

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: 19 February 2014
SUBJECT: Tax refund request
PRESENTER: Charles Russell Burrell and Stan Duncan
ATTACHMENT(S): Letter from Brian Hamill

SUMMARY OF REQUEST:

The Tax Department received a letter from Brian Hamill, attached. In the letter, Hamill makes a “written demand for release” of the County’s tax claim against a parcel of land.

In the opinion of your County Attorney, nothing in Mr. Hamill’s letter constitutes a defense to the assessment by the County of *ad valorem* real property taxes against his property.

Under N.C. Gen. Stat. §105-381:

Upon receiving a taxpayer's written statement of defense and request for release or refund, the governing body of the taxing unit shall within 90 days after receipt of such request determine whether the taxpayer has a valid defense to the tax imposed or any part thereof and shall either release or refund that portion of the amount that is determined to be in excess of the correct tax liability or notify the taxpayer in writing that no release or refund will be made. . . . All actions taken by the governing body or finance officer, manager, or attorney on requests for release or refund shall be recorded in the minutes of the governing body. . . .

County staff will be present and prepared if requested to give further information on this matter.

BOARD ACTION REQUESTED:

Denial of Mr. Hamill’s request.

If the Board is so inclined, the following motion is suggested:

I move that the Board deny Brian Hamill’s request for release or refund of tax claims.

January 7th, 2014

Re: Parcel # 9962591, tax year 2013

Dear Henderson County Tax Department:

This is my written demand for release of the tax claim under § 105-381(a).

"§ 105-381. Taxpayer's remedies.

(a) Statement of Defense. - Any taxpayer asserting a valid defense to the enforcement of the collection of a tax assessed upon his property shall proceed as hereinafter provided.

(1) For the purpose of this subsection, a valid defense shall include the following:

a. A tax imposed through clerical error;

b. An illegal tax;

c. A tax levied for an illegal purpose.

(2) If a tax has not been paid, the taxpayer may make a demand for the release of the tax claim by submitting to the governing body of the taxing unit a written statement of his defense to payment or enforcement of the tax and a request for release of the tax at any time prior to payment of the tax.

(3) If a tax has been paid, the taxpayer, at any time within five years after said tax first became due or within six months from the date of payment of such tax, whichever is the later date, may make a demand for a refund of the tax paid by submitting to the governing body of the taxing unit a written statement of his defense and a request for refund thereof."

It is impossible for me to say whether my land is being classified as taxable due to a clerical error or incorrect presumption, but taxing my land is illegal. My family lives here permanently. We are NOT using this land and house for:

-Commercial or business use

-To pursue financial gains

-Residential or tenancy use

-Any other reasons that might be regulable by Henderson County or the State of North Carolina.

"Chapter 153A: Counties.

Article 1 - Definitions and Statutory Construction.

§ 153A-1. Definitions.

Unless otherwise specifically provided, or unless otherwise clearly required by the context, the words and phrases defined in this section have the meaning indicated when used in this Chapter.

...

(4) "General law" means an act of the General Assembly that applies to all units of local government, to all counties, to all counties within a class defined by population or other criteria, to all cities, or to all cities within a class defined by population or other criteria, including a law that meets the foregoing standards but contains a clause or section exempting from its effect one or more counties, cities, or counties and cities."

The jurisdictional issue is obvious. Your reliance upon and enforcement of the general laws of North Carolina in this case is inappropriate and an affront to private rights.

"Article 12.

Property Subject to Taxation.

...

§ 105-275. Property classified and excluded from the tax base.

(16) Non-business Property. - As used in this subdivision, the term "non-business property" means personal property that is used by the owner of the property for a purpose other than the production of income and is not used in connection with a business. The term includes household furnishings, clothing, pets, lawn tools, and lawn equipment. The term does not include motor vehicles, mobile homes, aircraft, watercraft, or engines for watercraft."

We have chosen this as our absolute domicile. We are here as a matter of right, not privilege. Henderson County will be harming our rights if it enforces a tax on our home. Owning our home and affording the payments is VITAL and CENTRAL to our rights to life, liberty, and the pursuit of

happiness — rights that we, and our government, must recognize and support as Americans.

Either as written, or as being enforced, the taxation laws are in opposition to the Constitution of the United States of America.

In the North Carolina General Statutes, the duty to pay taxes is only specified in the following section:

“§ 105-385. Duty to pay taxes on real property; judicial sales; sales under powers; governmental purchasers.

(a) Judicial Sales. - In all civil actions and special proceedings in which the sale of any real property is ordered, the judgment shall provide for the payment of all taxes then constituting a lien upon the property and all special assessments or installments thereof then due, and the tax liens and special assessments shall be satisfied from the proceeds of the sale before the proceeds are disbursed. The judgment in such a civil action or special proceeding shall adjust the disbursements for taxes and special assessments between the parties to the action or special proceeding in accordance with their respective rights.

(b) Sales under Powers. - Any person who sells real property under a power of sale conferred upon him by a deed, will, power of attorney, mortgage, deed of trust, or assignment for the benefit of creditors shall from the proceeds of the sale first satisfy all taxes constituting a lien upon the real property and all special assessments or installments thereof then due unless the notice of sale provided that the property would be sold subject to tax liens and special assessments, and it was so sold.”

(c) Governmental Purchasers. - Any agency, department, or institution of the State of North Carolina and any county or municipal corporation that purchases real property shall satisfy all taxes constituting a lien upon the property purchased and all special assessments or installments thereof then due by deducting the amount of the taxes and special assessments from the purchase price and paying it to the proper taxing unit or units. Any agency, department, or institution of the State and any county or municipal corporation that fails to make the deductions and payments required by this subsection (c) shall be liable to the taxing unit or units to which the taxes and special assessments are owed for the amount thereof. This liability may be enforced in a civil action brought by the taxing unit or units to which the taxes and special assessments are owed in the appropriate trial division of the General Court of Justice of the county in which the property is located; this remedy shall be in addition to any remedies the taxing unit may have against the grantor of the property. (1901, c. 558, s. 47; Rev., s. 2857; C.S., s. 7980; 1929, c. 231, s. 1; 1951, c. 252, s. 1; 1971, c. 806, s. 1.)

All these situations involve the sale or purchase of real property in special situations.

In all other sections of the statutes relevant to the property tax, the duty is described as “those required to list” and “those with a duty to pay tax”, etc.. While studying the Statutes, I never found mention of my situation: “Private land used for private purposes by people of North Carolina with no duty or obligation to perform for the State.”

From the North Carolina Constitution:

“ARTICLE V

FINANCE

...

Sec. 2. State and local taxation.

(1) Power of taxation. *The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away.*

(2) Classification. *Only the General Assembly shall have the power to classify property for taxation, which power shall be exercised only on a State-wide basis and shall not be delegated. No class of property shall be taxed except by uniform rule, and every classification shall be made by general law uniformly applicable in every county, city and town, and other unit of local government.”*

We do not volunteer our land or our interest in this land to be made taxable due to constructive classification. This correspondence is in no way to be construed to make me a taxpayer.

“SUBCHAPTER II. LISTING, APPRAISAL, AND ASSESSMENT OF PROPERTY AND COLLECTION OF TAXES ON PROPERTY.

Article 11.

Short Title, Purpose, and Definitions.

§ 105-273. Definitions.

(13) Real property, real estate, or land. - Any of the following:

a. *The land itself.*

b. *Buildings, structures, improvements, or permanent fixtures on land.*

c. All rights and privileges belonging or in any way appertaining to the property.

We are not exercising privilege.

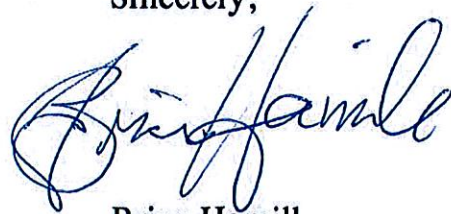
“Fourth Amendment to the U.S. Constitution

The RIGHT of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

I could keep going with more supporting evidence. I believe that this defense of my claim that my land and house are excluded from taxation is more than sufficient. The law says that an assertion of one of the valid defenses specified is all that is necessary.

The principles of right that I have expressed here apply to tax year 2012, tax year 2013, tax year 2014, and all foreseeable years. Let your presumption be that this assertion is ongoing for as long as Becki, myself and my heirs call this our home. I look forward to hearing from you in the positive regarding this demand for release and abatement.

Sincerely,

A handwritten signature in blue ink that reads "Brian Hamill". The signature is written in a cursive style with a large, looping initial "B".

Brian Hamill,
Owner