

STATE OF NORTH CAROLINA

BEFORE THE PROPERTY TAX COMMISSION

COUNTY OF WAKE

SITTING AS THE STATE BOARD OF

EQUALIZATION AND REVIEW

14 PTC 0114

IN THE MATTER OF:

APPEAL OF:

RGS Properties, Inc.

FINAL DECISION

from the decision of the Northampton
County Board of County Commissioners
denying the release of certain tax
bills associated with the Assessor's
disqualification of certain real property
from appraisal at present-use value for
tax year 2013.

This appeal was heard before the North Carolina Property Tax Commission ("Commission") sitting as the State Board of Equalization and Review in the City of Raleigh, Wake County, North Carolina on Friday, April 17, 2015, pursuant to the appeal of **RGS Properties, Inc.** ("Appellant" or "Taxpayer"). Appellant appealed to the Commission from the decision of the Northampton County Board of County Commissioners ("County Commissioners"), concerning the disqualification of certain real property from appraisal at present-use value taxation for tax year 2013.

Chairman William W. Peaslee presided over the hearing with Vice Chairman Terry L. Wheeler and Commission Members David A. Smith and Jack C. Morgan III participating.

R. Wendel Hutchins, Esquire, appeared at the hearing on behalf of Appellant. A. Scott McKellar, Esquire appeared at the hearing on behalf of Northampton County.

STATEMENT OF CASE

The Taxpayer, RGS Properties, Inc., has filed this appeal challenging the County Commissioners decision that affirmed the Northampton County's Tax Assessor's (the "Assessor") decision to remove the subject property from its appraisal at present-use value and issuance of tax bills for the deferred taxes that were due and payable when the property loses its eligibility for deferral as a result of a disqualifying event.

In tax year 2013, the Assessor conducted a statutory audit concerning the present-use value taxation of the subject property. Based on the audit, the county assessor removed the property from the present-use value program and issued bills for the deferred taxes. When challenging the Assessor's removal of the subject property from the present-use value program,

the Taxpayer requested the County Commissioners to release the tax bills¹ because the Taxpayer did not receive the initial 60-day audit notice that the Assessor claims was mailed to the Taxpayer requesting supplemental audit information. The County contends that the Assessor's decision to remove the subject property from its appraisal at present-use value for tax year 2013 and issuance of tax bills for the deferred taxes that were due and payable was appropriate when the subject property lost its eligibility for deferral because the Taxpayer failed to provide the requested information.

ISSUES

In the Order on Final Pre-hearing Conference filed with the Commission, the parties did not agree on the contested issues to be tried by the Commission. The issues considered by the Commission are stated as follows:

1. Did the Assessor comply with the statutory requirements of N.C. Gen. Stat. § 105-296(j) regarding her decision to remove the subject property from present-use value classification that resulted in the issuance of tax bills for the deferred taxes that she deemed were due and payable due to subject property's ineligibility for deferral as a result of a disqualifying event.
2. Did the Taxpayer receive an initial notice of audit as required by N.C. Gen. Stat. § 105-296(j)?

APPLICABLE LAW

This case arises from the Assessor's review of the Taxpayer's property as provided in N.C. Gen. Stat. § 105-296(j) in tax year 2013 that resulted in the Assessor's conclusion that Appellant's real property did not qualify for present-use value classification for tax year 2013, and that the deferred taxes, plus interest, were due and payable. N.C. Gen. Stat. § 105-296(j) provides that: "[T]he assessor must annually review at least one eighth of the parcels in the county classified for taxation at present-use value to verify that these parcels qualify for the classification. By this method, the assessor must review the eligibility of all parcels classified for taxation at present-use value in an eight-year period. The period of the review process is based on the average of the preceding three years' data. The assessor may request assistance from the Farm Service Agency, the Cooperative Extension Service, the North Carolina Forest Service for the Department of Agriculture and Consumer Services, or other organizations. The assessor may require the owner of classified property to submit any information, including sound management plans for forestland, needed by the assessor to verify that the property continues to qualify for present-use value taxation. The owner has 60 days from the date a written request for the information is made to submit the information to the assessor. If the assessor determines that the owner failed to make the information requested available in the time required without good cause, the property loses its present-use value classification and the property's deferred taxes become due and payable as provided in G.S. 105-277.4(c). If the property loses its present-use value classification for failure to provide the requested information, the assessor must reinstate

¹ See tax bills 13A0901826.1, 13A0901826.2, 13A0901826.3, and 13A0901826.4

the property's present-use value classification when the owner submits the requested information within 60 days after the disqualification unless the information discloses that the property no longer qualifies for present-use value classification. When a property's present-use value classification is reinstated, it is reinstated retroactive to the date the classification was revoked and any deferred taxes that were paid as a result of the revocation must be refunded to the property owner."

FROM THE APPLICATION FOR HEARING FILED IN THIS MATTER, STIPULATIONS AND THE EVIDENCE PRESENTED AT THE HEARING, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.

2. The properties under appeal are owned by the Taxpayer, RGS Properties, Inc., and are identified by the Northampton County Tax Office as Parcel Numbers 00-00215, 13-00225, and 09-01826.

3. In tax year 2013, the Tax Assessor selected the subject properties to conduct an audit as part of Northampton County's present-use value compliance program as provided in N.C. Gen. Stat. § 105-296(j).

4. At the hearing, Mr. Avery Davis, Chief Appraiser for Northampton County, testified that the Taxpayer was notified that the subject parcels were removed from the present-use value program due to Taxpayer's failure to respond to an audit notice.

5. When Northampton County removed the subject properties from the present-use value program, the tax value of the parcels increased as follows: (1) the value of Parcel 09-00215 increased from \$121,008 to \$339,456, Parcel 13-00225 increased from \$62,050 to \$141,856, and Parcel 09-01826 increased from \$22,439 to \$47,857.

6. The Taxpayer's property tax liability exceedingly increased when the deferred taxes became due and payable when the Assessor determined that the properties lost eligibility for deferral when the Taxpayer did not respond to the audit notice.

7. The Taxpayer challenged the Assessor's removal of the subject property from the present-use value program by filing an appeal with Northampton County Board of County Commissioners ("County Commissioners").

8. On April 21, 2014, the County Commissioners heard the Taxpayer's appeal. On May 12, 2014, the County Commissioners mailed a Notice of Decision to the Taxpayer denying the release of the following tax bills: 13A0901826.1, 13A0901826.2, 13A0901826.3, and 13A0901826.4, which the County Commissioners determined "did not meet G.S. 105-381."²

² See Notice of Decision attached to Taxpayer's Notice of Appeal and Application for Hearing.

9. The effect of the “rollback” of the present-use valuation resulted in an increase in tax liability to the Taxpayer of \$12,222.95 as of April 15, 2014.³ Taxpayer paid the increase in the tax liability in the total amount of \$12,222.95.

10. On June 6, 2014, the Taxpayer timely filed a Notice of Appeal and Application for Hearing with the Commission challenging the County Commissioners’ decision and requested a hearing as provided in N.C. Gen. Stat. § 105-290.

11. At the hearing, Taxpayer first called its managing member, Ms. Betty S. Doughtie,⁴ to testify. Ms. Doughtie testified concerning the nature of the property and its qualification for taxation under the present-use value program; and her responsibilities for the operation and management of the properties that concerned daily record keeping, collection of and answering mail and payment of taxes regarding the subject property.

12. Ms Doughtie further testified that she did not receive the initial 60-day audit notice that Northampton County claimed was mailed to the Taxpayer requesting supplemental audit information, but that she did contact Mr. Avery Davis, Chief Appraiser for Northampton County, when Taxpayer received the tax bills for the subject property.

13. Northampton County reinstated the subject property in present-use value taxation program for tax year 2014 because the subject property does qualify for present-use value taxation.

14. The assessor may request assistance from the Farm Service Agency, the Cooperative Extension Service, the North Carolina Forest Service for the Department of Agriculture and Consumer Services, or other organizations to perform its duties regarding the compliance review when performing the audit review in accordance with N.C. Gen. Stat. § 105-296(j).

15. The Assessor did not contact the agencies, services or organizations listed above to verify that the subject property continues to qualify for present-use value taxation for tax year 2013 as permitted by N.C. Gen. Stat. § 105-296(j).

16. Before removing the subject property from present-use value classification, the Assessor must verify if the property continues to qualify for present-use value taxation and whether the owner failed to make the information requested available in the time required without good cause.

17. The Assessor did not comply with the statutory requirements of N.C. Gen. Stat. § 105-296(j) regarding her decision to remove the subject property from its appraisal at present-use value; and it was not appropriate to issue tax bills for the deferred taxes when the Assessor failed

³See Stipulation 7 attached to the Order on Final Pre-Hearing Conference filed by the parties with the Commission in this appeal.

⁴Ms. Doughtie is one of four shareholders with an ownership interest in the subject property.

to verify that the subject property continued to qualify for present-use value taxation for tax year 2013, and when the Assessor failed to determine that the Taxpayer failed to make the information requested available in the time required with good cause when the Taxpayer did not receive the Assessor's written request for the information.

18. Since an audit review of the subject property did not occur, then the removal of the subject property from present-use value taxation for tax year 2013 and the issuance of tax bills for the deferred taxes were not appropriate.

**BASED ON THE FOREGOING FINDINGS OF FACT, THE COMMISSION
MAKES THE FOLLOWING CONCLUSIONS OF LAW:**

1. An assessor must annually review at least one eighth of the parcels in the county classified for taxation at present-use value to verify that these parcels qualify for the classification in accordance with N.C. Gen. Stat. § 105-296(j).

2. N.C. Gen. Stat. § 105-296(j) provides that when performing an audit review, the assessor may request assistance from the Farm Service Agency, the Cooperative Extension Service, the North Carolina Forest Service for the Department of Agriculture and Consumer Services, or other organizations.

3. N.C. Gen. Stat. § 105-296(j) also provides that the assessor may require the owner of classified property to submit information needed by the assessor to verify that the property continues to qualify for present-use value taxation, and that the owner has 60 days from the date a written request for the information is made to submit the information to the assessor.

4. The Assessor did not perform an audit review in compliance with the statutory requirements of N.C. Gen. Stat. § 105-296(j) in this case when the assessor did not verify that the subject property qualifies for present-use value classification by requesting assistance from the Farm Service Agency, the Cooperative Extension Service, the North Carolina Forest Service for the Department of Agriculture and Consumer Services, or other organizations since the Taxpayer did not receive the written notice requesting additional information before removing the subject property from present-use value classification, which the Commission determines is erroneous.

5. When the Assessor does not perform an audit review in compliance with N.C. Gen. Stat. § 105-296(j), as the Commission determines in this case, the subject property did not lose its eligibility for present-use value taxation.

**WHEREFORE THE NORTH CAROLINA PROPERTY TAX COMMISSION
THEREFORE ORDERS** that the decision of the County Commissioners denying the release of the following tax bills: 13A0901826.1, 13A0901826.2, 13A0901826.3, and 13A0901826.4, is vacated. The Assessor must decide whether it is necessary to perform an audit review of the subject property, in accordance with N.C. Gen. Stat. § 105-296(j), to verify that the subject property continues to qualify for present-use value taxation for tax year 2013.

NORTH CAROLINA PROPERTY TAX COMMISSION



A handwritten signature in black ink, appearing to read "William W. Peaslee", is written over a horizontal line.

William W. Peaslee, Chairman

Vice Chairman Wheeler and Commission Members Smith and Morgan concur.

ENTERED: June 26, 2015

ATTEST:

A handwritten signature in black ink, appearing to read "Janet L. Shires", is written over a horizontal line.

Janet L. Shires, General Counsel
Commission Secretary