

MINUTES

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS
MAY 17, 1995

The Henderson County Board of Commissioners met for a regularly scheduled meeting at 9:00 a.m. in the Commissioners' Conference Room of the Henderson County Office Building.

Those present were: Chairman Renee Kumor, Vice-Chair Vollie G. Good, Commissioner J. Michael Edney, Commissioner Bob Eklund, Commissioner Don Ward, County Manager David F. Thompson, County Attorney Don H. Elkins, Staff Attorney Angela M. Skerrett, and Clerk to the Board Elizabeth W. Corn.

Also present was: Planning Director Matt Matteson.

Absent was: Assistant County Manager David E. Nicholson.

CALL TO ORDER/WELCOME

Chairman Kumor called the meeting to order and welcomed all in attendance.

PLEDGE OF ALLEGIANCE

Commissioner Good led the Pledge to the American Flag.

INVOCATION

Rev. Dean Elliott, Pastor of Mt. Moriah Baptist Church, gave the invocation.

DISCUSSION/ADJUSTMENT OF AGENDA

There were none.

CONSENT AGENDA

Commissioner Ward made the motion to approve the consent agenda as presented. All voted in favor and the motion carried.

Consent Agenda included:

Review of Minutes: Minutes were presented for review and approval of the following meetings:

March 20, 1995 Special Called Meeting

May 17, 1995

Page 2

April 20, 1995	Special Called Meeting
April 25, 1995	Special Called Meeting
May 1, 1995	Regular Scheduled Meeting
May 9, 1995	Special Called Meeting

Tax Refund Requests (9): A list of nine (9) refund requests was submitted by the County Assessor for the Board's approval. It was the opinion of the Assessor that these findings were in order and supporting documentation is on file in his office.

Tax Release Requests (30): A list of thirty (30) release requests was submitted by the County Assessor for the Board's approval. It was the opinion of the Assessor that these findings were in order and supporting documentation is on file in his office.

Notification of Vacancies: The Board was notified of up-coming vacancies, for information purposes only. No action was required. These will appear under "Nominations" on an up-coming agenda for action:

1. Board of Equalization and Review - 1 vacancy
2. Jury Commission - 1 vacancy

ROCKY HYDER

David Thompson asked that Rocky Hyder be allowed to present an agenda item at this time. It was the consensus of the Board to allow this item.

Rocky Hyder presented a Resolution for approval of the Board, approving a tax exempt loan for the Blue Ridge Fire Department. This was to meet the requirements of the internal revenue code 150-E which allows lending institutions to claim tax exemptions for interest earned on loans to volunteer fire departments or other non-profit private corporations. 150-E requires that the governing body of the governing unit approve the loan and also requires that the fire department hold a public hearing at the fire department conducted by the Fire Dept. Board of Directors.

Blue Ridge is planning to purchase property in the Flat Rock area, to provide for a station in that area as well as additional equipment. The loan is for \$185,000 for this purpose but at the same time they are consolidating a current loan over a fifteen year time frame equaling \$450,000.

May 17, 1995

Page 3

Billy Anders, President of Blue Ridge Fire Department Board of Directors, stated that there would be no tax increase request regarding this loan.

Chairman Kumor read the prepared Resolution.

Commissioner Edney made the motion to add a sentence that there would be no liability to the county for repayment on the debt. Commissioner Edney also moved that the Board approve said Resolution and loan. All voted in favor and the motion carried. Commissioner Edney requested the Staff Attorney and County Attorney write such language into the Resolution.

INFORMAL PUBLIC INPUT

Pat Brinkley - Chairman Kumor recognized Pat Brinkley, Director of Western North Carolina Development Association, to speak briefly about their organization. They receive public funds and therefore wanted to report as to how the funds are spent.

The Association was founded in 1949 as a means of improving rural living standards. Their goals are agriculture promotion and rural community development. They are governed by a 70 member Board of Directors from all over Western North Carolina (the 18 westernmost counties). Their offices are located on State property at the Western North Carolina Farmers' Market.

In addition to the community development program, they have six commodity commission groups that work in their particular commodity area: beef cattle, dairy, horticulture crops, forestry, horses, and marketing strategies. Many of their efforts are cooperative efforts with the Cooperative Extension Service as well as the N.C. Department of Agriculture.

Aubrey Carruth - Mr. Carruth read a policy statement regarding Revenue Neutral Revaluation, that he had prepared for the Board of Commissioners. He presented a petition with 2,500 signatures. He presented an associated Resolution outlying the petition's request for a revenue neutral commitment by the elected county officials.

May 17, 1995

Page 4

Donald Layton - Mr. Layton also addressed Revenue Neutral Reappraisal. He compared the last two reappraisals, property values and tax rates.

Lucinda Guthrie - Ms. Guthrie also spoke in favor of a Revenue Neutral Reappraisal.

PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE AMBULANCE ORDINANCE

Commissioner Eklund made the motion to go into Public Hearing. All voted in favor and the motion carried.

Angela Skerrett informed the Board that the public hearing was being held pursuant to NCGS 153A-250 to consider two amendments to the Ordinance for the Operation of Ambulance Service in Henderson County.

The first amendment is to change Section XV of the Ambulance Ordinance. Section XV as it is currently written makes the ordinance applicable only to the unincorporated areas of Henderson County. Section XV as proposed will make the Ambulance Ordinance applicable to both the incorporated and the unincorporated areas of Henderson County.

The second amendment is to add a new Section XVI(2), a severability clause. A severability clause protects the County in that it allows the entire Ordinance to remain in full force and effect if any portion or paragraph is deemed invalid or unenforceable by a Court of competent jurisdiction.

Public Input - There was none.

Commissioner Good made the motion to close the Public Hearing. All voted in favor and the motion carried.

Commissioner Edney made the motion to amend the County Ambulance Ordinance as proposed. All voted in favor and the motion carried.

2nd ANNUAL REPORT FOR VOLUNTEER WATER INFORMATION NETWORK (VWIN)

Michelle Skeelee addressed the Board. ECO (Environmental and Conservation Organization) runs the VWIN program in Henderson County. The testing is done in four counties (Henderson, Buncombe, Transylvania, and Madison). They have 18 original sites on 13

May 17, 1995

Page 5

streams in Henderson County to monitor the waters. Volunteers do all the sampling and then the samples are taken to the University of North Carolina at Asheville to the Environmental Quality Institute for the laboratory analyses.

The reports are showing that the water in Henderson County is fairly good. We have several sites on the Bat Fork Creek and Mud Creek that are fairly heavily polluted.

The cost to run the program is \$350 per site. The Board of Commissioners now funds 18 of the 20 sites in Henderson County. This primarily pays for the testing results only.

Commissioner Edney asked Ms. Skeele if the program monitored for bacteria in the Mills River above the drinking water intake. VWIN currently does not monitor for bacteria. Commissioner Edney pointed out that engineering data has demonstrated that giardia and cryptosporidia have been found in samples of Mills River. Ms. Skeele replied that VWIN would work with the County if continued monitoring of bacteria is needed.

REQUEST TO SET AN ECONOMIC DEVELOPMENT PUBLIC HEARING

Angela Skerrett reminded the Board that the County has received an Offer to Purchase Lot 7 (revised), a 6.1031 acre lot of Appleland Business Park from Die-Tronic Metal Casting Incorporated for \$75,000. The County's purchase price for Lot 7 (revised) is \$19,520.00 per acre, or \$119,132.51. The County's purchase price for Lot 7A is \$19,520.00 per acre or \$2,883.10 (a ten foot wide strip to border lot 7 revised). In order to accept the Offer to Purchase for Lot 7, it would be necessary to purchase lot 7-A from Mrs. Cynthia Whitted as we cannot leave a site less than three acres.

The offered price for Lot 7 is \$75,000. Approximately three acres of lot 7 is flood plain and basically unusable without substantial sitework. There was discussion of how the per acre price was originally arrived at. According to Ms. Skerrett we would purchase lot 7 (revised) and lot 7-A and then would sell lot 7 (revised) only. Ms. Skerrett requested that the Board determine that \$75,000 was a fair market value for this 6.1031 acre lot (lot 7).

May 17, 1995

Page 6

Commissioner Good made the motion that the Board of Commissioners determine that \$75,000 was a fair market value for the sale of Lot 7 (revised). All voted in favor and the motion carried.

Commissioner Good made the motion to set a public hearing for Monday, June 5 at 7:00 p.m. to consider the purchase of Lots 7 (revised) and 7-A and the resale of Lot 7 (revised) to Die-Tronic for \$75,000. All voted in favor and the motion carried.

David Thompson reminded the Board that Die-Tronic Metal Casting Inc. plans to employ 25-30 employees initially and construct about a 15,000 square foot facility. Their hourly rate (once trained) is \$15-20 hour. They hope to expand up to 50 employees.

PACE FOSTER CARE COMMITTEE REPORT

Kathleen Lees, PACE Board member and Chair of Foster Care Committee, presented a brief report on findings and recommendations of the committee.

PACE stands for Planning Alliance for Community Empowerment. She spoke of the training for case workers that deal with foster care. They also offer training for foster parents, which didn't exist in the past. Ms. Lees discussed the need for a higher payment for placement of special needs children as there is a great need for foster homes for children with special needs.

Their highest priority is to reunite a child with their biological family. In the meantime they strive to find the most suitable temporary home for the benefit of the child. As a last resort, parental rights will be terminated and a new home found for a child.

ADDENDUM TO GDS CONTRACT

Nippy Page, Integrated Solid Waste Planner, discussed negotiations with GDS, Inc. Henderson County entered into a contract with GDS, Inc. in September of 1993 to operate a recycling facility as a joint public-private partnership. When the original contract was negotiated, it was for a 3 year term ending in September 1996 with an option for a 2 year extension if both parties negotiated such. The Board tried to structure this agreement so that the county could take over this function at this point in time or the county would look at continuing this joint venture. Based on Ms. Page's

May 17, 1995

Page 7

successful negotiation, staff recommended continuing this positive relationship with GDS, Inc.

The result of Ms. Page's negotiations are:

1. GDS has agreed to restructure our agreement by calculating the value of the present contract, and spreading this figure over the remaining term of the original contract plus the 2 year option to arrive at a new monthly support fee. The net result of this restructuring by itself is a reduced cost over the remaining contract of \$161,500.
2. The County will also receive the buy-back prices paid at the center for recyclables that we deliver from County programs. A conservative estimate based on our past volumes is \$6,000 per month for an additional revenue of \$102,000 over the next 17 months.
3. In addition to these amounts our contract with Transylvania County will result in revenues of \$66,000 over the next 17 months.
4. The County would have to extend the GDS contract for the 2 year option period.
5. The baler, conveyor, and truck scales would become the property of GDS. Previously, we would have sold them the equipment for 60% of its purchase price which would amount to \$135,000. The equipment has already been paid off by the County.

The net results of this financially is extremely appealing. The net savings to Henderson County over the next 17 months is \$246,500. When the revenue from Transylvania County is factored in the amount of \$66,000, the actual cost to Henderson County for our recycling partnership with GDS is \$4,250 through July, 1995 and then \$3,250 through September of 1998. This is a significant reduction over our current monthly net cost of \$22,000 a month.

David Thompson stated that Nippy Page should be commended for her efforts in this negotiation and the cost savings she has been able to achieve for Henderson County.

Nippy Page reviewed the changes in the addendum to the contract.

Commissioner Edney thanked Ms. Page for her hard work and her negotiation with GDS, Inc.

Commissioner Edney made the motion to approve the addendum to the original contract with GDS, Inc., assuming that everything is in order. All voted in favor and the motion carried.

May 17, 1995

Page 8

EMPLOYEE DISCOUNT OFFERS

Mona Quinn informed the Board that businesses in the area have offered discounts and/or services to Henderson County employees in the recent past.

Staff requested Board direction concerning the appropriate response to discount and/or service offers to Henderson County Employees. These offers appear to not violate Section 5.1 of the Henderson County Personnel Resolution in that the offers have been made to all Henderson County Employees as a whole. Any such offer(s) made to an Employee on an individual basis would be inappropriate.

There was some discussion. It was the consensus of the Board not to allow solicitation of discounts. It was also the consensus of the Board not to allow individuals to accept a gift or favor but the employees as a whole may. This would not violate the Personnel Resolution. The County Attorney agreed with the consensus of the Board.

UPDATE REAPPRAISAL PROGRAM AND BOARD OF EQUALIZATION AND REVIEW

Robert Baird, County Tax Assessor, informed the Board that the total number of reappraised properties were 49,579 with a total assessment of \$3,500,400,300 (very good estimate). As of May 16, 1995, 122 parcels have been appealed to the Board of Equalization and Review. The reappraisal came in at 96.99% of the market value, based on the sales ratio study prepared for the Department of Revenue.

If a contracted firm had done the reappraisal it would have cost approximately \$30.00 per parcel. In-house cost per parcel including daily maintenance was \$14.92 per parcel. The Assessor's Office is now accepting applications for the Board of Equalization and Review hearings. The Board will begin hearings on June 1, 1995.

It was Mr. Baird's opinion that we had a good reappraisal.

Break - Chairman Kumor called a 10 minute recess.

REQUEST FOR TAX REFUND

Robert Baird informed the Board of a request for a refund from the payment of property taxes in March, 1995, from Poly-Processing,

May 17, 1995

Page 9

Inc., as allowed by NCGS 105-381. NCGS 105-381 outlines the process by which a taxpayer can request a refund for any property taxes paid which were paid under protest. The bases for allowing a refund are 1) taxes imposed through clerical error; 2) illegal taxes; and 3) taxes levied for an illegal purpose. Poly-Processing, Inc., asserts in their request for a refund that they qualified for an exemption as a resource recovery or recycling facility as defined in NCGS 105-275(8) for tax year 1994. The State of North Carolina Department of Revenue inspected the facilities and equipment and found that they do meet the requirements of the "Standards for Special Tax Treatment of Recycling and Resource Recovery Equipment and Facilities". Poly-Processing therefore paid their property taxes for 1994 under protest and are now requesting a refund.

The Assessor's position with respect to this issue was that because Poly-Processing failed to file an application with his office for the exemption within the listing period for 1994, they do not qualify for the exemption for 1994. The Assessor granted them an extension to file an application for the 1995 tax year so that Poly-Processing will qualify for the 1995 tax year.

The County Attorney agreed with the Assessor's position and recommendation that the request be denied.

Commissioner Good made the motion to deny the request from Poly-Processing Inc. for a tax refund. All voted in favor and the motion carried.

RESTORATION/RENOVATION OF OLD COURTHOUSE BUILDING

David Thompson informed the Board that Alan Antoine of Grier-Fripp Architects was present to address this issue. Bill Byrnes was also in attendance.

David Thompson stated that they wished to address the proposed agreement concerning a plan of action for the restoration/renovation of the 1905 County Courthouse. The first stage of the project would be a master planning phase followed by a design and construction phase. The purpose of the master planning phase was to accomplish the following:

1. Identify existing deficiencies and improvements that will be needed in the building.
2. Define limitations and restrictions to renovation due to

May 17, 1995

Page 10

- the listing of the Old Courthouse on the National Registry of Historic Buildings.
3. Determine who will occupy the building and their estimated needs.
 4. Develop a project budget.
 5. Develop a schedule for implementation.

Phase II will focus on actual design and construction plans and specifications. The cost for Phase I will be \$15,860 which will be funded out of the courthouse project funds.

David Thompson and Alan Antoine requested direction from the Board as to the agencies, departments, and functions they anticipate for the building.

Alan Antoine informed the Board that he proposed that the Phase I study would take approx. two months.

Mr. Antoine informed the Board that the original 1905 structure is approx. 20,000 square feet and a number of additions that were made to the original courthouse over the years. The annex is the newer addition and is in fairly good physical condition. The 1915 jail is intact and we must maintain jail operations as well as limited Sheriff and Magistrate operations. He does not expect to have any effect on those areas during the renovation project.

There was much discussion of possible users of space in the 1905 building with designation as low or high priorities. It was the general consensus of the Board to allow the Manager to work with those who would fit in with our concept of the building:

Dispute Settlement Center - low priority

Law Enforcement - low priority for permanent location but high priority for temporary space, if feasible

Video Arraignment - low priority for permanent location but high priority for temporary space, if feasible (?lease/purchase)

Day Reporting and Restitution Center - high priority for temporary space

Absolute Theater - not feasible, no priority because there cannot be a permanent commitment.

May 17, 1995

Page 11

Board of Elections - it was consensus of the Board to relocate the Board of Elections to the new Courthouse

High priority for **County Administrative Functions** as follows:
Administration (Manager and Assistant Manager)
Board of Commissioners
Staff Attorney
Finance Department
? Planning Department ?

It was the consensus of the Board to have more office space (storage, phones, and meeting areas) for the Commissioners. Conference space (small rooms) is a real need. There was discussion of a computer station for the Commission's use.

Commissioner Edney made the motion to agree to the preliminary design phase of the project, not to exceed \$15,860. All voted in favor and the motion carried.

ACTION ON PROPOSED RURAL ZONING AMENDMENTS TO THE HENDERSON COUNTY ZONING ORDINANCE

On May 1, 1995, the Board of Commissioners held a public hearing on the proposed Rural Zoning Text Amendments to the Henderson County Zoning Ordinance. During the hearing, the Board asked staff to make some changes to various portions of the texts for consideration at the Board's mid-May meeting. Revised texts included the suggested changes. Planner Karen Collins reviewed the changes with the Board.

Texts of Proposed Amendments:

1. Section 619 - Rural Mixed Use 1 (RM-1) District
2. Section 620 - Rural Conservation (RC) District
3. Section 705 - Site Conditions for Uses in the RM-1 and RC Districts
4. Section 401.16 - Definition of Customary Incidental Home Occupation
5. Section 401.391 - Definition of Rural Accessory Business
6. Section 704 - Medical, Institutional Care Developments
7. Section 701 - Manufactured Home Parks

Following discussion, Commissioner Good made the motion that action on the proposed rural zoning amendments to the Henderson County

May 17, 1995

Page 12

Zoning Ordinance as presented by the Planning staff be approved as presented, including the definition of buffers.

Following discussion on the motion, a vote was taken which failed three to two with Commissioners Kumor and Good voting for.

Commissioner Edney wanted the Zoning Administrator to have some discretion but not unbridled discretion. He would like the Board of Commissioners to place policy limits on that discretion.

Chairman Kumor designated Commissioner Edney as a subcommittee of one to offer this in the form of a written proposal at the next meeting. Commissioner Edney accepted the challenge.

DISCUSSION OF TERM LIMITS

At the March 15, 1995 meeting, the Board directed the Staff Attorney to begin researching the ability of the Board to limit the terms of the various boards and committees to which the Board makes appointments. As of April 3, 1995 eight boards/committees had vacancies: the Blue Ridge Community College Board of Trustees; the Board of Social Services; the Hospital Board; the Jury Commission; the Library Board of Trustees; the Nursing Home/Domiciliary Home Committee; the Solid Waste Advisory Committee; and the Youth Services Advisory Committee.

The Staff Attorney has completed her research with respect to the above mentioned eight boards/committees. Angela Skerrett stated that a board can limit its appointed members informally simply by not reappointing someone for additional terms. Formal steps can be taken to limit terms also.

Following much discussion, it was the consensus of the Board to informally limit terms. It was also the consensus of the Board to look into changing the by-laws/resolutions for the Hospital Board and the Library Board to lessen their terms from the current six years to four years. The Chairman will rework the appointment letter to address some of the issues raised during discussions.

NOMINATIONS

Chairman Kumor reminded the Board of the following vacancies and opened the floor to nominations:

May 17, 1995

Page 13

1. **Western North Carolina Tomorrow** - 1 vacancy. David Thompson does not wish to serve another term. Chairman Kumor requested that she be allowed to replace Mr. Thompson on this board.

Commissioner Ward nominated Renee Kumor to fill this vacancy. Commissioner Ward also made the motion to suspend the rules and appoint Ms. Kumor. All voted in favor and the motion carried.

2. **Nursing Home/Domiciliary Home Advisory Committee** - 1 vacancy. This vacancy is a designated position and is going through the process so is not open for nominations.

3. **Nursing Home/Domiciliary Home Advisory Committee** - 2 vacancies. This vacancy is a designated position and is going through the process so is not open for nominations.

4. **Private Industry Council (PIC)** - 4 vacancies. Three of these four vacancies are for Chamber of Commerce appointees. Only one is a Board of Commissioners appointee. Patti Leonard has indicated that she is willing to serve another term.

Commissioner Edney nominated Patti Leonard. Commissioner Good made the motion to suspend the rules and reappoint Ms. Leonard. All voted in favor and the motion carried.

5. **Hospital Board of Trustees** - 1 vacancy. Commissioner Good nominated Rev. James Boyce (St. Paul Tabernacle) to fill this vacancy. Commissioner Good has talked with Rev. Boyce who states that he has the time to serve and would be willing, if nominated. Commissioner Edney made the motion to suspend the rules and appoint Rev. Boyce. All voted in favor and the motion carried.

6. **Social Services Board** - 1 vacancy. This vacancy is for a state appointment. No action is required by this board.

UPDATE ON PENDING ISSUES/Request for Direction to the Chair

1. Set LUGS workshop.

Chairman Kumor requested that the Board set a LUGS workshop. The Board set a workshop for July 17 at 7:00 p.m.

2. Manufactured Home Park Ordinance.

Chairman Kumor reminded the Board that they have all received a copy of the revised Manufactured Home Park Ordinance. The Board

May 17, 1995

Page 14

members requested more time to read the revised Ordinance. At an up-coming meeting the Board will set a workshop on this Ordinance.

3. Update on citizen request re: weeds and rats.

A couple of residents spoke during informal public input at the last meeting concerning neighboring properties with tall grass and weeds and rats (vectors). They asked if an Ordinance couldn't be passed to prohibit people from allowing their property to become grown up.

David Thompson stated that he and Matt Matteson checked on this. The Institute of Government is not aware of any county who has an ordinance which addresses high grass or weed control. Counties are larger and it would be very hard to enforce such an ordinance. Some municipalities do have and enforce such an ordinance but have a smaller area to control.

4. Raft Race.

Commissioner Good informed the Board of the up-coming raft race and stated that he would like to have a team from Henderson County of elected officials but other volunteers are needed.

Commissioners Kumor and Eklund volunteered to be on the Henderson County team.

5. ABWA update.

Commissioner Edney informed all that at a meeting yesterday he and David Thompson (our representatives on ABWA) were presented with the preliminary design report for the new water intake on Mills River. The initial design is for a 5,000,000 gpd plant with the ability to go up to 10,000,000 gpd for a fairly minimal cost. He stated that no dam whatsoever will be on the Mills River. The design will allow for the microscopic treatment of bacteria in the Mills River (ozonation treatment for cyrptosporidia).

6. Sunnybrook Nursing Home.

Chairman Kumor informed the Board that the Sunnybrook Nursing Home burned and they are requesting a waiver from the tipping fee at the landfill. Following discussion it was the consensus of the Board to deny the request.

7. Update on Trust Building.

David Thompson reminded the Board that staff was directed to check on the roof and drainage on that building and to get a proposed

May 17, 1995

Page 15

budget from Dr. George Jones. The proposed budget was handed out and this will be revisited during budget deliberations.

David Thompson informed the Board he had received a cost estimate to repair the roof (\$4,600) which should last about ten years. He informed the Board that there is approximately \$6,600 left in the contingency fund.

Commissioner Edney made the motion to approve \$4,600 to repair the roof at the Trust Building with the funds to come from contingencies. All voted in favor and the motion carried.

Staff has checked on the drainage and there appears to not be a problem at this time. If the city's storm system gets stopped up there could be some water coming into the lower floor.

The County Attorney needed some direction concerning the term of the lease so it can be prepared. Direction to the County Attorney was a five year lease, with a five year option, with the lease to begin July 1, 1995, \$1.00 per year. Subletting would be allowed with prior approval of the County Manager. The Board also wants improvements to the building first approved by the County Manager. Henderson County has liability insurance on the building but suggests that the Genealogical Society maintain their own insurance on the contents of the building. Henderson County will be responsible for cleaning the building before they move in and will repair the roof.

Commissioner Eklund requested a yearly report from Dr. Jones regarding number of visitors they have had.

IMPORTANT DATES

David Thompson asked the Board to set a Public Hearing on the Option on the Appleland Industrial Park. Commissioner Eklund made the motion to set the Public Hearing for June 5 at 7:00 p.m. All voted in favor and the motion carried.

CLOSED SESSION

Commissioner Edney made the motion for the Board to go into Closed Session as allowed under NCGS 143-318.11 for the following reasons:

May 17, 1995

Page 16

1. (a)(3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. To consult with an attorney employed or retained by the public body in order to consider and give instructions to the attorney with respect to a claim.
2. (a)(4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body.
3. (a)(6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee.

All voted in favor and the motion carried.

Commissioner Edney made the motion for the Board to go out of Closed Session. All voted in favor and the motion carried.

ACTION after Closed Session.

Commissioner Ward made the motion to accept the recommendation of Mark Lancaster as Assistant Agriculture Agent with our local NC Cooperative Extension Service. All voted in favor and the motion carried.

David Thompson informed the Board that he will be preparing and sending a letter to the School Board concerning their operational budget and the need for including the up-keep of surplus school properties in that budget.

Commissioner Good wanted the record to show that he and the Board thank Ray Cantrell and the Committee of 100 for working so well with the Board in securing Die-Tronic Metal Casting Inc. in our Appleland Industrial Park. The Board requested the Chairman to send a letter of thanks to the Chamber of Commerce for their help.

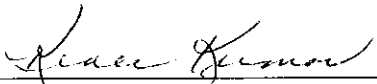
There being no further business to come before the Board, Commissioner Edney made the motion to adjourn at 2:40 p.m. All voted in favor and the motion carried.

May 17, 1995

Page 17

ATTEST:


Elizabeth W. Corn, Clerk


Renee Kumor, Chairman

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HENDERSON COUNTY
BOARD OF COMMISSIONERS

100 NORTH KING STREET
HENDERSONVILLE, N.C. 28792-5097
PHONE 704/697-4808
FAX 704/697-4536

RENEE KUMOR
CHAIRMAN
VOLLIE G. GOOD
J. MICHAEL EDNEY
BOB EKLUND
DON WARD

DAVID F. THOMPSON
COUNTY MANAGER

May 18, 1995

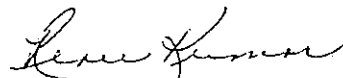
Robert Baird, County Tax Assessor
HENDERSON COUNTY ASSESSOR'S OFFICE
400 North Main Street
Hendersonville, N. C. 28739

Dear Mr. Baird:

Attached please find the lists of tax release requests (30) and tax refund requests (9) approved at the Henderson County Board of Commissioners' Meeting on Wednesday, May 17, 1995.

Please be advised that the Board also denied a request for refund from Poly-Processing, Inc. at the same meeting.

Sincerely,



Renee Kumor, Chairman
Henderson County Board of
Commissioners

RK/ewc

enclosures

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REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: Wednesday, May 17, 1995

SUBJECT: Tax Refunds

ATTACHMENTS: Refund Report

SUMMARY OF REQUEST:

The enclosed refund requests (9) have been reviewed by the County Assessor and as a result of that review, it is the opinion of the Assessor that these findings are in order. The supporting documentation is on file in the County Assessor's Office.

These refund requests are submitted for the approval by the Henderson County Board of Commissioners.

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Taxpayer Name	Taxbill	Total	Reason
BROOKS, GERALD D BROOKS, CAROLYN G	94R0115217.1	\$436.32	DISC 91-94 HOUSE ACTUALLY BUILT IN 1991
COSTERISAN AND ENGEL P A	94R34076.01	\$23.76	AMENDED VALUE
FRANKLIN, JAMES FRANKLIN, JO	94R9941732.1	\$474.12	PARCEL WAS SPLIT IN '93
HILL, SELDON R	94R924.01	\$110.47	'93 MH OWNED BY GRANDSON
JONES, ROLAND R JONES, IRENE C	94R66428.08	\$22.63	MH WAS SOLD IN '88 ALONG W/PROPERTY
NELSON, DONALD CHARLES NELSON, EDITH	94R27057.01	\$11.41	SOLD CAMPER 3 YRS AGO
OWENS, WALTER EARL OWENS, CLARA BELLE	94R0802266	\$5.28	JUDGEMENT CHANGE BOUNDARY IN 1991
RALPH WILSON PLASTICS, INC DART INDUSTRIES	94R927651	\$6491.34	PROPERTY TAX COMMISSION ORDER TO REDUCE VALUE TO 7,500,000
RALPH WILSON PLASTICS, INC DART INDUSTRIES	93R9927651	\$6491.34	PROPERTY TAX COMMISSION ORDER TO REDUCE VALUE TO 7,500,000

TOTAL REFUNDS >>> \$14066.67

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REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: Wednesday, May 17, 1995

SUBJECT: Tax Releases

ATTACHMENTS: Release Report

SUMMARY OF REQUEST:

The enclosed release requests (30) have been reviewed by the County Assessor and as a result of that review, it is the opinion of the Assessor that these findings are in order. The supporting documentation is on file in the County Assessor's Office.

These release requests are submitted for the approval by the Henderson County Board of Commissioners.

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Taxpayer Name	Taxbill	Total	Reason
BOND, MELVIN ANDREW JR BONO, DONNA LEIGH	94A0501979	\$155.97	VALUE WAS REFUNDED S/B RELEASED. CHECK HAS BEEN STOPPED
CHAMBERS, NIKKI CHAMBERS, SUSAN	94A118917.01	\$24.43	MH WAS LISTED IN POLK CO
CHAPLIN, JULIA	94A9948279	\$770.04	PROPERTY TAXED IN BUNCOMBE CO
COBB, MERRILL E	94A100928.02	\$11.72	SOLD TT '93.
COPELAND, RUSS	93A86112.02	\$84.15	TT WAS NOT IN HEND CO ON 1/1/93
COPELAND, RUSS	94A86112.02	\$45.57	'85D TT WAS NOT IN HEND CO ON 1/1/94
CORN, LOUIE E CORN, MARY JEAN	94A0300225	\$517.28	HOUSE ASSESSED ON PARCEL FOR '94 WHICH DOES NOT EXIST
DALTON, DWIGHT DALTON, KATHY WOOD	94A9941506	\$228.69	MH ON LEASED LAND S/B LISTED AS PERS PROP ON BUSINESS
EDWARDS, ROSA	94A0103392	\$64.80	OLD AGE EXEMPTION
GILLIAN, MORRIS	94A19391.01	\$13.73	MH S/B LISTED TO EX WIFE FOR '94. ACCT 123661
GRIFFIN, JOHN HENRY	94A19977.09	\$109.56	LISTED FOR '94 AS MV TAG HFP55683
GRINSTED, ALAN	94A103003.02	\$112.79	MH WAS SOLD IN '93 AND OUT OF HEND CO
HENDERSON COUNTY HABITAT FOR H	94A0107462	\$14.58	TOTAL REAL VALUE SHOULD HAVE BEEN RELEASED ORIGINALLY, BUT WAS ONLY PARTIALLY PROCESSED.

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Taxpayer Name	Taxbill	Total	Reason
JONES, ROLAND R JONES, IRENE C	92A66428.08	\$14.42	MH WAS SOLD IN '88 ALONG W/PROPERTY
JONES, ROLAND R JONES, IRENE C	91A66428.09	\$19.85	MH SOLD IN '88 ALONG W/PROPERTY
JONES, ROLAND R JONES, IRENE C	89A66428.08	\$49.51	MH WAS SOLD IN '88 ALONG W/PROPERTY
JONES, ROLAND R JONES, IRENE C	90A66428.08	\$16.63	MH WAS SOLD IN '88 ALONG W/PROPERTY
LAUGHTER, ELVA B	94A9945714.1	\$165.54	DISCOVERED IN ERROR
LUDECKE, OTTO	94A122759.03	\$77.55	RELEASED PER VRD
MAGUIRK, CYNTHIA LEIGH CO-TRU CHAVEZ, MELANIE FRANCES CO-TRU	94A102922.03	\$89.26	MH TO BE LISTED TO ACCT 86546
MONTGOMERY INDUSTRIES INC	94A9950319.1	\$167.75	INCORRECT VALUE S/B RESIDUAL VAL
MORGAN, GARY D D/B/A	94A100295.08	\$84.54	EQUIP NOT IN HEND CO
NOBLE, JAMES A & WIFE	94A29140.02	\$117.62	MH WAS DBL LISTED TO ACCT 76322
PAM BANKS LANDSCAPING DESIGN D/B/A BANKS LANDSCAPING DESIGN	94A112462.04	\$66.00	SAME BUS ASSETS AS 96985 CAROLINA CONCRETE DESIGN
RHODES, DONALD RHODES, BARBARA	91A9943123	\$38.21	RELEASE FILED. LOST IN 93/94.
RHODES, DONALD RHODES, BARBARA	92A9943123	\$34.21	RELEASE FILED. LOST IN 93/94.

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00700700 INT REPORT 05/17/95 LAREPDE BE
COMMS ASSES

Taxpayer Name	Taxbill	Total	Reason
SELMER, EDWARD BUTTON TRUSTEE SELLMER, EDYTHE LUCILLE MCBRID	94A98974.01	\$15.17	MH WAS SOLD IN '93
STOUT, BRIGITTE C	94A0115178	\$135.32	SOLD '85 CHEV ALSO BILLED AS TAGGED MV
TAYLOR, ALICE C ETAL	94A6306.04	\$18.41	MH WAS TRADED FOR DBL WIDE IN '92
VAUGHN, KENNETH VAUGHN, DORIS	94A100646.02	\$34.04	'75 AIRSTREAM WAS NOT OWNED BY THIS ACCT

TOTAL RELEASES >>> \$3296.34

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REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: WEDNESDAY, May 17, 1995

SUBJECT: REQUEST FOR TAX REFUND

ATTACHMENTS:

1. Letter requesting refund with attachments.
2. Assessor's Response letter.
3. N.C.G.S. 105-275; 105-282.1; 105-307; 105-381

SUMMARY OF REQUEST:

The Board received a request for a refund from the payment of property taxes in March, 1995, from Poly-Processing, Inc., as allowed by N.C.G.S. 105-381. N.C.G.S. 105-381 outlines the process by which a taxpayer can request a refund for any property taxes paid which were paid under protest. The bases for allowing a refund are 1) taxes imposed through clerical error; (2) illegal taxes; and (3) taxes levied for an illegal purpose. Poly-Processing, Inc., asserts in their request for a refund that they qualified for an exemption as a resource recovery or recycling facility as defined in N.C.G.S. 105-275(8) for tax year 1994. The State of North Carolina Department of Revenue inspected the facilities and equipment and found that they do meet the requirements of the "Standards for Special Tax Treatment of Recycling and Resource Recovery Equipment and Facilities". Poly-Processing therefore paid their property taxes for 1994 under protest and are now requesting a refund.

The Assessor's position with respect to this issue is that because Poly-Processing failed to file an application with his office for the exemption within the listing period for 1994, they do not qualify for the exemption for 1994. The Assessor granted them an extension to file an application for the 1995 tax year so that Poly-Processing will qualify for the 1995 tax year.

N.C.G.S. 105-381 requires Board action on this issue not later than 90 days after the receipt of the request for a refund. The request is dated March 8, 1995, allowing the Board until June 6, 1995 to make decision. If the Board fails to act by June 6, 1995, the taxpayer can then go directly to Court to ask for the refund. It would therefore be appropriate for the Board to take action with respect to this request at this meeting.

denied

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NESBITT & SLAWTER
ATTORNEYS AT LAW
SUITE 700
29 NORTH MARKET STREET
ASHEVILLE, NORTH CAROLINA 28801

MARTIN L. NESBITT, JR.
WILLIAM F. SLAWTER

704-258-2447
FAX 704-252-0511

KAREN J. THATCHER
MARY G. GODFREY

March 8, 1995

Ms. Renee Kumor, Chairman
Henderson County Board of Commissioners
100 North King Street
Hendersonville, NC 28792

HAND DELIVERY

Re: Poly Processing, Inc.
Account #78707


Dear Ms. Kumor:

Along with a copy of this letter, we are today delivering to the Henderson County Tax Collector, a check in the sum of \$2,568.43, representing payment in full of the 1994 real property taxes assessed on the above account, and a check in sum of \$1,378.38, representing payment in full on the 1994 personal property taxes assessed on the above account. These taxes are being paid under protest.

I am enclosing herewith a copy of a tax certification from the North Carolina Department of Environment, Health and Natural Resources dated April 14, 1994, evidencing a tax exempt status under G.S. §105-275(8). Please note that the tax certification for Poly Processing, Inc. reflects an application date of October 28, 1993, and a finding by NCDEHNR on November 29, 1993, well before the listing period.

In accordance with the provisions of G.S. §105-381, Poly Processing, Inc. hereby makes demand for refund, in that the tax imposed is an illegal tax, for the reasons set forth above. Please advise us of the action taken by the Henderson County Board of Commissioners pursuant to G.S. §105-381(b) at your earliest convenience. Thank you for your attention to this matter.

Very truly yours,


William F. Slawter

WFS/gh
Enclosures

pc: Terry Lyda, Tax Collector
Poly Processing, Inc.

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POLY PROCESSING, INC.

009757

1994 Real Prop Taxes

\$ 2,568.43

DATE

3/03/95

CHECK NUMBER

009757

POLY PROCESSING, INC.
P.O. BOX 195 PH. 704-685-3000
EDNEYVILLE, NC 28727

FIRST UNION NATIONAL BANK
HENDERSOVILLE, N.C.
66-162/531

009757

PAY *****TWO THOUSAND FIVE HUNDRED SIXTY EIGHT & 43/100-----DOLLARS

DATE	AMOUNT
3/03/95	\$ 2,568.43

TO THE ORDER OF: TERRY F. LYDA, TAX COLLECTOR
Paid Under Protest

Terry F. Lyda

AUTH. SIG.

⑈009757⑈ ⑆053101626⑆2070784412502⑈

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POLY PROCESSING, INC.

INVOICE NUMBER	DATE	AMOUNT	DISCOUNT	NET AMOUNT
1994 EQUIPMENT TAXES				\$ 1,378.38
				009758

DATE

3/03/95

CHECK NUMBER

009758

POLY PROCESSING, INC.
 P.O. BOX 195 PH. 704-685-3000
 EDNEYVILLE, NC 28727

FIRST UNION NATIONAL BANK
 HENDERSOVILLE, N.C.

66-162/531

009758

PAY *****ONE THOUSAND THREE HUNDRED SEVENTY EIGHT & 38/100-----DOLLARS

DATE	AMOUNT
3/03/95	\$ 1,378.38

TO THE ORDER OF:
 TERRY F LYDA TAX COLLECTOR
 paid Under Protest

Bob McLeod

AUTH. SIG.

⑈009758⑈ ⑆053101626⑆2070784412502⑈

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State of North Carolina
Department of Environment,
Health and Natural Resources

James B. Hunt, Jr., Governor
Jonathan B. Howes, Secretary
William L. Meyer, Director



T A X C E R T I F I C A T I O N

(Franchise/privilege; Amortization; Amortization allowance;
Net Income Adjustments; Ad Valorem)

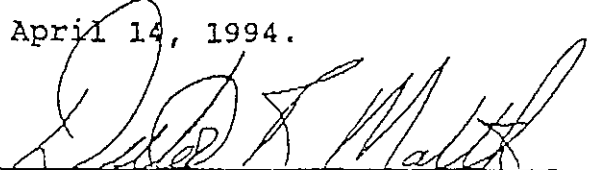
In accordance with the provisions of the General Statutes of North Carolina [G.S. 130A-294(a)(3); G.S. 105-122(b); G.S. 105-130.10; G.S. 105-130.15(b)(6); and G.S. 105-275(8)], this is to certify that:

POLY PROCESSING, INC.
PO BOX 195, MILLS GAP ROAD
HENDERSON County
EDNEYVILLE, NC 28727

filed a tax certification on resource recovering or recycling facilities and equipment on October 28, 1993.

The Division of Solid Waste Management of the North Carolina Department of Environment, Health, and Natural Resources inspected these resource recovering or recycling facilities and equipment on November 29, 1993, and found that the facilities and equipment in Enclosure (1) meet the requirements of the "Standards for Special Tax Treatment of Recycling and Resource Recovery Equipment and Facilities"

DATE TAX CERTIFICATION APPROVED: April 14, 1994.


Dexter R. Matthews, Chief
Solid Waste Section
Division of Solid Waste Management

DRM/gbf

cc: HENDERSON County Tax Supervisor
James Patterson, Waste Management Specialist

DEHNR Form 2480 (Rev. 10/89)
Solid Waste Section

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Henderson County Assessor's Office
200 North Grove Street
Suite 102
Hendersonville, NC 28792
704 - 697- 4870

COPY

April 13, 1995

Mr. William F. Slawter
Nesbitt & Slawter
Attorneys At Law
Suite 700
29 N Market Street
Asheville, NC 28801

RECEIVED
4-18-95

RE: Poly Processing Inc.
Acct: 78707

Dear Mr. Slawter:

This is in response to a letter to Ms. Renee Kumor, Chairwoman, Henderson County Board of Commissioners.

Your letter stated the payment of the 1994 personal property taxes were paid under protest on the above referenced account.

My office also received a copy of the Tax Certification on resource recovering or recycling facilities and equipment for Poly Processing, Inc. The Tax Certification states that the property in question was inspected on November 29, 1993 and found that the equipment noted on enclosure met the requirements for special tax exemption.

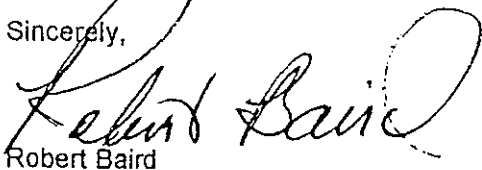
NCGS 105-282.1 states that an owner claiming exemption or exclusion shall annually file an application for exemption or exclusion during the listing period not covered under NCGS 105-275. NCGS 105-307 allows the Assessor to grant extensions for the listing period, however, not to extend beyond April 15.

Poly Processing did not file an exemption application during the regular listing period, nor did they request an extension for listing their Business Personal Property.

Poly Processing did not comply with the NCGS allowing this exemption. Therefore, I contend these taxes were not illegally imposed, therefore, no refund is recommended.

Poly Processing was granted extension for listing Business Personal Property for 1995 until April 15, 1995. If the enclosed application is filed along with the original cost and year of acquisition of the equipment detailed as the enclosure in the Tax Certification granted to Poly Processing dated April 14, 1994, an untimely application will be accepted and the applicable amount of exemption will be granted for 1995.

Sincerely,



Robert Baird
Henderson County Assessor

RB:lgm

Enclosure

cc: Renee Kumor, Chairwoman

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1985, c. 656, s. 20; 1985 (Reg. Sess., 1986), c. 947, ss. 3, 4; 1987, c. 43, s. 1; c. 440, s. 2; c. 805, s. 3; c. 813, ss. 1-4; 1991, c. 34, s. 3; 1991 (Reg. Sess., 1992), c. 975, s. 1; c. 1004, s. 1; 1993, c. 354, s. 23; c. 459, s. 1.)

Editor's Note. —

Session Laws 1993, c. 354, s. 29 is a severability clause.

Effect of Amendments. —

Session Laws 1993, c. 354, s. 23, effective October 1, 1993, inserted "limited liability company" in subdivision (12).

Session Laws 1993, c. 459, s. 1, effective for taxes imposed for taxable years beginning on or after July 1, 1994, deleted the former second paragraph of subdivision (8a), dealing with manufacturers and retail and wholesale merchants.

CASE NOTES

Used Machinery Is Not Inventory. — Where taxpayer which acquired used machinery and equipment primarily for use in its manufacture of textiles and only held the goods for sale after the property was no longer useful in taxpayer's textile business, the equipment and machinery at issue were not inventory held for sale in the regular course of business by a wholesale merchant. Consequently, the property was not ex-

cluded from ad valorem taxation. In re Cone Mills Corp., 112 N.C. App. 539, 435 S.E.2d 835 (1993), cert. denied, 335 N.C. 555, 441 S.E.2d 112 (1994).

Applied in Computer Sales Int'l, Inc. v. Forsyth Mem. Hosp., 112 N.C. App. 633, 436 S.E.2d 263 (1993).

Quoted in In re Dickey, 110 N.C. App. 823, 431 S.E.2d 203 (1993).

Cited in In re Philip Morris U.S.A., 335 N.C. 227, 436 S.E.2d 828 (1993).

ARTICLE 12.

Property Subject to Taxation.

§ 105-274. Property subject to taxation.

CASE NOTES

Used Machinery and Equipment. — Where taxpayer which acquired used machinery and equipment primarily for use in its manufacture of textiles and only held the goods for sale after the property was no longer useful in taxpayer's textile business, the equipment and machinery at issue were not inventory held for sale in the regular course of business by a wholesale merchant. Con-

sequently, the property was not excluded from ad valorem taxation. In re Cone Mills Corp., 112 N.C. App. 539, 435 S.E.2d 835 (1993), cert. denied, 335 N.C. 555, 441 S.E.2d 112 (1994).

Stated in In re Atl. Coast Conference, 112 N.C. App. 1, 434 S.E.2d 865 (1993).

Cited in In re Dickey, 110 N.C. App. 823, 431 S.E.2d 203 (1993).

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

The following classes of property are hereby designated special classes under authority of Article V, Sec. 2(2), of the North Carolina Constitution and shall not be listed, appraised, assessed, or taxed:

- (1) Repealed by Session Laws 1987, c. 813, s. 5.
- (2) Tangible personal property that has been imported from a foreign country through a North Carolina seaport terminal and which is stored at such a terminal while awaiting fur-

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- ther shipment for the first 12 months of such storage. (The purpose of this classification is to encourage the development of the ports of this State.)
- (3) Real and personal property owned by nonprofit water or nonprofit sewer associations or corporations.
 - (4) Repealed by Session Laws 1987, c. 813, s. 5.
 - (5) Vehicles that the United States government gives to veterans on account of disabilities they suffered in World War II, the Korean Conflict, or the Viet Nam Era so long as they are owned by:
 - a. A person to whom a vehicle has been given by the United States government or
 - b. Another person who is entitled to receive such a gift under Title 38, section 252, United States Code Annotated.
 - (6) Special nuclear materials held for or in the process of manufacture, processing, or delivery by the manufacturer or processor thereof, regardless whether the manufacturer or processor owns the special nuclear materials. The terms "manufacture" and "processing" do not include the use of special nuclear materials as fuel. The term "special nuclear materials" includes (i) uranium 233, uranium enriched in the isotope 233 or in the isotope 235; and (ii) any material artificially enriched by any of the foregoing, but not including source material. "Source material" means any material except special nuclear material which contains by weight one twentieth of one percent (0.05%) or more of (i) uranium, (ii) thorium, or (iii) any combination thereof. Provided however, that to qualify for this exemption no such nuclear materials shall be discharged into any river, creek or stream in North Carolina. The classification and exclusion provided for herein shall be denied to any manufacturer, fabricator or processor who permits burial of such material in North Carolina or who permits the discharge of such nuclear materials into the air or into any river, creek or stream in North Carolina if such discharge would contravene in any way the applicable health and safety standards established and enforced by the Department of Environment, Health, and Natural Resources or the Nuclear Regulatory Commission. The most stringent of these standards shall govern.
 - (7) Real and personal property that is:
 - a. Owned either by a nonprofit corporation formed under the provisions of Chapter 55A of the General Statutes or by a bona fide charitable organization, and either operated by such owning organization or leased to another such nonprofit corporation or charitable organization, and
 - b. Appropriated exclusively for public parks and drives.
 - (8) a. Real and personal property that is used or, if under construction, is to be used exclusively for air cleaning or waste disposal or to abate, reduce, or prevent the pollution of air or water (including, but not limited to, waste lagoons and facilities owned by public or private utilities built and installed primarily for the purpose of providing sewer service to areas that are predomi-

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nantly residential in character or areas that lie outside territory already having sewer service), if the Department of Environment, Health, and Natural Resources or a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 furnishes a certificate to the tax supervisor of the county in which the property is situated or to be situated stating that the Environmental Management Commission or local air pollution control program has found that the described property:

1. Has been or will be constructed or installed;
 2. Complies with or that plans therefor which have been submitted to the Environmental Management Commission or local air pollution control program indicate that it will comply with the requirements of the Environmental Management Commission or local air pollution control program;
 3. Is being effectively operated or will, when completed, be required to operate in accordance with the terms and conditions of the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program; and
 4. Has or, when completed, will have as its primary rather than incidental purpose the reduction of water pollution resulting from the discharge of sewage and waste or the reduction of air pollution resulting from the emission of air contaminants.
- b. Real or personal property that is used or, if under construction, is to be used exclusively for recycling or resource recovering of or from solid waste, if the Department of Environment, Health, and Natural Resources furnishes a certificate to the tax supervisor of the county in which the property is situated stating the Department of Environment, Health, and Natural Resources has found that the described property has been or will be constructed or installed, complies or will comply with the rules of the Department of Environment, Health, and Natural Resources, and has, or will have as its primary purpose recycling or resource recovering of or from solid waste.
- c. Tangible personal property that is used exclusively, or if being installed, is to be used exclusively, for the prevention or reduction of cotton dust inside a textile plant for the protection of the health of the employees of the plant, in accordance with occupational safety and health standards adopted by the State of North Carolina pursuant to Article 16 of G.S. Chapter 95. The Department of Revenue shall adopt guidelines to assist the tax supervisors in administering this exclusion.
- (9) through (11) Repealed by Session Laws 1987, c. 813, s. 5.

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- (12) Real property owned by a nonprofit corporation or association exclusively held and used by its owner for educational and scientific purposes as a protected natural area. (For purposes of this subdivision, the term "protected natural area" means a nature reserve or park in which all types of wild nature, flora and fauna, and biotic communities are preserved for observation and study.)
- (13) Repealed by Session Laws 1973, c. 904.
- (14) Motor vehicles chassis belonging to nonresidents, which chassis temporarily enters the State for the purpose of having a body mounted thereon.
- (15) Upon the date on which each county's next general reappraisal of real property under the provisions of G.S. 105-286(a) becomes effective, standing timber, pulpwood, seedlings, saplings, and other forest growth. (The purpose of this classification is to encourage proper forest management practices and to develop and maintain the forest resources of the State.)
- (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.
- (17) Real and personal property belonging to the American Legion, Veterans of Foreign Wars, Disabled American Veterans, or to any similar veterans organizations chartered by the Congress of the United States or organized and operated on a statewide or nationwide basis, and any post or local organization thereof, when used exclusively for meeting or lodge purposes by said organization, together with such additional adjacent real property as may be necessary for the convenient and normal use of the buildings thereon. Notwithstanding the exclusive-use requirement hereinabove established, if a part of a property that otherwise meets this subdivision's requirements is used for a purpose that would require that it not be listed, appraised, assessed or taxed if the entire property were so used, that part, according to its value, shall not be listed, appraised, assessed or taxed. The fact that a building or facility is incidentally available to and patronized by the general public, so far as there is no material amount of business or patronage with the general public, shall not defeat the classification granted by this section.
- (18) Real and personal property belonging to the Grand Lodge of Ancient, Free and Accepted Masons of North Carolina, the Prince Hall Masonic Grand Lodge of North Carolina, their subordinate lodges and appendant bodies including the Ancient and Arabic Order Nobles of the Mystic Shrine, and the Ancient Egyptian Order Nobles of the Mystic Shrine, when used exclusively for meeting or lodge purposes by said organization, together with such additional adjacent real property as may be necessary for the convenient normal use of the buildings thereon. Notwithstand-

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- ing the exclusive-use requirement hereinabove established, if a part of a property that otherwise meets this subdivision's requirements is used for a purpose that would require that it not be listed, appraised, assessed or taxed if the entire property were so used, that part, according to its value, shall not be listed, appraised, assessed or taxed. The fact that a building or facility is incidentally available to and patronized by the general public, so far as there is no material amount of business or patronage with the general public, shall not defeat the classification granted by this section.
- (19) Real and personal property belonging to the Loyal Order of Moose, the Benevolent and Protective Order of Elks, the Knights of Pythias, the Odd Fellows, the Woodmen of the World, and similar fraternal or civic orders and organizations operated for nonprofit benevolent, patriotic, historical, charitable, or civic purposes, when used exclusively for meeting or lodge purposes by the organization, together with as much additional adjacent real property as may be necessary for the convenient normal use of the buildings. Notwithstanding the exclusive-use requirement of this subdivision, if a part of a property that otherwise meets this subdivision's requirements is used for a purpose that would require that it not be listed, appraised, assessed, or taxed if the entire property were so used, that part, according to its value, shall not be listed, appraised, assessed, or taxed. The fact that a building or facility is incidentally available to and patronized by the general public, so far as there is no material amount of business or patronage with the general public, shall not defeat the classification granted by this section. Nothing in this subdivision shall be construed so as to include social fraternities, sororities, and similar college, university, or high school organizations in the classification for exclusion from ad valorem taxes.
- (20) Real and personal property belonging to Goodwill Industries and other charitable organizations organized for the training and rehabilitation of disabled persons when used exclusively for training and rehabilitation, including commercial activities directly related to such training and rehabilitation.
- (21) The first thirty-eight thousand dollars (\$38,000) in assessed value of housing together with the necessary land therefor, owned and used as a residence by a disabled veteran who receives benefits under Title 38, section 801, United States Code Annotated. This exclusion shall be the total amount of the exclusion applicable to such property.
- (22) Repealed by Session Laws 1987, c. 813, s. 5.
- (23) Tangible personal property imported from outside the United States and held in a Foreign Trade Zone for the purpose of sale, manufacture, processing, assembly, grading, cleaning, mixing or display and tangible personal property produced in the United States and held in a Foreign Trade Zone for exportation, either in its original form or as altered by any of the above processes.

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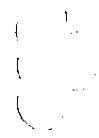


- (24) Cargo containers and container chassis used for the transportation of cargo by vessels in ocean commerce.
- The term "container" applies to those nondisposable receptacles of a permanent character and strong enough for repeated use and specially designed to facilitate the carriage of goods, by one or more modes of transport, one of which shall be by ocean vessels, without intermediate re-loadings and fitted with devices permitting its ready handling particularly in the transfer from one transport mode to another.
- (25) Tangible personal property shipped into this State for the purpose of repair, alteration, maintenance or servicing and reshipment to the owner outside this State.
- (26) For the tax year immediately following transfer of title, tangible personal property manufactured in this State for the account of a nonresident customer and held by the manufacturer for shipment. For the purpose of this subdivision, the term "nonresident" means a taxpayer having no place of business in North Carolina.
- (27), (28) Repealed by Session Laws 1983, c. 643, s. 1.
- (29) Real property and easements wholly and exclusively held and used for nonprofit historic preservation purposes by a nonprofit historical association or institution, including real property owned by a nonprofit corporation organized for historic preservation purposes and held by its owner exclusively for sale under an historic preservation agreement prepared and recorded under the provisions of the Conservation and Historic Preservation Agreements Act, Article 4, Chapter 121 of the General Statutes of North Carolina.
- (29a) Land within an historic district held, by a nonprofit corporation organized for historic preservation purposes, for use as a future site for an historic structure that is to be moved to the site from another location. Property may be classified under this subdivision for no more than five years. The taxes that would otherwise be due on land classified under this subdivision shall be a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit or units as deferred taxes and shall be payable five years from the fiscal year the exclusion is first claimed unless an historic structure is moved onto the site during that time. If an historic structure has not been moved to the site within five years, then deferred taxes for the preceding five fiscal years shall immediately be payable, together with interest as provided in G.S. 105-360 for unpaid taxes that shall accrue on the deferred taxes as if they had been payable on the dates on which they would originally become due. All liens arising under this subdivision are extinguished upon either the payment of any deferred taxes under this subdivision or the location of an historic structure on the site within the five-year period allowed under this subdivision.
- (30) Repealed by Session Laws 1987, c. 813, s. 5.

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- (31) Money, whether on hand or on deposit at a bank, a credit union, a savings and loan association, or an insurance company.
- (32) Real and personal property owned by a home for the aged, sick, or infirm, that is exempt from tax under Article 4 of this Chapter, and used in the operation of that home. The term "home for the aged, sick, or infirm" means a self-contained community that (i) is designed for elderly residents; (ii) operates a skilled nursing facility, an intermediate care facility, or a home for the aged; (iii) includes residential dwelling units, recreational facilities, and service facilities; (iv) the charter of which provides that in the event of dissolution, its assets will revert or be conveyed to an entity organized exclusively for charitable, educational, scientific, or religious purposes, and which qualifies as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986; (v) is owned, operated, and managed by one of the following entities:
- A. A congregation, parish, mission, synagogue, temple, or similar local unit of a church or religious body;
 - B. A conference, association, division, presbytery, diocese, district, synod, or similar unit of a church or religious body;
 - C. A Masonic organization whose property is excluded from taxation pursuant to G.S. 105-275(18); or
 - D. A nonprofit corporation governed by a board of directors at least a majority of whose members elected for terms commencing on or before December 31, 1987, shall have been elected or confirmed by, and all of whose members elected for terms commencing after December 31, 1987, shall be selected by, one or more entities described in A., B., or C. of this subdivision, or organized for a religious purpose as defined in G.S. 105-278.3(d)(1); and
- (vi) has an active program to generate funds through one or more sources, such as gifts, grants, trusts, bequests, endowment, or an annual giving program, to assist the home in serving persons who might not be able to reside at the home without financial assistance or subsidy.
- (32a) Inventories owned by contractors.
- (33) Inventories owned by manufacturers.
- (34) Inventories owned by retail and wholesale merchants.
- (35) Severable development rights, as defined in G.S. 136-66.11(a), when severed and evidenced by a deed recorded in the office of the register of deeds pursuant to G.S. 136-66.11(c).
- (36) Real and personal property belonging to the North Carolina Low-Level Radioactive Waste Management Authority created under Chapter 104G of the General Statutes.
- (37) Poultry and livestock and feed used in the production of poultry and livestock.
- (38) Real and personal property belonging to the North Carolina Hazardous Waste Management Commission created under Chapter 130B of the General Statutes.
- (39) Real and personal property that is: (i) owned by a nonprofit corporation organized upon the request of a local

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government unit for the sole purpose of financing projects for public use, (ii) leased to a unit of local government whose property is exempt from taxation under G.S. 105-278.1, and (iii) used in whole or in part for a public purpose by such unit of local government. If only part of the property is used for a public purpose, only that part is exempt from the tax. This subdivision shall not apply if any distributions are made to members, officers, or directors of the nonprofit corporation.

- (40) Computer software and any documentation related to the computer software. As used in this subdivision, the term "computer software" means any program or routine used to cause a computer to perform a specific task or set of tasks. The term includes system and application programs and database storage and management programs.

The exclusion established by this subdivision does not apply to computer software and its related documentation if the computer software meets one or more of the following descriptions:

- a. It is embedded software. "Embedded software" means computer instructions, known as microcode, that reside permanently in the internal memory of a computer system or other equipment and are not intended to be removed without terminating the operation of the computer system or equipment and removing a computer chip, a circuit, or another mechanical device.
- b. It is purchased or licensed from a person who is unrelated to the taxpayer and it is capitalized on the books of the taxpayer in accordance with generally accepted accounting principles, including financial accounting standards issued by the Financial Accounting Standards Board. A person is unrelated to a taxpayer if (i) the taxpayer and the person are not subject to any common ownership, either directly or indirectly, and (ii) neither the taxpayer nor the person has any ownership interest, either directly or indirectly, in the other.

This subdivision does not affect the value or taxable status of any property that is otherwise subject to taxation under this Subchapter. (1939, c. 310, s. 303; 1961, c. 1169, s. 8; 1967, c. 1185; 1971, c. 806, s. 1; c. 1121, s. 3; 1973, cc. 290, 451; c. 476, s. 128; c. 484; c. 695, s. 1; c. 790, s. 1; cc. 904, 962, 1028, 1034, 1077; c. 1262, s. 23; c. 1264, s. 1; 1975, cc. 566, 755; c. 764, s. 6; 1977, c. 771, s. 4; c. 782, s. 2; c. 1001, ss. 1, 2; 1977, 2nd Sess., c. 1200, s. 4; 1979, c. 200, s. 1; 1979, 2nd Sess., c. 1092; 1981, c. 86, s. 1; 1981 (Reg. Sess., 1982), c. 1244, ss. 1, 2; 1983, c. 643, ss. 1, 2; c. 693; 1983 (Reg. Sess., 1984), c. 1060; 1985, c. 510, s. 1; c. 656, s. 37; 1985 (Reg. Sess., 1986), c. 982, s. 18; 1987, c. 356; c. 622, s. 2; c. 747, s. 8; c. 777, s. 6; c. 813, ss. 5, 6, 22; c. 850, s. 17; 1987 (Reg. Sess., 1988), c. 1041, s. 1.1; 1989, c. 148, s. 4; c. 168, s. 6; c. 705; c. 723, s. 1; c. 727, ss. 28, 29; 1991, c. 717, s. 1; 1991 (Reg. Sess., 1992), c. 975, s. 2; 1993, c. 459, s. 2; 1993 (Reg. Sess., 1994), c. 745, s. 39.)

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§ 105-282.1. Applications for property tax exemption or exclusion.

(a) Every owner of property claiming exemption or exclusion from property taxes under the provisions of this Subchapter has the burden of establishing that the property is entitled thereto. Except as provided below, an owner claiming exemption or exclusion shall annually file an application for exemption or exclusion during the listing period. If the property for which the exemption or exclusion is claimed is appraised by the Department of Revenue, the application shall be filed with the Department. Otherwise, the application shall be filed with the assessor of the county in which the property is situated. An application must contain a complete and accurate statement of the facts that entitle the property to the exemption or exclusion and must indicate the municipality, if any, in which the property is located. Each application filed with the Department of Revenue or an assessor shall be submitted on a form approved by the Department. Application forms shall be made available by the assessor and the Department, as appropriate.

- (1) The United States government, the State of North Carolina and the counties and municipalities of the State are exempted from the requirement that owners file applications for exemption.
- (2) Owners of the special classes of property excluded from taxation under G.S. 105-275(5), (15), (16), (26), (31), (32a), (33), (34), or (40), or exempted under G.S. 105-278.2 are not required to file applications for the exclusion or exemption of that property.
- (3) After an owner of property entitled to exemption under G.S. 105-278.3, 105-278.4, 105-278.5, 105-278.6, 105-278.7, or 105-278.8 or exclusion under G.S. 105-275(3), (7), (12), or (39), G.S. 105-277.1 or G.S. 105-278 has applied for exemption or exclusion and the exemption or exclusion has been approved, the owner is not required to file an application in subsequent years except in the following circumstances:
 - a. New or additional property is acquired or improvements are added or removed, necessitating a change in the valuation of the property; or
 - b. There is a change in the use of the property or the qualifications or eligibility of the taxpayer necessitating a review of the exemption or exclusion.
- (4) After an owner of property entitled to exclusion under G.S. 105-277.10 has applied for the exclusion and the exclusion has been approved, the owner is not required to apply for the exclusion in subsequent years so long as the classified property, including classified property acquired after the application is approved, is used or held for use directly in manufacturing or processing as part of industrial machinery.
- (5) Upon a showing of good cause by the applicant for failure to make a timely application, an application for exemption or exclusion filed after the close of the listing period may be approved by the Department of Revenue, the board of equalization and review, the board of county commissioners, or the governing body of a municipality, as appropriate. An untimely application for exemption or exclusion

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- (6) Personal property, the title to which is held by a trustee, guardian, or other fiduciary, shall be listed by the fiduciary in his fiduciary capacity except as otherwise provided in this section.
- (7) If personal property is owned by two or more persons who are joint owners, each owner shall list the value of his interest. However, if the joint owners are husband and wife, the property owned jointly shall be listed on a single abstract in the names of both the husband and the wife.
- (8) If the person in whose name personal property should be listed is unknown, or if the ownership of the property is in dispute, the property shall be listed in the name of the person in possession of the property, or if there appears to be no person in possession, in the name of "unknown owner." When the name of the owner is later ascertained, the provisions of subsection (b), above, shall apply.
- (9) Personal property, owned under a time-sharing arrangement but managed by a homeowners association or other managing entity, shall be listed in the name of the managing entity. (1939, c. 310, s. 802; 1971, c. 806, s. 1; 1983, c. 785, s. 2; 1987, c. 45, s. 1.)

CASE NOTES

Cited in Szabo Food Serv., Inc. v. Balentine's, Inc., 285 N.C. 452, 206 S.E.2d 242 (1974); In re Hanes Dye & Finishing Co., 285 N.C. 598, 207 S.E.2d 729 (1974).

OPINIONS OF ATTORNEY GENERAL

Floor Plan Financing Arrangement Property to Be Listed for Ad Valorem Tax Purposes in Name of Owner. — See opinion of Attorney General to Mr. Bonner R. Lee, Hyde County Accountant, 41 N.C.A.G. 42 (1970), issued under former similar provisions.

§ 105-307. Length of listing period; extension; preliminary work.

The period during which property is to be listed for taxation each year shall begin on the first business day of the month of January and, unless extended as herein provided shall continue through the month of January. The board of county commissioners may, in any nonrevaluation year, extend the time during which property is to be listed for taxation for a period not to exceed 30 additional days; in years of octennial appraisal of real property, the board may extend the time for listing for a period not to exceed 60 additional days. Any action by the board of county commissioners extending the listing period shall be recorded in the minutes of the board, and notice thereof shall be published as required by G.S. 105-296(c). The entire period for listing, including any extension of time granted, shall be considered the regular listing period for the particular year within the meaning of this Subchapter.

The board of county commissioners shall grant individual extensions of time for the listing of real and personal property upon written request and for good cause shown. The request must be filed with the assessor no later than the ending date of the regular listing period. The board may delegate the authority to grant exten-

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sions to the assessor. Extensions granted under this paragraph shall not extend beyond April 15.

The assessor may conduct preparatory work before the listing period begins, but he may not make a final appraisal of property before the day as of which the value of the property is to be determined under G.S. 105-285. (1939, c. 310, s. 905; 1971, c. 806, s. 1; 1973, cc. 141, 706; 1975, c. 49; 1977, c. 360; 1987, c. 43, s. 5; c. 45, s. 1.)

Editor's Note. — Session Laws 1991, c. 160, ss. 2 and 3 provide: "Sec. 2. Notwithstanding G.S. 105-307, an individual required to list property for taxation for the 1991-92 tax year who, on or after August 2, 1990, was a member of the armed forces or the armed forces reserves and was deployed outside the State as a result of "Operation Desert Shield" or "Operation Desert Storm," is allowed 90 days after the end of the individual's deployment to list the property. For these individuals, the listing period

for the 1991-92 tax year is extended until the end of the 90-day period provided in this act, and an individual who lists the property before the end of the 90-day period is not subject to civil or criminal penalties for failure to list the property for the 1991-92 year.

"Sec. 3. This act is effective retroactively as of August 2, 1990. If any penalty or interest forgiven by this act has been paid before the date this act is ratified, the taxing unit shall refund the penalty or interest."

CASE NOTES

Stated in *In re Church of Creator*, 102 N.C. App. 507, 402 S.E.2d 874 (1991).

§ 105-308. Duty to list; penalty for failure.

effective through 1/95?

Every person in whose name any property is to be listed under the terms of this Subchapter shall list the property with the assessor within the time allowed by law on an abstract setting forth the information required by this Subchapter.

In addition to all other penalties prescribed by law, any person whose duty it is to list any property who willfully fails or refuses to list the same within the time prescribed by law shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00) or imprisonment not to exceed six months. The failure to list shall be prima facie evidence that the failure was willful.

Any person who willfully attempts, or who willfully aids or abets any person to attempt, in any manner to evade or defeat the taxes imposed under this Subchapter, whether by removal or concealment of property or otherwise, shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00) or imprisonment not to exceed six months or by both such fine and imprisonment. (1939, c. 310, s. 901; 1957, c. 848; 1971, c. 806, s. 1; 1977, c. 92; 1987, c. 43, s. 4; c. 45, s. 1.)

Legal Periodicals. — For comment, *Beware,* see 8 Campbell L. Rev. 473 (1986).
"Offer to Purchase and Contract: Buyer

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by submitting to the governing body of the taxing unit a written statement of his defense and a request for refund thereof.

(b) Action of Governing Body. — 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. The governing body may, by resolution, delegate its authority to determine requests for a release or refund of tax of less than one hundred dollars (\$100.00) to the finance officer, manager, or attorney of the taxing unit. A finance officer, manager, or attorney to whom this authority is delegated shall monthly report to the governing body the actions taken by him on requests for release or refund. 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. If a release is granted or refund made, the tax collector shall be credited with the amount released or refunded in his annual settlement.

(c) Request for Release before Payment. —

(1) If within 90 days after receiving a taxpayer's request for release of an unpaid tax claim under (a) above, the governing body of the taxing unit has failed to grant the release, has notified the taxpayer that no release will be granted, or has taken no action on the request, the taxpayer shall pay the tax. He may then within three years from the date of payment bring a civil action against the taxing unit for the amount claimed.

(2) Request for Refund. — If within 90 days after receiving a taxpayer's request for refund under (a) above, the governing body has failed to refund the full amount requested by the taxpayer, has notified the taxpayer that no refund will be made, or has taken no action on the request, the taxpayer may bring a civil action against the taxing unit for the amount claimed. Such action may be brought at any time within three years from the expiration of the period in which the governing body is required to act.

(d) Civil Actions. — Civil actions brought pursuant to subsection (c) above shall be brought in the appropriate division of the general court of justice of the county in which the taxing unit is located. If, upon the trial, it is determined that the tax or any part of it was illegal or levied for an illegal purpose, or excessive as the result of a clerical error, judgment shall be rendered therefor with interest thereon at six percent (6%) per annum, plus costs, and the judgment shall be collected as in other civil actions. (1901, c. 558, s. 30; Rev., s. 2855; C. S., s. 7979; 1971, c. 806, s. 1; 1973, c. 564, s. 3; 1977, c. 946, s. 2; 1985, c. 150, s. 1; 1987, c. 127.)

Local Modification. — Forsyth: 1981 (Reg. Sess., 1982), c. 1154; 1985, c. 150, s. 2.

Editor's Note. — Session Laws 1987, c. 127, which amended this section, provided in s. 2 that a taxpayer may make a

demand for a refund of taxes levied for the year 1982 and thereafter, whether or not the taxpayer had demanded a refund under subdivision (a)(3) of this section before the effective date of the act (July 1, 1987).

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compromise by civil action instituted by any resident of the taxing unit, and when collected, the recovered tax shall be paid to the treasurer of the taxing unit. The costs of bringing the action, including reasonable attorneys' fees, shall be allowed the plaintiff in the event the tax is recovered.

(d) The provisions of this section are not intended to restrict or abrogate the powers of a board of equalization and review or any agency exercising the powers of such a board. (1901, c. 558, s. 31; Rev., s. 2854; C.S., s. 7976; 1971, c. 806, s. 1; 1973, c. 564, s. 2.)

Local Modification. — Town of Stoneville: 1975, c. 336.

Editor's Note. — Session Laws 1989 (Reg. Sess., 1990), c. 960, ss. 1 and 2 provide:

"Section 1. A taxing unit's governing body may by resolution provide that, notwithstanding the provisions of G.S. 105-360 regarding the accrual of interest and G.S. 105-380 and G.S. 105-381 regarding the release, refund, compromise of taxes, interest shall not accrue on unpaid taxes for fiscal year 1989-90 unless the taxes remain unpaid after July 1, 1990. Interest accruing on taxes that remain unpaid after July 1, 1990, shall be computed according to the schedule stated in G.S. 105-360 in the

same manner as though the taxes were unpaid as of January 6, 1990. A resolution adopted pursuant to this act may apply only to fiscal year 1989-90 taxes, receipts of which were not delivered to the tax collector before January 1, 1990.

"Sec. 2. A resolution adopted by a taxing unit's governing body pursuant to this act relieves the tax collector of that taxing unit of any obligation to collect interest on taxes to which the resolution applies that are paid on or before July 1, 1990. After adoption of the resolution, the governing body of the taxing unit or its delegatee may refund any interest subject to Section 1 of this act that was paid by a taxpayer between January 7, 1990, and July 1, 1990."

CASE NOTES

Duty of Commissioners to Rescind Order Releasing Tax. — It is not only competent, but the duty of county commissioners to rescind an order improvidently granted to release one from the

assessment of a legal tax upon property. *Lemly v. Commissioners of Forsyth*, 85 N.C. 379 (1881), decided under former similar provisions.

§ 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

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approved under this subdivision applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed.

(b) The Department of Revenue or the assessor to whom an application for exemption or exclusion is submitted shall review the application and either approve or deny the application. Approved applications shall be filed and made available to all taxing units in which the exempted or excluded property is situated. If the Department denies an application for exemption or exclusion, it shall notify the taxpayer, who may appeal the denial to the Property Tax Commission.

If an assessor denies an application for exemption or exclusion, he shall notify the owner of his decision in time for him to appeal to the board of equalization and review and from the county board to the Property Tax Commission. If the notice of denial covers property located within a municipality, the assessor shall send a copy of the notice and a copy of the application to the governing body of the municipality. The municipal governing body shall then advise the owner whether it will adopt the decision of the county board or require the owner to file a separate appeal with the municipal governing body. In the event the owner is required to appeal to the municipal governing body and that body renders an adverse decision, the owner may appeal to the Property Tax Commission. Nothing in this section shall prevent the governing body of a municipality from denying an application which has been approved by the assessor or by the county board provided the owner's rights to notice and hearing are not abridged. Applications handled separately by a municipality shall be filed in the office of the person designated by the governing body, or in the absence of such designation, in the office of the chief fiscal officer of the municipality.

(c) When an owner of property that may be eligible for exemption or exclusion neither lists the property nor files an application for exemption or exclusion, the assessor or the Department of Revenue, as appropriate, shall proceed to discover the property. If, upon appeal, the owner demonstrates that the property meets the conditions for exemption or exclusion, the body hearing the appeal may approve the exemption or exclusion. Discovery of the property by the Department or the county shall automatically constitute a discovery by any taxing unit in which the property has a taxable situs.

(d) The county assessor shall prepare and maintain a roster of all property in the county that is granted tax relief through classification or exemption. As to affected real and personal property, the roster shall set forth:

- (1) The name of the owner of the property.
- (2) A brief description of the property.
- (3) A statement of the use to which the property is put.
- (4) A statement of the value of the property.
- (5) The total value of exempt property in the county and in each municipality therein.

(e) A duplicate copy of the roster shall be forwarded to the Department of Revenue on or before November 1, 1974. In subsequent years, on or before November 1, a report shall be filed with the Department of Revenue showing all changes since the last report. (1973, c. 695, s. 8; c. 1252; 1981, c. 54, ss. 2, 3; c. 86, s. 2; c. 915; 1985 (Reg. Sess., 1986), c. 982, s. 22; 1987, c. 45, s. 1; c. 295, ss. 5, 6; c.

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**HENDERSON COUNTY
BOARD OF COMMISSIONERS**

100 NORTH KING STREET
HENDERSONVILLE, N.C. 28792-5097
PHONE 704/697-4808
FAX 704/697-4536

RENEE KUMOR
CHAIRMAN
VOLLIE G. GOOD
J. MICHAEL EDNEY
BOB EKLUND
DON WARD

DAVID F. THOMPSON
COUNTY MANAGER

RESOLUTION

NOW THEREFORE BE IT HEREBY RESOLVED, that the Board of Commissioners of Henderson County, North Carolina does hereby approve a tax-exempt loan to the Blue Ridge Fire & Rescue, Inc. from First Union National Bank in the principal amount of \$450,000.00, which loan is for the following purpose (check applicable purpose):

1. () for the construction of a fire station for the VFD, (cross out the following if not applicable) including the purchase of the underlying real property.
2. () the purchase by the VFD of a fire truck or fire trucks, and


which fire truck(s) or fire station will be owned and operated by the VFD at the following address:


2632 Greenville Highway
Flat Rock, NC 28731

BE IT FURTHER RESOLVED, that repayment of such loan shall be the sole responsibility of Blue Ridge Fire & Rescue, Inc. and the approval of such loan by the Board of Commissioners of Henderson County shall not be deemed an assumption of liability, nor a guarantee of payment by Henderson County under any circumstances.

Duly Certified by the execution hereof and the placing hereon of the seal of the said municipality, this the 17th of May, 1995.

ATTEST:


Elizabeth W. Corn, Clerk


Renee Kumor, Chairman

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STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

CERTIFICATE OF CLERK REAPPROVAL
OF TAX-EXEMPT LOAN TO VOLUNTEER FIRE
DEPARTMENT BY BOARD OF COMMISSIONERS

RESOLUTION

NOW THEREFORE BE IT HEREBY RESOLVED, that the Board of Commissioners of Henderson County, North Carolina does hereby approve a tax-exempt loan to the Blue Ridge Fire & Rescue, Inc. from First Union National Bank in the principal amount of \$450,000.00, which loan is for the following purpose (check applicable purpose):

1. () for the construction of a fire station for the VFD,
(cross out the following if not applicable) including the purchase of the underlying real property.
2. () the purchase by the VFD of a fire truck or fire trucks, and

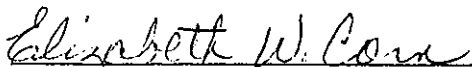
which fire truck(s) or fire station will be owned and operated by the VFD at the following address:

2632 Greenville Highway
Flat Rock, NC 28731

BE IT FURTHER RESOLVED, that repayment of such loan shall be the sole responsibility of Blue Ridge Fire & Rescue, Inc. and the approval of such loan by the Board of Commissioners of Henderson County shall not be deemed an assumption of liability, nor a guarantee of payment by Henderson County under any circumstances.

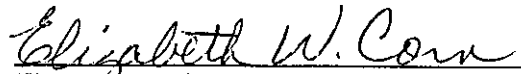
Duly Certified by the execution hereof and the placing hereon of the seal of the said municipality, this the 17th of May, 1995.

ATTEST:


Elizabeth W. Corn, Clerk


Renee Kumor, Chairman

The above signed, being the duly qualified Clerk of Henderson County, North Carolina, does hereby certify that the above is a true and accurate copy of a Resolution passed by the Board of Commissioners of Henderson County, North Carolina, at its regular meeting on the 17th of May, 1995, and that said Resolution remains in full force and effect.


Elizabeth W. Corn, Clerk
Henderson County Board of Commissioners

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