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AMMONS V. WAKE COUNTY: SOME LIGHT ON CLERICAL ERRORS

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Background

The statutes

To the vexation of everyone concerned—taxpayers, tax officials, and the attorneys who advise members of both groups—the Machinery Act uses the phrase "clerical error" or "clerical errors" in three different provisions, and nowhere defines the phrase. In G.S. 105-287, which authorizes the assessor to change the appraised value of real property in a nonrevaluation year, one of the grounds for making a change is a determination that a value should be increased or decreased to correct "a clerical or mathematical error." Unlike G.S. 105-325(a)(4), discussed below, there is no question that a change under G.S. 105-287 is prospective only. G.S. 105-287(c) expressly provides that "[a]n increase or decrease in appraised value made under this section is effective as of January 1 of the year in which it is made and is not retroactive."

In G.S. 105-325(a)(4), the second provision in which the phrase appears, one of the grounds on which the board of county commissioners (or the assessor, if the board has delegated the authority to the assessor) may change an appraisal or a tax after the board of equalization and review has adjourned is to correct "clerical or mathematical errors." Since the purpose of G.S. 105-325(a)(3), (4), (5), and (6) is to provide a procedure for making changes that could have been made by the board of equalization and review if the errors had been brought to the board's attention, and any changes made by the board of equalization and review are effective only for the year in which they are made [G.S. 105-322(g)(1)], it appears that any changes made under G.S. 105-325(a)(4) are also limited to the current year, the year in which they are made. That is, it seems unlikely that the legislature intended to limit the board of equalization and review's changes to the current year but not to so limit the board of commissioners' authority under G.S. 105-325, which is in substance a continuation of the board of equalization and review's role. Therefore, the correction of an appraisal or tax under G.S. 105-325(a)(4) because of a clerical error does not retroactively affect taxes for previous years. The difficulty with this line of reasoning is that G.S. 105-325(a)(6) expressly provides that changes made under that subsection are for the current year, but subsection (a)(4)—the clerical errors provision—contains no such specific limitation. So, although the legislative intention appears to have been to limit changes under

G.S. 105-325 to the current calendar year, there is some uncertainty about the matter.[1] If corrections under G.S. 105-325(a)(4) are not limited to the current year, then no time limitations apply except in cases of discoveries under G.S. 105-312: the board could change appraisals and taxes for any number of years in the past and apparently make releases or refunds as required. The five-year limitation on refunds in G.S. 105-381 does not appear to apply here because the correction powers of G.S. 105-325 and the release and refund powers of G.S. 105-381 are distinct, and nothing in G.S. 105-325 states or implies that other time limitations apply.

The third provision, G.S. 105-381, provides that one of the grounds on which a governing board may release or refund a tax is that the tax was "imposed through clerical error." A governing board may make a refund for as many as five previous years and may release tax claims that have not been paid for as many years as may be appropriate, with no time limit.

The tension between G.S. 105-325(a)(4) and 105-287—especially 105-287—and G.S. 105-381 should be obvious. A taxpayer whose tax bill is higher than it should have been because of a clerical error in appraising the property or in computing the tax will contend that under G.S. 105-381 he should be given a refund, for five years if necessary, or that the tax claim should be released as far back as necessary. But G.S. 105-287(c) limits the correction of clerical errors in the appraisal process to the current year and subsequent years. When is the correction of a clerical error limited to the current year by G.S. 105-287(c) [and also perhaps by G.S. 105-325(a)(4)] and when is it subject to a refund pursuant to G.S. 105-381?

Cases before *Ammons*

In the absence of any definitions in the Machinery Act, it is necessary to look to court decisions to attempt to ascertain the meaning of "clerical error" as it is used in the statutes. No judicial decisions have been decided that define the meaning of "clerical error" as used in G.S. 105-287, and only one case illuminates G.S. 105-325(a)(4). In *In re Weyerhaeuser*,[2] the taxpayer listed and paid taxes on property that could have qualified for exclusion under G.S. 105-275(8). The taxpayer argued that its listing of the property and failure to apply for the exclusion were clerical errors within the meaning of G.S. 105-325(4), and the board of commissioners should be able to correct them under that statute. The court held that the taxpayer's mistakes were not clerical errors within the meaning of G.S. 105-325(a)(4). In so holding, the court relied in part on *In re Nuzum-Cross Chevrolet, Inc.*,[3] and stated that, generally, a clerical error is a transcription error and must not be material. The court said that because the errors by the taxpayer here were material, they could not be considered clerical.

The court was correct in deciding that the mistakes made by the taxpayer in *Weyerhaeuser* should not be characterized as clerical errors within the meaning of G.S. 105-325(a)(4), but its reliance on *Nuzum-Cross* was misplaced. *Nuzum-Cross* involved an error by a taxing unit in omitting personal property taxes from the taxpayer's bill for several years. When he became aware of the error, the assessor billed the omitted amounts in a supplemental bill. The court said that the assessor's action was proper, that the assessor's clerical error in omitting the values was an immaterial irregularity within the meaning of G.S. 105-394, and that such an error did not invalidate the tax. The court in *Weyerhaeuser* made an unwarranted extension of *Nuzum-Cross* when it concluded that to be characterized as a clerical error under G.S. 105-325(a)(4) the error must be immaterial. One can think of many types of clerical errors that the board of commissioners should be able to correct under G.S. 105-325(a)(4)—for example, an abstract that shows two dwellings on a parcel when there is in fact only one, or an abstract that shows a building with 50,000 square feet when the number should be 5,000—that are material. The taxpayer's mistakes in *Weyerhaeuser* were not clerical errors within the meaning of G.S. 105-325(a)(4) because the taxpayer intended to do what it did: list the property and pay the taxes. The failure to apply for the exclusion may have resulted from a misunderstanding of the law, a rote listing from the previous year's information, or simple negligence on someone's part, but is was not

[1] The uncertainty arises from the Machinery Act of 1971. G.S. 105-325, as rewritten in 1971, was derived from former G.S. 105-330, Henry W. Lewis, **The Annotated Machinery Act of 1971** (1971), p. 151. G.S. 105-330 did not contain a provision limiting changes thereunder to the current year, but such a limitation was unnecessary because it was clear that the statute was simply providing for changes in the tax records for the current year after the board of equalization and review had adjourned. As enacted by the Machinery Act of 1971, G.S. 105-325(a)(6) contained the language limiting changes thereunder to the current year.

[2] 123 N.C. App. 784, 480 S.E.2d 442 (1996) (unpublished opinion).

[3] 59 N.C. App. 332, 296 S.E.2d 299 (1982), disc. rev. denied, 307 N.C. 576, 299 S.E.2d 645 (1983).

an inadvertent transcription of numbers or other information.

Ammons v. Wake County

In the first case to deal with the issue of the meaning of "clerical error" in G.S. 105-381, *Ammons v. Wake County*,[4] the taxpayer asked the assessor, in 1993, whether certain parcels that he owned qualified for present-use value as forest land. The assessor advised him that the parcels did not qualify. In 1994, the taxpayer called and received the same advice from the assessor but disregarded it and applied for present-use value anyway. The board of equalization and review granted present-use value status to the parcels for 1994. The taxpayer then made a request under G.S. 105-381 for a refund of the amount of the 1993 taxes that represented the difference between the market value and the present-use value assessment on the ground that those taxes had been imposed through a clerical error, the error being the assessor's advice that the parcels did not qualify for present-use value. The superior court found that no clerical error had been made and dismissed the action.

The court of appeals affirmed the superior court's decision. The court held that the assessor's error in this case was a mistake of judgment or an error in interpreting the law, not a clerical error. In reaching this conclusion, the court relied on definitions of "clerical error" in cases from other states to give meaning to the phrase as it is used in G.S. 105-381(a)(1). The court said that to constitute a clerical error within the meaning of G.S. 105-381(a)(1) the error must be a "transcription error," "must ordinarily be apparent on the face of the instrument,"[5] "must be capable of being corrected by reference to the record only,"[6] and "must be unintended."[7] The meaning thus given to "clerical error" in G.S. 105-381(a) is quite restrictive, with the result that taxing units must be scrupulously careful in granting releases and refunds under G.S. 105-381(a). This is important because governing board members who vote for a release or refund that should not have been granted are, pursuant to G.S. 105-380, individually liable for the amount of taxes released or refunded.

In light of the court's narrow definition of a clerical error, the following examples are offered as errors that meet the definition under G.S. 105-381(a) and would warrant a release or refund:

1. The addition of a zero or incorrect placement of a decimal point in arriving at a total valuation on an abstract or total taxes on a receipt; for example "$5000.00"is written instead of "$500.00." This is a transcription error and should be apparent from examining other figures on the abstract or receipt.

2. The transposition of numbers when entering them from an appraiser's notes to a property record card or abstract; for example "2,500" in the appraiser's notes is entered on the property record card as "5,200." This is a transcription error and should be apparent from examining the notes.

The following examples would not constitute clerical errors as defined by *Ammons*:

1. A deed calls for 100 acres, more or less, and both the assessor and taxpayer have relied on the deed to list the property as 100 acres for several years. A recent survey shows that the parcel contains only 90 acres. The assessor may change the listing under G.S. 105-287 for the current year and subsequent years, but it is not a clerical error for which a refund or release can be granted under G.S. 105-381. It was not a transcription error and it was not unintended.

2. In 1995, a revaluation year, an appraiser determined that a house should be valued as "B" grade construction. In 1997, after an inquiry by the taxpayer, a review of the construction shows that it should have been valued as "C" grade. This is not a clerical error; it was an appraisal judgment by the appraiser. It can be corrected under G.S. 105-287.

3. In 1994, a revaluation year, an appraiser incorrectly measured the length of a building as 2,500 feet. In 1997, after inquiry by the taxpayer, the building was remeasured and corrected to 2,000 feet. This is not a clerical error; it was not a transcription error, it was not unintended, and it was not apparent from the records themselves. It was a mistake of fact. The mistake can be corrected under G.S. 105-287.

These examples illustrate that under *Ammons* a clerical error within the meaning of G.S. 105-381 is one made in computing the amount of tax on a receipt, in totaling assessed value from information on the abstract, or in transferring information from one set of records to another. An error in the appraisal process, with rare exceptions, is not a clerical error within the meaning of G.S. 105-381, though it is correctable under to G.S. 105-287.

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[4] N.C. Ct. App. (No. COA96-574, Sept. 16, 1997).

[5] Trott v. Birmingham Ry. Light & Power Co., 39 So. 716 (Ala. 1905).

[6] Id.

[7] Chapman v. Town of Ellington, 635 A.2d 830 (Conn. App. 1993).

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