

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:

HILBURN K. SHELTON,
Appellant

20 PTC 672

From the decision of the Mecklenburg
County Board of Equalization and
Review for tax year 2020

FINAL DECISION

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 Tuesday, August 10, 2021, pursuant to the Motion for Summary Judgment filed by Mecklenburg County (“County”).

Chairman Robert C. Hunter presided over the hearing, with Vice Chairman Terry L. Wheeler and Commission Members Alexander A. Guess and June W. Michaux participating.

Attorney Robert S. Adden, Jr., appeared on behalf of the County. The Appellant Mr. Hilburn Shelton appeared *pro se*.

STATEMENT OF THE CASE

At issue is whether the Appellant qualifies for the homestead property tax relief program offered pursuant to N.C. Gen. Stat. §105-277.1. One of the requirements to participate in the program is that an applicant’s income for the year preceding the year of application cannot exceed the statutorily-defined income eligibility limit.

The Appellant timely filed an application to participate in the program for the 2020 tax year. The County denied the Appellant’s application, contending that the Appellant’s income for 2019 exceeded the income eligibility limit. The Appellant timely appealed the County’s denial to the Mecklenburg County Board of Equalization and Review (“Board”), which affirmed the County’s denial. The Appellant timely appealed the Board’s denial to the Commission.

ANALYSIS AND ISSUES

N.C. Gen. Stat. §105-277.1 provides in pertinent part as follows:

- (a) Exclusion. – A permanent residence owned and occupied by a qualifying owner is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and is taxable in accordance with this section.

...

A qualifying owner is an owner who meets all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

- (1) Is at least 65 years of age or totally and permanently disabled.
- (2) Has an income for the preceding calendar year of not more than the income eligibility limit.
- (3) Is a North Carolina resident.

For purposes of this program, “income” is defined in N.C. Gen. Stat. §105-277.1(b)(1a) as “All moneys received from every source other than gifts or inheritances received from a spouse, lineal ancestor, or lineal descendant.” The income eligibility limit is determined by the method provided in N.C. Gen. Stat. §105-277.1(a2).

Thus, the issue before the Commission in this matter is whether the Applicant’s 2019 income was no more than the income eligibility limit for 2020 applications, within the statutory definitions of “income” and “income eligibility limit.”

FROM THE EVIDENCE PRESENTED AND ALL DOCUMENTS OF RECORD, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

1. Along with the application for participation in the homestead property tax relief program offered pursuant to N.C. Gen. Stat. §105-277.1, the Appellant submitted to the County information relating to his income for 2019. There is no evidence of a dispute as to the dollar amounts contained in that information, although the parties disagree on which parts of the items should be considered, and which should be disregarded. As discussed below, that determination is dispositive of the ultimate issue of whether the Appellant qualifies for the program. Therefore, because specific dollar amounts are not essential to our decision, we refrain from directly discussing the Appellant’s income amounts in this decision, but expressly recognize that the exhibits admitted as a part of the record in this matter do provide those figures, should further clarification be necessary.
2. The Appellant’s primary contentions relate to the definition of “income” and to the treatment of certain pension payments. As to the latter, the Appellant contends that the pension payment

reported in his income information should not be considered because that amount represented a pension rollover from one account to another. Rollover pension distributions are generally not considered “moneys received,” because a pension administrator, rather than the account holder, retains control over the distribution, and the funds are instead considered income for the future year(s) in which they are transferred from the pension administrator to the account holder’s control. While there is little conclusive evidence before us as to the pension payment in this matter, we find that the inclusion or exclusion of the payment does not change the outcome here. Accordingly, we do not consider this contention further.

3. As to the contention regarding the definition of “income,” the Appellant explains first that the Internal Revenue Code definition of income permits individuals to use business losses from a sole proprietorship (or pass-through entity) to offset other income, and similarly allows individuals to use capital losses to offset capital gains, as well as some ordinary income. We disagree with the Appellant’s proposed consideration of losses, for at least two reasons. First, N.C. Gen. Stat. §105-277.1(b)(1a) provides the definition of income that is to be used in administering the homestead property tax relief program. This definition is both broad and the exclusive authority for participation in the program; therefore, we find that other concepts of “income,” while perhaps illustrative, are not fully determinative of the term’s meaning when the statutory language and intent clearly require a different result.
4. Secondly, the definition provided in N.C. Gen. Stat. §105-277.1(b)(1a) refers to “all moneys received,” with no suggestion whatsoever that losses of any kind should be considered. In fact, the history of the statute indicates that the legislature’s intent was exactly the opposite. During its 2007 session, the North Carolina General Assembly removed language from the statute that allowed income to be offset by losses, replacing the federal “adjusted gross income” with the broader “all moneys received” in the definition (see S.L. 2007-497, s.1.1 and S.L. 2007-484, s.43.7T(a)).
5. The School of Government at the University of North Carolina—Chapel Hill described the change as follows:

The definition of income was amended effective for the 2008-09 fiscal year to remove a reference to adjusted gross income as defined by the Internal Revenue Code.[citation omitted] This change was enacted to prevent taxpayers from basing the homestead exclusion income amount on an adjusted gross income figure derived after subtracting business and other losses from income as allowed on the front page of a federal income tax return. Income is not limited under this broad definition to taxable income but

includes nontaxable revenue such as Social Security income and distributions from an individual retirement account.¹

While this information comes neither from the legislature nor the courts, we nonetheless recognize it as a contemporaneous description and analysis of the context in which the legislature adopted the change. Finally, from a plain language interpretation, losses cannot logically be considered “moneys received.” We find, therefore, that losses or other negative amounts from an applicant’s income tax information are properly disregarded in considering the applicant’s income. Accordingly, we find further that the losses described and included in the Appellant’s application and appeal information should properly be disregarded in considering the Appellant’s application.

6. The Appellant also contends that the information supplied by the County to the public regarding qualification for the homestead property tax relief program describes “income” in such a way that would lead an applicant to believe that the term means something other than “all moneys received,” as specified in the statute. Again, the term “income,” as used in the context of the homestead property tax relief program, has a defined meaning, and the remainder of the statute uses the term “income,” as well. We find that there is nothing before us to suggest that the County’s use of the term is any different from the statutory use, and we note further that, even if the County did use the term differently, and whether that difference were intentional or not, the statute would still control the meaning in the context of the homestead property tax relief program. Accordingly, we do not give further consideration to this contention.
7. We find, therefore, that the Appellant’s losses for 2019 are to be disregarded, and that the listed items of income are greater than the income eligibility limit for 2020, even if the pension payments described above are disregarded.

UPON REVIEW OF THE EVIDENCE PRESENTED AND ALL DOCUMENTS OF RECORD, THE PROPERTY TAX COMMISSION CONCLUDES AS A MATTER OF LAW THAT:

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.
2. The language of N.C. Gen. Stat. §105-277.1(b)(1a), “[a]ll moneys received from every source,” does not apply to losses or other negative amounts.

¹ Denning, Shea Rigsbee. *A Guide to the Listing, Assessment and Taxation of Property in North Carolina*. UNC School of Gov’t., 2009.

3. Because the Appellant's listed income for 2019 was greater than the 2020 income eligibility limit for the homestead property tax relief program offered pursuant to N.C. Gen. Stat. §105-277.1, the Appellant does not meet the statutory requirements for participation in the program.

WHEREFORE, the Commission grants the County's motion for summary judgment, and orders and decrees that the decision of the Board, denying the Appellant's 2020 application to participate in the homestead property tax relief program offered pursuant to N.C. Gen. Stat. §105-277.1, is hereby affirmed.



NORTH CAROLINA PROPERTY TAX COMMISSION

Robert C. Hunter

Robert C. Hunter, Chairman

Vice Chairman Wheeler and Commission Members
Guess and Michaux concur.

ATTEST:

Stephen W. Pelfrey

Stephen W. Pelfrey, Commission Secretary

Date Entered: 9-30-2021