

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL
SMALL CLAIMS DIVISION

MI Montana LLC,
Petitioner,

v

MTT Docket No. 309147

Township of Custer,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith, III

CORRECTED FINAL OPINION AND JUDGMENT ON REMAND

The Tribunal, having given due consideration to the file in the above-captioned case, finds that there was an error in the Final Opinion and Judgment on Remand entered on February 2, 2009. However, this error does not change the ultimate outcome of the Final Judgment. On Page 3 of the Final Opinion and Judgment on Remand the incorrect parcel number is listed as 003-009-036-00. Rather, the correct parcel number pertaining to the above-captioned case is 05-04-027-021-00.

With these amendments, the Tribunal adopts and incorporates by reference the findings of fact and conclusions of law in the Final Opinion and Judgment on Remand as the final decision of the Tribunal.

Therefore;

IT IS ORDERED that the subject property's true cash, state equalized, and taxable values for the tax years at issue are as set forth in the Final Opinion and Judgment on Remand, as adopted by this Corrected Final Opinion and Judgment on Remand.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as adopted in the Final Opinion and Judgment on Remand within 20 days of the entry of this Corrected Final Opinion and Judgment on Remand, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Final Opinion and Judgment on Remand within 90 days of the entry of this Corrected Final Opinion and Judgment on Remand. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being

refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Corrected Final Opinion and Judgment on Remand. Pursuant to MCL 205.737, interest shall accrue at the rate of 2.16% for calendar year 2004, at the rate of 2.07% for calendar year 2005, at the rate of 3.66% for calendar year 2006, at the rate of 5.42% for calendar year 2007, at the rate of 5.81% for calendar year 2008, and at the rate of 3.31% for calendar year 2009.

MICHIGAN TAX TRIBUNAL

Entered: March 3, 2009
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By: Kimbal R. Smith III

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STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL
SMALL CLAIMS DIVISION

MI Montana LLC,
Petitioner,

v

MTT Docket No. 309147

Township of Custer,
Respondent.

Tribunal Judge Presiding
Susan Grimes Width

FINAL OPINION AND JUDGMENT ON REMAND

The Tribunal, having given due consideration to the file in the above-captioned case, finds:

The Tribunal rendered a Final Opinion and Judgment on March 9, 2006. The Tribunal's decision was appealed to the Michigan Court of Appeals and the Court reversed and remanded the case back to the Tribunal. The Court's Order provides, in pertinent part:

We reverse that portion of the tribunal's decision finding that the 2004 taxable value of petitioner's property could be increased on the basis that the house and garage constituted new construction in 2003. We affirm, however, the tribunal's finding with regard to the true cash value of the property. We remand for further proceedings consistent with this opinion.

While the Court of Appeals indicated that “the pole barn was a new construction addition made to the property in 2003” and that “it was appropriate for the pole barn to be included in the 2004 assessment. However, there is no evidence in the record before us that the house and garage, or any portion thereof, were new construction in 2003.” The Court further indicated in Footnote Number 5 the following:

A property record from 2004, which appears to have been printed on either March 29, 2004 or May 29, 2004, indicates that the 2003 assessment of the subject property was based on construction of the home being 50 percent complete. However, the issue whether there was a portion of petitioner’s property that was completed in 2002 but was not included in the 2003 assessment, which could then be included in the 2004 assessment as previously ‘omitted property’ pursuant to MCL 211.34d(1)(b)(i), see *Kok v Cascade Twp*, 265 Mich App 413, 421-422; 695 NW2d 545 (2005), was not raised below or on appeal, and therefore, it is not before us. Nevertheless, the tribunal may wish to consider this issue further on remand.

Given the above, the property’s taxable value for the 2004 tax year should be increased by \$19,715, which is one-half of the true cash value established for the pole barn under Respondent’s cost less depreciation approach for the valuation of that building. See also Footnote 4 of the Court’s decision.

The Tribunal finds that Respondent has assigned an assessed value to the land portion of the subject parcel of \$43,900 for the years 2004, 2005 and 2006, as reflected on the 2006 property record card supplied. The year 2003 assessed value for land on that same card is \$224,500. No entry has been made for the assessed value of buildings even though construction on the house and garage started in 2002. The Tribunal will assign an assessed value to the land for 2003 of \$43,900, consistent with the three following years. That leaves a remaining assessed value for the buildings and land improvements completed in 2002 of \$180,600 or a true cash value of \$361,200.

The Tribunal finds an entry on the 2004 property record card supplied by Respondent that states “50% DONE 40000 NEW 2003.” On this same property record card the Tribunal notes that the taxable value increases from \$212,732 in 2003 to \$270,024 in 2004. Applying the inflation rate multiplier for 2004 to the 2003 taxable value of \$212,732 increases the taxable value to \$217,624. The difference between this number and the taxable value reflected for 2004 is \$52,400, or a true cash value of additions in 2003 of \$104,800.

As noted previously, the Tribunal finds the appropriate addition to taxable value for the pole barn to be \$19,700, based on Respondent’s calculations under the cost less depreciation method. The 2004 property record card would indicate that Respondent added only \$12,400 for the pole barn. That would be the remainder after the addition of \$40,000 that represented one-half the value of the house and garage, per the assessor’s note on the 2004 property record card.

The Tribunal finds that the indication that only 50% of the house and garage were done at the end of 2002 is highly unreliable for several reasons. Respondent acknowledged in a letter dated January 6, 2006 that the subject property was inspected in January 2002 and the beginning construction of the house and garage were noted. In that same letter Respondent indicated that when he attempted to inspect the subject property in January 2003 he was unable to access the portion of the property where the buildings are located due to a gate on an access road nearly one mile away.

Additionally the Respondent has indicated that \$40,000 of additions represent 50% of the value. Even if this figure is interpreted as assessed value and \$80,000 represents 50% of true cash value, the statement is unreliable. Respondent, using the cost less depreciation method, has represented the house and garage on the subject property to be worth \$244,019 before applying the Economic Condition Factor on the 2004 property record card. The Respondent did not supply a copy of the 2003 property record card as evidence that only a portion of the value of the house and garage was included in the taxable value for 2003.

Therefore the Tribunal finds that the only proper addition to the 2003 taxable value is 50% of the true cash value of the pole barn or \$19,700. That results in a 2004 total taxable value of \$237,324. Since no evidence has been presented to indicate that there were additions in 2005, the 2005 taxable value shall be \$242,782. As such, the property's true cash, state equalized and taxable values for the tax years at issue are as follows:

Parcel Number: 003-009-036-00

Year	TCV	SEV	TV
2004	\$573,200	\$286,600	\$237,324
2005	\$623,000	\$311,000	\$242,782

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the property's true cash and taxable values for the tax years at issue are as set forth in this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Final

Opinion and Judgment within 90 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue at the rate of 2.16% for calendar year 2004, at the rate of 2.07% for calendar year 2005, at the rate of 3.66% for calendar year 2006, at the rate of 5.42% for calendar year 2007, at the rate of 5.81% for calendar year 2008, and at the rate of 3.31% for calendar year 2009.

MICHIGAN TAX TRIBUNAL

Entered: February 2, 2009
SGW/pmk/sms

By: Susan Grimes Width