



Tax Administration

in North Carolina Course



North Carolina Department of Revenue



Appeals

Property Tax Section
Local Government Division

Overview

- Overall, the appeals process is formed by Constitutional principles, by statute, and by administrative considerations
- The opportunity to appeal for a particular tax year generally begins and ends with the calendar year
- Each level of appeal becomes more formal than the last

Due Process and Equal Protection

- The (NC and federal) Constitutional concepts of Due Process and Equal Protection apply across all levels of appeal
- A full discussion of these concepts is beyond the scope of this course, but briefly:
 - **Due Process:** all appellants are entitled to notice and the opportunity to be heard
 - **Equal Protection:** all appellants are entitled to be treated the same

Important Note on Value Changes

- Any changes to the value of a property must be made within statutory boundaries, and according to the provisions of the county's duly adopted Schedule of Values
- This is true regardless of the level at which a property value is changed (informal, Board of E&R, Property Tax Commission, etc.)

First Level of Appeal: Before the Assessor

- The first “official” level of appeal is the county Board of Equalization and Review
- Until the Board of E&R meets, however, “the assessor may, for good cause, change the appraisal of any property subject to assessment for the current year...
- ...Written notice of a change in assessment shall be given to the taxpayer at his last known address prior to the first meeting of the board of equalization and review.” [105-296(i)]

First Level of Appeal: Before the Assessor

- This power gives the assessor the opportunity to deal with appeals on an informal basis, and to correct known issues with the values of particular properties
- It can also be a useful public relations tool by helping improve the perception of fairness and positive taxpayer service
- Informal appeals need to be wrapped up in time for taxpayers to appeal to the BOER

How Is Your Board of Equalization and Review Set Up?

- Refer to map

Second Level of Appeal: Board of E&R (105-322)

1. Start Date – must meet annually, and must hold its first meeting on or between the first Monday in April and the first Monday in May
2. Finish Date – expected to finish by third Monday after first meeting; in any case, by July 1 (or Dec. 1 in reappraisal years).
3. Notice – at least 10 days before first meeting, must publish notice of date and time, as well as expected adjournment date

Second Level of Appeal: Board of E&R (105-322)

4. Composition – county commissioners are the default BOER, but a special board can be appointed by resolution adopted no later than the first Monday in March. Must send copy of resolution to NCDOR.
5. Oath – members must take oath of office
6. Clerk – assessor serves as clerk, and is responsible for keeping accurate minutes, and for providing the board with complete listing and valuation information on the property

Second Level of Appeal: Board of E&R (105-322)

7. Adjournment – date chosen and published by the BOER, but no later than July 1 for non-reappraisal counties (Dec. 1 for reappraisal counties).
 - The statute provides, however, that the board may continue to meet after adjournment in order to hear timely appeals.
 - NCDOR recommends that the adjournment date be treated as the last possible date for the board to exercise its powers and duties, except for hearing appeals which have already been filed.

Second Level of Appeal: Board of E&R (105-322)

8. Powers & Duties (before adjourning) – the board shall:
 - a. List, appraise, and assess any taxable real or personal property that has been omitted from the tax lists.
 - b. Correct all errors in the names of persons and in the description of properties subject to taxation.
 - c. Increase or reduce the appraised value of any property that, in the board's opinion, has been listed and appraised at a figure that is [not true value].
 - d. Cause to be done whatever else is necessary to make the lists and tax records comply with the provisions of this Subchapter.
 - e. Embody actions taken under the provisions...above, in appropriate orders and have the orders entered in the minutes of the board.
 - f. Give written notice to the taxpayer at the taxpayer's last known address in the event the board...increases the appraisal of any property or lists for taxation any property omitted from the tax lists under the provisions of this subdivision.

Second Level of Appeal: Board of E&R (105-322)

9. Duty to hear appeals – “On request, the board of equalization and review shall hear any taxpayer who **owns or controls** property taxable in the county with respect to the **listing or appraisal** of the taxpayer's property **or the property of others.**”

Second Level of Appeal: Board of E&R (105-322)

“A request for a hearing...shall be made in writing to or by personal appearance before the board **prior to its adjournment**. However, if the taxpayer requests review of a decision made by the board under the provisions of subdivision (g)(1), above, notice of which was mailed fewer than 15 days prior to the board's adjournment, the request for a hearing thereon may be made within 15 days after the notice of the board's decision was mailed.”

Second Level of Appeal: Board of E&R (105-322)

“At [the] hearing,...the board...shall hear any evidence offered by the appellant, the assessor, and other county officials that is pertinent to the decision of the appeal. Upon the request of an appellant, the board shall subpoena witnesses or documents if there is a reasonable basis for believing that the witnesses have or the documents contain information pertinent to the decision of the appeal.”

Second Level of Appeal: Board of E&R (105-322)

“On the basis of its decision after any hearing..., the board shall adopt and have entered in its minutes an order reducing, increasing, or confirming the appraisal appealed or listing or removing from the tax lists the property whose omission or listing has been appealed. The board shall notify the appellant by mail as to the action taken on the taxpayer's appeal not later than 30 days after the board's adjournment.”

Second Level of Appeal: Board of E&R (105-322)

10. Other meetings after adjournment –

“Following adjournment..., the board may continue to meet to carry out the following duties:

- a. To hear and decide all appeals relating to discovered property under G.S. 105-312(d) and (k).
- b. To hear and decide all appeals relating to the appraisal, situs, and taxability of classified motor vehicles under G.S. 105-330.2(b).
- c. To hear and decide all appeals relating to audits conducted under G.S. 105-296(j) and relating to audits conducted under G.S. 105-296(j) and (l) of property classified at present-use value and property exempted or excluded from taxation.
- d. To hear and decide all appeals relating to personal property under G.S. 105-317.1(c).

Second Level of Appeal: Board of E&R (105-322)

Final notes:

- It's important for the county to have fully reviewed the property and investigated the appeal prior to hearing by the Board
- Boards should develop a policy as to how formal the appeals will be: will Powers of Attorney be permitted; who can represent business entities, etc.
- Boards should consult with their county attorney to determine how the state's "sunshine" laws apply to the conduct of the Board of E&R

About the Property Tax Commission

- The PTC has five-members, who are each appointed to a four-year term. The terms are staggered.
- The Governor appoints three members, and the General Assembly appoints the other two (the Speaker and President Pro Tem. each make an appointment).
- The PTC hears appeals from county decisions, from Public Service Company assessments, and appeals from the adoption of a county's Schedule of Values

Third Level of Appeal: PTC

1. A taxpayer has 30 days, from the date the Board of E&R decision notice is mailed, to send notice of appeal to the PTC. SOV appeals must be made during the 30 days following adoption. [G.S. 105-290]
2. The taxpayer must file Form AV-14 with the Commission in order to request a hearing. [Commission Rule 17 NCAC 11 .0212(b)]
3. The taxpayer can complete both steps at one time by using Form AV-14, “**Notice of Appeal and Application for Hearing.**”

Filing an Appeal to the PTC

- **Refer to: Form AV-14, Notice of Appeal and Application for Hearing**
- **Refer to: Form AV-63, Power of Attorney of Business Entities and Declaration of Nonattorney Representative**
- Under use of AV-63, some business entities can represent the entity without use of an attorney if certain conditions exist.

Third Level of Appeal: PTC

4. The PTC will hold a hearing on its own motion to dismiss appeals for which an AV-14 has not been timely filed
5. If a taxpayer fails to timely file a notice of appeal, the county can file a motion to dismiss the appeal
6. Before the hearing is scheduled, the parties have the opportunity to conduct discovery in preparation for the hearing

Third Level of Appeal: PTC

7. The appeal is also assigned to a property valuation specialist, who will review the file to determine the issues to be heard by the Commission
8. Approximately 50 days prior to the anticipated hearing session dates, the PTC mails notices both to the county and to the taxpayer

Third Level of Appeal: PTC

- Approximately 20 days prior to the scheduled hearing day, the PTC again mails notices both to the county and to the taxpayer
- At least 10 days in advance of the hearing, the taxpayer and county are expected to meet in order to exchange evidence and settle on the issues to be heard by the PTC
- The parties are also required to enter into a prehearing conference order at least 10 days in advance of the hearing

Third Level of Appeal: PTC

- Both parties are also required to file six copies of their evidence with the PTC at least 10 days in advance of the hearing date
- If the taxpayer fails to exchange evidence or to enter into the prehearing order, the county can file a motion to dismiss the appeal
- However, the PTC typically expects the county to file its evidence, as well as its half of the prehearing order, even if the taxpayer doesn't

Third Level of Appeal: PTC

- At the hearing, corporate taxpayers are required to be represented by an attorney authorized to practice in North Carolina; however there is a **exception** for some business entities. (Ref. Form AV-63)
- The hearing is conducted according to the NC Rules of Evidence (but not the Rules of Civil Procedure)
- As with all levels of appeal, the presumption is that the county's value is correct, and it's the taxpayer's responsibility to produce evidence to the contrary

The AMP Case

- If the county's value is presumed to be correct, what does the taxpayer have to do to overcome that presumption?
- This was one of the issues the NC Supreme Court addressed in the *In Re AMP, Inc.* case (1975).
- The Court's decision established the test used in valuation appeals to determine whether the taxpayer has provided enough evidence to demonstrate that the county's value is wrong

The AMP Test (for value appeals)

- A taxpayer may rebut the presumption (that the county value is correct) by producing competent, material and substantial evidence that tends to show:
 - The county assessor used either
 - an arbitrary method of valuation, **or**
 - an illegal method of valuation
 - AND**
 - The assessment substantially exceeded the true value in money of the property.
 - If both can be answered in the affirmative, then the question is—What is the true value as of Jan. 1 of the year at issue?

Third Level of Appeal: PTC

- At the hearing, each side has the opportunity to present an opening statement, followed by the taxpayer's presentation of evidence
- At the close of the taxpayer's presentation, the county may make a motion to dismiss if its position is that the taxpayer has not produced the required evidence
- If the PTC holds that the taxpayer has met its burden, then the county is required to present evidence in defense of its position

Third Level of Appeal: PTC

- After both sides have presented their evidence, the Commission will entertain any further motions, then deliberate on the evidence. Deliberation is conducted privately.
- When deliberation is complete, the Commission will announce its decision to the parties

Third Level of Appeal: PTC

- The written decision of the PTC is typically mailed to the parties 60-90 days after the hearing date
- Either party has 30 days from the date of the Commission's written decision to file notice of appeal with the NC Court of Appeals

Fourth Level of Appeal: NC Court of Appeals

- The Court of Appeals has jurisdiction to hear appeals from the PTC. Based on their review of the record created by the PTC proceedings,
- “The court may affirm or reverse the decision of the Commission, declare the same null and void, or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the appellants have been prejudiced because the Commission's findings, inferences, conclusions or decisions are...

Fourth Level of Appeal: NC Court of Appeals

- 1) In violation of constitutional provisions; or
- 2) In excess of statutory authority or jurisdiction of the Commission; or
- 3) Made upon unlawful proceedings; or
- 4) Affected by other errors of law; or
- 5) Unsupported by competent, material and substantial evidence in view of the entire record as submitted; or
- 6) Arbitrary or capricious.

Fifth Level of Appeal: NC Supreme Court

- Decisions of the Court of Appeals can be made to the NC Supreme Court. Many appeals, however, are at the discretion of the Court
- Appeals to both courts are subject to the specific procedural rules adopted by the courts