

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:

**P&L COLISEUM LP,**  
Appellant,

**20 PTC 0241**

**ORDER OF DISMISSAL**

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

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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 Wednesday, December 9, 2020, pursuant to the Motion to Dismiss the Appellant’s appeal, filed by Mecklenburg County (“County”), for the Appellant’s failure to timely file the notice of appeal.

Chairman Robert C. Hunter presided over the hearing, with Vice Chairman Terry L. Wheeler and Commission Members William W. Peaslee, Alexander A. Guess, and June W. Michaux participating<sup>1</sup>.

Attorney Robert S. Adden, Jr., appeared at the hearing via Webex on behalf of Mecklenburg County. Attorney Lindsey Walker Hillis appeared at the hearing via Webex on behalf of the Appellant.

**FROM ALL DOCUMENTS OF RECORD, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:**

1. The Appellant filed an appeal with the Mecklenburg County Board of Equalization and Review (“Board”).
2. Following the Appellant’s hearing before the Board, the Board mailed notice of its decision to the Appellant by letter dated March 2, 2020. The Appellant contends that the Board did not actually mail notice of its decision to the Appellant, because the Board contracted with a third party vendor to provide mailing services in connection with its notice of decision. While we do not find this argument to be persuasive, we note that there is no dispute that the notice was actually received by the appellant, and we note further that the notice of appeal filed with the Commission is marked as signed by the Appellant’s attorney on March 30, 2020. Accordingly, we find that the Board’s notice of decision was mailed by letter dated March 2, 2020.
3. April 1, 2020 is thirty days after March 2, 2020.

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<sup>1</sup> Commissioners Peaslee and Guess participated in the hearing via Webex.

4. On April 6, 2020, the Property Tax Commission received a notice of appeal filed by the Appellant, appealing the Board's decision.
5. The Appellant's notice of appeal was submitted to the Property Tax Commission by United States mail, but the envelope containing the notice was not postmarked.

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

1. N.C. Gen. Stat. §105-290(e) provides in pertinent part that "A notice of appeal...from a board of equalization and 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."
2. Because the Board mailed its notice of decision to the property owner by letter dated March 2, 2020, N.C. Gen. Stat. §105-290(e) requires a notice of appeal from said decision to have been filed with the Commission by April 1, 2020.
3. The Appellant contends that the Commission is a trial court, and that, by various orders of the North Carolina Supreme Court and of the Chief Justice of the North Carolina Supreme Court, the filing deadline established by N.C. Gen. Stat. §105-290(e) was extended. We disagree. While orders issuing from the Supreme Court and from the Chief Justice clearly apply to the various divisions of the General Court of Justice, the Commission is an administrative agency, and not a part of the State's court system [See, e.g., *In re Twin County Motorsports, Inc.*, 367 N.C. 613, 766 S.E.2d 832 (2014)]. Therefore, such orders are inapplicable to the deadlines created by the General Assembly for the administrative process of appeals before the Commission.
4. N.C. Gen. Stat. §105-290(e) further provides in pertinent part that "if an appeal submitted by United States mail is not postmarked or if the postmark does not show the date of mailing, the appeal is considered filed on the date it is received in the office of the Commission."
5. The Appellant contends that the notice of appeal was placed in the custody of the United States Postal Service, for delivery to the Commission, on March 30, 2020, and was therefore timely filed in compliance with N.C. Gen. Stat. §105-290(e). We disagree. Even if we were to assume that the appeal was mailed on March 30, 2020, the statute defines the date of filing as the earlier of the date actually received or the date postmarked by the United States Postal Service. Without a postmark, the date of mailing is irrelevant. See, e.g., *In re Bass Income Fund*, 115 N.C. App. 703, 446 S.E.2d 594 (1992).
6. Because the notice of appeal was submitted by United States mail; was received in the office of the Commission on April 6, 2020; and did not bear a postmark stamped by the United States Postal Service, the appeal is considered filed on April 6, 2020.
7. Because the notice of appeal was filed on April 6, 2020, the Appellant failed to comply with the requirements of N.C. Gen. Stat. §105-290(e).
8. Because the Appellant did not perfect the appeal from the Board within the time required by statute, the Commission has no jurisdiction to hear the Appellant's appeal. See, e.g., *In the*

*matter of: Appeals of: Louisiana Pacific Corporation*, 210 N.C. App. 457, 703 S.E.2d 190 (2010). Accordingly, the Appellant's appeal must be dismissed.


**WHEREFORE**, the Commission grants the County's Motion to Dismiss, and orders and decrees that this appeal must be, and is hereby, dismissed.

NORTH CAROLINA PROPERTY TAX COMMISSION



  
Robert C. Hunter, Chairman

Vice Chairman Wheeler and Commission Members  
Peaslee, Guess, and Michaux concur.

ATTEST:   
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Stephen W. Pelfrey, Commission Secretary

Date Entered: 1-28-2021