



# TOWN OF BLOWING ROCK

1036 Main Street • Post Office Box 47 • Blowing Rock, NC 28605

## Release Request No: 2018-07

Property Owner: Antoine G. Ghosn

Address: 7788 Globe Rd.

Parcel Number: 024W151G Request Date: February 12, 2019

I Hereby Request Release of Tax Under G.S. 105-381 for the Following Year(s):

Assessment Release	Tax Release	Interest	Total	Tax Year
		\$284.31	\$284.31	2018

Account Number: 127933

County: Watauga

Date: February 12, 2019

Release Amount: \$284.31

**Specific Reason for Release:** This property is a split property, part is located inside the city limits and part is located in Caldwell County. It was discovered during the 2018 billing cycle that they had been billed four years for the incorrect tax value. I did a Discovery billing for the difference (which was a significant amount) and mailed the bill along with the 2018 tax bill for the full amount. Ms. Ghosn contacted me to see if we could wave the interest fee on the Discovery Bill, they had already paid the 2018 Tax Bill. I contacted the North Carolina School of Government and Chris Mclaughlin advised the Board had the discretion to wave the interest fee under NCGS 105-312(k).

Approved By: \_\_\_\_\_ Date: \_\_\_\_\_

CONSENT #D

## Hilari Hubner

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**From:** Mclaughlin, Christopher B <mclaughlin@sog.unc.edu>  
**Sent:** Monday, February 04, 2019 10:34 AM  
**To:** Hilari Hubner  
**Subject:** RE: Tax Question

Hilari, I think this situation should be resolved using retroactive billing under 105-394, not a discovery. I explain why in this blog post and the bulletin linked in this post:

<https://canons.sog.unc.edu/what-to-do-when-property-that-should-be-taxed-isnt/>

If you stick with the discovery approach, the board has the discretion to waive any or all of that bill, including interest, under 105-312(k). If you choose to use retroactive billing, the board could waive interest under 105-381, as I explain in the blog post above.

Chris



Christopher B. McLaughlin  
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**From:** Hilari Hubner <clerk@townofblowingrocknc.gov>  
**Sent:** Friday, February 01, 2019 2:36 PM  
**To:** Mclaughlin, Christopher B <mclaughlin@sog.unc.edu>  
**Subject:** Tax Question

Hi Chris,

I have a question for you. I have a property in which they are located part inside the city limits and part in the county. It was discovered during the 2018 billing cycle that they had been billed for years the incorrect tax value. I did a 5 year Discovery billing for the difference (which was a significant amount) and mailed the bill along with the 2018 tax bill for the full amount. The tax payer has contacted me to see if we can wave the interest fee as they could not pay it all at once. I wasn't sure if that could be done. Can you please advise what I can do. Thanks!

*Hilari H Hubner*

Town Clerk/Tax Collector  
Town of Blowing Rock

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Blowing Rock, NC 28605  
828-295-5200 (Office)  
828-295-5202 (Fax)



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**§ 105-312. Discovered property; appraisal; penalty.**

(a) Repealed by Session Laws 1991, c. 34, s. 4.

(b) Duty to Discover and Assess Unlisted Property. - It shall be the duty of the assessor to see that all property not properly listed during the regular listing period be listed, assessed and taxed as provided in this Subchapter. The assessor shall file reports of such discoveries with the board of commissioners in such manner as the board may require.

(c) Carrying Forward Real Property. - At the close of the regular listing period each year, the assessor shall compare the tax lists submitted during the listing period just ended with the lists for the preceding year, and he shall carry forward to the lists of the current year all real property that was listed in the preceding year but that was not listed for the current year. When carried forward, the real property shall be listed in the name of the taxpayer who listed it in the preceding year unless, under the provisions of G.S. 105-302, it must be listed in the name of another taxpayer. Real property carried forward in this manner shall be deemed to be discovered property, and the procedures prescribed in subsection (d), below, shall be followed unless the property discovered is listed in the name of the taxpayer who listed it for the preceding year and the property is not subject to appraisal under either G.S. 105-286 or G.S. 105-287 in which case no notice of the listing and valuation need be sent to the taxpayer.

(d) Procedure for Listing, Appraising, and Assessing Discovered Property. - Subject to the provisions of subsection (c), above, and the presumptions established by subsection (f), below, discovered property shall be listed by the assessor in the name of the person required by G.S. 105-302 or G.S. 105-306. The discovery shall be deemed to be made on the date that the abstract is made or corrected pursuant to subsection (e) of this section. The assessor shall also make a tentative appraisal of the discovered property in accordance with the best information available to him.

When a discovery is made, the assessor shall mail a notice to the person in whose name the discovered property has been listed. The notice shall contain the following information:

- (1) The name and address of the person in whose name the property is listed;
- (2) A brief description of the property;
- (3) A tentative appraisal of the property;
- (4) A statement to the effect that the listing and appraisal will become final unless written exception thereto is filed with the assessor within 30 days from date of the notice.

Upon receipt of a timely exception to the notice of discovery, the assessor shall arrange a conference with the taxpayer to afford him the opportunity to present any evidence or argument he may have regarding the discovery. Within 15 days after the conference, the assessor shall give written notice to the taxpayer of his final decision. Written notice shall not be required, however, if the taxpayer signs an agreement accepting the listing and appraisal. In cases in which agreement is not reached, the taxpayer shall have 15 days from the date of the notice to request review of the decision of the assessor by the board of equalization and review or, if that board is not in session, by the board of commissioners. Unless the request for review by the county board is given at the conference, it shall be made in writing to the assessor. Upon receipt of a timely request for review, the provisions of G.S. 105-322 or G.S. 105-325, as appropriate, shall be followed.

(e) Record of Discovered Property. - When property is discovered, the taxpayer's original abstract (if one was submitted) may be corrected or a new abstract may be prepared to reflect the discovery. If a new abstract is prepared, it may be filed with the abstracts that were submitted during the regular listing period, or it may be filed separately with abstracts designated "Late Listings." Regardless of how filed, the listing shall have the same force and effect as if it had been submitted during the regular listing period.

(f) Presumptions. - When property is discovered and listed to a taxpayer in any year, it shall be presumed that it should have been listed by the same taxpayer for the preceding five years unless

the taxpayer shall produce satisfactory evidence that the property was not in existence, that it was actually listed for taxation, or that it was not his duty to list the property during those years or some of them under the provisions of G.S. 105-302 and G.S. 105-306. If it is shown that the property should have been listed by some other taxpayer during some or all of the preceding years, the property shall be listed in the name of the appropriate taxpayer for the proper years, but the discovery shall still be deemed to have been made as of the date that the assessor first listed it.

(g) Taxation of Discovered Property. - When property is discovered, it shall be taxed for the year in which discovered and for any of the preceding five years during which it escaped taxation in accordance with the assessed value it should have been assigned in each of the years for which it is to be taxed and the rate of tax imposed in each such year. The penalties prescribed by subsection (h) of this section shall be computed and imposed regardless of the name in which the discovered property is listed. If the discovery is based upon an understatement of value, quantity, or other measurement rather than an omission from the tax list, the tax shall be computed on the additional valuation fixed upon the property, and the penalties prescribed by subsection (h) of this section shall be computed on the basis of the additional tax.

(h) Computation of Penalties. - Having computed each year's taxes separately as provided in subsection (g), above, there shall be added a penalty of ten percent (10%) of the amount of the tax for the earliest year in which the property was not listed, plus an additional ten percent (10%) of the same amount for each subsequent listing period that elapsed before the property was discovered. This penalty shall be computed separately for each year in which a failure to list occurred; and the year, the amount of the tax for that year, and the total of penalties for failure to list in that year shall be shown separately on the tax records; but the taxes and penalties for all years in which there was a failure to list shall be then totalled on a single tax receipt.

(h1) Repealed by Session Laws 1991, c. 624, s. 8.

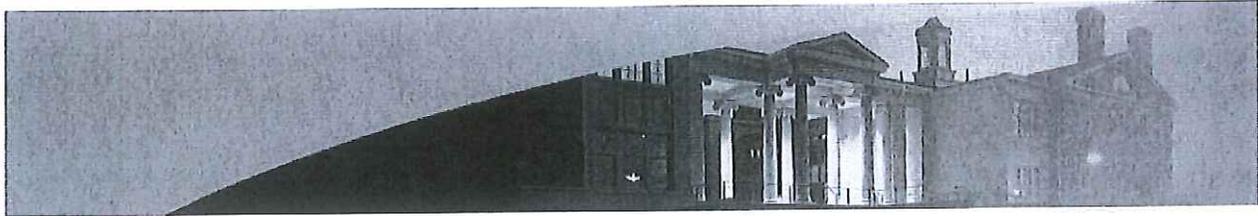
(i) Collection. - For purposes of tax collection and foreclosure, the total figure obtained and recorded as provided in subsection (h) of this section shall be deemed to be a tax for the fiscal year beginning on July 1 of the calendar year in which the property was discovered. The schedule of discounts for prepayment and interest for late payment applicable to taxes for the fiscal year referred to in the preceding sentence shall apply when the total figure on the single tax receipt is paid. Notwithstanding the time limitations contained in G.S. 105-381, any property owner who is required to pay taxes on discovered property as herein provided shall be entitled to a refund of any taxes erroneously paid on the same property to other taxing jurisdictions in North Carolina. Claim for refund shall be filed in the county where such tax was erroneously paid as provided by G.S. 105-381.

(j) Tax Receipts Charged to Collector. - Tax receipts prepared as required by subsections (h) and (i) of this section for the taxes and penalties imposed upon discovered property shall be delivered to the tax collector, and he shall be charged with their collection. Such receipts shall have the same force and effect as if they had been delivered to the collector at the time of the delivery of the regular tax receipts for the current year, and the taxes charged in the receipts shall be a lien upon the property in accordance with the provisions of G.S. 105-355.

(k) Power to Compromise. - After a tax receipt computed and prepared as required by subsections (g) and (h) of this section has been delivered and charged to the tax collector as prescribed in subsection (j), above, the board of county commissioners, upon the petition of the taxpayer, may compromise, settle, or adjust the county's claim for taxes arising therefrom. The board of commissioners may, by resolution, delegate the authority granted by this subsection to the board of equalization and review, including any board created by resolution pursuant to G.S. 105-322(a) and any special board established by local act.

(l) Municipal Corporations. - The provisions of this section shall apply to all cities, towns, and other municipal corporations having the power to tax property. Such governmental units shall designate an appropriate municipal officer to exercise the powers and duties assigned by this section

to the assessor, and the powers and duties assigned to the board of county commissioners shall be exercised by the governing body of the unit. When the assessor discovers property having a taxable situs in a municipal corporation, he shall send a copy of the notice of discovery required by subsection (d) to the governing body of the municipality together with such other information as may be necessary to enable the municipality to proceed. The governing board of a municipality may, by resolution, delegate the power to compromise, settle, or adjust tax claims granted by this subsection and by subsection (k) of this section to the county board of equalization and review, including any board created by resolution pursuant to G.S. 105-322(a) and any special board established by local act. (1939, c. 310, s. 1109; 1971, c. 806, s. 1; 1973, c. 476, s. 193; c. 787; 1977, c. 864; 1981, c. 623, ss. 1, 2; 1987, c. 45, s. 1; c. 743, ss. 1, 2; 1989, c. 522; 1991, c. 34, s. 4; c. 624, s. 8; 1991 (Reg. Sess., 1992), c. 961, s. 12; 1999-297, s. 2.)



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## What To Do When Property That Should Be Taxed Isn't

### About the author

Chris McLaughlin



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This entry was posted on March 7th, 2016 and is filed under [Finance & Tax](#), [Property Taxes](#).



Local government property tax offices are very good at what they do, with collection rates averaging around 98%. But nobody's perfect. Mistakes happen.

One common mistake is when property that should be taxed isn't. Perhaps the tax office never knew the property existed. Or the tax office had the property on its tax rolls but for some reason failed to levy taxes on that property.

Tax offices have two options to recapture taxes that should have been levied but weren't. One is the discovery process in [GS 105-312](#). The other is retroactive billing authorized by the "immaterial irregularity" provision in [GS 105-394](#). The choice between these two remedies depends on what caused the taxes to be missed.

A few years ago I co-authored a [property tax bulletin](#) on this topic with Stan Duncan, the recently retired veteran tax official from Henderson County. That bulletin discusses in detail how these remedies work and how to choose between them. Today's blog briefly summarizes that analysis and illustrates how those remedies should be used for one particularly common example of missed taxes: property that lies within a municipality but for some reason is not taxed by that municipality.

**Discovery:** the definition of "discovered property" requires that the discovery process in [GS 105-312](#) be used only when a listing error caused the missed taxes.

If property was never listed for taxation or listed at a substantial understatement (e.g., a house that was recently remodeled and expanded was listed at 2,000 square feet instead of its actual square footage of 4,500), then discovery applies.

Discovery also applies when property was listed under an exemption or exclusion for which it was not eligible (e.g., a residence continues to receive the elderly and disabled exclusion after the elderly owner dies and leaves the property to her 40-year old daughter).

If discovery applies, the tax office must bill missed taxes on the property for a maximum of six years: the current tax year plus the previous five. If the property is personal property or improvements to real property, the discovery bill must include penalties of 10% per missed listing period for each tax year included in the discovery. Interest does not accrue on a discovery bill until the next January 6.

See [this post](#) for more on discovery billing.

**Immaterial Irregularity:** [GS 105-394](#) excuses defects in all aspects of the property tax process. By explicitly stating that minor errors do not invalidate property taxes, the provision permits local governments to retroactively bill taxes that originally were missed or billed incorrectly.

In 2008, the North Carolina Supreme Court approved of a local government's use of GS 105-394 to bill ten years of back taxes retroactively on property that was listed by the taxpayer but for some reason never taxed. In this case, called *In re: Morgan*, the Supreme Court adopted [the dissenting opinion from an earlier Court of Appeals ruling](#) on the same matter. That opinion makes clear that the retroactive bills should include interest accruing from the original dates of delinquency for the missed taxes.

*In re: Morgan* does not offer an opinion as to how many years of retroactive tax bills are permitted. Theoretically, the tax office should bill every year of taxes that was missed. But practically it makes sense to bill only those years that fall within the 10-year statute of limitations on enforced collections created by [GS 105-378](#).

How should these remedies be applied to the problem of property that lies within a municipality but has not been taxed by that municipality?

First, determine if the problem is a listing error that must be fixed using the discovery process.

If the property has never been listed for taxation by the assessor, meaning neither the county nor the city has ever taxed the property, then discovery must apply. But most often in these situations the county has been levying taxes on this property all along. If so, that means the property was listed by the assessor. The problem was a failure to levy municipal taxes on that property, not a failure to list the property. Discovery does not apply if the problem is a levying error rather than a listing error. Instead, the problem must be fixed with retroactive municipal tax bills issued under the authority of GS 105-394.

Assuming the problem must be solved using GS 105-394, the second step is to determine how many years of municipal taxes were missed and prepare retroactive tax bills using the appropriate tax value and municipal tax rate for each year. Interest should be applied to each bill as if it had been originally taxed appropriately.

The taxpayer is of course going to be less than thrilled to receive a multi-year tax bill including interest. Which leads to the third and final step . . .

Ask the municipal governing board (town council) if it will agree to waive the interest on these retroactive tax bills under the "clerical error" justification of [GS 105-381](#), the refund and release provision. (For more on GS 105-381, see [this blog post](#).)

If the property owner was paying the county taxes in timely fashion each year, it's reasonable to assume that but for the clerical error by the tax office (the failure to levy municipal taxes on the property) the property owner would have also paid the municipal taxes in a timely fashion. Those taxes would never have accrued interest. I think the governing board would be authorized to release that interest under GS 105-381.

But there is no justification to release the principal taxes on those retroactive bills. GS 105-381 doesn't authorize a local government to release taxes just because they forgot to bill those taxes originally.

Let's apply this analysis to a hypothetical. Assume Billy Blue Devil's property lies in Carolina County and has been taxed by the county every year. In 2005, Tar Heel Town annexed an area that included Billy's property. For some reason, Tar Heel Town taxes were never levied on Billy's property. (Note it doesn't matter which government collects the town's taxes or which government made the mistake that caused the missed taxes.)

In 2016, the town realizes it has not been receiving taxes on Billy's property. How can it remedy this situation?

Discovery rules don't apply because Billy's property has been listed for taxation by the county all along. That means the problem must be remedied using retroactive tax bills under GS 105-394.

The town (or the county, if the county collects the town's taxes) should create bills for Billy's property for tax years 2006 thru 2016. (Technically the town could also bill for 2005 but because that year falls outside of the 10-year statute of limitations the best approach is to start with 2006 taxes.)

Each bill should reflect the tax value of the property for that year and the town tax rate for that year. Interest should be added to each of those retroactive bills from its original delinquency date. The bill for 2006 taxes should include interest from January 6, 2007, the bill for 2007 taxes should include interest from January 6, 2008, etc.

If Billy has been paying his county taxes on time each year, the town council might consider releasing that interest as mentioned above. But there could be factors that argue against a release. Let's assume that there is clear evidence Billy knew darn well his property was within the city's boundaries. Perhaps he began receiving town trash collection and water and sewer services immediately after the 2005 annexation. Perhaps his kids have been participating in city recreation programs. If so, then the town council might refuse a release because it concludes that Billy was on notice that he was in the city and that he was intentionally benefiting from city services while knowingly avoiding city taxes.

The facts will of course vary from case to case, meaning there is no bright line rule when interest should be waived. The important points to remember are (i) the principal taxes should not be waived and (ii) the decision to waive interest is for the governing board to make, not the tax office.

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