



# Beyond the Property Tax: Collecting Other Taxes and Fees

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For decades, most local tax collectors were responsible for a single revenue source, the property tax. Today, county and municipal tax collectors oversee multiple revenue sources with varied collection remedies. This bulletin provides two quick-reference tables summarizing the unique collection features of the most common local taxes, costs, and fees followed by a detailed examination of each. It concludes with a discussion of a local government's authority to refund or release these taxes, costs, and fees.

## Local Government Revenue Sources beyond the Property Tax

Counties and municipalities receive the majority of their revenues from sources other than the property tax.<sup>1</sup> This bulletin focuses on twelve revenue streams that local governments collect directly.<sup>2</sup> Seven revenue streams are tax-based:

1. Privilege license taxes
2. Occupancy taxes
3. Animal taxes
4. Prepared food or meal taxes
5. Beer and wine license taxes
6. Motor vehicle and heavy equipment rental gross receipts taxes
7. Municipal motor vehicle and taxicab taxes

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1. Property taxes account for 40 percent of county revenue and 20 percent of municipal revenue. The North Carolina Department of State Treasurer provides this data at [www.nctreasurer.com/lgc/units/D\\_AG.htm](http://www.nctreasurer.com/lgc/units/D_AG.htm) (municipalities) and [www.nctreasurer.com/lgc/units/D\\_E.htm](http://www.nctreasurer.com/lgc/units/D_E.htm) (counties) (each last visited January 25, 2010).

2. This bulletin excludes other major revenue sources for local governments that are collected by the state, such as sales and use taxes. For a detailed analysis of those taxes, please see Kara A. Millonzi and William C. Rivenbark, "Phased Implementation of the 2007 and 2008 Medicaid Funding Reform Legislation in North Carolina," *Local Finance Bulletin* No. 38 (September 2008), [www.sog.unc.edu/pubs/electronicversions/pdfs/lfb38.pdf](http://www.sog.unc.edu/pubs/electronicversions/pdfs/lfb38.pdf). Also excluded from this bulletin are taxes and fees that are collected before a service is provided, such as county land transfer taxes that must be paid before a deed is recorded by the register of deeds, because enforced collection efforts generally are not needed.

Fees and costs create the other five revenue streams:

1. Solid waste, water, sewer, and stormwater service fees<sup>3</sup>
2. Ambulance service fees
3. Special assessments
4. Nuisance abatement costs
5. Minimum housing standards enforcement costs

## Table 1 and Table 2

Table 1 and Table 2 summarize the important collection features of each tax, cost, and fee covered in this bulletin. A few explanatory notes may help to interpret this information.

### Statutory Liens on z Property

A *lien* is the right of a creditor to satisfy an obligation from the property of the debtor.<sup>4</sup> Liens allow a creditor to seize and sell a debtor's property to satisfy an obligation owed to the creditor. A creditor typically obtains a lien through a contract, such as a financing agreement between a lender and a homebuyer, or through a court judgment, such as when the creditor wins a civil lawsuit against the debtor. Other liens arise automatically as a matter of law because a statute mandates that a lien is created upon the occurrence of a particular event. For example, as a matter of law, property tax liens on real property arise each January 1.<sup>5</sup>

In Table 1 and Table 2, the "statutory liens" column indicates if a lien on a taxpayer's real property arises as a matter of law when a local government provides services or incurs costs. Special assessments,<sup>6</sup> nuisance abatement costs,<sup>7</sup> and housing demolition costs<sup>8</sup> are the only taxes or fees discussed in this bulletin that create a lien automatically on the taxpayer's real property without additional action by the local government. Two other fees, solid waste fees and ambulance service fees, can create liens on the taxpayer's property after the local government takes additional action. For solid waste fees the local government must adopt an ordinance requiring that the fees be included on the property tax bill and collected as property taxes.<sup>9</sup> For ambulance service fees the local government must file the lien with the clerk of the superior court.<sup>10</sup>

3. All of these fees arise under the "public enterprise" provisions for counties, N.C. GEN. STAT. (hereinafter G.S.) § 105, Article 16, and municipalities, G.S. Ch. 160A, Art. 15. The collection remedies discussed in this bulletin for water, sewer, and stormwater service fees would also apply to other fees authorized by the public enterprise provisions.

4. *Thigpen v. Leigh*, 93 N.C. 47 (1885).

5. G.S. 105-355(a). For a detailed examination of tax liens, including a discussion of the priority of competing liens on the same property, please see Christopher B. McLaughlin, "The Property Tax Lien," *Property Tax Bulletin* No. 150 (October 2009), [www.sog.unc.edu/pubs/electronicversions/pdfs/ptb150.pdf](http://www.sog.unc.edu/pubs/electronicversions/pdfs/ptb150.pdf).

6. G.S. 153A-195 (counties); G.S. 160A-228 (municipalities).

7. G.S. 153A-140 (counties); G.S. 160A-193 (municipalities).

8. G.S. 160A-443 (covers both counties and municipalities).

9. G.S. 153A-293 (counties); G.S. 160A-314.1 (municipalities).

10. G.S. 44-51.2 (requiring filing within 90 days after provision of services); G.S. 44-51.6 (requiring filing between 90 days and 180 days after provision of services for certain counties).

**Table 1. Taxes**

<b>Authorization for Taxes</b>	<b>Statutory Lien on Real Property?</b>	<b>Interest or Penalties?</b>	<b>Collection Remedies</b>
Privilege license taxes <i>G.S. 153A-152 (counties)</i> <i>G.S. 160A-211 (municipalities)</i>	No	5% penalty for every thirty days that business is conducted without license, up to 25% (G.S. 105-236(a)(2))	<ul style="list-style-type: none"> <li>• Attachment, garnishment, and levy</li> <li>• Set-off debt collection</li> <li>• Civil suit</li> <li>• Criminal misdemeanor prosecution</li> </ul>
Occupancy taxes <i>G.S. 153A-155 (counties)</i> <i>G.S. 160A-215 (municipalities)</i> <i>By local bills</i>	No	<p>5% penalty every thirty days for failure to file return when due, up to 25% (G.S. 105-236(a)(3))</p> <p>10% penalty for failure to pay tax when due (G.S. 105-236(a)(4))</p> <p>Or other penalties specified in local bill</p>	<ul style="list-style-type: none"> <li>• Attachment, garnishment, and levy</li> <li>• Set-off debt collection</li> <li>• Civil suit</li> <li>• Criminal misdemeanor prosecution</li> </ul>
Animal taxes <i>G.S. 153A-153 (counties)</i> <i>G.S. 160A-212 (municipalities)</i>	No	Yes, if included in the ordinance authorizing the tax	<ul style="list-style-type: none"> <li>• Attachment, garnishment, and levy</li> <li>• Set-off debt collection</li> <li>• Civil suit</li> <li>• Criminal misdemeanor prosecution, if adopted by ordinance that does not provide otherwise</li> </ul>
Beer and wine license taxes <i>G.S. 105-113.77 (municipalities)</i> <i>G.S. 105-113.78 (counties)</i> <i>G.S. 105-113.79 (municipal wholesalers)</i>	No	5% penalty for every thirty days that business is conducted without license, up to 25% (G.S. 105-236(a)(2))	<ul style="list-style-type: none"> <li>• Attachment, garnishment, and levy</li> <li>• Set-off debt collection</li> <li>• Civil suit</li> <li>• Criminal misdemeanor prosecution</li> </ul>
Prepared food/meal taxes <i>G.S. 153A-154.1 (counties)</i> <i>G.S. 160A-214.1 (municipalities)</i> <i>By local bills</i>	No	<p>5% penalty every thirty days for failure to file return when due, up to 25% (G.S. 105-236(a)(3))</p> <p>10% penalty for failure to pay tax when due (G.S. 105-236(a)(4))</p>	<ul style="list-style-type: none"> <li>• Attachment, garnishment, and levy</li> <li>• Set-off debt collection</li> <li>• Civil suit</li> <li>• Criminal misdemeanor prosecution</li> </ul>
Motor vehicle taxes and heavy equipment rental gross receipts taxes <i>G.S. 153A-156 and -156.1 (counties)</i> <i>G.S. 160A-215.1 and -215.2 (municipalities)</i>	No	<p>5% penalty every thirty days for failure to file return when due, up to 25% (G.S. 105-236(a)(3))</p> <p>10% penalty for failure to pay tax when due (G.S. 105-236(a)(4))</p>	<ul style="list-style-type: none"> <li>• Attachment, garnishment, and levy</li> <li>• Set-off debt collection</li> <li>• Civil suit</li> <li>• Criminal misdemeanor prosecution</li> </ul>
Municipal motor vehicle taxes and taxicab privilege license taxes <i>G.S. 20-97</i> <i>By local bills</i>	No	Yes, if included in the ordinance authorizing the tax	<ul style="list-style-type: none"> <li>• Attachment, garnishment, and levy</li> <li>• Set-off debt collection</li> <li>• Civil suit</li> <li>• Criminal misdemeanor prosecution, if adopted by ordinance that does not provide otherwise</li> </ul>

**Table 2. Fees and Costs**

<b>Authorization for Fees and Costs</b>	<b>Statutory Lien on Real Property?</b>	<b>Interest or Penalties</b>	<b>Collection Remedies</b>
Solid waste fees <i>G.S. 153A-292 and -293</i> <i>G.S. 160A-314 and -314.1</i>	Yes, if board adopts ordinance requiring fees to be billed with and collected as property taxes	Yes, at Machinery Act rates, if billed with property taxes  If not billed with property taxes, penalties may be included in the schedule of fees for the service	<ul style="list-style-type: none"> <li>• Discontinuation of services</li> <li>• Foreclosure, attachment, garnishment and levy, if billed with property taxes</li> <li>• Set-off debt collection</li> <li>• Civil suit</li> <li>• Criminal misdemeanor prosecution, if adopted by ordinance that does not provide otherwise</li> </ul>
Water, sewer, stormwater fees <i>G.S. 153A-274 and -277</i> <i>G.S. 160A-311 and -314</i>	No	Yes, if included in the schedule of fees for the service	<ul style="list-style-type: none"> <li>• Discontinuation of services</li> <li>• Set-off debt collection</li> <li>• Civil suit</li> <li>• Criminal misdemeanor prosecution, if adopted by ordinance that does not provide otherwise</li> </ul>
Ambulance services fees <i>G.S. Ch. 44, Art. 9A and Art. 9B</i>	Yes, must file lien with clerk of superior court	Yes, if included in the schedule of fees for the service	<ul style="list-style-type: none"> <li>• Foreclosure</li> <li>• Attachment and garnishment, only for Article 9B counties and their municipalities</li> <li>• Set-off debt collection</li> <li>• Civil suit</li> <li>• Criminal misdemeanor prosecution, if adopted by ordinance that does not provide otherwise</li> </ul>
Special assessments <i>G.S. Ch. 153A, Art. 9 and Art. 9A</i> <i>G.S. Ch. 160A, Art. 10 and Art. 10A</i>	Yes	Yes, up to 8% per year if included in the assessment resolution	<ul style="list-style-type: none"> <li>• Foreclosure, attachment, garnishment, and levy</li> <li>• Set-off debt collection</li> <li>• Civil suit</li> <li>• Criminal misdemeanor prosecution, if adopted by ordinance that does not provide otherwise</li> </ul>
Nuisance abatement costs <i>G.S. 153A-140 and G.S. 160A-193 or G.S. 153A-123 and G.S. 160A-175</i>	Yes, if proceeding under G.S. 153A-123 or G.S. 160A-175, must file lien with clerk of superior court	Yes, if mandated by the local governing board	<ul style="list-style-type: none"> <li>• Foreclosure, attachment, garnishment, and levy</li> <li>• Set-off debt collection</li> <li>• Civil suit</li> <li>• Criminal misdemeanor prosecution, if adopted by ordinance that does not provide otherwise</li> </ul>
Minimum housing standards enforcement costs <i>G.S. 160A-443</i>	Yes, should file lien with clerk of superior court and county register of deeds	Yes, if mandated by the local governing board	<ul style="list-style-type: none"> <li>• Foreclosure, attachment, garnishment, and levy</li> <li>• Set-off debt collection</li> <li>• Civil suit</li> <li>• Criminal misdemeanor prosecution, if adopted by ordinance that does not provide otherwise</li> </ul>

### Interest or Penalties

This column in Table 1 and Table 2 indicates whether a local government may charge interest or penalties for late payment of each fee and tax. With the exception of solid waste fees, all taxes and fees discussed in this bulletin fall into one of two categories: (1) those for which the penalties in Section 105-236 of the North Carolina General Statutes (hereinafter G.S.) for the nonpayment of state taxes apply or (2) those for which interest or penalties apply only if the local government adopts such measures in an authorizing ordinance or resolution.

In contrast, the statute for solid waste fees incorporates the Machinery Act's interest provisions, assuming that the local government has adopted an ordinance requiring that the solid waste fees be billed and collected as property taxes.<sup>11</sup>

### Collection Remedies

Not all local taxes and fees share the same collection remedies. To recover a debt, a local government may employ the following remedies:

1. Foreclosure of a lien on real property<sup>12</sup>
2. Attachment and garnishment of intangible property, such as bank accounts and wages<sup>13</sup>
3. Levy and sale of tangible personal property<sup>14</sup>
4. Set-off debt collection<sup>15</sup>
5. Civil lawsuit
6. Prosecution for a criminal misdemeanor<sup>16</sup>
7. Civil penalties<sup>17</sup>

The availability of these seven remedies varies from tax to tax and fee to fee.

Foreclosure—the right to sell real property to satisfy a debt—is available only to recoup those fees and costs that can create a lien on the debtor's real property: solid waste fees, ambulance service fees, special assessments, nuisance abatement costs, and minimum housing standards enforcement costs.

In contrast, attachment and garnishment—the process by which a tax collector may demand that wages, bank accounts, or other funds owed to a taxpayer be paid to the local government to satisfy a debt—is available for all local taxes and for the fees and costs described in this bulletin

11. G.S. 105-360(a). Under the Machinery Act interest begins on January 6 of the fiscal year in which the taxes are billed, with 2% interest that first month and 0.75% interest each month thereafter.

12. All but one of the liens covered by this bulletin can be foreclosed through the Machinery Act process described in G.S. 105-374. The only exception is the lien for ambulance services, which requires a standard civil foreclosure action.

13. Through the Machinery Act process described in G.S. 105-368, as applied to local taxes by G.S. 153A-147 (counties) and G.S. 160A-207 (municipalities).

14. Through the Machinery Act process described in G.S. 105-366 and -367, as applied to local taxes by G.S. 153A-147 (counties) and G.S. 160A-207 (municipalities).

15. G.S. 105A-5.

16. G.S. 105-236(a)(8) and (9), for those taxes subject to the penalties for nonpayment of state taxes. For all others, see G.S. 153A-123(b) and G.S. 160A-175(b), which authorize criminal misdemeanor prosecution for the violation of any ordinance unless the local government opts out of such a remedy to avoid the requirement that funds collected as late payment penalties be remitted to the public schools pursuant to N.C. CONST. art. IX, § 7.

17. G.S. 153A-123(c) (counties) and G.S. 160A-175(c) (municipalities).

other than water, sewer, and stormwater fees. The same is true for the levy and sale of the debtor's personal property.

Set-off debt collection, commonly known as "debt set-off," permits a local government to attach an individual or corporate taxpayer's North Carolina state income tax refund, lottery winnings, or other money owed to the taxpayer by the state to satisfy a debt of \$50 or more owed to that local government. Local governments must submit their requests for set-off debt collection to the N.C. Department of Revenue through a third-party clearinghouse. The clearinghouse that processes these requests for local governments requires that debts be delinquent for at least sixty days before submission.<sup>18</sup>

A civil lawsuit is also an option for any debt owed to a local government. This remedy is rarely used, though, because of the costs involved and because winning a civil judgment against a debtor generally provides no better collection options than the local government already possessed through its statutory remedies. However, because civil judgments can be enforced through foreclosures, a civil lawsuit could be helpful to collect a tax or fee for which foreclosure is not a statutory remedy.

Equally rare are criminal misdemeanor prosecutions, which are authorized for local taxes and fees under two different statutes. The first statute is the state sales tax collection remedies provision,<sup>19</sup> which applies to privilege license taxes, occupancy taxes, beer and wine taxes, prepared food/meal taxes, car rental taxes, and heavy equipment rental taxes. The second statute contains the general criminal enforcement provisions available for violations of local ordinances.<sup>20</sup> Any tax or fee that is enacted through an ordinance that is not subject to the sales tax criminal provisions can be enforced using the general criminal provisions. Punishment for a misdemeanor conviction is generally limited to a fine set at the discretion of the sentencing judge.

Finally, civil penalties can be used to punish violations of local ordinances.<sup>21</sup> But if the statutory provisions for a tax or fee provide for specific penalties, then the general civil penalties for ordinance violations are not available. For example, the privilege license statutes incorporate the specific penalties that apply to violations of state sales tax law. As a result, local governments are limited to those specific penalties and cannot create their own civil penalties for privilege license tax violations. In contrast, animal taxes and municipal motor vehicle and taxicab fees lack specific penalty provisions in their authorizing statutes. As a result, local governments levying such taxes are free to develop their own civil penalties for non-payment. Note that these penalties must be specific in the tax ordinance and cannot be collected through attachment and garnishment or levy and sale, as can the principal taxes.

## Taxes

This section describes seven different local taxes and the collection remedies available for each.

### Privilege License Taxes

Although their name suggests otherwise, privilege license taxes are not regulatory in nature. They are taxes on the privilege of conducting business within a particular jurisdiction.

18. The clearinghouse's website is [www.ncsetoff.org](http://www.ncsetoff.org).

19. G.S. 105-236(a)(8) and (9).

20. G.S. 153A-123(b) and G.S. 160A-175(b).

21. G.S. 153A-123(c) (counties) and G.S. 160A-175(c) (municipalities).

Cities have broad authority to levy privilege license taxes on all businesses within their jurisdictions, subject to a long list of exemptions and caps commonly called Schedule B exemptions.<sup>22</sup> If a business is *not* covered by one of those exemptions and caps then a municipality may tax that business in any reasonable manner it chooses.

Cities and towns have several taxation options for businesses not covered by Schedule B exemptions. Many apply a flat-rate tax. For example, the city of Dunn charges a flat tax of \$50 for department stores and \$35 for grocery stores.<sup>23</sup> Other municipalities levy a gross receipts tax on such businesses, charging each business a certain percentage of its annual income. For example, the city of Durham charges retailers a tax of \$50 for the first \$15,000 in gross receipts plus \$0.50 per each additional \$1,000 in gross receipts.<sup>24</sup> The gross receipts approach generally produces significantly more revenue than does a flat-rate tax.<sup>25</sup> Privilege license taxes could also be based on a business's total employment or its square footage.

Counties have a narrower authority to levy privilege license taxes. They may tax only certain businesses, and even then, they may only tax them up to limited amounts.<sup>26</sup> For this reason counties do not employ a gross receipts approach and generally collect much less privilege license tax revenue than do municipalities.

G.S. 105-236 includes penalties for the failure to pay state privilege license taxes. These penalties are made applicable to local privilege licenses by G.S. 105-109(a). Operating a business without the required privilege license triggers a monthly penalty of 5 percent of the applicable privilege license tax, up to a total of 25 percent. For example, if a business is required to pay a privilege license tax of \$100, the first day that business operates without a privilege license triggers a \$5 penalty. If the business is still operating without a license thirty days later, the business would owe another \$5. The penalties could continue for five months, up to a total of \$25. Although such a penalty seems insignificant based on a \$100 flat tax, the maximum penalty could be substantial if it applies to a large business that is subject to a gross receipts tax. In addition, G.S. 105-236(a)(9) makes the failure to pay the privilege license tax a Class 1 misdemeanor.

Tax collectors should read their local privilege license ordinances before proceeding with any collection efforts. Often these ordinances include helpful tools for tax collectors engaged in the collection process, such as the authority to demand access to a taxpayer's financial records.

### Occupancy Taxes

More than 150 counties and municipalities are the subject of local bills that grant them authority to levy taxes on the rental of rooms or similar accommodations furnished by hotels, motels, and other businesses that are subject to state sales tax under G.S. 105-164.4(a)(3).<sup>27</sup> Details of

22. G.S. 160A-211.

23. City of Dunn privilege license application, [www.dunn-nc.org/finance/downloads/PL%20&%20Fire%20Application.pdf](http://www.dunn-nc.org/finance/downloads/PL%20&%20Fire%20Application.pdf) (last visited January 28, 2010).

24. City of Durham privilege license tax schedule, [www.durhamnc.gov/forms/finance\\_gm\\_tax\\_sched.pdf](http://www.durhamnc.gov/forms/finance_gm_tax_sched.pdf) (last visited January 28, 2010).

25. Consider a big-box "supercenter" store that sells both groceries and general merchandise and that has annual revenue of \$20 million. In Dunn that business would likely pay about \$200 in privilege license taxes, including the \$50 department store tax, the \$35 grocery store tax, and a few additional flat-fee taxes. In Durham the store would owe about \$10,000 in gross-receipts privilege license taxes.

26. G.S. 153A-152.

27. Many, but not all, of these counties and municipalities are listed in the general occupancy tax provisions for counties, G.S. 153A-155, and municipalities, G.S. 160A-215. Because no master list of all local government authorizations exists, the best method of determining whether and how a local government

occupancy taxes vary by locality, but most are limited to a rate of either 3 or 6 percent. The tax revenue must be distributed to the local tourism development authority for use promoting travel and tourism in the area.<sup>28</sup>

The penalties for the failure to pay occupancy taxes are either specified in the local bill that authorized the tax<sup>29</sup> or tied to the penalties for delinquent state sales taxes found in G.S. 105-236.<sup>30</sup> These include a 5 percent-per-month penalty for failure to file the required monthly return, up to a maximum of 25 percent, and a one-time 10 percent penalty for failure to pay the tax along with the monthly return. Both penalties are based on the amount of tax owed. For example, if a hotel owed \$1,000 in occupancy tax for a particular month and did not file a return or pay the tax, the total penalty for the first month would be \$150: \$50 for the failure to file and \$100 for the failure to pay. G.S. 105-236(a)(9) also makes the failure to file a return or pay the tax a Class 1 misdemeanor.

### Animal Taxes

All counties and municipalities are authorized to levy a license tax on the privilege of keeping animals.<sup>31</sup> Rates and covered animals vary across the state. For example, residents of Charlotte and Mecklenburg County must pay \$30 per year for “unaltered” dogs, cats, and ferrets and \$10 per year for neutered or spayed pets.<sup>32</sup> Asheville’s \$10 annual tax only covers dogs.<sup>33</sup>

The penalties in G.S. 105-236 do not automatically apply to animal taxes. However, a local government may create late-payment penalties for these taxes in its authorizing ordinance.<sup>34</sup>

### Prepared Foods/Meals Taxes

Only fourteen local governments have authority to levy taxes on prepared foods.<sup>35</sup> Five of those are counties (Cumberland, Dare, Durham, Mecklenburg, and Wake), and nine are municipalities (Charlotte, Cornelius, Davidson, Hillsborough, Huntersville, Matthews, Mint Hill, Monroe, and Pineville). Although the details of the local authorizing bills vary, these taxes generally are

is authorized to levy such a tax is to search the “Session Laws” section of the General Assembly’s website, [www.ncga.state.nc.us/gascripts/EnactedLegislation/ELTOC.pl?sType=Law](http://www.ncga.state.nc.us/gascripts/EnactedLegislation/ELTOC.pl?sType=Law), using the government’s name and “occupancy tax” as search terms.

28. See, e.g., S.L. 2009-429, [www.ncga.state.nc.us/enactedlegislation/sessionlaws/html/2009-2010/sl2009-429.html](http://www.ncga.state.nc.us/enactedlegislation/sessionlaws/html/2009-2010/sl2009-429.html), authorizing 3 percent occupancy taxes for the municipalities of Jacksonville, Lenoir, Lowell, Mount Holly, Cramerton, McAdenville, and Ranlo.

29. See, for example, S.L. 1991-392, specifying penalties for the failure to pay Orange County occupancy taxes.

30. G.S. 153A-155(e) (counties) and G.S. 160A-215(e) (municipalities).

31. G.S. 153A-153 (limiting county animal taxes to the keeping of “pets”); G.S. 160A-212 (authorizing municipalities to tax the keeping of “any domestic animal”).

32. [www.petdata.com/cs/chr/fees.htm](http://www.petdata.com/cs/chr/fees.htm) (last visited January 28, 2010).

33. [www.buncombecounty.org/governing/depts/sheriff/animalControl.asp](http://www.buncombecounty.org/governing/depts/sheriff/animalControl.asp) (last visited January 28, 2010).

34. G.S. 153A-123(a) and (c) (counties); G.S. 160A-175(a) and (c) (municipalities).

35. S.L. 93-413, as amended by S.L. 2001-347 (Cumberland County); S.L. 91-177, as amended by S.L. 2001-347 and S.L. 2002-141 (Dare County); S.L. 2008-116 (Durham County); S.L. 89-821, as amended by S.L. 2001-347 and S.L. 2001-402 (Mecklenburg County and Charlotte); S.L. 91-594, as amended by S.L. 95-458 and S.L. 2001-347 (Wake County); S.L. 2001-402 (Cornelius); S.L. 2001-403 (Davidson); S.L. 93-449, as amended by S.L. 99-304 and S.L. 2001-341 (Hillsborough); S.L. 2001-405 (Huntersville); S.L. 2001-406 (Matthews); S.L. 2001-407 (Mint Hill); S.L. 2005-261 (Monroe); S.L. 2001-409 (Pineville).

**Table 3. Local Beer and Wine License Taxes**

Condition of Sale	County-Imposed Tax <sup>a</sup> (\$)	Municipality-Imposed Tax <sup>b</sup> (\$)
Beer, on-premises	25	15
Beer, off-premises	5	5
Wine, on-premises	25	15
Wine, off-premises	25	10

<sup>a</sup> G.S. 105-113.78

<sup>b</sup> G.S. 105-113.77

limited to 1 percent and apply to “prepared foods” as defined in the state sales tax provisions, G.S. 105-164.3(28).

**Prepared food:** Food that meets at least one of the conditions of this subdivision.

Prepared food does not include food the retailer sliced, repackaged, or pasteurized but did not heat, mix, or sell with eating utensils.

- a. It is sold in a heated state or it is heated by the retailer.
- b. It consists of two or more foods mixed or combined by the retailer for sale as a single item. This sub-subdivision does not include foods containing raw eggs, fish, meat, or poultry that require cooking by the consumer as recommended by the Food and Drug Administration to prevent food borne illnesses.
- c. It is sold with eating utensils provided by the retailer, such as plates, knives, forks, spoons, glasses, cups, napkins, and straws.

In 2001 and 2002 the General Assembly made the penalties for unpaid meal taxes uniform by subjecting the taxes to the penalty provisions in G.S. 105-236 and repealing all additional or higher local penalties.<sup>36</sup> These uniform penalties include a 5 percent per-month penalty for failure to file the required monthly return, up to a maximum of 25 percent, and a one-time 10 percent penalty for failure to pay the tax along with the monthly return. Both penalties are based on the amount of tax owed. G.S. 105-236(a)(9) also makes the failure to file a return or pay the tax a Class 1 misdemeanor.

### Beer and Wine License Taxes

In counties and municipalities that permit the sale of beer and wine, retailers of such beverages are required to obtain local licenses and pay a privilege tax mandated by statute. These taxes are in addition to the excise taxes imposed by the state, a portion of which is shared on a per-capita basis with the local governments that permit alcohol sales.<sup>37</sup>

Businesses must pay a tax for each of the taxable activities they conduct. See Table 3. If a bar sells beer and wine for take-out and for on-site consumption, it would be required to pay all four local beer and wine license taxes. What about a wine shop that holds tastings for its customers—does that activity require an on-premises license in addition to the shop’s off-premises license? Yes, but only if the shop charges for the tastings. If the tastings are free, then there is no retail activity to be taxed.

36. S.L. 2001-264 and S.L. 2002-72.

37. G.S. 105-113.82.

In contrast to retail license taxes, wholesale license taxes are not permitted for counties and are optional for municipalities. Cities and towns may levy a license tax up to \$37.50 per year on beer and wine wholesalers.

The penalties in G.S. 105-236 apply to local beer and wine license taxes. Operating a business without the required privilege license triggers a monthly penalty of 5 percent of the applicable privilege license tax, up to a total of 25 percent. G.S. 105-236(a)(9) also makes the failure to pay the tax a Class 1 misdemeanor.

### **Motor Vehicle and Heavy Equipment Rental Gross Receipts Taxes**

Local governments are not permitted to levy property taxes on cars, trucks, or mobile heavy equipment that are held for short-term rental.<sup>38</sup> Instead, counties and municipalities may tax the gross receipts from the rental of these vehicles and equipment as indicated in Table 4, below.

Vehicles are defined by G.S. 160A-215.1 as any of the following:

- a. A motor vehicle of the passenger type, including a passenger van, minivan, or sport utility vehicle.
- b. A motor vehicle of the cargo type, including cargo van, pickup truck, or truck with a gross vehicle weight rating of 26,000 pounds or less used predominantly in the transportation of property for other than commercial freight and that does not require the operator to possess a commercial drivers license.
- c. A trailer or semitrailer with a gross vehicle weight of 6,000 pounds or less.

Heavy equipment is defined by G.S. 153A-156.1 as “earthmoving, construction, or industrial equipment that is mobile, weighs at least 1,500 pounds,” and meets any of these descriptions:

- a. It is a self-propelled vehicle that is not designed to be driven on a highway.
- b. It is industrial lift equipment, industrial material handling equipment, industrial electrical generation equipment, or a similar piece of industrial equipment.

The jurisdiction from which a rental originates collects the tax on the motor vehicle or equipment rental, even if the vehicle or equipment is delivered and used in another jurisdiction. For example, if a New Hanover County business rents a bulldozer to a Brunswick County business for use in Brunswick County, the rental tax would be owed to New Hanover County.

The penalties for the failure to pay state taxes in G.S. 105-236 apply to vehicle and heavy equipment gross receipt taxes.<sup>39</sup> These include a 5 percent-per-month penalty for failure to file the required monthly return, up to a maximum of 25 percent, and a one-time 10 percent penalty for failure to pay the tax along with the monthly return. Both penalties are based on the amount of tax owed. G.S. 105-236(a)(9) also makes the failure to file a return or pay the tax a Class 1 misdemeanor.

38. G.S. 105-275(42) and (42a) exempts these types of property from local property taxes. An annual application is required for the heavy equipment exemption under G.S. 105-275(42a). No application is required for the short-term vehicle rental exemption in G.S. 105-275(42). See G.S. 105-282.1.

39. G.S. 153A-156(f); G.S. 160A-215.1(f); G.S. 153A-156.1(d); G.S. 160A-215.2(d).

**Table 4. Taxes on Receipts from Rentals**

Type of Rental	County-imposed Tax (%)	Municipality-imposed Tax (%)
Vehicle	1.5 <sup>a</sup>	1.5 <sup>b</sup>
Heavy Equipment	1.2 <sup>c</sup>	0.8 <sup>d</sup>

<sup>a</sup> G.S. 153A-156

<sup>b</sup> G.S. 160A-215.1

<sup>c</sup> G.S. 153A-156.1

<sup>d</sup> G.S. 160A-215.2

### Municipal Motor Vehicle and Taxicab Privilege License Taxes

Municipalities may levy annual taxes of up to \$5 on motor vehicles and of up to \$15 on taxicabs “for the use and privileges of the public highways.”<sup>40</sup> Municipalities that operate public transportation systems may levy an additional tax of up to \$5 per year, the proceeds of which must be used to support those systems.<sup>41</sup> These limits have been raised for many municipalities through local bills.<sup>42</sup>

The municipal motor vehicle and taxicab privilege license tax may be collected through levy or attachment and garnishment under G.S. 160A-207. Criminal misdemeanor prosecution and injunctive relief may also be available under G.S. 160A-175 to help with collection efforts. That same statute authorizes a municipality to charge a financial penalty for late or nonpayment of these taxes. To do so, the municipality must include that penalty in the ordinance that adopts the tax.

The penalties in G.S. 105-236 do not automatically apply to municipal motor vehicle and taxicab privilege license taxes. However, a local government may include penalties or interest charges for late tax payments in its authorizing ordinance.<sup>43</sup>

### Fees and Costs

Tax collectors increasingly are tasked with the collection of fees and costs associated with the provision of specific services by local governments. Details of each fee and cost are discussed below.

40. G.S. 20-97.

41. G.S. 105-550 defines “public transportation system” as “any combination of real and personal property established for purposes of public transportation. The systems may include one or more of the following: structures, improvements, buildings, equipment, vehicle parking or passenger transfer facilities, railroads and railroad rights-of-way, rights-of-way, bus services, shared-ride services, high-occupancy vehicle facilities, carpool and vanpool programs, voucher programs, telecommunications and information systems, integrated fare systems, bus lanes, and busways. The term does not include, however, streets, roads, or highways except to the extent they are dedicated to public transportation vehicles or to the extent they are necessary for access to vehicle parking or passenger transfer facilities.”

42. *See, e.g.*, S.L. 2009-160 (authorizing the city of Raleigh to levy an annual license tax on vehicles of up to \$25, \$15 of which may be spent for any purpose and the rest to be spent on transportation-related purposes including sidewalks).

43. G.S. 153A-123(a) and (c) (counties); G.S. 160A-175(a) and (c) (municipalities).

### Public Enterprise Fees: Water, Sewer, Solid Waste, and Stormwater

Under the public enterprise provisions applicable to counties and municipalities, all local governments are permitted to provide and charge for services such as water distribution, wastewater collection and treatment, solid waste collection and disposal, and stormwater management.<sup>44</sup> For each service that it offers, a local government may set its own fees and late-payment charges.<sup>45</sup>

The primary remedy for collecting unpaid utility fees is to discontinue utility service at the property where the delinquency occurred. City- and county-operated utilities must wait at least ten days after an account becomes delinquent before cutting off services.<sup>46</sup> A local government may also specify in its ordinance how partial payments will be allocated among multiple fees included on the same bill.<sup>47</sup> Most local governments put this authority to use by specifying that water service, the one easiest to discontinue and considered most vital by property owners, is paid last.

Beyond discontinuation of services and set-off debt collection, the final collection remedy available for most public enterprise fees is a civil lawsuit to enforce the debt.<sup>48</sup> The one exception to that rule is for the collection of solid waste fees.

If a local government adopts an ordinance requiring solid waste fees be billed and collected as property taxes, then these fees may be included on the property tax bill, will create a lien on the property owner's real property, and may be collected using the Machinery Act remedies of foreclosure, attachment and garnishment, and levy.<sup>49</sup> Without such an ordinance, or if after adopting such an ordinance the local government does not include these fees on property tax bills, then Machinery Act remedies are not available for the collection of solid waste fees.

Generally, collection efforts for unpaid utility bills may only be aimed at the contracting party, that is, the party that established the utility account. For example, if a tenant establishes a utility account, then generally only the tenant, not the property owner, may be held responsible for those bills. The reverse is also generally true: if the property owner establishes the utility account but directs that the bills be sent to a tenant, the property owner remains responsible for those bills.

In two situations collection efforts may be aimed at someone other than the contracting party. The first situation concerns property owners who are landlords. Regardless of who established the utility account, a landlord property owner can be held responsible for unpaid bills if the utility services for multiple tenants are measured on one meter or if the local government bills sewer service fees separately from water service fees.<sup>50</sup> The second situation concerns other members of the contracting party's household. Under certain scenarios unpaid utility bills incurred by one member of a household may justify the discontinuation of utility services to another household member.<sup>51</sup> However, a local government may never subject one household member to set-off debt collection or a civil suit for the unpaid utility bills of another household member.

44. G.S. Ch. 153A, Art. 15 (counties), and G.S. Ch. 160A, Art. 16 (municipalities). These provisions also authorize other services, but the four listed above are most relevant to local tax collectors.

45. G.S. 153A-277(a) (counties) and G.S. 160A-314(a) (municipalities).

46. G.S. 153A-277(b) (counties) and G.S. 160A-314(b) (counties). In contrast, water and sewer authorities must wait at least thirty days before cutting off services. G.S. 162A-9(c). Note that if a customer has filed for bankruptcy, a utility may be limited in its ability to cut off services. 11 U.S.C. § 366.

47. G.S. 153A-277(a) (counties) and G.S. 160A-314(a) (municipalities).

48. G.S. 153A-277(b) (counties) and G.S. 160A-314(b) (municipalities).

49. G.S. 153A-293 (counties) and G.S. 160A-314.1(b) (municipalities).

50. G.S. 153A-277(d) and G.S. 160A-314(d).

51. G.S. 153A-277(b1) and G.S. 160A-314(b1).

### Ambulance Service Fees

When a local government provides ambulance service to a person, that local government can obtain a lien on all real property owned by that person within the local government's jurisdiction to recover service fees. This is true regardless of whether the local government directly provides the ambulance services or pays a third-party to provide the services. These liens arise under either G.S. Ch. 44, Art. 9A or G.S. Ch. 44, Art. 9B.

Article 9A requires the local government to file the lien with the clerk of superior court within ninety days of the date it provided the ambulance services. To enforce a lien under Article 9A, the local government must initiate a civil action and obtain a judgment ordering the sale of the property subject to the lien; Machinery Act foreclosure, attachment, and levy remedies are not available.<sup>52</sup>

Eighty-nine counties possess additional enforcement remedies under Article 9B.<sup>53</sup> This article allows the covered counties to treat the ambulance service fees as a tax owed to the county and use Machinery Act remedies of attachment and garnishment to assist with their collection.<sup>54</sup> These counties also obtain a lien on real property if they file the lien with the clerk of superior court after 90 days but within 180 days of the date the ambulance services were provided.<sup>55</sup> The lien under Article 9B covers not only real property owned by the individual that received the ambulance services but also real property owned by people legally responsible for the support of the individual who received the services.<sup>56</sup> For example, if ambulance services are provided to a child by an Article 9B county, then that county would have a lien on real property owned by that child's parents. Similarly, this provision should permit an Article 9B county to attach the wages of the spouse of the person who received the ambulance services to satisfy the debt for those services.<sup>57</sup>

Neither Article 9A nor Article 9B provides for interest or penalties on late payments. However, a local government could adopt one charge or both in its schedule of fees for ambulance services.

52. G.S. 44-51.1. The local government must initiate this action before the earlier of (i) ten years from the date on which ambulance services were provided or (ii) three years from the date of the recipient's death.

53. As of the 2009 legislative session, those counties are: Alamance, Alexander, Alleghany, Anson, Ashe, Beaufort, Bladen, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Camden, Carteret, Caswell, Catawba, Chatham, Cherokee, Chowan, Cleveland, Columbus, Craven, Cumberland, Dare, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gaston, Graham, Granville, Greene, Guilford, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Johnston, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Mecklenburg, Mitchell, Montgomery, Moore, Nash, New Hanover, Onslow, Orange, Pasquotank, Pender, Person, Pitt, Polk, Randolph, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Stanly, Stokes, Surry, Swain, Transylvania, Tyrrell, Union, Vance, Wake, Warren, Washington, Watauga, Wilkes, Wilson, Yadkin, and Yancey. G.S. 44-51.8. It is unclear whether these eighty-nine counties have the option of proceeding under either Article 9A or Article 9B. In the author's view the safest course of action is to assume that these counties may proceed only under Article 9B.

54. G.S. 44-51.4. This provision does not include a statute of limitations on such collection actions. Presumably, the ten-year limitation in the Machinery Act would apply to attachments for ambulance service fees. See G.S. 105-378(a).

55. G.S. 44-51.6.

56. G.S. 44-51.5.

57. See *N.C. Baptist Hosp., Inc. v. Harris*, 319 N.C. 347 (1987) (applying the "doctrine of necessities" to hold a wife responsible for her husband's medical debt).

### Special Assessments

Special assessments are essentially additional property taxes levied to pay for the construction or improvement of particular public works such as streets, sidewalks, or water, sewer, and stormwater systems.<sup>58</sup> Special assessments target particular property owners whose properties benefit from these projects. Some special assessments require approval from a majority of the affected property owners; others may be levied unilaterally by the governing board.<sup>59</sup>

The cost of a public works project to be paid for by a special assessment is allocated among the properties that will benefit from the project. Several different allocation methods are permitted, including those based on the frontage abutting the project, the acreage served by the project, or the number of lots benefitting from the extension of an existing service.<sup>60</sup>

Special assessments are generally payable in ten annual installments, although those levied under the “critical infrastructure needs” provisions may be paid over thirty years.<sup>61</sup> Most often installments are billed with property taxes and due on September 1 each year, the same day property taxes are due.<sup>62</sup> Interest of up to 8 percent annually may apply to these installments if the governing board so provides in the resolution that authorizes the assessment.<sup>63</sup> Special assessments that are billed with property taxes accrue interest on the due date, September 1, not on the delinquency date for property taxes, January 6.

Once the governing board confirms the final assessment roll—that is, the list of properties responsible for paying the costs—the special assessments are a lien on the properties included in the roll.<sup>64</sup> This lien is senior to all other liens on the property except for federal, state, and local tax liens.<sup>65</sup> Notice of the final assessment roll must be published at least twenty days after confirmation by the governing board.

Tax collectors are responsible for collecting special assessments “in the same manner as property taxes,” meaning that the Machinery Act remedies of levy, attachment, garnishment,

58. G.S. Ch. 153A, Art. 9 and Art. 9A; G.S. Ch. 160A, Art. 10 and Art. 10A.

59. All special assessments levied under the “critical infrastructure needs” provisions of G.S. Ch. 153A, Art. 9A and G.S. Ch. 160A, Art. 10A, require petitions signed by the owners of at least 66 percent of the assessed value of real property and 50 percent of the owners that will be subject to the levy. Special assessments for the construction of sidewalks and streets under “traditional” process in G.S. Ch. 153A, Art. 9 and G.S. Ch. 160A, Art. 10, require petitions signed by owners of at least 50 percent of the lineal feet of frontage of the affected properties. Other special assessments under the “traditional” process, such as those for the extension of water and sewer service, may be levied by resolution of the governing board without input from the property owners. However, local governments generally prefer to confirm that the affected property owners desire water and sewer services before spending the money to extend those lines.

60. G.S. 153A-186 and G.S. 160A-218. In the case of special assessments levied under the new “critical infrastructure needs” provisions, the costs may also be allocated by “any other methods designed to allocate the costs in accordance with the benefits conferred.” G.S. 153A-210.2 and G.S. 160A-239.2.

61. G.S. 153A-210.5 and G.S. 160A-239.5. These provisions became law in 2008 and are scheduled to expire in 2013.

62. G.S. 153A-199 and G.S. 160A-232. Alternately, the first installment may be due with applicable interest sixty days after the assessment roll is confirmed, with subsequent installments due on the same date each year.

63. G.S. 153A-200(a) and G.S. 160A-233(a).

64. G.S. 153A-195 and G.S. 160A-228.

65. G.S. 153A-200(c) and G.S. 160A-233(c).

and foreclosure are available for help collecting delinquent payments.<sup>66</sup> If an installment payment is not paid by the due date, the entire special assessment immediately becomes due and delinquent, unless the governing board waives this right of “acceleration.”<sup>67</sup> For example, consider a \$1,000 special assessment that is payable in ten annual installments of \$100. If the property owner fails to pay the first installment when due, the entire \$1,000 becomes due and subject to enforced collection remedies. If the board waives its right to accelerate the installment payments, then only the first \$100 installment payment could be the subject of Machinery Act collection remedies. Enforcement actions must begin within ten years of the due date of the earliest installment payment included in the action.<sup>68</sup>

Unlike the other taxes and fees discussed in this bulletin, special assessments are subject to their own unique amendment provisions. Once confirmed, a special assessment may be modified only through “reassessment” in cases of “irregularity, omission, error, or lack of jurisdiction.”<sup>69</sup> This provision appears to eliminate the opportunity for a local government to negotiate or compromise a special assessment once it has been confirmed.

### **Nuisance Abatement Costs and Minimum Housing Enforcement Costs**

Although authorized by different statutes, both types of costs concern local governments’ efforts to remedy dangerous conditions on private property. These costs become a lien on the property that created the need for government action.

Nuisance abatement occurs when a local government takes action “to remove, abate, or remedy [any]thing that is dangerous or prejudicial to the public health or safety,” such as overgrown vegetation or trash-filled lots.<sup>70</sup> Municipalities may take abatement actions “summarily,” meaning without notice or hearing, but counties must provide the taxpayer with notice, the right to a hearing, and the right to appeal to the courts. Nuisance abatement liens arising under G.S. 153A-140 and G.S. 160A-193, the “traditional” abatement provisions, can be enforced using all Machinery Act remedies and have the same priority as liens for property taxes.<sup>71</sup> These liens do not need to be filed.

66. *City of Durham v. Herndon*, 61 N.C. App. 275, 300 S.E.2d 460 (1983) (authorizing use of Machinery Act remedies for collection of special assessment liens).

67. G.S. 153A-200(b) and G.S. 160A-233(b).

68. G.S. 153A-200(d) and G.S. 160A-233(d). However, if installment payments are accelerated, the ten-year limitation on enforcement for each installment payment begins to run from the date the installment payment would have been due without acceleration. For example, consider a \$1,000 special assessment payable in ten annual installments, with the first installment due on September 1, 2010. If the taxpayer fails to pay the first installment payment by that date, all ten installment payments can become immediately due and payable. However, the ten-year limitation for collecting each installment payment runs from its original due date: enforcement actions to collect the second \$100 installment payment could begin as late as August 31, 2021, which would be within ten years of September 1, 2011, the original due date of the second installment before acceleration.

69. G.S. 153A-198 (counties) and G.S. 160A-231 (municipalities).

70. G.S. 153A-140 (counties) and G.S. 160A-193 (municipalities).

71. Priority refers to the order in which liens are paid if a property is subject to multiple liens. Generally, property tax liens have the highest priority, followed by special assessment liens, and then by other liens, such as mechanics’ liens and mortgage liens. For a detailed discussion of lien priority, please see

Alternately, local governments may take action to abate nuisances under the statutes that provide for general enforcement of their ordinances, which require a court order before the local government may proceed.<sup>72</sup> Some local governments prefer this alternate approach because it may provide additional defenses to trespass allegations or other objections from the landowner. Nuisance abatement liens arising under this approach are equivalent to mechanics' liens arising under G.S. Ch. 44A, Art. 2. These liens must be filed with the clerk of superior court and can be enforced only through a civil action. They do not have "super-priority" as do property tax liens.<sup>73</sup>

Minimum housing standards enforcement actions are aimed at dwellings that are "unfit for human habitation" and require repair, closing, or demolition.<sup>74</sup> Before taking action to enforce minimum housing standards, a local government must (1) pass an ordinance finding that unfit dwelling conditions exist and (2) satisfy certain notice and hearing requirements.<sup>75</sup> Minimum housing standards enforcement liens are the equivalent of liens for special assessments. These liens are senior to all liens except tax liens and may be enforced through Machinery Act foreclosure, attachment, and levy procedures.<sup>76</sup>

## Refund and Release

The Machinery Act permits the refund or release of property taxes only in two very limited circumstances: when the taxes (1) were illegal or (2) were imposed due to clerical error.<sup>77</sup> This provision effectively prohibits the negotiation, waiver, or compromise of property taxes.

However, this restrictive provision does *not* apply to other taxes or fees collected by local governments, even for those that may be collected using Machinery Act remedies. None of the authorizing statutes for those taxes and fees specifically incorporate the Machinery Act's refund and release provisions.<sup>78</sup> As a result, local governments are generally free to develop their own

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Christopher B. McLaughlin, "The Property Tax Lien," *Property Tax Bulletin* No. 150 (October 2009), [www.sog.unc.edu/pubs/electronicversions/pdfs/ptb150.pdf](http://www.sog.unc.edu/pubs/electronicversions/pdfs/ptb150.pdf).

72. G.S. 153A-123(e) (counties) and G.S. 160A-175(e) (municipalities).

73. G.S. 44A-13.

74. G.S. 160A-441 (applies to both counties and municipalities).

75. G.S. 160A-443.

76. This statute also suggests that housing standards enforcement liens must be filed in the same manner as are special assessment liens. However, there is no requirement that special assessment liens be filed, which calls in to question exactly what filing requirement, if any, applies to housing standard enforcement liens. To protect their interests, local governments that incur housing standard enforcement costs should consider filing their liens both with the clerk of superior court in their county and with the county register of deeds. Even if these filings are not required, they should put prospective buyers of the property on notice of the lien and increase the likelihood that the lien will be satisfied without additional enforcement actions.

77. G.S. 105-381. For a detailed examination of this provision, please see Christopher B. McLaughlin, "The Refund and Release of Property Taxes," *Property Tax Bulletin* No. 153 (April 2010), [www.sog.unc.edu/pubs/electronicversions/pdfs/ptb153.pdf](http://www.sog.unc.edu/pubs/electronicversions/pdfs/ptb153.pdf).

78. For example, the special assessment provisions state that they may be "delivered to the tax collector for collection in the same manner . . . as property taxes." G.S. 153A-195 (counties); G.S. 160A-228 (municipalities). G.S. 105-381, which governs the refund and release of property taxes, is *not* a collection provision. It is a provision for the elimination of a tax that should never have been levied. Therefore, special assessments (and minimum housing standards enforcement costs, which are collected as special

refund and release procedures for the taxes and fees discussed in this bulletin. The only exception to this rule is special assessments, which are governed by their own amendment procedures and can be modified only in cases of “irregularity, omission, error or lack of jurisdiction.”<sup>79</sup>

For all other taxes and fees discussed in this bulletin, a local government could choose to adopt the Machinery Act refund and release provisions or could adopt more flexible provisions that permit the consideration of a debtor’s economic distress or other factors. Regardless of the policy that is chosen, local governments would be wise to adopt some type of formal refund and release policies for all of their taxes and fees before controversies arise. Such policies should be based on objective factors to avoid accusations of favoritism or discrimination.

### Statutes of Limitation: Other Local Taxes

None of the provisions governing the taxes discussed in this bulletin include a statute of limitations. However, certain remedies for these taxes are limited by provisions found elsewhere in the General Statutes.

Attachment and garnishment and levy and sale can be used for the collection of local taxes “under the rules and procedures proscribed by the Machinery Act.”<sup>80</sup> It follows that the Machinery Act’s ten-year limitation on the use of attachment and garnishment and levy and sale to collect property taxes also applies to the use of these remedies to collect all other local taxes.<sup>81</sup>

Criminal misdemeanor prosecutions of tax ordinance violations are subject to the general two-year limitation on all misdemeanor prosecutions.<sup>82</sup>

The two remaining remedies for the collection of other local taxes, civil lawsuits and set-off debt collection, are not subject to any statutes of limitation. Core governmental functions such as tax collection are exempt from the various general statutes of limitation found in Chapter 1 of the General Statutes.<sup>83</sup> Presumably this means that local governments can turn to civil lawsuits and the set-off debt collection process at any time, regardless of when the taxes in question were levied.

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assessments) are not subject to G.S. 105-381. The same argument applies to nuisance abatement costs, the authorizing statutes for which state that they shall be “collected as property taxes.” See G.S. 153A-140 (counties); G.S. 160A-193 (municipalities). The statutes authorizing the use of Machinery Act remedies for the collection of solid waste fees use slightly different language. Solid waste fees “may be billed with property taxes, may be payable in the same manner as property taxes, and, in the case of nonpayment, may be collected in any manner by which delinquent personal or real property taxes can be collected.” G.S. 153A-293 (counties); G.S. 160A-314.1(b). However, even this broader language does not implicate G.S. 105-381, which is neither a billing nor a payment nor a collection provision. This means that solid waste fees likely can be released or refunded without regard for G.S. 105-381.

79. G.S. 153A-198(counties) and G.S. 160A-231(municipalities). See “Special Assessments,” above, for more details.

80. G.S. 153A-147 (counties) and 160A-207 (municipalities).

81. G.S. 105-378(a) prohibits the use of Machinery Act remedies unless the remedy is initiated within ten years of the date the taxes became due.

82. G.S. 15-1.

83. See *City of Greensboro v. Morse*, 197 N.C. App. 624 (2009).

## Statutes of Limitation: Fees and Costs

Public enterprise utility fees are subject to varying statutes of limitation:<sup>84</sup>

Sewer (Wastewater) Utility Fees:	Three years <sup>85</sup>
Stormwater Utility Fees:	Three years <sup>86</sup>
Water Utility Fees:	Four years <sup>87</sup>
Solid Waste Collection Fees:	Three years if billed as are other public utility fees <sup>88</sup> Ten years if billed with property taxes <sup>89</sup>
Ambulance Service Fees:	For foreclosure, earlier of ten years from date of services or three years from the death of the person who received the services <sup>90</sup> For attachment and garnishment, ten years <sup>91</sup>

The three costs discussed in this bulletin—special assessments, minimum housing standard enforcement costs, and public nuisance abatement costs—are all subject to ten-year limitations on collections.<sup>92</sup>

84. For more details on the collection of certain public enterprise fees, please see Kara Millonzi, *A Guide to Billing and Collecting Public Enterprise Utility Fees for Water, Wastewater, and Solid Waste Service* (UNC School of Government, 2008).

85. G.S. 1-52(1), the general statute of limitations for actions based on contracts.

86. *Id.*

87. G.S. 25-2-725(1), part of the North Carolina version of the Uniform Commercial Code that governs the sale of goods.

88. *Id.*

89. G.S. 105-378(a). This limitation applies only if the local government includes its solid waste fees on its property tax bills and adopts an ordinance stating that the fees are payable and to be collected in the same manner as property taxes.

90. G.S. 44-51.1.

91. G.S. 44-51.4 states that Article 9B counties may “treat the amount due for such services as if it were a tax due to the county or municipality and may proceed to collect the amount through the use of attachment and garnishment proceedings set out in G.S. 105-368.” Presumably this reference to the Machinery Act attachment and garnishment process incorporates the Machinery Act’s ten-year limitation found in G.S. 105-378(a).

92. For special assessments, see G.S. 153A-200(d) (counties) and 160A-233(d) (municipalities). Minimum housing standard enforcement costs for both counties and municipalities are collected as special assessments. G.S. 160A-443(6)(a). Nuisance abatement costs are collected as property taxes, meaning the Machinery Act’s ten-year limitation applies. G.S. 153A-140 (counties) and 160A-193 (municipalities).