

FISCAL AND REGULATORY IMPACT ANALYSIS

Date: 2/25/16	Rule Change Title: Amendment to 17 NCAC 11 .0216 Legal Representation before the Commission	
Agency: North Carolina Property Tax Commission	Agency Contact (name and phone and/or email): William W. Peaslee, Chairman, North Carolina Property Tax Commission, bill.peaslee@doa.nc.gov Janet L. Shires, Rules Coordinator and General Counsel, janet.shires@dorncc.com	
Effective Date:	Rule NCAC Citation: 17 NCAC 11 .0216	Statutory Authority: G.S. 105-288; 105-290; 105-290(d2)
Statutory/ RRC Deadline (if any):		
<input checked="" type="checkbox"/> State Impact	<input checked="" type="checkbox"/> Local Government Impact	<input type="checkbox"/> Substantial Economic Impact

SUMMARY

1. Brief description of the rule change:

The amendment to the rule specifies a change to business entity representation before the Property Tax Commission and provides that a business entity’s appeal is subject to dismissal unless a business entity files prior written notice of non-attorney representation with the Commission pursuant to N.C. Gen. Stat. § 105-290(d2).

2. Brief description of the problem the rule change is addressing:

The current rule governing legal representation before the Commission does not accomplish the statutory purpose of allowing a business entity to be represented by non-attorney representatives before the Property Tax Commission and does not provide for the filing of prior written notice of non-attorney representation with the Commission.

3. Explanation of how the rule addresses the problem (versus alternatives, if applicable)?

The amendment to the rule specifies a change to the business entity representation requirement before the Property Tax Commission. The amendment to the rule also specifies that a business entity is required to file prior written notice of non-attorney representation with the Commission on a form provided by the Commission within 30 days of filing the Notice of Appeal or the appeal shall be subject to dismissal.

SUMMARY OF IMPACTS

Table 1: Estimated Costs and Benefits Summary - Net Present Value (at 7% discount rate)

Entity Affected	Costs		Benefits	
	<i>Estimate</i>	<i>Time Frame</i>	<i>Estimate</i>	<i>Time Frame</i>
State Government	-	-	Unquantified	2016-2020
Local Governments	Unquantified	2016-2020	-	-
Private Sector	-	-		
Federal Government	-	-	-	-
TOTAL	-	-	-	-

ANALYSIS:

Introduction

Due to a statutory amendment,¹ the Property Tax Commission (“Commission”) is proposing amendments to a rule in Subchapter 17 of Title 11 of the North Carolina Administrative Code, namely; Rule 17 NCAC 11 .0216 that governs the duties of the Commission when conducting property tax hearings and legal representation before the Commission at these property tax administrative hearings.

The current rule governing legal representation before the Commission does not accomplish the statutory purpose of allowing a business entity to be represented by non-attorney representatives before the Property Tax Commission, and does not provide for the filing of prior written notice of non-attorney representation with the Commission.

As a result, the Commission proposes to make changes to the rule. The major changes include:

- Allowing business entities to have non-attorney representation before the Commission;
- Including the requirement that prior written notice of non-attorney representation shall be made to the Commission on a form provided by the Commission; and
- Specifying that notice of non-attorney representation, pursuant to N.C. Gen. Stat. § 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.

Estimated Impact

The proposed changes would impact the Commission through the number of appeals it would hear, the local governments that are affected by the results of the appeals, as well as the business entities appealing a property tax. It unclear what the net impact of the rule change would be on the number of appeals. On one hand, changing the requirement for attorney representation could increase the number of appeals by making the process more affordable, but on the other hand the requirement to file a written notice of non-attorney representation within 30 days of filing the Notice of Appeal could decrease the number appeals. In tax year 2015, the Commission dismissed 23 out of 520 appeals filed, less than 5%, due to the taxpayer’s failure to timely file the application for hearing with the Commission.

The remainder of this section discusses the impacts by affected party.

Property Tax Commission

The proposed rule changes would impact the Commission’s responsibilities in the following areas:

- Change appraisal staff time needed to review property tax appeals;
- Reduce support desk functions that maintain files that are reviewed;
- Impose new responsibilities and duties for the Commission’s General Counsel to develop forms, draft policies and procedures, and monitor appeals; and

¹See N.C. Gen. Stat. § 105-290(d2) Business Entity Representation.

- Increase the time spent by the Commission’s General Counsel to review files, address procedural requirements, and prepare orders and final decisions for the Chairman’s signature.

While the proposed changes add to the responsibilities of the Commission and the Commission’s General Counsel, if there is any impact, Commission estimates that the impact would be insignificant. The Commission believes these changes can be accommodated by redirecting existing staff resources and would not require new resources at this time. Given the proposed changes it is likely that the Commission would save some staff time on the net, valued at about \$43 per hour on average; however, the number of hours saved are likely to be minimal, so it is unlikely for the savings to be significant.

Local Governments

Since units of local governments (i.e. counties) are not required to file a Motion to Dismiss when a business entity fails to file the required written form,² the Commission estimates that there would not be an additional cost to units of local government as a result of the proposed rules changes. They would however see an impact if there is a change in the number of appeals that get heard as a result of the rule, depending on the outcome of those appeals and the cost to local governments to participate in the appeals process. As mentioned above, it is unclear what the net effect of the rule would be on the number of appeals. Nonetheless, the Commission believes that the impact to local governments from a change in the number of appeals heard would be insignificant given the low difference in tax that a county levies as a result of an appeal. Based on data from the dismissed appeals in tax year 2015 (see Table 1), the total difference in tax counties could levy due to the dismissals was less \$18,000, or about \$1,500 per appeal.

Table 1. Counties’ Tax Levy Data based on Appeals Dismissed in Tax Year 2015

Affected County	Value Per County	Value Per Taxpayer	Difference in Value	County Property Tax Rate	Difference in County Levy
Durham County	256,464	230,000	26,464	0.7931	\$ 210
Rowan County	380,191	-	380,191	0.6625	\$2,519
Guilford County	1,260,800	1,000,000	260,800	0.7600	\$1,982
Craven County	33,220	32,760	460	0.4675	\$2
Moore County	250,820	240,000	10,820	0.4650	\$50
Moore County	241,950	190,000	51,950	0.4650	\$242
Chatham County	251,574	185,000	66,574	0.6219	\$414
Gaston County	1,142,824	766,000	376,824	0.8700	\$3,278
Gaston County	2,397,723	1,386,167	1,011,556	0.8700	\$8,801
Chatham County	477,470	400,000	77,470	0.6219	\$482
Davidson County	163,180	149,760	13,420	0.5400	\$72
Davidson County	38,450	29,730	8,720	0.5400	\$47
Total:	6,693,036	4,429,927	2,263,109		\$17,979

Other State Agencies

There is no impact on other state agencies since the Commission, pursuant to N.C. Gen. Stat. § 105-290(b), “shall hear and decide appeals from decisions concerning the listing, appraisal, or assessment of property

² The dismissal of a taxpayer’s appeal is considered and heard on the Commission’s Motion to Dismiss.

made by local boards of equalization and review and county boards of county commissioners. Any property owner of the county may except to an order of the county board of equalization and review or the board of county commissioners concerning the listing, appraisal, or assessment of property and appeal the order to the Property Tax Commission.”³ Furthermore, the rule changes do not impact the Commission’s duties to hear appeals pursuant to N.C. Gen. Stat. § 105-288(b).⁴

³ N.C. Gen. Stat. § 105-290(a) the Commission shall hear property tax appeals in its capacity as the State board of equalization and review.

⁴ Public Service Company may file appeals to the Commission pursuant to N.C. Gen. Stat. § 105-288(b).

Appendix

1 17 NCAC 11 .0216 is amended with notice pursuant to GS 150B-1(d)(4) as follows:

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3 **17 NCAC 11 .0216 LEGAL REPRESENTATION BEFORE THE COMMISSION**

4 ~~(a) Although individual taxpayers are entitled to represent themselves before the Commission, representation by an~~
5 ~~attorney is recommended because the hearings are governed by the rules of evidence as practiced in the courts.~~
6 ~~Corporate taxpayers and counties must be represented by an attorney licensed to practice law in North Carolina.~~
7 Parties appearing before the Property Tax Commission may either represent themselves if natural persons, or shall be
8 represented by an attorney licensed to practice law in North Carolina, except as provided for in N.C. Gen. Stat. § 105-
9 290(d2). This requirement ~~will~~ shall not be waived by the Commission. ~~An appellant represented by an attorney~~
10 ~~who is a member of a law firm is urged to see that another member of the firm be prepared to present his case in the~~
11 ~~event the primary attorney is unable to attend the hearing.~~ Notice of non-attorney representation pursuant to N.C.
12 Gen. Stat. § 105-290(d2) shall be filed with the Commission within 30 days of filing a Notice of Appeal or the appeal
13 shall be subject to dismissal.

14 (b) All parties, ~~attorney~~ attorneys, and witnesses shall be present for the hearing of their case ~~at least~~ 30 minutes
15 before the time it is scheduled by the Commission or the appeal shall be subject to dismissal.

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17 *History Note:* Authority G.S. 84-4; 105-288; 105-290;

18 *Eff. June 1, 1982;*

19 *Amended Eff. ____; July 1, 1993.*