

1. Cumberland County performed an audit for business personal property listings for tax years 2008 through 2013 concerning Appellant's property and, based on that audit, assessed the Appellant \$1,000,424 for unreported business personal property for tax years 2008 through 2013 for additional taxes of \$12,762.96, and late listing penalties in the amount of \$5,985.80.

2. The Appellant accepted the audit, paid the additional taxes and appealed the penalty assessment to the County Special Board of Equalization and Review ("Special Board").

3. The Special Board rendered a decision denying Appellant's request for release of the late listing penalties. The Appellant challenged the Special Board's decision by filing an appeal with the Commission.

4. On the Application for Hearing (Form AV-14), the Appellant states that the basis of its claim is that it supplied Cumberland County with IRS depreciation schedules which the county states it never received.

5. The Appellant paid the additional taxes and late listing penalties, and requests the release of the late listing penalties.

6. Cumberland County's audit of Appellant's business personal property listings for tax years 2008 through 2013, the assessment of \$1,000,424 for unreported business personal property for tax years 2008 through 2013, the assessment of \$12,762.96 for additional taxes, and \$5,985.80 for late listing penalties were conducted in compliance with the statutory requirements relating to the taxation of discovered property and computation of penalties.¹

7. After calling Mr. Mehta and Mr. Perrier as witnesses, Appellant did not provide any evidence tending to show that the County's assessment of \$1,000,424 for unreported business personal property for 2008 through 2013, \$12,762.96 for additional taxes and \$5,985.80 for late listing penalties did not comply with N.C. Gen. Stat. § 105-312(g) and -312(h).

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

1. N.C. Gen. Stat. § 105-312(g) provides as follows:

(g) Taxation of Discovered Property. – "When property is discovered, it shall be taxed for the year in which it is discovered and for any of the preceding five years during which it escaped taxation in accordance with the assessed value it should have assigned in each of the years for which it is to be taxed and the rate of tax imposed in each such year. The penalties prescribed by subsection (h) of this section shall be computed and imposed regardless of the name in which the discovered property is listed. If the discovery is based upon an understatement of value, quantity, or other measurement rather than an omission from the tax list, the tax shall be computed on the

¹ Testimony of Mr. Phillip Perrier, Cumberland County Tax Appraiser.

additional valuation fixed upon the property, and the penalties prescribed by subsection (h) of this section shall be computed on the basis of the additional tax.”

2. The penalty provisions of N.C. Gen. Stat. § 105-312(h) state:
Computation of Penalties. – “Having computed each year’s taxes separately as provided in subsection (g), above, there shall be added a penalty of ten percent (10%) of the amount of the tax for the earliest year in which the property was listed, plus an additional ten percent (10%) of the same amount for each subsequent listing period that elapsed before the property was discovered. This penalty shall be computed separately for each year in which a failure to list occurred; and the year, the amount of the tax for that year, and total of penalties for failure to list in that year shall be shown separately on the tax records; but the taxes and penalties for all years in which there was a failure to list shall be then totalled [sic] on a single tax receipt.”

3. Finally, pursuant to N.C. Gen. Stat. § 105-312(k) the power to compromise any “penalty” assessed for the discovery of taxable property has been granted to the assessing County. Specifically, N.C. Gen. Stat. § 105-312(k) states:

(k) Power to Compromise. --- “After a tax receipt computed and prepared as required by subsections (g) and (h) of this section has been delivered and charged to the tax collector as prescribed in subsection (j), above, the board of county commissioners, upon the petition of the taxpayer, may compromise, settle, or adjust the county’s claim for taxes arising therefrom. The board of commissioners may, by resolution, delegate the authority granted by this subsection to the board of equalization and review, including any board created by resolution pursuant to G.S. 105-322(a) and any special board established by local act.” [Emphasis added].

4. The Commission has statutory authority to hear and consider tax appeals concerning the listing, assessing or taxation of property; and discretionary decisions of the local board to compromise a penalty.²

5. Having paid the additional taxes, the Appellant did not produce competent, material, or substantial evidence tending to show that the County’s audit of its business personal property listings for 2008 through 2013 was arbitrary; that the assessment of \$1,000,424 for unreported business personal property for 2008 through 2013 and the assessment of additional taxes of \$12,762.96 was not appropriate; and that the late listing penalties in the amount of \$5,985.80 were not due and payable.

BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE COMMISSION THEREFORE ORDERS that the Special Board’s decision upholding the audit assessing the Appellant \$1,000,424 for unreported business personal property for tax years 2008 through 2013 for additional taxes of \$12,762.96, and late listing penalties in the amount of \$5,985.80 is affirmed.

²In re K-Mart Corp., 319 N.C. 378, 354 S.E. 2d 468 (1987).



NORTH CAROLINA PROPERTY TAX COMMISSION

William W. Peaslee, Chairman

Vice Chairman Wheeler and Commission Members Morgan and Smith
concur.

ENTERED: June 19, 2015

ATTEST:

Janet L. Shires, General Counsel
Commission Secretary