STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

GRETCHEN WHITMER
GOVERNOR

ORLENE HAWKS
DIRECTOR

Razeen Inc & S&R Real Properties,
Petitioners,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 17-001673

City of Warren,
Respondent.

Presiding Judge
Marcus L. Abood

FINAL OPINION AND JUDGMENT

The Tribunal issued a Proposed Opinion and Judgment ("POJ") on May 14, 2019. The POJ states, in pertinent part, "[t]he parties have 20 days from date of entry of this POJ to notify the Tribunal **in writing, by mail or by electronic filing, if available,** if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions)."

Neither party has filed exceptions to the POJ.

The Administrative Law Judge ("ALJ") considered the testimony and evidence and made specific findings of fact and conclusions of law. The ALJ's determination is supported by the testimony and evidence and applicable statutory and case law.

Given the above, the Tribunal adopts the POJ as the Tribunal's final decision in this case.[1] The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law contained in the POJ in this Final Opinion and Judgment. As a result:

Parcel No. 99-02-208-385 is not entitled to an exemption, under MCL 211.9o, for the 2017 and 2018 tax years.

The subject property's taxable value ("TV"), for the tax year(s) at issue, shall be as follows:

Parcel Number: 99-02-208-385

Year	TV
2017	$70,000
2018	$65,000

[1] See MCL 205.726.

IT IS SO ORDERED.

IT IS ORDERED that the officer charged with maintaining the assessment rolls for the tax year(s) at issue shall correct or cause the assessment rolls to be corrected to reflect the property's exemption within 20 days of entry of this Final Opinion and Judgment, subject to the processes of equalization.[2] 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 within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and 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, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (x) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, and (xi) after June 30, 2019 through December 31, 2019, at the rate of 6.39%.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.[3] Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is $50.00 in the

[2] See MCL 205.755.
[3] See TTR 261 and 257.

Entire Tribunal and $25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.[4] A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.[5] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[6]

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."[7] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[8] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[9]

By

Entered: June 18, 2019
jls

[4] See TTR 217 and 267.
[5] See TTR 261 and 225.
[6] See TTR 261 and 257.
[7] See MCL 205.753 and MCR 7.204.
[8] See TTR 213.
[9] See TTR 217 and 267.

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Razeen Inc & S&R Real Properties,
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City of Warren,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 17-001673

Presiding Judge
Peter M. Kopke

PROPOSED OPINION AND JUDGMENT

INTRODUCTION

Petitioners filed this appeal disputing the property tax assessment levied by Respondent against Parcel No. 99-02-208-385 for the 2017 and 2018 tax years. Myles A. Hoffert, Esq. represented Petitioners and Seth A. O'Loughlin, Esq. represented Respondent.

A hearing was commenced on January 8, 2019. Petitioners' witnesses were Buolus Ghraib, Appraiser and Sabur Ghazi and Respondent's witness was Michael Fontana, Assessing Auditor.[1]

Based on the evidence (i.e., testimony and admitted exhibits) and the case file,[2] the Tribunal finds that Parcel No. 99-02-208-385 is entitled to an exemption under MCL 211.9o of 0% for the 2017 and 2018 tax years. As a result, the property's taxable value ("TV") for those tax years is as follows:

[1] Mr. Ghraib submitted a valuation disclosure or appraisal, was offered as an expert for testifying as to value and was admitted without objection. See TR at 6-10. Mr. Fontana did not submit a valuation disclosure or appraisal. Nevertheless, he was offered as an expert witness "in the assessment of personal property for tax purposes and the small business personal property exemption" and admitted without objection. See TR at 153-9.
[2] P-1 was offered and admitted without objection. See TR at 7-15. P-2 was offered and admitted. See TR at 15 and 106. P-3 was offered and admitted without objection. See TR at 106-11 and 153-4. P-4 was offered and admitted without objection. See TR at 111-2 and 153-4. P-5 was offered and admitted over Respondent's objection. See TR at 112-5 and 153-4. P-6 was offered and not admitted, as it was already admitted under P-5. See TR at 115-6. P-7 was offered and not admitted, as it was already part of the case file. See TR at 116-8. R-5 was offered and admitted. See TR at 136-9. Judicial notice was taken of MCL 211.9o. See TR at 172-3. R-6 was offered and admitted. See TR at 139-44. R-7 was offered and admitted for the sole purpose of identifying items only. See TR at 180-5.

Year	TCV	SEV	TV
2017	N/A	N/A	$70,000
2018	N/A	N/A	$65,000

FINDINGS OF FACT

The following facts were proven by a preponderance of the evidence (i.e., testimony and admitted exhibits) and concern only the evidence and inferences found to be significantly relevant to the legal issues involved:[3]

1. The subject property (Parcel No. 99-02-208-385) is commercial personal property located at 22932 Groesbeck Highway, Warren, Michigan.[4]
2. Petitioner, S&R Real Properties, is a limited liability company and owns the personal property at issue and the real property upon which the personal property is located.[5] Sabur Ghazi and his wife, Rokshana Ghazi are the owners (i.e., 70/30) of Petitioner, S&R Real Properties.[6]
3. Petitioner, Razeen Inc., is a corporation and leases the real and personal property, “operates” the “gas station” at that location, and filed the affidavit claiming the exemption at issue.[7] Further, Mr. Ghazi owns Petitioner, Razeen, Inc.[8]
4. Neither Petitioner owns, leases, or controls any other personal property in the City of Warren.[9]
5. Mr. & Mrs. Ghazi own several rental properties in the City of Warren containing personal property owned by or in the possession of Mr. & Mrs. Ghazi.[10]
6. The property’s values, as established by Respondent’s March Board of Review, are for the tax year at issue as follows: AV and TV – $70,000 for the 2017 tax year and $65,000 for the 2018 tax year.[11]
7. The property’s values as contended by the parties are for the tax year at issue as follows: Petitioners’ TCV – $34,478 and TV – $0.00 for both the 2017 and 2018 tax years; and, Respondent’s TCV – $140,000 and TV – $70,000 for the 2017 tax year and TCV – $130,000 and TV – $65,000 for the 2018 tax year.[12]

[3] The Tribunal has not addressed every piece of evidence or every inference that might lead to conflicting conclusions and has rejected evidence contrary to these findings.
[4] See TR at 7. See also TR at 90.
[5] See TR at 124-29. See also TR at 170-1.
[6] See TR at 124-5. See also TR at 173.
[7] See TR at 129. See also TR at 90 and P-3, P-4, and P-5 and TR at 159-61 and 170-2.
[8] See TR at 21-2, 24, 127, and 139-40. See also TR at 173.
[9] See TR at 128-9, 144, and 147-8. See also TR at 25.
[10] See TR at 139-40. See also R-6 which indicates that Mr. & Mrs. Ghazi own 22 rental units in the City of Warren. Further, see TR at 174 (i.e., “I believe 21 or 22 of them are condos and he owns the house directly behind the gas station”).
[11] See the August 3, 2018 prehearing statements and the October 2, 2018 Prehearing Summary.
[12] See the August 3, 2018 prehearing statements, the October 2, 2018 Prehearing Summary, and P-1.

ISSUES AND CONCLUSIONS OF LAW

The issues in this matter are:

> Whether Petitioner's commercial personal property qualifies for an exemption under MCL 211.9o.

MCL 211.9o is a tax exemption statute and, as such, the Tribunal is required to "strictly construe" that statute "in favor of the taxing authority."[13] That does not, however, mean that the Tribunal "should give a strained construction which is averse to the Legislature's intent." In that regard, MCL 211.9o provides, in pertinent part:

> (1) Beginning December 31, 2013, **eligible personal property** for which an exemption has been **properly claimed** under this section is exempt from the collection of taxes under this act.
>
> (2) **An owner of eligible personal property** shall claim the exemption under this section by filing a statement with the local tax collecting unit in which the eligible personal property is located . . . . The statement shall require the owner to attest that the **combined** true cash value of **all** industrial personal property and **commercial personal property in that local tax collecting unit owned by**, leased to, **or in the possession of that owner or a related entity** on December 31 of the immediately preceding year is less than $80,000.00.
>
> [Emphasis added.]

The definition of "eligible personal property" is addressed by MCL 211.9o(8)(c), which provides, in pertinent part:

> (c) "Eligible personal property" means property that meets **all of the following conditions**:
>
> (i) Is industrial personal property or **commercial personal property**.
>
> (ii) The **combined** true cash value of **all** industrial personal property and **commercial personal property** in that local tax collecting unit **owned by**, leased to, **or in the possession of the person claiming an exemption** under this section **or a related entity** on December 31 of the immediately preceding year is less than $80,000.00 . . . .

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[13] See *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 664–65; 378 NW2d 737 (1985).

[Emphasis added.]

As for the definition of "person" and "related entity," MCL 211.9o(8) also provides, in pertinent part:

> (e) "Person" means an individual, partnership, corporation, association, limited liability company, or any other legal entity.
>
> (f) "Related entity" means **a person that**, directly or indirectly, **controls, is controlled by, or is under common control with the person** claiming an exemption under this section.
>
> [Emphasis added.]

Finally, the exemption for a "eligible personal property" is an established class of exemption and, as a result, Petitioner is required to establish the property's entitlement to that exemption by a preponderance of the evidence.[14]

Here, Petitioners claim, contrary to their Petition, Motion to Amend and Prehearing Statement, that this is a "simple" case involving Respondent's wrongful denial of their request for an exemption under MCL 211.9o that is supported by Petitioners' appraisal demonstrating that Petitioners' commercial personal property "came out less than $80,000."[15]

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[14] See *ProMed Healthcare v Kalamazoo*, 249 Mich App 490, 494-495; 644 NW2d 47 (2002).
[15] See TR at 5-6. More specifically, Petitioners' Petition, Motion to Amend, and Prehearing Statement all indicate that Petitioners were appealing both the property's assessment and the denial of their request for an exemption under MCL 211.9o for the tax years at issue, as indicated in the October 2, 2018 Prehearing Conference Summary, which provides, in pertinent part:

> **Petitioner's claims or counterclaims**: "Petitioner **alleges** that the property is assessed in excess of fifty percent (50%) of its True Cash Value **for each year which is the subject of this matter**.
>
> Petitioner **also alleges** that [it] is entitled to a personal property exemption per MCL 211.9o as the combined TCV of all industrial and commercial personal property in the City of Warren that is owned or leased by Petitioner is less than $80,000 and that Petitioner filed an Affidavit of Owners Eligible Personal Property Claiming Exemption from Collection of Taxes as required, that said exemption was denied, and the denial appealed to the Board of Review which then also denied the exemption. Petitioner then appealed this denial to the MTT." [Emphasis added.]

In response to Petitioners' claims, Respondent contends that (i) "there has been no showing by Petitioner[s] as to the ownership of the subject property,"[16] (ii) "Petitioners attempt to prove their burden in this case by presenting valuation evidence that purports to value all personal property owned by Razeen Inc. and located at the Groesbeck location . . . . [and] the issue is not the value of the property at . . . [that] specific location but the value of **all** personal property **owned by**, leased to **or in the possession of Petitioners or [a] related entity** in the City of Warren as of the relevant tax days,"[17] (iii) "the testimony in this case has made clear that Petitioners' valuation evidence is unreliable,"[18] (iv) "[a]t its most fundamental level, an entity claiming the small business taxpayer exemption under MCL 211.9o must be able to present the Tribunal with a comprehensive and detailed list of all property it or a related entity owned, leased or was in possession of as of the tax dates at issue . . . . and [Petitioners] failed this . . . step and attempted to jump directly to the valuation and failed there, as well."[19] [Emphasis added.]

Although Petitioners' assessment claim was not formally withdrawn, it was not addressed by either party during the January 8, 2019 hearing. Rather, the parties focused on Petitioners' exemption claim only (i.e., a "simple" case involving Respondent's wrongful denial of their request for an exemption under MCL 211.9o). As such that claim is treated as abandoned, despite the fact that no motion to amend would have been required for the inclusion of Petitioners' exemption claim for the 2018 tax year under MCL 205.737(5)(a). In that regard, see TR at 16, which provides, in pertinent part:

> Q: **So is it true that your value is less than $80,000**?
>
> A: That's correct.
>
> [Emphasis added.]

See also TR at 70-1 (i.e., "[i]n your opinion, and what you've done and based on your experience, was the value less than $80,000"), 78 (i.e., 'the value is substantially below $80,000"), 83 (i.e., "**we're not worried about whether it was worth $30,000 or it was worth $79,000** . . . . [w]**e're valuing whether it was worth less than $80,000, irrespective of the questions asked by Respondent**"), 86-7 (i.e., "the **sole purpose** of this was to come up with a value that was less than $80,000"), and 122 (i.e., "[s]o you have **requested** an appraisal **and received an appraisal** . . . of the property **that is less than 80,000** . . . . [o]h, **yes**"). [Emphasis added.]

[16] See TR at 148-49.

[17] See TR at 150. See also 151-53 (i.e., "a related entity").

[18] See TR at 150. See also TR at 229 (i.e., "I believe the testimony today has clearly shown that not only was property omitted from that calculation but that the calculation itself is deficient and unreliable").

[19] See TR at 151. See also TR at 229-30, which provides, in pertinent part:

As for Respondent, Respondent claims that the case involves a determination as whether the commercial personal property at issue is entitled to receive an exemption under MCL 211.9o.[20] Respondent also claims that (i) "Respondent's evidence will show Razeen Incorporated applied for and was denied a small business taxpayer evidence under MCL 211.9o for the 2017 and 2018 tax years,"[21] (ii) "in order to meet its burden in this case Petitioners **must first prove that they or a related entity has reported all of the personal property it owns**, leases **or controlled within the City of Warren** as of December 31st, 2016 and '17,"[22] (iii) "[t]estimony will show that Petitioners' valuation disclosure omits more property than has already been shown to be missing,"[23] (iv) "[t]estimony will also show how the owners of Razeen Inc. own several other properties in the City of Warren that contain personal property that was not reported or disclosed to the Court in this case,"[24] and (v) "the testimony in this case is going to make it clear that while Petitioner[s] advance[] a variety of arguments none satisfy the burden of proof

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> Even in the event the Tribunal wishes to accept the . . . valuation evidence provided by Petitioners' expert, there's still the question as to what exact other property is out there. **We know other personal property was out there in the City of Warren**. **We don't know the details of that property; we don't know how much property there was, we don't know what the value of that property was**. And without having that baseline information with which to form the comprehensive list that will be used in the valuation process, the subsequent step of valuation cannot be reached.
>
> [Emphasis added.]

[20] See TR at 148. See also TR at 229-30 (i.e., "by the plain language of the statute").
[21] See TR at 149.
[22] See TR at 148. See also TR at 229 (i.e., "I believe the statute speaks for itself and . . . [the Tribunal] will make a determination as to that").
[23] See TR at 150. See also TR at 229 and 230-31, which provides, in pertinent part:

> . . . there has been testimony that . . . has conclusively proved that there was property that was improperly omitted from the calculation that should have been included. Even if the Tribunal was to say the sign was real property based on the testimony today, which is a position Respondent would disagree with, there's still the issue as to the floor safe, as to the property in the condominium units, as to the [other] signs, as to the LEDs. There's simply too many question marks as to what personal property is relevant under this - - under the MCL 211.9o and was omitted to prevent the Tribunal from forming a comprehensive list of value.

[24] See TR at 150. See also TR at 229-30

or the elements of the small business taxpayer exemption and Respondent is entitled to judgment in its favor."[25] [Emphasis added.]

In response to Respondent's claims, Petitioners contend, in their closing argument, that (i) "if you have the possession interest but that's all, you don't own it, you don't control it, **I don't see how that affects the exemption**,"[26] (ii) "what the Respondent[] . . . is saying basically you can file it by the form [i.e., the small business exemption claim form] but everything else is considered . . . . [and] that's not what 211.9o says,"[27] and (iii) "[t]hey have estimated numbers but not filed any valuation disclosure on any of the property . . . . [and] [**t**]**hey have to tax on that value which was filed, not estimates**."[28] [Emphasis added.]

As for Petitioners' claims, Mr. Ghraib submitted a valuation disclosure or appraisal that does not, despite his testimony to the contrary,[29] value all of the personal property located at 22932 Groesbeck Highway, Warren, Michigan. In that regard, Mr. Ghraib, although offered and admitted as an expert witness on the valuation of personal property, also testified as follows:[30]

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[25] See TR at 151. See also TR at 226-31.
[26] See TR at 226.
[27] See TR at 226-28.
[28] See TR at 228.
[29] See TR at 7.
[30] See TR at 49. See also TR at 20. Further, see TR at 8, which provides, in pertinent part:

> Q: And what are some of your duties at the place of employment?
>
> A: Perform real property appraisal. And **once in a while** personal property if it's involved in gas station, certain personal property, such as gas station and assisted living, **that we required to do going concern value**. [Emphasis added.]

In that regard, Appraisal Institute: The Appraisal of Real Estate (2013, 14th ed) provides at 64 the following relative to "going concern value":

> Traditionally, the term *going-concern value* has been used to describe the market value of a proven property operation, although a more accurate term is *the market value of the going concern*. The concept of the value of the *going concern* can also be applied to a proposed business operation. The current definition of going concern highlights the assumption that the business enterprise is expected to continue operating well into the future (usually indefinitely). The market value of a going concern **includes** the incremental value associated with the business concern, **which is distinct from the value of the tangible real property and personal property**. [Emphasis added.]

> "Sir, I want to state again I'm **not** [an] expert on personal property value. **I did it the way I do for gas station allocation**. I never went - - when I do gas station allocation **and I explain to the counsel when I was hired I am not expert**. I'm going to go and survey the personal property, that's the way I see it, the way I do it for every report for the bank." [Emphasis added.]

Nevertheless, Mr. Ghraib further testified that he received a handwritten list from the owner (i.e., Mr. Ghazi),[31] "went" to the "site," and created his own lists of the personal property located at that site.[32] Mr. Ghraib's lists did not, however, indicate the date the

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[31] However, Mr. Ghazi testified that he did **not** give any list to Mr. Ghraib. [Emphasis added.] Rather, he testified that he got the list from Mr. Hoffert. See TR at 91 (i.e., "the appraiser didn't ask for any list because he got it from the attorney") and 97-9 (i.e., "[b]ut I'm not positive where he got it from").
[32] See TR at 9-15, which provides, in pertinent part:

> Q: Okay. Exhibit P-2, can you tell me that, the list, is this the list that was given to you by the owner? The one that starts on the left side, eight pumps, one air/vacuum machine. It says not own[ed].
>
> A: Okay. Owner list, yes. You talking about this one?
>
> Q: Yes, I believe so.
>
> A: Yes. Yeah, it's handwritten list given to me by the owner.
>
> Q: Okay. Did you check all those things against the - - the appraisal?
>
> A: Yes, I did.
>
> Q: And what is the - - the next page is a list of the pump and the walk-in cooler and the freezer and the coffee maker?
>
> A: **I have only one page**, Counselor.
>
> [Emphasis added.]

See also P-1 at 3-4 and P-2. Further, see TR at 22-3, which provides, in pertinent part:

> Q: Are those lists meant to represent every single item of personal property that you valued in this case?
>
> A: **Almost**. **Almost**.
>
> Q: Almost?
>
> A: Yeah, almost every that I could - - I would say almost because I went on each one by one and I - - handwritten and compared it to the list was given to me.

Q: Okay. So when you say almost, does that mean that there could be property missing?

A: **I don't think so**, but to my best ability I include all of it.

Q: Okay. So there's a possibility, though, that some might have been missed?

A: **Maybe very, very small item**, such - - probably small container, probably garbage container could be missed, you know, but - - but not - - **but I would say that this is almost hundred percent all the personal property**.

Q: Okay. But if you - - if you were a hundred percent sure you wouldn't have used almost; right, you would have said, I'm certain?

A: **I'm certain that I went through all the equipment in the** - - **in the station**.

Q: Okay. Did you personally compile the list on page 3?

A: Yes.

Q: When did you compile those lists?

A: During my writing my report.

Q: Okay. Did an owner or representative of the owner assist you in preparing that list?

A: No. **Besides the list that they gave me**, no.

Q: And when you prepared that list did you only include property owned by Razeen Inc.?

A: **I include all the property that located on the site during the inspection**.

Q: Okay. But you don't know who actually owns that property?

A: **No**.

Q: So you have included leased items in this analysis?

A: **Probably** - - probably if - - **they did not give[] me a list**, **show me the list**. I just - - **I went there and I went over each one by one that located on the property**, on the - - on the premises as of May 23rd, 2018.

Q: Okay. So you don't know if some items were leased or if they were just left there by someone else. That would be beyond your knowledge?

A: **No**, I don't - -

Q: Did you ever ask about the ownership of any of these items or was that not relevant to you?

A: I asked. **They said**, **we own everything there based on the list that they gave me**.

[Emphasis added.]

items were acquired, the condition of those items, or the actual cost new of those items.[33] Rather, Mr. Ghraib made assumptions as to (i) when the items were acquired based on statements from the owner (i.e., 1997 or 1998) and his many inspections of the property (i.e., 2011, 2015, and 2018), (ii) the "economic life" or "life expectancy" of each item to excuse his failure to determine the actual condition of each item beyond the fact that they were in "working condition" as "[t]he minute personal property exceed eight to ten years that exceeds their economic life, regardless what condition they are," and (iii) the estimated cost new of the items based on the Marshall Swift "ranges," his experience in performing allocation or going concern valuations for other "new" gas stations (i.e., "market estimating") and conversations with contractors (i.e., "market inputs"). As for the depreciation of Mr. Ghraib's estimated cost new of the items or "category" of items,[34] he didn't determine the effective age of each item.[35] Rather, he

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In that regard, the list purportedly given to him by the owners (i.e., P-2) indicated certain items "not owned" by Petitioner and yet some of those items were included in the list prepared and valued by Mr. Ghraib (i.e., ATM Machine, etc.). Further, P-2 consists of two lists that were admitted based on representations that they were the lists provided by the owner. Mr. Ghraib did not, however, receive the list included in P-2. Rather, he received a single list with no values or notations. See TR at 35-6. As such, the values indicated on P-2 at 2 were not considered by Mr. Ghraib for valuation purposes. See also TR at 71-83, 91-106 (i.e., "I kind of **estimated**, you know, probably this is market value"), 119-22 (i.e., "I got rid of a lot of stuff") and 130-5. [Emphasis added.] Of interest is the fact that the list not provided to Mr. Ghraib indicates "8 Pump," while the list or lists prepared by Mr. Ghraib's indicate six pumps – 4 "MPD" Gelborce Brand for three products, 2 hoses, 2 side with credit card acceptance and 2 Diesel fuel pumps – 2 hoses. See P-1 at 3. See also TR at 96.

[33] See TR at 36-70 (i.e., "I believe since 1997, since the open of the station," "[i]t doesn't matter . . . . [i]t exceeded its economic life," "I assume all of them were acquired new," "[t]hey were in working condition, some were not . . . . [b]ut mostly in working condition," "I did not see - - when I go there, sir, I do not check the mechanical condition of the property," "[i]t's depreciated by 85 percent," "most all equipment has been there since 1997," etc.). See also TR at 71-8 and regarding different lists – one given to Mr. Ghraib for purposes of preparing the appraisal and one given to Mr. Hoffert for purposes of preparing Petitioner, Razeen Inc.'s, claim for exemption.

[34] See TR at 60, which provides, in pertinent part:

> Q: . . . . Okay. So there's **not a single piece of information in your appraisal that shown actual market transactions for any of the property you are valuing**; is that correct?
>
> A: **That's correct**.

[35] See TR at 79, which provides, in pertinent part:

determined that there was no obsolescence and applied a "straight-line depreciation" to each item or category of items based on the items' "salvage value" because they had all "exceeded" their "life expectancy," which he then adjusted by five percent (5%) to reflect the fact that the items were still in working condition (i.e., a "remaining value of 15%).[36]

> Q: Whether or not one asset is an effective age lower and another asset is an effective age higher, does that make a difference in your value?
>
> A: No, sir.
>
> Q: And why is that?
>
> A: Like I stated before, the older equipment that exceeded their economic life that's still in use, actually when I do real estate property appraisal I set value-in-use. The value-in-use - - the value we come up for the bank we tell them this is the equipment for value-in-use. For - - it's identified that what is the owner benefit from those equipment. Different than liquidation value or salvage value or depreciated value.
>
> Q: **So would I be correct to summarize your testimony that you valued everything you saw there, you compared it to your list and you valued it; is that correct**?
>
> A: **That's correct, sir**.
>
> Q: Is there anything that you didn't value? Irrespective of the differences between what you say that - -
>
> A: I - -
>
> Q: Let me finish. - - differences in value, **what you say it was on one list versus the other, you counted and valued what was there; is that right**?
>
> A: **That's correct, sir**.
>
> [Emphasis added.]

See also TR at 80-2.

[36] In that regard, see TR at 68-9, which provides, in pertinent part:

> Q: So if it was working isn't it possible that the market could value it as something other than scrap because it is still functioning?
>
> A: I did **not** say it is scrap.
>
> Q: Or salvage, I'm sorry, salvage?
>
> A: **Where did I say salvage**?
>
> Q: **You said on page 4** [of P-1], **the second paragraph, physical depreciation, according to Marshall & Swift the salvage value is about 10 percent using 85**

Said methodology (i.e., estimated versus historic original cost and estimated depreciation based on economic life versus effective age) is, however, contrary to accepted appraisal practices and demonstrates, at the very least, his expertise for valuing such property for allocation or going-concern purposes and his admitted lack of expertise for valuing such purposes for market value purposes. In that regard, there are:

> . . . **three types** or causes **of appraisal depreciation traditionally recognized by appraisers** . . . physical deterioration, functional obsolescence, and economic obsolescence. The traditional definitions of these items are as follows:[37]
>
>> Physical deterioration is the loss in value or usefulness of a property **due to the using up or expiration of its useful life caused by wear and tear, deterioration, exposure to various elements, physical stresses, and similar factors** . . . .
>
> Once the proper level of current cost new has been determined, **deductions must be made for all forms of depreciation**. Normally physical deterioration is considered first. **Physical deterioration is the loss in value or usefulness of a property due to the using up or**

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percent physical depreciation, so - - **and then you depreciate it by 85 percent**. So you're essentially saying it's salvage; correct?

A: I quoted Marshall & Swift that when the equipment exceeded their economic expectancy they have a salvage value of almost 10 percent. **I view that is still in working condition**. **It was very difficult for me to go item by item and evaluate each one condition**, so I give it a 15 percent **salvage** value, more than Marshall & Swift.

Q: Okay. But salvage - - but **because it's working it could have more value that salvage**; right, someone could buy it for more than salvage?

A: **It could be**. **It could be**.

Q: And you don't present any market data to support that it's only worth its salvage value; correct?

A: It could be.

Q: Okay. **But you don't present any market data to show it's only worth its salvage value**; is that a fair statement?

A: **It's a fair statement**.

[Emphasis added.]

[37] See American Society of Appraisers: *Valuing Machinery and Equipment* (2000) at 69-89.

> **expiration of its useful life caused by wear and tear, deterioration**. Exposure to various elements, physical stresses, the passage of time, and similar factors**. It is generally a result of the expiration of the property's useful life over time, exposure to natural elements or the process area environment, internal defects from vibration and operating stress, and similar factors** . . . The best procedure to follow when measuring physical deterioration is to rely on the facts and circumstances applicable to the subject, **particularly the age and use of the property** . . . . In its simplest form, the age/life can be used to estimate physical deterioration using the following formula:
>
> Effective age/Physical life = % of physical deterioration
>
> [Emphasis added.]

In that regard, "normal useful life" is defined as:[38]

> . . . the **estimated** number of years **that a new property will actually be used before it is retired from service**. A property's normal useful life related to how long similar properties actually tend to be used, **as opposed to the more theoretical economic life calculations of how long a property can profitably be used**. The best evidence of normal useful life is statistical or actuarial data derived from the study of properties that are similar to the subject under actual operating conditions. An asset's useful life **may be longer** than its economic life because the owner **may elect not to retire** the asset from service upon expiration of the asset's **theoretical** economic life. [Emphasis added.]

"Remaining useful life" is also defined as:[39]

> . . . the estimated period during which a property of a **certain effective age** is expected to actually be used before it is retired from service. The best evidence of remaining useful life is statistical or actuarial data derived from the study of properties that are similar to the subject under actual

[38] See *Valuing Machinery and Equipment*, *supra* at 75. See also the definition of "economic life" at 76, which provides as follows:

> . . . the estimated number of years that a new property **may be profitably used** for the purpose for which it was intended. Stated another way, economic life is the estimated number of years that a new property **can be used before it would pay the owner to replace it with the most economical replacement property that could perform an equivalent service**. Functional or economic obsolescence factors may limit a property's economic life. **An asset's economic life will often be less than its normal useful life**. [Emphasis added.]

[39] See *Valuing Machinery and Equipment*, *supra* at 75.

operating conditions. Remaining useful life can sometimes be approximated by deducting **the asset's effective age** from its normal useful like . . .

As for the "age/life formula," "effective age" is defined as follows:[40]

. . . the apparent age of a property in comparison with a new property of like kind; that is, **the age indicated by the actual condition of a property**. In estimating effective age, **the appraiser considers the effect that overhauls, rebuilds, and above-average or below-average maintenance may have on the property's current condition**. **If a property has received regular overhauls, its effective age will normally be less, often significantly less, than its chronological age**. Effective age **is often the more appropriate numerator** in the age/life ratio than its chronological age. [Emphasis added.]

While "physical life" is defined as follows:[41]

. . . the estimated number of years that a new property **will physically endure** before it deteriorates or fatigues to an unusable condition purely from physical causes, **without** considering the possibility of earlier retirement due to functional or economic obsolescence.

Given the above, Mr. Ghraib's reliance on a "theoretical economic life" is misplaced, as Petitioner, S&R Real Properties, has elected not to "retire" the property. Rather, Mr. Ghraib should have determined the depreciation based on the effective age of each item.[42] Nevertheless, Mr. Ghraib determined a depreciated value for the "C

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[40] See *Valuing Machinery and Equipment*, *supra* at 74-5.
[41] See *Valuing Machinery and Equipment*, *supra* at 75.
[42] See *County of Wayne v Michigan State Tax Comm'n*, 261 Mich App 174, 181; 682 NW2d 100 (2004), which provides, in pertinent part:

Personal property in Michigan has been valued through multiplier tables since the early 1960s. **In general**, **taxpayers report the original (historical) installed cost of their property by year of acquisition and the STC applies a multiplier that converts the original cost to a current true cash value for the property**. Until recently, the multipliers were less than one (1) and decreased as property aged. The new multipliers for T & D property are lower than the prior multipliers . . . . [Emphasis added.]

The Michigan Court of Appeals in *County of Wayne* also provides, in pertinent part:

One of the problems that we face here is that this appeal does not involve a dispute over an individualized assessment of particular property, where this Court or the MTT could state whether, in that situation, use of the tables accurately produced a property's true cash value. **The tables**, **as mass appraisal tools**, **supposedly provide an**

store equipment" of $11,073 and for the "petrol equipment" of $23,305 resulting in a total depreciated value for the personal property of $34,478.[43] That "total depreciation

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> **approximation of value that is not ultimately controlling in a dispute**; **the true cash value governs**[,] **and a party may obtain a deviation from the Assessor's Manual on the basis of a different theory of valuation that accurately and appropriately produces the true cash value**. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353, 356; 483 NW2d 416 (1992). As made abundantly clear by our Supreme Court in *Danse Corp v Madison Heights*, 466 Mich 175, 181; 644 NW2d 721 (2002), the Assessor's Manual does **not** itself have the force of law. If the methods used are not inherently in violation of Michigan law, it is not proper for the MTT or this Court to rule, in a broad-sweeping ruling outside the context of an actual assessment dispute, that they are unlawful on the basis that the methods, and ultimately the tables, do **not** produce a true cash value. We could **not** correctly reach a conclusion on the issue of true cash value **unless** appraisals were undertaken and examined with respect to all T & D property and then compared with values obtained through use of the multiplier tables. This is **not** feasible and negates the purpose of a mass appraisal tool. [Emphasis added.]

See also *Lionel Trains, Inc v Chesterfield Twp*, 224 Mich App 350, 352; 568 NW2d 685 (1997), which provides, in pertinent part:

> Petitioner argues that the STC method of assessing personal property is improper because it taxes property on the basis of the uses of the property and not on the basis of the true cash value of the property. **Petitioner offered no evidence that the STC multipliers do not calculate true cash values for personal property that are close to the values that such property would bring on the open market**. [Emphasis added.]

In that regard, Petitioners contend that Mr. Ghraib's appraisal is, as indicated herein, a market-based appraisal and not a cost-based appraisal. See TR at 84-5 (i.e., a quasi-offer of proof). However, the appraisal does not, as admitted by Mr. Ghraib, contain any "market transactional data" or, more specifically, any indication of what "such property would bring on the open market." Rather, the purported market information is limited to undocumented market information purportedly provided by contractors that purchased equipment from manufacturers for resale. See also TR at 88-9 (i.e., "**cost approach based on market inputs**" and "[w]hat the general contractor estimate I review, that's market"). [Emphasis added.] Further, see *County of Wayne* at 244-46.

[43] See TR at 15-9 and P-1 at 5, which provides, in pertinent part:

> "**Since most of the personal property** we inspected has been on the premises since 1997, its effective age exceeded it[s] total economic life, thus in my opinion the personal property depreciated value for tax year 2017 and 2018 **are almost the same**.
>
> Further this appraiser appraised the subject property's real estate market value in June 2011 and December 2015. In both previous inspections, **we almost account to the same personal property on site** (less the fast food equipment that they removed by the inspection of 2015).
>
> It is our opinion that the subject's personal property depreciated value **as of May 23, 2018** is **not** to exceed $34,478.00 for tax year 2017 and 2018." [Emphasis added.]

See also TR at 19-21, which provides, in pertinent part:

value" is not, however, a reliable indicator of value, as Mr. Ghraib failed to properly (i) consider all items of personal property owned by Petitioner, S&R Real Properties, at the

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> Q: - - right? Okay. But May 23rd, 2018 is not the actual date of value at issue in this case; correct?
>
> A: Well, I realize that there is - - I should have - - those personal property that I did appraise **I realized that they exceeded the economic life** and I state it here. **So in my opinion the two days are similar because the personal property both of them already exceeded the economic life**. It's hard for me to determine what was the value as of two thousand - - December 31st, 2016 for tax year 2017 and - - as of December 31st, 2017 for two thousand - - for tax year 2018, because the fact that all the personal property exceeded the economic life.
>
> Actually, I want to answer I was **not** trained as a personal property appraiser. I was trained to do real property, **but we were trained to do personal property for gas station as allocated value and other similar property that from time to time we appraise as the - - as going concern value**.
>
> [Emphasis added.]

Further, see TR at 27, which provides, in pertinent part:

> Q: And those are the two charts that you utilized to conclude to a true cash value as of May 28, 2018; correct?
>
> A: Yeah, **I had the cost new then I did the depreciation**.
>
> [Emphasis added.]

Mr. Ghraib's testimony regarding "cost new" was, however, inconsistent or, more specifically, contradicted by his later testimony (TR at 45-6) that provided, in pertinent part:

> Q: Are any of these original acquisition costs?
>
> A: **No**, **nobody give me the original acquisition costs**.
>
> Q: So you basically - - you made a decision as to what the original cost is or what the value - - or what the cost or value of the property was when you inspected it?
>
> A: No.
>
> Q: Because you've talked about allocation costs and you've talked about going value concern (sic), okay? So I want to know how it is that these costs equate to the original acquisition costs of these individual items . . . .
>
> A: **The cost new** that I stated on page, this **came from Marshall & Swift and from other personal property acquisitions that I review with other new-built gas station**.
>
> [Emphasis added.]

See also 46-8.

site location at issue, (ii) determine the effective age of each item based on their dates of acquisition and actual conditions, (iii) determine whether any item, particularly Petitioners' electronic equipment including, but limited, to the computer, the credit card machine, and credit card readers, etc. suffered from obsolescence given technological advances since either 1997 or 1998,[44] (iv) determine the original cost new of each item based on Petitioner, S&R Real Properties', fixed asset records or provide actual documentation providing or otherwise supporting his estimated cost new for each item, and (v) depreciate each item separately based on the item's effective age rather than utilizing a straight-line unsupported quasi-salvage value depreciation on all of the items or "category" of items (i.e., office equipment, etc.).[45] More specifically, Petitioners'

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[44] See TR at 99-104 (i.e., "the company - - credit card company, they did - - provided a **new** chip reader, like when you swipe the card . . . . [i]t didn't cost me anything . . . [t]hey just supplied **because the technology changed** . . . . [t]hey just sent me new keypad for that"). [Emphasis added.] In that regard, see also TR at 196, which provides, in pertinent part:

> Q: Okay. In your experience is it **common for gas stations to update**, sir, in pieces of personal property such as credit card readers?
>
> A: **Yes**.
>
> Q: How often would you say they update credit card readers?
>
> A: **I would say every three to five years because of the technology changing**.
>
> Q: Okay, And is that rule **for the pumps**, as well, they have credit card readers at the pumps?
>
> A: Yes.
>
> Q: Okay. So is it common for places like gas stations to update their personal property on a semi regular basis, in your experience?
>
> A: Yes.
>
> [Emphasis added.]

[45] Interestingly, Petitioners in *Detroit Lions, Inc v City of Dearborn*, 302 Mich App 676, 702; 840 NW2d 168 (2013) asserted that "the tribunal adopted a wrong principle and **committed an error of law** by valuing the personal property **in gross by category rather than** taking into account the market value **of each individual asset**." See also TR 192-95 regarding issues with Petitioner's personal property statements (i.e., "total cost," "assets placed into service . . . [in] 2015," etc.). Further, see TR at 196-98 regarding Marshall & Swift valuation of personal property based on effective age and TR at 224-25 regarding the required reporting of historic cost.

appraisal is not a reliable indicator of value for determining that the TCV of the personal property at issue was, by itself,[46] less than $80,000 for the tax years at issue.[47]

With respect to Petitioners' other witness, Mr. Ghazi testified that he also owned several rental properties in the City of Warren.[48] He also testified that some of the units

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[46] As indicated above, MCL 211.9o(2) requires the consideration of the "**combined** true cash value of **all** industrial personal property and **commercial personal property in that local tax collecting unit owned by**, leased to, **or in the possession of that owner or a related entity** . . . ." [Emphasis added.]

[47] More specifically, Petitioner has, notwithstanding the abandonment of its assessment claim as indicated herein, also failed to meet either its burden of persuasion or burden of going forward relative to that claim. See MCL 205.737(3) and *Jones & Laughlin Corp v City of Warren*, 193 Mich App 348, 354; 483 NW2d 416 (1992), which provides, in pertinent part:

> The tribunal correctly noted that the burden of proof was on petitioner, MCL § 205.737(3); MSA § 7.650(37)(3). **This burden encompasses two separate concepts**: (1) the burden of persuasion, which does not shift during the course of the hearing, **and** (2) the burden of going forward with the evidence, **which may shift to the opposing party**. *Kar v Hogan,* 399 Mich 529, 539-40, 251 NW2d 77 (1976); *Holy Spirit Ass'n For the Unification of World Christianity v Dep't of Treasury,* 131 Mich App 743, 752; 347 NW2d 707 (1984). [Emphasis added.]

Although Petitioner's attorney argued that Respondent was required to rely on the reported values rather than estimate values, said argument is contrary to law. See *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 446; 716 NW2d 247 (2006) *citations omitted*, which provides, in pertinent part:

> . . . the GPTA requires the assessor to ascertain what personal property is in his jurisdiction and assess it accordingly. In doing so, the assessor must exercise his best judgment and has many tools available to better fulfill his statutory responsibility. And while the personal property statements **greatly assist** the assessor in carrying out that responsibility, **the assessor is not bound by the taxpayer's personal property statement**. [Emphasis added.]

[48] See TR at 139-43. In that regard, see also TR 138, which provides, in pertinent part:

> Q: So your testimony is that this list [i.e., R-5] **contains every item of personal property** owned by Razeen, Inc., S&R Properties or a related entity **in the City of Warren as of December 31st, 2016 and '17**?
>
> A: **Yes**.
>
> Q: Okay. And did Mr. Hoffert ask you to prepare that list or did he ask you only for the list of items in the store?
>
> A: No, he asked me that - - list every single item in the gas station, inside, outside, you know.
>
> Q: Okay. But just at the gas station; right?
>
> A: Yeah.

are furnished with a stove and oven and that some of the units may have additional personal property (i.e., refrigerators) if such property was left by a previous tenant, which may not be owned by Mr. and Mrs. Ghazi. Such property, if left by a previous tenant is, however, in their possession.[49]

As for Respondent, Respondent did not provide any valuation evidence.[50] Rather, Mr. Fontana testified that he was involved in the decision to deny Petitioner, Razeen, Inc.'s exemption requests for the 2017 and 2018 tax years and that the requests were denied because Petitioners did not report all of the personal property owned by them and all related entities (i.e., Mr. & Mrs. Ghazi).[51] Mr. Fontana also

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[Emphasis added.]

[49] See TR at 140-2 (i.e., "[s]ome of them I bought, you know, a few") and 143, which provides, in pertinent part:

> Q: So but some come with a microwave - -
>
> A: Yes.
>
> Q: - - stove, oven, refrigerator?
>
> A: No microwave. No microwave.
>
> Q: Okay. **Stove, oven, refrigerator, would you say those are common**?
>
> A: **Yeah, those are common, you know, mostly there, yeah**.
>
> [Emphasis added.]

[50] See TR at 158. See also TR at 180-5.

[51] See TR at 163-4 (i.e., "both years it was my recommendation"). See also TR at 160, which provides, in pertinent part:

> Q: Okay. Have you ever visited the property in your role as a personal property auditor for the City of Warren?
>
> A: Yes. We've driven by on various canvasses starting in 12/31 of 2014. And then we recently visited for a walk-through on 12/31/18.

Further, see TR at 164-177, which provides, in pertinent part:

> Q: And what did your research reveal?
>
> A: If I have the sheet here, one of them - - I was able to find a listing on-line for a[n] older listing that showed that he rented the property our and - - or, it was a rental property **and it included appliances**.

credibly testified that Petitioners' appraisal did not include all of the personal property located at the gas station/convenience store and that said failure would preclude a determination as to whether Petitioners qualified for the requested exemption.[52]

[Emphasis added.]

Although **not** addressed by either party, the exemption claim at issue was filed by Petitioner, Razeen, Inc., and **not** by the owner of the property at issue (i.e., Petitioner, S&R Real Properties) even though MCL 211.9o **specifically and clearly requires the filing of such claims by the owner of the property**. [Emphasis added.]

[52] See TR at 178 (i.e., "[t]he security cameras, closed circuit TV . . . . [and] [i]f I remember right you can see a sign in one of the pictures that was a monument sign [i.e., Valero Gas Station] that stands on the front of the property"), 178-9 (i.e., "[t]here's emblems on the canopy and then there's also a sign that usually looks like a goalpost that has three LED or LCD screens that gives you the prices of what the gas is going for and stuff"), 180 (i.e., "[t]here was a Veeder-Rot system . . . . [i]t's a tank monitoring system . . . . [i]t's a computer system that is on the back wall that was not listed or put anywhere from the appraisal"), and 185-8, which provides, in pertinent part:

> Q: And again, just to be clear for the record, this list was prepared based upon your inspection of the property?
>
> A: Yes, sir.
>
> Q: And your inspection occurred when?
>
> A: **December 13th, 2018**.
>
> Q: Thank you, sir.
>
> Q: Okay. What are the items colored in yellow on that document?
>
> A: These were the appraisal items that were included in the appraisal that I reviewed.
>
> Q: And by the appraisal you reviewed, do you mean the valuation evidence submitted by Petitioners in this case?
>
> A: Yes.
>
> Q: Correct. What are the items in red?
>
> A: **Those are the omitted items**.
>
> Q: And can you clarify what you mean by omitted items?
>
> A: Yes. These were items that may have been either listed on the appraisal; for instance, the shelving racks that he had in the one column but didn't include the values.
>
> If you look at the line below there are **five window signs** that were not included, there were **three exterior signs**, there was **a monument post and the LED sign**, **canopy signs by Valero**, which shows Valero's name on it and some of them say, Diesel.

> **The Waste Management eight-yard Dumpster** that was talked about before, **the Veeder-Root tank monitoring system**, **the propane storage tank** which was out in front, **the Manitowoc ice machine**, he had discussed that they have - - **they get a Pepsi dispenser from Pepsi**. But above it is **the ice machine** that makes the ice that helps keep the drinks cold. That was not mentioned anywhere in the appraisal or anywhere else.
>
> We asked the attendant there was there **a floor space**; he said yes. We did not go back to inspect it. We just said, okay, that's fine, but they admitted there was a floor safe that is not in the appraisal. **The Lotto equipment**, which they do get from the State of Michigan. And then, as we discussed earlier, **the security and the DVR system**.
>
> Q: Okay. **And do you believe that all the items you just listed are relevant to the MCL 211.90 calculation**?
>
> A: **Yes**.
>
> Q: **And would items such as the ATM that Petitioners testified to or the EBT system, would those also be relevant to the calculation**?
>
> A: **Yes**.
>
> Q: **What about the chip racks that the distributors put in**, **would those be relevant**?
>
> A: **Yes** . . . .
>
> Q: - - do you have any knowledge that would lead you to believe that those items may have been in existence as of December 31 of 2016 and December 31 of 2017?
>
> A: The sign? **There were permits pulled on that** - - I have the date. Well, I have - -
>
> Q: **Was the permit pulled prior to December 31st, 2016**?
>
> A: **Yes**. **Yes**.
>
> Q: And you're talking about the sign - - the Valero sign that - - the monument sign that is out front?
>
> A: Correct.
>
> Q: **Do you have any knowledge that would lead you to believe that any of the other items that are noted as being omitted were in existence as of either of those dates**?
>
> A: **The Lotto equipment I believe they had mentioned has been there for quite some[]time**. **The other stuff I could not comment on**.
>
> [Emphasis added.]

See also 188-9, which provides, in pertinent part:

> Q: So for every item of property **that you found to be omitted** from Petitioners' valuation evidence, **is that personal property that would commonly be found at a gas station**?

With respect to the "related entities,"[53] Mr. Fontana testified that "[c]ommon ownership is how we would determine [a] related entity . . . as in the case of S&R Real Properties and Razeen, they are related entities" and that the condominiums are "considered a related entity" because they are owned by "the same owner."[54] As for Mr. Hoffert's erroneous argument regarding "double taxation," Mr. Fontana also correctly and credibly testified:[55]

> A: **Yes**.
>
> Q: So it's - - it's **more likely than not** if you were to walk into a hypothetical gas station that similar items would be there at that hypothetical gas station?
>
> A: **Yes**.
>
> Q: Okay. And based on your inspection of the personal property, **do you believe that Petitioners' valuation expert omitted items of personal property from his report that are relevant to the small business exemption calculation**?
>
> A: **Yes**.
>
> [Emphasis added.]

Further, see TR at 190-2 and 198-99 regarding Respondent's inability to grant the requested exemption without a complete list of all personal property owned by, leased by, or in the possession of Petitioners or any related entity.

[53] The term "related entity" is clearly defined in MCL 211.9o(8)(f). See also the definition of person in MCL 90(8)(e). In that regard, the Tribunal is required to "focus . . . on the plain language of the statute in question." See *Spartan Stores, Inc v City of Grand Rapids*, 307 Mich App 565, 569; 861 NW2d 347 (2014) citing *Fisher Sand & Gravel Co v Neal A Sweebe, Inc,* 494 Mich 543, 560; 837 NW2d 244 (2013).

[54] See TR at 200-02.

[55] See TR at 202-24 regarding ownership and omitted property, specifically, the monument post and whether the post is real or personal. See *Tuinier v Bedford Charter Twp*, 235 Mich App 663, 668; 599 N.W.2d 116, 119 (1999), which provides, in pertinent part:

> Whether property qualifies as personal or real for purposes of taxation is determined by application of the following three tests: (1) whether the property was actually or constructively annexed to the real estate; (2) whether the property was adapted or applied to the use or purpose of that part of the realty to which the property in question is connected or appropriated; and (3) whether the property owner intended to make the property a permanent accession to the realty. *Dick & Don's Greenhouses, Inc v Comstock Twp,* 112 Mich App 294, 297; 315 NW2d 573 (1982); *Sequist v Fabiano,* 274 Mich 643, 645; 265 NW 488 (1936); *Peninsular Stove Co v. Young,* 247 Mich 580, 582; 226 NW 225 (1929); *Morris v Alexander,* 208 Mich 387, 390-91; 175 NW 264 (1919). With respect to the intention of the property owner, [t]he intention which controls is that manifested by the objective, visible facts. The permanence required is not equated with perpetuity. It is sufficient if the item is intended to remain where affixed until worn out, until the purpose to which the realty is devoted is accomplished or until the item is superseded by another item more suitable for the purpose.

> "We **don't** tax the other related entity under . . . MCL 211.9o. All that number is **is for the calculation to see if they are determined to qualify for that exemption**, so we don't tax them on it. For instance, it would be a leasing company. He has leasing companies that are there. We don't tax him on the leased equipment, but those numbers go into [the] calculation to determine whether or not he is under that 80,000 true cash value." [Emphasis added.]

Given the above, Petitioners did not submit sufficient or reliable evidence to establish their entitlement to the requested exemption. More specifically, Petitioners' appraisal not only failed to include all of the personal property at issue but also failed to include or otherwise address all of the personal property owned or the in the possession of Petitioners or Mr. & Mrs. Ghazi (i.e., a related entity) located in the City of Warren.[56] Further, the appraisal also failed to properly value the personal property actually included in the appraisal, as indicated herein. As a result, Petitioners have failed to demonstrate that the TCV of their "eligible personal property" is "less than $80,000" for either tax year at issue.[57]

Based on the above, the Tribunal concludes that the subject properties' TV for the tax years at issue is as listed in the Introduction Section of this Proposed Opinion and Judgment (POJ).

PROPOSED JUDGMENT

This is a proposed decision and not a final decision.[58] As such, no action should be taken based on this decision. After the expiration of the time period for the opposing

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Unfortunately, it is not possible to determine based on the evidence whether the post itself versus the LED display included on the post is real or personal. Said determination is, however, unnecessary as the evidence in this case is insufficient to determine whether Petitioners are entitled to the requested exemption.

[56] The failure of Mr. & Mrs. Ghazi to file required personal property statements for their rental properties given Mr. Ghazi's testimony with respect to the inclusion of stoves in certain units is also problematic.

[57] The revision of Petitioners' appraisal to include all personal property located at the gas station/convenience store based on the historic cost, the property's effective age, and proper depreciation would likely indicate a "combined" TCV of at least $80,000 for the property owned by Petitioner for the tax years at issue. The "combined" TCV of the personal property **owned by or in the possession of Petitioners**, which includes, among other things, the Lotto machine owned by the State, etc. **and its related entity** (i.e., Mr. & Mrs. Ghazi) is clearly greater than $80,000 for those tax years.

[58] See MCL 205.726.

party to file a response to the exceptions, the Tribunal will review the case file, including the POJ and all exceptions and responses, if any, and:

1. Issue a Final Opinion and Judgment (FOJ) adopting the POJ as the final decision.
2. Issue an FOJ modifying the POJ and adopting the Modified POJ as the final decision.
3. Issue an Order vacating the POJ and ordering a rehearing or such other action as is necessary and appropriate.

EXCEPTIONS

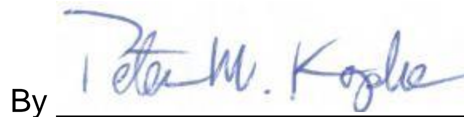
This POJ was prepared by the Michigan Administrative Hearings System. The parties have 20 days from date of entry of this POJ to notify the Tribunal **in writing, by mail or by electronic filing, if available,** if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions).

Exceptions are **limited** to the evidence submitted prior to or at the hearing and any matter addressed in the POJ. There is no fee for filing exceptions and the opposing party has 14 days from the date the exceptions were mailed to that party to file a written response to the exceptions.[59]

Exceptions and responses filed by *e-mail or facsimile* will **not** be considered in the rendering of the Final Opinion and Judgment.

A copy of a party's written exceptions or response **must** be sent to the opposing party **by mail or email, if** email service is agreed upon by the parties**,** and proof must be submitted to the Tribunal demonstrating that the exceptions or response were served on the opposing party.

Entered: May 14, 2019
pmk

By 

[59] See MCL 205.762(2) and TTR 289(1) and (2).