

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE
STATE BOARD OF EQUALIZATION AND
REVIEW

IN THE MATTER OF THE APPEAL OF:

AARON'S INC.,
Appellant

18 PTC 0306

Regarding the taxation of certain personal
property by Lincoln County for tax year
2017

ORDER OF DISMISSAL

This matter came on for hearing 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 Thursday, January 10, 2019, pursuant to the Motion to Dismiss the Appellant’s appeal filed by Lincoln County (“County”).

Chairman Robert C. Hunter presided over the hearing, with Vice Chairman Terry L. Wheeler and Commission Members William W. Peaslee, Alexander A. Guess, and Charles W. Penny participating.

Attorney C.B. McLean, Jr., appeared on behalf of Lincoln County (“County”). Attorney Alexander P. Sands, III, appeared on behalf of the Appellant.

STATEMENT OF THE CASE

During the listing period for 2017, a business personal property listing form was submitted by or on behalf of the Appellant for the 2017 tax year. The County perceived a listing error on the part of the Appellant, in that certain items of personal property were listed as disposed of during the prior calendar year, and yet also itemized on an attachment entitled, “Active Property List: Declaration of Property Owned and Used by Owner.” The County did not delete those items from the Appellant’s abstract of taxable property, and instead included the value of those items in preparation of the Appellant’s 2017 tax bill. It is these items of personal property that are at issue in this appeal.

Upon receipt of the tax bill, the Appellant’s agent disputed the taxability of the property included on the Appellant’s abstract, and the value upon which the Appellant was billed. The County scheduled a hearing by telephone for the Appellant’s agent before the Lincoln County Board of Equalization and Review (“Board”). The Board denied the exemption request of the

Appellant's agent for the subject property, and the Board issued a notice of its decision on or about December 15, 2017.

On or about August 3, 2018, the Appellant, through counsel, requested a hearing before the Board concerning the 2017 taxes for the subject property, contending that the subject property had been improperly listed by the County, and that the Appellant was entitled to the process provided by N.C. Gen. Stat. 105-312, regarding discovered property. The County denied the Appellant's request, and on September 12, 2018, the Appellant filed a Notice of Appeal and Application for Hearing with the Property Tax Commission ("Commission").

ANALYSIS AND ISSUES

The essential question before the Commission is whether the subject property was listed or discovered. The resolution of this initial issue determines whether the Appellant was afforded appropriate notice and opportunity to be heard concerning the taxation of the subject property. Moreover, that issue determines whether the Commission has jurisdiction to hear the appeal.

"List," used as a verb, is not defined in the Machinery Act. However, N.C. Gen. Stat. 105-306 and 105-308 impose upon the owner of taxable property the duty to "list the property with the assessor within the time allowed by law on an abstract setting forth the information required by this Subchapter." Logically, then, listing is the act by which the owner provides the required information to the County on an abstract, defined by N.C. Gen. Stat. 105-273(1) as "The document on which the property of a taxpayer is listed for ad valorem taxation and on which the appraised and assessed values of the property are recorded."

N.C. Gen. Stat. 105-273(6a) defines "Discovered property" as

"Any of the following:

- a. Property that was not listed during a listing period.
- b. Property that was listed but the listing included a substantial understatement.
- c. Property that has been granted an exemption or exclusion and does not qualify for the exemption or exclusion."

The initial determination in this matter, then, is to determine whether the subject property was listed by or on behalf of the Appellant, or, rather, whether it was discovered by the County.

FROM THE MOTIONS FILED IN THIS MATTER AND ALL DOCUMENTS OF RECORD, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

1. The Appellant, either directly or through its agent, submitted to the County a form entitled, "2017 Business Personal Property Listing" (Appellant's Exhibit D). On Page 2 of this form, under the heading "Group (8) Other – To be Used with County Approval," the form lists \$1,308,125 of property in both the "Prior Yr. Cost" column and in the "Deletions" column.

2. On Page 3 of the 2017 Business Personal Property Listing form, Schedule G shows the same figure of \$1,308,981 under the “Disposal” subsection, referring to an attached scheduled for detail.
3. Schedule G-1 on Page 5 of the 2017 Business Personal Property Listing form provides a summary, by year of acquisition, of the property included in the \$1,308, 125 figure.
4. Page 6 of the 2017 Business Personal Property Listing, under the heading, “Active Property List: Declaration of Property Owned and Used by Owner,” is the start of a fully itemized list of the individual items of property that total to the reported cost of \$1,308,125.
5. The County included the subject property in the assessment of Appellant’s property, and subsequently gave notice to the Appellant as provided in N.C. Gen Stat. 105-317.1(c) by issuing a bill that included the value of the subject property.
6. The Appellant, through its agent, appealed the taxability of the subject property, first to the County assessor, and then to the Board, after denial by the assessor of the exemption request.
7. There is no evidence indicating that the Appellant applied for or otherwise sought exemption for the subject property, prior to the appeals to the assessor and to the Board.
8. On December 5, 2017, the Board conducted a hearing, in which the Appellant’s agent participated, and the Board denied the requested exemption.
9. The Appellant’s agent repeatedly directed the County to communicate with the agent regarding property tax matters. The agent’s signature and mailing address appear on the 2017 Business Personal Property Listing form.
10. On December 15, 2017, the Board mailed notice of its decision from the December 5, 2017 hearing to the Appellant, in care of its agent, at the address previously provided.
11. January 14, 2018, a Sunday, is 30 days after December 15, 2017. January 15, 2018 was a holiday.
12. The Appellant filed a Notice of Appeal and Application for Hearing with the Commission on September 12, 2018.

BASED UPON THE FOREGOING FINDINGS OF FACT, THE PROPERTY TAX COMMISSION CONCLUDES AS A MATTER OF LAW:

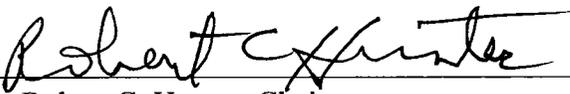
1. “Listing,” though undefined statutorily, clearly has the plain meaning and intent to give the assessor notice of property subject to taxation. The Appellant, through its agent, did, in fact, provide a list of its property on the 2017 Business Personal Property Listing form, thereby giving notice to the assessor of the Appellant’s property.
2. The Appellant, through its agent, provided the County with an itemized detail of the subject property, including an attachment that characterized the property using the descriptive phrase “Active Property List: Declaration of Property Owned and Used by Owner.” This characterization is clearly in conflict with property that has been disposed of.
3. There is no evidence or suggestion that the subject property was, in fact, disposed of, nor was there an application or other assertion made by the Appellant or its agent that the subject property was not taxable, prior to the post-billing appeal.

4. The Appellant, through its agent, was given opportunity to be heard by the Board on the listing and taxability of its property, and was actually heard by the Board on this issue.
5. The property was not discovered under the provisions of N.C. Gen Stat. 105-312, because it was actually listed under the provisions of N.C. Gen. Stat. 105-308.
6. N.C. Gen. Stat. §105-290(e) provides in pertinent part that “A notice of appeal...from a board of equalization and review shall be filed with the Property Tax Commission within 30 days after the date the board mailed a notice of its decision to the property owner.”
7. Because the Board mailed its notice of decision to the property owner on December 15, 2017, N.C. Gen. Stat. §105-290(e) requires a notice of appeal from said decision to be filed with the Commission by January 14, 2018.
8. Because January 14, 2018 was a Sunday, and because January 15, 2018 was a holiday, the provisions of N.C. Gen. Stat. 105-395.1 extend the time by which the Board’s decision could be appealed to the Commission to January 16, 2018.
9. Because the notice of appeal was filed on September 12, 2018, the Appellant failed to comply with the requirements of N.C. Gen. Stat. §105-290(e).
10. Because the Appellant did not perfect the appeal from the Board within the time required by statute, the Commission has no jurisdiction to hear the Appellant’s appeal. See, e.g., *In the matter of: Appeals of: Louisiana Pacific Corporation*, 210 N.C. App. 457, 703 S.E.2d 190 (2010). Accordingly, the Appellant’s appeal is subject to dismissal.
11. The County properly moved to dismiss the Appellant’s appeal to the Commission because the Appellant’s appeal to the Commission was untimely.

WHEREFORE, the Commission grants the County’s Motion, and the Appellant’s appeal is hereby dismissed.

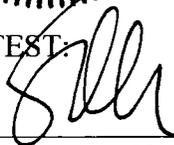
NORTH CAROLINA PROPERTY TAX COMMISSION




 Robert C. Hunter, Chairman

Vice Chairman Wheeler and Commission Members
 Peaslee, Guess, and Penny concur.

ATTEST:


 Stephen W. Pelfrey, Commission Secretary

Date Entered: 4.29.19