Coates' Canons Blog: Taxes, Reappraisals, and Budgets in the COVID-19 Era

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Local tax officials from across the state continue raise important questions about the pandemic. I don't have perfect answers to all of those questions, but I'll do my best to respond to many of them in today's post. Please also see my earlier post on pandemic-related tax questions. And click here the see all of the School of Government's growing pandemic resources.

Waiving Penalties for Late Listing

The Machinery Act doesn't say a word about late listing penalties, and yet I think every county applies them when taxpayers list their property after the end of the listing period. Why? These 10% penalties are actually discovery penalties under GS 105-312(h). (Remember that GS 105-308(b)(3) eliminates discovery penalties for land, meaning the penalties apply only to late-listed buildings and personal property.)

Without action by the governing board, a county's listing period ends on January 31. GS 105-307. That statute permits the board to extend the listing period for all taxpayers for an additional 30 days, or an additional 60 days if the county conducted a reappraisal this year. Counties may extend the deadline for the electronic listing of personal property under GS 105-310.1 to June 1. Taxpayers may receive additional individual extensions, but those may not extend past April 15.

That April 15 deadline mirrors the traditional deadline set by the IRS for federal taxes, because many corporate taxpayers need to resolve their federal taxes before they address state and local taxes. But due to the pandemic, this year the IRS extended the federal tax filing deadline to July 15 for all taxpayers. As a result, some taxpayers are concerned that they will not have their records in appropriate shape to list their business personal property by April 15 (with individual extensions) or by June 1 (if they list electronically).

If counties want to help these corporate taxpayers, how may they do so? Absent action by the General Assembly, counties cannot extend their listing periods past the April 15/June 1 statutory deadlines. But counties do have the unfettered discretion to waive any and all discovery penalties, including those that we often call late listing penalties. Counties could announce that they will automatically waive penalties for all business personal property listings made by a certain date (perhaps July 15, the new federal tax deadline).

I share this information not to suggest that all counties *should* waive late listing penalties this year, but only to let counties know that they could. This is a policy decision to be made by the board, not the tax office, and certainly not by me.

Reappraisals

When the Great Recession arrived in late 2008, many counties that were scheduled for 2009 reappraisals were concerned about moving forward with new, likely increased, tax values when the economy was falling apart. Some counties postponed their reappraisals immediately, some tried to do so later in 2009, some moved forward as planned. For more details, read this Local Government Law bulletin.

That story is repeating itself in 2020. A few counties that conducted reappraisals for 2020 are now regretting their action and wondering if they can toss out those new tax values and replace them with the old ones from their last reappraisals. The short answer to that question is, "No."

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Tax values for the 2020-21 tax year were set as of January 1, 2020 for counties that conducted reappraisals in 2020. GS 105-285. Once those new values were set, it became too late to postpone a 2020 reappraisal.

In 2009, the General Assembly passed special legislation permitting certain counties to retroactively reverse their 2009 reappraisals due to the recession. But there is no guarantee that the General Assembly will provide similar authorization for counties that reappraised in 2020. Absent such legislation, counties cannot simply pretend that their 2020 reappraisals never occurred.

While assessors, boards of equalization and review, and boards of county commissioners have authority during different time periods to change those new 2020 tax values, any changes made by any of those officials must still comply with GS 105-285. Counties that conducted reappraisals in 2020 may change 2020-21 tax values to better match the true market values of property as of January 1, 2020, **but they may not change 2020-21 tax values to reflect changes in market values that occurred *after* January 1, 2020**.

We know that the pandemic may affect property values across the state. But regardless of what has happened or might happen to property values due to the pandemic, clearly none of that impact was evident as of January 1, 2020. The United States did not have a confirmed COVID-19 case until January 21, 2020 and Governor Cooper did not make a state of emergency declaration until March 10. This means that **tax values for 2020 should not reflect the impact of the pandemic**, even if taxpayers can prove that market values dropped during the year.

That said, counties conducting reappraisals for **2021** must pay close attention to market changes that occur during 2020. Counties often wrap up their reappraisal work by the fall prior to the reappraisal year. But in uncertain economic times such as we are now experiencing, counties with 2021 reappraisals may want to hold off on finalizing their 2021 tax values until the very end of 2020 so that they accurately capture the impact of the pandemic. This approach may delay the release of those new tax values and extend the resolution of appeals later into 2021 than desired, but those consequences may be a small price to pay for more accurate 2021 appraisals.

Counties with reappraisals scheduled for 2021 or future years may also consider postponing those reappraisals. So long as a county conducts its next reappraisal within 8 years of its last reappraisal, a county may change its reappraisal schedule as it desires. But as noted above, it must make that decision before January 1 of the reappraisal year.

Note that **no county should change its real property tax values in response to the pandemic until its next reappraisal**. GS 105-287 prohibits changes to real property tax values in non-reappraisal years due to "economic changes affecting the county in general." Any negative economic impact from the pandemic will certainly be county wide (if not state and nation wide as well), meaning that economic impact cannot justify changes to real property tax values in non-reappraisal years.

What about *personal property* tax values? Unlike real property (land and buildings), personal property is reappraised every year. All counties will be appraising all of their personal property again as of January 1, 2021. If the economic downturn from the pandemic is suppressing personal property values as of that date, then counties should incorporate that impact into their 2021 personal property appraisals. In the words of my appraisal expert colleague Kirk Boone, "If a decline in demand for a product results in a business closure, that decline may impact the demand for the equipment used in that sector of business. It's very specific to the property type. For business personal property, the reaction of the market as of January 1, 2021 will determine the value as of January 1, 2021. Appraisers will need to look at supply and demand components, trends, and forecasts leading up to that date."

Budgeting

Local governments are expected to adopt their annual budget ordinances by July 1, the start of the fiscal year. See the Local Government Budget and Fiscal Control Act, GS 159, Art. 3. That ordinance must include the property tax rate for the coming fiscal year.

Once that tax rate is set in the budget ordinance, it usually may not be changed. GS 159-15 states in part, "If after July 1 the local government receives revenues that are substantially more or less than the amount anticipated, the governing body may, before January 1 following adoption of the budget, amend the budget ordinance to reduce or increase the

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property tax levy to account for the unanticipated increase or reduction in revenues." In other words, a local government could change the rate if there were a major drop in revenue not foreseen as of the date the ordinance was adopted. Given that we already know there are likely to be negative economic consequences from the pandemic, it's not clear that the pandemic would satisfy this standard. And even if it could, any change to the 2020-21 tax rate must be made prior to January 1, 2021.

Given the fixed nature of the tax rate and the current economic uncertainty, some local governments have raised concerns about setting a property tax by July 1. It is possible to delay that decision. GS 159-16 allows the adoption of an interim budget that does not include a property tax rate. The interim budget permits continued spending for "salaries, debt service payments, and the usual ordinary expenses of the local government."

This approach would allow the local government to delay a decision on the 2020-21 property tax rate by delaying adoption of the final budget ordinance. GS 159-16 does not create a time limit for how long an interim budget may remain in place. But as my colleague Kara Millonzi discusses in this blog post, if an interim budget exists for an unreasonably long period then the state Local Government Commission could assert control of that local government's finances.

While an interim budget offers the benefit of additional time to make a final property tax rate decision, this approach also limits spending to basic services, prevents the funding of new initiatives, and delays the billing and collection of 2020 property taxes. A local government will need balance the value of the additional time an interim budget provides against the cost of the restrictions it places on government operations.

Only one type of property tax will still be collected in a timely fashion under an interim budget. Taxes on registered motor vehicles have been collected by the state Division of Motor Vehicles (DMV) since the adoption of the "Tag & Tax Together" program in 2013. My colleagues at the state report that the DMV will continue to collect local property taxes on motor vehicle registrations and renewals at the old property tax rate even if a local government fails to adopt a new budget and new property tax rate by July 1.

If the new property tax rate is lower than the old rate, the local government will owe refunds for the excess taxes paid by taxpayers who registered or renewed between July 1 and the date on which the DMV is informed of the new rate. If the new rate is higher than the old rate, then the local government will **not** be able to recapture the difference on registrations and renewals made after July 1 but before the DMV is informed of the new rate. (Local governments have no collection remedies for taxes on registered motor vehicles, while the DMV collects only future taxes and never back taxes.)

Remember that a local government must adopt **one tax rate** for all property in its jurisdiction, including registered motor vehicles. The only exception to this one-rate rule is the additional taxes permitted in special service districts. See this post for more details about tax rates.

Links

- www.sog.unc.edu/resources/microsites/coronavirus-covid-19
- www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_105/gs_105-312.html
- www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_105/gs_105-308.html
- www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_105/gs_105-307.html
- www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_105/gs_105-310.1.html
- www.irs.gov/newsroom/payment-deadline-extended-to-july-15-2020
- www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_105/gs_105-285.html
- www.nytimes.com/interactive/2020/03/21/us/coronavirus-us-cases-spread.html
- governor.nc.gov/news/governor-cooper-declares-state-emergency-respond-coronavirus-covid-19
- www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_105/gs_105-287.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_159/Article_3.html
- www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/GS_159-15.html
- www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/GS_159-16.html

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