

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION
SITTING AS THE STATE BOARD
EQUALIZATION AND REVIEW
07 PTC 820

IN THE MATTER OF:

APPEAL OF Amusements of Rochester, Inc.,
Powers Great American Midways Company)
and Leslie and Debbie Powers concerning)
the discovery assessment for tax years 2002)
through 2007 by Pender County.)

FINAL DECISION

THIS MATTER was heard by the North Carolina Property Tax Commission (“the 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 Thursday, May 15, 2008 pursuant to the appeal of Amusements of Rochester, Inc.¹ (“ARI”) from the discovery and assessment of certain tangible personal property.

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

Alfred P. Carlton, Jr. Esq. and M. Jackson Nichols, Esq. represented the Appellants at the hearing. Charles C. Meeker, Esq., represented Pender County at the hearing.

Statement of Case

The issue in this appeal is whether Pender County has jurisdiction and authority to tax certain amusement property that is owned by Amusements of Rochester, Inc. For tax years 2002 through 2007, Pender County issued a property tax assessment valuing the subject amusement rides at a total valuation of \$24,857,354 for tax years 2002 through 2007. Amusements of Rochester, Inc. agreed to the total valuation of \$24,857,354 for years 2002 through 2007, so the issue of value was not under appeal to the County Board and is not subject to this appeal before the Commission.

The subject of this appeal is Pender County’s claim that taxable situs is established in Pender County for taxation of the subject amusement rides for tax years 2002 through 2007. Amusements of Rochester, Inc. contends that it has no taxable situs in North Carolina and even if taxable situs is decided in favor of Pender County, it is subject to apportionment under N.C. Gen. Stat. § 105-122. Additionally, Amusements of Rochester, Inc. contends that it is subject to exemptions under N.C. Gen. Stat. § 105-275.

¹ There are multiple parties to this appeal, Amusements of Rochester, Inc., Powers Great American Midways Company (PGAM) and Leslie and Debbie Powers. Since all of the assessed property is equipment owned by Amusements of Rochester, Inc., counsel requested the Commission to recognize Amusements of Rochester, Inc. as the only party to this appeal and dismiss the appeal as to other parties.

The County Board issued its decision dated July 27, 2007, and determined that taxable situs was established in Pender County based upon the facts presented at the hearing and based on applicable North Carolina General Statutes. In addition to this determination, the Board decided that the apportionment argument is not applicable in this appeal. Therefore, the County Board denied Amusements of Rochester, Inc.'s request for apportionment.

Stipulations

In the Order on Final Pre-Hearing Conference, the parties stipulated to the following facts:

1. All parties are properly before the Commission and that the Commission has jurisdiction over the parties and subject matter of this appeal.
2. All parties have been correctly designated.

Evidence

The exhibits and testimony presented by Amusements of Rochester, Inc. at the hearing consists of the following:

1. Entity Information for Amusements of Rochester, Inc. from NYS Department of State.
2. Entity Information for Amusements of Rochester, Inc. from NC Secretary of State.
3. Application for Certificate of Authority filed with NC Secretary of State by Amusements of Rochester, Inc. on July 25, 2006.
4. Certificate of Existence for Amusements of Rochester, Inc. from NYS Department of State dated April 10, 2006.
5. Spreadsheet Listing Trucks and Trailers owned by Amusements of Rochester, Inc.
6. Chronology of Communications and Events regarding Pender County Tax Audit of Powers Great American Midways.
7. Letter of Assessment from Coby S. Heath, Pender County Tax Assessor, to Joseph E. Betts, attorney for taxpayers, dated July 10, 2007.
8. Letter of Assessment from Coby S. Heath, Pender County Tax Assessor, to Joseph E. Betts, attorney for taxpayers, dated March 19, 2007.
9. Final Decision from Assessor's Conference regarding Pender County Tax Audit of PGAM dated May 22, 2007.

10. Notice of Decision of Pender County Board of Equalization and Review dated July 27, 2007.
11. Notice of Appeal to Property Tax Commission dated August 24, 2007.
12. Fact Sheet regarding Pender County Tax Audit of PGAM.
13. Assessed Property Titles.
14. Oral testimony of James Turner, President of Turner Business Appraisers, Inc.
15. Oral testimony of Debbie Powers, Secretary of Amusements of Rochester, Inc. d/b/a Powers Great American Midways, Inc.
16. Oral testimony of Leslie "Corky" Powers, President of Amusements of Rochester, Inc. d/b/a Powers Great American Midway, Inc.

The exhibits and testimony presented by Pender County at the hearing consists of the following:

1. Deeds.
2. NY Department of State's entity information concerning Amusements of Rochester, Inc.
3. Application for Certificate of Authority.
4. NC Secretary of State's data sheet concerning Amusements of Rochester, Inc.
5. Business North Carolina, September 2006, article entitled "Fair Play"; and Amusements Business, December 2007, article entitled "Powers' Great American Midways Not Seen As A Small Show Anymore".
6. NCDA press release dated January 19, 2006.
7. News & Observer articles concerning Taxpayers.
8. Webpage concerning carnivals.
9. NC Department of Labor's amusement device data collection form.
10. Google Earth satellite photograph of site.
11. Pictures of equipment.
12. Taxpayers' Website print-out.

13. Letter dated September 13, 2006.
14. Letter dated April 23, 2007.
15. Final Notice of Decision dated May 22, 2007.
16. Revised assessment dated July 20, 2007.
17. Equalization and Review Board Decision.
18. Taxpayer's Application for Hearing.
19. Oral testimony of Boyd Williamson, Interim Robeson County Assessor.

Issues

1. Whether Pender County may lawfully assess *ad valorem* taxes for tax years 2002 through 2007 against the subject amusement rides owned by Amusements of Rochester, Inc.
2. Whether Amusements of Rochester, Inc. has tax situs in North Carolina.
3. Whether Amusements of Rochester, Inc. is subject to exemptions under N.C. Gen. Stat. § 105-275.
4. Whether Amusements of Rochester, Inc. is subject to apportionment under N.C. Gen. Stat. § 105-122.

After carefully considering all the evidence presented and the stipulations of the parties, the Commission makes the following Finding of Facts:

1. Amusement of Rochester, Inc., is a New York Corporation formed on March 29, 1993 in Genesee County, New York ["ARI"]. Mr. Leslie E. Powers is the President of ARI.
2. In 1993, Mr. Powers and partner Bob Gillis bought 20 acres in Burgaw, Pender County. Three years later Mr. Powers bought out Mr. Gillis and then moved his own family to Wilmington in 1995. ARI pays property taxes on real property located in Pender County.
3. During the 2007 calendar year, ARI and all affiliated entities were engaged in the business of providing amusement carnivals in several states. Each year, the amusement rides were in Virginia, Maryland, Pennsylvania and New York from approximately late April until late October. After the last scheduled amusement carnival show, the amusement rides were transferred to Burgaw in Pender

County, North Carolina. The subject amusement rides owned by ARI were located in Pender County, North Carolina as of January 1, and the property is not subject to taxation in New York.

4. The carnival begins the circuit in Eastern North Carolina in March, then journeys north to spend the summer in Virginia, Maryland, New York and Pennsylvania before returning to North Carolina in the fall.
5. During the first half of carnival season, before the big county and regional fairs, Mr. Powers allocates the carnival into the Light Blue and Dark Blue units to play smaller venues, including community festivals and shopping centers. The Dark Blue unit is run by Mr. Leslie Powers and his son runs the Light Blue unit.
6. ARI and its affiliate, Powers Great American Midways, operated the midway for the NC Mountain State Fairs near Asheville in 2004 and 2005, and played fairs in Rowan, Wayne, Onslow, Columbus and New Hanover counties.
7. The amusement rides were housed each winter at the ARI's complex in Burgaw, north of Wilmington in coastal Pender County for a period of approximately six months.
8. At the Burgaw headquarters, 15 employees work year-round in four shops with more than 12,000 square feet, rebuilding and maintaining rides and other equipment for the next carnival year.
9. The discovered property is the amusement rides used in carnival shows and operations. ARI agreed to the total valuation of \$24,857,354 for all tax years 2002 through 2007, as reflected and detailed in the revised assessment of value dated July 10, 2007 by the Pender County Tax Assessor.²
10. A filing by ARI with the North Carolina Department of Secretary of State showed its registered agent as Leslie E. Powers and the registered office and the principal place to be located at 4815 Highway 53 E., Burgaw, NC. The mailing address for the principal office and registered office showed P.O. Box 1608, Burgaw, NC 28425. [Taxpayer Exhibit 4].
11. ARI's Application for Certificate of Authority filed with the North Carolina Secretary of State by Mr. Leslie E. Powers, President, showed the corporation's principal office to be located at 4815 Highway 53 E., Burgaw, NC 28425, Pender County, and the mailing address for the principal office to be P.O. Box 1608, Burgaw, NC 28425. [Taxpayer Exhibit 3].
12. ARI appealed the subject amusement rides' discovery and assessment to the Pender County Board of Equalization and Review. ARI agreed to the total

² See Taxpayer's notice of appeal filed with the Commission on August 24, 2007.

valuation of \$24,857,354 for tax years 2002 through 2007. The County Board determined that taxable situs was established in Pender County, and also determined that ARI's contention regarding apportionment was not applicable in this situation.³

Based on the Findings of Fact, the Commission makes the following Conclusions of Law:

1. All property, real and personal, in North Carolina is subject to property tax unless specifically exempted or excluded from taxation by statute or by the North Carolina Constitution. [N.C. Gen. Stat. § 105-274].
2. Tangible personal property is all personal property that is not intangible and that is not permanently affixed to real property. [N.C. Gen. Stat. § 105-273(14)].
3. The owner must list taxable tangible business personal property every year. Situs and value are determined as of 1 January of the tax year. [N.C. Gen. Stat. § 105-285(b)].
4. As a general rule, tangible personal property is taxable at the residence of the owner. As provided in N.C. Gen. Stat. § 105-304(2), the residence of a domestic or foreign taxpayer other than an individual person is the place at which its principal North Carolina place of business is located.
5. ARI is a foreign corporation with a principal place of business in Burgaw, Pender County, North Carolina.
6. The subject amusement park equipment is not specifically exempted or excluded from taxation by statute or by the North Carolina Constitution.
7. The subject amusement equipment had tax situs in Pender County, North Carolina on 1 January 2007.
8. Pender County lawfully discovered and assessed *ad valorem* taxes for tax years 2002 through 2007 against the subject amusement rides owned by ARI.
9. The Commission does not rule upon a request for apportionment under the provisions of N.C. Gen. Stat. § 105-122.⁴

Based upon the foregoing Findings of Fact and Conclusions of Law, the Commission Orders and Decrees that Pender County lawfully discovered and assessed property taxes for tax years 2002 through 2007 on the subject amusement rides, and Pender County's assessment is hereby AFFIRMED.

³ See Taxpayer's notice of appeal filed with the Commission on August 24, 2007.

⁴ Prior to January 1, 2008, a request for apportionment under N.C. Gen. Stat. § 105-122 was filed with the Tax Review Board.



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

Vice Chairman Young and Commissioners Cope and Wilmoth concur. Commissioner Sitton did not participate in the hearing or deliberation of this appeal.

Entered: September 16, 2008

Attest:

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

Janet L. Shires, General Counsel