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:

HARVEY C. KRASNY,
Appellant

19 PTC 0387

From the decision of the Orange County Board of Equalization and Review for tax year 2019

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 Monday, August 9, 2021, pursuant to the Appellant's appeal from the decision of the Orange County Board of Equalization and Review ("Board").

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 Anne Marie Tosco appeared on behalf of Orange County ("County"). The Appellant Mr. Harvey Krasny 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 2019 tax year. The County denied the Appellant's application, contending that the Appellant's income for 2018 exceeded the income eligibility limit. The Appellant timely appealed the County's denial to the Orange 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 2018 income was no more than the income eligibility limit for 2019 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. It appears uncontested that the determinative question in this matter is whether a required distribution from an individual retirement account ("IRA") was properly included by the County as part of the Appellant's 2018 income. If the distribution was properly included, then the Appellant's income exceeded the 2019 income eligibility limit, but if the distribution should not have been counted as part of the Appellant's 2018 income, the Appellant's income would not have exceeded the 2019 income eligibility limit. 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. In or around 1995, the Appellant became eligible to receive a retirement payment from a former employer (see Taxpayer's Exhibits, Annex 2). The Appellant elected to have the payment deposited as a direct transfer rollover contribution into an IRA that he owns (see Taxpayer's

Exhibits, Annex 3). Because the retirement payment was considered to have been directly transferred from the employer to the IRA, the Appellant was eligible to disregard the payment as income at the time of the transfer. We find that the Appellant did not actually receive the payment at the time of the transfer, and therefore did not recognize the payment as income at that time.

3. At the hearing, Mr. Krasny testified that he was required in 2018 to take a distribution from his IRA, and that he elected to have the distribution immediately transferred to a separate, non-tax-advantaged investment account. It is this distribution that is the subject of the appeal.
4. The Appellant contends in part that he did not actually receive the distribution in 2018, since he directed that the distribution be immediately reinvested, rather than paid directly to him, and contends further that the amount of the distribution should actually be considered as income for the year in which the direct transfer rollover contribution occurred (i.e., 1995 or 1996). We disagree with both positions.
5. On the surface, both the 2018 transfer and the earlier transfer may appear similar: both involve a payment that the Appellant could have chosen to receive directly, and in both situations, the Appellant chose instead to have the payment transferred to a different account. The difference, however, is that the initial direct transfer rollover contribution to the IRA was treated (under the IRA rollover provisions he elected to use) as a transfer in which Mr. Krasny never took custody of the payment. By electing to use the IRA rollover provisions available to him at the time, Mr. Krasny was able to defer recognizing the retirement payment as income until a future date. That future date arrived in 2018, when Mr. Krasny became obligated to make a withdrawal (i.e., the required distribution) from the IRA, and to recognize the withdrawal as income. While he chose to transfer the withdrawal to a different investment account, there is no meaningful difference between placing the withdrawal proceeds in an investment account or in a conventional bank account, or even in converting the proceeds to cash. In each example, the recipient has exclusive control over the further disposition of the proceeds immediately upon the withdrawal. We contrast this with the earlier direct transfer rollover contribution, in which Mr. Krasny essentially ceded control over the retirement payment to the IRA custodian. Accordingly, we find that 2018, the year of the required IRA distribution, is the proper year in which to recognize the distribution as income received, and that the year in which the direct transfer rollover contribution occurred is not.

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," with limited exceptions, applies to IRA distributions, and to the year in which the distribution is recognized as income. Because the Appellant took a distribution in 2018 from his IRA, the distribution is part of the "moneys received" by the Appellant in 2018, regardless of whether the distribution was required.
3. There is no evidence before us regarding any statutory exception to the moneys received, and there is no dispute that the 2018 distribution is the sole issue as to the Appellant's qualification for the homestead property tax relief program offered pursuant to N.C. Gen. Stat. §105-277.1.
4. Because the 2018 distribution is properly included in the Appellant's 2018 income, the Appellant's income was greater than the 2019 income eligibility limit for the program. Accordingly, the Appellant does not meet the statutory requirements for participation in the program.

WHEREFORE, the Commission orders and decrees that the decision of the Board, denying the Appellant's 2019 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, Commission Secretary

Date Entered: 9·30·2021