

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD OF
EQUALIZATION AND REVIEW

90 PTC 27

In the matter of:)
The appeal of Cone Mills, Inc.)
from the denial of its request) Final Decision
for exclusion of certain property)
by the Guilford County Board of)
Equalization and Review for 1989.)

This matter was heard before the Property Tax Commission, sitting as the State Board of Equalization and Review in the City of Raleigh, Wake County, North Carolina, on 21 April 1992 pursuant to the appeal of Cone Mills, Inc. (hereinafter "Taxpayer") from a decision of the Guilford County Board of Equalization and Review for 1989.

Statement of Case

The property under appeal consists entirely of personal property owned by the Taxpayer, Cone Mills, Inc. and contained in the Taxpayer's Minneola plant in Gibsonville on 1 January 1989. The personal property in question consisted primarily of textile manufacturing machinery and equipment and related items.

By letter dated 21 March 1990, the Taxpayer was notified that the Guilford County Board of Equalization and Review for 1989 had denied its request that this personal property be classified as inventory and excluded from property taxation. The Taxpayer filed a notice of appeal to the Property Tax Commission on 4 April 1990.

The Taxpayer asserts that the personal property at issue here meets the statutory definition of "inventories" contained G.S. 105-273(8a) and all other requirements for exclusion from property taxation; the County asserts that it does not.

The Taxpayer was represented at the hearing before the Commission by Edward C. Winslow III and Robert J. King, attorneys at law; the County was represented at the hearing by Gregory L. Gorham, Deputy County Attorney for Guilford County. Koger Bradford, attorney at law (member of the South Carolina Bar) appeared at the hearing on behalf of the purchasers of the subject property and, with Mr. Winslow and Mr. King, on behalf of the Taxpayer.

Issues

In their Order On Final Pre-hearing Conference, the parties did not agree on the issue to be decided. The Taxpayer contended that the contested issue was: "Is the personal property at issue excluded from taxation as "inventory" pursuant to N.C.G.S. 105-273(8a) and 105-275(34)?" The County contended that the contested issue was: "Are the machinery, equipment, furniture, fixtures, and supplies listed in the business personal property tax listing for Cone Mills, Minneola Plant, for business year ending January 1, 1989, 'inventory' as defined in N.C.G.S. 105-273(8a) and 105-275(34)?"

In view of the clear statutory direction contained in the first sentence of G.S. 105-282.1(a) and repeated in numerous appellate cases in which exemption and exclusion issues have been considered, the Commission finds that the issue to be decided is whether the Taxpayer has met its burden of establishing that the subject property was entitled to exemption or exclusion from property taxes under the provisions of the Machinery Act, G.S. 105-271 et seq. The Taxpayer relies on the

provisions of G.S. 105-273(8a) and 105-275(34), and has the burden of establishing that its property is entitled to exclusion under these sections.

Stipulations

In addition to procedural stipulations contained in the pre-hearing order, the parties also stipulated: (a) Cone Mills was the owner of the property at issue on 1 January 1989; and (b) the property at issue consists of items of personal property contained in the Minneola Plant in Gibsonville, North Carolina on 1 January 1989.

Evidence

The evidence presented by the Taxpayer and considered by the Commission consisted of the following:

1. Taxpayer Exhibit 1 - Graph showing sales of equipment by Cone Mills.
2. Taxpayer Exhibit 2 - List of equipment sales by Cone Mills or Gibbs Machinery.
3. Taxpayer Exhibit 3 - Bill of sales for equipment at issue.
4. Taxpayer Exhibit 4 - Affidavit of Mr. John Markham.
5. Taxpayer Exhibit 5 - Affidavit of Mr. Robert Ollis.
6. Oral testimony of Mr. John Markham.
7. Oral testimony of Mr. Robert Ollis.

The evidence presented by the County and considered by the Commission consisted of the following:

1. County Exhibit 1 - Business personal property tax listing and attachments for Cone Mills, Minneola Plant for 1 January 1989.
2. Oral testimony of Mr. James P. Overby, Jr.

Commission Exhibits

In addition to the evidence presented by the parties, the Commission also considered the following procedural documents:

- C-1 Notice of Appeal, filed 6 April 1990.
- C-2 Commission acknowledgement of C-1, 6 April 1990.
- C-3 Transmittal letter and Application For Hearing, filed 26 April 1990.
- C-4 Commission acknowledgement of C-3, 2 May 1990.
- C-5 Preliminary notice of hearing, 29 July 1991.
- C-6 Letter from Commission continuing hearing, 29 August 1991.
- C-7 Preliminary notice of hearing, 4 March 1992.
- C-8 Notice of Hearing (County), 1 April 1992.
- C-9 Notice of Hearing (Taxpayer), 1 April 1992.
- C-10 Transmittal letter for pre-hearing order and Taxpayer exhibits, filed 10 April 1992.
- C-11 Transmittal letter for Affidavit of Robert Ollis, filed 10 April 1992.
- C-12 Brief for Taxpayer.
- C-13 Order On Final Pre-hearing Conference, approved by the Chairman and ordered filed 21 April 1992.

Findings of Fact

Based on the evidence presented by the parties, as set forth above, the Commission makes the following Findings of Fact:

1. The property under appeal consists of tangible personal property owned by the Taxpayer, Cone Mills, Inc. and contained in the Taxpayer's Minneola plant in Gibsonville on 1 January 1989. The personal property is primarily textile manufacturing machinery and equipment and related items.

2. The Taxpayer, for its own business purposes, ceased to use its Minneola Plant as a textile manufacturing plant. After ceasing operations, in November of 1988 the Taxpayer offered for sale both the real and personal property located at its Minneola Plant.
3. Prior to ceasing operation of the Minneola Plant, the Taxpayer used the Minneola Plant as a weaving operation. The machinery, equipment, and related items comprising the property under appeal were the operating machinery of the Minneola Plant. At the time the Taxpayer ceased operation of the Plant, it was an outdated facility.
4. The Taxpayer, at all times relevant to this appeal, was and is regularly engaged in the manufacture, production, and sale of textile products, at various locations.
5. The Taxpayer's sales of textile products generate annual gross revenues in the \$500 million to \$750 million range.
6. The Taxpayer's sales of used equipment generate annual gross revenues of approximately \$200,000. See Taxpayer Exhibit 1. As noted in footnote 1 to this Exhibit, however, this annual amount includes "sales of equipment by Gibbs Machinery on behalf of Cone Mills." Emphasis added.
7. Gibbs Machinery is a broker and dealer in textile machinery and equipment.
8. The Taxpayer is not a broker of either new or used textile equipment.

9. The Taxpayer is not a dealer in either new or used textile equipment.
10. The Taxpayer is not a merchant of either new or used textile equipment.
11. The Taxpayer does not purchase any new or used textile equipment for the purpose of immediate resale. The Taxpayer does purchase new and (occasionally) used equipment for its own use in the manufacture of textile products.
12. The Taxpayer, for sound business reasons, occasionally finds it advantageous to dispose of machinery and equipment which it has purchased, and used for a period of time, but which is still useful and has value in the marketplace for used textile equipment. The Taxpayer commonly employs broker-dealers like Gibbs Machinery to find a purchaser for such equipment.
13. The market for used textile equipment is large and active enough to support a number of brokers and dealers in used textile equipment. Mr. Robert Ollis, Vice President (Operations) of Gibbs Machinery, testified as a witness for the Taxpayer concerning the market for used textile equipment.
14. The Taxpayer's role in this market, like that of other major textile manufacturers, is that of a consumer or purchaser, primarily of new equipment, but also of some used equipment. The Taxpayer is not a broker or dealer, and does not compete with Gibbs Machinery or other merchants in this market.

15. The Taxpayer offered no evidence tending to show that the Taxpayer has ever purchased one single piece of machinery or equipment for the purpose of resale. Instead, the Taxpayer's evidence tends to show that such items, including the property under appeal, are purchased, used, then disposed of for much less than the price originally paid.

Conclusions of Law

Based on its Findings of Fact set forth above, the Commission makes the following Conclusions of Law:

1. The Taxpayer is not a "retail merchant" of textile machinery as that term is defined in G.S. 105-273(13a).
2. The Taxpayer is not a "manufacturer" of textile machinery as that term is defined in G.S. 105-273(10b). The Taxpayer is a "manufacturer" of textile products and has enjoyed the substantial benefit of the General Assembly's exclusion of its inventory of textile products from ad valorem taxation.
3. The Taxpayer is not a "wholesale merchant" of textile machinery as that term is defined in G.S. 105-273(19).
4. It was stipulated by the Taxpayer that the Taxpayer was the owner of the subject property as of 1 January 1989. The Commission concludes that none of the property under appeal constituted "inventories" of the Taxpayer as that term is defined in G.S. 105-273(8a).

5. None of the property under appeal constituted "inventories owned by manufacturers" or "inventories owned by retail and wholesale merchants" as defined and excluded from property taxation by G.S. 105-275(33) and (34).
6. None of the property under appeal is entitled to exemption or exclusion from ad valorem taxation under any provision of North Carolina law.

Decision and Order

All of the textile manufacturing machinery and equipment and related property under appeal in this case was purchased by the Taxpayer, over a period of years, for the Taxpayer's own use. The Taxpayer utilized the bulk of this property for many years.

Correct application of the statutes at issue in this appeal requires consideration of plain language of the statutes, as well as the principles laid down time and again by our State's appellate courts. One fundamental premise in this area of the law is that statutes creating exemptions or exclusions from the property tax are strictly construed in favor of taxation, and against exemption or exclusion, where the application of the statute to particular facts is questionable. This premise appears in many property tax cases.

Chief Justice Parker wrote in Wake County v. Ingle, 273 N.C. 343, 346, 160 S.E.2d 62, 64 (1968):

"What is said in Seminary, Inc. v. Wake County, 251 N.C. 775, 112 S.E.2d 528, is relevant here:

'In this connection this Court stated in Harrison v. Guilford County, 218 N.C. 718, 12 S.E.2d 269, that statutes exempting specific property from taxation because of the

purposes for which such property is held and used, are and should be construed strictly, when there is room for construction, against exemption and in favor of taxation (citing cases).

"By the rule of strict construction, however, is not meant that the statutes shall be stintingly or even narrowly construed . . . but it means that everything shall be excluded from its operation which does not clearly come within the scope of the language used." Stacy, C.J., in S. v. Whitehurst, 212 N.C. 300, 193 S.E. 657."

The statutory provisions at issue here were designed to exempt "inventories" owned by manufacturers and by wholesale and retail merchants. The fundamental attribute of a merchant's inventories is that such items are purchased and held by the merchant, not for his own use, but for immediate resale for a profit. A "merchant" generates a profit by buying and selling goods.

The Taxpayer claims that the property at issue here became inventories of a wholesale merchant at the moment when the Taxpayer offered the property for sale, simply because the Taxpayer has in the past disposed of similar property, in relatively insignificant amounts. The critical fact ignored by the Taxpayer is that the Taxpayer is the consumer of the property at issue, not a merchant of such property.

G.S. 105-273(8a) provides that "inventories" are goods held for sale in the regular course of business by manufacturers and retail and wholesale merchants. The Taxpayer purchased the subject property for its own use, not for resale. The Taxpayer's decision to dispose of the property did not change the nature of the property, or the purpose for which it was held. The Taxpayer did not hold the machinery and equipment located in its Minneola Plant for sale in the regular course of business.

Every statutory provision providing for the exemption or exclusion of property except G.S. 105-278.1 contains, either implicitly or explicitly, two requirements: (1) qualifying owner (for some, any owner may qualify), and (2) qualifying use. G.S. 105-278.1 has only an ownership requirement, for reasons thoroughly discussed in In re University of North Carolina, 300 N.C. 563, 268 S.E.2d 472 (1980).

Whenever property is removed from the property tax base, all other taxpayers bear an increased tax burden. In the application of exemption and exclusion provisions other than G.S. 105-278.1, the use of the particular property for which exemption or exclusion is sought must be carefully analyzed to avoid unfair (and unconstitutional) discrimination against other taxpayers. See, e.g., In re Wake Forest University, 51 N.C. App. 516, 277 S.E.2d 91, cert. denied, 303 N.C. 544, 281 S.E.2d 391 (1981); In re North Carolina Forestry Foundation, Inc., 35 N.C. App. 414, 242 S.E.2d 492 (1978); In re North Carolina Forestry Foundation, Inc., 296 N.C. 330, 250 S.E.2d 236 (1979).

A merchant does not purchase and hold his inventories for his own use; he holds them to sell as quickly as possible. The purpose for which a merchant holds and uses his inventories is distinctly different from the purpose for which consumers hold and use the same property.

It would be unfair to others who own and use property in their businesses to accept the tenuous argument propounded by the Taxpayer herein for exclusion of the subject property from the tax base of Guilford County for tax year 1989. While the Taxpayer attempted to show

that its circumstances were similar to those considered by this Commission in the Appeal of Moore Buick-Pontiac (89 PTC 53, entered 13 February 1991) there are critical differences.

The taxpayer in that case (Moore) argued that its rental cars and demonstrator cars constituted "inventories" of a wholesale or retail merchant. Moore had three active business operations: (1) new car sales, (2) used car sales, and (3) rental operations ("Dollar Rent-A-Car"). With regard to rental cars, this Commission found that while they were held for the purpose of rental, such cars were not excluded inventory. Such cars could become inventory in the Taxpayer's hands only when held for the exclusive purpose of sale.

Unlike Cone Mills, the taxpayer in Moore did engage in the purchase and resale of used property for a profit. Moore, like many automobile dealers, was regularly engaged in the retail merchandising of used cars, and regularly purchased used cars for the exclusive purpose of immediate resale. A used car held by Moore for the exclusive purpose of immediate resale was part of Moore's used car inventory.

Cone Mills, the Taxpayer herein, has never purchased textile machinery or equipment for the purpose of resale. No one seeking used textile equipment would call the Taxpayer, for the Taxpayer is not a merchant of such equipment (though Gibbs Machinery clearly is). As this Commission pointed out in its Final Decision in Moore Buick-Pontiac,

addressing the demonstrator cars which the Commission found were inventories in the hands of Moore:

"Where the taxpayer routinely disposes of his display and demonstration merchandise by sale to the public in the regular course of his business, the property meets the requirements of G.S. 105-275(34). Note that the property must not be consumed by the taxpayer in the course of his display and demonstration. In the case of the demonstrator cars at issue in this case, the Taxpayer uses the cars for a short period of time, then sells them at a small discount from the price of a new car. If, on the other hand, a taxpayer kept demonstration units in service until they had relatively little value, the taxpayer would become the consumer of the units, and could not claim that they were held for sale." Emphasis in the original.

Cone Mills, the Taxpayer herein, purchases machinery and equipment, consumes it, and disposes of it at a price much less than the price paid. A merchant, on the other hand, purchases property and sells it for more than he paid for it, in order to generate a profit. The Taxpayer is not a merchant of used textile machinery and equipment by any reasonable definition.

WHEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the decision of the Guilford County Board of Equalization and Review for 1989 denying the Taxpayer's application for exclusion of the subject property from ad valorem taxation, is AFFIRMED.

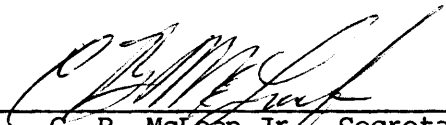
Entered this the 2nd day of July, 1992.

NORTH CAROLINA PROPERTY TAX COMMISSION

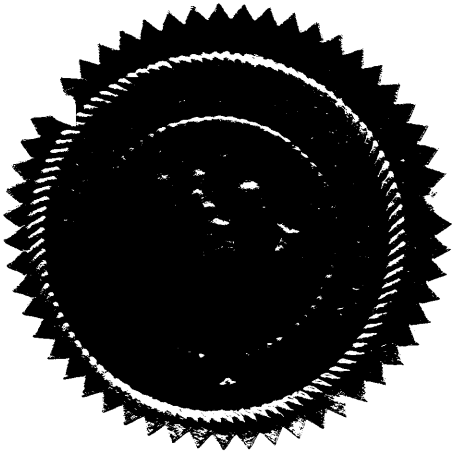


John A. Cocklereece, Chairman

Attest:



C. B. McLean Jr., Secretary



NO. 9210PTC1053

NORTH CAROLINA COURT OF APPEALS

Filed: 2 November 1993

IN THE MATTER OF THE APPEAL OF
CONE MILLS CORPORATION

From the North Carolina
Property Tax Commission
No. 90 PTC 27

CLERK OF THE COURT
OF APPEALS

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FILED

Appeal by taxpayer from a final decision of the North Carolina Property Tax Commission denying taxpayer's application for exclusion of personal property from *ad valorem* taxation. Heard in the Court of Appeals 30 September 1993.

Taxpayer, Cone Mills Corporation, is engaged in a variety of business activities in North Carolina, including the manufacture of textiles. Taxpayer's sales of textile products generate annual gross revenues in the range of \$500 million to \$750 million. In November 1988, taxpayer closed one of its plants, and the textile manufacturing equipment and machinery, which was no longer in use at the plant, was sold by the taxpayer.

On 21 March 1990, the Guilford County Board of Equalization and Review denied taxpayer's request to classify the personal property as inventory and imposed an *ad valorem* tax on the sale of the property. Taxpayer appealed to the Property Tax Commission which affirmed the decision of the Guilford County Board of Equalization and Review. Taxpayer appealed.

Brooks, Pierce, McLendon, Humphrey & Leonard, by Edward C. Winslow III and Robert J. King III, for the taxpayer-appellant.

Guilford County Attorney's Office, by County Attorney Jonathan V. Maxwell and Deputy County Attorney Gregory L. Gorham, for the taxing authority-appellee.

WELLS, Judge.

According to N.C. Gen. Stat. § 105-274:

(a) All property, real and personal, within the jurisdiction of the State shall be subject to taxation unless it is:

- (1) Excluded from the tax base by a statute of statewide application enacted under the classification power accorded the General Assembly by Article V, § 2(2), of the North Carolina Constitution, or
- (2) Exempted from taxation by the Constitution or by a statute of statewide application enacted under the authority granted the General Assembly by Article V, § 2(3), of the North Carolina Constitution.

N.C. Gen. Stat. § 105-275(34) designates inventories "owned by retail and wholesale merchants" as a special class of property which "shall not be listed, appraised, assessed, or taxed." Inventories are defined as "goods held for sale in the regular course of business by manufacturers, retail and wholesale merchants, and contractors." N.C. Gen. Stat. § 105-273(8a).

Wholesale merchant is defined as

a taxpayer who is regularly engaged in the sale of tangible personal property, acquired by a means other than manufacture, processing, or producing by the merchant, to other retail or wholesale merchants for resale or to manufacturers for use as ingredient or component parts of articles being manufactured for sale.

N.C. Gen. Stat. § 105-273(19).

Taxpayer argues that because it sells its used machinery and equipment from time to time the sale of its machinery and equipment meets all the requirements set forth above and is therefore excluded from taxation. We do not agree.

The scope of appellate review of cases from the Property Tax Commission is set by N.C. Gen. Stat. § 105-345.2, which provides in pertinent part:

(b) So far as necessary to the decision and where presented, the court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning and applicability of the terms of any Commission action. 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:

. . .

- (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.

(c) In making the foregoing determinations, the court shall review the whole record or such portions thereof as may be cited by any party and due account shall be taken of the rule of prejudicial error.

This statutorily mandated standard of review is known as the "whole record test." In applying this standard of review, this Court is not permitted to replace the Property Tax Commission's judgment with its own judgment even when there are two reasonably conflicting views. *In re Appeal of Perry-Griffin Foundation*, 108

N.C. App. 383, 424 S.E.2d 212, *rev. denied*, 333 N.C. 533, 429 S.E.2d 561 (1993). "The whole record test is not 'a tool of judicial intrusion; instead it merely gives a reviewing court the capability to determine whether an administrative decision has a rational basis in the evidence.'" *Rainbow Springs Partnership v. County of Macon*, 79 N.C. App. 335, 339 S.E.2d 681, *rev. denied*, 316 N.C. 734, 345 S.E.2d 392 (1986) (quoting *In re Rogers*, 297 N.C. 48, 253 S.E.2d 912 (1979)). In reviewing whether the whole record fully supports the Commission's decision, this Court must evaluate whether the Commission's decision is supported by substantial evidence. If substantial evidence is found, this Court cannot overturn the Property Tax Commission's decision. *Id.*

The dispositive question on appeal is whether the taxpayer is a wholesale merchant of inventories as defined by N.C. Gen. Stat. § 105-273 (8a) and (19). The statutory language of The Machinery Act provides us with the clearest guidance in resolving this question.

To resolve this question we ask: What was the primary purpose for which taxpayer acquired the property? If the taxpayer acquired the equipment and machinery for the primary purpose of using it in the manufacture of textiles, then the equipment and machinery are not goods held for sale in the regular course of business by a wholesale merchant. If the taxpayer acquired the property for the primary purpose of resale, then the property would be excluded from *ad valorem* taxation.

Taxpayer admits that the primary purpose for which it purchased the machinery and equipment was for use in its manufacture of textiles. Only when the taxpayer no longer used the machinery and equipment in its textile business did taxpayer offer it for sale. Taxpayer's annual revenues generated from the sale of used equipment and machinery totaled approximately \$200,000, whereas taxpayer's annual gross revenues from the manufacture of textiles totaled approximately \$500 million.

After reviewing the whole record, we conclude that the Property Tax Commission's decision was supported by substantial evidence. Taxpayer acquired the property primarily for use in its manufacture of textiles and only held the goods for sale after the property was no longer useful in taxpayer's textile business. The equipment and machinery at issue were not inventory held for sale in the regular course of business by a wholesale merchant. Consequently, the property is not excluded from *ad valorem* taxation and the decision of the Property Tax Commission is

Affirmed.

Judges LEWIS and MARTIN concur.

A TRUE COPY
CLERK OF THE COURT OF APPEALS
OF NORTH CAROLINA
BY Patricia P. Wheeler
DEPUTY CLERK
November 22 1993