

STATE OF NORTH CAROLINA BEFORE THE PROPERTY TAX COMMISSION
COUNTY OF WAKE SITTING AS THE STATE BOARD OF
 EQUALIZATION AND REVIEW
 01 PTC 544

IN THE MATTER OF:

APPEAL OF **IBM CREDIT CORPORATION**

from the decision of the Durham County Board
of County Commissioners concerning the valuation
and taxation of personal property for tax year 2001.

FINAL DECISION

This Matter was heard before the North Carolina Property Tax Commission (hereinafter "Commission"), sitting as the State Board of Equalization and Review in the City of Raleigh, Wake County, North Carolina, during the Commission's regular scheduled Session of Hearings on October 10, 2005 -- October 13, 2005 and the Commission's regular scheduled Session of Hearings on December 14, 2005 -- December 16, 2005, pursuant to the appeal of **IBM CREDIT CORPORATION** (hereinafter "IBM Credit") from the decision of the Durham County Board of County Commissioners concerning the valuation and taxation of certain personal property for tax year 2001.

Chairman Terry L. Wheeler presided over the October 2005 Session of Hearings with Vice Chairman R. Bruce Cope and Commissioner members Wade F. Wilmoth, Harvey W. Raynor, III and Anthony L. Young participating.

Chairman Terry L. Wheeler presided over the December 2005 Session of Hearings with Commissioner members Wade F. Wilmoth, Harvey W. Raynor, III and Anthony L. Young participating.

Attorneys Michael T. Medford and Judson A. Welborn represented IBM Credit at the hearings. Lucy Chavis, Assistant Durham County Attorney, represented Durham County at the hearings.

Before hearing evidence on October 10, 2005, the Commission ruled upon Durham County's Motion In Limine, and Motion to Disqualify Mr. Judson A. Welborn, as an attorney in this matter. In its Motion In Limine, filed on September 22, 2005, Durham County requests the Commission to prohibit the testimony of Mr. Dennis C. Neilson in this matter because IBM Credit did not designate Mr. Neilson as an expert witness until immediately before the Pre-Trial Hearing Conference. In its Motion to Disqualify, filed on September 30, 2005, Durham County requests the Commission to disqualify Mr. Judson A. Welborn as an attorney in this matter. The Commission, after considering Durham County's motions, and IBM Credit's objections thereto, and after deliberation on the motions, reached a unanimous decision to deny both of Durham County's motions.

STATEMENT OF FACTS AND CASE

The subject of this appeal is Durham County's 2001 assessment of 40,779 separate individual items of computer and computer-related equipment that IBM Credit has on lease to end-users in Durham County as of January 1, 2001. For tax year 2001, IBM Credit classified the personal property into four (4) main categories: (i) Mainframe Computers; (ii) Mid-range Computers; (iii) Personal Computers; and (iv) Peripherals, which include storage, additional memory, and printers. IBM Credit itself is using none of the equipment; it leases all of the equipment to others, a variety of customers in Durham County, one of which is IBM Credit's parent corporation.

IBM Credit, through counsel, contends that Durham County's assessment of the subject property violates N.C. Gen. Stat. § 105-283 and § 105-284 and other applicable law in that the subject personal property was assessed at an amount that exceeds its true value in money. IBM Credit also contends that Durham County, in using the Cost Index and Depreciation Schedules, published by the North Carolina Department of Revenue, Property Tax Division, failed to appraise the property at fair market value because the Schedules do not recognize a high enough level of depreciation. IBM Credit further contends in the Application for Hearing, filed with the Commission on January 25, 2002, that the value of the subject property was \$96,458,707, as of January 1, 2001.

Durham County, through counsel, argues that property tax assessments are presumed to be correct and the burden is on the taxpayer to show that the County's assessment of the subject personal property was erroneous. In order to rebut the presumption of correctness, the taxpayer must prove that Durham County used an arbitrary or illegal method of valuation and that the assessment of the subject property substantially exceeded the true value in money of the property as of January 1, 2001. Durham County contends that in using the 2001 Cost Index and Depreciation Schedules it properly assessed the subject property at a total value of \$144,277,140 and that its assessment is not arbitrary or illegal. Thus, Durham County requests the Commission to affirm its valuation of \$144,277,140 for the subject property as of January 1, 2001.

ISSUES

In the Order on Final Pre-Hearing Conference, the parties did not agree on the issues to be presented to the Commission for consideration. In view of the guidelines set by the North Carolina Supreme Court for property tax appeals in *In Re Appeal of Amp, Inc.*, 287 NC 547, 215 S.E.2d 752 (1975), the Commission finds that the issues presented were:

1. Did Durham County (hereinafter "County") employ an arbitrary or illegal method of appraisal in reaching the total assessed value assigned by the County Board to IBM Credit's personal property as of January 1, 2001?

2. Did the County Board's assessment of the subject personal property **substantially** exceed the true value in money of the subject property as of January 1, 2001?
3. If issues 1 and 2 are answered in the affirmative, what was the true value in money of the subject property as of January 1, 2001?

The Commission notes that under the guidelines of AMP, supra, that IBM Credit has the burden of establishing:

1. The County employed an arbitrary or illegal method of appraisal; and
2. The value assigned by the County Board was **substantially** greater than the true value in money of the property as of January 1 for the year at issue.

EVIDENCE

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

- Exhibit 1 IBM Credit's 2001 Business Personal Property Tax Listing with Durham County.
- Exhibit 2 IBM Credit's 2001 Durham County personal property tax bills.
- Exhibit 3 Excerpts from IBM Credit's Detailed Listing Printout (by district).
- Exhibit 4 IBM Credit's Form AV-14 dated January 25, 2002 and attachments.
- Exhibit 30 Curriculum Vitae of Robert Zises.
- Exhibit 31 Curriculum Vitae of Dennis Neilson.
- Exhibit 33 February 15, 2001 NACOMEX report.
- Exhibit 37 Excerpts from the subset of the NACOMEX database utilized in preparation of the February 15, 2001 NACOMEX report.
- Exhibit 43 North Carolina Department of Revenue 2001 Cost Index and Depreciation Schedules (Schedule U5).
- Exhibit 44 Memo to Users of 2001 Cost Index and Depreciation Schedules.
- Exhibit 45 N.C.G.S. §105-283.
- Exhibit 46 N.C.G.S. §105-317.1
- Exhibit 61 Excerpts from the Valuing Machinery and Equipment (American Society of Appraisers' Textbook).
- Oral Testimony of Robert Zises, admitted as an expert in the appraisal of computer equipment.
- Oral Testimony of David B. Baker, Director, Property Tax Division.
- Oral Testimony of Dennis Neilson (St. Charles, Ill.), called as a rebuttal witness.
- Oral Testimony of Chuck Lally, 10556 Clubmont Road, Raleigh, NC 27617.
- Oral Testimony of Paul Copeland (Gaithersburg, Maryland).
- Oral Testimony of Vincent Palmiotto, 103 Pocono Road, Brookfield, Connecticut.

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

- County Exhibit 1 at Tab 1: Value, Ownership and Place of Taxation.
- County Exhibit 3, at Tab 2: Statutory Requirements (General Statutes).
- County Exhibit 4, at Tab 2: N.C. Gen. Stat. § 105-285(b) - Date property is to be listed and appraised.
- County Exhibit 7, at Tab 2: N.C. Gen. Stat. § 105-284 - Uniform Assessment Standard.
- County Exhibit 8, Tab 3: County Valuation Analysis.
- County Exhibit 42, at Tab 8: Report by BCRI – Valuation Services.
- Oral Testimony of Kenneth L. Joyner, Durham County Assessor, admitted as an expert in the appraisal of property.
- Oral Testimony of Stephen L. Barreca, admitted as an expert in the area of real and personal property appraisal.

COMMISSION EXHIBITS

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

- C-1 Notice of Appeal, filed December 28, 2001.
- C-2 Commission acknowledgment of C-1, dated December 28, 2001.
- C-3 Application for Hearing, filed January 25, 2002.
- C-4 Commission acknowledgment of C-3, dated January 29, 2002.
- C-5 Durham County's First Set of Interrogatories and Request for Production of Documents, filed August 19, 2002.
- C-6 Letter from Taxpayer's attorney to Commission Secretary, filed October 23, 2002.
- C-7 Durham County's Motion to Compel or Dismiss, filed August 8, 2003.
- C-8 Commission acknowledgment of C-7, dated August 13, 2003.
- C-9 Letter to Commission Secretary changing date of hearing, dated August 28, 2003.
- C-10 Response of Taxpayer to County's Motion to Dismiss, filed September 18, 2003.
- C-11 Letter from Taxpayer's attorney to Commission Secretary, filed November 12, 2003.
- C-12 Transmittal letter and Recommendation of Commission Representative, dated February 11, 2004.
- C-13 Transmittal letters and Orders of Commission, dated March 15, 2003.
- C-14 IBM Credit's Motion for Protective Order, filed February 3, 2005.
- C-15 Durham County's Response to Motion for Protective Order, filed February 14, 2005.

- C-16 Letter from Durham County to Taxpayer's attorney, faxed March 14, 2005.
- C-17 Letter from Durham County to Taxpayer's attorney, faxed March 14, 2005.
- C-18 Letter from Taxpayer's attorney to County Attorney, faxed March 17, 2005.
- C-19 Executed Scheduling Order, filed March 21, 2005.
- C-20 Letter from Taxpayer's Attorney to Durham County, faxed March 16, 2005.
- C-21 Durham County's Response to Taxpayer's Scheduling Order, filed March 21, 2005.
- C-22 Letter from Taxpayer's attorney to County attorney, filed March 18, 2005.
- C-23 Letter from County attorney to Commission Secretary, filed March 28, 2005.
- C-24 Transmittal letter and Protective Order, dated March 23, 2005.
- C-25 Letter from County attorney to Taxpayer's attorney, filed April 25, 2005.
- C-26 Transmittal letter and Scheduling Order dated April 18, 2005.
- C-27 Letter from County attorney to Taxpayer's attorney, filed April 21, 2005, i.e. Sample Lease request.
- C-28 Letter from County attorney to Taxpayer's attorney, filed May 6, 2006.
- C-29 Letter from County attorney to Taxpayer's attorney, filed May 19, 2005.
- C-30 Letter from Taxpayer's attorney to County attorney, faxed May 24, 2005.
- C-31 Letter from County attorney to Taxpayer's attorney, filed June 2, 2005.
- C-32 Letter from County attorney to Taxpayer's attorney, filed June 20, 2005.
- C-33 Letter from County attorney to Taxpayer's attorney, filed June 20, 2005.
- C-34 Letter from County attorney to Taxpayer's attorney, filed July 5, 2005.
- C-35 Letter from County attorney to Commission Secretary, filed July 28, 2005.
- C-36 Proposed hearing Calendar for October Session of Property Tax Commission, dated August 23, 2005.
- C-37 Joint Motion to Amend Scheduling Order, filed August 23, 2005.
- C-38 Fax from Taxpayer's attorney, dated August 25, 2005.
- C-39 Transmittal letter and Amended Scheduling Order, dated August 30, 2005.
- C-40 Amended Proposed Hearing Calendar, dated August 30, 2005.
- C-41 IBM Credit's Supplemental Expert Witness Designation, filed September 21, 2005.
- C-42 Notice of Hearing, dated September 22, 2005.
- C-43 Durham County's Motion In Limine, filed September 22, 2005.
- C-44 Commission acknowledgment of C-43, dated September 27, 2005.
- C-45 Request of Taxpayer's attorney to subpoena David Baker, filed September 29, 2005.
- C-46 Response of Taxpayer's attorney to Durham County's Motion In Limine, filed September 30, 2005.
- C-47 Taxpayer's Pre-Hearing Memorandum, filed September 30, 2005.
- C-48 Durham County's Motion to Disqualify, filed September 30, 2005.
- C-49 Order on Final Pre-Hearing Conference, filed September 30, 2005.
- C-50 Copy of Subpoena, filed October 4, 2005.

FROM THE APPLICATION FILED IN THIS MATTER, ANY STIPULATIONS AND EVIDENCE PRESENTED, THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.

2. The subject of this appeal is Durham County's 2001 assessment of 40,779 separate pieces of computer equipment that IBM Credit leased to end-users in Durham County as of January 1, 2001. For tax year 2001, IBM Credit classified the equipment into four (4) main categories: (i) Mainframe Computers; (ii) Mid-range Computers; (iii) Personal Computers; and (iv) Peripheral devices such as printers, storage devices and additional memory.

3. IBM Credit leased the 40,779 pieces of computer equipment at issue to 364 customer accounts as of January 1, 2001 in Durham County. With respect to the 364 customers, the leasing process operates in a similar manner; namely, the person who is interested in leasing a computer negotiates a price with the vendor of the equipment, which may be IBM, an independent reseller of IBM equipment, or some other entity. IBM Credit acquires each item of computer equipment at the price negotiated by the customer, and IBM Credit then leases the equipment to the customer under the lease that basically is structured so that the lease payments, along with the residual value, which is the value the computer equipment is expected to have at the end of the lease, will compensate IBM Credit for the time value of its money. (IBM Credit pays the purchase price at acquisition, and then receives monthly lease installment payments).

4. The typical lease agreement is for a period of three (3) years. IBM Credit establishes the residual value under the lease agreements and the residual value is always the same under each lease agreement.

5. Applying the 2001 Cost Index and Depreciation Schedules, published by the North Carolina Department of Revenue, Property Tax Division, to IBM Credit's 2001 business personal property tax listing, the Durham County Tax Assessor determined that the total valuation of the subject property was \$144,277,140, as of January 1, 2001. In particular, Durham County used Schedule U5 of the 2001 Cost Index and Depreciation Schedules to determine the tax valuation for the subject business personal property.

6. The North Carolina Department of Revenue, Property Tax Division, developed the 2001 Cost Index and Depreciation Schedules for use by county tax assessors to value business personal property for property tax purposes as required by the property tax laws in North Carolina. The 2001 Cost Index and Depreciation Schedules include Schedule U5, which assists county tax assessors in determining the valuation of computer and computer-related equipment.

7. Mr. David B. Baker, Director of the Property Tax Division, testified that when using the U5 Schedule of the 2001 Cost Index and Depreciation Schedules, a county tax assessor would appraise computer and computer-related equipment, in North Carolina, at its fair market value. Mr. Baker further testified that when appraising such property, you must consider the value of the property in place performing the function or functions for which it is required to do.

8. After carefully considering the testimony of all the witnesses and other evidence presented at the hearing, the Commission finds that the NACOMEX report prepared by IBM Credit's expert, Mr. Robert J. Zises, is not the appropriate methodology to determine the true value in money of the subject personal property under appeal. The Commission further finds that the conclusions contained in Mr. Zises' report regarding the depreciation factors lacked credibility and were not persuasive because: (1) the report is not an appraisal of the subject property because it does not contain an opinion of value; (2) the report contained unverified data and ignored the current use of the property in Durham County, North Carolina; and (3) in preparing this report, Mr. Zises did not audit or examine the property at issue since he only considered the model numbers which do not take into consideration the configuration of IBM Credit's property.

BASED UPON THE FOREGOING FINDINGS OF FACT, THE PROPERTY TAX COMMISSION CONCLUDES AS A MATTER OF LAW:

1. The Commission has jurisdiction to hear this appeal and correct any assessment of personal property that is based upon an arbitrary or illegal method of valuation and to correct a valuation that substantially exceeds the true value in money.

2. In North Carolina, property must be valued for *ad valorem* tax assessment purposes at its "true value in money," which is statutorily defined as "market value." Specifically, N.C. Gen. Stat. § 105-283 (2005) provides that:

"All property, real and personal, shall as far as practicable be appraised or valued at its true value in money. When used in this Subchapter, the words "true value" shall be interpreted as meaning market value, that is the price estimated in terms of money at which the property would change hands between a willing and financially able buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of all the uses to which the property is adapted and for which it is capable of being used."

3. *Ad valorem* tax assessments are presumed to be correct. In order for the taxpayer to rebut the presumption of correctness, the taxpayer must prove that the county tax assessor employed an arbitrary or illegal method of valuation and that the assessment of the property **substantially** exceeded the true value in money of the subject property.

4. In its capacity as the State board of equalization and review, as provided in N.C. Gen. Stat. § 105-290(a) (2005), the Commission is required to hear and adjudicate appeals from boards of county commissioners and from county boards of equalization and review. In N.C. Gen. Stat. § 105-290(b) (2005), the Commission is required to "... hear and decide appeals from decisions concerning the listing, appraisal, or assessment of property made by county boards of equalization and review and boards of county commissioners."

5. When hearing and deciding appeals from decisions concerning the listing, appraisal, or assessment of property made by county boards of equalization and review and boards of county commissioners, it is the function of the Commission to determine the weight and sufficiency of the evidence and the credibility of the witnesses, and to draw inferences from the facts and to appraise conflicting evidence. (See *In Re S. Ry.*, 59 N.C. App. 119, 296 S.E.2d 463, rev'd on other grounds, 313 N.C. 177, 328 S.E. 2d 235 (1985)).

6. N.C. Gen. Stat. § 105-291 (2005) directs the North Carolina Department of Revenue to "develop and recommend standards and rules to be used by tax supervisors and other responsible officials in the appraisal of specific kinds and categories of property for taxation." The North Carolina Department of Revenue, Property Tax Division, develops Cost Index and Depreciation Schedules for use by county tax assessors in the valuation of business personal property for *ad valorem* taxation.

7. The Durham County Assessor used and properly applied the 2001 Cost Index and Depreciation Schedules as developed by the North Carolina Department of Revenue, Property Tax Division, to determine the valuation of the subject business personal property, effective January 1, 2001.

8. The Durham County Assessor consistently applied the 2001 Cost Index and Depreciation Schedules to determine the valuations of similarly situated business personal property in Durham County.

9. IBM Credit did not produce competent, material and substantial evidence to show that Durham County employed an arbitrary or illegal method of valuation to determine the valuation of subject business personal property. IBM Credit failed to show that use of the Department of Revenue's Cost Index and Depreciation Schedules for computer and computer-related equipment resulted in a valuation that **substantially** exceeded the true value in money of the subject property for tax year 2001.

BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE COMMISSION THEREFORE ORDERS that the decision of the Durham County Board of County Commissioners, assigning a total value of \$144,277,140 to IBM Credit's business personal property, effective January 1, 2001, is **AFFIRMED**.

NORTH CAROLINA PROPERTY TAX COMMISSION



A handwritten signature in black ink, appearing to read "T. Wheeler", written over a horizontal line.

Terry L. Wheeler, Chairman

Commissioners Wilmoth, Raynor and Young concur. Vice Chairman Cope did not participate in the deliberation and decision of this matter.

Entered: March 30, 2006

ATTEST:

A handwritten signature in black ink, appearing to read "Janet L. Shires", written over a horizontal line.

Janet L. Shires, Secretary