

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD OF
EQUALIZATION AND REVIEW
14 PTC 0137

IN THE MATTER OF:

APPEAL OF: New Tree Farms LLC
from the decision of the Northampton
County Board of County Commissioners
denying the release of certain tax
bills associated with Tax Assessor's
disqualification of certain real property
from appraisal at present-use value for
tax year 2013.

FINAL DECISION

This appeal was heard 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 Friday, April 17, 2015, pursuant to the appeal of **New Tree Farms LLC** ("Appellant" or "Taxpayer"). Appellant appealed to the Commission from the decision of the Northampton County Board of County Commissioners ("County Commissioners"), concerning the disqualification of certain real property from appraisal at present-use value taxation for year 2013.

Chairman William W. Peaslee presided over the hearing with Commission Members David A. Smith and Jack C. Morgan III participating.

Attorney R. Wendel Hutchins appeared at the hearing on behalf of the Taxpayer. Attorney A. Scott McKellar appeared at the hearing on behalf of Northampton County.

Prior to the Commission considering the Taxpayer's appeal, Vice Chairman Wheeler rescued himself from the hearing of this matter.

STATEMENT OF CASE

The Taxpayer, **New Tree Farms LLC**, has filed this appeal challenging the County Commissioners decision that affirmed the Northampton County's Tax Assessor's (the "Assessor") decision to remove the subject property from its appraisal at present-use value and issuance of tax bills for the deferred taxes that were due and payable when the property loses its eligibility for deferral as a result of a disqualifying event.

In tax year 2013, the Assessor conducted a statutory audit concerning the present-use value taxation of the subject property. Based on the audit, the county assessor removed the property from the present-use value program and issued bills for the deferred taxes. When challenging the Assessor's removal of the subject property from the present-use value program, the Taxpayer requested the County Commissioners to release the tax bills, and reinstate the property in the present-use value program.

The County contends that based on the audit, that the county assessor's removal of the property from the present use value status was proper and that the deferred taxes are due and payable. The County further contends that the Taxpayer did not comply with the supplemental audit information in a timely manner as provided in N.C. Gen. Stat. § 105-296(1). As such, the County requests the Commission to affirm the County Board's decision for tax year 2013.

ISSUES

In the Order on Final Pre-hearing Conference filed with the Commission, the parties did not agree on the issues to be heard by the Commission. The issues considered by the Commission are stated as follows:

1. Did the Taxpayer receive an initial notice of audit and the requirements of supplemental information as required by N.C. Gen. Stat. § 105-296(j)?
2. Did the Taxpayer then comply with the 60-day supplemental audit information allowed by N.C. Gen. Stat. § 105-296(j) by filing the information in a timely manner; and if not, was the failure to timely file the information due to a showing of good cause, compelling present-use value continuation?
3. Did the Assessor comply with the statutory requirements of N.C. Gen. Stat. § 105-296(j) regarding her decision to remove the subject property from present-use value classification that resulted in the issuance of tax bills for the deferred taxes that she deemed were due and payable due to subject property's ineligibility for deferral as a result of a disqualifying event?

APPLICABLE LAW

This case arises from the Assessor's review of the Taxpayer's property as provided in N.C. Gen. Stat. § 105-296(j) in tax year 2013 that resulted in the Assessor's conclusion that the subject property did not qualify for present-use value classification for tax year 2013, and that the deferred taxes, plus interest, were due and payable. N.C. Gen. Stat. § 105-296(j) provides in pertinent part that: "[T]he assessor must annually review at least one eighth of the parcels in the county classified for taxation at present-use value to verify that these parcels qualify for the classification. By this method, the assessor must review the eligibility of all parcels classified for taxation at present-use value in an eight-year period. The period of the review process is based on the average of the preceding three years' data." "The assessor may require the owner of classified property to submit any information, including sound management plans for forestland, needed by the assessor to verify that the property continues to qualify for present-use value taxation. The owner has 60 days from the date a written request for the information is made to submit the information to the assessor. If the assessor determines that the owner failed to make the information requested available in the time required without good cause, the property loses its present-use value classification and the property's deferred taxes become due and payable as provided in G.S. 105-277.4(c)."

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

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.

2. The property under appeal is owned by New Tree Farm LLC and is identified by the Northampton County Tax Office as Parcel Number 06-02186. The subject property is located at 187 Chapel Hill Road, Northampton County, North Carolina.

3. In tax year 2013, the Tax Assessor selected the property to conduct an audit as part of Northampton County's present-use value compliance program as provided in N.C. Gen. Stat. § 105-296(j).

4. As a result of the audit, the Assessor removed the property from the present-use value program when the Taxpayer failed to timely submit the supplemental information for qualification of the subject property in the present-use value program.

5. The Northampton County Assessor notified the Taxpayer that the subject property was removed from the present-use value program and was subject to a three year "rollback" billing of taxes due, resulting in a tax liability increase of \$18,794.29.

6. The removal of the subject property from present-use valuation classification resulted in a taxable value from \$283,856 to \$804,505.

7. The Taxpayer was notified of its right to appeal the County Assessor's decision to the Northampton County Board of Commissioners, sitting as the Board of Equalization and Review ("County Board"), to request a release of the following tax bills: 13A0602186.1, 13A0602186.2, 13A06021876.3, and 12A0602186.44.

8. The County Board denied the Taxpayer's request to restore the present-use value of \$283,856 and release the above referenced tax bills and notified the Taxpayer of this decision by Notice of Decision mailed on May 12, 2014. The Taxpayer then appealed to the Commission.

9. The effect of the reversal of the present-use valuation and the rollback assessment resulted in an increase in tax liability to Taxpayer over the three year rollback period totaling \$18,794.29 as of April 21, 2014.

10. At the hearing, Taxpayer first called its property manager, Mr. Uli Bennewitz, to testify. Mr. Bennewitz testified concerning the ownership and nature of the property, and his management of the property. Mr. Bennewitz further testified that he did not receive the initial notice of audit that Northampton County mailed to him, but that he did mail the second notice to

the Taxpayer for its review and signature in order to provide the requested information. Concerning this audit, Mr. Bennewitz also testified that he was confused with the process because he had just filed a form with the County to qualify the property for present-use value.

11. Mr. Bennewitz mailed Mr. Avery Davis, Chief Appraiser for Northampton County, a letter explaining the delay in filing the audit response, with an audit response that was signed by Taxpayer's managing member after January 1, 2014.

12. The County properly removed the subject property from the present-use classification for failure of the Taxpayer to submit the supplemental information in accordance with N.C. Gen. Stat. § 105-296(j), when Taxpayer did not comply with the timely filing requirements N.C. Gen. Stat. § 105-296(j) concerning the submission of supplemental information and when the finding of good cause for Taxpayer's delay.

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

1. An assessor must annually review at least one eighth of the parcels in the county classified for taxation at present-use value to verify that these parcels qualify for the classification in accordance with N.C. Gen. Stat. § 105-296(j).

2. The controlling issue is whether the Assessor complied with the statutory requirements of N.C. Gen. Stat. § 105-296(j) regarding the removal of property from present-use value that resulted in the issuance of tax bills for the deferred taxes that were due and payable.

3. In this case, the Assessor performed the audit in compliance with the statutory requirements of N.C. Gen. Stat. § 105-296(j) when the assessor required the owner of classified property to submit information needed by the assessor to verify that the property continues to qualify for present-use value taxation by mailing the request to the Taxpayer's manager.

4. Testimony of Taxpayer's witness was not sufficient to show that Taxpayer's delay in providing the information was based on good cause. Thus, the subject property loses its present-use value classification and the property's deferred taxes become due and payable as provided in G.S. 105-277.4(c).

5. The Taxpayer did not timely comply with the requirement of N.C. Gen. Stat. § 105-296(j) when the Taxpayer did not timely file the supplemental audit information.

6. Since the Assessor did perform an audit review in compliance with N.C. Gen. Stat. § 105-296(j), as the Commission determines in this case, and the Taxpayer did not comply with the statutory time period, the subject property lose its eligibility for present-use value.

**WHEREFORE THE NORTH CAROLINA PROPERTY TAX COMMISSION
THEREFORE ORDERS** that the decision of 2013 County Board is affirmed.



NORTH CAROLINA PROPERTY TAX COMMISSION

William W. Peaslee, Chairman

Commission Members Smith and Morgan concur.
Vice Chairman Wheeler did not participate in the hearing or
deliberation of this appeal.

ENTERED: June 26, 2015

ATTEST:

Janet L. Shires, General Counsel
Commission Secretary