

STATE OF NORTH CAROLINA
COUNTY OF WAKE

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

90 PTC 362

In the matter of:)
The appeal of Gene A. Dickey)
and Deborah A. Dickey from)
the Forsyth County Board of)
Equalization and Review for)
1990.)

Final Decision

This matter was heard by the Property Tax Commission, sitting as the State Board of Equalization and Review in the City of Raleigh, Wake County, North Carolina on 6 November 1991 pursuant to the appeal of Gene A. Dickey and Deborah A. Dickey (hereinafter "Taxpayers") from the dismissal of their appeal by the Forsyth County Board of Equalization and Review for 1990.

STATEMENT OF CASE

The property under appeal in this case, described in County tax records as Block 3413C, Lot 48, is a house and lot located at 3408 Jameson Lane. The house and lot were purchased by the Taxpayers in 1988. The deed to the property was recorded 28 October 1988. In 1990, county officials discovered that taxes on the subject property for the tax year 1989 had been computed, billed and paid based on value of the lot alone, even though the house located on the lot was completed and occupied by the Taxpayers as of 1 January 1989.

On 12 June 1990, the County issued a discovery notice to the Taxpayers pursuant to G.S. 105-312. The discovered property referenced in this notice consisted of improvements to the property (the house),

appraised by the County at \$185,500. The Taxpayers appealed the discovery to the assessor and then to the County board of equalization and review, which dismissed their appeal, thereby upholding the discovery.

In their notice of appeal filed with the Commission, the Taxpayers contend that the improvements discovered by the County were, in fact, listed by them for taxation for the year 1989. Because the Taxpayers contend that they listed the improvements during the 1989 regular listing period, the Taxpayers contend that the improvements do not meet the definition of "discovered property" contained in the statute. The Taxpayers contend that they filed a proper listing, but the County erroneously omitted the improvements, causing a bill to be sent which reflected only the land value.

The Taxpayers do not ask that the County correct its records to reflect their assertion that the subject property improvements were listed during the regular listing period; instead, the Taxpayers ask that the Commission declare the discovery void and release the improvements from any property tax for the tax year 1989. The Taxpayers have not contested the County's appraisal of either the land or the improvements.

The Taxpayers appeared pro se at the hearing before the Commission; Forsyth County was represented at the hearing by Davida W. Martin, Assistant County Attorney for Forsyth County.

ISSUES

The Taxpayers and the County did not agree as to the issue or issues to be decided by the Commission. The Taxpayers contended in their proposed Order On Final Pre-hearing Conference that the issues were:

1. Whether the County has any proof that the Taxpayers did not properly, accurately, and completely list their specific property for taxes in 1989;
2. Whether the County erred in failing in its duty to appraise and assess the property in a timely manner;
3. Whether the County established a prima facie valuation for the property which was duly approved by the Board of Equalization and Review prior to their adjournment, which determination cannot be disturbed;
4. Whether the County erred in improperly altering the tax records of previously listed property after the tax liability had been determined and fixed for that year by the Board of Equalization; and
5. Whether the property fits the strict statutory definition of "discovered property".

The County contended in its proposed Order On Final Pre-hearing Conference the issue to be decided was:

Whether the Property Tax Commission has jurisdiction over an appeal which does not relate to the listing, appraisal, or assessment of property made by a county board of equalization and review.

The majority of Commission finds that the issues presented are:

1. Is the subject property discovered property within the meaning of G.S. 105-312(a)(1)?
2. If the property was properly listed by the taxpayer, there was no defect in the description, the revenue stamps placed upon the deed were examined by the county tax office and disclosed accurately the value of the property, and other indicia of the proper value were before the county tax office, all of which were disregarded by the county, is there some point at which such matters become material irregularities as opposed to immaterial irregularities as set forth in G.S. 105-394?
3. Do the prohibitions of G.S. 105-287(c) which were enacted in 1987 apply with regard to the appraised value of real property in this instance?
4. Is the distinction between personal property as addressed in the case of In re Notice of Attachment and Garnishment Issued by the Catawba County Tax Collector, 59 N.C. App. 332, 296 S.E.2d 499, (1982), cert. denied 307 N.C. 576, 299 S.E.2d 645 (1983) and real property as addressed in G.S. 105-287(c) a valid one under these circumstances?

EVIDENCE

The evidence presented by the Taxpayers and considered by the Commission consisted of the following:

1. Taxpayer Exhibit 1 - Forsyth County Notice of Real Property Appraisal dated 8 June 1990.

2. Taxpayer Exhibit 2 - Forsyth County 1990 Property Tax Listing form for the Taxpayers.
3. Taxpayer Exhibit 3 - Forsyth County 1989 tax bill for the Taxpayer, indicating a "real value" of \$37,500 and a motor vehicle value of \$6,120 for a total taxable value of \$43,620.
4. Taxpayer Exhibit 4 - Forsyth County 1989 Property Tax Listing form for the Taxpayers dated 17 January 1989.
5. Taxpayer Exhibit 5 - Forsyth County 1988 tax bill for the lot on which the subject improvements are located, indicating a "real value" of \$37,500.
6. Taxpayer Exhibit 6 - Authorization form for Transamerica real estate tax service dated 28 October 1988.
7. Taxpayer Exhibit 7 - Forsyth County statement of account dated 12 June 1990, reflecting a total due from the Taxpayers of \$2,094.30.
8. Taxpayer Exhibit 8 - Page One of Forsyth County Property Record Card for Block 3413C, Lot 48, located at 3408 Jameson Lane, dated 21 November 1988.
9. Taxpayer Exhibit 9 - Page Two of Forsyth County Property Record Card for Block 3413C, Lot 48, located at 3408 Jameson Lane, dated 21 November 1988.
10. Taxpayer Exhibit 10 - Forsyth County Property Record Card for Block 3413C, Lot 48, located at 3408 Jameson Lane, dated 7 June 1990.
11. Oral testimony of Mr. Gene A. Dickey.

The evidence presented by the County and considered by the

Commission consisted of the following:

1. County Exhibit 1 - A deed from Alexander & Stevenson, Inc. to Gene A. Dickey and wife Deborah A. Dickey, recorded in the Forsyth County Registry on 28 October 1991.
2. County Exhibit 2 - A discovery notice issued by Forsyth County on 12 June 1990 pursuant to G.S. 105-312, directed to the Taxpayers.
3. County Exhibit 3 - Letter from Mr. Dickey to the Forsyth County Assessor's office dated 10 July 1990.

4. County Exhibit 4 - Letter from Kelvin T. Wood of the Forsyth County Assessor's office to Mr. Dickey, dated 11 July 1990.
5. County Exhibit 5 - Letter from Mr. Wood to Mr. Dickey, dated 24 July 1990.
6. County Exhibit 6 - Letter from Mr. Dickey to the Forsyth County Assessor's office, dated 4 August 1990.
7. County Exhibit 7 - Request for hearing before the Forsyth County Board of Equalization and Review concerning the 1990 tax appraisal of the property located at 3408 Jameson Lane.
8. County Exhibit 8 - Forsyth County 1989 tax bill for the Taxpayer, indicating a "real value" of \$37,500 and a motor vehicle value of \$6,120 for a total taxable value of \$43,620. Identical to Taxpayer Exhibit 3.
9. County Exhibit 9 - Forsyth County tax bill dated 22 October 1991, indicating property tax due of 2,094.30 on a "real value" of \$185,500, together with \$186.25 in interest, for a total due of \$2,280.55.
10. County Exhibit 10 - Letter from Mr. Dickey to the Commission, giving notice of appeal, dated 30 September 1990.
11. County Exhibit 11 - Application For Hearing, dated 4 January 1991.
12. County Exhibit 12 - Response to Application For Hearing, dated 11 January 1991.
13. Oral testimony of Mr. Aldon M. Idol.

Commission Exhibits

In addition to the evidence presented by the parties, the Commission also considered the following Commission Exhibits:

- C-1 Notice of Appeal, filed October 1, 1990.
- C-2 Commission acknowledgment of C-1, dated October 4, 1990.
- C-3 Application for Hearing, filed January 8, 1991.
- C-4 Commission acknowledgment of C-3, dated January 10, 1991.
- C-5 County's Response to Application for Hearing, filed January 14, 1991.

- C-6 Commission's acknowledgment of C-5, dated January 14, 1991.
- C-7 Proposed hearing calendar for November Commission meeting, dated September 16, 1991.
- C-8 Notice of Hearing (Taxpayer), dated October 16, 1991.
- C-9 Notice of Hearing (County), dated October 16, 1991.
- C-10 Motion to Dismiss Appeal, filed 28 October 1991.
- C-11 Proposed Order On Final Pre-hearing Conference (County), filed 28 October 1991.
- C-12 Transmittal letter for C-10 and C-11, filed 28 October 1991.
- C-13 Proposed Order On Final Pre-hearing Conference (Taxpayer), filed 4 November 1991.
- C-14 Transmittal letter for C-13, filed 4 November 1991.

Findings of Fact

Based on the evidence presented by the parties, as set forth above, the Commission adopts the facts stated in the Statement of Case as part of its Findings of Fact, and makes the following additional Findings:

1. The house which is the subject of this appeal was completely constructed as of 1 January 1989. The house was owned in fee simple by the Taxpayers as of that date. The house was located within the boundaries of Forsyth County.
2. The true value of the subject house as of 1 January 1989 did not exceed \$185,500.
3. The Taxpayers did properly describe and list the subject house on their property tax listing dated 17 January 1989. A copy of a portion of this listing form was submitted by the Taxpayers as Taxpayer Exhibit 4.

4. The Taxpayers described the improvements at issue on a portion of the listing form which was designed to be torn off if it was not completed. After receipt by the County, this portion of the form was removed and destroyed even though it had been completed by the Taxpayers.
5. Taxpayer Exhibit 3, the Forsyth County 1989 tax bill for the Taxpayers, indicates a "real value" of \$37,500 and a motor vehicle value of \$6,120, for a total taxable value of \$43,620.
6. Taxpayer Exhibit 5, the Forsyth County 1988 tax bill for the lot on which the subject improvements are located, indicates a "real value" of \$37,500. As of 1 January 1988, no improvements had been constructed on the lot.
7. The "real value" of \$37,500 which was referenced in both Taxpayer Exhibit 3 and Taxpayer Exhibit 5 was the value assigned by the County to the land, and only to the land, upon which the subject improvements were located.
8. No portion of the appraised value upon which the Taxpayers' 1989 tax bill (Taxpayer Exhibit 3) was based was attributable to the improvements at issue.
9. The Taxpayers did not assert, at either the local level or at the hearing before the Commission, that the value of \$185,500 assigned by the County to the subject improvements exceeded the true value in money of the property as of 1 January 1989.

10. While Taxpayer Exhibit 3, the Forsyth County 1989 tax bill for the Taxpayers, indicates a "real value" of \$37,500 and a motor vehicle value of \$6,120 for a total taxable value of \$43,620, the real estate excise tax stamps on the deed by which the Taxpayers acquired the subject property (County Exhibit 1) indicate that the purchase price paid by the Taxpayers for the house and lot was approximately \$272,500. Despite the large difference between the purchase price of \$272,500 and the "real value" of \$37,500 on the 1989 tax bill, Mr. Dickey testified that he was unaware of the County's error until 1990.

Conclusions of Law

Based on its Findings of Fact set forth above, the Commission makes the following Conclusions of Law:

1. Because the Taxpayers submitted a timely and accurate property tax listing form to the County on 17 January 1989 which described the subject improvements, the subject improvements cannot be considered "discovered property" as defined in G.S. 105-312(a)(1). The provisions of G.S. 105-312 therefore do not apply to the subject improvements for tax year 1989.
2. The County appraised the subject improvements at a value of zero (\$0) for tax year 1989. Under the provisions of G.S. 105-287, the County was authorized to reappraise the subject improvements in 1990, for the 1990 tax year, and did so,

assigning a value of \$185,500 to the improvements. However, subsection (c) of G.S. 105-287 provides that:

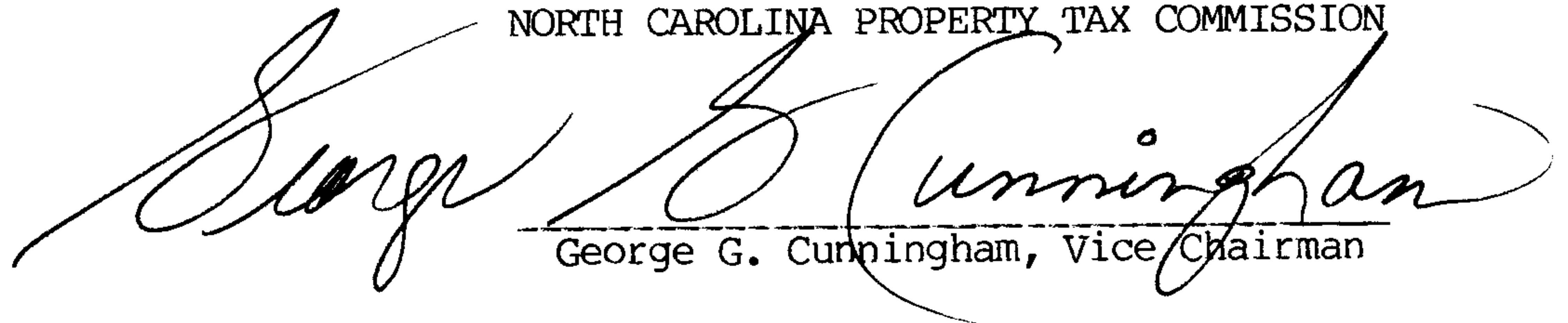
"[a]n increase or decrease in the appraised value of real property authorized by this section shall be made in accordance with the schedules, standards, and rules used in the county's most recent general reappraisal or horizontal adjustment. An increase or decrease in appraised value made under this section is effective as of January 1 of the year in which made and is not retroactive. This provision does not modify or restrict the provisions of G.S. 105-312 concerning the appraisal of discovered property." Emphasis added.

3. This case is distinguishable from the circumstances considered by the North Carolina Court of Appeals in In re Notice of Attachment & Garnishment Issued by Catawba County Tax Collector, 59 N.C. App. 332, 296 S.E.2d 499 (1982), cert. denied, 307 N.C. 576, 299 S.E.2d 645 (1983). That case dealt with personal property; the provisions of G.S. 105-287(c) which prohibit a retroactive appraisal are addressed exclusively to real property and were enacted in 1987 and therefore anticipated the circumstances presented by this case.

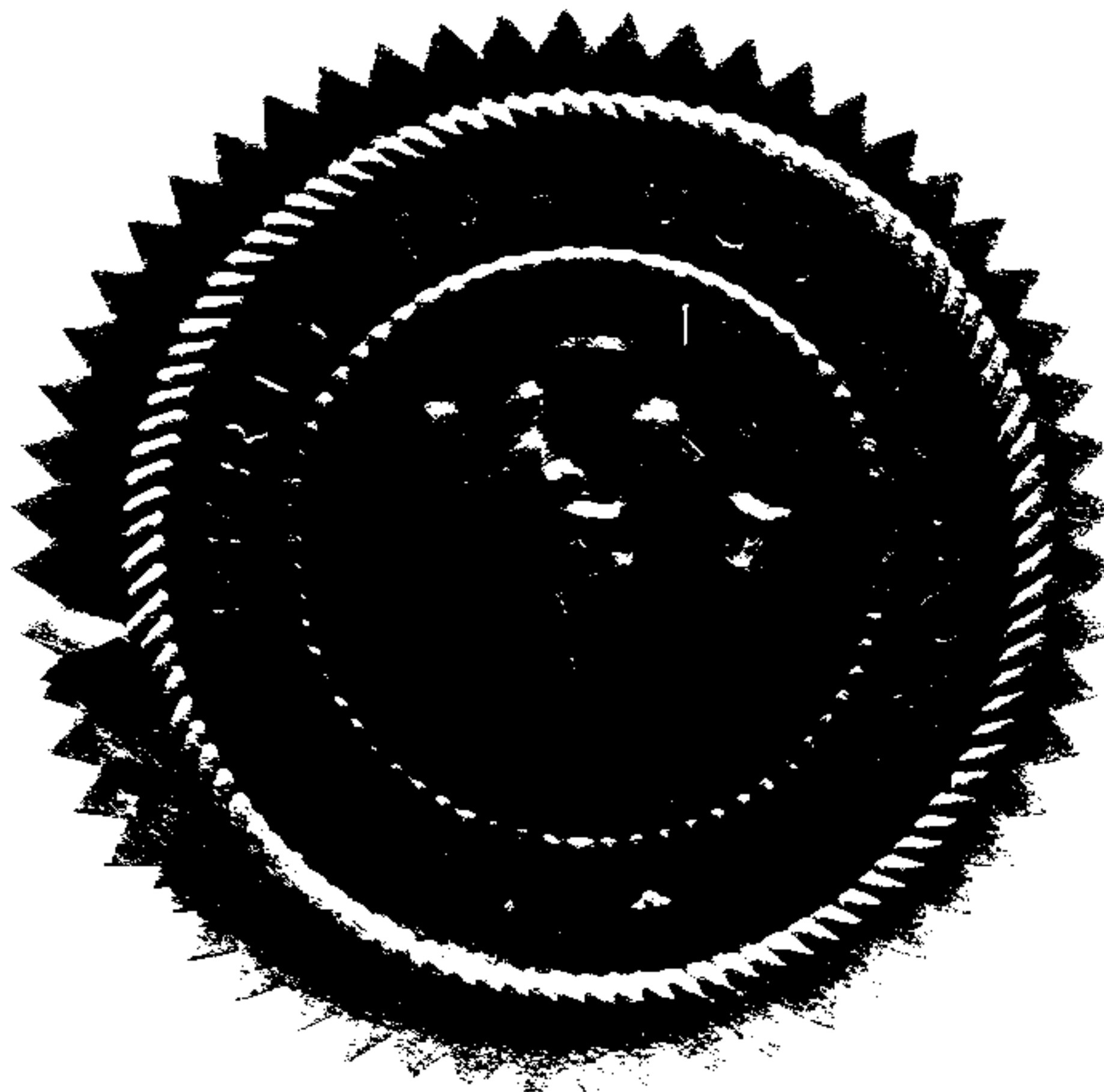
WHEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the appraised tax value of the subject property improvements for tax year 1989 is zero (\$0); the County is instructed to revise its tax records accordingly.

Entered this the 20th day of FEBRUARY, 1992.


NORTH CAROLINA PROPERTY TAX COMMISSION


George G. Cunningham, Vice Chairman

Commission Chairman John A. Cocklereece and Commission Member W. Eugene Wilson dissented from this decision of the Commission.



Attest:


C. B. McLean Jr. Acting Secretary

Commission Chairman John A. Cocklereece, dissenting:

The majority bases its decision in this case on two unique conclusions of law: (1) that the subject real property improvement, a house worth \$185,500, was appraised by the County at a value of zero, and (2) that the "retroactive reappraisal" of the house is prohibited by G.S. 105-287(c). A better way to analyze the undisputed facts is that the County simply failed to notify the Taxpayers of its appraisal of the house or to bill the Taxpayers for taxes on its value.

Note that the County is not required to bill the Taxpayers at all; the failure to notify the taxpayer of the amount of taxes due does not defeat the tax; see G.S. 105-274, G.S. 105-394, and the decision of the North Carolina Court of Appeals in In re Notice of Attachment & Garnishment Issued by Catawba County Tax Collector, 59 N.C. App. 332, 296 S.E.2d 499 (1982), cert. denied, 307 N.C. 576, 299 S.E.2d 645 (1983).

G.S. 105-287(c) is intended to prevent retroactive reappraisals of real property; it has no application to the facts and circumstances described in the instant appeal, where the County has never asserted any appraised value for the improvements except \$185,500.

It is fundamental to our system of property taxation (and that of other States) that all property, real and personal, within the jurisdiction of the State shall be subject to taxation unless it is exempted or excluded from taxation by a statute of statewide application; see G.S. 105-274. When a taxpayer fails to list his property as required by law, the provisions of G.S. 105-312 apply. Note that G.S. 105-287(c) makes specific reference to the provisions of G.S. 105-312. The County,

having no record that the Taxpayers listed the house in 1989, properly initiated a discovery proceeding under G.S. 105-312. When the Taxpayers asserted that they had, in fact, listed the improvements, the County eliminated the penalties imposed pursuant to G.S. 105-312, and instead billed the Taxpayers only for the 1989 tax due on the value of the improvements and for interest on the tax due; see County Exhibit 9, the Forsyth County tax bill dated 22 October 1991, indicating property taxes due of 2,094.30 on a "real value" of \$185,500, together with \$186.25 in interest, for a total due of \$2,280.55. The bill indicates that no penalties were applied by the County. This is the proper way to handle a billing error, as the Court of Appeals clearly stated in In re Notice.

The majority concludes that because the County sent an erroneous bill, the County actually appraised the subject house at a value of zero, and is barred by G.S. 105-287(c) from retroactively reappraising the house. A better analysis of these facts suggests that the County neither appraised the house nor billed the Taxpayers for taxes due on it.

A more reasonable application of statutory law to the undisputed facts of this case is that the County, through its own clerical error, billed the Taxpayers only for their land and automobiles and failed to bill the Taxpayers for the new house located on the land. When the error was discovered, the County gave the Taxpayers ample opportunity to contest the tax appraisal of the property for 1989. The Taxpayers also had an opportunity to contest this appraisal at the hearing before the Commission, but did not choose to do so.

It is undisputed that the subject property improvements had a "true value," on 1 January 1989, of at least \$185,500, that these improvements were located in Forsyth County, and that the Taxpayers were the owners of the improvements. The only question properly before this Commission is whether the Taxpayers listed the improvements, in which case the County is entitled to collect its taxes for 1989 on the appraised value of improvements (\$185,500), together with interest thereon beginning on 6 January 1990, or whether the Taxpayers failed to list the improvements, in which case the County's discovery initiated 12 June 1990 is proper, the imposition of penalties under G.S. 105-312 is required, and interest on the discovery tax bill (including penalties) began to run on 6 January 1991. Assuming that the majority is correct in its Finding of Fact Paragraph 3, wherein the majority found that the Taxpayers submitted a correct and complete listing form, the Taxpayers owe the County taxes and interest (from 6 January 1990) on the \$185,500 value of the house, but no penalties.

The majority found as a fact that the Taxpayers properly listed the subject improvements in January of 1989. This fact removes the case from the scope of G.S. 105-312, for the same reasons that were cited by the Court of Appeals in In re Notice. It does not, however, support the exemption of the subject improvements from the property tax for 1989.

G.S. 105-394 provides that immaterial irregularities in the listing, appraisal, or assessment of property for taxation or in the levy or collection of the property tax or in any other proceeding or requirement of this Subchapter ". . . shall not invalidate the tax imposed upon any

property or any process of listing, appraisal, assessment, levy, collection, or any other proceeding under the Subchapter." Examples of immaterial irregularities include, but are not limited to, subsection (3) "[t]he failure to list, appraise, or assess any property for taxation or to levy any tax within the time prescribed by law," subsection (9) "[t]he failure to make or serve any notice mentioned in this Subchapter," (this includes a notice of the amount of tax due) and subsection (11) "[a]ny other immaterial informality, omission, or defect on the part of any person in any proceeding or requirement of this Subchapter." Emphasis added.

Under the theory advanced by the majority, the County is penalized more for having sent an defective bill than it would be penalized if it had sent no bill at all. Under this theory, a taxpayer who receives a tax bill that is clearly erroneous (with the error in the taxpayer's favor) should not bring this fact to the County's attention; instead, the taxpayer should hope that the County will fail to discover its error before the end of the year so that the taxpayer may thereby receive an undeserved windfall.

It is clear that the Taxpayers in this case had the right, both at the local level and before the Commission, to contest the appraised value of \$185,500 assigned by the County to the subject improvements for the 1989 tax year. Fairness demands that when the County advised the Taxpayers of this value in 1990 the Taxpayers should be given an opportunity to contest it. The Taxpayers had this opportunity at the local level and again at the Commission.

Fairness to other taxpayers in Forsyth County demands that the Taxpayers in this case pay the taxes lawfully assessed on their improvements which had an undisputed value, as of 1 January 1989, of \$185,500. The majority decision in this case ignores the sound principles established by the General Assembly in G.S. 105-274 and G.S. 105-394 and ignores the holding of the Court of Appeals in In re Notice. The main point of that case was that a taxpayer cannot benefit from a billing error by the tax office, at least if the error is corrected within the period of the statute of limitations. As the Court stated in the last sentence of its opinion, "[i]f any time limit is to be put on the assertion of immaterial irregularities by taxing authorities under G.S. 105-394, that is a task for the General Assembly and not this Court." The majority, in its effort to find a rationale supporting its desire to punish the County, adopted a strained interpretation of G.S. 105-287(c) that is completely at odds with the basic statutory law governing the property tax.

Finally, it should be noted that following the reasoning of the Court of Appeals in In re Notice works no injustice against the Taxpayers in this case. Like all other taxpayers, they have had the opportunity to challenge the County's appraisal of their property for the 1989 tax year. The County does not seek to impose penalties against the Taxpayers; instead, the County asserts only its right to receive taxes based on the true value of property subject to taxation within its jurisdiction on the lien date, together with interest allowed by law. The Taxpayers were in no way harmed by the County's erroneous billing,

and should not be allowed to enjoy a windfall as a result of it. The cost of providing such a windfall, if the decision of the majority is affirmed, will be born by the other taxpayers of Forsyth County.