



State of North Carolina

Department of Justice
PO Box 629
Raleigh, North Carolina
27602

Reply to: Revenue Section
Telephone: (919) 716-6550
Fax: (919) 715-3550

ROY COOPER
ATTORNEY GENERAL

-MEMORANDUM-

TO: David Baker, Director
Property Tax Division

FROM: Kay Linn Miller Hobart *KLMH*
Special Deputy Attorney General

DATE: 8 April 2009

SUBJECT: Advancement of Reappraisal of Real Property for *Ad Valorem* Taxation

You have asked for an opinion as to whether a county which has advanced its general reappraisal as provided in N.C. Gen. Stat. § 105-286(a)(2) and has adopted a new schedule of values, standards and rules as required by N.C. Gen. Stat. § 105-317 may rescind the general reappraisal after the effective date of the reappraisal and new schedule.

“A sovereign state, as one of its inherent attributes, has the power of taxation, which must be exercised by its legislative branch.” *Hajoca Corp. v. Clayton*, 277 N.C. 560, 569, 178 S.E.2d 481, 487 (1971). Cities and counties do not possess inherent authority to levy taxes. *Id.* A county must derive its taxing power from the State Constitution or from the State’s legislative enactments. *Id.* Any grant of taxing power from the General Assembly must be strictly construed. *Kenny Co. v. Brevard*, 217 N.C. 269, 272, 7 S.E.2d 542, 543 (1940) (“The powers of municipalities relating to taxation are strictly construed.”).

Subchapter II of Chapter 105 of the North Carolina General Statutes “provides the machinery for the listing, appraisal, and assessment of property and the levy and collection of taxes on property by counties and municipalities.” N.C. Gen. Stat. § 105-272. The Machinery Act “prescribes the time and manner for listing and valuing property for ad valorem tax purposes.” *Spiers v. Davenport*, 263 N.C. 56, 58, 138 S.E.2d 762, 763 (1964). The subject of property taxation “is regulated entirely by statute.” *Wade v. Commissioners of Craven County*, 74 N.C. 81, 82 (1876).

David Baker
8 April 2009
Page 2

All property must be listed annually. N.C. Gen. Stat. § 105-285(a). Personal property is valued annually. N.C. Gen. Stat. § 105-285(b). Real property is valued octennially, or every eight years. N.C. Gen. Stat. §§ 105-285(d); 105-286(a).

N.C. Gen. Stat. § 105-286(a) instructs:

Unless the date shall be advanced as provided in subdivision (a)(2), below, each county of the State, as of January 1 of the year prescribed in the schedule set out in subdivision (a)(1), below, and every eighth year thereafter, shall reappraise all real property in accordance with the provisions of G.S. 105-283 and 105-317.

Subsection (a)(2) provides:

Any county desiring to conduct a reappraisal of real property earlier than required by this subsection (a) may do so upon adoption by the board of county commissioners of a resolution so providing. A copy of any resolution shall be forwarded promptly to the Department of Revenue. If the scheduled date for reappraisal for any county is advanced as provided herein, real property in that county shall thereafter be reappraised every eighth year following the advanced date unless, in accordance with the provisions of this subdivision (a)(2), an earlier date shall be adopted by the board of county commissioners, in which event a new schedule of octennial reappraisals shall thereby be established for that county.

The statutory terms regarding reappraisal are mandatory.

In accordance with N.C. Gen. Stat. § 105-286(a)(2), the boards of county commissioners of three counties adopted resolutions advancing their schedule of reappraisal from the eighth year to 2009. In each case, the resolutions were adopted prior to 1 January 2009.

The advanced reappraisals must be conducted in accordance with N.C. Gen. Stat. §§ 105-283 and 105-317. N.C. Gen. Stat. § 105-286(a). N.C. Gen. Stat. § 105-283 requires that property be appraised at its "true value in money." N.C. Gen. Stat. § 105-317(b)(1) requires the tax assessor of each county to prepare uniform schedules of values, standards and rules ("schedule of values") to be used in appraising property at its true value. N.C. Gen. Stat. § 105-317(c) requires the board of county commissioners to review and approve the schedule of values before 1 January of the year they are applied. Again, in all three cases, we understand that the boards of county commissioners approved the schedule of values prior to 1 January 2009.

The value of real property is determined as of 1 January of the year in which the valuation is fixed. N.C. Gen. Stat. § 105-285(d); *see also Spiers*, 263 N.C. at 58, 138 S.E.2d at 763. Thus, the value of real property is determined as of 1 January 2009 in accordance with the schedule of

David Baker
8 April 2009
Page 3

values approved by the board of county commissioners. The Machinery Act contains no authorization for a board of county commissioners to rescind its advancement of a general reappraisal or its approval of a schedule of values once that schedule becomes effective on 1 January. Thus, the county must proceed in accordance with the schedule of values approved by the board of county commissioners.

As a corollary, we understand that one or more counties may be considering adjusting all appraisals under N.C. Gen. Stat. § 105-296(i). Even assuming that N.C. Gen. Stat. § 105-296(i) permits a blanket or horizontal adjustment (a question on which we express no opinion in this memorandum), any adjustment to an appraisal under this provision must be in accordance with the new schedule of values. Thus, a county may not use this as a vehicle to effectively rescind the advancement of the reappraisal and new schedule of values and revert to the previous year's values.

Additionally, N.C. Gen. Stat. § 105-347 requires the taxing authority to "levy on property rates of taxes, not exceeding any constitutional or statutory limits, necessary to meet the general and other legally authorized expenses of the taxing units." It must do so each year no later than the date prescribed by law. *Id.* As the North Carolina Supreme Court observed in *Spiers*, the time limits in the Machinery Act serve a critical purpose: "The taxing unit must know the value of the taxable property before it can fix a rate sufficient to meet governmental needs." 263 N.C. at 58, 138 S.E.2d at 764. If a county were allowed to rescind its previous approval of the advancement of the reappraisal and the new schedule of values, it could jeopardize the county's ability to comply with N.C. Gen. Stat. § 105-347, particularly if a county could rescind a previously adopted schedule of values at any time during the year.

A final observation: we understand that many of the counties are concerned about a reappraisal during the current economic climate. Because a county has the authority to fix the tax rate, however, a reappraisal does not automatically result in a tax increase. A county always has the option to reduce its tax rate to counterbalance a higher appraisal. *See* N.C. Gen. Stat. § 105-347.

I hope the foregoing is helpful. This is an advisory memorandum. It has not been reviewed and approved in accordance with the procedures for issuing an Attorney General's opinion.