

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: 20 July 2016

SUBJECT: Tax settlement with Morris Broadband

PRESENTER: Charles Russell Burrell; Darlene Burgess

ATTACHMENT(S): Proposed agreement

SUMMARY OF REQUEST:

Pursuant to N.C. Gen. Stat. §105-312(k), “the board of county commissioners, upon the petition of the taxpayer, may compromise, settle, or adjust the county's claim for taxes arising therefrom.”

The taxpayer in this instance self-reported an underpayment. This proposed settlement makes the County whole, in that it will receive all taxes owed (including those for fire districts), plus interest at the rate that the County was receiving interest on its deposits.

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

BOARD ACTION REQUESTED:

Approval of the settlement.

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

I move that the Board approve the proposed settlement, and authorize the Chair and staff to execute the same.

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

**AGREEMENT ON PARTIAL REMISSION OF
DISCOVERY PENALTIES ON *AD VALOREM*
TAXATION**

THIS AGREEMENT is between the County of Henderson, a body corporate and politic of the State of North Carolina (the "County"), and Morris Broadband, LLC ("Morris"), a Georgia limited liability company authorized to do business in North Carolina.

Circumstances Leading to Agreement

1. Pursuant to a statewide franchise, Morris provides cable service over a cable system (as those terms are defined in N.C. Gen. Stat. §66-350) owned by Morris within Henderson County.
2. Morris acquired the cable system in 2009. It was the first cable operation owned by Morris.
3. Morris' cable system in the County is subject to *ad valorem* taxation pursuant to the Machinery Act of North Carolina.
4. The Machinery Act of North Carolina requires taxpayers owning systems such as that owned by Morris to list the value of the business property used in the operation of the system for *ad valorem* taxation.
5. When Morris acquired the cable system, it continued the procedure Morris believed, but could not confirm, was used by the prior owner for the listing of the value of the property used in the operation of the system.
6. The procedure used by Morris in listing business property for *ad valorem* taxation failed to account for the full cost of the installation of the property used in the operation of the system.
7. Such cost of installation is a significant part of the listable value of the system under the Machinery Act.
8. As a result, Morris failed to list for purposes of *ad valorem* taxation under the Machinery Act significant value in taxable business property.
9. The Machinery Act does not provide for amended listings of property, but rather for the "discovery" of untaxed but taxable property.
10. When property is "discovered" under the Machinery Act, there is a presumption of taxes owed for a period of five years, and of a significant penalty to be added to the taxes owed on the "discovered" property, pursuant to N.C. Gen. Stat. §105-312(h).

11. Morris discovered the foregoing, and self-reported the same to the Assessor of the County.

12. This is the first time of any instance of business personal property listing error by Morris.

13. As a result of the "discovered" property, the following additional taxes (not including any possible penalties) have been levied against Morris:

Henderson County	\$107,633.09
Blue Ridge Fire District	\$2,458.79
Dana Fire District	\$1,795.28
Edneyville Fire District	\$1,469.67
Etowah-Horse Shoe Fire District	\$2,498.49
Fletcher Fire District	\$1,718.54
Mountain Home Fire District	\$1,778.07
Mountain Home Fire District (2)	\$67.28

14. Pursuant to N.C. Gen. Stat. §105-312(k), "the board of county commissioners, upon the petition of the taxpayer, may compromise, settle, or adjust the county's claim for taxes arising therefrom."

15. Morris has petitioned the County for the "compromise, settlement or adjustment" of the taxes owed as a result of the discovery.

16. The Board of Commissioners of Henderson County has determined and Morris has agreed that full payment of all taxes owed, plus interest at the rate of two percent (2%) per year for each year owed (approximating the interest actually earned by the County on its deposits), is a fair compromise, settlement and adjustment of the taxes under all the circumstances listed above.

Agreement

Morris shall pay the County the sums listed above as taxes owed, plus interest at the rate of two percent (2%) per year or portion thereof such taxes were owed (as indicated on the attached spreadsheet), by not later than August 1, 2016.

Terry K. House, Jr.
Morris Communications Company, LLC
Director of Tax/Assistant Secretary

HENDERSON COUNTY

By: _____
Thomas H. Thompson, Chairman
Henderson County Board of Commissioners