



NCDOR

**NORTH
CAROLINA
DEPARTMENT
OF REVENUE**

Appeals Update

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2017 Advanced Seminars

1. About the PTC
2. What's new
3. What's not new—three examples
4. What could be different or improved?



5 Commissioners:

- 3 chosen by Governor
- 1 chosen by Speaker of NC House
- 1 chosen by President Pro Tempore of the Senate



- Serve for four-year terms, which end on June 30
- Terms are staggered, with 2 or 3 appointments expiring in odd years
- Governor chooses the Chair
- Members choose the Vice Chair



Current roster:

- Robert C. Hunter (Chair); appointed by Gov. Cooper; term ends 6/1/2021
- Terry L Wheeler (Vice Chair); Speaker Tim Moore; 2019
- William W. Peaslee; Senate PPT Phil Berger; 2019
- Alexander A. Guess; Gov. McCrory; 2019
- Charles W. Penny; Gov. Cooper; 2021



Governing Laws:

- Machinery Act, especially:
 - GS 105-288 (General PTC provisions);
 - 105-290 (PTC appeals process);
 - 105-291 (Specific Commission powers);
 - Article 24—starts with 105-345 (appeals from PTC decisions)
- Other parts of the General Statutes, like:
 - GS Chapter 8C (Rules of Evidence)
- NC Administrative Code Title 17, Chap. 11



- Mostly, people have changed:
 - New Commissioners
 - New Chair
 - New Director
 - New Secretary



- New people bring new ways of looking at things:
 - Should any procedures change?
 - Should roles be more clearly defined?
 - Should rules be examined (as in “by the book” vs traditional practice)?
 - Should forms be updated or otherwise revised?



- Some of the potential for new ideas and approaches comes from regular issues that we see.
- Some examples, and there are certainly more, are discussed in the following slides



- In 2014, 105-290 was amended to allow certain non-attorneys to represent business entities in appeals before the PTC
- In 2016, the NCAC was amended to provide “Notice of non-attorney representation pursuant to G.S. 105-290(d2) shall be filed with the Commission within 30 days of filing a Notice of Appeal or the appeal shall be subject to dismissal.”



(The AV-63 is the required form of notice)

The new rules created a few issues, such as:

- a) In what situations is the AV-63 required?
- b) AV-14 vs AV-63 deadlines
- c) What happens when the AV-63 is not filed?



DOR's interpretation:

- a) The AV-63 is required whenever an appellant business entity wants to use a non-attorney representative. It is not required when the appellant has an attorney licensed in NC. **The type of non-attorney is specified in the statute, and does not apply to tax representatives.**



DOR's interpretation:

- b) The AV-63 is due within 30 days of filing a **Notice of Appeal**. The AV-14 is due within 30 days of **the date of DOR's acknowledgement letter**. This often creates two different deadlines for the two forms.



DOR's interpretation:

- c) Although failure to file the AV-63 could make the appeal subject to dismissal under the Administrative Code [17 NCAC 11 .0216(a)], this is probably not the appropriate outcome. As a matter of practice, the appellant would lose the opportunity to designate a non-attorney representative, and would instead have to retain an attorney.



Untimeliness can be an issue at the PTC in multiple ways:

- a) Untimely appeals to the BOER
- b) Untimely appeals from the BOER to the PTC
- c) Untimely filing of the AV-14



Untimely appeals to the BOER

- How are these handled locally—decision from the BOER or letter from the Clerk to the Board?
- Better to have an actual decision from the Board. The decision could result from a hearing on the timeliness, or it could be handled administratively if the Board so authorizes the Clerk.



Untimely appeals from the BOER to the PTC

- Thirty days is thirty days, unless a weekend or holiday (or sometimes, an extension) is involved.
- The county can file a motion to dismiss if the appeal is received by the PTC after the deadline.
- The county's motion should include documentation supporting the untimeliness.
- It's preferred that the county appear for the MTD hearing.



Untimely filing of the AV-14

- An appellant has to do two things in order to perfect their appeal:
 1. File a timely Notice of Appeal; and
 2. File a timely Application for Hearing
- The AV-14 does both, so this can be a one- or two-step process



Untimely filing of the AV-14

- When the two-step process is involved, the PTC will normally put the matter on the calendar for a hearing to consider dismissing the appeal for failure to file the AV-14 on time.
- The PTC itself would make its own motion to dismiss, if the record shows that the AV-14 was not filed timely.
- The parties are given notice of the hearing, and are told that appearance is optional.



County Motions to Dismiss

- When the county files a MTD for untimeliness or other procedural defect (such as failure to enter into the prehearing order):
 1. The county should provide supporting documentation; and
 2. The county is advised to appear in order to be heard on the motion.



- Some counties actively seek to schedule prehearing conferences with the appellant.
- Others take the position that it's the appellant's responsibility to set these up.
- The PTC's view appears to prefer that counties initiate the prehearing conference, especially with *pro se* appellants.



3. Compromise in Discovery

- **At the end** of the discovery process, GS 105-312(k) permits the local Board (commissioners or E&R) to compromise part or all of a discovery bill.
- In my opinion*, this is a local, discretionary matter that cannot be appealed to the PTC.
- Therefore, decision letters regarding compromise should probably not include information on further appeal to the PTC.

*Not necessarily the opinion of DOR or the PTC



3. Compromise in Discovery

- **However**, remember that discovery is a two-part (or three-part) process:
 - a) First, the issue of listing has to be resolved;
 - b) Then, the value of any discovered property has to be settled; and
 - c) Finally, a bill is issued for the discovery.
- Since listing and valuation are processes that the PTC can review, it is my opinion that these steps can be appealed to the PTC for review.



- Following the procedural rules (including the intent of the rules) is becoming more of an issue.
- Counties need to provide supporting documentation in their Motions and cases.
- Whether a party shows up at a PTC hearing is up to them to decide, but there is a risk involved with not appearing.



Discussion—What are some areas that you believe the PTC should improve upon, or that the PTC should clarify?



Questions?



Thank you!

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