

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD OF
EQUALIZATION AND REVIEW
05 PTC 192

IN THE MATTER:
THE APPEAL OF: **TYLETA W.
MORGAN** from the decision of
the Henderson County Board of
Equalization and Review concerning
the taxation of certain real property
for tax years 1995 through 2003.

FINAL DECISION

This Matter came on for hearing before the North Carolina Property Tax Commission (hereinafter "Commission"), sitting as the State Board of Equalization and Review, at its regularly scheduled Session of Hearings in the City of Raleigh, Wake County, North Carolina on Wednesday, January 18, 2006, pursuant to the appeal of Tyleta W. Morgan (hereinafter "Taxpayer") from the decision of the Henderson County Board of Equalization and Review (hereinafter "County Board") concerning the taxation of certain real property for tax years 1995 through 2003.

Chairman Terry L. Wheeler presided over the hearing with then Vice Chairman R. Bruce Cope and Commission members Wade F. Wilmoth, Harvey W. Raynor, III and Anthony L. Young participating.

The Taxpayer appeared at the hearing pro se. Charles C. Meeker, Esquire appeared at the hearing on behalf of Henderson County.

STATEMENT OF THE CASE

The property subject to this appeal is located off Little Hungry Road in the Blue Ridge Township, Henderson County, North Carolina and is identified on the Henderson County Tax records as Parcel # 02-01442. The property is more particularly described as a residence and shell metal building situated on 85.71 acres. In tax year 2005, the Henderson County Tax Assessor (Tax Assessor) notified the Taxpayer that Henderson County was seeking recovery of property taxes for tax years 1995 through 2003 in the principal amount of \$5,891.30, plus interest in the amount of \$2,642.31 for a total tax bill of \$8,533.61. The Taxpayer paid the total tax bill and appealed the Tax Assessor's final determination regarding the "Notice of Immaterial Irregularity" to the County Board. After receiving the County Board's adverse decision, the Taxpayer filed a Notice of Appeal and an Application for Hearing with the Commission, and requested a hearing pursuant to N.C. Gen. Stat. § 105-290.

...reappraisal for 1999, the Taxpayer questions Henderson County's action to recover the principal amount of the tax, plus interest, in the total amount of \$8,533.61, for tax years 1995 through 2003. The Tax Assessor, relying upon N.C. Gen. Stat. §§ 105-394(3) and (11), contends that Henderson County may pursue recovery of taxes, plus interest, for the subject property for tax years 1995 through 2003 because the action constitutes an immaterial irregularity. Notwithstanding the stipulation by the parties that the value of the subject property was \$279,300, as of January 1, 2004, the Taxpayer was never given an opportunity to be heard on the valuations of the subject residence for the tax years at issue.

ISSUE

In the Order on Final Pre-Hearing Conference, the parties did not agree on the issue to be presented to the Commission. The issue as presented by the County was:

Whether the Tax Assessor reasonably relied upon N. C. Gen. Stat. § §105-394(3) and (11) to recover property taxes on the subject residence for tax years 1995 through 2003.

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

1. The Taxpayer became sole owner of the subject property when her husband, Mr. John W. Morgan, died on November 30, 2001.
2. The residence, which is the subject of this appeal, is located off Little Hungry Road in the Blue Ridge Township, Henderson County, North Carolina and is identified on the Henderson County Tax records as Parcel # 02-01442. The Taxpayer also owns 85.71 acres that has received present-use value classification since 1991.
3. As of January 1, 1993, Taxpayer's husband listed the subject residence with the Henderson County Tax Office as eighty percent (80%) complete. The Taxpayer's husband also obtained all necessary permits for the construction of the subject residence. The Henderson County Tax Office received the 1993 listing that the Taxpayer's husband prepared and signed on January 7, 1993. Attached to the listing form was a letter from Mr. John W. Morgan stating: "If you need to contact me regarding this, you may call me collect in Charlotte at 704-536-3521 or in Hendersonville at 685-7594." (See County Exhibit 3).
4. From the time of Taxpayer's original listing, the Tax Assessor conducted at least two countywide reappraisals that were effective as of January 1, 1999 and January 1, 2003 and an appraiser with the Henderson County Tax Office visited the subject property during the time of Henderson County's reappraisals.

5. Initially, the Tax Assessor notified the Taxpayer of a change in the assessed value of the subject property by letter dated January 7, 2004. This notice contained a statement that: "The Real Property Assessment for the year 2004 on the above referenced property will be **\$327,500.**" The notice further stated that "This appraisal is based upon the Schedule of Values adopted for the 2003 Reappraisal and will stay the same until 2007 unless changes are made to the property."

6. The above referenced letter served as the notice of change in assessed value with regard to the subject residence (\$279,300) as provided in N.C. Gen. Stat. § 105-287, and was effective as of January 1, 2004. Henderson County's notice of change in value was based upon the schedule of values, standards, and rules adopted for the most current reappraisal and the Taxpayer did not contest Henderson County's valuation of the property as of January 1, 2003.

7. A second notice, dated December 1, 2004, was sent to the Taxpayer from the Tax Assessor stating that Henderson County was seeking recovery of property taxes for tax years 1995 through 2003 in the principal amount of \$5,891.30, plus interest in the amount of \$2,642.31 for a total tax bill of \$8,533.61. In this notice, Mr. William Lee King, Present Use Appraiser, with the Henderson County Tax Office, stated that "The recapture of the tax that would have been due the County had the house been properly listed, appraised, and assessed as it should have been for the tax years 1995 through 2003 is made under the authority of *immaterial irregularities* as set forth in North Carolina General Statute (N.C.G.S.) 105-394..."

8. The Tax Assessor then prepared a third notice, dated March 7, 2005, that was also sent to the Taxpayer, and was referred to as the final letter of determination regarding the "Notice of Immaterial Irregularity." (See letter from Henderson County dated December 1, 2004). This notice also stated that the Taxpayer owed property taxes for tax years 1995 through 2003 in the principal amount of \$5,891.30, plus interest in the amount of \$2,642.31 for a total tax bill of \$8,533.61 and the notice further stated that: "Interest accrues on a tax bills (sic) generated as a result of an immaterial irregularity at the rate of $\frac{3}{4}$ of 1% (three quarters of one percent) per month. The amount due stated above **will change** if paid after 31 March 2005 when additional interest will accrue."

9. After filing an appeal with the County Board and receiving an adverse decision, the Taxpayer filed an appeal with the Commission and requested a hearing pursuant to N.C. Gen. Stat. § 105-290.

10. The evidence presented at the hearing showed that the Tax Assessor should have ascertained values for the subject residence prior to the notice dated December 1, 2004 to recover backs taxes associated with the subject residence.

11. The Tax Assessor issued a notice of change in value by letter dated January 7, 2004 regarding the value of the subject residence for tax year 2004. This notice of change in value was proper and the Taxpayer did not question the tax valuation of the subject property in the amount of \$279,300. (See Application for Hearing, dated July 8, 2005).

BASED UPON THE FOREGOING FINDINGS OF FACT, THE NORTH CAROLINA PROPERTY TAX COMMISSION CONCLUDES AS A MATTER OF LAW:

1. All property, real and personal, within the jurisdiction of the State shall be subject to taxation unless it is excluded or exempted N.C. Gen. Stat. § 105-274 (2005). All property subject to taxation shall be listed annually, as a general rule during the month of January. N.C. Gen. Stat. § 105- 285 (a) and 105-307 (2005).

2. The Tax Assessor, in certain situations and at certain times relevant here, may increase or decrease the appraised value of real property, but such increase or decrease “is effective as of January 1 of the year in which it is made and is not retroactive.” N.C. Gen. Stat. § 105-287(c) (2005). Thus, the Commission concludes that the Tax Assessor properly issued a notice of change in value of the subject property, effective as of January 1, 2004. A change in the appraised value of real property made pursuant to N.C. Gen. Stat. § 105-287 is effective as of January 1 of the year that it is made and is not retroactive.

3. The Commission concludes that the Tax Assessor improperly issued the second and third notices dated December 1, 2004 and March 7, 2005 respectively, because the failure of the Tax Assessor to include upon Taxpayer’s 1995 through 2003 tax bills valuation assessments for the subject residence was not an immaterial irregularity, and the Tax Assessor’s reliance upon N. C. Gen. Stat. § §105-394(3) and (11) to issue “Notices of Immaterial Irregularity” were not proper under the facts and circumstances of this appeal. In reaching this conclusion, the Commission does not ignore prior case law, but distinguishes that case law as provided herein. (See In re Dickey, 110 N.C. App. 823, 431 S.E.2d 203 (1993)). In the matter of In re Dickey, the North Carolina Court of Appeals reversed the Property Tax Commission’s decision relieving the Dickeys from their 1989 tax obligation. In reversing the Commission, the Court determined that an administrative error by the Tax Assessor did not invalidate a tax owed on the property. In that case, an employee of the Tax Assessor inadvertently destroyed the portion of the Dickeys’ 1989 tax listing form containing the listing for the subject property. The Court deemed the employee’s action an immaterial irregularity since the Assessor did not know of the existence of the property without the listing form.

4. Unlike the facts in the matter of In re Dickey, there is substantial evidence in this record to show that the Tax Assessor could have obtained valuations for the subject residence prior to issuing the Notices of Immaterial Irregularity for tax years 1995 through 2003 when:

(1) the Taxpayer's husband listed the subject residence with the Henderson County Tax Office, effective January 1, 1993, as eighty percent (80%) complete and instructed the Tax Assessor to contact him if there were questions regarding his listing; (2) The Taxpayer's husband obtained all necessary permits during the construction of the subject residence; (3) After the subject property's original listing in January 1, 1993, the Tax Assessor conducted at least two countywide reappraisals, effective as of January 1, 1999 and January 1, 2003; and (4) An appraiser with the Henderson County Tax Office visited the site of the subject property during the time of the county's reappraisals. Thus, the Tax Assessor had ample information to know that a house was situated on the property.

5. Unlike the facts in the matter of In re Dickey, there is substantial evidence in this record to show that the Legislature did not intend for the action of the Tax Assessor, under the facts and circumstances at issue, to be an immaterial irregularity since his action in this matter does not constitute a clerical or administrative error. To rule otherwise would subject taxpayers in our State, under the facts at issue, to substantial tax liens when a Tax Assessor, relying upon N. C. Gen. Stat. § 105-394 seeks not only property taxes, but also a substantial amount of interest.

6. As matter of law, the Taxpayer questions the Tax Assessor's reliance upon the General Statutes, in particular, N. C. Gen. Stat. § §105-394(3) and (11) to recover property taxes, plus interest, on the subject residence for tax years 1995 through 2003.

7. This Commission rules that, although the appellate courts have held that N. C. Gen. Stat. 105-394 applies to actions by counties to collect taxes or to levy any tax when actions by the Tax Assessor constitute immaterial irregularities, this is an action brought by a Taxpayer who challenges, contests, and questions the right of a Tax Assessor to rely upon N. C. Gen. Stat. § §105-394(3) and (11) to recover property taxes, **plus interest**, for the period at issue. In particular, the Taxpayer argued to the Commission that the Tax Assessor is penalizing her because of the malfeasance that has occurred in Henderson County Tax Office when she has always timely paid her taxes and she promptly paid the taxes and interest at issue since she was instructed that interest would continue to accrue. Based upon the Taxpayer's argument, and the facts at issue, the Commission concludes that the Tax Assessor's action is not an immaterial irregularity, as intended by the Legislature under N. C. Gen. Stat. §105-394, and such action violates the public policy of this State because a Tax Assessor should not be permitted to benefit from his own omissions or mistakes.

BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE COMMISSION THEREFORE, ORDERS that the decision of the Henderson County Board of Equalization and Review is Reversed.

NORTH CAROLINA PROPERTY TAX COMMISSION



Terry L. Wheeler

Terry L. Wheeler, Chairman

Vice Chairman Young and Commissioners Cope, Wilmoth and Raynor concur.

Entered: July 17, 2006

ATTEST:

Janet L. Shires

Janet L. Shires, Secretary