

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE PROPERTY TAX COMMISSION  
SITTING AS THE STATE BOARD OF  
EQUALIZATION AND REVIEW  
95 PTC 545

IN THE MATTER OF:  
APPEAL OF VALLEY PROTEIN, INC.  
from the decision of the Anson  
County Board of Equalization  
and Review concerning property  
taxation for 1994.

**FINAL DECISION**

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This matter was heard before the Property Tax Commission (hereinafter "Commission"), as the State Board of Equalization and Review in the City Of Raleigh, Wake County, North Carolina on July 25, 1996 pursuant to the appeal of Valley Protein, Inc., (hereinafter "Taxpayer") from the decision of the Anson County Board of County Commissioners' (hereinafter "County Board") denial of Taxpayer's request for property tax exemption for 1994.

Vice Chairman Terry L. Wheeler presided over the hearing with Commission members James R. Vosburgh, R. Bruce Cope and Samuel L. Erby, Jr. participating.

H. P. Taylor, Jr., attorney at law appeared on behalf of the Taxpayer; George C. Bower, attorney at Law, appeared on behalf of Anson County.

**STATEMENT OF CASE**

The property subject to this appeal is business personal property used for recycling and resource recovery located on State Road 1649 in the city of Wadesboro, Anson County, North Carolina. On December 12, 1994, the subject property was certified as such by the State Department of Environment, Health and Natural Resources (hereinafter "DEHNR"). On September 5, 1995, the Taxpayer filed an application for property tax exemption with Anson County requesting that the property be exempted pursuant to G.S. § 105-278(8). The County Assessor denied the request for exemption on the grounds that the application was not timely filed pursuant to G.S. §105-282.1(a). G.S. §105-282.1(a) provides that an application for exemption must be filed during the regular listing period in order for the same to be timely. The Taxpayer then appealed to the Board of County

Commissioners who affirmed the Assessor's denial of tax exemption. From that decision, the Taxpayer appealed to the Property Tax Commission.

In the Taxpayer's Application for Hearing, (Form AV-14), the Taxpayer contended that the property should be exempted for the 1994 tax year. The Taxpayer further contended that when it listed its taxes for 1994; it included all relevant information requested for on the Application for Exemption, (Form AV-10). Therefore, the Taxpayer contended that it more than substantially complied with the statutory requirement.

The County contended that Taxpayer failed to complete and file an application for the 1994 year and no application was filed until September 5, 1995. The County further contended that G.S. §105-282.1(a) requires all applications for exemption to be submitted on a form approved by the North Carolina Department of Revenue; namely Form AV-10. In addition, the County contended that since the first application was filed in 1995, G.S. §105-282.1(c) prohibits the approval of all late application because it was not filed during the 1994 calendar year. The County did not contend that the application would have been denied if filed in a timely manner.

As a final contention, Taxpayer stated that the Application for Exemption, (Form AV-10) was filed on September 5, 1995, because the Anson County Tax Assessor refused to deny the request for exemption until he received the application. Accordingly, the appeal process could not begin unless and until Form AV-10 was filed.

### **ISSUE**

The issue presented to the Commission dealt strictly with the question of whether the subject property was entitled to property tax exemption for 1994. The parties did not dispute the value assessed to the subject property.

**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 property for which the exemption is sought was found to meet the "Standards for Special Tax Treatment of Recycling and Resource Recovery Equipment and Facilities" by the Department of Environment, Health and Natural, (hereinafter "DEHNR").

3. In 1991, 1992 and 1993, the Anson County allowed the exemption for Recycling and Resource Recover Equipment and Facilities (hereinafter "Res Rec"), and did not require the Taxpayer to file Form AV-10.

4. Beginning in 1991, Taxpayer prepared a business personal property listing that set for the categories of taxable business personal property and exempt property.

5. In 1994, Taxpayer made the following listing with Anson County regarding construction in process:

As of December 31, 1993, the total amount of construction in progress is \$5,240,478.00. Of this amount, \$430,000 is non RES REC items. Non RES REC consists of:

Concrete Pads	\$ 30,000.00
Silo	100,000.00
Grease Tanks	200,000.00
Other items	100,000.00

The North Carolina DEHNR will make an on site inspection to denote the items that are not RES REC and the ones that are RES REC. As a result of such determination, if DEHNR directs that some of the items deemed RES REC are not RES REC, then Taxpayer will take the necessary steps to correct the listing returns.

6. In April of 1994, The former Anson County Tax Assessor, George Short, retired and Rebecca Westbrook, an employee served as Acting Assessor until September 1994, when Ted McCormick was employed as Anson County Tax Assessor.

7. At no time did Mr. Short, Mrs. Westbrook or Mr. McCormick advise the Taxpayer that Form AV-10 would be required.

8. On October 10, 1994, the Taxpayer advised Mr. McCormick that DEHNR would inspect the Taxpayer's property on October 26, 1994 at 9:30 a.m.

9. On December 12, 1994, DEHNR mailed to the Anson County Tax Assessor a copy of the tax certification for 1994 regarding Taxpayer's property.

10. In February, 1995, Mr. McCormick advised the Taxpayer that the property tax exemption was denied because Form AV-10 had not been filed.

11. Taxpayer furnished all pertinent information that is required by Form AV-10 when it listed its property for 1994.

12. Taxpayer conveyed to the Anson County Tax Assessor by letter the following statement: "It is our understanding that the Tax Certificate you have received will be sufficient for tax exemption."

13. Based upon the facts in this matter, Anson County was not prejudiced by the Taxpayer's failure to file the Application for Exemption (Form AV-10).

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

1. The Taxpayer substantially complied with the law when it applied for the exemption of its property from taxation when it completed its 1994 tax listing by setting forth that the exempt property was construction in process and the an application had been filed with the DEHNR for approval.

2. The North Carolina Supreme Court has held that: "If the strict, literal interpretation of a Statute contravenes the manifest purpose of the Legislature, the reason and purpose of the law should control and the strict letter thereof should be disregarded." *Duncan vs. Carpenter, 233 NC 422 (1951) and State vs. Barksdate, 181 NC 621 (1921).*

3. The North Carolina Supreme Court stated that: "There is not absolutely formal test for determining whether a statutory provision is to be considered mandatory or directory. The meaning and intention of the Legislature must govern; and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it one way or other." *Spruill vs. Davenport, 178 NC 364 (1919).*

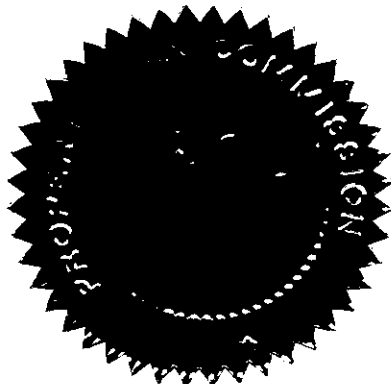
4. The North Carolina Supreme Court stated that: "Whether a particular provision in a Statute is regarded as mandatory or directory depends more on the purpose of the statute than upon the particular language used." "As expressed by the Apostle Paul in his Second Epistle to the Corinthians, "The letter killeth, but the Spirit maketh alive." (2 Cor. 3:6). *Society vs. Bridges, 235 NC 130 (1952).*

**BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW THE COMMISSION NOW, THEREFORE, ORDERS, ADJUDGES AND DECREES** that the decision of the Anson County Board of Commissioners denying Taxpayer's request for acceptance of Form AV-10 for 1994 is **REVERSED** and Taxpayer's request for property tax exemption for 1994 is therefore **GRANTED**.

It is further Ordered that each party's exhibits received into evidence may be released, upon request, to his/her/its counsel 30 days following the final resolution of this appeal.

It is further Ordered that if a party does not request the return of his/her/its exhibits within 50 days after this decision has become a final resolution of this matter, then the Commission staff may dispose of the party's exhibits.


NORTH CAROLINA PROPERTY TAX COMMISSION



  
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Terry L. Wheeler, Vice Chairman

Commission members Vosburgh, Cope and Erby concur.  
Chairman Murray did not participate in this decision.

Entered: November 1, 1996

Attest:  
  
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Janet L. Shires, Secretary