

STATE OF NORTH CAROLINA
COUNTY OF WAKE

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

IN THE MATTER OF THE APPEAL
OF:

ELAINE TERRELL

16 PTC 0768

and

JENNIFER LEE TERRELL,

16 PTC 0769

Appellants

From the decision of the Orange County
Board of Equalization and Review
concerning the disqualification of certain
real property from the Present-Use Value
program for tax year 2016

FINAL DECISION

This matter came on for hearing 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 Thursday, July 27, 2017, pursuant to the Appellants’ appeals from the decisions of the Orange County Board of Equalization and Review (“Board”).

Chairman Robert C. Hunter presided over the hearing, with Vice Chairman Terry L. Wheeler and Commission Members Alexander A. Guess and Charles W. Penny participating.

Anne Marie Tosco, Associate Attorney for Orange County, appeared on behalf of Orange County (“County”). Each Appellant appeared *pro se*.

For the convenience of the Appellants and because the above-captioned appeals involve essentially identical facts and issues, the Commission heard both appeals jointly. Where appropriate herein, individual Appellants are referred to by name.

STATEMENT OF THE CASE

Prior to July 8, 2015, Appellant Elaine Terrell owned two parcels of land, each situated in Orange County, and each containing land enrolled in the forestry Present-Use Value program. One of the parcels contained 20.34 acres of forested land, and the other contained 9.76 acres of forested land.

On July 8, 2015, Elaine Terrell gifted by deed a total of 11.56 acres of land to her daughter, Appellant Jennifer Lee Terrell. The 11.56-acre tract contained 10.56 acres of forested land. After the gift, Elaine Terrell owned 19.54 total acres of forested land, and Jennifer Lee Terrell owned 10.56 total acres of forested land.

On or about August 10, 2016, the Appellants each received notification from the County assessor that, following the deed transfer, neither Appellant owned the minimum of 20 acres of forested land required

to participate in the forestry Present-Use Value program. As such, the County removed the properties from the Present-Use Value program and issued bills for the deferred taxes due under the program's disqualification provisions.

The Appellants appealed to the Orange County Board of Equalization and Review ("Board") regarding the County assessor's decision to remove the property from the Present-Use Value program. On October 13, 2016, the Board affirmed the County assessor's decision.

ANALYSIS AND ISSUES

The Present-Use Value program is governed by N.C. Gen. State §105-277.2 through §105-277.7. In the program, property must meet certain statutory requirements in order to qualify for participation as agricultural land, horticultural land, or forestland. Among other requirements, each program provides specific size requirements for qualification.

In these appeals, the issues presented for the Commission are:

1. Whether the property owned by Elaine Terrell qualified for participation in the forestry Present-Use Value program as of the date the County assessor removed the property from the program; and
2. Whether the property owned by Jennifer Lee Terrell qualified for participation in the forestry Present-Use Value program as of the date the County assessor removed the property from the program.

FROM THE EVIDENCE PRESENTED AND ALL DOCUMENTS OF RECORD, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

1. Prior to July 8, 2015, Appellant Elaine Terrell owned two parcels of land containing a combined total of 30.1 acres of forested land, all of which was enrolled in the forestry Present-Use Value program.
2. On July 8, 2015, Elaine Terrell gifted by deed a tract of land to her daughter, Appellant Jennifer Lee Terrell, which tract contained 10.56 acres of forested land.
3. After the gift, Elaine Terrell owned 19.54 total acres of forested land, and Jennifer Lee Terrell owned 10.56 total acres of forested land.
4. On or about August 10, 2016, the Appellants each received notification from the County assessor that, following the July 8, 2015 deed transfer, neither Appellant owned the minimum of 20 acres of forested land required to participate in the forestry Present-Use Value program.
5. The Appellants appealed to the Orange County Board of Equalization and Review ("Board") regarding the County assessor's decision to remove the property from the Present-Use Value program.
6. On October 13, 2016, the Board affirmed the County assessor's decision.
7. On November 30, 2016, the Board mailed notice of its decision to the Appellants.
8. On December 21, 2016, the Appellants each filed a Notice of Appeal and Application.
9. At the hearing, Elaine Terrell testified that all of the property in question had been in her family for some 200 years. She further testified that she had not known in advance that the gift to her daughter would result in disqualification; that she had not been advised concerning potential disqualification; and that the cumulative deferred tax bills were a hardship to her family. She further testified that she transferred the balance of the property to her daughter as soon as she learned of the disqualification.

10. At the hearing, the County indicated that it was willing to assist the Appellants with their situation, but could not find a way to do so that could be supported statutorily.
11. At the hearing, the County moved to dismiss the Appellants' appeals at the close of the Appellants' case because, at the relevant time, the parcels did not meet the statutory requirements for participation in the Present-Use Value program; because there was no statutory provision that could provide the Appellants relief; and because the Appellants did not present evidence that the property did, in fact, qualify at the time it was disqualified from participating in the program.

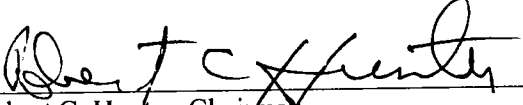
BASED UPON THE FOREGOING FINDINGS OF FACT, THE PROPERTY TAX COMMISSION CONCLUDES AS A MATTER OF LAW:

1. N.C. Gen. Stat. §105-277.3(a)(3) provides in pertinent part that, in order to qualify for participation in the Present-Use value program, forestland must be "[i]ndividually owned forestland consisting of one or more tracts, one of which consists of **at least 20 acres** that are in actual production and are not included in a farm unit." [emphasis added]
2. At the date relevant to the disqualification, Elaine Terrell owned 19.54 total acres of forested land.
3. At the date relevant to the disqualification, Jennifer Lee Terrell owned 10.56 total acres of forested land.
4. Neither Appellant owned at least 20 acres of forestland, as required by statute, at the time of the disqualification.
5. There appears to be no statutory method by which the Commission could offer relief to the Appellants.
6. The County properly moved to dismiss Appellant's appeal when there was no evidence, and no dispute, that the forestland property owned by each Appellant was less than the 20 acres required by statute.

WHEREFORE, the Commission orders and decrees that the County's motion to dismiss is granted; and that this appeal is hereby dismissed.

This the 27th day of July, 2017.

NORTH CAROLINA PROPERTY TAX COMMISSION




Robert C. Hunter, Chairman

Vice Chairman Wheeler and Commission Members
Guess and Penny concur.

Date Entered: 9-6-17

ATTEST:



Stephen W. Pelfrey, Commission Secretary