

STATE OF NORTH CAROLINA
COUNTY OF WAKE

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

IN THE MATTER OF THE APPEAL
OF:

MARTIN MARIETTA MATERIALS, INC.,
Appellant

17 PTC 0427

From the decision of the Rowan County Board
of Equalization and Review concerning the
taxation of certain personal property for tax year
2017

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 in the City of Raleigh, Wake County, North Carolina on Wednesday, February 6, 2019, pursuant to the Appellant’s appeal from the decision of the Rowan County Board of Equalization and Review (“Board”).

Chairman Robert C. Hunter presided over the hearing, with Vice Chairman Terry L. Wheeler and Commission Members William W. Peaslee, Alexander A. Guess, and Charles W. Penny participating.

Attorney John W. Dees, II, appeared on behalf of Rowan County (“County”). Attorneys Charles H. Mercer, Jr., and Reed J. Hollander appeared on behalf of the Appellant.

STATEMENT OF THE CASE

The Appellant company produces aggregates, including various sizes of crushed stone, at many locations in multiple states. The Appellant’s facility in Rowan County, known as the “Salisbury Shop,” repairs and rebuilds equipment worn crushers and other equipment that has been used in the process of crushing stone. In the course of repairing and rebuilding machinery, the Salisbury Shop carries a supply of components, parts, raw materials, and rebuilt products for use in the further repair and rebuilding of the crushing equipment. It is this supply of various items of personal property that is the subject of this appeal.

The Appellant sought a property tax exclusion for the subject personal property under the provisions of N.C. Gen. Stat. 105-275(33), “Inventories owned by manufacturers.” The Rowan County Board of Equalization and Review (“Board”) denied the exclusion, and the Appellant appealed that decision to the Commission.

ANALYSIS AND ISSUES

N.C. Gen. Stat. 105-274 provides that all property located within North Carolina, both real and personal, is subject to taxation unless expressly excluded or exempt from taxation by a statutory or constitutional provision. N.C. Gen. Stat. 105-275(33) expressly excludes from taxation “[i]nventories owned by manufacturers.”

N.C. Gen. Stat. 105-273(8a) provides in pertinent part that “Inventories” are defined as:

“a. [g]oods held for sale in the regular course of business by manufacturers, retail and wholesale merchants, and construction contractors”; and, alternatively,

“c. [a]s to manufacturers, raw materials, goods in process, finished goods, or other materials or supplies that are consumed in manufacturing or processing or that accompany and become a part of the sale of the property being sold. The term does not include fuel used in manufacturing or processing and materials or supplies not used directly in manufacturing or processing.”

N.C. Gen. Stat. 105-273(10b) defines a “Manufacturer” as “[a] A taxpayer who is regularly engaged in the mechanical or chemical conversion or transformation of materials or substances into new products for sale or in the growth, breeding, raising, or other production of new products for sale.”

In seeking an exemption or exclusion from taxation, “it is the taxpayer’s burden to **prove** that the property in question is entitled to an exemption,”¹ and “a party claiming a statutory exemption bears the burden of bringing itself within the exemption or exception.”²

¹ In re Appeal of Southeastern Baptist Theological Seminary Inc., 135 N.C. App. 247, 249, 520 S.E.2d 302, 304 (1999) [emphasis added to distinguish this burden from one of production]

² Parkdale America, LLC v. Hinton, 200 N.C. App. 275, 278, 684 S.E.2d 458, 461 (2009)

Under this analysis, the Commission must consider whether the Appellant carried its burden of producing competent, material and substantial evidence³ proving that the personal property made the subject of this appeal is excluded from property taxation as inventory of the Appellant.

**FROM THE EVIDENCE PRESENTED AND ALL DOCUMENTS OF RECORD,
THE COMMISSION MAKES THE FOLLOWING FINDINGS OF FACT:**

1. The Salisbury Shop rebuilds worn equipment used for crushing rocks. Rebuilding the crushing equipment can involve replacement parts purchased from third parties, as well as parts that are rebuilt in the Salisbury Shop. Rebuilding processes include the fabrication of CNC-produced machined parts and welded buildups to produce parts that are deemed superior to those available from third parties.
2. The Salisbury Shop maintains a supply of new and rebuilt parts and assemblies that are exchanged out for nonfunctional items received from rock-crushing facilities. At any given time, approximately 60% of the supply consists of rebuilt parts and assemblies; approximately 30% consists of items purchased from third party vendors; and approximately 10% consists of raw materials such as steel and pipe, in addition to fasteners, bolts, and other similar items.
3. Exchanges and other transfers of parts from the Salisbury Shop to other Martin Marietta facilities is, and has been, the primary ultimate destination of the supplies. Such exchanges and transfers within Martin Marietta result in accounting transfers between the Salisbury Shop and the other Martin Marietta facilities.
4. In or around 2008, in an effort to keep staff employed, the Salisbury Shop began selling parts and assemblies to companies outside of Martin Marietta. For such outside sales, the buyer pays the purchase price to Martin Marietta. Outside customers pay a higher price than the amounts of the accounting transfers used to record intra-Martin Marietta exchanges and transfers. Three percent to nine percent of all exchanges and transfers from the Salisbury Shop are to outside customers, with the remaining exchanges and transfers being transactions that are with other Martin Marietta facilities.

³ N.C. Gen. Stat. §105-345.2(b)(5)

5. The Appellant's witness Damon Allen, Director of Production Services for the Salisbury Shop, testified that, while all parts and assemblies were available for sale to outside customers, a Martin Marietta exchange or transfer would be preferred to an outside customer. When asked whether the Salisbury Shop would sell all of its supply of parts and assemblies to outside customers, if occasion arose, Mr. Allen responded, "Possibly."
6. Mr. Allen testified further that all parts ordered by the Salisbury Shop are owned by Martin Marietta; that the Salisbury Shop is a division of Martin Marietta; and that the Salisbury Shop is not a separate legal entity from Martin Marietta.
7. The County's witness Jim H. Turner, Jr., a North Carolina-licensed Certified Public Accountant, testified that, since Martin Marietta was always the owner of the subject property, whether in the hands of the Salisbury Shop or of other Martin Marietta facilities, intracompany transfers of parts and assemblies could not be characterized as sales under standards set by the Financial Accounting Standards Board ("FASB"), or under Generally Accepted Accounting Principles ("GAAP"), or under regulations promulgated by the Securities and Exchange Commission ("SEC").

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

1. The Commission has jurisdiction over the parties and the subject matter of this appeal.
2. N.C. Gen. Stat. 105-273(10b) defines a "Manufacturer" as "[a] A taxpayer who is regularly engaged in the mechanical or chemical conversion or transformation of materials or substances into **new products for sale** or in the growth, breeding, raising, or other production of **new products for sale**" [emphasis added].
3. While there has been much argument over whether the rebuilding of parts and assemblies, including fabrication of some components, should be characterized as the "remanufacture" of those items, and that "remanufacture" equates to "manufacture;" and further argument as to whether the final parts and assemblies are "new products," we find that the key statutory element to determine is whether the final parts are meant to be "for sale."
4. This interpretation is consistent with the holding of the North Carolina Court of Appeals that "[i]t is the use to which the property is dedicated, rather than the nature or

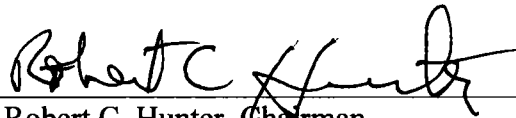
characteristics of the owning entity which ultimately determines the property's exemption status. In re Wake Forest University, 51 N.C. App. 516, 277 S.E.2d 91, disc. review denied, 303 N.C. 544, 281 S.E.2d 391 (1981).(Citations omitted.)

5. Here, virtually all evidence indicates that the subject property is rebuilt and held in supply for the convenience of the Appellant, rather than for sale, and that 90% or more of the subject property is actually and ultimately used internally at the Appellant's facilities, to keep its own equipment in operating condition.
6. Even if the subject property is theoretically available for sale to outside customers, several factors distinguish the outside sales from the internal transfers, such as the priority given to internal transfers; the difference in prices charged to outside customers, as compared to the accounting for internal transfers; and the comparatively minor amount of transfers that involve outside parties.
7. If any of the subject property can be considered as being meant for sale, this characterization can only reasonably be applied to the portion of the property that is actually and ultimately sold to an outside customer. Therefore, the Appellant can only be considered a manufacturer as to property that is actually and ultimately sold to an outside customer.

WHEREFORE, the Commission orders and decrees that property of the Appellant that is involved in intracompany transfers is not eligible for the property tax exclusion offered by N.C. Gen. Stat. §105-273(8a), but that said property tax exclusion does apply as to such property that is actually and ultimately sold to a customer external to the Appellant.



NORTH CAROLINA PROPERTY TAX COMMISSION


Robert C. Hunter, Chairman

Vice Chairman Wheeler and Commission Members
Peaslee, Guess, and Penny concur.

Date Entered: 4.29.19

ATTEST:


Stephen W. Pelfrey, Commission Secretary