



Beyond the Property Tax: Collecting Other Taxes and Fees

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Although property taxes represent the largest source of unrestricted funds for North Carolina counties and municipalities,¹ our state's local governments collect a wide variety of other taxes and fees. This bulletin analyzes more than a dozen different locally collected taxes and fees. It includes two tables highlighting the unique features of these taxes and fees and then provides a detailed analysis of each one.²

Seven of these locally collected revenue streams are tax-based:³

1. animal taxes,
2. beer and wine license taxes,
3. heavy equipment rental and motor vehicle rental gross receipts taxes,

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1. For summaries of local government financial data compiled by the North Carolina Department of State Treasurer, see "North Carolina County and Municipal Financial Information," available on the Treasurer's website at <http://www.nctreasurer.com/slg/lfm/financial-analysis/Pages/Analysis-by-Population.aspx>. As that resource demonstrates, property taxes provide more than 50 percent of county revenues and more than 25 percent of municipal revenues (excluding debt proceeds). The largest source of revenues for cities is public enterprise fees (in other words, services and utilities), but the revenue from those fees is not unrestricted. State law requires that public enterprise fee revenue first be used to cover public enterprise fees. Chapter 159, Section 13(b)(14) of the North Carolina General Statutes (hereinafter G.S.).

2. This bulletin excludes most taxes and fees that are collected by the state and shared with local governments, including sales and use taxes, electricity taxes, telecommunications taxes, and motor fuels taxes. It also excludes some taxes and fees collected before a service is provided, such as county land transfer taxes that must be paid before a deed is recorded by the register of deeds, because enforced collection efforts generally are not needed for those obligations. The service is not provided if the fee is not paid. For details regarding these other taxes and fees, see Kara A. Millonzi, *A Guide to County and Municipal Revenues in North Carolina* (UNC School of Government, Aug. 2016), www.ncfinanceconnect.com/folders/file/24 (free download).

3. Note that this bulletin also excludes local privilege license taxes that were repealed as of July 1, 2015. See note 101 below. If a local government still has uncollected privilege license taxes on its books from tax year 2014 or earlier, those old privilege license taxes may be collected using the attachment and garnishment, levy and sale, or set-off debt collection remedies discussed in this bulletin.

4. motor vehicle registration taxes,
5. municipal tax taxes,
6. occupancy taxes, and
7. prepared food and beverage taxes.

Fees and costs like the ones listed below create the other revenue streams addressed in this bulletin:

1. ambulance service fees;
2. minimum housing standards enforcement costs;
3. nuisance abatement costs;
4. solid waste, water, sewer, and stormwater service fees;⁴
5. special assessments;
6. business registration fees; and
7. other regulatory and use fees.

Tables 1 and 2, below, summarize the important collection features of these taxes, costs, and fees. A few explanatory notes may help to interpret this information.

Statutory Liens on Real Property

A *lien* is the right of a creditor to satisfy an obligation from the property of the debtor.⁵ Liens allow a creditor to seize and sell a debtor's property to satisfy an obligation owed to the creditor. A creditor typically obtains a lien through a contract, such as a financing agreement between a lender and a homebuyer, or through a court judgment, such as when the creditor wins a civil lawsuit against the debtor. Other liens arise automatically as a matter of law because a statute mandates that a lien is created upon the occurrence of a particular event. For example, as a matter of law, property tax liens on real property arise each January 1.⁶

In Tables 1 and 2, the "Statutory Lien on Real Property?" column indicates whether a lien on a taxpayer's real property arises as a matter of law when a local government provides services or incurs costs. Special assessments,⁷ nuisance abatement costs,⁸ and housing demolition costs⁹ are the only taxes or fees discussed in this bulletin that create a lien automatically on the taxpayer's real property without additional action by the local government. Two other fees, solid waste fees and ambulance service fees, can create liens on the taxpayer's property after the local

4. All of these fees arise under the "public enterprise" provisions for counties, G.S. Chapter 153A, Article 15, and municipalities, G.S. Chapter 160A, Article 16. The collection remedies discussed herein for water, sewer, and stormwater service fees would also apply to other fees authorized by the public enterprise provisions.

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

6. G.S. 105-355(a) (referencing G.S. 105-285). For a detailed examination of tax liens, including a discussion of the priority of competing liens on the same property, see chapter 5 of Christopher B. McLaughlin, *Fundamentals of Property Tax Collection Law in North Carolina* (UNC School of Government, 2012) (hereafter *Fundamentals*).

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

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

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

government takes additional action. For solid waste fees, the local government must adopt an ordinance requiring that the fees be included on the property tax bill and collected as property taxes.¹⁰ For ambulance service fees, the local government must file the lien with the clerk of the superior court.¹¹

Interest or Penalties

The column in Tables 1 and 2 labeled “Interest or Penalties?” indicates whether a local government may charge interest or penalties for late payment of each fee and tax. With the exception of solid waste fees, all taxes and fees discussed herein fall into one of two categories: (1) those for which the penalties in G.S. 105-236 for the nonpayment of state taxes apply or (2) those for which interest or penalties apply only if the local government adopts such measures in an authorizing ordinance or resolution.

In contrast, the statute for solid waste fees incorporates the interest provisions of the Machinery Act,¹² assuming that the local government has adopted an ordinance requiring that the solid waste fees be billed and collected as property taxes.¹³

Collection Remedies

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

1. foreclosure of a lien on real property;¹⁴
2. attachment and garnishment of intangible property, such as bank accounts and wages;¹⁵
3. levy and sale of tangible personal property;¹⁶
4. set-off debt collection;¹⁷
5. civil lawsuit;

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

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

12. *See generally* G.S. Ch. 105, Art. 11.

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

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

15. This recovery remedy is carried out through the Machinery Act process described in G.S. 105-368, as applied to local taxes by G.S. 153A-147 (counties) and G.S. 160A-207 (municipalities).

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

17. *See* G.S. 105A-5.

6. prosecution for a criminal misdemeanor;¹⁸
7. civil penalties.¹⁹

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

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

In contrast, attachment and garnishment—the process by which a tax collector may demand that wages, bank accounts, or other funds owed to a taxpayer be paid to the local government to satisfy a debt—is available for all local taxes and for the fees and costs described in this bulletin other than water, sewer, and stormwater fees. The same is true for the levy and sale of the debtor’s personal property.

Set-off debt collection, commonly known as debt set-off, permits a local government to attach an individual or corporate taxpayer’s North Carolina state income tax refund, lottery winnings, or other money owed to the taxpayer by the state to satisfy a debt of \$50 or more owed to that local government.²⁰ Local governments must submit their requests for set-off debt collection to the N.C. Department of Revenue through a third-party clearinghouse. The clearinghouse that processes these requests for local governments requires that debts be delinquent for at least sixty days before submission.²¹

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

Equally rare are criminal misdemeanor prosecutions, which are authorized for local taxes and fees under two different statutes. The first statute is the state sales tax collection remedies provision,²² which applies to occupancy taxes, beer and wine taxes, prepared food/meal taxes, car rental taxes, and heavy equipment rental taxes. The second statute contains the general criminal enforcement provisions available for violations of local ordinances.²³ Any tax or fee that is enacted through an ordinance that is not subject to the sales tax criminal provisions can be enforced using the general criminal provisions. Punishment for a misdemeanor conviction is generally limited to a fine set at the discretion of the sentencing judge.

18. G.S. 105-236(a)(8) and (9) for those taxes subject to the penalties for nonpayment of state taxes. For all others, see G.S. 153A-123(b) (counties) and 160A-175(b) (municipalities) (both referencing G.S. 14-4), which authorize criminal misdemeanor prosecution for the violation of any ordinance unless the local government opts out of such a remedy to avoid the requirement that funds collected as late payment penalties be remitted to the public schools pursuant to Article IX, Section 7 of the state constitution.

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

20. See chapter 8 of *Fundamentals*.

21. For more information, see North Carolina Local Government Debt Setoff Clearinghouse, www.ncsetoff.org.

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

23. G.S. 153A-123(b) (counties) and 160A-175(b) (municipalities).

Table 1. Taxes *(continued)*

TAX TYPE/ AUTHORIZATION FOR TAX	STATUTORY LIEN ON REAL PROPERTY?	INTEREST OR PENALTIES?	COLLECTION REMEDIES
Occupancy Taxes			
• G.S. 153A-155 (counties)	No	• 5 percent penalty every thirty days for failure to file return when due, up to 25 percent (G.S. 105-236(a)(3))	• Attachment and garnishment, levy
• G.S. 160A-215 (municipalities)		• 10 percent penalty for failure to pay tax when due (G.S. 105-236(a)(4))	• Set-off debt collection
• By local bills		• Other penalties specified in local bill	• Civil suit
			• Criminal misdemeanor prosecution
Animal Taxes			
• G.S. 153A-153 (counties)	No	• Yes, if included in the ordinance authorizing the tax	• Attachment and garnishment, levy
• G.S. 160A-212 (municipalities)			• Set-off debt collection
			• Civil suit
			• Criminal misdemeanor prosecution, if adopted by ordinance that does not provide otherwise
Beer and Wine License Taxes			
• G.S. 105-113.77 (municipalities)	No	• 5 percent penalty for every thirty days that business is conducted without license, up to 25 percent (G.S. 105-236(a)(2))	• Attachment and garnishment, levy
• G.S. 105-113.78 (counties)			• Set-off debt collection
• G.S. 105-113.79 (municipal wholesalers)			• Civil suit
			• Criminal misdemeanor prosecution
Prepared Food/Meal Taxes			
• G.S. 153A-154.1 (counties)	No	• 5 percent penalty every thirty days for failure to file return when due, up to 25 percent (G.S. 105-236(a)(3))	• Attachment and garnishment, levy
• G.S. 160A-214.1 (municipalities)		• 10 percent penalty for failure to pay tax when due (G.S. 105-236(a)(4))	• Set-off debt collection
• By local bills			• Civil suit
			• Criminal misdemeanor prosecution
Motor Vehicle Taxes and Heavy Equipment Rental Gross Receipts Taxes			
• G.S. 153A-156 and -156.1 (counties)	No	• 5 percent penalty every thirty days for failure to file return when due, up to 25 percent (G.S. 105-236(a)(3))	• Attachment and garnishment, levy
• G.S. 160A-215.1 and -215.2 (municipalities)		• 10 percent penalty for failure to pay tax when due (G.S. 105-236(a)(4))	• Set-off debt collection
			• Civil suit
			• Criminal misdemeanor prosecution

Table 1. Taxes *(continued)*

TAX TYPE/ AUTHORIZATION FOR TAX	STATUTORY LIEN ON REAL PROPERTY?	INTEREST OR PENALTIES?	COLLECTION REMEDIES
Motor Vehicle Registration Taxes			
<ul style="list-style-type: none"> • G.S. 20-97(b1) (municipalities) • G.S. 105-570 (counties) • By local bills 	No	<ul style="list-style-type: none"> • Theoretically, yes, if included in the ordinance authorizing the tax; in practice, no, because these taxes are collected by the N.C. Division of Motor Vehicles in the principal amount only 	<ul style="list-style-type: none"> • Collected by N.C. Division of Motor Vehicles at time vehicle is registered • Local enforced collection remedies are theoretically possible but not used in practice
Municipal Tax Taxes			
<ul style="list-style-type: none"> • G.S. 20-97(d) 	No	<ul style="list-style-type: none"> • Yes, if included in the ordinance authorizing the tax 	<ul style="list-style-type: none"> • Attachment and garnishment, levy • Set-off debt collection • Civil suit • Criminal misdemeanor prosecution

Table 2. Fees and Cost

FEE TYPE/ AUTHORIZATION FOR FEE	STATUTORY LIEN ON REAL PROPERTY?	INTEREST OR PENALTIES?	COLLECTION REMEDIES
Solid Waste Fees			
<ul style="list-style-type: none"> • G.S. 153A-292 and -293 • G.S. 160A-314 and -314.1 	Yes, if board adopts ordinance requiring that fees be billed with and collected as property taxes	<ul style="list-style-type: none"> • Yes, at Machinery Act rates, if billed with property taxes • If not billed with property taxes, penalties may be included in the schedule of fees for the service 	<ul style="list-style-type: none"> • Discontinuation of services • Foreclosure, attachment and garnishment, levy, if billed with property taxes • Set-off debt collection • Civil suit • Criminal misdemeanor prosecution, if adopted by ordinance that does not provide otherwise
Water, Sewer, Stormwater Fees			
<ul style="list-style-type: none"> • G.S. 153A-274 and -277 • G.S. 160A-311 and -314 	No	<ul style="list-style-type: none"> • Yes, if included in the schedule of fees for the service 	<ul style="list-style-type: none"> • Discontinuation of services • Set-off debt collection • Civil suit • Criminal misdemeanor prosecution, if adopted by ordinance that does not provide otherwise

Table 2. Fees and Cost (continued)

FEE TYPE/ AUTHORIZATION FOR FEE	STATUTORY LIEN ON REAL PROPERTY?	INTEREST OR PENALTIES?	COLLECTION REMEDIES
Ambulance Service Fees			
<ul style="list-style-type: none"> G.S. Chapter 44, Articles 9A and 9B 	Yes, must file lien with clerk of superior court	<ul style="list-style-type: none"> Yes, if included in the schedule of fees for the service 	<ul style="list-style-type: none"> Foreclosure Attachment and garnishment, only for Article 9B counties and their municipalities Set-off debt collection Civil suit Criminal misdemeanor prosecution, if adopted by ordinance that does not provide otherwise
Special Assessments			
<ul style="list-style-type: none"> G.S. Chapter 153A, Articles 9 and 9A G.S. Chapter 160A, Articles 10 and 10A 	Yes	<ul style="list-style-type: none"> Yes, up to 8 percent per year if included in the assessment resolution 	<ul style="list-style-type: none"> Foreclosure, attachment and garnishment, levy Set-off debt collection Civil suit Criminal misdemeanor prosecution, if adopted by ordinance that does not provide otherwise
Nuisance Abatement Costs			
<ul style="list-style-type: none"> G.S. 153A-140 and 160A-193 or G.S. 153A-123 and 160A-175 	Yes, if proceeding under G.S. 153A-123 or 160A-175, must file lien with clerk of superior court	<ul style="list-style-type: none"> Yes, if mandated by the local governing board 	<ul style="list-style-type: none"> Foreclosure, attachment and garnishment, levy Set-off debt collection Civil suit Criminal misdemeanor prosecution, if adopted by ordinance that does not provide otherwise
Minimum Housing Standards Enforcement Costs			
<ul style="list-style-type: none"> G.S. 160A-443 	Yes, should file lien with clerk of superior court and county register of deeds	<ul style="list-style-type: none"> Yes, if mandated by the local governing board 	<ul style="list-style-type: none"> Foreclosure, attachment and garnishment, levy Set-off debt collection Civil suit Criminal misdemeanor prosecution, if adopted by ordinance that does not provide otherwise
Business Registration Fees, Other Regulatory and User Fees			
<ul style="list-style-type: none"> G.S. 153A-134 G.S. 160A-194 	No	<ul style="list-style-type: none"> Yes, if mandated by the local governing board 	<ul style="list-style-type: none"> Set-off debt collection Civil suit Criminal misdemeanor prosecution, if adopted by ordinance that does not provide otherwise

Finally, civil penalties can be used to punish violations of local ordinances.²⁴ But if the statutory provisions for a tax or fee provide for specific penalties, then the general civil penalties for ordinance violations are not available. For example, the occupancy tax statutes discussed in the next section incorporate the specific penalties that apply to violations of state sales tax law.

As a result, local governments are limited to those specific penalties and cannot create their own civil penalties for privilege license tax violations. In contrast, animal taxes and municipal taxicab taxes lack specific penalty provisions in their authorizing statutes. As a result, local governments levying such taxes are free to develop their own civil penalties for nonpayment.²⁵ Note that these penalties must be specific in the tax ordinance and cannot be collected through attachment and garnishment or levy and sale, as can the principal taxes.

Taxes

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

Occupancy Taxes

More than 150 counties and municipalities are the subject of local bills that grant them authority to levy taxes on the rental of rooms or similar accommodations furnished by hotels, motels, and other businesses that are subject to state sales tax under G.S. 105-164.4(a)(3).²⁶ Details of occupancy taxes vary by locality, but most are limited to a rate of either 3 or 6 percent and require that the revenues be distributed to the local tourism development authority for use in promoting travel and tourism in the area.²⁷

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

25. For more details on civil penalties for ordinance violations, please see the following bulletins by former School of Government faculty member David M. Lawrence: *Civil Penalties for Ordinance Violations—Specific or Variable?*, Local Government Law Bulletin No. 127 (UNC School of Government, May 2012), www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/lglb127.pdf; *Are There Limits on the Size of Penalties to Enforce Local Government Ordinances?*, Local Government Law Bulletin No. 128 (UNC School of Government, July 2012), www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/lglb128.pdf.

26. Many, but not all, of these counties and municipalities are listed in the general occupancy tax provisions for counties, G.S. 153A-155, and municipalities, G.S. 160A-215. The staff at the General Assembly maintains a list of all localities authorized to levy occupancy taxes and of all the related local bills through the 2013 legislative session. The list is available at <http://canons.sog.unc.edu/wp-content/uploads/2013/11/OCCUPANCY-TAX-OVERVIEW-TABLE.pdf>. The best method for determining whether a local government is authorized to levy occupancy taxes is to search the “Session Laws” section of the General Assembly’s website (www.ncga.state.nc.us/gascripts/EnactedLegislation/ELTOC.pl?sType=Law) using as search terms the name of the local government and the phrase “occupancy tax.”

27. See, e.g., S.L. 2009-429, authorizing 3 percent occupancy taxes for the municipalities of Jacksonville, Lenoir, Lowell, Mount Holly, Cramerton, McAdenville, and Ranlo. For more details on the administration of occupancy taxes, please see the following posts by the author on the Coates’ Canons: NC Local Government Law blog: *Occupancy Tax 101* (Nov. 11, 2013), <http://canons.sog.unc.edu/occupancy-tax-101/>; *Occupancy Taxes, Continued* (April 28, 2014), <http://canons.sog.unc.edu/occupancy-taxes-continued/>.

Local occupancy taxes apply to all accommodation rentals that are subject to state sales taxes, which includes hotel rooms, vacation homes, and rooms in private residences rented through websites such as Airbnb.²⁸ The only rental accommodations exempt from local occupancy taxes are (1) a private residence or room that is rented for fewer than fifteen days in a calendar year and is not listed with a real estate agent, (2) an accommodation supplied to the same person for a period of ninety or more continuous days, and (3) an accommodation arranged or provided to a person by a school or camp where tuition or a fee is charged to the person for enrollment.²⁹

The hotel or the owner/manager of the residence made available as an accommodation is responsible for collecting the local occupancy tax from the customer renting the accommodation. The taxes collected by that hotel or owner/manager should be submitted to the local government on a monthly basis. If a rental for which occupancy taxes are collected and submitted to a local government remains rented to the same party for ninety days, then the local government is obligated to make a refund of the taxes on that accommodation upon request from the hotel or owner/manager of the residence.³⁰

The penalties for the failure to pay occupancy taxes are either specified in the local bill that authorized the tax³¹ or tied to the penalties for delinquent state sales taxes found in G.S. 105-236.³² These include a 5-percent-per-month penalty for failure to file the required monthly return, up to a maximum of 25 percent, and a one-time 10 percent penalty for failure to pay the tax along with the monthly return. Both penalties are based on the amount of tax owed. For example, if a hotel owed \$1,000 in occupancy tax for a particular month and did not file a return or pay the tax, the total penalty for the first month would be \$150: \$50 for the failure to file and \$100 for the failure to pay. G.S. 105-236(a)(9) also makes the failure to file a return or pay the tax a Class 1 misdemeanor. In general, there is no successor liability for occupancy taxes. Absent contrary provisions in a local government's authorizing legislation, the new owner of a hotel or rental home has no responsibility for occupancy taxes that should have been collected and submitted by the previous owner.³³

28. G.S. 105-164.4F defines the scope of state sales taxes on accommodations, which is made applicable to local occupancy taxes through G.S. 153A-155 and 160A-215.

29. G.S. 105-164.4F(e).

30. In practice, many hotels and property managers will simply deduct the refund amount from a subsequent month's occupancy tax payment to that local government rather than requesting a refund check.

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

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

33. But tax collectors should check the details of their local occupancy tax bills to confirm that they do not include special provisions about successor liability. Wake County's bill, for example, incorporates the state sales tax successor liability rules. See S.L. 1995-458.

Animal Taxes

All counties and municipalities are authorized to levy a license tax on the privilege of keeping animals.³⁴ Rates and covered animals vary across the state. For example, residents of Charlotte and Mecklenburg County must pay \$30 per year for “unaltered” dogs, cats, and ferrets and \$10 per year for neutered or spayed pets.³⁵ Asheville’s \$10 annual tax covers only dogs.³⁶

The penalties in G.S. 105-236 do not automatically apply to animal taxes. However, a local government may create late-payment penalties for these taxes in its authorizing ordinance.³⁷

Prepared Foods/Meals Taxes

Local governments require special authorization from the General Assembly to levy taxes on prepared food and beverages. A search of the General Assembly’s website suggests that only a handful of local governments have received this authority: five counties (Cumberland, Dare, Durham, Mecklenburg, and Wake) and three municipalities (Charlotte, Hillsborough, and Monroe).³⁸ Although the details of the local authorizing bills vary, these taxes generally are limited to 1 percent and apply to “prepared foods” as defined in G.S. 105-164.3(28):

Prepared food. — Food that meets at least one of the conditions of this subdivision. Prepared food does not include food the retailer sliced, repackaged, or pasteurized but did not heat, mix, or sell with eating utensils.

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

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

35. See Pet Data, “License Fees: Charlotte-Mecklenburg, North Carolina” (2017), www.petdata.com/for-pet-owners/chr/license-fees.

36. See Pet Data, “License Fees: Asheville, North Carolina” (2017), <http://www.petdata.com/for-pet-owners/ash/license-fees>.

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

38. Of these eight local governments, only five actually levy the prepared food and beverage tax. Cumberland, Dare, Mecklenburg, and Wake counties and the town of Hillsborough each levy a 1 percent prepared food and beverage tax. Charlotte has the authority to levy the tax only to the extent that Mecklenburg County does not, but because the county does levy the tax, the city shares in that revenue and does not levy its own additional tax. Proposed prepared food and beverage taxes were rejected by voters in Durham County and the city of Monroe. See summary of Senate Bill 2014-876: Brevard Meals Tax, N.C. General Assembly, Research Division (June 11, 2014), www.ncga.state.nc.us/documentsites/committees/senatefinance/2013/Meeting%20Documents/6-11-2014/S876%20Brevard%20Meals%20Tax%20Summary.pdf. The authorizing legislation for each of the eight localities is as follows: S.L. 1993-413, *as amended by* S.L. 2001-347 (Cumberland County); S.L. 1991-177, *as amended by* S.L. 2001-347 and S.L. 2002-141 (Dare County); S.L. 2008-116 (Durham County); S.L. 1989-821, *as amended by* S.L. 2001-347 and S.L. 2001-402 (Mecklenburg County and Charlotte); S.L. 1991-594, *as amended by* S.L. 1995-458 and S.L. 2001-347 (Wake County); S.L. 1993-449, *as amended by* S.L. 1999-304 and S.L. 2001-347 (Hillsborough); S.L. 2005-261 (Monroe). A number of towns in Mecklenburg County are authorized to receive a portion of that county’s tax but do not levy their own taxes. See S.L. 2001-402 (Cornelius, Davidson, Huntersville, Matthews, Mint Hill, and Pineville).

In 2001 and 2002 the General Assembly made the penalties for unpaid meal taxes uniform by subjecting the taxes to the penalty provisions in G.S. 105-236 and repealing all additional or higher local penalties.³⁹ These uniform penalties include a 5-percent-per-month penalty for failure to file the required monthly return, up to a maximum of 25 percent, and a one-time 10 percent penalty for failure to pay the tax along with the monthly return.⁴⁰ Both penalties are based on the amount of tax owed. G.S. 105-236(a)(9) also makes the failure to file a return or pay the tax a Class 1 misdemeanor.

Beer and Wine License Taxes

In counties and municipalities that permit the sale of beer and wine, retailers of such beverages are required to obtain local licenses and pay privilege taxes specified in state law.⁴¹ These local taxes are in addition to the fees required for state alcoholic beverage permits⁴² and state excise taxes, a portion of which is shared on a per-capita basis with the local governments that permit alcohol sales.⁴³

Technically, a business must obtain a license and pay the appropriate fee or tax for each of the permitted activities it conducts. See Table 3, below. If a business sells both wine and beer, it must obtain a license for both types of sales. If that business were located in a city, it would need to pay for the relevant retail licenses from both the city and county. There is one exception to the multiple-license requirement. Both state and local regulatory authorities report that they allow the more expensive on-premises license to cover both on- and off-premises alcohol consumption. This means that if a business sells beer for both on- and off-premises consumption, it is required to obtain only the on-premises permit.

Table 3. Local Beer and Wine License Taxes

CONDITION OF SALE	COUNTY- IMPOSED TAX ^a (\$)	MUNICIPALITY- IMPOSED TAX ^b (\$)
Beer, On-Premises	25	15
Beer, Off-Premises	5	5
Wine, On-Premises	25	15
Wine, Off-Premises	25	10

a. G.S. 105-113.78.

b. G.S. 105-113.77.

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

40. G.S. 105-236(a)(3) and (4), respectively.

41. Twenty-five counties (and the municipalities in those counties) plus four additional cities (Aulander, Greensboro, Pink Hill, and Zebulon) have discretion to refuse to issue local licenses for the on-premises consumption of wine. Those twenty-five counties are Alamance, Alexander, Ashe, Avery, Chatham, Clay, Duplin, Granville, Greene, Haywood, Jackson, Macon, Madison, McDowell, Montgomery, Nash, Pender, Randolph, Robeson, Sampson, Transylvania, Vance, Watauga, Wilkes, and Yadkin. G.S. 105-113.71(b). For more details on how local governments may regular or restrict the sale of alcohol within their jurisdictions, please see former faculty member Michael Crowell's chapter on alcoholic beverage control in *County and Municipal Government in North Carolina* (UNC School of Government, 2nd ed. 2014).

42. G.S. Chapter 18B, Art. 10.

43. G.S. 105-113.82.

For example, if a bar sells beer and wine for both on-site consumption and take-out, it would be required to pay for two local beer and wine retail license taxes, the on-premises beer tax and the on-premises wine tax. Those licenses would also cover take-out sales for off-premises consumption. If that bar were located in a city, it would need to obtain and pay for those same two licenses at the city rate. The total annual local beer and wine taxes for this establishment would be \$80 (\$25 for county beer on-premises, \$25 for county wine on-premises, \$15 for city beer on-premises, \$15 for city wine on-premises).

What about a take-out shop that occasionally offers beer or wine tastings for their customers? That business would need an on-premises license (beer or wine or both) only if it charges for those tastings. If the tastings are free, then there is no retail activity to be taxed, and an on-premises license is not required.

Each local beer and wine license covers that specific activity at one specific location. If a business has multiple locations in one county or city, that business will need to obtain separate licenses for each location.

City beer and wine taxes must increase by 10 percent for each additional license of the same type issued to the same taxpayer for use at a separate location.⁴⁴ For example, assume ABC, Inc. operates three beer and wine shops in the city. Each location sells both beer and wine for off-premises consumption. The taxes for the first location would be \$5 for beer off-premises and \$10 for wine off-premises. The taxes for the second location would increase by 10 percent: \$5.50 for beer off-premises and \$11 for wine off-premises. The taxes for the third location would again increase by 10 percent: \$6.05 for beer off-premises and \$12.10 for wine off-premises.⁴⁵ County beer and wine taxes do not increase for additional locations.

The local beer and wine license statutes do not create exceptions or special rules for vendors who operate at different locations temporarily. For example, a beer vendor who is permitted to sell beer at a three-day city festival would need to obtain an on-premises consumption permit for that location even if that vendor already had a license for on-premises consumption elsewhere in the city or county.

Unlike property taxes, which are tied to the fiscal year (July 1 to June 30), local beer and wine licenses and taxes must cover the period from May 1 to April 30.⁴⁶ The licenses are non-transferable, meaning that if the operator of a wine or beer store sells the business, the new owner will be required to obtain a new license and pay the applicable tax.⁴⁷

G.S. 105-113.70(d) prohibits all local licenses or taxes aimed at the manufacture or sale of alcoholic beverages other than those expressly permitted or required by G.S. 105-113.77 (city beer and wine license taxes), -113.78 (county beer and wine license taxes), and -113.79 (city wholesaler license taxes). As a result, local governments are not authorized to charge local license taxes for the sale of liquor or mixed alcoholic drinks, nor may they tax beer breweries, wineries, or distilleries for the manufacture of alcoholic beverages.⁴⁸

Taxes on beer and wine wholesalers are optional for municipalities and prohibited for counties. Cities and towns may levy a license tax up to \$37.50 per year on beer and wine wholesalers.

44. G.S. 105-113.77(b).

45. To see how the taxes would continue to increase for even more locations, see City of Durham, Business License Unit, "Beer and Wine Privilege Business License Tax Schedule," <https://durhamnc.gov/DocumentCenter/View/1595>.

46. G.S. 105-113.70(b).

47. G.S. 105-113.70(c).

48. But if any of those businesses also sold beer or wine for on- or off-premises consumption, they would be liable for the applicable city and county taxes for those activities.

The penalties in G.S. 105-236 apply to the failure to pay for or obtain local beer and wine licenses. Operating a business without the required privilege license triggers a monthly penalty of 5 percent of the applicable privilege license tax, up to a total of 25 percent. Failure to pay the required tax triggers a separate 10 percent penalty.⁴⁹ These violations are also Class 1 misdemeanors.

There is no successor liability for local beer and wine taxes. If a business with delinquent beer and wine taxes sells an establishment to another owner, that new owner is not liable for the taxes owed by the original owner. But that new owner will be required to obtain and pay for its own new local beer and wine licenses.

Motor Vehicle and Heavy Equipment Rental Gross Receipts Taxes

Local governments are not permitted to levy property taxes on cars, trucks, or mobile heavy equipment that are held for short-term rental.⁵⁰ However, counties and municipalities may tax the gross receipts from the rental of these vehicles and equipment as indicated in Table 4, below.

Table 4. Taxes on Receipts from Rentals

TYPE OF RENTAL	COUNTY-IMPOSED TAX ^a (\$)	MUNICIPALITY-IMPOSED TAX ^b (\$)
Vehicle	1.5 ^a	1.5 ^b
Heavy Equipment	1.2 ^c	0.8 ^d

- a. G.S. 153A-156.
- b. G.S. 160A-215.1.
- c. G.S. 153A-156.1.
- d. G.S. 160A-215.2.

A “vehicle” is defined by G.S. 160A-215.1(e)(2) as

[a]ny of the following:

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

“Heavy equipment” is defined by G.S. 153A-156.1(a)(1) as

[e]arthmoving, construction, or industrial equipment that is mobile, weighs at least 1,500 pounds, and meets any of [these] descriptions . . . :

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

49. G.S. 105-236(a)(4).

50. G.S. 105-275(42) and (42a) exempt these types of property from local property taxes. An annual application is required for the heavy equipment exemption under G.S. 105-275(42a). No application is required for the short-term vehicle rental exemption in G.S. 105-275(42). See G.S. 105-282.1(a) and (a)(1)b.

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

The penalties in G.S. 105-236 for the failure to pay state taxes apply to vehicle and heavy equipment gross receipt taxes.⁵¹ These include a 5-percent-per-month penalty for failure to file the required monthly return, up to a maximum of 25 percent, and a one-time 10 percent penalty for failure to pay the tax along with the monthly return. Both penalties are based on the amount of tax owed. G.S. 105-236(a)(9) also makes the failure to file a return or pay the tax a Class 1 misdemeanor.

Motor Vehicle Registration Taxes

All municipalities and some counties (those operating public transportation systems) may levy taxes on motor vehicle registrations.⁵² Under the “Tag & Tax Together” system that debuted in 2013, these registration taxes are collected, along with local property taxes on the vehicle and state registration fees, by the North Carolina Division of Motor Vehicles (DMV) at the time a vehicle’s registration is applied for or is renewed.⁵³ If the taxpayer does not pay all of the taxes and fees due on the vehicle, the DMV will not issue a registration or a renewal for that vehicle.⁵⁴ As a result, local governments do not have to use their own enforced collection remedies (for example, the attachment and garnishment remedy that is available for all local taxes) to collect these registration taxes.⁵⁵

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

52. Technically, the municipal taxes are taxes not on motor vehicle registrations but on motor vehicles themselves. The authorizing statute, G.S. 20-97(b1), does not explicitly limit the tax to registered motor vehicles. It’s possible that a municipality could levy these taxes on unregistered as well as registered motor vehicles. That would seem to contradict the intent of the law, however, given the fact that G.S. 20-97 is contained in a part of G.S. Chapter 20 entitled, “Title and Registration Fees.” Such placement of the statute suggests that it was intended to apply *only* to registered motor vehicles.

53. For more details on the Tag & Tax Together system, see Christopher B. McLaughlin, “The Collection of Property Taxes on Motor Vehicles,” *Property Tax Bulletin* No. 172 (UNC School of Government, Dec. 2016) (hereinafter *PTB 172*), www.sog.unc.edu/publications/bulletins/collection-property-taxes-motor-vehicles.

54. There is one exception to this practice: a taxpayer seeking an initial registration on a newly purchased vehicle has the option of obtaining a limited registration plate good for 60 days without paying local taxes on the vehicle. The DMV will require payment of those local taxes when the taxpayer seeks to obtain full registration. For more details, see *PTB 172*.

55. G.S. 153A-147 (counties) and 160A-207 (municipalities) authorize the use of property tax collection remedies for all local taxes. In theory, a local government could attempt to collect these registration taxes itself without the help of the DMV in the rare instance in which an owner is permitted to obtain a registration without paying all local taxes on the vehicle as described in the previous note. However, the author is unaware of any local government that does so.

Municipalities

In 2015 the General Assembly made substantial changes to municipalities' authority to levy taxes on motor vehicle registrations.⁵⁶ All municipalities are now permitted to levy annual taxes of up to \$30 per vehicle on motor vehicle registrations.⁵⁷ Under G.S. 20-97(b1), the net proceeds from the vehicle registration tax may be used as follows:

- Up to \$5 per vehicle of the tax proceeds may be used for any lawful purpose.
- If the municipality operates a public transportation system, as defined in G.S. 105-550, up to \$5 per vehicle of the tax proceeds may be used for “financing, constructing, operating, and maintaining local public transportation systems.”
- The remaining proceeds must be used for “maintaining, repairing, constructing, reconstructing, widening, or improving public streets” in the municipality that are not part of the state highway system.

Counties

If a county, or at least one municipality located within a county, operates a public transportation system, the county may impose a registration tax of up to \$7 per year on any vehicle located within the county.⁵⁸ The proceeds of the tax are distributed on a per capita basis among the county if the county operates a public transportation system, and among any municipalities located in the county if the municipalities operate public transportation systems.⁵⁹ The proceeds must be used “to operate a public transportation system, including financing, constructing, operating, and maintaining that public transportation system.”⁶⁰

Municipal Taxicab Taxes

In addition to vehicle registration taxes, all municipalities may levy taxes of up to \$15 on vehicles used as “taxicabs.”⁶¹ The General Statutes do not define the term “taxicab”, but presumably it applies to any vehicle used to transport passengers for compensation. If so, then the taxicab tax would apply to vehicles used in ride-share businesses such as Lyft and Uber as well as to traditional taxis, limousines, and car services.

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

56. For a detailed analysis of these changes, please see Kara Millonzi, “Expanded Motor Vehicle License Tax Authority for Municipalities,” *Coates’ Canons: NC Local Government Law* blog (Nov. 9, 2015), <http://canons.sog.unc.edu/expanded-motor-vehicle-license-tax-authority-for-municipalities/>.

57. G.S. 20-97(b1). A number of municipalities were authorized by local bills to exceed the \$5 cap on registration taxes that previously existed in G.S. 20-97. *See, e.g.*, S.L. 2009-160 (authorizing the city of Raleigh to levy an annual license tax on vehicles of up to \$25, \$15 of which may be spent for any purpose while the rest must be spent on transportation-related purposes, including sidewalks). These municipalities may continue to use their registration tax proceeds as described in those local bills.

58. G.S. 105-570(a) and (b).

59. G.S. 105-570(c).

60. G.S. 105-570(d).

61. G.S. 20-97(d).

The penalties in G.S. 105-236 do not automatically apply to taxicab taxes. However, a local government may include penalties or interest charges for late tax payments in its authorizing ordinance.⁶²

Fees and Costs

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

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

Under the public enterprise provisions applicable to counties and municipalities, all local governments are permitted to provide and charge for services such as water distribution, wastewater collection and treatment, solid waste collection and disposal, and stormwater management.⁶³ For each service that it offers, a local government may set its own fees and late-payment charges.⁶⁴

The primary remedy for collecting unpaid utility fees is to discontinue utility service at the property where the delinquency occurred. City- and county-operated utilities must wait at least ten days after an account becomes delinquent before cutting off services.⁶⁵ A local government may also specify in its ordinance how partial payments will be allocated among multiple fees included on the same bill.⁶⁶ Most local governments put this authority to use by specifying that water service, the one easiest to discontinue and considered most vital by property owners, is paid last.

Beyond discontinuation of services and set-off debt collection, the final collection remedy available for most public enterprise fees is a civil lawsuit to enforce the debt.⁶⁷ Outside of a few towns and counties that have been granted special collection authority via local bills,⁶⁸ Machinery Act remedies generally are not available for the collection of public utility fees. The one exception to that rule is for the collection of solid waste fees.

If a local government adopts an ordinance requiring that solid waste fees be billed and collected as property taxes, then these fees may be included on the property tax bill, will create

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

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

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

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

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

67. *Id.*

68. For example, see S.L. 2011-109 and 2005-441, authorizing Clemmons, Durham, Garner, Kernersville, Knightdale, Morrisville, Wendell, Winston-Salem, and Zebulon to use Machinery Act remedies to collect stormwater utility fees. Similarly, S.L. 2002-127, 1999-127, 1998-84, and 1989-1070 authorize Chadbourn, Locust, Mount Gilead, Norwood, Stanfield, Richfield, and Montgomery County to use the Machinery Act remedy of levy and sale of tangible personal property (G.S. 105-366 and -367) to collect water and sewer bills.

a lien on the property owner's real property, and may be collected using the Machinery Act remedies of foreclosure, attachment and garnishment, and levy.⁶⁹ Without such an ordinance, or if after adopting such an ordinance the local government does not include these fees on property tax bills, then Machinery Act remedies are not available for the collection of solid waste fees.

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

In two situations, collection efforts may be aimed at someone other than the contracting party. The first situation concerns property owners who are landlords. Regardless of who established the utility account, a landlord property owner can be held responsible for unpaid bills if the utility services for multiple tenants are measured on one meter or if the local government bills sewer service fees separately from water service fees.⁷⁰ The second situation concerns other members of the contracting party's household. Under certain scenarios, unpaid utility bills incurred by one member of a household may justify the discontinuation of utility services to another household member.⁷¹ However, a local government may never subject one household member to set-off debt collection or a civil suit for the unpaid utility bills of another household member.

Ambulance Service Fees

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

Article 9A requires the local government to file the lien with the clerk of superior court within ninety days of the date it provided the ambulance service.⁷² To enforce a lien under Article 9A, the local government must initiate a civil action and obtain a judgment ordering the sale of the property subject to the lien; Machinery Act foreclosure, attachment, and levy remedies are not available.⁷³

Eighty-nine counties possess additional enforcement remedies under Article 9B.⁷⁴ This article allows the covered counties to treat the ambulance service fees as a tax owed to the

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

70. G.S. 153A-277(d) (counties) and 160A-314(d) (municipalities).

71. G.S. 153A-277(b1) (counties) and 160A-314(b1) (municipalities).

72. G.S. 44-51.2.

73. G.S. 44-51.1. The local government must initiate this action before the earlier of (1) ten years from the date on which ambulance service was provided or (2) three years from the date of the service recipient's death.

74. As of the 2017 legislative session, those counties are Alamance, Alexander, Alleghany, Anson, Ashe, Beaufort, Bladen, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Camden, Carteret, Caswell, Catawba, Chatham, Cherokee, Chowan, Cleveland, Columbus, Craven, Cumberland, Dare, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gaston, Graham, Granville, Greene, Guilford, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Johnston, Jones, Lee, Lenoir,

county and to use the Machinery Act remedies of attachment and garnishment to assist with their collection.⁷⁵ These counties also obtain a lien on real property if they file the lien with the clerk of superior court after 90 days but within 180 days of the date the ambulance service was provided.⁷⁶ The lien under Article 9B covers not only real property owned by the individual who received the ambulance service but also real property owned by people legally responsible for the support of the individual who received the service.⁷⁷ For example, if ambulance service is provided to a child by an Article 9B county, then that county would have a lien on real property owned by that child's parents. Similarly, this provision should permit an Article 9B county to attach the wages of the spouse of the person who received the ambulance service to satisfy the debt for that service.⁷⁸

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

Special Assessments

Special assessments are essentially additional property taxes levied to pay for the construction or improvement of particular public works such as streets; sidewalks; or water, sewer, and stormwater systems.⁷⁹ Special assessments target particular property owners whose properties benefit from these projects. Some special assessments require approval from a majority of the affected property owners; others may be levied unilaterally by the governing board.⁸⁰

Lincoln, McDowell, Macon, Madison, Mecklenburg, Mitchell, Montgomery, Moore, Nash, New Hanover, Onslow, Orange, Pasquotank, Pender, Person, Pitt, Polk, Randolph, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Stanly, Stokes, Surry, Swain, Transylvania, Tyrrell, Union, Vance, Wake, Warren, Washington, Watauga, Wilkes, Wilson, Yadkin, and Yancey. G.S. 44-51.8. It is unclear whether these eighty-nine counties have the option of proceeding under either Article 9A or Article 9B. In the author's view, the safest course of action is to assume that these counties may proceed *only* under Article 9B.

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

76. G.S. 44-51.6.

77. G.S. 44-51.5.

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

79. G.S. Chapter 153A, Articles 9 and 9A (counties); Chapter 160A, Articles 10 and 10A (municipalities).

80. All special assessments levied under the "critical infrastructure needs" provisions of G.S. Chapter 153A, Article 9A and Chapter 160A, Article 10A require petitions signed by (1) the owners of the real property to be assessed who represent at least 66 percent of the assessed value of that real property and (2) more than 50 percent of the owners who will be subject to the levy. G.S. 153A-210.3 (counties); 160A-239.3 (municipalities). Petitions are also required for county or municipal improvements to sidewalks and streets under the "traditional" special assessment process. *See* G.S. 160A-217 and 153A-205. Other special assessments under the traditional process, such as those for the extension of water and sewer lines, may be levied by resolution of the governing board without petitions from the property owners. G.S. 153A-185 (counties); 160A-216 (municipalities) However, local governments generally prefer to confirm that the affected property owners desire water and sewer services before spending the money to extend those lines. For more details on special assessments for critical infrastructure needs, see Kara Millonzi, "An Overview of Special Assessment Bond Authority in North Carolina," *Local Government*

The cost of a public works project to be paid for by a special assessment is allocated among the properties that will benefit from the project. Several different allocation methods are permitted, including those based on the frontage abutting the project, the acreage served by the project, or the number of lots benefitting from the extension of an existing service.⁸¹

Special assessments are generally payable in ten annual installments, although those levied under the “critical infrastructure needs” provisions may be paid over twenty-five years.⁸² Most often installments are billed with property taxes and due on September 1 each year, the same day property taxes are due.⁸³ Interest of up to 8 percent annually may apply to these installments if the governing board so provides in the resolution that authorizes the assessment.⁸⁴ Special assessments that are billed with property taxes accrue interest on the due date, September 1, not on the delinquency date for property taxes, January 6.

Once the governing board confirms the final assessment roll—that is, the list of properties responsible for paying the costs—the special assessments become a lien on the properties included in the roll.⁸⁵ This lien is senior to all other liens on the property except for federal, state, and local tax liens.⁸⁶ Notice of the final assessment roll must be published at least twenty days after confirmation by the governing board.

Tax collectors are responsible for collecting special assessments “in the same manner as . . . [property] taxes,” meaning that the Machinery Act remedies of levy, attachment and garnishment, and foreclosure are available to help collect delinquent payments.⁸⁷ If an installment payment is not paid by the due date, the entire special assessment immediately becomes due and delinquent unless the governing board waives this right of “acceleration.”⁸⁸ For example, consider a \$1,000 special assessment that is payable in ten annual installments of \$100. If the property owner fails to pay the first installment when due, the entire \$1,000 becomes due and subject to enforced collection remedies. If the board waives its right to accelerate the installment payments, then only the first \$100 installment payment could be the subject of Machinery Act collection remedies. Enforcement actions must begin within ten years of the due date of the earliest installment payment included in the action.⁸⁹

Finance Bulletin No. 40 (UNC School of Government, Nov. 2009) (hereinafter *LGFB 40*), <http://sogpubs.unc.edu/electronicversions/pdfs/lfb40.pdf>.

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

82. G.S. 153A-210.5 (counties) and 160A-239.5 (municipalities). These provisions became law in 2008 and are scheduled to expire in 2020. S.L. 2015-121.

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

84. G.S. 153A-200(a) (counties) and 160A-233(a) (municipalities).

85. G.S. 153A-195 (counties) and 160A-228 (municipalities).

86. G.S. 153A-200(c) (counties) and 160A-233(c) (municipalities).

87. *City of Durham v. Herndon*, 61 N.C. App. 275, 277 (1983) (quoting S.L. 1975-671) (authorizing use of Machinery Act remedies for collection of special assessment liens).

88. G.S. 153A-200(b) (counties) and 160A-233(b) (municipalities).

89. G.S. 153A-200(d) (counties) and 160A-233(d) (municipalities). However, if installment payments are accelerated, the ten-year limitation on enforcement for each installment payment begins to run from the date the installment payment would have been due without acceleration. For example,

Special assessments for critical infrastructure needs are the one type of debt for which a local government might be compelled to use all available collection remedies up to and including foreclosure. Generally, the decision to pursue enforced collection remedies for unpaid taxes or fees is left to the discretion of the local government. Although local tax collectors are charged with the duty to “employ all lawful means” to collect property taxes and other debts with which they are charged,⁹⁰ local governments are not required to force their tax collectors to use enforced collections for all delinquent debts. Governing boards and their tax collectors have the discretion to pursue or decline to pursue enforced collections, including foreclosure, on particular accounts. That is not true for special assessments for critical infrastructure needs for which the local government issues revenue bonds. These bonds, which raise the initial funds needed to pay for the infrastructure projects that produced the special assessments, include covenants that require the local government to employ all available enforced collection methods up to and including foreclosure to collect unpaid assessments.⁹¹

Unlike the other taxes and fees discussed in this bulletin, special assessments are subject to their own unique amendment provisions. Once confirmed, under the General Statutes a special assessment may be modified only through “reassessment” in cases of “irregularity, omission, error, or lack of jurisdiction.”⁹² The applicable provisions appear to eliminate the opportunity for a local government to negotiate or compromise a special assessment once it has been confirmed.

Nuisance Abatement Costs and Minimum Housing Standards Enforcement Costs

Although authorized by different statutes, both nuisance abatement and minimum housing standards enforcement costs concern local governments’ efforts to remedy dangerous conditions on private property. These costs become a lien on the property that created the need for government action.

Nuisance abatement occurs when a local government takes action to “remove, abate, or remedy [any]thing that is dangerous or prejudicial to the public health or safety,” such

consider a \$1,000 special assessment payable in ten annual installments, with the first installment due on September 1, 2010. If the taxpayer fails to pay the first installment payment by that date, all ten installment payments can become immediately due and payable. However, the ten-year limitation for collecting each installment payment runs from its original due date: enforcement actions to collect the second \$100 installment payment could begin as late as August 31, 2021, which would be within ten years of September 1, 2011, the original due date of the second installment before acceleration.

90. G.S. 105-350 includes that obligation in its list of “general duties of tax collectors.” G.S. 105-350(1). Additionally, the mandatory “order of collection” issued by the governing board to the tax collector states that the tax collector is “authorized, empowered, and commanded to collect the taxes” and serves as the authority to “direct, require and enable [the tax collector] to levy on and sell any real or personal property” of delinquent taxpayers. *Id.* § 105-321(b).

91. See *LGFB 40*. The town of Hillsborough was the first, and as of this writing, the only, North Carolina local government to take advantage of the authority to issue special-assessment-backed revenue bonds in North Carolina. For more details, see the following blog posts: “Town of Hillsborough: Special Assessments (Parts I–III),” *Community and Economic Development in North Carolina and Beyond* (UNC School of Government, Community and Economic Development program, Feb. 6 and 20, March 13, 2014), <https://ced.sog.unc.edu/town-of-hillsborough-special-assessments-part-i/>. (Parts II and III may be accessed within Part I.)

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

as overgrown vegetation or trash-filled lots.⁹³ Municipalities may take abatement actions “summarily,” meaning without notice or hearing, but counties must provide the taxpayer allegedly responsible for the nuisance with notice, the right to a hearing, and the right to appeal to the courts.⁹⁴ Nuisance abatement liens arising under G.S. 153A-140 and 160A-193, the “traditional” abatement provisions, can be enforced using all Machinery Act remedies and have the same priority as liens for property taxes.⁹⁵ These liens do not need to be filed.

Alternately, local governments may take action to abate nuisances under the statutes that provide for general enforcement of their ordinances, which require a court order before the local government may proceed.⁹⁶ Some local governments prefer this alternate approach because it may provide additional defenses to trespass allegations or other objections from the landowner. Nuisance abatement liens arising under this approach are equivalent to mechanics’ liens arising under G.S. Chapter 44A, Article 2. These liens must be filed with the clerk of superior court and can be enforced only through a civil action. They do not have “super-priority” as do property tax liens.⁹⁷

Minimum housing standards enforcement actions are aimed at dwellings that are “unfit for human habitation” and require repair, closing, or demolition.⁹⁸ Before taking action to enforce minimum housing standards, a local government must (1) pass an ordinance finding that unfit dwelling conditions exist and (2) satisfy certain notice and hearing requirements.⁹⁹ Minimum housing standards enforcement liens are the equivalent of liens for special assessments. These liens are senior to all liens except tax liens and may be enforced through Machinery Act foreclosure, attachment, and levy procedures.¹⁰⁰

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

94. A municipality must take care not to abuse its authority to abate public nuisances without notice or court approval. As School of Government faculty member Trey Allen notes, the common municipal practice of mowing overgrown lawns and charging property owners for that service may not be supported by relevant state law. See “May a City Mow an Overgrown Lot without a Court Order?”, *Coates’ Canons: NC Local Government Law* blog (April 10, 2017), <https://canons.sog.unc.edu/may-a-city-mow-an-overgrown-lot-without-a-court-order/>.

95. “Priority” refers to the order in which liens are paid if a property is subject to multiple liens. Generally, property tax liens have the highest priority, followed by special assessment liens, and then by other liens, such as mechanics’ liens and mortgage liens. For a detailed discussion of lien priority, see chapter 5 of *Fundamentals*.

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

97. G.S. 44A-13.

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

99. G.S. 160A-443 (applies to both counties and municipalities).

100. G.S. 160A-443 also suggests that housing standards enforcement liens must be filed in the same manner as are special assessment liens. However, there is no requirement that special assessment liens be filed, which calls in to question exactly what filing requirement, if any, applies to housing standards enforcement liens. To protect their interests, local governments that incur housing standards enforcement costs should consider filing their liens both with the clerk of superior court in their county and with the county register of deeds. Even if these filings are not required, they should put prospective buyers of the property on notice of the lien and increase the likelihood that the lien will be satisfied without additional enforcement actions.

Business Registration Fees

The General Assembly eliminated essentially all local privilege license taxes as of July 1, 2015.¹⁰¹ The only remaining local privilege license taxes are those levied on the sale of beer and wine, described above.

Many local governments relied on their general privilege license tax system for both revenue and regulatory functions. By requiring all businesses except those exempted by state law to file annual privilege license returns, local governments had a reasonably accurate record of who was conducting business where within their boundaries.

After general local privilege license taxes were eliminated by the General Assembly, a number of local governments sought alternative methods for keeping track of the businesses operating in their jurisdictions. Some decided to adopt a mandatory business registration system under local governments' general business regulatory authority created by G.S. 153A-134 (counties) and 160A-194 (municipalities). For example, the city of Reidsville charges \$15 annually for a business registration that covers the fiscal year (July 1 to June 30).¹⁰² Elizabeth City's annual business registration fee is \$20.¹⁰³ The town of Davidson requires a one-time \$40 business registration fee.¹⁰⁴

Although the law surrounding mandatory registration systems is not entirely settled, this approach is likely permissible absent new legislation to the contrary.¹⁰⁵ Assuming local governments are permitted to implement mandatory business registrations, they would be authorized to charge reasonable fees for those registrations. Local government regulatory fees such as those for a business registration system are generally permitted but must be tied to the cost of the related regulatory structure and not be intended to produce additional revenue beyond those costs.¹⁰⁶ If a local government's registration program consisted of nothing more than collecting names and contact information for businesses and issuing paper licenses—no criminal background checks, no physical inspection of business premises—presumably the cost-per-business of that regulatory scheme would be relatively low. The fee charged for the

101. S.L. 2014-3. For more details on the elimination of local privilege license taxes, please see the following blog posts by the author: "The Axe Finally Falls on Local Privilege License Taxes," *Coates' Canons: NC Local Government Law* blog (May 30, 2014), <http://canons.sog.unc.edu/the-axe-finally-falls-on-local-privilege-license-taxes/>, and "More Questions and Answers about the New Privilege License Law," *Coates' Canons: NC Local Government Law* blog (June 13, 2014), <http://canons.sog.unc.edu/more-questions-and-answers-about-the-new-privilege-license-law/>.

102. See "Privilege Licenses: Business Registration: Registering Your Business: What You Need to Know," on the City of Reidsville's website, accessed Dec. 12, 2017, www.ci.reidsville.nc.us/government/privilege_licenses/index.php.

103. See "City of Elizabeth City Business Registration Application," accessed Dec. 12, 2017, [www.cityofec.com/vertical/sites/%7B81CF1C17-216A-4959-BE57-0B405379B891%7D/uploads/1_-_2015_Business_Registration___Permit_Application_\(Rev_9-2015\).pdf](http://www.cityofec.com/vertical/sites/%7B81CF1C17-216A-4959-BE57-0B405379B891%7D/uploads/1_-_2015_Business_Registration___Permit_Application_(Rev_9-2015).pdf).

104. See "Business Registration," on the Town of Davidson's website, accessed Dec. 12, 2017, www.ci.davidson.nc.us/757/Business-Registration.

105. While G.S. 153A-134 and 160A-194 appear to authorize local governments to implement general business registration programs, state courts have yet to address the lawfulness of this approach. Until the courts or the General Assembly acts to specifically authorize registration requirements, their legality is not insured. For more details, see the following blog post by School of Government faculty member Trey Allen: "Business Registration Programs: 10 Questions and Answers," *Coates' Canons: NC Local Government Law* blog (Aug. 28, 2015), <http://canons.sog.unc.edu/business-registration-fees-a-few-questions-and-answers/>.

106. *Homebuilders Ass'n of Charlotte, Inc. v. City of Charlotte*, 336 N.C. 37 (1994).

registration program would also need to be relatively low, perhaps \$10 or \$20 per business. Anything much higher than that would significantly increase the risk of being declared an illegal fee were it to be challenged in court.¹⁰⁷

Because these registration fees are not taxes, local governments may not collect them using the attachment and garnishment or levy and sale remedies available for local taxes.¹⁰⁸ Instead, local governments would need to rely on their general ordinance enforcement powers to target businesses that failed to register or pay the registration fees. These collection remedies include criminal misdemeanor prosecution, financial penalties pursued through civil court actions, injunctions (court orders demanding that a business satisfy its obligations under an ordinance or be shut down), and set-off debt collection.¹⁰⁹

Other Regulatory and User Fees

Both cities and counties are implicitly authorized to charge reasonable fees for permitted regulatory activity. As discussed above, these fees must be tied to the actual cost of the regulatory scheme in question.¹¹⁰ For example, all local governments require building permits for all renovation and new construction work, with the fees for those permits varying based on the size or value of the construction project involved.¹¹¹ Similarly, most local governments have adopted fee systems for mandatory fire inspections.¹¹²

In general, North Carolina law does not provide any special collection remedies for these regulatory and user fees. The most effective collection remedy, of course, is for the local government to refuse to provide the requested permit or service unless the fee is paid up front. If that practice is diligently followed, the local government will never be forced to attempt to collect delinquent regulatory fees.

If a regulatory fee does become delinquent, it will be subject to the same collection remedies discussed above for business registration fees. Because these fees are not taxes, local governments may not collect them using the attachment and garnishment or levy and sale remedies

107. For an example of a successful (and potentially very costly) challenge to a local government regulatory fee, see the following blog post from School of Government faculty member Kara Millonzi: “Municipalities (and Counties) Not Authorized to Charge Certain Impact (aka Capacity, System Development) Fees,” *Coates’ Canons: NC Local Government Law* blog (Sept. 14, 2016), <http://canons.sog.unc.edu/updated-municipalities-counties-not-authorized-charge-certain-impact-aka-capacity-system-development-fees/>.

108. See G.S. 153A-147 (counties); 160A-207 (municipalities).

109. For a detailed discussion of these ordinance enforcement remedies, see Trey Allen, “Ordinance Enforcement Basics,” *Coates’ Canons: NC Local Government Law* blog (Feb. 1, 2016) (hereinafter *Ordinance Enforcement Basics*), <http://canons.sog.unc.edu/ordinance-enforcement-basics/>. For more on the set-off debt collection process, see chapter 8 of *Fundamentals*.

110. See the *Homebuilders* case cited in note 106, above.

111. See, for example, “City of Greensboro Building Permit Fee Schedule,” on the City of Greensboro’s website, last revised Oct. 6, 2016, www.greensboro-nc.gov/modules/showdocument.aspx?documentid=5112.

112. See, for example, the Durham Fire Department’s fire inspection fee schedule, located at “Permits and Fees: Billing for Inspections and Permits: Fee Schedule,” on the City of Durham’s website, accessed Dec. 12, 2017, <https://durhamnc.gov/635/Permits-and-Fees>.

available for local taxes.¹¹³ Instead, local governments would need to rely on their general ordinance enforcement powers. These collection remedies include criminal misdemeanor prosecution, financial penalties pursued through civil court actions, injunctions (court orders demanding that a property owner or business operator satisfy its obligations under an ordinance or stop using the property in question), and set-off debt collection.¹¹⁴

Refunds and Releases

The Machinery Act, specifically, G.S. 105-381, permits the refund or release of property taxes only in two very limited circumstances: when the taxes (1) were illegal or (2) were imposed due to clerical error.¹¹⁵ This provision effectively prohibits the negotiation, waiver, or compromise of property taxes.

However, this restrictive provision does *not* automatically apply to other taxes or fees collected by local governments, even for those that may be collected using Machinery Act remedies. None of the authorizing statutes for those taxes and fees specifically incorporate the Machinery Act's refund and release provisions.¹¹⁶ As a result, local governments are generally free to develop their own refund and release procedures for the taxes and fees discussed in this bulletin. The only exception to this rule is special assessments, which are governed by their own amendment procedures and can be modified only in cases of "irregularity, omission, error, or lack of jurisdiction."¹¹⁷

113. See G.S. 153A-147 (counties); 160A-207 (municipalities).

114. For a detailed discussion of these ordinance enforcement remedies, see *Ordinance Enforcement Basics*. For more on the set-off debt collection process, see chapter 8 of *Fundamentals*.

115. For a detailed examination of this provision, see chapter 12 of *Fundamentals*.

116. For example, the special assessment provisions state that such assessments may be "delivered to the tax collector for collection in the same manner . . . as property taxes." G.S. 153A-195 (counties); 160A-228 (municipalities). G.S. 105-381, which governs the refund and release of property taxes, is *not* a collection provision. It is a provision for the elimination of a tax that should never have been levied. Therefore, special assessments (and minimum housing standards enforcement costs, which are collected as special assessments) are not subject to G.S. 105-381. The same argument applies to nuisance abatement costs, the authorizing statutes for which state that they shall be "collected as [property] taxes." See G.S. 153A-140 (counties); 160A-193 (municipalities). The statutes authorizing the use of Machinery Act remedies for the collection of solid waste fees use slightly different language. Solid waste fees "may be billed with property taxes, may be payable in the same manner as property taxes, and, in the case of nonpayment, may be collected in any manner by which delinquent personal or real property taxes can be collected." G.S. 153A-293 (counties); 160A-314.1(b). However, even this broader language does not implicate G.S. 105-381, which is neither a billing nor a payment nor a collection provision. This means that solid waste fees likely can be released or refunded without regard for G.S. 105-381.

117. G.S. 153A-198 (counties) and 160A-231 (municipalities). See the "Special Assessments" section, above, for more details.

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

Statutes of Limitation: Other Local Taxes

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

Attachment and garnishment and levy and sale can be used for the collection of local taxes “under the rules and procedures prescribed by the Machinery Act.”¹¹⁸ It follows that the Machinery Act's ten-year limitation on the use of attachment and garnishment and levy and sale to collect property taxes also applies to the use of these remedies to collect all other local taxes.¹¹⁹

Criminal misdemeanor prosecutions of tax ordinance violations are subject to the general two-year limitation on all misdemeanor prosecutions.¹²⁰

The two remaining remedies for the collection of other local taxes, civil lawsuits and set-off debt collection, are not subject to any statutes of limitation. Core governmental functions such as tax collection are exempt from the various general statutes of limitation found in Chapter 1 of the General Statutes.¹²¹ Presumably, this means that local governments can turn to civil lawsuits and the set-off debt collection process at any time, regardless of when the taxes in question were levied.

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

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

120. *See* G.S. 15-1.

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

Statutes of Limitation: Fees and Costs

As demonstrated in Table 5, below, public enterprise utility fees are subject to varying statutes of limitation.¹²²

Table 5. Fees, Limitation Periods

Fee Type	Applicable Statute of Limitations
Sewer (Wastewater) Utility Fees	Three years ^a
Stormwater Utility Fees	Three years ^b
Water Utility Fees	Four years ^c
Solid Waste Collection Fees	Three years if billed like other public utility fees ^d Ten years if billed with property taxes ^e
Ambulance Service Fees	For foreclosure, earlier of ten years from date of services or three years from the death of the person who received the services ^f For attachment and garnishment, ten years ^g

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

b. *Id.*

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

d. *Id.*

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

f. G.S. 44-51.1.

g. G.S. 44-51.4 states that Article 9B counties (see pages 17–18, above, for further explanation of this term) may “treat the amount due for such services as if it were a tax due to the county or municipality and may proceed to collect the amount through the use of attachment and garnishment proceedings as set out in G.S. 105-368.” Presumably, this reference to the Machinery Act attachment and garnishment process incorporates the Machinery Act’s ten-year limitation found in G.S. 105-378(a).

¹²² For more details on the collection of certain public enterprise fees, see Kara A. Millonzi, *A Guide to Billing and Collecting Public Enterprise Utility Fees for Water, Wastewater, and Solid Waste Service* (UNC School of Government, 2008).

The three costs discussed in this bulletin—special assessments, minimum housing standards enforcement costs, and public nuisance abatement costs—are all subject to ten-year limitations on collections.¹²³

Business registration fees and other regulatory fees are not subject to any statutes of limitation because state law does not expressly create time limitations for these types of ordinance enforcement efforts.¹²⁴

123. For special assessments, see G.S. 153A-200(d) (counties) and 160A-233(d) (municipalities). Technically, these provisions limit only foreclosures, but the author believes that a court would likely interpret them also to limit remedies against personal property, such as attachment and garnishment. Minimum housing standards enforcement costs for both counties and municipalities are collected as special assessments. G.S. 160A-443(6)a. Nuisance abatement costs are collected as property taxes, meaning that the Machinery Act's ten-year limitation applies. G.S. 153A-140 (counties) and 160A-193(a) (municipalities).

124. The Latin phrase *nullum tempus occurrit regi*—"time does not run against the crown"—has for centuries stood for the principle that the government is not subject to statutes of limitations on its own judicial actions related to governmental functions unless the government creates a time limitation that expressly covers the governmental claim in question (as North Carolina has done for the collection of property taxes, special assessments, and public enterprise fees, all of which are described above). See *City of Greensboro v. Morse*, 197 N.C. App. 624 (2009), for an example of how North Carolina courts have applied this principle to the collection of civil fines for unpaid parking tickets.