COUNTY AND MUNICIPAL GOVERNMENT IN NORTH CAROLINA

ARTICLE 14

The Property Tax

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Part I. Characteristics and History of the Property Tax

The Property Tax

PROPERTY TAXES COMPRISE the single largest source of revenue for counties in North Carolina. For municipalities, property taxes are the largest source of revenue other than fees for utility services. Unlike revenues generated from utilities such as water and sewer, which pay only for the service provided, property taxes paid to local governments subsidize all types of government functions and service, from schools to health departments to jails to trash disposal.

Both real property and personal property are subject to taxation in North Carolina. Real property includes land, buildings, and permanent fixtures, as well as rights and privileges pertaining to land, such as mineral or forestry rights. Personal property includes all other property, both tangible and intangible, that is not permanently affixed to land. With the exception of certain software and leasehold interests in real property, only tangible personal property is subject to property taxes in North Carolina.

Property taxes are said to be in rem, from the Latin phrases meaning “on the thing,” because they are levied upon the property itself, unlike “in personam” taxes, such as income taxes, which are levied “on the person.” Notwithstanding the “in rem” nature of the property tax, property owners who fail to pay property taxes are personally liable for the amount of the taxes. Tax collectors may elect to satisfy past-due taxes by seizing or attaching personal property of the taxpayer or by foreclosing upon real property. Because property taxes are in rem, the lien for property taxes is not extinguished upon transfer of real property to a new owner. This means that if taxes on real property remain unpaid after its transfer, the new owner must pay the taxes or risk having the land foreclosed upon, even if the tax liability was incurred when someone else owned the property. Property taxes on personal property, in contrast, only become a lien on personal property upon seizure by the tax collector. Moreover, personal property generally only may be seized in the hands of the taxpayer who incurred the tax liability.

Reliance upon the Property Tax

Property taxes are one of the oldest forms of taxation in the United States and have been central among revenue sources in North Carolina since the early days of statehood. Before 1931, property taxes were levied by the state as well as local governments. Now, such taxes are levied only by cities, counties, and special districts. While reliance on the property tax has declined dramatically since local governments were first authorized to levy local retail sales taxes

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in 1971,[1] property taxes remain an important revenue source for cities and counties, today comprising about 20 percent of total city revenues and 40 percent of county revenues.[2] Neither the longevity of the taxation scheme nor its critical role in the financing of local government has, however, been sufficient to improve its image.

Like the tax itself, its unpopularity among property owners and politicians dates from the eighteenth century. Recent evidence of the public's aversion to the property tax was highlighted in national surveys conducted annually from 1972 to 1994.[3] The U.S. Advisory Commission on Intergovernmental Relations asked respondents to select the "least fair" tax among the federal income tax, Social Security tax, state income tax, state sales tax, and local property tax. Local property taxes were perceived by the general public to be the "least fair" of the selected taxes in seven of the surveys and the second "least fair" tax (trailing only the federal income tax) in all other surveys.[4]

History of the Property Tax

While property taxes were an important revenue source for many northern colonies during the colonial period, poll taxes provided the major source of revenue for colonial and county governments in North Carolina. Two explanations have been offered for the state's reliance on the poll tax: First, the eastern landowners who controlled North Carolina's colonial assembly opposed a system of property taxes that would have placed upon them the lion's share of the tax burden. Because the poll tax was levied on every male of a certain age, the large landowners' share of the tax burden was considerably less than it would have been under a property tax regime. Second, the Crown's unpopular and poorly administered system of levying quit-rents, or an annual charge per acre of land, may have rendered the levy of property taxes a practical and political impossibility.[5]

While the eastern landowners retained control under the state government established by the state constitution of 1776, their power waned during the Revolutionary War, when common citizens were called upon to fight for independence. The General Assembly in 1777 enacted a tax system in which a property tax levied on nearly every type of property became the principal tax and the poll tax was relegated to secondary status. This new system of taxation did not survive the war. Within a few years, intangible property, such as stocks, bonds, and bank accounts, was taxed at a fraction of its value. Subsequently, livestock and improvements to real property were exempted from the tax base.

The Revenue Act of 1784 further eroded the property tax base by providing for the taxation of all rural land at a set amount per acre, while town lots were taxed based on value. The act also exempted personal property from taxation. As a result, by 1812, the poll tax produced twice as much revenue as the property tax.

The Constitution of 1835 ushered in a new system of taxation based upon ability to pay. Ad valorem taxes on real property and poll taxes were supplemented by taxes on income, inheritance, luxuries, and capital of merchants and corporations, as well as numerous license taxes imposed for the privilege of engaging in business. By 1854, the income tax produced more revenue than property taxes on real property.

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1. Charles D. Liner, "The Evolution of North Carolina's State and Local Tax System," *State and Local Government Relations in North Carolina*, 2d ed. (Chapel Hill, N.C.: Institute of Government, University of North Carolina at Chapel Hill, 1995), 62 (reporting that property taxes comprised 96.4 percent of local government revenue in 1970, but only 71.2 percent in 1992).

2. North Carolina Department of State Treasurer, *Financial Information*, http://www.treasurer.state.nc.us/lgc/units/D_E.htm, http://www.treasurer.state.nc.us/lgc/units/D_AG.htm.

3. The survey results are from various issues of "Changing Public Attitudes on Governments and Taxes" published by the U.S. Advisory Commission on Intergovernmental Relations. The surveys are available at http://www.library.unt.edu/gpo/ACIR/browsetitles.htm.

4. In the 1994 survey, for example, 28.4 percent of respondents judged the local property tax to be the "least fair," compared with 27.2 percent for the federal income tax, 13.6 percent for the state sales tax, 12.4 percent for the Social Security tax, and 7.4 percent for the state income tax.

5. This section draws heavily on Charles D. Liner's article, "The Origins and Development of the North Carolina System of Taxation," *Popular Government* 45 (Summer 1979): 41 and his chapter "The Evolution of North Carolina's State and Local Tax System," *State and Local Government Relations in North Carolina*, 2d ed. (Chapel Hill, N.C.: Institute of Government, University of North Carolina at Chapel Hill, 1995), 51–67.

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During the Civil War, the General Assembly enacted legislation taxing most forms of property according to value, including improvements to land, household furniture and other personal property, and intangible personal property. This comported with the nationwide movement toward uniform and universal taxation. The state Constitution adopted after the civil war in 1868 provided for a poll tax on males between the ages of twenty-one and fifty to be levied at the state and local level and required that 75 percent of poll tax revenues be used for education and 25 percent for care of the poor. The rate of the poll tax was set at the equivalent of the tax on $300 in property, not to exceed $2. The Constitution also mandated uniform and universal taxation of property. Local governments, however, were permitted to levy taxes only for necessary expenses without voter approval. The provision equalizing and limiting the rate for poll taxes based upon the rate of the property tax effectively limited the combined rate at which state and county property taxes could be levied to 66-2/3 cents per $100 of value, or, stated in terms of the poll tax, $2 per $300.

Notwithstanding the stated rate limitation, by 1914, the property tax rate in nearly every county exceeded 66-2/3 cents per hundred (Moose v. Board of Commissioners of Alexander County, 172 N.C. 419, 90 S.E.441). This is so because the state Supreme Court interpreted the equation and limitation clause to apply only to the levy of taxes for general purposes and not to taxes levied for a special purpose.

The 1868 Constitution also required the General Assembly to provide a general and uniform system of schools for four months of the year. Counties were required to levy property and poll taxes sufficient to produce revenues that would, when combined with state revenues, support the newly mandated school term.

The mandate for school funding became more difficult for counties to satisfy after the courts ruled that schools were not a "necessary expense." Thus, for a time, counties could not levy property taxes to fund schools without first obtaining voter approval. Convincing voters to vote to increase their own tax burden was then, as it is now, a difficult feat. In the early 1920s the Supreme Court changed its view on the matter, holding that counties could levy taxes necessary to maintain schools for the constitutionally required term without seeking voter approval.

Between 1900 and 1921, taxpayers were required to list property and income every four years with township list takers. List takers, who were appointed every four years to record property for purposes of state and local taxation, primarily relied upon taxpayers' honesty in reporting the nature and extent of property owned and its value. List takers worked separately from one another and followed no uniform guides for estimating value. Though their work was reviewed by the county, that review was largely a formality. Neither list takers nor any other county official was charged with the duty of inspecting property to determine the accuracy of the information reported. The honor system predictably led to the underreporting and undervaluation of taxable property. The low assessments that resulted required localities to increase the rate of property taxes in order to obtain additional funds. Due to the constitutional rate limitation on property taxes, local officials were required to obtain voter approval to levy taxes at a higher rate. The average countywide property tax rate in 1919 was $1.51. By way of contrast, the average countywide tax rate in the 2004–5 fiscal year was 65 cents.[6] The high rates in the early twentieth century exacerbated taxpayers' undervaluation of property and their omission of property from tax lists.

In 1919, at the urging of then-governor Thomas W. Bickett, the General Assembly passed the Revaluation Act, which mandated a statewide revaluation of all property. The State Tax Commission, which had been created in 1901, was charged with supervising the revaluation. The state commission appointed a tax supervisor in each county to coordinate and oversee the work of list takers in preparation for the 1920 revaluation. The assessed value of property tripled in the revaluation of 1919–20, and more than one million acres of land were added to the tax lists. The tax supervisor ultimately gained a permanent role in the state's system of ad valorem taxation. While the duties and powers of the supervisor expanded, the importance of the list taker declined. The position of tax supervisor evolved into the modern-day office of tax assessor.

In 1921, the General Assembly enacted a state-administered corporate and personal income tax and abandoned the property tax to local governments. With the exception of a brief period during the Great Depression, property taxes have remained strictly a source of local, rather than state, revenue. The state's abandonment of property tax revenues in 1921 marked an important and lasting shift in the financing model for state and local governments in North Carolina: Revenues from the property tax fund local government functions while statewide sources of revenue, such as the income tax, gasoline tax, and state retail sales tax, are used to pay for state programs.

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6. North Carolina Department of State Treasurer, *Memorandum #1049, April 6, 2006, Subject: Management of Cash and Taxes and Fund Balance Available—Counties for the Fiscal Year ended June 30, 2005,* at p. 103.

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Another significant change in North Carolina government financing took place in the early 1930s when the state assumed responsibility financing schools, roads, and prisons—three central governmental functions that had previously been relegated to counties. The state funded these programs by levying a 3 percent state retail sales tax as well as a tax on alcoholic beverages and by increasing franchise and income tax rates. North Carolina's prescient shift to a centralized model of funding based upon income and sales tax revenue, rather than property taxes, enabled the state, unlike many others, to meet demands for increased public services during the decades to come through reliance on rising revenues from the income tax without having to increase tax rates or impose additional taxes.

Along with the constitutional mandate for a general property tax, the egalitarian principle of uniform and universal taxation of property reflected in the 1868 Constitution was effectively abandoned in 1936 upon the enactment of a constitutional amendment permitting the General Assembly to classify property for assessment at a reduced rate or for exclusion from the tax base. A 1961 amendment ended the practice of classifying property for exclusion or reduced taxation through local acts that applied only to a particular city or county by requiring that the classification power be exercised only on a statewide basis. The General Assembly has exercised its power to classify property on numerous occasions. The classification with the largest financial impact permits the taxation of certain agricultural property based upon its rental value as agricultural property rather than its market value based upon its highest and best use.

The 1971 amendments to the Constitution eliminated the constitutional limitation on the tax rate and gave the General Assembly authority to decide when voter approval would be required for property tax levies.

The history of the property tax undoubtedly influences both taxpayer aversion to and local government reliance upon this significant revenue source. In recent years, local officials sensitive to voters' negative views of the property tax, have sought authorization from the General Assembly to raise revenue from other sources, including sales taxes, fees imposed upon users of particular services, availability fees levied at a flat rate upon all occupied dwellings, land transfer taxes, occupancy taxes, taxes on prepared meals, impact taxes, and motor vehicle fees. At the same time, property owners have lobbied the General Assembly for exclusion or reduced taxation of business inventory, intangible property, residences owned by elderly persons, agricultural, and other special categories of property. Beginning in the 1980s and continuing to the present day, the legislature has responded to constituent concerns by excluding from the tax base or providing for reduced taxation of numerous categories of property. The granting of such exemptions and the lowering of tax burdens on certain types of property has eroded the constitutional mandate of uniformity—and thus equity—in taxation.

Nature of the Property Tax

Despite its aforementioned lack of popular appeal, the property tax remains the primary general revenue source for local governments in North Carolina. Given this stature, it is useful to briefly review the arguments in favor and against the property tax. Historically, property (particularly real property) was considered an ideal "tax candidate" due to the relative ease with which taxes could be assessed on visible, tangible property and the high rate of compliance resulting from the immobility of real property and the threat of government foreclosure. In short, property taxes were considered ideal because they were hard to evade and it was a relatively simple matter to ensure that all property owners paid their share.

More recent arguments in support of local property taxes tend to be centered on the concept of equity in taxation, which is simply the notion that the burden of taxation should be distributed fairly. Given the value judgments inherent in determining what is fair, equity generally is evaluated based on the *ability-to-pay* and *benefits-received principles*. The ability-to-pay principle holds that those who have a greater ability to pay should in fact pay more of the cost of providing government services, while the benefits-received principle asserts that individuals should be taxed in proportion to the benefits they receive from government services. Since property ownership is one method for assessing a taxpayer's ability to pay (with income, wealth, and consumption being the other methods), individuals who own more property may be viewed as having a greater ability-to-pay. Similarly, because owning property is most often associated with the use of related government services such as public education, garbage collection, and police and fire protection, it is often argued that the value of these services is closely related to property tax payments and therefore the property tax is best viewed as a "benefits tax" for services rendered.

In addition to the political unpopularity of the tax, which is most likely associated with the manner in which payment may be enforced and requirement of a large, lump sum payment, there are economic arguments against its use. First, the subjective nature of property appraisal gives rise to criticism that property taxes are not uniform and thus are inequitable. The subjectivity associated with appraisals is more problematic for property located in an area where sales

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are infrequent or property of a type that is infrequently sold since sales of like property establish the market standard by which appraisals may be measured. Second, the property tax, unlike many other taxes, is susceptible to base erosion, which has been a problem for many years in the manufacturing-heavy Midwest. The idea underlying base erosion is that if property tax rates are increased, then individuals have a greater incentive to alter their property holdings into non-taxed forms of property and/or move their resources into other jurisdictions with lower tax rates. Such actions may lower the value of taxable property (because it is less desirable) and compel local governments to raise property tax rates in an effort to maintain revenue. The raising of rates in turn increases the incentive to alter property holdings, which may start an unwelcome cycle of lowered values and increased rates. A final economic criticism that may be levied against the property tax is that the tax is applied to a taxpayer's wealth rather than to his or her income. This criticism goes to the heart of how a taxpayer's ability to pay is assessed. Unfortunately, there is no established criteria for measuring one's ability to pay. Wealth, as defined by economists, is a stock measure of ability-to-pay because it is a snapshot of an individual's assets at one point in time, while income is a flow measure of ability-to-pay because it is based on a longer time period (typically one year). This distinction arises because although income and wealth tend to be related, some individuals—retirees in particular—tend to have more wealth than income. A large, lump-sum payment is often viewed as too burdensome for these individuals.

Putting the arguments for and against the property tax aside, one positive and rarely mentioned aspect of the property tax is its stability as a revenue source. For any tax, the revenue generated depends on the tax rate and the tax base. Most tax bases tend to be *procyclical*, which means the tax base tends to grow as the economy grows and tends to contract as the economy contracts. If tax rates remain unchanged, then tax revenue will fluctuate as the level of economic activity changes because the tax base will expand and contract with the overall level of economic activity. Different tax bases react differently to changes in economic activity so different revenue sources, such as property, sales, and income tax revenue, will fluctuate up and down differently over the business cycle. The property tax base is generally considered to be the most stable of all tax bases, which means that revenue from the property tax is highly dependable.

Finally as compared to other schemes of state and local taxation, the property tax is relatively expensive to administer—at least at the county level, where nearly all valuation takes place. With income and sales taxes, the taxpayer and retailer, respectively, assume the burden of calculating and reporting their tax liability—or of paying a professional accountant do so. High administrative costs are, however, countered by the uniformity that results from the valuation and assessment of property by counties under the supervision of the Department of Revenue. The lower cost alternative is self-assessment and voluntary taxpayer reporting of taxable property—which was tried and failed in the early twentieth century. In addition, because tax collectors have broad authority to enforce the payment of delinquent taxes by seizing tangible personal property, attaching bank accounts, and ultimately, by foreclosing upon real property, the collection rate for assessed taxes is universally high, averaging 97 percent statewide in 2005.[7]

Constitutional Provisions Governing Taxation

For Public Purposes Only

Because Article V of the North Carolina Constitution establishes the ground rules for the levying of any state or local tax, a review of its provisions is a logical starting point for a discussion of the levy of property taxes by local governments. The Constitution permits the power of taxation to be used "for public purposes only." Thus, a city or county wishing to pay for a program, function, or activity with property tax revenues must ensure that the program, function, or activity serves a public purpose. This analysis requires more than simply determining whether the expenditure somehow benefits more than a limited segment of the community. A public benefit that is merely incidental to a

7. North Carolina Department of State Treasurer, Memorandum #1049, April 6, 2006, Subject: Management of Cash and Taxes and Fund Balance Available—Counties for the Fiscal Year Ended June 30, 2005, at 2; ibid., Memorandum #1050, April 6, 2006, Subject: Management of Cash and Taxes and Fund Balance Available—Municipalities for the Fiscal Year Ended June 30, 2005, at 2.

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principal benefit for a private party does not satisfy the public-purpose test. Conversely, the levying of a tax primarily intended to benefit the community at large by bestowing a benefit upon a private party does not render the tax unconstitutional. The state supreme court has considered both types of expenditures.

In 1947, the state supreme court struck down as unconstitutional a local act that permitted the Town of Tarboro to issue bonds and levy taxes to construct a hotel, which the town planned to own and maintain.[8] While recognizing that the proposed hotel would promote business in Tarboro and enhance property values, the court held that such benefits were too incidental to justify the expenditure of public funds for what was essentially a private business. Because the cost of constructing the hotel was not a public purpose, the court concluded that the General Assembly exceeded its authority in authorizing the expenditure of tax revenues for the construction of a municipal hotel. In reaching its conclusion, the court listed many types of expenditures that fell within the definition of public purposes, including streets, sidewalks, bridges; water, light, and sewerage plants; municipal buildings; auditoriums; hospitals; playgrounds; parks; railroads; armories; fairs; and airports.

Consideration of the Town of Tarboro case in the modern era of economic incentive grants raises the question of whether tax revenues may be expended in incentive payments to private businesses, which are intended to lure private businesses to locate or expand in a particular jurisdiction. Are such incentive payments for a public purpose? The state supreme court answered this question affirmatively in a 1996 case resulting from a lawsuit filed by a private citizen, William Maready, against the City of Winston-Salem and Forsyth County.[9] Maready alleged that a state statute authorizing local governments to make economic development incentive grants to private businesses was unconstitutional because it violated the constitutional requirement that the power of taxation be used only for public purposes. Maready challenged twenty-four economic development incentive projects entered into by the city or county at a cost of $13 million, most of which was generated from property taxes. The city and county estimated that these programs resulted in a $240 million increase in the tax base and the creation of 5,500 new jobs.

The state supreme court sided with the city and county, determining that the incentive payments were made to spur economic development, which had long been recognized as a proper governmental function, in order to further the general economic welfare of city and county residents. In distinguishing a 1968 opinion in which it struck down a statute that authorized the issuance of industrial revenue bonds to finance the construction of facilities for private industry, the supreme court explained the incongruity of preventing cities and counties that expend large sums on humanitarian and social programs "from promoting the provision of jobs for the unemployed, an increase in the tax base, and the prevention of economic stagnation."

The Power to Exempt and Classify Property

A constitutional provision dating from the 1868 state Constitution (Art. V, sec. 2(3)) exempts from taxation property belonging to the state, counties, and municipal corporations. The provision further authorizes the General Assembly to exempt from taxation cemeteries, property held for educational, scientific, literary, cultural, charitable, or religious purposes, personal property to a value not exceeding $300, and $1,000 in property held and used as the place of residence of the owner. As previously noted, the Constitution was subsequently amended to require that every such exemption apply statewide and be made by general law uniformly applicable in every county, city, or special district. Only the General Assembly may grant exemptions.

As mentioned earlier, the General Assembly gained the exclusive power to classify property for taxation in a provision added to the state constitution in 1936. The constitution requires that all such classifications be made by general law uniformly applicable in every county, city, and town, and other unit of local government, and that each class must be taxed by uniform rule.

The granting of the power to classify property in 1936 rendered largely meaningless the permissible exemptions clause dating from 1868. This is so because the General Assembly may enact a general law designating some type of property as a special class and then exclude that class from taxation. In 1985, the General Assembly did just that with respect to household personal property by designating all nonbusiness personal property (other than motor vehicles, mobile homes, aircraft, watercraft, and watercraft engines) as a special class of property and excluding it from the tax

8. Nash v. Town of Tarboro, 227 N.C. 283, 42 S.E.2d 209 (1947).

9. Maready v. City of Winston-Salem, 342 N.C. 708, 467 S.E.2d 615 (1996).

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base. Thus, through its classification power, the legislature exempted from taxation far more than the $300 in personal property authorized by the earlier constitutional provision. Similarly, the General Assembly acted pursuant to the classification power to exclude from taxation the greater of $20,000 or 50 percent of the portion of the residence of a qualifying disabled or elderly person, again exceeding the $1,000 residence exemption authorized in the permissible exemptions clause.

To the extent that the exemptions clause mandates exemption from property taxes for property belonging to the state, counties, and cities, it does, however, remain important.

Nearly two decades after the adoption of the 1868 Constitution, the General Assembly enacted a statute exempting property belonging to the state and its political subdivisions so long as the property was "used for public purposes." The statutory limitation that property be held for a public purpose remained in effect, even after the Constitution was rewritten in 1970 to contain the same mandatory exemption for state, county, and municipal property, with no public-purpose limitation, present in the 1868 Constitution. In 1974, the tax assessor for Orange County assessed for taxation a hotel and the personal property therein owned by and located on the campus of the University of North Carolina at Chapel Hill, a state institution, on the basis that the hotel and associated personal property were being used for commercial purposes unrelated to the university's educational mission. The university objected, alleging that the hotel and personal property were exempt from property taxes pursuant to the state constitution as property owned by the state. The supreme court agreed with the university and found unconstitutional the public-purpose gloss placed by the legislature upon the constitutionally mandated exemption for state property. The court, like the Constitution, put it simply, stating, "[S]tate-owned property is exempt from ad valorem taxation solely by reason of State ownership, regardless of the property's use."

Statewide Application of Exemptions and Classifications

The requirement that classifications and exemptions be made by general law uniformly applicable in every county, city, and state bars the General Assembly from passing local acts that exempt certain types of property only in a particular tax district. An act exempting all cemeteries in a particular county would, for example, be unconstitutional. In contrast, the General Assembly may constitutionally enact a statute exempting *all* cemeteries from taxation, or, in the alternative, designating burial grounds as a special class of property to be assessed based on its value as a burial ground. The General Assembly has, in fact, both exempted burial property not held for sale and designated such property held for sale as a special class of property.

The Uniform Rule Requirement and Service Districts

The uniform rule requirement mandates uniformity in the tax rate as well as the mode of assessment. This uniformity must be coextensive with the territory to which it applies. Thus, a local tax, such as the property tax, must be based upon rates and standards of assessment that apply uniformly throughout the city, county, or special or service district in which the tax is levied.[10] As a practical matter, the General Assembly has enacted legislation requiring that all property other than certain public service company property and property located in a development financing district be assessed for taxation at its true value or use value (in the case of certain agricultural, horticultural, or forestland property) (G.S. 105-284). Moreover, the Machinery Act provides that the county assessor's assessment of all property other than public service company property, which is assessed by the state Department of Revenue, applies to all cities and special and service districts within the county (G.S. 105-284, -327, -328). An exception applies to property located in a city that straddles two or more counties. The governing board for such a city may appoint a city assessor to appraise and assess city property.

Given the constitutional requirement that the mode of assessment and rate of taxation be uniform throughout a taxing district, it would be necessary, if the constitution had no more to say on the subject, to establish a special district—a separate unit of local government—in order to levy taxes at increased rates in defined territorial areas within a particular taxing unit. A provision added to the state constitution in 1973, however, permits the General Assembly to enact laws authorizing the governing body of a taxing unit to define such a territorial area and to levy additional taxes within the area to provide for additional or greater services, facilities, or functions in the defined

10. Hajoca Corp. v. Clayton, 277 N.C. 560, 569, 178 S.E.2d 481, 487 (1971).

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area [N.C. Const. Art. V., Sec. 2(4)].[11] The same year the constitution was so amended, the General Assembly enacted county and municipal service district acts, authorizing cities and counties to define territorial areas in which increased taxes may be levied to fund watershed improvement projects, beach erosion control, sewage systems, and other services (G.S. 153A-301; 160A-536).

Part II. The Machinery Act

Statutes Governing the Administration of Property Taxes

The Machinery Act, codified at Subchapter II of Chapter 105 of the General Statutes, sets forth the procedures for assessing and collecting property taxes. The title of the act dates from the time of a state-levied property tax. Before 1931, the General Assembly passed each session a Revenue Act, which levied the property tax, and a Machinery Act, which set forth the procedures for levying and collecting the tax.[12] A permanent Machinery Act, governing the assessment and collection of local property taxes, was enacted in 1939.[13] The 1939 version of the Machinery Act was overhauled in 1971. The 1971 Machinery Act, as modified by subsequent enactments of the General Assembly, remains in effect today.

The Machinery Act divides property into two general types: *real* and *personal*. Real property is defined in G.S. 105-273(13) to include land and improvements, which consist of buildings and fixtures that are permanently attached to land, including manufactured homes placed upon land owned by the same person who owns the home. G.S. 105-273 subdivides personal property into tangible property, such as motor vehicles, boats, and machinery, and intangible property, such as bank accounts, stocks, and bonds. All real and personal property is taxable, unless specifically exempted or excluded from taxation. Thus, taxation is the rule and exemption or exclusion the exception.[14] As previously noted, very little intangible property is subject to ad valorem taxation today. All 100 counties and most cities levy property taxes. In fiscal year 2004–5, the average tax rate was 65 cents per $100 in value for counties and 44 cents per $100 for cities. County tax rates ranged from 35 cents to more than $1 per $100, while city rates ranged from 2 to 90 cents per $100.[15]

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11. See also David M. Lawrence, *Local Government Finance in North Carolina*, 2d ed. (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1990), ch. 16, § 1600, pp. 283–84 (discussing uniformity provision and constitutional provision authorizing creation of service districts).

12. Joseph S. Ferrell, "A Taxpayer's Guide to Property Tax Revaluation," *Popular Government* 47 (Winter 1982): 35.

13. N.C. Pub. Laws 1939, Ch. 310.

14. Albert Coates, *The Battle of Exemptions*, 19 N.C. L. Rev. 154, 165 (1940).

15. North Carolina Department of State Treasurer, Memorandum #1049, n. 7. at page 10; Memorandum #1050 at p. 32.

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The Administrative Structure

The Machinery Act prescribes the basic administrative structure for listing, assessing, and collecting property taxes. The county assessor and the county and city tax collector stand at the heart of this structure. The county commissioners appoint, pay, assist, and supervise the county assessor and collector. The city council does the same for the city tax collector. The county assessor also is supervised at the state level by the Department of Revenue and the Property Tax Commission.

Traditionally, the county board of commissioners appointed separate individuals to serve in the role of county assessor and tax collector. The assessor and tax collector headed separate departments and reported to the board of commissioners and related to the county manager independently of each other. Some counties still follow the traditional model, while others have combined the assessing and collecting functions in a single tax department under one department head. Some counties accomplish this by appointing the same person as assessor and tax collector. The Machinery Act permits the office of assessor to be held concurrently with any other appointive or elective office except that of county commissioner [G.S. 105-294(f)]. Others counties name a tax administrator who heads a combined tax department. A tax assessor may serve as administrator as well as collector without violating the prohibition on holding more than two appointive or elective offices since the third position—tax administrator—is an administrative and not an appointed or elected position.

The work of the county assessor is subject to review by the county board of equalization and review. The principal function of this board is to hear and decide taxpayer appeals. In many counties the board of equalization and review is comprised of the county commissioners, who sit for that purpose for a limited time each year. In other counties special boards of equalization and review are appointed by the county commissioners. Some of these special boards have been created by local act of the General Assembly. Others have been created by resolution of the board of county commissioners pursuant to general enabling legislation.

At the state level, over and above the county officials, are the Department of Revenue and the Property Tax Commission. As an administrative agency, the Department of Revenue is charged with supervising the valuation and taxation of property by local units of government and, in limited cases, with appraising property for local taxation. The Property Tax Commission is an administrative appeals board that has the power to review and change listing and valuation decisions made by local officials or the Department of Revenue.

Terms and Qualifications of the County Assessor

The county assessor is appointed directly by the board of county commissioners rather than by the county manager. The term of office is two years, beginning on July 1 of odd-numbered years. An assessor who has completed a two-year term and has been certified by the Department of Revenue may be reappointed for a four-year term, at the discretion of the board. The commissioners may remove the assessor at any time for good cause after giving him or her notice in writing and an opportunity to appear and be heard at a public session of the board.

Persons appointed as assessor must be certified by the Department of Revenue. A prospective assessor must complete satisfactorily four basic training courses and a comprehensive examination. New appointees have two years to complete these requirements and are not eligible for reappointment if they fail to do so within the time allowed. Assessors also are required to complete at least thirty hours of continuing education instruction every two years to remain eligible for reappointment.

The Property Tax Calendar

Many citizens and local government officials are surprised to learn that property taxes are levied for a *fiscal year* that opens on July 1 and closes on the following June 30. This confusion is likely caused by several factors. First, North Carolina real estate attorneys routinely prorate taxes between buyers and sellers in real estate closings on a calendar year basis. Second, the January 1 date of assessment and the January 6 delinquency date the following year roughly follow a calendar year cycle. In addition, property taxes levied for the 2006–7 year generally are referred to simply as "2006 taxes." Anyone familiar with local government finance and budgeting will recognize, however, that property taxes, which are the bread and butter of local government finance, could be levied on nothing other than a fiscal year basis. After all, county commissioners and city council members adopt their budgets and set the property tax rate by

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July 1 of each year. Bills for property taxes, which supply the revenue for budgeted expenditures, are then mailed to taxpayers as soon as possible after July 1. Taxes are due September 1 (a date that is widely ignored by taxpayers in all taxing jurisdictions that do not offer a discount for early payment of taxes) and are payable without interest at any time through the following January 5. Most taxpayers, and all mortgage companies paying on behalf of homeowners, pay property taxes before January 1 so that the amount paid may be deducted from the property owner's income tax return for the current calendar year. Thus, midway through the fiscal year, the local government unit will have received most of its revenues from current fiscal year property taxes.

After the delinquency date (January 6), local tax collectors begin to use enforced collection remedies against those who have not paid on time in the current year. In addition to collecting delinquent taxes for the current year after January 6, the tax collector continues efforts to collect delinquent taxes from prior years.

In order to estimate the probable revenues from property taxes levied at a given rate, the local governing board must know the total assessed value of property subject to taxation in its jurisdiction as well as the jurisdiction's collection percentage from the previous year. So that the board may determine the assessed value, the Machinery Act requires that the review and appeal process (at least in years in which there is no countywide revaluation of real property) conclude by July 1—the date by which the tax levy must be established.

To tax property according to value in the correct taxing jurisdiction and bill the taxes to the proper owner, the taxing authorities must know where the property is located, its value, who owns the property, and whether it is subject to taxation. Because these characteristics may change over time, the Machinery Act sets January 1 as the date for determining the *situs* (location for purposes of taxation), value, ownership, and taxability of property. Situs, taxability, and ownership of real and personal property (other than registered motor vehicles) are determined annually as of the January 1 that precedes the fiscal year for which taxes are to be levied. Situs, taxability, and ownership of registered motor vehicles are determined as of the date of vehicle registration. The value of real property is determined as of January 1 of the year in which property is revalued. Counties must conduct a countywide revaluation at least every eight years. Personal property other than registered motor vehicles is valued annually as of January 1. Registered motor vehicles are valued as of January 1 of the year in which the taxes become due.

The information needed to determine situs, taxability, ownership, and value is compiled each year during the listing period, which begins in January and normally runs for about thirty days. During this time taxpayers must submit to the county assessor a list of their taxable personal property and any improvements they have made to their real property. While taxpayers were formerly required to list real as well as personal property, every county now has a permanent listing system for real property, which requires the assessor to list all real property. The form on which taxable property is declared is called the *abstract*. The listing period also is the time for property owners who want to claim the benefit of exemption or other special tax treatment to submit their applications.

After the listing period closes, the county assessor determines the appraised and assessed value of each taxable item and compiles the *scroll*, which is a tentative list of taxable property showing the owner's name and address and the aggregate assessed value of his or her taxable property. The scroll is then submitted to the board of equalization and review for approval. Most counties begin this process on the first Monday in May. The Machinery Act contemplates that the board of equalization and review will remain in session for three weeks, but in any event not later than July 1. In reality, most boards of equalization and review now meet for several months after July 1, though they do so only to hear appeals filed before July 1. While the board is authorized to make any changes in the scroll needed to bring the listing and assessments into conformity with legal requirements, in practice virtually all of the changes it makes result from appeals by property owners.

After the board of equalization and review has completed its work and the tax rate has been set, the tax office computes the precise amount of taxes due from each person entered on the scroll, which is now more properly called the *tax list and assessment roll* because it has been finalized for the current year. The list of taxpayers with the amount of taxes due from each is called the *tax book*. In the modern era of electronic record-keeping, many of the Machinery Act titles for records have lost much of their earlier significance. For example, in many counties, the data formerly reflected in a printed tax book and tax list and assessment roll are combined in a computerized database.

Tax receipts prepared from information in the tax book doubles as a billing notice to the taxpayer. Once the tax has been paid, the tax receipt serves as legal evidence that the tax lien has been discharged.

Table 14-1 shows a simplified calendar of important dates in the 2006–7 property tax cycle for a county that begins the review and appeal process in May and is not subject to a general revaluation of real property in 2006. Note that taxpayer deadlines falling on a holiday or weekend are moved to the following business day.

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Table 14-1. *Simplified Calendar of Dates in the 2006–7 Property Tax Cycle*

Date	Process
Sunday, January 1, 2006	Assessment date.
Tuesday, January 3	Listing period begins (first business day after January 1).
Friday, January 6	Delinquency date for 2005–6 taxes.
Tuesday, January 31	Listing period ends.
Wednesday, March 1	Tax collector advertises unpaid 2005–6 taxes that are liens on real property.
Monday, April 17	Listing deadline for taxpayers who have been granted extensions of time in which to list (first business day after April 15)
Friday, April 21	Assessor publishes legal notice of beginning of review and appeal process.
Monday, May 1	Review and appeal process begins when board of equalization and review holds its first meeting.
Monday, May 22	Deadline for taxpayers to file requests for review of listings and assessments by board of equalization and review.
Friday, June 30	Close of 2005–6 fiscal year.
Saturday, July 1	Beginning of 2006–7 fiscal year. (Counties and cities should adopt their 2006–7 budgets and set their tax rates before start of new fiscal year. Statutory deadline for budget adoption is July 1.)
Mid-July to mid-August	Tax notices should be mailed as soon as possible after tax rate is set.
Friday, September 1	Due date for 2006–7 taxes.

Real Estate Transfers, Prorations, and Annexation

In nearly every real estate transfer, property taxes are prorated between the buyer and seller. A portion of the property taxes attributable to the period of the seller's ownership is deducted from the seller's proceeds and credited to the buyer. Many property owners mistakenly believe that this balance sheet deduction and credit at a real estate closing satisfies any liability for property taxes for the year in which the transfer takes place. Yet, unless the transfer occurs after property tax bills have been issued in late July or early August, the general practice is that the property taxes are not paid from the proceeds at closing. For many years, the nonpayment of taxes at closing has led to several problems. First, the owner of record of property as of the assessment date traditionally was defined as the "taxpayer," whose name appeared on the tax receipt, in any advertisement of tax liens published in the newspaper, and against whom enforced collection remedies were authorized if the taxes are not paid. It is not difficult to imagine a seller's surprise upon having his or her wages garnished for property he or she sold in the previous calendar year. The proration of taxes at closing was no defense to an enforced collection action as the prorating was merely a private agreement between the parties and did not result in the actual payment of taxes at closing.

The General Assembly in 2006 addressed this problem by redefining the term taxpayer, for purposes of enforced collection of delinquent property taxes assessed on real property, as the owner of record on the date the taxes become delinquent and any subsequent owner of record of the property if conveyed after that date [GS 105-273(17)]. Thus, beginning with property taxes imposed for the 2006–7 fiscal year, payment of delinquent property taxes assessed on real property transferred after January 1 may be secured by attaching or levying upon personal property of the owner as of the date of delinquency or any subsequent owner, but not the owner of the property as of January 1. The nonpayment of taxes at closing also presents potential problems for purchasers of property, who often do not receive the bill for property taxes because the former owner's name appears on the tax receipt, which doubles as the bill. If a new owner does not receive the tax bill, she may neglect to pay the taxes before they become delinquent. This is less of an issue if the property is subject to a mortgage, in which case the mortgage company usually maintains an escrow account from which the taxes are paid even if the new owner does not receive the tax bill.

Finally, the proration of taxes upon the transfer of real property leads to confusion because of the manner in which such prorations are calculated. Though property taxes are levied on a fiscal year basis, real estate attorneys generally prorate them based upon a calendar year. Indeed, the General Assembly specifically endorsed this method of proration in 2006 by enacting new G.S. 39-60, which states that the calendar-year basis is the presumptive manner of prorating

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property taxes upon the sale of real property. Pursuant to the calendar year method of proration, if property is sold on July 1, 2006, one-half of the 2006 property taxes is deducted from the seller's proceeds—even though the seller did not own the property during the period for which the 2006 taxes were levied, July 1, 2006, through June 30, 2007.

The practice of prorating fiscal year taxes on a calendar year basis can create considerable confusion upon the sale of a newly annexed property. Newly annexed areas are subject to property taxes in proportion to the period of time that the area is within the city during the current tax year (G.S. 160A-58.10). For example, suppose a city annexes property on August 15, 2006. Property owners in the annexed area are responsible for city taxes for the number of months remaining after the annexation in the current fiscal year. These property owners will thus be responsible for ten months of 2006 taxes. These taxes are for the period September 1, 2006, through June 30, 2007. Suppose that one of the property owners whose property recently has been annexed sells the property on June 30, 2007. At closing, the 2007 taxes are prorated on a calendar year basis, and six months of taxes are deducted from the seller's proceeds. The seller, having just learned in the annexation process that taxes are levied on a fiscal year basis, believes that the closing agreement does not fairly represent his share of the taxes since he paid city and county taxes on December 31, 2006, for the tax year concluding June 30, 2007. The seller is, of course, correct. Nonetheless, it is important to note that the city and county in this example are not double-paid. Instead, by virtue of the closing agreement, the seller has simply subsidized the buyer's portion of 2007 taxes.

Unlike annexations, property taxes are not billed based on a partial fiscal year when territory is added to fire districts, sanitary districts, and other special taxing districts after July 1. If property is not located within a tax district on July 1, it cannot be taxed by the district for the current fiscal year. There are special statutes that require cities annexing portions of fire tax districts to make partial refunds of fire district taxes to property owners in the annexed area.[16] Otherwise, the statute requiring payment of municipal taxes for the number of months remaining after annexation in the fiscal year would result in property owners paying twice for fire protection in the same fiscal year.

Actual versus Effective Tax Rates

In its annual report on city and county management of cash and taxes, the Department of State Treasurer lists actual and effective tax rates for each city and county. Obviously, the actual tax rate is the rate set by the governing body of a taxing unit for a particular year. Effective tax rates, in contrast, illustrate the manner in which increases in property values lower the stated tax rate applicable to a parcel of property.

For example, a tax rate of 50 cents per $100 applied to a tax base of $10 billion results in a tax levy of $50 million. If the market value of taxable property increases to $12 billion, but the assessed value remains $10 billion, the effective tax rate is approximately 42 cents per $100. This is so because the taxing unit is imposing $50 million in property taxes on a tax base of $12 billion. The property tax paid divided by the actual market value of the property equals 42 cents per $100—the effective tax rate. Because taxing units revalue property on differing schedules and experience different levels of economic growth, the publication of an effective tax rate helps local officials compare the tax rate imposed by one governmental unit to that imposed by other governmental units.

Steps in the Taxation of Property

There are six basic steps in administering the property tax at the local level.

1. Property must be identified as to ownership, location, and whether it is taxable. This step is called *listing*.
2. The tax office must estimate the market value of the listed property. This step is called *appraisal*.
3. The portion of the market value to be taxed must be calculated, and the property must be formally placed on the roll of taxable property. This step is called *assessment*.
4. Once property has been formally assessed for taxation, the taxing authorities must allow time for *review and appeal* of assessments. The owner may want to challenge the valuation placed on the property or whether the taxing jurisdiction has authority to tax it all, and the governing board may want to correct assessment inequities.

16. N.C. Gen. Stat. §§ 69-25.15 (voted fire tax districts), 153A-304.1 (county fire service districts) (hereinafter G.S.).

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5. Once the review process has concluded, the governing body of the taxing unit sets the *tax rate* for the current tax year, and the tax office begins the *billing* process that notifies each taxpayer how much he or she owes and when and where to pay the tax.
6. The last step is *collection* of the tax levy.

The Listing Process

A taxing unit must, of course, know what property is subject to its jurisdiction before it can levy a tax on such property. The process of listing property with the county and municipal assessor, which dates from the era of the township list taker, accomplishes this objective.

One significant characteristic of the modern listing process is the permanent listing of all real property by the county assessor. By July 1, 2004, every county had implemented a permanent listing system that charged the county assessor with listing all real property in the name of the owner of record. Taxpayers are no longer required to list real property with the county, but are required to provide the assessor with information regarding improvements made to the property since the time of the last reappraisal and any ownership of separate rights, such as mineral or timber rights in the property, and separate ownership of improvements to the property.

Who is responsible for listing property? Generally speaking, the listing taxpayer is the record owner of real property and the owner of personal property (for which there often is no formal record) as of January 1. The person in whose name property is listed becomes important for purposes of carrying out enforced collection remedies in the event the taxes become delinquent. Taxpayers list property and apply for exemptions or exclusions of property with the county tax assessor, though municipalities retain the right to affirm or deny an exemption or exclusion application notwithstanding the county's determination. The listing period generally is the month of January, but individual listing extensions may be granted during the regular listing period that permit a taxpayer to file his or her listing as late as April 15.

Determining the tax situs of real property is a relatively easy task given the permanent and immobile character of such property. With the exception of real property situated on or near a jurisdictional boundary, few disputes arise over the tax situs of real property. Determining the tax situs of personal property, which may travel through several taxing units in and out of state during a given year is a more complicated task. The Machinery Act provides that personal property generally is taxable at the residence of its owner. An individual's residence is the place where he or she dwelt for the longest period of time during the preceding calendar year. A corporation's residence is its principal place of business in North Carolina. Property commonly used at some other premises is, however, excepted from the general rule of taxation at the place of residence. Tangible personal property commonly used at a seasonal dwelling is taxable at the place of the seasonal dwelling. Tangible personal property used in connection with the owner's business is taxable at the business premises. Tangible personal property used or stored at premises other than the owner's residence pursuant to a business agreement is taxable at the place where the property is located. Thus, a boat owned by a Wake County resident but stored in a Craven County marina for a monthly fee is taxable in Craven County, rather than in Wake County.

Property that is not listed and thereby escapes taxation or that is listed at a substantial understatement in value is subject to discovery by the taxing unit. Penalties apply in the amount of 10 percent per elapsed listing period for taxpayer's failure to list. Property may be discovered for the current tax year and up to five previous years.

The taxpayer himself lists and values personal property on an abstract form submitted to the assessor—a vestige of self-assessment. Unlike the days of the list taker, however, many counties now have aggressive auditing procedures in place as a check on the abuses inherent in the self-reporting and valuation of property. The abstract for personal property must list any city in which the listed property is taxable. Given the exclusion of household personal property from taxation, most personal property abstracts list business property. Some individual personal property abstracts remain, however, as individuals are required to list boats, manufactured homes, and unregistered motor vehicles on annual abstracts.

Role of the City in the Listing Process

Cities may copy listings from the county records or may require that property be separately listed with the city. Most cities copy the county's listings. These cities remain responsible for deciding for themselves whether specific property should be listed for taxation or be granted immunity. This responsibility is independent of county decisions about the same property. If a county and a city differ on whether certain property is entitled to exemption or other preferential treatment, the owner may appeal to the Property Tax Commission for resolution of the dispute.

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Table 14-2. *Income Limit for Homestead Exclusion*

Income Year	Income Limit	Tax Year Eligible for Exclusion
2005	$19,700	2006–7

Although a city may elect to do its own listing, it must accept the property valuations fixed by the county authorities unless it lies in more than one county. (In that case, G.S. 105-328 grants special appraisal authority to the city.)

Property Not Subject to Taxation: Requests for Tax Relief

Under G.S. 105-282.1, exempt and excluded property is not required to be listed, but owners of such property have the burden of demonstrating to tax authorities that it qualifies for this preferential treatment by filing a request for tax relief. This is normally done during the regular listing period. (No request need be made for government-owned and certain other types of property.)

For most of the property currently granted tax immunity or other preferential treatment by the Machinery Act, requests for relief must be made only once, then revised when improvements or additions are made or a change in use occurs. However, for some types of exempt and classified property (primarily business-related property), annual requests for relief must be made.

As the requests are made or revised, tax officials must review them to ensure that the property in question qualifies for the relief requested. Personal property that is not listed and for which no exemption or exclusion application is filed is subject to discovery.

The homestead exclusion. One of the most widely applicable exclusions from the tax base is the *homestead* exclusion, which provides partial property tax relief for elderly or disabled low-income people who own their own homes. An individual who is sixty-five or older or who is permanently and totally disabled and who had a disposable income of not more than a statutorily prescribed amount in the preceding calendar year may have excluded from property taxes the greater of $20,000 or 50 percent of the tax value of his or her permanent residence. Table 14-2 sets forth the current income limit. Social Security, retirement benefits, public assistance payments, and any other form of income except gifts or inheritances are counted as income. Homeowners must apply for the benefit of the homestead exclusion, but once an application is approved, it remains valid for succeeding tax years if there is no change in circumstances that affects eligibility.

Appraisal

Statutory Elements of Value

Market-Value Standard

The Machinery Act requires that all property not singled out for special tax treatment be assessed at its true value as determined under G.S. 105-283 or use value as determined under GS 105-277.6. The term *true value* is defined in G.S. 105-283 as “market value, that is, the price . . . at which the property would change hands between a willing and financially able buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of all the uses to which the property is adapted and for which it is capable of being used.” Thus, property not qualifying for assessment based on its use value is said to be valued at its highest and best use rather than its current use.

Taxability of All Rights in Land

Several entities or people may have ownership rights in the same parcel of land. Notwithstanding a division of ownership interests, the entire value of property, including the interests of all owners, is assessed for taxation. Property is thus taxed as though one person has complete ownership of all interests in the property.

The classic example of property interests divided among several people is the *life estate*. Here, one owner, the *life tenant*, has the right of current possession and the right to all of the rents and profits from the land for his or her lifetime but does not have the right to sell the land or dispose of it by will. The remaining interest in the property belongs to persons known as *remaindermen*. Upon the death of the life tenant all of the interest in the property will belong to the remaindermen, who only then become full owners of the property. North Carolina taxes the entire value of all interests in this form of ownership. The property is appraised as if both the life tenant and all the remaindermen were

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willing to sell their respective interests at the same time to the same buyer. That is, the property is assigned one value for tax purposes. There is no apportionment of the value among the separate ownership interests of the life tenant and remaindermen.

Rental property subject to long-term leases provides a similar example. Here, the right of possession of the property has been leased to another for a specific term of years, often at a fixed monthly or annual rent that cannot be adjusted for inflation or other changes in market conditions. The landlord can sell his or her underlying ownership of the property but cannot evict the tenants until the lease expires. A purchaser will take the building subject to the outstanding leases. If the rent being paid under the leases is less than the current market demands for similar space, the value of the landlord's ownership interest can be adversely affected. The difference will depend on the gap between market rent and rent under the leases, and how long the leases have to run. Conversely, the value of the leasehold interests held by the tenants will be enhanced. This kind of property is taxed as if the owner had all of the interest in the property, that is, as though the property was leased at the current market rate.[17]

Use-Value Appraisal of Farmlands

In 1973 the General Assembly classified land used for agricultural, horticultural, or forestry purposes that meets certain ownership and size requirements as a special class of property eligible for taxation on the basis of its value in its present use, even though it may have a greater market value for other uses (G.S. 105-277.2 through -277.6). G.S. 105-277.2 defines *present-use value* as "the value of land in its current use as agricultural land, horticultural land, or forestland, based solely on its ability to produce income and assuming an average level of management."

Market value still plays an important part in the taxation of farmland and forestland, however. If the land ceases to be used for agricultural, horticultural, or forestry purposes, or if title passes to a disqualifying owner, a deferred tax must be paid. The amount of this tax is the difference between the taxes paid based on the use value and the taxes that would have been paid based on the market value for the preceding three years.

Personal Property

Personal property, which typically changes in value more rapidly than real property, must be appraised each year when it is listed for taxation. This annual appraisal may be a relatively simple process, as in determining the value of an automobile, or it may be highly complex, as in selecting an appropriate depreciation rate for unusual industrial machinery.

Real Property

The Machinery Act requires that real property be reappraised at least once every eight years. About half of the counties have shortened the reappraisal cycle to terms ranging from four to seven years. A county that shortens its reappraisal cycle is not bound to adhere to the shorter term in perpetuity but may elect to revert to an eight-year cycle.

Appraisal Techniques

In appraising personal property, the appraiser must consider replacement cost, sale price of similar property, age, physical condition, productivity, remaining life, obsolescence, economic utility (that is, usability and adaptability for industrial, commercial, or other purposes), and any other factor that may affect the value of the property.

County appraisers have developed many techniques for estimating the market value of various types of personal property. Industry pricing guides are available for motor vehicles, mobile homes, boats, and aircraft. For machinery and equipment the current value may be estimated by depreciating the original cost to acquire the item according to a standard depreciation schedule. This technique is further refined in many counties by factoring or "trending" the original cost to current market levels before applying the standard depreciation factor.

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17. *In re* Greensboro Office Partnership, 72 N.C. App. 635, 325 S.E.2d 24, *cert. denied*, 313 N.C. 602, 330 S.E.2d 610 (1985). This type of leasehold interest in otherwise exempt property is one of the few remaining items of intangible personal property subject to taxation. Thus, if a building owned by the county and therefore exempt from taxation is leased to an individual at a below market rate, the lessee possesses a taxable leasehold interest in the property. A lessee leasing exempt property at a rate of 50 percent of the market rate would have a greater tax liability, for example, than a lessee leasing exempt property at rate of 75 percent of the market rate. A lessee leasing exempt property at 100 percent of the market rate would have no taxable leasehold interest.

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Mass Appraisal of Real Property

A general revaluation of real property is a big undertaking. The typical county has more than 40,000 parcels of land that must be individually appraised. The process must begin early enough to have the results ready in time for tax billing in the revaluation year but not so early that the value estimates will be out of date by the time they take effect. Also, the cost of the revaluation must be reasonable. A person who is borrowing money from a lending institution to buy a new house can expect to pay about $350 for an appraisal of the house and the lot. A tax appraisal must cost much less than that. Most counties estimate about $20 per parcel. Obviously, to accomplish a job of such magnitude at reasonable cost requires specialized appraisal techniques that rapidly, efficiently, and economically yield a high degree of accuracy.

Development of an Appraisal Manual for Establishing Market Value

G.S. 105-317 lays out the essential elements of a modern mass appraisal system. The foundation of the system is the assessor's appraisal manual or, as the statute describes it, "uniform schedules of values, standards, and rules to be used in appraising real property." The manual is formulated from two basic sources: the local real estate market and national data on the cost of building construction, adjusted to reflect local building costs. The manual identifies characteristics exhibited by real property in the county and indicates the ranges for dollar amounts that each characteristic can normally be expected to contribute to the value of a given parcel of land or a given building according to an appropriate unit of measure. For example, the appraisal manual contains a land schedule. For rural land the appropriate unit of measure is usually the acre, whereas urban land is typically measured by square footage, front footage (the number of feet of a lot that fronts on a street), or standard-sized lot (such as the 100- by 200-foot lot often found in newer subdivisions). Buildings are usually measured by square footage.

The value increments attributed to the various units of measurement vary considerably. Some land may be worth $100,000 or more per acre, other land only $1,000 per acre. Buildings of top-quality construction may be priced at $150 or more per square foot, lower-quality buildings at $100. Other characteristics may increase or reduce the value indicated by the basic unit of measurement. Agricultural land may be decreased in value by poor soil or topography. The value of an urban residential lot may be adversely affected by other development in the neighborhood. The value of buildings is always adjusted to reflect accrued depreciation. Values may increase or decrease based on the grade of construction.

The characteristics just mentioned are but the tip of the iceberg; a well-conceived appraisal manual will identify many more. The manual is a comprehensive, complex document designed to enable the assessor to estimate the value of thousands of parcels and buildings accurately, efficiently, and rapidly by means of a manageable number of characteristics that influence value.

Developing the appraisal manual is the single most important step in a revaluation. The manual's designation of the property characteristics to be examined and the value increment to be attributed to each determines the accuracy with which the assessor can estimate the fair market value of real property in the county. If the manual sets values too high, most properties will be appraised higher than market value. If the values are too low, most properties will be under-appraised. If too few characteristics are used, the accuracy of appraisals will vary widely from parcel to parcel. If too many are used, the assessor may not be able to complete the job on time.

Development of a Present-Use Value Schedule

Similarly, the assessor establishes a special schedule for appraising eligible agricultural land, horticultural land, and forestland at its present-use value. The assessor may use a statewide valuation manual prepared by the Department of Revenue with the assistance of the Use-Value Advisory Board, which is composed of representatives of the Agricultural Extension Service, the state Department of Agriculture, and the state Division of Forest Resources. This manual is based upon the rental value of land used for agricultural and horticultural purposes and the net income earned for forestland. Use of the Department of Revenue's manual is not mandatory, but it carries great authority.

Approval of the Manuals

After the manuals on market value and present-use value have been prepared and a public hearing has been held, the board of county commissioners adopts them and places a newspaper notice stating that it has done so. Property owners then have thirty days to challenge the manuals by appeal to the state Property Tax Commission on grounds that the manuals do not adhere to the appropriate statutory valuation standard (that is, that they will produce values that are too high, too low, or inconsistent). The commission has the power to order the board of county commissioners to revise the manuals if they do not adhere to the statutory valuation standard though such revisions are seldom deemed necessary or ordered. The commission's decision regarding a challenge to an appraisal manual may be appealed to the North Carolina Court of Appeals.

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Preparation of Record Cards

After the manuals are adopted, the assessor prepares a record card for each parcel of land in the county. On this card the assessor notes all the characteristics of the parcel that will be considered in making the appraisal. Although land and the buildings on it are appraised separately, data for both appear on the same property record card. The Machinery Act specifically directs the assessor to show on the card all characteristics considered in appraising the parcel, points out that they must be consistent with the appraisal manual, and requires that the data be accurate.

Collecting data about property characteristics is called *listing* the property. For buildings this process consists of measuring their outside perimeter, showing special features such as air conditioning and the number of bathrooms, and recording such crucial factors as depreciation and quality or grade of construction. For agricultural land and forestland, the process is similar but simpler. Characteristics of such land usually include the number of acres in the tract, its road frontage if the manual identifies this as a relevant characteristic, its fertility or productivity grade, and any crop allotments. Much of this information can be gathered by persons who are not trained appraisers; for example, no advanced training is needed to measure a house or compute the number of acres in a tract of land from the tax map. Other computations, such as estimating depreciation, require trained and experienced personnel.

Appraisal of Property

After the basic data has been gathered and recorded on the property record card, the parcel is appraised. G.S. 105-317 requires that a competent appraiser do this for each parcel individually. The first step is usually carried out mechanically. The property characteristics gathered by the listers are used to compute a preliminary value estimate according to the value increments set out in the manual for those characteristics. This value is tentatively recorded on the property record card. The appraiser then takes the cards into the field and revisits each property. This procedure, known as the *review*, is the critical fine-tuning step in which the training, experience, and judgment of the appraiser play a large part. Recognizing the crucial importance of appraising property on the basis of accurate data, G.S. 105-317 gives each property owner the right to have the assessor (or one of the assessor's agents or employees) actually visit and observe the property to verify the accuracy of characteristics on record for it.

Notice to Property Owners

The Machinery Act requires that when the final review has been completed, the assessor send each property owner a written notice of the appraised value on each parcel owned by that person. At this point nearly all assessors allow for a period of informal appeals that is not required by law. Typically the value notice sent to taxpayers states that they may contact the assessor for an appointment to review the appraisal if they believe it to be in error. Most counties engage the services of a professional appraisal company to assist in the revaluation, although the legal responsibility remains entirely in the hands of the assessor appointed by the county commissioners. If professional appraisers have helped in the revaluation, taxpayers may obtain an appointment with the company appraiser, at which time they may be able to persuade the appraiser that a mistake was made in measurement, calculation, or judgment. The time allowed for these informal appeals is within the discretion of the assessor.

Formal Appraisal and Assessment

When the informal appeal process is over, the assessor formally appraises and assesses each parcel. Ideally the appraisals are adopted before January 1 of the revaluation year. This may not always be possible because the appraisal may take more time than was planned or there may be more informal appeals than were expected. In any event, after the assessor has adopted the appraisals, the taxpayer may appeal directly to the assessor at any time before the county board of equalization and review convenes.

Appeal and Review

Valuation Appeals

G.S. 105-322 governs listing and valuation appeals. The county board of equalization and review is the local body charged with hearing property tax appeals. It also has the power to correct the tax lists and to increase or reduce values on its own motion. As explained earlier, in some counties the board of equalization and review is the board of county commissioners sitting in another capacity. In other counties, however, the board of commissioners has created a special board to hear appeals. In others a special board has been created by local act of the General Assembly. In all counties the primary work of the board of equalization and review is essentially the same: to hear and decide valuation

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appeals. The board convenes no earlier than the first Monday in April and no later than the first Monday in May. It sits for at least three weeks and may meet longer if needed. It may not sit later than July 1 except to decide appeals filed before that date.

The Property Tax Commission hears taxpayer appeals from the county boards of equalization and review across the state. If the taxpayer prevails at the board of equalization and review, the county may not appeal the board's decision. An appellant taxpayer who believes that the Property Tax Commission made an error of law in reaching its decision on his or her property may appeal further to the North Carolina Court of Appeals. Normally this is the court of last resort. The North Carolina Supreme Court will hear a property tax appeal only if the court of appeals was not unanimous in its decision or if the supreme court believes that a major issue of law in the case warrants its attention.

Adjustment of Real Property Values in Nonrevaluation Years

The Machinery Act provides for annual appraisal of personal property and octennial appraisal of real property. Yet for the sake of equity and uniformity, some parcels of real property may need reappraisal in a year in which general revaluation of real property is not undertaken. G.S. 105-287 directs the assessor in a nonrevaluation year to reappraise specific parcels in order to correct clerical or mathematical errors in the former appraisal; correct appraisal errors resulting from misapplication of the county's appraisal manual; or recognize an increase or a decrease in value resulting from some factor other than normal depreciation, economic changes affecting property in general, or certain improvements such as repainting and landscaping. Reappraisals made under the authority of G.S. 105-287 must conform to the appraisal manual adopted in the last revaluation year so that they will represent market or present-use value as of January 1 of the revaluation year, rather than current value. Also, these appraisals take effect as of January 1 of the year in which they are made and do not affect previous tax years.

Discovered Property

To *discover* property, as the expression is used in the tax statutes, means to find that an item of taxable property has not been listed for taxation during the annual listing period established by law or has been listed at a substantial understatement of value, quantity, or other measurement. Under G.S. 105-312 it is the duty of the assessor to see that all property not properly listed during the regular listing period is accurately listed, assessed, and taxed. The assessor is also required to file reports of such discoveries with the governing boards of all taxing units affected by the discovery at such times and in such form as those boards may require.

When unlisted real or personal property has been identified, the county assessor must first sign an abstract listing it and then make a tentative appraisal of it, in accordance with the best information available. The assessor must then mail a notice to the person in whose name it has been listed.

When property is found not to be listed for a given year, it has often not been listed for a number of years or perhaps has never been listed. Accordingly there is a statutory presumption that it should have been listed by the same taxpayer for the preceding five years. The taxpayer can overcome this presumption by showing that the property was not in existence, that it was actually listed for taxation, or that it was not his or her duty to list the property during all or some of the years in question.

The penalty for failing to list property for taxes is an amount equal to 10 percent of the tax for each listing period that has elapsed since the failure to list occurred. For example, if a taxpayer failed to list his or her property for 2001 taxes and was subjected to discovery procedures in September 2006, the penalty for the 2001 failure to list would be 60 percent of the tax. If the taxpayer had failed to list the same item of property for each of the intervening years, the penalty rates would be 50 percent for 2002, 40 percent for 2003, and so on down to 10 percent for 2006. In addition to the penalty, the taxpayer also is, of course, liable for the principal amount of the taxes for each year of the discovery.

Special cases may arise in which the county commissioners feel that the statutory provisions place an undue burden on the property owner. In such situations the board is empowered to reduce the penalty (or even the principal amount of the tax) to what it finds to be equitable. This authority does not arise until the discovery procedures have been completed, and it may be exercised only on written petition of the taxpayer. The assessor has no authority to waive any part of the penalty or the tax, and the board may not delegate such authority to him or her.

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Part III. Collection of Property Taxes

Office of Tax Collector

Cities and counties with special legislation that provide a method (either elective or appointive) for selecting tax collectors must adhere to the provisions of that legislation relating to the tax collector's selection and term of office [G.S. 105-395(c)]. In the absence of special legislation, the governing body of each city and county must appoint a tax collector, for a term to be determined by the appointing body, to collect the taxes it levies [G.S. 105-349(a)]. By entering into a contract with the county for the collection of its taxes, a city effectively appoints the county collector as the city's collector. Ordinarily, collectors are named early enough in the fiscal year to prepare themselves to take over the new taxes when the time comes for collection.

Often persons charged with tax collection also have other duties. For example, as noted earlier, it is increasingly common for the same person to serve as both assessor and tax collector. The Machinery Act declares the office of tax collector to be "an office that may be held concurrently with any appointive or elective office other than those hereinafter designated, and the governing body may appoint as tax collector any appointive or elective officer who meets the personal and bonding requirements" (discussed under the next section, "Qualification as Tax Collector") [G.S. 105-349(e)]. Only two restrictions are placed on double-office-holding by collectors, but they are important:

> A member of the governing body of a taxing unit may not be appointed tax collector, nor may the duties of the office be conferred upon him. A person appointed or elected as treasurer or chief accounting officer of a taxing unit may not be appointed tax collector, nor may the duties of the office of tax collector be conferred upon him except with the written permission of the secretary of the Local Government Commission who, before giving his permission, shall satisfy himself that the unit's internal control procedures are sufficient to prevent improper handling of public funds. [G.S. 105-349(e)]

Most cities and counties pay their collectors salaries. Some also pay a travel allowance. A few delinquent collectors, who are specially appointed to collect taxes unpaid at the close of the fiscal year for which levied, are paid wholly or in part from commissions on collections. The Machinery Act provides simply that "[t]he compensation and expense allowances of the tax collector shall be fixed by the governing body" of the taxing unit [G.S. 105-349(d)].

Qualification as Tax Collector

Governing boards and councils may only assign collection responsibility for a tax year to an individual who satisfies the statutory requirements set forth in G.S. 105-352. First, the tax collector must turn over to the finance officer the receipts issued for prepayment of taxes not yet charged to the collector. The collector must also demonstrate that the funds associated with these receipts have been deposited. Finally, the collector must settle for all taxes currently in his or her hands for collection and provide satisfactory bond for taxes for the current year and all prior years in his or her hands for collection [G.S. 105-352(b)].

The courts have not defined *satisfactory bond* for a local tax collector. A useful test might be a reasonable approximation of the maximum amount of money that the collector will have in his or her hands at any one time, plus a reasonable allowance for cumulative losses.

By law, any member of a governing body who votes to deliver the tax receipts to the tax collector before the collector has met the requirements just listed is individually liable for the amount of taxes charged against the tax collector for which he or she has not made satisfactory settlement. Any member who so votes is also guilty of a misdemeanor punishable by fine or imprisonment, or both, at the discretion of the court [G.S. 105-352(d)(1)].

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Removal of the Tax Collector

Collectors who cannot meet the bonding and settlement requirements outlined in the preceding section are not entitled to serve and may be removed from office or simply not permitted to collect taxes. In addition, cases may arise in which a collector who meets the statutory prerequisites and conditions should not be permitted to remain in office.[18] The Machinery Act gives the governing body express authority to remove the tax collector from office during the tax collector's term for good cause after giving notice in writing and an opportunity to appear and be heard at a public session of the governing body [G.S. 105-349(a)]. *Cause* in this sense refers to reasons recognized by the law and sound public policy as sufficient warrant for removal—that is, *legal cause*, not merely cause that the appointing power in exercising its discretion may deem sufficient. Moreover, the cause must affect the tax collector's performance of the duties of the office, must be substantial rather than minor, and must directly affect the public interest.[19] For example, misappropriation of funds would be cause for discharge.

Deputy Tax Collectors

Governing boards and councils have discretion over whether to appoint deputy tax collectors. The governing body of a taxing unit also sets the term and the pay of each appointed deputy collector as well as the amount of his or her bond. Unless the governing body specifically limits the scope of the deputy's authority, he or she has the authority to perform, under the direction of the tax collector, any act that the tax collector may perform [G.S. 105-349(f)].

Necessary Collection Records

Apart from the tax records, which include the scroll and tax book described earlier, the most important document in the collection process is the *tax receipt*. The tax receipt furnishes the taxpayer with evidence of payment and provides the tax collector with the payment information necessary to support a credit in the settlement.

The Machinery Act does not require that tax collectors send a bill for property taxes unless they are specifically ordered to do so by their governing board. Moreover, the Machinery Act provides that all persons with an interest in real property are charged with notice that the property should be listed for taxation, that taxes may become a lien on the property, and that action may be taken to enforce the lien (G.S. 105-348). Thus, while all taxing units, as a practical matter, bill for property taxes owed, the failure of a particular taxpayer to receive a bill for property taxes is not a defense to nonpayment of taxes.

Reports of Progress in Collection

The tax collector must keep adequate records of all collections [G.S. 105-350(4)] and must submit a report showing the amount collected on each year's taxes, the amount remaining uncollected, and the steps being taken to encourage or enforce payment, at each regular meeting of the governing body [G.S. 105-350(7)]. These reports enable the governing body to evaluate the tax collector's collection activities and to compare collection activities from current years to the taxing unit's present position.

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18. The manner in which a tax collector may be removed depends on the source of law under which he or she holds office. Because the Machinery Act preserves local legislation relating to the selection of tax collectors [G.S. 105-395(c)], pertinent provisions of the special act creating the tax collector's office in a given unit may control the circumstances and procedures under which he or she may be dismissed. Governing bodies of units subject to such local legislation should seek the advice of their attorneys before attempting to remove a tax collector from office, especially if the collector is an elected official.

19. *American Jurisprudence*, 2d ed., vol. 63C, *Public Officers and Employees*, sec. 183 (WL database updated August 2005).

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Tax Due Dates: Periods Covered

As pointed out earlier, property taxes are due and payable on the first day of September of the fiscal year for which they are levied [G.S. 105-360(a)]. The tax collector may use enforced collection remedies to collect the taxes for a period of ten years measured from the September 1 due date (G.S. 105-378).

Order of Collection

Once the tax collector enters a settlement for the previous year's taxes and provides satisfactory bond, the governing body must adopt an order to be entered in its minutes directing the tax collector to collect taxes for the current fiscal year (G.S. 105-321). The board must then deliver the current year's tax receipts to the collector [G.S. 105-352(a)]. The order to collect must be entered and the receipts turned over by September 1. The wording of the order to collect is prescribed by statute [G.S. 105-321(b)]:

STATE OF NORTH CAROLINA

COUNTY (or CITY or TOWN) OF _________________________

To the Tax Collector of the County (or City or Town) of ______________________:

You are hereby authorized, empowered, and commanded to collect the taxes set forth in the tax records filed in the office of ____________ and in the tax receipts herewith delivered to you, in the amounts and from the taxpayers likewise therein set forth. Such taxes are hereby declared to be a first lien upon all real property of the respective taxpayers in the County (or City or Town) of ____________, and this order shall be a full and sufficient authority to direct, require, and enable you to levy on and sell any real or personal property of such taxpayers, for and on account thereof, in accordance with law.

Witness my hand and official seal, this ____ day of ____________, 20____.

(SEAL)
Chairman, Board of Commissioners of ______________________
(Mayor, City (or Town) of ___________________)

Attest:
____
Clerk of Board of Commissioners of ____________ County
(Clerk of the City (or Town) of ________________)

The order has the force and effect of a judgment and execution against the taxpayers' real and personal property, which affords the tax collector the authority to seize and attach personal property of a taxpayer without a court order (G.S. 105-321). While the issuance of the order is a critical step in the collection process, G.S. 105-321(b) contains a safety-net clause, which provides that a governing body's failure to deliver the order does not affect a tax collector's use of enforced collection remedies.

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Property Tax Lien

The North Carolina Supreme Court has defined *lien* as "the right to have a demand satisfied out of the property of another."[20] This right runs against the property rather than against the owner. As used in the property tax laws of this state, the lien for taxes runs in favor of the local government unit and may be enforced against the property of the taxpayer.

A taxing unit acquires a lien against all real property that each taxpayer owns within its jurisdiction on January 1 [G.S. 105-355(a)]. As of the date the lien attaches, the amount of taxes it represents is indeterminate, as the governing body will not set the tax rate until the following June or July. Moreover, the tax collector may take no action to enforce this lien until the taxes become delinquent on January 6 of the next year. The lien against real property includes not only the taxes levied on the real property itself but also the taxes levied on all the taxpayer's personal property (other than registered motor vehicles) by the taxing unit. Property taxes levied on other parcels of real property do not, however, become a lien on any real property other than that for which they were levied. In addition, all penalties, interest, and costs allowed by law are added to the amount of the lien for the principal amount of the taxes [G.S. 105-355(b)].

The taxing unit does not acquire an automatic lien against personal property each January 1. Instead, a lien for property taxes against personal property only attaches upon the tax collector's seizure of the property, either through levy or attachment [G.S. 105-355(b)]. Once attached, the lien against personal property includes all taxes due the county, not merely those levied on the particular item seized, nor merely those levied on the personal property of the taxpayer [G.S. 105-355(b)].

Ordinarily the tax lien on real and personal property continues until the principal amount of the taxes plus penalties, interest, and costs are fully paid [G.S. 105-362(a)]. Nevertheless, the tax collector's issuance of a full payment receipt may release the lien even if erroneously issued before taxes are paid in full. Because the lien is the taxing unit's security interest, tax collectors must exercise care in issuing such receipts.

The lien for property taxes against real property is superior to all other liens and rights, except previously recorded liens for state taxes, regardless of whether the other liens were acquired before the lien for taxes [G.S. 105-356(a)(1), (2)]. Furthermore, once the lien has attached to real property, its priority is not affected by transfer of title, by death, or by receivership of the property owner [G.S. 105-356(a)(3)].

As already pointed out, taxes, interest, penalties, and costs become a lien on personal property from and after levy or attachment. The priority of the lien depends upon whether the lien is for taxes on the particular item seized or whether it is for other taxes. The portion of the lien that is for taxes levied on the specific personal property levied upon attached is superior to all other liens and rights [G.S. 105-356(b)(1)]. The portion that is for taxes levied on property other than the specific personal property levied upon or attached is inferior to prior valid liens and perfected security interests but superior to all subsequent liens and security interests [G.S. 105-356(b)(2)].

Payment of Taxes

Taxes may always be paid in cash, and the Machinery Act permits tax collectors to also accept—at their own risk—checks and electronic payments [G.S. 105-357(a)]. Tax collectors may issue receipts immediately upon payment by check or may withhold the receipt until the check is collected [G.S. 105-357(b)]. When a collector has taken a check in payment of taxes, has issued a receipt, and has had the check returned unpaid, the taxes are treated as being unpaid. In such a case the collector has the same remedies for collection that he or she would have had if the receipt had not been issued (plus the right to bring a civil suit on the check), provided that the collector has not been negligent in presenting the check for payment [G.S. 105-357(b)].

Buyers and sellers of property and their representatives frequently ask tax collectors for information on whether an individual owes taxes or the amount of taxes owed on a given parcel of real property. Sometimes the requests are for an oral statement of taxes owed and other times it is for a written statement, called a certificate. The Machinery Act requires the tax collector to provide a certificate of the taxes that constitute a lien on specified real property when requested to do so by the following people:

20. Thigpen v. Leigh, 93 N.C. 47, 49 (1885).

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Table 14-3. *Interest for Late Payment of Taxes (Other than Taxes on Registered Motor Vehicles)*

If taxes are paid . . .	The interest charged is . . .
September 1 through January 5	0
During remainder of January	2%
During February	2.75%
During March	3.5%
Thereafter	*3.5%*

*Plus 0.75 percent per month, the additional 0.75 percent being added on the first day of each month

1. an owner of the property
2. an occupant of the property
3. a person having a lien on the property
4. a person having a legal interest or estate in the property
5. a person or a firm having a contract to purchase or lease the property
6. a person or a firm having a contract to make a loan secured by the property
7. the authorized agent or attorney of anyone in one of the first six categories

Before furnishing a certificate, the collector should require the requester to identify the person in whose name the property was listed for each year for which tax information is desired. When a qualified person obtains a certificate of taxes owed and relies on it by (1) paying the amount of taxes certified as a lien on the property, (2) purchasing or leasing the property, or (3) lending money secured by the property, then a lien will exist against the property in relation to that person only to the extent that taxes and special assessments are stated to be due in the certificate. An understatement of the tax liability in the certificate causes the lien to be released in the amount of the understatement. Although the taxing unit retains the ability to proceed against personal property of the taxpayer for unpaid taxes omitted from the certificate, an erroneous certificate may surrender the county's security for payment.

Tax collectors are liable on their bond for any loss that the county suffers as the result of an erroneous certificate [G.S. 105-361(b)]. Unlike a certificate, an oral statement made by the tax collector about the amount of taxes, penalties, interest, and costs due binds neither the tax collector nor the taxing unit [G.S. 105-361(d)].

Discounts

If the governing board chooses to provide discounts for prepayment, that is, for payment before September 1, it may do so by adopting a resolution or an ordinance not later than the first day of May preceding the due date of the taxes to which the resolution or the ordinance first applies, specifying the amounts of the discounts and the periods during which they are to be applicable [G.S. 105-360(c)(1)]. The resolution or the ordinance must be approved by the Department of Revenue, and the discount schedule must be published at least once in some newspaper that has a general circulation in the taxing unit [G.S. 105-360(c)(3)]. The Department of Revenue will not approve a discount schedule if in its opinion the rates are excessive or the discount period is unreasonable [G.S. 105-360(c)].

Interest for Late Payment of Taxes

The substance of the statewide statute establishing interest for late payment of taxes [G.S. 105-360(a)] can be reduced to the schedule shown in Table 14-3.

Enforced Collection of Property Taxes

The Machinery Act supplies the tax collector with specific legal means for enforcing collection against the taxpayer's property: in the case of real property, advertisement of the lien followed by foreclosure; and in the case of personal property, levy or attachment and garnishment.

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Enforcement against Real Property: Lien Advertisement and Foreclosure

Report of Delinquent Taxes Constituting Liens on Realty

In February of each year the tax collector is required to report to the governing body of the taxing unit "the total amount of unpaid taxes for the current fiscal year that are liens on real property" [G.S. 105-369(a)]. When it receives this report, the governing body must order that the liens be advertised [G.S. 105-369(a)].

Time and Place of Lien Advertisement

The governing body may choose any date from March 1 through June 30 on which to advertise the liens. The liens must be advertised at least once by posting a notice at the county courthouse, in the case of unpaid county taxes, or the city hall, for delinquent city taxes, and by publishing a notice in a newspaper of general circulation [G.S. 105-369(c)]. If the county tax collector collects taxes for a city, the taxes of the county and city must be advertised separately unless the county and city have agreed to joint advertisement.

Foreclosure

Foreclosure of real property is the collection remedy of last resort because it is complex and expensive and requires the public sale of private property. If the tax collector is unable to collect delinquent taxes that are a lien on real property through attachment or levy, foreclosure is the only option. In such a case, the governing body must decide which of the two available foreclosure methods it will employ. One foreclosure method is characterized as being "in the nature of an action to foreclose a mortgage" [G.S. 105-374(a)], and the other is described as an action *in rem* [G.S. 105-375(a)]. The first method is a civil lawsuit that requires the services of an attorney. The second is a summary procedure that in most instances can be handled by the tax collector, or a paralegal, with occasional advice from an attorney. Both methods require a title examination to determine the persons who are entitled to receive notice of the foreclosure action. The *in rem* procedure can usually be concluded more expeditiously and less expensively than the mortgage-style foreclosure. Some counties use one method exclusively; other counties sometimes use the mortgage-style foreclosure and sometimes use the *in rem* method, depending on circumstances relating to the property being foreclosed.

Enforcement against Personal Property: Levy and Attachment and Garnishment

The remedies for use in subjecting personal property to the satisfaction of tax claims are based on actual seizure of the property. What happens after the seizure differs according to the remedy being used, but the fundamental element in the remedies remains seizure. If the personal property to be seized is tangible, the appropriate remedy is levy, followed by public sale of the property seized. If the personal property to be seized is intangible, that is, incapable of manual seizure or delivery, the remedy is attachment and garnishment.

Time Limitations on Use of Levy and Attachment and Garnishment

As a general rule, levy and attachment and garnishment may not be used until the tax has become delinquent [G.S. 105-366(b)], that is, not until after January 5 following the September 1 due date. The right to use these remedies continues until the expiration of the ten-year statute of limitations or, in the case of taxes that are a lien against real property, until foreclosure is initiated [G.S. 105-366(b)], whichever occurs first.

Procedure for Levy

As already indicated, levy is a procedure under which tangible personal property of the taxpayer is seized, advertised, and sold to the highest bidder for cash to pay a tax claim held by the taxing unit. Tax collectors and deputy tax collectors are authorized to make the levy and conduct the sale [G.S. 105-367(b)]. Alternatively, the governing body of a taxing unit may authorize the tax collector to direct an execution against personal property for taxes to the sheriff or city police [G.S. 105-367(b)]. Even if the tax collector elects to levy upon property without directing the execution to law enforcement, he or she may still call upon a law enforcement officer to accompany him or her in carrying out the levy.

Procedure in Attachment and Garnishment

Attachment and garnishment involves a third person in the collection process, that is, a person other than the taxpayer and the tax collector. The third person is brought in because the item of intangible personal property to be attached is something that the third person owes or holds for the taxpayer. For example, an employer owes wages to the taxpayer; a bank holds money for its depositor-taxpayer, and a renter owes rent to the landlord-taxpayer. Debts owed to a taxpayer, though intangible, are nonetheless the property of the taxpayer, and may be attached by the tax collector to satisfy the unit's claim for taxes. Like levy, attachment and garnishment is designed to operate outside the courts [G.S. 105-368(c)].

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The collector attaches intangible property by serving notice on the taxpayer and the person or institution that holds the intangible item to be seized. Usually the collector need take no further action; the garnishee will remit to the collector the amount demanded. If wages are attached, the employer must remit no more than 10 percent per pay period to the tax collector [G.S. 105-368(a)].

Reduction, Release, and Refund of Property Taxes

The tax collector has no authority to reduce, release, or refund taxes, including accrued interest, penalties, and costs. To the extent there is any authority to release taxes, it rests with the governing body. A strong public policy supports the stability of sources of government revenue. As previously noted, property taxes are the largest source of revenue for counties and are second only to utility revenue for cities. For this reason, governing bodies are given only limited authority to release or refund property taxes and are strictly prohibited from compromising taxes for any other reason not expressly authorized (G.S. 105-380). Lest any governing body ignore this admonition, the Machinery Act provides that any member of a governing body who votes for the unlawful release, refund, or compromise of taxes may be held personally liable for the amount of the taxes forgiven (G.S. 105-380).

Just what are the permissible bases for releasing or refunding taxes? The governing body of a taxing unit may release or refund a tax that was (1) imposed through a clerical error, (2) illegal, or (3) levied for an illegal purpose.

Clerical Error Defined

Just what sorts of errors are clerical? The Court of Appeals provided some guidance on that point in *Ammons v. Wake County*, 127 N.C. App. 426 (1997). The taxpayer acquired forestland from a family corporation and inquired of the Wake County assessor whether the property would qualify for reduced taxation based upon present-use value. The county assessor stated that the property would not qualify for taxation based on present-use value because it did not meet the ownership requirements. Thus, the taxpayer did not apply for present use taxation. The next year, notwithstanding the assessor's previous advice, the taxpayer applied for taxation at present-use value, which the assessor predictably denied. The taxpayer appealed to the board of equalization and review, which determined that the property was eligible for present-use taxation based on a recent ruling from the state court of appeals. The taxpayer then requested a refund from the board of county commissioners for the years during which the property was taxed at market, rather than present-use, value. The board denied the taxpayer's request for refund, and the taxpayer filed suit. The case reached the court of appeals, which determined that the taxes were not "imposed through clerical error," and that the taxpayer was not entitled to a refund. The court of appeals held that the term *clerical error* applied only to transcription errors, that is, mistakes in writing or copying that were ordinarily apparent on the face of the document. The court noted that the error in *Ammons* was not apparent on the face of the assessor's statement, but only by reference to a subsequent court decision. Moreover, the court noted that a clerical error must be unintended and that the assessor fully intended that the taxpayer accept his interpretation that the property did not qualify for present-use value taxation. The court stated that "[m]istake of judgment or law" is not a basis for the refund or release of taxes pursuant to G.S. 105-381.

What Is an Illegal Tax?

If the assessed valuation of the property taxed has been reduced under proper exercise of legal authority, a reduction in the tax bill follows as a matter of course. Otherwise, the tax would be illegal. If the property concerned is not taxable by the unit, that is, if the property is legally entitled to exemption or if it does not fall within the unit's jurisdiction, a release of the claim also is justified under the illegal tax basis. If the property has been listed and taxed twice, that is, *double-listed*, one of the duplicate claims should be released on the basis that it is an illegal tax.

When Is a Tax Imposed for an Illegal Purpose?

A tax refund or release is warranted pursuant to the illegal purpose defense if the tax is levied for something other than a "public purpose," without a vote of the people in a situation in which such a vote is required by law, or for an amount greater than that authorized by the state constitution, statutes, or a vote of the people.

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Procedures for Refund or Release

To claim a right to release or refund of taxes, the taxpayer must submit a written statement of his or her demand to the governing body of the taxing unit. A request for release of taxes not yet paid may be made at any time. A taxpayer may only request a refund, however, within five years after the tax became due or within six months from the date the tax was paid, whichever is later [G.S. 105-381(a)(3)]. Upon receiving the taxpayer's request, the governing board must decide within 90 days whether legal grounds for the release or refund exist.

The board of commissioners may delegate authority to make refunds and releases of less than $100 to the county attorney, finance officer, or manager. The officer to whom this authority is delegated must make a monthly report to the board of all releases and refunds granted.

Settlements

Settlement refers to the tax collector's annual report to the board of commissioners concerning his or her tax-collection efforts throughout the preceding fiscal year as well as an accounting of the funds collected. In addition to reporting collection efforts and funds collected for taxes for the preceding fiscal year, the tax collector or other person charged with the collection of delinquent taxes from prior years must settle with the governing body for sums received in payment of delinquent taxes. While this annual settlement must occur after July 1 and before the tax collector is charged with taxes for the current fiscal year, settlement must also take place at the end of a tax collector's term of office and at any other time required by the governing body [G.S. 105-350(6); 105-373].

Governing boards and councils must adhere to the requirement that the tax collector settle for the prior fiscal year before being charged with current-year taxes. Not only does the settlement statute provide that it is a misdemeanor for a member of a governing body to fail to perform duties assigned under the statute [G.S. 105-373(f)], but a member of the governing body who votes to deliver the tax receipts to the tax collector before the collector has settled for the prior year and met other statutory requirements is individually liable for the amount of taxes for which the collector has not made satisfactory settlement [G.S. 105-352(d)(1)].

Insolvents

The governing body of a taxing unit must evaluate the collector's report at settlement to determine whether the collector has utilized all available legal remedies to attach and garnish property of taxpayers whose taxes are delinquent. It is particularly important that the governing body closely review the efforts of the collector to collect taxes that are not secured by a lien on real property. Taxpayers who owe personal property taxes but own no real property comprise a separate list in the collector's report at settlement. The collector is required to append to this list a sworn statement that he or she has been diligent in using levy and attachment and garnishment to collect the taxes, that she has attempted to work out payment schedules for taxpayers, and has used all the procedures available in collecting from estates, receivers, and bankrupts, and, in appropriate circumstances, has called on collectors of other taxing units to assist in collecting the sums owed. Finally, the collector must report any other information that may be of interest to the governing body.

The governing body must review the report for purposes of rendering the insolvents list to be credited to the tax collector in his or her settlement. The governing body may reject the name of any taxpayer if, in its opinion or knowledge, the taxpayer is not insolvent. In the event of a rejection, the governing body may hold the collector liable on his or her bond for the uncollected tax [G.S. 105-373(a)(2), (3)]. Having reviewed the list submitted by the collector and having come to a conclusion about the collector's justification in asking that he or she be allowed credit in the settlement for the uncollected items on the ground of the taxpayers' "insolvency," the governing body must enter in its minutes the names of the taxpayers found to be insolvent and designate them as the insolvent list "to be credited to the tax collector in his settlement" [G.S. 105-373(a)(2)].

Form of Settlement

The Machinery Act specifies the items that must be charged against the collector and the items that must be allowed as credits [G.S. 105-373(a)(3), (b)]. They are summarized in Table 14-4.

The charges and the credits should balance. The collector is liable on his or her bond for any deficiency and is subject to criminal penalties for failure to perform any duty imposed by the settlement statute [G.S. 105-373(f)]. It also bears noting that the governing body's approval of a collector's settlement does not relieve the collector of liability for any shortage that existed at the time of the settlement but is only later discovered [G.S. 105-373(e)].

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Table 14-4. *Items Required to be Charged against and Credited to the Tax Collector*

Charges	
1.	The total amount of all taxes placed in the collector's hands for collection, including taxes on discoveries, increased assessments, and values certified by the Property Tax Commission
2.	All late-listing penalties collected by the tax collector
3.	All interest on taxes collected by the tax collector
4.	Any other sums collected or received by the tax collector, including, for example, fees allowed in levy and attachment and garnishment
5.	Any fees that the tax collector may have taken for making collections for other taxing units
Credits	
1.	All sums deposited by the collector to the credit of the taxing unit or for which the proper official has given receipts
2.	Releases allowed by the governing body, including refunds and reductions in value.
3.	Discounts allowed for prepayments, if the principal amounts of such accounts were collected after the books were placed in the collector's hands
4.	The principal amount of unpaid taxes constituting liens against real property
5.	The principal amount of taxes found by the county commissioners to be uncollectible in the current year because the taxpayers who owe them are insolvent
6.	Any commissions to which the collector is entitled

Part IV. Special Classes of Property

As noted earlier, the General Assembly may classify property for special tax treatment so long as the classifications apply on a statewide basis. While the General Assembly has exercised this authority with respect to numerous types of property, there are three types of classifications that result in property receiving substantially different treatment under the Machinery Act. These classifications apply to (1) qualifying agricultural, horticultural, and forestry property, (2) registered motor vehicles, and (3) property owned by public service companies. The assessment of agricultural, horticultural, and forestry property was discussed in Part II of this article. An overview of the taxation of registered motor vehicles and public service company property follows.

Registered Motor Vehicles

The assessment and collection of taxes on motor vehicles has proven universally problematic.[21] Indeed, counties report three collection rates to the Department of the State Treasurer: an overall collection rate, the higher collection rate resulting from the exclusion of motor vehicles taxes, and the rate of collection for motor vehicle taxes.[22] The average statewide collection rate for motor vehicle taxes in 2004–5 was 88 percent.[23] Certainly the mobility of motor vehicles

21. Before the enactment in 1991 of special rules governing the taxation of motor vehicles, studies by the General Assembly's Fiscal Research Division in 1989-90 estimated that local governments were losing between $10 and $15 million each year in property taxes on motor vehicles. William A. Campbell, "1993: A New Day for Collecting Local Property Taxes on Automobiles," *Popular Government* 58 (Fall 1992): 28–31.

22. North Carolina Department of State Treasurer, *Financial Information,* available at http://www.treasurer.state.nc.us/lgc/units/D_E.htm#ALLGROUPS.

23. North Carolina Department of State Treasurer, Memorandum #1049, April 6, 2006, Subject: Management of Cash and Taxes and Fund Balance Available—Counties for the Fiscal Year Ended June 30, 2005, at 3.

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Table 14-5. *Calendar for Listing and Assessing Automobiles Registered in February*

January 15	Division of Motor Vehicles (DMV) mails renewal notices and cards to vehicle owners with February registrations
April 10	DMV sends list of February registrations to county assessors.
May 15 (approximately)	Tax collectors mail bills for February registrations.
June 1	Due date for taxes on vehicles registered in February
July 1	Interest begins to accrue on unpaid bills for February registrations.
October 10	Tax collector reports to DMV list of delinquent taxpayers for February registrations.

is problematic from the standpoint of the assessment and collection of taxes, but this alone does not explain the difficulties associated with motor vehicle taxation. After all, nearly all personal property is mobile. Likewise, the value associated with motor vehicle taxes explains only one component of the focus on motor vehicle collections since in some urban counties, taxes imposed upon business personal property equal the taxes imposed on registered motor vehicles. The issues associated with motor vehicle taxation instead result from the combined effect of mobility, frequent transfers, and significant value under individual, rather than business, ownership. Mobility, transfers between owners, and number of vehicles make routine levies difficult, and individuals, unlike businesses, often lack other personal property that the tax collector may seize to secure payment of delinquent motor vehicle taxes. In addition, individuals may sell a vehicle or move out of the county in which the vehicle is assessed, without giving a thought to resolving any outstanding property taxes.

The General Assembly's first major attempt to improve the assessment and collection of motor vehicle taxes occurred in 1991 with the enactment of Article 22A of the Machinery Act, which linked the taxation of motor vehicles to the month in which a vehicle is registered. The 1991 legislation created an automatic listing system for motor vehicles registered with the Division of Motor Vehicles (DMV). DMV transmits to counties on a monthly basis lists of vehicles newly registered or with renewed registrations in the county. The county of registration then bills the vehicle's owner for county property taxes as well as city taxes if the vehicle has a tax situs within a municipality. The county is charged with collecting all taxes due on motor vehicles, including city and special district taxes. Property taxes on the vehicle are due the first day of the fourth month following the month of registration. Property taxes become delinquent the first day of the fifth month after vehicle registration.

Article 22A also created a new enforcement mechanism. If taxes are unpaid four months after they became due, the tax office notifies the DMV, which places a block on the vehicle's registration. The registration may only be renewed upon payment of the taxes.

Given that property taxes for a given fiscal year on motor vehicles might come due more than a year after the traditional January 1 date of assessment, the value of a motor vehicle is determined as of January 1 of the year in which the taxes become due. Thus, taxes on a vehicle registered in February 2006 will be based on the tax rate for the 2005–6 fiscal year, and will be due June 1, 2006. The value of the vehicle will be determined as of January 1, 2006, rather than January 1, 2005, which is the date upon which the value of other personal property will be determined for purposes of 2005–6 taxes. Table 14-5 sets forth a calendar for the billing and assessment of taxes for a vehicle registered in February.

While both registered and unregistered vehicles are classified by Article 22A, unregistered vehicles continue to be listed and taxed in the same manner as other kinds of personal property. That is, they must be listed by the owner during the regular listing period; they are subject to discovery if not listed; they are valued as of January 1 preceding the fiscal year of taxation; and taxes on them are due September 1 of each year and delinquent the following January 6.

While Article 22A has significantly improved the assessment and collection process for motor vehicle taxes, problems remain. The sheer volume of data exchanged on a monthly basis among DMV and the counties leads to errors in the assessment and billing of taxes. Moreover, many counties are reluctant to dedicate limited resources to enforce collection of individually small amounts of motor vehicle taxes and must dedicate significant time to the cumbersome task of billing and collecting motor vehicle taxes and reporting unpaid taxes to DMV.

The 2005 General Assembly took substantial steps toward solving these problems by enacting legislation that launched a process for fully integrating vehicle taxation and registration. Beginning in July 1, 2010, or upon the earlier creation of a combined registration and taxation computer system within DMV, taxes on motor vehicles will be billed and must be paid with registration fees. Amended Article 22A increased the first month's interest on delinquent motor vehicle taxes from 2 to 5 percent, effective January 1, 2006, and allocated 60 percent of the increased interest to

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fund the development of the integrated computer system for taxation and registration. Under the combined system, the Property Tax Division of the Department of Revenue will annually adopt a schedule of motor vehicle values for use by all county assessors.

Public Service Company Property

Real and personal property owned or leased by a public service company, such as a railroad, pipeline, gas, power, or telephone company, airline or motor freight carrier, is appraised and assessed at the state rather than county level (G.S. 105-335). Public service companies are required to list property with the Department of Revenue. The department allocates public service company property values among the counties pursuant to statutory rules and certifies values to counties. The counties must tax the assessed valuations at the rate of tax levied against other property in the county or city.

While real and personal property generally is assessed at 100 percent of its appraised value, this is not always the case for public service company property. Pursuant to G.S. 105-284, the Department of Revenue must assess only a percentage of the appraised value of public service company property if the property is taxable in a county in which real property on average is taxed at less than 90 percent of its market value in certain years. The department determines the assessment level for real property in every county on an annual basis by comparing assessed values to arms length sales of property. By April 15 of each year, the department determines each county's sales assessment ratio for real property from the previous calendar year. In the year of revaluation, sales assessment ratios typically equal 100 percent. Given that property values generally rise in the ensuing years before the revaluation, the sales assessment ratio typically drops below 100 percent in those years.

The Department of Revenue examines each county's sales assessment ratio for real property in the fourth and seventh years after revaluation. If the ratio is below 90 percent in those years, then public service company property in the county is taxed at that percentage of its appraised value until the department's next review of ratios. Thus, if a county's sales assessment ratio drops to 80 percent four years after a revaluation, public service company property in the county will be assessed at 80 percent of its appraised value until at least hree years later when the department studies ratios seven years after the revaluation. Counties that revalue property every four years have little to be concerned about with respect to the sales-ratio study since each year of study will be a revaluation year in which appraised values should equal 100 percent of market value established by sales.

Additional Resources

Campbell, William A. *Property Tax Collection in North Carolina*, 4th ed. Chapel Hill, N.C.: Institute of Government, University of North Carolina at Chapel Hill, 1998.

———. *Property Tax Lien Foreclosure Forms and Procedures*, 6th ed. Chapel Hill, N.C.: Institute of Government, University of North Carolina at Chapel Hill, 2003.

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