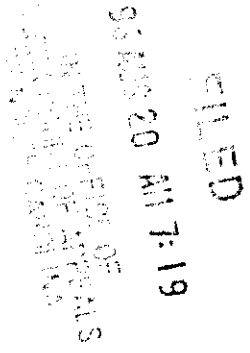
NO. COA95-1168

NORTH CAROLINA COURT OF APPEALS

Filed: 20 August 1996



In the matter of:
The appeal of Weyerhaeuser Company
from the decision of the Craven County
Board of Commissioners dated
8 February 1994 concerning the listing,
appraisal, and assessment of certain
property for the years 1987 through
1992.

From the North Carolina
Property Tax Commission
No. 94 PTC 59

Appeal by taxpayer from order entered 2 June 1995 by the North Carolina Property Tax Commission. Heard in the Court of Appeals 24 May 1996.

C.B. McLean, Jr., for taxpayer-appellant.

Sumrell, Sugg, Carmichael & Ashton, P.A., by James R. Sugg and Jimmie B. Hicks, Jr., for County-Appellee.

MARTIN, John C., Judge.

In July 1992, Craven County ("County") initiated an audit of Weyerhaeuser Company's ("Weyerhaeuser") personal property tax listings in the county for the tax years 1987 through 1992. On 29 December 1992, the County's Tax Administrator, pursuant to G.S. § 105-312(d), sent a notice of discovery to Weyerhaeuser proposing taxes and penalties against the company for unlisted personal property. The audit also revealed that Weyerhaeuser had not listed certain pollution control equipment for the tax years 1991 and 1992.

On 10 December 1992, Weyerhaeuser filed an application with the North Carolina Department of Environmental, Health and Natural

Resources ("DEHNR") for exemption for "pollution abatement equipment which was installed [in its] New Bern pulp facility," and was granted the exemption by DEHNR on 21 December 1992. On 16 December 1993, the County issued its final notice and worksheets to Weyerhaeuser finding that there had been a substantial underlisting of personal property and a failure to list certain pollution abatement equipment for tax years 1991 and 1992, and giving notice of taxes and penalties owed by reason thereof. Weyerhaeuser subsequently made a timely request for review of the decision to the Craven County Board of Commissioners, the Craven County Board of Equalization and Review not being in session.

The County Board of Commissioners granted Weyerhaeuser's request for exemption of the pollution abatement equipment "discovered" by the County for tax years 1991 and 1992, but affirmed the taxes due on other "discovered" taxable property. In addition, the Commissioners denied what they termed a "request for refund" by Weyerhaeuser for taxes assessed and paid on pollution abatement equipment which had been listed by the company for tax year 1991, but for which no application for exemption was received in that year. Weyerhaeuser subsequently made a timely appeal to the North Carolina Property Tax Commission ("Commission").

On 20 April 1995, the Commission heard arguments of counsel and considered documents filed in the matter, including a motion by the County to dismiss Weyerhaeuser's appeal. By order entered 2 June 1995, the Commission dismissed the appeal. Weyerhaeuser appeals.

The dispositive issue in this appeal is whether the pollution abatement equipment listed by appellant in 1991, and for which no exemption was applied for in that year, should now be treated as "discovered property" entitling appellant to an exemption for taxes already paid on the equipment. We hold that it should not be so treated.

"Discovered property" is defined by G.S. § 105-273(6a) as:

> a. Property that was not listed during a listing period.
> b. Property that was listed but the listing included a substantial understatement.
> c. Property that has been granted an exemption or exclusion and does not qualify for the exemption or exclusion.

The parties' stipulations in this case make clear that appellant listed the contested pollution abatement equipment in tax year 1991, that the equipment was correctly valued, and that appellant was assessed and paid taxes on the equipment in tax year 1991. Thus, the contested equipment does not meet the statutory definition of "discovered property."

Nevertheless, the crux of appellant's claim is that, because the County's "discovery" audit revealed in 1992 that appellant listed and paid taxes in 1991 on the now contested pollution abatement equipment without seeking exclusion or exemption in that year, it was entitled to seek exclusion in 1992 and have the listed property treated as "discovered." Consequently, appellant claims the Commission erred in dismissing its appeal because it had

subject matter jurisdiction to address issues of exemption or exclusion under G.S. § 105-282.1(a)(5) or (c), or under § 105-312, and that the Commission erred in failing to exclude the listed pollution abatement equipment. We disagree.

Section 105-282.1(c) provides in pertinent part:

> When an owner of property that may be eligible for exemption or exclusion *neither lists the property nor files an application for exemption or exclusion*, the assessor or the Department of Revenue, as appropriate, shall proceed to discover the property. If, upon appeal, the owner demonstrates that the property meets the conditions for exemption or exclusion, the body hearing the appeal may approve the exemption or exclusion. . . .

(emphasis added). In this case, however, appellant stipulated that it had listed the equipment at issue. Thus, § 105-282.1(c) does not apply. Similarly, G.S. § 105-312(d) is not applicable because it also deals with "discovered" rather than listed property.

Appellant argues, however, that its listing of the equipment and failure to apply for exclusion under G.S. § 105-275(8) in tax year 1991 constituted a "clerical error" which it was entitled to have corrected by the County Board of Commissioners pursuant to G.S. § 105-325(a)(4) so as to treat the property as "discovered." Our research has revealed no definition of "clerical error" as applied to G.S. § 105-325(a)(4). However, this Court has previously held that "clerical errors" concern matters such as transcription errors which are not material in nature. *See In re Nuzum-Cross Chevrolet,* 59 N.C. App. 332, 296 S.E.2d 299 (1982), *disc. rev. denied,* 307 N.C. 576, 299 S.E.2d 645 (1983). *See also* 84 C.J.S. *Taxation* § 507 (noting that errors which affect the

substance of an assessment are not clerical). We hold as a matter of law that appellant's listing of the pollution abatement equipment and failure to apply for exemption for the equipment are not clerical errors subject to correction under G.S. § 105-325(a)(4) because they are material in nature.

Moreover, we are not persuaded by appellant's argument that because the County's "discovery" audit was for years 1987-1992, that the entire proceeding amounts to a tax levied in 1992 such that G.S. § 105-282.1(a)(5) applies. Section 105-282.1(a)(5) provides:

> Upon a *showing of good cause by the applicant for failure to make a timely application*, an application for exemption or exclusion filed after the close of the listing period may be approved by the Department of Revenue, the board of equalization and review, the board of county commissioners, or the governing body of a municipality, as appropriate. An untimely application for exemption or exclusion approved under this subdivision applies only to property taxes *levied by the county or municipality in the calendar year in which the untimely application is filed*.

(emphasis added). The statute is inapplicable to the present case. The parties stipulated that the tax on the contested equipment was assessed and paid in 1991; appellant's application for exemption was not filed until 1992. Appellant seeks to have exempted from taxation property for which an untimely application for exemption was filed in a different calendar year, which is not authorized by the statute. In addition, our review of the record in this case has revealed no "showing of good cause by the applicant for failure to make a timely application." Accordingly, this argument of

appellant is overruled.

We also reject appellant's contention that its 1992 certificate from DEHNR excluding pollution abatement equipment from taxation applies retroactively to the contested equipment. Section 105-275(8) provides that pollution abatement equipment shall be exempted or excluded from taxation if it is properly certified by the DEHNR, or other appropriate body, and if the certificate is furnished to the tax supervisor of the county in which the property is situated. G.S. § 105-286 makes clear that, unless otherwise provided, the value of tangible personal property is to be determined annually as of 1 January. It is undisputed that neither of the requirements of G.S. § 105-275(8) was met with respect to the equipment at issue in tax year 1991. Moreover, appellant's primary argument for its contention rests largely on a claim of "tardiness" by DEHNR, even though the record shows that DEHNR issued an exemption certificate eleven days after appellant's application in December 1992.

For the foregoing reasons, the contested pollution abatement equipment cannot be treated as "discovered" property entitling appellant to an exemption for taxes already paid. To the contrary, we agree with the County that appellant is, in actuality, seeking a refund for taxes paid on the equipment.

Section 105-380 of the General Statutes prohibits the governing body of a taxing unit "from releasing, refunding, or compromising all or any portion of the taxes levied against any property within its jurisdiction except as expressly provided in

[G.S. § 105-381]." Moreover, our Supreme Court has held that "[t]axes paid voluntarily and without objection or compulsion cannot be recovered, even though the tax be levied unlawfully." *Middleton v. R.R.*, 224 N.C. 309, 310, 30 S.E.2d 42, 43 (1944). The evidence in this case tends to show that appellant paid the taxes at issue voluntarily and without objection or compulsion.

In addition, as appellant's brief admits, "the Commission clearly does not have jurisdiction over a question of refund or release arising under N.C. Gen. Stat. § 105-381." Thus, we find the Commission was not required to make findings of fact in its order dismissing Weyerhaeuser's appeal. The Commission's order is affirmed.

AFFIRMED.

Judges GREENE and WALKER concur.

Report per Rule 30(e).