

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD OF
EQUALIZATION AND REVIEW
10 PTC 434
11 PTC 028

IN THE MATTER OF:
APPEAL OF: **NOVARTIS
VACCINES and DIAGNOSTICS,
INC.** from Wake County Board of
Commissioners' denial of property tax
exemption for certain real and personal
property for tax year 2010.

FINAL DECISION

This Matter came on for hearing before the North Carolina Property Tax Commission ("Commission"), sitting as the State Board of Equalization and Review at its regularly scheduled Session of Hearings in the City of Raleigh, Wake County, North Carolina on Thursday, June 23, 2011, pursuant to the consolidated appeal of **Novartis Vaccines and Diagnostics, Inc.** ("Novartis" or "Appellant") from two decisions of the Wake County Board of County Commissioners ("County Board") denying Appellant's applications for property tax exemption for certain real property and personal property for tax year 2010.

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

Charles B. Neely, Jr., Esquire and Brian C. Vick, Esquire appeared at the hearing as counsel for Appellant. Shelley T. Eason, Esquire appeared at the hearing as counsel for Wake County (the "County").

STATEMENT OF THE CASE

This is a consolidated appeal from two decisions of the County Board denying separate applications filed by Appellant seeking partial exemption of certain real property and personal property for tax year 2010. The Appellant is seeking a partial exemption for a new cell-based influenza vaccine manufacturing facility (the "Holly Springs Facility" or "Facility") that it is jointly constructing with the United States Department of Health and Human Services (the "Federal Government") that is located at 475 Green Oaks Parkway, Holly Springs, North Carolina.

In this appeal, Appellant sent a letter to the Wake County Revenue Department ("Revenue Department") on January 29, 2010 requesting a partial exemption from taxation of certain real property located at the Holly Springs Facility on grounds that the Federal Government owned 40% of the property. By letter dated February 8, 2010, the Revenue Department denied Appellant's application for a partial exemption of the real property located at the Holly Springs Facility. By decision dated May 18, 2010, the County Board also denied Appellant's request for a partial exemption of the real property located at the Holly Springs Facility. Appellant timely appealed to the Commission. Under case number 10 PTC 434,

Appellant requests that the Commission grant property tax exempt status for certain real property located at the Holly Springs Facility.

By letter dated June 30, 2010, the Revenue Department provided Appellant notice of the assessed value of the personal property located at the Holly Springs Facility. On July 28, 2010, Appellant sent a letter to the Revenue Department requesting a partial exemption from taxation of certain personal property located at the Holly Springs Facility on grounds that the Federal Government owned 40% of the subject property. On December 3, 2010, the Revenue Department sent Appellant a revised notice of assessment for additional personal property discovered at the Holly Springs Facility. By letter dated December 16, 2010, Appellant renewed its application for a partial exemption of the personal property from taxation based on the Federal Government's 40% ownership of the subject property. The Revenue Department denied that application on December 22, 2010. By decision dated February 10, 2011, the County Board also denied Appellant's request for a partial exemption of the personal property located at the Holly Springs Facility. Appellant timely appealed to the Commission. Under case number 11 PTC 028, Appellant requests that the Commission grant property tax exempt status for certain personal property located at the Holly Springs Facility.

In this appeal, Appellant contends that 40% of certain real and personal property located at the Holly Springs Facility is exempt from *ad valorem* taxation because 40% of such real and personal property is owned by the Federal Government and, as a result, is both immune from taxation under the Supremacy Clause of the United States Constitution and exempt from taxation under N.C. Gen. Stat. § 105-278.1(a). The County contends that 100% of the real and personal property at issue in this appeal is subject to *ad valorem* taxes.

Prior to the hearing, Appellant filed three motions (1) a Motion in Limine To Exclude and/or Strike Legal Opinion Testimony From John N. Ford; (2) a Motion in Limine To Exclude and/or Strike Evidence Related to the Valuation of Individual Property Interests in the Holly Springs Facility; and (3) a Motion for Summary Judgment, along with a supporting memorandum, a supporting affidavit, and supporting exhibits. The County filed a Cross Motion for Summary Judgment, along with a supporting memorandum, and supporting affidavits and exhibits.¹

After reviewing the written motions and briefs filed by the parties, reviewing each of the exhibits and affidavits offered, and considering all of the arguments and authorities cited, the Commission voted unanimously to grant Appellant's Motion for Summary Judgment and held that 40% of the subject property is owned by the Federal Government and, therefore, is exempt from taxation under N.C. Gen. Stat. § 105-278.1(a). The Commission further voted unanimously to deny (1) Appellant's Motion in Limine to Exclude and/or Strike Evidence Related to the Valuation of Individual Property Interests in the Holly Springs Facility; and (2) the County's Cross Motion for Summary Judgment.

ISSUE

In the Order on Final Pre-Hearing Conference, the parties did not agree upon the precise

¹ Prior to the hearing, Wake County withdrew affidavit of John N. Ford and attached exhibit.

issues to be presented to the Commission. Thus, the issue considered by the Commission is stated as follows:

Whether the real and personal property at issue in this appeal qualifies for partial exemption from *ad valorem* taxation pursuant to N.C. Gen. Stat. § 105-278.1, exemption of real and personal property owned by units of government.

FINDINGS OF FACT

Based on the documents and information submitted, the Commission finds that the following facts are clearly established and are not in dispute, rendering summary judgment appropriate:

1. Appellant is currently in the process of constructing and validating a new cell-based influenza vaccine manufacturing facility in Holly Springs, North Carolina.

2. On January 13, 2009, the Federal Government awarded Contract #HHSO100200900101C (the "101C Contract" or "Contract") to Appellant "to design, construct, validate and perform regulatory activities with the goal of achieving FDA-licensure of new U.S.-based bulk influenza vaccine manufacturing facilities." See Novartis Exhibit G at 1-2.

3. The tasks that Appellant is required to complete under the 101C Contract are divided into individual "Contract Line Item Numbers" or "CLINs." Novartis Exhibit G at 2.

4. The design-, construction-, and validation-related tasks under the 101C Contract are set forth under CLINs 0001 through 0007. Novartis Exhibit G at 2-3.

5. CLINs 0001 through 0007 operate on a cost-sharing (otherwise known as cost-reimbursement) basis under which the Federal Government and Appellant agreed to jointly fund the design, construction, and validation of the Holly Springs Facility. Novartis Exhibit G at 2-3.

6. Under CLINs 0001 through 0007, the Federal Government agreed to fund 40% of the projected costs of designing, constructing, and validating the Holly Springs Facility up to a maximum of \$316,579,000. Novartis Exhibit G at 2-3. Appellant agreed to fund the remaining 60% of the cost, which was projected to be \$474,868,000. Novartis Exhibit G at 2-3.

7. Under a provision in the 101C Contract entitled "Ownership and Use of the Facility," the Federal Government and Appellant agreed that, "as they will be jointly funding facility construction, they will jointly own the facility in accordance with their respective shares of investment during the performance of CLINS 0001 through 0007." Novartis Exhibit G at 6. The Federal Government and Appellant further agreed that, in the event Appellant is able successfully to complete CLIN 0007, "all rights and title" that the Federal Government owned in the Holly Springs Facility would pass to Appellant. Novartis Exhibit G at 6.

8. Under Section I.1 of the 101C Contract, the Federal Government and Appellant incorporated contract clauses that appear in Part 52 of the Federal Acquisition Regulations, 48

C.F.R. § 52.200, *et seq*, including a contract clause entitled “Government Property” that appears at 48 C.F.R. § 52.245-1. See Novartis Exhibit G at 36, 42.

9. As of December 31, 2009, the Federal Government and Appellant had invested a combined total of \$473,942,526 on the development, construction, and validation of the Holly Springs Facility under the terms of the 101C Contract. Novartis Exhibit H ¶ 11. As of that same date, the Federal Government had either reimbursed or was contractually obligated to reimburse Appellant \$189,577,010, which represented 40% of the total amount spent on the development, construction, and validation of the Facility. Novartis Exhibit H ¶ 11.

10. The Federal Government maintained a 40% level of investment in the development, construction, and validation of the Facility throughout 2010. Novartis Exhibit H ¶ 14.

11. As of December 31, 2010, Appellant had not completed each of the construction- and validation-related tasks set forth in CLINs 0001 through 0007 of the 101C Contract. Novartis Exhibit H. ¶ 12.

12. Appellant has not requested a partial exemption of the land at the Holly Springs Facility. Pre-Hearing Order ¶ 3(c).

13. For the 2010 tax year, the Revenue Department assessed the true value of the improvements to the real property at the Holly Springs Facility at \$218,289,340 and imposed taxes on the full assessed value. Pre-Hearing Order ¶ 3(e).

14. For the 2010 tax year, the Revenue Department assessed the true value of certain personal property located at the Holly Springs Facility at \$267,267,220 and imposed taxes on the full assessed value. Pre-Hearing Order ¶ 3(f). This assessment included all of the personal property owned jointly by Novartis and the Federal Government and did not include any personal property that was located at the Holly Springs Facility and that was 100% owned by the Federal Government. Pre-Hearing Order ¶ 3(g).

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

1. All property, real and personal, within the jurisdiction of the State shall be subject to taxation unless it is excluded from the tax base or exempted from taxation. See N.C. Gen. Stat. § 105-274.

2. N.C. Gen. Stat. § 105-278.1(a) exempts real and personal property owned by the Federal Government from taxation. N.C. Gen. Stat. § 105-278.1(a) provides: “Real and personal property owned by the United States and, by virtue of federal law, not subject to State and local taxes shall be exempted from taxation.”

3. Under N.C. Gen. Stat. § 105-282.1(a), “[e]very owner of property claiming exemption or exclusion from property taxes under [N.C. Gen. Stat. § 105-278.1(a)] has the burden of establishing that the property is entitled to it.”

4. Under the Supremacy Clause of the United States Constitution, property that is owned by the Federal Government is not subject to taxation by state and local governments, unless Congress waives such tax immunity. U.S. Const., art. IV, cl. 2; McCulloch v Maryland, 17 U.S. 316 (1819). Congress has not waived the Federal Government's tax immunity in any way that is relevant to this appeal.

5. The Federal Government owns the Holly Springs Facility in accordance with its share of investment in the Facility under CLINs 0001 through 0007 of the 101C Contract. See Novartis Exhibit G at 6.

6. Title to the Holly Springs Facility passed to and vested in the Federal Government by operation of law. See Novartis Exhibit G at 6, 42; 48 C.F.R. §§ 45.402(b), 52.245-1(e)(3).

7. As of January 1, 2010, the Federal Government owned 40% of the Holly Springs Facility. See Novartis Exhibit G at 6, 42; Novartis Exhibit H ¶¶ 11; 48 C.F.R. § 52.245-1(e)(3). The Federal Government owned 40% of the Holly Springs Facility throughout 2010. See Novartis Exhibit G at 6, 42; Novartis Exhibit H ¶¶ 11, 14; 48 C.F.R. § 52.245-1(e)(3).

8. Appellant has sustained its burden of establishing that, as of the assessment date of January 1, 2010, the Federal Government owned 40% of the Holly Springs Facility and that the Federal Government's 40% interest in the Holly Springs Facility is exempt from taxation. N.C. Gen. Stat. §§ 105-278.1(a), 105-282.1(a).

9. The Federal Governments' 40% interest in the Holly Springs Facility is exempt from taxation. N.C. Gen. Stat. § 105-278.1(a).

10. For tax year 2010, 40% of the assessed value of the improvements to the real property located at the Holly Springs Facility and jointly owned by Novartis and the Federal Government is exempt from taxation. For tax year 2010, this 40% exemption is equal to \$87,315,736 of the true value of the real property located at the Holly Springs Facility.

11. For tax year 2010, 40% of the assessed value of the personal property located at the Holly Springs Facility and jointly owned by Novartis and the Federal Government is exempt from taxation. For tax year 2010, this 40% exemption is equal to \$106,906,888 of the true value of the personal property located at the Holly Springs Facility, which is allocated to the following categories of personal property in the following amounts:

- a. CIP(A10) - \$101,393,818;
- b. office furniture, fixtures, and equipment - \$4,553,803;
- c. computer equipment - \$856,193; and
- d. supplies - \$103,074.

THEREFORE, THE COMMISSION ORDERS AND DECREES that the decisions of the 2010 Wake County Board of County Commissioners denying Taxpayer's applications for property tax exemptions for the subject property for tax year 2010 are reversed; and Wake County is directed to adjust the tax records to reflect the findings of fact and conclusions of law in accordance with this Final Decision.



NORTH CAROLINA PROPERTY TAX COMMISSION

Terry L. Wheeler, Chairman

Commission members Wilmoth, Dixon and Pittman concur.

Entered: June 30, 2011

Attest:

Janet L. Shires, General Counsel and Secretary