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The Changing Face of Taxation of Virginia Business After American Woodmark and DataComp

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After American Woodmark and DataComp
by
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I. Being a Manufacturer - Why It's Important.

A. Tangible Personal Property Tax -

1. Favorable Rate for Manufacturer's "Machinery and Tools." See Va. Code § 58.1-3507.

2. No Tax On Manufacturer's Other Personal Property (e.g., @Corporate Headquarters). Va. Code § 58.1-1101 provides that:

> **Classification, rate of tax. --** A. The subjects of taxation classified by this section are hereby defined as intangible personal property:
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> * * *
>
> 2. Capital which is personal property, tangible in fact, used in **manufacturing,** . . . businesses. Machinery and tools, motor vehicles and delivery equipment of such businesses shall not be defined as intangible personal property for purposes of this chapter and shall be taxed locally as tangible personal property according to the applicable provisions of law relative to such property;
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> * * *
>
> C. The subjects of intangible personal property set forth in subdivision 1 through 8 of subsection A shall be exempt from [local] taxation as provided in Article X, Section 6(a)(5) of the Constitution of Virginia.

3. Other Protected Business in Addition to Manufacturing (e.g., mining, broadcasters, dairies, laundries) § 58.1-1100.

B. BPOL License Tax - Exclusion for Manufacturer's Sales Made "At Wholesale at the Place of Manufacture"

> **§ 58.1-3703. Counties, cities and towns may impose local license taxes; limitations of authority. --** A. The governing body of any [locality] may levy . . . [local] license taxes on businesses, trades, professions, occupations, and callings and upon the persons, firms, and

corporations engaged therein within the [locality] subject to the limitations provided [below].

B. No county, city, or town shall levy any license tax:

* * *

4. On a **manufacturer** for the privilege of **manufacturing** and selling goods, wares, and merchandise at wholesale at the place of **manufacture**;

C. Sales and Use Tax - "Property Directly Used In Manufacturing [or Processing]" Not Subject To Sales and Use Tax. See Va. Code § 58.1-602, 609.3.

D. Tax Credits

1. Major Business Facility Job Tax Credit § 58.1-439. Available to facilities in qualifying industries including "manufacturing."

E. Manufacturer Status Not Particularly Helpful For

1. Income Taxes (except to extent it skews property, payroll factors).

2. Real Estate Taxes.

F. "Manufacturing" Tests for Property Tax and BPOL Tax Overlap. See infra.

1. Sales Tax Precedent Less Helpful. Because the sales tax exemption extends to "processors" as well as "manufacturers," sales tax precedent does not carry over to property tax and BPOL as well. See Orange-Madison Coop. infra.

II. The Old Days: Virginia's Painful Search for a Tax Definition of Manufacturing in Virginia

A. "Manufacturing" Defined

1. Substantial Transformation - Solite Corp. v. County of King George, 220 Va. 661, 261 S.E.2d 535 (1980).

Facts: "Big rocks into little rocks." Taxpayer operates a facility where it extracts broken rocks, clay, and sand from the earth and produces sand and gravel. The finished products are sold to suppliers or builders.

Issue: *Whether Taxpayer's extracting and processing of sand and gravel constitute manufacturing for BPOL purposes.*

Holding: No. Unless processing transforms material into a product of substantially different character, it cannot be considered "manufacturing" even though the value or usefulness of the product is increased. There must be transformation; a new and different article must emerge, having a distinctive name, character or use.

2. Processing v. Manufacturing - Commonwealth v. Orange-Madison Coop. Farm Serv., 220 Va. 655, 261 S.E.2d 532 (1980).

Facts: Taxpayer operates feed and fertilizer plants. At the feed plants, grain is passed through a steam cooker where moisture is added and the grain is cracked. The grain is then flattened by passing through two rollers and is subsequently dried. The process then requires the addition of several different ingredients. All of these elements are then blended to achieve a final product. At the fertilizer plants, chemicals are blended by machinery into a finished fertilizer product meeting the individual farmer's needs as determined by scientific testing of soil conditions. Taxpayer argued for sales tax exemption on its equipment purchases.

Issue: *Whether processing, like manufacturing, entails a transformation of a raw material into an article or product of substantially different character.*

Holding: No. "Processing" and "manufacturing" are not synonymous. Here, taxpayer was a processor but not a manufacturer. Processor is an easier standard and still gets the sales tax exemption. "Processing," unlike "manufacturing," does not require transformation of a raw material into a different article but merely requires that the product undergo a treatment rendering the product more marketable or useful. Production of feed and fertilizer satisfies all requisites of "processing." See also Golden Skillet Corp. v. Commonwealth, 214 Va. 276, 199 S.E.2d 511 (1973) (restaurant fryers are not "processing" equipment).

B. WINNERS: Business Activities Deemed to be Manufacturing

1. Transforming livestock into different meat products. Morris & Co. v. Commonwealth, 116 Va. 912 (1914).

2. The production of condensed milk, milk powder and cheese. Richmond v. Dairy Company, 156 Va. 63 (1931).

3. Curing of hams, bacon, and making sausage. Commonwealth v. Meyer, 180 Va. 466 (1942).

4. Drying, crushing, grading, and packing of herbs. 1984-85 Atty. Gen. Ann. Rep. 398.

5. Crushing and compacting of scrap metal. 1984 Atty. Gen. Ann. Rep. 398. But see Money Point Land Holding Corp. v. City of Chesapeake, (Chesapeake Cir. Ct. 1995).

6. Mixing and piping two chemicals at a controlled temperature and speed into a ship's void spaces where the solution expanded tenfold and became rigid. City of Newport News v. Ryan Marine Corp., 6 Va. Cir. 178 (1984).

7. Ship building and ship repair. Opinion of Tax Commissioner, December 28, 1984.

8. Hardware engineering. 1991 Atty. Gen. Ann. Rep. 248.

9. Thawing frozen shrimp, treating the shrimp with chemicals, deveining, deshelling, and refreezing. 1993 Op. Va. Atty. Gen. 231.

10. Tee shirt silk screening. 1996 Op. Va. Atty. Gen. ____.

C. LOSERS: Business Activities Deemed Not to be Manufacturing.

1. Pasteurization of milk and producing buttermilk. Richmond v. Dairy Company, 156 Va. 63 (1931).

2. Killing and defeathering chickens and preparing for fryers. Prentice v. City of Richmond, 197 Va. 724 (1956)

3. Blending of rock and gravel. Solite v. King George Co., 220 Va. 661 (1980).

4. Mixing sand, rock, and cement. 1984-85 Atty. Gen. Ann. Rep. 356.

5. Grading and packing of herbs. 1984-85 Atty. Gen. Ann. Rep. 398.

6. Selling of scrap metal or junk items. 1984-85 Atty. Gen. Ann. Rep. 398.

7. Wholesaling of raw nitrate. 1986-87 Atty. Gen. Ann. Rep. 288.

8. Production of steam from boiling water. November 2, 1987. Opinion by State Tax Commissioner W.H. Forst.

9. Combining steel and friction material into disk pads and brake shoes. Henrico v. Grunnell Brake, 10 Va. Cir. 377 (1988).

10. Development of computer software. 1991 Atty. Gen. Ann. Rep. 248.

11. Shoe repair. Nov. 22, 1994. Opinion by State Tax Commissioner (P.D. 94-349).

III. **The Modern Era: Manufacturing As An Elastic Concept**

A. Question Becomes Not **What** Is Manufacturing (*Solite* Test) But **Who** Is Manufacturer . . .

1. The Benchmark. In County of Chesterfield vs. BBC Brown Boveri, Inc., 238 Va. 64, 380 S.E.2d 890 (1989), the Virginia Supreme Court was asked to determine whether a taxpayer engaged in both manufacturing and non-manufacturing activities could be classified as a "manufacturer" for purposes of both property tax - for the machinery and tools rate - and BPOL.

2. The Facts. In 1974, Brown Boveri opened a facility in Chesterfield County to repair used turbine generators previously manufactured in Europe by BB's Swiss parent company and in use by electric power companies in the United States. Over time, the windings, blades, and rotors on the turbine generators deteriorate impairing efficient operation of turbine generator unit. Brown Boveri's work at the Chesterfield site included replacement of the copper windings, replacement of damaged turbine blades, and repair of cracked, imbalanced, or bent rotor shafts.

   (a) Taxpayer Did Lots of Things. Brown Boveri also performed repairs on industrial equipment other than turbine generators, provided professional engineering services to customers, and obtained some revenues from rentals of equipment and retail sales of items not manufactured by Brown Boveri. In addition, Brown Boveri performed a limited amount of

manufacturing by completing the final steps in the production of turbine generators manufactured by Brown Boveri in Europe.

(b) The Audit. The County reviewed all of Brown Boveri's invoice and job file records pertaining to work billed by Brown Boveri from 1980 through 1983. Arguably, the manufacturing portion of Brown Boveri's business ranged from 5% to 30% over four years.

The County concluded that, while Brown Boveri performed some limited manufacturing work, Brown Boveri's business essentially involved the servicing and repairing of used, broken, or damaged turbine generators and other industrial equipment. In one County official's words, it was "just a glorified auto repair shop." Since service and repair constituted the predominant percentage of its work activity, the Commissioner concluded that Brown Boveri was not a manufacturing business. Non-manufacturing activity was separated into personal service, professional service, retail sales, rental, and other activities so that business license tax rates could be applied to each of Brown Boveri's non-manufacturing revenue areas.

3. The Substantiality Test To The Rescue. The Virginia Supreme Court held that even though Brown Boveri was engaged in both manufacturing and nonmanufacturing activities, it would be classified as a "manufacturer" for tax purposes if the manufacturing portion of its business was substantial in comparison to its total activities. The court held that in order to be considered "substantial" the manufacturing component of a business must not be "de minimis, merely trivial, or only incidental to its principal business." Brown Boveri, 238 Va. at 71, 380 S.E.2d at 893-894.

(a) Factors. The court listed a number of factors to be considered in determining whether the manufacturing component of a multi-purpose business is substantial. These factors include: the manufacturing component's financial receipts, its proportion of the total corporate income, the percentage it comprises of the total capital investment in the business, the number of employees working in the manufacturing component as compared to the total number of employees of the business, and the ratio of manufacturing activities to the entire business. Applying these factors, the Supreme Court found that Brown Boveri's manufacturing activities were substantial when compared to its total activities.

4. The "Ancillary and Integral" Test Too.

In Brown Boveri, the County of Chesterfield had also argued that the design and engineering stages of the taxpayer's manufacturing projects did

not constitute "manufacturing" for purposes of Virginia law. The Virginia Supreme Court disagreed, holding that activities that are ancillary or integral to manufacturing activities are properly classified as "manufacturing." Brown Boveri's design and engineering work, being ancillary and integral to the manufacturing process, therefore constituted "manufacturing" for purposes of Virginia Code § 58.1-3507.

5. Conclusions:

a. Pro-Manufacturer. Public policy of Virginia is to encourage manufacturing; therefore, the definition of manufacturing should be liberally applied for the benefit of businesses.

b. No Change in the Definition. Solite's "transformation-of-raw-materials" definition of manufacturing was not changed by Brown Boveri but it was stretched to cover what many call "re-manufacturing." which Virginia business does a lot.

c. "Ancillary & Integral". A multi-purpose business will be categorized as a single business when the multiple activities are related. See 1997 BPOL Guidelines.

d. "Substantial" Is All It Takes. To determine the nature of a business decide what business it is "substantially" engaged in. "Substantiality" for manufacturing purposes is:

(1) Not susceptible to mathematical precision;

(2) Not "de minimis, trivial or incidental" to its principal businesses;

(3) Not synonymous with "preponderance" (51%). In fact, localities still argue ruefully that Brown Boveri holds that only 5% manufacturing constitutes "substantial" for classification purposes. See Remarks of Jeffrey Mincks, Assistant County Attorney, VAAO Conference, Oct. 14, 1993.

B. Recent Tax Developments Since Brown Boveri

1. No Virginia Supreme Court decisions since 1989 have modified Brown Boveri.

2. Virginia Circuit Court Trial Decisions:

a. "Ancillary and Integral" Goes For a Road Test. In LG&E Westmoreland Hopewell, et al. v. City of Hopewell, Circuit Court of the City of Hopewell, Law Nos. CL93-117, CL93-118 and CL93-119 (1994). The taxpayer produced electrical power for cogeneration to supply electricity directly to industries and to Virginia Power. Virginia Power paid LG&E for the electricity that it purchased and, in addition, paid for the capital costs to provide excess generation capacity whether Virginia Power actually purchased the power or not. The excess capacity was guaranteed for Virginia Power during peak periods. The City first argued that the provision of electric power for purchase by Virginia Power did not constitute manufacturing under § 58.1-3703(b)(4). The City instead argued that supplying power was a service. Secondarily, the City argued that even if the provision of electricity to Virginia Power was manufacturing, that its gross receipts from Virginia Power for providing capacity was certainly not manufacturing. The Court disagreed on both counts and indicated that creation of electricity was manufacturing and that under the Brown Boveri decision, such payments for capacity were an activity that was integral and ancillary to LG&E's manufacture of electricity. On March 2, 1995, the Virginia Supreme Court denied LG&E's petition for appeal, finding that there was no reversible error in the trial court's decision.

b. Computers Get Into the Act. Fairfax County v. DataComp Corp. Va. Cir. 60 (1995), Circuit Court of Fairfax County, Law # 128829. relied on Brown Boveri, Discussed Below.

C. *Solite* Told Us "**What**," *Brown Boveri* Told Us "**Who**," But American Woodmark Said **Where** Was Irrelevant Because Manufacturing Anywhere is Manufacturing Everywhere.

The Second Benchmark. The Virginia Supreme Court's 1995 decision in City of Winchester v. American Woodmark Corporation, 250 Va. 451, 464 S.E.2d 148 (1995) ("American Woodmark") represents a landmark case in the construction of "manufacturing" for Virginia tax purposes. American Woodmark Corporation, the nation's third largest manufacturer of kitchen cabinets, has its corporate headquarters in Winchester, Virginia, but no manufacturing plant there. The City of Winchester assessed tangible personal property tax against American Woodmark's office furniture, fixtures, equipment, and computers used at its Winchester headquarters arguing that American Woodmark was not a "manufacturer" and, even if it was, it was at least not engaged in a "manufacturing business" in Winchester. American Woodmark has three important holdings.

1. Protecting the Manufacturer's Non-Manufacturing Assets - "There's No **Where** There." The City of Winchester had attempted to limit the definition of a "manufacturer" to a business that carries on actual manufacturing operations *within the taxing locality.* The City unsuccessfully argued that American Woodmark, despite its extensive manufacturing operations throughout the country, would not be classified as a "manufacturer" because it conducted no manufacturing within the City. The Court rejected this interpretation, holding that American Woodmark's personal property at its headquarters still constituted "capital used in a *manufacturing business*" and thus was not subject to taxation by the City. The Court's holding in American Woodmark means that *a manufacturer anywhere is a manufacturer everywhere*, and the components of that business are taxable, or not taxable, under the rules applicable to manufacturers generally no matter where those components, including the manufacturing plant, are located.

2. A Precedent Definition For "Machinery and Tools." The second important aspect of the American Woodmark decision is that the Court, for the first time, defined the term "machinery and tools" for Virginia tax purposes. Under Va. Code § 58.1-1101(A)(2) "machinery and tools" -- even if used in a manufacturing business -- are not treated as "intangible personal property" and are, therefore, subject to local tax.

   (1) Is a Machine Like a Computer "Machinery"? The City of Winchester argued that any machine with moving parts, e.g., a computer, was necessarily classified as "machinery and tools" and thus American Woodmark's headquarters office equipment and computers were subject to taxation by the City as "machinery and tools."

   (2) Nope. The Court disagreed, citing with approval the definition used for decades by the Virginia State Tax Commissioner and the Attorney General:

> machinery and tools used in a particular manufacturing business' are the machinery and tools which are necessary in the particular manufacturing business and which are used in connection with the operation of machinery which is actually and directly used in the manufacturing process . . . .

(3) The Shop Floor Test. Applying this test, the Court held that American Woodmark's furniture, fixtures, office equipment, and computer equipment were not "machinery and tools" within the meaning of Code § 58.1-1101(A)(2) because these items are not used in connection with the operation of machinery which is actually and directly used in the manufacturing process. 250 Va. at 152, 464 S.E.2d at 458 (citations omitted). The "directly used" concept is defined, for sales tax purposes, in Va. Code § 58.1-602 (equipment used in administration not "directly used" in manufacturing).

3. The Locality, Not the Taxpayer, Bears The Burden of Refuting This "Exclusion."

The third important aspect of the American Woodmark I decision is that the Supreme Court of Virginia specifically held that Virginia Court § § 58.1-1100 and 58.1-1101 must be construed in favor of taxpayers, with the burden on the localities to prove their right to tax property. Virginia Code § 58.1-1101, according to the Court, did not exempt manufacturers from taxation, but classified and segregated certain types of property for taxation only by the Commonwealth. In segregating this property for state taxation, the General Assembly was specifically withholding from the localities the power to tax manufacturers' intangible personal property. As such, these statutes were not tax "exemptions," which the law requires to be narrowly construed against the taxpayer, but general tax statutes, which according to the Court,

> . . . are to be construed most strongly against the government, and in favor of the citizen, and are not to be extended by implication beyond the clear import of the language used. Whenever there is just doubt, "that doubt should absolve the taxpayer from his burden." 250 Va. at 152, 464 S.E.2d at 456.

See also Brown Boveri, supra, re: liberal construction of the definition of "manufacturing."

D. Fallout from *American Woodmark*.

a. Nontraditional Uses. Is a Soft Drink Vending Machine Excluded from Property Tax?

b. What About Leased Equipment? Note that Va. Code § 58.1-1101(A)(2) relates to property "used in a manufacturing

business, not property "owned by" a manufacturing business. In City of Martinsville v. Tultex Corporation, 238 Va. 59, 381 S.E.2d 6 (1989), the Virginia Supreme Court made clear that personal property leased to and used in a manufacturing business would be classified as intangible personal property segregated for state taxation only under § 58.1-1101(A)(2) notwithstanding the fact that the property was actually owned by a non-manufacturer. Thus, leased equipment used by a manufacturing business should not be subject to local personal property tax, regardless of the status of the actual title-holder to the property.

c. Parent-Subsidiary Structures. Is the holding company engaged in the "manufacturing business" of its subsidiaries are engaged in the manufacturing and sale of products? The statute's reference to "business" and not "taxpayer" suggests that the taxpayer's line of business, not its corporate structure, is the controlling factor.

IV. The Computer Age - Hardware Assembly is Manufacturing Too.

A. Fairfax County v. DataComp Corporation, 36 Va. Cir. 60 (Fairfax Co. Cir. Ct. 1995). In this 1995 trial court case, the Fairfax County Circuit Court adopted a broad construction of "manufacturing," finding that the production of computers constituted "manufacturing" and therefore was not subject to BPOL taxation by Fairfax County.

B. The Facts. DataComp Corporation was in the business of producing and selling personal computers, file servers, and computer parts. In producing its computers, DataComp acquired various component parts such as motherboards, power switches, cabling, and brackets from other manufacturers, which it tested to ensure quality and compatibility with FCC standards. DataComp technicians then assembled and integrated these parts into a final product through a process involving soldering, taping, and connecting of the materials by trained employees.

C. The Issue. DataComp argued that it was entitled to the BPOL exclusion under Va. Code § 58.1-3703(B)(4), which forbids counties from levying a license tax "on a manufacturer for the privilege of manufacturing and selling goods, wares, and merchandise at wholesale at the place of manufacture." Va. Code § 58.1-3703(B)(4). Fairfax County took the position that "mere" assembly of component parts is not manufacturing.

D. The Holding. Under the three prong Solite test for determining whether a business activity constituted manufacturing, the Court looked to: (1) the original material, sometimes referred to as "raw" material, (2) the process in which the raw material

is changed, and (3) the resulting product, and the sense in which it differs from the raw material. Citing Brown Boveri, the Circuit Court said that whether the activity constitutes manufacturing should be liberally construed to encourage manufacturing in the Commonwealth. Moreover, the Court indicated that the use of raw materials did not require use of "natural" raw materials because such a limited test would be inappropriate in this age of advanced technology. Instead, citing Brown Boveri again, the Court focused on whether there had been a transformation of "new" material into an article or product with substantially different character.

E. The Computers and Cars Analogy. The evidence according to the Court convinced them that DataComp's production of computers involved the transformation and integration of components into a final product of substantially different character, not unlike the activity engaged in by General Motors. Finally, the Court decided that since the president testified that well over half of its business activities consisted of producing computers and monitors for government contracts, that easily met the substantiality test for manufacturing set forth in Brown Boveri.

F. Practical Results of DataComp. The Fairfax County Circuit Court's holding in DataComp Corp., combined with American Woodmark, suggests that the definition of "manufacturing" for BPOL tax purposes is broad enough to encompass a range of high tech and light industrial processes not previously included in most localities' traditionally narrow "smokestack" interpretation of "manufacturing." DataComp makes clear that computer producers' personal property (other than assembly-line machinery and tools) should not be subject to local personal property tax.

G. Be Careful.

1. Trial Decision Only. DataComp is only a Virginia trial court decision, not binding outside of Fairfax.

2. Is Soldering Critical? Even the DataComp facts and holding are pre-historic in today's world where hand soldering of computers parts is all but extinct.

3. Practical Tip: "Let's Go to the Videotape." At least one county has accepted a hardware manufacturer's video of non-Virginia manufacturing activities as evidence.

H. Department of Taxation's New BPOL Guidelines Discuss Manufacturing vs. Assembly. As the above cases demonstrate, one nagging problem in defining "manufacturing" for Virginia tax purposes has been the distinction between

"assembly" and "manufacturing." When is "assembly" manufacturing, and when is it not? In January 1997, the Virginia Department of Taxation issued BPOL Guidelines that addressed, among other things, this distinction. According to the Department, the facts and circumstances of the business must be evaluated to determine whether the assembly of purchased components is a separate service or part of the manufacturing process. Factors which suggest that assembly is part of the manufacturing process include, but are not limited to, any one or more of the following:]

(i) The assembly process is complex and uses numerous parts;
(ii) Following assembly, the component parts cannot be recognized without previous knowledge;
(iii) The component parts cannot readily be used for any purpose other than incorporation into the finished product. See, Virginia Department of Taxation, Guidelines for Business, Professional, and Occupational License Tax Imposed by City, County, and Town Ordinances, Appendix B, 2-3 (Jan. 1, 1997).

I. Remember Even Non-Manufacturers With Lots of Computers Need to Pay Attention.

1. Telecommunications Industries, Inc. v. Fairfax County Board of Supervisors, 246 Va. 472, 436 S.E.2d 442 (1993).

a. Issue. This November 1993 ruling of the Supreme Court of Virginia and follow-up action by the Virginia General Assembly in 1994 codifying the result creates the potential for many taxpayers owning computers and other rapidly depreciating assets to obtain refunds of local personal property taxes paid with respect to those assets.

b. Facts. In Telecommunications Industries, Inc., the Supreme Court has ruled that the value of personal property upon which the personal property tax can be assessed cannot exceed the property's fair market value including reductions in fair market value attributable to obsolescence and other market factors. For example, if your firm purchased a mainframe computer during 1990 for $1 million and the value of the computer, due to the introduction of a new advanced line of computers, was reduced to $250,000 by 1991, then the fair market value upon which the 1991 personal property tax could be assessed is $250,00. Contrary to this fair market value limitation, most Virginia localities have been valuing business equipment, including computers, for property

taxation at a fixed percent of original cost so that the value of the computer during 1991 would be specified as a standard percentage of the $1 million original cost without regard to obsolescence and the real value of the equipment. For example, in Fairfax County, the second year percentage was fifty-five percent so that the country's determination of the 1991 value would have been $550,000, i.e., $300,000 in excess of the true fair market value.

c. Holding. The Virginia Supreme Court ordered Fairfax County to refund all personal property taxes attributable to the $300,000 overassessment. The Court held that the limitations against assessments in excess of fair market value overrode uniformity considerations.

2. Practical Effect. The Telecommunications Industries, Inc. case released a flood of refund cases by large computer-owning taxpayers who were not otherwise manufacturers, e.g., Northern Virginia government contractors. After several years of litigation, a trial court decision and the County's appeal to the Supreme Court was denied, the Mitre litigation was recently concluded in late 1996 with a refund to the taxpayers on most but not all of the claims asserted. Similar claims are pending in other jurisdictions. Many localities now classify computers separately from other business property for separate and more liberal assessment schedules that reflect the technological obsolescence of computers.

V. Conclusion.

A. The Scope of the Test for Manufacturing and the Tax Exclusion Continues to Grow.

1. The Test of Manufacturing: As the transition from Solite to DataComp. illustrates, the traditional "smokestack" test of manufacturers is now obsolete.

2. The Scope of the Exclusion: Brown Boveri and now American Woodmark further illustrate the broad, liberalized scope of the manufacturer exclusion and that the tax benefits to manufacturers extend far beyond the factory gate.

B. Localities are Grappling With These Trends

1. Lobbying for change - The 1997 Colgan Bill To Abolish Property Tax.
2. Looking for Their Own Loopholes - Testing Manufacturing Claims

a. Local Tax Officials Still Smoldering Over Brown Boveri, American Woodmark, BPOL reform. DataComp opens up an entire new industry to the exclusion.

b. To test whether the taxpayer qualifies as a manufacturer, localities look at:

(1) Homepage on the Internet
(2) Prospectus, financing applications
(3) Annual report, corporate income transactions, SIC code
(4) State income tax filings
(5) Business licenses
(6) Leases
(7) Advertisements
(8) Nature of change in raw materials
(9) Is the property really used in the manufacturing business (e.g., the CEO's fishtank).