

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD OF
EQUALIZATION AND REVIEW
09 PTC 022

IN THE MATTER OF:
APPEAL OF: **David H. Murdock
Research Institute (“DHMRI”)**
from the decision by the Cabarrus
County Board of Equalization
and Review denying the
application for property
tax exemption for certain
property for tax year 2008.

FINAL DECISION

This Matter was heard before the Property Tax Commission ("Commission"), sitting as the State Board of Equalization and Review in the City of Raleigh, Wake County, North Carolina, at its regularly scheduled Session of Hearings on Wednesday, March 23, 2011 pursuant to the appeal of the **David H. Murdock Research Institute (“DHMRI”)** (Appellant). In this matter, Appellant challenges the decision of the Cabarrus County Board of Equalization and Review (“County Board”) denying its application for exemption from *ad valorem* taxation for certain property.

Chairman Terry L. Wheeler presided over the hearing with Vice Chairman Aaron W. Plyler and Commission members Wade F. Wilmoth, Georgette Dixon and Paul Pittman participating.

Mr. Fletcher Hartsell, Jr., Esquire appeared at the hearing on behalf of the Appellant. Mr. Richard M. Koch, Esquire appeared at the hearing on behalf of Cabarrus County.

STATEMENT OF CASE

This matter was scheduled for hearing on Cabarrus County’s Motion to Dismiss¹ Appellant’s appeal for failure of the Appellant to file a timely application for exemption from *ad valorem* taxation for tax year 2008. In its Motion to Dismiss, Cabarrus County does not dispute that Appellant is a qualifying exempt organization and that the property would be exempt from *ad valorem* taxation for tax year 2008 if a timely application for an exemption was filed.

In its response to Cabarrus County’s Motion to Dismiss, Appellant, through counsel, requests the Commission to deny Cabarrus County’s Motion to Dismiss the appeal, and for the Commission to take such other and further action as the Commission may deem appropriate.² Appellant, DHMRI, is seeking an exemption for its property located in the City of Kannapolis, Cabarrus County, North Carolina.

Appellant, DHMRI, filed the exemption application after receiving the notice of assessment and tax bill from the Cabarrus County Tax Office, which was mailed to Appellant on July 23, 2008. Even though the application for exemption from *ad valorem* taxation for the subject property was

¹ Cabarrus County requested that the verified motion be received as an affidavit for purposes of the Commission’s consideration of this motion.

² See Appellant’s Response to Motion to Dismiss, including Affidavit of Gerald A. Newton.

not filed during the listing period, Appellant did file the application during the 2008 calendar year. The County Board denied the exemption application as a “late” exemption application for tax year 2008.

ISSUE

Did the County Board err by denying the Appellant’s application for exemption from *ad valorem* taxation for the subject property for tax year 2008?

FROM THE MOTION AND RESPONSE FILED IN THIS MATTER, THE AFFIDAVITS, RELEVANT STATUTES AND AUTHORITIES CITED, AND ARGUMENTS PRESENTED, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

1. The subject property is only a portion of a fourth (4th) building being developed in a tax-exempt capacity, i.e. David H. Murdock Research Institute, Core Lab, and Condominium Unit 1 (“Unit 1”).³

2. Appellant (“DHMRI”) is the owner of the Core Lab, Condo Unit 1 in the David Murdock Core Laboratory Building (the “DHM Core Lab”) on the North Carolina Research Campus (“NCRC”). Unit 1 is a unique condominium area in the DHM Core Lab facility, housing the operations and equipment for DHMRI. Castle & Cooke, a North Carolina LLC, transferred Unit 1 to DHMRI on November 30, 2007 by deed recorded in the office of the Cabarrus County Register of Deeds (Book 7937 at page 113).⁴

3. The NCRC is a master-planned educational and scientific biotechnical campus upon which agricultural and nutritional research has been, is being and will be conducted by multiple constituent campuses of the University of North Carolina (the UNC System”), independent colleges and universities, community colleges and other health and nutrition-related public and private sector organizations. Ultimately, the research is designed to translate into health and nutrition-related human development for the benefit of the State, nation and world. The DHM Core Lab is the principal laboratory and research facility located on the campus in the City of Kannapolis, Cabarrus County, North Carolina.⁵

4. The affiliation of DHMRI and, particularly Unit 1, of the DHM Core Lab, with the UNC System is common knowledge in the community, Cabarrus County and the State.⁶

5. Since the announcement of NCRC on September 12, 2005 (the “Announcement”), Cabarrus County and the City of Kannapolis have engaged with David H. Murdock and “affiliated” entities, including DHMRI when formed, regarding a complex financing strategy (now commonly

³ See Affidavit of Gerald A. Newton. Mr. Newton served on the Cabarrus County Board of Equalization and Review from July 1999 through June 2005. Mr. Newton also served as the Planning and Development Area Manager in Cabarrus County for the period of 1990 - 1996.

⁴ See Appellant’s Exhibit 3D.

⁵ See Appellant’s Application for Hearing.

⁶ *Id.*

known as “Tax Increment Financing” or “TIF”) for the redevelopment of the former site of Cannon Mills Plant I (the “Project” or the “Project Site”). The Project ultimately involved the leasing of facilities on the Project Site to state educational institutions (including at least three (3) major facilities for the UNC and community college systems) and the gift transfer of those facilities to the State of North Carolina at the conclusion of the lease term. The entire tax financing, structure, ownership and leasing of the Project was, and continues to be, expressly known, and approved, by Cabarrus County, the City of Kannapolis, and the Appellant and Murdock interests.⁷

6. DHMRI is a private foundation, organized under the Internal Revenue Code for the benefit of university-related scientific research. DHMRI applied for recognition of its non-profit status with the Internal Revenue Service as a qualified 501(c)(3) in tax year 2008, and was granted that status on July 1, 2009, effective retroactively to March 30, 2007, the date upon which its Articles were filed with the Office of the Secretary of State.⁸

7. As of January 31, 2008, the Cabarrus County Tax Assessor had not made an assessment of the subject property. As such, the assessment of the subject property occurred after the applicable listing period, and no value was identified before Cabarrus County sent the tax bill to Appellant on July 23, 2008.⁹

8. For tax year 2008, Appellant filed a formal application for exemption from *ad valorem* taxation for the subject property in the fall of 2008 after receiving a tax assessment (\$40,170,588) and tax bill (\$449,910.58) from the Cabarrus County Tax Office.¹⁰

9. The County Board was still meeting and hearing appeals and considering applications for tax exclusions and exemptions for tax year 2008 that were untimely filed. For tax year 2008, the County Board accepted untimely applications for properties seeking farm use, homeowner association, forestry present use, religious, homestead exclusions, non-profits elderly and historical exemptions, exclusions or deferments.¹¹

10. During the thirteen County Board meetings (May 20, June 17, July 29, August 5, August 14, September 2, September 16, September 23, October 27, November 5, November 18 and December 3), that occurred prior to the December 10, 2008 meeting, the County Board approved untimely exclusion, exemption or deferment applications that were presented at the meetings. There were no cases where the County Board denied an untimely application prior to the December 10, 2008 meeting when the County Board denied DHMRI’s application requesting exemption from *ad valorem* taxation for the subject property.¹²

11. Cabarrus County approved DHMRI’s application for exemption from *ad valorem* taxation for the subject property for tax year 2009.

⁷Affidavit of Gerald A. Newton at Item 5.

⁸See Appellant’s Application for Hearing, with attachments, filed with the Commission on November 30, 2010.

⁹See Appellant’s Exhibit 3H.

¹⁰Id.

¹¹Applications that were filed after the January 1, 2008 applicable listing period.

¹²The minutes of the December 10, 2008 meeting provide that the meeting began by Mr. Murdock defending his organization as a charitable organization. Brent Weisner then interjected that the appeal before the Board was not exemption eligibility of the organization but rather whether to accept the late application. (See Exhibit 3F to the Appellant’s Application for Hearing).

12. The subject property is and will be used by Appellant in the performance of scientific research. As such, the property qualifies for property tax exemption as real property used for a scientific purpose.¹³

13. DHMRI's challenge to the decision of the County Board arose in part because the County Board denied its application for exemption from *ad valorem* taxation for the subject property. In its notice of decision, the County Board states the decision of the Board to be: "To deny the late exemption application for tax year 2008."¹⁴

14. Cabarrus County, among other things requested and obtained local legislation (Session Laws 2000-92 and 2004-100)¹⁵ authorizing the County Board to accept an application for exemption or exclusion that was filed after the statutory deadline.

BASED ON THE FOREGOING FINDINGS OF FACT, THE COMMISSION CONCLUDES AS A MATTER OF LAW:

1. N.C. Gen. Stat. § 105-282.1 provides that the owner of property claiming exemption or exclusion from property taxes under the provisions of this Subchapter has the burden of establishing that the property is entitled to the exemption or exclusion. In this appeal, Appellant has shown that the property is entitled to exemption from property taxes when N.C. Gen. Stat. § 105-278.7 exempts parts of buildings and personal property owned by organizations such as DHMRI. Cabarrus County only contests the filing of the application for exemption from property taxes and not the exempt status of the subject property for tax year 2008.

2. N.C. Gen. Stat. § 105-282.1(a1) grants the County Board the authority to approve a late application for exemption or exclusion from *ad valorem* taxation upon a showing of good cause. N.C. Gen. Stat. § 105-282.1(a1) further provides that an untimely application for exemption or exclusion approved under this subsection applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed. In this appeal, Appellant filed the application for exemption from property taxes during the 2008 calendar year.

3. There is a showing of good cause to grant the application for exemption from *ad valorem* taxation for the subject property when Cabarrus County was aware of the exempt status of this property before the filing of the application for exemption in the 2008 calendar year.

WHEREFORE, THE COMMISSION THEREFORE ORDERS that Cabarrus County's Motion to Dismiss Appellant's appeal is denied; and that the decision of the Cabarrus County Board of Equalization and Review denying Appellant's application for exemption from *ad valorem* taxation for the subject property for tax year 2008 is reversed. Cabarrus County is instructed to revise its tax records to reflect the Findings of Fact and Conclusions of Law of the Commission determining that the subject property is exempt from *ad valorem* taxation for tax year 2008.

¹³ Appellant's Application for Hearing.

¹⁴ See County Board's notice of decision to the Appellant mailed on December 17, 2008.

¹⁵ Appellant's Exhibit 3B.



NORTH CAROLINA PROPERTY TAX COMMISSION

Terry L. Wheeler, Chairman

Vice Chairman Plyler and Commission members Wilmoth, Dixon and Pittman concur.

Entered: May 31, 2011

Attest:

Janet L. Shires, Secretary and General Counsel