



# Tax Administration

## in North Carolina Course



North Carolina Department of Revenue

## Refunds and Releases

Property Tax Section  
Local Government Division

# What are we talking about here?

- In this section, “Refunds & Releases” refers to situations where the taxpayer can support an argument that he didn’t legally owe a tax.
- This is not the more common situation where, for example, value is appealed, and then bills continue to go out while that issue is resolved. Those bills really can’t be finalized until the value is determined.
- **Refund** = tax has been paid
- **Release** = tax has not been paid

# When R&R can be requested

- G.S. 105-381 (a)(1): valid defenses to the enforcement of the collection of a property tax include:
  - a. A tax imposed through clerical error;
  - b. An illegal tax;
  - c. A tax levied for an illegal purpose.

# Clerical Errors

- The NC Court of Appeals, in the 1997 *Ammons v. Wake County* case, defined clerical errors as unintended mistakes which are ordinarily apparent on the face of the instrument.
- Examples include transposed numbers or other kinds of transcription errors, where the information entered in the records was not what was intended.
- **Appraisal errors are not clerical errors.**

# Illegal Tax Examples

- Taxing exempt property
- Taxing the same property twice
- Taxing property which does not exist, or which has no situs in the jurisdiction
- Tax rate violates legal limits
- **Not the same as an erroneous tax**

# Taxes for Illegal Purposes

- Taxes levied for non-public purposes
- Taxes levied without a public vote, if a vote is required
- Taxes levied for any other purpose not allowed by law

# Restriction on R&R

## G.S. 105-380

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

# Liability for Unauthorized R&R

## G.S. 105-380

- (c) Any tax that has been released, refunded, or compromised in violation of this section **may be recovered from any member or members of the governing body who voted for the release, refund, or compromise** by civil action instituted by any resident of the taxing unit, and when collected, the recovered tax shall be paid to the treasurer of the taxing unit. The costs of bringing the action, including reasonable attorneys' fees, shall be allowed the plaintiff in the event the tax is recovered.

# Effect of Unauthorized R&R

## G.S. 105-380

- (b) Taxes that have been released, refunded, or compromised in violation of this section shall be **deemed to be unpaid** and shall be collectible by any means **provided by this Subchapter**, and the existence and priority of any tax lien on property shall not be affected by the **unauthorized release, refund, or compromise of the tax liability.**

# R&R Deadlines [G.S. 105-381(a)(2&3)]

- Requests for **releases** can be made at any time prior to paying the tax
- Requests for **refunds** must be made by the later of
  - Five years after the date the tax was due, or
  - Six months after the tax was actually paid

# R&R Procedure [G.S. 105-381(b)]

- Taxpayer makes **written** request for refund or release, along with a statement of appropriate defense
- Governing body must respond within 90 days, either with a refund/release, or with a denial
- Governing body can delegate authority to refund/release amounts less than \$100 to finance officer, manager, or attorney. **No one else.**

# Civil Suit [G.S. 105-381(c &d)]

- If the county denies refund/release, or fails to respond within 90 days, taxpayer can sue for refund/release
- If suing for release, taxpayer must pay the bill first
- If the taxpayer wins the suit, he is also entitled to recover costs and 6% interest from the date of the judgment until it is paid