

# REQUEST FOR BOARD ACTION

## HENDERSON COUNTY

### BOARD OF COMMISSIONERS

**MEETING DATE:** October 21, 2020

**SUBJECT:** Tax Refund request by Meritor

**PRESENTER:** Charles Russell Burrell

**ATTACHMENT:** N.C. Gen. Stat. §§ 105-380 and -381

#### SUMMARY OF REQUEST:

Taxpayer Meritor seeks a refund of \$274,890 in taxes it claims it paid erroneously, pursuant to N.C. Gen. Stat. §105-381. To succeed, it must show a valid defense under that statute.

#### Timeline:

1/31/2019	Meritor timely filed its business personal property listing
2/15/2019	Assessor's Office processes the listing and accepts values as filed, showing an increase in taxable value from \$87,219,703 in 2018 to \$127,771,821 in 2019
8/01/2019	Tax Office sends tax bill based on assessed values (\$127,771,821)
8/31/2019	Meritor's last day to file appeal on incorrect tax assessed
11/18/2019	Meritor pays tax bill in full
1/09/2020	Meritor files appeal of 2019 tax assessment; informed by staff that only avenue of appeal is §105-381.

Pursuant to §105-381, an appeal for refund can be granted only if (1) the tax is imposed through a clerical error, (2) the tax is an illegal tax, or (3) the tax is levied for an illegal purpose. "Clerical error" must be "apparent on the face of the record and capable of being corrected by reference to the record only."<sup>1</sup> Further, "[t]axes paid voluntarily and without objection or compulsion cannot be recovered, even though the tax be levied unlawfully."<sup>2</sup>

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

#### BOARD ACTION REQUESTED:

Adjudication of Meritor's appeal. If the Board takes no action, this would be considered a ruling against Meritor under §105-381(c).

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<sup>1</sup> *Trott v. Birmingham Ry., Light & Power Co.*, 144 Ala. 383, 430, 39 So. 716 (Ala. 1905), *quoted in Ammons v. County of Wake*, 127 N.C. App. 426 (1997).

<sup>2</sup> *Middleton v. Wilmington, Brunswick & Southern R.R. Co.*, 224 N.C. 309 (1944).

**§ 105-381. Taxpayer's remedies.**

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

- (1) For the purpose of this subsection, a valid defense shall include the following:
  - a. A tax imposed through clerical error;
  - b. An illegal tax;
  - c. A tax levied for an illegal purpose.
- (2) If a tax has not been paid, the taxpayer may make a demand for the release of the tax claim by submitting to the governing body of the taxing unit a written statement of his defense to payment or enforcement of the tax and a request for release of the tax at any time prior to payment of the tax.
- (3) If a tax has been paid, the taxpayer, at any time within five years after said tax first became due or within six months from the date of payment of such tax, whichever is the later date, may make a demand for a refund of the tax paid by submitting to the governing body of the taxing unit a written statement of his defense and a request for refund thereof.

(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) Suit for Recovery of Property Taxes. –

- (1) Request for Release before Payment. – 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.)

**§ 105-380. No taxes to be released, refunded, or compromised.**

(a) The governing body of a taxing unit is prohibited from releasing, refunding, or compromising all or any portion of the taxes levied against any property within its jurisdiction except as expressly provided in this Subchapter.

(b) Taxes that have been released, refunded, or compromised in violation of this section shall be deemed to be unpaid and shall be collectible by any means provided by this Subchapter, and the existence and priority of any tax lien on property shall not be affected by the unauthorized release, refund, or compromise of the tax liability.

(c) Any tax that has been released, refunded, or compromised in violation of this section may be recovered from any member or members of the governing body who voted for the release, refund, or 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.

(e) Expired. (1901, c. 558, s. 31; Rev., s. 2854; C.S., s. 7976; 1971, c. 806, s. 1; 1973, c. 564, s. 2; 2013-19, s. 1.)