



Refunds and Releases

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Few issues carry a greater potential for conflict between taxpayers and tax offices than do requests for refunds or waivers of property taxes. This is true in large part because the Machinery Act allows refunds and waivers only under two very limited circumstances. Unless the disputed tax is imposed due to clerical error or is illegal, the Machinery Act prohibits the refund of a tax payment or the waiver—called a “release” in the Machinery Act—of an unpaid tax obligation. Contrary to what many taxpayers believe, the refund and release process is not the venue for a re-examination of a property’s value or taxable status. Although some governing boards desire to be more forgiving on these issues, they do so at their peril: board members who approve refunds or releases that violate the Machinery Act can be held personally responsible for the lost taxes.¹

1. Who may approve refunds and releases?

The governing board, always. The local government’s manager, attorney, or finance officer, sometimes. But the tax collector, never.

G.S. Section 105-381(b) of the North Carolina General Statutes (hereinafter G.S.) gives the governing board primary responsibility for approving refund and release requests. For refunds and releases of less than \$100, the board may delegate this responsibility to the manager, attorney, or finance officer, who must then report monthly to the board on the actions taken. Conspicuously absent from this list is the tax collector. In practice some tax collectors grant small refunds or releases and then seek approval from the board, but this is a risky approach.

Once a refund or release is approved by the board or its delegate, the tax collector should be credited with that amount in the next annual settlement.²

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1. N.C. GEN. STAT. (hereinafter G.S.) § 105-380(c).

2. G.S. 105-381(b).

2. When are refunds and releases authorized?

Technically, refunds and releases are authorized in three situations: when a tax is (1) imposed through clerical error, (2) illegal, or (3) levied for an illegal purpose.³ However, because reasons 2 and 3 overlap substantially, if not entirely, in practice there are only two situations that justify a refund: when a tax is imposed due to clerical error or is illegal.

Clerical Error

The General Assembly has not defined the term “clerical error,” but state courts have. In 1997, the North Carolina Court of Appeals tackled this issue in *Ammons v. Wake County*.⁴ In this case, the taxpayer asked the assessor if his forest land qualified for present-use value (PUV) tax deferrals for the 1993 tax year. The assessor answered no and the taxpayer did not apply for the PUV program. One year later, the taxpayer ignored the assessor’s opinion and applied for a PUV deferral. The assessor denied the application, but the taxpayer won his appeal to the board of equalization and review and was granted PUV status for the 1994 tax year. The taxpayer then requested a refund for the 1993 taxes he would have been able to defer had the assessor provided accurate advice about the property’s eligibility for the PUV program. After the board of county commissioners denied the refund request, the taxpayer turned to the courts. The superior court ruled that the assessor’s incorrect advice did not constitute a clerical error under G.S. 105-381 and dismissed the taxpayer’s claim. The court of appeals affirmed this decision, which became final when the North Carolina Supreme Court declined to hear the taxpayer’s appeal.

According to the court of appeals, to qualify as a clerical error under G.S. 105-381 the tax office’s error “must ordinarily be apparent on the face of the instrument,” “must be capable of being corrected by reference to the record only,” and must produce an unintended result. Prime examples are transcription errors, such as when an additional zero is added to tax valuation or when two numbers are transposed on a tax bill.

The definition of clerical error adopted in *Ammons* excludes a factual or judgment error by an appraiser, which must be addressed during the assessment appeal period and not in a refund and release request. For example, assume that in 2007 an appraiser values a lakefront lot with the understanding that it is buildable. Three years later, the taxpayer applies for a building permit and is denied based on the size and slope of the lot. The taxpayer immediately asks the tax office for a retroactive decrease in the tax value of the lot and a tax refund, based on the fact that the lot was never buildable. Applying the *Ammons* test, this error does not justify a refund under G.S. 105-381 because it is a judgment error and not a clerical error. First, the error is apparent and correctable only through an examination of the property and a decision by the county inspections department, not by reference to the appraisal documents. Second, the error has not caused an unintended result. In 2007, the appraiser intended to value the house as a buildable lot, and it was so valued. The judgment error by the appraiser can be corrected under G.S. 105-287(a)(2) for current and future tax years, but it does not justify a retroactive change to the tax value or a refund for past years under G.S. 105-381.

For a terrific analysis of the *Ammons* case and its definition of clerical error, please see William A. Campbell’s *Property Tax Bulletin* No. 111.⁵

3. G.S. 105-381(a)(1).

4. 490 S.E. 2d 569, 127 N.C. App. 426 (1997), cert. denied, 500 S.E.2d 84, 347 N.C. 670 (1998).

5. William A. Campbell, “*Ammons v. Wake County*: Some Light on Clerical Errors,” *Property Tax Bulletin* No. 111 (October 1997), available online at www.sog.unc.edu/pubs/electronicversions/pdfs/ptb111.pdf.

Can a clerical error by the taxpayer ever justify a refund or a release? No. Based on the language in G.S. 105-381, a refund or release is justified only if the tax is “imposed through clerical error” and only the government can impose a tax.

Consider the situation in which Tina Taxpayer forgets that her mortgage company is escrowing her property tax payments and makes a payment to the tax office. Can Tina’s payment be refunded based on the fact that her mortgage company will pay the tax bill later in the year with the escrowed funds? No. Even though Tina’s error may be a clerical one, it does not satisfy G.S. 105-381 because the tax on her home was not imposed due to her error. Tina’s refund request should be directed to her mortgage company, not to the tax office.

Similarly, a refund is not justified if a taxpayer mistakenly pays the taxes on property that he or she sold to another taxpayer at some point after the listing period. The taxpayer may have made a clerical error when he or she wrote the wrong parcel number on the payment check, but that does not mean the taxes on that parcel were imposed due to clerical error. The taxpayer’s remedy, if any, would be from the new owner of the property, not the tax office.

Illegal Taxes

Taxes that are either *illegal* or *levied for an illegal purpose* may be released or refunded under G.S. 105-181. Situations in which refunds may occur include:

1. Double taxation, when the same property is taxed more than once;
2. Situs mistakes, when a taxing unit taxes property that has no situs in the unit’s jurisdiction;
3. Procedural defects, when a taxing unit levies a tax without a required ordinance or referendum;⁶
4. Excess taxation, when a taxing unit levies a tax in excess of the applicable cap on that tax;⁷ and
5. Improper purposes, when a taxing unit levies a tax for a purpose not permitted by the General Assembly.⁸

This author believes some local governments inappropriately shoehorn valuation errors and/or judgment errors into the illegal tax category and authorize refunds for matters that should be resolved during the valuation appeal process.

For example, consider the situation in which the assessor’s office incorrectly assumes during a reappraisal that Tom Taxpayer’s house has a finished third floor. Two years later, Tom demonstrates to the assessor that his house has never had a finished third floor. Tom asks that his assessment be reduced retroactively and that his excess tax payment for the past two years be

6. For example, county and municipal property taxes must be included in the government’s annual budget ordinance. G.S. 159-13. Rural fire district taxes require a petition signed by 35 percent of the affected landowners and voter referendum in the proposed district. G.S. 69-25.1.

7. For example, with some exceptions general county and municipal property tax rates are capped at \$1.50. G.S. 153A-149; G.S. 160A-209. Rural fire district tax rates are capped at either 10 cents or 15 cents, depending on the language of the authorizing referendum. G.S. 69-25.4.

8. G.S. 153A-149 and G.S. 160A-209 list the approved purposes for general county and municipal property taxes. Special service district taxes may be used only for the provision of additional services in those districts such as beach erosion control, sewer systems, fire protection (counties only), and downtown revitalization projects (municipalities only). G.S. 153A-301; G.S. 160A-536. Rural fire district taxes may be used only for the provision of fire protection services in these districts. G.S. 69-25.4.

refunded. The error at issue clearly is not a clerical error under the *Ammons* test. Nevertheless, is a refund justified because the resulting tax is illegal, in that the county taxed Tom for property (a finished third floor) that Tom has never owned?

Many counties would answer yes, but this author disagrees. If valuation errors such as the one involving Tom's third floor are refundable under the illegal tax category, then the deadline for valuation appeals becomes irrelevant. Local governments would lose all certainty about the value of their tax bases and find it impossible to budget accurately. For this reason, the best interpretation of the illegal tax category is one that excludes valuation judgment errors. If a taxpayer wishes to contest the valuation of his or her property, he or she must do so through the board of equalization and review appeal process, not through the refund and release process.⁹

Listing errors must also be resolved during the initial appeal period to the board of equalization and review rather than through the refund and release process. For example, assume that Tom Taxpayer has listed a boat in Carolina County for several years. In November 2009 he sells the boat to his neighbor, Tina Taxpayer. In January 2010 Carolina County sends Tom a listing form that includes the boat. Tom signs and returns the form without carefully reading it. The county subsequently assesses the boat for taxation under Tom's name. When Tom receives the tax bill for the boat-, he promptly pays it. Six months later he realizes he has paid taxes on a boat he no longer owns and demands a refund from Carolina County. Tom is not entitled to a refund under G.S. 105-381 because the tax on the boat is not illegal: Carolina County is authorized to tax the boat because it still has situs in Carolina County on January 1, 2010. Nor is Tom entitled to a refund under the clerical error category because the listing error does not satisfy the *Ammons* test. Tom's opportunity to contest the listing of the boat in his name ended when the valuation appeal period ended thirty days after he received notice of the boat's tax valuation.¹⁰

That said, refunds and releases *are* justified under GS 105-381's illegal tax category for taxes levied on property that does not exist or does not have situs in the taxing unit as of the listing date. Consider the example above, but assume instead that in mid-2009 Tom sold the boat to a resident of another county who promptly removed it from Carolina County. If Tom mistakenly listed his boat for taxation in Carolina County for 2010, he would be entitled to a refund or a release of those taxes after providing evidence that the boat did not have situs in Carolina County on January 1, 2010. The same would be true if Tom's boat was destroyed by hurricane in mid-2009 and he mistakenly listed it for taxation for 2010. Tom would be entitled to a refund or release of the taxes on the boat if he could provide evidence that the boat no longer existed as of January 1, 2010.¹¹

9. The same is true of taxability errors. As the *Ammons* case demonstrates, incorrect decisions by the assessor regarding applications for exemptions or exclusions do not justify refunds or releases. If a taxpayer believes that he or she is entitled to an exemption or exclusion, the taxpayer must take advantage of the application and appeal process in G.S. 105-282.1. The taxpayer cannot retroactively raise these issues using the refund and release process under G.S. 105-381.

10. G.S. 105-317.1(c). Under G.S. 105-306, the county is permitted to correct the listing error and proceed as if it had been listed in Tina's name all along. This means that if Tom had never paid the taxes, he would no longer be considered the responsible taxpayer and could not be subject to enforced collection remedies. The same conclusions would be reached under G.S. 105-302 if the listing error concerned real property.

11. In contrast, this author believes that a refund or release is *not* justified under G.S. 105-381 when a business taxpayer lists a certain cost of personal property for taxation and then later seeks a refund or release of the related taxes on the grounds that the taxpayer included in that cost amount some personal

3. Which taxes must be released or refunded under G.S. 105-381?

The Machinery Act defines the term “tax” as “the principal amount of any tax, cost, penalties and interest imposed upon property tax or dog license tax.”¹² This definition means that G.S. 105-381 controls the refund or release of all property taxes, including special service district taxes and rural fire district taxes. G.S. 105-381 does not control the refund or release of other local taxes, such as privilege license taxes and occupancy taxes, nor does it control the refund or release of costs and fees, such as special assessments and nuisance abatement costs, that by statute are collectible as property taxes. See Question 7 for details on the refund and release of other taxes and fees.

4. Does G.S. 105-381 govern the refund or release of interest?

Yes. Because the term “taxes” as used in GS 105-381 includes interest, any refund or release of interest must conform to the restrictions in that statute. Only when interest is levied illegally or added due to a clerical error can it be released or refunded. For example, if the tax office miscalculates the interest owed by a taxpayer, that interest charge could be refunded or released under G.S. 105-381.

What if the taxpayer claims that he or she was charged interest only because the tax office failed to send a tax bill in a timely fashion or sent an inaccurate tax bill? The North Carolina Supreme Court answered this question in the negative when it decided *In re Morgan* two years ago.¹³ In this case, the taxpayer listed her house with the Henderson County assessor but the house was never assessed or taxed due to tax office error. Eight years later the tax office learned of its mistake and sent retroactive tax bills, plus interest, for each year the house had escaped taxation. The taxpayer contested both the principal taxes and the interest. The Supreme Court ruled in favor of the county, approving not only the principal taxes but also the addition of interest to the tardy tax bills. The court’s decision relied on G.S. 105-348, which provides taxpayers with notice of their taxes regardless of when or if they receive tax bills, and G.S. 105-394, which forgives minor defects—“immaterial irregularities” in the language of the statute—during the taxation process.¹⁴ Although the taxpayer in *Morgan* did not seek a release under G.S. 105-381, the result would be the same had she done so. *Morgan* makes clear that it is legal for interest to accrue on taxes billed after the delinquency date due to tax office error. A release is, therefore, not justified under G.S. 105-381.

property that was disposed of prior to January 1. This relatively common situation involves a dispute over the *valuation* of the taxpayer’s aggregate personal property as opposed to a dispute over the *existence* of taxable property. Accordingly, the taxpayer’s opportunity to contest the issue should be through the listing and appraisal appeal period, not through the refund and release process.

12. G.S. 105-273(15).

13. 362 N.C. 339, 661 S.E.2d 733 (2008).

14. For more on *Morgan* and the immaterial irregularity provisions, please see Christopher B. McLaughlin and Stan C. Duncan, “Discovery, Immaterial Irregularity, and the *Morgan* Decision,” *Property Tax Bulletin* No. 147 (March 2009), available online at www.sog.unc.edu/pubs/electronicversions/pdfs/ptb147.pdf.

5. How many years of taxes can be released or refunded?

Different rules apply depending on whether the taxpayer seeks a refund of paid taxes or a release of unpaid taxes. Refunds are limited to the later of (1) five years from the tax's original due date and (2) six months from the date the taxes are paid. Releases of unpaid taxes may be granted at any time.

For example, assume that Carolina County improperly levies taxes for 2005–9 on a boat that Tina Taxpayer keeps permanently moored in Ocean County. These taxes are illegal and justify relief under G.S. 105-381. If Tina has never paid the boat taxes to Carolina County, she can obtain a release of the taxes and interest at any time. She can ask for a release immediately upon discovering the mistake in 2010 or wait years to submit her request; either way, Tina will be entitled to a full release as long as the taxes have not been paid.

If Tina has been paying the Carolina County taxes punctually each year, then the refund rules apply. Tina can obtain a refund for all taxes that were originally due within five years of her refund request. Her 2005 taxes were due on September 1, 2005; as long as she requests a refund before September 2, 2010, she is entitled to a refund of the 2005 taxes and all subsequent taxes. If Tina submits her request after September 1, 2010, she cannot obtain a refund of the 2005 taxes.

The *six months from payment* provision will apply if Tina learns of the Carolina County taxes in 2010 and pays in full for the years 2005–9 on June 1, 2010. In this case, six months from the date of payment (December 1, 2010) will be later than five years from the tax's original due date (September 1, 2010). Tina will, therefore, have until December 1, 2010, to request a refund of the 2005 taxes.

6. If the governing board denies a request for a refund or release, does the taxpayer have the right to appeal that decision?

Yes. If the governing board denies the taxpayer's request or fails to act on the request within ninety days, the taxpayer has the right to bring a civil action in state court within three years.¹⁵ The taxpayer must pay the disputed taxes before initiating a lawsuit if the request is for a release. If the taxpayer prevails, the taxing jurisdiction must refund the disputed taxes plus six percent interest, as well as all costs and attorneys' fees incurred by the taxpayer.

7. Does G.S. 105-381 govern the refund or release of other taxes or fees collected by a local government?

No. In addition to property taxes, local governments are authorized to levy a variety of taxes on activities ranging from owning a pet to selling alcohol to renting cars. All of these taxes may be collected using Machinery Act remedies of attachment, garnishment, and levy.¹⁶ However, none of the authorizing statutes for these various taxes specifically incorporates the Machinery Act refund and release provisions. Local governments are, therefore, free to develop their own refund and release policies for taxes other than property taxes or can choose to adopt

15. G.S. 105-381(c).

16. G.S. 153A-147 (counties) and G.S. 160A-207 (municipalities).

the Machinery Act approach. Regardless of the chosen method, local governments would be wise to adopt formal refund and release policies for all of their various taxes in order to avoid controversy.

The same approach holds true for local government costs and fees that may be collected using Machinery Act enforced collection remedies for delinquent property taxes. These include special assessments, public nuisance abatement costs, and solid waste fees.¹⁷ Like the taxes discussed above, the authorizing statutes for these fees and costs do not specifically incorporate the Machinery Act refund and release provisions. As a result, local governments are free to craft their own refund and release provisions for most of the fees and costs they collect. The only exceptions are special assessments, which are governed by their own amendment procedures.¹⁸

17. For special assessments for the cost of public works projects such as water and sewer system extensions, see G.S. 153A-195 (counties) and G.S. 160A-228 (municipalities). For mowing, trash collection, or other costs incurred abating public nuisances on private property, see G.S. 153A-140 (counties) and G.S. 160A-193 (municipalities). For solid waste fees included on property tax bills, see G.S. 153A-293 (counties) and G.S. 160A-314.1(b) (municipalities).

18. G.S. 153A-198 (counties) and G.S. 160A-231 (municipalities) permit special assessments to be modified only in cases of “irregularity, omission, error or lack of jurisdiction.”