

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:

HARRIS TEETER, LLC,
Appellant,

16 PTC 0060

FINAL DECISION

From the decision of the Mecklenburg
County Board of Equalization and
Review

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 Tuesday, March 5, 2019, pursuant to the Appellant’s appeal from the decision of the Mecklenburg 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 Ronald L. Gibson appeared at the hearing on behalf of Mecklenburg County. Attorneys John A. Cocklereece and Justin M. Hardy appeared on behalf of the Appellant.

STATEMENT OF THE CASE

The property that is the subject of the hearing is certain taxable personal property, such as (without limitation) point-of-sale systems, shelving, coolers, various trade fixtures and other items of personal property, all used in connection with the business of six (6) store locations operated by the Appellant. The Appellant identifies the six locations in question as stores #11, #30, #157, #160, #340, and #401.

For each store location, the Appellant submitted or caused to be submitted a listing of such taxable property to the County for the 2015 tax year. In each such listing, the Appellant provided an itemization of all taxable personal property, along with the date of acquisition and original

installed cost for each item. There appears to be no dispute as to the sufficiency or timeliness of the Appellant's said listings for the 2015 tax year.

For various reasons of convenience and efficiency, the Appellant and the County agreed to present evidence in this matter regarding the taxable personal property of the six (6) representative store locations, although there are some thirty-nine (39) locations that are included in the above-referenced Commission file number. References herein to the singular or plural forms of "property," "value," and the like are intended to refer to the collective personal property for all six locations.

The Appellant appealed the taxable value of the personal property, as determined by the County for the 2015 tax year, to the Mecklenburg County Board of Equalization and Review, and subsequently appealed the Board's decisions to the Commission. Whereas the County contends that the sum true value of the subject property is \$21,434,313, the Appellant contends that the actual true value of the property is \$13,663,000, both values being effective as of January 1, 2015.

ANALYSIS AND ISSUES

A county's ad valorem tax assessment is presumed to be correct.¹ A taxpayer may rebut this presumption by producing "competent, material, and substantial" evidence that tends to show that: "(1) [e]ither the county tax supervisor used an *arbitrary method* of valuation; or (2) the county tax supervisor used an *illegal method* of valuation; AND (3) the assessment *substantially* exceeded the true value in money of the property".² N.C. Gen. Stat. §105-283 requires all taxable property to be valued for tax purposes at its "true value," as that term is defined in the same section.

If the taxpayer produces the evidence required to rebut the presumption, then the burden shifts to the taxing authority to demonstrate that its methods produce true values.³

Under this analysis, the Commission must consider the following issues:

1. Whether the Appellant carried its burden of producing competent, material and substantial evidence tending to show that:

¹ *In re Amp, Inc.*, 287 N.C. 547, 563, 215 S.E.2d 752, 762 (1975).

² *Id.* (capitalization and emphasis in original).

³ *In re Appeal of S. Ry. Co.*, 313 N.C. 177, 323 S.E.2d 235 (1985). *In re IBM Credit Corporation, (IBM Credit II)*, 201 N.C. App. 343, 689 S.E.2d 487 (2009), disc. review denied and appeal dismissed, 363 N.C. 854, 694 S.E.2d 204 (2010).

- (a) The County employed an arbitrary or illegal method of valuation in determining the assessed value of the Appellant's property; and
 - (b) The assessed value substantially exceeded the true value of the property for the year at issue.
2. If the Appellant produces the evidence required to rebut the presumption, then whether the County demonstrates that its appraisal methods produced a true value for the property, considering the evidence of both sides; its weight and sufficiency and the credibility of witnesses; the inferences drawn therefrom; and the [evaluation] of conflicting and circumstantial evidence.⁴

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

1. Both the County and the Appellant have generated value opinions for the subject property based on the cost approach. The starting point for each party's approach was the original installed costs for each item of the subject property, which costs were then adjusted to reach an estimate of true value as of January 1, 2015. The primary reason for the differences in the parties' respective values results from the methodology each chose for making adjustments to the original installed cost.
2. The County's Assessor, Kenneth L. Joyner, Jr., testified that the County had relied upon the cost approach. The Appellant's witness, Mitchell S. Rolnick, testified that he had not considered the income approach; that he had researched and aggregated the sales of comparable property, but had determined that the sales comparison approach would require significant adjustments to be "viable;" and that he had ultimately relied upon the cost approach, as well.
3. Just as with each of the three approaches to value recognized by the North Carolina courts (i.e., the cost, income, and comparable sales approaches⁵), the cost approach has its limitations. However, when property does not directly produce income; when there are limited relevant sales of comparable property; and when property is currently being put to

⁴ *In re Parkdale Mills*, 225 N.C. App.713, 741 S.E.2d 416 (2013).

⁵ See, for example, *In re Greens of Pine Glen Ltd.*, 356 N.C. 642, 648, 576 S.E.2d 316, 320 (2003)

its intended and most profitable use, the cost approach is typically the most reliable method for producing an estimate of value.

4. While Mr. Rolnick testified that he had abandoned the sales comparison approach because of the significant adjustments that would be required to create parity between the sold properties and the subject properties, he also testified that he had relied upon the sales of used equipment, without making any adjustments, in order to develop schedules that he had used for calculating the level of depreciation that he had applied to the original installed costs. It appears illogical to determine that sales are too unreliable to be useful in developing value using the sales comparison approach, but then to use the same or similar sales, directly and without adjustment, under the cost approach to determine the appropriate level of depreciation to apply to original installed cost in order to arrive at current, true value.
5. Mr. Rolnick further testified that he calculated the current value of the subject property by starting with the original installed cost of the subject property; applied a trending factor to that cost to determine the property's replacement cost new; and then applied the depreciation amount indicated in his depreciation schedules to arrive at current market value. He testified further as to his opinion that this value reflected "fair market value installed."
6. The record discloses extensive evidence that the depreciation schedules developed for the Appellant's opinion of value were not based upon sales that included the installed cost of putting the sold equipment to use. The Appellant's stated position is that, because the original installed cost includes the costs required to deliver, install, and put the original equipment to its intended use, adding those same costs to the sale prices of the sold equipment would essentially double-count installation costs and therefore overstate the sale prices and underestimate depreciation. We disagree. If the basis for determining true value under the cost approach is the total cost required to put equipment to its intended use, then a resale of used equipment must also include installation and other necessary costs in order for that sale to be useful in isolating any depreciation element. Otherwise, any difference between the installed cost of new equipment and the uninstalled cost of used equipment would reflect both depreciation and installation cost, because the used equipment in the hands of a buyer cannot be put to its intended use until it is delivered and installed.

7. Nevertheless, the Appellant argues that the difference between the installed cost of new equipment and the sale price of uninstalled used equipment represents certain elements of depreciation that are not fully captured by the County. More specifically, the Appellant contends that of the three elements of depreciation (physical deterioration, functional obsolescence, and economic obsolescence), the County's approach reflects only physical deterioration, or the decline in value of the equipment due to its natural wearing out by age and use. The Appellant explains that the reason for the difference in the installed cost of new equipment and the sale price of uninstalled used equipment is actually due to functional obsolescence (the decline in an object's value due to outdated or flawed design), and/or to economic obsolescence (the decline in an object's value due to external economic forces), and urges the Commission to attribute the entire difference to functional and/or economic obsolescence.
8. Putting aside our concerns about the conflation of delivery and other installation costs along with any depreciation due to obsolescence, we find no evidence in the record to suggest that the equipment in question (collectively) is failing to perform adequately the job for which it was intended due to design or economic factors. We consider, however, that functional obsolescence likely affects at least some equipment (for example, computer-based items), and there has been general testimony from the Appellant regarding the economic state of the grocery and broader retail industry, to the effect that mergers and consolidation of various companies has resulted in the closure of a number of their respective store locations, thereby adding the assets of those closed stores to the market for used equipment.
9. The Appellant's evidence further indicates that its stores are, on average, significantly remodeled every six (6) years, and that the equipment removed from stores during a remodel "goes either in the dumpster or into the marketplace," according to Mr. Rolnick.
10. We observe from the record at least two points regarding the potential obsolescence of the Appellant's equipment: First, that economic conditions for the retail industry in general has perhaps added to the quantity of used equipment entering the marketplace; and second, that the regular remodeling of the Appellant's stores perhaps reflects its response to changing consumer preferences, which could be a form of functional obsolescence.

11. As to whether either form of potential obsolescence affects the Appellant, we note further the lack of evidence that the Appellant is itself closing stores as a result of economic conditions, and also that the Appellant has effectively limited the impact of functional obsolescence on its equipment through a program of regularly replacing it. Moreover, we struggle to accept the argument that the market for new, installed equipment is the same as the market for used, uninstalled equipment that has been effectively discarded through store closures or even remodels. Clearly, the Appellant has chosen the new product over the old for a reason; if the used equipment were truly the equivalent of the new, there would be no rational reason to incur the removal and installation costs of a remodel. And, given that the options for used equipment disposal are either to trash it or to sell it, it is reasonable to conclude that the marketplace for used equipment, even at the upper end of sales, is closer to a liquidation value for the equipment than to the true value of installed, adequately functioning equipment.
12. Mr. Rolnick testified as to his opinion that the sum total value of taxable personal property for the six locations is \$13,663,000 (see unlabeled page 20 of Taxpayer's Exhibit 1).
13. As support for its total value of \$21,434,313, the County offered the testimony of James H. Turner, Jr., CPA, who testified as to his opinion that the sum total value of taxable personal property for the six locations is \$22,100,000.
14. In developing his opinion of value, Mr. Turner testified that he, like the Appellant and the County, had primarily relied on the cost approach, with the original installed cost as his starting point. He testified that he trended the original cost of each asset to current replacement cost new by applying a factor representing the Producer Price Index, then depreciated those replacement costs according to depreciation tables published by Marshall Valuation Services, a national valuation analysis service.
15. Mr. Turner testified that he identified additional functional obsolescence in computer-based equipment and further depreciated the value of those assets in order to account for the additional loss in value. He testified that he accelerated the depreciation on certain types of equipment as a result of information he received from the Appellant's staff—that some equipment was replaced before the end of its normal useful life because of severe use of that equipment. Mr. Turner testified that, in his review of the Appellant's financial materials, he found that the Appellant conducted a regular program of impairment testing,

by which assets are evaluated to ensure that they are producing a sufficient return to the company, based on their value. Mr. Turner testified further that he had personally developed income-based values in order to determine for himself whether the subject property was producing an appropriate return for the Appellant, and determined that the subject property produced income greater than standard for the industry. His conclusion, therefore, is that the subject property does not exhibit economic obsolescence, and we agree. The property's apparent capacity to generate income greater than the industry standard is not an indication of economic obsolescence.

16. Accordingly, we find that all or nearly all of the depreciation affecting the subject property is the result of physical deterioration, with some assets exhibiting functional obsolescence in addition. As the parties are in substantial agreement that physical deterioration has been captured in the county's valuation of the assets, we find that the county's value of \$21,434,313 is not only supported by Mr. Turner's appraisal, but also is a reasonable estimate of true value.

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 and has the authority to correct any assessment of property when it is shown to be based upon an arbitrary or illegal method of valuation and that the valuation substantially exceeds the true value in money.
2. A county's ad valorem tax assessment is presumptively correct.⁶ The taxpayer rebuts this presumption by presenting "competent, material and substantial" evidence that tends to show that: (1) [e]ither the county tax supervisor used an arbitrary method of valuation; or (2) the county tax supervisor used an illegal method of valuation; and (3) the assessment substantially exceeded the true value in money of the property.⁷
3. The Appellant offered competent, material, and substantial evidence that the County's value of the subject property substantially exceeded the true value of the subject

⁶ *In re Amp, Inc.*, 287 N.C. 547, 215 S.E. 752 (1975).

⁷ *Id.*

properties, when the Appellant produced evidence tending to show that the true value of the subject properties was actually about one-third (1/3) less than the County's value, according to an appraisal developed by its expert witness.

4. When the Appellant offers evidence that the appraisal methods used by the County do not produce true values and that the values actually produced by those methods are substantially in excess of true value, the Appellant rebuts the presumption of correctness of the County's value.⁸
5. Since the Appellant rebutted the presumption of correctness, the burden then shifted to the County to demonstrate that its methods produced true values.
6. The County demonstrated that its methods in appraising the subject property produced true values when it provided evidence that the true values of the subject property, considering all forms of depreciation, was consistent with the County's values for the subject property.

WHEREFORE, the Commission orders and decrees that the decisions of the Mecklenburg County Board of Equalization and Review, determining the collective true value of the subject properties to be \$21,434,313, are hereby affirmed.



NORTH CAROLINA PROPERTY TAX COMMISSION


Robert C. Hunter, Chairman

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

Date Entered: 5/30/19

ATTEST:

Stephen W. Pelfrey, Commission Secretary

⁸ In re Appeal of S. Ry. Co., 313 N.C. 177, 323 S.E.2d 235 (1985)