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

Fritz Products, Inc.,
Petitioner,
v MTT Docket No. 14-004547

City of River Rouge, Tribunal Judge Presiding
Respondent. Steven H Lasher

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Fritz Products, Inc., appeals ad valorem property tax assessments levied by Respondent, City of River Rouge, against Parcel No. 82-50-999-00-0344-500 for the 2014 and 2015 tax years. Jerome P. Pesick and Jason C. Long, Attorneys, represented Petitioner, and Laura M. Hallahan, Attorney, represented Respondent.

A hearing on this matter was held on June 1, 2016. Petitioner's witnesses were Leonard Fritz, Vice President, Fritz Products, Inc., and Brian Grzybowski, machinery and equipment appraiser. Respondent's sole witness was Aaron Powers, MMAO, current assessor for the City of River Rouge.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash values ("TCV"), state equalized values ("SEV"), and taxable values ("TV") of the subject property for the 2014 and 2015 tax years are as follows:

Parcel No.	Year	TCV	SEV	TV
82-50-999-00-0344-500	2014	$9,311,362	$4,655,681	$4,655,681
82-50-999-00-0344-500	2015	$9,186,144	$4,593,072	$4,593,072

PETITIONER'S CONTENTIONS

Petitioner contends that the evidence presented in this case supports a determination that the true cash value of the subject personal property on the assessment rolls is overstated, and therefore, should be substantially reduced for the tax years at issue. Specifically, Petitioner contends that: (i) Petitioner is a metal recycling company and their main business is recycling scrap aluminum into ingots, (ii) in early 2000, Petitioner began exploring an additional line of

business that would use high heat electricity to melt feedstock material and produce pig iron ("the cupola project"), (iii) in the fall 2013, the cupola project was abandoned, (iv) the TCV of the cupola project assets should be reduced to reflect the abandonment of the project, rendering these assets obsolete, (v) the TCV of the cupola project assets should be determined by excluding "soft costs" such as transportation of materials and engineering from total acquisition cost, and (vi) certain of the personal property costs reported by Petitioner on its personal property statements for the tax years at issue were in error, as specific assets had been disposed of, or had been idled, as of the respective assessment dates, or had been incorrectly reported by classification.

As determined by Petitioner's appraiser, the TCV, SEV, and TV for the subject property for the tax years at issue should be as follows:

Parcel Number: 82-50-999-00-0344-500

Year	TCV	SEV	TV
2014	$5,526,338	$2,763,169	$2,763,169
2015	$5,007,143	$2,503,571	$2,503,571

PETITIONER'S ADMITTED EXHIBITS

P-1 2014 Personal Property Statement, Parcel No. 82-50-999-00-0344-500.
P-2 2015 Personal Property Statement, Parcel No. 82-50-999-00-0344-500.
P-3 Asset Listing.
P-4 Photographs of the subject property.
P-5 Personal Property Appraisal, Parcel No. 82-50-999-00-0344-50, prepared by Brian Grzybowski, Delta Consulting Services, Inc., dated December 17, 2015.
P-6 Excerpts from Brian Grzybowski's work file.

PETITIONER'S WITNESSES

Leonard Fritz

Leonard Fritz, Vice President, Fritz Products, Inc., testified that: (i) he is Vice President of Fritz Products, Inc., (ii) Fritz Products, Inc. melts aluminum into ingots, (iii) he oversaw the cupola project which was ultimately abandoned in the fall 2013 without ever going into service, (iv) the cupola project would have fed iron bearing material into a shaft furnace, which was then melted down utilizing plasma electricity, resulting in the production of pig iron, (v) the cupola project was abandoned for economic reasons, (vi) the assets comprising the cupola project

cannot be adapted for other uses, and (vii) he reviewed Petitioner's asset listings as of December 31, 2013 and December 31, 2014, and agrees with Mr. Grzybowski that certain assets had either been disposed of, or idled prior to those dates, and should not have been included on the company's asset list.

Brian Grzybowski

Brian Grzybowski, Delta Consulting Services, Inc. was qualified as an expert in the appraisal of machinery and equipment. Mr. Grzybowski testified that (i) he prepared an analysis of the subject personal property and concluded to a TCV of $5,526,338 for the 2014 tax year and $5,007,143 for the 2015 tax year, (ii) his determination of the TCV of the subject property was based on the asset costs reported by Petitioner on its personal property statement, with reductions for (a) asset disposals, (b) identification of idle machinery, (c) asset misclassifications, and (d) the cupola project assets, (iii) he utilized the cost approach to value, with depreciation adjustments consistent with State Tax Commission tables, (iv) in valuing the cupola project, (a) he determined that the project was uneconomical and was never placed in service, and (b) he concluded that a prospective purchaser would ascribe no value to soft costs incurred by Petitioner in acquiring these assets, including transportation costs, engineering costs, installation costs, machinery rental, concrete machinery bases, and building structures, and (c) he concluded that "fair market value removal" should be the appropriate definition of TCV in this matter.

RESPONDENT'S CONTENTIONS

Respondent contends that the true cash, assessed, and taxable values determined by Respondent for the 2014 and 2015 tax years at issue reflect cost values reported by Petitioner on its personal property statements adjusted for depreciation in accordance with State Tax Commission tables. Specifically, Respondent contends that: (i) Petitioner has failed to carry its burden of proof in establishing the fair market value of the subject property for the tax years at issue, (ii) Petitioner's appraiser's conclusions of value are "utterly devoid of any factual support,"[1] (iii) Petitioner's appraiser failed to consider either the sales comparison approach or the income approach in determining the value of the subject property, (iv) Petitioner's appraiser

[1] Transcript, p. 127

utilizes a definition of TCV inconsistent with MCL 211.27, (v) three of the four issues identified by Petitioner's appraiser are classification issues, rather than valuation issues and should have been raised by Petitioner pursuant to MCL 211.154 or MCL 211.53a, and (vi) Petitioner's appraiser failed to provide any market evidence in support of his conclusion that "soft costs" associated with the cupola assets do not contribute value.

As determined by Respondent, the TCV, SEV, and TV for the subject property for the tax years at issue should be as follows:

Parcel Number: 82-50-999-00-0344-500

Year	TCV	SEV	TV
2014	$9,825,200	$4,912,600	$4,912,600
2015	$10,585,600	$5,292,800	$5,292,800

RESPONDENT'S ADMITTED EXHIBITS

R-1 Respondent's valuation disclosure.

RESPONDENT'S WITNESSES

Aaron Powers

Aaron Powers is the managing director of WCA Assessing and holds the MMAO assessing designation in Michigan. Mr. Powers was qualified as an expert in the assessment of personal property. Mr. Powers testified that: (i) for personal property assessment purposes, taxpayers self-report acquisition costs, which include sales tax, freight and installation of the property, by year of acquisition, (ii) he was not the assessor for the City of River Rouge for either the 2014 or 2015 tax years, and (iii) in applying the cost approach to personal property, the State Tax Commission directs assessors that acquisition costs include soft costs such as sales tax, freight, and installation.

FINDINGS OF FACT

1. The subject personal property is located at 255 Marion, City of River Rouge, Wayne County, Michigan.

2. The subject property was assessed for the tax years at issue as follows:

Parcel Number: 82-50-999-00-0344-500

Year	TCV	SEV	TV
2014	$9,825,200	$4,912,600	$4,912,600
2015	$10,585,600	$5,292,800	$5,292,800

3. For ad valorem tax purposes, personal property must be reported annually.
4. For the tax years at issue, Petitioner reported its personal property at the subject location on the prescribed Personal Property Statements, Michigan Department of Treasury Form 632.
5. For the 2014 tax year, Petitioner reported $1,738,926 on Section A, Furniture and Fixtures, $2,349,921 on Section B, Machinery and Equipment, $111,472 on Section D, Office, Electronic, Video and Testing Equipment, $942 on Section F, Computer Equipment, $2,000 on Section J, Leased Property, and $14,477,562 as Construction in Progress.
6. For the 2015 tax year, Petitioner reported $66,929 on Section A, Furniture and Fixtures, $3,992,425 on Section B, Machinery and Equipment, $111,473 on Section D, Office, Electronic, Video and Testing Equipment, $942 on Section F, Computer Equipment, and $14,179,618 as Construction in Progress.
7. In determining the TCV of the subject property for the 2014 tax year, Respondent applied the multiplier tables approved by the State Tax Commission to the costs reported by Petitioner on its Personal Property Statement.
8. In determining the TCV of the subject property for the 2015 tax year, Respondent applied the multiplier tables approved by the State Tax Commission to the costs reported by Petitioner on its Personal Property Statement, except that Respondent failed to correctly identify a change in classification of property from Furniture and Fixtures to Machinery and Equipment reported by Petitioner, resulting in a carryover of the amount of 2011 acquisition cost ($1,681,977) reported by Petitioner in 2014 to 2015, ignoring Petitioner's reporting of only $5,495 as 2011 acquisition cost for the 2015 tax year.
9. Petitioner's appraisal is a "Limited Appraisal" as it applied only the cost less depreciation approach to determine the TCV of the subject property.
10. Petitioner's appraisal determined the "Fair Market Value – Removal" of the subject property.
11. Petitioner's appraiser utilized the State Tax Commission's multiplier tables reflected on Form L-4175 in determining the TCV of the subject property.
12. Petitioner's appraiser determined that Petitioner had erroneously characterized a purchase of a rolloff container and a rebuild of an aluminum furnace in 2011 as Furniture and Fixtures, rather than Machinery and Equipment.
13. Petitioner's appraiser determined that certain personal property reported by Petitioner in its 2014 and 2015 Personal Property Statements had been disposed of by Petitioner prior to the respective assessment dates.

14. Petitioner's appraiser determined that certain personal property reported by Petitioner in its 2014 and 2015 Personal Property Statements had not been correctly reported as idle property.
15. Petitioner's appraiser determined that certain "soft costs" associated with Petitioner's acquisition of the cupola project assets should not be included in the valuation of those assets.

CONCLUSIONS OF LAW

Pursuant to Section 3 of Article IX of the State Constitution, the assessment of real property in Michigan must not exceed 50% of its true cash value.[2] The Michigan Legislature has defined "true cash value" to mean:

> [T]he usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.[3]

"True cash value is synonymous with fair market value."[4] The Tribunal is charged with finding a property's true cash value to determine its lawful assessment.[5] Determination of the lawful assessment will, in turn, facilitate calculation of the property's taxable value as provided by MCL 211.27a. A proceeding before the Tax Tribunal is original, independent, and de novo.[6] The Tribunal's factual findings must be supported "by competent, material, and substantial evidence."[7] "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."[8]

"The petitioner has the burden of proof in establishing the true cash value of the property."[9] "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

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[2] "The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not . . . exceed 50 percent . . . ." Const 1963, art 9, sec 3.
[3] MCL 211.27(1).
[4] *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353; 483 NW2d 416, 419 (1992).
[5] *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).
[6] MCL 205.735a(2).
[7] *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).
[8] *Jones & Laughlin,* 193 Mich App at 352-353.
[9] MCL 205.737(3).

the evidence, which may shift to the opposing party."[10] However, "[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question."[11]

The Tribunal is not bound to accept either of the parties' theories of valuation.[12] "It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case."[13] In that regard, the Tribunal "may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination."[14] "Regardless of the valuation approach employed, the final value determination must represent the usual price for which the subject property would sell."[15] The three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach.[16] "The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading."[17]

Because the income approach determines the present worth of future benefits of ownership, it is not typically applied to individual items of machinery and equipment. Further, neither of the parties applied the income approach to value the subject personal property. Therefore, the Tribunal finds that application of the income approach in this matter is not appropriate.

As with the income approach, neither party provided a sales comparison approach to determine the TCV of the subject personal property. As discussed previously, Respondent takes exception to Petitioner's appraiser's failure to determine the TCV of the subject property using all three recognized approaches to value. In this regard, although Petitioner's appraiser stated in his appraisal that "[m]arket research was performed considering current dealer and

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[10] *Jones & Laughlin,* 193 Mich App at 354-355.
[11] MCL 205.737(3).
[12] *Teledyne Continental Motors v Muskegon Twp,* 145 Mich App 749, 754; 378 NW2d 590 (1985).
[13] *Meadowlanes Ltd Dividend Housing Ass'n v Holland,* 437 Mich 473, 485; 473 NW2d 636 (1991).
[14] *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).
[15] *Meadowlanes*, 437 Mich at 485.
[16] *Id.*
[17] *Jones & Laughlin,* 193 Mich App at 353.

manufacturers offerings of similar and comparable assets,"[18] Petitioner's appraiser failed to attempt to provide any information that would allow the Tribunal to determine TCV using market information. In reviewing the American Society of Appraisers ("ASA") *Valuing Machinery and Equipment: The Fundamentals of Appraising Machinery and Technical Assets,* (Washington, D.C.: 3rd ed, 2011), the Tribunal finds that while the sales comparison approach "is most reliable where there is an active market providing a sufficient number of sales of comparable property that can be independently verified through reliable sources,"[19] the sales comparison approach "is not feasible when the subject property is unique."[20] Although Petitioner's appraiser's testimony regarding the lack of a market for the subject personal property was limited to the cupola assets, the Tribunal finds that neither party presented any evidence regarding the market for the subject assets that would allow the Tribunal to reach a credible conclusion as to the TCV of the subject property using the sales comparison approach.
In applying the cost approach to value personal property, the appraiser typically begins with the current replacement cost of the property being appraised and then calculates deductions for the loss in value caused by physical depreciation and functional and economic obsolescence.[21] Here, neither party provided the Tribunal with a cost less depreciation approach consistent with that discussed or prescribed by the American Society of Appraisers. Instead, Respondent simply followed guidance provided by the State Tax Commission to determine the TCV of the subject property,[22] relying on original costs reported by Petitioner by year installed, not indexed for time, with application of State Tax Commission personal property multipliers. With certain adjustments and assumptions as discussed below, Petitioner's appraiser also relied on the methodology prescribed by the State Tax Commission in determining the TCV of the subject personal property.

Respondent contends that three of the four issues identified by Petitioner's appraiser are classification issues rather than valuation issues and should have been raised by Petitioner pursuant to MCL 211.154 or MCL 211.53a. The Tribunal finds, however, that only one of the

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[18] Petitioner's appraisal, p. 2.
[19] Valuing Machinery and Equipment, p. 94
[20] Valuing Machinery and Equipment, p. 94
[21] American Society of Appraisers, *Valuing Machinery and Equipment: The Fundamentals of Appraising Machinery and Technical Assets* (Washington, DC: American Society of Appraisers, 3rd ed, 2011), p 39.
[22] Assessor's Manual, State Tax Commission, Vol. III, Ch. 15 (2003).

disputed issues pertains to classification, and it is not classification within the traditional sense of the term.[23] It is classification for purposes of determining the appropriate multiplier to use in calculating the true cash value of a group of assets under the methodology adopted by the State Tax Commission, and it is directly related to the valuation of the personal property at issue in this appeal. Further, while all disputed issues do pertain to incorrectly reported property, the filing of an appeal with the Tribunal under MCL 211.53a or the State Tax Commission under MCL 211.154 are not mandated methods for correcting such errors. The Tribunal has authority to address all issues affecting value in appeals timely filed under MCL 205.735a, and though Petitioner in this case filed a very generic petition that failed to specify misclassification and idle or non-existent asset issues, the Michigan Supreme Court has held as follows:

> The pleader . . . cannot know in advance exactly what the proofs will establish. If he could, there would often be no suit. What is required of pleadings in modern times is no more than reasonable notice of the claims made, in sufficient detail only that there be no misleading of either party nor a denial to him of information necessary to a fair preparation and presentation of his case. The pleader, in other words, need only ‘apprize plainly the opposite party of the cause of action and the claim of plaintiff.' Our court rules put it succinctly in stating that the burden upon the plaintiff is merely to plead such allegations ‘as will reasonably inform the defendant of the nature of the cause he is called upon to defend.'[24]

The subject petition states that “[t]his appeal involves issues relating to the subject property’s true cash, assessed, and taxable values, and the uniformity of the subject property’s assessment to the extent that the subject property’s true cash and assessed values overestimate the subject property’s value and therefore affect the uniformity of the assessment.” It further states that Respondent’s assessment is unlawful and invalid because it is “based on erroneous determinations of the subject property’s true cash value.” The Tribunal finds that the petition provided reasonable notice of Petitioner’s claim that the subject property was assessed in excess of 50% of its true cash value and reasonably informed Respondent of the nature of the action it was called upon to defend. As such, all of Petitioner’s valuation issues are properly considered.

[23] All of the subject property is classified as industrial personal for assessing purposes.
[24] *Jean v Hall*, 364 Mich 434, 436–38; 111 NW2d 111, 112–13 (1961) (footnotes omitted).

Cost Less Depreciation Approach

As discussed above, both Respondent and Petitioner valued the subject property utilizing the cost-less-depreciation approach as prescribed by the State Tax Commission.

1. Misclassification of $1,681,977 as Furniture and Fixtures rather than Machinery and Equipment.

   On its 2014 Personal Property Statement, Petitioner reported 2011 Furniture and Fixture acquisition costs in the amount of $1,681,977 and reported 2011 Machinery and Equipment acquisition costs in the amount of $81,729. On its 2015 Personal Property Statement, Petitioner reported 2011 Furniture and Fixture acquisition costs in the amount of $5,495 and reported 2011 Machinery and Equipment acquisition costs in the amount of $1,743,211. Thus, total 2011 acquisition costs for these two categories reported by Petitioner for 2014 was $1,763,706; however, for 2015, the total amount reported by Petitioner was $1,748,706, a $15,000 discrepancy unexplained by either party. Petitioner's appraiser stated that the $1,681,977 of acquisition cost incorrectly reported by Petitioner was a rebuild of its aluminum furnace, which the Tribunal finds that should be properly reported and depreciated as machinery and equipment. The Tribunal further finds that for the 2014 tax year, the multiplier for 2011 acquisitions is 69% for Furniture and Fixtures and 67% for Machinery and Equipment. Therefore, the Tribunal agrees with Petitioner that the TCV for the subject property for 2014 should be reduced by $33,639 (2% of $1,681,977). However, Petitioner's appraiser incorrectly concluded that because Petitioner correctly reported Furniture and Fixtures and Machinery and Equipment for 2015, no correction is warranted. Upon review of Respondent's assessment records for the subject property for the 2015 tax year, the Tribunal finds that Respondent valued $1,681,977 of 2011 acquisition costs for both Furniture and Fixtures and Machinery and Equipment, instead of the $5,495 for Furniture and Fixtures as reported by Petitioner. Therefore, the Tribunal finds that Respondent has overvalued Petitioner's Furniture and Fixtures for 2015 by $1,022,654 (the difference of

$1,676,482 multiplied by the multiplier of 61%), and that the TCV of the subject property should be reduced by that amount.

2. Personal Property reported by Petitioner on its Personal Property Statement for 2014 that was disposed of prior to the December 31, 2013 assessment date.

Petitioner's appraiser identified twelve items of personal property that were disposed of at the time of the appraisal, and ultimately determined that ten of these items were improperly reported on Petitioner's Personal Property Statement for 2014 because said items had been disposed of prior to December 31, 2013.[25] Petitioner's appraiser identified the following assets included on Petitioner's Exhibit 3, Asset Listing as of December 31, 2013 that had been disposed of prior to that date:

Item Number	Description	Year Acquired	Cost
190	Clorine Evaporator	1995	$18,240
243	Scrap Heater	2001	$105,958
255	Floor Sweeper	2004	$3,000
258	Lift Table	2004	$3,454
266	Liquid Oxygen Tank	2005	$15,000
269	Clorine Evaporator	2006	$28,475
288	Forklift	2008	$12,800
291	Forklift	2008	$28,000
304	Forklift	2011	$25,743
310	Forklift	2011	$15,000
			$255,670[26]

Respondent contends that Petitioner's appraiser failed to independently verify the disposal of these assets prior to December 31, 2013, relying instead upon the representations of Mr. Fritz and other personnel employed by Petitioner. In this regard, the Tribunal accepts the testimony of Petitioner's witness, Fritz, that each of

[25] Petitioner's appraiser testified that the other two items were disposed of in 2014 and said disposals were correctly reported by Petitioner for the 2015 tax year (Transcript, p. 73).
[26] As noted above, Petitioner's appraiser identified 12 items disposed of with a total cost of $272,441 and calculated a reduction to TCV based on that total cost by year of acquisition. However, because only 10 items were disposed of prior to December 31, 2013, the total cost for those items is $255,670. As stated by Petitioner's appraiser, the disposal of all 12 items was recognized by Petitioner prior to filing its Personal Property Statement for 2015 and therefore, no adjustment is necessary for 2015 (Petitioner's Exhibit 6, pages 10 and 11).

the above items was disposed of prior to the December 31, 2013 assessment date. The Tribunal has recalculated the TCV of the erroneously reported assets for the 2014 tax year as follows to reflect the following reduction:

Year of Acquisition	Acquisition Cost	Multiplier	TCV
1995	$18,240	.23	$4,195
2001	$105,958	.29	$30,728
2004	$6,454	.36	$2,323
2005	$15,000	.38	$5,700
2006	$28,475	.42	$11,959
2008	$40,800	.49	$19,992
2011	$40,743	.67	$27,298
	$255,670		$102,195[27]

3. Personal Property reported by Petitioner on its Personal Property Statements for 2014 and 2015 that had been idled prior to December 31, 2013.

Petitioner's appraiser determined that the Dross Cooling System was originally installed by Petitioner in 1992 at a cost of $167,000 and was replaced in 2002 at a cost of $93,016. Because this process was discontinued prior to December 31, 2013, because of high operation costs, Petitioner contends that this equipment should be reclassified as idle equipment for the tax years at issue. As a result, for the 2014 tax year, Petitioner's appraiser reduced the multiplier on the 1992 acquisition from 23% to 9.2% and on the 2002 acquisition from 31% to 12.4%, resulting in a reduction in TCV for 2014 of $40,347. For the 2015 tax year, Petitioner's appraiser reduced the multiplier on the 1992 acquisition from 23% to 9.2% and on the 2002 acquisition from 29% to 11.2%.

[27] Petitioner's appraiser concludes to an adjustment in TCV of $109,194, even though his work papers (Petitioner's Exhibit 6, p. 12) reflect a net adjustment of $102,194.

In its instructions to Form 2698, Idle Equipment, Obsolete Equipment, and Surplus Equipment Report, the State Tax Commission defines idle equipment as "equipment that has been disconnected and stored in a separate location. This equipment is not part of an existing process, not even on a standby basis." [28] Petitioner's appraiser credibly testified upon cross-examination that the Dross Cooling System was located "in a red enclosure behind the facility . . . separate from the main building." The Tribunal finds that the Dross Cooling System should have been reported by Petitioner as idle equipment for the 2014 and 2015 tax years.

4. The Cupola Project Assets

Petitioner agrees that the methodology prescribed by the STC for valuing personal property is the most reliable indicator of value for the tax years at issue in this appeal, but contends that the TCV of the cupola project assets should be reduced to reflect the abandonment of the project, rendering these assets obsolete.[29] More specifically, Petitioner contends that the TCV of the cupola project assets should be determined by excluding "soft" costs such as transportation of materials and engineering from the total acquisition cost.[30] Petitioner's appraiser indicated that removal of these costs was supported by *Lionel Trains v Chesterfield Twp*,[31] wherein the Tribunal noted that "freight and installation are properly included where it is standard practice in an industry to include such costs in arms-length market transactions," but that "the value

[28] See also Assessor's Manual, State Tax Commission, Vol. III, Ch. 15 (2003). The Assessor's Manual also provides that equipment can be "idle-in-place" if storage in a separate location is not feasible.
[29] Petitioner's appraiser acknowledged, however, that the assets, which were installed but never put into service, did not qualify as idle, obsolete, or surplus equipment under State Tax Commissions guidelines. As indicated above, "idle equipment" is "equipment which has been *disconnected* and is stored in a separate location," or equipment that is "idle-in-place." Equipment is considered "obsolete" or "surplus" if it "(1) requires rebuilding for continued economic use and is in the possession of a machine rebuilding firm on tax day, or (2) has been declared as surplus by an owner who is abandoning a process or plant and is being disposed of by means of an advertised sale or through an agent." Assessor's Manual, State Tax Commission, Vol. III, Ch. 15 (2003).
[30] Pursuant to the Assessor's Manual, "The estimated true cash value of personal property for assessment purposes is determined annually by applying the appropriate State Tax Commission personal property multipliers to the original cost, by year installed," and original costs "should include the cost of sales tax, the cost of fright, and the cost of installation." Assessor's Manual, State Tax Commission, Vol. III, Ch. 15 (2003).
[31] *Lionel Trains v Chesterfield Twp*, 9 MTTR 315 (Docket No. 219538), Issued June 12, 1996). See also *Lionel Trains v Chesterfield Twp*, 224 Mich App 350; 568 NW2d 685 (1997).

may be adjusted by market evidence on appeal to the Tribunal." Petitioner's reliance on this case is misplaced, however, because like the petitioner in *Lionel Trains*, it has failed to present any market evidence establishing that freight and installation costs should not be included in the value of the cupola assets for purposes of personal property taxation. By his own admission, there is no evidence in Mr. Grzybowski's appraisal or work file to establish that the market does not support these costs for the specific items at issue. Petitioner contends that this is because there is no market, but the evidence on record is insufficient to establish this as fact. Mr. Grzybowski testified as to his opinion in this regard, and stated, without further explanation, that he was unsuccessful in finding any market data on cupola lines and their components after spending "a significant amount of time" doing research. The submitted report provides no analysis, and absent some detail from which the Tribunal can independently arrive at the same conclusion, these unsupported declaratory statements are not persuasive. The same is true of the fact that there appeared to be no buyers for the cupola assets, as there was no testimony or evidence indicating that they had been actively marketed at any point after the project was shut down. All that was indicated was that Petitioner had been approached by a metal company about purchasing the cupola itself, and that no offer was received. Further, Mr. Fritz testified that Petitioner purchased the cupola assets from Westinghouse Plasma, General Motors, and different foundries, and this testimony suggests that in fact there is a market for these goods notwithstanding the defunct status of the cupola industry.

Petitioner's reliance on *Diversified Machine Inc v City of Montague*[32] is also misplaced, as both parties in that case relied on the ASA replacement cost approach and there was evidence establishing that freight and installation costs were not included in the market prices of the goods at issue. Further, while counsel for Petitioner argued economic obsolescence similar to that in *Diversified Machine*, its appraiser made no such finding. Mr. Grzybowski determined only that "a willing buyer would not attribute value or pay any amount to a willing seller for the seller's

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[32] *Diversified Machine Inc v City of Montague*, 26 MTTR 247 (Docket No. 370306), issued October 31, 2012.

previously incurred costs of procuring, dismantling, transporting, engineering, or installing of asset items which have contributed value and benefit to the seller only."[33] This conclusion lacks any evidentiary support, market-based or otherwise, and the underlying theory (i.e., the theory that such costs are of value only to the specific user) has been rejected repeatedly by this Tribunal, as has the fair market value definition that Petitioner's appraiser relies on to eliminate these value-to-the-user objections. "Fair Market Value – Removed" is defined by the American Society of Appraisers as "an opinion, expressed in terms of money, at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts, considering removal of the property to another location, as of a specific date."[34] Its applicability was first addressed in *AEG Mictron, Inc v City of Troy*,[35] wherein the Tribunal held as follows:

> As noted earlier in this opinion, no part of Petitioner's appraisal theory is supported by independent market data. Equally serious is that the theory of excluding certain costs (sales tax, freight, installation), and the theory of valuation of property as movable, ignore the location-specific provisions of applicable statutes. MCL 211.13, supra, as to personal property assessment, and MCL 211.27(1), supra, as to the definition of true cash value, both require property to be valued at a specific location. It is proper, therefore, that those costs appropriate to locate, install, or construct property at a specific location are also to be considered. Property, real and personal, encounter both cost-of-acquisition to secure the physical entity, and cost-of-placement to provide residence at a specific location. Those expenditures are properly considered in true cash value to the extent they are reflected in market value. Petitioner errs in rejecting consideration of certain value expenditures, without reference to market information for guidance, and without regard for the location-specific provisions of the applicable statutes. The result is to value all personal property at a near-

[33] P-5, p. 10. Obsolescence was alluded to by reference to the economic infeasibility of the operation and the lack of a market for the cupola assets, but as indicated above, Petitioner failed to meet its burden of proof on the latter issue. Even if economic obsolescence existed, removing soft costs would not be the appropriate way to account for the same. Soft costs are a wholly different issue and are properly removed from the total acquisition cost only if they are not part of the market for that particular group of goods. Indeed, an item of personal property could suffer from economic obsolescence, and yet have soft costs properly included in its true cash value.

[34] American Society of Appraisers, *Valuing Machinery and Equipment: The Fundamentals of Appraising Machinery and Technical Assets* (Washington, DC: American Society of Appraisers, 3rd ed, 2011), p 10.

[35] *AEG Mictron, Inc v City of Troy*, 9MTTR 276 (Docket No. 192743), issued May 6, 1996.

> salvage level. Petitioner's valuation theories are misguided in this matter, and fail accordingly.[36]

This holding was repeated in *MC Sporting Goods v City of Troy*,[37] and in *MC Sporting Goods v Meridian Twp*.[38] In the Meridian Township case, the Tribunal noted that this definition of fair market value is contrary to that prescribed by the Michigan Legislature:

> The gravamen of Petitioner's true cash value contention is its use of the ASA definition of Fair Market Value-Removal. The legislature defines fair market value in MCL 211.27(1), supra, and it is directly contrary to Petitioner's contention that removal value is the best indicator of market value. Even assuming Petitioner was conceptually or academically correct in its contention, Petitioner fails to present reliable and credible evidence to support its valuation methodology over those methodologies having already been accepted as conforming to legislatively prescribed definitions and requirements, such as the In-Use multipliers of the STC Manual. The Tribunal has no power to redefine the meaning of fair market value as defined by the legislature.[39]

Both of these decisions were upheld by the Michigan Court of Appeals.[40] And here, as in each of these cases, and *Lionel Trains* discussed above, Petitioner has failed to present reliable and credible evidence to support exclusion of the disputed costs. Its appraisal offers only conclusions and is void of any substantive evidence or analysis. "Petitioner's failure to prove that inclusion of these costs inflated the true cash value of its property well over fair market value [is] fatal, as petitioner, not respondent,

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[36] *Id*.
[37] *MC Sporting Goods v City of Troy*, 9 MTTR 212 (Docket No. 192750), issued July 18, 1996.
[38] *MC Sporting Goods v Meridian Twp*, 9 MTTR 360 (Docket No. 219655, issued October 31, 1996.
[39] *Id*. (citations omitted).
[40] See *MC Sporting Goods v City of Troy*, unpublished opinion per curiam of the Court of Appeals, issued August 10, 1999 (Docket No. 196918) and *Michigan Sporting Goods v Meridian Twp*, unpublished opinion per curiam of the Court of Appeals, issued April 6, 1999 (Docket No. 2003636). The Tribunal notes that Petitioner's appraiser took exception to the Tribunal's opinion in *Ralcorp Holding v City of Battle Creek*, 20 MTTR 254 (Docket No. 292696), issued April 21, 2011. Specifically referenced from that opinion was the following excerpt: "[I]deally, a manufacturer who spends $10,000 on a piece of equipment plus an additional $5,000 in freight, sales tax and installation is not likely to sell that equipment unless he can recoup $15,000 between the selling price and the financial benefit received from having used the equipment in the manufacturing process. In most cases, if there were no such financial benefit in acquiring the equipment, it would not have been purchased in the first place." Mr. Grzybowski testified that he took issue with the opinion because it's not what he feels, in his experience, accurately reflects what a purchaser would pay for. This excerpt, however, was not the Tribunal's own; the Tribunal was quoting the Court of Appeals decision in the Meridian Township case.

[bears] the burden of proving the true cash value."[41] The Court of Appeals has continually reaffirmed its prior holding that "costs such as freight, sales tax, and installation may be properly considered in calculating the true cash value of personal property, absent evidence that they do not reflect true cash value."[42]

Petitioner's appraiser also identified three entry errors on the document labeled Capital Expenditures Cupola Project. He indicated that correction of these errors resulted in a $699,536 reduction of project costs. These errors are not identified anywhere in the appraisal report, and there is no explanation as to what the errors were or what was done to correct them. Mr. Grzybowski testified, however, that the first entry error relates to the amount paid to Ingersoll Rand for compressors. It was determined that the correct amount that was paid to Ingersoll Rand was $245,082.00, a difference of $11,291.29. The second error relates to the amount paid to Westinghouse Plasma for plasma units. It was determined that the correct amount for that entry should have been $3,493,146.00, a difference of $787,569.98. Mr. Grzybowski testified that he excluded transportation costs in this instance, and that the total amount of the transportation costs that were excluded was $24,221.00. He did not exclude any other soft costs. The third error is a calculation error. The total listed for electrical is $1,203,714.25, a difference of $76,742.70. Mr. Grzybowski's testimony on this issue was credible, and excepting exclusion of transportation costs for the plasma units, the Tribunal accepts his findings with respect to these errors. Thus, a reduction of $675,314.91 is warranted.

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[41] *MC Sporting Goods v City of Troy*, unpublished opinion per curiam of the Court of Appeals, issued August 10, 1999 (Docket No. 196918).

[42] *Michigan Sporting Goods v Meridian Twp*, unpublished opinion per curiam of the Court of Appeals, issued April 6, 1999 (Docket No. 2003636), citing *Lionel Trains v Chesterfield Twp*, 224 Mich App 350; 568 NW2d 685 (1997). See also *MC Sporting Goods v City of Troy*, unpublished opinion per curiam of the Court of Appeals, issued August 10, 1999 (Docket No. 196918) and *Spartech Polycom, Inc v City of St. Clair*, unpublished opinion per curiam of the Court of Appeals, issued March 8, 2011 (Docket No. 295334).

Summary

Based on the discussion above, the Tribunal finds that the TCV of the subject personal property for the tax years at issue is properly determined by applying the State Tax Commission multipliers to Petitioner's acquisition costs by year of acquisition. The Tribunal finds that the TCV of the subject property is as follows:

	2014	2015
TCV Determined by Respondent	$9,825,200	$10,585,685
Reduced by:		
2011 Acquisition	$33,639	$1,022,654
Asset Disposals	$102,195	$0
Idle Machinery	$40,347	$39,231
Cupola Project	$337,657	$337,657
Revised TCV	$9,311,362	$9,186,144*

*Rounded up for assessment purposes

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the subject property is assessed in excess of 50% of true cash value, and that the most reliable indicator of value for the 2014 and 2015 tax years at issue is the cost less depreciation approach, as calculated by the Tribunal. The subject property's TCV, SEV, and TV for the tax years at issue are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the property's state equalized and taxable values for the tax years at issue are MODIFIED as set forth in the Introduction section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values within 20 days of entry of this Final Opinion and Judgment, subject to the processes of equalization.[43] To the extent that the final level of

[43] See MCL 205.755.

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%, and (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%.

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.[44] 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 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,

[44] See TTR 261 and 257.

there is no filing fee.[45] 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.[46] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[47]

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.[48] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[49] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[50]

By Steven H. Lasher

Date Entered by Tribunal: August 18, 2016
ejg

[45] See TTR 217 and 267.
[46] See TTR 261 and 225.
[47] See TTR 261 and 257.
[48] See MCL 205.753 and MCR 7.204.
[49] See TTR 213.
[50] See TTR 217 and 267.