



# A Citizens' Guide to the Revaluation and Assessment of Property by North Carolina Counties

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These days, any discussion of the process of appraising land, homes, and other buildings for tax purposes, particularly if the property is located at the coast, on a lake, in the mountains, or in the fast-growing Triangle (in other words, pretty much anywhere in North Carolina) is likely to include the term “sticker shock.” Unfortunately, such discussions also frequently include taxpayers’ expressions of frustration with, confusion about, and mistrust of the assessment process. More than half of North Carolina counties revalue land, homes, buildings, and other structures, defined as *real property*, only once every eight years, and many taxpayers have limited knowledge of the laws and procedures governing the valuation and assessment of this property for local government<sup>1</sup> taxation. Infrequent revaluations in high-growth areas can result in individual valuations that double, triple, or even quadruple from one revaluation to the next. In contrast, business personal property and motor vehicles are assessed for taxation every year by North Carolina counties, and that process generally attracts little notice—let alone sticker shock. The differences in taxpayer sentiment may be attributed to several factors, among them the varying ways in which real and personal property are added to the tax rolls (the former by the tax assessor and the latter generally by the taxpayer), the shorter cycle for revaluation of personal property as compared to real property, and the depreciation of personal property over time as contrasted with the typical appreciation of real property. Certainly the exclusion from taxation of nonbusiness personal property (other than classified motor vehicles) plays a role since taxes on property used to produce income are likely to be considered a cost of doing business rather than an unavoidable, burdensome obligation imposed on a citizen’s home or land.

This bulletin explains the legal framework underlying the assessment of property by North Carolina counties as well as the laws and procedures governing review and appeal of these assessments. This bulletin may be of particular interest to local officials and citizens in the thirty-eight counties in which new countywide real property valuations became effective January 1, 2008, or will become effective January 1, 2009. For a list of these counties, see Table 1.

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1. Real property includes land, buildings, and permanent fixtures, as well as rights and privileges pertaining to land, such as mineral or forestry rights. Personal property includes all other property, both tangible and intangible, that is not permanently affixed to land.

**Table 1. Counties with Revaluations of Real Property in 2008 and 2009**

<u>Effective January 1, 2008</u>	<u>Effective January 1, 2009</u>
Cabarrus	Alamance
Caswell	Caldwell
Cherokee	Chatham
Cleveland	Davie
Durham	Duplin
Jackson	Edgecombe
Lincoln	Forsyth
Perquimans	Gates
Pitt	Harnett
Richmond	Hyde
Surry	Lenoir
Union	Martin
Vance	Mecklenburg
Wake	Mitchell
Wilson	Nash
Yancey	Orange
	Person
	Polk
	Rockingham
	Stanley
	Stokes
	Swain
	Transylvania
	Tyrrell
	Warren
	Yadkin

## The Role of the County Assessor

The county assessor appraises and assesses all property in the county in accordance with the Machinery Act, Subchapter II of Chapter 105 of the North Carolina General Statutes. The assessor creates an abstract or property record card for all real property in the county.<sup>2</sup> This process is referred to as a “permanent listing system” and its implementation, which began in the 1990s, marked a departure from traditional listing methodology in which the duty to list property subject to taxation was borne by the owners of real and personal property. Even in a permanent listing system, however, owners of real property remain responsible for listing buildings and other improvements valued at more than \$100 that have been acquired, begun, erected, damaged, or destroyed since the time of

2. N.C. GEN. STAT. § 105-303(b) (hereinafter G.S.).

the last appraisal.<sup>3</sup> The listing abstract or property record card reflects the owner of record as of the listing date, which generally is January 1.<sup>4</sup> The term “owner of record” denotes ownership as reflected in a document of public record—that is, a deed, judgment, probated will, or other document reflecting ownership filed in the official record maintained by the clerk of superior court or the register of deeds.

Unlike assessors in most other United States jurisdictions<sup>5</sup> county assessors in North Carolina are appointed rather than elected. And unlike most county employees, tax assessors are appointed by the county board of commissioners rather than by the county manager.<sup>6</sup> The term of office is two years, beginning on July 1 of odd-numbered years.<sup>7</sup> An assessor who has completed a two-year term and has been certified by the Department of Revenue may be reappointed for a four-year term, at the discretion of the board. During his or her appointed term, an assessor is not an employee at will, whose employment may be terminated at any time. Instead, an assessor may only be removed from office for “good cause,”—that is, for a reason that affects the assessor’s performance of the duties of the office, is substantial, and directly affects the public interest.<sup>8</sup> Before an assessor is removed from office for such a reason, the board of commissioners must provide the assessor notice in writing of the reasons for the impending dismissal and provide the assessor an opportunity to appear and be heard at a public session of the board.

A person appointed as assessor must be at least twenty-one years old as of the date of employment and have a high school diploma or certificate of equivalency or, alternatively, have five years employment experience in a vocation reasonably related to the duties of a county assessor.<sup>9</sup> Within two years of the date of appointment, an assessor must pass courses approved by the Department of Revenue covering the following topics: (1) state law governing the listing, appraisal, and assessment of property for taxation; (2) the theory and practice of estimating the fair market value of real property for ad valorem tax purposes; (3) the theory and practice of estimating the fair market value of personal property for ad valorem tax purposes; and (4) property tax assessment administration.<sup>10</sup> As a practical matter, these requirements are satisfied by completing and passing the examination in the following courses: (1) Property Tax Listing and Assessing in North Carolina, a course co-sponsored by the UNC School of Government and the Department of Revenue; (2) Real Property Appraisal, International Association of Assessing Officers (IAAO) Course 101; (3) Personal Property Appraisal, a Department of Revenue course; and (4) Assessment Administration, IAAO Course 400. After completing and passing these four courses and exams, the assessor must also pass a comprehensive examination in

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3. G.S. 105-303(b)(2); G.S. 105-309(c)(3), (4).

4. G.S. 105-285. An exception applies to exempt real property transferred after January 1 but before July 1. This property is listed in the name of the new owner of record.

5. Gary C. Cornia & Lawrence C. Walters, *Full Disclosure: Controlling Property Tax Increases During Periods of Increasing Housing Values*, 59 NATIONAL TAX JOURNAL, No. 3, 2006, at 736.

6. See G.S. 153A-82 (providing that manager shall appoint all employees except those who are elected or whose appointment is otherwise provided by law). The county tax collector, county attorney, county manager, and county clerk also are appointed by the board of commissioners. See G.S. 105-349 (county tax collector); G.S. 153A-114 (county attorney); G.S. 153A-81 (county manager); G.S. 153A-111 (county clerk).

7. Assessors must, on occasion, be appointed during even-numbered years if there is a vacancy in the office. Given that the Machinery Act sets forth a reappointment schedule based upon odd-numbered-year reappointments, boards of commissioners appointing assessors in even-numbered years should make these appointments effective through June 30 of the next odd-numbered year. The board may then resume the Machinery Act schedule of appointments July 1 of the odd-numbered year.

8. 63C AMERICAN JURISPRUDENCE, PUBLIC OFFICERS AND EMPLOYEES, § 183 (2d ed. 2005).

9. G.S. 105-294(b).

10. G.S. 105-294(b)(3).

property tax administration given by the Department of Revenue. Until an assessor completes these requirements, the assessor is deemed to serve in an “acting capacity.”<sup>11</sup> Once an assessor meets these requirements, the assessor is certified by the Department of Revenue. An acting assessor who fails to qualify for certification within two years of appointment may not be reappointed until all of the certification requirements are met.<sup>12</sup> Once certified, an assessor must complete at least thirty hours of instruction in the appraisal or assessment of property every two years to remain eligible for reappointment.

Upon appointment, an assessor must take the oath constitutionally required of all persons elected or appointed to office and also must promise not to allow his or her “actions as assessor to be influenced by personal or political friendships or obligations.”<sup>13</sup> This additional oath requirement emphasizes the necessity of impartiality on the part of the assessor.

The assessor cannot, of course, single-handedly fulfill the duties of the office. Accordingly, the assessor is authorized “within budgeted appropriations” to “employ listers, appraisers, and clerical assistants necessary to carry out the listing, appraisal, assessing, and billing functions required by law.”<sup>14</sup> Each person employed by an assessor as a real property or personal property appraiser must, during the first year of employment and every other year thereafter, attend a course of instruction in the employee’s area of work.<sup>15</sup> In addition, at the end of the first year of employment, the appraiser must pass a comprehensive examination in property tax administration conducted by the Department of Revenue. The Department of Revenue has adopted regulations that permit waiver of the comprehensive exam requirement if the appraiser completes and passes the examination in Property Tax Listing and Assessing in North Carolina and the basic appraisal course for either real or personal property, IAAO Course 101, or Personal Property Appraisal, depending upon the appraiser’s area of specialty.<sup>16</sup> The department also may waive the examination requirement if the appraiser has been designated a North Carolina Certified Appraiser by the North Carolina Association of Assessing Officers (NCAAO) or a Certified Assessment Evaluator (CAE) by the IAAO.<sup>17</sup>

County boards of commissioners also are authorized, upon recommendation of the assessor, to appoint one or more assistant assessors.<sup>18</sup> Boards seldom exercise this authority. Boards also may, and frequently do, employ appraisal firms, mapping firms, and other outside contractors to assist appraisers in performing their duties. The most common situation in which such outside contractors are employed is when a county revalues its real property. Any person employed by an appraisal firm whose duties include the appraisal of property for the county must pass a comprehensive exam administered by the Department of Revenue.<sup>19</sup> In hiring an appraisal firm, a board of commissioners must give primary consideration to firms registered with the Department of Revenue.

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11. G.S. 105-204(c).

12. G.S. 105-294(c).

13. G.S. 105-295.

14. G.S. 105-296(b).

15. *Id.*

16. N.C. DEPARTMENT OF REVENUE, PROPERTY TAX DIVISION, REGULATION FOR TRAINING AND CERTIFICATION OF COUNTY ASSESSORS, COUNTY APPRAISERS, AND APPRAISAL FIRM APPRAISERS IN NORTH CAROLINA (2006).

17. *Id.*

18. G.S. 105-297.

19. This exam differs from the comprehensive exam for county appraisers. If an appraiser for an appraisal firm passes the School of Government and Department of Revenue Property Tax Listing and Assessing in North Carolina course along with either IAAO 101, for real property appraisers, or the Department of Revenue’s business personal property course, for personal property appraisers, the comprehensive exam requirement is waived. N.C. DEPARTMENT OF REVENUE, PROPERTY TAX DIVISION, *supra* note 16.

## Revaluation of Real Property

North Carolina counties must conduct a countywide revaluation of all real property within the county at least every eight years.<sup>20</sup> Revaluation is a labor- and time-intensive process. The typical county has about forty thousand parcels, all of which must be separately appraised. Many of these parcels include buildings, structures, and fixtures that must be appraised along with land.<sup>21</sup> Counties must accomplish this task for each parcel at a fraction of the cost of a single-property or “fee” appraisal. On average, counties spend less than \$20 per parcel in a revaluation.<sup>22</sup> About half of the state’s counties have shortened the number of years between revaluations to periods ranging from four to seven years. In addition, real property may be reappraised in a non-revaluation year if the value of the property has changed for some reason other than an economic condition affecting the county in general, such as a rezoning of the property.<sup>23</sup> Personal property, as noted above, is appraised for taxation every year based on its value on January 1.<sup>24</sup>

## Valuation Standard

The uniform standard governing the county assessor’s appraisal of all property, real and personal, is that property be *appraised* at its market value—that is, the price at which it would change hands between a willing and financially able buyer and willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of all the uses to which the property is adapted and for which it is capable of being used.<sup>25</sup> Property is, in turn, *assessed* for taxation based on its appraised value, with the exception of agricultural, horticultural, or forestry property that qualifies for taxation based upon its present-use value and public service company system property assessed by the Department of Revenue based in part on the effective rates of taxation in a given county.<sup>26</sup>

To accomplish the task of valuing tens of thousands of parcels as of the January 1 revaluation date, a county must utilize the methodology of mass appraisal rather than the methodology employed in single-property appraisals, which are commonly performed at the behest of financial institutions.<sup>27</sup> Mass appraisal is the systematic appraisal of groups of properties, commonly referred to as neighborhoods, as of the controlling date (January 1 of the year of reappraisal) using standardized procedures and statistical testing.<sup>28</sup> A large urban city, for example, may stratify property among thousands of neighborhoods for purposes of conducting a countywide revaluation.<sup>29</sup> In a mass appraisal

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20. G.S. 105-286.

21. According to data maintained by the Department of Revenue, Property Tax Division, as of September 2007, the mean number of parcels per county was 50,845 and the median was 37,250.

22. G.S. 153A-150 requires each county to report to the Department of Revenue the terms of the county’s eight year reappraisal budget, which includes information on estimated costs per parcel. The average amount budgeted per parcel for revaluation years 2008 and later is \$18.46.

23. G.S. 105-287.

24. G.S. 105-285. The value of a registered motor vehicle is determined annually as of January 1 of the year the taxes become due. G.S. 105-330.2. Taxes on registered motor vehicles are due the first day of the fourth month following the date the registration expires. G.S. 105-330.4(a).

25. G.S. 105-283.

26. G.S. 105-284.

27. PROPERTY ASSESSMENT VALUATION CH. 13, at 285 (IAAO, 2d ed. 1996).

28. PROPERTY ASSESSMENT VALUATION, *supra* note 27, at 285.

29. *See, e.g.*, WAKE COUNTY GOVERNMENT, WHAT’S YOUR PROPERTY WORTH? THE ABCs OF WAKE COUNTY’S 2008 PROPERTY REVALUATION PROJECT (2007) (stating that Wake County designated 4,200 appraisal neighborhoods in its 2008 revaluation).

system, the assessor must make valuation judgments about *groups* of properties rather than *single* properties and “must be able to develop, support, and explain standardized adjustments in a valuation model among use classes, construction types, neighborhoods, and other property groups.”<sup>30</sup>

There are three generally recognized methodologies for valuing property, commonly referred to as “approaches to value”: the cost approach, the sales comparison approach, and the income approach.<sup>31</sup> The cost approach estimates value as the sum of the depreciated improvement cost and the value of the site, or land, as if vacant and available for development at its highest and best use.<sup>32</sup> The sales comparison approach, as its name indicates, compares the property being appraised with similar properties that have recently sold.<sup>33</sup> This approach is most applicable when sufficient sales data is available for similar properties. It is commonly used to appraise single-family residences and land, but it also is an effective approach for valuing multi-family and commercial properties where sufficient sales data for these types of properties is available.<sup>34</sup> The third approach, the income approach, defines value as the present worth of future benefits arising from ownership of a property. The income approach to value is based on the principle that something is worth what it will earn.<sup>35</sup> To value property under the income approach, the assessor must analyze the income stream in terms of quantity, quality, and duration and apply an appropriate capitalization rate to convert the stream to market value.<sup>36</sup> Stated in terms of an equation, value equals income divided by rate.<sup>37</sup> Thus, “the capitalized value of a given income stream varies directly with the amount of income and inversely with the capitalization rate” and even “[s]light variations in the capitalization rate can result in large variations in value.”<sup>38</sup>

## Schedule of Values

The assessor’s first step in conducting a countywide revaluation is to prepare uniform schedules of values, standards, and rules to be used in appraising real property at its true value and at its present-use value.<sup>39</sup> These schedules serve as the county’s mass appraisal model and are implemented by means of a computer assisted mass appraisal system (CAMA). The schedules incorporate building cost figures derived from national data that have been adjusted to reflect local costs, sales data based upon qualifying arms-length sales of property grouped by appraisal neighborhood, and income and expense formulas applicable to commercial property and derived from local and national sources. The schedule of values, standards, and rules sets forth values per appropriate unit of measurement for use in appraising land and buildings. For example, the value of a dwelling typically is based on an established amount per square foot, while the value of land is based upon a set amount per square foot, lot, acre, or homesite, depending upon the highest and best use of the land. The land value per appropriate unit of measurement also will vary depending on the neighborhood in which the land is situated. The schedule of values, standards, and rules also sets forth factors warranting adjustments

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30. PROPERTY ASSESSMENT VALUATION, *supra* note 27, at 285.

31. *Id.* at 42.

32. *Id.* at 43–44.

33. *Id.* at 45.

34. *Id.*

35. *In re Southern Ry.*, 313 N.C. 177, 328 S.E.2d 235 (1985).

36. PROPERTY ASSESSMENT VALUATION, *supra* note 27, at 46.

37. *In re Southern Ry.*, 313 N.C. at 185, 328 S.E.2d at 241.

38. *Id.*

39. G.S. 105-317(c).

in valuations for various types of property. For example, a schedule may provide for adjustments to the base value of dwellings for square footage of an upper story, based upon grade of construction, to account for depreciation, and to include the value of items such as fireplaces, finished basements, and air conditioning. A county's schedule also typically authorizes adjustments to land value based on factors such as homesite size, excess acreage, road frontage, topography, zoning, the presence of easements, and other factors. A schedule also typically prescribes ranges of characteristics and corresponding percentage adjustments for recognized factors.

The schedules of values, standards, and rules must be reviewed and approved by the board of county commissioners before January 1 of the year they are applied, though the assessor may collect data needed to apply the schedules before they are adopted by the board.<sup>40</sup> The assessor must submit the proposed schedules, standards, and rules to the board at least twenty-one days before the meeting at which the board will consider the schedule.<sup>41</sup> On the same day the schedules are submitted to the board, the assessor must file a copy of the proposed schedules in the assessor's office to be available for public inspection. Upon receipt of the schedules, the board of commissioners must publish a statement in a newspaper with general circulation in the county stating that the schedules have been submitted and are available for inspection.<sup>42</sup> The newspaper notice also must specify the time and place of the public hearing regarding the proposed schedules.<sup>43</sup> The board must hold this public hearing at least seven days before adopting the final schedules.<sup>44</sup> The true value and present-use value schedules may be approved separately or simultaneously, in the board's discretion.<sup>45</sup>

When the board approves the final schedules of values, standards, and rules, it must issue an order adopting the schedules.<sup>46</sup> Notice of the order must be published once a week for four consecutive weeks in a newspaper with general circulation in the county, with the last publication taking place at least seven days before the last day for challenging the validity of the schedule through an appeal to the Property Tax Commission, the statewide board of equalization and review.<sup>47</sup> The published notice must state that the schedules have been adopted and are open to examination in the office of the assessor and that a property owner who asserts that the schedules are invalid may appeal to the Property Tax Commission within thirty days of the first publication of the notice.

### **Notification of the Appraised Value of Real Property**

Before the first meeting of the board of equalization and review, the assessor must provide written notice of a change in the appraisal of real property to the taxpayer<sup>48</sup>—that is, the owner of the property—at the owner's last known address.<sup>49</sup> This notice must be provided for appraisal changes

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40. *Id.*

41. G.S. 105-317(c)(1).

42. G.S. 105-317(c)(2).

43. *Id.*

44. *Id.*

45. G.S. 105-302(c).

46. G.S. 105-317(c)(3).

47. *Id.*

48. The term *taxpayer* is defined as "any person whose property is subject to ad valorem property taxation by any county or municipality and any person who, under the terms of this Subchapter, has a duty to list property for taxation. For purposes of collecting delinquent ad valorem taxes assessed on real property under G.S. 105-366 through G.S. 105-375, 'taxpayer' means the owner of record on the date the taxes become delinquent and any subsequent owner of record of the real property if conveyed after that date." G.S. 105-273(17).

49. G.S. 105-296(i).

applicable to real property in revaluation and nonrevaluation years. Though the Machinery Act does not require it, most assessors provide an informal appeal process to afford taxpayers an opportunity to inform the assessor of their objections to an appraisal or assessment or to the denial of a request for exemption. If the assessor finds the taxpayer's objection well-founded, the assessor may correct the error in the property assessment before the board of equalization and review convenes.

## Review of Appraisals and Assessments

Each county has a board of equalization and review responsible for reviewing tax lists and hearing taxpayer appeals. The board of commissioners serves as the county board of equalization and review unless it appoints by resolution a special board to carry out these duties.<sup>50</sup> Many boards of commissioners find that appointing a separate board of equalization and review permits review of county assessments by a more representative cross-section of the community. For instance, the board of equalization and review might be made up of private appraisers, real estate professionals, and others with a particular expertise in the valuation of property. The appointment of a separate board also shields the review process from political pressures. In a handful of counties, boards of equalization and review were created and continue to operate pursuant to the provisions of a local act enacted by the General Assembly.<sup>51</sup> The board of equalization and review must convene no earlier than the first Monday in April and no later than the first Monday in May. While the Machinery Act provides that the board, in a non-revaluation year, "shall complete its duties on or before the third Monday following its first meeting unless . . . a longer period of time is necessary," the Act is not explicit about the shortest amount of time the board may meet.<sup>52</sup> In some counties, the board convenes and adjourns the same day. The Machinery Act's reference to meetings held "[f]rom the time of [the board of E & R's] first meeting until its adjournment"<sup>53</sup> appears to contemplate that there will be more than one meeting. It bears noting that the very purpose of the board is to provide taxpayers an opportunity for a meaningful hearing and review of the assessment of their property. Convening and adjourning on the same day is not a practice designed to meet that objective. The author's interpretation of the statute, in light of its vague language and its underlying purpose, is that the board must have at least two meetings, though a contrary interpretation certainly is plausible. In revaluation years, the board must adjourn by December 1; in other years it must adjourn by July 1. This adjournment signals the end of the appeal period for real property, but not the end of the board's work. The board may remain in session after adjournment to consider appeals filed before adjournment and timely appeals from valuation changes made by the board itself, notice of which was mailed fifteen days before the board's adjournment.<sup>54</sup> A taxpayer may appeal to the board by submitting a written request for a hearing or by personally appearing before the board at one of its sessions.<sup>55</sup>

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50. G.S. 105-322.

51. *See, e.g.*, 1991 N.C. Sess. Laws ch. 871 (Durham County); 1989 N.C. Sess. Laws ch. 606 (Cumberland County); 1981 N.C. Sess. Laws ch. 509 (Mecklenburg County).

52. G. S. 105-322(e).

53. *Id.*

54. The board also may consider appeals relating to discovered property and certain other appeals not related to the appraisal and revaluation of real property discussed here. G.S. 105-322.

55. Notice of the date, hours, place, and purpose of the board's first meeting must be published at least three times in a newspaper with general circulation in the county, with the first publication at least ten days before the first meeting. The notice also must state the dates and hours of the board's subsequent meetings and the date on which it expects to adjourn. G.S. 105-322(f).

## Standing

Consideration of taxpayer appeals comprises the lion's share of the work of all boards of equalization and review, or "boards of E&R," as they are commonly termed. Boards of E&R are required by statute "to hear appeals from any taxpayer who owns or controls property taxable in the county with respect to the listing or appraisal of the taxpayer's property or the property of others."<sup>56</sup> While the statute is broadly written, the courts have determined that the legal doctrine of standing permits a taxpayer to contest the valuation of property of others *only* when the appellant taxpayer is in some way aggrieved by that valuation.<sup>57</sup> Given that "[t]he purpose of the statutory requirement that all property be appraised at its true value in money is to assure, as far as practicable, a distribution of the burden of taxation in proportion to the true values of the respective taxpayers' property holdings," a taxpayer is only aggrieved by the valuation of another's property when that property has been undervalued or underassessed by the county assessor, thereby resulting in the taxpayer bearing a disproportionately greater share of the overall tax burden.<sup>58</sup> The overvaluation of another's property, which would lessen the tax burden borne by other property owners, including the taxpayer, is not a matter that aggrieves the taxpayer and, as such, is not a matter that the taxpayer may appeal.<sup>59</sup>

In *In re Whiteside Estates*,<sup>60</sup> a Jackson County taxpayer filed an appeal with the county board of equalization and review challenging the classification of a 227-acre parcel owned by Whiteside Estates, a family corporation, for taxation based on its present-use value as forestland. The board determined that the property did not meet present-use value requirements and notified Whiteside of its right to a hearing. At Whiteside's request, the board conducted another hearing and again determined that the property had been improperly classified as forestland qualifying for present-use-value taxation. The board ordered the property assessed at its market value of \$719,000 rather than its present-use value of \$102,800. Whiteside appealed to the Property Tax Commission, contending that the initial appeal to

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56. G.S. 105-322(g)(2).

57. *In re Whiteside Estates*, 136 N.C. App. 360, 525 S.E.2d 196 (2000).

58. *Id.* (quoting *In re King*, 281 N.C. 533, 189 S.E.2d 158 (1972)).

59. *See Brock v. Property Tax Comm'n*, 290 N.C. 731, 228 S.E.2d 254 (1976). Brock and several unidentified property owners appeared before the Jones County Board of Equalization and Review to request a 25 percent reduction in the appraised values of all farm property in Jones County. When their request was denied, Brock and eleven other taxpayers appealed to the Property Tax Commission. Brock later sought to have ninety-nine additional landowners added to the complaint. The Property Tax Commission dismissed all of the appeals on the basis that the taxpayers sought to attack the schedule of values rather than the appraised value of their own property and thus lacked standing to pursue the appeal. The taxpayers appealed to Wake Superior Court, which was, at that time, the body to which Property Tax Commission appeals were filed. The superior court affirmed the Property Tax Commission decision. The taxpayers then appealed to the Court of Appeals, which also affirmed the Property Tax Commission's decision, though one judge dissented from the opinion. The taxpayers appealed to the North Carolina Supreme Court, which reversed the lower court's decision, determining that the initial complainants had challenged the appraisal of their property rather than the schedule of values and, as such, were entitled to a full hearing on the merits before the Property Tax Commission. The Supreme Court held, however, that the Property Tax Commission had properly dismissed the appeal as to the ninety-nine property owners who sought to join the appeal in process. Noting that the Machinery Act permitted *any* property owner to appeal an order of the county board of equalization and review to the Property Tax Commission, the court held that this statutory provision presupposed a ruling by the county board adverse to the appellant taxpayer with respect to the listing or appraisal of his property or the property of others, after a hearing requested by the taxpayer. Since the additional taxpayers had not requested a hearing before the county board or filed a timely notice of appeal, the dismissal of the case was proper. The original eleven appellants argued that even if the ninety-nine additional plaintiffs lacked standing, they could appeal the appraisal of this additional property under the authority to appeal the appraisal of others' property. The court rejected this argument on the basis that there had been no showing that the original eleven appellants had been aggrieved by those appraisals.

60. 136 N.C. App. 360, 525 S.E.2d 196 (2000).

the county board should have been dismissed because the taxpayer who challenged the classification had no standing to do so. The Property Tax Commission denied Whiteside's motion to dismiss and heard the merits of the case regarding the property's present-use classification. The commission affirmed the county board's decision taxing the property at market value. Whiteside appealed to the court of appeals on the basis that the appealing taxpayer, as a general taxpayer in Jackson County who did not own property in the present-use program or that adjoined the Whiteside property, had no standing to appeal the classification of the Whiteside property. The court of appeals rejected Whiteside's contention. The court reasoned that as the owner of property in Jackson County, the appellant taxpayer was aggrieved by the reduction in assessed value of the Whiteside property (from market to present-use) that resulted from the allegedly improper classification of the property as forestland. Thus, the court concluded that the taxpayer had standing to appeal to the county board for a revaluation of the Whiteside property. Upon consideration of the merits of the classification issue, the court affirmed the Property Tax Commission's determination that the property was not eligible for appraisal at present-use value.

Given that someone other than the property owner may appeal the undervaluation or exemption of property, the property owner must be notified of the challenge to the value or assessment and provided an opportunity to be heard in a new (or "de novo") hearing in which none of the board's previous judgments are binding. This may require the board of E&R to conduct two hearings—an initial hearing to hear the party bringing the appeal and a subsequent hearing in which the property owner may be heard.

When property in a county appreciates rapidly from one revaluation year to the next, towns within the county sometimes join taxpayers' refrain by objecting to increases in appraised value of real property. In these cases towns or their representatives may attempt to appeal the valuation of all property within the town limits on behalf of the town's taxpayers. Given that no property owned by the town is taxable, by virtue of the exemption granted in the state constitution for property owned by municipalities [codified in North Carolina General Statutes § 105-278.1 (hereinafter G.S.)], towns have no standing to appeal the valuation of their own property or the property of others. Likewise, an individual property owner in the town lacks standing to challenge the valuation of *all* property within the town on behalf of all of the owners of such property since, as previously noted, a taxpayer may only contest the valuation of others' property when the taxpayer is in some way aggrieved by that valuation.<sup>61</sup>

### **Proceedings before the Board of Equalization and Review**

The procedures generally followed by the board of equalization and review are relatively informal, at least when compared to proceedings before the Property Tax Commission or courts of general justice. Unlike the Property Tax Commission, whose deliberations as a quasi-judicial state agency are exempt from the open meetings law,<sup>62</sup> county boards of E&R, as quasi-judicial local agencies, must hear taxpayer appeals and deliberate in open session.<sup>63</sup>

Boards of E&R have discretionary authority to examine any witnesses and documents and to place witnesses under oath and may subpoena witnesses or documents on its own motion.<sup>64</sup> The board *must* subpoena witnesses or documents if an appellant taxpayer so requests and there is a reasonable basis for believing that the witnesses have or the documents contain information relevant to the decision of the appeal.

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61. *Id.*

62. G.S. 143-318.18(7).

63. See DAVID M. LAWRENCE, OPEN MEETINGS AND LOCAL GOVERNMENTS IN NORTH CAROLINA: SOME QUESTIONS AND ANSWERS, Question 140 at 32 (6th ed. 2002).

64. G.S. 105-322(g)(3)(b).

The board may appoint committees composed of its own members or other persons to assist it in making necessary investigations.<sup>65</sup> The board also may employ expert appraisers on its own motion or upon the demand of the appealing taxpayer.<sup>66</sup> If experts are employed upon a taxpayer's demand, the board may require the taxpayer to reimburse the county for the expense if the expert's appraisal does not result in a material reduction of the value of the property by the local board or by the Property Tax Commission upon appeal.<sup>67</sup>

The county assessor serves as clerk to the board of E&R.<sup>68</sup> The assessor must be present at all board of E&R meetings and must maintain accurate minutes of the board's actions.<sup>69</sup> In addition, the assessor must provide the board with all information related to the listing and valuation of taxable property in the county. At the hearing, the board of E&R may receive and consider evidence offered by the taxpayer, the assessor, and other county officials.<sup>70</sup>

As previously noted, the board may examine witnesses and documents, may place witnesses under oath, and may subpoena documents on its own motion.<sup>71</sup> The board must subpoena witnesses and documents upon request of the taxpayer if there is a reasonable basis for believing that the witnesses have, or the documents contain, information relevant to the appeal.<sup>72</sup> The willful failure to appear, produce documents, or testify when appearing in response to a subpoena is a Class 1 misdemeanor.<sup>73</sup> The board must enter into its minutes any order reducing, increasing, or confirming an appraisal and must notify the taxpayer by mail as to the action taken on an appeal no later than thirty days after the board adjourns.<sup>74</sup>

All changes in listings, names, descriptions, appraisals, and assessments made by the board of E&R must be noted in the tax records, which then must be totaled. A majority of the board of E&R then must sign the following statement to be included at the end of the tax records:

State of North Carolina

County of \_\_\_\_\_

We, the undersigned members of the Board of Equalization and Review of \_\_\_\_\_  
County, hereby certify that these tax records constitute the fixed and permanent tax list  
and assessment roll and record of taxes due for the year \_\_\_\_\_, subject to only such  
changes as may be allowed by law.

\_\_\_\_\_  
\_\_\_\_\_  
Members of the Board of Equalization and Review of \_\_\_\_\_ County

65. G.S. 105-322(g)(3)(a).

66. *Id.*

67. *Id.*

68. G.S. 105-322(d).

69. *Id.*

70. G.S. 105-322(g)(2)(c). Ethical concerns may arise when persons other than attorneys seek to represent parties in connection with an appeal to the board of E&R. This issue arises in the context of appeals filed by corporations as well as individuals, particularly elderly individuals who may wish to have a younger relative explain or articulate the basis for the appeal. The North Carolina State Bar issued an advisory opinion concluding that only lawyers may represent a party before a planning board, board of adjustment, or other government body conducting quasi-judicial hearings since the representation of another person at a quasi-judicial hearing constitutes the practice of law. N.C. State Bar, Formal Ethics Opinion 2007-3.

71. A subpoena issued by the board must be signed by the chair of the board, directed to the witness or to the person having custody of the document, and served by an officer authorized to serve subpoenas. G.S. 105-322(g)(3)(b).

72. G.S. 105-322(g)(2)(c).

73. G.S. 105-322(g)(3)(b).

74. G.S. 105-322(g)(3)(d).

## Post-Adjournment Changes

After the board of E&R certifies the fixed and permanent tax list and assessment roll and record, the board of county commissioners has sole authority to authorize changes to the abstracts and tax records.<sup>75</sup> A board of county commissioners may authorize changes for several purposes, two of which are relevant to the discussion here: (1) to correct appraisals, assessments and tax amounts resulting from clerical or mathematical errors and (2) to appraise or reappraise property when the assessor reports that since adjournment of the board of E&R, certain circumstances warrant changing the appraisal of property in the current calendar year.<sup>76</sup> The board of commissioners may delegate to the assessor the authority to make changes for the first purpose, but only the board of commissioners may make changes for the second purpose; moreover, the board may only make such a change if the change could have been made by the board of E&R had the same facts been brought to its attention. The board of county commissioners may not appraise or reappraise property to account for changes that have occurred since the listing date. If a reappraisal demonstrates that property was listed at a substantial understatement in value, quantity, or other measurement, the provisions of G.S. 105-312 providing for a discovery of property listed at a substantial understatement in value apply. To *discover property* means to determine that it has not been timely listed, that a taxpayer made a substantial understatement of listed property, or that the property was granted an exemption or exclusion for which it did not qualify.<sup>77</sup>

The taxpayer must be provided written notice of any appraisal or reappraisal that will adversely affect the taxpayer's interests and must be afforded an opportunity to be heard before any such appraisal becomes final. Orders of the board of county commissioners and actions of the assessor on delegation of the board's authority<sup>78</sup> may be appealed to the Property Tax Commission.

## Appeals from the Board of Equalization and Review to the Property Tax Commission

A county board of commissioners may by resolution permit a taxpayer to appeal a decision of a separate board of E&R to the board of commissioners.<sup>79</sup> If the board of commissioners also serves as the board of E&R or if the board of commissioners elects not to provide this appeal route, a taxpayer may appeal a decision of the board of E&R to the Property Tax Commission, which functions as the state board of equalization and review.<sup>80</sup> Only a *taxpayer* may appeal a decision of the board of E&R. If the board of E&R reduces the valuation of property or grants an exemption or exclusion upon the taxpayer's appeal, the county may not seek review of that determination by the Property Tax Commission. A notice of appeal to the Property Tax Commission from an order of the county board of commissioners or board of E&R must be filed with the commission within thirty days of the date the county board mailed its notice of decision to the property owner.<sup>81</sup> The property owner must also send a copy of the notice to the county assessor. The grounds for appeal must be stated in the notice.<sup>82</sup> A notice of appeal is considered filed on the date postmarked by the United States Postal Service or,

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75. G.S. 105-325(a).

76. G.S. 105-325.

77. G.S. 105-273(6b).

78. See G.S. 105-325.

79. G.S. 105-322(a).

80. G.S. 105-290.

81. G.S. 105-290(e).

82. G.S. 105-290(f).

if there is no such postmark, on the date received in the office of the Property Tax Commission.<sup>83</sup> A property owner bears the burden of proving that the appeal is timely.<sup>84</sup>

The Property Tax Commission consists of five members, three appointed by the Governor and two appointed by the General Assembly.<sup>85</sup> Of the two appointments made by the General Assembly, one is made upon the recommendation of the Speaker of the House of Representatives and the other is made upon the recommendation of the President Pro Tempore of the Senate.<sup>86</sup> For all appointments to the commission made after July 1, 2007, each member has a four year term. Formerly the term of the commission member appointed upon recommendation of the Speaker of the House of Representatives was two years, while other members served four year terms, two of which expired on June 30 of each odd-numbered year. The Property Tax Commission is required to meet at least once in each quarter and may hold special meetings at any time and place within the state at the call of the chair or upon the written request of at least three members.

Joint owners of property may file separate appeals or may jointly appeal the listing, appraisal, or assessment of property. In addition, a taxpayer may file a single appeal to contest the listing or valuation of more than one item of personal property or more than one tract or parcel of real property.<sup>87</sup> Upon receiving an appeal filed by a taxpayer, the Property Tax Commission must provide a hearing before one or more representatives of the commission<sup>88</sup> (followed by a review of the representative's findings of fact and conclusions of law by the full commission) or, alternatively, before the full commission.<sup>89</sup> The commission sets the time and place for the hearing of an appeal and, at least ten days before the hearing, must provide written notice of either type of hearing to the taxpayer and to the clerk of the board of commissioners of the county from which the appeal arises. At the hearing the commission or its representative(s) must hear evidence and affidavits offered by the appellant taxpayer and the county. The commission must determine the weight and sufficiency of the evidence and the credibility of the witnesses, draw inferences from facts, and analyze conflicting and circumstantial evidence.<sup>90</sup>

The Property Tax Commission is not bound by findings and conclusions of the county board of E&R; instead, the hearing before the commission is "de novo," meaning that it is based solely on the record before the commission. Nevertheless, the court of appeals held in *MAO/Pines Assoc. Ltd. v. New Hanover County Board of Equalization*<sup>91</sup> that the Property Tax Commission is not required to consider evidence of a factor affecting the value of a taxpayer's property unless the taxpayer alerts the county assessor of the factor within the tax year in question, alerts the board of E&R of the factor upon appeal, or states the factor in the application for hearing to the Property Tax Commission. In other words, a taxpayer may not withhold material information from the county assessor and the local board of equalization and review with plans to present the information to the commission in an appeal from the local decision. In *MAO/Pines*, the taxpayer learned of asbestos contamination before the board of

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83. G.S. 105-290(g).

84. *Id.*; G.S. 105-290(g).

85. G.S. 105-288.

86. G.S. 105-290.

87. *Id.*

88. G.S. 105-290(b)(2)(a) (permitting the commission to authorize one or more members of the commission or employees of the Department of Revenue to hear an appeal, make examinations and investigations, have made a record of the evidence offered at the hearing, and make recommended findings of fact and conclusions of law).

89. G.S. 105-290(b)(2).

90. *In re McElwee*, 304 N.C. 68, 87, 283 S.E.2d 115, 126-27 (1981).

91. 116 N.C. App. 551, 449 S.E.2d 196 (1994).

E&R heard the valuation appeal. The taxpayer did not alert the board or the county assessor of the presence of asbestos on the property and appealed the board's decision affirming the county's appraisal to the Property Tax Commission on the basis that "excessive expenses and low rents"<sup>92</sup> warranted a reduction in value. The taxpayer later moved to amend its petition to the commission to introduce an appraisal that took into account the presence of asbestos on the property, though the motion itself did not specifically refer to asbestos. The commission affirmed the county's valuation, declining to consider the asbestos contamination. The court of appeals affirmed the commission, holding that company representatives' statements to the county assessor regarding asbestos contamination nearly sixteen months after the effective date of the appraisal and almost four months after the end of the calendar year of the appraisal as well as the proffer to the commission regarding asbestos contamination "came too late to qualify as proper and timely notification."<sup>93</sup> The court explained that the Machinery Act provides for appeal to a local board to "provide opportunity at the local level to deal with taxpayer-presented information and to modify appraisals as such information requires before any appeal need be heard by the Commission."<sup>94</sup>

The taxpayer must appear in person at the hearing or be represented by an attorney.<sup>95</sup> While individuals may represent themselves before the commission, corporate taxpayers and counties must be represented by an attorney.<sup>96</sup> The commission and its individual members as well as Department of Revenue employees so authorized by the commission may subpoena witnesses and documents upon a subpoena signed by the chairperson of the commission. Proceedings before the commission are governed by the rules of evidence that apply in the courts of general justice.<sup>97</sup> The Property Tax Commission must make findings of fact and conclusions of law and, based upon these findings and conclusions, enter an order reducing, increasing, or confirming the valuation appealed or listing or removing the property from the tax lists. A certified copy of the order must be delivered to the appellant and to the clerk of the board of commissioners of the county from which the appeal was taken, and the abstracts and tax records of the county must be corrected to reflect the commission's order.<sup>98</sup> When the Property Tax Commission reduces the valuation of property or removes the property from the tax lists and, based on the commission's order, the taxpayer is owed a refund, the taxpayer is entitled to receive the overpayment with interest.<sup>99</sup> Overpayments bear interest at the rate set pursuant to G.S. 105-241.1(i) from the date interest begins to accrue until a refund is paid.<sup>100</sup> Interest accrues from the later of the date the tax was paid or the date the tax would have been considered delinquent.<sup>101</sup> Thus, an overpayment of a 2007 tax made on December 20, 2007, begins to accrue interest on January 8, 2008, the date the tax would have been delinquent.<sup>102</sup> An overpayment for a 2007 tax bill made on February 1, 2008, would, in contrast, bear interest from the date of

92. *Id.* at 552, 449 S.E.2d at 197.

93. *Id.* at 560, 449 S.E.2d at 202.

94. *Id.* at 558, 449 S.E.2d at 201.

95. 17 NCAC 11.0217.

96. 17 NCAC 11.0216.

97. 17 NCAC 11.0216.

98. G.S. 105-290(b)(3).

99. G.S. 105-290(b)(4).

100. *Id.*

101. *Id.*

102. Taxes are payable at par—that is, without interest—until January 5 of the fiscal year for which they are levied. When the last day for a taxpayer to accomplish a particular act falls on a weekend or holiday, the taxpayer has until the next business day to perform the required act. Because January 5, 2008, falls on a Saturday, taxpayers may pay at par the next business day, Monday, January 7, 2008. Thus, interest does not accrue and 2007–8 taxes are not delinquent until January 8, 2008.

payment, since payment was made after taxes became delinquent. A refund is considered paid on a date determined by the governing body of the taxing unit that is no sooner than five days after a refund check is mailed.<sup>103</sup>

### **Standard Governing Review of Assessment**

There is a well-established presumption under North Carolina law that the county tax assessor has acted in good faith and that the assessor's assessments are correct.<sup>104</sup> Because of this presumption, a taxpayer seeking to challenge an assessment must produce evidence that the assessment is erroneous.<sup>105</sup> Without this presumption of correctness, every taxpayer would have an unlimited ability to attack the assessment of property. The administrative and fiscal burden imposed upon local governments in a system permitting unbridled taxpayer challenges would be insurmountable.<sup>106</sup> To say, however, that the county's assessment is presumed correct does not imply that a taxpayer may never demonstrate otherwise. A taxpayer may rebut the factual presumption that the county's assessment is valid by producing competent, material, and substantial evidence that tends to show that (1) the tax assessor used an arbitrary or illegal method of valuation and (2) the assessment substantially exceeded the true value in money of the property. In other words, the resulting value is more important than the methodology used to establish the value. To prevail on appeal, the taxpayer must produce evidence demonstrating that flawed methodology resulted in an assessment that substantially exceeded the property's true value in money. Once the taxpayer produces such evidence, the presumption of correctness is rebutted. The taxing unit then must produce evidence and persuade the finder of fact that its methods will produce true values.<sup>107</sup>

### ***In re Amp Inc.***

The leading case on the standard of review of assessments is *In re Amp Inc.*<sup>108</sup> Although the case arose from a taxpayer challenge to the assessment of personal property, the standards of review established by the court also apply to appeals of the assessment of real property. Amp owned and operated a plant in Greensboro where it manufactured electronic parts and components. Amp filed business property abstracts with the Guilford County tax supervisor (the title held by a county assessor before 1987) for 1964-68, which included values for its inventories.<sup>109</sup> In August 1969, the tax supervisor notified Amp of a discovery resulting from Amp's undervaluation of inventory from 1964 to 1968. Thus, the tax supervisor advised Amp of his intent to increase the valuation of Amp's inventories for those years. Based on these adjustments to value made through the discovery process, additional taxes and penalties were assessed against Amp. Amp appealed the discovery to the county board of commissioners, which approved and confirmed the assessment. Both the tax assessor and the county board valued the inventories based on the values reported on Amp's state income tax returns. The assessor and board

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103. G.S. 105-290(b)(4).

104. *In re Amp, Inc.* 287 N.C. 547, 215 S.E.2d 752 (1975).

105. *Id.*

106. *Id.*

107. *In re Southern Ry. Co.*, 313 N.C. 177, 182, 328 S.E.2d 235, 239 (1985); *In re IBM Credit Corp.*, \_\_\_ N.C. App. \_\_\_, 650 S.E.2d 828 (2007), *aff'd*, No. 520A07, 2008 WL 616118 (N.C. S. Ct. March 7, 2008) (per curiam).

108. 287 N.C. 547, 215 S.E.2d 752 (1975).

109. Inventories are now excluded from taxation by G.S. 105-275(33).

subtracted inventories reported to Forsyth, Mecklenburg, and Wake counties (where other Amp facilities were located) from the total value reported for income tax purposes, thereby attributing the remaining value to Guilford County. Amp appealed to the State Board of Assessment (the predecessor to today's Property Tax Commission).

The manager from the Greensboro Amp plant testified that Amp manufactured connections for the electronics industry, which were used to terminate wires contained in various types of electronic equipment. Amp received at its Greensboro plant metals in strips which it then processed through machines to make a specific type of electrical terminal. Substantial scrap material was generated in this process. Amp sold this scrap material along with damaged raw material to the mills from which it purchased raw materials. Amp's tax manager testified that the book values recorded by Amp exceeded the true cash values of its inventories because Amp could only sell in-process inventory for scrap prices. Since Amp had no finished goods on hand as of January 1 of any of the listing years at issue, Amp's tax manager testified that all of his computations for those years included in-process and raw material inventories, all of which were valued as scrap. The tax manager testified that if Amp had finished goods as of January 1, 1968, the book value of such goods would have equaled their true value. Indeed, the values testified to by Amp's tax manager before the State Board of Assessment were lower even than the values listed by Amp for the years in question. Amp explained that its outside accountant had improperly overvalued its inventory for the years in question.

The Guilford County tax supervisor (now, the tax assessor) testified that he believed the values of inventory listed with the county should match the taxpayer's books as well as the values reported on a taxpayer's state income and franchise tax returns. The tax supervisor testified unequivocally as to his "assumption" that there was no difference between the amount to be reported as ad valorem tax value and the amount reported on state corporate income and franchise tax returns, though he conceded he had made no inquiry to determine the correctness of this view.<sup>110</sup> The State Board of Assessment determined that the value of Amp's inventories for property tax purposes was represented by the values reported in its books for the years in question. The difference between book value and the value reported by Amp thus constituted unlisted property subject to discovery and assessment of additional taxes and penalties. Amp appealed the State Board of Assessment's decision to the Superior Court Division of Guilford County,<sup>111</sup> which reversed the State Board's determination, finding that (1) Amp in good faith listed its inventory at what it believed to be its true cash value; (2) Amp produced competent, material evidence to justify its method of valuation, and there was no competent, material evidence that Amp's valuations were understated; and (3) the evidence before the State Board contradicted the board's findings that Amp's inventory figures for income and franchise tax purposes (that is, book value) equaled the "true cash value" of the inventory for property tax purposes. The superior court thus determined that the State Board erred in concluding that the valuation of inventory was to be determined by inventory records maintained for income tax purposes (in other words, book value). The superior court ruled, therefore, that the difference between the values included in Amp's books and the values listed by Amp on property tax abstracts was *not* the proper subject of a discovery. Guilford County appealed the superior court's decision to the court of appeals, which reversed the superior court. Amp then appealed to the state supreme court.

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110. *In re Amp*, 287 N.C. at 564, 215 S.E.2d at 762-63.

111. Decisions of the Property Tax Commission are now appealed directly to the Court of Appeals rather than to Wake County Superior Court.

The supreme court began its analysis by reciting the appropriate standard of review for decisions by the State Board of Assessment and noting that “no court of the General Courts of Justice could weigh the evidence presented to the State Board and substitute its evaluation of the evidence for that of the Board.”<sup>112</sup> The court then recognized the factual presumption that property tax assessments are presumed to be correct and held that in order to rebut the presumption, the taxpayer had to produce competent, material, and substantial evidence tending to show that the county tax assessor used an arbitrary or illegal method of valuation and that the assessment substantially exceeded the true value in money of the property.

The court noted that the record demonstrated that the tax supervisor had used an illegal method of valuation given his erroneous assumption that the true value of property equaled its book value. The court then addressed the question of whether Amp produced competent, material, and substantial evidence demonstrating that Guilford County’s assessment increasing the value of its inventories from 1964 to 1968 was substantially greater than the true value in money of the property.

The court noted that Amp’s tax manager testified that Amp hired an outside accounting firm to prepare its abstracts for the years in question because it did not know how to compute the true cash value of its inventories. Moreover, Amp’s tax manager testified that when Amp figured out how to compute the value of its inventory, it concluded that the calculations of the outside accounting firm were incorrect. Thus, the court concluded, there was no evidence to substantiate the values reported by Amp from 1964 through 1968. The court further determined that Amp’s subsequently calculated values were unreasonable, since Amp valued all of its material as scrap. The court rejected Amp’s interpretation that its property was to be valued as if the company had to sell all of its inventory on January 1 of each year, whether such material was raw or in process, so that the only potential buyers would be scrap mills. The court noted that property was to be valued at its true value in money rather than its value in a forced sale.

The court then analyzed the three types of property other than finished goods that constituted Amp’s inventories: (1) scrap metal and damaged raw material, (2) nondefective in-process inventory, and (3) nondamaged raw material inventory. Though the court concluded that the true value of scrap metal and damaged raw material did equal the scrap prices paid by the supplying mills to repurchase such material rather than the book value, it determined that AMP failed to prove that its inventories on the relevant dates included scrap metals. Thus, the court reasoned that Amp’s proof that such property was properly valued at scrap prices was of no consequence. As for the second category—nondefective in-process inventory—the court pointed to the obvious fact that no ongoing business entity would sell its in-process inventory for scrap prices. Amp’s assertion that it could only realize scrap value from the sale of such uncompleted items failed to recognize the assumption that the entity was ongoing, thereby contradicting the purpose of the statutory requirement that all property be valued at its true value in money. Because the evidence Amp presented was based upon the theory that all of its in-process inventory had to be valued as scrap, the court concluded that the company failed to produce the evidence necessary to show that the assessment substantially exceeded the true value in money of the property. The court noted that the mere fact that there was no market for particular property did not deprive it of market value, which could be established by reference to factors other than sales. The proper standard for valuing such property, according to the court, was replacement cost plus labor and overhead. The court likewise rejected scrap pricing for items in the final category, nondamaged

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112. *In re Amp*, 287 N.C. at 562, 215 S.E.2d at 761.

raw material inventory, noting that Amp's methodology required it to assume that such property lost about 60 percent of its value upon entering Amp's warehouse. As with nondefective in-process inventory, the court concluded that the appropriate formula for valuing raw material inventory was replacement cost.

The court then considered whether the Machinery Act permitted a county assessor, as a per se rule, to equate the book value of property as listed on a state income tax return with the true value in money of such property for purposes of property taxation. The court concluded that such a rule was not statutorily sanctioned. Nevertheless, the court noted that book value was the appropriate measure of value for certain property such as business inventories and that the resulting values were more important than the method used to determine valuation. The book values used by Guilford County were based on figures Amp itself furnished to the state for income and franchise tax purposes. Amp defined book value as the lower of cost or market; thus, by its own definition, the reported values adopted by the county did not exceed market value. Moreover, the expert accountant testifying for Amp before the State Board explained that Amp based book value on replacement cost plus labor and overhead. Thus, the court agreed with the State Board's conclusion that, in this case, book value was evidence of the property's true value in money and concluded that the differences between the values originally listed by Amp and book value was subject to discovery.

### ***Two-part test for challenging assessment***

A North Carolina Court of Appeals decision involving the assessment of property in a country club community in Davie County further demonstrates why proof of an improper appraisal methodology alone will not satisfy a taxpayer's burden on appeal.<sup>113</sup> Persons who purchased property in several subdivisions in Davie County were required by the terms of restrictive covenants encumbering their properties to join the Bermuda Run Country Club. The covenants provided that country club membership was not a personal right "but shall run with the ownership of a Dwelling Unit."<sup>114</sup> The initiation fee for the country club was due at the time title to an encumbered parcel of property was transferred. The purchaser received a credit toward the total initiation fee in the amount of the fee in effect at the time the previous owner acquired the property. The new purchaser was then obligated to pay the difference, if any, between the previous and current initiation fees. The Davie County tax assessor included \$10,000 in the appraised value of each parcel of residential real estate to represent the initiation fee as of the date of the county's last revaluation. Several property owners objected to the inclusion of this amount and appealed the valuations to the county board of E&R and then to the Property Tax Commission, both of which affirmed the county's assessments. The property owners then appealed to the court of appeals, arguing that the county improperly included the values of the country club memberships in the assessment of their property given that the memberships were intangible personal property not subject to taxation. The court never addressed this issue; instead it concluded as a preliminary matter that the appellants failed to produce any evidence that the county's assessments exceeded the true value in money of the properties. The property owners conceded in their written brief to the court of appeals that, while they objected to the inclusion of the initiation fees in the valuation of their properties, they were "not otherwise contesting the appraised value of their real property."<sup>115</sup> The taxpayers' attorney affirmed at the hearing before the Property Tax

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113. *In re Bermuda Run Property Owners*, 145 N.C. App. 672, 551 S.E.2d 541 (2001).

114. *Id.* at 673, 551 S.E.2d at 542.

115. *Id.* at 677; 551 S.E.2d at 545.

Commission that he planned to present no evidence as to the value of the specific properties. The attorney explained that since he was representing more than eighty taxpayers, the presentation of such valuation evidence was “just not practical.”<sup>116</sup> Based on the lack of evidence that the specific properties had been substantially overvalued by the tax assessor, the court held that the taxpayers failed to carry their burden to demonstrate that the assessments were invalid. Thus, the court affirmed the order of the Property Tax Commission upholding the county’s assessments.

### **Immaterial Irregularities**

Akin to the principle that taxpayers may not invalidate a county’s assessment merely by attacking the methodology of assessment—without showing a corresponding unwarranted increase in value—is the notion that an assessment will not be invalidated because of a procedural irregularity in the assessment process. The Machinery Act provides that such “immaterial irregularities,” which range from clerical errors by the assessor to failure to advertise, list, appraise, or assess any property for taxation, do not invalidate the tax imposed on any property.<sup>117</sup>

Property “not properly listed” during the regular listing period, property listed at a substantial understatement in value, and property granted an exemption or exclusion for which it did not qualify are subject to discovery under G.S. 105-312, which permits the property to be taxed for the current and five previous years. Sometimes, however, property may escape assessment and taxation without meeting any of these criteria. For instance, a taxpayer may properly list property, but the assessor may inadvertently neglect to assess such property. A question then arises as to whether the omitted assessment and resulting taxes may be imposed at a later date under the theory that the failure to timely assess the property was an immaterial irregularity.

The North Carolina Court of Appeals addressed such a situation in *In re Notice of Attachment and Garnishment Issued by Catawba County Tax Collector Against Nuzum-Cross Chevrolet Inc.*<sup>118</sup> Nuzum-Cross Chevrolet timely listed its business personal property with the Catawba County tax supervisor (now, the tax assessor) in 1976, 1977, and 1978. The tax department transposed numbers when calculating the total assessment. As a result, Nuzum-Cross Chevrolet was taxed on a lower figure than it should have been in 1976, 1977, and 1978. The county tax supervisor discovered the error in September 1978 and billed Nuzum-Cross for the unpaid taxes. When Nuzum-Cross did not pay, the tax collector attached one of the company’s bank accounts for \$5,087.67, the amount of the additional taxes plus interest.

At a hearing a district court judge ordered the bank to remit the total taxes due, minus penalties and interest. The taxpayer appealed to the court of appeals. The appellate court held that the tax supervisor’s error was an immaterial irregularity under G.S. 105-394 that did not invalidate the tax imposed. Recognizing that its holding permitted the county to “go back two years (from 1978 to 1976) to correct its error,” the court noted that under the Machinery Act “all property is subject to taxation unless subject to an exemption.”<sup>119</sup> The appellate court acknowledged the taxpayer’s argument that a taxpayer who intentionally fails to list property might be better off than one whose property is not assessed due to an immaterial irregularity since discoveries cannot go back more than five years, while

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116. *Id.*

117. G.S. 105-394.

118. 59 N.C. App. 332, 296 S.E.2d 499 (1982).

119. *Id.* at 334; 296 S.E.2d at 501.

the immaterial irregularities clause contains no such time limitation. But the court noted that it was the role of the legislature, not the court, to impose these time limits. Thus the court of appeals affirmed the district court's order, which, as previously mentioned, did not award interest or penalties.

Another case significant for its role in setting parameters for application of the immaterial irregularities clause is *In re Dickey*, which involved an appeal from a Forsyth County assessment.<sup>120</sup> The Dickeys purchased a new home in Forsyth County in October 1988 for \$272,500. In January 1989 the Dickeys submitted a listing form on which they listed their house on a portion of the form separated by a perforation. When tax office personnel received the form, someone threw away the perforated portion, which was the proper procedure if nothing was listed on that portion of the form. That, of course, was not the case on the Dickeys' form. The Dickeys received a 1989 tax bill imposing taxes only on the value of their unimproved lot, \$37,500. In June 1990 the assessor's office realized its mistake and discovered \$185,500 in value. The assessor then billed the Dickeys for an additional \$2,094.30 in taxes. The Dickeys alleged that the assessment was untimely and appealed to the county board of E&R, which dismissed their appeal. The Dickeys then appealed to the Property Tax Commission, which concluded that the value of the Dickeys' house was not discoverable pursuant to G.S. 105-312, as the Dickeys had properly listed the house with the tax office. The commission further concluded that the assessor had "appraised" the house at a value of \$0 for 1989. While the assessor could reappraise the house for 1990-91 and subsequent tax years,<sup>121</sup> the commission concluded that this value was not retroactive. The commission ordered the assessor to revise its tax records to reflect a value of \$0 for the Dickey's house in 1989. The county appealed the commission's decision to the court of appeals. While the court of appeals agreed with the commission that discovery of property listed by the taxpayer was improper, the court disagreed with the commission's conclusion that the assessor had appraised the house at a value of \$0 in 1989. The court cited the lack of evidence that the assessor had attempted to determine the value of the Dickeys' home before 1990 and noted that no one contended the home purchased by the Dickeys for more than \$250,000 was actually worth nothing. Instead, the court noted that the record demonstrated the assessor was unaware that the house existed because a portion of the Dickeys' listing form was inadvertently removed and destroyed. Because the assessor could not have appraised a house that he did not know existed, the court determined that the provisions of G.S. 105-287 prohibiting retroactive increases in appraised property values did not preclude the assessor from levying the challenged tax. Furthermore, the court held that the administrative error that resulted in the failure to assess the Dickeys' house for 1989 taxes was an "immaterial irregularity," within the meaning of G.S. 105-394. The court concluded that such an irregularity did not invalidate the taxes owed by the Dickeys for 1989 and levied by the assessor in 1990 and reversed the decision of the Property Tax Commission. The court further noted that G.S. 105-394 imposed no time restriction on the correction of immaterial irregularities from previous years, noting that the imposition of time limits were the exclusive province of the legislature.

The North Carolina Court of Appeals in *In re Morgan*<sup>122</sup> clarified that the immaterial irregularities clause allows the tax assessor to correct clerical and administrative errors only—not errors that result from an assessor's failure to carry out assigned duties. Tyleta Morgan and her husband owned property in Henderson County and in 1986 began to build a home on the property.

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120. *In re Dickey*, 110 N.C. App. 823, 431 S.E.2d 203 (1993).

121. G.S. 105-287.

122. \_\_\_ N.C. App. \_\_\_, 652 S.E.2d 655 (2007).

Construction of the house was not completed until 1993. Mr. Morgan, who died before the house was assessed, obtained all required building permits from the county. The county inspected the home in 1986. In 1993, when the house was 80 percent complete, Mr. Morgan listed the house with the Henderson County tax assessor. The county performed a countywide reappraisal effective January 1, 1999, and another effective January 1, 2003. An appraiser for the county visited the Morgans' property during both reappraisals, yet the Morgans' house was not assessed. In 2004 the county assessed taxes on the residence and informed Mrs. Morgan that she owed taxes and interest totaling \$8,533.61 for tax years 1995 through 2003. The Property Tax Commission determined that the county should have assessed the property before 2004 and that its failure to do so was not an immaterial irregularity. Thus, the commission barred the county from attempting to collect the back taxes.

The Court of Appeals, in an opinion joined by two of three panel judges, reviewed the commission's decision under the "whole record test," considering only whether the commission's decision had a rational basis in the evidence. Because legal issues are subject to *de novo* review in the court of appeals, the court's application of this deferential standard of review signaled its approval of the commission's view that only clerical and administrative errors may be corrected pursuant to G.S. 105-394. The appellate court held that the commission's conclusion was supported by substantial evidence that, for more than a decade, the county botched multiple opportunities to assess the residence after it was properly listed by Mr. Morgan. The court rejected the dissenting judge's argument that G.S. 105-394 authorized the county to collect taxes for past years plus interest. The majority opined that even if G.S. 105-394 permitted the levy of taxes for past years, the county could not recover interest in addition to the taxes "when non-payment was due to the gross and repeated failures to assess by the County Tax Assessor's Office."<sup>123</sup>

Judge Geer dissented on the basis that "the Commission and majority opinion have improperly imposed their view of appropriate public policy—fairness to individual taxpayers—to override other public policies promoted by the statute's plain language such as equality of taxation and reduction of tax rates." Noting that G.S. 105-394 defines "immaterial irregularity" as a "failure to assess any property for taxation . . . within the time prescribed by law" and does not explicitly require that this failure result from a clerical or administrative error, the dissent concluded that the county's failure to assess Mrs. Morgan's residence fell squarely within the statutory definition of immaterial irregularity. Moreover, the dissent concluded that because interest automatically applies to taxes paid after the date they became due, interest also applies to taxes assessed after their due date due to an immaterial irregularity. The dissent cited public policy in support of its determination, namely the inequity of one property owner being taxed on all of his or her property and another only being assessed on a portion of her property due to a tax office error. The full assessment of all property, noted the dissent, permits the tax rate to be set as low as possible.

The county appealed the court of appeals' decision to the state supreme court, which has not yet issued an opinion.

### **Settlement of Property Tax Appeals**

Occasionally a taxpayer proposes to settle a matter appealed to the Property Tax Commission by paying some portion of the tax owed before the case is heard by the commission. A taxpayer might, for instance, offer to withdraw the appeal and pay the principal amount of taxes owed on the condition

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123. *Id.* at \_\_\_, 652, S.E.2d at 657.

that the board commissioners waive accrued interest. In such a circumstance, a governing board might wish to enter into the agreement and save the costs of litigation.

While normally a county board of commissioners has no authority to compromise interest or any other portion of a tax absent a showing that the tax was imposed through clerical error, the tax was illegal, or the tax was levied for an illegal purpose,<sup>124</sup> a board is implicitly empowered to settle pending litigation.<sup>125</sup> Notwithstanding this power, a board of commissioners does not have unfettered authority to enter into such settlements with respect to taxes that are the subject of an appeal to the Property Tax Commission. If the board had unlimited discretion to settle appeals, the mere filing of an appeal with the Property Tax Commission would provide the taxpayer and the board with a convenient method to evade the Machinery Act's prohibition against compromising taxes.

Given that a provision of state law prohibits a local governing body from compromising taxes (including accrued interest), a board may not circumvent that prohibition through its power to settle pending litigation.<sup>126</sup> Governing boards are, however, authorized to appraise or reappraise property in the current calendar year upon the assessor's report that, since adjournment of the board of E&R, facts have come to the assessor's attention that warrant raising or lowering the value of property.<sup>127</sup> If a governing board finds that reduction in the value of the property is authorized to comport with the market value standard or other provisions of the Machinery Act, it is authorized to enter into a settlement agreement that alters the property's assessed value as provided by law.

A staff member of the Property Tax Division of the Department of Revenue reviews all appeals filed with the Property Tax Commission.<sup>128</sup> This entails reviewing the issues on appeal with the taxpayer, the counsel for the taxpayer, the county assessor, and the county attorney. These discussions sometimes result in an agreement about the appropriate valuation or exempt status of the property, which may be formalized in a settlement agreement prepared as a consent order signed by the director of the Property Tax Division of the Department of Revenue or as a formal order signed by the chairperson of the Property Tax Commission. Such settlement agreements are afforded the same status as a post-hearing decision by the commission; thus, the refund and release provisions of G.S. 105-380 and G.S. 105-381 do not apply.

Tax receipts for assessments appealed to the Property Tax Commission are delivered to the tax collector along with all other tax receipts, but the tax collector may not use enforced collection remedies to collect such taxes nor advertise the taxes as delinquent until the appeal is resolved.<sup>129</sup>

### **Appeal to the Court of Appeals from the Decision of the Property Tax Commission**

Either the taxpayer or the county, or both, may appeal to the North Carolina Court of Appeals from an adverse decision rendered by the Property Tax Commission.<sup>130</sup> A party seeking to appeal an order

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124. G.S. 105-380; 105-381.

125. G.S. 153A-11 sets out the corporate powers of counties, which include the power to sue and be sued and to contract and be contracted with. G.S. 153A-12 gives the board of commissioners authority to exercise the corporate powers of the county. The authority to settle a claim is implicit in suing or being sued.

126. *See, e.g., Cleveland County Ass'n for Gov't by the People v. Cleveland County Bd. of Comm'rs*, 142 F.3d 468 (D.C. Cir. 1998) (holding that a North Carolina county could not enter into a consent decree that circumvented state elections law).

127. G.S. 105-325(a)(6).

128. NORTH CAROLINA DEPARTMENT OF REVENUE, PROPERTY TAX DIVISION, PROPERTY TAX APPEALS MANUAL, 21 (2006).

129. An appeal is resolved when all rights to appeal are exhausted or the time for filing an appeal has expired.

130. G.S. 105-345.

of the Property Tax Commission must file with the commission a notice of appeal and exceptions setting forth the basis on which the order is unlawful, unjust, unreasonable, or unwarranted and citing errors alleged to have been committed by the commission. The notice of appeal must be filed within thirty days after entry of the Property Tax Commission's final order.<sup>131</sup> The Property Tax Commission may then, upon its own motion or the motion of any party, set a hearing on the exceptions to the final order on which the appeal is based. If the commission does not set such a hearing, the appeal proceeds directly to the North Carolina Court of Appeals for hearing and determination. The appellant may not rely on any grounds for relief on appeal that are not set forth in the notice of appeal filed with the Property Tax Commission.

The appellate court considers questions of law under the standard of *de novo* review, pursuant to which the court "consider[s] the matter anew and freely substitute[s] its own judgment for that of the Commission."<sup>132</sup> Other issues, such as sufficiency of the evidence to support the commission's decision, are reviewed under the "whole record test," which requires the appellate court to determine whether the commission's decision has a rational basis in the evidence.<sup>133</sup> The whole record test does not permit the reviewing court to replace its judgment for that of the Property Tax Commission where both views are reasonable, regardless of whether the court justifiably could have reached a different result had the matter been before it under the *de novo* standard. Instead, the whole record rule requires the court, in determining the substantiality of the commission decision, to consider items in the record that detract from the weight of the evidence supporting the commission's decision below. Under the whole evidence rule, the court must consider the evidence that justifies the commission's decision along with contradictory evidence.<sup>134</sup> By applying this analysis, a reviewing court can determine whether the commission's decision has a rational basis in the evidence.<sup>135</sup>

The court of appeals bases its determination upon the record and proceedings of the Property Tax Commission and may not receive additional evidence. If a party can demonstrate to the court that it discovered evidence after the Property Tax Commission hearing that it could not through reasonable efforts have obtained for use at the commission hearing and the evidence will materially affect the merits of the case, the court of appeals may remand the record and proceedings to the Property Tax Commission for consideration of the new evidence.<sup>136</sup>

The court of appeals must review the record and exception and assignments of error in accordance with the Rules of Appellate Procedure. The appellate court must decide all questions of law presented by the appeal, interpret constitutional and statutory provisions, and determine the meaning and applicability of the terms of any commission action.<sup>137</sup> The court may affirm, reverse, or declare null and void the decision of the Property Tax Commission or may remand the case for further proceedings.

The appellate court may reverse or modify the Property Tax Commission's decision regarding a disputed assessment if it determines that the substantial rights of the appellants have been prejudiced because the commission's findings, inferences, conclusions, or decisions are (1) in violation of constitutional provisions; (2) in excess of the commission's jurisdiction or statutory authority; (3) made

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131. *Id.*

132. *In re Greens of Pine Glen*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003) (internal quotations omitted).

133. *Id.*

134. *In re McElwee*, 304 N.C. 68, 87-88, 283 S.E.2d 115, 127 (1981).

135. *In re Owens*, 132 N.C. App. 281, 511 S.E.2d 319 (1999).

136. G.S. 105-345.1.

137. G.S. 105-345.2.

upon unlawful proceedings; (4) affected by other errors of law; (5) not supported by competent, material, and substantial evidence in view of the entire record; or (6) arbitrary or capricious.<sup>138</sup>

The taxpayer, the county, or both may appeal an adverse decision by the court of appeals to the North Carolina Supreme Court if the case directly involves a substantial question arising under the state or federal constitution (this might be the case, for example, if the issue involved an attempt to tax property within the exclusive jurisdiction of the federal government) or in a case in which a dissent is filed by a court of appeals judge.<sup>139</sup> In cases in which there is no appeal of right from the court of appeals decision, a party may petition the supreme court for discretionary review after the court of appeals renders its decision.<sup>140</sup> The supreme court may only agree to review the case if it determines that the subject matter of the appeal has significant public interest, the case involves legal principles of major significance to the jurisprudence of the state, or the court of appeals decision conflicts with a supreme court decision.<sup>141</sup> A petition for appeal of right to or for discretionary review by the state supreme court must be filed within fifteen days after the mandate of the court of appeals has been issued to the Property Tax Commission.<sup>142</sup> The mandate of the court consists of certified copies of its judgment and opinion, which are issued by the clerk of the court to the clerk of the Property Tax Commission.<sup>143</sup> The clerk of court enters judgment and issues the mandate twenty days after the written opinion of the court is filed with the clerk.<sup>144</sup>

Recall that a tax collector may not seek to collect taxes or enforce a tax lien resulting from an assessment appealed to the Property Tax Commission until the appeal is finally adjudicated.<sup>145</sup> Though various arguments could be raised regarding the time at which the appeal is “finally adjudicated,”<sup>146</sup> the most conservative and prudent course of action for tax collectors is to refrain from enforcing payment of taxes subject to an appeal until either the entry of an opinion by the state supreme court or upon expiration of the time to file an appeal as of right or a petition for discretionary review to either the state court of appeals or state supreme court.

### **Adjustment of Real Property Values in Nonrevaluation Years**

As noted earlier, the Machinery Act provides for annual appraisal of personal property and octennial appraisal of real property. Yet for the sake of equity and uniformity, some parcels of real property must be reappraised in a year in which general revaluation of real property is not undertaken. Property may be rezoned from residential to commercial, bringing about a change in its highest and best use and the resulting valuation. Buildings may be constructed, improved, or expanded, and portions of existing parcels may be transferred, which can result in a change in the portion of property valued as residual acreage.<sup>147</sup> While most of the aforementioned changes increase the value of property in a nonrevaluation year, property also must be reappraised for qualifying changes that

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138. *Id.*

139. G.S. 7A-30.

140. G.S. 105-345.4.

141. G.S. 7A-31.

142. Rules 14, 15, Rules of Appellate Procedure.

143. Rule 32, Rules of Appellate Procedure.

144. *Id.*

145. G.S. 105-378(d).

146. N.C. R. Civ. P. 54.

147. *See In re Corbett*, 355 N.C. 181, 558 S.E.2d 82 (2002) (approving the reappraisal of residual acreage from a larger parcel as a residential homesite after transfer of that acreage to a new owner in a nonrevaluation year).

reduce its value, such as damage or destruction of property by tornados, floods, or fires. Property may also be reappraised to correct errors in the initial appraisal, which can result in an increased or lowered valuation, depending upon the circumstances. G.S. 105-287 directs the assessor in a nonrevaluation year to reappraise specific parcels in order to correct clerical or mathematical errors in the former appraisal; to correct appraisal errors resulting from misapplication of the county's appraisal manual; or to recognize an increase or a decrease in value resulting from some factor other than normal depreciation, economic changes affecting property in general, or certain listed improvements such as repainting and landscaping. If the circumstance that causes the increase or decrease in valuation is not specifically excluded from reappraisal, the assessor is required to reappraise the property to recognize the impact of that circumstance.<sup>148</sup>

An appraisal change may only be made based on a factor that has affected the property by January 1 of the year in which the property is reappraised. Thus, if a county conducts a countywide reappraisal effective January 1, 2007, and a house is destroyed by fire on January 2, 2008, the property may not be reappraised until 2009.

Reappraisals made under the authority of G.S. 105-287 must conform to the appraisal manual adopted in the last revaluation year so that they will represent the property's market or present-use value as of January 1 of the revaluation year rather than its current value. A fee appraiser's independent determination of value may only be relied upon to the extent that it correlates to the applicable schedule of values.<sup>149</sup> Thus, in the example above in which a house is destroyed by fire on January 2, 2008, the reappraisal of the affected parcel in 2009 will be based upon the 2007 schedule of values. Nonrevaluation year appraisals take effect as of January 1 of the year in which they are made and do not affect previous tax years.

Property may not be reappraised in a nonrevaluation year based on an increase or decrease in value evidenced by a sale that occurs after the January 1 revaluation date.<sup>150</sup> While the transfer of some portion of a larger parcel requires reappraisal to assign value to the resulting parcels, the sale of an entire parcel does not, since such a sale is not a factor from which the increase or decrease in value results.<sup>151</sup>

The county assessor must complete all reappraisals warranted under G.S. 105-287 before the board of E&R convenes. Once the board is in session, reappraisal may only occur at its direction. Any reappraisal by the board of E&R must conform to the standards and procedures set forth in G.S. 105-287. The Property Tax Commission's authority to change property valuations is limited to the same extent as the assessor's; thus any reappraisal ordered by the commission must likewise conform to G.S. 105-287.<sup>152</sup>

After adjournment, the authority of the board of E&R is largely limited to considering appeals filed before adjournment. At this stage in the assessment cycle, only the board of county commissioners may make or authorize changes to the tax records, including reappraisal.<sup>153</sup> The board of county commissioners may authorize the reappraisal of property when the assessor reports that, since the adjournment of the board of E&R, facts have come to the assessor's attention rendering it advisable to raise or lower the appraisal of property in the current calendar year. The assessor has discretion over whether to make such a report to the board.

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148. *Id.* at 185, 558 S.E.2d at 84.

149. *In re Allred*, 351 N.C. 1, 10, 519 S.E.2d 52, 57 (1999).

150. *In re Allred*, 351 N.C. 1, 519 S.E.2d 52 (1999).

151. *Compare In re Corbett*, 355 N.C. 181, 558 S.E.2d 82 (nonrevaluation year reappraisal affirmed when parcel split into two smaller buildable lots) *with In re Allred*, 351 N.C. 1, 519 S.E.2d 52 (holding that a sale after January 1 of the revaluation year is not a factor from which an increase or decrease in value results within the meaning of G.S. 105-287(a)(3)).

152. *In re Allred*, 351 N.C. at 3; 519 S.E.2d at 53.

153. G.S. 105-325.

## The Property Tax Calendar

Many citizens and local government officials are surprised to learn that property taxes are levied for a *fiscal year* that begins on July 1 and concludes the following June 30. This confusion is likely caused by several factors. First, North Carolina real estate attorneys routinely prorate taxes between buyers and sellers in real estate closings on a calendar year basis. Second, the January 1 date of assessment and the January 6 delinquency date the following year roughly follow a calendar year cycle. In addition, property taxes levied for the 2008–9 year generally are referred to simply as “2008 taxes.”<sup>154</sup> Anyone familiar with local government finance and budgeting will recognize, however, that property taxes, which are the bread and butter of local government finance, could be levied on nothing other than a fiscal year basis. After all, county commissioners and city council members adopt their budgets and set the property tax rate by July 1 of each year.<sup>155</sup> Bills for property taxes, the payments for which supply the revenue for budgeted expenditures, are mailed to taxpayers as soon as possible after July 1. Taxes are due September 1 (a date that is widely ignored by taxpayers in all taxing jurisdictions that do not offer a discount for early payment of taxes) and are payable without interest at any time through the following January 5.<sup>156</sup> Most taxpayers, and all mortgage companies paying on behalf of homeowners, pay property taxes before January 1 so that the amount paid may be deducted as an itemized deduction from the property owner’s income tax return for the current calendar year. Thus, midway through the fiscal year, the local government unit receives most of its revenues from current fiscal year property taxes.

In order to estimate the probable revenues from property taxes levied at a given rate, the local governing board must know the total assessed value of property subject to taxation in its jurisdiction as well as the jurisdiction’s collection percentage in the current year. So that the board may determine the assessed value, the Machinery Act requires that all appeals of the taxation or assessment of real property (in years in which there is no countywide revaluation of real property) be filed by July 1—the date by which the tax levy must be established.<sup>157</sup> In revaluation years, these appeals must be filed no later than December 1.<sup>158</sup>

## Setting the Tax Rate

The tax rate is determined by dividing the budgeted revenue by the total value of assessed property—in other words, the tax base.<sup>159</sup> If budgeted property tax revenue is  $B$ , total assessed value is  $V$ , and the tax rate is  $R$ , this may be stated as the following formula:  $R = B / V$ . This is, of course, an overly simplified formula given that no taxing unit collects 100 percent of the property taxes levied. Thus, in setting the rate, the Budget and Fiscal Control Act prohibits the taxing unit from estimating a percentage of collection of property taxes greater than the percentage collection for the preceding

154. This differs from the state treasurer’s convention of referring to fiscal years by the year in which they end. Thus “2007 taxes” are levied for the 2008 fiscal year in the nomenclature of the state treasurer.

155. G.S. 159-13.

156. G.S. 105-360.

157. G.S. 105-322(e).

158. *Id.*

159. See, e.g., Nathan B. Anderson, *Property Tax Limitations: An Interpretive Review*, 59 NATIONAL TAX JOURNAL, No. 3, 2006.

fiscal year.<sup>160</sup> The rate derived from the above calculation ( $R$ ) must be divided by the appropriate collection percentage to arrive at the actual tax rate,  $R_1$ .

An example may help illustrate the manner in which this calculation is made. Suppose that the total assessed value of all taxable property ( $V$ ) in Carolina County for the 2008–9 fiscal year is \$3 billion. Carolina County has budgeted revenues of \$19.5 million ( $B$ ) from property taxes. Applying the simple formula stated above,  $R = B$  [\$19,500,000] /  $V$  [\$3,000,000,000], the tax rate ( $R$ ) equals .0065 per \$1. Carolina County's collection percentage for 2007–8 is 97 percent, and the county cannot assume a higher rate of collection for 2008–9. If the county levies a tax at the rate of .0065, it must presume that it will not receive  $B$  [\$19,500,000], but instead will receive no more than 97 percent of  $B$ , or no more than \$18,915,000. If the tax rate is set at .0065, the county may experience a shortfall of \$585,000 (or more, if the collection rate falls below 97 percent). The collection percentage may be factored into the tax rate calculation in one of two ways. First,  $B$  [\$19,500,000] may be divided by the collection percentage [.97], resulting in  $B_1$  [\$20,103,092.78]. The resulting formula is  $R_1$  [.006701] =  $B_1$  [\$20,103,092.78] /  $V$  [\$3,000,000,000]. The tax rate, rounded to the nearest ten thousandth, is .0067. Multiplying  $R_1$  [.0067] by  $V$  [\$3,000,000,000] and multiplying the result by .97 results in budgeted revenue  $B$  [\$19,500,000]. Another way to reach the same result is to divide the rate  $R$  [.0065], resulting from the simple formula, by the collection percentage rate, .97. The quotient is  $R_1$  [.006701].

The tax rate stated in Carolina County's budget will be \$.67 or 67 cents, rather than .0067. This is because, in North Carolina, property tax rates are stated in terms of dollars per hundred. Thus the calculated rate of .0067 per dollar equals a rate of .67 per hundred dollars. A taxpayer in Carolina County with property assessed at \$100,000 in value will owe \$670 in taxes at this rate. This figure may be derived by multiplying \$100,000 by .0067 or by dividing \$100,000 by 100 and multiplying the result by .67.<sup>161</sup>

### Actual versus Effective Tax Rates

In its annual report on city and county management of cash and taxes, the North Carolina Department of State Treasurer lists actual and effective tax rates for each city and county. Obviously, the actual tax rate is the rate set by the governing body of a taxing unit for a particular year. Effective tax rates, in contrast, illustrate the manner in which increases in property values lower the stated tax rate applicable to a parcel of property.

For example, a tax rate of 50 cents applied to a tax base of \$10 billion results in a tax levy of \$50 million. If the market value of taxable property increases to \$12 billion, but the assessed value remains \$10 billion, the effective tax rate is approximately 42 cents. This is because the taxing unit is imposing \$50 million in property taxes on a tax base of \$12 billion. The property tax paid divided by the actual market value of the property equals 42 cents—the effective tax rate. Because taxing units revalue property on differing schedules and experience different levels of economic growth, the publication of an effective tax rate facilitates comparison of the tax rate imposed by one governmental unit to that imposed by other governmental units.

160. G.S. 159-13(6).

161. Some other states express property tax rates as mills per dollar. There are 1,000 mills in a dollar (10 mills to a penny). A decimal rate tax of .0067 would be expressed as 6.7 mills per \$1 (.0067 / 1,000).

## Revenue-Neutral Rate

A new term was introduced into the tax lexicon in 2005: the revenue-neutral tax rate. Unlike the effective tax rate, which facilitates comparison of the tax rate set by different jurisdictions, the revenue-neutral rate provides a comparison of the tax burden borne by property owners within a particular taxing unit before and after revaluation. The revenue-neutral rate is the rate for the fiscal year after revaluation that, taking into account expected rates of growth in the tax base and excluding increases in market value recognized by the revaluation, would produce revenue that equals the current year's tax levy.<sup>162</sup> The expected rate of growth in the revaluation year is based upon an average of increases or decreases to the assessed value since the last revaluation. This growth or decline is based on additions to or reductions in a taxing unit's base of taxable property rather than on the increases and decreases in market value that are accounted for by the effective tax rate but are not recouped by the taxing unit in nonrevaluation years. Changes to the real property tax base in nonrevaluation years result from the construction of new homes and businesses, improvements to existing structures, divisions and conveyances of land, rezoning, and other occurrences unrelated to economic conditions affecting the taxing unit in general. Changes in the personal property base occur each year because personal property is valued on an annual basis; moreover, personal property generally depreciates, or decreases in value from one year to the next. G.S. 159-11(e) provides that the growth factor used in calculating the revenue-neutral rate is based on the average increase in the tax base "due to improvements since the last general reappraisal."<sup>163</sup>

Adoption of a revenue-neutral rate in the year of a revaluation will not, however, prevent taxes assessed against real property from increasing.<sup>164</sup> This is because, in a revaluation year, a realignment occurs in the tax burden imposed upon real and personal property. In a revaluation year, the assessed value of real property equals its market value as of January 1 of that year. In each subsequent year, the assessed value of real property (other than new construction) remains constant, though its market value typically increases. Personal property, in contrast, is valued at its market value every year. Because real property is assessed at less than its current market value in the years subsequent to a revaluation and the assessed value of personal property equals its market value in those years, personal property bears a greater portion of the overall tax burden in relation to its true value. That imbalance is corrected in a revaluation year, when real property again shares equitably in the tax burden imposed. This realignment almost always results in real property comprising a larger percentage of the overall tax base in a revaluation year. Thus, even under a revenue-neutral rate, a larger portion of revenue is generated from real property in a revaluation year than from personal property. As a result, many individual real property owners receive increased tax bills in revaluation years.

A sample calculation may assist in illustrating this point. Assume that Carolina County has a \$3 billion tax base and a tax rate of \$.70 in the 2006–7 fiscal year. Seventy-eight percent of this base value (\$2.34 billion) is derived from the assessed value of taxable real property; ten percent (\$300 million) is derived from the valuation of personal property other than registered motor vehicles; ten

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162. G.S. 159-11(e).

163. For a detailed discussion of the method for calculating a revenue-neutral tax rate, see Shea Riggsbee Denning and William C. Rivenbark, *Statement of Revenue-Neutral Tax Rate and Provision for Mid-Year Property Tax Rate Change*, LOCAL FINANCE BULLETIN No. 32 (Chapel Hill: UNC School of Government, November 2004).

164. Forsyth County published an explanation of the impact of a revenue-neutral rate on real property taxes in conjunction with its last revaluation. See Technical Discussion—Revenue Neutral Tax Rate, [www.co.forsyth.nc.us/tax/reval.pdf](http://www.co.forsyth.nc.us/tax/reval.pdf) (last visited March 31, 2008).

percent (\$300 million) is derived from the valuation of registered motor vehicles; and two percent (\$60 million) is derived from the valuation of public service company system property.

The 2006–7 tax levy totals \$21,000,000 ( $\$3,000,000,000 \times \$.0070$ ). Assume that 2007 is a revaluation year and that the rate of growth in the tax base in each year since Carolina County's last revaluation averages 3 percent. If the tax base after revaluation increases by 15 percent, to \$3.45 billion, the revenue-neutral rate for 2007–8 will be \$.63 cents.<sup>165</sup> Assuming that the value of all personal property and public service company property increases by 3 percent in the revaluation year, real property values as a percentage of the total tax base will increase from 78 to 80.3 percent. Thus, taxes assessed on real property at the revenue-neutral tax rate will increase from \$16.38 million in 2006–7 to \$17,367,949.57 in 2007–8. Taxes assessed on personal property, registered motor vehicles, and public service company system property decrease from \$4.62 million to \$4,262,050.43. The impact on individual tax assessments will depend on the rate at which the property has appreciated or depreciated.

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165. This revenue-neutral rate is calculated by first determining the rate that must be imposed upon the revalued tax base to produce revenues equal to those for the current fiscal year. The new tax base is \$3.45 billion. The current year's levy is \$21 million. Thus, a tax rate of \$.61 per hundred would have to be imposed to produce revenues equaling those of the current year [ $(\$3,450,000,000 / 100) / \$21,000,000 = \$.61$ ]. This rate is then increased by three percent, the average annual percentage increase in the tax base due to improvements since the last general reappraisal [ $\$.61 * 1.03$ ]. The resulting rate is .6283, rounded to \$.63. The resulting tax levy is \$21,630,000.

These calculations are set forth in Table 2.

**Table 2. The Revenue-Neutral Tax Rate**

<b>Calculation of revenue-neutral tax rate</b>	<b>2006-7</b>	<b>2007-8</b>
Tax base (dollars)	3,000,000,000	3,450,000,000
Overall growth in revaluation year (percent)		15
Increase in personal property value in revaluation year (percent)		3
<b>Real property assessed value (dollars)</b>		
Real property assessed value (dollars)	2,340,000,000	2,770,200,000
Personal property assessed value (dollars)	300,000,000	309,000,000
Registered motor vehicle assessed value (dollars)	300,000,000	309,000,000
Public service company system property (dollars)	60,000,000	61,800,000
<b>Tax rate in 2006-7</b>		
Tax rate in 2006-7	0.70	
Tax levy in 2006-7 (dollars)	21,000,000	
Rate necessary to produce 2006-7 revenue in 2007-8		0.61
Average annual increase in tax base since last revaluation (percent)		3
<b>Revenue neutral rate for 2007-8</b>		
		<b>0.63</b>
Tax levy in revaluation year at revenue-neutral rate (dollars)		21,630,000
Change in personal property levy (percent)		-7.75
Change in real property tax levy (percent)		6.03
<i>Percent of tax base</i>		
Real property	78.00	80.30
Personal property	10.00	8.96
Registered motor vehicles	10.00	8.96
Public service company system property	2.00	1.79
<i>Tax levy by property type (dollars)</i>		
Real property	16,380,000.00	17,367,949.57
Personal property	2,100,000.00	1,937,295.65
Registered motor vehicles	2,100,000.00	1,937,295.65
Public service company system property	420,000.00	387,459.13
<b>Total personal and public service company</b>	<b>4,620,000.00</b>	<b>4,262,050.43</b>

## Conclusion

Revaluations are conducted to ensure that property owners bear a share of the total tax burden that is proportionate to the value of taxable property they own. While revaluations may be politically unpopular, infrequent reassessments of real property have been linked to systematic bias against certain groups of property owners in the property tax structure<sup>166</sup> as well as general lack of assessment uniformity.<sup>167</sup> Numerous requirements set forth in the Machinery Act operate to make the revaluation process more transparent for taxpayers. Boards of county commissioners must conduct a public hearing before adopting the schedule of values. Assessors must notify taxpayers of any change in real property valuation before the board of E&R convenes. The hearings and deliberations of the board of E&R are public. By comparing the revenue-neutral tax rate published in the taxing unit's budget with the rate adopted by a taxing unit, citizens can ascertain whether a reduction in the tax rate in a revaluation year is a revenue-neutral reduction, or, instead, a rate reduction that represents an increase in the tax levy. Ironically, this level of visibility and transparency may fuel criticism by subjecting property taxes to "a level of scrutiny rarely faced by taxes less familiar to the average taxpayer."<sup>168</sup> Despite its detractors, the property tax is likely continue to serve a critical role in the financing of local government in North Carolina as it has since the early days of statehood.<sup>169</sup> Perhaps if citizens have an improved understanding of the revaluation process, the duties and qualifications of the tax assessor, the purpose for which reassessments are conducted, and the avenues of appeal and review, they will be less prone to sticker shock during revaluation.

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166. Jerome F. Heavey, *Patterns of Property Tax Exploitation Produced by Infrequent Assessments*, 42 AMERICAN JOURNAL OF ECONOMICS AND SOCIOLOGY, October, 1983, 441-49 (reporting findings from study of tax assessments in thirty-five Pennsylvania school districts indicating that assessment ratios were systematically biased against cities).

167. Tae Ho Eom, *A Comprehensive Model of Determinants of Property Tax Assessment Quality: Evidence in New York State*, PUBLIC BUDGETING AND FINANCE, Spring 2008, 58.

168. Joan Youngman, *Enlarging the Property Tax Debate—Regressivity and Fairness*, 26 STATE TAX NOTES, October 3, 2002, 45.

169. Charles D. Liner, *The Evolution of North Carolina's State and Local Tax System*, in STATE AND LOCAL GOVERNMENT RELATIONS IN NORTH CAROLINA: THEIR EVOLUTION AND CURRENT STATUS, 51, 53 (Charles D. Liner ed., 1995).

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