

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD OF
EQUALIZATION AND REVIEW
14 PTC 0391

IN THE MATTER OF:
APPEAL OF:

DG Solar Lessee, LLC

FINAL DECISION

From the decision of the Duplin County Board of Commissioners regarding the denial of an exclusion application for certain solar energy electric system property for tax year 2014.

This Matter came on for hearing before the Property Tax Commission (“Commission”), sitting as the State Board of Equalization and Review in the City of Raleigh, Wake County, North Carolina, at its regularly scheduled meeting on Wednesday, May 13, 2015. This matter concerns the appeal of **DG Solar Lessee, LLC** (“Appellant”) from the decision of the Duplin County Board of Commissioners (“County Board”) concerning the denial of an exclusion application for certain solar energy electric system property for tax year 2014.

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

Ms. Cerene O. Setliff, Esquire appeared at the hearing on behalf of the Appellant. Ms. Wendy L. Sivori, Duplin County Attorney, at appeared at the hearing on behalf of Duplin County.

STATEMENT OF CASE

Appellant, DG Solar Lessee, LLC, appeals to the Commission from the decision of the County Board denying an exclusion application for certain solar energy electric system property for tax year 2014 that was not timely filed with Duplin County as provided in N.C. Gen. Stat. § 105-282.1. The subject property is a solar energy electric system eligible for an exclusion of 80% of its value from the assessed value that is subject to taxation. The application for exclusion (Form AV-10) was due in the Duplin County Tax Assessor’s office (“Tax Assessor”) by January 31, 2014. The application for exclusion was received in the Tax Assessor’s office on October 6, 2014. Since the application was not timely filed, the Tax Assessor denied the request for exclusion of 80% of the subject property’s value for tax year 2014. On appeal to the County Board, the County Board denied the exclusion application when there was no showing of good cause by the applicant for failure to make a timely application as provided in N.C. Gen. Stat. § 105-282.1(a1). From the County Board’s decision, the Appellant filed an appeal with the Commission and requested a hearing as provided in N.C. Gen. Stat. § 105-290.

ISSUES

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

Whether the Appellant's untimely application for tax exclusion for certain solar energy electric system property may be granted upon a showing of good cause by the applicant for failure to make a timely application as provided in N.C. Gen. Stat. § 105-282.1(a1).

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

1. The Commission has jurisdiction over the parties and subject matter of this appeal.
2. The property subject to this appeal is certain solar energy electric system property located in Duplin County that is eligible for an exclusion of eighty percent (80%) of the appraised value of the solar energy electric system property from the tax base provided in N.C. Gen. Stat. § 105-275(45).
3. In order to obtain the exclusion of eighty percent (80%) of the appraised value of the solar energy electric system property from the tax base, the owner of the property must file an application for the benefit of the exclusion as provided in N.C. Gen. Stat. § 105-282.1(2).
4. The application for exclusion is required to be filed with a county tax office during the listing period.
5. For the subject appeal, the application for exclusion was required to be filed with the Duplin County Tax Office on or before January 1, 2014.
6. The Duplin County Tax Office received Appellant's application for exclusion on October 6, 2014, which was after the close of the listing period.
7. The Tax Assessor denied Applicant's request for exclusion of eighty percent (80%) of the appraised value of solar energy electric system property from the tax base for tax year 2014 based on the untimely filing of the application for exclusion since the application for exclusion was received after the close of the listing period.
8. Appellant appealed the Tax Assessor's denial of the application for exclusion to the County Board. After conducting a hearing, the County Board denied the exclusion application when there was no showing of good cause by the Appellant (applicant) for failure to make a timely application as provided in N.C. Gen. Stat. § 105-282.1(a1).

9. At the hearing before the Commission, the Appellant offered the testimony of Mr. Jeffrey Ralston, who testified that he was aware that eighty percent (80%) of the appraised value of the subject solar energy electric system property was eligible for exclusion from the tax base; but that he did not know that an application for exclusion was required in order to obtain the property tax exclusion from Duplin County.
10. Mr. Ralston further testified that other jurisdictions in North Carolina (Scotland and Vance Counties) granted exclusions for solar energy electric system properties located in those counties by approving Appellant's untimely exclusion applications that were filed after the listing period.
11. In particular, for tax year 2013, he testified that the Scotland County Board approved Appellant's untimely application for exclusion for the solar energy electric system property upon the Appellant's statement that it was unaware that an exclusion application was required in order for the property to be eligible for an exclusion of eighty percent (80%) of property's value from the tax base.
12. Notwithstanding Mr. Ralston's testimony of his lack of knowledge regarding the application requirement, the Appellant did have knowledge in tax year 2014 that an application for exclusion was required in order to obtain and be eligible for an exclusion of eighty percent (80%) of the value of the solar energy electric system property that is located in Duplin County since Appellant had appeared before the Scotland County Board in tax year 2013 and requested the Scotland County Board to approve its late exclusion application.
13. There was no showing of good cause by the Appellant for its failure to make a timely application for tax exclusion for certain solar energy electric system property located in Duplin County for tax year 2014.
14. Without a showing of good cause, Appellant's untimely application for tax exclusion for certain solar energy electric system property may not be granted by the County Board for tax year 2014.
15. The County Board properly denied the Appellant's untimely application for tax exclusion for certain solar energy electric system property when there was no showing of good cause by the Appellant for failure to make a timely application for tax year 2014.

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

1. All property, real and personal, within the jurisdiction of the State shall be subject to taxation unless it is excluded from the tax base or exempted from taxation.¹

¹N.C. Gen. Stat. §105-274.

2. As provided in N.C. Gen. Stat. §105-275(45), eighty percent (80%) of the appraised value of a solar energy electric system property is excluded from the tax base upon the filing of an application for exclusion from property tax.²
3. In particular, an owner of property that is classified under N.C. Gen. Stat. §105-275(45) must file an exclusion application in order for the property to be eligible for an exclusion of eighty percent (80%) of its value from the tax base; and the owner claiming the exclusion from property taxes must file an application for the exclusion during the listing period unless a late application is approved.
4. A late application for exclusion may be approved by the County Board upon a showing of good cause by the applicant for failure to make a timely application as provided in N.C. Gen. Stat. § 105-282.1(a1).
5. N.C. Gen. Stat. § 105-282.1(a1) provides in pertinent part: “Upon a showing of good cause by the applicant for failure to make a timely application, an application for exemption or exclusion filed after the close of the listing period may be approved by the Department of Revenue, the board of equalization and review, the board of county commissioners, or the governing body of a municipality, as appropriate.”
6. The Appellant did not file the exclusion application during the listing period in this appeal; and there was no showing of good cause by the Appellant for failure to make a timely application when the Appellant had knowledge that an application was required in order for the property to be eligible for an exclusion of eighty percent (80%) of its value from the tax base for tax year 2014.
7. As a result, testimony of Appellant’s witness that he was unaware of the application requirement for exclusion of eighty percent (80%) of the property’s value from the tax base is not sufficient evidence to constitute a showing of cause good by Appellant (applicant) for failure to make a timely application as provided in N.C. Gen. Stat. § 105-282.1(a1).

BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE COMMISSION THEREFORE ORDERS that the decision of the Duplin County Board of Commissioners denying the approval of the Appellant’s untimely application for exclusion of eighty percent (80%) of the appraised value of a solar energy electric system property from the tax base for tax year 2014 is affirmed.

² N.C. Gen. Stat. §105-282.1.



NORTH CAROLINA PROPERTY TAX COMMISSION

William W. Peaslee, Chairman

Vice Chairman Wheeler and Commission Member Morgan concur.
Commission Member Smith respectfully dissents.

ENTERED: June 23, 2015

ATTEST:

Janet L. Shires, Esquire, General Counsel
Commission Secretary