



Tax Administration

in North Carolina Course



North Carolina Department of Revenue



Discoveries & Immaterial Irregularities

Property Tax Section
Local Government Division

What We Will Cover

- What are discoveries?
- What are immaterial irregularities?
- What are the differences between the two?
- What do the courts say on this issue?

Discovery

- What does it mean to discover property?
- G.S. 105-273(6b) states that “to discover property” means to determine that:
 - Property has **not been listed** during a listing period.
 - A taxpayer **made a substantial understatement** of listed property.
 - Property was granted an **exemption or exclusion for which it did not qualify.**

Note on Listing

- Remember that all taxable personal property is required to be listed by the owner
- Real property is permanently listed in all counties, but it's still the owner's responsibility to report, **to the assessor**, any improvements or taxable separate interests in real property

On what date is a discovery made?

- G.S. 105-312(d): The discovery shall be deemed to be made on the date that the abstract is made or corrected.
- Alternatively, the date the notice of discovery is mailed to the taxpayer would serve as an adequate proxy for the discovery date.

For what years is property discovered?

- Discovered property shall be taxed for the year in which it is discovered and for any of the preceding five years during which the property escaped taxation.
 - Presumption is that property should have been listed by the same taxpayer for the preceding five years.
- Discovered property is taxed according to the tax rate imposed in each year and the assessed value that it should have been assigned in each year.
- Penalties imposed are based on amount of tax owed.

Penalties imposed: GS 105-312(h)

- Penalty is 10% of the amount of tax for the earliest year in which the property was not listed,
 - plus an additional 10% of the same amount for each subsequent listing period that elapsed before the property was discovered.
- Penalty is computed separately for each year in which the property was not listed.
- The taxes and penalties for all years in which there was a failure to list are totaled on single tax receipt.

Collection of taxes on discoveries

- Taxes, including penalties, on discovered property are a tax for the fiscal year that begins on July 1 of the calendar year in which the property is discovered.
- The schedule of discounts for prepayments apply to discovery taxes when the total taxes for the discovery are paid within the proper time period for prepayment for the above fiscal year.

2017 Discovery—Property Not Listed in Any Years

Year	Value	Tax Rate	Taxes	Penalty %	Penalty Amount	Total
2017	\$300,000	\$0.50	\$1,500.00	10%	\$150.00	\$1,650.00
2016	\$250,000	\$0.60	\$1,500.00	20%	\$300.00	\$1,800.00
2015	\$275,000	\$0.70	\$1,925.00	30%	\$577.50	\$2,502.50
2014	\$315,000	\$0.50	\$1,575.00	40%	\$630.00	\$2,205.00
2013	\$325,000	\$0.55	\$1,787.50	50%	\$893.75	\$2,681.25
2012	\$375,000	\$0.55	\$2,062.50	60%	\$1237.50	\$3,300.00
Total	\$1,840,000		\$10,350.00		\$3,788.75	\$14,138.75

Do Discoveries Still Exist?

- For personal property: YES
- For exemptions/exclusions: YES
- For failure to list improvements to real property:
 - NO, technically.
 - YES, in practice. (explained on next four slides)

Discovery of Real Property Improvements

- All counties must have permanent listing systems for real property. G.S. 105-303(b)
- Per G.S. 105-303(b)(2), persons whose duty it is to list real property are relieved of that duty...
- BUT, annually during the listing period, these persons must furnish the assessor with the information concerning improvements on and separate rights in real property.

Discovery of Real Property Improvements

- Also, G.S. 105-303(b)(3) states that:
 - The penalties in G.S. 105-312 do not apply for failure to list real property for taxation,
 - BUT, the penalties do apply for failure to report the construction or acquisition of improvements on and separate rights in real property.

Discovery of Real Property Improvements

- Technically, the taxpayer no longer has a duty to list the improvements to real property, but does have a duty to report the improvements.
- Failure to report the improvements will result in the penalties in G.S. 105-312.
- Therefore, continue to use the notice, billing, penalty provisions, etc. found in G.S. 105-312.

Discovery of Real Property Improvements

- So, we ask again: Do discoveries still exist for failure to list (report) improvements to real property?
 - No, for failure to list.
 - Yes, for failure to report.
- Bottom line: It is good to be aware of this legal distinction but in practice nothing has really changed, except the terminology.

Immaterial Irregularities

- G.S. 105-394

- “Immaterial irregularities in the listing, appraisal, or assessment of property for taxation or in the levy or collection of the property tax or in any other proceeding or requirement of this Subchapter **shall not invalidate the tax imposed upon any property** or any other process of listing, appraisal, assessment, levy, collection, or any other proceeding under this Subchapter.”

Immaterial Irregularities

- Immaterial irregularities include:
 - Failure to list, appraise, or assess any property for taxation or to levy any tax within the time prescribed by law.
 - Failure of the collector to advertise any tax lien.
 - Failure to make or serve any notice.

Immaterial Irregularities

- Immaterial irregularities include (cont'd):
 - Failure of list takers, tax supervisors, or members of the BER to take their oaths.
 - Failure of the BER to meet or adjourn within the time prescribed by law.

Immaterial Irregularities

- The focus of the immaterial irregularity discussion usually involves G.S. 105-394(3):
 - Failure to **list** any property for taxation,
 - Failure to **appraise** any property for taxation,
 - Failure to **assess** any property for taxation, or
 - Failure to **levy** any tax within the time prescribed by law.

Immaterial Irregularities

- Are there any irregularities that are not immaterial?
- Any irregularity that deprives the taxpayer of due process is very likely not an immaterial irregularity.
 - In re Henderson County v. Osteen 292 N.C. 692, 235 S.E. 2d 166 (1977).

Immaterial Irregularities

- Interest is due from the original delinquency date.
- G.S. 105-355(a) states in part: “Regardless of the time at which liability for a tax for a given fiscal year may arise or the exact amount thereof be determined, the lien for taxes levied on a parcel of real property shall attach to the parcel taxed on the date as of which property is to be listed under G.S. 105-285.... All penalties, interest, and costs allowed by law shall be added to the amount of the lien and shall be regarded as attaching at the same time as the lien for the principal amount of the taxes.”
- Penalties are not assessed since immaterial irregularities are NOT discoveries.

Immaterial Irregularities

- There is no limit to number of past years that can be billed if previously omitted or incorrectly billed.
- However, due to the ten-year limitation on use of enforced remedies found in G.S. 105-378(a), most counties will bill no further back than ten years.

Immaterial Irregularities

- Examples:
 - Although a new house was listed (reported) by the taxpayer in the proper year and listing period, the tax assessor did not list, appraise, or assess the property for seven years.
 - Several properties were annexed by the city six years ago but the tax assessor never billed the owners for city taxes.
 - A BER member did not take his oath of office before hearing several cases.

Immaterial Irregularities

Immaterial irregularity is NOT a means to correct appraisal judgment errors that affected prior years. Appraisal judgment errors can only be changed for the current year and forward. G.S. 105-287.

Immaterial Irreg. Appeal Process

- What is the appeal process for immaterial irregularities?
- There is no appeal provision in G.S. 105-394 but the courts would probably strike down an attempt to pursue immaterial irregularities without one.
- A reasonable and recommended approach is to use the notice and appeal procedures provided for discoveries in G.S. 105-312.

List v. List

- “List” is used primarily in two different contexts:
 - When the taxpayer is required to list. Discoveries only apply to the taxpayer’s listing (and reporting) requirements.
 - When the assessor is required to list. Immaterial irregularities only apply to the assessor’s listing requirements.

Discoveries v. Immaterial Irregularities

- Generally:
 - Discovery is the remedy to correct errors or omissions of the taxpayer.
 - Immaterial irregularity is the remedy to correct certain types of errors or omissions of the assessor.

Discoveries v. Immaterial Irregularities

- Discovery = recapture current year and up to five previous years with penalties.
- Immaterial Irregularity = recapture up to ten enforceable years with interest accruing separately from each year's delinquency date.

Discoveries v. Immaterial Irregularities

The courts have recognized that, while an error by the taxpayer is recoverable for only five prior years, an error by the tax assessor is recoverable for at least ten years. The courts have ruled this discrepancy to be legal and the correct application of the statutes. A change in this public policy position would have to come from the General Assembly.

Case: In re NuzumCross Chevrolet

- The Court of Appeals stated:
 - “The argument that a taxpayer who deliberately attempts to hide his property is in a better position than the victim of a clerical error, since the taxing authority can only go back five years under the “discovery statute” G.S. 105-312(g), is not for us to decide. If a time limit is to be put on the assertion of immaterial irregularities by taxing authorities under G.S. 105-394, that is a task for the General Assembly and not this Court.”
- In re Notice of Attachment and Garnishment Issued by Catawba County Tax Collector Against NuzumCross Chevrolet, Inc. 59 N.C. App. 332, 296 S.E. 2d 499 (1982).

Case: In re Dickey

- The Court of Appeals stated:
 - “Based on the clear and unambiguous language of Section 105-394, we conclude that the failure by the Assessor due to an administrative error to include on the Dickey’s 1989 tax bill an assessment for the improvements to the lot is an immaterial irregularity and does not, contrary to the Dickey’s contention, invalidate the tax owed on the house.
 - “...we have discovered no authority setting forth a time limit within which the Assessor may correct an immaterial irregularity...”
- In re Appeal of Dickey, 110 N.C. App. 823, 431 S.E. 2d 203 (1993).

Case: In re Morgan

- The COA dissenting opinion stated:
 - “It is undisputed that, in the present case, the County failed to assess the Morgan residence within the time prescribed by law. Under the plain language of N.C. Gen. Stat. 105-394(3), this failure constitutes an immaterial irregularity and did not, therefore, ‘invalidate the tax levied on the property.’”
 - “...see no basis for excluding tax assessments arising as a result of immaterial irregularities from this general rule.” (Referencing the rule in G.S. 105-360(a) that interest applies to delinquent taxes.)
- In re Tyleta W. Morgan 362 N.C. 339 S.E. 2d 733 (2008).

Case: In re Morgan

The North Carolina Supreme Court reversed the North Carolina Court of Appeals decision and adopted the language of the dissenting COA judge as the reasons for the reversal.

SOG Bulletin

The UNC School of Government has published an excellent Property Tax Bulletin on this issue:
<http://www.sog.unc.edu/pubs/electronicversions/pdfs/ptb147.pdf>