

**STATE OF NORTH CAROLINA**  
**COUNTY OF WAKE**

**BEFORE THE**  
**SECRETARY OF REVENUE**

**IN THE MATTER OF:**

The Proposed Assessment of Corporate )  
Income and Franchise Tax for Tax Years )  
1999-2001 by the Secretary of Revenue of )  
the State of North Carolina )  
 )  
vs. )  
 )  
(Taxpayer) )

**FINAL DECISION**  
Docket No. 2006-287

This matter was heard before Eugene J. Cella, Assistant Secretary for Administrative Tax Hearings, at the North Carolina Department of Revenue in the City of Raleigh on January 11, 2007 regarding corporate income and franchise tax assessments proposed against (Taxpayer) for the tax year 1999, the tax period May 3 through December 31, 2000, and the tax year 2001. Taxpayer did not attend the hearing. The Corporate, Excise and Insurance Tax Division (“Division”) of the Department of Revenue (“Department”) was represented by Jonathan K. Tart, Administrative Officer.

**ISSUE**

Whether the adjustments to deny tax credits, to increase the apportionment factor, and to make an addition to federal taxable income for taxes based on or measured by net income were lawful and proper?

**EVIDENCE**

Taxpayer did not present any evidence. The following items were introduced as evidence by the Division at the hearing and made part of the record:

Exhibit D-1 Taxpayer’s franchise and income tax return for the tax year 1999.

Exhibit D-2 Taxpayer’s franchise and income tax return for the tax period January 1 through May 2, 2000.

- Exhibit D-3 Taxpayer's franchise and income tax return for the tax period May 3, 2000 through December 31, 2000.
- Exhibit D-4 Taxpayer's franchise and income tax return for the tax year 2001.
- Exhibit D-5 Notice of Corporate Income Tax Assessment for the tax year 1999 dated October 6, 2003.
- Exhibit D-6 Notice of Corporate Income Tax Assessment for the tax period May 3 through December 31, 2000 dated October 6, 2003.
- Exhibit D-7 Notice of Corporate Income Tax Assessment for the tax period May 3 through December 31, 2000 dated October 6, 2003.
- Exhibit D-8 Notice of Corporate Income Tax Assessment for the tax year 2001 dated October 6, 2003.
- Exhibit D-9 Notice of Franchise Tax Assessment for the tax year 1999 dated October 6, 2003.
- Exhibit D-10 Notice of Franchise Tax Assessment for the tax period May 3 through December 31, 2000 dated October 6, 2003.
- Exhibit D-11 Notice of Franchise Tax Assessment for the tax year 2001 dated October 6, 2003.
- Exhibit D-12 Auditor's report dated September 30, 2003.
- Exhibit D-13 Letter dated October 28, 2003 from (CPA) of (Accounting Firm) to Greg Radford, Director of the Corporate, Excise and Insurance Tax Division protesting the proposed assessments and requesting an administrative tax hearing.
- Exhibit D-14 Letter dated April 17, 2006 from Jonathan K. Tart, Administrative Officer in the Corporate, Excise and Insurance Tax Division, to (Employee), Corporate Controller for Taxpayer, with related attachments.
- Exhibit D-15 Letter dated August 7, 2006 from Mr. Tart to (Employee).
- Exhibit D-16 Letter dated October 11, 2006 from Eugene J. Cella, Assistant Secretary of Revenue, to (Employee).
- Exhibit D-17 County Wage Standards for 1999 published by the North Carolina Department of Commerce.
- Exhibit D-18 County Wage Standards for 2000 published by the North Carolina Department of Commerce.

### **FINDINGS OF FACT**

Based on the foregoing evidence of record, the Assistant Secretary makes the following findings of fact:

1. Taxpayer is a (Product) manufacturer and has a facility located in (City), North Carolina and facilities located outside of North Carolina.
2. (City) is located in Anson County.
3. Taxpayer filed North Carolina corporate income and franchise tax returns as an S corporation for the tax year 1999 and for the tax period January 1 through May 2, 2000. For the tax period May 3 through December 31, 2000 and for the tax year 2001, Taxpayer filed as a C corporation.
4. Taxpayer reported eligible tax credits of \$328,000 for new jobs, \$10,905 for machinery and equipment, and \$41,000 for worker training on its 1999 return. Taxpayer claimed a tax credit of \$41,000 for worker training on that return.
5. Taxpayer reported eligible tax credits of \$336,000 for new jobs, \$54,632 for machinery and equipment, and \$41,721 for worker training on its return for the period ending December 31, 2000. Taxpayer claimed tax credits of \$41,721 for worker training, and \$42,706 for new jobs (an installment from the new jobs credit generated in 1999) on that return.
6. Taxpayer reported eligible tax credits of \$100,000 for new jobs and \$1,710 for machinery and equipment on its return for the year 2001. Taxpayer claimed tax credits of \$28,605 for new jobs (installments from the new jobs credits generated in 1999 and 2000) on that return.
7. Upon examination, the eligible machinery and equipment tax credits and the jobs tax credits for the tax period ending December 31, 2000 and the tax year 2001 were denied because Taxpayer did not meet the wage standard test. The wage standard for Anson County was \$490 for 2000 and \$517 for 2001. The average wage for all employees at the facility was \$392 for 2000 and \$406 for 2001. The average wage for the new hires was \$342 in 2000 and \$317 in 2000.
8. The tax year 1999 jobs tax credit was reduced because Taxpayer did not meet the wage standard test for all new hires and due to the loss of positions in future years. The wage standard for Anson County was \$468. Taxpayer was given

credit for 10 employees that did meet the wage standard but only 8 of these positions remained in 2000 and only 6 of these positions remained in 2001.

9. The tax year 1999 worker training credit was reduced to the amount of wages paid to the ten new employees for which Taxpayer qualified for the new jobs credit. Taxpayer did not establish that any other employees who received worker training met the wage standard.
10. Taxpayer's North Carolina net income for the tax year 1999 was increased as a result of an increase to the numerator of the property factor in the apportionment formula prescribed by G.S. 105-130.4(j) because Taxpayer understated the amount of inventory attributable to North Carolina.
11. Taxpayer's North Carolina net incomes for the tax period ending December 31, 2000 and for the tax year 2001 were increased because Taxpayer understated the adjustment for taxes deducted on the federal return that are based on or measured by net income required by G.S. 105-130.5(a)(1).
12. The Department's adjustments resulted in an understatement of Taxpayer's franchise tax and income tax liabilities for each tax period by 25% or more.
13. The Department issued proposed assessments dated October 6, 2003 for additional franchise and income tax, interest, and 25% negligence penalties for the tax year 1999, the tax period May 3 through December 31, 2000, and the tax year 2001.
14. Taxpayer timely protested the proposed assessments and requested a hearing before the Secretary of Revenue.
15. Taxpayer has not pursued its appeal since submitting its written request for a hearing in protest of the proposed assessments.
16. Taxpayer never submitted any explanation for its protest and never responded to the Department's requests for evidence to support its appeal.
17. Taxpayer did not respond to notice of hearing.

### **CONCLUSIONS OF LAW**

Based on the foregoing findings of fact, the Assistant Secretary makes the following conclusions of law:

1. Article 3A of Chapter 105 of the General Statutes, hereafter referred to as "the Act," provides tax credits for investments in certain types of businesses, including

credits for creating jobs, training workers and investing in machinery and equipment.

2. The tax credit for worker training is taken in the year the taxpayer qualifies for the credit. The tax credits for new jobs and for investing in machinery and equipment are taken in installments beginning in the tax period following the year in which the taxpayer qualifies for the credit.
3. The Act sets out requirements that must be satisfied before any of the tax credits are available, including the requirements to be primarily engaged in a certain type of business, to conduct that business activity in this State and to meet the wage standard test.
4. The burden of proof for eligibility to claim tax credits under the Act rests upon the taxpayer.
5. Manufacturing is one of the qualifying businesses included in G.S. § 105-129.4(a).
6. Manufacturing is defined under the Act as “[a]n industry in manufacturing sectors 31 through 33, as defined by NAICS, but not including quick printing or retail bakeries.”
7. Taxpayer’s primary business was manufacturing.
8. Taxpayer was primarily engaged in manufacturing at the location with respect to which the credits were claimed.
9. To meet the wage standard test for the credit for creating jobs or for the credit for worker training, the jobs for which the credit is claimed must meet the wage standard.
10. To meet the wage standard test for the credit for investing in machinery and equipment, the jobs at the location with respect to which the credit is claimed must meet the wage standard.
11. Taxpayer met the wage standard for ten new hires in tax year 1999. Taxpayer did not establish that it met the wage standard for any other employees trained in 1999.
12. Taxpayer did not meet the wage standard for any new hires or for the total number of employees at the establishment in 2000 or 2001
13. The jobs tax credit is conditioned on the continued employment by the taxpayer of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

14. If, in one of the four years in which the installment of a new jobs tax credit accrues, the number of the taxpayer's full-time employees in this State falls below the number of full-time employees the taxpayer had in this State in the year in which the taxpayer qualified for the credit, the credit for the number of lost positions expires and the taxpayer may not take any remaining installments of the credit for those positions.
15. Only 8 of the 10 positions that qualified for the new jobs credit in 1999 remained in 2000 and only 6 of those positions remained in 2001.
16. Multistate corporations are required to apportion income pursuant to G.S. 105-130.4.
17. The apportionment formula contains a property factor that is defined by G.S. 105-130.4(j) as "a fraction, the numerator of which is the average value of the corporation's real and tangible personal property owned or rented and used in this State during the income year and the denominator of which is the average value of all the corporation's real and tangible personal property owned or rented and used during the income year."
18. Taxpayer understated the amount of inventory attributable to North Carolina.
19. G.S. 105-130.5(a)(1) requires an addition to federal taxable income for any taxes deducted on the federal return that are based on or measured by net income.
20. Taxpayer understated the adjustment for taxes deducted on the federal return that are based on or measured by net income.

### **DECISION**

The proposed assessments of additional corporate income and franchise tax, penalty, and interest for the tax year 1999, the tax period May 3 through December 31, 2000, and the tax year 2001 are hereby sustained based on the aforementioned findings of fact and conclusions of law. Taxpayer failed to provide any evidence to dispute the Department's position.

This the \_\_\_\_ day of \_\_\_\_\_, 2007.

Signature \_\_\_\_\_

Eugene J. Cella  
Assistant Secretary of Revenue