

STATE OF NORTH CAROLINA BEFORE THE PROPERTY TAX COMMISSION
COUNTY OF WAKE SITTING AS THE STATE BOARD OF
 EQUALIZATION AND REVIEW
 07 PTC 781

IN THE MATTER OF:
APPEAL OF U.S. Xpress Inc.
from the appraisal of system
property by the Department
of Revenue for tax year 2007.

ORDER

THIS MATTER came on for hearing before the North Carolina Property Tax Commission, sitting as the State Board of Equalization and Review, on Wednesday, April 16, 2008, on motion for summary judgment filed by counsel for the Department of Revenue, ("Department") and on motion for summary judgment filed by counsel for U.S. Xpress, Inc. ("Taxpayer").

Chairman Terry L. Wheeler presided over the hearing with Vice Chairman Anthony L. Young and Commission members R. Bruce Cope, Wade F. Wilmoth and Juleigh Sitton participating.

Charles H. Mercer, Jr., Esq. and Reed J. Hollander, Esq. appeared at the hearing on behalf of U.S. Xpress, Inc. Michael D. Youth, Assistant Attorney General, appeared at the hearing on behalf of the Department of Revenue.

To rule in favor of the Department or Taxpayer regarding the motions for summary judgment, the Commission must determine: (1) that there is no genuine issue of material fact and, (2) that Department or Taxpayer is entitled to judgment as a matter of law.

In this appeal, the Department of Revenue, Property Tax Division, sent the Taxpayer a notice of the 2007 proposed valuation of Taxpayer's rolling stock apportioned to North Carolina. The Taxpayer was sent the proposed valuation because the Department of Revenue determined that the Taxpayer is a motor freight carrier company and thus a public service company as provided in Machinery Act.¹ The notice provided that the proposed valuation would become final, unless written notice of exception is received in the office of the Property Tax Commission within 20 days after the date on which the notice was mailed.² Pursuant to N.C. Gen. Stat. § 105-342(b), the Taxpayer challenged the 2007 proposed valuation of its rolling stock by filing an appeal with the Commission.³ Based upon its arguments, the Taxpayer contends that its property located in Lexington, NC is only taxable by Davidson County and the City of Lexington because it does not own a terminal in North Carolina. Prior to the hearing, the parties stipulated to certain facts, listed the exhibits, and submitted the contested issues.⁴

¹ See N.C. Gen. Stat. § 105-333(14) and N.C. Gen. Stat. § 105-333(10).

² See Attachment A to Taxpayer's Notice of Appeal.

³ See Taxpayer's Notice of Appeal dated August 17, 2007.

⁴ See Order on Final Pre-Hearing Conference.

Having considered the pleadings, affidavits, exhibits and authorities cited, the Commission finds that: (1) Taxpayer is domiciled outside of North Carolina; (2) Taxpayer is engaged in the business of transporting property by motor vehicle for hire over the public highways of North Carolina; (3) Taxpayer regularly transports property to or from (4) at least one terminal (Lexington facility),⁵ which is (5) located in North Carolina (6) that is owned by the Taxpayer. Consequently, the Department of Revenue properly valued Taxpayer's rolling stock apportioned to North Carolina as required by the Machinery Act.

Therefore, the Commission concludes as a matter of law: (1) that there is no genuine issue of material fact and, (2) that the Department of Revenue is entitled to judgment as a matter of law.

IT IS THEREFORE ORDERED that the Commission grants summary judgment for the Department of Revenue.



NORTH CAROLINA PROPERTY TAX COMMISSION

Terry L. Wheeler, Chairman

Vice Chairman Young and Commission members Cope,
Wilmoth and Sitton concur.

Entered: July 2, 2008

ATTEST:

Janet L. Shires, General Counsel

⁵See Order on Final Pre-Hearing Conference, Stipulations 3(c) and (3)(d).