



# Tax Administration

## in North Carolina Course



North Carolina Department of Revenue

### Collections

Property Tax Section  
Local Government Division

# Overview

1. Important Dates
2. About Liens
3. Enforced Collections
4. Settlement
5. Refunds & Releases

# Relevant Dates

- Remember that taxes are collected on a fiscal year basis, following the county budget year, which runs from July 1 through June 30 of the following year. Technically, this is the tax year.
- However, the lien (the legal claim for payment against the taxable property) attaches to **real property on the January 1 before the fiscal year starts**. More on liens in a minute....

# Relevant Dates, cont'd.

- Taxes on real and personal property are due and payable as of September 1. We'll deal with Registered Motor Vehicles in another presentation.
- The collector does not have to accept early payments until the proposed budget has been filed with the county commissioners (or municipal board, for municipal budgets), usually sometime in June. But hey, why not?

# Relevant Dates, cont'd.

- Deferred taxes (e.g., Circuit Breaker, PUV, Builder's Inventory programs) become immediately due and payable as of the date of a disqualifying event
- Taxes on real and personal property are delinquent as of January 6. Interest accrues (2% for the month of January, and .75% every month thereafter), and enforced collections methods are immediately available in most situations

# Liens, in General

- Liens are claims against property because of some underlying debt. In addition to the property tax lien, other examples include:
  - Debts owed to a lender (for example, a mortgage)
  - Recorded judgments as the result of a court order
  - Unpaid state or federal taxes can become liens
  - Special Assessments (usually for local public improvements)

# The Property Tax Lien

- Here, “lien” means the legal claim against property for the payment of property taxes. It’s the reason collectors can enforce collection.
- While we’re on definitions, let’s look at “levy:”
  - Originally, this meant to raise, in the sense of gathering up—levy an army, levy revenue, or even levy a lot of earth to hold the water back.
  - In the property tax world, it’s sometimes used to mean “to impose,” or “to collect,” or, more generically, “to tax.”
  - In some collections situations, it means “to seize.”

# More Fun With Definitions

- “Attachment” in the everyday sense means the same as “connection,” but it’s also the legal process of seizing someone’s property through some official method, like a court order or statutory mechanism.
- “Garnishment” is a proceeding used when a third party owes money to the person you’re really trying to collect from. The **garnishor** is the one who wants to get the money, and the **garnishee** is the one holding the money.



# Back to the tax lien (G.S. 105-355)

- (a) Lien on Real Property. – ...the lien for taxes levied<sup>+</sup> on a parcel of real property shall attach\* to the parcel taxed on [January 1], and the lien for taxes levied<sup>+</sup> on **personal** property shall attach to all real property of the taxpayer in the taxing unit on the same date....
  - (b) Lien on Personal Property. – Taxes levied<sup>+</sup> on real and personal property (including penalties, interest, and costs allowed by law) shall be a lien on personal property from and after **levy<sup>++</sup> or attachment\*\* and garnishment** of the personal property levied upon or attached\*\*.
- 
- \*here, it just means “connect,” but \*\*here, it means the seizure process
  - <sup>+</sup>this means “imposed,” and <sup>++</sup>this means seizure

# Satisfying the Real Property Lien (G.S. 105-362)

- The owner satisfies the lien against real property by paying all taxes owed on the parcel in question, **plus** all personal property taxes owed by the owner that same year. RMV taxes are not figured in here.
- Another party with a legal interest in the property (such as a lender, or perhaps a buyer under a purchase contract) satisfies the lien against real property by paying all taxes owed on the parcel in question, **plus** a proportionate amount of all personal property taxes owed by the owner that same year.

# “Transferring” the Real Property Tax Lien

- If an existing lienholder satisfies the property tax lien on real property, that lienholder acquires another special lien for that amount, which (like the property tax lien) is superior to most other liens (G.S. 105-386)

# Remedies for Joint Owners of Real Property (G.S. 105-363)

- If one tenant in common pays his share of the lien, the lien is released from his share.
- If one tenant in common pays more than his share of the tax lien, he gets a lien against the other tenants' ownership shares.
- The tenant who pays doesn't get a high-priority lien like in the previous example, but he has a claim against the non-paying tenants, in case (for example) the tax lien is foreclosed.

# What about the lien on personal property?

- Remember that there is no lien against personal property unless and until it is seized or garnished
- So, if a lien is created by seizing personal property, the lien would be extinguished by paying the taxes from the proceed of the sale

# **ENFORCED COLLECTIONS (G.S. 105-366 THROUGH 105-375)**

# When can the collector start collection procedures?

- When the taxpayer is delinquent in paying the taxes owed. “Delinquent” is defined in G.S. 105-365.1(a):
  - When the tax (not counting deferred taxes) begins to accrue interest.
  - For deferred taxes (except for **certain** Circuit Breaker deferrals), when a disqualifying event occurs.
  - For property which no longer qualifies for the Circuit Breaker program because of the death of the owner, the first day of the ninth month after death.

# From whom do we collect?

[G.S. 105-365.1(b)]

- The owner, as indicated by the public records

## BUT

- Ownership can change. The real question is, when do we decide who the owner is, for collection purposes?
  - Personal property: January 1 of the tax year
  - Real property: On the delinquency date, **and** all subsequent owners are on the hook, too



# IMPORTANT

- Remember that the owner is a specific individual or entity. **One owner can't be held responsible for the delinquent taxes of another.** These are all different owners:
  - Bob Smith
  - Sally Smith
  - Bob Smith and wife, Sally Smith
  - Bob Smith and Sally Smith, as Tenants in Common
  - Bob Smith, Inc.
  - Bob Smith, LLC
  - Bob Smith, Trustee of The Bob Smith Revocable Trust
  - Smith Family Limited Partnership

# A Final Note Before Getting Started

- There are federal and state statutes which affect collections proceedings against active-duty military personnel. Make sure you're fully informed when in this situation.

# Enforced Collections Options

1. Seize/sell personal property  
(PP + RP)
2. Run the newspaper ad (RP only)
3. Foreclose (RP only)

# Option 1:

## Use Personal Property to Get Paid

- Under G.S. 105-366, personal property can be used to pay delinquent taxes not only on personal property, but also on real property in the following situations:
  - At the discretion of the collector;
  - By order of the governing body; or
  - At the written request of the taxpayer or lienholder, providing the location and description of the property to be attached

# Option 1, cont'd.

- If taxes are delinquent, the collector may levy upon and sell or attach certain listed property for failure to pay taxes.

## “levy upon & sell”

- Terms used for seizure & sale of tangible personal property
- Ex.: boat, jewelry, suitcase full of cash

vs.

## “attach”

- Term used for seizing or taking control of intangible property
- Ex.: wages, rents, money on deposit (not necessarily an accounting definition)

# Option1—What to Seize

1. Any personal property of the taxpayer
2. Any PP transferred by the taxpayer to a relative (defined)
3. PP held for the taxpayer by a receiver
4. PP of a decedent, before estate is settled
5. PP acquired from a wholesaler or retailer, when taxes were due on the property, and they remain unpaid 30 days after the transfer. The transferee's own PP can also be seized within 6 months.

# More Stuff to Seize

6. Repossessed PP of the taxpayer, when held by the reposessor or his transferee (unless a bona fide purchase)
7. PP due or to become due to the taxpayer within the calendar year
8. PP of a partner in satisfaction of partnership property taxes (after the partnership is depleted)
9. PP transferred by the taxpayer in any other way, except for bona fide sales, within 6 months of the date of transfer

# Option 1: Special Situations

- Even before delinquency, if the collector believes a taxpayer is about to remove the property, or to transfer it, or to become insolvent, the property can be seized pending determination of a final tax bill [G.S. 105-366(c)]
- There are special notice and withholding requirements for “bulk sale” and going out of business situations [G.S. 105-366(d)]



# The Levy Procedure (G.S. 105-367)

- Levy and sale are tools used in regular civil matters to execute (enforce) court judgments. Those rules apply to tax levy and sale, plus:
  - The collector or deputy collector can handle the levy & sale without involving the sheriff
  - If authorized by the governing board, the collector can direct law enforcement to handle execution
  - The collector can run additional sale ads, if desired
  - The costs of levy & sale and advertising become part of the tax bill

# Attachment & Garnishment (G.S. 105-368)

- Most any type of payment owed to the taxpayer can be attached—wages, bank deposits, rent, tax refunds (at least state), county refunds, etc.
- Wages and other compensation can't be garnished for more than 10% of the paycheck

# Attachment & Garnishment, cont'd.

- The “Debt Setoff” program run by the state of NC maintains a database of debts (\$50 or greater) owed to state & local agencies, and payments due back from the state are compared to the database before being paid
- There are fees and notice requirements in order to list a debt with the program

# Attachment & Garnishment, cont'd.

- Some government benefits **cannot be attached**—Social Security and Veterans' benefits, state unemployment benefits, and state public assistance payments are all exempt from attachment, even after being deposited to a bank account
- Certain retirement benefits and accounts can't be garnished from the original payor, but could be attached once deposited in the bank

# A&G Procedure

1. Serve notice on both the taxpayer and garnishee. The notice must contain certain information, set out in the statute.
2. Within 10 days after service, the garnishee must either pay or notify the collector of a setoff or defense to payment.
3. The taxpayer can also, within 10 days, send notice to the collector of a defense to payment.

# A&G Procedure, cont'd

4. If the collector agrees to a defense or setoff, he must notify the garnishee within 10 days of the garnishee's letter, and the garnishee is discharged accordingly.
5. If the collector does not agree, he must notify the garnishee of his objections within 10 days of the garnishee's letter, and also file a copy in the office of the Clerk of Court in the garnishee's county, and a civil action-style proceeding begins.

# A&G Procedure, cont'd

6. If the garnishee does not respond, then 15 days after service, the collector may file a copy of the garnishment notice, together with a statement that the garnishee has not responded, in the office of the Clerk of Court in the garnishee's county, and a civil action-style proceeding begins.
7. If the county wins the proceeding, then the garnishee becomes liable for the delinquent taxes, interest, penalties, and suit costs.

# A&G – Other Provisions

- Wages of North Carolina state and local government employees can be subjected to garnishment proceedings by serving the attachment notice both on the taxpayer and on the chief financial officer of the agency, or on the payroll officer of the local government.
- The collector can demand from employers a list of employee names and addresses. The collector must keep this information confidential.



# Option 2: Run the Ad

- It's not really an option, because the statute (G.S. 105-369)...
  - requires the collector to report to the governing body all unsatisfied tax liens on real property;
  - requires the governing body to order the collector to advertise the liens; and
  - requires the collector to run the ad
- But it's reasonably effective, because many delinquent taxpayers don't like the embarrassment of being listed in the ad

# Procedures for Running the Ad

- At least 30 days before running the ad (but after being ordered to run it), the collector must mail notice to each affected taxpayer, advising them of the advertisement and the amount of delinquent taxes
- Each parcel advertised is assessed a fee to cover the actual cost of advertisement

# Advertising Requirements

- The ad must be posted at the county courthouse (or town hall, for municipal collectors), and must be published at least once in at least one newspaper of general circulation.
- The advertising must be done between March 1 and June 30 (including those dates)

# Required Ad Contents

- Names (in alphabetical order) of record owners, as of the date of delinquency
- Brief description of the parcels in question
- Statement of the principal amounts of taxes owed
- General statement that interest and costs will be added to the amounts listed
- General statement that the taxing unit may foreclose upon the property for unpaid taxes

# Advertising – Payments & Errors

- If the lien on a parcel is paid, the parcel should be removed from any future advertisements
- Errors in the advertisement have no effect on the actual lien
- It is a crime for the collector to knowingly and willfully advertise either:
  - a property on which the taxes have been paid, or
  - a property which is not subject to taxation

# Option 3:

## Enforcing the Lien Through Foreclosure

- This option is usually a last resort, both because it's a fairly complex process, and because filing the foreclosure complaint cuts off all the remedies against personal property
- There are two foreclosure methods available—one that is similar to the traditional, mortgage-style foreclosure, and the other, more streamlined, “in rem” procedure

# Mortgage-type Foreclosure

- There's a lot of formality to this process, which has been around for (probably) centuries. It's designed to protect the property owner, because his rights in the property are being cut off.
- This is a special type of legal proceeding, in which all property owners, lienholders and any other persons entitled to notice all become parties to the proceeding

# Mortgage-type Foreclosure

- All parties have the chance to respond, and there is a hearing to determine whether the property may be sold
- If there is a judgment that the property may be sold, a commissioner is appointed to conduct the sale, after required advertisement
- After the sale is completed and the upset bid period has passed, the commissioner deeded the property to the purchaser and files a final report



# In Rem Foreclosure

- “In rem” means “against the thing,” and this foreclosure process is centered around the idea that the taxes owed are imposed on the property itself, rather than on the owner
- Therefore, this method focuses on forcing the property to pay what it owes, without hearing or too many procedural requirements

# In Rem Foreclosure

- Rather than filing a complaint, serving the parties, and having a hearing, the in rem process jumps straight to the judgment phase.
- At least 30 days before filing, the collector must send notice of the foreclosure to the taxpayer (return receipt requested) and to lienholders of record
- If the receipt is not returned, the collector must try to locate and notify the taxpayer and lienholders. Posting the property will work.

# In Rem Foreclosure

- 30 days or more after advertising the liens, and after serving the required notice, the collector can file with the Clerk of Court a certificate of taxes, penalties, interests and costs due.
- Once docketed, the has the same effect as a court order for the sale of the property to satisfy the tax lien

# In Rem Foreclosure

- From three months until two years after the certificate is docketed, the collector may request the court to issue an execution, and the property can be sold by the sheriff
- Postage and publication fees, in addition to a \$250 administrative fee, are added to the tax bill. Attorney fees, if any, are between the county and the attorney, and cannot be added.

**WHEW.  
LET'S MOVE ON TO SOMETHING A LITTLE  
DIFFERENT...**

# Settlement (G.S. 105-373)

- Every year, between July 1 and the date she is charged with the new taxes for the fiscal year, the collector has to settle up with the governing body
- This process both shows the governing board how the collector is doing, and also gives them a better understanding as to how much of the levy they can expect to actually get as revenue

# Steps in Settlement

- Collector provides the governing body a list of all persons still owing taxes from last year
- Governing body reviews the list and, from it, makes a separate list of insolvent taxpayers who own no real property
- Collector and governing body review the total taxes charged to the collector, as compared to taxes received. Other additions and offsets are also considered

# Settlement “Balance Sheet”

## Credits

- Tax deposits
- Releases
- Real property liens
- Insolvents’ bills
- Authorized discounts
- Collector commissions
- Bills for property under appeal to the PTC

## Credits

- All taxes originally charged
- Discoveries
- Penalties
- Interest
- Costs & fees
- All other sums collected



# Settlement – Miscellaneous

- In general, uncollected taxes from prior years are recharged to the collector
- Prior years' tax collections are also settled up annually in a similar manner
- There are special provisions for changing the settlement time when the collector leaves office, and when a new collector is appointed

# Releases & Refunds\*

\*i.e., release from liability for taxes; a refund is the same thing, except the taxpayer has already paid

# The General Rule (G.S. 105-380)

- Taxes **cannot** be released by the county except as provided in G.S. 105-381
- Members of the governing body can be held individually liable for illegally released taxes
- Improperly released taxes can still be collected as unpaid by any authorized means

# When Release is Authorized (G.S. 105-381)

- When the tax is the result of a clerical error;
- When the tax is illegal; or
- When the tax is levied for an illegal purpose.

**And for no other reason. Period.**

# Clerical Errors

- Under the Ammons Court of Appeals case (1997), these are **transcription** errors—that is,
  - The tax records don't reflect the actual intent of the assessor;
  - The error is apparent, when looking at the face of the tax records; and
  - The inaccurate entry itself was unintended

# Illegality

- An illegal tax is one which is not authorized under the Machinery Act
  - Tax on property which is exempt
  - Tax beyond statutory limit
- Taxes are permitted for any public purpose, so a non-public purpose would be an illegal purpose