

STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Proto-Cam, Inc.,
Petitioner,

v

MTT Docket No. 0352809

City of Grand Rapids,

Respondent.

Tribunal Judge Presiding
Paul V. McCord

FINAL OPINION AND JUDGMENT

Frederick E. Mackraz (P52623), for Petitioner
Bernard Schafer (P40114), for Respondent

I. INTRODUCTION

This matter comes before the Tribunal for decision after hearing in the Entire Tribunal Division on August 15, 2011 in Lansing, Michigan. Petitioner, Proto-Cam, Inc., timely petitioned a State Tax Commission (STC) Order approving an increase in the assessment of its personal property for tax years 2005, 2006 and 2007. Specifically, Petitioner alleges that the true cash value (TCV) of its personal property is \$310,200 for tax year 2005, \$699,600 for 2006, and \$788,000 for 2007.¹ Respondent asserts that the property has been fairly and uniformly assessed

¹ On June 3, 2008, Petitioner sent a letter to the Tribunal appealing two STC orders affecting the value of its personal property; one involving the ad valorem personal property tax parcel and tax years at issue here, and the other involving the 2005 assessment of an Industrial Facilities Tax parcel, identified by parcel ID number 41-57-51-

and in accordance with the administrative guidance issued by the STC, and requests that the value adjusted by the STC be upheld; that the TCV of the property for each of tax years 2005, 2006 and 2007 is \$465,600, \$1,012,000, and \$1,079,800, respectively.

We are asked to determine the true cash value of Petitioner's personal property as of each of the tax years at issue. Petitioner challenges the value assigned to its personal property after audit on two legal grounds. First, Petitioner asserts that Respondent, its auditor, and the STC erred in retroactively applying State Tax Commission Bulletin 12 of 1999² to determine the true cash value of its assets acquired before the effective date of that administrative pronouncement. Second, Petitioner argues that the auditor's application of the method of reporting the cost of machinery and equipment that contains computer equipment components prescribed in Bulletin 1999-12 to such depreciated assets acquired before the effective date of that administrative guidance results in impermissible

930-544. We treated Petitioner's June 3, 2008 letter as a defective petition, issued Docket No. 352809 and requested Petitioner complete a small claims form petition. Petitioner completed the small claims petition, again appealing the action of the STC with respect to its ad valorem personal property parcel at issue here and also included a claim relating to a real property parcel identified by parcel ID number 41-01-51-111-255. Petitioner's small claims form petition makes no mention of the IFT parcel 41-57-51-930-544. On October 22, 2008, we issued an order placing Petitioner in default, as its small claims petition exceeded the jurisdictional limits of the small claims division. We ordered Petitioner to file an Entire Tribunal petition on or before November 12, 2008, which Petitioner did on November 10, 2008. In its Entire Tribunal Petition, Petitioner again challenged the STC action with respect to its ad valorem personal property parcel for the tax years at issue, but made no mention of either its real property parcel 41-01-51-111-255 or its IFT parcel 41-57-51-930-544. Accordingly, Petitioner abandoned its claims with respect to the assessment of these two parcels.

² See Department of Treasury, STC Bulletin 1999-12, *available at* <http://www.michigan.gov/treasury> (accessed from home page by entering "State Tax Commission Bulletin 12 of 1999") [hereinafter Bulletin 1999-12].

double taxation. We disagree on both accounts. Respondent essentially counters that regardless of Petitioner's legal theories, Petitioner failed to meet its burden of proving the true cash value of its property as mandated by MCL 205.737(3). We agree.

II. JUDGMENT

We hold that the subject property's true cash value (TCV), state equalized value (SEV), and taxable value (TV) for the tax years at issue are as follows:

Tax Year	Parcel Number	TCV	SEV	TV
2005	41-01-51-101-622	\$465,600	\$232,800	\$232,800
2006	41-01-51-101-622	\$1,012,000	\$506,000	\$506,000
2007	41-01-51-101-622	\$1,079,800	\$539,900	\$539,900

III. FINDINGS OF FACT

This section is a "concise, separate, statement of facts" within the meaning of MCL 205.751, and, unless stated otherwise, the matters stated or summarized are "findings of fact" within the meaning of MCL 24.285. At the time the petition was filed, Petitioner's principal place of business was in Grand Rapids, Michigan.

1. Petitioner's Manufacturing Operations

Petitioner is a machine shop engaged in the manufacturing of tooling used to bend tubing. Petitioner manufactures tooling, such as die sets, mandrels, and wipers, that are integrated into machines that bend tubing to produce such items as exhaust systems, plumbing, handlebars, and furniture. Petitioner utilizes a variety of production equipment in rendering its work, including CNC (computer numerical control) machine tools, lathes and mills. A CNC machine consists of two principal components: a machinery component and a computer component called a CNC controller. Petitioner employs a method of manufacturing referred to as “datafacturing,” that we infer to be an automated or computer integrated manufacturing system, which permits Petitioner to program a wide variety of different tools in one set-up. Petitioner also uses a variety of manual tools and equipment in its manufacturing process such as fixtures, carts, tooling, etc.

2. Petitioner's Pre-Year 2000 Personal Property Reporting Method

The STC prescribes so-called personal property multiplier tables – essentially a depreciation percentage – that local assessors are required to apply to the reported costs of personal property in order to arrive at an indication of market value for assessment purposes. Prior to the year 2000, these multiplier tables are reproduced on Tables 1 through 6 issued by the STC. Property owners report the

full acquisition cost new, in the year of its acquisition, of their various personal property asset classes, even if those assets have been fully depreciated for Federal income tax or financial accounting purposes, in the appropriate section of the personal property statement. The local assessing official then multiples cost reported by the property owner by the corresponding multiplier applicable to line item year of acquisition to arrive at a depreciated cost figure. These computations are then totaled by the local assessing official to arrive at an indicated true cash value of all of the taxpayer's personal property for the particular tax year.

Up to the year 2000, Petitioner reported the original installed costs of its CNC machines by year of acquisition in two places on its personal property statements: (1) the machinery portion of its CNC machines was reported utilizing the table pertaining to its machinery and equipment, and (2) the associated computer controller – the CNC controller – was reported using the schedule specified in Table 6, relating to computer equipment. Petitioner developed this method of reporting for these particular assets based on consultation with the Wyoming city tax assessor. The city assessing office used a formula that apportioned the cost of such machines into two separate components: the machinery portion and the computer controller.

The prescribed multiplier – depreciation schedule – for computer equipment appearing on Table 6 is more rapid than that for machinery and equipment.

Computer equipment depreciated by means of Table 6 was fully depreciated to its 10% residual value by 6-year and older. In contrast, other than certain utility property, other industries, like Petitioner, reported their machinery and equipment as either long-lived or average-lived assets under former Tables 3 and 4. Each of these tables prescribed a 15-year life, although the rate of depreciation for average-lived assets was a bit more rapid. Final residual value occurring for assets 15 years or older differed between 40% for long-lived assets versus 30% for averaged-lived assets.

3. New State Tax Commission Multipliers

Beginning in the late 1990s, the STC began studying the multiplier tables then in use since the 1960s. Ultimately, new multiplier tables were adopted in 1999. *See* Bulletin 1999-12.

Bulletin 1999-12 states, in part:

12. Machinery and Equipment Which Contains Computer Equipment Components

In the past, assessors were directed to apply the Computer Equipment Multiplier Table to the cost of computer equipment components contained within individual pieces of machinery and equipment, provided the owner could identify these costs. **THIS PRACTICE IS**

NO LONGER NECESSARY STARTING WITH 2000
ASSESSMENTS.

Starting with 2000 assessments, the new Machinery and Equipment Multiplier Table already reflects the fact that some machinery and equipment contains computer equipment components. It will no longer be necessary to break out the costs of computer equipment components contained within individual pieces of machinery and equipment. * * *.

[Emphasis in the original].

4. Petitioner's Method of Reporting Personal Property During the Tax Years at Issue

The instructions to the personal property statement, Form 632, for each of the tax years at issue, instruct that the full acquisition cost new for each asset class are to be reported by year of acquisition in Sections A through F. Beginning with its 2000 personal property statement, and continuing through the tax years at issue, Petitioner reported the acquisition costs new of both the machine component and the computer controller of its CNC machines acquired after the year 2000 in Section B as instructed. As to its CNC equipment purchased before 2000, Petitioner first determined the year 2000 depreciated cost of the CNC controller based on its year of acquisition and the depreciation multipliers in effect prior to the year 2000. Petitioner then added this depreciated cost figure for the computer controller component and added it to the machinery component. Petitioner then

reported this total in Section B on the appropriate line relating to the year the equipment was originally acquired.

5. Personal Property As Originally Reported and Assessed for the Tax Years at Issue

The Subject Property is identified on Respondent's assessment rolls as Parcel I.D. No. 41-01-51-101-622. The indicated true cash value of the Subject Property by method of mass appraisal as originally reported by Petitioner for each of the tax years at issue, together with the indicated state equalized value (SEV), are as follows:

Year	TCV	SEV
2005	\$310,208	\$155,104
2006	\$699,548	\$349,548
2007	\$788,009	\$394,004

The indicated true cash of the Subject Property by method of mass appraisal together with the state equalized value (SEV), assessed value (AV), and taxable value (TV) as originally reflected on Respondent's assessment roll as of each of the tax years at issue, are as follows:

Year	TCV	SEV	AV	TV
2005	\$310,200	\$155,100	\$155,100	\$155,100
2006	\$699,600	\$349,800	\$349,800	\$349,800
2007	\$788,000	\$394,000	\$394,000	\$394,000

6. Personal Property Tax Audit

As part of a state-wide personal property tax compliance program, the Michigan Department of Treasury hired Tax Management Associates, Inc. (TMA) to conduct personal property tax audits of selected taxpayers. Petitioner was selected for examination. The examination of Petitioner's personal property was performed by Mr. Alfonso Consiglio. By letter dated June 20, 2007, TMA reported its audit findings to Respondent's assessor. The principal audit discrepancy reported by the auditor was the separate cost of computer controllers for CNC equipment reported on Section F, Computer Equipment, that should have been reported in Section B, Machinery and Equipment. TMA identified about \$917,553 in such costs that should be moved from Section F to Section B in accordance with STC Bulletin 12 of 1999.

Acting on TMA's recommendation, Respondent filed a petition with the STC under MCL 211.154. On May 29, 2008, the STC issued an order granting Respondent's request for change in the assessment as follows:

Year	TCV	SEV	TV
2005	\$465,600	\$232,800	\$232,800
2006	\$1,012,000	\$506,000	\$506,000
2007	\$1,078,000	\$539,000	\$539,000

IV. CONCLUSIONS OF LAW

A. *Standard of Value*

The true cash value of property is ultimately a question of fact. See *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 638; 462 NW2d 325 (1990).

In turn, the phrase “true cash value” is defined as “the usual selling price at the place where the property to which the term is applied is at the time of assessment.”

MCL 211.27(1). It is essentially the fair market value of property. *Meadowlanes Ltd Dividend Housing Ass’n v City of Holland*, 437 Mich 473, 484 n 17; 473

NW2d 636 (1991). Under the Tax Tribunal Act we are charged to apply our own expertise in order to make an independent determination of true cash value of the property at issue based on the evidence presented. See *President Inn Props LLC v*

Grand Rapids, 291 Mich App 625; ___ NW2d ___ (Docket No. 294452, issued February 17, 2011) slip op p 6. The Tax Tribunal is not a “rubber stamp” on the

taxing authority’s assessment as a property’s assessed valuation on the tax rolls

carries no presumption of validity. See *Id.*; see also *Consolidated Aluminum Corp,*

Inc v Richmond Twp, 88 Mich App 229, 232; 276 NW2d 566 (1964). Nor are we under any obligation to accept either party’s figures or theories of valuation.

Teledyne Continental Motors v Muskegon Twp, 145 Mich App 749, 754; 378

NW2d 590 (1985). Regardless of the method applied, the value we ultimately

determine “must be the usual price for which the property would sell.” *Great*

Lakes Div of Nat'l Steel Corp v Ecorse, 227 Mich App 379, 390; 576 NW2d 667 (1998).

B. Burden of Proof

While a property's assessed valuation on the tax rolls carries no presumption of validity, Petitioner nevertheless bears the burden to establish the true cash value of its property, MCL 205.737(3); *Georgetown Place Co-op v City of Taylor*, 226 Mich App 33; 572 NW2d 232, 236 (1997). A petitioner meets its burden by introducing affirmative evidence as to the market value of its property. See *Berenjian v City of Ann Arbor*, unpublished opinion per curiam of the Court of Appeals issued November 29, 2011 (Docket No. 300490) slip op p 3. After considering all the evidence, the Tribunal makes a determination based on the preponderance of the evidence. See *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 409; 576 NW2d 667 (1998); *Allen v Dep't of Treasury*, 10 MTT 802 (2000). As a practical matter, this means that a petitioner whose strategy focuses on finding defects in the respondent's case, errors in the property's assessment, or that its modification to mass appraisal tools more accurately reflects a property's true cash value is unlikely to be successful. Here, Petitioner did not fulfill its burden of proof by presenting affirmative evidence of the true cash value of its property.

C. Valuation of Personal Property

The Michigan Constitution calls for the uniform taxation of property. Const 1963, art 9, § 3. To this end, the General Property Tax Act (MCL 211.1 et seq.) requires taxpayers to file a personal property statement each year before February 20, reporting the original cost of their personal property located in the assessing unit by year of acquisition. MCL 211.19(2). Based on the taxpayer's reporting, a property's assessed value is annually set by the local assessor through the application of appropriate mass appraisal guidelines prescribed by the State Tax Commission in the form of its Michigan Assessor's Manual. Respondent was required to utilize the manual and the standard valuation multipliers in preparing Petitioner's assessment. MCL 211.10e.³ The STC system for mass appraisals of personal property was held to result in the uniform taxation of personal property. See *Lionel Trains, Inc v Chesterfield Twp*, 224 Mich App 350, 351; 568 NW2d 685 (1997).

All that being said, while the accuracy of each individual assessment is important, it is not all-important in the context of mass appraisal, as the methods required to be applied strive to permit a value to be annually determined on a

³ MCL 211.10e provides, in relevant part:

All *assessing officials*, whose duty it is to assess real or personal property on which real or personal property taxes are levied by any taxing unit of the state, *shall use only* the official assessor's manual or any manual approved by the state tax commission, consistent with the official assessor's manual, with their latest supplements, as prepared or approved by the state tax commission as a guide in preparing assessments. [Emphasis added.]

uniform basis for every property within the assessing unit. While ensuring uniform results when spread across a large population of parcels, mass appraisal tools do not, necessarily, ensure that the value determined for each individual parcel is accurate. See, e.g., *County of Wayne v Michigan State Tax Com'n*, 261 Mich App 174, 197; 682 NW2d 100 (2004). As a result, Michigan case law instructs that if evidence of a different true cash value is apparent because the manual does not adequately account for a factor relevant to the assessment, a party may obtain a deviation from the manual in an assessment dispute by submitting evidence—whether it be an expert report, a valuation, or other documentation to establish the true cash value of the property. See, e.g., *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992). This is because the Tax Tribunal’s specific concern is to arrive at the most accurate determination of the value of the property under appeal. See *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984).

From these authorities, the personal property taxation scheme is clear. The taxpayer must report its personal property for property tax purposes at its full acquisition cost new. If, however, the “market” is lower, the taxpayer may be permitted to depart from reporting acquisition cost new by initiating a property tax appeal and substantiating its lower personal property valuation by providing evidence of actual offerings, actual sales, etc. For example, Petitioner could have

used a market comparison approach that compares its CNC machines to the prices paid for similar items in the current market based on large websites like eBay and using the “Buy It Now” price. See, e.g., *Spartech Polycom, Inc v City of St Clair*, unpublished opinion per curiam of the Court of Appeals, issued March 8, 2011 (Docket No. 295334). In the absence of objective evidence of this kind, a taxpayer’s assertions as to the “market value” of its personal property are not cognizable in computing its assessment.

It is clear to us that Petitioner’s procedure for reporting its CNC equipment was inconsistent with both this legislative scheme and the administrative guidance issued thereunder. The manual and valuation multipliers in effect for the tax years at issue did not prescribe the method of reporting/computations that Petitioner utilized. It appears that Petitioner’s departure from the STC guidance results in an even less reliable indication of value as: (1) the new multipliers already took into account the computer content of this particular asset class and (2) by its own terms, the STC could only assure accuracy in the results of its prescribed method, to the extent its methods and guidelines were followed. Whether Petitioner’s manner of reporting results in a more accurate valuation of the property at issue we have no way of knowing because Petitioner made no effort to ascertain the “market” for its CNC equipment. More importantly, Petitioner did not present any evidence regarding what similar CNC machines sold for on the market. Petitioner thus

failed to provide any objective evidence whatever that its method of reporting the costs of its CNC equipment had any market support ascribed to it.

D. Retroactivity

Petitioner complains that the auditor's method of valuing its CNC controllers purchased before 2000 impermissibly applied Bulletin 1999-12 retroactively. We disagree. "Retroactivity" itself is a deceptively simple word for a complex set of problems. In real time, all laws or administrative guidance can operate only prospectively, prescribing legal consequences after their enactment or issuance; they cannot change the past. On the other hand, all new laws or administrative guidance operate upon a state of affairs formed to some extent by past events. An administrative rule does not operate retroactively merely because it applies to prior conduct, or simply because it takes into consideration conduct antedating the regulation's effective date or upsets expectations based in prior law. See *Hughes v Judges' Retirement Bd*, 407 Mich 75, 86; 282 NW2d 160 (1979). Rather, a regulation has retroactive effect if it would impair vested rights a party possessed when the party acted, increase the party's liability for past conduct, or impose new duties with respect to transactions already completed. *Id.*, see also *GMAC LLC v Dep't of Treasury*, 286 Mich App 365, 377; 781 NW2d 310 (2009). A mere expectation based upon the anticipation that a particular method of

depreciation would continue does not amount to a vested right. See *In re Request for Advisory Opinion Regarding Constitutionality of 2011 PA 38*, 490 Mich 295; ___ NW2d ___ (2011) slip op p 25, citing *Walker v City of Detroit*, 445 Mich 682, 703; 520 NW2d 135 (1994); see also *GMAC LLC*, *supra* at 377 – 378.

The text of Bulletin 1999-12 did nothing to alter Petitioner's existing obligation under MCL 211.19 to file a personal property statement reporting the full acquisition cost new of its personal property by year of purchase. This Petitioner did not do. Instead, Petitioner reported the depreciated cost of certain of its CNC controllers. This treatment was contrary to both the guidance in Bulletin 1999-12 and the instructions to Form 632, *Personal Property Statement*. A property's true cash value is to be determined annually as of each December 31. This necessarily results in a new calculation of true cash value each year for each personal property tax parcel as the multiplier tables, by design, increase the depreciation factor to be applied to the original install costs of the various groups of assets as those assets age. The auditor simply restored the original cost by year of acquisition of this equipment and place it in Section B as specified in the STC's administrative guidance and the instructions to the personal property statements in order to value Petitioner's personal property on a mass basis as of each December 31, 2002, 2003 and 2004, the respective tax days for each of the tax years at issue.

The auditor did not apply the prescribed multipliers or procedures outlined in Bulletin 1999-12 to tax years prior to the year 2000.⁴

Petitioner has cited no authority, nor have we found any that suggest the Assessor's Manual or Bulletin 1999-12 exceed the statutory authority granted to the STC by the Legislature. See *William Mueller & Sons, Inc v Department of Treasury* 189 Mich App 570; 473 NW2d 783 (1991). To the contrary, other than providing a broad framework and numerous factors to be considered, the Legislature has not specified methods of valuation that assessors must employ. *Antisdale*, 420 Mich 275–276; see also MCL 211.27(1). As a result, assessing officers have considerable latitude in valuing property within the broad prerequisites found in 1963 Const, art 9, § 3. MCL 211.27(1) and MCL 211.10e recognizes that discretion must be exercised in some manner. In effect, the

⁴ That said, retroactive application of either the assessor's manual or the cost multipliers is not necessarily impermissible as the official assessor's manual together with its latest supplements is only to be used "as a *guide* in preparing assessments . . ." MCL 211.10e. A "guide" does not require strict adherence when supplied with information that would result in a more accurate valuation. See *Wayne County v Michigan State Tax Commission*, 261 Mich App 174, 179; 682 NW2d 100 (2004). Thus, for example, on a previous occasion we decided that it was appropriate to apply the same personal property multipliers at issue here retroactively to an earlier tax year. Specifically, in *Valassis Communication v City of Livonia*, 11 MTT 244 (2001), we determined that the new, so-called 2000 multipliers adopted by the STC on September 2, 1999, to be used to value personal property as of December 31, 1999 – could be used to determine the true cash value of the personal property at issue on a mass basis as of December 31, 1998. Based on the evidence presented in that case, specifically that the sales data used to develop the 2000 multipliers came from sales occurring in 1990 through 1999, we held that the application of the new multipliers to determine the true cash value for tax year 1999 was appropriate as it yielded a more accurate determination of the true cash value of the property at issue. *Id.* at 3. Our decision in *Valassis* was subsequently affirmed in an unpublished decision of the Court of Appeals. See *Valassis Communications v City of Livonia*, unpublished decision per curiam of the Court of Appeals, issued December 27, 2002 (Docket No 233676).

guidance at issue here simply sets forth a procedure for valuing the personal property at issue.

Nor do we agree with the implication of Petitioner's retroactivity argument that it was somehow entitled to continue to use or receive the benefit of the prior method of depreciation with respect to its CNC controllers purchased before 2000. By now it is well established in Michigan that a taxpayer does not have a vested right in a tax statute or in the continuance of any tax law. *In re Request for Advisory Opinion Regarding Constitutionality of 2011 PA 38*, 490 Mich 295; ___ NW2d ___ (2011) slip op p 25; *Detroit v Walker*, 445 Mich at 703; see also *General Motors Corp v Dep't of Treasury*, 290 Mich App 355; 803 NW2d 698 (2010), lv den 489 Mich 991; 800 NW2d 85 (2011); *Ford Motor Credit Co v Department of Treasury*, unpublished memorandum opinion of the Court of Appeals issued January 12, 2010 (Docket No 289781), lv den 486 Mich 962; 782 NW2d 771 (2010), cert den 131 S Ct 1000 (2011); *GMAC LLC v Dep't of Treasury*, *supra*; *Ludka v Dep't of Treasury*, 155 Mich App 250, 260: 399 NW2d 490 (1986) (noting that the Legislature is free to take away, at any time, rights that arise under a tax statute); *United States v Carlton*, 512 US 26, 33 (1994) ("Tax legislation is not a promise, and a taxpayer has no vested right in the Internal Revenue Code."). Petitioner has not shown that the auditor's method of valuing its

personal property resulted in an impermissible retroactive application of an administrative pronouncement.

E. Double Taxation

Finally, Petitioner argues that because it previously paid personal property tax on its CNC controllers acquired before the year 2000 and, at that time, was permitted more rapid depreciation, if Respondent is now allowed to move the undepreciated cost of that same equipment on to Section B, a portion of the cost of its CNC controllers will be subject to tax twice. We disagree.

Double taxation, in the prohibited sense, exists where both taxes have been imposed in the same taxing period, for the same purpose, upon the same property owned by the same person, and by the same taxing authority. See *C F Smith Co v Fitzgerald*, 270 Mich 659, 685; 259 NW 352 (1935). Thus, a party must establish three elements to show that it has been subjected to double taxation: (1) both taxes must fall on the same property, (2) the second tax is imposed for the same purpose as the first, and (3) both taxes are imposed by the same taxing authority during the same taxing period. See *Ameritech Publishing, Inc v Department of Treasury*, 281 Mich App 132, 152-153; 761 NW2d 470 (2008). Petitioner has failed to establish any of the elements necessary to show impermissible double taxation. It has not shown that the market value of its CNC controllers was twice subject to

Respondent's ad valorem taxation during the tax years at issue. We therefore hold that Petitioner was not subjected to double taxation.

F. Depreciation for Ad Valorem Personal Property Tax Purposes

Petitioner's retroactivity and double taxation arguments appear to misapprehend the distinction between the usage of the term "depreciation" as used for both financial and income tax accounting purposes and the concept of depreciation imbedded in the personal property multipliers for mass appraisal purposes.

For financial accounting purposes, book depreciation is an expense recorded on the owner's "books" and reported on the financial statements. This form of depreciation is based on the matching principle of accounting, *i.e.*, expenses are recognized when obligations are (1) incurred (usually when goods are transferred or services rendered, e.g. sold), and (2) offset against recognized revenues, which were generated from those expenses (related on the cause-and-effect basis), no matter when cash is paid out. Thus financial accounting generally attempts to match a machine's cost to the accounting periods during which the machine is being used to earn revenue.

Similarly, under a tax based on net income, the net return from all investments is sought to be measured, *i.e.*, income, matched to the appropriate period, and subject to tax. As a general rule, taxpayers compute their taxable income based on the accounting methods used in their books and records subject to the requirement that the selected method clearly reflects income. To the extent that an asset like a machine has a useful life beyond the year in which it was purchased, proper income measurement suggests that it is inappropriate to deduct the machine's cost as a current expense. Rather, the cost of the machine should be first capitalized with the capitalized cost then recovered gradually over time. Otherwise, proper income measurement would require that these costs should be recovered upon sale or disposition of the property (as in the case of inventory and land). Tax depreciation recorded on a firm's income tax returns may differ from that recorded on a firm's books for financial accounting purpose and is not market derived, but instead, is based on a method or schedule that reflects policy choices made by Congress, state legislature, or the specific state taxing authority.

The basis for taxing personal property in Michigan, however, is on 50% of the "true cash value" of property which is established as of December 31 of each year, 1963 Const, art 9, § 3;MCL 211.27a(1); see also MCL 211.2(2) and MCL 211.13, meaning that an assessment must reflect not more than 50% of the probable price that a willing buyer and a willing seller would arrive at through

arm's length negotiation as of December 31st. See *Huron Ridge, LP v Ypsilanti Twp*, 275 Mich App 23, 28; 737 NW2d 187 (2007). For Michigan personal property tax purposes, we are concerned with the market value of the assets, and not whether expenses are matched to revenues or whether the items of income, loss, deduction, or credit result in a clear reflection of income.

Thus, in contrast to financial accounting or tax accounting, depreciation for ad valorem tax purposes relates to the loss of utility from all causes: physical deterioration, functional obsolescence, and external obsolescence (such as, for example, adverse market conditions), and therefore the asset's loss of market value. In this regard it is a necessary consideration in estimating the market value of an asset. As the Michigan Assessor's Manual generally specifies a cost-less-depreciation methodology in valuing personal property, depreciation under this approach to value is the difference between the contributory value of an asset and its reproduction or replacement cost as of a date certain. By estimating the depreciation experienced by an asset and subtracting it from the asset's reproduction or replacement cost, the result approximates the asset's market value as of a date certain.

The computational method specified by Bulletin 1999-12, and required to be applied by Respondent and correctly applied by the auditor, is not a method of cost recovery or matching revenues with expenses but a method of annual valuation. If

the legislature had desired to limit assessed values to 50% of the depreciated book value of tangible assets, it could easily have done so. Since it did not do so, we conclude, on this record and in the absence of record evidence to the contrary, that the valuation methodology employed by the auditor – including the cost multipliers – and adopted by Respondent, results in the most accurate indication of the subject property's true cash value as of each of the tax years at issue.

V. CONCLUSION

After a careful review and weighing of the testimony and exhibits presented by both parties, and after considering the credibility of the witnesses, we conclude that Petitioner's proofs were inadequate, and that a reduction in the assessment is not warranted. Under the circumstances and evidence presented here, Respondent's valuation approach, namely that prescribed by the Michigan Assessor's Manual, Bulletin 1999-12, and the instructions to the Forms 632, *Personal Property Statements*, for each of the tax years at issue yields the most accurate valuation of the property. Accordingly, it is our conclusion that the true cash value of the property as recomputed by and adopted by Respondent is most correct, and Respondent presented substantial evidence in support of our conclusion. For the above reasons, the conclusion of the Tribunal is that the true cash value of Petitioner's property is \$465,600, \$1,012,000, and \$1,078,000 for tax years 2005, 2006 and 2007, respectively.

IT IS ORDERED that the officer charged with maintaining the assessment rolls for the tax year 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, the 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 this Order within 28 days of the entry of this Order. 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 the Tribunal's order. As provided in 1994 PA 254, being

MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest rate of the 94-day discount treasury bill rate for the first Monday in each month plus 1%. As provided in 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after January 1, 1996 at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 1995 at the rate of 6.55% for calendar year 1996, (ii) after December 31, 1996 at the rate of 6.11% for calendar year 1997, (iii) after December 31, 1997 at the 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, (xiv) after December 31, 2008, at the rate of 3.31% for calendar year 2009, (xv) after December 31, 2009, at the rate of 1.23%

for calendar year 2010, (xvi) after December 31, 2010, at the rate of 1.12% for calendar year 2011, and (xvi) after December 31, 2011, at the rate of 1.09 for calendar year 2012.

This Opinion resolves all pending claims and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: December 22, 2011

By: Paul V. McCord