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## SYNOPSIS

1. **Introduction:** The levying and collecting of taxes represents a large portion of the accounting, clerical, and control activities of counties, municipalities, and other taxing units of government.
2. **The Tax Assessor:** The county tax assessor is the person responsible for the listing and appraisal of all taxable property within the county. Assessors must be certified if hired after 1983; those hired prior to that time may have to meet other requirements.
3. **The Board of Equalization and Review:** The board of equalization and review, which usually is the county commissioners serving in another capacity, must review the listings and assessed valuations of taxable property within the unit. The board also hears and decides appeals from taxpayers concerning the values assigned to their property.
4. **The Listing Process:** The listing process identifies all property to be taxed. It is the taxpayers' responsibility to list all taxable property with the proper taxing unit. Various tax maps and reports required by the statutes are available to assist units in determining that all property has been listed.
5. **The Valuation Process:** The valuation process is a process by which a value for tax purposes is assigned to all taxable property within the taxing unit. Property is valued at market value, but state law allows some property to be taxed at its present-use value.
6. **Appraisal of Personal Property:** Personal property is appraised every year. Industry pricing guides are used whenever possible to determine market value. Property owners may appeal the value assigned to their personal property to the board of equalization and review.
7. **Appraisal of Real Property:** Real property must be appraised every eight years by law. Counties may appraise it more often if they choose. An appraisal manual must be written, presented to the unit's governing board, discussed at a public hearing, and ultimately be adopted by that board each time a complete appraisal of real property is performed. Adjustments to real property value may be made without a formal appraisal if the change is to correct an error or to recognize a change in value due to something other than normal depreciation, economic conditions, appreciation, or improvements. Property owners may appeal the values assigned to real property to the board of equalization and review.
8. **Discovery of Taxable Property:** It is the assessor's responsibility to determine that all taxable property within the taxing unit has been listed for taxes. When property is located that is not listed or has been undervalued, the property is termed "discovered". All real property listed in the prior tax year is carried forward to the current year and compared to the current year's listing to identify unlisted real property. Various reports must be filed by those businesses that deal in personal property storage and location (e.g., airports, mobile home parks, marinas) to assist units in identifying unlisted personal property. Units also receive monthly listings of vehicles for which the owners have renewed the vehicle

- registration. Penalties will be assessed to the taxpayer for unlisted or underlisted property that is discovered.
9. **The Billing Process:** Tax records are maintained permanently by the taxing unit and must contain certain information as dictated by law. There is no legal requirement that units send tax bills to the taxpayers, but the cost of sending bills is justified by the increased cash flow and collection rate. Tax receipts must be maintained by the unit and are given to the tax collector by September 1, when he or she is charged with the collection of the taxes. The tax collector may not be charged with new taxes until settlement is made for the previous year.
  10. **The Collection Process:** The tax collector is responsible for the collection of all taxes levied by the unit. The collector must meet certain legal qualifications and is required to be bonded. The governing board should charge the collector with the collection of the taxes when the tax receipts are given to him or her. With the charge, the tax collector has the authority to use all legal means available to collect the taxes owed.
  11. **Payment of Taxes:** Taxes are due and payable on September 1 and must be paid by January 5 of the fiscal year for which they were levied in order to be current. Interest begins accruing on taxes unpaid on January 6. Tax collectors may accept checks in payment, but they are not required to accept checks. Returned checks can jeopardize a unit's lien. Discounts on early payments may be allowed at the discretion of the board. Penalties and interest for late payment, determined by law, take on the same character as the tax and generally may not be compromised.
  12. **Creation of Tax Lien:** A lien in favor of the taxing unit is attached to real property at the time the property is listed or should be listed for taxes. The lien for personal property attaches at the time attachment is made through garnishment or levy. Liens on real property are superior to all other liens. Liens on personal property may be superior if the property is being attached for the tax owed on that property.
  13. **Releases and Refunds:** Releases and refunds are similar; releases are made before the tax has been paid, while refunds are made after the tax has been paid. There are specific instances in which releases and refunds may be made. Board members may be held personally responsible if a refund or release is made improperly.
  14. **Collection of Delinquent Taxes:** It is generally more favorable to proceed against personal property to satisfy a tax claim than to pursue real property, as it is much less expensive to proceed against personal property. Three means of collection against personal property are available: (1) attachment and garnishment, (2) levy, and (3) debt setoff. Attachment and garnishment is used on intangible personal property, such as bank accounts and payroll checks. Levy is used against tangible personal property that may be sold for value. Debt setoff uses an individual's State income tax refund to settle debts owed to a local government (debts are not limited to delinquent property taxes). There are certain legal steps that must be taken in all of these proceedings. In the first two, the unit may recover the amount of the tax owed, the penalties, interest, and any costs incurred by the unit in the collection of the tax. If recovery is made under the debt setoff program, the unit will credit

the taxpayer's account for the amount collected and, beginning January 1, 2003, may charge an additional \$15 processing fee as a cost of collection. Foreclosure proceedings may be used against real property. There are two types: foreclosure in the nature of an action to foreclose, and *in rem* foreclosure. The first is very time consuming and expensive. The second method is less expensive and less time consuming, but its constitutionality has not been explicitly tested in the courts. In a foreclosure, the use of an attorney is necessary to protect the unit. The use of the unit's attorney for an *in rem* foreclosure is not required but is certainly allowed if individual circumstances warrant.

15. **Consolidating Property Tax Functions:** A municipality should consider consolidating its tax functions with that of a county, as this normally results in a more efficient means of billing and collecting taxes. Units with lower collection rates also may experience an increase in their collection rates as a result of consolidation.
16. **LGC's Management of Cash and Taxes Report:** The staff of the Local Government Commission annually issues two reports providing comparative cash and investment and tax levy information for local units. Units may compare their performance with that of other units or with statewide averages.
17. **Financial Statement Considerations:** There are several note disclosures and schedules regarding tax billings and collections that must be presented in the annual financial statements of a unit. The note disclosures discuss taxes receivable, the potential tax revenues from use-valued land, and the allowance for doubtful accounts. The schedules illustrate the collection efforts of the unit for the ten-year period for which collections are being pursued and reconciles collections, revenues and receivables. The schedules also show the current year tax collection percentage that is used to measure the unit's tax collection efforts.

## **Introduction**

The listing, appraisal, and assessment of real and personal property, and the methods by which taxes are levied and collected on such property, represent a major portion of the clerical, accounting, and control activities of municipalities, counties, and other tax-levying governments. Prompt collection of a major portion of each year's tax levy indicates good administrative and fiscal control and should have a positive impact on the unit's credit rating. Rating agencies look favorably on a unit that makes strong efforts to collect funds that are legally owed to it. Higher credit ratings decrease net interest costs on debt, thus reducing a unit's expenditures in that area.

A high percentage of taxes collected results in more revenues for a unit, allowing for increased funding of existing projects and programs, funding of new projects and programs, and may reduce the need to issue debt. Increased tax revenues also bring about increased investment earnings, which in turn increases available revenues even more. Taxpayers that pay their taxes in a timely manner should expect a unit to do everything legally possible to collect taxes from those taxpayers that do not pay their bills. Increased tax collections may allow a unit to reduce the overall tax rate.

The General Statutes are very specific regarding tax listings, appraisals, assessment of property, and collection of taxes. Article 26 of the Machinery Act, Subchapter II, Chapter 105 of the General Statutes, is the primary authoritative source in this area. Copies of the Act are available free of charge from the Ad Valorem Tax Division of the North Carolina Department of Revenue. Contact the North Carolina Department of Revenue, Property Tax Division, Post Office Box 871, Raleigh, NC 27602, telephone 919-733-7711, for information on availability and updating for legislative changes. The NC General Assembly's web site also lists the NC General Statutes [[www.ncga.state.nc.us](http://www.ncga.state.nc.us)]. Please read the caveats listed and cross check pertinent statutes for legislative changes which may not have been incorporated into the electronic versions of the State laws.

## **The Tax Assessor**

The county tax assessor is responsible for the listing and appraising of all property within the county. In addition to supervising the listing and appraisal of property that is reported by the owners, the assessor also must work to find any property in the county that is not listed at all or has been undervalued. The assessor also serves as the clerk to the board of equalization and review.

The tax assessor is appointed by the county board of commissioners at its first regular meeting in July and is appointed for either a two or four year term, depending on the candidate's certification status. All assessors must be certified by the State Department of Revenue. Newly appointed assessors have two years to fulfill the requirements for certification, thus the two year term. Candidates not meeting the requirements within the two year time frame are not eligible for reappointment to the position. The requirements for certification are that the assessor: (1) must be 21 or older; (2) must hold a high school diploma or certificate or have five years of reasonably related experience; (3) must earn a passing score in four training courses; and (4) must pass a comprehensive examination given by the Department of Revenue (G.S. 105-294). These standards went into effect in 1984; assessors who were certified prior to that time do not have to meet the

requirements. Assessors who were appointed prior to 1971 do not have to be certified at all. All assessors, regardless of certification status, must complete 30 hours of professional education every two years to be eligible for reappointment.

Many units of government appoint someone already within the county government to serve as tax assessor. Anyone in county government may hold the position of tax assessor with the exception of a county commissioner.

### **The Board of Equalization and Review**

The board of county commissioners generally serves as the board of equalization and review, which functions as a separate agency of the county. The members must take a different oath from the oath they took to serve as county commissioners. As the board of equalization and review, the commissioners must review the listings and assessed valuations for accuracy and compliance with the standards set by State law (see below). They also must hear any appeals from property owners concerning the values assigned to their property and render decisions on these appeals. Again, they must ensure that the values assigned to property are within the standards set by the State. The board of equalization and review has the authority to employ expert assistance, initiate investigations, and subpoena any persons and records from which needed information can be obtained.

If the board of commissioners so desires, it may elect a special board of equalization and review. This board has the same powers and responsibilities as a regular board of equalization and review. Special boards must be created by ordinance of the board of commissioners; the ordinance must be passed by the first Monday in March of the year for which it is to be effective.

Property owners may appeal decisions of the board of equalization and review to the State Property Tax Commission. This Commission is appointed by the Governor and the General Assembly. The Commission's responsibilities include reviewing the counties' listing and valuation decisions; reviewing each board of commissioners' orders adopting schedules, standards, and rules for use in revaluation programs; and reviewing the North Carolina Department of Revenue's appraisal and assessment of the property owned by public service companies.

### **The Listing Process**

The listing process is governed by G.S. 105-301 through -312. All taxable property must be listed for taxation each year by the legal owner of the property. It is the owner's legal responsibility to list what he or she owns with the county where the property is located. Most counties now maintain a permanent listing for real property, which means the property owner's only responsibility is to list any changes in the real property, such as changes in ownership or improvements. By 2004, all counties are required by State law to maintain permanent listings of real property. The statutes have provided that a penalty equal to 10% of the amount of the tax owed will automatically be assessed against property owners who fail to comply with the listing requirements. It is the tax assessor's responsibility to list all taxable property not listed by the legal owners of such property. Units must have their listing forms approved by the Department of Revenue (G.S. 105-318).

All property must be listed with a county. The listing form (the abstract) also must indicate if the property is located within a municipality and/or special district. A municipality may then copy the county listing or it may set up its own listing process and records. However, municipalities must accept the property valuations assigned by the county (unless the municipality is located in more than one county). For that reason, many municipalities copy the county listings rather than compile their own listings. Municipalities retain the right to determine which specific property should be listed for taxation and which should be granted immunity (as available under State law), even if a municipality copies the county listing.

Municipalities that are located in more than one county are granted special appraisal authority by the statutes (G.S. 105-328) enabling them to assign property values independent of the counties in which they are located if they so desire. If the governing body of a municipality feels that all counties involved have appraised the property in such a way that the same appraisal and assessment standards have been applied to all property within the municipality, then it may simply accept the values assigned to all listed property by the applicable county. If the governing body of the municipality determines that the appraisals do not result in a uniform application of appraisal and assessment standards, the governing board may equalize the appraised values through horizontal (across the board) adjustments. The North Carolina Department of Revenue can assist in this area by using sales/assessment ratios to adjust assessed valuations in order to equalize these valuations. Real property must always be listed with the county in which the property is located. Personal property is moveable, thus complicating the issue of determining where it should be listed. Generally, the property is taxed in the unit(s) of residence of the owner of the property. However, if the property is held or used at the owner's place of business, it must be taxed in the unit of "residence" of the business. For example, if a taxpayer maintains personal property at his/her home in County A, then that property is listed as tangible personal property in County A. However, if the owner keeps personal property at his/her place of business, located in County B, then the property would be listed as tangible personal property in County B.

All taxable property must be listed in the name of the person who owned it on January 1 of the current year (G.S. 105-308). Normally the listing period is the entire month of January. However, property owners can file for extensions of time to list by filing a written application. Extensions may be granted up to April 15 (G.S. 105-307). The tax listing, or abstract, must contain certain information as dictated by the General Statutes (G.S. 105-309). The information required to be reported on the abstract varies according to the type of property and improvements made upon the property.

Counties most often use tax maps to assist the assessor in determining that all real property is listed for property taxes. The Land Records Management Program in the North Carolina Department of the Secretary of State, telephone 919-807-2206, [\[www.secretary.state.nc.us/land/default.asp\]](http://www.secretary.state.nc.us/land/default.asp), provides assistance to counties that wish to undertake mapping programs. Ownership records and tract descriptions also are useful in determining that all property is properly listed. G.S. 105-303 grants county commissioners broad power to regulate the deed-recording process to facilitate the review of land transfer records. A review of building and electrical inspectors' reports often will assist a unit in identifying new construction that should be listed. Also, the revaluation process invariably identifies unlisted property and improvements.

G.S. 105-303(b) also authorizes counties to adopt (required by 2004), with the approval of the North Carolina Department of Revenue, a permanent listing system. This type of system makes the assessor responsible for listing all real property according to its recorded ownership as of January 1. The taxpayer is then relieved of his or her duty to list real estate, except for information concerning improvements and separate rights (such as mineral or timber rights) that are owned by someone other than the taxpayer.

To assist units in identifying unlisted or underlisted personal property, the General Statutes have granted a variety of powers to governing boards. For example, the statutes require any person having custody of tangible personal property that has been entrusted to him or her for the purpose of storage, sale, rental, or other business purposes, to provide a list of such property to the county assessor. This list should show the name of the owner of the property, a description of the property, the quantity of property, and the amount of money, if any, that has been advanced against the property (G.S. 105-315). This does not apply to inventories exempt under G.S. 105-275(33) and (34). G.S. 105-316 requires operators of house trailer parks, marinas, and aircraft storage facilities to provide a list to the county of the owners of the property located in their facilities and a description of the property. This applies only to facilities that lease space for three or more items. Tax permits must be obtained from the tax collector in the county in which the home is located in order to legally move a mobile home (G.S. 105-316.1). All of these statutes were designed to assist units in the listing of tangible personal property.

#### Special Classes of Property Excluded or Exempted from Taxation

Certain property is, under the General Statutes, exempt from taxation. Property that is excluded from the tax base does not have to be listed, appraised, assessed, or taxed. For a detailed listing of these special classes of property, see G.S. 105-275. Other certain property may be exempt or may be taxed at a reduced rate or assessed at a reduced or special valuation (G.S. 105-277 through 278). Some criteria may have to be met to receive the special tax status. For a detailed discussion of each class, please refer to G.S. 105-278.1 through G.S. 105-278.8.

Generally, every owner of exempted or excluded property must file for the exemption or exclusion annually (G.S. 105-282.1). The application must contain a complete and accurate statement of the facts that entitle the property to the exemption or exclusion and must indicate the municipality, if any, in which the property is located. Certain exceptions apply to the annual filing rule, however. Property held by non-profit organizations, fraternal organizations and certain disabled individuals may be excluded from the tax base. See G.S. 105-275 for a listing of property for which the owner is exempted from the filing requirements. Properties owned by the U.S. Government, the State of North Carolina, and the counties and municipalities of the State are exempt from taxation as well. Other property, listed in G.S. 105-275 and 105-277.4, is not subject to annual filing after the initial filing is made and the exemption or exclusion has been approved, unless new or additional property is acquired or improvements are made, necessitating a change in the valuation of the property, or if there is a change in the use of the property or the qualifications or eligibility of the taxpayer.

As of 2000, the NC General Statutes listed over 60 classes of real or personal property entitled to tax exemption, exclusion, or taxation at a reduced rate. Governing board members should familiarize themselves with what local property receives special tax treatment. The board should be aware of these preferential treatments and consider what effects proposed tax legislation may have

upon the local tax base in the future. New governing board members may want to consult with the local tax official to determine to what extent property in the local unit receives preferential tax treatment.

G.S. 105-296(j) requires that the tax assessor must annually review at least one-eighth of the property that is exempt or excluded from taxation in order to verify that the property is being correctly exempted or excluded. The assessor may require the owner of the property to provide any information reasonably needed by the assessor to verify that the exemption or exclusion status is valid.

### **The Valuation Process**

The appraisal or valuation process is intended to provide a true value of all taxable property. However, the North Carolina Constitution does not contain any instructions on how property should be valued. It simply states that property may be divided into classes and that taxes must be applied uniformly within each class. Thus, all property not specified by the statutes to receive preferential treatment is subject to the same valuation standard. G.S. 105-283 states that "all property, real and personal, shall as far as practicable be appraised or valued at its true value in money." The statute goes on further to state that true value means market value, which is defined as "the price estimated in terms of money 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." One departure from the market value standard is permitted under the current law. G.S. 105-277.2 through -277.6 allows the appraisal of land used for agricultural, horticultural, or forest purposes to be made on the basis of its value in its present use. 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, using a rate of nine percent (9%) to capitalize the expected net income of the property and assuming an average level of management." However, if the land ceases to be used for one of these purposes, or if title to the land passes to someone outside the owner's immediate family, a deferred tax must be paid. This tax is the difference between the tax based on market value and the tax based on the use value for the last three years. Because of the complexity of the transfer requirements and present use qualifications and the potential of legislative changes, the tax collector should consult the updated General Statutes prior to the assessment of deferred taxes.

### **Appraisal of Personal Property**

As the value of personal property fluctuates rapidly, personal property is appraised each year as of January 1. Industry pricing guides are available for motor vehicles, mobile homes, boats, and aircraft. Machinery and equipment can be valued by applying a standard rate of depreciation to the original cost or by factoring the original cost to current market value and then applying the depreciation factor. Whatever techniques are used, the appraiser is required by G.S. 105-317.1 to consider the replacement cost of the property, the sales price of similar property, its age, physical condition, productivity, remaining life, the effect of obsolescence on the property, and its economic utility. The appraiser also may use any information reflected on a taxpayer's tax returns filed with the N.C. Department of Revenue and the Internal Revenue Service, to determine the value of personal property being used for business purposes [G.S. 105-317.1(b)].

## **Appraisal of Real Property**

Real property must be appraised every eight years (G.S. 105-286). North Carolina counties are divided into eight groups with a base revaluation year established for each group. However, the statutes do not prohibit a county from reappraising its real property on a more frequent basis. As long as a revaluation is done at least every eight years, the county is within the law. Counties choosing to use the octennial schedule for reappraisal may make horizontal adjustments across the board or to limited categories of property in the fourth year of the cycle. These adjustments must be made by applying uniform percentages to change the property value.

The mass appraisal of a county's real property is a tremendous undertaking. It must be completed in time to determine the necessary tax rate but not so early that the appraised values are out of date by the time they are put into use. The appraisals must be cost-effective. Above all, the appraisal techniques must be uniformly applied in such a manner that they result in accurate estimates of the value of the property. If a county underestimates the market values of its property, it will not only lose tax revenue on those properties, but also on public service properties, as their valuations are reduced if a county's sales assessment ratio (tax value to true market value), as determined by the North Carolina Department of Revenue, is less than 90%.

The statutes require that a schedule of standards, values, and rules be developed and used as the basis for all appraisals [G.S. 105-317(b)(1)]. This appraisal "manual" must be developed, reviewed, and approved by January 1 of the year in which the standards are to be applied. It must be submitted at least 21 days prior to the meeting at which the board will consider it for approval. At the time it is submitted to the board, a copy must be made available for public inspection. A statement also shall be published in a newspaper having general circulation within the county stating that the standards have been submitted and are available for inspection and disclosing the time and place of the public hearing on the standards. This hearing must be held at least seven days prior to the board's approving the standards. Once the board does approve a set of standards, it shall issue an order adopting those standards. This order shall be published for four successive weeks in a newspaper having general circulation within the county, with the last publication appearing at least seven days prior to the deadline for taxpayers to appeal the validity of the schedules with the Property Tax Commission. Appeals must be made within 30 days of the first publication of the order adopting the standards. The order must state that the standards have been adopted, that they are available for public inspection in the tax assessor's office, and that taxpayers may appeal them to the Property Tax Commission within 30 days of the first publication of the order [G.S. 105-317(c)].

The appraisal manual is formulated from two basic sources: the local real estate market and nationally developed data on the cost of building construction adjusted to reflect local building costs. The manual primarily consists of lists of characteristics of real property within the county, with a dollar value assigned to each. The manual must provide the value of enough characteristics to enable the appraiser to accurately determine the market value of property without listing so many characteristics that the process becomes lengthy and cumbersome. Furthermore, the values assigned to each characteristic must be accurate in order for the appraiser to arrive at a realistic and reasonable valuation amount.

Special schedules in the form of a manual are developed for land taxed at its present-use value. These are available from the North Carolina Department of Revenue and are prepared by that Department with the assistance of the Use-Value Advisory Board. Use of this manual is not mandatory.

The actual appraisal process begins with the listing of each parcel of land in the county on a listing card. This process does not have to be done by a professional appraiser. The listing card must show all characteristics that will be considered in appraising the parcel [G.S. 105-317(b)]. The characteristics listed must be consistent with the appraisal manual and the listing must be accurate. Once all the information has been recorded, including estimated depreciation on any buildings, a preliminary value is calculated for both the land and any buildings, using only the values found in the appraisal manual. The cards are then taken to the actual property by an appraiser and reviewed. Any adjustments that are necessary are made at that time. The training, experience, and judgment of the appraiser have a great deal of influence on the adjustments made at this point.

Once the review is complete, the property owners are notified of the value assigned to their property. Almost every county in the State allows for informal appeals at this time. The time period for appeal is determined by each county and is at the discretion of the tax assessor. Once this informal appeal process is over, the assessor formally appraises and assesses each parcel. If possible, this should be done prior to January 1 of the year in which the new values will be used. Once the values are formally determined, any appeals by taxpayers must be made to the assessor unless the board of equalization and review has already convened.

#### Appeals to the Board of Equalization and Review

The primary function of the board of equalization and review is to hear and decide valuation appeals. The board must convene by the first Monday in May but may not meet earlier than the first Monday in April (G.S. 105-322). It sits for at least four weeks, or longer if necessary. It may not sit any later than July 1 except to hear appeals filed before that date. (In revaluation years, the board may not sit any later than December 1 except to hear appeals filed prior to that date.) Prior to the board convening, it must publish in a newspaper having general circulation in the county the date, hours, place, and purpose of its first meeting. This must be published three times prior to the first meeting, with the first publication appearing at least ten days prior to the first meeting. The board also must indicate in these publications the dates and hours of its second and third meetings and the date on which it expects to adjourn. It also will state that in the event of earlier or later adjournment, it will publish at least once in that same newspaper an announcement of the change in the adjournment date. Should such a notice actually be required, it must appear at least five days prior to the adjournment date if the board is actually going to adjourn earlier than it intended. If the board is going to sit longer than originally intended, the notice must appear at any time prior to the originally announced adjournment date.

Taxpayers may appeal an appraisal by appearing at a scheduled meeting of the board. However, most taxpayers will make an appointment in advance. The proceedings are informal, but the board normally expects specific testimony supporting the taxpayer's claim that the valuation of his or her property is incorrect. This testimony is most likely to come from a professional appraiser who disagrees with the appraised value assigned to the property.

Taxpayers who wish to appeal a decision by the board of equalization and review may do so to the Property Tax Commission. In this capacity, the Property Tax Commission acts as a State board of equalization and review. Again, specific testimony supporting both the county's and the taxpayer's positions will be expected. Further appeals may be made to the North Carolina Court of Appeals only if the taxpayer or the county believes that the Property Tax Commission made an error of law. Technically, the Appeals Court decision could be appealed to the North Carolina Supreme Court, but the Supreme Court will only hear a case if a major issue of law is in question.

### Adjustments of Property Value in Non-Revaluation Years

The tax assessor may change the valuation of property in a non-revaluation year (G.S. 105-287) in certain circumstances. Changes can be made only to correct clerical or mathematical errors, to correct misapplications of the appraisal standards, or to recognize an increase or decrease in the value of property caused by something other than normal depreciation, economic changes, or improvements. Any changes made by the assessor must be made in accordance with the appraisal manual adopted in the last revaluation year. Any changes in value take effect on January 1 of the year in which they are made and do not affect prior tax years.

### Tax of Newly Annexed Property

Real and personal property located in a newly annexed area as of the January 1 preceding the beginning of the fiscal year in which the annexation becomes effective is subject to prorated municipal taxes levied for that fiscal year [G.S. 160A-58.10(b)]. The amount of taxes owed is determined by multiplying the amount of tax that would have been owed on the property if it was part of the municipality for the entire fiscal year by the following fraction: the number of full months left in the fiscal year one day after the day the annexation takes effect divided by 12. The lien for the prorated property taxes shall attach to the property on the listing date (January 1) of the fiscal year immediately preceding the fiscal year in which the annexation takes effect. If the annexation becomes effective after June 30 but before September 2, the prorated taxes are due and payable on the first day of September of the fiscal year for which the taxes are levied. If the annexation becomes effective after September 1 and before the following July 1, the prorated taxes shall be due and payable on the first day of September of the next succeeding fiscal year. Any changes in fire tax districts boundaries automatically become effective at the beginning of the next succeeding fiscal year after the change is approved (G.S. 69-25.11). Taxes are then prorated based on the same standards used for municipalities. All prorated taxes are subject to the same means of collection as any other property taxes.

### **Discovery of Taxable Property**

It is the tax assessor's duty to "discover" property and see that it is accurately listed, assessed, and taxed. The governing board may require that the assessor file reports with it regarding all discovered property [G.S. 105-312(b)].

With regards to real property, there are basically two types of discoveries. The first is property that was listed in previous years but for some reason did not get listed in the current year. It is the assessor's responsibility to compare the prior year's final property listing to the current year's listing and identify all parcels of real property that do not appear on the current year list. This comparison

is to be done at the close of the regular listing period in the current year [G.S. 105-312(c)]. When such property is carried forward, it is to be listed in the name of the taxpayer who listed it in the preceding year unless dictated otherwise by G.S. 105-302. At this point, the property is treated as any other discovered property except that notice of appraisal should only be sent to the taxpayer if the property value is being changed either through a standard revaluation or correction of a prior valuation is needed. The second type of discovered real property is property that has never been listed for taxation.

Discovered real property and discovered personal property are treated the same according to the General Statutes. G.S. 105-312(d) discusses the procedures for listing, appraising, and assessing discovered property. These procedures consist primarily of listing the property as required by G.S. 105-302 or -306, tentatively appraising the property, and notifying the taxpayer of the listing. The notice should include such information as the name and address of the taxpayer in whose name the property is listed, a description of the property, a tentative appraisal of the property, and a statement that the listing and appraisal will become final unless written exception is filed with the assessor within 30 days from the date of the notice.

The original abstract may be corrected for discovered property, if possible, or a new abstract may be created. It is assumed that such property should have been listed by the taxpayer for the preceding five years unless the taxpayer can show evidence that the property was not in existence, that it was listed for taxation, or that it was not the taxpayer's duty to list the property. If the taxpayer can prove that the property should have been listed in another taxpayer's name in preceding years, the property shall be listed in the name of the proper taxpayer in the appropriate years, but the date of discovery shall remain the same [G.S. 105-312(f)].

Discovered property will be taxed for the year in which it is discovered and for the five preceding years. Tax for the five preceding years will be calculated using the value that should have been assigned to the property for each of the five years and the rate that was in effect in each of the five years. If the discovery is based on an understatement of value, quantity, or other measurement, the tax will be computed on the additional valuation [G.S. 105-312(g)]. (See Section 10, "Budgeting", for a discussion on budgeting property tax revenues from discovered property.)

G.S. 105-312(h) dictates that penalties will be charged in addition to the tax levied on discovered property. The penalty charged is 10% of the tax levied on the property as a result of the discovery. The penalty is assessed for each year the property was not listed or was undervalued. For example, if a taxpayer was found to have not listed property for the previous five years, the penalty for failure to list would be 60% of the tax from the earliest year, 50% from the next year, 40% from the year after that, and so forth until the current year penalty of 10% [G.S. 105-312(h)]. This penalty does not apply to real property if (i) there have been no improvements to the property since it was last listed and (ii) there has been no change in ownership since it was last listed. This exception is **not applicable** for tax years beginning on or after July 1, 2004. [G.S. 105-312(h)]

G.S. 105-312(i) states that the taxpayer is required to pay all penalties in the current year as if they were taxes due in the current year. All prepayment discounts and late payment interest charges apply to the penalties as well. The taxpayer is entitled to refunds from other jurisdictions within the State if he or she wrongly paid tax on the discovered property in another jurisdiction. Requests for such refunds should be filed according to G.S. 105-381.

The taxpayer may petition the governing board of the unit to consider a compromise as satisfaction of the full amount of the penalty. It is entirely at the board's discretion to accept less than the full amount of the discovery penalty. The board may, by resolution, delegate the authority to receive and accept such a petition to the board of equalization and review [G.S. 105-312(k)].

Municipalities that use the county listings should be aware that discoveries take place throughout the year. Municipalities should work with their counties to develop a method by which the municipality may keep its lists up-to-date.

### **The Billing Process**

The billing of property taxes is the culmination of the listing, appraisal, and assessment processes. Various tax records are kept to support the billings, the primary one being the tax book or scroll. The tax scroll provides, for each tax year, the fixed listing of all taxable property within the county. The listing includes a separate entry for each tract, parcel, or group of contiguous lots. Additionally, the tax scroll lists all taxable personal property according to the township or municipality in which it is located.

### The Tax Records

The form of the tax scroll, book, or combined record must be approved by the Department of Revenue [G.S. 105-319(a)]. The scroll normally shows the property valuations, and the book normally lists the amount of tax due. Many units choose to combine these into one set of records, as determined by the governing body [G.S. 105-319(a)]. The tax records must be prepared separately by the county for each township unless the county board of commissioners says otherwise [G.S. 105-319(b)]. The tax records are prepared in two parts: 1) individual taxpayers and 2) corporations, partnerships, other business firms, unincorporated associations, and other taxpayers other than individuals.

The tax records must list at least the following information according to G.S. 105-319(c):

1. the name of each taxpayer whose property is assessed and listed for valuation, in alphabetical order;
2. assessment of each taxpayer's real property listed for unit-wide taxation (divided into as many categories as the Department of Revenue may prescribe);
3. assessment of each taxpayer's personal property listed for unit-wide taxation (divided into as many categories as the Department of Revenue may prescribe);
4. the total assessed value of each taxpayer's real and personal property listed for unit-wide purposes;
5. the amount of ad valorem tax due by each taxpayer for unit-wide purposes;
6. the amount of any dog license tax due by each taxpayer;

7. the total assessed value of each taxpayer's real and personal property listed for taxation in any special district or subdivision of the unit;
8. the amount of ad valorem tax due by each taxpayer to any special district or subdivision of the unit;
9. the amount of penalties, if any, imposed under G.S. 105-312;
10. the total amount of all taxes and penalties due by each taxpayer to the unit and to special districts and subdivisions of the unit.

Any changes, listings, and assessments made during the time between the closing of the regular listing period and the first meeting of the board of equalization and review, or during the regular listing period, should be entered into the tax records. These records should be submitted to the board of equalization and review at its first meeting. Any additions, deletions, or other changes made by the board of equalization and review should be entered into these records as well [G.S. 105-319(d)].

#### Tax Receipts

There is no legal requirement that the taxing authority provide the taxpayer with any kind of bill or notice of taxes due. Because virtually all tax records and receipts are now maintained in a computer format, tax receipts may be printed as needed. This eliminates the need to maintain books of printed, multi-part tax receipts. The ease of printing should make it easier for the tax receipt to be used as a notice to the taxpayer that the taxes are due and payable.

Upon an order of the governing body, the tax receipts are delivered to the tax collector on or before the first day of September [G.S. 105-321(c)], assuming the tax collector has made his or her settlement per G.S. 105-352(b). Before delivery is made, the governing body must adopt and enter into its minutes an order directing the tax collector to collect the taxes charged in the tax records and receipts [G.S. 105-321(b)]. A copy of the order is delivered to the tax collector along with the tax receipts. Failure to deliver this order does not relieve the tax collector of the responsibilities of the position. The tax collector should give the board a receipt for the delivery of the tax receipts.

The form of the tax receipt must be approved by the Department of Revenue and include the following information [G.S. 105-320(a)(1-13) and (16)]:

1. The name and address of the taxpayer charged with taxes;
2. the assessment of the taxpayer's real property listed for unit-wide taxation;
3. the assessment of the taxpayer's personal property listed for unit-wide taxation;
4. the total assessed value of the taxpayer's real and personal property listed for unit-wide taxation;

5. the total assessed value of the taxpayer's real and personal property listed for taxation in any special district or subdivision of the unit;
6. the rate of tax levied for each unit-wide purpose, the total rate levied for all unit-wide purposes and the rate levied by or for any special district or subdivision of the unit in which the taxpayer's property is subject to taxation. (In lieu of showing this information on the tax receipt, it may be furnished on a separate sheet of paper, properly identified, at the time the official receipt is delivered upon payment);
7. the amount of ad valorem tax due by the taxpayer for unit-wide purposes;
8. the amount of ad valorem tax due by the taxpayer to any special district or subdivision of the unit;
9. the amount of dog license tax due by the taxpayer;
10. the amount of penalties, if any;
11. the total amount of all taxes and penalties due by the taxpayer to the unit and to special districts and subdivisions of the unit;
12. the amount of discount allowed for prepayment of taxes;
13. the amount of interest charged for late payment of taxes;
14. the total assessed value of farm machinery, attachments, and repair parts of individual owners and Subchapter "S" corporations engaged in farming subject to the income tax credit in G.S. 105-151.21 and the amount of ad valorem taxes due by an individual farmer or a Subchapter "S" corporation engaged in farming on farm machinery, attachments, and repair parts subject to that credit (this information may be shown on a separate sheet of paper included with the receipt rather than on the receipt itself).

At the time the tax receipts are delivered to the tax collector, a list of all appeals pending before the Property Tax Commission affecting property that has been listed and assessed for taxation within the unit should be provided.

### **The Collection Process**

#### The Tax Collector

The selection of the tax collector is generally governed by G.S. 105-349, unless the process is provided for by a local act or charter. If the local act or charter was in effect prior to July 1, 1971, it is maintained intact by the General Statutes. If a local act or charter was put into effect after July 1, 1971, it must specifically state that it is making a local amendment to G.S. 105-349 in order for the local act or charter to be effective. The office of tax collector is usually an appointed one and may be held by any official or employee of a unit except a member of the governing board or

the finance officer [G.S. 105-349(e)]. In certain instances, the finance officer may serve as the tax collector, but **only with the written approval of the Secretary of the Local Government Commission** (emphasis added).

In order to be appointed tax collector, the selected person must meet certain legal qualifications [G.S. 105-349(b)]. Before the tax receipts for the current year are delivered to the tax collector, the following requirements must have been met: the duplicate receipts for any prepaid taxes must be delivered to the finance officer; the tax collector must have demonstrated to the satisfaction of the finance officer that all prepayments of taxes have been deposited to the credit of the taxing unit; he or she must have made the annual settlement with the board; and he or she must have bond coverage for all taxes for the current year and all prior years that are uncollected. G.S. 105-349(c) requires that all tax collectors be bonded, with the amount determined by the governing board. This statute also stipulates that a tax collector may not collect taxes not covered by his or her bond and may not continue collecting taxes once the bond has expired. G.S. 159-29(b) requires that any officer, employee, or agent of a local government that handles or has in his or her custody more than \$100 of the unit's funds at any time must be bonded individually for an adequate amount. G.S. 159-29(c) offers the alternative of bonding employees under a blanket bond. This section clearly states that a tax collector must have his or her own individual bond; inclusion under the blanket bond is only appropriate if the tax collector receives additional coverage as compared to the tax collector's individual bond.

The tax collector can be removed from office by authority of the Machinery Act [G.S. 105-349(a)] if the collector was not hired or elected under a local statute or act. Collectors can be removed if they do not meet the requirements discussed in the above paragraph. The board also has the authority to remove the collector for "good cause" according to the Machinery Act. The collector must be given notice in writing and given the opportunity to appear and be heard at a public meeting of the board. "Cause" in this case refers to reasons of law and public policy to justify removal. The cause must relate to and affect the administration of the collector's office and must be of a substantial nature that directly affects the public's rights and interests. If the collector was hired under a local act or was elected, the board should seek the advice of its local attorney before any attempt is made to remove the collector from office, especially if the collector is an elected official. There is no general authority in the statutes to remove elected local officials, and it has been held in other states that a board cannot remove an elected official unless specifically authorized to do so by statute.

### The Order of Collection

At the time the tax books and receipts for the current year are turned over to the tax collector, he or she should be given an order of collection by the board. The board is to issue this order, give a copy to the collector, and keep a copy in its meeting minutes. The wording of the order is prescribed in G.S. 105-321(b) and should be followed. The order has the legal force of a judgment. Failure to issue the order does not affect the collector's right and ability to use the collection procedures of attachment and garnishment, levy, and foreclosure. However, it may affect his or her ability to use "*in rem*" foreclosure as a means of collection, and it possibly may affect an out-of-unit attachment. Therefore, issuance of this order is an important process that should not be overlooked. Once the tax books are given to the collector and the current year's levy charged against him or her, the collector is ready to begin collecting taxes.

### **Payment of Taxes**

The statutes dictate that payment of taxes must be made in the national currency. Deeds to property, notes, bonds, or other payments in kind are not acceptable as payment. Taxpayers also may not offset their tax liability with any bill, judgment, claim, or other obligation owed them by the taxing unit (G.S. 105-357). The tax collector may accept checks or electronic payments as payment at his or her own risk. The collector is not required to accept checks. (See the section below for more information on electronic payment of taxes.) Should the collector choose to accept this method of payment, he/she shall have the option of issuing the receipt for payment immediately or to withhold the receipt until the check has been collected or the electronic payment is honored by the issuer, i.e. the financial institution issuing the credit card, debit card, or other form of electronic payment [G.S. 105-357(b)]. If a receipt is issued immediately for taxes paid with a check or electronic payment and the item is later returned unpaid or not honored by the issuer, the taxes shall be deemed unpaid and the unit's copies of the tax records changed to show the tax as unpaid. However, the tax collector has the responsibility of presenting the check or electronic payment for payment in a timely manner. If a check is returned or an electronic invoice is not honored by the issuer, the tax collector must notify the taxpayer by certified or registered mail. The tax collector may then use any remedies allowed for the collection of taxes or he/she may bring a civil action on the check or the electronic payment in order to collect the taxes due. Taxpayers may be required to pay a penalty of 10% (minimum penalty of \$1.00, maximum of \$1,000) of the amount of the check for any check returned to the governing unit unpaid [G.S. 105-357(b)(2)]. Certain exceptions apply with regards to the penalty.

The return of a check as unpaid or an electronic payment that is not honored by the issuer also may affect the unit's lien on the property being taxed. If a check is returned or an electronic payment is not honored by the issuer, the unit's lien becomes inferior to the rights of purchasers for value and any persons acquiring liens of record for value if such purchasers or lienholders (1) acquired their rights in good faith, with no knowledge of the return of the check or that the electronic payment was not honored, and (2) after examination of the unit's tax records indicating that the taxes were paid or after examination of the taxpayer's official receipt showing the taxes as paid if such examination was made prior to the taxpayer's written notification that the check was returned unpaid or the electronic payment was not accepted by the issuer [G.S. 105-357(b)(1)].

Units may contract with a bank or other financial institution to accept payment of taxes from taxpayers [G.S. 105-321(e)]. These payments may be for current year or delinquent taxes owed. However, the financial institution should not issue a receipt for the tax payment. Tax receipts should only be issued by the unit's tax collector. The governing board of the local government must require a performance bond from the financial institution in an amount to be determined by the board. If the institution will accept payments in person, the governing board also must publish a timely notice in a newspaper that is circulated within the taxing unit of the institution's contract to collect taxes. If the institution accepts payments only through the mail, then notice is not required to be published.

The governing board of a unit may permit the tax collector to ignore small underpayments or overpayments of taxes. By law, the amount of such under or overpayment may not exceed \$1.00 [G.S. 105-357(c)]. If permitted by the board, the tax collector will not attempt to collect amounts

underpaid up to \$1.00 or return amounts overpaid up to \$1.00 but will keep track of these amounts by receipt number and amount and report these payments to the governing board as a part of the annual settlement. If the board chooses to allow this practice, (1) it must adopt a resolution stating such before June 15 of the year in which it will apply, (2) it must apply to all taxes levied in previous years, and (3) it must continue in effect until repealed or amended by resolution of the board [G.S. 105-357(c)(1)-(3)].

Partial payments of tax should be accepted by the tax collector, unless otherwise instructed by the governing board (G.S. 105-358). Receipts should be given for the partial amount paid. Partial payments are applied first to penalties, then interest, costs, and finally principal. The governing board may set minimum amounts or percentages that will be accepted.

### Electronic Payments

State legislation has responded to modern banking practices and expanded the payment methods to allow a tax collector to accept credit cards, debit cards, or other forms of electronic fund transfers for the payment of property taxes. The discount fee retained by the card issuer for electronic payments is now seen as a cost of collection and no longer is seen as preventing the tax collector from collecting taxes in their entirety [S.L. 1999-434, amending G.S. 105-357(b)]. The legislation does allow the local governments the option of adding a surcharge to the tax payment which will cover the discount fee charged by the card issuer. In actual practice, local governments typically do not exercise this option because adding these surcharges is not allowed by the card issuers and voids the credit card agreement with the county or municipality.

Some local taxing authorities have begun accepting electronic payments through a third party. The third party electronically accepts payments on behalf of the taxing authority. Following are some common or typical characteristics of these arrangements. First, the third party accepting payment on behalf of a taxing authority is acting as the “merchant” in the eyes of the card issuer, and it is the third party that pays the transaction or discount fee to the card issuer. Second, as the third party accepts tax payments from a citizen, a “convenience fee” is added to the amount of taxes due. Often the citizen is informed of this additional fee and is given several opportunities to accept or reject the transaction. The total of taxes due and the convenience fee is charged to the taxpayer’s credit card, debit card, etc. Third, the total amount of the tax due is timely remitted to the taxing authority’s deposit account by the third party, usually by electronic transfer. The convenience fee is retained by the third party as their profit. This, in turn, allows the third parties to offer these services at little or no cost to the taxing unit.

Electronic collection of property taxes by a third party has been described as, “a practice which is gaining momentum” in North Carolina. Before investing time and effort into establishing an electronic payment system, the habits of the taxpayers should be considered. Do the citizens take advantage of all the conveniences offered by the local government? Are enough citizens asking for this payment option to make it worth the effort? Is there a reasonable chance that this may increase the overall tax collection rate? Could accepting property taxes electronically improve the collection of relatively small amounts, such as the motor vehicle tax? Will accepting tax payments electronically reduce printing and operational costs so that a taxing unit may maintain the same overall collection rate but with reduced operating costs?

Finally, this is a rapidly evolving issue. Taxing authorities wishing to accept electronic payments for taxes due are encouraged to research the latest developments prior to installing a system and to consult with other local governments which may have already implemented such a system.

### Prepayments

Prepayments of taxes (payments made before the tax receipts are delivered to the tax collector) should be accepted by the tax collector unless the board has authorized another person to receive them. The person accepting the payments must be satisfactorily bonded to receive such payments. No prepayments are required to be accepted by anyone until the annual budget estimate has been filed with the board [G.S. 105-359(b)]. If the final tax due has not been determined at the time the taxpayer makes payment, the tax collector or designated person should estimate the bill to the best of his or her ability. Any subsequent overpayment of tax should be returned to the taxpayer without interest. Any subsequent amount owed by the taxpayer to the unit shall be due and the balance due shall be allowed the discount or charged the interest in effect with respect to taxes for the same year at the time the balance is paid [G.S. 105-359(c)]. The governing body of any county or city has the authority to establish a schedule of discounts to be applied to taxes paid prior to the due date. In order to establish a prepayment discount, the governing body of a unit must adopt a resolution, by May 1, specifying the amount(s) of the discount(s) and the time(s) during which they are applicable. The resolution must then be submitted to the Department of Revenue for approval and then published at least once in a newspaper having general circulation within the unit [G.S. 105-360(c)].

### Due Date for Taxes

Taxes become due and payable on September 1 of the year for which they are levied. Taxes may be paid up through January 5 of the next calendar year without penalty. On January 6, the taxes become delinquent and subject to interest charges. Tax payments submitted by mail are deemed received as of the date of the postmark affixed by the U.S. Postal Service. If there is no postmark, the payment is deemed received when it arrives in the office of the tax collector [G.S. 105-360(d)].

For motor vehicles registered under the staggered system, taxes shall be due on the first day of the fourth month following the date the registration expires or on the first day of the fourth month following the last day of the month in which the new registration is applied for.

For vehicles registered under the annual system, taxes are due May 1 following the date registration expired. For a vehicle newly registered under the annual system, the taxes are due on the first day of the fourth month following the date the new registration is applied for [G.S. 105-330.4].

### Interest

Interest is accrued on payments made after January 5 of the calendar year subsequent to the year for which the taxes were levied. For the period from January 6 to February 1, interest accrues at the rate of 2%. For the period from February 1 until the principal amount, the accrued interest, and the penalties on the taxes are paid, interest shall accrue at the rate of 3/4% per month or a fraction thereof [G.S. 105-360(a)]. For motor vehicles, interest is first accrued at 2% on the first day of the month following the due date and at 3/4% for each month thereafter. While the assessment rate is the same as above, the actual dates will vary depending upon the registration date of the vehicle.

### **Creation of Tax Lien**

The taxing unit's lien for taxes on real property attaches to the parcel being taxed on January 1. The lien on real property for taxes owed on personal property also attaches on that day, except for motor vehicles taxed on the staggered schedule. The tax on a motor vehicle does not create a lien against the real property of the vehicle's owner. All subsequent penalties, interest, and costs shall be added to the lien and shall attach at that same time. Liens on personal property, including penalties, interest, and costs, shall attach at the time of attachment and garnishment or levy (G.S. 105-355). Tax liens on real property are superior to all other liens, assessments, charges, rights, and claims of any kind, regardless of the claimant and whether such claims were acquired before or after the attachment of the tax lien. The law states that the priority of the lien is not affected by the transfer of title to the real property after the lien has attached, nor is it affected by the death, receivership, or bankruptcy of the owner(s) [G.S. 105-356(a)(3)]. On personal property, the tax lien shall be superior to all liens if it is attached to the property on which the tax is owed. If the lien is attached to property other than that on which tax is owed, the tax lien shall be inferior to all valid liens and perfected security agreements attached prior to it and superior to all valid liens and perfected security agreements attaching after it [G.S. 105-356(b)].

### **Releases and Refunds**

The governing board may approve refunds or releases of taxes according to G.S. 105-380. A release refers to the elimination of a tax claim by a unit prior to the bill being paid. Refunds are essentially the same except that they are made after the bill has been paid. In either case, it is the taxpayer who, by protesting the tax claim, initiates the process of obtaining a release or refund. The statutes are quite rigid regarding the refund or release of the tax claim. Any board member who votes to release or refund taxes in violation of the statutes in this area becomes personally responsible for the amount of the tax, including any costs to recover it [G.S. 105-380(c)].

G.S. 105-381(a)(1) gives the taxpayer specific defenses to the enforcement of the collection of taxes. These include: (1) a tax imposed through a clerical error; (2) an illegal tax; (3) a tax levied for an illegal purpose. Examples of specific instances in which releases or refunds should be granted are as follows:

1. The assessed valuation of the property taxed has been reduced under proper exercise of legal authority;
2. The property in question is not taxable by the unit;
3. The property in question has been listed twice;
4. The rate of tax or any part of it has been illegally levied, such as taxes levied for something other than a public purpose, taxes levied without a vote of the people when such a vote was required, or taxes levied in an amount greater than is authorized by the N.C. Constitution, the statutes, or a vote of the people; or

5. The amount of the tax has been erroneously computed through a clerical or mathematical error, resulting in a higher amount owed than is proper.

A taxpayer must file a written request for a release or refund. There is no time limit on the filing of a request for a release other than, as stated earlier, a request for a release can only be filed before the tax is paid. There are statutory limits on the time period in which a request for a refund can be filed. Refunds must be requested within five years of the date the tax first became due or within six months from the date of payment of the tax, whichever is later. Once a request for a refund or release has been filed, the board must review it to determine if the taxpayer has legal grounds for a release or refund. If so, then the request is granted, provided the request for refund has been filed within the allowed time.

### **Collection of Delinquent Taxes**

Delinquent taxes can be collected through four different processes: debt setoff, attachment and garnishment, levy, and foreclosure. Each of these is an effective means of collecting taxes, given the proper situation. The tax collector has the authority to use the above remedies by virtue of his or her office, without any other special authority and generally without the assistance of the unit's attorney. With respect to the current fiscal year's taxes, the collector may use these remedies, except the debt setoff program, at any time after taxes are delinquent (January 6) [G.S. 105-366(b)]. See the following pages for a fuller discussion of the available methods. With regards to personal property, the type of property being attached determines which procedure to use. With regards to real property, it is almost always best to proceed against personal property first in order to satisfy the claim. Once this avenue is exhausted, then foreclosure proceedings can be used.

G.S. 105-369 states that on the first Monday (counties) or second Monday (municipalities) in February the tax collector must report to the governing board on the total amount of unpaid taxes that are liens on real property for the current fiscal year. Upon receipt of this report, the governing board must decide at what time it will advertise these liens. Liens may be advertised in March, April, May, or June. Advertising in this case means publication at least once in at least one newspaper of general circulation in the unit and posting of the same list at the courthouse or at the town hall. The selling of liens is no longer permitted.

Proceedings against personal property may begin at any time after January 5. There are four instances in which the tax collector can proceed against personal property prior to that time: (1) if the collector has reasonable grounds for believing that the taxpayer is about to remove his or her property from the taxing unit; (2) if the collector has reasonable grounds for believing that the taxpayer is about to transfer his or her property to another person; (3) if the collector has reasonable grounds for believing that the taxpayer is about to become insolvent; and (4) whenever a wholesale or retail merchant sells or transfers the major portion of his or her stock of goods, materials, etc., other than in the normal course or business, or goes out of business, and the taxes on the transferred property that will fall due on September 1 are not paid within 30 days of the transfer. In this last instance, the collector's authority expires six months after the date of the transfer, but during that six months, the collector may proceed against the seller and/or the purchaser to satisfy the tax claim [G.S. 105-366(c) and (d)].

### NC Local Government Debt Setoff Clearinghouse

*Note that the NC Local Government Debt Setoff Clearinghouse program (the Debt Setoff program) may be used as a collection tool for any legal debt owed to a North Carolina municipality or county by an individual. The discussion is included herein because of its anticipated use as a property tax collection method. See General Statute 105A-1 through -16 for the enabling legislation.*

In the latter part of 2001, the North Carolina Association of County Commissioners and the North Carolina League of Municipalities created and sponsored the framework allowing municipalities and counties to submit information to a third party clearinghouse, and allowing the clearinghouse to intercept State income tax refunds of debtors on behalf of the municipalities and counties. In summary, a municipalities and counties may submit a claim for a debt(s) totaling \$50 or more to the NC Local Government Debt Setoff Clearinghouse. The debt(s) must be owed to the municipality or county by an individual and have occurred because of contract, subrogation, tort, operation of law or some other legal theory. Delinquent property taxes may be submitted for setoff, as well as delinquent water bills or other amounts owed to a municipality or county. The debt may not be submitted to the clearinghouse until 60 days after the debt has been declared to be delinquent. The submission must include the full name and Social Security number of the debtor. General Statute 105A establishes the State laws authorizing and regulating the Debt Setoff program. The statutes require that municipalities and counties notify the debtors in writing that the local government intends to use the debt setoff process to recover the amount owed. An appeal process must also be available to the citizens wishing to protest the proposed debt setoff.

Each successful debt setoff match will be charged a \$15 recovery fee. Effective January 1, 2003, this collection fee may be assessed against the debtor. This is a revision from the original legislation. Now, there is no cost to the unit if a match is made between the list of debtors submitted to the clearinghouse and the NC Department of Revenue's records. If no match is made, there is no charge to the unit.

At the time of this writing, the Debt Setoff program has only been fully operational for a relatively short period. However, early feedback from counties and municipalities provide some additional information which local tax collection officials may want to consider. One county, working with the local newspaper to publicize the program, found some citizens welcoming the chance to catch up on their back taxes and avoid any temptation to spend their tax return on other items. One participating coastal community believes that their debtors have left the local area but have not left the State, thus making collection efforts on a statewide basis potentially more effective than current methods. A municipality or county planning to participate should consider such factors as who their debtors are, are they likely to be receiving NC income tax refunds, does the unit have the debtors' Social Security number, etc. Also, the municipality or county should remember that State agencies take priority over local agencies if there are competing claims for debt setoff [G.S. 105A-12].

At the time of this update, few legal challenges have been made to the 1990 federal legislation on Social Security numbers, the Privacy Act of 1974, and the State Privacy Act [G.S.143-64.60]. Thus, there are few judicial decisions for guidance as to what is and is not a permitted use of a citizen's Social Security number. If the information is requested on a written application, a written disclosure should be made informing the reader if the Social Security number is voluntary or

mandatory information, what statutory authority allows the local government to ask for the number, and how the Social Security number will be used. If a municipality or county does request Social Security numbers from citizens and customers, it should review its policy, disclosure statement, documents and internal controls for safeguarding this information with the unit's local attorney. **Local governments should be aware that no rights, benefits or privileges set out in law can be denied because of a citizen's refusal to disclose his or her Social Security number** [The Privacy Act of 1974; G.S. 143-64.60] (emphasis added). See G.S. 105A-3(c), which outlines a unit's rights and duties to collect identifying information for use in collecting amounts owed to the county or municipality. Additional information on the program is available from the NC Association of County Commissioners [[www.ncacc.org](http://www.ncacc.org)], the NC League of Municipalities [[www.nclm.org](http://www.nclm.org)], and the NC Debt Setoff Clearinghouse [[www.ncsetoff.org](http://www.ncsetoff.org)].

### Attachment and Garnishment

Attachment and garnishment is a legal procedure by which a taxpayer's intangible personal property is seized to pay a tax claim of a unit of local government. Intangible, or "nontouchable", personal property in this context usually consists of bank deposits, wages earned but not yet paid, and rents or other debts owed to the taxpayer. Therefore the property that the tax collector is proceeding against is usually "held" by a third party, called the "garnishee". The attachment and garnishment procedure provides a method whereby the collector notifies the garnishee, usually the taxpayer's financial institution or employer, of the taxpayer's unpaid tax bill, and the financial institution or employer pays to the collector an amount of the taxpayer's money sufficient to pay the taxes (G.S. 105-368). In the tax collection context, attachment and garnishment is the name of a single remedy, although it is a combination of the two separate procedures of attachment (a "freezing" of a taxpayer's property) and garnishment (the paying over of this property by the third party garnishee). Attachment and garnishment is available only for proceeding against intangible personal property. Either the taxpayer or the garnishee must reside in the collector's taxing unit of government before the collector can use attachment and garnishment. If the delinquent taxpayer and the intended garnishee reside outside the collector's taxing unit of government, then the collector may not use attachment and garnishment (or levy) but must instead use the certification process authorized by G.S. 105-364.

### Steps in Attachment and Garnishment (G.S. 105-368)

1. Prepare three (3) copies of the Notice of Attachment and Garnishment. The Notice must contain the following information [G.S. 105-368(b)]: (a) the name of the taxpayer, his or her social security number or federal taxpayer identification number (if known), and his or her address; (b) the amount of taxes, penalties, interest, and costs (including fees allowed) and the year or years for which the taxes were imposed; (c) a brief description of the property sought to be attached; (d) the name of the taxing unit or units by which the taxes were levied; and (e) the copy of the applicable law (G.S. 105-366 and 368). Notices for two or more taxpayers may be combined if they are served on the same garnishee but the amount of taxes, penalties, interest, and costs for each taxpayer must be set out separately. *A sample Notice of Attachment and Garnishment is included as Appendix A.*
2. Deliver the Notices to the taxpayer and the garnishee. This must be done in person or by registered or certified mail. Delivery is normally made by the tax collector, deputy

collector, or county sheriff. Municipal collectors are authorized only to deliver within the corporate limits of the municipality while county collectors are similarly restricted by county lines. If the garnishee is a corporation, delivery must be made to the president or other head, secretary, cashier, treasurer, director, managing agent, or local agent of the corporation. Once delivery is made, the third copy ("return" section on the back of the Notice) is completed by the delivery person and that copy is retained on file by the unit in the tax collector's office. Fees for delivery are set by G.S 7A-311. The current fee is \$5 each per taxpayer and garnishee for a total fee of \$10. The fee is added to the tax bill being collected. The revenue from the fee goes to the department that delivers the Notice. For example, if the sheriff's office makes delivery of the Notices, the sheriff's office receives the revenues.

3. The garnishee must respond to the Notice within 10 days, either by remitting the funds with a statement of no defense to the garnishment, or by stating an objection to the garnishment, or by a partial remittance. The garnishee may offer a "defense" to the garnishment, which is simply a legitimate reason that the garnishment is not valid. For example, if the garnishee is a bank and the taxpayer had no accounts with that bank, then the bank would have a defense to the garnishment. The garnishee also may respond with a "set-off" to the garnishment, which is a valid, enforceable claim by the garnishee against the taxpayer. This could include an unpaid loan or advance owed to the garnishee by the taxpayer. The collector must decide whether or not to accept a set-off. If the collector accepts the defense or set-off, he or she notifies the garnishee within 10 days after receiving the garnishee's statement. The collector may accept the defense or set-off in whole or in part. If partial payment is sent, the garnishment is discharged to the extent accepted. The remaining amount is still owed. If the collector rejects the defense or set-off, the collector must notify the garnishee within 10 days of receipt of the garnishee's statement. Then the collector must file copies of the Notice, the garnishee's response, and the collector's objections to the response with the appropriate division of the General Court of Justice. A court action will follow in which the taxing unit will seek a judgment against the garnishee. If the garnishee does not respond to the Notice within 15 days, the collector may file for a similar judgment. If a judgment is awarded to the collector against the garnishee, the garnishee will be liable for the taxes owed and the court costs.

There are preliminary procedures that must be followed if the tax collector wishes to attach wages. In the first week of January, the tax collector should request that each major employer in the county and municipality furnish a list of employees to the office of the tax collector. Any employer that does not provide a list of employees to the tax collector as requested is guilty of a misdemeanor [G.S. 105-368(i)(1)]. These employee lists may not be used for any purpose other than the collection of taxes and may not be released to unauthorized persons [G.S. 105-368(i)(2)]. The requests for these lists are best made by a polite, informative letter which may be followed by a telephone call to answer any questions by the employer. The collector should attempt to establish a cooperative relationship between his or her office and each employer. Most employers, once they have been informed of what attachment and garnishment is and their duties and liabilities under the procedure, are willing to cooperate. Wages can only be remitted up to 10% of the gross pay per pay period. An attachment of wages is good for one calendar year.

The collector should compare the names in each employee list with the names of delinquent taxpayers. His or her staff can then begin computing each taxpayer's bill (including interest, penalties, and fees) as of February 1. By that date, a Notice of Attachment and Garnishment should be completed for each taxpayer.

Attaching bank deposits also requires some special procedures. There is no statutory requirement that a bank or savings institution disclose to a tax collector the names of its depositors or the amount each has on deposit. In most cases, a collector who wishes to attach and garnish such deposits can only speculate as to where a delinquent taxpayer maintains an account and serve a Notice upon that financial institution(s). The collector may try using information from the utility department, gathered from checks received for payment of utilities or checks received for payment of building permits. The collector also may serve several duplicate Notices concerning a single taxpayer on all banks in the community on the assumption that the taxpayer has attachable funds in at least one such institution. If the collector has not previously used the remedy of attachment and garnishment, the collector could visit each financial institution's local official to acquaint him or her with the unit's collection program in general and the specific procedures of attachment and garnishment. Banking officials in some communities will respond to polite, informal inquiries as to whether a taxpayer maintains an account and whether the deposit is sufficient to cover the tax claim. If the response is affirmative, the collector then proceeds with serving the Notices in the customary manner.

### Levy

Levy can best be defined as the seizing of a taxpayer's personal property for future advertisement and sale to the highest bidder, with the proceeds of such a sale applied to the taxpayer's tax bill. G.S. 105-367(a) adopts the levy procedure regularly available through court action to private individuals through G.S. Chapter 1, Article 29B, sections -339.41 through -339.71. Two important variations on this exist for tax collectors. The first is that the levy is made by the tax collector or a duly appointed deputy. The second is that the tax collector does not need to go to court to obtain a judgment and execution against the taxpayer. The governing body's formal order of collection has this effect [G.S. 105-321(b)]. (See also "The Order of Collection" above.) By means of this order, the tax collector or deputy has the authority to levy. The use of law enforcement officers is not necessary but is allowed if the unit's governing board authorizes the tax collector to call upon law enforcement officers for this purpose [G.S. 105-367(b)]. However, the officer(s) must be furnished a written document by the collector that will serve as the "execution" referred to in the statute.

Any tangible personal property listed in G.S. 105-366(b) may be levied upon. This includes personal property held by the taxpayer, personal property transferred by the taxpayer to a relative (as defined in the statute), personal property in the hands of a receiver for the taxpayer, personal property of a deceased taxpayer if the levy is made prior to final settlement of the estate, the stock of goods or fixtures of a wholesale or retail merchant (in specific instances), personal property of the taxpayer that has been repossessed as long as it is still in the hands of the person that repossessed it, personal property of a partner to satisfy a tax claim on the partnership (in certain instances), personal property due to the taxpayer or to become due to him or her within the calendar year, and personal property of a taxpayer that has been transferred by any other means, except by bona fide sale for value, if the levy is made within six months of transfer. Property acquired by the

taxpayers since the listing period the previous January also may be levied upon, so the collector should make an effort to learn of any subsequently-acquired property [G.S. 105-366(b)(1)].

### Steps in Making a Levy (G.S. 105-367)

1. Decide which items to levy upon. Review the statutes in this area, as the law is very specific on some items [G.S. 105-366(b)]. The two most important factors in selecting an item are: (a) Can it be readily sold in the community? and (b) Can it be safely and inexpensively stored until sold?
2. Prepare four copies of the Notice of Levy and Sale. The property to be levied upon must be described "sufficiently to indicate its nature and quantity" [G.S. 1-339.51(4)]. *See Appendix B for a sample Notice of Levy and Sale of Personal Property for Ad Valorem Taxes.*
3. Locate the property, seize it, and serve the taxpayer with a signed copy of the Notice of Levy and Sale.
4. Maintain safe custody of the property. Expenses that are incurred by the unit may be recovered from the proceeds of the sale (G.S. 1-322, 7A-311, 1-339.70).
5. Select a sale date and advertise the sale. A copy of the Notice of Levy and Sale must be posted at the county courthouse door at least ten days prior to the sale date (G.S. 1-339.53). Municipal collectors also should post a copy at town hall. If a motor vehicle is being levied upon, the Notice should be posted 20 days prior to the sale date and the Commissioner of Motor Vehicles notified of the levy and sale (G.S. 20-114). The Commissioner should be provided with the vehicle identification number and license plate number of each vehicle.
6. Sell the property at a public auction to the highest cash bidder. Sales may be conducted between 10:00 a.m. and 4:00 p.m. on any day except Sunday at a place located within the unit of government's boundaries as designated on the Notice [G.S. 1-339.21 and G.S. 1-339.5]. In municipalities with populations of 5,000 or more, sales can continue until 10:00 p.m.[G.S. 1-339.21(c)]. In other units, sales not completed by 4:00 p.m. can be continued to the next day other than Sunday. Items seized under separate levies may be sold at the same sale. If more than one item is collected from a single taxpayer, all items from that taxpayer may be sold as a group, individually, or some items in a group and some items individually, etc. However, the collector must be careful not to sell more items than is necessary to satisfy the tax claim, including the cost of the sale.
7. Compute the fees owed the unit per G.S. 7A-311. Deliver the property to the purchaser, giving each purchaser a Bill of Sale.
8. Distribute the proceeds of the sale:
  - a. Pay fees and costs to the appropriate office.
  - b. Pay for custody expenses for storage, insurance, and maintenance to the finance officer of the unit making the levy.
  - c. Pay the tax bill, including penalties and interest.

- d. Pay any excess to the parties entitled to it, normally the owner(s) of the property. If there are others who claim the excess, the collector should turn the excess over to the Clerk of Superior Court, who will then conduct a proceeding according to G.S. 1-339.71 to determine the reliability of the claims.

Sales may be postponed for a variety of reasons. G.S. 1-339.58 states that a sale may be postponed if (a) there are no bidders; (b) the number of prospective bidders is substantially decreased due to inclement weather or any casualty; (c) numerous other sales have been scheduled for the same day so that it is impracticable to hold the sale in question on the scheduled day; and (d) illness or other good reason or cause. Postponement of the sale must be publicly announced at the time and place of the original sale. A notice of postponement should be posted with the original Notice of Levy and Sale. The notice of postponement should include a statement of postponement, the new sale date, the reason for postponement, and the signature of the officer authorized to hold the sale. The new sale date must be set at the time of postponement and can be no more than six days after the original sale date, excluding Sundays (G.S. 1-339.20 and G.S. 1-339.58).

### Foreclosure

Foreclosure is the process by which a lien against real property is enforced. It is a drastic and expensive measure and is therefore often the method of last resort to collect taxes, after attachment and garnishment and levy have failed to satisfy the tax claim. In fact, there are two cases in which the tax collector is required to proceed against personal property prior to using foreclosure. The first is if the tax collector is so directed by the governing board. The second is if the taxpayer or mortgagee or other person holding a lien on the real property requests that personal property be used first to satisfy the tax claim. This request must be made in writing, must describe the personal property to be proceeded against, and must give the location of such property [G.S. 105-366(a)]. It is strongly suggested that units considering the use of foreclosure as a means of tax collection discuss it at length with their attorney prior to initiating any proceedings.

There are two types of foreclosure allowed under North Carolina law, and it is up to the governing body as to which type it will pursue. The first type of foreclosure is described in the statutes as being "in the nature of an action to foreclose a mortgage" (G.S. 105-374). The action is filed in the appropriate division (either district or superior) of the General Court of Justice to foreclose the lien and obtain a court order for sale of the foreclosed property. The unit initiating the foreclosure must be very careful to notify all interested parties that such an action is being filed. The courts are very concerned with protecting all interested parties against loss of property, so the foreclosing unit must be very careful that the proper procedures are followed. Foreclosures "in the nature of an action to foreclose a mortgage" are also expensive to pursue. Extensive title searches must be made to determine that all interested parties are contacted. The procedures are time-consuming and require the work of an attorney. There are often delays in the proceedings. Depending on the amount of taxes owed, foreclosures of this type may not be cost-effective. In light of this fact, the statutes provide for another type of foreclosure - the *in rem* method of foreclosure (G.S. 105-375).

To pursue an *in rem* foreclosure, the governing body must wait at least 30 days after the lien advertisement. At that time, the tax collector should file a certificate for each case with the clerk of superior court. The certificate should show the name of the taxpayer, the amount of the unpaid lien, the years for which the tax is owed, and a description of the property. However, the certificate

cannot be filed until notice is given to certain persons. At least thirty days before filing the certificate, the tax collector is required to send, by registered or certified mail, a notice to the listing taxpayer and to the current owner (if different from the taxpayer) stating that a judgment will be filed against the property. Also, all lienholders on record must be notified by registered or certified mail [G.S. 105-375(c)]. If the tax collector has not received an indication that the notices were received by all applicable persons, he or she must publish a notice in a newspaper having general circulation in the unit ten days after the original notices were mailed. The notice must run for two consecutive weeks and must name the unnotified lienholders and the taxpayer.

Once all the notices have been mailed or published and the certificate filed, the execution sale may be conducted. At any time before the sale, however, any interested party may appear before the clerk of superior court and have the judgment set aside by proving that the tax has been paid or that the lien is invalid. Assuming the judgment is not set aside, notice must be given to the taxpayer and current owner by certified or registered mail, one week before the scheduled sale date. Again, assuming the judgment is not set aside, the sale is conducted like any other execution sale. The purchaser acquires a fee simple title, free and clear of all other interests and claims except liens for taxes or assessments that were not satisfied as a part of the purchase price and judgment. The unit's costs may be recovered as a part of the sale except for the attorney's fees, if incurred. [G.S. 105-375(j)].

All constitutional aspects of *in rem* foreclosure have not been tested in the courts, so there is a possibility it could be declared unconstitutional in the future. However, the statute [G.S. 105-375(m)] makes provisions in the event this should occur by giving units that have used *in rem* foreclosure a five year period from the date the opinion declaring it unconstitutional is filed, to institute foreclosure proceedings under G.S. 105-374.

Foreclosures are complicated legal proceedings. The above is only a summary of the actions to be taken. The statutes should be carefully reviewed and an attorney consulted, as appropriate, before a unit begins these proceedings. If a unit does not consult the unit attorney prior to an *in rem* foreclosure, all actions, events, correspondence, etc. should be documented and filed to demonstrate that the local government unit is following all statutory requirements.

#### Limitation on Use of Remedies

G.S. 105-378 states that "no county or municipality may maintain an action or procedure to enforce any remedy provided by law for the collection of taxes or the enforcement of any tax liens (whether the taxes or tax liens are evidenced by the original tax receipts, tax sales certificates, or otherwise) unless the action or procedure is instituted within 10 years from the date the taxes became due." As a practical matter, all delinquent taxes outstanding for ten years are usually written off at the end of the tenth year. This practice recognizes (1) that in most cases, the cost to collect taxes 10 years overdue may be excessive and (2) that the taxpayer may raise the "10-year defense" of G.S. 105-378 in order to avoid the tax liability. In addition, the governing board may allow taxes owed by persons on the insolvents list (see "Annual Settlement" below) that are five or more years delinquent to be written off as well [G.S. 105-373(g)]. However, the board and the finance officer should formally approve such an action. By approving the write-off of taxes prior to the end of the tenth year of delinquency, the board is stating that it agrees with the tax collector's determination that the taxpayer is insolvent. Therefore, the board should assure itself that each taxpayer is

rightfully being declared insolvent prior to authorizing the write-off of taxes. Prompt collection of taxes by the tax collector can help to reduce the number of taxpayers that appear on the insolvents list and thus reduce the number of write-offs a unit has to make.

### Levy and Collection of School District Taxes

If a local school administrative unit or district has voted a tax to provide more funds for its operation, the board of county commissioners is authorized to levy that tax for the school administrative unit (G.S. 115C-511). The tax may be levied for the school current expense fund, for the capital outlay fund, or for both funds.

To facilitate the budgeting process, the county tax assessor must provide the school unit an estimate of the total property to be taxed that lies within the school unit's jurisdiction by April 15. The school unit may then determine the tax rate it wishes to request be levied by the county. The tax rate request should be submitted to the county along with the school unit's annual budget request. (See Section 10 of this manual, Budgeting - County and City School Systems.) The county then determines how much of a tax it is willing to levy, not to exceed the rate requested by the school board. The county then includes the supplemental school tax on its tax bills to those taxpayers affected. The school tax must be shown separately on the bill. The county is responsible for collecting the tax and must remit collections to the school unit within 10 days after the close of each calendar month (G.S. 115C-511). The county may use any and all remedies available to it to collect the tax and may deduct from the tax remitted to the school unit the actual costs to the county of levying, computing, billing, and collecting the additional tax. Partial payments should be divided between the county and the school unit based on the percentage that the county's general tax levy and the school district's levy, respectively, represent to the total tax levy.

### Annual Settlement

Each year, the tax collector must make a settlement with the governing body with regards to the taxes he or she was charged to collect. The governing board may call for a full settlement at any time, but usually an annual settlement will suffice, unless the tax collector leaves office before the term is over. While a settlement is used to account for the taxes the collector was ordered to collect, it does not relieve him or her of responsibility if a shortage that existed at the time of the settlement is later discovered, nor does it relieve him or her of any criminal liability. The settlement is more than an accounting of the funds. It also provides the board with the opportunity to evaluate the collector's performance and efforts to actually collect the taxes that are owed.

Annual settlements are made between July 1 and the time at which the collector is charged with the current year's tax levy. As stated earlier, other settlements may be called for, especially if the collector resigns or is removed from office at some time other than at the time of the annual settlement.

Prior to the actual accounting for the previous year's taxes (but after July 1), the tax collector must present the board with a list of all "insolvents" owing tax. This list is of "the persons not owning real property whose personal property taxes remain unpaid" (G.S. 105-373). To this list the tax collector shall append his or her statement under oath that he or she has made diligent efforts to collect the taxes due from the persons listed out of their personal property and by other means

available to the tax collector for collection. He or she shall report such other information concerning these taxpayers as may be of interest to or required by the governing body, including a report of his or her efforts to make collection outside the taxing unit.

The purpose of this report is for the tax collector to demonstrate to the board that he or she has made every possible effort to collect the taxes owed for which the unit does not have a lien on real property. However, the board is not obliged to simply accept these statements as fact. The board has the authority to reject any name on the insolvents list if, in its opinion, the taxpayer is not insolvent. The board also may hold the collector responsible for the amount of tax owed by those persons that it rejects from the insolvents list. Once the board has agreed on the insolvents list, the amount of tax owed by these persons is credited to the tax collector at his or her settlement. The collector also must present a list to the board of all taxes owed that constitute a lien on real property.

The actual "settlement" of funds is a two-step process. First, the charges are calculated to include the following [G.S. 105-373(a)(3)a.]:

1. the total amount of all taxes placed in the collector's hands for collection, including taxes on discoveries, late listings, increased assessments, and values certified by the Property Tax Commission;
2. all late-listing penalties, interest, and costs collected by the tax collector;
3. all other sums collected by the tax collector, including items such as fees for levy and attachment and garnishment, etc.

Second, the credits are calculated as follows [G.S. 105-373(a)(3)b.]:

1. all sums deposited by the collector to the credit of the unit for which the proper official has given receipts;
2. releases allowed by the governing board, including refunds;
3. discounts allowed for prepayments, if the principal amounts of such accounts were collected after the books were turned over to the collector;
4. the principal amount of unpaid taxes that constitute liens against real property;
5. the principal amount of unpaid taxes owed by the taxpayers deemed to be insolvent;
6. any commissions to which the collector is entitled.

The credits should equal the charges. Any deficiency is the liability of the collector. In addition to civil liability, the collector can be criminally charged with a misdemeanor punishable by fine or imprisonment or both, at the discretion of the court [G.S. 105-373(f)].

### **Consolidating Property Tax Functions**

Local governments are authorized by G.S. 160A-461 to enter into joint arrangements that include contracts for the billing and collection of property taxes. All units not currently utilizing consolidated tax billing and collection should consider it. Consolidating the tax functions of

municipalities and counties should provide a more economical use of equipment, office personnel, supplies, and postage. A single billing and collections office also should simplify taxpayers' efforts to pay and inquire about the status of their taxes. For smaller units, a consolidated tax office should improve their collection percentages, as counties generally are able to enforce tax collections through attachment and garnishment, levy, and foreclosure at a lower cost. However, contracting with a county for tax collection services does not relieve a municipality of its legal responsibility for the taxes it has levied. To be most effective, county tax collectors should periodically provide a listing of delinquent municipal taxpayers to the appropriate municipal officials. Local municipal officials may be able to provide employment information about the delinquent taxpayers to the county tax collector. The local municipality may also have bank account information obtained when the delinquent taxpayer paid a water or electric bill with a check. A cooperative sharing of information should allow a municipality to increase its tax collections. If the county is paid a percentage of taxes collected, the revenue to the county also increases, and the county tax collector now has information which may be useful in collecting delinquent county taxes. In most instances, it would appear that all parties involved would benefit from a consolidated tax billing and collection effort. The smaller the local governments involved, the more effective this cooperation is likely to be. Municipal officials should be aware that because the county tax collector is acting as the municipal tax collector and the county tax collector is authorized by the order of collection, all official actions should begin with the county tax collector.

In February 2001, the staff of the Local Government Commission published Memorandum 929, *Results of Municipals and Counties Survey on Consolidating and Billing of Tax Functions*. This memorandum was sent to all counties and municipalities in the State. The results provide some baseline for a "typical" consolidated tax collection arrangement. Because motor vehicle tax collection is specified by the General Statutes, those collection arrangements show little variation from county to county. A copy of the memorandum is available on our web site.

Counties must collect any supplemental school taxes levied for the school administrative unit, as this is the only manner by which the taxes can legally be collected. A county may deduct from the collections the actual cost to the county of levying, computing, billing, and collecting the school tax. Therefore, a county may not simply charge the school a fee or percentage of the collections, but may only deduct from the tax revenue the additional cost to collect these taxes.

### **LGC's Management of Cash and Taxes Reports**

The Local Government Commission staff prepares annually the publications *Management of Cash and Taxes - Counties* and *Management of Cash and Taxes - Municipalities*. These publications provide comparative cash and investment and tax levy information of local governments for the fiscal year. Local government officials are encouraged to compare their own performances to similar units and to statewide averages. Such comparisons may identify opportunities for improvement or may document improved performances from previous fiscal years. For those local governments with below average tax collection rates, collection procedures should be reviewed to determine if more effective means of collection are available.

## **Financial Statement Considerations**

Several note disclosures and schedules concerning tax billings and collections are required to be in the unit's financial statements.

### Note Disclosures

Three primary note disclosures regarding ad valorem taxes are required for the unit's financial statements. The first of these is a note discussing the ad valorem taxes receivable and the important dates on the property tax calendar. This note focuses primarily on the fact that taxes receivable are not recorded as revenue in the operating statements, but are instead shown as a deferred revenue in the liability section of the balance sheet. This treatment reflects the fact that at June 30, taxes receivable are approximately six months past due and are therefore not considered available as a resource to the unit. *Appendix C contains an example of this disclosure, as well as the additional disclosures discussed below.*

The second required note regarding ad valorem taxes discusses the use-value assessment of certain land within the unit and the possible effects on tax revenue. This note explains the use-value assessment concept to the reader. It then shows the amount of tax that could become due and payable should all property currently taxed at its use-value rather than at market value lose its eligibility as use-valued property under this program. The note also explains that the potential tax revenue is not recorded on the financial statements because the unit does not know how much, if any, of these taxes will become due and payable to the unit. (See "The Valuation Process" section of this policy for a more detailed discussion of use-value assessment.)

The final required note disclosure regarding ad valorem taxes is a note on allowances for doubtful accounts. This note simply details the amount of the allowance for doubtful accounts by fund type and revenue source. Property taxes generally make up the majority of the allowance in the General Fund.

### Required Schedules

There are two schedules regarding ad valorem taxes that are required to be presented in the unit's financial statements. These are (1) the Schedule of Ad Valorem Taxes Receivable and (2) the Analysis of Current Tax Levy.

The Schedule of Ad Valorem Taxes Receivable provides information regarding the ten-year period for which taxes are being collected. For each year the following information is given: the uncollected balance at June 30 of the previous year; additions to the tax levy; collections and credits; and the uncollected balance at June 30 of the reporting year. (Totals also are presented.) The uncollected balance at June 30 of the reporting year is then reconciled to the ad valorem taxes receivable balance that appears on the balance sheet. The last section of this schedule reconciles total collections and credits to the ad valorem tax revenue that is reflected on the statement of revenues, expenditures, and changes in fund balance (Exhibit B or Exhibit 2 in the financial statements.) Revenues are reconciled to collections and credits by adding the following to the revenue figure: discounts allowed by the governing board (see the "Payment of Taxes" section of this policy for a discussion on discounts); amount of taxes written off per the statute of limitations

(see the "Limitation on Use of Remedies" section of this policy for a discussion of write-off policies); and taxes collected by the unit for another unit, such as for a fire or school district. Interest collected on delinquent taxes is then subtracted to arrive at the total of collections and credits. From this schedule the reader can easily see how much of each year's tax levy has been collected, how much remains to be collected, and what amount of taxes are being written off. *An example of this schedule, as well as the Analysis of Current Tax Levy described below, is presented in Appendix D.*

The Analysis of Current Tax Levy presents information on the levy for the reporting year. The amount of the original levy is given, including the property valuation and the tax rate. The total amount of discoveries is listed and broken down between the current (reporting) year and the prior years. (See the "Discovery of Taxable Property" portion of this section for a discussion of discoveries.) Total abatements also are given. An abatement can be defined as any reduction in the valuation of taxable property and the resulting reduction of the taxes owed on that property. An adjusted total levy (or net levy) is then presented. From that figure, the uncollected taxes at June 30 of the reporting year is subtracted to give a total of collections for the reporting year. To calculate the collection percentage, the reporting year's collections are divided by the adjusted total levy (net levy).

Effective January 1, 1993, the General Assembly passed legislation altering the due date for the property taxes on most motor vehicles. The Assembly hoped to increase the dollar total of motor vehicle property taxes collected by tying property tax collection to the vehicle registration process. The property taxes on most motor vehicles are now due on the first day of the fourth month following the date the registration expires or on the first day of the fourth month following the last day of the month in which the new registration is applied for [G.S. 105-330.4]. The due dates for collection are now staggered throughout the year. Also, the legislation instructed that the county tax collector is responsible for the collection of the motor vehicle property taxes and that the county finance officer is responsible for the system of recording the receipts and disbursing the appropriate amounts to the respective municipalities and authorities [G.S. 105-330.4]. The staff of the Local Government Commission has revised the Analysis of Current Tax Levy to include two additional columns. The assessment, discovery and collection information described in the above paragraph is first presented for motor vehicles only. The second new column details the collection results for all other property. Note that the "All Other Property" column should be the difference between the "Total" Column and the "Motor Vehicles Only" column. Since this information has been required, average motor vehicle tax collection rates have been between 80% and 85% of the assessed amount.

The tax on annually registered motor vehicles is due May 1<sup>st</sup> and in reality is a revenue source funding the following fiscal year. To recognize this, the levy and collections on annually registered motor vehicles should not be included in the Analysis of Current Tax Levy. However, the taxes are due to the unit at June 30<sup>th</sup>, and the receivable should be recorded on the balance sheet and should appear on the 10-year Schedule of Ad Valorem taxes receivable as a reconciling item. See Appendix D for an illustration of this. For more discussion, see LGC Memorandums #872 and #872A.

The percentage of tax collected for the reporting year is an important statistic. It is the measure by which all units' tax collection efforts are initially judged. Credit rating agencies look at the percentage as one indicator of the quality of each unit's administrative and fiscal control. Because

the collection of motor vehicle property taxes is the responsibility of the county tax collector, the revised format of the Analysis of Current Tax Levy more clearly shows a municipality's success in collecting those taxes that it is responsible for.

Accurate tax collection information is necessary for proper budget compliance. A unit of local government may not budget an estimated collection rate better than the collection percentage based upon actual cash receipts as of June 30 of the preceding year [G.S. 159-13(b)(6)]. As an illustration, staff turnover and loss of property to hurricane damage has caused the City of Dogwood's tax collection rate to drop from 96.54% to 90.15% (excluding motor vehicle collection; see the discussion below) for the year ended June 30, 20X1. For the fiscal year ended June 30, 20X2, the budget may not anticipate a better property tax collection rate than 90.15% for the portion excluding motor vehicles. Because the estimated tax collection rate is limited, additional revenue sources must be located, the tax rates must be increased, or fund balance available must be appropriated in order for a taxing unit to maintain services and appropriations at the same level as before the drop in the tax collection rate. Continuing with the above scenario, G.S. 159-13(b)(7) allows units to budget what is reasonably expected to be collected for property taxes levied in prior years. If a unit has experienced a sudden drop in the tax collection rate, a corresponding increase in the amount of prior year taxes to be collected may be reasonable. The staff of the LGC stresses that the estimated revenues should be realistic. A budget ordinance with significantly overestimated revenues easily could allow a unit to "live beyond its means," eroding fund balance and creating cash flow problems.

Additionally, Session Law 1999-261 amended G.S. 159-13(b)(6). The limitation on estimated tax collection is now a two part calculation. The estimated collection for the motor vehicle portion of a current budget may not exceed the collection rate for motor vehicles based on those motor vehicle taxes levied for the nine month period ending March 31. The collection percentage however is based on the 12 months of collections, through June 30. The intention of this is to determine a more realistic measure of a county's collection efforts for motor vehicle taxes. Basing the calculation on 9 months of levies and 12 months of collection efforts adjusts for those staggered motor vehicle taxes which come due at the end of the fiscal year, when the tax collector has little time to enforce collection. As for all other property, the collection rate is calculated as before, on the cash collections for the twelve months ended June 30 as compared to the net levy for those twelve months.

Finally, the tax collector's office and the finance office should work closely together so that the Analysis of Current Tax Levy may be completed accurately. Because each office reports tax collection information from a different viewpoint, the information should be maintained in a flexible manner. That is, the tax collector has a known amount of taxes, from several fiscal years, to collect at a given time and is judged against the total collected to date. The finance officer must take the collection information and match the taxes to the fiscal year those taxes are meant to fund, as well as accounting for any prepaid taxes for years that have not yet begun.

### **Additional Resources**

"The Machinery Act of North Carolina," Available from the Ad Valorem Tax Division of the North Carolina Department of Revenue. Revenue Building, 2 South Salisbury Street, Raleigh, N.C. 27602-1348. (919) 733-7711.

#### **Institute of Government Publications**

Mail requests to: Publications Office  
Institute of Government  
CB #3330 Knapp Building  
UNC-CH  
Chapel Hill, NC 27599-3330

Phone 919-966-4119  
Fax 919-962-2707  
Web Site <http://ncinfo.iog.unc.edu/>

Property Tax Collection in North Carolina, fourth edition, 1998, William A. Campbell.

Property Tax Lien Foreclosure Forms & Procedures, fifth edition, 1999, William A. Campbell.

*Property Tax Bulletins*, edited by William A. Campbell and Joseph S. Ferrell

#### **Department of State Treasurer**

Web Site (Fiscal Management Section, including memos, illustrative financial statements, etc.)  
<http://ncdst-webt.treasurer.state.nc.us/SLG/frslg.htm>

**NOTICE OF ATTACHMENT AND GARNISHMENT**

State of North Carolina, City/County of \_\_\_\_\_

To Garnishee: \_\_\_\_\_  
 (Name)

\_\_\_\_\_  
 (Address)

Garnishee being the person owing or having in his or her possession wages, rents, bank deposits, debts, or other property of the taxpayer(s) sought to be attached and the following taxpayer(s):

To \_\_\_\_\_  
 (Name)

\_\_\_\_\_  
 (Address)

Each of you will take notice that pursuant to Sections 105-366 and 105-368 of the North Carolina General Statutes authorizing the attachment and garnishment of wages, rents, bank deposits, proceeds of property subject to levy, and other intangible personal property, the property described below for [the/each] taxpayer is hereby attached to the extent stated below for the taxes levied by the [County/City] of \_\_\_\_\_ and which are unpaid.

Year	Receipt No.	Taxes	Penalties	Interest	Total
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Total Taxes, Plus Penalties and Interest: .....\$ \_\_\_\_\_  
 Cost of Serving Notice: .....\$ \_\_\_\_\_  
 Total Due and Attached: .....\$ \_\_\_\_\_

The property sought to be attached is \_\_\_\_\_  
 due to the taxpayer, or subject to his demand, or to become due him during calendar year \_\_\_\_\_.

Within ten (10) days after service of this notice, the garnishee is directed to answer the notice by sending to the tax collector of \_\_\_\_\_ by registered mail a statement that he has no defense or setoff against the taxpayer, and by remitting the amount demanded; or, if the garnishee does offer a defense or setoff, he shall proceed as provided in Section 105-368(d) of the North Carolina General Statutes. If the amount due the taxpayer has not matured at the date of service of this notice, the garnishee's statement shall set forth that fact, and the demand shall be paid to the tax collector upon maturity. If the property attached is wages or other compensation for personal services, the garnishee shall remit to the tax collector not more than ten (10) percent of such compensation per pay period, and he shall continue to remit not more than ten (10) percent of the taxpayer's compensation each pay period until the total amount demanded is satisfied.

Pursuant to the requirements of G.S. 105-368(b)(5), copies of G.S. 105-366 and G.S. 105-368 are on the reverse side.

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Tax Collector

**§ 105-366. Remedies against personal property.**

Statute text

(a) Authority to Proceed against Personal Property; Relation between Remedies against Personal Property and Remedies against Real Property. - All tax collectors shall have authority to proceed against personal property to enforce the collection of taxes as provided in this section and in G.S. 105-367 and 105-368. Any tax collector may, in his discretion, proceed first against personal property before employing the remedies for enforcing the lien for taxes against real property, and he shall proceed first against personal property:

- (1) When directed to do so by the governing body of the taxing unit, or
  - (2) When requested to do so by the taxpayer or by a mortgagee or other person holding a lien upon the real property subject to the lien for taxes if the person making the request furnishes the tax collector with a written statement describing the personal property to be proceeded against and giving its location.
- No foreclosure of a tax lien on real property may be attacked as invalid on the ground that payment of the tax should have been procured from personal property.
- (b) Remedies after Taxes Are Delinquent. - At any time after taxes are delinquent and before the filing of a tax foreclosure complaint under G.S. 105-374 or the docketing of a judgment for taxes under G.S. 105-375, and subject to the provisions of G.S. 105-356 governing the priority of liens, the tax collector may levy upon and sell or attach the following property for failure to pay taxes:
- (1) Any personal property owned by the taxpayer, regardless of the time at which it was acquired and regardless of the existence or date of creation of mortgages or other liens thereon.
  - (2) Any personal property transferred by the taxpayer to a relative (which shall mean any parent, grandparent, child, grandchild, brother, sister, aunt, uncle, niece, or nephew, or their spouses, of the taxpayer or his spouse).
  - (3) Personal property in the hands of a receiver for the taxpayer. (It shall not be necessary for the tax collector to apply for an order of the court directing payment or authorizing the levy or attachment, but he may proceed as though the property were not in the hands of the receiver, and the tax collector's filing of a claim in a receivership proceeding shall not preclude him from proceeding to levy under G.S. 105-367 or to attach under G.S. 105-368.)
  - (4) Personal property of a deceased taxpayer if the levy or attachment is made before final settlement of the estate.
  - (5) The stock of goods or fixtures of a wholesale merchant or retailer, as defined in G.S. 105-164.3, in the hands of a purchaser or transferee thereof, or any other personal property of the purchaser or transferee of the property, if the taxes on the goods or fixtures remain unpaid 30 days after the date of the sale or transfer. In the case of other personal property of the purchaser or transferee, the levy or attachment must be made within six months of the sale or transfer.
  - (6) Personal property of the taxpayer that has been repossessed by one having a security interest therein so long as the property remains in the hands of the person who has repossessed it or the person to whom it has been transferred other than by bona fide sale for value.
  - (7) Personal property due the taxpayer or to become due to him within the calendar year.
  - (8) Personal property of a partner in satisfaction of taxes on partnership property, but only after the tax collector:
    - a. Has sold the taxing unit's lien for taxes against the partnership real property, if any; and
    - b. Exhausted the partnership's personal property through the use of levy and attachment and garnishment; and
    - c. Exercised the authority granted him by G.S. 105-364 in an effort to collect the tax due on the partnership's property.
  - (9) Personal property transferred by the taxpayer by any type of transfer other than those mentioned in this subsection (b) and other than by bona fide sale for value if the levy or attachment is made within six months of the transfer.
- (c) Remedies Before Taxes Are Delinquent. - If between the date as of which property is to be listed and January 6 of the fiscal year for which the taxes are imposed the tax collector has reasonable grounds for believing that the taxpayer is about to remove his property from the taxing unit or transfer it to another person or is in imminent danger of becoming insolvent, the tax collector may levy on or attach that property or any other personal property of the taxpayer, in the manner provided in G.S. 105-367 and 105-368. If the amount of taxes collected under this subsection has not yet been determined, these taxes shall be computed in accordance with G.S. 105-359 and any applicable discount shall be allowed.

(d) Remedies against Sellers and Purchasers of Stocks of Goods or Fixtures of Wholesale Merchants or Retailers. -

(1) Any wholesale merchant or retailer, as defined in G.S. 105-164.3, who sells or transfers the major part of its stock of goods, materials, supplies, or fixtures, other than in the ordinary course of business, or who goes out of business, must take the following actions:

- a. At least 48 hours prior to the date of the pending sale, transfer, or termination of business, give notice to the assessors and tax collectors of the taxing units in which the business is located.
- b. Within 30 days of the sale, transfer, or termination of business, pay all taxes due or to become due on the transferred property on the first day of September of the current calendar year.
- (2) Any person to whom the major part of the stock of goods, materials, supplies, or fixtures of a wholesale merchant or retailer is sold or transferred, other than in the ordinary course of business, or who becomes the successor in business of a wholesale merchant or retailer shall withhold from the purchase money paid to the merchant an amount sufficient to pay the taxes due or to become due on the transferred property on the first day of September of the current calendar year until the former owner or seller produces either a receipt from the tax collector showing that the taxes have been paid or a certificate that no taxes are due. If the purchaser or successor in business fails to withhold a sufficient amount of the purchase money to pay the taxes as required by this subsection and the taxes remain unpaid after the 30-day period allowed, the purchaser or successor is personally liable for the amount of the taxes unpaid. This liability may be enforced by means of a civil action brought in the name of the taxing unit against the purchaser or successor in an appropriate trial division of the General Court of Justice in the county in which the taxing unit is located.
- (3) Whenever any wholesale merchant or retailer sells or transfers the major part of its stock of goods, materials, supplies, or fixtures, other than in the ordinary course of business, or goes out of business and the taxes due or to become due on the transferred property on the first day of September of the current calendar year are unpaid, the tax collector, to enforce collection of the unpaid taxes, may do any of the following:
  - a. Levy on or attach any personal property of the seller.
  - b. If the taxes remain unpaid 30 days after the date of the transfer or termination of business, levy on or attach any of the property transferred in the hands of the transferee or successor in business, or any other personal property of the transferee or successor in business, but in either case the levy or attachment must be made within six months of the transfer or termination of business.
- (4) In using the remedies provided in this subsection, the amount of taxes not yet determined shall be computed in accordance with G.S. 105-359, and any applicable discount shall be allowed.

History  
(1939, c. 310, s. 1713; 1951, c. 1141, s. 1; 1955, cc. 1263, 1264; 1957, c. 1414, ss. 2-4; 1969, c. 305; c. 1029, s. 1; 1971, c. 806, s. 1; 1973, c. 564, s. 1; 1987, c. 45, s. 1; c. 93, s. 3; 1998-98, ss. 112, 113.)

**§ 105-368. Procedure for attachment and garnishment.**

Statute text

(a) Subject to the provisions of G.S. 105-356 governing the priority of the lien acquired, the tax collector may attach wages and other compensation, rents, bank deposits, the proceeds of property subject to levy, or any other intangible personal property, including property held in the Escheat Fund, in the circumstances and to the extent prescribed in G.S. 105-366(b), (c), and (d).

In the case of property due the taxpayer or to become due to him within the current calendar year, the person owing the property to the taxpayer or having the property in his possession shall be liable for the taxes to the extent of the amount he owes or has in his possession. However, when wages or other compensation for personal services is attached, the garnishee shall not pay to the tax collector more than ten percent (10%) of such compensation for any one pay period.

(b) To proceed under this section, the tax collector shall serve or cause to be served upon the taxpayer and the person owing or having in his possession the wages, rents, debts or other property sought to be attached a notice as provided by this subsection. The notice may be personally served by any deputy or employee of the tax collector or by any officer having authority to serve summonses, or may be served in any manner provided in Rule 4 of the North Carolina Rules of Civil Procedure. The notice shall contain:

- (1) The name of the taxpayer, and if known his Social Security number or federal tax identification number and his address.
- (2) The amount of the taxes, penalties, interest, and costs (including the fees allowed by this section) and the year or years for which the taxes were imposed.
- (3) The name of the taxing unit or units by which the taxes were levied.
- (4) A brief description of the property sought to be attached.
- (5) A copy of the applicable law, that is, G.S. 105-366 and 105-368. Notices concerning two or more taxpayers may be combined if they are to be served upon the same garnishee, but the taxes, penalties, interest, and costs charged against each taxpayer must be set forth separately.
- (c) If the garnishee has no defense to offer or no setoff against the taxpayer, he shall within 10 days after service of the notice answer it by sending to the tax collector by registered or certified mail a statement to that effect, and if the amount demanded by the tax collector is then due to the taxpayer or subject to his demand, the garnishee shall remit it to the tax collector with his statement; but if the amount due to the taxpayer or subject to his demand is to mature in the future, the garnishee's statement shall set forth that fact, and the demand shall be paid to the tax collector upon maturity. Any payment by the garnishee under the provisions of this subsection (c) shall completely satisfy any liability therefor on his part to the taxpayer.

(d) If the garnishee has a defense or setoff against the taxpayer, he shall state it in writing under oath, and, within 10 days after service of the garnishment notice, he shall send two copies of his statement to the tax collector by registered or certified mail. If the tax collector admits the defense or setoff, he shall so advise the garnishee in writing within 10 days after receipt of the garnishee's statement, and the attachment or garnishment shall thereupon be discharged to the amount required by the defense or setoff, and any amount attached or garnished which is not affected by the defense or setoff shall be remitted to the tax collector as provided in subsection (c), above.

If the tax collector does not admit the defense or setoff, he shall set forth in writing his objections thereto and send a copy thereof to the garnishee within 10 days after receipt of the garnishee's statement, or within such further time as may be agreed on by the garnishee, and at the same time the tax collector shall file a copy of the notice of garnishment, a copy of the garnishee's statement, and a copy of the tax collector's objections thereto in the appropriate division of the General Court of Justice of the county in which the garnishee resides or does business, where the issues made shall be tried as in civil actions.

(e) If the garnishee has not responded to the notice of garnishment as required by subsections (c) and (d), above, within 15 days after service of the notice, the tax collector may file in the appropriate division of the General Court of Justice of the county in which the garnishee resides a copy of the notice of garnishment, accompanied by a written statement that the garnishee has not responded thereto and a request for judgment, and the issues shall be tried as in civil actions.

(f) The taxpayer may raise any defenses to the attachment or garnishment that he may have in the manner provided in subsection (d), above, for the garnishee.

(g) The fee for serving a notice of garnishment shall be the same as that charged in a civil action. If judgment is entered in favor of the taxing unit by default or after hearing, the garnishee shall become liable for the taxes, penalties, and interest due by the taxpayer, plus the fees and costs of the action, but payment shall not be required from amounts which are not to become due to the taxpayer until they actually come due. The garnishee may satisfy the judgment upon paying the amount thereof, and if he fails to do so, execution may issue as provided by law. From any judgment or order entered, either the taxing unit or the garnishee may appeal as provided by law. If, before or after judgment, adequate security is filed for the payment of the taxes, penalties, interest, and costs, the tax collector may release the attachment or garnishment, or execution may be stayed at the request of the tax collector pending appeal, but the final judgment shall be paid or enforced as above provided. If judgment is rendered against the taxing unit, it shall pay the fees and costs of the action. All fees collected by officers shall be disposed of in the same manner as other fees collected by such officers.

(h) Tax collectors may proceed against the wages, salary, or other compensation of officials and employees of this State and its agencies, instrumentalities, and political subdivisions in the manner provided in this section. If the taxpayer is an employee of the State, the notice of attachment shall be served upon him and upon the head or chief fiscal officer of the department, agency, instrumentality, or institution by which he is employed. If the taxpayer is an employee of a political subdivision of the State (county, municipality, etc.), the notice of attachment shall be served upon him and upon the officer charged with making up the payrolls of the political subdivision by which he is employed. All deductions from the wages or salary of a taxpayer made pursuant to this subsection (h) and remitted to the tax collector shall, pro tanto, constitute a satisfaction of the salary or wages due the taxpayer.

(i) (1) Any person who, after written demand therefor, refuses to give the tax collector or assessor a list of the names and addresses of all of his employees who may be liable for taxes, shall be guilty of a Class 1 misdemeanor.

(2) Any tax collector or assessor who receives, upon his written demand, any list of employees may not release or furnish that list or any copy thereof, or disclose any name or information thereon, to any other person, and may not use that list in any manner or for any purpose not directly related to and in furtherance of the collection and foreclosure of taxes. Any tax collector or assessor who violates or allows the violation of this subsection (i)(2) shall be guilty of a Class 1 misdemeanor.

History  
(1939, c. 310, s. 1713; 1951, c. 1141, s. 1; 1955, cc. 1263, 1264; 1957, c. 1414, ss. 2-4; 1969, c. 305; c. 1029, s. 1; 1971, c. 806, s. 1; 1979, c. 103, ss. 3, 4; 1979, 2nd Sess., c. 1085, s. 2; 1981, c. 76, s. 1; 1987, c. 45, s. 1; 1989, c. 580, s. 2; 1993, c. 539, s. 724; 1994, Ex. Sess., c. 24, s. 14(c).)

---

**RETURN**

I certify that this Notice was received on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ and was served as follows:

1. On \_\_\_\_\_ [garnishee], on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
\_\_\_\_\_ [name and title of officer serving notice] \_\_\_\_\_ [date] \_\_\_\_\_

2. On \_\_\_\_\_ [taxpayer], on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
\_\_\_\_\_ [name and title of officer serving notice] \_\_\_\_\_ [date] \_\_\_\_\_

---

*(Note that the RETURN Section is only required to be completed on the third copy, is kept on file with the taxing unit, and is completed by the person serving the Notice to the taxpayer(s) and the garnishee as evidence of delivery.)*

**NOTICE OF LEVY AND SALE OF PERSONAL PROPERTY FOR  
 AD VALOREM TAXES**

State of North Carolina  
 City/County of \_\_\_\_\_

Notice is hereby given that because of the failure of:

Name \_\_\_\_\_

Address \_\_\_\_\_

to pay the [City/County] of \_\_\_\_\_ ad valorem taxes in the following amounts:

Year	Receipt No.	Taxes	Interest	Total Taxes and Interest	Cost of Serving Notice	Total Due
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____

Total amount due: \$ \_\_\_\_\_

The undersigned has levied on the following described personal property of the taxpayer in accordance with Sections 105-366 and 105-367 of the North Carolina General Statutes.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Pursuant to the authority recited above, this personal property will be sold at public auction to the highest bidder for cash.

Sale Date, Time, and Location: \_\_\_\_\_

\_\_\_\_\_  
 Tax Collector

By \_\_\_\_\_

DEPARTMENT OF STATE TREASURER POLICIES MANUAL  
PROPERTY TAX ASSESSMENT, BILLING, AND COLLECTION  
SECTION 50 PAGE - 39

APPENDIX C  
SAMPLE NOTE DISCLOSURES

The following is a sample note regarding ad valorem taxes receivable (assume the reporting year is July 1, 20X0 - June 30, 20X1):

Ad Valorem Taxes Receivable

In accordance with G.S. 105-347 and G.S. 159-13(a), ad valorem taxes are levied on July 1, the beginning of the fiscal year and are due on September 1; however, interest does not accrue until the following January 6. The taxes are based on the assessed values as of January 1, 20X0.

Ad valorem taxes receivable are not accrued as a revenue because the amount is not considered "available". At June 30, taxes receivable are materially past due and are not considered to be an available resource to finance the operations of the subsequent year. The receivable amount is reduced by an allowance for doubtful accounts equal to the original levy which was written off in past years. An amount equal to the net receivable is shown as a deferred revenue on the Combined Balance Sheet.

The following is a sample note disclosure on the potential tax revenue that may be realized from use-valued lands (assume the reporting year is July 1, 20X0 - June 30, 20X1):

Use-Value Assessment on Certain Lands

In accordance with the general statutes, agriculture, horticulture, and forest land may be taxed at present-use value as opposed to market value. When the property loses its eligibility for use-value taxation, the property tax is recomputed at market value for the current year and the three preceding fiscal years along with accrued interest from the original due date. This tax is immediately due and payable. The following are property taxes that could become due if present use-value eligibility is lost. These amounts have not been recorded in the financial statements.

<u>Year</u> <u>Levied</u>	<u>Tax</u>	<u>Interest</u>	<u>Total</u>
19W7	\$12,676	\$3,295	\$15,971
19W8	13,264	2,254	15,518
19W9	13,711	1,096	14,807
20X0	<u>14,326</u>	<u>-</u>	<u>14,326</u>
Total	\$53,977	\$6,645	\$60,622
	=====	=====	=====

DEPARTMENT OF STATE TREASURER POLICIES MANUAL  
PROPERTY TAX ASSESSMENT, BILLING, AND COLLECTION  
SECTION 50 PAGE - 40

APPENDIX C

Sample Note Disclosures (continued)

The following note is a sample of the required disclosure on allowances for doubtful accounts (assume the reporting year is July 1, 20X0 - June 30, 20X1):

<u>Funds</u>	<u>6/30/X1</u>	<u>6/30/X0</u>
General Fund		
Property Taxes	\$1,450,000	\$1,300,000
Special Assessments	5,206	2,575
Other	167,093	143,984
Total	<u>1,622,299</u>	<u>1,446,559</u>
Special Revenue Fund	1,107	981
Water and Sewer Fund	<u>2,119</u>	<u>2,003</u>
Total	<u>\$1,625,525</u>	<u>\$1,449,543</u>
	=====	=====

(Continued on page 43.)

DEPARTMENT OF STATE TREASURER POLICIES MANUAL  
PROPERTY TAX ASSESSMENT, BILLING, AND COLLECTION  
SECTION 50 PAGE - 41

APPENDIX D

Carolina County, North Carolina  
**General Fund**  
**Schedule of Ad Valorem Taxes Receivable**  
June 30, 20X1

Fiscal Year	Uncollected Balance June 30, 19X0	Additions	Collections And Credits	Uncollected Balance June 30, 19X1
19X0 - 19X1	\$ -	\$ 55,974,003 (a)	\$ 54,590,736 (b)	\$ 1,383,267 (c)
19W9 - 19X0	1,507,284	-	779,895	727,389
19W8 - 19W9	748,517	-	307,414	441,103
19W7 - 19W8	514,495	-	129,678	384,817
19W6 - 19W7	308,581	-	52,909	255,672
19W5 - 19W6	189,478	-	15,401	174,077
19W4 - 19W5	140,894	-	6,323	134,571
19W3 - 19W4	137,417	-	3,549	133,868
19W2 - 19W3	78,282	-	1,264	77,018
19W1 - 19W2	33,983	-	548	33,435
19W0 - 19W1	78,673	-	78,673	-
	<u>\$ 3,737,604</u>	<u>\$ 55,974,003</u>	<u>\$ 55,966,390 (d)</u>	<u>3,745,217</u>
Plus: uncollected 20X1-20X2 ad valorem taxes receivable on annually registered vehicles				25,100
Less: allowance for uncollectible accounts: General Fund				<u>1,450,000</u>
Ad valorem taxes receivable - net: General Fund				<u>\$ 2,320,317</u>
<u>Reconcilement with revenues:</u>				
Ad valorem taxes - General Fund				<u>\$ 55,683,874</u>
Reconciling items:				
Interest collected				(350,571)
Discounts allowed				554,414
Taxes written off				78,673
Total reconciling items				<u>282,516</u>
Total collections and credits				<u>\$ 55,966,390 (d)</u>

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Carolina County, North Carolina  
**Analysis of Current Tax Levy**  
**County-wide Levy**  
For the fiscal year ended June 30, 20X1

	County - wide			Total Levy	
				Registered Motor Vehicles	Registered Motor Vehicles
	Property Valuation	Rate	Amount of Levy		
Original levy:					
Property taxed at current year's rate	\$ 6,487,478,196	\$.86	\$ 55,792,312	\$ 54,143,649	\$ 1,648,663
Motor vehicles taxed at prior year's rate	10,398,304	.85	88,386		88,386
Penalties	-		68,654	68,654	
Total	<u>6,497,876,500</u>		<u>55,949,352</u>	<u>54,212,303</u>	<u>1,737,049</u>
Discoveries:					
Current year taxes	28,033,700	.86	240,829	233,725	7,104
Prior year taxes	-		409,038	409,038	
Penalties	-		142,239	142,239	
Total	<u>28,033,700</u>		<u>792,106</u>	<u>785,002</u>	<u>7,104</u>
Abatements	<u>(89,173,800)</u>		<u>(767,455)</u>	<u>(767,455)</u>	<u>-</u>
Total property valuation	<u>\$ 6,436,736,400</u>				
Net levy			55,974,003 (a)	54,229,850	1,744,153
Uncollected taxes at June 30, 20X1			<u>1,383,267 (c)</u>	<u>1,148,112</u>	<u>235,155</u>
Current year's taxes collected			<u>\$ 54,590,736 (b)</u>	<u>\$ 53,081,739</u>	<u>\$ 1,508,997</u>
Current levy collection percentage			<u>97.53%</u>	<u>97.88%</u>	<u>86.52%</u>

(Note the inclusion of the cross references (a) through (d) on both schedules, to illustrate how the amounts should "flow" from one schedule to the other.

Source: *Audit Manual for Governmental Auditors in North Carolina*, published by the Department of State Treasurer, extracted from the *Illustrative Financial Statements for Carolina County*.)