

Franklin County Bd. of Educ. v. N.C. Dep't of Revenue, 2009 NCBC 28.

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY

09-CVS-20861

FRANKLIN COUNTY BOARD
OF EDUCATION,

Petitioner,

v.

**ORDER ON RESPONDENT'S
MOTION TO DISMISS**

NORTH CAROLINA DEPARTMENT
OF REVENUE,

Respondent.

THIS MATTER comes before the Court on Respondent's Motion to Dismiss, filed December 3, 2009. Petitioner filed a Brief in Opposition to Respondent's Motion on December 17, 2009. After reviewing the submissions by counsel, the Court hereby DENIES the Motion.

The amendments to section 105-241.16 of the North Carolina General Statutes did not repeal section 150B-45(b). To the extent the Petition in this case was untimely because the tax and interest were paid twelve days after filing the Petition, the Court accepts the Petition. Under section 150B-45(b), this Court has express authority to accept untimely petitions for good cause shown. N.C. Gen. Stat. § 150B-45(b) (2009). Section 105-241.16 of the North Carolina General Statutes is not a model of clarity, and this Petition represents the first appeal under the new statutory procedure. The statute should have made it clear that the tax, penalties, and interest had to be paid before or contemporaneously with the filing of the Petition. Respondent's notice of appeal rights in the Final Decision also should have made that requirement clear. It did not. Petitioner acted in good faith under a misapprehension of the requirements and promptly paid the tax and interest due.

Therefore, the Court finds that good cause has been shown to support its acceptance of the Petition under these circumstances. N.C. Gen. Stat. § 150B-45(b). Now that the Statute has been clarified by the Court, attorneys are on notice of the

requirement. The Respondent would be well advised to make the payment requirement clear in its notice of appeal procedures.

IT IS SO ORDERED, this the 22nd day of December, 2009.