

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:

U.S. FOOD, INC.,
Appellant

18 PTC 0398

From the decision of the Mecklenburg
County Board of Equalization and Review

ORDER

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 Monday, December 9, 2019, pursuant to the Motion to Dismiss the Appellant’s appeal filed by Mecklenburg County (“County”).

Chairman Robert C. Hunter presided over the hearing, with Vice Chairman Terry L. Wheeler and Commission Members William W. Peaslee and June W. Michaux participating.

Attorney Robert S. Adden, Jr., appeared on behalf of Mecklenburg County (“County”). Attorney John A. Cocklereece appeared on behalf of the Appellant.

STATEMENT OF THE CASE

During tax year 2018, an appeal to the Mecklenburg County Board of Equalization and Review (“Board”) was filed by or on behalf of the Appellant. On October 25, 2018, the board made its determination of the appeal, and mailed notice of its decision to the Appellant or its agent on or about November 20, 2018. On December 27, 2018, a Notice of Appeal and Application for Hearing, Form AV-14 (hereinafter “notice of appeal”) was received in the office of the Commission.

On January 2, 2019 the Commission mailed a letter to the Appellant acknowledging receipt of the Appellant’s notice of appeal. The acknowledgement letter advised that the appeal was considered filed on December 27, 2018 and noted further that, it appearing that the notice of decision from the Board was mailed on November 20, 2018, the appeal to the Commission would have been due on December 20, 2018.

ANALYSIS AND ISSUES

N. C. Gen. Stat. §105-290(e) provides in pertinent part that “[a] notice of appeal from...a board of equalization an review shall be filed with the Property Tax Commission within 30 days after the date the board mailed a notice of its decision to the property owner.”

N. C. Gen. Stat. §105-290(g) provides further that “[a] notice of appeal submitted to the Property Tax Commission by United States mail is considered to be filed on the date shown on the postmark stamped by the United States Postal Service. If an appeal submitted by United States mail is not postmarked or the postmark does not show the date of mailing, the appeal is considered to be filed on the date it is received in the office of the Commission. A property owner who files an appeal with the Commission has the burden of proving that the appeal is timely.”

The essential question before the Commission is whether the notice of appeal filed by the Appellant was timely filed pursuant to N. C. Gen. Stat. §105-290(e) and (g).

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

1. It is undisputed that the notice of appeal filed in this matter was submitted by United States mail; however, the envelope containing the application for hearing was not postmarked by the United States Postal Service, and instead bore a Pitney Bowes postage meter label.
2. There appears to be no significant dispute between the parties as to the mailing date of the initial notice from the Board. That date being November 20, 2018, N. C. Gen. Stat. §105-290(e) requires the Appellant to file its appeal to the Commission by no later than December 20, 2018.
3. The notice of appeal filed by the Appellant was received in the office of the Commission on December 27, 2018, and the envelope containing the notice of appeal bore no postmark from the United States Postal Service. The envelope containing the Appellant's notice of appeal did, however, bear a Certified Mail sticker, which included a 20-digit tracking number associated with the certified mailing.
4. At the hearing, the Appellant provided an exhibit, located behind Tab 3 of its exhibits, showing a copy of a Certified Mail receipt which bore the same 20-digit Certified Mail tracking number as that affixed to the envelope, as well as a postmark apparently affixed by the United States Postal Service and dated December 20, 2018.
5. The County, relying upon the decision of the North Carolina Court of Appeals in the Bass Income Fund case, notes that the envelope containing the notice of appeal filed by the Appellant in this matter was stamped with a postage meter label, but not with a postmark affixed by the U. S. Postal Service.

6. The court in the Bass Income Fund case held that the statute in question, N. C. Gen. Stat. §105-290(g), is to be strictly construed and that if the filing was stamped by a metered stamp rather than a stamp postmarked by the United States Postal Service, it would be considered filed when actually received. The court stated, “[t]he statute does not specifically describe the type of ‘postmark’ cited in the final category. However, considered in context with the remainder of the subsection, ‘postmark’ in the third sentence can only be read to refer to the term as used in the second sentence, that is, ‘postmark stamped by the United States Postal Service.’ We therefore hold the statute to establish that a notice of appeal submitted to the Commission via the Postal Service, but which does not bear a postmark stamped by the service, is considered filed only upon receipt by the Commission [emphasis in original].”
7. The Bass Court recognized further that the “[t]axpayers argued that such an interpretation of the statute is hypertechnical, endorses the bureaucratic rigidity they assert is present in the case sub judice, and penalizes those entities or individuals which utilize postal meters, intended as office efficiency and automation systems. While these points may be well taken, legislation by the General Assembly is presumed to have a purpose [citation omitted], and it is our duty to apply legislation as written, whatever our opinion may be as to its efficacy or as to the hardship it may impose in individual cases [citation omitted].” There are multiple cases in which the Court of Appeals has maintained the interpretation that the 30-day time limit is to be strictly construed .
8. The Appellant contends, however, that the Certified Mail receipt, previously attached to the original envelope, and itself stamped by the United States Postal Service with a postmark, constitutes the affixation of a postmark by the United States Postal Service to the appeal filed with the Commission, thereby making the actual filing date of the notice of appeal December 20, 2018, rather than December 27, 2018.
9. We note that a Certified Mail receipt is generally and initially attached to a Certified Mail sticker or label. Each part bears the same tracking number. The sticker is affixed to the envelope for which the Certified Mail service is requested; the receipt is typically postmarked by the U.S. Postal Service when the envelope is presented at a U.S. Post Office for mailing, and the receipt is detached and given to the sender as proof of certified mailing. We find no evidence to indicate that the circumstances in this situation were any different, and therefore find that the process described applied here.

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

1. It is apparent in this situation that the Certified Mail Receipt and accompanying Certified Mail label were once both affixed to the envelope, with the receipt portion being postmarked by stamp of the United States Postal Service once it was accepted for mailing, after which the receipt portion was removed. We conclude, therefore, that the postmark affixed to the Certified Mail receipt is the equivalent of a postmark affixed to the envelope itself, when it is clear that the Certified Mail receipt bears the same tracking number as the Certified Mail sticker affixed to the envelope.
2. Because December 20, 2018 was the postmark date stamped by the United States Postal Service on the Certified Mail receipt, the notice of appeal is considered filed as of that date.

WHEREFORE, the Commission denies the County's Motion to Dismiss, and herewith determines and orders that the Appellant's notice of appeal be considered filed by the Appellant on December 20, 2018.



NORTH CAROLINA PROPERTY TAX COMMISSION

Robert C. Hunter, Chairman

Vice Chairman Wheeler and Commission Members Peaslee and Michaux concur.

ATTEST:

Stephen W. Pelfrey, Commission Secretary

Date Entered: 2.24.2020