

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Property Tax Commission

RULE CITATION: 17 NCAC 11 .0216 and 17 NCAC 11 .0217

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
- X Failure to comply with the APA
- Extend the period of review

COMMENT:

Both rules adopted by the Property Tax Commission cite that notice of this rulemaking action was not required by G.S. 150B-1(d)(4). However, the cited exception is the following:

§ 150B-1. Policy and scope.

(a) Purpose. - This Chapter establishes a uniform system of administrative rule making and adjudicatory procedures for agencies. The procedures ensure that the functions of rule making, investigation, advocacy, and adjudication are not all performed by the same person in the administrative process.

(b) Rights. - This Chapter confers procedural rights.

...

(d) Exemptions from Rule Making. - Article 2A of this Chapter does not apply to the following:

...

(4) The Department of Revenue, with respect to the notice and hearing requirements contained in Part 2 of Article 2A. With respect to the Secretary of Revenue's authority to redetermine the State net taxable income of a corporation under G.S. 105-130.5A, the Department is subject to the rule-making requirements of G.S. 105-262.1.

See attached G.S. 150B-1. The Property Tax Commission is a separate statutorily created agency, as set forth in G.S. 105-288:

§ 105-288. Property Tax Commission.

(a) Creation and Membership. - The Property Tax Commission is created. It consists of five members, three of whom are appointed by the Governor and two of whom are appointed by the General Assembly. Of the two appointments by the General Assembly, one shall be made upon the recommendation of the Speaker of the House of Representatives and the other shall be made upon the recommendation of the President Pro Tempore of the Senate. The terms of the members are for four years and expire on June 30. The General Assembly shall make its appointments in accordance with G.S. 120-121 and shall fill a vacancy in accordance with G.S. 120-122. A vacancy occurs on the Commission when a member resigns, is removed, or dies. The person appointed to fill a vacancy shall serve for the balance of the unexpired term. The Governor may remove any member for misfeasance, malfeasance, or nonfeasance. The Commission shall have a chair and a vice-chair. The Governor shall designate one of the Commission members as the chair, to serve at the pleasure of the Governor. The members of the Commission shall elect a vice-chair from among its membership. The vice-chair serves until the member's regularly appointed term expires.

See attached G.S. 105-288. The claim by the Property Tax Commission to fall within the notice and hearing exception set forth in G.S. 150B-1(d)(4) appears incorrect, as the Property Tax Commission is a separate statutorily created agency and is not itemized as an agency exempt from the requirement of Article 2A of G.S. 150B.

Further, the rules were adopted by the Property Tax Commission on November 12, 2014. G.S. 150B-21.2(g) requires that “[a]n agency must submit an adopted rule to the Rules Review Commission within 30 days of the agency's adoption of the rule.” The rules filed on August 19, 2015 are approximately 275 days since the adoption of the rules by the Property Tax Commission, and fails to comply with G.S. 150B-21.2(g). See attached G.S. 150B-21.2.

Summary:

The Property Tax Commission is asserting an exemption from the notice and hearing requirements of Article 2A of G.S. 150B. However, the cited exemption does not apply to the Property Tax Commission, which is an independent agency created by statute and separate from the Department of Revenue. Further, these rules were not filed within 30 days of the agency's adoption. It is staff's recommendation to object to 17 NCAC 11 .0216 and 17 NCAC 11 .0217 for failure to comply with the Administrative Procedure Act.

Chapter 150B.**Administrative Procedure Act.**

Article 1.

General Provisions.

§ 150B-1. Policy and scope.

(a) Purpose. - This Chapter establishes a uniform system of administrative rule making and adjudicatory procedures for agencies. The procedures ensure that the functions of rule making, investigation, advocacy, and adjudication are not all performed by the same person in the administrative process.

(b) Rights. - This Chapter confers procedural rights.

(c) Full Exemptions. - This Chapter applies to every agency except:

- (1) The North Carolina National Guard in exercising its court-martial jurisdiction.
- (2) The Department of Health and Human Services in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.
- (3) The Utilities Commission.
- (4) Repealed by Session Laws 2011-287, s. 21(a), effective June 24, 2011, and applicable to rules adopted on or after that date.
- (5) Repealed by Session Laws 2011-401, s. 1.10(a), effective November 1, 2011.
- (6) The State Board of Elections in administering the HAVA Administrative Complaint Procedure of Article 8A of Chapter 163 of the General Statutes.
- (7) The North Carolina State Lottery.
- (8) [Expired June 30, 2012.]

(d) Exemptions from Rule Making. - Article 2A of this Chapter does not apply to the following:

- (1) The Commission.
- (2) Repealed by Session Laws 2000-189, s. 14, effective July 1, 2000.
- (3) Repealed by Session Laws 2001-474, s. 34, effective November 29, 2001.
- (4) The Department of Revenue, with respect to the notice and hearing requirements contained in Part 2 of Article 2A. With respect to the Secretary of Revenue's authority to redetermine the State net taxable income of a corporation under G.S. 105-130.5A, the Department is subject to the rule-making requirements of G.S. 105-262.1.
- (5) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.
- (6) The Division of Adult Correction of the Department of Public Safety, with respect to matters relating solely to persons in its custody or under its supervision, including prisoners, probationers, and parolees.
- (7) The State Health Plan for Teachers and State Employees in administering the provisions of Article 3B of Chapter 135 of the General Statutes.
- (8) The North Carolina Federal Tax Reform Allocation Committee, with respect to the adoption of the annual qualified allocation plan required by 26 U.S.C. § 42(m), and any agency designated by the Committee to the extent necessary to administer the annual qualified allocation plan.
- (9) The Department of Health and Human Services in adopting new or amending existing medical coverage policies for the State Medicaid and NC Health Choice programs pursuant to G.S. 108A-54.2.
- (10) The Economic Investment Committee in developing criteria for the Job Development Investment Grant Program under Part 2F of Article 10 of Chapter 143B of the General Statutes.

- (11) The North Carolina State Ports Authority with respect to fees established pursuant to G.S. 136-262(a)(11).
- (12) The Department of Commerce and the Economic Investment Committee in developing criteria and administering the Site Infrastructure Development Program under G.S. 143B-437.02.
- (13) The Department of Commerce and the Governor's Office in developing guidelines for the One North Carolina Fund under Part 2H of Article 10 of Chapter 143B of the General Statutes.
- (14) Repealed by Session Laws 2011-145, s. 8.18(a), as amended by Session Laws 2011-391, s. 19, effective June 15, 2011.
- (15) Repealed by Session Laws 2009-445, s. 41(b), effective August 7, 2009.
- (16) The State Ethics Commission with respect to Chapter 138A and Chapter 120C of the General Statutes.
- (17) The Department of Commerce in developing guidelines for the NC Green Business Fund under Part 2B of Article 10 of Chapter 143B of the General Statutes.
- (18) The Department of Commerce and the Economic Investment Committee in developing criteria and administering the Job Maintenance and Capital Development Fund under G.S. 143B-437.012.
- (18a) The Department of Commerce in developing criteria and administering the Expanded Gas Products Service to Agriculture Fund under G.S. 143B-437.020.
- (18b) **(Effective January 1, 2015 and expires July 1, 2020)** The Department of Commerce in administering the Film and Entertainment Grant Fund under G.S. 143B-437.02A.
- (19) Repealed by Session Laws 2011-145, s. 8.18(a), as amended by Session Laws 2011-391, s. 19, effective June 15, 2011.
- (20) The Department of Health and Human Services in implementing, operating, or overseeing new 1915(b)/(c) Medicaid Waiver programs or amendments to existing 1915(b)/(c) Medicaid Waiver programs.
- (21) Reserved for future codification purposes.
- (22) The Department of Health and Human Services with respect to the content of State Plans, State Plan Amendments, and Waivers approved by the Centers for Medicare and Medicaid Services (CMS) for the North Carolina Medicaid Program and the NC Health Choice program.
- (23) The Department of Cultural Resources with respect to admission fees or related activity fees at historic sites and museums pursuant to G.S. 121-7.3.
- (24) Tryon Palace Commission with respect to admission fees or related activity fees pursuant to G.S. 143B-71.
- (25) U.S.S. Battleship Commission with respect to admission fees or related activity fees pursuant to G.S. 143B-73.
- (26) The Board of Agriculture in the Department of Agriculture and Consumer Services with respect to annual admission fees for the State Fair. The Board shall annually post the admission fee schedule on its Web site and provide notice of the fee schedule, along with a citation to this section, to all persons named on the mailing list maintained pursuant to G.S. 150B-21.2(d).

(e) Exemptions From Contested Case Provisions. - The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

- (1) The Department of Health and Human Services and the Department of Environment and Natural Resources in complying with the procedural safeguards mandated by Section 680 of Part H of Public Law 99-457 as amended (Education of the Handicapped Act Amendments of 1986).

- (2) Repealed by Session Laws 1993, c. 501, s. 29.
 - (3), (4) Repealed by Session Laws 2001-474, s. 35, effective November 29, 2001.
 - (5) Hearings required pursuant to the Rehabilitation Act of 1973, (Public Law 93-122), as amended and federal regulations promulgated thereunder. G.S. 150B-51(a) is considered a contested case hearing provision that does not apply to these hearings.
 - (6) Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.
 - (7) The Division of Adult Correction of the Department of Public Safety.
 - (8) The Department of Transportation, except as provided in G.S. 136-29.
 - (9) The North Carolina Occupational Safety and Health Review Commission.
 - (10) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.
 - (11) Hearings that are provided by the Department of Health and Human Services regarding the eligibility and provision of services for eligible assaultive and violent children, as defined in G.S. 122C-3(13a), shall be conducted pursuant to the provisions outlined in G.S. 122C, Article 4, Part 7.
 - (12) The State Health Plan for Teachers and State Employees respect to disputes involving the performance, terms, or conditions of a contract between the Plan and an entity under contract with the Plan.
 - (13) The State Health Plan for Teachers and State Employees with respect to determinations by the Executive Administrator and Board of Trustees, the Plan's designated utilization review organization, or a self-funded health maintenance organization under contract with the Plan that an admission, availability of care, continued stay, or other health care service has been reviewed and, based upon the information provided, does not meet the Plan's requirements for medical necessity, appropriateness, health care setting, or level of care or effectiveness, and the requested service is therefore denied, reduced, or terminated.
 - (14) The Department of Public Safety for hearings and appeals authorized under Chapter 20 of the General Statutes.
 - (15) The Wildlife Resources Commission with respect to determinations of whether to authorize or terminate the authority of a person to sell licenses and permits as a license agent of the Wildlife Resources Commission.
 - (16) Repealed by Session Laws 2011-399, s. 3, effective July 25, 2011.
 - (17) The Department of Health and Human Services with respect to the review of North Carolina Health Choice Program determinations regarding delay, denial, reduction, suspension, or termination of health services, in whole or in part, including a determination about the type or level of services.
 - (18) Hearings provided by the Department of Health and Human Services to decide appeals pertaining to adult care home resident discharges initiated by adult care homes under G.S. 131D-4.8.
 - (19) The Industrial Commission.
 - (20) The Department of Commerce for hearings and appeals authorized under Chapter 96 of the General Statutes.
 - (21) The Department of Health and Human Services for actions taken under G.S. 122C-124.2.
- (f) Exemption for the University of North Carolina. - Except as provided in G.S. 143-135.3, no Article in this Chapter except Article 4 applies to The University of North Carolina.
- (g) Exemption for the State Board of Community Colleges. - Except as provided in G.S. 143-135.3, no Article in this Chapter except Article 4 applies to the State Board of Community Colleges. (1973, c. 1331, s. 1; 1975, c. 390; c. 716, s. 5; c. 721, s. 1; c. 742, s. 4; 1981, c. 614, s. 22; 1983, c. 147,

s. 2; c. 927, s. 13; 1985, c. 746, ss. 1, 19; 1987, c. 112, s. 2; c. 335, s. 2; c. 536, s. 1; c. 847, s. 2; c. 850, s. 20; 1987 (Reg. Sess., 1988), c. 1082, s. 14; c. 1111, s. 9; 1989, c. 76, s. 29; c. 168, s. 33; c. 373, s. 2; c. 538, s. 1; c. 751, s. 7(44); 1989 (Reg. Sess., 1990), c. 1004, s. 36; 1991, c. 103, s. 1; c. 418, s. 2; c. 477, s. 1; c. 749, ss. 9, 10; 1991 (Reg. Sess., 1992), c. 1030, s. 46; 1993, c. 501, s. 29; 1993 (Reg. Sess., 1994), c. 777, ss. 4(j), 4(k); 1995, c. 249, s. 4; c. 507, s. 27.8(m); 1997-35, s. 2; 1997-278, s. 1; 1997-412, s. 8; 1997-443, ss. 11A.110, 11A.119(a); 2000-189, s. 14; 2001-192, s. 1; 2001-299, s. 1; 2001-395, s. 6(c); 2001-424, ss. 6.20(b), 21.20(c); 2001-446, s. 5(d); 2001-474, ss. 34, 35; 2001-496, s. 8(c); 2002-99, s. 7(b); 2002-159, ss. 31.5(b), 49; 2002-172, s. 2.6; 2002-190, s. 16; 2003-226, s. 17(b); 2003-416, s. 2; 2003-435, 2nd Ex. Sess., s. 1.3; 2004-88, s. 1(e); 2005-133, s. 10; 2005-276, s. 31.1(ff); 2005-300, s. 1; 2005-344, s. 11.1; 2005-455, s. 3.3; 2006-66, ss. 12.8(c), 8.10(d); 2006-201, s. 2(a); 2007-323, ss. 13.2(c), 28.22A(o); 2007-345, s. 12; 2007-491, s. 2; 2007-552, 1st. Ex. Sess., s. 3; 2008-107, s. 10.15A(f); 2008-168, s. 5(a); 2008-187, s. 26(b); 2009-445, s. 41(b); 2009-475, s. 4; 2009-523, s. 2(a); 2010-70, s. 2; 2011-85, s. 2.11(a); 2011-145, ss. 8.18(a), (b), 14.6(j), 19.1(g), (h); 2011-264, s. 4; 2011-272, s. 5; 2011-287, s. 21(a), (b); 2011-391, s. 19; 2011-399, ss. 2, 3; 2011-401, ss. 1.10(a), (b); 2012-43, s. 3; 2013-85, s. 10; 2013-360, ss. 19.2(d), 12H.6(c), 12H.9(c); 2014-100, ss. 13.2(a), 15.13(b), 15.14B(b); 2014-103, s. 17.)

Article 15.

Duties of Department and Property Tax Commission as to Assessments.

§ 105-288. Property Tax Commission.

(a) **Creation and Membership.** - The Property Tax Commission is created. It consists of five members, three of whom are appointed by the Governor and two of whom are appointed by the General Assembly. Of the two appointments by the General Assembly, one shall be made upon the recommendation of the Speaker of the House of Representatives and the other shall be made upon the recommendation of the President Pro Tempore of the Senate. The terms of the members are for four years and expire on June 30. The General Assembly shall make its appointments in accordance with G.S. 120-121 and shall fill a vacancy in accordance with G.S. 120-122. A vacancy occurs on the Commission when a member resigns, is removed, or dies. The person appointed to fill a vacancy shall serve for the balance of the unexpired term. The Governor may remove any member for misfeasance, malfeasance, or nonfeasance.

The Commission shall have a chair and a vice-chair. The Governor shall designate one of the Commission members as the chair, to serve at the pleasure of the Governor. The members of the Commission shall elect a vice-chair from among its membership. The vice-chair serves until the member's regularly appointed term expires.

(b) **Duties.** - The Property Tax Commission constitutes the State Board of Equalization and Review for the valuation and taxation of property in the State. It shall hear appeals from the appraisal and assessment of the property of public service companies as defined in G.S. 105-333. The Commission may adopt rules needed to fulfill its duties.

(c) **Oath.** - Each member of the Property Tax Commission, as the appointed holder of an office, shall take the oath required by Article VI, § 7 of the North Carolina Constitution with the following phrase added to it: "that I will not allow my actions as a member of the Property Tax Commission to be influenced by personal or political friendships or obligations,".

(d) **Expenses.** - The members of the Property Tax Commission shall receive travel and subsistence expenses in accordance with G.S. 138-5 and a salary as provided for by the Commission when hearing cases, meeting to decide cases, and attending training or continuing education classes on property taxes or judicial procedure. The Secretary of Revenue shall supply all the clerical and other services required by the Commission. All expenses of the Commission and the Department of Revenue in performing the duties enumerated in this Article shall be paid as provided in G.S. 105-501.

(e) **Meetings.** - The Property Tax Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the Chair or upon the written request of at least three members. At least 15 days' notice shall be given to each member with respect to each special meeting. A majority of the Commission members constitutes a quorum for the transaction of business. (1939, c. 310, ss. 200, 201; 1941, c. 327, s. 6; 1947, c. 184; 1961, c. 547, s. 1; 1967, c. 1196, ss. 1, 2; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 1991, c. 110, s. 1; 1991 (Reg. Sess., 1992), c. 1007, s. 20; c. 1016, s. 2; 1995, c. 41, s. 5; 2000-67, s. 7.11; 2005-276, s. 22.5(a); 2007-308, s. 1.)

§ 150B-21.2. Procedure for adopting a permanent rule.

(a) Steps. - Before an agency adopts a permanent rule, the agency must comply with the requirements of G.S. 150B-19.1, and it must take the following actions:

- (1) Publish a notice of text in the North Carolina Register.
- (2) When required by G.S. 150B-21.4, prepare or obtain a fiscal note for the proposed rule.
- (3) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.
- (4) When required by subsection (e) of this section, hold a public hearing on the proposed rule after publication of the proposed text of the rule.
- (5) Accept oral or written comments on the proposed rule as required by subsection (f) of this section.

(b) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.

(c) Notice of Text. - A notice of the proposed text of a rule must include all of the following:

- (1) The text of the proposed rule, unless the rule is a readoption without substantive changes to the existing rule proposed in accordance with G.S. 150B-21.3A.
- (2) A short explanation of the reason for the proposed rule.
- (2a) A link to the agency's Web site containing the information required by G.S. 150B-19.1(c).
- (3) A citation to the law that gives the agency the authority to adopt the rule.
- (4) The proposed effective date of the rule.
- (5) The date, time, and place of any public hearing scheduled on the rule.
- (6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (e) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.
- (7) The period of time during which and the person within the agency to whom written comments may be submitted on the proposed rule.
- (8) If a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency.
- (9) Repealed by Session Laws 2013-143, s. 1, effective June 19, 2013.

(d) Mailing List. - An agency must maintain a mailing list of persons who have requested notice of rule making. When an agency publishes in the North Carolina Register a notice of text of a proposed rule, it must mail a copy of the notice or text to each person on the mailing list who has requested notice on the subject matter described in the notice or the rule affected. An agency may charge an annual fee to each person on the agency's mailing list to cover copying and mailing costs.

(e) Hearing. - An agency must hold a public hearing on a rule it proposes to adopt if the agency publishes the text of the proposed rule in the North Carolina Register and the agency receives a written request for a public hearing on the proposed rule within 15 days after the notice of text is published. The agency must accept comments at the public hearing on both the proposed rule and any fiscal note that has been prepared in connection with the proposed rule.

An agency may hold a public hearing on a proposed rule and fiscal note in other circumstances. When an agency is required to hold a public hearing on a proposed rule or decides to hold a public hearing on a proposed rule when it is not required to do so, the agency must publish in the North Carolina Register a notice of the date, time, and place of the public hearing. The hearing date of a public hearing held after the agency publishes notice of the hearing in the North Carolina Register must be at least 15 days after the date the notice is published. If notice of a public hearing has been published in the North Carolina Register and that public hearing has been cancelled, the agency shall publish notice in the North Carolina Register at least 15 days prior to the date of any rescheduled hearing.

(f) Comments. - An agency must accept comments on the text of a proposed rule that is published in the North Carolina Register and any fiscal note that has been prepared in connection with

the proposed rule for at least 60 days after the text is published or until the date of any public hearing held on the proposed rule, whichever is longer. An agency must consider fully all written and oral comments received.

(g) Adoption. - An agency shall not adopt a rule until the time for commenting on the proposed text of the rule has elapsed and shall not adopt a rule if more than 12 months have elapsed since the end of the time for commenting on the proposed text of the rule. Prior to adoption, an agency shall review any fiscal note that has been prepared for the proposed rule and consider any public comments received in connection with the proposed rule or the fiscal note. An agency shall not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection (f) of this section.

An adopted rule differs substantially from a proposed rule if it does one or more of the following:

- (1) Affects the interests of persons who, based on the proposed text of the rule published in the North Carolina Register, could not reasonably have determined that the rule would affect their interests.
- (2) Addresses a subject matter or an issue that is not addressed in the proposed text of the rule.
- (3) Produces an effect that could not reasonably have been expected based on the proposed text of the rule.

When an agency adopts a rule, it shall not take subsequent action on the rule without following the procedures in this Part. **An agency must submit an adopted rule to the Rules Review Commission within 30 days of the agency's adoption of the rule.**

(h) Explanation. - An agency must issue a concise written statement explaining why the agency adopted a rule if, within 15 days after the agency adopts the rule, a person asks the agency to do so. The explanation must state the principal reasons for and against adopting the rule and must discuss why the agency rejected any arguments made or considerations urged against the adoption of the rule. The agency must issue the explanation within 15 days after receipt of the request for an explanation.

(i) Record. - An agency must keep a record of a rule-making proceeding. The record must include all written comments received, a transcript or recording of any public hearing held on the rule, any fiscal note that has been prepared for the rule, and any written explanation made by the agency for adopting the rule. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 63; 1977, c. 915, s. 2; 1983, c. 927, ss. 3, 7; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(1), (7); 1987, c. 285, ss. 7-9; 1989, c. 5, s. 1; 1991, c. 418, s. 1; 1995, c. 507, s. 27.8(d); 1996, 2nd Ex. Sess., c. 18, s. 7.10(e); 2003-229, s. 4; 2011-398, s. 5; 2013-143, s. 1; 2013-413, s. 3(a).)

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Property Tax Commission

RULE CITATION: 17 NCAC 11 .0216

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

This Rule contains the following language on lines 9 through 11:

An appellant represented by an attorney 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 event that primary attorney is unable to attend the hearing.

This language speaks to the legal representation of an appealing property owner before the Property Tax Commission and that property owner's relationship with retained legal counsel. That relationship does not appear to be within the authority of Article 15 of G.S. 105 and the language in this Rule exceeds the statutory authority of the rulemaking agency.

Summary:

As written, this Rule places a burden on the appealing party that is outside the statutory authority of the Property Tax Commission to regulate the relationship between a client and their legal counsel. It is staff's recommendation to object to this Rule for lack of statutory authority.

Abigail M. Hammond
Commission Counsel

REQUEST FOR TECHNICAL CHANGE

AGENCY: Property Tax Commission

RULE CITATION: 17 NCAC 11 .0216

DEADLINE FOR RECEIPT: Friday, September 11, 2015

NOTE WELL: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Please update box 10 of the Submission for Permanent Rule form to provide a Rule-making Coordinator.

In box 10 of the Submission for Permanent Rule form, please correct the email address for Janet Shires

Lines 4 thru 5, this statement is an aspirational statement and does not appear to be a requirement or standard of the rulemaking agency. Furthermore, the citation to the role of the rules of evidence seems unnecessary, as that is provided for in 17 NCAC 11 .0209. Who is entitled to appeal? Is it only the property owner, regardless of if the property owner is an individual or a business entity? Consider the following suggested re-write for lines 4 thru 8:

“Except as provided in G.S. 105-290(d2), a property owner may represent themselves or be represented by an attorney. The attorney representing the property owner shall be an active licensed member of the North Carolina State Bar.”

Line 9, replace “will” with “shall”

Line 12, add a comma after “attorneys”

Line 12, delete “at least”

Line 12, what happens if the party is not present 30 minutes before the hearing? Is the case dismissed? Please clarify what occurs. Otherwise, consider deleting the requirement.

Line 13, who is scheduling the hearing? Please clarify.

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Thursday, August 27, 2015

Line 15, add 105-290 to the statutory authority.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, August 27, 2015

1 17 NCAC 11 .0216 is amended without notice pursuant to GS 150B-1(d)(4) as follows:

2

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. Except~~
7 as provided in G.S. 105-290, appellants may not be represented by any person or association of persons except active
8 members of the bar of the State of North Carolina, admitted and licensed to practice as attorneys at law. This
9 requirement will not be waived by the Commission. An appellant represented by an attorney who is a member of a law
10 firm is urged to see that another member of the firm be prepared to present his case in the event that primary attorney is
11 unable to attend the hearing.

12 (b) All parties, attorneys and witnesses shall be present for the hearing of their case at least 30 minutes before the time it
13 is scheduled.

14

15 *History Note: Authority G.S. 84-4; 105-288;*
16 *Eff. June 1, 1982;*
17 *Amended Eff. October 1, 2015; July 1, 1993.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Property Tax Commission

RULE CITATION: 17 NCAC 11 .0217

DEADLINE FOR RECEIPT: Friday, September 11, 2015

NOTE WELL: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Please update box 10 of the Submission for Permanent Rule form to provide a Rule-making Coordinator.

In box 10 of the Submission for Permanent Rule form, please correct the email address for Janet Shires

Line 4, replace "must" with "shall"

Line 4 has the reference to Rule .0216 after the appellant, but the correct placement appears to be on line 5 after the "attorney at law." Please correct placement of the amended language.

Line 8, replace "is" with "shall be"

Lines 10 thru 12 appears to four unrelated clauses combined into two sentences. Please break the clauses into separate sentences.

Line 14, add 105-290 to the statutory authority.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, August 27, 2015

1 17 NCAC 11 .0217 is amended without notice pursuant to GS 150B-1(d)(4) as follows:

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3 **17 NCAC 11 .0217 APPEARANCE AT HEARING REQUIRED**

4 (a) In order to pursue an appeal, the appellant must either appear at the hearing, as permitted in 17 NCAC 11 .0216, or
5 be represented at the hearing by attorney at law. Attorneys at law not authorized to practice in North Carolina must
6 comply with the provisions of G.S. 84-4.1.

7 (b) If no continuance has been granted, the failure of the appellant or his attorney to appear at the scheduled time and
8 date for hearing is grounds for dismissal of the appellant's appeal. The Commission may dismiss the appeal on motion of
9 the opposing party or on its own motion.

10 (c) If the appellant is a trust, a trustee may appear for the trust; if the appellant is a partnership, a general partner may
11 appear for the partnership. A family member may not represent another family member; an attorney-in-fact may not
12 represent the grantor of the power of attorney.

13

14 *History Note: Authority G.S. 84-4; G.S. 84-4.1; 105-288;*

15 *Eff. June 1, 1991;*

16 *Amended Eff. October 1, 2015; July 1, 1993.*