SUPREME COURT OF VIRGINIA
RECEIVED
OCT 23 1979
RICHMOND, VIRGINIA

IN THE

SUPREME COURT OF VIRGINIA

At Richmond

Record No. 790521
Circuit Court Nos. 5916 and 5917

WILLIAM H. FORST, STATE TAX COMMISSIONER,

Appellant,

v.

ROCKINGHAM POULTRY MARKETING COOPERATIVE, INC.,

Appellee,

and

WILLIAM H. FORST, STATE TAX COMMISSIONER,

Appellant,

v.

SHEN-VALLEY MEAT PACKERS, INC.,

Appellee.

JOINT APPENDIX

Marshall Coleman
Attorney General

John G. MacConnell
Kenneth W. Thorson
Norman K. Marshall
Assistant Attorneys General
P. O. Box 6-L
Richmond, VA 23282
Counsel for Appellant

Donald E. Showalter
George H. Roberts, Jr.
Wharton, Aldhizer & Weaver
P. O. Box 809
Harrisonburg, VA 22801
Counsel for Appellees

INDEX OF APPENDIX

		Page
I.	PETITION - RELIEF FROM ERRONEOUS TAX ASSESSMENT - Filed -- December 30, 1977	1
II.	ANSWER OF THE STATE TAX COMMISSIONER Filed -- January 25, 1978	5
III.	STIPULATION OF FACT - Filed -- February 27, 1978	11
	a. SUPPLEMENTAL STIPULATION - Filed-- May 10, 1978	16
IV.	FRANCHISE REPORT OF SCC (Exhibits)	18
V.	STIPULATION FOR CONSOLIDATION OF CASES - Filed-- March 10, 1978	34
VI.	DEPARTMENT'S STIPULATIONS (Exhibits) Filed -- April 4, 1978	35
VII.	COURT'S OPINION - Filed-- May 26, 1978	41
VIII.	ORDER - Filed -- July 17, 1978	50
IX.	NOTICE OF APPEAL - Filed-- August 14, 1978	53
X.	COMMONWEALTH'S LETTER - Filed-- October 18, 1978	59
XI.	CLERK'S LETTER - Filed-- October 20, 1978	60
XII.	PETITION FOR REHEARING - Filed-- October 24, 1978	61
XIII.	DEMURRER - Filed-- November 3, 1978	67
XIV.	MEMORANDUM FOR FILE - Filed-- December 20, 1978	74
XV.	ORDER - Filed-- January 5, 1979	75
XVI.	NOTICE OF APPEAL - Filed-January 30, 1979	77
XVII.	ASSIGNMENTS OF ERROR	83

IN THE

SUPREME COURT OF VIRGINIA

At Richmond

Record No. 790521
Circuit Court Nos. 5916 and 5917

WILLIAM H. FORST, STATE TAX COMMISSIONER,

Appellant,

v.

ROCKINGHAM POULTRY MARKETING COOPERATIVE, INC.,

Appellee,

and

WILLIAM H. FORST, STATE TAX COMMISSIONER,

Appellant,

v.

SHEN-VALLEY MEAT PACKERS, INC.,

Appellee.

JOINT APPENDIX

I. PETITION - RELIEF FROM ERRONEOUS TAX ASSESSMENT
Filed -- December 30, 1977

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

IN RE: RELIEF FROM THE ERRONEOUS TAX ASSESSMENT OF ROCKINGHAM POULTRY MARKETING COOPERATIVE, INCORPORATED FOR TAXES ON INTANGIBLE PERSONAL PROPERTY (CAPITAL NOT OTHERWISE TAXED) AND INCOME TAXES

PETITION

TO THE HONORABLE JOSHUA L. ROBINSON, JUDGE OF SAID COURT:

Your petitioner, Rockingham Poultry Marketing Cooperative, Incorporated, respectfully represents unto this Court as follows:

(1) That it is a Virginia corporation organized and existing under Title 13.1, Chapter 3, Article 2, Agricultural Cooperative Associations, Section 13.1-312, et seq., which association has its principal place of business at Timberville, Virginia, which is within Rockingham County, and has its address as Broadway, Virginia.

(2) Petitioner's sole and exclusive business is the marketing of poultry and poultry products for and on behalf of its members who are bona fide producers of agricultural products.

(3) This petitioner has paid the following taxes which are defined as taxes on capital not otherwise taxed for the following years:

1973	$11,578.81
1974	$17,756.34
1975	$14,175.30
1976	$15,197.34
1977	$18,468.94

(4) Your petitioner has paid the following income taxes for the following years:

1974	$128.36
1975	$ 39.03

Filed in the Clerk's Office this 20th day of December, 1977
Writ Tax $
Fee 25.00
L. L. 1.00
Misc.
Total $26.00
Teste: GEORGE W. KEMPER, Clerk
By Deputy Clerk D.C.

WHARTON, ALDHIZER AND WEAVER
ATTORNEYS AT LAW
HARRISONBURG, VA.

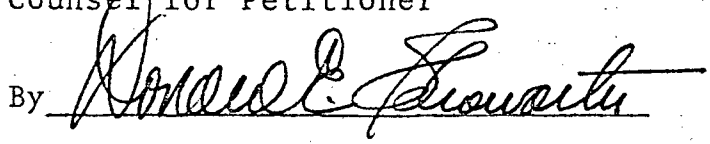
(5) Your petitioner denies that it owes any of the aforesaid taxes on capital not otherwise taxed or income taxes by reason of the exemption from such taxes contained in Section 13.1-341 of the Code of Virginia, 1950, as amended.

(6) Your petitioner has paid an annual license fee of Ten Dollars ($10.00) for the years 1973, 1974, 1975, 1976 and 1977.

WHEREFORE, your petitioner prays that this Court will correct this assessment and declare the petitioner exempt from the payment of any of the taxes herein set forth for which it has been erroneously assessed and further, that this Court will order a refund of the aforesaid taxes paid together with interest thereon and that said order exempting petitioner from the payment of said taxes and the refund thereof be certified to the State Tax Commissioner, and further, that your petitioner may have such other, further and general relief as the nature of its case may require.

ROCKINGHAM POULTRY MARKETING
COOPERATIVE, INCORPORATED
By Counsel

DONALD E. SHOWALTER
GEORGE H. ROBERTS, JR.
Of Wharton, Aldhizer & Weaver
Post Office Box 809
Harrisonburg, Virginia 22801
Counsel for Petitioner

By 

WHARTON, ALDHIZER
AND
WEAVER
ATTORNEYS AT LAW
HARRISONBURG, VA.

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

IN RE: RELIEF FROM THE ERRONEOUS TAX ASSESSMENT OF SHEN-VALLEY MEAT PACKERS, INCORPORATED FOR TAXES ON TANGIBLE PERSONAL PROPERTY (CAPITAL NOT OTHERWISE TAXED)

PETITION

To the Honorable Joshua L. Robinson, Judge of said Court:

Your petitioner, Shen-Valley Meat Packers, Incorporated, respectfully represents unto this Court as follows:

(1) That it is a Virginia corporation organized and existing under Title 13.1, Chapter 3, Article 2, Agricultural Cooperative Associations, Section 13.1-312, et seq., which association has its principal place of business at Timberville, Virginia, which is within Rockingham County, and has its address as Timberville, Virginia.

(2) Petitioners' sole and exclusive business is the marketing of agricultural products for and on behalf of its members who are bona fide producers of agricultural products.

(3) This petitioner has paid the following taxes which are defined as taxes on capital not otherwise taxed for the following years:

1973	$1,660.26
1974	$1,473.35
1975	$1,661.60
1976	$1,932.87
1977	$2,756.05

(4) Your petitioner denies that it owes any of the aforesaid taxes on capital not otherwise taxed by reason of the exemption from such taxes contained in Section 13.1-341 of the Code of Virginia, 1950, as amended.

(5) Your petitioner has paid an annual license fee of

Filed in the Clerk's Office
Writ Tax $
Fee
L. L.
Misc.
Total
By Clerk
D. C.

WHARTON, ALDHIZER AND WEAVER
ATTORNEYS AT LAW
HARRISONBURG, VA.

Ten Dollars ($10.00) for the years 1973, 1974, 1975, 1976 and 1977.

WHEREFORE, your petitioner prays that this Court will correct this assessment and declare the petitioner exempt from the payment of any of the taxes herein set forth for which it has been erroneously assessed and further, that this Court will order a refund of the aforesaid taxes paid, together with interest thereon, and that said order exempting petitioner from the payment of said taxes and the refund thereof be certified to the State Tax Commissioner, and further, that your petitioner may have such other, further and general relief as the nature of its case may require.

SHEN-VALLEY MEAT PACKERS, INCORPORATED
By Counsel

DONALD E. SHOWALTER
GEORGE H. ROBERTS, JR.
Of Wharton, Aldhizer & Weaver
P. O. Box 809
Harrisonburg, Virginia - 22801
Counsel for Petitioner

By Donald E. Showalter

II. ANSWER OF THE STATE TAX COMMISSIONER
Filed -- January 25, 1978

V I R G I N I A:

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

IN RE: RELIEF FROM THE TAX ASSESSMENT OF ROCKINGHAM POULTRY MARKETING COOPERATIVE, INCORPORATED, FOR INTANGIBLE PERSONAL PROPERTY TAXES AND INCOME TAXES

ANSWER

The defendant, State Tax Commissioner, by counsel, for response to the Petition for Relief from the Assessment of State Taxes, states as follows:

1. That the facts and allegations of Paragraphs 1 and 4 are admitted.

2. That the facts and allegations of Paragraphs 2 and 5 are denied.

3. That the facts and allegations of Paragraph 3 are admitted; however, the Department of Taxation's records differ slightly with regard to the amount of capital tax actually attributable to the years 1973, 1974, 1975 and 1976 because of audit adjustments and a net refund made in September, 1977.

4. That the defendant has no knowledge of the facts alleged in paragraph 6 and therefore can neither admit nor deny same; consequently strict proof is demanded therefor, particularly with regard to when such payments were made.

WHEREFORE, now having fully answered the defendant prays that its assessment be found correct and that the Petition be dismissed with costs.

WILLIAM H. FORST
STATE TAX COMMISSIONER

Filed in the Clerk's Office
Rockingham County, Va.

JAN 25

Marlene Hoy Deputy Clerk

By John H. MacConnell
Counsel

4

Marshall Coleman
Attorney General of Virginia

John G. MacConnell
Assistant Attorney General
P. O. Box 6-L, Room 206
Richmond, Virginia 23282

CERTIFICATION

I hereby certify that the original of this foregoing Answer has been mailed to the clerk of this court for filing and a true copy thereof has been mailed to Donald E. Showalter, Esquire, and George H. Roberts, Jr., Esquire, of Wharton, Aldhizer & Weaver, P. O. Box 809, Harrisonburg, Virginia 22801, this 24th day of January, 1978.

John G. MacConnell

V I R G I N I A:

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

IN RE: PETITION OF SHEN-VALLEY MEAT PACKERS, INCORPORATED, FOR CORRECTION OF STATE TAX ASSESSMENT OF INTANGIBLE PERSONAL PROPERTY TAXES

ANSWER

The defendant, State Tax Commissioner, by counsel, for response to the Petition for Relief from the State Tax Assessment of Shen-Valley Meat Packers, states as follows:

1. That the facts and allegations of Paragraph 1 are admitted.

2. That the facts and allegations of Paragraphs 2 and 4 are denied.

3. That the facts and allegations of Paragraph 3 are admitted; however, the Department of Taxation states that the capital taxes due and owing for the years 1973, 1974, 1975, and 1976 exceeds the amounts actually paid for those years.

4. That the defendant has no knowledge of the facts alleged in paragraph 5 and therefore can neither admit nor deny same; consequently strict proof of such payments is called for, particularly with regard to when such payments were actually made.

WHEREFORE, now having fully answered the defendant prays that its assessment be found correct and that the Petition be dismissed with costs.

WILLIAM H. FORST
STATE TAX COMMISSIONER

Filed in the Clerk's Office
Rockingham County, Va.

JAN 25

Deputy Clerk

By John D. MacConnell
Counsel

4

Marshall Coleman
Attorney General of Virginia

John G. MacConnell
Assistant Attorney General
P. O. Box 6-L, Room 206
Richmond, Virginia 23282

CERTIFICATION

I hereby certify that the original of this foregoing Answer has been mailed to the clerk of this court for filing and a true copy thereof has been mailed to Donald E. Showalter, Esquire, and George H. Roberts, Jr., Esquire, of Wharton, Aldhizer & Weaver, P. O. Box 809, Harrisonburg, Virginia 22801, this 14th day of January, 1978.

John G. MacConnell

III. STIPULATION OF FACT -- Filed--
February 27, 1978

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

IN RE: RELIEF FROM THE ERRONEOUS TAX ASSESSMENT OF ROCKINGHAM POULTRY MARKETING COOPERATIVE, INCORPORATED FOR TAXES ON INTANGIBLE PERSONAL PROPERTY (CAPITAL NOT OTHERWISE TAXED) AND INCOME TAXES

STIPULATION OF FACT

(1) Rockingham Poultry Marketing Cooperative, Inc. (hereinafter referred to as "Rockingham") is an agricultural cooperative organized under the provisions of Section 13.1-312 et. seq. of the Code of Virginia (1950) as amended, cited as the Agricultural Association Act, and is exempt from Federal Income Taxes under the provisions of Section 521 of the Internal Revenue Code.

(2) Rockingham has its principal office at Broadway, Rockingham County, Virginia and is engaged in the business of marketing poultry for its producer patrons, who are also members of the association.

(3) Rockingham enters into individual contracts with each farmer or grower of broilers under the terms of which he agrees at all times to qualify as a producer of agricultural products within the meaning of Section 521 of the Internal Revenue Code of 1954. Under the terms of this contract, Rockingham furnishes to each producer at Rockingham's cost, all chicks, feed, medications and supplies necessary to raise chicks to marketable broiler size. The title to the chicks passes to the producer upon delivery of the chicks to the producer's poultry house. The producer is required to furnish all fuel and litter. The producer grows the broilers to marketable size at which time they are picked up by Rockingham, delivered to one of its processing plants,

Filed in the Clerk's Office
Rockingham County, Va.
FEB 27 1978
Deputy Clerk

WHARTON, ALDHIZER
AND
WEAVER
ATTORNEYS AT LAW
HARRISONBURG, VA.

processed, packaged and sold. The producer under the terms of the contract specifically authorizes Rockingham to determine all matters relative to the marketing of the chicks including when, to whom, the size and the price.

(4) At the time Rockingham picks up the chicks from the producer's farm, the producer is paid a market advance equal to all costs of feed, medication and supplies necessary to raise chicks to marketable broiler size plus an additional amount determined and calculated in accordance with a particular payment table tied to the prevailing prices for comparable broilers on other markets.

(5) At the end of Rockingham's fiscal year, all net margins earned in the processing and final disposition of poultry is accounted to the grower on a patronage basis and returned to him in the form of patronage allocations.

(6) Rockingham timely paid taxes on capital assessed under the provisions of Section 58-418 of the Code of Virginia (1950) as amended and income taxes in the amounts for the years as follows:

Capital taxes	1973	$11,578.81
	1974	$17,756.34
	1975	$14,175.30
	1976	$15,197.34
	1977	$18,468.94
Income taxes	1974	$ 128.36
	1975	$ 39.03

(7) Rockingham does not purchase any poultry other than from bona fide producers of agricultural products who have entered into the aforesaid broiler-producer agreement and who have purchased one share of common stock in Rockingham thus entitling that producer to be a member, and all net savings realized by Rockingham are accounted to those producers on a cooperative basis.

WI ON, ALDHIZER
AND
WEAVER
ATTORNEYS AT LAW
HARRISONBURG, VA.

(8) Rockingham has filed for the years in question a franchise tax report form with the State Corporation Commission, copies of which are attached hereto and made a part hereof. The State Corporation Commission has accepted the annual $10.00 license fee in lieu of all other taxes collected by the State Corporation Commission pursuant to Section 13.1-341 of the Code of Virginia (1950) as amended.

THE ABOVE STIPULATIONS OF FACT ARE HEREBY AGREED UPON, this 27 day of February, 1978.

Counsel for Rockingham Poultry Marketing Cooperative, Incorporated, Petitioner

John D. MacGavell

Counsel for State of Virginia Department of Taxation, defendant

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

IN RE: RELIEF FROM THE ERRONEOUS TAX ASSESSMENT OF SHEN-VALLEY MEAT PACKERS, INCORPORATED FOR TAXES ON INTANGIBLE PERSONAL PROPERTY (CAPITAL NOT OTHERWISE TAXED)

STIPULATION OF FACT

(1) Shen-Valley Meat Packers Cooperative, Incorporated (hereinafter referred to as "Shen-Valley") is an agricultural cooperative organized under the provisions of Section 13.1-312 et. seq. of the Code of Virginia (1950) as amended, cited as the Agricultural Association Act. Shen-Valley operates as a non-exempt association under Section 521 of the Internal Revenue Code.

(2) Shen-Valley, with its principal office at Timberville, Rockingham County, Virginia, was organized to provide its patrons with the advantages of cooperative bargaining in marketing their livestock and performing certain functions such as processing and advertising at a cost below that which would be possible if the producer patrons were acting individually. The creation of this cooperative association grew out of the need in the region served by it for a place whereby farmers could market their livestock at competitive prices. The association was created as a marketing cooperative and since its establishment in 1945 it has not engaged in any other activities.

(3) Farmers ("producers" within the meaning of Section 521 of the Internal Revenue Code) bring their livestock (hogs and cattle) to the plant and are paid an "advance" at that time based on live weight consistent with the practices prescribed in the Packers and Stockyards Act. Title to the

Rockingham County, Va.
FEB 27 1978
Deputy Clerk

WHAR N. ALDHIZER
ND
WEAVER
ATTORNEYS AT LAW
HARRISONBURG, VA.

livestock passes to the association at this time. The livestock is then slaughtered and processed into products for sale at wholesale to the consuming public. The products which are made available for the consuming public at the processing plant include the typical products produced from hogs and cattle, namely, hams, bacon, hot dogs, sausage, beef cuts and various bologna, kosher meats and byproducts.

(4) The processing of livestock by Shen-Valley is done as an essential step in the marketing of the farmer's livestock. Shen-Valley does not market any products except those it receives from those farmers and does not resell any livestock live. At the end of Shen-Valley's fiscal year all net margins earned in the processing and final disposition of livestock is accounted to the farmer on a patronage basis and returned to him in the form of patronage allocations.

(5) Shen-Valley timely paid taxes on capital assessed under the provisions of Section 58-418 of the Code of Virginia (1950) as amended in the amounts for the years as follows:

1973	$1,660.26
1974	$1,473.35
1975	$1,661.60
1976	$1,932.87
1977	$2,756.05

(6) Shen-Valley has filed for the years in question a franchise tax report form with the State Corporation Commission, copies of which are attached hereto and made a part hereof. The State Corporation Commission has accepted the annual $10.00 license fee in lieu of all other taxes collected by the State Corporation Commission

WHARTON, ALDHIZER
AND
WEAVER
ATTORNEYS AT LAW
HARRISONBURG, VA.

pursuant to Section 13.1-341 of the Code of Virginia (1950) as amended.

THE ABOVE STIPULATIONS OF FACT ARE HEREBY AGREED UPON, this 27 day of February, 1978.

Counsel for Shen-Valley Meat Packers, Incorporated, Petitioner

Counsel for State of Virginia Department of Taxation, Defendant

III. a. SUPPLEMENTAL STIPULATION
Filed-- May 10, 1978

MAY 12 1978

file

Commonwealth of Virginia

JUDGES

ROBERT K. WOLTZ
COUNTY COURTHOUSE
WINCHESTER, VIRGINIA 22601
(703) 667-1580

JOSHUA L. ROBINSON
P. O. BOX 46
LURAY, VIRGINIA 22835
(703) 743-6599

DUNCAN C. GIBB
P. O. BOX 1597
FRONT ROYAL, VIRGINIA 22630
(703) 635-3550

CIRCUIT COURTS OF

COUNTY OF PAGE
COUNTY OF CLARKE
COUNTY OF WARREN
CITY OF WINCHESTER
COUNTY OF FREDERICK
COUNTY OF ROCKINGHAM
COUNTY OF SHENANDOAH

TWENTY-SIXTH JUDICIAL CIRCUIT

May 10, 1978

George H. Roberts, Jr., Esquire
Wharton, Aldhizer & Weaver
90 North Main Street
Harrisonburg, Virginia 22801

John G. MacConnell
Assistant Attorney General
Supreme Court Building
1101 East Broad Street
Richmond, Virginia 23219

Gentlemen:

Re: Petition of Shen-Valley Meat Packers, Inc. and Rockingham Poultry Marketing Cooperative, Inc.
Circuit Court of Rockingham County
At Law Nos. 5916 and 5917

In reviewing these files, I find in paragraph 3 of the Shen-Valley stipulation a listing of the end products of the processing plant.

I find no similar stipulation in the Rockingham Poultry petition (5917), except the language in paragraph 3 " . . . they (broilers) are . . . processed, packaged and sold."

It is not entirely clear to me in what context the word "processed" is used.

Can you enter into a supplemental stipulation similar to the last sentence of paragraph 3 of the Shen-Valley stipulation?

Yours very truly,

Joshua L. Robinson, Judge
Twenty-Sixth Judicial Circuit

JLR/zjm

cc: George Kemper, Clerk

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

IN RE: RELIEF FROM THE ERRONEOUS TAX ASSESSMENT OF ROCKINGHAM POULTRY MARKETING COOPERATIVE, INCORPORATED FOR TAXES ON INTANGIBLE PERSONAL PROPERTY (CAPITAL NOT OTHERWISE TAXED)

STIPULATION

The parties to the above-captioned action, by and through their attorneys appearing herein, have agreed to the following stipulation:

The chickens which are processed by Rockingham Poultry are picked up on behalf of Rockingham Poultry from the individual farms, delivered to the processing plant where they are slaughtered, eviscerated, packaged as whole or cut up chickens or cut into parts such as halves, drumsticks, thighs, breasts, and packaged and then sold either fresh or in a quick-frozen state.

Respectfully submitted and agreed.

Donald E. Elsworth
Of counsel for petitioner

John D. MacConnell
Counsel for defendant

IV. FRANCHISE REPORT OF SCC (Exhibits)

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AUG 1971
STATE CORPORATION COMMISSION VA.

FRANCHISE TAX REPORT FORM

AGRICULTURAL CO-OPERATIVE ASSOCIATIONS

§13.1-341 of the Code of Virginia reduces the annual franchise tax of an agricultural co-operative association if part of its business is the storing and/or marketing of farmers' crops or products.

Accordingly, it is necessary to determine each year what percentage of the business of each such association consists of storing and marketing. If your Association is entitled to the benefits conferred by §13.1-341, please answer the following questions and return this form promptly. If we do not receive this report from you by October 1, we will take it for granted that you do not claim to be entitled to a reduction in the tax.

Please answer the following questions:

1. Gross receipts of the Association for the year ending June 30th, 1971
$ 28,676,386.94.

2. Gross receipts from the business of storing and/or marketing of farmers' crops or products for the year ending June 30th
$ 28,676,386.94.

(If the Association did no business during the year ending June 30th, estimate the above amounts for the current year.)

Rockingham Poultry
Marketing Cooperative, Incorporated
Name of Association

The undersigned Secretary of said
Title
Association declares under the penalties of perjury that the answers to the above questions are true.

Raymond Daugherty
(To be signed by an officer of the Association)
Raymond Daugherty, Secretary

Mail to:

Mr. William C. Young, Clerk
State Corporation Commission
P. O. Box 1197
Richmond, Virginia 23209

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

FRANCHISE TAX REPORT FORM

AGRICULTURAL CO-OPERATIVE ASSOCIATIONS

§13.1-341 of the Code of Virginia reduces the annual franchise tax of an agricultural co-operative association if part of its business is the storing and/or marketing of farmers' crops or products.

Accordingly, it is necessary to determine each year what percentage of the business of each such association consists of storing and marketing. If your Association is entitled to the benefits conferred by §13.1-341, please answer the following questions and return this form promptly. If we do not receive this report from you by October 16, we will take it for granted that you do not claim to be entitled to a reduction in the tax.

Please answer the following questions:

1. Gross receipts of the Association for the year ending June 30th, 1972
$ 27,366,337.72.

2. Gross receipts from the business of storing and/or marketing of farmers' crops or products for the year ending June 30th
$ 27,366,337.72.

(If the Association did no business during the year ending June 30th, estimate the above amounts for the current year.)

Rockingham Poultry Marketing Cooperative, Incorporated
Name of Association

The undersigned Secretary of said
Title
Association declares under the penalties of perjury that the answers to the above questions are true.

Raymond Daugherty

(To be signed by an officer of the Association)
Raymond Daugherty, Secretary

Mail to:

Mr. William C. Young, Clerk
State Corporation Commission
P. O. Box 1197
Richmond, Virginia 23209

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

FRANCHISE TAX REPORT FORM

AGRICULTURAL CO-OPERATIVE ASSOCIATIONS

Section 13.1-341 of the Code of Virginia reduces the annual franchise tax of an agricultural co-operative association if part of its business is the storing and/or marketing of farmers' crops or products.

Accordingly, it is necessary to determine each year what percentage of the business of each such association consists of storing and marketing. If your Association is entitled to the benefits conferred by Section 13.1-341, please answer the following questions and return this form promptly. If we do not receive this report from you by November 1, we will take it for granted that you do not claim to be entitled to a reduction in the tax.

Please answer the following questions:

1. Gross receipts of the Association for the year ending June 30th, 1973
   $ 35,867,577.06.

2. Gross receipts from the business of storing and/or marketing of farmers' crops or products for the year ending June 30th
   $ 35,867,577.06.

(If the Association did no business during the year ending June 30th, estimate the above amounts for the current year.)

Rockingham Poultry Marketing Cooperative, Incorporated
Name of Association

The undersigned Secretary of said
S Title
Association declares under the penalties of perjury that the answers to the above questions are true.

Raymond Daugherty

(To be signed by an officer of the Association)
Raymond Daugherty, Secretary

Mail to:

Mr. William C. Young, Clerk
State Corporation Commission
P. O. Box 1197
Richmond, Virginia 23209

20

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

FRANCHISE TAX REPORT FORM

AGRICULTURAL CO-OPERATIVE ASSOCIATIONS

§13.1-341 of the Code of Virginia reduces the annual franchise tax of an agricultural co-operative association if part of its business is the storing and/or marketing of farmers' crops or products.

Accordingly, it is necessary to determine each year what percentage of the business of each such association consists of storing and marketing. If your Association is entitled to the benefits conferred by §13.1-341, please answer the following questions and return this form promptly. If we do not receive this report from you by October 16, we will take it for granted that you do not claim to be entitled to a reduction in the tax.

Please answer the following questions:

1. Gross receipts of the Association for the year ending June 30th, 1974 $44,325,000.53

2. Gross receipts from the business of storing and/or marketing of farmers' crops or products for the year ending June 30th $44,325,000.53

(If the Association did no business during the year ending June 30th, estimate the above amounts for the current year.)

Rockingham Poultry Marketing Cooperative, Incorporated
Name of Association

The undersigned Secretary of said
Title
Association declares under the penalties of perjury that the answers to the above questions are true.

Raymond Daugherty
(To be signed by an officer of the Association)
Raymond Daugherty, Secretary

Mail to:

Mr. William C. Young, Clerk
State Corporation Commission
P. O. Box 1197
Richmond, Virginia 23209

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

FRANCHISE TAX REPORT FORM

AGRICULTURAL CO-OPERATIVE ASSOCIATIONS

Section 13.1-341 of the Code of Virginia reduces the annual franchise tax of an agricultural co-operative association if part of its business is the storing and/or marketing of farmers' crops or products.

Accordingly, it is necessary to determine each year what percentage of the business of each such association consists of storing and marketing. If your Association is entitled to the benefits conferred by Section 13.1-341, please answer the following questions and return this form promptly. If we do not receive this report from you by November 1, we will take it for granted that you do not claim to be entitled to a reduction in the tax.

Please answer the following questions:

1. Gross receipts of the Association for the year ending June 30th, 1975
   $ 43,458,366.83.

2. Gross receipts from the business of storing and/or marketing of farmers' crops or products for the year ending June 30th
   $ 43,458,366.83.

(If the Association did no business during the year ending June 30th, estimate the above amounts for the current year.)

Rockingham Poultry Marketing Cooperative, Incorporated
Name of Association

The undersigned General Manager & Treasurer of said
Title
Association declares under the penalties of perjury that the answers to the above questions are true.

(To be signed by an officer of the Association)

Mail to:

Mr. William C. Young, Clerk
State Corporation Commission
P. O. Box 1197
Richmond, Virginia 23209

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

FRANCHISE TAX REPORT FORM

AGRICULTURAL CO-OPERATIVE ASSOCIATIONS

Section 13.1-341 of the Code of Virginia reduces the annual ranchise tax of an agricultural co-operative association if part of its usiness is the storing and/or marketing of farmers' crops or products.

Accordingly, it is necessary to determine each year what ercentage of the business of each such association consists of storing nd marketing. If your Association is entitled to the benefits conferred y Section 13.1-341, please answer the following questions and return this orm promptly. If we do not receive this report from you by Nobember 9, we ill take it for granted that you do not claim to be entitled to a reduction the tax.

PLEASE ANSWER THE FOLLOWING QUESTIONS:

Gross receipts of the Association for the year ending June 30th, 1976
$ 52,822,741.21.

Gross receipts from the business of storing and/or marketing of farmers' crops or products for the year ending June 30th
$ 52,822,741.21;

(If the Association did no business during the year ending e 30th, estimate the above amounts for the current year.)

Rockingham Poultry Marketing Cooperative, Incorporated
Name of Association

The undersigned General Manager & Treasurer of said
Title
ciation declares under the penalties of perjury that the answers to above questions are true.

George A. Heitz
(To be signed by an officer of the Association) 10-26-76

to:

Mr. William C. Young, Clerk
State Corporation Commission
O. Box 1197
chmond, Virginia 23209

46921

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

FRANCHISE TAX REPORT FORM

AGRICULTURAL CO-OPERATIVE ASSOCIATIONS

Section 13.1-341 of the Code of Virginia reduces the annual franchise tax of an agricultural co-operative association if part of its business is the storing and/or marketing of farmers' crops or products.

Accordingly, it is necessary to determine each year what percentage of the business of each such association consists of storing and marketing. If your Association is entitled to the benefits conferred by Section 13.1-341, please answer the following questions and return this form promptly. If we do not receive this report from you by November 15, we will take it for granted that you do not claim to be entitled to a reduction in the tax.

PLEASE ANSWER THE FOLLOWING QUESTIONS:

1. Gross receipts of the Association for the year ending June 30th, 1977
$ 50,560,980.80

2. Gross receipts from the business of storing and/or marketing of farmers' crops or products for the year ending June 30th
$ 50,560,980.80

(If the Association did no business during the year ending June 30th, estimate the above amounts for the current year.)

Rockingham Poultry Marketing Cooperative, Incorporated
Name of Association

The undersigned Executive Secretary & Treasurer of said
Title
Association declares under the penalties of perjury that the answers to the above questions are true.

George A. Heitz
(To be signed by an officer of the Association)
10-28-77

Mail to:

Mr. William C. Young, Clerk
State Corporation Commission
P. O. Box 1197
Richmond, Virginia 23209

Commonwealth of Virginia

State Corporation Commission

I, William C. Young, Clerk of the State Corporation Commission, do hereby certify that the foregoing is a true copy of Franchise Tax Report Forms for the years 1971 through 1977, inclusive, filed by Rockingham Poultry Marketing Cooperative, Incorporated, and on file in the Clerk's Office of the State Corporation Commission.

In Testimony Whereof I hereunto set my hand and affix the Official Seal of the State Corporation Commission, at Richmond this 6th day of February A. D. 1978

William C. Young
Clerk of the Commission.

51205

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

FRANCHISE TAX REPORT FORM

AGRICULTURAL CO-OPERATIVE ASSOCIATIONS

Section 13.1-341 of the Code of Virginia reduces the annual franchise tax of an agricultural co-operative association if part of its business is the storing and/or marketing of farmers' crops or products.

Accordingly, it is necessary to determine each year what percentage of the business of each such association consists of storing and marketing. If your Association is entitled to the benefits conferred by Section 13.1-341, please answer the following questions and return this form promptly. If we do not receive this report from you by November 15, we will take it for granted that you do not claim to be entitled to a reduction in the tax.

PLEASE ANSWER THE FOLLOWING QUESTIONS:

1. Gross receipts of the Association for the year ending June 30th, 1977
$17,202,342.10

2. Gross receipts from the business of storing and/or marketing of farmers' crops or products for the year ending June 30th, 1977
$17,202,342.10

(If the Association did no business during the year ending June 30th, estimate the above amounts for the current year.)

Shen-Valley Meat Packers, Incorporated
Name of Association

The undersigned Treasurer of said
Title
Association declares under the penalties of perjury that the answers to the above questions are true.

Mearl G. Gordon
(To be signed by an officer of the Association)

Mail to:

Mr. William C. Young, Clerk
State Corporation Commission
P. O. Box 1197
Richmond, Virginia 23209

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

FRANCHISE TAX REPORT FORM

AGRICULTURAL CO-OPERATIVE ASSOCIATIONS

§13.1-341 of the Code of Virginia reduces the annual franchise tax of an agricultural co-operative association if part of its business is the storing and/or marketing of farmers' crops or products.

Accordingly, it is necessary to determine each year what percentage of the business of each such association consists of storing and marketing. If your Association is entitled to the benefits conferred by §13.1-341, please answer the following questions and return this form promptly. If we do not receive this report from you by October 1, we will take it for granted that you do not claim to be entitled to a reduction in the tax.

Please answer the following questions:

1. Gross receipts of the Association for the year ending June 30th 1976
$ 17,821,304.02

2. Gross receipts from the business of storing and/or marketing of farmers' crops or products for the year ending June 30th, 1976
$ 17,821,304.02

(If the Association did no business during the year ending June 30th, estimate the above amounts for the current year.)

Shen-Valley Meat Packers, Incorporated
Name of Association

The undersigned Treasurer of said
Title
Association declares under the penalties of perjury that the answers to the above questions are true.

Mearl G. Gordon
(To be signed by an officer of the Association)

Mail to:

Mr. William C. Young, Clerk
State Corporation Commission
P. O. Box 1197
Richmond, Virginia 23209

27

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

FRANCHISE TAX REPORT FORM

AGRICULTURAL CO-OPERATIVE ASSOCIATIONS

§13.1-341 of the Code of Virginia reduces the annual franchise tax of an agricultural co-operative association if part of its business is the storing and/or marketing of farmers' crops or products.

Accordingly, it is necessary to determine each year what percentage of the business of each such association consists of storing and marketing. If your Association is entitled to the benefits conferred by §13.1-341, please answer the following questions and return this form promptly. If we do not receive this report from you by October 1, we will take it for granted that you do not claim to be entitled to a reduction in the tax.

Please answer the following questions:

1. Gross receipts of the Association for the year ending June 30th, 1975
$ 17,078,167.47

2. Gross receipts from the business of storing and/or marketing of farmers' crops or products for the year ending June 30th, 1975
$ 17,078,167.47

(If the Association did no business during the year ending June 30th, estimate the above amounts for the current year.)

Shen-Valley Meat Packers, Incorporated
Name of Association

The undersigned Vice-President of said
Title
Association declares under the penalties of perjury that the answers to the above questions are true.

Justin W. Dove

Justin W. Dove
(To be signed by an officer of the Association)

Mail to:

Mr. William C. Young, Clerk
State Corporation Commission
P. O. Box 1197
Richmond, Virginia 23209

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

FRANCHISE TAX REPORT FORM

AGRICULTURAL CO-OPERATIVE ASSOCIATIONS

§13.1-341 of the Code of Virginia reduces the annual franchise tax of an agricultural co-operative association if part of its business is the storing and/or marketing of farmers' crops or products.

Accordingly, it is necessary to determine each year what percentage of the business of each such association consists of storing and marketing. If your Association is entitled to the benefits conferred by §13.1-341, please answer the following questions and return this form promptly. If we do not receive this report from you by October 1, we will take it for granted that you do not claim to be entitled to a reduction in the tax.

Please answer the following questions:

1. Gross receipts of the Association for the year ending June 30th, 1974 $ 10,992,477.25.

2. Gross receipts from the business of storing and/or marketing of farmers' crops or products for the year ending June 30th, 1974 $ 10,992,477.25.

(If the Association did no business during the year ending June 30th, estimate the above amounts for the current year.)

Shen-Valley Meat Packers, Incorporated
Name of Association

The undersigned Phillip C. Stone, Attorney, Wharton, Aldhizer & Weaver, Harrisonburg, Virginia 22801 of said
Title

Association declares under the penalties of perjury that the answers to the above questions are true.

Justin W. Dove V. Pres.
(To be signed by an officer of the Association)
Justin W. Dove, Vice-President

Mail to:

Mr. William C. Young, Clerk
State Corporation Commission
P. O. Box 1197
Richmond, Virginia 23209

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

FRANCHISE TAX REPORT FORM

AGRICULTURAL CO-OPERATIVE ASSOCIATIONS

Section 13.1-341 of the Code of Virginia reduces the annual franchise tax of an agricultural co-operative association if part of its business is the storing and/or marketing of farmers' crops or products.

Accordingly, it is necessary to determine each year what percentage of the business of each such association consists of storing and marketing. If your Association is entitled to the benefits conferred by Section 13.1-341, please answer the following questions and return this form promptly. If we do not receive this report from you by November 1, we will take it for granted that you do not claim to be entitled to a reduction in the tax.

Please answer the following questions:

1. Gross receipts of the Association for the year ending June 30th 1973
   $ 8,632,804.93.

2. Gross receipts from the business of storing and/or marketing of farmers' crops or products for the year ending June 30th 1973
   $ 8,632,804.93.

(If the Association did no business during the year ending June 30th, estimate the above amounts for the current year.)

Shen-Valley Meat Packers, Incorporated
Name of Association

The undersigned Secretary-Treasurer of said
Title
Association declares under the penalties of perjury that the answers to the above questions are true.

(To be signed by an officer of the Association)
A. J. Jessee

Mail to:

Mr. William C. Young, Clerk
State Corporation Commission
P. O. Box 1197
Richmond, Virginia 23209

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

FRANCHISE TAX REPORT FORM

AGRICULTURAL CO-OPERATIVE ASSOCIATIONS

§13.1-341 of the Code of Virginia reduces the annual franchise tax of an agricultural co-operative association if part of its business is the storing and/or marketing of farmers' crops or products.

Accordingly, it is necessary to determine each year what percentage of the business of each such association consists of storing and marketing. If your Association is entitled to the benefits conferred by §13.1-341, please answer the following questions and return this form promptly. If we do not receive this report from you by October 1, we will take it for granted that you do not claim to be entitled to a reduction in the tax.

Please answer the following questions:

1. Gross receipts of the Association for the year ending June 30th, 1972
   $ 10,002,230.34.

2. Gross receipts from the business of storing and/or marketing of farmers' crops or products for the year ending June 30th
   $ 10,002,230.34.

(If the Association did no business during the year ending June 30th, estimate the above amounts for the current year.)

Shen-Valley Meat Packers, Incorporated
Name of Association

The undersigned Secretary-Treasurer of said
Title
Association declares under the penalties of perjury that the answers to the above questions are true.

A. J. Jessee
(To be signed by an officer of the Association)

Mail to:

Mr. William C. Young, Clerk
State Corporation Commission
P. O. Box 1197
Richmond, Virginia 23209

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

FRANCHISE TAX REPORT FORM

AGRICULTURAL CO-OPERATIVE ASSOCIATIONS

§13.1-341 of the Code of Virginia reduces the annual franchise tax of an agricultural co-operative association if part of its business is the storing and/or marketing of farmers' crops or products.

Accordingly, it is necessary to determine each year what percentage of the business of each such association consists of storing and marketing. If your Association is entitled to the benefits conferred by §13.1-341, please answer the following questions and return this form promptly. If we do not receive this report from you by October 1, we will take it for granted that you do not claim to be entitled to a reduction in the tax.

Please answer the following questions:

1. Gross receipts of the Association for the year ending June 30th, 1971 $10,717,086.72.

2. Gross receipts from the business of storing and/or marketing of farmers' crops or products for the year ending June 30th $10,717,086.72.

(If the Association did no business during the year ending June 30th, estimate the above amounts for the current year.)

Shen-Valley Meat Packers, Incorporated
Name of Association

The undersigned Secretary-Treasurer of said
Title
Association declares under the penalties of perjury that the answers to the above questions are true.

A. J. Jessee
(To be signed by an officer of the Association)

Mail to:

Mr. William C. Young, Clerk
State Corporation Commission
P. O. Box 1197
Richmond, Virginia 23209

Commonwealth of Virginia

State Corporation Commission

I, William C. Young, Clerk of the State Corporation Commission, do hereby certify that the foregoing is a true copy of Franchise Tax Report Forms for the years 1971 through 1977, inclusive, filed by Shen-Valley Meat Packers, Incorporated, and on file in the Clerk's Office of the State Corporation Commission.

In Testimony Whereof I hereunto set my hand and affix the Official Seal of the State Corporation Commission, at Richmond this 6th day of February A. D. 19 78

William C. Young
Clerk of the Commission.

16

V. STIPULATION FOR CONSOLIDATION OF CASES
Filed-- March 10, 1978

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

IN RE: RELIEF FROM THE ERRONEOUS TAX ASSESSMENT OF ROCKINGHAM POULTRY MARKETING COOPERATIVE, INCORPORATED AND SHEN-VALLEY MEAT PACKERS, INCORPORATED FOR TAXES ON INTANGIBLE PERSONAL PROPERTY (CAPITAL NOT OTHERWISE TAXED)

STIPULATION

Pursuant to the Order of this Court on February 27, 1978, the parties hereto agree to the following stipulations:

(1) The parties agree that both cases may be consolidated for hearing, argument and the filing of briefs and that they involve the same substantive legal question.

(2) Briefs or memoranda of authorities in support of the Petitioners' positions shall be filed with the Judge by March 17, 1978. The Department of Taxation shall file its response by March 31, 1978, and the Petitioners shall have five days to file any reply brief or memorandum.

(3) Both parties desire to argue their case orally at the Motions Day to be held April 19, 1978.

THE ABOVE STIPULATIONS ARE HEREBY AGREED UPON this 10th day of March, 1978.

Counsel for Petitioners

John S. MacSwell
Counsel for Defendant

WHARTON, ALDHIZER AND WEAVER
ATTORNEYS AT LAW
HARRISONBURG, VA.

Filed in the Clerk's Office
Rockingham County, Va.

MAR 13 1978

Deputy Clerk

VI. DEPARTMENT'S STIPULATIONS (Exhibits)
Filed -- April 4, 1978

VIRGINIA:

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

RE: PETITION FOR CORRECTION OF ERRONEOUS TAX ASSESSMENT OF ROCKINGHAM POULTRY MARKETING COOPERATIVE, INC., AND SHEN-VALLEY MEAT PACKERS, INC., FOR TAXES ON INTANGIBLE PERSONAL PROPERTY

STIPULATION

The parties to the above-captioned action, by and through their attorneys appearing herein, have agreed to the following stipulation:

(1) The attached copies of letters were issued by Judge Morrissett in his capacity as State Tax Commissioner.

RESPECTFULLY SUBMITTED AND AGREED.

Counsel for Petitioners

Counsel for Defendant

Filed in the Clerk's Office
Rockingham County, Va.

APR 4 1978

Deputy Clerk

47

COPY

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TAXATION
RICHMOND

June 6, 1949.

My dear

Your letter of May 25th was duly received. I am writing you at the first opportunity.

Enclosed you will find a copy of our circular of December 28, 1948, addressed to the Commissioners of the Revenue, in relation to the present status of cooperative marketing and purchasing associations under the Virginia tax laws. This circular quotes the Act of Assembly of 1948 on this subject and attempts to explain the Act.

For the privilege of storing and/or marketing the farmer's crops or products, including dairy products, an association is required to pay only an annual license fee of $10 for such privilege; but this language is not broad enough to cover anything except "storing and/or marketing." If the cooperative goes further than storing and/or marketing, and in the case of milk, pasteurizes it, I must confess that I am unable to see how such a dairy can claim any exemption, especially in view of Section 73-a of the Tax Code, which provides that dairies pasteurizing milk are subject to the capital tax. It appears also that your company is dealing in orangeade and dari-rich.

From what has been said, I am compelled to conclude that your company is subject to the capital tax. If it did nothing but market raw milk produced by farmer-members, the situation would be different, but this is not the case.

With best wishes, I am,

Very truly yours,

State Tax Commissioner.

Encl.

§ 13.1-341

Memo

February 9, 1954

Messrs. Leach, Calkins & Scott
Certified Public Accountants
Mutual Building
Richmond, Virginia

Attention: Mr. Hodge

Gentlemen:

Reference is made to our telephone conversation concerning Shen-Valley Meat Packers, Inc. This is said to be a cooperative association. Its principal business activity is meat packing and processing. This being true, this corporation takes the same status under our tax laws as if it did not purport to be a cooperative.

Whenever we encounter a cooperative of this kind, we cannot apply the proviso mentioned in our circular of December 28, 1948 relating to what is now Section 13-291 of the Code of Virginia. It is not believed by me that both the first part of Section 13-291 and the proviso can be made applicable to the same cooperative. It is my view that there is no legal authority for classifying any one cooperative as coming partly within the first part of Section 13-291 and partly within the proviso.

With all good wishes, I am,

Very truly yours,

State Tax Commissioner

4/9

COPY

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TAXATION
RICHMOND

April 22, 1954

Hon. James W. Fletcher
Attorney at Law
Sperryville, Virginia

Re:

My dear Mr. Fletcher:

Conditions beyond my control prevented me from writing you sooner in reply to your letter of April 3.

This corporation is manufacturing apple juice. For the privilege of storing and/or marketing the farmers' crops or products, an association coming within the purview of Section 13-291 of the Code of Virginia is required to pay only an annual license fee of $10 for such privilege; but this language is not broad enough to cover anything except "storing and/or marketing." If the cooperative goes further than storing and/or marketing, and in the case of apples manufacturers apple juice therefrom, it is indeed difficult to say that such a manufacturer can claim any exemption from either the income tax or the capital tax.

From what has been said, I am compelled to conclude that this corporation is subject to the State income tax as well as to the State capital tax.

The Virginia law on the State income taxation of cooperatives is entirely different from the Federal income tax law on the Federal income taxation of cooperatives. The Virginia law is far less liberal and ~~so to~~ all cooperatives except those who do nothing except store and/or market farmers' crops or products are subject to the same State taxation, both property and income, ~~the same~~ as if such cooperatives were not cooperatives.

When a cooperative like

prepares its State income tax return, it is not entitled to deduct any dividends paid shareholders on preferred or common stock. Patronage dividends to patrons, duly declared and paid, are deductible.

With all good wishes, I am,

Very sincerely yours,

State Tax Commissioner

57

C
O
P
Y

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TAXATION
RICHMOND

Mr. W. C. Andrews, Jr.
Commissioner of the Revenue
City Hall, 120 Main Street
Newport News, Virginia

February 8, 1963

Re:

Dear Mr. Andrews:

Your letter of February 5 has been carefully read and considered.

The corporation has constructed a plant in Newport News. Presumably this plant will pasteurize and sell milk and cream; it may produce and sell buttermilk; moreover, it may manufacture various dairy products. This operation of the corporation in Newport News is taxable on capital.

For the privilege of storing and/or marketing the farmers' crops or products, including dairy products, an association coming within the purview of § 13.1-341 of the Code of Virginia is required to pay only an annual license fee of $10 for such privilege; but this language is not broad enough to cover anything except "storing and/or marketing." If the cooperative goes further than storing and/or marketing, and in the case of milk, pasteurizes it, we are unable to see how such a dairy can claim any exemption, especially in view of § 58-416 of the Code of Virginia, which provides that dairies pasteurizing milk are subject to the capital tax.

Agricultural cooperatives which do the things set out in § 58-416 of the Code of Virginia have been held to be taxable on capital without exception. If a cooperative does nothing but market raw milk produced by farmer-members, the situation would be different, but here you have a milk processing plant.

If the corporation is not filing a capital tax return in Arlington County, it is doubtless because its milk processing plant is located in Maryland.

With best wishes, I am,

Very truly yours,

State Tax Commissioner

VII. COURT'S OPINION
Filed-- May 26, 1978

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

SHEN-VALLEY MEAT PACKERS, INC.

V. AT LAW NO. 5916

WILLIAM H. FORST, STATE
TAX COMMISSIONER

ROCKINGHAM POULTRY MARKETING COOPERATIVE, INC.

V. AT LAW NO. 5917

WILLIAM H. FORST, STATE
TAX COMMISSIONER

O P I N I O N

In these consolidated petitions for relief from erroneous tax assessments, two Agricultural Cooperative Associations organized under the provisions Title 13.1, Chapter 3, Article 2 of the Code of Virginia (§§13.1-312 et seq.) allege that the limitation of §13.1-341 on the tax on their capital and income is as broad as the permissible corporate purposes of Agricultural Cooperative Associations in §13.1-315. The Court cannot accept this contention.

The facts are stipulated.

I. No. 5916

Shen-Valley Meat Packers Cooperative, Incorporated (hereinafter referred to as "Shen-Valley") is an agricultural cooperative organized under the provisions of Section 13.1-312 et. seq. of the Code of Virginia (1950) as amended, cited as the Agricultural Association Act. Shen-Valley operates as a non-exempt association under Section 521 of the Internal Revenue Code.

Farmers ("producers" within the meaning of Section 521 of the Internal Revenue Code) bring their hogs and cattle to Shen-Valley's plant and Shen-Valley pays them an advance at that time based on live weight consistent with the practices prescribed in the Packers and Stockyards Act; at that time title to the hogs and cattle passes to Shen-Valley which slaughters and processes the livestock into products for sale at wholesale. The end products include hams, bacon, hot dogs, sausage, beef cuts and various bologna, kosher meats, and byproducts.

Shen-Valley markets only products it receives from its member farmers, and does not resell any live livestock. At the end of each fiscal year all net margins earned in the processing and final disposition of livestock is accounted for to the farmer on a patronage basis and returned to the farmer in the form of patronage allocations.

For the years 1973-1978, the petitioner paid taxes on capital assessed under the provision of §58-418 of the Code of Virginia, and the $10.00 license fee pursuant to §13.1-341 of the Code of Virginia.

II. No. 5917

Rockingham Poultry Marketing Cooperative, Inc. (hereinafter referred to as "Rockingham") is an agricultural cooperative organized under the provisions of Section 13.1-312 et. seq. of the Code of Virginia (1950) as amended, cited as the Agricultural Association Act, and is exempt from Federal Income Taxes under the provisions of Section 521 of the Internal Revenue Code.

It is engaged in the business of marketing poultry for its producer patrons, who are also members of the association.

Rockingham enters into individual contracts with each farmer or grower of broilers under the terms of which the farmer agrees to qualify as a producer of Agricultural products within the meaning of Section 521 of the Internal Revenue Code of 1954. Rockingham furnishes each producer with all chicks, feed, medications and supplies necessary to raise chicks to marketable broiler size. Title to the chicks passes to the

producer upon delivery of the chicks to the producer's poultry house. The producer is required to furnish all fuel and litter. The producer then grows the broilers to marketable size and at that time they are picked up by Rockingham and delivered to one of its processing plants, where they are slaughtered, eviscerated, packaged as whole or cut up chickens or cut into parts such as halves, drumsticks, thighs, breasts, and packaged and then sold either fresh or in a quick-frozen state.

Rockingham is authorized by the contract to determine all matters relating to the marketing of the poultry including the time, and the price of the sale.

When Rockingham picks up the poultry from the producer's farm, the farmer is paid a market advance equal to all costs of feed, medication and supplies necessary to raise the chicks to marketable broiler size plus an additional amount determined and calculated in accordance with a particular payment table which is tied to the prevailing prices for comparable broilers on other markets.

At the end of fiscal year, all net margins earned in the processing and final disposition of poultry is accounted for to the grower on a patronage basis and returned to him in the form of patronage allocations.

Rockingham purchases poultry only from bona fide producers of agricultural products, who have entered into broiler-producer agreements, and who have purchased at least one share of Rockingham's common stock, which entitles that producer to be a member; all net savings realized by Rockingham are accounted to its producers on a cooperative basis.

Rockingham paid taxes on capital assessed under the provisions of § 58-418 of the Code of Virginia for the years 1973-1977 and income taxes for the years 1974 and 1975. For those years it has also filed a franchise tax report and paid the annual $10.00 license fee pursuant to Section 13.1-341 of the Code of Virginia.

III

Code of Virginia, § 13.1-341 provides:

"Nothing in this article shall be construed as exempting any association from the payment of license, income, property or other taxes, State and local; and the designation of any such association in this article as nonprofit shall not be construed as exempting it from State income taxation, notwithstanding any other provision of law. For the privilege of storing and/or marketing farmers' crops or products including dairy products, fruit or livestock, an association shall, however, pay only an annual license fee of ten dollars which shall be in lieu of all other corporation, franchise and income taxes, taxes on capital, taxes and charges upon reserves held by the association, and all State and local license taxes on that part of its business which is solely and exclusively the storing and/or marketing of farmers' crops or products." Emphasis Supplied.

The permissible corporate purposes of such associations are in Code §13.1-315:

"Such association may be organized for the purpose of engaging in any cooperative activity for producers of agricultural products in connection with:

"(a) Producing, assembling, marketing, buying or selling agricultural products, or harvesting, preserving, drying, processing, manufacturing, blending, canning, packing, ginning, grading, storing, warehousing, handling, transporting, shipping or utilizing such products, or manufacturing or marketing the by-products thereof.

"(b) Manufacturing, processing, storing, transporting, delivering, handling, buying for or furnishing supplies to its members and other patrons.

"(c) Performing or furnishing business or educational or other services, including the services of buildings, machinery and equipment, on a cooperative basis.

"(d) Financing any of the above enumerated activities for its members." Emphasis Supplied.

Thus, while the corporate purposes include marketing, processing, manufacturing, and storing, the ten dollar license fee in lieu of taxes on income and capital applies only to storing and/or marketing. The General Assembly has, therefore, clearly expressed the intent to exclude manufacturing and processing from the limitation of §13.1-341. Expressio unius est exclusio alterius. Christianburg v. Montgomery County, 216 Va. 654, 658 (1976).

Petitioners rely upon, and the Court accepts, the definition of marketing in Treasure Valley Potato Bargaining Association v. Ore-Ida Foods, Inc., 497 F. 2d 203 (9th Cir. 1974), an antitrust case involving an exemption under the Capper-Volstead Act, 7 U.S.C.A.

§291, 292, where the Court stated:

> "We think the term marketing is far broader than the word sell. A common definition of 'marketing' is this: 'The aggregate of functions involved in transferring title and in moving goods from producer to consumer, including among others buying, selling, storing, transporting, standardizing, financing, risk bearing and supplying market information.' Webster's New Collegiate Dictionary, 1953 Edition"; 497 F. 2d at 215.

However, this broad definition cannot be read to include manufacturing or processing.

Part of Shen-Valley's operations are clearly manufacturing. Prentice v. City of Richmond, 197 Va. 724, 727, 729 (1956). Although Rockingham's slaughtering, picking and eviscerating of poultry may not change live poultry into a product of substantially different character as is essential to manufacturing, 197 Va. 731, it does not follow that it is not processing.

In Richmond v. Richmond Dairy Co., 156 Va. 63, 157 S.E. 728, (1931), the question before the Court was whether the pasteurization of milk constituted manufacturing. The Court, speaking through Mr. Chief Justice Prentis held that the pasteurization of milk did not constitute manufacturing, but in several places in the opinion he described pasteurization as a "process" e.g., 156 Va. at 68, 75. Again in Prentis v. City of Richmond, supra, the question was whether "processing" of chickens constituted manufacturing; in that case the so-called processor slaughtered the chickens, cut them up and sold them as cut-up chickens. Throughout the opinion, the Court considered that what petitioner was doing to the chickens constituted processing. The Court adopted a definition of manufacturing in Prentis (179 Va. at 729), that in general, the more comprehensive definitions recognize three essential elements involved in manufacturing: (1) original material referred to as raw material, (2) a process whereby the raw material is changed, and (3) a resulting product which by reason of being subjected to the processing is different than the original raw material. Our Supreme Court thereby recognized that processing is a narrower term than manufacturing and one need not be a manufacturer

poultry parts, which changes the form, if not the shape, is processing. Similar procedures have been held to be processing in other jurisdictions. E.g., Fisher Artificial Ice and Cold Storage Company v. Iowa State Tax Commission, 81 N.W. 2d 437, (Iowa 1957)(quick freezing of meat and butter); Smith v. State, 100 S. 2d 524 (La., 1958), (sorting, cleaning and re-packaging of beans); Stokely-VanCamp v. State, 312 P. 2d 816 (Wash., 1957), ("quick freezing" of fruits and vegetables held to be manufacturing.)

The Court is therefore of the opinion that so much of petitioners' capital as is devoted to manufacturing or processing, and income allocatable thereto, is not included in the limitation of Code §13.1-341.

IV

The $10 license fee in lieu of other taxes in § 13.1-341 includes the storing and/or marketing of farmer's crops or products. We read this language to encompass the definition of "agricultural products" in Code §13.1-313(a):

> "As used in this Act, unless the context or subject matter requires otherwise:
>
> "(a) 'Agricultural products' include livestock and livestock products, dairy products, poultry and poultry products, seeds, nuts, ground stock horticultural floricultural, viticultural, forestry, bee and any and all kinds of farm products."

Although the livestock may be processed by slaughtering, butchering, grinding, chopping, curing, and freezing, and "so transformed through art and labor that without previous knowledge it could not have been recognized in the new shape it assumed" (Prentice v. City of Richmond, supra at 727), it nonetheless remains an agricultural or farm product. The limitation in §13.1-341 extends to farmers' crops or products. Thus in the context §13.1-313(a) hot dogs and chicken parts are farm products, and the limitation would include the storing and marketing thereof after the shape or form has been changed by the various processing stages.

Further, it would not be logical to exclude all the activities enumerated in § 13.1-315(a) from the definition of marketing. Assembling (including grading, sorting, and packing) warehousing, handling,

transporting, and storing are more nearly related to marketing and/or storing than to processing. Applying this analysis, the capital devoted to, and income allocable from changing the shape or form of the farm products is not within the limitation of §13.1-341.

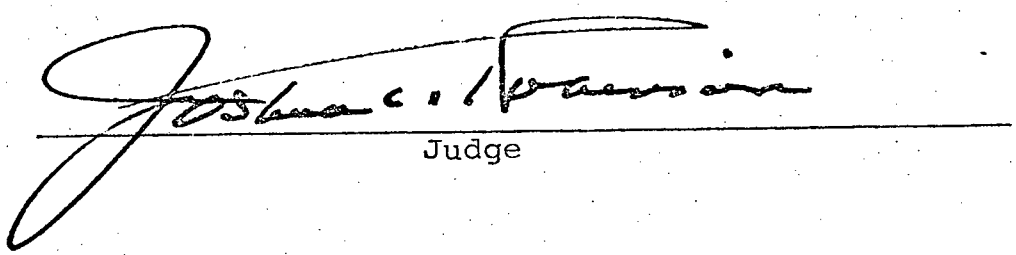
V

The stipulated facts include no allocation of the assessment to particular activities of petitioner. Counsel are invited to submit supplemental stipulations, or may proceed pursuant to Rule 4:11.

VI

The Attorney General may submit an appropriate order, making this opinion part of the record, pursuant to Rule 1:13 and Local Rule 3:1(a)1.

May 26, 1978.



Judge

We have been cited to no Virginia definition of processing, and accept the definition of the Ohio Court in Huron Fish Co. v. Glander, ____ Ohio St. ____, 67 N.E. 2d 546 (1946) as:

> "'to subject to some special process or treatment.' To subject (esp. raw materials) to a process of manufacture, development, preparation for the market. (Citations omitted).
>
> ". . .'The word "process" means to subject, especially raw material to a process of manufacturing, development for the market, etc., and to convert to marketable form, as livestock by slaughtering, grain by milling, cotton by spinning, milk by pasteurizing, fruits and vegetables by sorting and repacking.'" 67 N.E. 2d at 547.

In Northwestern Ohio Poultry Assn., Inc. v. Schneider, 2 Ohio St. 2d 34, 205 N.E. 2d 905 (1965) the Ohio Court considered whether the washing of eggs, inspection by candling, oiling to prevent the escape of carbon dioxide, and crating, constituted processing. In a Per Curiam opinion the Court held that appellee was "processing and preparing for market and sale." 205 N.E. 2d at 906.

On similar facts, the Supreme Court of South carolina reached the same result. Monroe v. Livingston, ___ N.C. ___ 161 S.E. 2d 243 (1968).

Although Northwestern Poultry was overruled by a closely divided court in Gressel Produce Co., Inc. v. Kosydar, 34 Ohio St. 2d 206, 297 N.E. 2d 532 (1973), this decision followed an amendment to the Ohio Statute, Ohio R.C. 5739.01(s):

> "'Manufacturing' or 'processing' means the transformation or conversion of material or things into a different state or form from that in which they originally existed. . . ." 297 N.E. 2d at 534.

Three dissenting justices considered washing and replacement of a natural oil on the egg-shell with a coating of mineral oil, to be a change in shape and form from dirty, unsalable eggs to clean, marketable eggs, which came within the statutory exception. Compare, Byrd & Frederickson, Inc. v. W. H. Forst, State Tax Commissioner, Circuit Court of Rockingham County #5321, (Sept. 11, 1974).

In petition of Cassco Corp., Circuit Court of Rockingham County, No. 5165 (May 16, 1973), this Court held that the "quick freezing" of

VIII. ORDER -- Filed -- July 17, 1978

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

IN RE: RELIEF FROM THE ERRONEOUS TAX ASSESSMENT OF ROCKINGHAM POULTRY MARKETING COOPERATIVE, INCORPORATED AND SHEN-VALLEY MEAT PACKERS, INCORPORATED FOR TAXES ON INTANGIBLE PERSONAL PROPERTY (CAPITAL NOT OTHERWISE TAXED) AND INCOME TAXES	)	At Law Nos. 5916 5917

ORDER

These actions were consolidated for the purpose of argument and disposition, and came on to be heard this 12th day of June, 1978, upon the petitions for refund filed by the taxpayers, the answers of the Commonwealth, the stipulations previously filed, the briefs of counsel, and the opinion of this Court filed May 26, 1978. The taxpayers were represented by Donald E. Showalter and George H. Roberts, Jr., and the Commonwealth by John G. MacConnell, Assistant Attorney General, and the case was argued by counsel.

Whereupon, consistent with the opinion of this Court filed as aforesaid, it is ADJUDGED, ORDERED and DECREED that the processing functions of the taxpayers are not included within the limitation of Section 13.1-341 of the Code of Virginia (1950), as amended, and only those functions of taxpayers attributable to storing and/or marketing of farm products are within the limitation of said Code provision.

It was stipulated that the only property then subject to the tax which is the subject of this litigation consists of inventory, bills and accounts receivable less bills payable, and certain relatively small portions of office equipment, and that the sole source of revenue of both taxpayers is derived from the sale of inventory which in the opinion of this Court is held to constitute farm products and

HAR ALDHIZER
ND
WEAVER
ATTORNEYS AT LAW
HARRISONBURG, VA.

that the accounts receivable are the direct result of the sale and marketing of such inventory, and upon agreement of counsel that all office equipment is properly allocated to the marketing functions of the taxpayer (it being agreed that any proration to the processing functions of the taxpayers would be de minimus); and that all machinery, tools and equipment and motor and delivery vehicles and other taxable personal property which are used in the processing function of the taxpayers are exempt from taxation under the provisions of Section 58-412 of the Code of Virginia (1950), as amended. Therefore, in order to allocate that portion of taxpayers' business which constitutes the processing and which is not included within the limitation under Section 13.1-341 of the Code of Virginia (1950) as amended, it is accordingly ADJUDGED, ORDERED and DECREED that the machinery, tools and equipment and motor and delivery vehicles and other taxable personal property used in processing are not included within the limitation of tax upon capital under Section 13.1-341, but are otherwise exempt under the provisions of Section 58-412, and that all other classes of property taxed as capital pursuant to Section 58-418 are derived from the marketing of farm products and are limited to the annual license fee of Ten Dollars ($10.00) under Section 13.1-341.

It is further ADJUDGED, ORDERED and DECREED that the petitions of the taxpayers are hereby granted, that the annual license fee of Ten Dollars ($10.00) is in lieu of the taxes in question which in the case of Rockingham Poultry Marketing Cooperative, Inc. total $80,212.81 of taxes upon capital and income taxes of $167.39 for a total of $80,380.20, and $9,484.13 of taxes upon capital in the case of Shen-Valley Meat Packers, Inc., and they are each entitled to a refund for these taxes together with interest as provided by law.

WHARTON, ALDHIZER
AND
WEAVER
ATTORNEYS AT LAW
HARRISONBURG, VA.

Pursuant to Section 58-1134 of the Code of Virginia (1950), as amended, the Clerk of this Court is directed to mail an attested copy of this Order to the State Tax Commissioner, W. H. Forst.

mailed 7/19/78

To the foregoing findings and stipulations of fact the Commonwealth concurs; however, the objection of the Commonwealth to the findings of law that the taxpayers are entitled to any exemption under Section 13.1-341 is noted.

Dated: July 17, 1978

ENTER:

_____, Judge

WE ASKED FOR THIS:

DONALD E. SHOWALTER
GEORGE H. ROBERTS, JR.
Counsel for Rockingham Poultry Marketing Cooperative, Inc. and Shen-Valley Meat Packers, Inc.

Recorded In Common Law
Order Book 30 Page 554
7/17/78

SEEN AND OBJECTED TO AS SET FORTH ABOVE:

JOHN G. MacCONNELL, Assistant Attorney General, Counsel for the Commonwealth of Virginia, Department of Taxation

mailed 7/19/78

IX. NOTICE OF APPEAL -- Filed August 14, 1978

V I R G I N I A:

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

ROCKINGHAM POULTRY MARKETING COOPERATIVE, INC.,	)	
	)	
Petitioner,	)	
	)	Law No.
v.	)	5917
	)	
WILLIAM H. FORST,	)	
STATE TAX COMMISSIONER,	)	
	)	
Defendant.	)	

NOTICE OF APPEAL

Pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia, the defendant, William H. Forst, State Tax Commissioner, hereby gives notice that he will apply to the Supreme Court of Virginia for a writ of error from the final order entered herein on January 5, 1979.

No transcript or statement of facts, testimony or other incidents of the case will hereafter be filed as the original papers and exhibits (including various stipulations of facts and certain exhibits) lodged in the clerk's office of the trial court automatically constitute the record on appeal, pursuant to Rule 5:8(a) of the Rules of the Supreme Court of Virginia.

Dated this 30th day of January, 1979.

WILLIAM H. FORST,
STATE TAX COMMISSIONER

By _____
Of Counsel

Marshall Coleman
Attorney General of Virginia

John G. MacConnell
Kenneth W. Thorson
Norman K. Marshall
Assistant Attorneys General
P. O. Box 6-L, Room 206
Richmond, Virginia 23282

Filed in the Clerk's Office
Rockingham County, Va.

JAN 31 1979

Donna Funkhouser Deputy Clerk

153

R

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Notice of Appeal was mailed to the clerk of this court for filing and a true copy thereof was likewise mailed, postage prepaid, to George H. Roberts, Jr., Esquire, Wharton, Aldhizer & Weaver, P. O. Box 809, Harrisonburg, Virginia 22801, on this 30th day of January 1979.

John J. Bradbrook
Assistant Attorney General

V I R G I N I A:

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

SHEN-VALLEY MEAT PACKERS, INC.,	)	
	)	
Petitioner,	)	
	)	Law No.
v.	)	5916
	)	
WILLIAM H. FORST,	)	
STATE TAX COMMISSIONER,	)	
	)	
Defendant.	)	

NOTICE OF APPEAL

Pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia, the defendant, William H. Forst, State Tax Commissioner, hereby gives notice that he will apply to the Supreme Court of Virginia for a writ of error from the final order entered herein on July 17, 1978.

No transcript or statement of facts, testimony or other incidents of the case will hereafter be filed as the original papers and exhibits (including various stipulations of facts and certain exhibits) lodged in the clerk's office of the trial court automatically constitute the record on appeal, pursuant to Rule 5:8(a) of the Rules of the Supreme Court of Virginia.

Dated this 11th day of August, 1978.

WILLIAM H. FORST,
STATE TAX COMMISSIONER

By John D. MacConnell
Of Counsel

Marshall Coleman
Attorney General of Virginia

John G. MacConnell
Kenneth W. Thorson
Norman K. Marshall
Assistant Attorneys General
P. O. Box 6-L, Room 206
Richmond, Virginia 23282

Filed in the Clerk's Office
Rockingham County, Va.

AUG 14 1978

Deputy Clerk

64

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Notice of Appeal has been mailed to the clerk of this court for filing and a true copy thereof was likewise mailed, postage prepaid, to Donald E. Showalter, Esquire, and George H. Roberts, Jr., Esquire, Wharton, Adhizer & Weaver, P. O. Box 809, Harrisonburg, Virginia 22801, on this 11th day of August, 1978.

John D. MacCarell
Assistant Attorney General

X. COMMONWEALTH'S LETTER -- Filed--
October 18, 1978

October 18, 1978

BY HAND

Honorable Allen L. Lucy, Clerk
Supreme Court of Virginia
1101 East Broad Street
Richmond, Virginia 23219

RE: Appeals in Shen-Valley Meat Packers and Rockingham Poultry

Dear Mr. Lucy:

Please be advised that the Commonwealth will not, at this time, take further steps to perfect an appeal in these cases. The Notices of Appeal herein were filed on August 11, 1978.

Please remove this case from your active files and return the Record to the Clerk of the Circuit Court of the County of Rockingham.

Thank you for your assistance.

Very truly yours,

John G. MacConnell
Assistant Attorney General

sgs

cc: George H. Roberts, Jr., Esquire

COPY

XI. CLERK'S LETTER -- Filed-- October 20, 1978

OCT 25 1978

122

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 20th *day of* October, 1978.

It appearing to the court that the records in the cases of Shen-Valley Meat Packers, Inc. v. W. H. Forst, State Tax Commissioner (Case No. 5916) and Rockingham Poultry Marketing Cooperative, Inc. v. W. H. Forst, State Tax Commissioner from the Circuit Court of Rockingham County were filed in this court on September 21, 1978; and it further appearing that no petition for appeal will be filed in these cases and that the time allowed by law within which to do so has expired, it is ordered that the said records be returned to the said circuit court.

A Copy,

Teste:

Allen L. Lucas

Clerk

XII. PETITION FOR REHEARING
Filed -- October 24, 1978

V I R G I N I A:

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

COMMONWEALTH OF VIRGINIA,

Petitioner,

v. At Law 5917

ROCKINGHAM POULTRY MARKETING COOPERATIVE, INC.,

Respondent.

PETITION FOR REHEARING

The petitioner, W. H. Forst, State Tax Commissioner (Commissioner), in the name of the Commonwealth, respectfully moves the Court pursuant to § 58-1137 of the Code of Virginia to rehear a certain Application (Petition) for Correction of Erroneous Assessment, filed on behalf of Rockingham Poultry Marketing Cooperative, Inc., Law No. 5917. The grounds in support of such petition are as follows:

1. From the statements of the facts and other evidence in said proceeding the said Commissioner is of the opinion that the order of the Court, entered July 17, 1978, granting the redress is erroneous.

2. This petition is being filed within six months from the time such order was certified by the Clerk to the Commissioner.

COMMONWEALTH OF VIRGINIA
W. H. FORST
State Tax Commissioner

By: John D. MacConnell
John G. MacConnell
Assistant Attorney General

Marshall Coleman
Attorney General of Virginia

John G. MacConnell
Assistant Attorney General
P. O. Box 6-L
Richmond, Virginia 23282

77

CERTIFICATION

I hereby certify that the original of the foregoing Petition for Rehearing has been mailed to the Clerk of this Court for filing and a true copy thereof likewise mailed to George H. Roberts, Jr., Esquire, Wharton, Aldhizer & Weaver, 90 North Main Street, Harrisonburg, Virginia 22801, on this 24th day of October 1978.

John D. MacDonell
Assistant Attorney General

V I R G I N I A:

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

COMMONWEALTH OF VIRGINIA,

Petitioner,

v. At Law 5916

SHEN-VALLEY MEAT PACKERS, INC.,

Respondent.

PETITION FOR REHEARING

The petitioner, W. H. Forst, State Tax Commissioner (Commissioner), in the name of the Commonwealth, respectfully moves the Court pursuant to § 58-1137 of the Code of Virginia to rehear a certain Application (Petition) for Correction of Erroneous Assessment, filed on behalf of Shen-Valley Meat Packers, Inc., Law No. 5916. The grounds in support of such petition are as follows:

1. From the statements of the facts and other evidence in said proceeding the said Commissioner is of the opinion that the order of the Court, entered July 17, 1978, granting the redress is erroneous.

2. This petition is being filed within six months from the time such order was certified by the Clerk to the Commissioner.

COMMONWEALTH OF VIRGINIA
W. H. FORST
State Tax Commissioner

By: John G. MacConnell
John G. MacConnell
Assistant Attorney General

Marshall Coleman
Attorney General of Virginia

John G. MacConnell
Assistant Attorney General
P. O. Box 6-L
Richmond, Virginia 23282

75

CERTIFICATION

I hereby certify that the original of the foregoing Petition for Rehearing has been mailed to the Clerk of this Court for filing and a true copy thereof likewise mailed to George H. Roberts, Jr., Esquire, Wharton, Aldhizer & Weaver, 90 North Main Street, Harrisonburg, Virginia 22801, on this 24th day of October 1978.

John D. MacConnell
Assistant Attorney General

XIII. DEMURRER - Filed November 3, 1978

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

COMMONWEALTH OF VIRGINIA	)	
	)	
	)	
V.	)	At Law No. 5917
	)	
	)	
ROCKINGHAM POULTRY MARKETING COOPERATIVE, INC.	)	
	)	

DEMURRER

The defendant, Rockingham Poultry Marketing Cooperative, Inc., says that the Petition is insufficient at law. For the grounds of its demurrer to the Petition of the State Tax Commissioner filed in this case, the defendant Rockingham Poultry Marketing Cooperative, Inc. (the "Taxpayer") states as follows:

(1) The State Tax Commissioner fails to allege any new evidentiary basis to support its request for a rehearing.

(2) The State Tax Commissioner has participated in all aspects of this case from its very inception having been represented by the Attorney General.

(3) Subsequent to the filing of the written opinion by this Court upon the request of counsel for the Taxpayer and the State Tax Commissioner the law and facts of this case were fully re-argued at a rehearing and from which rehearing this Court issued its final Order.

(4) There are no facts in dispute, in fact, all factual matters have been stipulated previously.

(5) The prior administrative position of the State Tax Commissioner has been fully disclosed by the respective stipulations.

WHARTON, ALDHIZER
AND
WEAVER
ATTORNEYS AT LAW
HARRISONBURG, VA.

Filed in the Clerk's Office
Rockingham County, Va.

NOV 3 1978

Deputy Clerk

80

(6) The State Tax Commissioner is estopped from pursuing this Petition, having had previously a rehearing and for the further ground that it elected to proceed with its appeal to the Supreme Court of Virginia as evidenced by the filing of its notice of appeal on August 11, 1978, and further by its filing of the Statement of Facts on or about September 11, 1978. Having taken the steps necessary to proceed to the perfection of the appeal, the State Tax Commissioner, at his election, did not perfect its appeal and an Order was entered by the Supreme Court of Virginia directing that the records be returned to the Clerk's Office of the Circuit Court of Rockingham County upon the request of the State Tax Commissioner and upon the finding that the time period for the filing of the Petition of Appeal had run.

(7) By reason of the Order of the Supreme Court of Virginia and by its taking jurisdiction of this case and not remanding this case for further proceeding, this Court lacks jurisdiction to rule upon the Petition for Rehearing filed by the State Tax Commissioner.

(8) To permit the State Tax Commissioner under Section 58-1137 of the Code of Virginia (1950) as amended, to now petition for a rehearing would be a denial of equal protection as guaranteed under the Constitution of the United States of America and the Constitution of Virginia.

WHEREFORE, Rockingham Poultry Marketing Cooperative Inc. requests that the Petition for Rehearing filed by the State Tax Commissioner be denied, that the supersedeas be lifted, and that the State Tax Commissioner be directed to apply to the Comptroller of Virginia for a warrant drawn upon the Treasury of the Commonwealth of Virginia for the

WH N. ALDHIZER
AND
WEAVER
ATTORNEYS AT LAW
HARRISONBURG, VA.

amount due the Taxpayer under the Order of this Court entered July 17, 1978.

ROCKINGHAM POULTRY MARKETING
COOPERATIVE, INC.
By Counsel

DONALD E. SHOWALTER
GEORGE H. ROBERTS, JR.
of Wharton, Aldhizer & Weaver
90 North Main Street
Harrisonburg, VA 22801
Counsel for defendant

By _____

I hereby certify that a true and correct copy of the foregoing Demurrer was mailed this 3d day of November, 1978, to John G. MacConnell, Esquire, Assistant Attorney General, P. O. Box 6-L, Room 206, Richmond, Virginia, 23282.

_____

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

COMMONWEALTH OF VIRGINIA	)	
	)	
	)	
V.	)	At Law No. 5916
	)	
	)	
SHEN-VALLEY MEAT PACKERS, INCORPORATED	)	
	)	

DEMURRER

The defendant, Shen-Valley Meat Packers, Incorporated, says that the Petition is insufficient at law. For the grounds of its demurrer to the Petition of the State Tax Commissioner filed in this case, the defendant Shen-Valley Meat Packers, Incorporated, (the "Taxpayer") states as follows:

(1) The State Tax Commissioner fails to allege any new evidentiary basis to support its request for a rehearing.

(2) The State Tax Commissioner has participated in all aspects of this case from its very inception having been represented by the Attorney General.

(3) Subsequent to the filing of the written opinion by this Court upon the request of counsel for the Taxpayer and the State Tax Commissioner the law and facts of this case were fully re-argued at a rehearing and from which rehearing this Court issued its final Order.

(4) There are no facts in dispute, in fact, all factual matters have been stipulated previously.

(5) The prior administrative position of the State Tax Commissioner has been fully disclosed by the respective stipulations.

WHARTON, ALDHIZER
AND
WEAVER
ATTORNEYS AT LAW
HARRISONBURG, VA.

Filed in the Clerk's Office
Rockingham County, Va.

(6) The State Tax Commissioner is estopped from pursuing this Petition, having had previously a rehearing and for the further ground that it elected to proceed with its appeal to the Supreme Court of Virginia as evidenced by the filing of its notice of appeal on August 11, 1978, and further by its filing of the Statement of Facts on or about September 11, 1978. Having taken the steps necessary to proceed to the perfection of the appeal, the State Tax Commissioner, at his election, did not perfect its appeal and an Order was entered by the Supreme Court of Virginia directing that the records be returned to the Clerk's Office of the Circuit Court of Rockingham County upon the request of the State Tax Commissioner and upon the finding that the time period for the filing of the Petition of Appeal had run.

(7) By reason of the Order of the Supreme Court of Virginia and by its taking jurisdiction of this case and not remanding this case for further proceeding, this Court lacks jurisdiction to rule upon the Petition for Rehearing filed by the State Tax Commissioner.

(8) To permit the State Tax Commissioner under Section 58-1137 of the Code of Virginia (1950) as amended, to now petition for a rehearing would be a denial of equal protection as guaranteed under the Constitution of the United States of America and the Constitution of Virginia.

WHEREFORE, Shen-Valley Meat Packers, Incorporated requests that the Petition for Rehearing filed by the State Tax Commissioner be denied, that the supersedeas be lifted, and that the State Tax Commissioner be directed to apply to the Comptroller of Virginia for a warrant drawn upon the

WHAR N. ALDHIZER
AND
WEAVER
ATTORNEYS AT LAW
HARRISONBURG, VA.

Treasury of the Commonwealth of Virginia for the amount due the Taxpayer under the Order of this Court entered July 17, 1978.

SHEN-VALLEY MEAT PACKERS,
INCORPORATED
By Counsel

DONALD E. SHOWALTER
GEORGE H. ROBERTS, JR.
of Wharton, Aldhizer & Weaver
90 North Main Street
Harrisonburg, VA 22801
Counsel for defendant

By _____

I hereby certify that a true and correct copy of the foregoing Demurrer was mailed this 30 day of November, 1978, to John G. MacConnell, Esquire, Assistant Attorney General, P. O. Box 6-L, Room 206, Richmond, Virginia, 23282.

_____

XIV. MEMORANDUM FOR FILE-- Filed--
December 20, 1978

DEC 20 1978

MEMORANDUM FOR FILE

SHEN-VALLEY MEAT PACKERS, INC.

V. AT LAW NO. 5916

WILLIAM H. FORST

ROCKINGHAM POULTRY MARKETING COOPERATIVE, INC.

V. AT LAW NO. 5917

WILLIAM H. FORST

Mr. MacConnell will submit an appropriate order upon consideration of the petition for rehearing. Mr. MacConnell appeared for the State Tax Commissioners, Mr. Roberts, Mr. Showalter and Senator Aldhizer appeared for the taxpayer. The Court deeming it unnecesary to consider the procedural issues raised by the demurrer to the petition for rehearing and the Court having adjudicated the substative issues raised by the Commissioner in favor of the Commissioner, that is, that processing and manufacturing were not within the $10.00 limitation of Code Section 13.1-341 and the parties having stipulated what assets of the taxpayers were solely and exclusively devoted to the storing or marketing of farmers' crops or products, the Court adheres to its previous ruling and the petitions for rehearing are denied and dismissed.

74

J. R

XV. ORDER -- Filed-- January 5, 1979

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

SHEN-VALLEY MEAT PACKERS, INC. Petitioner	)	
v.	)	At Law No. 5916
WILLIAM H. FORST, STATE TAX COMMISSIONER Respondent	)	
ROCKINGHAM POULTRY MARKETING COOPERATIVE, INC., Petitioner	)	
v.	)	At Law No. 5917
WILLIAM H. FORST STATE TAX COMMISSIONER Respondent	)	

ORDER

These cases came on to be heard ~~this~~ the 18th day of December, 1978, upon the petition for rehearing filed by the State Tax Commissioner, the demurrers thereto filed by the taxpayers, the briefs submitted by each party, and was argued by counsel.

Notwithstanding the demurrers of the taxpayers, the petition of the State Tax Commissioner for the rehearing is granted and further, upon the evidence and arguments presented, the Court being of the opinion that its prior order entered July 17, 1978 was and continues to be correct, the prior order of this Court dated July 17, 1978, is in all respects confirmed and approved and is incorporated herein by reference, and the relief sought by the State Tax Commissioner is denied.

It is further ORDERED that the Clerk of this Court

shall certify a copy of this order to the State Tax Commissioner pursuant to Section 58-1134 of the Code of Virginia (1950), as amended, and shall further forward one certified copy of this order to each counsel of record.

To the foregoing ruling granting the petition for the rehearing notwithstanding the demurrers filed by the taxpayers, the taxpayers' objection is noted as is the objection of the Commonwealth to the reaffirmation of the prior order of this Court entered July 17, 1978.

No transcript or statement of facts, testimony or other evidence in this case will hereafter be filed as the original papers and exhibits (including various stipulations of fact and certain exhibits) lodged in the Clerk's Office of the trial court automatically constitute the record on appeal.

Dated: January 5, 1979

ENTER:

, Judge

SEEN AND OBJECTED TO AS SET FORTH ABOVE:

Donald H. Showalter
George H. Roberts, Jr.
Counsel for Shen-Valley Meat Packers, Inc. and Rockingham Poultry Marketing Cooperative, Inc.

Recorded In
Common Law
Order Book 31 Page 110
1/5/79

SEEN AND OBJECTED TO AS SET FORTH ABOVE:

John G. MacConnell
Assistant Attorney General
Counsel for William H. Forst, State Tax Commissioner, the Commonwealth of Virginia, Department of Taxation

XVI. NOTICE OF APPEAL -- Filed-- January 30, 1979

V I R G I N I A:

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

ROCKINGHAM POULTRY MARKETING COOPERATIVE, INC., Petitioner,	)	Law No. 5917
v.	)	
WILLIAM H. FORST, STATE TAX COMMISSIONER, Defendant.	)	

NOTICE OF APPEAL

Pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia, the defendant, William H. Forst, State Tax Commissioner, hereby gives notice that he will apply to the Supreme Court of Virginia for a writ of error from the final order entered herein on July 17, 1978.

No transcript or statement of facts, testimony or other incidents of the case will hereafter be filed as the original papers and exhibits (including various stipulations of facts and certain exhibits) lodged in the clerk's office of the trial court automatically constitute the record on appeal, pursuant to Rule 5:8(a) of the Rules of the Supreme Court of Virginia.

Dated this 11th day of August, 1978.

WILLIAM H. FORST,
STATE TAX COMMISSIONER

77

By John J. MacFarlane
Of Counsel

Marshall Coleman
Attorney General of Virginia

John G. MacConnell
Kenneth W. Thorson
Norman K. Marshall
Assistant Attorneys General
P. O. Box 6-L, Room 206
Richmond, Virginia 23282

Filed in the Clerk's Office
Rockingham County, Va.

AUG 14 1978

Deputy Clerk

605

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Notice of Appeal has been mailed to the clerk of this court for filing and a true copy thereof was likewise mailed, postage prepaid, to Donald E. Showalter, Esquire, and George H. Roberts, Jr., Esquire, Wharton, Adhizer & Weaver, P. O. Box 809, Harrisonburg, Virginia 22801, on this 11th day of August, 1978.

John G. MacConnell
Assistant Attorney General

V I R G I N I A:

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

SHEN-VALLEY MEAT PACKERS, INC.,	)	
Petitioner,	)	
	)	Law No.
v.	)	5916
	)	
WILLIAM H. FORST, STATE TAX COMMISSIONER,	)	
Defendant.	)	

NOTICE OF APPEAL

Pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia, the defendant, William H. Forst, State Tax Commissioner, hereby gives notice that he will apply to the Supreme Court of Virginia for a writ of error from the final order entered herein on January 5, 1979.

No transcript or statement of facts, testimony or other incidents of the case will hereafter be filed as the original papers and exhibits (including various stipulations of facts and certain exhibits) lodged in the clerk's office of the trial court automatically constitute the record on appeal, pursuant to Rule 5:8(a) of the Rules of the Supreme Court of Virginia.

Dated this 30th day of January, 1979.

WILLIAM H. FORST,
STATE TAX COMMISSIONER

By _____
Of Counsel

Marshall Coleman
Attorney General of Virginia

John G. MacConnell
Kenneth W. Thorson
Norman K. Marshall
Assistant Attorneys General
P. O. Box 6-L, Room 206
Richmond, Virginia 23282

Filed in the Clerk's Office
Rockingham County, Va.

JAN 31 1979

Donna Funkhouser Deputy Clerk

153

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Notice of Appeal was mailed to the clerk of this court for filing and a true copy thereof was likewise mailed, postage prepaid, to George H. Roberts, Jr., Esquire, Wharton, Aldhizer & Weaver, P. O. Box 809, Harrisonburg, Virginia 22801, on this 30th day of January 1979.

John D. MacDonald
Assistant Attorney General

XVII. ASSIGNMENTS OF ERROR

ASSIGNMENTS OF ERROR

Pursuant to Rule 5:21 of the Rules of the Supreme Court of Virginia, counsel for the appellant assigns and relies upon the following assignments of error in this Petition for Appeal.

1. The trial court erred in its conclusion that § 13.1-341 was not a tax exemption provision and in its failure to construe that section strictly and against the taxpayers claiming its benefits.

2. The trial court erred in failing to attribute great weight to the State Tax Commissioner's long-standing interpretation of the proration language of § 13.1-341.

3. The trial court erred in its conclusion that the terms "farmers' crops or products" encompassed the processed, finished products ultimately sold by the taxpayers. See p (7), trial court's opinion of May 26, 1978, Exhibit B.

4. The trial court erred in its construction of § 13.1-341 by prorating, allocating, or applying all the § 58-411 property to the taxpayer's selling function, thereby effectively eliminating the Commonwealth's ability to tax agricultural cooperatives, under the guise of interpreting § 13.1-341.

ASSIGNMENT OF CROSS-ERROR

The trial court erred in granting the Tax Commissioner a rehearing under §58-1137, over the objections of Taxpayers.

QUESTION PRESENTED BY ASSIGNMENT OF CROSS-ERROR

Whether the Tax Commissioner after fully defending an action petitioning for a refund and taking all the steps necessary to perfect an appeal except the filing of the petition for the appeal, may file for a petition for rehearing under §58-1137.