

Property Tax in North Carolina

Property Tax Assessment of Real Property

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Introduction

All real property is subject to *ad valorem* taxation in North Carolina unless it is constitutionally exempted or classified and excluded from taxation by statute.¹

Real property is defined by the Machinery Act as “not only the land itself, but also buildings, structures, improvements, and permanent fixtures on the land, and all rights and privileges belonging or in any way appertaining to the property.”²

A. The Listing of Real Property for Assessment

All taxable real property not centrally assessed by the Department of Revenue (certain real property owned by public service companies) is assessable by the county in which it is situated.³ It is required to be listed in the name of the owner of the real property and it is the owner’s duty to list it annually unless the county has adopted a permanent listing system.⁴ All counties have, in fact, adopted such a system and the owner of the real property is thereby relieved from the annual filing requirement otherwise imposed by statute. The owner remains responsible, however, for annually listing buildings constructed and improvements made since the last appraisal, as well as listing separate rights created in the real property (such as mineral, quarry, timber, waterpower or other rights) since the last revaluation.⁵

¹ N.C. Const., Art. V, §§ 2-3.

² N.C. Gen. Stat. § 105-273(13).

³ N.C. Gen. Stat. § 105-301.

⁴ N.C. Gen. Stat. § 105-302.

⁵ N.C. Gen. Stat. § 105-303(b)(2); N.C. Gen. Stat. § 105-309(c)(4)-(5).

Since real property may be owned by different parties with different interests, N.C. Gen. Stat. § 105-302 provides a detailed list of how these interests should be listed.

B. Fair Market Value and Uniformity

All property subject to assessment must be assessed “at its true value in money,” or fair market value.⁶ The Machinery Act defines “true value” as “the price estimated in terms of money at which the property would change hands between a willing and financially able buyer and a willing seller, neither being under any compulsion to buy or to sell, and both having reasonable knowledge of all the uses to which the property is adapted and for which it is capable of being used.”⁷

Further, under the North Carolina Constitution, all property in each county must be assessed uniformly.⁸ As an example, it would constitute a violation of uniformity principles for the assessor to distinguish in assessment practice between property that has been sold and similar property that has not been sold. See Edward Valves, Inc. v. Wake County.⁹ In addition, N.C. Gen. Stat. § 105-284(a) imposes two uniformity requirements upon assessors: (1) that all property, real and personal, be assessed for taxation at its true value (or, in the case of agricultural, horticultural or forestland, at the value for which it is used, its “use value”) and (2) that all taxes imposed by counties and municipalities be levied uniformly on the assessed value (either true value or use value).

⁶ N.C. Gen. Stat. § 105-283.

⁷ Id.

⁸ N.C. Const., Art. V, Sec. 2; N.C. Gen. Stat. § 105-284.

⁹ Edward Valves, Inc. v. Wake County, 343 N.C. 426, 471 S.E.2d 342 (1996), reh'g denied, 344 N.C. 444, 476 S.E.2d 115 (1996), cert. denied, 519 U.S. 1112, 117 S. Ct. 952 (1997).

The North Carolina Supreme Court has ruled that uniformity of assessment exists only with a uniform mode of assessment.¹⁰

C. The Assessor's Valuation of Real Estate

Real property – land and the improvements thereto – is valued on a countywide basis by the county tax assessor every eight years, unless the local taxing jurisdiction advances its revaluation schedule.¹¹ Counties may advance the date of an octennial revaluation and many North Carolina counties are now revaluing real property every four (4) years.

Mecklenburg County 2011 Revaluation

The current imbroglio involving Mecklenburg County's 2011 revaluation has proven to be the exception to the general statutory pattern. Mecklenburg County, the location of Charlotte, the largest city in North Carolina and the second largest banking center in the United States, was hit hard by the Great Recession.

Prior to its 2011 revaluation, Mecklenburg had last revalued in 2003. The county planned at that time to revalue in 2007. During the course of the last cycle, however, county commissioners decided to postpone the revaluation until 2009. After the banking crisis and resulting real estate market crash of 2008, when real estate sales largely ceased, commissioners postponed the revaluation to 2010, and then postponed it again until 2011, the eighth year in the cycle, when by law the revaluation had to occur. Presumably, political leaders intended the postponements to allow the real estate market an opportunity to stabilize, and perhaps recover.

¹⁰ Hajoca Corp. v Clayton, 277 N.C. 560, 569, 178 S.E.2d 481, 487 (1971).

¹¹ N.C. Gen. Stat. § 105-285 and N.C. Gen. Stat. § 105-286.

Those good intentions and the resulting series of postponements proved to be major contributors to what must be regarded as a blown revaluation, despite the best efforts of what has generally been regarded as a highly competent assessor and staff. The assessments produced significant overvaluations of many properties and sparked mass protests from homeowners in sections of the county in a heated debate punctuated by the county assessor's resignation. Taxpayers had filed 1,542 appeals to the North Carolina Property Tax Commission from the Mecklenburg County Board of Equalization and Review as of mid-April this year, the largest number by far from any revaluation in North Carolina's history.

Pearson's Appraisal Service, an outside consultant the county hired to study the revaluation, reviewed a random sample of the revaluation results and discovered major issues. Although much of the revaluation met acceptable assessment standards, the consultant identified inconsistencies involving both uniformity of assessment and valuation in residential neighborhoods which were heterogeneous with in-fill and tear-down activity, and in neighborhoods where the current use might not be the highest and best use.

Problems also emerged in connection with commercial properties including certain office, retail and hotel categories. Substantial problems turned up involving land valuations, in addition to many other issues that the consultant characterized as minor.

Although the county commissioners voted to expand the consultant's study, they were constrained by a state law that prohibits retroactive valuation adjustments and taxpayer refunds for years when assessments had not previously been appealed. Amid continuing and widespread

voter dissatisfaction, legislators, with the support of the county commission, introduced unprecedented legislation on March 4, 2013, to correct the 2011 revaluation.

Article V, Section 2(2) of the North Carolina Constitution prohibits classifications of property for taxation except on a statewide basis and provides that “every classification shall be made by general law uniformly applicable in every county, city and town, and other unit of local government.” Article II, Section 24 (1) (k) prohibits local legislation “extending the time for the levy or collection of taxes”

Attempting to draft constitutional legislation that would address Mecklenburg County’s unique revaluation needs, lawmakers worded Senate Bill 159 and its House counterpart, HB 200, to be ostensibly applicable statewide, but with preconditions to application of the statute that only Mecklenburg County is likely to meet.

The North Carolina Senate passed SB 159 unanimously on March 28, and after amendment in the House, the bill was returned to the Senate, which concurred in the House amendments on July 18. The bill was signed by the Governor on July 26, 2013, and may be found at Session Law 2013-362. SB 159 provides that the county must conduct a general reappraisal within 18 months if the following is found to exist:

- The county has evidence that the majority of commercial neighborhoods possess significant issues of inequity,
- Instances of inequity or erroneous data had a significant impact on the valuation of residential neighborhoods,

- The county's last general reappraisal was performed in 2008-2012 when the economic downturn most severely affected home prices,
- The county's evidence resulted from a review by an appraisal service retained by the county and resulted from a sample size of not less than 375 properties that were examined on site.
- The reappraisal is to be applicable to all tax years from and including the year of last revaluation.
- Alternatively, a county meeting the criteria must have a qualified appraisal service conduct a total review of all the values in the county and make recommendations as to true values of the properties as of Jan. 1 of the last general revaluation.

Once in possession of this information, the county would be required under SB 159 to correct incorrect assessments to reflect true value as of Jan. 1, 2011, and apply those corrected values for later years in the revaluation cycle. Refunds would be automatically made, with interest, and under assessments based on the new values would be subject to discovery assessments under existing tax statutes, but without being subject to normal discovery penalties.

Based on the legislative action, it appears that the Mecklenburg revaluation will drag on for some time. Since the County will be reviewing values, the legislation appears to open the door for taxpayers to identify assessments they think unfair and draw them to the attention of the county for review. And as the legislative note accompanying the bill provides, "a taxpayer or county may have standing to challenge" the legislation and "it is unknown whether a court would find the bill to be local in nature or non-uniform."

In other words, lawmakers recognize the potential for a court to rule the legislation as unconstitutional.

Elements of Appraisal

In appraising real property, the assessor must consider the elements set forth in N.C. Gen. Stat. § 105-317(a)(1) as to land (location, zoning, soil quality, mineral deposits, adaptability for different uses, past and future income, etc.) and those set forth in N.C. Gen. Stat. § 105-317(a)(2) as to buildings or other improvements (types of construction, age, replacement cost, cost, adaptability for uses as well as some of the factors listed in (a)(1)). (See Attachment A.)

Each county, as part of its real estate revaluation process, must adopt a schedule of values, standards and rules before the revaluation begins.¹² The schedule of values is, in essence, a “cookbook” to be followed by the assessor and his staff in conducting the revaluation. The schedule of values, which must be approved by the county commissioners before January 1 of the year for which they are to be applied, contains a relatively detailed set of “recipes” for the valuation of different types of real estate. The schedule of values establishes a valuation methodology for different types of real estate and is used to ensure the uniform assessment of real property.¹³

A particular taxpayer’s real property may be revalued between scheduled revaluation years if the value changes as a result of certain events, such as additions or expansions to a structure, or changes in the legally permitted use of a property.¹⁴ N.C. Gen. Stat. § 105-287 (see Attachment B)

¹² N.C. Gen. Stat. § 105-317(b)(1) and (c).

¹³ N.C. Gen. Stat. § 105-317.

¹⁴ N.C. Gen. Stat. § 105-287. See In re Allred, 351 NC 1, 519 S.E.2d 52 (1999), and In re Corbett, 355 N.C. 181, 558 S.E.2d 82 (2002).

provides a detailed list of circumstances under which the assessed value of real property may be changed between revaluation years.

The value of the property is determined as of January 1 of the revaluation year and generally speaking, unless the property itself has changed in some fashion, it will not be subject to a change in value due to circumstances occurring after the revaluation date.

The assessor must, however, change the assessed value to:

- a) correct a clerical or mathematical error
- b) correct an appraisal error resulting from a misapplication of the schedule of values¹⁵
- c) recognize a change in value due to a conservation or preservation agreement
- d) recognize a change in value due to a physical change to the property (other than changes due to normal physical depreciation or specified betterments)
- e) recognize a change in the legally permitted use of the property, or
- f) recognize any other change not due to inflation, deflation or other economic changes affecting the county in general.

Under N.C. Gen. Stat. § 105-287(c) the increase or decrease in value “is effective as of January 1 of the year in which it is made and is not retroactive.” In general, if a property remains unchanged after the revaluation date, it is only in very limited circumstances that its value can thereafter be changed, other than by a challenge to its value as of the reappraisal date.

If the highest and best use of the property changes after the revaluation date, there would be a sound basis for requesting a change in valuation based upon that change in highest and best use.¹⁶

¹⁵ In re Appeal of Ocean Isle Palms LLC, No. 128A12, 2013 N.C. LEXIS 55 (Jan. 25, 2013).

It is important to note that if the assessed value of real property is to be changed between scheduled revaluation years, as authorized by N.C. Gen. Stat. § 105-287, the changes must be made pursuant to the schedule of values adopted for the revaluation year governing the revaluation cycle. Following the schedule of values ensures that similar real property is valued under the same approach to value, using the same land costs and construction costs, as of the cycle revaluation date and helps ensure uniformity.¹⁷ Thus, in a county using an eight-year revaluation cycle, a new home or commercial building constructed and sold in the sixth year and placed upon the assessment rolls when complete, as of January 1 of the seventh year, must be valued, not using its fair market value as of January 1 of the seventh year, but valued using construction costs, land costs and market conditions in effect seven years earlier. See N.C. Gen. Stat. §105-287(c).

D. Appeals of Schedules of Value

Typically, the schedules of values are approved three to nine months before January 1 of the revaluation year. The assessor prepares the schedules of values, sometimes with the assistance of a consultant, submits them to the county board no less than 21 days before the hearing when they will be considered by the board, notice is published, the board adopts them, and notice of that action must be published in a paper of general circulation for four successive weeks thereafter.

Failure to give adequate notice of the adoption of the schedules of values is a denial of due process.¹⁸

¹⁶ In re Appeal of Ivy Associates, 91 PTC 392 (1991), affirmed with no discussion, 117 N.C. App. 309 (1994).

¹⁷ In re Allred, 351 N.C. 1, 10, 519 S.E.2d 52, 55 (1999).

¹⁸ In re McElwee, 304 N.C. 68, 79-81, 283 S.E.2d 115, 122-24 (1981).

A property owner who asserts that the schedules, standards, and rules are invalid may appeal from the order adopting the schedules of values to the Property Tax Commission within 30 days of the date when the order adopting them was first published.¹⁹

Normally, this process does not present a problem because the schedules contain ranges broad enough to give the assessor significant leeway in making the assessment and not so narrow that if the taxpayer does not appeal the adoption of the schedules of values, he will have difficulty challenging an assessment made pursuant to the schedules. However, “the appeal procedure thus provided is the exclusive means for challenging the order adopting schedules, standards and rules for the octennial reappraisal of real property for taxation.”²⁰ (Emphasis added.) If the schedule for a particular property is drafted so tightly that its application will result in a higher than market valuation for a property, and the taxpayer does not appeal the adoption of the schedule of values, the taxpayer may well find itself without a remedy when it receives its notice of revalued assessment.

E. Appeals of Assessed Value to County Boards of Equalization and Review

If a taxpayer concludes that his real property has been over-assessed, it is advisable to appeal the assessed value during the revaluation year, which, as noted above, occurs every 8 years unless the county has elected a 4-year cycle or otherwise advances the revaluation schedule.

Any relief granted will be effective for the year appealed and future years in the revaluation cycle. Appeals may, however, be taken after the revaluation year. *See* In re Property of Pine Raleigh

¹⁹ N.C. Gen. Stat. § 105-317(c)(3)b.

²⁰ Brock v. N.C. Property Tax Comm’n, 290 N.C. 731, 228 S.E.2d 254 (1976).

Corp.²¹ In such cases, the valuation of the property will be determined as of January 1 of the revaluation year, subject to the limited exceptions set forth in N.C. Gen. Stat. § 105-287 governing changes to the property thereafter. Any relief granted will not be retroactive to the revaluation year, but will be prospective only.

Even though a property's valuation has changed significantly since the general revaluation date, if the valuation change is not confined to something peculiar to the property, but is due to "economic changes affecting the county in general," the property's assessed value may not be changed until the next revaluation.²²

In the event that a taxpayer objects to the county tax assessor's listing, appraisal or assessment of the taxpayer's real or personal property, the taxpayer may appeal to the county board of equalization and review.²³ (See Attachment C for a form notice of appeal. Some counties request use of their own appeal forms.) The board of equalization and review is comprised of the board of county commissioners unless the board of county commissioners has authorized a special board of equalization and review to hear property tax appeals.²⁴ Most counties do set up a special board of equalization and review comprised of citizens of the county. County boards of equalization and review convene between the first Monday in April and the first Monday in May of each year to hear property tax appeals and must adjourn no later than July 1, (December 1 in revaluation years), or later under certain circumstances when the board has received a timely-filed appeal prior to its

²¹ 258 N.C. 398, 128 S.E.2d 855 (1963).

²² N.C. Gen. Stat. § 105-287(b). See In re Appeal of Hotel L'Europe, 116 N.C. App. 651, 652-654, 448 S.E.2d 865, 866 (1994), disc. review denied, 339 N.C. 612, 454 S.E.2d 252 (1995). See also In re Appeal of Schwartz & Schwartz, Inc., 166 N.C. App. 744, 603 S.E.2d 852 (2004).

²³ N.C. Gen. Stat. § 105-322(g)(2).

adjournment for the year.²⁵ In non-revaluation years it is not uncommon for boards to meet and adjourn on the same date. Since appeals to the county board must be filed prior to its adjournment,²⁶ in non-revaluation years a taxpayer would be well advised to file its appeal by March 31, before the board convenes. G.S. § 105-322(g)(5), authorizes boards of equalization and review to continue to meet after adjournment to hear and decide discovery appeals, motor vehicle tax appeals, appeals related to audits of property classified for present use valuation or under another classification for exclusion or exemption, and to hear and decide appeals relating to the value, situs or taxability of personal property under GS 105-317.1.

In revaluation years, some counties publish notice that the board will adjourn on June 30 or some other date, except for the purpose of hearing pending appeals. The purpose of this notice is to cut off the time for filing appeals as of the noticed date of adjournment, even though the board will continue to meet after that date to hear appeals previously filed. While the statutory scheme is ambiguous on this point,²⁷ a taxpayer should acquaint itself with the local rules to ensure that its appeal is timely filed.²⁸

If a notice of the assessment of real or personal property is not delivered until after adjournment of the county board, the Property Tax Commission has held that an appeal is timely if

²⁴ N.C. Gen. Stat. § 105-322(a).

²⁵ N.C. Gen. Stat. § 105-322(e).

²⁶ N.C. Gen. Stat. § 105-322(g)(2)(a).

²⁷ N.C. Gen. Stat. § 105-322(e) and (g)(2).

²⁸ The Court of Appeals held in In the Matter of Appeal of Dixie Building, LLC, ____ NC App ____ (2014), that local boards of equalization and review may set deadlines for the filing of hearing requests and that failure to abide by those deadlines will render the appeal untimely.

filed before year-end on the grounds that failure to afford a hearing would constitute a denial of due process.

Upon appeal by a taxpayer that owns or controls property in the county, the county board of equalization and review will review any decision of the county tax assessor with regard to the listing or appraisal of the taxpayer's property.²⁹ The county board is authorized to examine and adjust the appraised value of the taxpayer's property and take other steps necessary to ensure that the property is appraised and taxed in conformity with statutory requirements.³⁰ If a taxpayer is "aggrieved" by the assessment of property he does not own, he may also appeal that assessed value.³¹

County boards may increase or decrease the assessed value appealed. If the assessor discovers facts during the course of the appeal that lead him to believe that he under-assessed the property, he will undoubtedly ask the local board to increase his assessment.

Hearings before county boards are informal. Taxpayers may represent themselves, be represented by counsel and, in most counties, by family members, accountants or tax representatives. (A few counties take the position that if the taxpayer does not appear in person, he must be represented by counsel and that tax consultants may not appear on behalf of the taxpayer.) Witnesses are not sworn and the rules of evidence are not followed. Counties typically require non-lawyers representing property owners to produce a power of attorney before the appeal will be heard.

Although hearings on the appeals from county boards of equalization to the State Property Tax Commission (discussed below) are *de novo*, and although it often seems that hearings before

²⁹ N.C. Gen. Stat. § 105-322(g).

³⁰ *Id.*

³¹ See Brock v. N.C. Property Tax Comm'n, *supra* note 22. See also In re Appeal of Whiteside Estates, Inc., 136

local county boards are perfunctory, occasionally taxpayers will be able to obtain relief from county boards. This may be particularly true of less complicated properties where the owner is able to present facts affecting value not known to the assessor.

The North Carolina Court of Appeals held in MAO/Pines Associates, Ltd. v. New Hanover County Board of Equalization³² that failure to reveal evidence of a factor (asbestos contamination in that case) allegedly affecting the true value of the taxpayer's property to the assessor or to the local board of equalization and review on a timely basis was sufficient basis for exclusion of evidence of that factor by the Property Tax Commission. Although MAO/Pines may be distinguishable, in order to maintain a good working relationship with the county assessor, taxpayers would be well advised to apprise assessors of factors adversely affecting the value of their property during negotiations with the assessor and to advise the county board of equalization and review of these factors in appearances before these bodies.³³

F. Appeals to Property Tax Commission

1. Procedure

If a taxpayer objects to the resolution of his locally assessed property tax appeal by the county board of equalization and review or board of county commissioners, the taxpayer may appeal to the state Property Tax Commission.³⁴ The Commission now prescribes a form, which may be found on

N.C. App. 360, 525 S.E.2d 196, cert. denied, 351 N.C. 473, 543 S.E.2d 511 (2000).

³² 116 N.C. App. 551, 449 S.E.2d 196 (1994).

³³ But see also Brock v. N.C. Property Tax Comm'n, supra note 22. "A county board of equalization and review operates in a very informal manner. No record is kept and usually little hard evidence exists to indicate the procedures followed. Therefore, appeals to the Property Tax Commission should not be dismissed on technical grounds, but only for clear noncompliance with statutory prerequisites."

³⁴ N.C. Gen. Stat. § 105-290; N.C. Gen. Stat. § 105-342(b).

the Department of Revenue website (See Attachment D for a form notice of appeal and application for hearing.) The county assessor may not appeal an adverse ruling of the county board.³⁵ Three of the five members of the Commission are appointed by the Governor, one member is appointed by the Speaker of the North Carolina House of Representatives, and one member is appointed by the President Pro Tempore of the North Carolina Senate. All serve for four year terms.³⁶

For locally assessed property, written notice of appeal to the Commission must be filed within thirty (30) days after the date that the county board of equalization and review mails a notice of its decision to the property owner.³⁷

In filing appeals to the Property Tax Commission, it is important to carefully comply with the filing requirements of N.C.G.S. 105-290(g), which provides:

A notice of appeal submitted to the Property Tax Commission by a means other than United States mail is considered to be filed on the date it is received in the office of the Commission. 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 North Carolina Court of Appeals held in The Matter of the Appeal of Bass Income Fund, 115 N.C. App. 703, 446 S.E.2d 594 (1994) that a postmark affixed by a private individual employing a postal meter does not constitute a “postmark stamped by the United States Postal Service.” In other

³⁵ N.C. Gen. Stat. § 105-290(b); In re Appeal of Forsyth County, 104 N.C. App. 635, 410 S.E.2d 533 (1991), disc. rev. denied, 330 N.C. 851, 413 S.E.2d 551 (1992); In re Moses H. Cone Memorial Hospital, 113 N.C. App. 562, 439 S.E.2d 778 (1994), aff'd in part, cert. improvidently granted in part, 340 N.C. 93, 455 S.E.2d 431 (1995).

³⁶ N.C. Gen. Stat. § 105-288.

³⁷ N.C. Gen. Stat. § 105-290(e). See In re Appeal of Intermedia Communications, Inc., 144 N.C. App. 424, 548

words, if the taxpayer uses a postal meter to mail its appeals to the Property Tax Commission, even if certified mail is used, the taxpayer must insure that the notice of appeal is received in the office of the Property Tax Commission within 30 days after the date the Board mailed notice of its decision to the property owner. In Bass Income Fund, the taxpayer's appeal was dismissed as untimely when the appeal was mailed using a postal meter and was not received at the Commission until the 31st day. The Court of Appeals upheld the Commission's decision.

Under the Commission procedures, the taxpayer must timely request a hearing. This is accomplished by the filing of Commission Form AV14, Application for Hearing, which is available on the Department's website. According to Commission rules, only taxpayers appearing *pro se* or attorneys licensed to practice law in North Carolina may file appeals to the Commission or otherwise appear before that body.³⁸ Corporate taxpayers must be represented by counsel. However, GS105-290(d2), as amended in 2014, provides that "business entities" may be represented by a non attorney representative who is one or more of the following of the business entity: (i) an officer, (ii) a manager or manager member, if the business entity is an LLC, (iii) an employee whose income is reported on IRS Form W-2, if the business entity authorizes the appeal in writing, or (iv) an owner of the business entity if he owns at least 25% of the entity and the representation is authorized in writing. Despite this authorization, given the complexity of Commission proceedings and the burden of proof imposed on the taxpayer, a taxpayer would be well advised to retain competent counsel.

S.E.2d 562 (2001) (allowing an appeal to be filed by fax).

³⁸ N.C. Admin. Code, title 17, r. 11.0216.

After an appeal is filed, the staff of the Property Tax Division of the Department of Revenue will consult with both the taxpayer and the county in an attempt to mediate the appeal informally. The staff is knowledgeable and helpful and their efforts are frequently successful.

Although the Rules of Civil Procedure do not apply to proceedings before the Commission, the rules pertaining to discovery have been adopted and are available for use by the parties.³⁹ The Commission encourages the use of informal discovery. In addition, the Commission has the authority to issue subpoenas.⁴⁰

The Commission's rules are published in Chapter 11 of Title 17 of the North Carolina Administrative Code and may be found on the Department of Revenue website. Appeals to the Commission are subject to dismissal for failure to comply with the Commission's rules,⁴¹ so careful compliance with the rules is recommended.

2. Hearings

The full Commission may hear the taxpayer's appeal or, in rare instances, it may designate one or more Commission members or Department employees to hear the appeal and issue a proposed decision which may then be accepted or rejected by the full Commission after review of the record and any written arguments of the parties.⁴² Typically, the Commission meets monthly, usually in

³⁹ N.C. Admin. Code, title 17, r. 11.0218.

⁴⁰ N.C. Gen. Stat. § 105-290(d).

⁴¹ In re Appeal of Fayetteville Hotel Associates, 117 N.C. App. 285, 450 S.E.2d 568 (1994), aff'd 342 N.C. 405, 464 S.E.2d 298 (1995). See also In the Matter of Appeal of Schwarz and Schwarz, Inc., 163 N.C. App. 358, 594 S.E.2d 156 (2004) (unpublished).

⁴² N.C. Gen. Stat. § 105-290(b).

Raleigh. Hearings before the Commission are *de novo*⁴³ and are conducted under the North Carolina Rules of Evidence.⁴⁴

The duties of the Property Tax Commission are quasi-judicial in nature and require the exercise of judgment and discretion.⁴⁵ The Commission has the duty “to determine the weight and sufficiency of the evidence and the credibility of the witnesses, to draw inferences from the facts, and to appraise conflicting and circumstantial evidence.”⁴⁶

As with appeals to the local board of equalization and review, the Commission may affirm the assessment appealed, may lower it, or may increase it.

An *ad valorem* tax assessment is presumed correct.⁴⁷ This presumption is only one of fact and is, therefore, rebuttable. This presumption may be rebutted by material, substantial, and competent evidence that tends to show that either an arbitrary or an illegal method of valuation was used and that the assessment substantially exceeded the true value in money of the property.⁴⁸ It is not enough for the taxpayer to show that the method used by the assessor was wrong; the taxpayer must also show that the result of the valuation is substantially greater than the true value in money of the property assessed.⁴⁹ The converse is also true – the taxpayer must not only prove that the value is substantially in excess of true value, he must prove that the assessment was arbitrary or illegal.⁵⁰ The

⁴³ Appeal of Forestry Foundation, 35 N.C. App. 414, 425, 242 S.E.2d 492, 499 (1978), aff'd, 296 N.C. 330, 250 S.E.2d 236 (1979).

⁴⁴ N.C. Gen. Stat. § 8C-1.

⁴⁵ Albemarle Electric Membership Corp., 282 N.C. 402, 409, 192 S.E.2d 811, 816 (1972).

⁴⁶ In re McElwee, supra note 18 at 87, 283 S.E.2d at 126-27.

⁴⁷ In re Appeal of AMP, Inc., 287 N.C. 547, 561, 215 S.E.2d 752, 761 (1975).

⁴⁸ Id. at 563, 215 S.E.2d at 762.

⁴⁹ Id.

⁵⁰ Id.

good faith of tax assessors and the validity of their actions are presumed. The taxpayer bears the burden of showing that the assessment was erroneous.⁵¹

“When a taxpayer has rebutted the presumption of regularity in favor of the county . . . the burden then shifts to the county to demonstrate to the Property Tax Commission that the values determined in the revaluation process were not substantially higher than that called for by the statutory formula, and the county must demonstrate the reasonableness of its valuation by ‘competent, material and substantial evidence.’”⁵² The Supreme Court observed in In Re Southern Railway⁵³ that when the taxpayer offered evidence that the appraisal methods used by the assessing authority would not produce true values for the taxpayer and that the values actually produced by these methods were substantially in excess of true value, the taxpayer had rebutted the presumption of correctness. “The burden of going forward with evidence and of persuasion that its methods would in fact produce true values then rested with the [assessing authority] and it became the Commission’s duty to hear the evidence of both sides, to determine its weight and sufficiency and the credibility of witnesses, to draw inferences, and to appraise conflicting and circumstantial evidence, all in order to determine whether the [assessing authority] met its burden.”

Three decision of the Court of Appeals in In re Appeal of IBM Credit Corporation^{54 55 56} are also instructive on the burden of proof.

⁵¹ In re Appeal of McElwee, 304 N.C. 68, 75, 283 S.E.2d 115, 120 (1981).

⁵² In re Appeal of McElwee, 304 N.C. at 86-87, 283 S.E.2d at 126-27.

⁵³ In re Appeal of Southern Railway Co., 313 N.C. 177, 328 S.E.2d 235 (1985).

⁵⁴ 186 N.C. App. 223, 650 S.E.2d 828 (2007), aff’d per curiam, 657 S.E.2d 355 (2008) (IBM Credit I).

⁵⁵ 201 N.C. App. 343, 689 S.E.2d 487 (2009) (IBM Credit II).

⁵⁶ 2012 N.C. App. LEXIS 1015, 731 S.E.2d 444 (2012) (IBM Credit III).

While IBM Credit I, II, and III involve the valuation of computer equipment, the decisions are of significance for real estate appeals, as they carefully explain how the Property Tax Commission should weigh the evidence and support its decision once the taxpayer has met its burden of proof at hearing and the burden of persuasion has shifted to the County.

The cases involved the assessment of 40,000 pieces of computer equipment owned by IBM Credit and leased to customers in Durham County.

In the first appeal of this case, the Court of Appeals held that the Commission had wrongly applied the law on burden of proof, reversing and remanding the Commission decision in favor of Durham County with instructions that the Commission apply the correct burden of proof framework.

The Court observed,

... *Southern Railway* thus clarifies that the burden upon the aggrieved taxpayer, set forth in *AMP*, is one of production and not persuasion: the taxpayer must offer evidence that the government's appraisal relies on illegal or arbitrary valuation methods. Other decisions of the North Carolina appellate courts are consistent on this point (citations omitted). Indeed, *AMP* itself states that "for the taxpayer to rebut the presumption he must *produce* 'competent, material and substantial' evidence that *tends to show*" an arbitrary or illegal method of valuation.

Because the Commission's order contained statements that IBM Credit was required to *prove* that the County's valuation method was arbitrary or illegal, the Court held that the Commission had "imposed a burden of persuasion on IBM

rather than a burden of production.” The Court remanded the decision to the Commission and on remand, the Commission again ruled in favor of the County.

On appeal, the Court of Appeals in IBM Credit II again reversed, stating that the Commission’s failure “to explicitly make these findings (as to burden of proof) is problematic for this Court on review.” The Court held that because the Commission final decision had failed to adequately address key issues necessary to arrive at the ultimate decision about the fair market value of the property being assessed, these omissions “result in conclusions which lack evidentiary support and are therefore arbitrary and capricious” The Court then proceeded to outline the deficiencies in the Commission final decision, giving explicit guidance to the Commission as to how it should deal with the case on remand.

The significance of this case lies in its direction to the Commission to provide detailed support for its decisions once the taxpayer has met its burden of proof and “the burden of persuasion and going forward with the evidence that the methods used ... do in fact produce ‘true value’ shifts to” the County. In recent years, the Commission has tended to write relatively terse decisions with little analysis and support for its conclusions, making appeals from Commission decisions difficult.

Despite the decisions in IBM Credit I and II, on remand, the Commission devised a new methodology and a higher value than the County had originally assessed. Not surprisingly, IBM Credit again appealed, and the Court of Appeals in

IBM Credit III, its exasperation with the Commission readily apparent, reversed and directed the Commission to enter an order reducing the assessment to the value originally contended by IBM Credit.

The three IBM Credit decisions, Amp and Southern Railway set out a clear explanation of the law on burden of proof in property tax appeals.⁵⁷

3. Arbitrary or Illegal Assessment

Illegal Assessment

“An illegal appraisal method is one which will not result in true value as that term is used in N.C. Gen. Stat. § 105-283 and, for public service companies, in N.C. Gen. Stat. § 105-335.”⁵⁸ The Supreme Court held in AMP that the use of book value as a *per se* indicator of fair market value was illegal.⁵⁹ An appraisal method contrary to the Machinery Act is an illegal method of valuation.⁶⁰ The Supreme Court further observed in McElwee that the use of comparable sales constituted an illegal method of valuation when the “comparable” land which had been sold was not shown to be used for the same purposes as the land being valued.⁶¹ “An illegal appraisal method is one which will not result in ‘true value’ as that term is used in [G.S. § 105-283]”.⁶² Failure to take into account the statutory factors listed in G.S. 105-317(a) will result in an assessment being held to be illegal.⁶³

⁵⁷ That said, the Commission continues to struggle with burden of proof issues. See In the Matter of Appeal of: Parkdale Mills and Parkdale America, 710 S.E.2d 449 (2011) (Parkdale I), subsequent appeal, No. COA12-1078, 2013 N.C. App. LEXIS 222 (Jan. 10, 2013) (Parkdale II).

⁵⁸ Southern Railway Co., *supra* note 55 at 181, 328 S.E.2d at 239.

⁵⁹ AMP, 287 N.C. 547, 563-65, 215 S.E.2d 752, 762-63 (1975).

⁶⁰ Id.

⁶¹ In re McElwee, 704 N.C. 68, 89-91, 283 S.E.2d 115, 127-29 (1981).

⁶² Appeal of Colonial Pipeline, 318 N.C. 224, 236, 347 S.E.2d 382, 389 (1986).

⁶³ In re Appeal of Weaver, 165 N.C. App. 198, 598 S.E.2d 591 (2004). The case discusses an array of assessor

Arbitrary Assessment

The use of valuation guides without consideration of the condition of the article being valued has been held to be an arbitrary method of valuation.⁶⁴ A revaluation process conducted 2½ years before the effective date of the appraisal and under a short time frame (2 months) is “plainly arbitrary.”⁶⁵ Failure to take restraints on alienation into account in assessing real property was found to be arbitrary.⁶⁶ Averaging of comparable sales and omitting other comparable sales from the average without apparent analysis of the comparable sales was found to be arbitrary; assessing real property based on a figure per front foot without considering suitability of the tract for building was found to be arbitrary.⁶⁷

4. Valuation of Real Property – Proof that the Assessed Value is “Substantially Greater” than True Value

Hearings before the Commission on appeals of the assessed valuation of properties typically involve battles between expert witnesses, including appraisers, cost estimators and engineers, and generally turn on questions of the highest and best use of the property, the determination of obsolescence and depreciation under the cost approach to value, the comparability of “comparable sales” under the market data approach to value, and calculations of net operating income and its appropriate capitalization, or use of the discounted cash flow method, under the income approach to value.

errors resulting in the assessment being held to be both illegal and arbitrary.

⁶⁴ In re Carolina Quality Block Co., 270 N.C. 765, 155 S.E.2d 263 (1967).

⁶⁵ In re McElwee, 704 N.C. at 82-84, 283 S.E.2d at 124-125.

⁶⁶ In re Appeal of Perry-Griffin Foundation, 108 N.C. App. 383, 424 S.E.2d 212 (1993), disc. rev. denied, 333 N.C. 538, 429 S.E.2d 561 (1993).

⁶⁷ In re Appeal of Boos, 95 N.C.App. 386, 382 S.E.2d 769 (1989).

Appraisers will usually consider all of the three approaches to determining fair market value – cost, income, and comparable sales – and, depending upon the availability of data, will use one or more of these methods, frequently using all three.

Although theoretically all three approaches to the determination of market value should yield approximately the same number, in practice they often do not, leaving the appraiser to reconcile the approaches he used and to determine which approach he must most heavily rely upon.⁶⁸

Assessors in North Carolina traditionally used the cost approach to assess improvements to real estate. In more recent years, as they have become more sophisticated and have had access to greater resources, many assessors, particularly in large, more urban counties, have also begun using the income approach to assess income producing properties.

The propriety of a particular valuation method is frequently disputed before the Property Tax Commission and the appellate courts.

Our courts have held that the income approach is most appropriate for the valuation of investment properties like mall anchor stores⁶⁹ and super regional malls.⁷⁰ In using the income approach to value properties, it is important to note that North Carolina is a “market rents” state and not a “contract rents” state; for property tax purposes, in applying the income approach to value, the market rents of comparable properties are used and not the properties’ actual contract rents, although an appraiser may determine, based upon his survey of the market, that the properties’ actual rents

⁶⁸ It is important to note that appraisals to be used before the Property Tax Commission must be correlated to the County’s schedule of values. In re Appeal of Allred, 351 N.C. 1, 10, 519 S.E.2d 52, 57 (1999). See also In re Appeal of Schwartz & Schwartz, 166 N.C. App. 744, 603 S.E.2d 852 (2004).

⁶⁹ In re Appeal of Belk-Broome Co., 119 N.C. App. 470, 458 S.E.2d 921 (1995).

⁷⁰ In re Winston-Salem Joint Venture, 144 N.C. App. 706, 551 S.E.2d 556, disc. review denied, 354 N.C. 217, 555

reflect the market. Therefore, the existence of a long-term below-market lease will not lower the value of the property for tax assessment purposes.⁷¹

A 1995 case has clouded the issue in North Carolina as to just what the “market” is – Belk-Broome.⁷² In Belk-Broome, the Court of Appeals held that in valuing mall anchor stores, the assessor’s reliance on the cost approach was inappropriate because the income produced by market rents for mall anchor stores should be the primary measure of value. However, the Court of Appeals then departed from the market income standard and held that the operating agreements between mall developers and anchor store owners, which define each party’s respective rights and obligations, customarily offered anchor stores lower rental rates or lower purchase prices for the mall real property on which anchor stores are located in exchange for the anchor stores’ promise “to operate only as a department store and . . . not to sell the property to any entity other than an acceptable anchor department store.” In Belk-Broome, the Court of Appeals held that operating agreements between malls and anchor stores were “an integral part of the market,” determined that anchor stores paid lower rents as a subsidy and that “the property must be valued according to that market,” creating an exception to the normal rule in North Carolina that market income as of the date of assessment must be considered under the income approach in valuing income-producing property.”⁷³

In a 2005 decision involving the valuation of electric power generating plants, the North Carolina Court of Appeals carved out another exception from North Carolina’s traditional rule that in

S.E.2d 277 (2001).

⁷¹ In re Greensboro Office Partnership, 72 N.C. App. 635, 325 S.E.2d 24, cert. denied, 313 N.C. 601, 330 S.E.2d 610 (1985); In re Pine Raleigh Corp., 258 N.C. 398, 128 S.E.2d 855 (1963).

⁷² In re Appeal of Belk-Broome Co., supra note 71.

⁷³ In re Appeal of Belk-Broome Co., supra note 71 at 478-80, 458 S.E.2d at 926-27.

applying the income approach to valuation, market income should be used and not contract income.

The Taxpayer owned two coal-fired baseload generating facilities located adjacent to each other. Both plants were built subject to long-term power purchase agreements (PPAs) under which the power generated was sold to a utility.

In its decision, the Court of Appeals analogized the market for power plants like the Taxpayer's generating plants to the market for regional mall anchor stores discussed in In re Appeal of Belk-Broome, *supra*.

In Appeal of Westmoreland-LG&E Partners, 174 N.C. App. 692, 622 S.E.2d 124 (2005), the Court of Appeals extended the exception created in Belk-Broome to the valuation of the power plants in question, holding that even though the income under a long-term PPA exceeded the income obtainable without the contract, "like the operating agreement in Belk-Broome, the income received under the PPAs are an integral part of the market for taxpayer's property; therefore any assessment of this property's income must factor in the revenue streams received under these PPAs." The Court went on further to hold that "the existence of the PPA is not something unique to this facility but was a market standard during the tax years in question." Accordingly, the proper market against which to judge the value of the taxpayer's plants under the income approach is that consisting of the existing facilities with the PPAs" (Emphasis added.)

The Court of Appeals made this holding despite the fact that the County had not argued for an extension of the Belk-Broome exception to power plants, neither party briefed or argued at oral argument that the Belk-Broome doctrine was applicable, the facts in Belk-Broome are readily distinguishable from the facts in Westmoreland-LG&E Partners, and the record was arguably

inadequately developed to support such an extension of the Belk-Broome doctrine to power plants.

A careful analysis of the Court of Appeals holding in Westmoreland-LG&E Partners indicates that the ruling should be confined to the facts of the case and to the tax years in question, 1996-2001. Taxpayers in other cases involving the valuation of power plants subject to PPAs which produce above-market income streams may be able to develop evidence that would show that PPAs are not the market standard and that the case is distinguishable on its facts.

Our Supreme Court gave further support to the market rents doctrine in Appeal of Greens of Pine Glen.⁷⁴ The Court ruled that rental housing constructed under 26 U.S.C. § 42 (§ 42 housing) which provides income tax credits to developers in exchange for their agreement to offer below market rents, should not be valued using the § 42 below market housing income stream, but should be valued using market rents for comparable properties. In so ruling, the Court expressly declined to extend the concept of a separate market standard enunciated in Belk Broome to § 42 housing, holding that Belk Broome was distinguishable.⁷⁵

Our Supreme Court has also held that the income approach is appropriate for the valuation of property assessed at its present use.⁷⁶

Our courts have indicated that, “The cost approach is better suited for valuing specialty property or newly developed property . . .”⁷⁷

⁷⁴ 356 N.C. 642, 576 S.E.2d 316 (2003).

⁷⁵ N.C. Gen. Stat. §105-277.16, subsequently enacted, now provides the valuation methodology for low-income housing, and effectively overrules Greens of Pine Glen.

⁷⁶ In re Appeal of McElwee, 304 N.C. 68, 92, 283 S.E.2d 115, 130 (1981).

⁷⁷ In re Appeal of Belk-Broome Co., 119 N.C. App. at 474, 458 S.E.2d at 924.

The comparable sales approach seems to be particularly useful for the valuation of raw land and single family residences, and when market comparables are available, for other types of property, such as apartment complexes, office buildings, or retail uses,⁷⁸ keeping in mind the court's preference for the income approach for investment grade properties. The Court of Appeals in In re Appeal of Lane Company, held that sales of property after the revaluation date may be used as comparable sales in the valuation of real property.⁷⁹ Given the discussion of the Supreme Court in In re Allred, supra, in which the Supreme Court held that sales of the subject property after the revaluation date should not be considered, appraisers should proceed carefully in this area.

Industrial plants, particularly older ones, present significant appraisal challenges. Rental income data is rarely available since these properties are generally owner occupied. Many plants have significant physical, functional and external obsolescence, requiring large and subjective adjustments to the replacement cost new. The replacement cost new of an older plant will sometimes mean that construction of a new plant can't be justified and would not occur. Although comparable sales are frequently available, even for large plants, the assessor invariably contends that the "dangling wire plants" (plants from which all the machinery and equipment have been removed) which have been sold are not comparable to plants in economically productive use.

The Property Tax Commission ruled in The Matter of Kimberly-Clark Corporation,⁸⁰ that the use by the taxpayer's appraiser of sales of plants which were not operating as comparable sales in the

⁷⁸ In ascertaining market value, sales of comparable property are the most reliable indicators of value. United States v. 100.80 Acres of Land, 657 F. Supp. 269, 274 (M.D.N.C. 1987); City of Statesville v. Cloaninger, 106 N.C. App. 10, 16, 415 S.E.2d 111, 115 (1992), disc. review denied, 331 N.C. 553, 418 S.E.2d 664 (1992).

⁷⁹ 153 N.C. App. 119, 571 S.E.2d 224 (2002).

⁸⁰ 07 PTC 298 (Mar. 13, 2009).

valuation of a plant still in operation was improper, since the subject plant was still in operation on the assessment date.

While sales of non-operating plants may not always be comparable sales, due in particular, to special features in the comparables or the subject, nevertheless, the mere fact that a plant is not in operation should not be sufficient to disqualify the sale of the plant as a comparable. There are features in all industrial plants that add or detract from the value of the plant. In using the sales of these plants as comparables, it may be important to account for those factors, as well as other distinguishing factors.

Kimberly-Clark was not appealed. However, in Parkdale Mills II,⁸¹ in which the Commission had criticized Parkdale's appraiser's use of sales of closed plants as comparable sales, the Court of Appeals noted, "By emphasizing the fact that Parkdale uses these facilities industrially to produce yarn 24-hours a day, the Commission's findings implicitly allow the County to measure the value of the properties as their subjective worth to Parkdale. *Such a valuation is obviously not the same as adequately determining the objective value of these properties to another willing buyer.*"(emphasis added.) Parkdale Mills II casts serious doubt on the value of Kimberly-Clark as a precedent.

In valuing industrial properties, several issues generally present themselves:

- Quantification of obsolescence.
- Valuation of super adequate features.

⁸¹ No. COA 12-1078, 2013 N.C. App. LEXIS 222 (Jan. 10, 2013).

- Construction in process and new construction – how to value additions to an obsolescent plant.
- Distinguishing between realty and personalty when the personalty is often permanently affixed to the realty.

As a general rule, the Property Tax Commission staff, and most appraisers, tend to regard the equipment installed in the plant for plant lighting, air handling and plumbing for human comfort, distribution wiring, etc., to be part of the real estate, while equipment installed for purposes of the manufacturing process conducted within the plant to be personalty.⁸²

The Appraisal of Real Estate, 13th Ed., published by the Appraisal Institute in 2008, is an invaluable resource for the discussion of appraisal methodology.

After the parties have introduced their evidence, the Commission “shall make findings of fact and conclusions of law and issue an appropriate order” based on evidence considered at the hearing.

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The Property Tax Commission has no authority to rule on constitutional issues. These must be raised and preserved for the appellate courts.⁸⁴

G. Judicial Review

Any party aggrieved by a final order or decision of the Commission may appeal to the North Carolina Court of Appeals by filing with the Commission within thirty (30) days after

⁸² See Personal Property Appraisal and Assessment Manual, Section 3 (June 2007) (published by the NCDOR). The Manual contains a useful checklist classifying selected items as realty or personalty.

⁸³ N.C. Gen. Stat. § 105-290(b)(2).

⁸⁴ Gulf Oil Corp. v. Clayton, 267 N.C. 15, 147 S.E.2d 522 (1966); Great American Insurance Company v. Gold, 254 N.C. 168, 118 S.E.2d 792 (1961), overruled on other grounds, Smith v. State, 289 N.C. 303, 222 S.E.2d 412

entry of the final decision or order being appealed a notice of appeal and a statement of alleged errors made by the Commission in its decision.⁸⁵ The appealing party must also serve notice of the appeal on all other parties to the action and perfect the appeal in the Court of Appeals in accordance with the Rules of Appellate Procedure. Either the taxpayer or the taxing jurisdiction may appeal the decision of the Court of Appeals to the North Carolina Supreme Court as provided in the Rules of Appellate Procedure.

G.S. § 105-345.2(b) establishes the standard of review to be applied by appellate courts upon an appeal of a decision of the Commission:

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:

- (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.

“Questions of law receive *de novo* review, while issues such as the sufficiency of the evidence to support the Commission's decision are reviewed under the whole record test . . . Under *de novo* review, the Court considers the matter anew and freely substitutes its own judgment for that of the Commission.”⁸⁶

(1976).

⁸⁵ N.C. Gen. Stat. § 105-345.

⁸⁶ In re Appeal of The Greens of Pine Glen Ltd., 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003).

G.S. § 105-345.2(c) requires: “(I)n making the foregoing determinations, the court shall review the whole record . . . and due account shall be taken of the rule of prejudicial error.” Under a “whole record” analysis, the reviewing court may not

“replace the [Commission’s] judgment as between two reasonably conflicting views, even though the court could justifiably have reached a different result had the matter been before it *de novo* (citation omitted). On the other hand the “whole record” rule requires the court, in determining the substantiality of evidence supporting the [Commission’s] decision, to take into account whatever in the record fairly detracts from the weight of the [Commission’s] evidence. Under the whole evidence rule, the court may not consider the evidence which in and of itself justifies the [Commission’s] result, without taking into account the contradictory evidence or evidence from which conflicting inferences could be drawn (citation omitted).”⁸⁷

However, “it is clear that no court of the General Court of Justice can weigh the evidence presented to the [Commission] and substitute its evaluation of the evidence for that of the [Commission].”⁸⁸ If the Commission’s decision, considered in the light of the foregoing rules, is supported by substantial evidence, it cannot be overturned.⁸⁹ Substantial evidence means more than a scintilla of evidence or such evidence as a reasonable person might accept as adequate.⁹⁰

H. Action Brought Directly in Superior Court

A taxpayer may, in certain circumstances, bypass administrative appeals of its property tax assessment and seek judicial review in a state trial court by filing with the city or county that imposed the tax a demand for the release of any tax assessed but not paid or, in the event that the

⁸⁷ In re Appeal of McElwee, 304 N.C. 68, 283 S.E.2d 115 (1981) (citing Thompson v. Wake County Board of Education, 292 N.C. 406, 233 S.E.2d 538 (1977)).

⁸⁸ AMP, 287 N.C. 547, 563-65, 215 S.E.2d 752 (1975).

⁸⁹ In re Appeal of Interstate Income Fund I, 126 N.C. App. 162, 484 S.E.2d 450 (1997); In re Appeal of Perry-Griffin Foundation, 108 N.C. App. 383, 424 S.E.2d 212 (1993), disc. review denied, 333 N.C. 538, 429 S.E.2d 561 (1993).

⁹⁰ In re Appeal of General Tire, Inc., 102 N.C. App. 38, 40, 401 S.E.2d 391, 393 (1991) (substantial evidence

taxpayer has already paid the tax, a claim for refund. The claim for refund must be filed within five years after the tax first became due or within six months from the date of payment, whichever is later.⁹¹ This procedure is available only in instances where the taxpayer alleges that the property tax was imposed through clerical error, an illegal tax, or a tax levied for an illegal purpose. It would not, for instance, apply where the taxpayer challenges the appraised value of its property.⁹² As one example, this procedure would seem to be available when a taxpayer determines that property had been assessed which was no longer in existence in the county as of the assessment date, or was otherwise not properly assessable, but the time has passed for challenging the assessment.

If the taxing body does not grant the requested release or refund within ninety (90) days after receipt of the request, the taxpayer may file suit against the taxing body for the tax amount claimed.⁹³

If the taxpayer sought a release from an unpaid property tax and did not receive the requested release of the tax from the taxing body, the taxpayer must first pay the tax due before filing suit. The taxpayer in that circumstance may file suit within three (3) years after payment of the tax. A taxpayer filing suit after the 90-day period for approval of his refund claim has passed must file suit within three (3) years after the date when the governing body was required to act on the taxpayer's refund claim.⁹⁴

supported the Commission's decision).

⁹¹ N.C. Gen. Stat. § 105-381.

⁹² Edward Valves, Inc. v. Wake County, 117 N.C. App. 484, 489, 451 S.E.2d 641, 645 (1995), aff'd as modified on other grounds and remanded, 343 N.C. 426, 471 S.E.2d 342 (1996) ("If a taxpayer disagrees with a county's valuation of its property, the taxpayer must pursue and exhaust its administrative remedies before resorting to the courts...Questions concerning valuation which are first presented directly to the courts are properly dismissed." (citations omitted)).

⁹³ N.C. Gen. Stat. § 105-381(c).

⁹⁴ Id.