b>	City Interest 0.00
<b>Total Value</b>	<b>310,745.00</b>						Wake County 0.00
			0.8005	Wake County	1,866.02	0.00	Fire District 0.00
				Fire District	0.00	0.00	Special District 0.00
				Special District	0.00	0.00	Late List Penalty 0.00
			30.00%	Late List Penalty	559.81	0.00	Recycle Fee 0.00
				Recycle Fee	0.00	0.00	County Interest 0.00
				<b>Total Wake County</b>	<b>2,425.83</b>	<b>0.00</b>	Costs 0.00
				<b>Total Billed</b>	<b>4,115.63</b>	<b>0.00</b>	<b>Total Paid</b> 0.00

Account Number	Tax Year/Year For	Bill Type	Bill Date	Due Date	Interest Begins
0006852752	2018/2017	000000	11/05/2018	09/01/2018	01/08/2019

<b>Description:</b>	VALUATIONS ARE BASED ON AUDIT	<b>Class:</b>	1	<b>Plate Expiration:</b>	
<b>Physical Location:</b>	5511 CAPITAL CENTER DR 460, RALEIGH 27608-3535	<b>Acres:</b>		<b>Vin Number:</b>	
<b>Municipality:</b>	RALEIGH	<b>PIN #:</b>	0783.13 04 8376 000	<b>Months Billed:</b>	
<b>Fire District:</b>		<b>REID:</b>	0192273		
<b>Special District:</b>		<b>Recycle Units:</b>			

Assessed Value	Orig	Adj	Tax Rate	Taxing Unit	Amt Billed	Adj Billed	Payment Allocation
Real	0.00		0.4253	Raleigh	1,342.42	0.00	Raleigh 0.00
Deferred				Special District	0.00	0.00	Special District 0.00
Use	0.00		20.00%	Late List Penalty	288.48	0.00	Late List Penalty 0.00
Personal	315,640.00			Vehicle Fee	0.00	0.00	Vehicle Fee 0.00
Exclusion	0.00			<b>Total Raleigh</b>	<b>1,610.90</b>	<b>0.00</b>	City Interest 0.00
<b>Total Value</b>	<b>315,640.00</b>						Wake County 0.00
			0.6150	Wake County	1,941.19	0.00	Fire District 0.00
				Fire District	0.00	0.00	Special District 0.00
				Special District	0.00	0.00	Late List Penalty 0.00
			20.00%	Late List Penalty	388.24	0.00	Recycle Fee 0.00
				Recycle Fee	0.00	0.00	County Interest 0.00
				<b>Total Wake County</b>	<b>2,329.43</b>	<b>0.00</b>	Costs 0.00
				<b>Total Billed</b>	<b>3,940.33</b>	<b>0.00</b>	<b>Total Paid</b> 0.00

# Discoveries

## *GS 105-312*

- Compromise Authority (105-312(k))
  - Unique!
  - Applies to principal taxes, penalties, interest
  - City vs. County decisions
  - Ends when bill is paid?



# Discoveries

## *GS 105-312*

- Compromise Authority (105-312(k))
  - May be delegated to BOER
  - Appeal to PTC?

# Discoveries

## *GS 105-312*

### Three Methods of Challenging a Discovery

Type	Time Limitation	Justification	Appealable?
Compromise <i>G.S. 105-312(k)</i>	Until bill is paid	Anything	No
Appeal to BOER <i>G.S. 105-312(d)</i>	30 days after notice	Valuation, taxability, situs, ownership	Yes, to PTC
Refund/Release <i>G.S. 105-381</i>	5 years for refund No limit for release	Illegal tax or clerical error	Yes, to state court

# Discoveries

*GS 105-312*

In November 2018, Wanda Wolfpack receives a 2018 discovery bill from Carolina County for her private plane.

Wanda pays the bill immediately.

In February 2019, she requests a refund of the discovery bill based on situs. She provides proof that her plane was hangered in Virginia for all of 2018.

# POLL

- Is Wanda entitled to a refund?
- No, she was required to appeal the situs issue within 30 days of the discovery bill.
- Yes, under the “illegal tax” justification for a refund in G.S. 105-381.

# Discoveries

*GS 105-312*

In February 2019, Duke University receives a discovery bill for an office building that it purchased in late 2017.

The discovery bill covers the years 2018 and 2019.

After it receives the bill, Duke submits an application for the educational exemption for the office building.

# Poll

- Assuming the office building qualifies for the educational exemption, what is the earliest year for which Duke can receive the exemption?
- 2018
- 2019
- 2020

# Notice to Taxpayer

- Assessor must mail the discovery notice to person in whose name property will be listed for the years included on discovery bill.
- Transferred property?



# Who Gets The Bill?

- Roy owns a boat that he has not listed for taxation with Carolina County since 2011.
- In 2018 Roy sells the boat to Mike.
- Mike lists the boat for 2019 taxes.
- In February 2019, Carolina County discovers the boat for the prior years.



# POLL

- What years should be included in the discovery bill?
  - 2013-2018
  - 2013-2019
  - 2014-2018
  - 2014-2019

# POLL

- Who should receive the discovery bill issued in February 2019?
  - Roy
  - Mike
  - Roy & Mike

# Who Gets The Bill? (part 2)

- Roy owns Parcel A. In 2011 he builds a detached garage on Parcel A but fails to list the garage with Carolina County.
- In 2018 Roy sells Parcel A to Mike.
- For 2019, Mike lists the garage.
- In February 2019, Carolina County discovers the garage for 2014-2018.

# POLL

- Who should receive the discovery bill issued in February 2019 for the garage?
  - Roy
  - Mike
  - Roy & Mike

# Certificate of Taxes Owed

## GS 105-361

- If a certificate is issued, does it bar any future discovery on that property?

# RMV Taxation

- Gap Billing or Discovery?

Vehicle Value	Gap Billing Value	End Bill Renewal Type	Months Skipped
\$11,330.00	\$1,888.33	Renewal	2
\$11,340.00	\$8,505.00	Renewal	9
\$10,340.00	\$14,648.33	Issuance	17
\$30,350.00	\$32,879.17	Issuance	13
\$7,760.00	\$9,053.33	Issuance	14
\$1,970.00	\$164.17	Issuance	1
\$13,700.00	\$1,141.67	Issuance	1
\$2,685.00	\$223.75	Renewal	1
\$7,040.00	\$6,453.33	Renewal	11

# Immaterial Irregularity

- 105-394
- Retroactive billing (with interest!)
- For taxes missed due to any reason other than a listing error
- Listing error: must use discovery process

# Immaterial Irregularity

GS 105-394

- Taxes remain part of original year's levy
- 10-year limitation?



# Immaterial Irregularity

## GS 105-394

- Two big court cases:
- In re: Morgan
  - (N.C. Supreme Ct. 2008)
- In re: Pace/Dowd Properties
  - (NC Ct. of Appeals 2014)

# Mrs. Morgan's Property



This map is prepared for the inventory of real property found within this jurisdiction, and is compiled from recorded deeds, plats, and other public records and data. Users of this map are hereby notified that the aforementioned public primary information sources should be consulted for verification of the information contained on this map. The County and mapping company assume no legal responsibility for the information contained on this map.

Morgan Property



Henderson County Assessor's Office  
LAND RECORDS SECTION-pamc  
April 13, 2009

# In re: Morgan

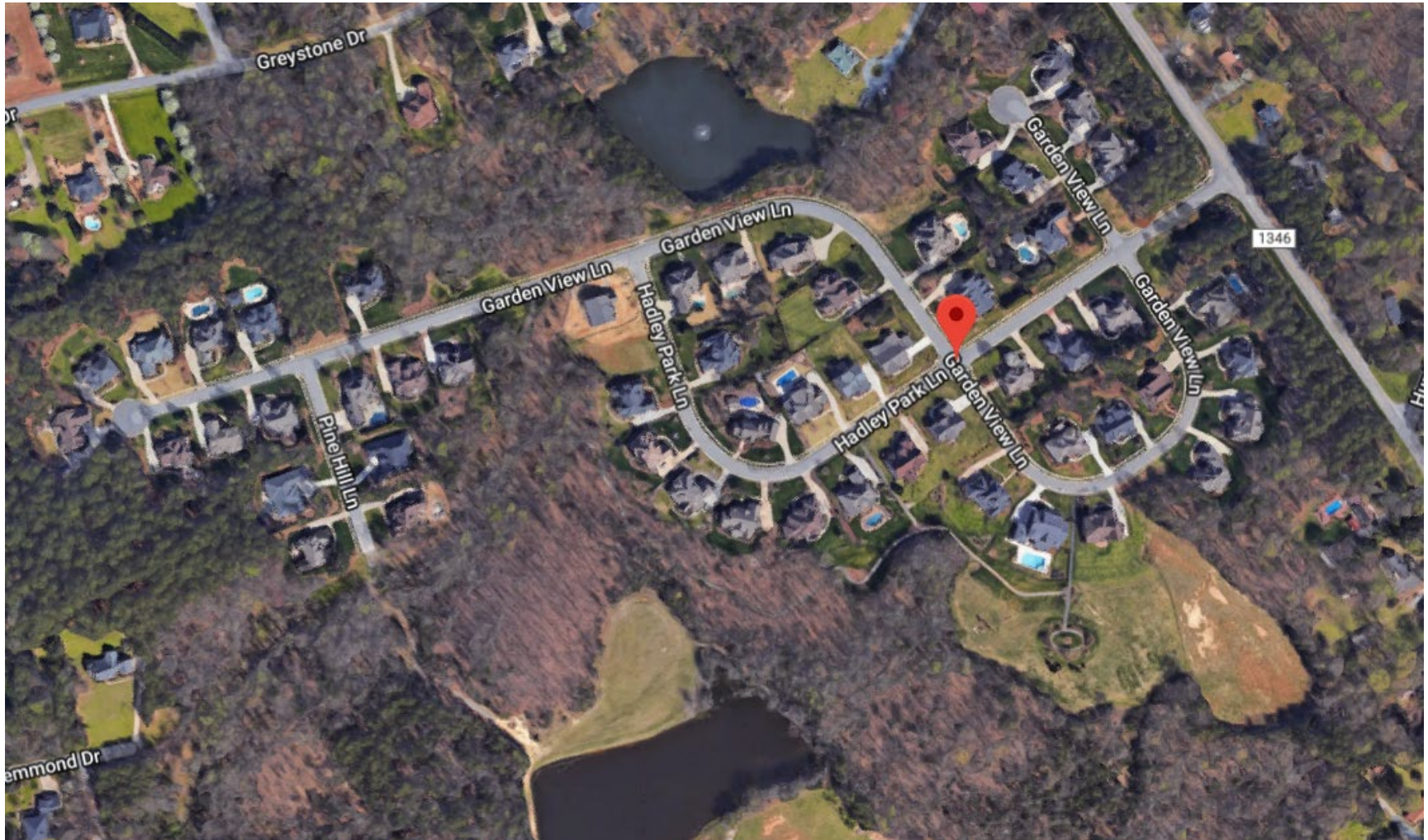
- Dwelling “found” as part of Henderson County mapping effort after 2003 reappraisal appeals.
- County issued discovery for dwelling
- During Discovery Conference, Mrs. Morgan stated the home had been listed by (now-deceased) Mr. Morgan.
- A search of the hard-copy tax records uncovered a listing of the new construction for tax year 1993.
- County rescinds discovery and issues retroactive bills under G.S. 105-394 for the years 1993 to 2003.

# In re: Morgan

- NC Supreme Court holds:
  - Appropriate use of 105-394
  - Interest must be added for all omitted taxes from the taxes' original delinquency dates



# In re: Pace/Dowd Properties



# In re: Pace/Dowd Properties

- In 2008 Union County incorrectly coded part of subdivision as “common area”
  - \$1.1 million tax value
- In 2010 county realizes error and codes property as buildable land
- Retroactively raises tax value to \$9.1 million for 2008, 2009, and 2010

# In re: Pace/Dowd Properties

- NC Court of Appeals holds:
  - Not appropriate use of GS 105-394 because property has been appraised initially
  - Illegal retroactive value change under GS 105-287

# What did we learn from Morgan and Pace/Dowd?

- Interest should be added to taxes recovered under GS 105-394
- May not use GS 105-394 to retroactively correct valuation/appraisal errors



# Immaterial Irregularity

## GS 105-394

- Authority to compromise?
- Release under 105-381?
  - Principal Taxes: **NO!**
  - Interest: Maybe
    - if taxpayer always pays on time and can assume that taxpayer would have paid the omitted taxes on time if the county had billed them on time

# Immaterial Irregularity

## GS 105-394

- Government ***never*** waives its right and obligation to appropriately enforce the law
- 105-394 gives you the authority to correct billing mistakes retroactively (*but not appraisal mistakes*)

# Discussion Question

- In 2009, Smith builds a 5,000 sq. ft. house on his lot in Carolina County and appropriately lists it with the assessor for 2010 taxes.
- When a county appraiser visits the site, he mistakenly assumes that the house does not have a finished basement or third floor and assesses it as a 3,000 sq. ft. house.
- Roy is taxed only for the lot and a 3,000 sq. ft. house until 2019, when the assessor learns of the mistake.
- How should the county resolve this situation?

# Poll

- How should the assessor resolve this situation?
  - Do nothing until the next reappraisal.
  - Increase the property's tax appraisal for 2019 and future years
  - Issue a discovery bill for the increased value for 2014 to 2019
  - Retroactive bill the increased value for 2010 to 2019, with interest