



# Tax Refund Request

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Board of County Commissioners

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# N.C. Gen. Stat. § 105-380

- The governing body of the taxing unit is prohibited from releasing, refunding, or compromising, all or any portion of the taxes levied against any property within its jurisdiction except as provided by N.C. Gen. Stat. § 105-381.
- Any tax that has been released, refunded or compromised in violation of this section may be recovered from any member or members of the governing body who voted for the release, refund or compromise by a resident of the taxing unit.



## N.C. Gen. Stat. § 105-381

- A taxpayer may request a tax refund from the County for the following reasons:
  - a. A tax imposed through a clerical error.
  - b. An illegal tax.
  - c. A tax levied for an illegal purpose.
- The Commissioners determine whether the refund request meets one of the three categories.



## N.C. Gen. Stat. § 105-381

- If the Commissioner deny the refund request, the taxpayer has three (3) years from the date of the Commissioners denial to bring a civil action in civil court.
- If the taxpayer's lawsuit is successful, the County pays 6% interest and costs.
- It is unclear from the Statute when the interest starts to accrue or what type of costs will be awarded by the Court.



# Tangible Personal Property Listings

- Pursuant to N.C. Gen. Stat. § 105-274, all property, real and personal is subject to taxation unless excluded or exempted by statute.
- Each year, pursuant to § 105-304, every taxpayer is required to submit a list of tangible personal property (herein “TPP”) kept in Buncombe County to the Tax Assessor.
- Pursuant to § 105-306, taxable personal property shall be listed in the name of the owner on the day as of which property is to be listed for taxation, and it shall be the duty of the owner to list the property.



# Facts

- GE Industrial, GE Capital and General Electric Company are separate legal entities.
- In 2019 and 2020, GE Capital submitted a list of equipment kept at 401 Sweeten Creek Industrial Park (herein “401 SCIP”) to the Tax Assessor.
- In 2019 and 2020, GE Industrial submitted a list of equipment kept at 401 SCIP to the Tax Assessor.
- In 2019 and 2020, GE submitted a list of equipment kept at 401 SCIP to the Tax Assessor.



# Facts

- Based on the listings filed by GE Industrial, GE Capital and General Electric Company, the County determined the assessed value for each entity's TPP for 2019 and 2020.
- Based on the assessed value of the TPP, the County sent each entity a tax bill for 2019 and 2020.
- None of the entities challenged the valuation of the TPP to the Board of Equalization and Review and each entity paid their tax bill for 2019 and 2020.



# Facts

- During an audit in 2022, GE discovered that in several instances GE Capital and GE listed the same equipment on its TPP listings for 2019 and 2020.
- During an audit in 2022, GE discovered that in several instances GE Industrial and GE listed the same equipment on its TPP listings for 2019 and 2020.
- On July 19, 2023, GE Healthcare Finance Service, LLC on behalf of GE Capital and GE Industrial requested a tax refund.





# General Electric's Refund Request

- It is GE's position that it was taxed twice for the same TPP in tax years 2019 and 2020.
- GE is alleging that being taxed twice for the same property, regardless of fault, constitutes double taxation which is an illegal tax.
- GE is requesting a total refund from Buncombe County of \$279,990.00.
- GE has also made this refund request to the City of Asheville for its portion of the taxes paid in the amount of \$227,007.



# Double Taxation

- Double taxation is a legal theory found in several legal treatises whereby the taxing authority taxes the same property, for the same purpose, within the same jurisdiction, during the same taxing period and there must be the same character of tax.
- Double taxation is not looked at favorably by the legal treatises.
- Double taxation has never been applied by the North Carolina Appellate Courts where the taxpayer made a listing error on real or personal property.



# The Law in North Carolina

- The North Carolina Court of Appeals defines an illegal tax as a tax that is imposed by the taxing authority without authority or taxing a property that has a valid exemption.
- Overassessment is not one of the three valid defenses pursuant to N.C. Gen. Stat. § 105-381(a)(1).
- There is no North Carolina Constitutional provision that expressly prohibits double taxation.
- Listing and valuation errors are appealed to the Board of Equalization and Review.



# Staff Recommendation

- Since GE did not appeal the listing errors and the County had legal authority to assess the tax based on each taxpayer's submitted listing, Staff recommends that the Commissioners deny GE's July 19, 2023 request for a tax refund on taxes paid in 2019 and 2020.



# Questions?

