



For tax year 2001, IBM Credit commissioned the services of NACOMEX U.S.A. Inc. to list its computer and computer-related equipment (data processing tangible personal property) with the Durham County Tax Office. Based upon the services of NACOMEX U.S.A. Inc, the total value listed by IBM Credit for the relevant tax year (January 1, 2001) for its data processing tangible personal property was \$96,458,707.00.<sup>1</sup> To assess the value of the 40,779 pieces of computer equipment, Durham County used Schedule U5 of the 2001 Cost Index and Depreciation Schedules published by the North Carolina Department of Revenue (“Department”). Based upon the depreciation tables of Schedule U5, Durham County assessed IBM Credit’s equipment at a total value of \$144,277,140.00.<sup>2</sup>

IBM Credit brought the appeal to the Commission because of its contention that the assessment by Durham County violates N.C. Gen. Stat. §§ 105-283, 105-284 and other applicable law in that IBM Credit’s property has been assessed at an amount that exceeds its true value in money.<sup>3</sup> After conducting an evidentiary hearing, the Commission entered its final decision rejecting IBM Credit’s valuation of \$96,458,707.00 and upholding Durham County’s valuation of \$144,277,140.00.<sup>4</sup>

IBM Credit appealed the Commission’s final decision by filing a timely notice of appeal to the North Carolina Court of Appeals. On October 2, 2007, the Court of Appeals remanded this matter to the Commission with instructions to reconsider the evidence presented in the appeal in accordance with its opinion. Durham County appealed the Court of Appeals decision to the North Carolina Supreme Court. By opinion dated March 7, 2008, the Supreme Court affirmed the Court of Appeals decision, *per curiam*, and remanded this matter to the Commission for further consideration in accordance with the Court of Appeals opinion.

### **Evidence**

The exhibits and testimony presented by IBM Credit and reconsidered by the Commission on remand of this matter consists of the following:

- IBM Credit’s Exhibit 1 (IBM Credit’s 2001 Business Personal Property Tax Listing filed with Durham County).
- IBM Credit’s Exhibit 2 (IBM Credit’s 2001 Durham County personal property tax bills).
- IBM Credit’s Exhibit 3 (Excerpts from IBM Credit’s Detailed Listing Printout (by district)).
- IBM Credit’s Exhibit 4 (Application for Hearing, Form AV-14 dated January 25, 2002 and attachments A, B, and C).
- IBM Credit’s Exhibit 30 (Curriculum Vitae of Robert Zises).
- IBM Credit’s Exhibit 31 (Curriculum Vitae of Dennis Neilson).

---

<sup>1</sup> See IBM Credit’s Application for Hearing, dated January 25, 2002 and filed with the Commission on January 22, 2002.

<sup>2</sup> Durham County’s Exhibit 4 (Durham County’s 2001 Business Personal Property Appraisal of IBM Credit’s business personal property (by district)).

<sup>3</sup> See Attachment A to IBM Credit’s Application for Hearing, dated January 25, 2002.

<sup>4</sup> Final Decision of the North Carolina Property Tax Commission dated March 30, 2006.

- IBM Credit's Exhibit 33 (February 15, 2001 NACOMEX report).
- IBM Credit's Exhibit 37 (Excerpts from the subset of the NACOMEX database utilized in preparation of the February 15, 2001 NACOMEX report).
- IBM Credit's Exhibit 43 (North Carolina Department of Revenue 2001 Cost Index and Depreciation Schedules (Schedule U5)).
- IBM Credit's Exhibit 44 (Memo to Users of 2001 Cost Index and Depreciation Schedules).
- IBM Credit's Exhibit 61 (Excerpts from Valuing Machinery and Equipment (American Society of Appraisers' Textbook)).
- Oral Testimony of Robert Zises, admitted as an expert in the appraisal of computer equipment.
- Oral Testimony of David B. Baker, North Carolina Department of Revenue, Director, Property Tax Division.
- Oral Testimony of Dennis Neilson (St. Charles, Ill.), called as a rebuttal witness.
- Oral Testimony of Chuck Lally, 10556 Clubmont Road, Raleigh, NC 27617.
- Oral Testimony of Paul Copeland (Gaithersburg, Maryland).
- Oral Testimony of Vincent Palmiotto, 103 Pocono Road, Brookfield, Connecticut.

The exhibits and testimony presented by Durham County and reconsidered by the Commission on remand of this matter consists of the following:

- Durham County's Exhibit 3 (Durham County's Valuation Methods of Procedures – Excerpts from the North Carolina Department of Revenue, Property Tax Division's 2001 Cost Index and Depreciation Schedules).
- Durham County's Exhibit 4 (Durham County's 2001 Business Personal Property Appraisal of IBM Credit's business personal property (by district)).
- Durham County's Exhibit 7 (IBM Credit's leases).
- Durham County's Exhibit 8 (Report by BCRI – Valuation Services).
- Oral Testimony of Kenneth L. Joyner, Durham County Assessor, admitted as an expert in the appraisal of property.
- Curriculum Vitae of Kenneth L. Joyner.
- Oral Testimony of Stephen L. Barreca, admitted as an expert in the area of real and personal property appraisal.
- Curriculum Vitae of Stephen L. Barreca.

#### **Commission Documents**

- C-1 IBM Credit's Notice of Appeal, filed December 28, 2001.
- C-2 Commission acknowledgment of C-1, dated December 28, 2001.
- C-3 IBM Credit's Application for Hearing, with Attachments A, B, and C, dated January 25, 2002 and filed with the Commission on January 25, 2002.
- C-4 Commission acknowledgment of C-3, dated January 29, 2002.
- C-5 Durham County's First Set of Interrogatories and Request for Production of Documents, filed August 19, 2002.
- C-6 Letter from Taxpayer's attorney to Commission Secretary, filed October 23, 2002.
- C-7 Durham County's Motion to Compel or Dismiss, filed August 8, 2003.

- C-8 Commission acknowledgment of C-7, dated August 13, 2003.
- C-9 Letter to Commission Secretary changing date of hearing, dated August 28, 2003.
- C-10 Response of Taxpayer to County's Motion to Dismiss, filed September 18, 2003.
- C-11 Letter from Taxpayer's attorney to Commission Secretary, filed November 12, 2003.
- C-12 Transmittal letter and Recommendation of Commission Representative, dated February 11, 2004.
- C-13 Transmittal letters and Orders of Commission, dated March 15, 2003.
- C-14 IBM Credit's Motion for Protective Order filed February 3, 2005.
- C-15 Durham County's Response to Motion for Protective Order, filed February 14, 2005.
- C-16 Letter from Durham County to Taxpayer's attorney, faxed March 14, 2005.
- C-17 Letter from Durham County to Taxpayer's attorney, filed March 16, 2005.
- C-18 Letter from Taxpayer's attorney to County Attorney, faxed March 17, 2005.
- C-19 Executed Scheduling Order, filed March 21, 2005.
- C-20 Letter from Taxpayer's Attorney to Durham County, faxed March 16, 2005.
- C-21 Durham County's Response to Taxpayer's Scheduling Order, filed March 21, 2005.
- C-22 Letter from Taxpayer's attorney to County attorney, filed March 18, 2005.
- C-23 Letter from County attorney to Commission Secretary, filed March 28, 2005.
- C-24 Transmittal letter and Protective Order, dated March 23, 2005.
- C-25 Letter from County attorney to Taxpayer's attorney, filed April 25, 2005.
- C-26 Transmittal letter and Scheduling Order dated April 18, 2005.
- C-27 Letter from County attorney to Taxpayer's attorney, filed April 21, 2005, (i.e. Sample Lease request).
- C-28 Letter from County attorney to Taxpayer's attorney, filed May 6, 2005.
- C-29 Letter from County attorney to Taxpayer's attorney, filed May 19, 2005.
- C-30 Letter from Taxpayer's attorney to County attorney, faxed May 24, 2005.
- C-31 Letter from County attorney to Taxpayer's attorney, filed June 2, 2005.
- C-32 Letter from County attorney to Taxpayer's attorney, filed June 20, 2005.
- C-33 Letter from County attorney to Taxpayer's attorney, filed June 20, 2005.
- C-34 Letter from County attorney to Taxpayer's attorney, filed July 5, 2005.
- C-35 Letter from County attorney to Commission Secretary, filed July 28, 2005.
- C-36 Proposed hearing calendar for October session of Property Tax Commission, dated August 23, 2005.
- C-37 Joint motion to amend scheduling Order, filed August 23, 2005.
- C-38 Fax from Taxpayer's attorney, dated August 25, 2005.
- C-39 Transmittal letter and amended scheduling Order, dated August 30, 2005.
- C-40 Amended proposed hearing calendar, dated August 30, 2005.
- C-41 IBM Credit's supplemental expert witness designation, filed September 21, 2005.
- C-42 Notice of Hearing, dated September 22, 2005.
- C-43 Durham County's Motion In Limine, filed September 22, 2005.
- C-44 Commission acknowledgment of C-43, dated September 27, 2005.
- C-45 Request of Taxpayer's attorney to subpoena David Baker, filed September 29, 2005.
- C-46 Response of Taxpayer's attorney to Durham County's Motion In Limine, filed September 30, 2005.
- C-47 Taxpayer's Pre-Hearing Memorandum, filed September 30, 2005.

- C-48 Durham County's Motion to Disqualify, filed September 30, 2005.
- C-49 Order on Final Pre-Hearing Conference, filed September 30, 2005.
- C-50 Copy of Subpoena, filed October 4, 2005.

In addition to the above-referenced evidence and documents, the Commission considered the following:

- Final Decision of the Property Tax Commission entered on March 30, 2006.
- *In re Appeal of Southern Railway*, 313 N.C. 177, 328 S.E. 2d 235. (1985).
- *In re Appeal of IBM Credit Corporation*, 362 N.C. 228, 657 S.E.2d 355 (2008).
- *In re Appeal of IBM Credit Corporation*, 186 App.\_\_\_\_, 650 S.E.2d 828 (2007).
- *In re Amp, Inc.*, 287 N.C. 547, 215 S.e.2d 752 (1975).
- IBM Credits' Post-Remand Memorandum filed with the Commission on April 30, 2008.
- Durham County's Post-Remand Brief filed with the Commission on April 30, 2008.

### **Findings of Fact**

In accordance with the Court of Appeals opinion, and after carefully considering all the evidence presented, the Commission makes the following Finding of Facts:

1. IBM Credit is a corporation engaged in the business of leasing computer and computer-related equipment. As of the relevant tax date (January 1, 2001), the leased equipment under appeal falls within four categories: mainframe computers; mid-range computers; personal computers; and peripheral devices, such as printers, scanners and storage devices.

2. As of January 1, 2001, IBM Credit leased the 40,779 pieces of computer and computer-related equipment to 364 customers in Durham County. With respect to the 364 customers, the leasing process was structured so that the IBM Credit customer would negotiate an acquisition price for a particular item with a vendor. IBM Credit would then purchase the item at the price negotiated between the customer and the vendor. After acquiring the computer equipment, IBM Credit would in turn lease it to the customer, typically for a term of three years, in exchange for monthly payments. IBM Credit would retain whatever residual value the computer equipment and computer-related equipment retained at the end of the lease term.

3. IBM Credit duly and timely filed its business personal property listings with the Durham County Tax Office ("Tax Office") for tax year 2001.<sup>5</sup> IBM Credit retained the services of NACOMEX U.S.A. Inc.<sup>6</sup> to assist in listing its computer and computer-related equipment in Durham County. NACOMEX U.S.A. Inc. did not conduct an asset-by-asset inventory of the equipment but did rely on descriptions provided on IBM Credit's asset list and assumed that all of the equipment valued is maintained in a good and serviceable manner.<sup>7</sup>

---

<sup>5</sup> IBM Credit's Exhibit 1, 2001 Business Personal Property Tax Listing filed with Durham County.

<sup>6</sup> NACOMEX U.S.A. Inc. is a computer broker that created the NACOMEX Database.

<sup>7</sup> IBM Credit's Exhibit 33 (February 15, 2001 NACOMEX report).

4. To determine the value of the 40,779 pieces of computer and computer-related equipment for tax year 2001, Durham County used the 2001 Cost Index and Depreciation Schedules (“Schedule U5”) developed and published by the North Carolina Department of Revenue (“Department”). The Department developed Schedule U5 to assist county tax assessors in determining the assessed value of computer and computer-related equipment.<sup>8</sup> Based upon the depreciation tables of Schedule U5, Durham County assessed IBM Credit’s computer and computer-related equipment at a total value of \$144,277,140.00.<sup>9</sup> To arrive at this total value, Durham County used IBM Credit’s listing and applied the Schedule U5. In particular, Durham County used the original cost listed by IBM Credit on its business personal property listing by year for the computer and computer-related equipment and then applied Schedule U5 to arrive at the final value for each listing.<sup>10</sup>

5. The 2001 Cost Index and Depreciation Schedules (i.e. trending tables) are published to assist the counties in the appraisal and assessing of personal property, specifically business personal property. The Cost Index and Depreciation Schedules (“Schedules”) are called guidelines because the county assessor has the statutory duty to appraise all property within the county.<sup>11</sup>

6. Under the appraisal process, a county assessor exercises his appraisal judgment when determining the assessed value of property for *ad valorem* tax purposes and considers all factors that may affect the value of the property. Since the county assessor is responsible for determining the assessed value, the Department recommends schedules as guidelines in the appraisal of business personal property. In this case, Schedule U5 is the recommended schedule to appraise IBM Credit’s computer and computer-related equipment as of January 1, 2001.<sup>12</sup>

7. Since 1994, the Department has changed Schedule U5 by reducing the residual value of fifteen percent down to ten percent. When developing Schedule U5, the Department considered other factors that affect the value of computer and computer-related equipment.<sup>13</sup>

8. IBM Credit challenged Durham County’s assessment of its computer and computer-related equipment by filing an appeal with the County Board. After the County Board denied IBM Credit’s request to utilize additional depreciation for its computer and computer-related equipment for tax year 2001,<sup>14</sup> IBM Credit filed an appeal with the Commission and contends that the value of its computer and computer-related equipment was \$96,458,707.00 as of January 1, 2001.<sup>15</sup>

---

<sup>8</sup> The Department developed Schedule U5 after the Commission’s ruling in *In re Appeal of Northern Telecom, Inc.* 91 PTC 26, 92 PTC 413, 93 PTC 23 (1994).

<sup>9</sup> Durham County’s Exhibit 4 (Durham County’s 2001 Business Personal Property Appraisal of IBM Credit’s business personal property (by district)), and Durham County’s Exhibit 3 (Durham County’s Valuation Methods of Procedures – Excerpts from the 2001 Cost Index and Depreciation Schedules).

<sup>10</sup> Testimony of Ken Joyner, then Durham County Tax Assessor, admitted as an expert in the appraisal of property.

<sup>11</sup> Testimony of David B. Baker, Director, Department of Revenue, Property Tax Division.

<sup>12</sup> *Id.*

<sup>13</sup> Testimony of David B. Baker, Director, Department of Revenue, Property Tax Division.

<sup>14</sup> Attachment A to IBM Credit’s notice of appeal to the Commission.

<sup>15</sup> Application for Hearing filed with the Commission on January 25, 2002 including Attachments.

9. In terms of valuing IBM Credit's computer and computer-related equipment, Mr. Zises testified that certain computers, such as mid-range computers, hold their values because the values are based more on the software, rather than the technology of the hardware.

10. While under lease to 364 customer accounts in Durham County the computer and computer-related equipment was being used for the intended purpose for which the equipment was designed and was performing the tasks for which the customers intended the computers and computer-related equipment to do.

11. Of the three accepted approaches to value (income approach, sales comparison approach and cost approach), Schedule U5 is a consistent method and similar to the cost approach to value computer and computer-related equipment.<sup>16</sup> The cost approach measures value by estimating the current cost of a new asset, then deducting for various elements of depreciation, including physical deterioration, and functional and external obsolescence to arrive at "depreciated cost new".<sup>17</sup> The logic behind this method is that an indication of value of the asset is its cost less a charge against various forms of obsolescence such as functional, technological and economic as well as physical deterioration, if any.<sup>18</sup> In addition, all cost of placing the asset in use must be considered.

12. Durham County's appraisal of IBM Credit's computer and computer-related equipment relies on a method that takes into consideration the value of the computer and computer-related equipment in place performing the function or functions for which it is required to; and measures the value of the assets by their original costs and then deducts for depreciation.<sup>19</sup>

13. When using Schedule U5, Durham County used a method of appraisal that accounts for changes in the computer industry. In particular, Schedule U5 takes a thirty percent deduction for functional and economic obsolescence.<sup>20</sup> Thereafter, a straight line depreciation is taken for the next five years with a residual value of ten percent, until the property is no longer listed for taxation.<sup>21</sup>

14. For tax year 2001, IBM Credit retained the services of NACOMEX U.S.A. Inc.<sup>22</sup> to assist in listing its computer and computer-related equipment in Durham County. As a result of IBM Credit's challenge of the assessed value by Durham County, NACOMEX U.S.A. Inc. developed the NACOMEX report, which includes NACOMEX tables to determine the value of its computer and computer-related equipment.

---

<sup>16</sup> Testimony of Ken Joyner, then Durham County Tax Assessor.

<sup>17</sup> IBM Credit's Exhibit 33 (February 15, 2001 NACOMEX report).

<sup>18</sup> Id.

<sup>19</sup> Durham County's Exhibit 4 (Durham County's 2001 Business Personal Property Appraisal of IBM Credit's business personal property (by district)), and Durham County's Exhibit 3 (Durham County's Valuation Methods of Procedures – Excerpts from the 2001 Cost Index and Depreciation Schedules).

<sup>20</sup> Taxpayer Exhibit 43, North Carolina Department of Revenue 2001 Cost Index and Depreciation Schedule (Schedule U5).

<sup>21</sup> Id.

<sup>22</sup> NACOMEX U.S.A. Inc. a computer brokerage company that created the NACOMEX database.

15. Mr. Robert J. Zises,<sup>23</sup> IBM Credit's expert witness, maintained a database (NACOMEX database) as a resource of providing computer valuation information to various clients who would use the information to establish values for their tangible personal property. The sales information contained in Mr. Zises' database was from "transactional sales observations" covering a period in excess of ten years and reflects secondary sales (brokerage sales) of computer and computer-related equipment.<sup>24</sup>

16. In his report, Mr. Zises provides a summary of the three approaches to value, (income approach, market approach (i.e. sales comparison approach) and cost approach, and in his opinion, his market approach is the best method to estimate the value of IBM Credit's computer and computer-related equipment.<sup>25</sup>

17. When developing his method of appraisal Mr. Zises established subsets that were extracted from the NACOMEX database and used in his report (NACOMEX Report).<sup>26</sup> Mr. Zises testified that the subsets contained less information than was stored in the "transactional sales database" (NACOMEX database). Under his method, Mr. Zises exported only a portion of the "transactional sales observations" that he deemed necessary to complete his analysis. Mr. Zises did not provide any supporting data to confirm his method and did not provide evidence that he considered additional costs associated with the asset.

18. Based upon the exported information contained in the NACOMEX database subset, and other techniques, Mr. Zises developed certain depreciation tables that he believed reflected the valuation of computer and computer-related equipment based upon the sales in his database. As stated in his report, the depreciation factors may be used as age/life multipliers to establish market value when applied to the original cost of each IBM asset within the corresponding category and year.<sup>27</sup> Relying on the NACOMEX Report, IBM Credit arrived at the total valuation of its equipment by multiplying the original purchase price of the computer and computer-related equipment by the percent good listed in the NACOMEX tables for the category and age of the equipment.<sup>28</sup>

19. The Durham County Tax Assessor and IBM Credit used the same original purchase price and age for each item of IBM Credit's computer and computer-related equipment, but applied different depreciation tables to arrive at the valuations for IBM Credit's computer and computer-related equipment.

20. Under the Zises' report, the "transactional observation sales" used to develop the depreciation factors were gathered from sales by computer dealers, wholesalers, brokers and

---

<sup>23</sup> Mr. Robert Zises is the president and owner of NACOMEX U.S.A. Inc. Mr. Zises also testified that he is an independent contractor that works on projects for NACOMEX U.S.A. Inc.

<sup>24</sup> Testimony of Mr. Robert Zises, expert witness for IBM Credit.

<sup>25</sup> IBM Credit's Exhibit 33 (February 15, 2001 NACOMEX report).

<sup>26</sup> IBM Credit's Exhibit 33 (February 15, 2001 NACOMEX report).

<sup>27</sup> Id.

<sup>28</sup> NACOMEX Report attached as Exhibit A to IBM Credit's Application for Hearing.



computer traders (secondary market sales).<sup>29</sup> Mr. Zises did not consider any factors relative to computers and computer-related equipment being used in the market. Without additional data, the conclusions contained in Mr. Zises' report regarding his depreciation factors being most applicable to the appraisal of IBM Credit's computer and computer-related equipment are not credible or persuasive.

21. Notwithstanding testimony by Mr. Zises that his appraisal method reflects the rapid rate of technological change in the computer field,<sup>30</sup> there is no evidence in the record that addresses any design factors inherent in IBM Credit's computer and computer-related equipment that impair the equipment's desirability or usefulness in the current market.

22. The "transactional sales observations" contained in Mr. Zises' database that were exported into the NACOMEX database subset to determine the percent good of the computer and computer-related equipment categories are not sales of tangible personal property (computers and computer-related equipment) that were in place performing the functions for which the computer and computer related-equipment were designed. As such, the NACOMEX database and information contained in the NACOMEX report is not relevant to the circumstance of IBM Credit's business dealings (leasing of computer and computer-related equipment) and such information does not impact the current functionality of the equipment or its use in the market as of January 1, 2001.

23. As stated above, the Durham County Tax Assessor ("Tax Assessor") applied Schedule U5 to appraise IBM Credit's computer and computer-related equipment for tax year 2001. The principles of the cost approach method to value were used to develop Schedule U5. As such, Schedule U5 does account for functional and economic obsolescence. Part of the cost approach is deducting for depreciation, which is "a loss of utility and, hence, value from any cause...." Depreciation may be caused by deterioration, which is a physical impairment, such as structural defects, or by obsolescence, which is "an impairment of desirability or usefulness brought about by changes in design standards (functional obsolescence) or factors external to the property (economic obsolescence)."<sup>31</sup>

24. To account for changes in the computer industry, the Schedule U5 takes a thirty percent deduction for functional and economic obsolescence.<sup>32</sup> Thereafter, a straight line depreciation is taken for the next five years with a residual value of ten percent, until the property is no longer listed for taxation.<sup>33</sup>

---

<sup>29</sup> Testimony by Mr. Zises on cross-examination by Ms. Chavis.

<sup>30</sup> NACOMEX database is a compilation of transactional sales by computer dealers, wholesalers, brokers and computer traders.<sup>30</sup>

<sup>31</sup> *In Re Appeal of Stroh Brewery*, 116 N.C. App. 178, 186, 447 S.E.2d 803, 807 (1994).

<sup>32</sup> Durham County's Exhibit 3 (Durham County's Valuation Methods of Procedures – Excerpts from the 2001 Cost Index and Depreciation Schedules).

<sup>33</sup> *Id.*

25. Durham County uniformly applied the U5 Schedule to determine the total assessed value of IBM Credit's computer and computer-related equipment for tax year 2001.<sup>34</sup>

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

1. N.C. Gen. Stat. § 105-283 requires that all property be appraised at its "true value in money," a term of art under the Machinery Act, N.C. Gen. Stat. § 105-271 et seq. N.C. Gen. Stat. § 105-317.1 requires that in any appraisal of personal property the following elements shall be considered:

1. The replacement cost of the property;
2. The sale price of similar property;
3. The age of the property;
4. The physical condition of the property;
5. The productivity of the property;
6. The remaining life of the property;
7. The effect of obsolescence on the property;
8. The economic utility of the property, that is, its usability and adaptability for industrial, commercial, or other purposes; and
9. Any other factor that may affect the value of the property.

2. In this case, IBM Credit contends that use of Schedule U5 is unlawful because it is not based on information from the marketplace and does not lead to a determination of actual "market value" as required by N.C. Gen. Stat. §§ 105-283, 105-284 and other applicable law in that IBM Credit's property has been assessed at an amount that exceeds its true value in money.

3. *Ad valorem* assessments are presumed to be correct. When assessments are attacked or challenged, a taxpayer may rebut the presumption of correctness by producing competent, material and substantial evidence that tends to show that: (1) Either the county tax supervisor (assessor) used an arbitrary method of valuation; or (2) the county tax supervisor (assessor) used an illegal method of valuation; and (3) the assessment substantially exceeded the true value in money of the property.<sup>35</sup>

4. Once the taxpayer produces the evidence required by *Amp*, the burden of proof then shifts and the burden of going forward with the evidence and of persuasion that its methods would in fact produce true value then rests with the County; and it is the Commission's duty to hear the evidence of both sides, to determine its weight and sufficiency and the credibility of witnesses, to draw inferences, and to appraise conflicting and circumstantial evidence, all in order to determine whether the County met its burden.<sup>36</sup>

---

<sup>34</sup> Testimony of Ken Joyner, then Durham County Tax Assessor.

<sup>35</sup> *In re Amp, Inc.*, 287 N.C. 547, 215 S.E.2d 752 (1975).

<sup>36</sup> *In re Appeal of S. Ry. Co.*, 313 N.C. 177, 182 S.E.2d 235, 239 (1985). *In re Appeal of IBM Credit Corporation*, 186 App. \_\_\_, 650 S.E.2d 828 (2007), *aff'd per curiam*, 362 N.C. 228, 657 S.E.2d 355 (2008).

5. The Department has the power to “develop and recommend standards and rules to be used by tax supervisors and other responsible officials in the appraisal of specific kinds and categories of property taxation.”<sup>37</sup>

6. Durham County reasonably relied upon the 2001 Cost Index and Depreciation Schedules (Schedule U5) to determine the valuation of IBM Credit’s computer and computer-related equipment as of January 1, 2001. By relying upon the 2001 Cost Index and Depreciation Schedules (Schedule U5) to determine the valuation of IBM Credit’s computer and computer-related equipment as of January 1, 2001, Durham County presented credible evidence regarding the valuation of IBM Credit’s computer and computer-related equipment as of January 1, 2001.

7. Schedule U5 accounts for changes in the computer industry, considers the factors set forth in N.C. Gen. Stat. § 105-317.1 and is the most reliable method to use in the appraisal of IBM Credit’s computer and computer-related equipment as of January 1, 2001.

8. Schedule U5 is a legal method for valuing IBM Credit’s computer and computer-related equipment because the schedule does account for functional and economic obsolescence and appraises the subject property at its true value. Our Court of Appeals has held the Department’s Schedules to be a legal method of valuing property in our State.<sup>38</sup>

9. Durham County did produce evidence that its method would in fact produce true value for IBM Credits’ computer and computer-related equipment.

10. Durham County’s appraisal of IBM Credit’s computer and computer-related equipment was not affected by any appraisal deficiencies when Schedule U5 accounts for changes in the computer industry by taking a thirty percent deduction for functional and economic obsolescence, and then a straight line depreciation is taken for the next five years with a residual value of ten percent, until the property is no longer listed for taxation. As such, Durham County did not render an arbitrary or illegal appraisal.

11. The total assessed value assigned by Durham County to IBM Credit’s computer and computer-related equipment was not substantially greater than the true value in money of IBM Credit’s computer and computer-related equipment as of January 1, 2001.

12. The Commission, after reconsidering the evidence of both sides, reviewing all the exhibits and reconsidering all matters and after determining its weight and sufficiency and the credibility of witnesses, and drawing inferences, and appraising conflicting and circumstantial evidence, determines that Durham County met its burden in this appeal.

**Based upon the foregoing Findings of Fact and Conclusions of Law, the Commission Orders** that the decision of the 2001 Durham County Board of County Commissioners, assigning a total value of \$144,277,140 to IBM Credit’s property, as of January 1, 2001, is AFFIRMED.

---

<sup>37</sup> See N.C. Gen. Stat. § 105-291.

<sup>38</sup> *In re Appeal of Westmoreland-LG&E*, 174 N.C. App. 692, 622 S.E.2d 124 (2005).

NORTH CAROLINA PROPERTY TAX COMMISSION



*Terry L. Wheeler*

Terry L. Wheeler, Chairman

Vice Chairman Young and Commissioner **Wilmoth** concur.  
Commissioners Cope and Sitton did not participate in the  
reconsideration of this matter.

Entered: August 29, 2008

ATTEST:

*Janet L. Shires*

Janet L. Shires, Secretary