



RESOLUTION

A RESOLUTION HONORING CHARLES MESSER FOR HIS DEDICATED SERVICE TO HENDERSON COUNTY AND THE NORTH CAROLINA ASSOCIATION OF COUNTY COMMISSIONERS

WHEREAS, Charles D. "Charlie" Messer was first elected to serve as Henderson County Commissioner in 2000, serving for five consecutive terms, until his sudden passing on July 10, 2020.

WHEREAS, Commissioner Messer served as Chair of the Henderson County Board of Commissioners from 2013 to 2014, and as Vice-Chair from 2005 to 2009, and 2015 to 2016.

WHEREAS, Commissioner Messer served as Chair of the Cane Creek Water and Sewer District and as a member of the Board of Trustees for Pardee Hospital.

WHEREAS, Commissioner Messer is remembered as a champion of his community, who balanced local funding needs and focused on land planning, education and recreation.

WHEREAS, Commissioner Messer was a leader in the adoption of the Land Development Code in Henderson County, and credited for his role in the establishment of new elementary schools at Mills River, Hillandale and Edneyville, and the Henderson County Arts, Parks & Community Center.

WHEREAS, Commissioner Messer's efforts led to major projects in Henderson County, including the renovation of the Historic Courthouse, construction of the Detention Center, and major additions to Pardee Hospital.

WHEREAS, Commissioner Messer's commitment to public service extended beyond Henderson County, as reflected in various statewide leadership positions he held as the North Carolina Association of County Commissioners.

WHEREAS, Commissioner Messer served as a long-time member of the North Carolina Association of County Commissioners Board of Directors, including two terms as a District Director representing Buncombe, Henderson, Madison and Transylvania counties.

WHEREAS, Commissioner Messer assumed various leadership positions on key committees of the North Carolina Association of County Commissioners, serving as Chair and Co-Chair of the Agriculture Steering Committee and as a member of the Legislative Goals Committee, which oversees the Association's legislative goals process, guiding policy priorities for the organization.

WHEREAS, Commissioner Messer was appointed to the North Carolina Association of County Commissioners Joint Risk Management Agency Board of Trustees, which governs the risk pools that provide counties comprehensive and affordable coverages for workers' compensation and liability and property.

WHEREAS, Commissioner Messer participated regularly in additional North Carolina Association of County Commissioners Steering Committees, including Health and Human Services and Tax and Finance.

NOW, THEREFORE BE IT RESOLVED the North Carolina Association of County Commissioners Board of Directors honors Charles D. "Charlie" Messer for his dedicated service to Henderson County and our Association.

Adopted this 12th day of August 2020 by North Carolina Association of County Commissioners.

A handwritten signature in black ink, appearing to read "Kevin Austin", is positioned above the printed name.

Kevin Austin, President
North Carolina Association of County Commissioners

Wednesday, October 21, 2020

9:30 a.m.

PUBLIC HEARING

Consideration of Text Amendments to the
Henderson County Land Development Code (#TX-2020-01)

Sign-up Sheet

PLEASE PRINT

Name:

Complete Address:

- | Name: | Complete Address: |
|-------------------------|---|
| 1. ✓ Terry Bozon | 122 Cinnamon Way Flat Rock |
| 2. ✓ TERRI REED | 205 WARD DRIVE, East Flat Rock, NC |
| 3. ✓ Bruce Griffith | 45 TWIN PINES E. Flat Rock 28721 |
| ✓ 4. Beverly Johnson | 99 Covered Bridge 28731 |
| 5. ✓ Will Pucker | 4 Hearthstone Ln 28731 |
| 6. ✓ GARY STEINBERG | 8 SETTERS CROSSING FLAT ROCK 28731 |
| 7. ✓ Judy Williams | 216 Reed Dr East Flat Rock |
| ✓ 8. Lois Sonekumch | 208 Reed Dr East Flat Rock |
| 9. ✓ Gracie Dyal | 110. OAK GROVE East Flat R. |
| ✓ 10. Shannon Nicholson | 3315 Spoutanbury Hwy, Flat Rock, NC 28731 |
| 11. | |
| 12. | |
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PUBLIC COMMENT SIGNUP SHEET

OCTOBER 21, 2020

Pursuant to N.C. Gen. Stat. §153A-52.1, the Henderson County welcomes public comment at its meetings. Please note that each speaker is limited to three (3) minutes, unless a different time limit is announced. Also, the Board may adopt rules limiting the number of persons speaking taking the same position on a given issue, and other rules regarding the maintenance of good order.

Each speaker should be aware and by their signatures hereto they agree that their comments may be recorded (by audio-visual recordings, photography or other means), and may be (but are not required to be) broadcast by the County as a part of the broadcast of this meeting, or as a part of the County's programming on its local video channel(s). By their signature they further agree that Henderson County is and will be the sole owner of all rights in and to such programming. The undersigned hereby indemnifies Henderson County, its employees and agents, against any and all claims, damages, liabilities, costs and expenses arising out of the use of the undersigned's images and words in connection therewith.

1. Barbara Bozon Barbara Bozon
PRINTED NAME SIGNATURE
122 Cinnamon Way
A02
MAILING ADDRESS Topic

2. RAY DALEY Ran Daley
PRINTED NAME SIGNATURE
4 SEASONS ROTARY PROCLAMATION
MAILING ADDRESS Topic

3. _____
PRINTED NAME SIGNATURE

MAILING ADDRESS Topic

4. _____
PRINTED NAME SIGNATURE

MAILING ADDRESS Topic

REQUEST FOR RELEASE/REFUND

Henderson County Assessor
200 N. Grove Street, Ste. 102
Hendersonville, NC 28792
Phone (828) 697-4870 • Fax (828) 697-4578
www.hendersoncountync.org/ca

Tax Administrator
Darlene Burgess

INSTRUCTIONS:

- > NC Statutes governing your right to the release or refund of a tax are found in NCGS 105-381.
- > It's important that you fully complete all sections of this form.
- > Information to support your claim for release or refund of tax is essential. At the time you file your request, please attach any information you believe to be pertinent in supporting your request.
- > As part of this evaluation, additional information may be requested. You will be notified by the Assessor's Office of a decision within 90 days.

Owner Name(s): Meritor Heavy Vehicle Systems, LLC

Mailing Address: 2135 West Maple Road Troy MI 48084-7121
Street Address/P.O. Box City State Zip

Physical Address: 1000 Rockwell Dr. Fletcher NC 28732
Physical Location City State Zip

Abstract (Bill) #: 694530 Tax Year: 2019 Year for: 2019

Parcel #: 0300167FLETHEND1000 Account: _____

> Information to support your claim for release or refund of tax is essential. At the time you file your request, please attach any information you believe to be pertinent in supporting your request.

Reason for Release/Refund:

Amended return filed to correct overstatement of additions. We respectfully request that overpayment due to the erroneous original filing to be refunded.

Owner's Signature: K B Date: 1/17/20

Daytime Phone: 248-435-1000 Email Address: Tax.Department@meritor.com

FOR OFFICE USE ONLY

Date Request Received: _____ Request Processed by: _____ Date: _____

1) Taxpayer Remedies Statute Allowing for Refund of Tax:

N.C. Gen. Stat. § 105-381

§ 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.

3) Illegal Tax

The clerical error resulted in the county assessing \$48,801,732 of property that does not exist. Under N.C. Gen. Stat. § 105-274, “all property, real and personal, within the jurisdiction of the state shall be subject to taxation”. Because the \$48,801,732 of property that was assessed as a result of the clerical error did not exist, it is impossible for the equipment to be “within the jurisdiction of the State”.

A tax or assessment is invalid or illegal only when the taxing body lacks the authority to impose the tax, as where the rate is unconstitutional or **the subject is exempt from taxation**.

See: Reeves Bros. v. Town of Rutherfordton, 15 N.C. App. 385, 391, 190 S.E.2d 345, 349 (1972), rev'd, 282 N.C. 559, 194 S.E.2d 129 (1973)

N.C. Gen. Stat. Ann. § 105-274

§ 105-274. Property subject to taxation

(a) All property, real and personal, within the jurisdiction of the State shall be subject to taxation unless it is:

(1) Excluded from the tax base by a statute of statewide application enacted under the classification power accorded the General Assembly by Article V, § 2(2), of the North Carolina Constitution, or

(2) Exempted from taxation by the Constitution or by a statute of statewide application enacted under the authority granted the General Assembly by Article V, § 2(3), of the North Carolina Constitution.

(b) No provision of this Subchapter shall be construed to exempt from taxation any property situated in this State belonging to any foreign corporation unless the context of the provision clearly indicates a legislative intent to grant such an exemption.

5) Voluntary Payment

Meritor respectfully disagrees with the assertion that “[t]axes paid voluntarily and without objection or compulsion cannot be recovered, even though the tax be levied unlawfully.” *Middleton v. Wilmington, B. & S. R. Co.*, 224 N.C. 309 (1944).

In *Middleton*, the decision to disallow a refund based on voluntary payment was based on the plaintiff’s failure to pay under protest or comply “with the provisions of the Statute, G.S. § 105-406, ...which is a prerequisite to a right of action for the recovery of taxes or any part thereof.” The statute the case based its decision on in *Middleton*, G.S. § 105-406 was repealed in 1971 and does not apply to the present case. Further, in 1946 the North Carolina Supreme Court decided and reaffirmed in 1977 that “Where there is express statutory authority, however, even voluntary payments may be recovered.” *Coca-Cola Co. v. Coble*, 293 N.C. 565, 567, 238 S.E.2d 780, 782 (1977); *B-C Remedy Co. v. Unemployment Comp. Comm'n of N. C.*, 226 N.C. 52, 55, 36 S.E.2d 733, 735–36 (1946). N.C. Gen. Stat. § 105-381 creates clear statutory authority for the refund of taxes due to a clerical error or an illegal tax, therefore the requirement that the taxes be paid under protest in order to file a claim does not apply.

***Middleton v. Wilmington, B. & S. R. Co.*, 224 N.C. 309, 311, 30 S.E.2d 42, 43 (1944)**

“It does not appear of record that the taxes, penalties and interest, involved herein, were paid under protest or that the appellant has complied with the provisions of the Statute, G.S. § 105-406, C.S. § 7979, which is a prerequisite to a right of action for the recovery of taxes or any part thereof. *Hunt v. Cooper*, 194 N.C. 265, 139 S.E. 446; *Blackwell v. City of Gastonia*, 181 N.C. 378, 107 S.E. 218; *Teeter v. Wallace*, 138 N.C. 264, 50 S.E. 701; *Railroad Co. v. Reidsville*, 109 N.C. 494, 13 S.E. 865. Taxes paid voluntarily and without objection or compulsion cannot be recovered, even though the tax be levied unlawfully”

***B-C Remedy Co. v. Unemployment Comp. Comm'n of N. C.*, 226 N.C. 52, 55, 36 S.E.2d 733, 735–36 (1946)**

“As a part of its defense, appellant suggests that there is no remedy for recovery of tax voluntarily paid. That could only be true where the statute fails to provide for a refund under such circumstances, **736 and in a jurisdiction which would regard an action at law for its recovery as a suit against the state, without statutory authority for its institution. In view of the construction we give the statute, we do not find it necessary to discuss the point. The Act is broad enough in its phraseology to cover refund of money paid through mistake, without raising technical distinctions between voluntary and involuntary payments. There is no question that the item was erroneously collected or paid within the meaning of that term as used in the statute.”

***Coca-Cola Co. v. Coble*, 293 N.C. 565, 567, 238 S.E.2d 780, 782 (1977)**

“While the tax in fact paid under G.S. 105-113.51 is not alleged to be unlawful, plaintiff maintains that, but for an unlawful restriction, it would have paid under the more favorable method in G.S. 105-113.56A. This situation is closely analogous to one in which a party pays a tax that later proves to be unconstitutional and then seeks a refund of those payments. “Taxes paid voluntarily and without

TAX ADMINISTRATOR'S RECOMMENDATION TO BOARD OF COMMISSIONERS:
REQUEST FOR RELEASE/REFUND: MERITOR HEAVY VEHICLE SYSTEMS, LLC
COMMISSIONERS MEETING DATE: October 21, 2020

SUMMARY OF REQUEST:

Pursuant to NCGS §105-381, Meritor has requested a refund of 2019 business personal property taxes paid, contending that Meritor's staff made an error when the business listing was originally filed, resulting in an overpayment of County tax and Fletcher Fire District tax.

BACKGROUND:

In January of 2019, Meritor filed a business personal property listing and listed the value of its 2018 additions for machinery and equipment as \$54,224,147. Meritor now asserts that a clerical error was made by Meritor's staff and that the value should have been listed as \$5,422,415. The total impacted value due to Meritor's alleged inaccurate filing amounts to approximately \$48,802,353. When processing listing forms, Henderson County's Business Personal Property staff normally compare percentages of increase or decrease with the prior year's listing. Because Meritor regularly receives economic incentive payments from Henderson County which are (in part) based on the value of personal property placed into service, this large variance was not questioned. The County's current Economic Incentive Agreement with Meritor expires in 2023 and requires a \$30 million-dollar new investment in business personal property.

The time to appeal the 2019 tax assessment has expired. Meritor did not file an amended listing form, nor did they appeal the value, situs or taxability of the personal property by the deadline, which was August 31, 2019.

In early August 2019, Meritor received a tax bill for the business personal property. Meritor paid the tax bill in November of 2019.

In January 2020, Meritor requested an appeal of the 2019 listing. The Tax Department replied to the appeal request, advising Meritor that the time to appeal had expired. Meritor then filed a request for refund pursuant to NCGS §105-381 to the Board of Commissioners.

In reviewing the circumstances surrounding Meritor's request for a refund, it was discovered that this is the second time Meritor has submitted an incorrect listing and as a result, requested a refund of tax. The previous request was received in 2007 and covered tax years 2002 – 2006. To complicate the issue further, Meritor received incentive payments from Henderson County based (in part) on the amounts derived from the original (allegedly erroneous) listings.

TAX ADMINISTRATOR'S RECOMMENDATION:

The Tax Administrator recommends that the Board deny this request for the reasons stated below and further, to consider additional recommendations as set forth below.

- There is no legal basis for a refund because the alleged listing error was made by the taxpayer. NCGS §105-381 provides that a refund may be made due to a clerical error, however, the error must have been made by the tax office. Based on language in NCGS §105-381, a refund or release is justified only if the tax is "imposed through clerical error." [emphasis added]. Because only the

government can impose a tax, only a clerical error by the government (tax office) can justify a release or refund under §105-381. This is supported by case law defined below.

- A refund granted contrary to statute poses a personal liability risk to all Board members who voted in favor of the refund. Pursuant to NCGS §105-380(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 ..."
- The deadline to appeal the assessment for 2019 personal property tax bills has long since passed, having expired in August of 2019.
- The Board may consider authorizing the Tax Administrator to engage an independent auditor who specializes in business personal property to conduct an audit of Meritor's Henderson County business personal property in order to ensure that the current listing is accurately stated.

PERTINENT CASE LAW:

Kinro, Inc. v. Randolph County, 108 N.C.App. 334, 337-38, 423 S.E.2d 513, 515 (1992)

"... over assessed values of personal property" do not constitute an illegal tax.

Ammons v. Wake County, 127 N.C. App. 426 (1997)

"... to qualify as a clerical error, the mistake must be apparent on the face of the instrument ..." " ... a clerical error is made by a clerk in transcribing, or otherwise, and, of course, must be apparent on the face of the record, and capable of being corrected by reference to the record only."

COA95-1168, *Appeal of Weyerhaeuser Company v. Craven County*, Court of Appeals Case of 95 PTC 59

Middleton v. R.R., 224 N.C. 309, 310 30 S.E.2d 42, 43 (1944)

"taxes paid voluntarily and without objection or compulsion cannot be recovered, even though the tax be levied unlawfully"



NORTH CAROLINA ASSOCIATION OF COUNTY COMMISSIONERS

September 15, 2020

Mr. Steve Wyatt
Henderson County Manager
1 Historic Courthouse Square
Hendersonville, NC 28792

Dear Steve,

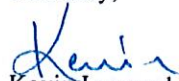
I hope this letter finds you well.

It was my sincere hope that I could make this presentation to you and the Henderson County Board of Commissioners in-person. Unfortunately, I am uncertain when we could make that happen. Therefore, we wanted to proceed in sending the enclosed framed resolution honoring Commissioner Charlie Messer to you in hopes that you could present and inform the Henderson County Board of its passage by the NCACC Board at their August Board meeting.

As you and I have discussed, Commissioner Messer held a special place in the hearts of many across this entire state. The service he provided and the friendships he created during his time providing leadership to our Association will have a lasting impact. On behalf of the Association and our Board of Directors, we would like to present the enclosed resolution to Henderson County to honor Commissioner Messer and demonstrate to the Henderson County citizens how beloved Commissioner Messer was by so many across North Carolina.

As always, thank you for all you and your team do for Henderson County and for your support of the Association. If we can ever be of assistance to you, please do not hesitate to contact us directly.

Sincerely,


Kevin Leonard
Executive Director

P.S. - A duplicate copy of the framed resolution was also shared with Messer family.

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: October 21, 2020

SUBJECT: Department of Justice Grant Award for Comprehensive Opioid, Stimulant, and Substance Abuse Program – Add on

PRESENTER: Steve Smith, Health Director
Jodi Grabowski, Behavioral Health Systems Coordinator

ATTACHMENTS: 1. Department of Justice Grant Award Notification
2. Comprehensive Substance Abuse Program Abstract

SUMMARY OF REQUEST:

Department of Justice grant opportunity is consistent with substance use prevention strategies defined by the Community Health Improvement Plan, Behavioral Health Summit and Substance Abuse Task Force. The Henderson County Board of Health was briefed on the grant application at their June 9, 2020 meeting.

The Department of Public Health will administer the grant and will contract with The Free Clinics and HOPE Rx to implement and achieve the required deliverables. No county funds or county positions are required for the initiative.

It is worth noting that the early investments in a Behavioral Health System Coordinator and other substance abuse initiatives by the Henderson County Board of Commissioners has now in part generated \$1.525 million dollars in grants (Drug Free Communities and Department of Justice).

On October 13, 2020, the Henderson County Board of Health approved acceptance of the grant if awarded subject to consideration and final approval by the Henderson County Board of Commissioners.

BOARD ACTION REQUESTED:

The Board is requested to accept the Department of Justice grant award and authorize the appropriate budgetary actions necessary to implement the initiative as outlined subject to the funding limitations of the grant.

Suggested Motion:

I move the Board accept the Department of Justice grant award for the Henderson County Department of Health and approve the necessary budgetary actions to implement the initiative subject to funding limitations of the grant.

Steve Smith

From: do-not-reply@ojp.usdoj.gov
Sent: Friday, October 16, 2020 1:45 PM
To: Steve Smith

Dear Steven Smith:

On behalf of Attorney General Barr, it is my pleasure to inform you that the Office of Justice Programs has approved the application submitted by Henderson County Health Department for an award under the funding opportunity entitled Comprehensive Opioid, Stimulant, and Substance Abuse Site-based Program: Local or Tribal Applications. The approved award amount is \$900,000.

As DOJ transitions to its new grants management system, there will be a delay in accessing your award agreement and associated information.

You will receive an email notification from the Justice Grants System (JustGrants) in the next few days which will provide information on how to access your award agreement, review the terms and conditions, and accept the award.

In the meantime, please visit the [JustGrants website](#) and [training pages](#) to become familiar with the new system.

Congratulations, and we look forward to working with you.

Katherine T. Sullivan

Principal Deputy Assistant Attorney General

What: Comprehensive Opioid, Stimulant, and Substance Abuse Site-based Program (COSSAP), FY 2020 Competitive Grant Solicitation

Who: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance

When: due May 21, 2020 / begins October 1, 2020

Amount: up to \$900,000 over 3 years

Must be submitted by a government agency: HD would apply in conjunction with The Free Clinics / Hope RX as partnering agency. This grant would allow continuity of care from the current work in the Detention Center and pending work through the PORT.

Henderson County in North Carolina will use grant funds to expand access to recovery support services across behavioral health, primary care, social services, detention and emergency management services.

Grant funds will be used to fund the following:

- A full-time coordinator and peer recovery coaches who will connect individuals with substance use disorders with treatment and peer support.
- Creation of a peer living room to support individuals with substance use disorders leaving the jails or the emergency department

Through the Peer Living Room:

- Development of programs to address the use of opioids and stimulants in high risk communities
- Development and implementation of a comprehensive plan to reduce the risk of overdose death and enhance treatment and recovery service engagement among high risk populations leaving jails
- Provision of services to individuals who are at risk of substance abuse or are experiencing substance abuse personally or at home.
- Peer recovery coaching for individuals and families suffering substance use disorders.

This grant will support the timely collection and integration of data to provide an understanding of drug trends, support program evaluation, inform clinical decision-making, identify at-risk individuals or populations, and support investigations. The county and partnering agencies will provide direct support to include developing a screening and referral process, identify and implement evidence-based services; develop sustainability and implementation plans, and an evaluation plan to track impacts and outcomes.