

# Enforced Collections

2020



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## What are enforced collections?

- Against PERSONAL property (\$ or stuff):
  - Attachment & Garnishment
  - Levy & Sale
  - Set-off Debt Collection
- Against REAL Property (land):
  - Foreclosure

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## Who is the responsible taxpayer?

*In other words, **Whose stuff can I take?***

GS 105-365.1

- For REAL property taxes:
  - Owner of record on date of delinquency – **Jan. 6**
  - Plus all subsequent owners

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## Who is the responsible taxpayer?

*In other words, **Whose stuff can I take?***

GS 105-365.1

- For PERSONAL property taxes:
  - Owner as of listing date (**Jan. 1** except for DMV)

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## Who is the responsible taxpayer?

*In other words, **Whose stuff can I take?***

GS 105-365.1

- “Owner of Record”?
  - Document filed with
    - Register of Deeds (deed)
    - Clerk of Superior Court (will or order)
    - Tax Office (affidavit from heirs)

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## Who is the responsible taxpayer?

*In other words, **Whose stuff can I take?***

GS 105-365.1

- Roy sells house to Mike on Dec. 27, 2019.
- Deed recorded same day.
- Husband and wife own property as “tenants by the entirety”
- Divorce on Dec. 27, 2019.
- Settlement agreement says wife gets house.

6

## Who is the responsible taxpayer?

*In other words, **Whose stuff can I take?***

GS 105-365.1

- Who is the “Owner of Record” for delinquent 2019 taxes?
  - Scrooge McDuck dies in October 2019
  - No probate proceedings occur

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## Who is the responsible taxpayer?

*In other words, **Whose stuff can I take?***

GS 105-365.1

- Who is the “Owner of Record” for delinquent 2019 taxes?
  - Scrooge McDuck dies in October 2019
  - Will probated in February 2020
  - Donald Duck declared beneficiary and owner of McDuck’s home

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Beyonce sells her beach house to Mark Zuckerberg in December 2019.

Deed recorded same day.

The 2019 property taxes become delinquent.

What tax collection options are available?

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Beyonce sells her **yacht** to Lady Gaga in December 2019.

The 2019 property taxes on the boat become delinquent.

What tax collection options are available?

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Taxes on Beyonce & Jay-Z's beach house become delinquent. The house is owned TBE.

May the tax collector attach Beyonce's wages?

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## Remedies Against Personal Property GS 105-366

- When?
- Two exceptions:
  - Pending removal/transfer/insolvency (366(c))
  - *Going-out-of-business* sale (366(d))
    - Manufacturers, wholesalers and retailers
    - “goods, materials, supplies, or fixtures”
    - 6-month window to go after buyer's property

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## Attachment & Garnishment GS 105-368

- For what kinds of taxes?
- 10% limitation for wages per pay period
- No limit on other funds
- See sample “Notice of Attachment”

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## Attachment & Garnishment GS 105-368

- How do you find out where the \$\$ is??
- Employee Lists (105-368(i))
- Employment Security Commission
- Escheats Fund

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## Attachment & Garnishment GS 105-368

- Checks for Other County/City payments?
- Owner of Multiple Properties? Rents!
- Bank with no branch in your county?

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## Attachment & Garnishment GS 105-368

- Funds Exempt from Attachment Post-Payment  
*(page 93 in Ptax Collection Law book)*
  - Social Security benefits
  - Federal pension benefits
  - State public assistance
  - Unemployment benefits
- How will you know if the funds are exempt?

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## Social Security Benefits Example

- Taxpayer Tom receives \$500 Social Security benefits each month
- Deposited into bank account where he also deposits his wages from part-time job at Home Depot.
- Tom makes roughly \$200 week from his job.

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## Social Security Benefits Example

- Tom has \$3,500 in his bank account.
- He owes \$5,000 in back taxes.
- How much, if any, may the tax office attach from Tom's bank account?
- 90-day look back?

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## Attachment & Garnishment GS 105-368

- Timing of Notice?
- How served?
- Cost of Notice?

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## Attachment & Garnishment GS 105-368

- Garnishee becomes liable for taxes to extent it owes taxpayer any \$\$
- Defenses?
  - 10 days to object (taxpayer and garnishee)
  - No answer? 15 days from service can SUE
  - Loser pays costs and fees
- Duration of attachment?

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## Attachment & Garnishment GS 105-368

- Carolina County sends notice of attachment to Wells Fargo for Billy BlueDevil's delinquent taxes.
- Billy doesn't have an account at Wells Fargo.
- Do attachment fees apply? How much?

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## Attachment & Garnishment GS 105-368

- Wages already garnished by feds or state?
- 25% / minimal wage limitation on tax garnishments?

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## Levy & Sale

GS 105-367

- Is court order needed?
- Property outside of city/county?
- Do I really need to take possession of the property?
- Break & enter to levy?

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## Setoff Debt Collection

GS 105A-5

- *Any* debt of \$50 or more
- Attach state income tax refund
- \$15 collection fee to clearinghouse
- Notice and hearing procedures

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## Statute of Limitations

- 10 years from due date
- Last day to start enforced collection action for 2020 taxes?

# Discovery & Immaterial Irregularity Billing

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Fall 2020



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Discovery	Immaterial Irregularity
<ul style="list-style-type: none"> <li>• Listing mistakes               <ul style="list-style-type: none"> <li>– Not listed</li> <li>– Substantial understatement of value</li> <li>– Improper exemption</li> </ul> </li> <li>• 6-year recapture</li> <li>• Penalties               <ul style="list-style-type: none"> <li>– 10% per listing period</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Other mistakes               <ul style="list-style-type: none"> <li>– Billing</li> </ul> </li> <li>• Unlimited* recapture</li> <li>• Interest               <ul style="list-style-type: none"> <li>– From original DQ date</li> </ul> </li> </ul>

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## Discoveries

*GS 105-312*

- Recapture current year plus      prior years
- Compute each year's discovery tax using
  - That year's rate
  - That year's tax value

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# 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, 2019**
  - Which tax levy?
  - When delinquent:
- Discovery made in **January 2, 2020**
  - Which tax levy?
  - When delinquent?

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## When is the discovery made?

- GS 105-312(d): “on the date that the abstract is made or corrected”

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## When is the discovery made?

- In November 2019, Carolina County learns of a new barn that Farmer Fred built in 2006 but never listed.
- Carolina County sends a discovery notice to Fred in December. He immediately appeals the value of the discovery.
- In February 2020, Fred and the assessor agree to reduce the value of the discovery by 25%.

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## What years should be included in the discovery bill?

2009 to 2019

2010 to 2020

2014 to 2019

2015 to 2020

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# 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?

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# Discoveries

*GS 105-312*

- Penalties:
  - **Not** for land (permanent listing)
  - Improvements to real property
  - Personal property
  - % for each year listing period missed for each tax year the property was not listed

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Mike sells his house to Roy in March 2020. In October 2020 the assessor discovers a detached garage on the property that was never listed.

Who should get the discovery bill?

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## Retroactive Billing under GS 105-394

*Immaterial irregularities in the listing, appraisal, assessment or collection processes shall NOT invalidate a property tax*



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Discovery	Immaterial Irregularity
<ul style="list-style-type: none"> <li>• Listing mistakes               <ul style="list-style-type: none"> <li>– Not listed</li> <li>– Substantial understatement of value</li> <li>– Improper exemption</li> </ul> </li> <li>• 6-year recapture</li> <li>• Penalties               <ul style="list-style-type: none"> <li>– 10% per listing period</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Other mistakes               <ul style="list-style-type: none"> <li>– Billing</li> </ul> </li> <li>• Unlimited* recapture</li> <li>• Interest               <ul style="list-style-type: none"> <li>– From original DQ date</li> </ul> </li> </ul>

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## GS 105-394: A Tax Collector's Best Friend

- Coach K's property was annexed by Blue Devil City in 2000. He's been billed county taxes each year but has never been billed city taxes. Tax Collector Tara learns of this error in March 2020.

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## How should Tax Collector Tara remedy this problem?

She may not collect any city taxes for prior years.

Discovery bill for 2015 to 2020.

Retroactive bills, plus interest, for the past 10 years.



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## Discoveries

*GS 105-312*

- Discovery Worksheet



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## Property Tax Listing and Assessing

### Discovery Bill Worksheet 2020

In May of 2020, 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 2013. 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
2020	\$300,000	\$.50				
2019	\$200,000	\$.60				
2018	\$300,000	\$.70				
2017	\$400,000	\$.50				
2016	\$300,000	\$.50				
2015	\$200,000	\$.50				
2014	\$200,000	\$.50				
<b>Totals:</b>						

When will this discovery bill accrue interest?

Carolina County offers a 2% discount for taxes paid before September 1. Is this discovery bill eligible for this discount? If so, what would the discount be if ABC Corp. paid the discovery bill before September 1, 2020?

# Basic Bankruptcy Law for Tax Collectors

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2020



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## What is bankruptcy?

- Opportunity for debtor to get “fresh start”
- Liquidation or Reorganization of assets
- Discharge of debts
- Governed by federal law
- Taxes generally given preferential treatment

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## If You Only Remember 1 Thing About Bankruptcy, Remember This:

- **Automatic Stay**
  - STOP!!!!!!!!!!!!
  - Affects ALL collection efforts
  - Until
    - Dismissal
    - Discharge
  - Sanctions

3

You have a foreclosure sale of Tommy Tarheel's home scheduled for tomorrow.

Tommy's lawyer calls and says he is filing for bankruptcy today and demands that you cancel the sale.

What do you do?

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**What do you do?**

Say, "Who cares!"  
and hang up on the  
lawyer.

Immediately cancel  
the sale.

Ask for proof that a  
bankruptcy petition  
has been filed.

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You have a wage garnishment in place  
for Tommy Tarheel.

After you get this month's garnishment,  
Tommy hands you a copy of his  
bankruptcy petition filed two weeks  
ago.

What should you do?

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**What should you do?**

- Find another job, quick.
- Stop the garnishment and keep the \$.
- Stop the garnishment and return the \$ to the bankruptcy court.

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Tommy Tarheel is in bankruptcy.

Can I advertise his delinquent real property tax lien?

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## Bankruptcy Bottom Line:

- Don't take any collection actions during the bankruptcy
- Most local tax claims will be enforceable after the bankruptcy ends.

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## 2 Key Questions

- When did the debtor file the petition?
- What chapter?

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## Types of Tax Claims

- **Administrative:** the best!
- **Secured:** foreclosure later
- **Priority:** *usually* paid in bankruptcy
- **Non-priority:** not gonna happen

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## ADMINISTRATIVE CLAIMS

- Administrative claims are taxes which are incurred **after** the bankruptcy petition is filed.
- Administrative claims are not discharged.
- 
- When allowed, administrative claims are paid before (almost) all other claims.

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## When Are Taxes “Incurred” For Bankruptcy Purposes?

- On the date the ownership, value and situs is determined (aka the listing date)
- Taxes on Real Property and Personal Property (other than RMVs):
  - January 1
- Taxes on RMVs:
  - Date old registration expires/new reg applied for

## SECURED CLAIMS

- Secured claims are those which are secured by a lien on the Debtor’s property.
- Liens for secured claims (usually) remain enforceable after the bankruptcy proceeding ends.
- Taxes on:
  - Real property AND
  - Personal Property owned by same taxpayer



## PRIORITY CLAIMS

- Unsecured claims only
- Incurred prior to the bankruptcy
- Last payable without penalty/interest within one year of the filing of the petition
- Should be paid during bankruptcy if proof of claim is filed.
- Enforceable after bankruptcy (except in Chapter 13 cases)

## NON-PRIORITY UNSECURED CLAIMS

- Not secured, administrative, priority or penalty claims
- Discharged and NOT enforceable post-bankruptcy

## How Do Bankruptcies End?

- Dismissal
- Discharge

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## DISMISSAL

- Unsuccessfully termination of bankruptcy
- 
- A dismissal means that the bankruptcy case has no further legal significance.
- Creditors retain their rights as if the case had not occurred.

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## DISCHARGE

- Successful completion of a bankruptcy proceeding
- Debtor not personally liable for discharged debts
- No attachment/garnishment, levy/sale
- Foreclosure still an option for liens that survive bankruptcy

## DISCHARGE

- Not discharged:
  - Administrative claims
  - Most liens (secured claims)
  - Priority tax claims, except in Chapter 13



## 3 Most Common Types of Bankruptcies

- Chapter 7
- Chapter 13
- Chapter 11

## CHAPTER 7

- **Liquidation** (sale) of Debtor's assets by a court-appointed trustee
- Sale proceeds paid to creditors based on the priority of their claims



## CHAPTER 7

- Can liquidate only non-exempt assets
- Most cases are “no asset” cases
- 
- Do not file a claim until notified to do so
  - Trustee will ask for claims only when there are assets to sell.

## CHAPTER 13

- **Reorganization** for individuals with regular income (“wage earner” bankruptcy)
- Reorganization plan of 3 to 5 years
- Once the court confirms the plan, debtor pays portion of earnings to trustee
- Trustee pays creditors according to plan and priority of claims

## CHAPTER 13

- Tax collector should file proofs of claim
- Make sure debtor doesn't misstate tax claims in plan/proofs of claim
- Discharge after plan is completed eliminates all prepetition claims (even priority claims)
- Dismissal or conversion to Chapter 7 for failure to satisfy plan

## CHAPTER 11

- **Business reorganization**
- Reorganization plan is filed stating who is to be paid, and when



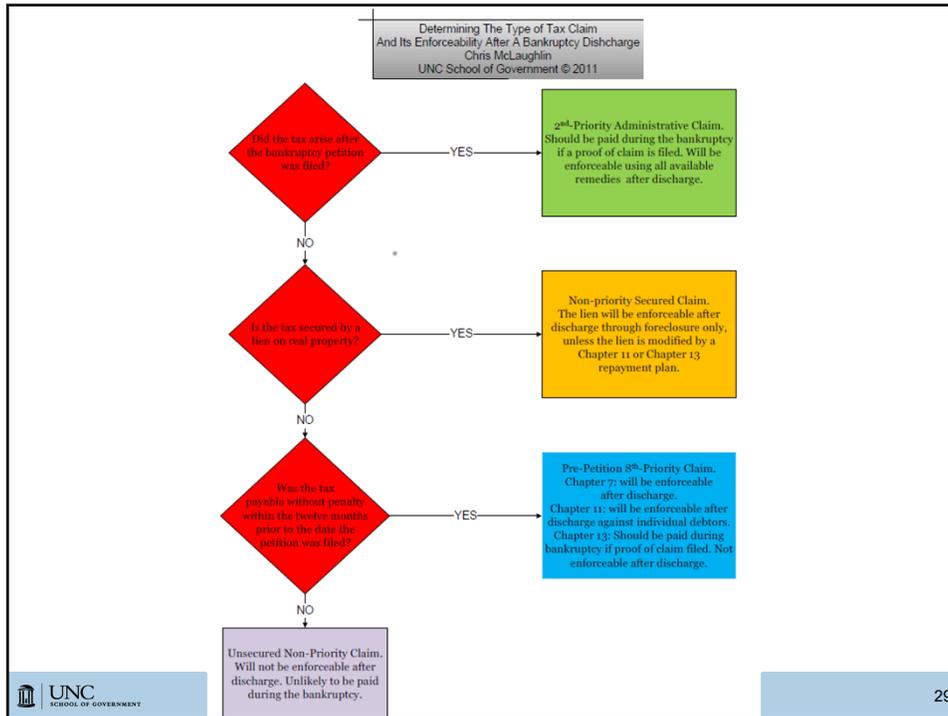
## CHAPTER 11

- Usually no trustee
- Often very complicated business reorganization
- Plan should be reviewed for treatment of liens and payment terms.
- Hire attorney if big \$\$\$\$!

## Helpful Resources

- Ptax Collection Book  
Chapter 16: Bankruptcy
- Flowchart





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## Helpful Resources

- *Will My Tax Claim be Enforceable After Bankruptcy?* (flowchart)

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## Are These Taxes Enforceable?

- **Chapter 7** petition filed December 1, 2019
- Discharge April 15, 2020
  - No real property
  - Taxes on mobile home:
    - 2017
    - 2018
    - 2019
    - 2020

## Are These Taxes Enforceable?

- **Chapter 13** petition filed Dec. 1, 2017
- Discharge October 1, 2020
  - No real property
  - Taxes on mobile home:
    - 2015
    - 2016
    - 2017
    - 2018 and later



## Tag & Tax Together

- Can DMV still require payment of RMV taxes as part of the registration/renewal process if the taxpayer is in bankruptcy?
- YES! (almost always)
- Unless the old registration expired before taxpayer filed for bankruptcy.

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## Tag and Tax Together

- Usual situation:
- Tommy files bankruptcy on Sept. 10, 2020
- Tommy's registration expires Oct. 31, 2020
- Tommy attempts to renew registration on Nov. 15, 2020
- Can DMV require property tax payment?

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## Tag and Tax Together

- Unusual situation:
- Tommy's registration expires Oct. 31, 2020
- Tommy files bankruptcy on Nov. 10, 2020
- Tommy attempts to renew registration on Nov. 15, 2020
- Can DMV require property tax payment?

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Roy owes Carolina County three years of back taxes.

He filed for Chapter 13 bankruptcy in November.

In February he mails the county a check for two years of taxes.

Should Carolina County keep the \$\$?

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Coach K filed for bankruptcy in December.

In January, the taxes on property listed by Coach K's Donuts, Inc. became delinquent.

Coach K is the sole shareholder of the donut corporation.

Can you attach the corporation's bank accounts?

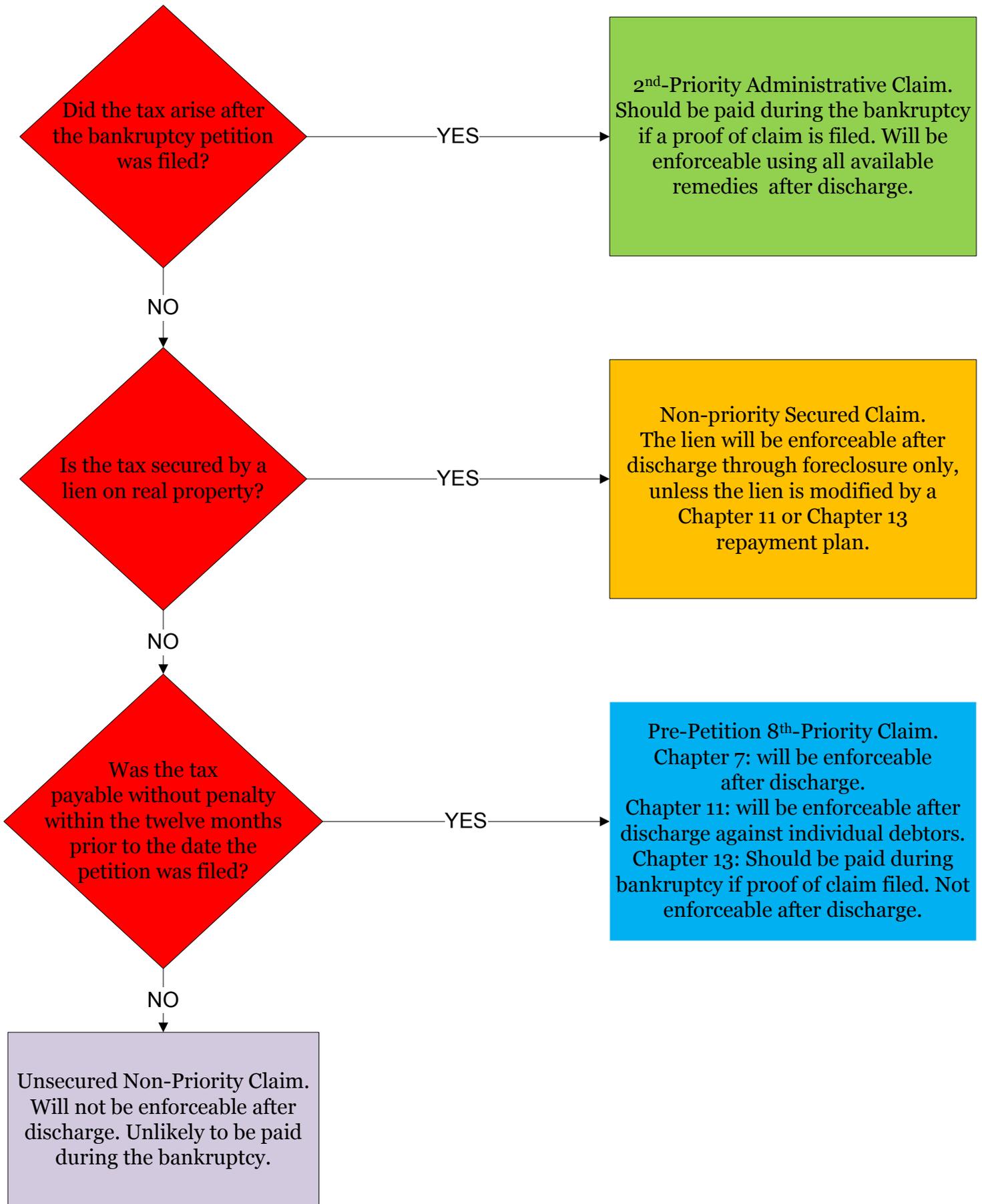
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- Roy's 2019 real property taxes are delinquent. He files for bankruptcy on February 1, 2020.
- On March 1, 2020, the court dismisses Roy's petition.
- May you begin foreclosure proceedings on Roy's property for the 2020 taxes in June?

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Determining The Type of Tax Claim  
And Its Enforceability After A Bankruptcy Discharge  
Chris McLaughlin  
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# Refunds and Releases

Chris McLaughlin

Fall 2020



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## Appeal vs. Refund/Release

- Appeal:
  - Value judgments or Eligibility for Exemptions
  - Current Year Only
  - BOER / PTC / State Court
- Refund / Release
  - Illegality or Procedural Mistakes by Tax Office
  - Retroactive
  - BOCC / State Court



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**NCGS 105-380:  
No taxes to be released, refunded, or  
compromised.**

- The governing body of a taxing unit is prohibited from releasing, refunding, or compromising taxes levied against any property within its jurisdiction *except as expressly provided in this Subchapter.*
- Personal liability

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**NCGS 105-381:  
Three\* Justifications for  
Release/Refund**

1. A tax imposed through clerical error
2. An illegal tax\*
3. A tax levied for an illegal purpose\*

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## NCGS 105-381: Illegal Tax / Tax for Illegal Purpose

- Double taxation
- Tax on property with no situs in taxing unit
- Tax levied for non-public purpose
- Tax levied w/out required referendum
- Tax in excess of statutory cap of \$1.50

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## NCGS 105-381: Clerical Error

- A procedural error that produces and unintended assessment
- Not a judgment error

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## Judgment Error v. Clerical Error

- Judgment Errors:
  - “My house isn’t worth that much!”
  - “I should have been exempt last year!”
- Clerical Errors:
  - “You taxed me on 5,200 sq. ft. instead of 2,500!”
  - “You applied my tax payment to the wrong account!”

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## Judgment Error v. Clerical Error

- Judgment Error:
  - Resolve through the assessment appeal process
    - Bd of Equalization & Review (county)
    - Property Tax Commission (state)
    - State Courts
    - Current year only---never retroactive

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## Judgment Error v. Clerical Error

- Clerical Error:
  - Resolve through Refund & Release (GS 105-381)
    - Tax Collector
    - Bd of County Commissioners / Town Council
    - State Courts
    - Retroactive

## NCGS 105-381: Clerical Error

- Ammons v. Wake County
  - 127 N.C. App. 426 (1997)
- Assessor tells taxpayer that property would not qualify for PUV
- Taxpayer applies for PUV following year
- E&R grants exemption
- Taxpayer claims “clerical error” for missed year of PUV

## NCGS 105-381: Clerical Error Ammons v. Wake County (1997)

- Not a clerical error!
- Was not unintended result
- Was not apparent on the face of the documents or capable of being corrected by reference to the record only
- *Best example:* Transcription error

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Carolina County mistakenly sends two 2019 tax bills to Roy for the same boat. Roy pays both.

A year later Roy demands a refund for his double payment.

Is a refund justified?

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Mike K. pays his 2020 Durham County taxes in September 2020, forgetting that his mortgage company is escrowing the taxes for him.

Two weeks later he demands a refund, explaining that the mortgage company will pay the taxes in December.

Is a refund justified?

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Beginning in 2016, Carolina County taxes Dean for his land, his house, and a detached garage.

Dean has never had a detached garage. He pays the taxes each year.

In 2020, Dean demands a refund for the taxes on the non-existent garage.

Is a refund justified?

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In 2018 Carolina County assessed Roy's house as if it had a finished 3<sup>rd</sup> floor.

In 2020 Roy demands a refund of 2018 and 2019 taxes because his house has never had a finished 3<sup>rd</sup> floor.

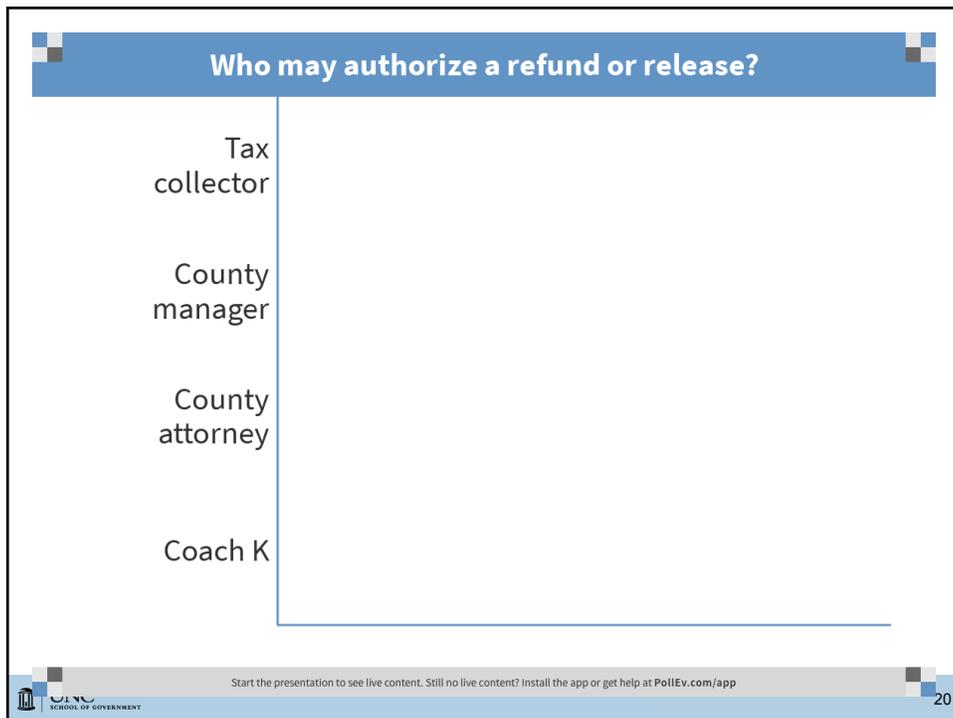
Is a refund justified?

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## NCGS 105-381: Timeframe for Refunds/Releases

- Release:
  - NO time limit
- Refund:
  - 5 years after tax first due\*

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## Discussion Questions

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## *Fundamentals of Property Tax Collection 2020*

### **Refunds and Releases**

1. Carolina County conducted a revaluation of real property in 2015. At that time, Taxpayer Tom's house was graded as Grade A construction and assessed for 5,200 square feet of living space. In fact, the house has only 2,500 square feet of living space but the appraiser reversed the numbers when entering the data. Tom pays the assessed taxes for 2015 thru 2019, but in 2020 he requests that the assessor review his assessment for both the construction grade and the square footage issues. The assessor agrees that as of January 1, 2015, the house was actually Grade B construction and had only 2,500 square feet of living space. Tom immediately requests a refund of the 2015-2019 taxes based on the wrong construction grade and square footage.

For what taxes, if any, is Tom entitled to a refund?

2. Dean owns an empty lot on Lake Blue Devil in Doorham County. Since he purchased the lot in 2006, it has been appraised as if it were a buildable lot under Doorham County zoning regulations. In February of 2020, Dean applies for a building permit and is rejected because the lot does not meet several requirements for waterfront construction.

Dean immediately demands that the property tax assessment be reduced to reflect that fact that his lot is not buildable. Under the assumption that the lot was buildable, it had been assessed at \$250,000. The assessor adjusts the appraisal for 2020 and future tax years to \$25,000 to reflect the fact that the lot is not buildable.

Not satisfied, Dean requests a refund of the "excess" taxes he's paid on the lot since 2006 as a result of the assumption that the lot was buildable.

Is Dean entitled to this refund?

3. Maureen the Marine has a home state of record of Texas but has been stationed in Carolina County, NC, since 2010. Maureen registered her car in Carolina County immediately after moving here and dutifully paid property taxes on the car each year. In 2020, Maureen realizes that she should be exempt from North Carolina personal property taxes under the Servicemembers Civil Relief Act. She brings the appropriate documentation to the Carolina County tax office and requests that her tax payments for 2010 through 2020 be refunded.

Is Maureen the Marine entitled to a refund?

4. Billy has been taxed for a detached garage ever since he built the house in 2010. Billy has never had a detached garage. In 2020, Billy realizes this error and proves to the tax office that the alleged garage never existed. He requests a refund for the excess taxes he paid due to the incorrect assessment.

Is Billy entitled to a refund of any taxes?

5. Wanda Wolfpack has owned Parcel A in Wake County since 2000. She has been assessed (and has paid) both county taxes and Raleigh city taxes every year. In March 2020, the assessor realizes that a mapping error occurred in 1970 and that Wanda's property has never been inside the Raleigh city limits.

For what years, if any, may Raleigh refund the city taxes paid by Wanda?

6. Same facts as above, but assume that Wanda has never paid her Raleigh city taxes because she was certain her property was outside of the city limits. When faced with a foreclosure action in 2020 by the city for delinquent taxes from 2001 through 2019, Wanda pays all of the outstanding city taxes plus interest. One week later, the assessor learns of the mapping mistake and tells Wanda, who immediately demands a refund.

For what years, if any, may Raleigh refund the city taxes paid by Wanda?



# The Collection of Property Taxes on Motor Vehicles

Christopher B. McLaughlin

Since Article 22A was added to the Machinery Act in 1993, the assessment and collection of property taxes on registered motor vehicles has been governed by very different rules from those that apply to taxes on real property and other types of personal property.<sup>1</sup> Those rules changed dramatically again in 2013, with the beginning of the “Tag & Tax Together” system under the law commonly known as H.B. (House Bill) 1779.<sup>2</sup> H.B. 1779 was originally scheduled to take effect in 2009 but was delayed repeatedly by substantive changes to the law and by concerns over development of the necessary computer software.<sup>3</sup>

In a nutshell, H.B. 1779 shifted responsibility for collecting local property taxes on registered motor vehicles (RMVs) from counties to the state Division of Motor Vehicles (DMV). Vehicle owners must now pay property taxes on their motor vehicles for the coming tax year when they register those vehicles with the DMV. If the owner fails to pay the applicable property taxes, the DMV will refuse to register that vehicle and will not issue the required license plate sticker.<sup>4</sup> The owner then risks receiving a ticket for driving an unregistered vehicle.<sup>5</sup>

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This bulletin updates and replaces Christopher B. McLaughlin, “County Obligations for Motor Vehicle Property Tax Collection under the ‘Tag and Tax Together’ Program,” *Property Tax Bulletin* No. 165 (UNC School of Government, Sept. 2013), [www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/ptb165\\_1.pdf](http://www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/ptb165_1.pdf).

1. Article 22A of the North Carolina General Statutes (hereinafter G.S.), which contains special provisions for the taxation of motor vehicles, was added to G.S. Chapter 105 effective 1993 by Chapter 624 of the 1991 North Carolina Session Laws (hereinafter S.L.).

2. S.L. 2005-294. Details of the procedure are available on the website of the North Carolina Department of Transportation, Division of Motor Vehicles (DMV), at [www.ncdot.gov/dmv/vehicle/tagtax/](http://www.ncdot.gov/dmv/vehicle/tagtax/).

3. See, e.g., S.L. 2008-134, S.L. 2009-445, and S.B. (Senate Bill) 1177 (2009), repeatedly extending the effective date of H.B. 1779. Several members of the General Assembly have introduced bills that would have repealed H.B. (House Bill) 1779 entirely and kept the 1993-era taxation system for registered motor vehicles in place. See, e.g., H.B. 1434 (2009).

4. G.S. 20-50.4(a).

5. G.S. 20-111 makes it a Class 3 misdemeanor to drive a vehicle on public streets with an expired registration. According to School of Government faculty member Shea Denning, this criminal motor vehicle offense is the second most common in the state after speeding. Nearly 240,000 people were convicted of driving with expired tags across the state in 2014. For more details, see Shea Denning, *How Many Shades of Registration Violations?* N.C. Crim. L., UNC Sch. of Gov’t Blog (May 27, 2015), <http://nccriminallaw.sog.unc.edu/how-many-shades-of-registration-violations/>.

The motivation behind the new system was to improve the historically low collection rate for RMV property taxes.<sup>6</sup> The effort seems to have worked. Collection rates are now close to 100 percent (see question 2, below, for an explanation why), and monthly RMV tax collections statewide rose from \$47.5 million in the last year under the old system to \$71.5 million in fiscal 2015–16. Even after subtracting DMV collection fees, Tag & Tax Together has increased local government RMV tax revenue by almost 50 percent as compared to the old system.<sup>7</sup>

Although the DMV now collects local taxes on RMVs, counties and cities still have some responsibilities relating to those taxes. These include refunds, bankruptcy blocks, and taxation of unregistered vehicles. This bulletin summarizes the Tag & Tax Together system and highlights the role that local governments continue to play in the taxation of RMVs.

## 1. What vehicles are subject to Article 22A of G.S. Chapter 105?

Article 22A of the Machinery Act applies only to *classified motor vehicles* (see definition in paragraph immediately below). For both property tax and DMV purposes, a *motor vehicle* is (1) a self-propelled vehicle or (2) a vehicle that is designed to be “run upon the highways which is pulled by a self-propelled vehicle.”<sup>8</sup> The term specifically excludes mopeds and “electric assisted bicycles” but otherwise includes all cars, trucks, motorcycles, trailers, and golf carts.<sup>9</sup>

The Machinery Act considers all motor vehicles to be *classified* except for a limited list of special use vehicles, including vehicles exempt from the annual registration requirement such as farm equipment, vehicles eligible for permanent registrations, manufactured homes, trailers registered on a multiyear basis, and vehicles owned or leased by public service companies.<sup>10</sup>

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6. Collection rates for taxes on real property and “regular” personal property have hovered around 98 percent in recent years. Collection rates for taxes on RMVs prior to Tag & Tax Together were substantially lower, usually around 85 percent. Historical collection rate statistics are available on the N.C. Department of the State Treasurer’s website: [www.nctreasurer.com/slg/lfm/financial-analysis/Pages/Analysis-by-Population.aspx](http://www.nctreasurer.com/slg/lfm/financial-analysis/Pages/Analysis-by-Population.aspx).

7. Statistics provided by email from Tina Stone, Personal Property Division Manager, Property Tax Section, Local Government Division, North Carolina Department of Revenue (DOR), June 27, 2016.

8. In G.S. 105-330(2), the Machinery Act adopts the definition of “motor vehicle” used in G.S. 20-4.01(23), from the statutory chapter that creates the DMV and establishes procedures for registration, driver’s licenses, and the like.

9. It is unclear whether the Machinery Act intended to tax all golf carts. The very broad definition of “motor vehicle” found in G.S. 20-4.01(23) and incorporated by the Machinery Act would exclude golf carts from the non-business personal property exclusion from taxation set out in G.S. 105-275(16) and lead to the conclusion that golf carts are taxable. But G.S. 20-4.01(49) defines “vehicle” in part as a device that is intended to transport persons or property on a highway. To be permitted on a highway (meaning a public road), a golf cart must meet the requirements of G.S. 20-121.1 (mandating headlights, stop lights, seat belts, speedometer, etc.). If a golf cart does not satisfy the requirements of that statute, then it may not be used on public roads and, therefore, does not qualify as a “vehicle.” That might mean it is not taxable. Given the confusing and contradictory statutory language involved, it is not surprising that different counties treat golf carts differently for property tax purposes. The DOR recommends that counties tax only those golf carts that are legal for use on public highways.

10. G.S. 105-330.1.

If a motor vehicle is not classified, it is not covered by Article 22A and generally is either taxed as “regular” personal property (such as farm equipment) or under special taxation rules (such as those for public service company property).<sup>11</sup>

The bulk of Article 22A concerns *registered* classified motor vehicles, meaning those that have been registered with the DMV to operate upon the state’s highways.<sup>12</sup> These registrations must be renewed annually.<sup>13</sup> A few types of vehicles must be registered annually each January 1,<sup>14</sup> but the vast majority are registered on a staggered basis throughout the calendar year. Property taxes on a registered classified motor vehicle are tied to the vehicle’s registration date, which could fall in any month of the year. As a result, there is no uniform fixed date on which property taxes on all RMVs become due or delinquent as there is for property taxes on real property and other types of personal property.<sup>15</sup>

If a taxpayer does not wish to drive a vehicle on public streets, that vehicle does not need to be registered. Unregistered classified motor vehicles should be listed, assessed, and taxed just like other taxable personal property such as boats and planes.<sup>16</sup>

For example, assume Wanda Wolfpack owns two cars, a Honda Civic and a Ford Explorer. To save money, Wanda decides she will drive only the Civic for the coming year and lets the registration on the Explorer expire in November 2017. Wanda should list the unregistered Explorer as taxable personal property for 2018 taxes during the January 2018 listing period. Those taxes will be due on September 1, 2018, and delinquent on January 6, 2019, just like property taxes on Wanda’s real property and other taxable personal property. If Wanda fails to list the unregistered Explorer and never renews the car’s registration, the county may use the discovery procedures in G.S. 105-312 to capture those lost taxes.<sup>17</sup> If Wanda fails to list the Explorer and later decides to renew the Explorer’s registration at some point, the county will need to use the “gap billing” procedure described below to capture the taxes on the Explorer for the period it was unregistered and unlisted.

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11. G.S. Chapter 105, Article 23 covers public service companies and describes how public service company property is appraised annually by the DOR.

12. G.S. 20-50(a). G.S. 20-51 provides a list of vehicles that are exempt from the registration requirement, including farm equipment, cars owned by the federal government, and motorized wheelchairs. These vehicles are not classified by the Machinery Act and, therefore, are not subject to Article 22A’s special tax provisions.

13. G.S. 20-66(a).

14. The following types of owners and vehicles operate under the annual registration system that requires renewals every January 1: Civil Air Patrol members; Consular Corps members; National Guard members; N.C. district attorneys, House members, senators, judges, magistrates, and clerks of superior court; state government vehicles; N.C. registers of deeds, sheriffs, and retired sheriffs; and U.S. House members, senators, attorneys, and marshals. *See* DMV, “Renew Your Vehicle registration and Plate,” [www.ncdot.org/dmv/vehicle/registration/](http://www.ncdot.org/dmv/vehicle/registration/).

15. G.S. 105-330.5(c) requires tax assessors to send property tax notices (bills) for all unregistered classified vehicles. The taxes included in these notices will be subject to the same deadlines as property taxes on real property and “regular” personal property, which become due on September 1 and delinquent on January 6 of the fiscal year for which the taxes are levied. G.S. 105-360(a).

16. G.S. 105-275(16) exempts from taxation most non-business personal property, including household furnishings, clothing, pets, and lawn equipment. However, this exclusion does not include motor vehicles, mobile homes, planes, and boats, meaning that these types of personal property are taxable.

17. *See also infra* note 58.

## 2. How does the Tag & Tax Together system work?

For a vehicle with an existing registration, roughly sixty days before that registration expires the DMV will send the owner a combined tax and registration notice.<sup>18</sup> This document is the equivalent of a property tax bill. It informs the owner about the obligation to pay local property taxes and registration fees in order to renew the vehicle's registration and to obtain a current registration sticker for the vehicle's license plate. The notice will include the appraised value of the vehicle and the amount of local property taxes for the coming tax year, as well information relating to the registration renewal process, such as the requirement that the vehicle must be inspected within ninety days of the registration renewal.<sup>19</sup> Owners wishing to register vehicles for the first time will be informed of the vehicles' tax values and property tax levies when they visit the DMV to pay initial registration fees. For both initial registrations and renewals, the vehicle's tax year will mirror the vehicle's registration year.<sup>20</sup>

Counties no longer have any collection remedies for property taxes levied on RMVs on or after October 1, 2013, the first month Tag & Tax Together was in place.<sup>21</sup> The only collection remedy for an unpaid property tax on an RMV is denial of registration by the DMV. But this remedy is extremely effective, as RMV tax collection rates now exceed 99 percent under the new system.<sup>22</sup> Under the old system, RMV collection rates never exceeded 90 percent, in large part because the DMV's ability to block registrations due to non-payment of RMV taxes did not arise until the following registration year.<sup>23</sup> Thanks to the immediate registration block under the Tag & Tax Together system, the default rule is that all vehicle owners pay their RMV taxes at the time of registration.

The only two exceptions to the rule requiring immediate payment of RMV property taxes at registration are (1) when a "limited registration plate" (discussed further in the next question) is issued by the DMV instead of a full registration, usually for vehicles purchased from dealers, and (2) pre-bankruptcy petition taxes subject to what is known as the automatic stay (discussed further in question 4, below).

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18. G.S. 105-330.5(a).

19. G.S. 20-183.4C creates the safety and emissions inspection requirement.

20. G.S. 105-330.6(a).

21. G.S. 105-330.4(c).

22. See the URL listed *supra* note 6.

23. Under the system in place from 1993 to 2013, counties billed RMV property taxes roughly three months after owners registered their vehicles. If those taxes were not paid, the county could ask the DMV to block the owner's next registration renewal. This lag meant that an owner could wait a full year after registration to pay property taxes on a vehicle without being affected by a registration block. For the full details of the old RMV property tax collection system, see Christopher B. McLaughlin, "The Collection of Taxes on Motor Vehicles," *Property Tax Bulletin* No. 160 (UNC School of Government, Dec. 2010), <http://sogpubs.unc.edu/electronicversions/pdfs/ptb160.pdf>.

### 3. What are limited registration plates and how do they affect the collection of property taxes on RMVs?

A limited registration plate (LRP) is a temporary registration that expires the last day of the second month after it is issued.<sup>24</sup> LRPs are most commonly issued after a taxpayer purchases a vehicle from a dealer.<sup>25</sup> But an LRP may also be issued to a taxpayer who purchases a vehicle in a private sale from another taxpayer<sup>26</sup> or when an existing registration is renewed more than twelve months after it expires.<sup>27</sup>

In any of these situations, the taxpayer has options regarding the payment of property taxes on the RMV. The owner may either (1) pay all local property taxes owed on the vehicle for the coming year and receive a full annual registration or (2) decline to pay any property taxes on the vehicle and receive only a limited registration that expires. If the taxpayer chooses option (2) and receives an LRP, then the full property tax bill on the vehicle for the coming tax year will be due on the last day of the second month following the date the vehicle owner applied for a license plate.<sup>28</sup> If the taxes are not paid by the due date, the limited registration will expire and interest will begin to accrue on the unpaid RMV property taxes.<sup>29</sup>

Regardless of when the owner pays the property taxes on the vehicle, the property tax year will coincide with the registration year and runs from the first day of the month after the new registration is issued until the last day of the month in which the new registration expires.<sup>30</sup>

For example, assume Billy Blue Devil purchases a used Honda Accord in April 2017 from Coach K's Used Kars, which is a licensed dealer. Billy decides not to pay any property taxes on the Honda at the time of purchase. Instead he pays only the DMV registration fee and receives a limited registration that is good through June 30, 2017 (the last day of the second month after he applies for the registration).

If Billy wishes to obtain a full registration for the Honda, he must pay the full amount of 2017–18 property taxes on the Honda to the DMV. If he fails to do by June 30, 2017, he will risk a ticket for an expired registration and will accrue interest on the unpaid property taxes. Interest accrues at the rate of 5 percent for the first month and then 0.75 percent on the first day of every month thereafter until the property taxes are paid.<sup>31</sup>

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24. G.S. 20-79.1A(b).

25. G.S. 20-79.1A(a)(1). Note that the vehicle need not be new, it simply needs to be newly purchased from the dealer. Both new and used cars purchased from dealers qualify for the limited registrations described in this section.

26. While it is unclear whether the drafters of the statute intended to cover private sales, the language in G.S. 20-79.1A(a)(1) is broad enough to cover private sales as well as dealer sales.

27. G.S. 20-79.1A(a)(2). The DOR intends to work with the DMV to seek a technical statutory change that would eliminate the availability of limited registration plates (LRPs) for registrations that were expired for more than one year. But until that change occurs, LRPs remain available for that situation. As discussed in question 5, below, if a registration remains expired for more than a year, when the registration is renewed the DMV should change the registration year and tax year for the vehicle and a "gap bill" should be issued by the county to tax the vehicle for the time period it was unregistered.

28. G.S. 105-330.4(a)(4).

29. See question 10, below, for more on interest calculation on late RMV taxes.

30. G.S. 105-330.6(a).

31. G.S. 105-330.4(b).

Remember that neither the county nor the DMV have any enforced collection remedies for Billy's unpaid RMV taxes other than the DMV's refusal to issue a full registration for the Honda. The county has no authority to attach Billy's bank accounts or wages or to levy and sell his car, as it could for other delinquent property taxes.

#### **4. May the DMV require payment of RMV property taxes at the time of registration for taxpayers who are in bankruptcy?**

When a taxpayer files a bankruptcy petition, an *automatic stay* immediately arises.<sup>32</sup> This stay applies to every bankruptcy debtor and creates a variety of prohibitions on creditors and third parties, two of which are particularly important for the collection of RMV taxes.

The first is the prohibition against “the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case . . . or to recover a claim against the debtor that arose before the commencement of the case.”<sup>33</sup> In plain English, this provision essentially bars all efforts to collect debts that arose prior to the filing of the bankruptcy petition.

The second is the prohibition on “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.”<sup>34</sup> The term “estate” refers to property of the debtor that is under the control of the bankruptcy court. With limited exceptions, the bankruptcy estate includes all of the debtor's property, including property owed to the debtor but held by other parties (e.g., wages, bank accounts, rents, etc.).<sup>35</sup> This provision effectively bars a debt collection action that affects any property of the debtor. And because it makes no reference to pre- or post-petition debts, the prohibition therefore applies to collection efforts for all debts regardless of when they arose.

Read together, these bankruptcy law provisions prohibit two things: (1) “actions” to collect pre-petition debts and (2) collection efforts for all debts (regardless of when they arose) if those efforts affect the property of the debtor.

The strength and scope of the automatic stay raises a big question about North Carolina property tax collections on RMVs: Does a motor vehicle registration block against a taxpayer who has filed for bankruptcy violate the automatic stay?

While this question might have arisen under the former RMV tax system, it takes on even greater importance under Tag & Tax Together. Under the old system, county tax collectors were authorized to place a block on the renewal of a vehicle's registration if property taxes owed on the vehicle remained unpaid eight months after the vehicle's registration was issued or renewed. Under Tag & Tax Together, the registration block takes effect immediately; if the vehicle owner

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32. 11 U.S.C. § 362(a). For a more detailed explanation of how bankruptcy law affects property taxes, see Christopher B. McLaughlin, *Fundamentals of Property Tax Collection Law in North Carolina* (UNC School of Government, 2011), ch. 16.

33. 11 U.S.C. § 362(a)(1).

34. 11 U.S.C. § 362(a)(3).

35. 11 U.S.C. § 541.

does not pay the property taxes on the vehicle, the DMV will not issue a new registration or renew an existing registration for that vehicle.<sup>36</sup>

Concerned about its pending new role in property tax collection, in 2013 the DMV requested a legal opinion from the Office of the North Carolina Attorney General on how the automatic stay affects registration blocks. In its response, the Attorney General's office concluded that a registration block for taxes that arose prior to a bankruptcy filing would violate the automatic stay but that blocks for taxes that arose after the filing were permissible.<sup>37</sup>

The Attorney General's advice appears sound. Happily for the DMV and for local property tax collectors, nearly all RMV property taxes arise after the filing of bankruptcy petitions. This means that in nearly all situations the DMV is permitted to require payment of RMV property taxes at the time of registration. The only situation in which this requirement might violate the automatic stay is when a taxpayer obtains a limited registration on a newly purchased vehicle and files for bankruptcy prior to paying the property taxes on that vehicle. Questions and issues arising in this situation are discussed below.

### Is the Tax Pre- or Post-Petition?

For bankruptcy purposes, a North Carolina property tax obligation arises on the date the property is listed for taxes.<sup>38</sup> For taxes on registered motor vehicles, the listing date is the date on which the owner applies for an initial registration or renews an existing registration (even if that renewal occurs after the existing registration expires).<sup>39</sup>

Under both the old and the new RMV tax systems, if the taxpayer renews a registration or applies for an initial registration before filing for bankruptcy, then the RMV taxes relating to that registration are considered *pre-petition* taxes. If the renewal or initial registration occurs after a bankruptcy filing, then the related taxes are said to be *post-petition* taxes. Under Tag & Tax Together, RMV taxes are payable on the same day the vehicle is registered. This means that nearly always the RMV taxes will either be paid before a bankruptcy filing occurs (in which case the automatic stay is not a concern) or will arise after a bankruptcy filing (in which case they will be *post-petition* taxes).

### Post-Petition RMV Taxes

Registration blocks for post-petition taxes are almost certainly permissible under bankruptcy law. The issue turns on whether a registration block is an "act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate" under Title 11, Section 362(a)(3) of the United States Code (U.S.C.). If so, then the block is barred by that section. If not, then the block is permitted.

Nationwide, courts generally agree that motor vehicle registrations (along with drivers' licenses) are privileges and not property. This means that the refusal to issue a vehicle registration for failure to pay post-petition obligations is not an act that affects the property of the debtor and, therefore, does not violate the automatic stay.<sup>40</sup>

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36. G.S. 20-50.4(a).

37. Letter from Neal Dalton, Special Deputy N.C. Attorney General, to James Forte, Commissioner, DMV (Feb. 26, 2013).

38. *In re Member's Warehouse, Inc.*, 991 F.2d 116 (4th Cir. 1993).

39. G.S. 105-330.2(a).

40. *See, e.g., Geiger v. Pennsylvania*, 143 B.R. 30 (Bankr. E.D. Pa. 1992) (refusal to reinstate driver's license for failure to pay a post-petition debt did not violate automatic stay because driver's license was

Assuming that North Carolina bankruptcy courts would adopt the same reasoning, the DMV may refuse to issue a vehicle registration or renewal based on a taxpayer's failure to pay RMV property taxes that arose *after* a bankruptcy petition.

### Pre-Petition RMV Taxes

The automatic stay likely prohibits registration blocks for pre-petition taxes. But the only situation in which unpaid RMV taxes might be pre-petition is when a taxpayer buys a car from a dealer and obtains a limited registration and then files for bankruptcy before paying the RMV property taxes and obtaining a full-year registration. In this situation, the taxes arose at the time the limited registration was issued, meaning that they would be pre-petition.

U.S.C. Title 11, Section 362(a)(1) prohibits all *actions* or *proceedings* to collect pre-petition debt. The consensus among the few courts that have wrestled with this issue is that the placement of a block on the issuance of any type of a license or a registration—or the refusal to take steps to remove a block put in place prior to a bankruptcy filing—is an *action* under Section 362(a)(1) and, therefore, violates the automatic stay.<sup>41</sup>

Among the several exceptions to the automatic stay is one for efforts by a government to enforce its “police and regulatory power.”<sup>42</sup> If the registration block for unpaid taxes were to be considered a *regulatory action* and not a *debt collection action*, it would fall outside of the automatic stay and would be permissible regardless of when the taxes arose.

That said, the police and regulatory power exception most likely does not apply in cases involving blocks for pre-petition taxes. In *Perez v. Campbell*,<sup>43</sup> the U.S. Supreme Court struck down Arizona's suspension of bankruptcy debtors' drivers' licenses based solely on the non-payment of pre-petition judgments based on the negligent operation of their motor vehicles. Ever since, lower courts have refused to apply the police and regulatory exception to governmental actions that are motivated by the government's “pecuniary interest” rather than by public safety and health concerns. In other words, if the action in question is aimed primarily at helping the government collect a debt, then that action is prohibited by the automatic stay.

North Carolina's registration block seems to be motivated entirely by pecuniary interests—tax collection—and not by public health and safety interests. The block has no relationship to the vehicle owner's driving or criminal history; it is based solely on a financial obligation unrelated to the safety of our state's highways. As a federal bankruptcy court in Rhode Island stated: “If the law looks like a revenue collection measure and operates like a revenue collection

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not property of the debtor); *In re Thomas*, No. 05-31615, 2007 WL 1079980 (Bankr. N.D. Cal. Apr. 5, 2007) (government could require payment of post-petition parking fines before permitting bankruptcy debtor to renew motor vehicle registration).

41. *See, e.g., Jessamey v. Town of Saugus*, 330 B.R. 80 (Bankr. D. Mass. 2005) (refusal to lift driver's license and registration block based on failure to pay pre-petition taxes violates automatic stay); *Bertuccio v. Cal. State Contractors License Bd.*, 414 B.R. 604 (Bankr. N.D. Cal. 2008) (state had affirmative duty to reinstate contractor's license that was suspended prior to bankruptcy filing for contractor's failure to pay taxes).

42. 11 U.S.C. § 362(b)(4).

43. 402 U.S. 637 (1971).

measure, the chances are excellent that, when all is said and done, it is indeed a revenue collection measure.<sup>44</sup>

Assuming that North Carolina bankruptcy courts would adopt similar reasoning as did previous courts that have addressed this issue, the DMV may not refuse to issue a vehicle registration or renewal based on a taxpayer's failure to pay RMV taxes that arose before the filing of a bankruptcy petition.

And even when this situation does arise, bankruptcy law prohibits the registration block only for the first year of property taxes. All subsequent property taxes levied on the vehicle will be considered post-petition taxes, for which a block is permitted. For example, assume that Susie Seahawk purchases a new Chevy pick-up truck on November 5, 2017. She does not pay any property taxes on the vehicle and receives a limited registration. Susie files for bankruptcy on December 1, 2017, before paying the 2017–18 taxes on her Chevy.

When the county tax collector learns of Susie's bankruptcy filing, the collector should inform the DMV and request that Susie be permitted to obtain a "regular" registration for the rest of the 2017–18 registration year without paying the 2017–18 property taxes on her Chevy.

If Susie remains in bankruptcy through November 2018, she will be required to pay the 2018–19 taxes on her Chevy before she can renew the registration for 2018–19. Those taxes are considered post-petition and, therefore, eligible for the registration block. But Susie could not be forced to pay the 2017–18 taxes on her Chevy because those taxes are pre-petition and, therefore, not eligible for a registration block due to the automatic stay.

#### **Will Unpaid Pre-Petition RMV Taxes Ever Be Collected?**

If the DMV does not collect pre-petition RMV taxes due to the automatic stay, those taxes may never be paid. The local government may submit a claim for those taxes in the taxpayer's bankruptcy proceeding, but if that claim is not paid the local government will have no collection remedies for those unpaid RMV taxes after the bankruptcy proceeding ends.<sup>45</sup> Only the DMV has collection authority for taxes on RMVs, and the DMV collects only RMV taxes for the coming year. At the time of the writing of this bulletin, the DMV does not have the capacity to levy and collect prior years' RMV taxes at the time of registration.<sup>46</sup> The local government may send a bill to the taxpayer and hope that she will pay it voluntarily, but if not, those taxes will need to be written off using the insolvents list process described in G.S. 105-373(2).

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44. *Hoffman v. Clark*, 65 B.R. 985, 989 (Bankr. D.R.I. 1986) (holding that state law requiring payment of delinquent taxes prior to transfer of liquor license was not covered by the "police and regulatory" exception to the automatic stay).

45. G.S. 105-330.4(c) eliminates all local government collection authority for RMV property taxes.

46. Even if the DMV did attempt to collect prior years' RMV property taxes after a bankruptcy, its authority to do so could be limited by federal bankruptcy law. In Chapter 13 bankruptcies, a discharge eliminates personal responsibility for unpaid priority claims. This means that a taxpayer who avoided paying RMV property taxes after obtaining a limited registration plate and then filing for Chapter 13 bankruptcy can never be forced to pay those taxes.

## 5. How are unregistered motor vehicles taxed?

Counties and municipalities remain responsible for collecting taxes on unregistered motor vehicles, which are taxed the same as other types of personal property such as boats and planes. The problem is, motor vehicles can move back and forth between registered and unregistered status. That makes it tricky to determine which entity (the DMV or the county) collects which taxes for which time period.

For example, assume that the registration for Billy Blue Devil's Honda Civic expires in September 2016 but he does not renew the Civic's registration until March 2017. Does the DMV tax the car from October 2016 to March 2017 as a registered vehicle or does the county tax the car for that period as an unregistered vehicle?

To answer that question, the tax office needs to know whether the vehicle's registration and tax year changed due to the late renewal. A vehicle's tax year corresponds with its registration year and runs for the twelve months following the application for a new registration or the expiration of an existing registration.<sup>47</sup>

In the example above, the original tax and registration year for Billy's Civic ran from October to September. The key question to ask is whether the tax and registration year changed due to Billy's late renewal in March 2017. Is the vehicle's tax and registration year now April to March? If so, then the vehicle was unregistered during the period between expiration and renewal (the so-called "gap period") and the county must tax it for those months using the "gap billing" process described below.

Or is Billy's tax and registration year still October to September? If so, then the DMV will be responsible for collecting the taxes on the vehicle for the time in between the expiration of the registration and the renewal of that registration. The late renewal relates back to the prior expiration date, and the vehicle is considered registered (and therefore the responsibility of the DMV) for the entire period.

The DMV's standard practice is to change a vehicle's registration year (and therefore the vehicle's tax year) in two circumstances:

1. Where the vehicle was not drivable at the time the old registration expired
2. Where it has been more than twelve months since the old registration expired<sup>48</sup>

If neither of these circumstances exists, then the vehicle's registration and tax year should remain the same despite a delay in the renewal of the registration.

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47. G.S. 105-330.6(a). Note that G.S. 20-66(g) provides a fifteen-day grace period after the registration expires during which an owner may not be cited for driving an unregistered vehicle. This grace period does not affect the vehicle's tax year.

48. Based on multiple conversations with officials from the Property Tax Division of the DOR and from the DMV.

To stay informed about when gap bills are required, counties can use NCVTS, the Tag & Tax Together software system, to create monthly reports listing all vehicles for which the tax and registration years changed in the past thirty days.<sup>49</sup> Below are a few examples demonstrating how taxation of late registration renewals should work. The relevant statutes for purposes of this discussion are G.S. 105-330.3 and -330.4.

**Example 1: No Change to Vehicle Tax Year**

Billy Blue Devil owns a Ford Fusion with a Durham County registration and tax year that ends on October 31, 2016. Billy decides not to renew the registration when it expires. But in February 2017 his other car breaks down, making it necessary for Billy to start driving the Ford again. He visits the DMV and renews the registration for the Ford on February 20, 2017. The DMV does not change the registration and tax year for Billy's Ford.

*A. What taxes must Billy pay when he renews the Ford's registration in February 2017?*

Billy will be required to pay the 2016–17 taxes on the Ford, plus interest. Interest begins to accrue, at a rate of 5 percent, on November 16, 2016, and runs through December 31, 2016; the rate is 0.75 percent each month for January 2017 and February 2017.<sup>50</sup>

*B. When will the tax year for the Ford end?*

Billy's late renewal did not change the Ford's tax year. It will run from November 2016 to October 2017.

*C. Does the county have any responsibility to collect property taxes on Billy's Ford?*

No. Despite Billy's late renewal, for tax purposes the Ford is treated as if it had always been registered. The DMV has sole responsibility for collecting taxes on registered motor vehicles.

**Example 2: Car Not Drivable, Vehicle Tax Year Changes**

Wanda Wolfpack owns a Chevy Camaro. Her Wake County registration and tax year ends on October 31, 2016. Because her Camaro is not drivable at that time, she does not renew her registration in 2016. In June 2017, Wanda gets the Camaro serviced and registers it with the DMV, which creates a new tax year for the Camaro.

*A. What taxes must Wanda pay when she renews the Camaro's registration in June 2017?*

Wanda will pay the 2017–18 taxes on the Camaro. No interest is charged because it is not considered a late registration; it is essentially a new registration with a new tax year.

*B. When will the tax year for the Camaro end?*

The new registration and tax year for the Camaro will run from July 2017 to June 2018.

*C. Does the county have any responsibility to collect property taxes on Wanda's Camaro?*

Yes. Under G.S. 105-330.3(a1), the county is responsible for a gap bill to recapture the property taxes for the period between the expiration of Wanda's prior registration and her new registration. In this case, the gap billing should cover eight months: November 2016 through June 2017.

49. Based on numerous conversations with DOR officials.

50. G.S. 105-330.4(b).

The tax is prorated based on what the taxes would have been for a full tax year using the tax rate and tax value in place at the time the bill is created.<sup>51</sup> Gap bills become delinquent and begin to accrue interest on the first day of the second month after the bill is created.<sup>52</sup>

Presumably Wake County would learn of Wanda's new registration and begin to create her gap bill in July 2017. (It might be June 2017, but there likely will be some delay between registration with the DMV and provision of notice to the county). Assume that Wake County's tax rate as of July 2017 is \$0.60 and the value of Wanda's Camaro as of January 1, 2016 (the year in which her old registration expired), was \$10,000. A full year of tax would be \$60. Wanda's prorated gap bill for eight months would therefore be \$40. It would be due on September 1, 2017. If not paid on time, interest would accrue at 5 percent for September and 0.75 percent for every month thereafter.<sup>53</sup>

*D. What collection remedies may the county use for the gap bill?*

Despite its unusual calculation method, the gap bill is a regular personal property bill for collection purposes. The county always may collect a gap bill using attachment and garnishment or levy and sale.<sup>54</sup> If the taxpayer also owns real property in the county, foreclosure is an option because the tax lien on real property includes taxes on all personal property listed by the same taxpayer in the same county.<sup>55</sup>

However, the county may not place a block on the taxpayer's subsequent motor vehicle registration to collect a gap bill for the period in which the vehicle was unregistered. The DMV will require payment at the time of registration only of property taxes for the period during which the vehicle is registered.<sup>56</sup>

**Example 3: Unregistered for More Than a Full Fiscal Year, Vehicle Tax Year Changes**

Tim Tarheel owns a Toyota Camry. His Buncombe County registration and tax year ends on October 31, 2016. He fails to renew his registration until October 2018, at which time the DMV creates a new tax year for the Camry.

*A. What taxes must Tim pay when he renews the Camry's registration in October 2018?*

Tim will pay the 2018–19 taxes on the Camry. No interest is charged because it is not considered a late registration; it is essentially a new registration with a new tax year.

51. G.S. 105-330.3(a1)(2)a. currently requires that the vehicle be assessed based on the tax value as of January 1 of the year in which the registration expired. However, during the 2017 legislative session the DOR plans to pursue a technical amendment to this provision that would require the vehicle to be assessed using the tax value as of January 1 of the year in which the gap bill is created. G.S. 105-330.3(a1)(2)b. mandates that the tax rate for a gap bill be the rate in effect at the time the bill is created.

52. Interest accrues on gap bills at a rate of 5 percent for the first month of delinquency and 0.75 percent for all subsequent months. G.S. 105-330.3(a1)(2)e.

53. G.S. 105-330.3(a1)(2)e.

54. G.S. 105-366, -367, and -368 provide details for the attachment and garnishment and levy and sale collection remedies.

55. G.S. 105-355(a). Motor vehicles are personal property. However, *registered* motor vehicles are removed from the "regular" property tax collection procedures by G.S. 105-330.4(c) and are, therefore, not included in the tax lien on real property.

56. G.S. 20-50.4. While this provision does not make it entirely clear that the DMV can block registration only for taxes on registered motor vehicles, numerous conversations with officials from the DMV and from the DOR have confirmed this to be true.

*B. When will the tax year for the Camry end?*

The new registration and tax year for the Camry will run from November 2018 to October 2019.

*C. Does the county have any responsibility to collect property taxes on Tim's Camry?*

Yes. Just as in Example 2C, above, the county will be required to bill Tim for the months his Camry was not registered.

Tim's Camry was unregistered for twenty-four months—November 2016 through October 2018—meaning that the gap bill will be prorated for twenty-four months of taxes. The tax rate will be Buncombe County's tax rate as of the date the gap bill is prepared, which likely would be November 2018. The tax value of the Camry will be the car's tax value as of January 1, 2016, the year in which Tim's prior registration expired. The gap bill would become delinquent and accrue interest on the first day of the second month after the bill is created, at rate of 5 percent for the first month and 0.75 percent for every month thereafter.<sup>57</sup>

*D. Could the county create a discovery bill<sup>58</sup> for Tim's Camry?*

Yes, but that would be a much more complicated approach. It would require two different tax bills with different tax values, tax rates, delinquency dates, and interest rates.

The discovery bill would cover the 2017–18 tax year for Tim's failure to list his unregistered Camry as personal property. The bill would use the car's tax value as of January 1, 2017, and Buncombe County's tax rate for the 2017–18 tax year. Discovery penalties of 20 percent (for missing two listing periods, 2017 and 2018) must be added. The bill would become delinquent on January 6, 2019, and accrue interest at the "regular" Machinery Act<sup>59</sup> rate of 2 percent for the first month and 0.75 percent for every month thereafter.<sup>60</sup>

The related gap bill would cover the months the Camry was unregistered prior to and after the 2017–18 tax year (twelve months total: November 2016 through June 2017 and July 2018 through October 2018). It would have the same tax rate, tax value, delinquency date, and interest rate as the gap bill for Tim's Camry described above—all of which differ from the discovery bill.

G.S. 105-330.3(a1) contemplates the use of a discovery bill when a vehicle remains unregistered for more than a full tax year. That said, experts at the DOR and this author agree that the better approach in this circumstance is to avoid using the discovery process. The recommended method is a single gap bill prorated for all of the months between expiration and registration, as described above. The DOR plans to work with the General Assembly to amend G.S. 105-330.3 to eliminate the need for discovery bills in gap situations.<sup>61</sup>

*E. What collection remedies may the county use for the gap bill and/or the discovery bill?*

The county may rely upon the same remedies used for the gap bill described above in Example 2C.

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<sup>57</sup> G.S. 105-330.3(a1)(2)e.

<sup>58</sup> "Discovery" describes the process by which assessors assess property taxes on property that should have been listed for taxation by taxpayers. The discovery process is governed by G.S. 105-312.

<sup>59</sup> See generally G.S. Chapter 105, Subchapter II.

<sup>60</sup> G.S. 105-312 describes the discovery billing process. G.S. 105-360 creates the interest provisions for non-RMV property taxes.

<sup>61</sup> Based on multiple conversations with David Baker, Director, Local Government Division, DOR.

## 6. When are ownership, situs, and taxability of RMVs determined?

The ownership, situs, and taxability of RMVs are determined as of the date on which a new registration is applied for or on which an existing registration is renewed.<sup>62</sup> If a taxpayer has moved since the vehicle's last renewal, he or she must update his or her address with the DMV at the next renewal and the taxpayer's tax bill will be recalculated based on the vehicle's new situs.

## 7. When are RMV tax values determined and how can they be appealed?

For a new registration that begins, or an existing registration that expires, between January 1 and August 31, the value of the RMV is determined as of the January 1 of the current calendar year.<sup>63</sup> For a new registration that begins, or an existing registration that expires, between September 1 and December 31, the tax value of the RMV is determined as of January 1 of the following calendar year.<sup>64</sup>

Assume that the registration for Tina Tarheel's Chevy Malibu expires on July 31, 2016. Her 2016–17 property taxes will be based on the appraised value of that vehicle as of January 1, 2016. But if Tina also has a Ford Explorer with a registration that expires September 30, 2016, her 2016–17 taxes on the Explorer will be based the appraised value of that vehicle as of January 1, 2017.

RMV tax appraisals must be based on the schedule of values, standards, and rules issued annually by the DOR, subject to adjustments for local market conditions, mileage, and vehicle condition.<sup>65</sup> A vehicle registered for the first time after purchase from a dealer must be appraised at its purchase price.<sup>66</sup>

A taxpayer who wishes to appeal the tax value of her RMV must first pay the tax owed on the initial appraisal and then file an appeal with the assessor within **thirty** days of the tax's due date.<sup>67</sup> RMV taxes on staggered registrations are due on the fifteenth day of the month following the expiration of the existing registration.<sup>68</sup> For new registrations, taxes are due on the date when the taxpayer applies for the registration.<sup>69</sup>

If the taxpayer wins an appeal and the tax value of her RMV is decreased, the county (and not the DMV) is responsible for providing the required refund to the taxpayer. Interest will be due on that refund if the appeal is resolved by the county board of equalization and review or by the state Property Tax Commission to the same extent interest would accrue on other types of

62. G.S. 105-330.2(a).

63. G.S. 105-330.2(a)(1).

64. G.S. 105-330.2(a)(2).

65. G.S. 105-330.2(b). No applications are required for the exemptions and exclusions from taxation listed in G.S. 105-282.1(a)(1), which include government property (G.S. 105-278.1) and rental cars and trucks that are subject to county and municipal gross receipts taxes (G.S. 105-275(42)). For more details about rental vehicle gross receipts taxes, see Christopher B. McLaughlin, "Beyond the Property Tax: Collecting Other Taxes and Fees," *Property Tax Bulletin* No. 162 (UNC School of Government, Feb. 2011), <http://sogpubs.unc.edu/electronicversions/pdfs/ptb162.pdf>.

66. G.S. 105-330.2(b).

67. G.S. 105-330.2(b1).

68. G.S. 105-330.4(a)(2).

69. G.S. 105-330.4(a)(2).

property tax appeals.<sup>70</sup> No interest is required if the assessor agrees to lower the RMV tax value under G.S. 105-296(i) without a formal appeal to the county board of equalization and review.

## 8. How does a taxpayer obtain an exemption or exclusion for an RMV?

A taxpayer who seeks an exemption or exclusion for an RMV must submit an application within thirty days of the date on which taxes on the RMV are due.<sup>71</sup>

If the assessor approves the application, the vehicle must be removed from the tax rolls unless and until the taxpayer subsequently provides information indicating that the vehicle no longer qualifies for an exemption or exclusion. A taxpayer's failure to provide the required information mandates a \$100 penalty per registration period if the assessor later issues a discovery bill due to the vehicle's loss of eligibility.<sup>72</sup>

If the assessor rejects an RMV exemption or exclusion application, the taxpayer has thirty days to appeal the assessor's decision.<sup>73</sup> Those appeals are resolved in the same manner as are discovery bill appeals under G.S. 105-312(d).

## 9. What tax rate applies to RMVs?

RMVs are subject to the property tax rate in effect for all other property in the taxing unit on the day the DMV creates the "invitation to renew," which is the equivalent of a tax bill for RMVs.<sup>74</sup> All local governments are required to update their property tax rates with the DMV annually so that the DMV can accurately calculate RMV tax bills.

For example, assume that the registration for Donald Duke's Toyota Camry expires on July 31, 2017. Donald's car is registered in Carolina County. The county's tax rate for 2016–17 is \$.62. The county's tax rate for 2017–18 will be \$.65. When the DMV calculates the 2017–18 invitation to renew for Donald's Camry in May 2017, it should use the \$.62 tax rate that is then in effect in Carolina County. Although Donald's new RMV tax year will begin after the county's new 2017–18 tax rate arises on July 1, he will be assessed taxes on the Camry based on the county's old tax rate because his invitation to renew was calculated when the old rate was still in effect.

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70. G.S. 105-360(e) applies Machinery Act interest at the rate of 2 percent for the first month and 0.75 percent for all successive months for refunds resulting from decisions by county boards of equalization and review. G.S. 105-290(b)(4) applies interest to refunds based on decisions issued by the Property Tax Commission at the same rate that is applied to late state income tax refunds under G.S. 105-241.21. That rate is set every six months by the DOR and is, as of the date of this bulletin, 5 percent.

71. G.S. 105-330.3(b). Taxes on a new registration are due on the date the owner applies for the registration. G.S. 105-330.4(a)(2). Taxes on a vehicle that has received a limited registration plate are due when that limited registration expires, which is on the last day of the second month after the registration is obtained. G.S. 104-330.4(a)(4).

72. G.S. 105-330.3(c).

73. G.S. 105-330.2(b2).

74. G.S. 105-330.5(a).

## 10. When does interest apply to late RMV taxes and how is it calculated?

Interest begins to accrue when RMV taxes remain unpaid after their due date.<sup>75</sup> The due date for staggered registrations is the fifteenth day of the month after the registration expires.<sup>76</sup> For limited registrations issued after vehicle purchases, the due date is the last day of the second month following the date the owner applied for the limited registration.<sup>77</sup> (Note that both of these dates are tied to the date on which a driver can receive a ticket for driving with an expired registration.) The due date for new registrations is the date on which the registration is applied for, but because taxes for new registrations must be paid at the time of registration, they should never accrue interest.<sup>78</sup>

The interest calculation is a bit unusual. Interest accrues at 5 percent for the remainder of the month in which the taxes became due. No interest accrues the first month following the due date. For the second month after the due date and every month thereafter, interest accrues at 0.75 percent per month.<sup>79</sup> As with “regular” property taxes, the interest on RMV taxes should be simple and not compound. In other words, the county should not accrue interest upon prior interest charges.

Assume Billy Blue Devil’s registration expires September 30, 2016. If he renews his registration on November 10, 2016, total interest would be 5 percent: 5 percent for the period October 16 to October 31, 0 percent for November. Were Billy to renew his registration on December 10, 2016, total interest would be 5.75 percent: 5 percent for October 16 to October 31, 0 percent for November, and 0.75 percent for December.

However, if Billy chose not to register his car for several months because it was not drivable, when he finally does register his car again interest should not apply because the DMV should create a new registration for his vehicle with a new registration year and tax year. See the discussion of changes in tax years in question 5, above.

## 11. What collection remedies do counties have for unpaid RMV taxes?

None. The Machinery Act specifically eliminates all “regular” property tax enforced collection remedies for taxes on RMVs levied after on or after October 1, 2013.<sup>80</sup> The only collection remedy for RMV taxes is the DMV requirement that property taxes for the coming tax year be paid at the time of initial vehicle registration or at renewal. If RMV property taxes are not paid at the time of registration or renewal (because a limited registration was issued or because of a bankruptcy filing, situations that are described in questions 3 and 4, above), neither the DMV nor the county has the authority to use attachment and garnishment or levy and sale as collection remedies against the taxpayer.

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75. G.S. 105-330.4(b).

76. G.S. 105-330.4(a)(2).

77. G.S. 105-330.4(a)(4).

78. G.S. 105-330.4(b).

79. G.S. 105-330.4(a)(2).

80. See G.S. 105-330.4(c).

## 12. Who is responsible for processing and paying refunds and releases of RMV taxes?

Counties are responsible for all refunds and releases of RMV taxes. The DMV has no responsibility for this process.

In general, the refund and release rules that apply to “regular” personal property taxes under G.S. 105-381 also apply to RMV taxes. That statute limits refunds and releases to situations that involve illegal taxes or taxes levied due to clerical error by a county.<sup>81</sup> Refunds of RMV taxes should be rare, most often arising for situs issues (vehicle taxed by wrong county or municipality). Valuation controversies must be resolved through the appeal process described in question 7, above, and not under the G.S. 105-381 refund and release process.

There are three special refund and release provisions unique to RMV taxes. The first two are the prorated refund and credit provisions discussed in questions 13 and 14, below. The third special provision authorizes local governments to reduce or waive entirely the interest on unpaid RMV taxes that arose under the “old” RMV tax system.<sup>82</sup>

## 13. When is a taxpayer entitled to a prorated refund for RMV taxes?

The RMV property tax provisions create a unique prorated refund for vehicles that are transferred or moved out of state in the middle of the tax year. The general property tax rule is that if property is sited in the taxing jurisdiction on the listing date (January 1 for real property and “regular” personal property, the registration/renewal date for RMVs), then that property is taxed for the entire year. If a house burns down in March, a boat sinks in May, or a plane is sold to an out-of-state owner in July, that property is still fully taxable to the January 1 owner for the coming tax year.<sup>83</sup>

But an exception to that general rule applies to motor vehicles that are transferred or moved out of state in the middle of the tax year. In either of those situations, G.S. 105-330.6(c) allows a taxpayer to turn in the vehicle’s license plate to the DMV and obtain a refund for the number of full months remaining in the vehicle’s tax year.

This exception exists to prevent double taxation of the same vehicle in the same tax year. Assume that Susie Seahawk owns a Ford Focus with a tax year of September 2016 to August 2017. If Susie sells the Ford to Wanda Wolfpack in January 2017 and that owner registers the car under her name, Wanda will pay property taxes on the Ford for the period February 2017 to

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81. See Christopher B. McLaughlin, “Refunds and Releases,” *Property Tax Bulletin* No. 153 (UNC School of Government, Apr. 2010), <https://www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/ptb153.pdf>.

82. G.S. 105-330.4(e). A local government that wishes to take advantage of this authority must adopt a resolution that reduces or waives all interest on RMV taxes for tax years that began prior to July 1, 2013. Governments are not authorized to reduce or waive old RMV interest on an individual taxpayer basis; if adopted, the reduction or waiver must apply to all taxpayers.

83. G.S. 105-285. See also Chris McLaughlin, “Property Taxes and New Year’s Day,” COATES’ CANONS: NC LOCAL GOV’T L. BLOG (Dec. 4, 2014), <http://canons.sog.unc.edu/property-taxes-and-new-years-day/>.

January 2018. Two owners will have paid property taxes on the same property for the same time period, February 2017 to August 2017. To avoid that situation, the Machinery Act allows Susie to obtain a refund for the full months remaining in her vehicle's tax year after she turns in her license plates to the DMV.

When a taxpayer sells a vehicle, she has two options. The taxpayer may (1) surrender the license plates from the sold vehicle and receive a prorated tax release or refund for the months remaining on the sold vehicle's tax year<sup>84</sup> or (2) transfer the license plates from the sold vehicle to a different vehicle and not pay taxes on the second vehicle until the existing registration expires.<sup>85</sup>

Under the first option, the taxpayer can obtain a partial tax release or refund by surrendering the license plates to the DMV and presenting two documents to the county tax office: (1) a form FS20, the dated receipt provided by the DMV for the surrendered license plates and (2) a bill of sale or other proof of ownership transfer.<sup>86</sup> These documents must be provided to the county tax office within one year of the date on the form FS20. The tax collector must then determine the number of full months remaining in the vehicle's tax year after the date on the form FS20 and provide a prorated tax release or refund for those months.

Consider again the Susie example. The 2016 taxes on her Ford Focus were \$120. Susie sells the Focus in January 2017, surrenders her plates to the DMV in February 2017, and provides a form FS20 and proof of sale to the tax office in March 2017. She will be entitled to a partial refund of \$60, representing the six full months (March to August) remaining in the tax year for the Focus after she surrendered her plates in February. Note that the proration is based on the date on which the DMV issued the form FS20, not the date of sale or the date on which the taxpayer requests the refund.

Under the second option, a taxpayer may transfer the license plates from a sold vehicle to a newly purchased vehicle. In that situation, the newly purchased vehicle will not be listed or taxed until the registration from the sold vehicle expires and the owner renews the plates on the newly purchased car.<sup>87</sup>

For example, assume that instead of surrendering the license plates after selling her Ford Focus Susie transfers those plates to a newly purchased Dodge Ram pick-up truck. Susie will not be required to register or pay taxes on her new pick-up truck until the registration for the Focus expires in August 2017. She will be taxed on the value of her new pick-up truck when she registers it for September 2017 through August 2018.

Although G.S. 105-330.6(c) is not clear on this point, a prorated refund should also be available if a vehicle is totaled in an accident or is stolen. In those situations, the vehicle is usually transferred to the insurance company, which should trigger the refund provisions of G.S. 105-330.6(c).<sup>88</sup>

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84. G.S. 105-330.6(c).

85. G.S. 105-330.6(b).

86. G.S. 105-330.6(c). A prorated refund is also available to a taxpayer who moves out of North Carolina and registers a vehicle in another state. In that situation, the taxpayer must provide a form FS20 and proof that the vehicle has been registered in another state.

87. G.S. 105-330.6(b).

88. The taxpayer should be able to obtain a form FS20 for the retired plates even if the plates no longer physically exist. For stolen vehicles, one option would be to first obtain replacement plates from the DMV (see [www.ncdot.gov/dmv/vehicle/plates/replace/](http://www.ncdot.gov/dmv/vehicle/plates/replace/)) and then surrender the replacement plates and receive the form FS20.

#### 14. When is the taxpayer entitled to a prorated credit for RMV taxes?

If the taxpayer turns in the plates on an RMV and later re-registers that vehicle and receives new plates and a new tax year, then the taxpayer should receive a prorated credit for taxes paid on the vehicle's original tax year.<sup>89</sup> That credit is calculated on the number of months that the old and new tax years overlap.

For example, assume that Billy Blue Devil renews his registration on an old Ford Mustang in October 2016. He pays \$120 in property taxes for the 2016–17 RMV tax year, which runs from November 2016 to October 2017. In January 2017 he decides to stop driving the car and refurbish it, so he turns in his plates to the DMV. In May 2017 he obtains new plates for the Mustang with a new tax and registration year running from June 2017 to May 2018. Billy should receive a prorated credit for the taxes he paid on the Mustang's old tax year toward the taxes he owes on the car's new tax year. Those two tax years overlap five months (June to October 2017), so Billy should receive a 5/12 credit of the taxes he previously paid on the Mustang (5/12 of \$120 equals \$50) toward the taxes he owes for the Mustang's new tax year.

The taxpayer is also entitled to a prorated credit when a vehicle moves from registered to unregistered status in the middle of the tax year.<sup>90</sup> For example, assume Tommy Tarheel lists his Honda minivan as an unregistered vehicle for 2017 taxes. He receives the 2017–18 tax bill on the Honda in August 2017 and immediately pays it. In December 2017 he decides to register the Honda and pays property taxes to the DMV for the Honda's new RMV tax year of January 2018 to December 2018. Because his new RMV tax year overlaps with the old unregistered tax year (which was the fiscal year July 2017 to June 2018) for six months, Tommy should receive a credit for six months (1/2) of the taxes he paid on the Honda as an unregistered vehicle.

To receive a prorated credit for previously paid property taxes on a vehicle, the taxpayer must apply to the county within thirty days after the date on which new taxes are due (which will normally be the registration date) and provide the tax collector with proof of payment of the prior taxes.<sup>91</sup>

Counties, and not the DMV, will be responsible for applying this credit to the property taxes for the new registration in the form of a cash refund.

#### 15. What are municipal privilege taxes on motor vehicles and how are they collected?

As of July 1, 2016, all municipalities are authorized to levy taxes on the privilege of operating a motor vehicle within their borders of up to \$30 per vehicle.<sup>92</sup> This tax is collected by the DMV at the time of registration, along with the registration fee and county and municipal property taxes.

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89. G.S. 105-330.6(a1).

90. G.S. 105-330.6(a1).

91. G.S. 105-330.6(a1).

92. S.L. 2015-241, § 29.27A, *amending* G.S. 20-97. For a full discussion of this new law, see Kara Millonzi, "Expanded Motor Vehicle License Tax Authority for Municipalities," COATES' CANONS: NC LOCAL GOV'T L. BLOG (Nov. 9, 2015), <http://canons.sog.unc.edu/expanded-motor-vehicle-license-tax-authority-for-municipalities/>.

Unlike property tax revenue, the revenue produced by a municipal motor vehicle registration tax is not unrestricted. The General Assembly has placed some strings on how the funds produced by this tax may be used.

The first \$5 of a municipal motor vehicle registration tax is unrestricted, meaning that it may be used for any legal purpose.<sup>93</sup> If a municipality operates a public transportation system, then it may use up to \$5 of the motor vehicle tax to construct, operate, and maintain that system.<sup>94</sup> Any remaining revenue from a municipal motor vehicle registration tax must be used to construct, maintain, repair, or improve public streets.<sup>95</sup>

Making the matter more complex, some municipalities already have the authority via local acts to levy motor vehicle registration taxes of up to \$30 per vehicle with no restrictions on how those funds may be used.<sup>96</sup> If those municipalities continue to levy motor vehicle registration taxes under those local bills, the new general limitation that these tax revenues be used for public streets will not apply.

Below are some examples of how the new law would affect different cities levying different amounts of motor vehicle registration taxes.

- Municipality A levies a tax of \$30 per vehicle under the general law authority. It does not operate a public transit system. The first \$5 of revenue from the tax may be used for any purpose; the remaining \$25 must be used for municipal streets.
- Municipality B levies a tax of \$30 per vehicle under the general law authority. It does operate a public transit system. The first \$5 of revenue from the tax may be used for any purpose. It may use another \$5 of that revenue to fund its public transit system. The remaining \$20 of revenue must be used for municipal streets.
- Municipality C levies a tax of \$25 per vehicle under local bill authority. It may continue to levy this tax subject to any revenue usage restrictions created by the local bill and will not be subject to the general law revenue usage restrictions. If it increases its tax to \$30 per vehicle, the first \$25 of revenue would be subject to the usage restrictions in the local bill (if any) and the remaining \$5 would be limited to use for municipal streets under the general law authority.

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93. See G.S. 20-97(b1)(1).

94. See G.S. 20-97(b1)(2). The municipal motor vehicle tax statute incorporates the definition of “public transportation system” provided by G.S. 105-550(5): “Any combination of real and personal property established for purposes of public transportation. The systems may include one or more of the following: structures, improvements, buildings, equipment, vehicle parking or passenger transfer facilities, railroads and railroad rights-of-way, rights-of-way, bus services, shared-ride services, high-occupancy vehicle facilities, carpool and vanpool programs, voucher programs, telecommunications and information systems, integrated fare systems, bus lanes, and busways. The term does not include, however, streets, roads, or highways except to the extent they are dedicated to public transportation vehicles or to the extent they are necessary for access to vehicle parking or passenger transfer facilities.” This is nearly identical to the definition of “public transportation system” provided in G.S. 105-506.1(3) that is the basis for the county vehicle registration taxes discussed in the next question.

95. See G.S. 20-97(b1)(3).

96. See, for example, S.L. 2007-108, authorizing the towns of Apex and Morrisville to levy privilege taxes of up to \$15 per vehicle.

## 16. What are county vehicle registration taxes and how are they collected?

In 2009, the General Assembly granted counties the authority to levy a vehicle registration tax of up to \$7 per year.<sup>97</sup> However, this tax is permitted only if the county or one of the local governments in the county operates a public transportation system.<sup>98</sup> The tax proceeds may be used solely for the creation or operation of a public transportation system.<sup>99</sup>

Just like the municipal motor vehicle registration taxes discussed above, county motor vehicle registration taxes are also collected by the DMV when the motor vehicle is registered. The county has no collection responsibilities for the tax.

After receiving the tax proceeds from the DMV, the county must distribute the funds pro rata to itself, if it operates a public transportation system, and to each local government in the county that operates a public transportation system.<sup>100</sup> If the county does not operate a public transportation system, then the county does not keep any of the tax proceeds.<sup>101</sup> Similarly, if a particular municipality does not operate a public transportation system, then that municipality does not receive any of the tax proceeds.<sup>102</sup>

The pro rata distribution to those governments operating public transportation systems is based on population. For the county, it is based only on the portion of the county's population that resides in the unincorporated areas of the county. For a municipality, it is based only on the portion of the municipality's population that resides in the county that levied the tax.<sup>103</sup>

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97. G.S. 105-570, effective August 27, 2009, as per S.L. 2009-527, § 7.

98. G.S. 105-570(b). The statute incorporates the definition of "public transportation system" provided in G.S. 105-506.1(3), which is nearly identical to the definition in G.S. 105-550(5) that is referenced in the municipal motor vehicle privilege tax provision. *See supra* note 94. G.S. 105-506.1(3) defines "public transportation system" as "[a]ny combination of real and personal property established for purposes of public transportation. The systems may include one or more of the following: structures, improvements, buildings, equipment, vehicle parking or passenger transfer facilities, railroads and railroad rights-of-way, rights-of-way, bus services, shared-ride services, high-occupancy vehicle facilities, car-pool and vanpool programs, voucher programs, telecommunications and information systems, integrated fare systems, *and the interconnected bicycle and pedestrian infrastructure that supports public transportation*, bus lanes, and busways. The term does not include, however, streets, roads, or highways except to the extent they are dedicated to public transportation vehicles or to the extent they are necessary for access to vehicle parking or passenger transfer facilities" (emphasis added). The italicized words are the only difference between this definition and the one found in G.S. 105-550(5).

99. G.S. 105-570(d).

100. G.S. 105-570(c)(1).

101. G.S. 105-570(c)(3).

102. G.S. 105-570(c)(2).

103. G.S. 105-570(c)(1).

### **17. Does the “minimal taxes” rule apply to RMV taxes?**

No. G.S. 105-321(f) allows local governments to relieve their tax collectors of responsibility for tax bills that are \$5.00 or less. However, that provision, known as the “minimal taxes” rule, applies only to taxes that are charged to the tax collector. RMV taxes are not charged to the local tax collector because they are collected by the DMV. As a result, the minimal taxes rule does not apply to RMV taxes. The DMV must collect all tax bills on all RMVs even if a particular bill is less than \$5.00.

The minimal taxes rule does apply to gap bills (see question 5, above) created for motor vehicles that move between registered and unregistered status. Those bills are the equivalent of “regular” personal property tax bills. The tax collector is not obligated to collect on a gap bill if (1) the bill is for less than \$5.00 and (2) the local government generating the gap bill has opted into the minimal taxes rule created by G.S. 105-321(f).

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## Fundamentals of Property Tax Collection 2020

### *Register Motor Vehicle Tax Collection Discussion Questions*

1. Billy Blue Devil drives a Honda Civic. The registration and tax year runs from April 2020 to March 2021. Billy renews his tags and pays the 2020-2021 property taxes on March 15, 2020. The property taxes were \$120. In September 2020 Billy sells the Civic. He turns in his tags to the DMV on October 3, 2020 and obtains a receipt. Billy visits the county tax office on December 15, 2020 to ask for a refund on his 2020 property taxes for the Civic.

Is Billy entitled to a refund? If so, how much of a refund?

2. Suzie Seahawk files for bankruptcy on September 1, 2020. The tags on her Ford Focus expire on October 31, 2020. She appears at the DMV on November 20, 2020 to renew her tags.

May the DMV require her to pay the 2020-2021 property taxes on Ford Focus before the DMV will renew the tags on that car?

3. **True or False:** If property taxes owed under the “Tag & Tax Together” system are not paid at the time of registration, the county may use attachment & garnishment as a enforced collection remedy to collect those unpaid taxes.

4. Wanda Wolfpack drives a Toyota Camry. Her tags expire on August 31, 2020. She decides not to renew the tags because she does not plan to drive the vehicle. In September 2021 she appears at the DMV and asks to register the Camry again. The DMV issues her a registration that runs from October 2021 to September 2021 and requires her to pay the 2021-2021 property taxes on the Camry.

Does the county have any obligation or authority to collect additional property taxes on the Camry? If so, for what months?

5. Assume the same facts in #4 and that the county issues a “gap” bill to Wanda for her Camry in November 2021. When will that bill begin to accrue interest? What collection remedies does the county have if that bill is not paid?

6. **True or False:** The county may levy a different property tax rate on RMVs as compared to the property tax rate that is levied on real property.

**Mortgage-Style Foreclosure Discussion Question**  
**(GS 105-374, 105-376)**

Carolina County has initiated a foreclosure proceeding under GS 105-374 on property owned by Mike Shashefsky. County taxes and interest owed on the property amount to \$4,000. The county's largest town, Blue Devil City, has a lien on Shashefsky's property for \$2,000 worth of property taxes and interest, as well as a \$1,000 special assessment. The county tax collector also collects Blue Devil City's taxes and has included the city's taxes and special assessment in the foreclosure action. Big Bank, which has a mortgage lien on the property in the amount of \$5,000, has also been named as a defendant in the action.

On March 1, 2020, the court issues a judgment of sale in favor of the county and city. After appropriate notice and advertisement, a foreclosure sale is held in April. Costs of sale, including the commissioner's fee and attorneys' fees, amount to \$1,000.

At sale, the only bidder is Big Bank, which bids \$5,000.

- 1) If the county does not want to lose the property, what is the minimum that it must bid to take title?
- 2) One week after the county is high bidder at \$8,000, Shashefsky appears at the Carolina County tax office and demands the right to stop the foreclosure sale. Is this permitted? If so, what amount would Shashefsky need to pay to "redeem" his property?
- 3) One week after the court issues a judgment of confirmation for the \$8,000 sale to the county, Shashefsky appears at the tax office and demands to stop the foreclosure sale. Is this permitted? If so, what amount would Shashefsky need to pay to "redeem" his property?
- 4) The county purchases the property at auction for \$8,000 and Shashefsky does not attempt to stop the foreclosure process. One month later, the county sells the property at public auction and attracts a bid of \$4,000 from someone other than Shashefsky. May the county sell the property to this bidder? If so, how should the proceeds be distributed?
- 5) Tommy Tarheel is the high bidder at the auction for \$10,000. At the close of the auction he gives the sheriff a deposit of \$2,000 and is told he must produce the remaining \$8,000 by the close of business at 5pm. By 9am the next morning Tommy has not produced the \$8,000 and is not returning calls to his cell phone. What should the county do?
- 6) Tommy is the high bidder at auction for \$10,000. Three days later Roy submits an upset bid of \$12,000. On the 9<sup>th</sup> day after Roy's upset bid is submitted, Shashefsky appears at the tax office and demands to stop the foreclosure. May he do so? If so, what amount of \$ must he pay?