

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD OF
EQUALIZATION AND REVIEW
17 PTC 0365

From Mecklenburg County

IN THE MATTER OF:)
)
The Appeal of:)
)
PENN STATION EAST COAST)
SUBS, LLC)
_____)

ORDER OF DISMISSAL

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 Tuesday, February 20, 2018, pursuant to the Motion to Dismiss the Appellant’s appeal filed by Mecklenburg County (“County”).

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

County Attorney Ronald L. Gibson appeared at the hearing on behalf of the County. There was no appearance for the Appellant.

FROM THE MOTION FILED IN THIS MATTER AND ALL DOCUMENTS OF RECORD, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

1. By letter dated May 26, 2017, the County noticed Penn Station East Coast Subs, LLC (“Appellant”) that is was discovering business personal property that had not been listed as required by NCGS 105-304 et. seq.
2. Pursuant to NCGS 105-312(h), penalties were computed and imposed on the taxes that were due. The penalties imposed with regard to abstract 7956799 were \$936.52. The penalties imposed with regard to abstract 8085119 were \$952.54.
3. The Appellant did not dispute the assessment of the discovered business personal property, but did request that the penalties be waived.
4. NCGS 105-312(k) provides that the Board of Equalization and Review has the power to compromise discoveries, including waiver of penalties.
5. The Mecklenburg Board of Equalization and Review (“Board”) heard the Appellant’s appeal and request for waiver of penalties at a hearing held on August 24, 2017. The

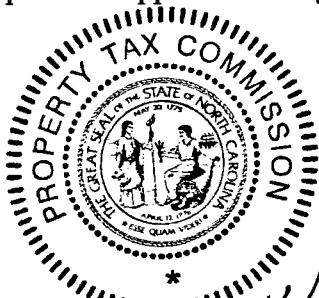
Board determined that it would not waive the penalties and notified the Appellant of its decision by Notices of Decision dated September 15, 2017.

6. The Appellant filed a Notice of Appeal and Application for Hearing (form AV-14) with the Commission and requested the Commission to waive the penalties.

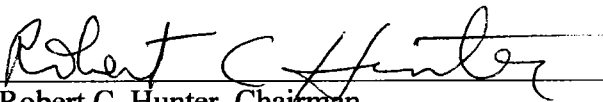
BASED UPON THE FOREGOING FINDINGS OF FACT, THE PROPERTY TAX COMMISSION CONCLUDES AS A MATTER OF LAW:

1. The Power to Compromise as set forth in NCGS 105-312(k) is a power delegated by the General Assembly to the boards of county commission and/or to the local boards of equalization and review. The Power to Compromise is a discretionary power and is not subject to review by the Commission.
2. NCGS 105-290 provides that the Commission shall have authority to hear appeals from a local Board regarding the "listing, appraisal or assessment of property." The statute does not provide authority to the Commission to compromise the issuance of penalties.
3. In addition, NCGS 105-312(k) provides that the Power to Compromise does not arise until after the tax receipt, which includes taxes and penalties, has been computed and prepared and "delivered and charged to the tax collector..." Accordingly, the Power to Compromise discoveries and associated penalties is a billing or collection issue, which is not within the jurisdiction of the Commission.
4. The Commission does not have jurisdiction over the Appellant's request for waiver of penalties.
5. The County properly moved to dismiss the Appellant's appeal to the Commission because the Commission does not have jurisdiction over the issue.


WHEREFORE, the Commission grants the County's Motion to Dismiss, and the Appellant's appeal is hereby dismissed.



NORTH CAROLINA PROPERTY TAX COMMISSION


Robert C. Hunter, Chairman

Date Entered: 4/27/18 * Commission Members Wheeler, Peaslee, Guess and Penny concur.

ATTEST:

Stephen W. Pelfrey, Commission Secretary