

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

Spartech Polycom,  
Petitioner,

v

MTT Docket 329583

City of St. Clair,  
Respondent.

Tribunal Judge Presiding  
Victoria L. Enyart

OPINION AND JUDGMENT

Petitioner, Spartech Polycom, appeals ad valorem property tax assessments levied by Respondent City of St. Clair (also “City”), against the personal property owned by Petitioner for the 2003, 2004, 2005, 2007 and 2008 tax years. David B. Marmon, attorney, appeared on behalf of Petitioner. John B. McNamee, attorney, appeared on behalf of Respondent. Witnesses appeared on behalf of both parties. They include: Petitioner’s valuation expert, Michael Clarkson, appraiser; Respondent’s assessment expert, Lynne Houston, CMAE3, Assessor for the City of St. Clair; Alfonso Consiglio, Regional Manager for Tax Management Associates, Inc. (“TMA”); Philip Loeske, auditor for TMA; Kelli Sobel; and Timothy Schnelle, Attorney and CMAE 3.

The hearing was held before the Tribunal on June 9, 2009, to resolve the personal property assessment dispute.

At issue before the Tribunal is the determination of true cash value of Petitioner’s personal property for the 2003, 2004, 2005, 2007 and 2008 tax years. The pertinent information to the contested assessments is as follows:

Assessments as on Roll:

Parcel Number: 74-07-999-2011-000

Year	TCV	SEV	TV
2003	\$1,386,600	\$693,300	\$693,300
2004	\$3,678,700	\$1,839,350	\$1,839,350
2005	\$3,554,300	\$1,777,150	\$1,777,150
2007	\$3,293,058	\$1,646,529	\$1,646,529
2008	\$2,969,400	\$1,484,400	\$1,484,400

Petitioner’s contentions<sup>1</sup> are:

Parcel Number: 74-07-999-2011-000

Year	Petitioner’s TCV	Petitioner’s SEV	Petitioner’s TV
2003	\$1,014,000	\$507,000	\$507,000
2004	\$966,000	\$483,000	\$483,000
2005	\$959,000	\$479,500	\$479,500
2007	\$836,000	\$418,000	\$418,000
2008	\$810,000	\$405,000	\$405,000

Based upon its examination of the evidence received at the hearing conducted in this matter, the Tribunal concludes the true cash value, state equalized value, assessed value and taxable value of the subject property for the 2003, 2004, 2005, 2007 and 2008 tax years are as follows:

Parcel Number: 74-07-999-2011-000

Year	TCV	SEV	TV
2003	\$1,014,000	\$507,000	\$507,000
2004	\$966,000	\$483,000	\$483,000
2005	\$959,000	\$479,500	\$479,500
2007	\$836,000	\$418,000	\$418,000
2008	\$810,000	\$405,000	\$405,000

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<sup>1</sup> Petitioner’s revised contentions, admitted as P-4.

Background and Introduction

The subject property is located at 2011 Christian B. Hass Drive within the City of St. Clair, Macomb County, Michigan.

Petitioner argues that Respondent has overvalued the personal property. Petitioner has a market appraisal of subject property. Petitioner claims that the values submitted are not auction values, but on-line information that Petitioner believes will establish what the market is for various items of personalty. Petitioner challenges the cost new-less depreciation based upon State Tax Commission (“STC”) multipliers. Petitioner states that its method is superior to mass appraisal techniques and that the value is in line with the definition of market value.

Respondent argues that Petitioner’s use of e-commerce as a basis for determining market value is flawed for several reasons. First, E-Bay, a public auction site, is not to be used under MCL 211.27; second, the only exception to the use of auction sales is if those sales become a common method of acquisition. Third, Petitioner failure to consider freight, taxes, installation, and removal is a violation of MCL 211.27 and MCL 211.13. Respondent requested the Tribunal to consider a directed verdict because Petitioner failed to meet its statutory burden of proof.

Respondent has prepared an audit of subject property, which is the basis for its true cash value contentions.

The Michigan State Tax Commission (“STC”) filed a Motion for Leave to File Amicus Curiae Brief in Support of the City of St. Clair. The STC requested that the Tribunal reject the values obtained from the internet site E-bay unless such sales are properly verified, and then reject the

notion that freight, tax and installation costs are not to be included in the determination of the values of subject property.

#### Petitioner's Arguments

Petitioner states that Spartech Polycom produces plastic pellets that eventually are sold to other original equipment manufacturers for the automotive industry. Petitioner's valuation was prepared through an appraiser with over thirty years of experience with a variety of personal property. Petitioner argues that the values are not auction values, but rather are on-line information that establishes the market for various machinery.

Petitioner's exhibits that were admitted:

P-1-Petitioner's valuation disclosure dated November 26, 2007, TCV as of December 31, 2002, December 31, 2003, December 31, 2004 and December 31, 2006.

P-2-Petitioner's valuation disclosure dated March 24, 2009, TCV as of December 31, 2007.

P-4-Petitioner's correction summary. Respondent objected, but the exhibit was admitted.

P-4-Judicial notice is taken of 41-USC, para 426, Title 41. Public Contracts, Chapter 7. Office of Federal Procurement Policy.

Michael Clarkson, personal property appraiser, was qualified as an expert in personal property valuation. He described the process that he used to determine the market value of the personal property. Initially, a physical inspection is made of the subject property with the management. The actual appraisal process is explained and then the plant is walked through, foot by foot, and an inventory of the personal property items is taken as well as their condition and any identifying characteristics of the property that will assist in determining a value. After the inspection, Clarkson determines if any additions or disposals have been made for all the tax years at issue that will need to be added to or deducted from the property.

Clarkson found approximately 166 items of personal property. The subject property is a processing plant with two active processing lines, which does not have a change in personal property often.

Clarkson determined that the highest and best use of the personal property was at the plant, in place and operating, thus the current use is the highest and best use. When questioned when a cost approach would be applicable, Clarkson testified:

Well the cost approach is typically best used when a property is very new or a specific purpose property that has no market activity and comparable sales. So there were new additions that I included in my appraisal, and I knew what the costs were so I used a cost-less-depreciation method to determine the fair market value or the true cash value of those items. TR Vol 1, p 27.

The market approach was explained several times throughout the hearing. Clarkson explained how he proceeded if a market approach is appropriate for the assignment:

So if I do rely on the market approach, the Internet is where I start, and almost with every item of equipment you can use a search engine or some of these big sites like machinetools.com, labx.com, eBay, have search engines built into those to look for pieces of equipment. So I plug in the key words. And it's just me, but what I do is I sort by the highest offered price on down.

For instance, for an extruder, which you value at fifty thousand dollars, for every one extruder that's on an Internet site for sale, you may have fifty or sixty component parts, little bitty parts that don't interest you in your valuation. So value-sorting highest number down allows you to focus on the main pieces of equipment and you match up make, model, serial number, condition, age, then I print out the site and make a determination as to the value. Is it equal to exactly what the site says? Is it lower or higher?

I try to be conservative, so I'm reluctant to go lower unless there's an obvious difference in model or condition. TR Vol 1, pp 183, 184.

Clarkson testified that he would rarely use auction sites. He stated that it's difficult to use auction sites because the seller is compelled to sell and the sale is not considered "arm's-length." He would only use an auction sale if there was no other sale available for a specialty machine.

The different types of Internet sites were discussed briefly. Clarkson explained that end users may have a specific machine for sale on their web site. Machine dealers own machines and resell them. The next level is an accumulation of machine dealers that have one site: machinetools.com, with thousands of owners, machines and buyers. eBay is similar to a shopping mall that brings buyers and sellers together. The Internet is the most efficient way to find market information. Prior to the Internet, Clarkson stated that research took longer, and documentation was lacking. The only way to get information was word of mouth, phone calls, dealers and owners.

USPAP, Opinion 24, page 205, Illustration 4, was explained by Clarkson as:

During an appraisal assignment, the appraiser was informed by the owner that the subject property was listed for sale on a prominent Internet site. The appraiser did no additional research, and in the appraisal report indicated only that the property was listed for sale. Does this comply with the requirements of USPAP? The answer is no. The appraiser must analyze the current listing and report findings within the appraisal report. Since the listing was placed on the Internet, where it would be available for general public, it would be available to the appraiser in the normal course of business. TR Vol 1, p 32, 33.

Clarkson testified that the on-line values are available to appraisers in the ordinary course of business. It was his belief that to ignore items that are bought and sold on the open market would be doing less than his requirement for USPAP. He indicated that everyone has access to the internet sites.

Clarkson went through several examples of equipment and followed through the list so that all parties could find equipment, selecting item eleven, which is a 1020 laser jet printer, as an example of how the appraisal is organized. In 2006 it was \$100, it was adjusted back to 2005, 2004 and 2003 years and, therefore, he increased the value 10%. Its reference number is 3281 located on page 31 of P-1. The printer on page 31 of P-1 is almost an exact match, except that it is new. Page 21 of P-1 indicates that the new printer has a "Buy It Now" price of \$120. Clarkson explained the Buy It Now price as the price that eBay and many other internet marketplace users or sellers offer, which provides the users or the sellers an opportunity to put a value on the equipment they offer, indicating that they will sell it for that price if a buyer makes an offer for that price. Clarkson stated:

Generally the Buy It Now price is a willing seller and if a willing buyer would like to buy it at \$120, then that seems close to me to qualify for a willing buyer, willing seller approach. Another thing to note about the Buy It Now price would be if I'm looking for this particular laser printer, I would not pay more than \$120 for this printer because I can buy it here for \$120 and I don't need to pay more. So that would be representative of the upper end of the price, in an arm's length transaction. Tr Vol 1, p36.

Clarkson was asked if the Buy It Now price is different than an auction price, and whether Buy It Now prices are generally higher than auction prices. He replied in the affirmative. Clarkson continued to go through examples in which the same methodology was used to determine the true cash value of each individual asset based upon a Buy It Now price, and the condition of the subject property.

Clarkson testified that he would not have determined the values any differently if the client were Respondent. He further testified when asked if freight and installation is included in his use of the market approach, "I use market data and I value the property in its current use, where it is, so

I don't need to move it anywhere. It's already installed and sales tax is not, in my opinion, included in the amount that's ultimately traded between a buyer and a seller." Tr Vol 1, p 43.

Clarkson responded on cross-examination when asked to review MCL 211.13 and read the following "Which is the tangible personal property is located on tax day as provided in Section 2." He responded when also requested to read MCL 211.27 "At the place where the property to which the term is applied is at the time of the assessment." Tr Vol 1, pp 52-53. It is the same language essentially in MCL 211.13.

Clarkson testified on cross when asked about freight and installation:

The property is appraised where it is located on the tax day. I don't need to move it anywhere, so there's no freight involved. I appraised the property located where it was on tax day, so there are no additional costs that need to be made to put it in place. It's already in place. And I explained that sales tax, I do not believe should be considered or included because it is a sum of money that is not exchanged between a willing buyer and a willing seller. It's exchanged to a third party to complete a sale. Tr Vol 1, p 54.

When asked on cross about different cases whether he would add disassembly costs, moving costs, freight, tax, reinstallation costs, Clarkson responded that, in the cost approach to value, he would add the costs. When questioned about the economy for the years at issue Clarkson referred to P-1, p 7, last paragraph.

These circumstances ideally are based upon actual sales with adjustments made for condition, quality, desirability, inflation, location and degree of specialization. I should have added there and expanded a description that previous effective dates are affected, and I should have made adjustments for time as well. I did not do that. Tr Vol 1, p 62.

Clarkson was asked on cross, because he was not provided an inventory from Petitioner, what information was provided.

All they had was a fixed asset depreciation schedule, which was not reliable because of the ambiguity of descriptions on the schedule. Also the amount of ghost assets that were contained on the schedule, and there was no list or organized description of the equipment. So the only way that I could do that was to create one. So I went from one end of the plant to the other, gathering information on all the equipment as I went by. Tr Vol 1, p 72.

Clarkson did not rely on personal property statements because he can't rely on their descriptions. He did ask if any equipment was disposed of in the earlier year of the appeal. But the records were less than astute. Clarkson had a meeting with members of the plant and asked questions about when machinery was placed into service or acquired. He wanted to make sure that all of the personal property was properly considered. He placed the condition of the property at the time of inspection and adjusted it back to consider all of the years at issue.

Respondent's cross went to a series of questions trying to determine if the eBay Buy It Now price is enforced and what restriction it may have for buyers who may change their minds and not sell property. Clarkson stated it was his belief that eBay would enforce a Buy it Now sale, but was not aware of the contractual obligations. Clarkson was also not aware of how many sales are offered for any specific items. Clarkson did not verify any Buy It Now prices after a sale. He was not aware if an item sold, if there was one item or several, it wouldn't matter; it simply is a way to determine the value of a specific item. If there is more than one for sale, a buyer is going to purchase the one that costs the least, thus the Buy It Now is considered a market based price. The sales are between willing buyers and willing sellers under no undue influence. A buyer is not going to pay more than an advertised price for any item.

Respondent went through a series of questions to impeach Clarkson. The questions pertained to the condition of equipment, how eBay works and, if the equipment was not sold for several years, would that influence Clarkson's opinion of value. Clarkson determined the condition of subject's individual properties, based upon descriptions found at the various web sites, and printed for documentation the information that he used to determine value. He believes that this documentation is substantially more information than he would have received by calling sellers and requesting brochures (if available). When questioned what additional research was done, Clarkson testified, "I researched multiple sites, I made phone calls, talked to dealers." Tr Vol 1, p 169.

Clarkston outlined what his process is when he receives an appraisal assignment as follows:

I ask for all the records from the maintenance department, from the engineering department, from the accounting and finance department, to help with forming a basis for the descriptions of the equipment and locations of the equipment, and other pertinent information.

I make those requests, I get whatever is given to me, and I perform a physical inspection. Now, some plants have a hundred and sixty items, some plants have sixteen thousand items, so that process may vary over time. But I go up to the item and I look at the item and try to describe it in a way that relates back to one of my lists or where we can correlate it with the engineering or maintenance people. Look for make, model, serial number, condition, those types of things.

Once I know what the equipment is and what the condition is, I determine—I have to consider all—I begin the appraisal. Back up just a couple of sentences. There's two steps to any appraisal. One is verification and the other is valuation. The verification process is what I've just described. The valuation process begins after I've gotten—obtained a very good description, or the best I can. Some of the descriptions are not perfect, some of them fall way short of perfect. But that forms my basis. Tr Vol 1, pp 182, 183.

Clarkson continued testifying about the three traditional approaches to value that he considers.

For example, some facilities and assets require different approaches. Clarkson prefers the

market approach, because it captures obsolescence that the cost approach must capture. He stated that “The market approach doesn’t have intangible assets like the income approach does. The income approach values the business and subtracts out those nontaxable items.” Tr Vol 1, p 183.

Clarkson begins his market approach with an internet search from sites like machinetools.com, labx.com and eBay. He sorts from the highest price to the lowest. He tries to be conservative. Clarkson states “My intent is to show the reader a reference, where I base my value so we can make a discussion as to his or her agreement to that value.” Tr Vol 1, p 184.

Clarkson believes that the feedback from internet sites would not knowingly misrepresent the information that they publish.

#### Respondent’s Arguments

Respondent argues that Petitioner failed to meet its burden of proof and requested a directed verdict. Respondent reasons that Clarkson’s use of eBay auction sites is a violation of MCL 211.17. Public auction sites are not to be used to determine true cash value unless the sales become a common method of acquisition. Respondent also stated “And there was no testimony that the common marketing techniques for the sale of used and industrial equipment and particularly with the plastics industry has now become an eBay auction type of sale.” Tr Vol 2, p 11.

Respondent’s second issue is the failure of Clarkson to consider freight, taxes, installation, and removal because failure to do so violates MCL 211.27 and 211.13, which requires the property to

be valued at the site on tax day. Respondent's last issue with Petitioner's appraisal is that the matter involves the use of State Tax Commission ("STC") multiplier tables. Respondent contends that Petitioner clearly did not use the mandatory STC depreciation tables.

Respondent, after an audit of the personal property was conducted and approved by the county, filed a 154 petition with the SAB requesting and receiving an increase in the assessment.

Respondent's exhibits that were admitted:

R-2- 2007 Personal Property Statement.

R-2- 2008 Personal Property Statement.

R-4- STC Order issued October 18, 2006 increasing the 2003, 2005 and 2005 Assessed Value and Taxable Value.

R-5- TMA Audit.

R-6- Web page from [www.aaronequipment.com](http://www.aaronequipment.com).

R-8- Web page from [www.egi.eBay.com](http://www.egi.eBay.com).

R-9- Web page from [www.imindustrial.com](http://www.imindustrial.com).

R-10- Check off list from TMA Audit.

R-1 was not admitted as it was Respondent's Prehearing Statement.

Not marked as an exhibit but Respondent's excerpt from American Society of Appraisers, *Valuing Machinery and Equipment; The Fundamentals of Appraising Machinery and Technical Assets*, (Washington D.C., 2002) was placed on file with the Tribunal.

Kelli Sobel, who was a fact witness, testified that she was involved in buying and selling items on eBay for the last five years. She had experience with 600 to 800 transactions. She stated that to sign up you give a verified e-mail address and certify that you are over 18 years of age. She explained that the two ways of purchasing items on eBay are auction price or Buy It Now price. There is a choice, or both formats can be used. If both are selected as soon as someone bids for an item, the Buy It Now price goes away; it reverts to an auction price. There are instances where the auction price is higher than the original Buy It Now price. Sobel also testified to an

experience she had that was less than satisfactory, but she did not provide negative feedback to the seller for fear of retaliation. She testified that she never bought any industrial equipment, just household items, furniture and purses.

Timothy Schnelle, Section Manager of the commercial/industrial utilities valuation section for the assessment and certification division of the Michigan Department of Treasury, was qualified as an expert in personal property valuation and theory based on his skills, knowledge, experience, education and training. Schnelle was offered to testify to the valuation theory and STC rules with respect to the appraisal of personal property.

Schnelle testified that he has considered the market approach but did not use it in an appraisal that he authored. The market approach was not used in the final reconciliation because he was not able to find sufficient market data.

Schnelle remarked that the Uniform Standards of Professional Appraisal Practice Advisory Opinions, effective July 1, 2006, contains Standards Rule 7 or 7-3A. This states that “In developing a personal property appraisal when necessary for credible assignment results, an appraiser must analyze the current use and alternative uses to encompass what is profitable, legal, and physically possible as relevant to the type and definition of value and intended use of the appraisal.” Tr Vol 2, p58. In other words, in analyzing the highest and best use, the appropriate definition of the market and level of trade within that market should be considered. The definition of the market varies from insurable value, scrap value, liquidation value, and

value in use. Schnelle states that the same personal property can have a different value in different markets under a different definition of value.

Schnelle was not able to properly answer the necessary question posed as to who he was testifying on behalf of or why he was there. He indicated that he is employed by the Assessment and Certification Division and was asked by the STC executive secretary to testify. His responses were not clear as to whether his testimony was on behalf of the STC, who filed an *Amicus Curiae* Brief, so as to permit a determination as to whom he testified on behalf of or why he was there. Schnelle was not testifying as an attorney for the STC.

Schnelle gave the Tribunal his interpretation of MCL 211.27 and defined true cash value. His interpretation is that value is determined in the end user market based upon the advantages of that personal property at that location, installed and available for use at that location.

Schnelle believes that the market should include adjustments for differences for time to relocate the personalty, the cost of sales and use tax, and installation, which in some instances can be more than half of the value.

Schnelle voiced three concerns that he had with the use of the Internet to obtain comparables for personal property. The first concern is that in the sales comparison approach it is necessary to verify the sale, ensure there are sufficient quantities to determine if it is a market or just a spot market. There is no assurance that you have the ability to always go back and purchase a piece of equipment.

An adjustment for age, especially in the last half of the item's economic life, was another concern. The time value of money is considered because when a piece of equipment is needed it usually is required quickly, which can depress the value of the market. The condition of equipment should also be considered when looking at the sales comparison approach.

Schnelle testified to expenditures that are incurred that require adjustments to the sale price, including risk and time to minimize the risk, issues relating to the expense of freight and reinstallation at the new location.

When questioned on cross, "So you subscribe to the doctrine of value in place in interpreting Section 27 of the General Property Tax Act?" Schnelle testified, "I would guess that it might be more correct to say I would subscribe to a value—fair market value and continued use if that use will continue." Tr Vol 1, p 83.

The mass valuation procedure is not intended to value individual pieces of equipment, but to value the whole grouping of equipment having certain attributes. Schnelle stated that in most cases it is a good indication of market value, but "there can be exceptions, particularly if you don't have an integrated facility" or if there is a major piece of property. Tr Vol 1, pp 85-86.

Alfonso Consiglio, Regional Manager for Tax Management Associates, Inc. ("TMA"), was Respondent's next witness. Consiglio testified that his primary function is to manage and oversee audit programs in Michigan and Connecticut. He still performs several audits a month for complex properties. He did not perform this audit, but has conducted approximately 11,000.

Consiglio testified that the procedure for an audit is:

The community or the municipality that we are working with would send out a letter notifying the taxpayer that they were selected for an audit. We would follow up that with a phone call to the representative on the personal property statement, to schedule a in-person appointment at the location where the records are kept, in this case, in this example, that was in Pennsylvania. So our auditor will travel to the location where the books and records are located and would conduct an interview with the taxpayer and receive the necessary audit documents.

In many cases like this the records are not at the same location as the physical property so we will make a subsequent appointment to go to the physical location and do a field inspection. At the book review or at the initial meeting the auditor will reconcile the costs typically to a financial statement, to ensure that they have all of the property that the taxpayer owns.

There will be questions about property they don't own, questions about exempt property, questions about particular positions that the taxpayer may have taken on the filing. And all of this is kind of worked out at that initial appointment. The auditor then will go through, as he did in this case, and code or assign a group for each individual asset. And in this case there are—were some property that was left off as not taxable. So that whole reconciliation is done.

That work is generally shared back with the taxpayer in the exit interview, and once there's no more disagreement about the categories or whether something is taxable or not is typically when it gets sent to the county. There's always going to be disagreements between taxpayers and our recommendations, and that's kind of what the process is about, bringing those facts to the assessor, giving the assessor an opportunity to kind of work with the taxpayer on that. There might be issues of real versus personal that require more of an assessor's attention to that. We try to review real property information, but we generally try to leave that up to the assessor's discretion. Tr Vol 2, pp 109, 111.

TMA's final step is to file the 154 petition with the STC and defend the audit.

Lynne Houston, CMAE III, is the assessor for the City of St. Clair. She testified that she accepted the findings of TMA as adopted by the STC for the audit for tax years 2003, 2004, and 2005. R-2 is Houston's valuation disclosure for 2007. The valuation disclosure consists of

Petitioner sending in a personal property statement and depreciating the numbers that were provided. R-3 was explained that, as Petitioner was late in filing the personal property statement for 2008, she filed an L-4154 (omitted property statement) to the STC and sent also to Spartech Polycom to have them concur. The result is the 2008 assessment.

Houston testified that she sends blank personal property statements out in January. The personal property statements are due by February 20<sup>th</sup>. When Houston receives them she compares them to the prior years to see if there are any changes. If there are no changes, she adds in any the new personal property. If the changes to equipment are major she may call the company to see if they got rid of a piece of equipment. "But we accept them as they're filed by the Petitioner. All this information is entered into our computer program, which is BS & A software and calculated off of that." Tr Vol 2, p 138.

Respondent's final witness is Philip Loeske, the auditor with TMA, who prepared R-5. Loeske testified that he performed Petitioner's audit. He stated that in 2005 he went to Pennsylvania and met with Kim Morton, company representative for Spartech Polycom. Morton provided Loeske with a chart of accounts, depreciation schedules, and since they were acquired in April 1998, he had to request depreciation schedules that predated that acquisition.

Loeske's next step was to key in all the post-acquisition asset costs, dates placed in service and consideration was given to historical costs of the pre-acquisition assets. He later considered that some of the equipment had an Industrial Exemption Certificate that expired in 2003.

After preparing the audit documents, Loeske sent the results to Michigan, because the field inspection remained to be completed. The site visit is a verification of the assets that are on the depreciation schedule, to make sure that the assets are at the site. Consiglio reviewed the report and, after submission, Loeske is “pretty much out of the picture.” Tr Vol 3, p 13.

Loeske agreed that he performed an audit, not an appraisal. He simply took historical costs data and decided which multiplier table to use. The majority of equipment that was moved was a lot of computer controlled machinery from Group F, the computer group, to Group B, which is machinery and equipment. When questioned on cross if he specifically knew what any of the equipment does, he responded, “Honestly, the only thing I know about this company is that they are a plastic molder, and what Ms. Morton told me when I was there was that they make plastic pellets and they, in turn sell to other molding companies.” Tr Vol 3, p 25. Loeske was not aware if asset number 75008 is a material handling machine or if it was able to function without a computer.

Loeske went through R-5, his audit, for the Tribunal:

- Page 3 letter signed by St. Clair County and sent to the taxpayer;
- Page 4 are notes from work papers and audit template, it explains what the TMA record number is, the date of the audit, the jurisdiction, parcel identification etc.;
- Page 5 is from audit work papers and shows the true cash value of the variances;
- Page 6 is a grid showing equipment by category and year in service;
- Pages 7-10 are from TMA’s audit template (they appear to be similar to personal property statements, but prepared by TMA);
- Page 11 is the Form for a 211.154 showing revised assessments for the STC;
- Page 12 another schedule similar to page 5 with additional detail;
- Page 13 is a copy of the appointment letter;
- Page 14 Introduction letter;
- Page 15 is Loeske’s site visit notes;
- Pages 16-21 are listings of the assets with the grouping for depreciation purposes, and the dates placed in service;

Pages 22-63 are various depreciation schedules;  
Page 64 is Loeske's flow chart;  
Page 65 is an IFT property record card; and  
Pages 66-93 are property record cards.

Loeske went through the details using pages sixteen and twenty-two as the example. Page twenty-two, third asset down, number 71003, with a cost of \$9,500, is the top asset on page sixteen and the date placed in service corresponds to the date on the depreciation schedule for 2002. The remainder of the schedule was set up in the same manner.

#### Department of Treasury *Amicus Curiae* Brief

On June 8, 2009, the Department of Treasury filed a Motion for Leave to File *Amicus Curiae* Brief in Support of the City of St. Clair. They state:

1. The Michigan State Tax Commission is the administrative agency charged with the general supervision of the administration of the general property tax, MCL 211.150.
2. One of the issues presented in this appeal, whether the use of sales through an internet auction forum can be used to establish the "true cash value" of personal property for property tax purposes, is of major importance to the State of Michigan and will have a major impact upon the assessment of personal property for property tax purposes.

The Tribunal finds that the Michigan Department of Treasury, Michigan State Tax Commission's Motion to File *Amicus Curiae* Brief in Support of the City of St. Clair is GRANTED.

#### Tribunal's Finding's of Fact

Petitioner was able to convince the Tribunal that the practice of determining market value of personal property using an e-bay "buy now" price is an updated method used by personal property appraisers and is a reliable method. The use of the Internet to determine the market value of each specific asset only assists the appraiser in accomplishing the task more efficiently.

The ability to print out a specific page also assists the appraiser in documentation. Prior to the Internet, appraisers would have to call individual sellers of similar equipment without any paper documentation.

Respondent's audit identified by item that Petitioner properly reported all of its personal property. However, for that purpose some of the equipment was in an incorrect category resulting in the move of some computer equipment to the manufacturing equipment category. Respondent was not able, however, to testify what any individual asset was, or the value. Respondent followed proper audit procedures and did an acceptable cost approach, albeit one that did not equate to market value.

Value is defined in Appraisal Institute, *The Dictionary of Real Estate Appraisal*, Chicago: 4<sup>th</sup> ed, 2002, as: "The monetary worth of a property, good, or service to buyers and sellers at a given time."

The State Tax Commission<sup>2</sup> discusses proper audit procedures as:

Verify that the taxpayer has reported the furnishings, machinery and equipment at usual selling price new in the year that each item was originally placed in service. In this regard, the following should be verified:

It should be determined whether the reported cost represents usual selling price new in the year that the property was originally placed in service. See Section O below for specific procedures. Reporting "rebooked costs" is permitted only in cases where the original historic cost and year are **neither** known **nor** reasonably ascertainable. If "rebooked" costs are reported, the assessor should appraise the property or follow another of the procedures outlined in the December, 2000, issue of the Michigan Assessor (see Introduction). b) It should be determined whether the cost is based on the correct "level of trade". In other words, *the usual selling price is the price at which a dealer in the goods would sell the goods to the end user of the goods.* (emphasis added) Frequently, the taxpayer will assert that the usual selling price is a price which he or she paid, even though he or she is not

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<sup>2</sup> Michigan Department of Treasury, 2008 Property Tax Information, Personal Property Tax Tables; Introduction to Model Audit Program. <http://www.michigan.gov/documents>.

going to be the end user (this is particularly applicable to leasing companies) or, in the alternative, is the price at which he or she could sell the goods to a broker. In fact, it may be the broker who is the dealer and the usual selling price may be the price at which the broker would sell to the end user. c) If the taxpayer acquired a pre-existing business interest, the auditor should be alert to the fact that the allocation of the purchase price may be influenced by the relative bargaining power of the parties and by tax considerations. In addition, in the case of lease interests, the price paid may reflect the value of the income stream rather than the value of the property. (In other words, the value of the lease to the lessee, because of bargain purchase rights, etc. may not be included.)

The State Tax Commission prescribes the method to be used for the cost-less-depreciation method. They do not cover in any bulletins the appropriate method to determine the market value of the assets.

Contrary to the STC's opinion that expended costs for freight, taxes and installation are to be included in the value of personal property, the Tribunal found these additions are for the cost approach and appropriately so. These same costs for subject property's market analysis should not be added. The market approach differs from the cost approach. MCL 211.13 and 211.27(1) (which the Tribunal notes is included in the *amicus curiae* brief), states:

Sec. 13. (1) All tangible personal property, except as otherwise provided in this act, shall be assessed to the owner of that tangible personal property, if known, in the local tax collecting unit in which the tangible personal property is located on tax day as provided in section 2.

Sec. 27. (1) as used in this act, "true cash value" means the *usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale*, (emphasis added) and not at auction sale except as otherwise provided in this section, or at forced sale. The usual selling price may include sales at public auction held by a nongovernmental agency or person if those sales have become a common method of acquisition in the jurisdiction for the class of property being valued. The usual selling price does not include sales at public auction if the sale is part of a liquidation of the seller's assets in a bankruptcy proceeding or if the seller is unable to use common marketing techniques to obtain the usual selling price for the property.

The true cash value of real and personal property is determined at the location where the property is located on tax day. The Tribunal agrees with the concept that the “value” of property located in a governmental unit other than where the buyer will use it when it is purchased is not the value of that property when it is located at the place the buyer will use it. Additional costs, *if appropriate*, must be considered, especially in a cost approach. The L-4175 Personal Property Statement is the STC’s form authorized under MCL 211.19(5). Form L-4175 indicates that costs for freight, tax and installation are to be included. The Tribunal notes that the requirement for the addition of freight, installation and taxes is not found in MCL 211.8 through MCL 211.23 or in MCL 211.27(1) as indicated by the Amicus Curiae brief. However, MCL 211.13 is the statutory authority for the STC to prescribe a form or statement for reporting personal property. On page 7 of Form L-4175 under General Instructions for Sections A-F, in the middle of the first paragraph in bold lettering, is the only cite the Tribunal finds regarding freight, installation and taxes. It states: “All costs reported must include freight, sales tax and installation costs, even in cases where the cost was actually incurred by another.” However, in the market approach, property is already valued at its location eliminating the need for freight, sales tax and installation costs. The STC added freight, sales tax and installation costs to the cost approach. The Tribunal finds that the additional basis for the cost may or may not be necessary. It was not a point of argument for the cost approach.

Michigan, as a market-based state, provides for using a cost approach with depreciation multipliers if there is no other alternative or market based evidence.

*Wayne County v State Tax Commission*, 261 Mich App 174; 682 NW2d 100 (2004), held:

In an individual assessment dispute, if the municipality, or for that matter the utilities, do not think the multipliers equate to true cash value, they can introduce evidence to the contrary for consideration. *County of Wayne v Michigan State Tax Com'n*, 261 Mich App 174, 236-237; 682 NW2d 100,136 (2004).

The above case upheld the validity of the STC multipliers as an appraisal method, and further held if a taxpayer or municipality believes the multipliers are inadequate as applied to particular property, it must introduce other evidence of value. The Tribunal notes that this is not a new concept; it is consistent with the Tribunal's holdings in *Producers Color* and *IBM Credit v Grand Rapids*, Michigan Court of Appeals No. 181519 (1996), (invalidating State Tax Commission multipliers for computer equipment).

*IBM Credit Corp v City of Grand Rapids*, MTT 172989, (1994), stated:

When accurate market information is available, case law clearly supports the market approach as the preferred method of valuation. *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984). In quoting the State Tax Commissions Assessor's Manual, Ch VI, pp 1-2, the *Antisdale Court* held:

The market value of a given property is estimated by comparison with similar properties which have recently been *sold or offered for sale in the open market*. . . . Of all appraisal methods the market data approach is the most direct, the best understood, and the only one directly reflecting the balance of supply and demand for a whole property in actual market place trading. [ *Antisdale* at 276.]

In the same vein, the *Jones & Laughlin Court* affirmed the credibility of the market approach. "The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading." *Jones & Laughlin* at 353.

The Tribunal finds that Petitioner met the burden of proving that the true cash value of the subject property was different than that which the STC multipliers provided.

When using any accepted approach to valuation, case law is clear that the valuation must reflect the "selling price" that could be obtained in an arms-length transaction between a willing seller and a willing buyer. "Regardless of the approach selected, the value determined must represent the usual price for which the subject property would sell." *Jones & Laughlin v City of Warren* 193 Mich

App 348; 483 NW2d 416 (1992).

Pursuant to the tax years at issue, the Tribunal notes that it is not holding that installation and freight should never be included in the valuation of personal property. The State Tax Commission Assessor's Manual, Vol. III, Chapter 15, pp. 15-3, 15-4 states that freight and installation may be included:

A sale price which is based on a detailed appraisal at fair market value may be representative of true cash value though it may need to be adjusted for freight and installation. . . . It is the assessor's responsibility to value property at its true cash value. Therefore, if an *allocated cost is unreasonable*, it must be disregarded. (emphasis added)

The Tribunal finds that Petitioner has presented a good market approach to value the personal property. Clarkson physically inventoried the assets; the inventoried list was compared to the depreciation schedule. For years prior to the inspection year, Clarkson received additions and disposals so that they would be appropriately considered. The cost new less depreciation method was used to determine value if an asset was new or a special item. The remainder of the assets was listed and the specific web site printed to document the base value. Clarkson did not randomly select depreciation for an entire classification of equipment. He looked at the quality, manufacturer, size, age and condition of each asset and selected, to the best of his ability, the current counterpart. This is akin to doing a sales comparison approach for each individual residential property in a subdivision with 160 properties. This method appears to be contemporary information and values the property as of the date instead of the outdated "blue book" that has been used in years past. Clarkson presented material, competent and substantial evidence for the Tribunal. This is in contrast to Respondent's witness, who used the cost-less-depreciation multipliers, could not identify what any piece of equipment was, or the actual use.

The Tribunal agrees that freight and installation are properly included where it is standard practice in the industry to include these costs in arms-length market transactions or in the cost approach.

The Tribunal finds in the case at hand that adequate proofs have been presented that show the market value (selling/listing price) of the subject property does not include freight and installation.

The Tribunal finds that the following conclusion in *Producers Colors* is the same conclusion that the Tribunal would now reach thirteen years later:

Having given study to the evidence and testimony presented in this case, it is clear that only Petitioner employed market data, and applied that data to a market-based valuation methodology. Petitioner's valuation is based directly on market information; Respondent's valuation is not, being based on historic acquisition costs, applied to a preconceived set of fixed numbers. Further, Petitioner's personal inspection of the property is the more reliable evidence of the existence and condition of the equipment being valued.

Petitioner has met its burden of proof through use of market data and market-based methodologies, providing convincing evidence of the true cash value for subject personal property. Respondent's rebuttal arguments, and use of the STC Multiplier method, are insufficient to persuade the Tribunal to adopt its viewpoints and conclusions. Accordingly, the Tribunal finds the subject personal property true cash value to be as stated in Petitioner's appraisal and supporting testimony.

The Tribunal finds that the use of eBay Buy It Now pricing is not considered the same as the eBay auction price/sales, and that Petitioner has met its burden of proving that the Buy It Now price exposes the price to many buyers who are able to take advantage of the Internet.

The Tribunal finds Petitioner has met its burden of proof through the use of market data and market-based techniques, providing convincing evidence of the true cash value of subject property. Based upon its examination of the evidence received at the hearing conducted in this

matter, the Tribunal concludes the true cash value, state equalized value, and taxable value of the subject property for the 2004, 2005, 2006 and 2007 tax years are as follows:

Parcel Number: 74-07-999-2011-000

Year	TCV	SEV	TV
2003	\$1,014,000	\$507,000	\$507,000
2004	\$966,000	\$483,000	\$483,000
2005	\$959,000	\$479,500	\$479,500
2007	\$836,000	\$418,000	\$418,000
2008	\$810,000	\$405,000	\$405,000

Conclusions of Law

Pursuant to Section 3 of Article IX of the State Constitution, the assessment of real property in Michigan must not exceed 50% of its true cash value. The Michigan Legislature has defined true cash value to mean the usual selling price at the place where the property to which the term is applied is at the time of the assessment, being the price which could be obtained for the property at private sale and not forced or auction sale. See MCL 211.27(1). The Michigan Supreme Court in *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450 (1974), has also held that true cash value is synonymous with fair market value.

In that regard, the Tribunal is charged in such cases with finding a property’s true cash value to determine the property’s lawful assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767 (1981). The determination of the lawful assessment will, in turn, facilitate the calculation of the property’s taxable value as provided by MCL 211.27a. A petitioner does, however, have the burden of establishing the property’s true cash value. See MCL 205.737(3) and *Kern v Pontiac Twp*, 93 Mich App 612 (1974).

The Tribunal may not automatically adopt a respondent’s assessment but must make its own findings of fact and arrive at a legally supportable true cash value. *Pinelake Housing*

*Cooperative v Ann Arbor*, 159 Mich App 208,220; 406 NW2d 832 (1987); *Consolidated Aluminum Corp v Richmond Twp*, 88 Mich App 229, 232-233; 276 NW2d 566 (1979). The Tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination. *Meadowlanes*, at 485-486; *Wolverine Tower Associates v City of Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980). A similar position is stated in *Tatham v City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982): The Tax Tribunal is not required to accept the valuation figure advanced by the taxpayer, the valuation figure advanced by the assessing unit, or some figure in between these two. It may reject both the taxpayer's and assessing unit's approaches.

The three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach. *Meadowlanes Limited Dividend Housing Assn v City of Holland*, 437, 484-485; 473 NW2d 636 (1991); *Pantlind Hotel Co v State Tax Commission*, 3 Mich App 170; 141 NW2d 699 (1966); 380 Mich 390; 157 NW2d 293 (1968); *Antisdale v City of Galesburg*, 420 Mich 265, 276; 362 NW2d 632 (1984). The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in the marketplace trading. *Antisdale* at 276, n 1. The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale*, at 277.

The Tribunal finds that *Producers Color v City of Clawson*, MTT Docket No. 216818, is on point and states in part:

Therefore, Petitioner's burden of proof, in challenging Respondent's use of the STC Manual and multiplier methodology, is to provide convincing evidence of the subject's market value. Since "true cash value" means "the usual selling price," which is synonymous with "fair market value," the valuation problem here is best addressed by use of applicable and reliable market data, applied to a market-based methodology. That "market-based methodology" for personal property is preferably the market/sales comparison approach, but when appropriate data is not fully available, a cost-less-depreciation approach with market data input; only in unusual circumstances is an income analysis appropriate.

Therefore, critical to a Tribunal finding is consideration of whether Petitioner has presented market methodology and analysis capable of making a *prima facie* case in attempting to carry the burden of proof. Offset against that presentation is further consideration of Respondent's challenge found in its case for rebuttal, and offering of alternate methodology and conclusions for acceptance of its own valuation work. Finally, the Tribunal will make an independent determination of true cash value, for which the results may include these options: (1) accepting Petitioner's case as having met its burden; (2) finding Petitioner to have failed in its burden, and Respondent having succeeded in both rebuttal and presentation of its valuation; (3) a finding resulting from an acceptance in part of one or the other valuation proofs, but with modification to the portion(s) found not to be acceptable; (4) acceptance in part of each of the valuation proofs, with the finding being a combination of each; (5) rejection of both, with a finding based on acceptable data and components excerpted from one, the other, or each party's valuation proofs. (*Meadowlanes* at 485-486; *Tatham* at 597). p 10.

Summary of Opposing Valuation Methodologies. In overview, this case follows a general pattern of contention and methodology reviewed by the Tribunal in prior cases. The observed pattern is one where Petitioner presents a challenge to the assessment by producing an independent appraisal of the personal property's market value. The values reported are based on data usually secured from independent third-party sources, such as contact with sellers/buyers/dealers in the marketplace, or use of published pricing information. That data is then applied to a market comparison process, or if sales/offering data is not readily available, such data as is available forms a cost-less-depreciation analysis. Respondent's case usually consists of placing into evidence the results of its mass appraisal process. That procedure employs the owner's reported personal property original acquisition costs, applied to the STC multipliers, as selected to represent facts of age, and whether in-use or not. Both parties' procedures are buttressed by testimony pertaining to data and method. With variations on the theme, this case falls into that scenario. p 10.

The importance of market data to implement the standard cost approach was stated in *Uniroyal Goodrich Tire Company v City of Troy*, 8 MTT 361 (1994) at 376:

Since market-based answers are mandatory in assessment matters, the valuation expert is faced with a difficult situation where there is a strong reliance upon only the cost approach, or cost-based support. For example, in the cost approach it is essential that available and applicable market data support all components of the cost approach, beginning with cost new, extending into the various forms of value loss (physical deterioration, function and external obsolescence), and ending with land value.

Market data is the foundation of all three approaches to value, and is an essential component in the valuation of personal property, just as it is in the valuation of real property. Whether personal property is valued by single-property method using cost and market approaches, as did Petitioner, or by the use of a mass appraisal method as did Respondent, there must be an infusion of market data for the result to be market-based. Respondent's use of a variant cost approach, without reference to any market data in support of that method, renders it difficult to accept the valuation conclusion as being market-based. For the STC Multiplier method to be a reflection of market values, it would be necessary to view evidence of current market information having been introduced at some effective point of the process. Absent such evidence, the Tribunal has only the statement of witness Hobart that the multipliers are being constantly monitored to assure they remain current. While doubt is not being cast upon this being a factual representation, such an assurance, of itself, is not sufficient market evidence.

It appears to the Tribunal that the STC Multiplier method is a valuation process better employed as a mass appraisal technique for its uniformity of result and ease of administration. The method does not appear well-suited to defense as a market-based methodology in Tribunal appeals. A more effective process would be to employ market data directly in support of a market-based appraisal methodology. Respondent had that choice, the choice of changing valuation systems in challenging Petitioner's proofs and defending its own position. It was not necessary that the true cash value upon which the assessment is based be defended by the same assessment mass appraisal system used in its derivation. p 14.

It is interesting to note that Clarkson was the same appraiser in *Producers Color*.

The Tribunal finds that the method has changed over the years in gathering information; with e-commerce the result is faster and provides documentation. That allows appraisers of personal property to do the same gathering of information only much faster, with documentation that can be printed and shared, unlike confirming information over the phone in times past without such

documentation. The use of the internet is becoming a common-place method by which a typical buyer will look to price an article. The internet exposes the item for sale to a world-wide audience. Unlike days past when a personal property appraiser used contacts and knowledge of what equipment dealers would sell a property for after a phone call or two. The use of the internet generally provides a limit of value that anyone who has the need can purchase. The Tribunal would be remiss in dismissing the valuation because every item was not verified, when the exposure was expanded and unlimited. The United States Federal procurement<sup>3</sup> includes to the maximum extent that is practicable and cost-effective, procedures and processes that employ electric commerce in the conduct and administration of its procurement system. If the Federal Government encourages e-commerce, the State of Michigan and the STC also needs to update their process and include the possibility that market evidence exists on, for example, eBay Buy-It-Now.

#### Judgment

IT IS ORDERED that the property's assessed and taxable values for the tax years at issue shall be as set forth in the *Findings of Fact* section of 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 90 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.

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<sup>3</sup> 41 USCS 426. Chapter 7 Office of Federal Procurement Policy, approved May 20, 2009.

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 (i) after December 31, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for calendar year 1998, (iv) after December 31, 1998, at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999, at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000, at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001, at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ix) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (xi) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (xii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, and (xiii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, and (xiv) after December 31, 2008, at the rate of 3.31% for calendar year 2009.

This Order resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: November 10, 2009

Victoria L. Enyart, Tribunal Member