



# SENATE BILL 616: Limit Look-Back for Immaterial Irregularities.

2017-2018 General Assembly

<b>Committee:</b> Senate Rules and Operations of the Senate	<b>Date:</b> May 9, 2017
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<b>Analysis of:</b> Second Edition	Staff Attorney

**OVERVIEW:** *Senate Bill 616 would reduce the distinctions between the two different procedures used to recapture back property taxes: the discovery provisions of G.S. 105-312 and the immaterial irregularity provisions of G.S. 105-394.*

**CURRENT LAW:** When a local government learns that property has escaped taxation for a number of years<sup>1</sup>, there are two different procedures that may be used to recapture the back property taxes: discoveries under G.S. 105-312 and immaterial irregularities under G.S. 105-394. The distinction between discovery and irregular immateriality is not always clear, but the difference between the two is significant.<sup>2</sup>

Discovery. – The discovery statute, G.S. 105-312, describes the procedure for taxing property that was not listed appropriately *by the taxpayer*. The discovery process limits collection of the back taxes to the current year plus the five previous years, without interest. There is a discovery penalty of 10% per year. The board of commissioners has complete discretion to reduce discovery bills or waive them entirely. Under the general taxpayer remedy statute<sup>3</sup>, elected officials may permit refunds and releases only for taxes imposed through clerical errors, illegal taxes, or taxes levied for illegal purposes.

The other unique aspect of the discovery statute is the specific notice and appeal procedures. After the assessor makes a "tentative appraisal" of the discovered property, the assessor must send notice of that appraisal and inform the taxpayer that it will become final unless the taxpayer files a written objection within 30 days of the date of the notice. If the taxpayer files a timely objection, the assessor must schedule an informal conference to allow the taxpayer to demonstrate why the tentative appraisal is not accurate. Once the assessor provides the taxpayer a final decision regarding the appraisal, the taxpayer has 15 days to file an appeal to the board of equalization and review or to the board of county commissioners. The standard appeal procedures would then apply.

Immaterial Irregularity. – The immaterial irregularity statute is the one tax officials rely on when property has escaped taxation because of assessing or billing failures *on the part of the taxing unit*. It prevents a taxpayer from relying on a taxing authority's failure to satisfy a particular statutory requirement as an excuse not to pay an otherwise valid tax. The phrase "immaterial irregularity" has an expansive and nonexclusive definition. G.S. 105-394 offers ten different specific examples of

<sup>1</sup> Reasons property may escape taxation include a property owner's failure to list improvements, an assessor's failure to list the property, an assessor's failure to include property within a municipality's tax base upon annexation of the property into the municipality's corporate limits, an assessor's failure to assess an improvement upon listing of the improvement by the property owner, and an assessor's failure to bill the appropriate tax levy.

<sup>2</sup> ["Discovery, Immaterial Irregularity, and the Morgan Decision," by Stan C. Duncan and Christopher B. McLaughlin, Property Tax Bulletin, UNC School of Government, Number 147/March 2009.](#)

<sup>3</sup> G.S. 105-381.

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immaterial irregularities, including the failure to list, appraise, or assess property<sup>4</sup>, plus a seemingly unlimited catch-all provision.

Under the immaterial irregularity statute, back taxes may be billed for all past years, including interest, from the date the back taxes were originally delinquent. No penalties may be assessed against the property owner since the failure to properly assess, list, or bill the tax lies with the taxing unit. Although the statute does not contain a time limitation, G.S. 105-378 bars the use of enforced collection remedies more than 10 years after the date the taxes originally became due. However, G.S. 105-378 does not invalidate taxes older than 10 years, nor does it eliminate the liens created by those taxes. While unenforceable, those back taxes older than 10 years continue to accrue interest until a sale occurs that requires title insurance, at which time payment of the taxes are needed to clear title to the property.

**BILL ANALYSIS:** Local tax officials in different jurisdictions may be applying a different solution to similar situations involving the recapture of back property taxes. The benefits to a county that resolves an assessor's failure to list real property through G.S. 105-394 rather than G.S. 105-312 could be substantial because G.S. 105-394 permits a county to bill for back taxes plus interest from the date the taxes would have been delinquent.

Senate bill 616 would make the two processes more similar by making the following changes to G.S. 105-394, the procedure used to correct failures of the taxing unit:

- It would add a time limit so that a county would be limited to the current year of back taxes, plus the previous five years, as is allowed for discoveries. This limitation would also be consistent with the tax refund statute.<sup>5</sup>
- It would only apply interest on late payments prospectively, not from the date the back taxes were originally delinquent.
- It would provide a similar notice and appeal process as exists for discoveries.
- It would give the board of commissioners the same authority to compromise a retroactive tax bill as the board has for discoveries.

**EFFECTIVE DATE:** The bill would become effective when it becomes law.

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<sup>4</sup> G.S. 105-303 has required a permanent listing system for real property since 2004. This system makes the assessor, not the property owner, responsible for the listing of real property. The discovery statute does not apply to the failure to list acquisitions and sales of real property since that is the responsibility of the assessor. A property owner retains the obligation to list all improvements to real property, and failure to do so is subject to the discovery statute.

<sup>5</sup> G.S. 105-381.