



Legislation Text

File #: ID 14-0647, **Version:** 1

Resolution Denying Tax Refund Pursuant to G.S. 105-381, Concerning the Property Located at 5803 Cardinal Way, Greensboro, NC 27410

Department: Legal
Council District: 5

Public Hearing: Not Applicable
Advertising Date/By: Not Applicable

Contact 1 and Phone: Becky Jo Peterson-Buie, Chief Deputy City Attorney, ext 2320
Contact 2 and Phone: Tom Carruthers, City Attorney, ext 2320

PURPOSE: Kathy Jackson, through legal counsel, Jeffrey K. Peraldo, submitted a letter alleging the City imposed an unlawful tax on his client, and demanded a refund of property taxes, in whole or in part, for the property located at 5803 Cardinal Way, Greensboro, NC 27410, for five tax years from 2009 through 2013. Ms. Jackson paid City taxes in the amount of \$949.89 in 2009, \$946.15 in 2010 and 2011, and \$979.34 in 2012 and 2013. Attached for your information is a spreadsheet showing city/county taxes paid from 2008 through 2013. The letter demanded “an appropriate refund of these taxes and a change in either services policy or tax rates moving forward”. City Council must decide whether legal grounds exist to refund taxes to Ms. Jackson pursuant to G.S. 105-381(b).

The City Attorney has reviewed this matter and advises there are no legal grounds to refund these tax payments.

BACKGROUND: Ms. Jackson’s property became a part of the City of Greensboro by an involuntary annexation into Area 2008-12, instituted pursuant to North Carolina General Statutes § 160A-49. The aforesaid law provides that upon the effective date of annexation the annexation area and those living within it are entitled to the same privileges and benefits as other parts of the city. It is important to note that the law only entitles residents in the annexed area to receive the same services as residents already in the City of Greensboro. The effective date of the annexation in question was July 1, 2008. Based on records maintained by the City of Greensboro, Ms. Jackson and other persons annexed in Area 2008-12 have been receiving the required municipal services within the annexation area in accordance with the law.

Ms. Jackson’s attorney indicated in his letter to Mayor Vaughan, that “we are not challenging the annexation; but, we believe the taxes are unlawful” in accordance with North Carolina General Statutes § 105-381. Statutory and case law makes it clear that it is too late to challenge the annexation.

According to North Carolina General Statutes § 105-381(a) (1), a valid defense to a tax refund must include “a tax imposed through clerical error; an illegal tax, or a tax levied for an illegal purpose”. There is no allegation of a clerical error in the present situation. There is an assertion of an “unlawful tax”. North Carolina General

Statutes § 160A-58.10 makes plain that newly annexed territory is subject to real and personal city taxes. Therefore, the taxes paid by Ms. Jackson from 2009 through 2013 are not an illegal tax or taxes levied for an unlawful or illegal purpose.

Since the annexation of Area 2008-12 was legal, and the taxes were properly levied, there is no valid defense to justify refund of taxes. For the above stated reasons, there are no legal grounds for the refund of taxes to Ms. Jackson for the five tax years from 2009 through 2013. Nevertheless, North Carolina law requires City Council to respond to this request.

Attachments: A copy of Ms. Jackson's request for refund
Spreadsheet of city/county taxes paid by Ms. Jackson from 2008-2013
Resolution denying refund of taxes from 2009 through 2013

BUDGET IMPACT: None.

RECOMMENDATION / ACTION REQUESTED: The City Attorney recommends that Council approve the attached resolution denying the request from Kathy Jackson, for a refund of taxes for tax years 2009, 2010, 2011, 2012, and 2013.