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

Arena Associates, Inc.,
Petitioner,
v

MTT Docket No. 310577

City of Rochester Hills,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

FINAL OPINION AND JUDGMENT

## INTRODUCTION

The issue before the Tribunal is whether Petitioner, Arena Associates, has been lawfully taxed on certain improvements at the Meadowbrook Music Festival ("Meadowbrook"), an outdoor amphitheater located on property owned by Oakland University, by Respondent City of Rochester Hills. Petitioner, as lessee, operates and makes improvements to the amphitheater pursuant to a lease agreement entered into with lessor, Oakland University. It is the character and ownership of the improvements that are the subject of this dispute. It is Respondent's argument that the subject improvements are personal property owned by Petitioner and, as such, should be taxed accordingly pursuant to MCL 211.8(h). Petitioner contends that the improvements are real property owned by Oakland University, and as such, are exempt from ad valorem property tax pursuant to MCL 211.7l.

## PROCEDURAL HISTORY

On April 16, 2009, the Tribunal issued its Summary for Prehearing Conference, ordering that this matter shall be heard on briefs filed by the parties, and further indicating that the parties may request oral argument at the time of filing of their briefs. On July 1, 2009, Petitioner filed its Brief and Request for Oral Argument. On August 3, 2009, Respondent submitted its Brief in Response to Petitioner's brief. On August 17, 2009, Petitioner submitted its Reply Brief and a

request for oral argument. on August 28, 2009, the Tribunal entered an Order Granting Requests for Oral Argument. The hearing commenced as scheduled at 11:00 a.m. Wednesday, September 30, 2009, at the Tribunal's Lansing office.

## STIPULATED FINDINGS OF FACT

On June 1, 2009, Petitioner and Respondent filed their Joint Stipulation of Facts and Joint Exhibits. The following facts were stipulated to by the parties:

1. Oakland University is a state-supported educational institution.
2. Under the General Property Tax Act, Oakland University is exempt from ad valorem property tax on property that it owns.
3. The Meadow Brook Music Festival Premises ("MBMF") is located at Oakland University, and the land underlying the MBMF is owned by Oakland University.
4. Petitioner Arena Associates, Inc. changed its name to Palace Sports Entertainment, Inc. on November 12, 1996, pursuant to the Restated Articles of Incorporation.
5. Petitioner operates the MBMF pursuant to the "Lease of Meadow Brook Music Festival Premises," the "Sign Agreement" and the letter exercising "Option to Renew" (collectively, the "Lease").
6. Pursuant to the Lease, Petitioner has made the leasehold improvements to the MBMF.
7. These improvements were assessed and taxed by Respondent as two separate parcels; (1) Parcel 70-15-18-601-001 ("buildings on leased land"), and (2) Parcel 70-99-00-417-800 ("commercial personal"). The items and corresponding values under the "building on leased land" parcel in dispute are as follows:

    Sprinkler system
    Building improvements
    Paved parking lot
    Stairwell

All of the items in the buildings on leased land parcel have been assessed as personal property owned by Respondent and are being appealed.

8. Petitioner is also appealing a portion of the items listed in Parcel 70-99-00-417-800 ("commercial personal"). The items and corresponding values under the commercial personal parcel in dispute are as follows:

| | |
|---|---|
| Stage -Counterweight System | Seats in Meadowbrook Pavilion |
| Stage - Light and sound | Main Sign |
| Awnings | Outdoor signage renovation |
| Meadow Brook Sign/Land improvement | |

Respondent has also assessed these items as personal property owned by Petitioner.

9. Petitioner stipulated that the remaining items listed in the "commercial personal" parcel are personal property and is responsible for paying tax on such items.

Respondent contends that all items contained in both parcels are personal property, owned by Petitioner, and are subject to ad valorem property taxes. As such, the "subject improvements" in dispute are all improvements listed in "building on leased land" and a portion of "commercial personal" parcel.

**PETITIONER'S CONTENTION**

Petitioner claims that the subject improvements are real property owned by Oakland University and, as such, are exempt from property tax pursuant to MCL 211.7l. Petitioner relies on MCL 211.2(1)(a) and relevant case law in arriving at the conclusion that the subject improvements are real property. Petitioner claims that each of the subject improvements are securely attached to a building or to the land and that the removal of the subject improvements would cause damage to the building or land to which it is attached. Petitioner further contends that each of the subject improvements was specifically built to fit on and become an inherent component of the building or land to which it is attached and enhances the value of

Meadowbrook. Also, Petitioner states that the intention of Oakland University and Petitioner for the subject improvements to remain as a part of the leased property is evident through the contractual duties and limitations spelled out in the Lease. Because of the above contentions, Petitioner arrives at the conclusion that the subject improvements are permanent fixtures that constitute real property.

Petitioner contends that it is not the owner of the subject improvements. Petitioner points to applicable sections of the lease agreement between Petitioner and Oakland University which evidences Oakland University's power over the type, nature, location, operation and allocation of the expense of the subject improvements. Petitioner highlights these provisions in support of its conclusion that Oakland University has ultimate control over the subject improvements while Petitioner only has a temporal, possessory right. As a result, under the applicable Tribunal and Court of Appeals decisions, Petitioner contends that Oakland University is the owner of the improvements for property tax purposes. Thus, because the subject improvements are owned by Oakland University, the subject improvements are exempt from property taxes pursuant to MCL 211.7l. As such, Petitioner's contentions of the property's TCV, SEV and TV for the tax years at issue are as follows:

**Parcel Number**: **70-15-18-601-001 (Building on leased land)**

| Year | TCV | SEV | TV |
|---|---|---|---|
| 2004 | Exempt | Exempt | Exempt |
| 2005 | Exempt | Exempt | Exempt |
| 2006 | Exempt | Exempt | Exempt |
| 2007 | Exempt | Exempt | Exempt |
| 2008 | Exempt | Exempt | Exempt |
| 2009 | Exempt | Exempt | Exempt |

**Parcel Number**: **70-99-00-417-800 (Commercial Personal)**

| Year | TCV | SEV | TV |
|---|---|---|---|
| 2004 | 89,800 | 44,900 | 44,900 |
| 2005 | 80,540 | 40,270 | 40,270 |
| 2006 | 84,680 | 42,340 | 42,340 |
| 2007 | 75,780 | 37,890 | 37,890 |
| 2008 | 70,540 | 35,270 | 35,270 |
| 2009 | 124,220 | 62,110 | 62,110 |

## RESPONDENT'S CONTENTION

Respondent contends that in situations where tenant-installed leasehold improvements of a real property nature becomes the property of the landlord upon installation, such improvements cannot be assessed to the landlord as real property, rather, they can be assessed to the tenant as personal property under MCL 211.8(h). Respondent argues that all of the property at issue is personal property. Moreover, Respondent claims that the improvements listed in the building on leased land parcel are expressly exempt from real property classification. MCL 211.8(h) defines as personal property, "leasehold improvements and structures installed and constructed on real property by the lessee, provided and to the extent the improvements or structures add to the taxable value of the real property notwithstanding that the real property is encumbered by a lease agreement." In addition to characterizing buildings and improvements on leased land as personal property, MCL 211.8(h) requires that such property "shall be assessed to the lessee." Respondent further contends that the improvements listed in the commercial personal parcel are not fixtures, and, as such, are not real property. Respondent relies on sections in the Assessors Manual and other State Tax Commission issued documents in an attempt to prove the commercial personal property is, in fact, personal property. In particular, Respondent points to the Assessors Manual, which lists as personal property tools, dies, and jigs; leased equipment, production machinery and equipment; and furniture and fixtures. Furthermore, Respondent relies on STC Bulletin No. 8 of 2002 (issued July 17, 2002), which states that:

> Tenant installed leasehold improvements of a real property nature generally DO NOT include attached personal property such as certain security equipment and other trade fixtures, all of which can be removed and taken by the tenant when the tenant vacates the premises….[pg.5, emphasis in original].

Respondent contends that removing any of the subject property would not damage the buildings or structures to which they are attached at Meadowbrook; rather, the subject property is movable and stand alone, and not part of any system. Respondent does not dispute the function of the subject property serves the specific purpose of a performance venue. However, Respondent contends that the subject improvements are not adapted to the purpose of the realty because the subject property can serve more than just the purpose of a concert venue. As such, based on the above contentions, Respondent arrives at the conclusion that the items of property at issue are not appurtenances or fixtures. Thus, the subject improvements are not real property. Therefore, because the improvements are personal property owned by Petitioner, Respondent concludes that it has properly and lawfully taxed the subject improvements to Petitioner pursuant to MCL 211.8(h). As such, Respondent contends that the property's TCV, SEV and TV as established by the Board of Review for the tax years at issue are as follows:

**Parcel Number**: **70-15-18-601-001 (Building on leased land)**

| Year | TCV | SEV | TV |
|---|---|---|---|
| 2004 | 1,312,160 | 656,080 | 645,120 |
| 2005 | 1,312,160 | 656,080 | 656,080 |
| 2006 | 1,312,160 | 656,080 | 656,080 |
| 2007 | 1,312,160 | 656,080 | 656,080 |
| 2008 | 1,312,160 | 656,080 | 656,080 |
| 2009 | 1,312,160 | 656,080 | 656,080 |

**Parcel Number**: **70-99-00-417-800 (Commercial Personal)**

| Year | TCV | SEV | TV |
|---|---|---|---|
| 2004 | 355,800 | 177,900 | 177,900 |
| 2005 | 316,020 | 158,010 | 158,010 |
| 2006 | 293,900 | 146,950 | 146,950 |
| 2007 | 260,520 | 130,260 | 130,260 |
| 2008 | 238,580 | 119,290 | 119,290 |
| 2009 | 276,080 | 138,040 | 138,040 |

## CONCLUSIONS OF LAW

Tax exemptions are strictly construed against the taxpayer and in favor of the taxing authority. *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 753; 298 NW2d 422 (1980). Because taxation is the rule and exemption is the exception, the intention to make an exemption must be expressed in clear and unambiguous terms. *Nomads, Inc v Romulus*, 154 Mich App 46, 55; 397 NW2d 210 (1986). The Legislature is presumed to have intended the meaning it plainly expressed, and if the meaning of the statutory language is clear, judicial construction is neither necessary nor permitted. *Guardian Industries Corp v Dep't of Treasury*, 198 Mich App 363, 381; 499 NW2d 349 (1993). MCL 211.7l states that "public property belonging to the state . . . is exempt from taxation under this act." It is undisputed in this case that any property owned by Oakland University, because it is an arm of the state, is exempt from ad valorem taxes pursuant to MCL 211.7l. *Michigan State University v Lansing*, unpublished opinion per curiam of the Court of Appeals, decided February 15, 2005 (Docket No. 250813). However, the classification of the property as either personal or real is in dispute.

### *(a) Classification of Property*

This Tribunal has carefully considered the parties' briefs, pleadings, testimony, and other documentary evidence filed with the Tribunal and determines that the subject improvements are real property. MCL 211.2 defines real property as "…all lands within the state, and all buildings and fixtures thereon, and appurtenances thereto . . . ." While fixtures are included in the definition of real property, the statute is silent as to the meaning of this term. In *Continental Cablevision of Michigan, Inc v Roseville*, 430 Mich 727; 425 NW2d 53 (1988), the test to be applied in order to ascertain whether or not an item is a fixture emphasizes three factors:

> (1) Annexation to the realty, either actual or constructive;
> (2) Adaptation or application to the use or purpose of that part of the realty to which it is connected or apportioned; and

(3) Intention to make the article a permanent accession to the realty.

The third factor, intention to make the article a permanent accession to the realty, is the most important consideration. In *Continental Cablevision, supra,* at 736, the court stated that permanency of the attachment, and its character in law, do not depend so much upon the degree of physical force with which the thing is attached, or the manner and means of its attachment, as upon the motives and intention of the party in attaching it.

In this case, there is no doubt that the subject improvements are affixed to the realty and have been adapted to the use or purpose of the Meadowbrook premises. Even if the subject improvements could be removed, Petitioner is not permitted to because of the contractual obligation in the lease between Petitioner and Oakland University. Most importantly, the provisions of the lease between Petitioner and Oakland University make it clear that the subject improvements were intended by the parties to be permanent accession to the realty. Thus, we conclude that the improvements made to Meadowbrook by Petitioner are fixtures. As such, they are real property. We must now resolve the issue of whether Petitioner or Oakland University owns the subject improvements.

***(b) Ownership of the subject improvements***

Based on the parties' briefs, pleadings, testimony, and other documentary evidence filed with the Tribunal, the Tribunal finds that the subject improvements are real property owned by Oakland University.

Pursuant to the decision in *Emery Worldwide v Cascade Twp,* 2005 WL 563323 (Mich App) and the standard applied by the Court of Appeals in *Air-Flite & Serv-A-Plane v Tittabawassee Twp,* 134 Mich App 73; 350 NW2d 837 (1984) and *Skybolt Partnership v City of Flint,* 205 Mich App 597; 517 NW2d 838 (1984), Petitioner is not the owner of the subject improvements. The Michigan Court of Appeals found in *Air-Flite* and *Skybolt* that when

determining ownership of buildings constructed on leased property pursuant to a lease, buildings placed upon real property become part of the real property they are placed on. Regarding the lease in question, ownership of the subject improvements go beyond mere title, and ultimate ownership vests with Oakland University.

In particular, Paragraph 11a, p 5 of the Lease requires Petitioner to "make at least . . . $1,000,000 of approved Capital Improvements no later than the beginning of the 1998 Performance Season. [Petitioner] shall make additional approved Capital Improvements over the remainder of the ten year lease term so that total Capital Improvements shall be at least . . . $1,750,000."

Furthermore, Paragraph 25, pps 10-11 of the Main Lease requires Petitioner to "make capital improvements to the leased facilities, including structures, fixtures, and other leasehold improvements, fixtures, . . . which were installed or provided by [Petitioner] shall be left in place and shall become Oakland's property."

Moreover, the lease is replete with restrictions on Petitioner's use of the property and confers substantial power on Oakland University. Because of the obligation to leave the improvements on the premises at the end of the lease term, Petitioner, as lessee, only has an interest in that property for the lease term and Petitioner has no greater rights to the land upon improvement than any other lessee generally would have under a lease agreement. Furthermore, Oakland University has the ultimate rights to the land and right to allow or disallow any conduct or operation on the leased premises lies strictly with Oakland University. Thus, the ultimate control of this property is in the hands of Oakland University. As such, Oakland University is the owner of the subject improvements of Meadowbrook. Therefore, pursuant to MCL 211.7l and the lease, the disputed subject improvements on the Commercial Personal Property are exempt from property taxes.

***(c) Proper classification of parcels***

As a result of the Tribunal finding that Petitioner is correct in its assertion that the contested improvements listed by Respondent in the "commercial personal" parcel are real property owned by Oakland University, those items should be removed from Parcel No. 70-99-00-417-800 "Commercial Personal" and properly included in parcel 70-15-18-601-001 "Building on leased land." As such, Parcel No. 70-15-18-601-001 "Building on leased land" shall consist of the following items:

| | |
|---|---|
| Sprinkler system | Awnings |
| Building improvements | Seats in Meadowbrook Pavilion |
| Paved parking lot | Main Sign |
| Stairwell | Outdoor signage renovation |
| Stage -Counterweight System | Stage - Light and sound |
| Meadow Brook Sign/Land improvement | |

The uncontested items listed under commercial personal parcel should properly remain as part of parcel 70-99-00-417-800 "Commercial Personal" and be taxed as personal property owned by Petitioner. As such, Parcel No. 70-99-00-417-800 "Commercial Personal" shall consist of the following improvement:

| | |
|---|---|
| Limestone on Road | Landscape Construction |
| Landscape lighting and sprinklers | Landscaping |
| Parking Signage | New floor MB building |
| Loading dock/platform replacement | Pavilion |
| Dressing Room cabinets/tops | Painted steel beams |

As such, Respondent shall cause its records to be corrected to reflect the changes in the parcels.

***(d) True Cash Values, State Equalized Values, and Taxable Value for the tax years at issue***

Per MCL 203.737(3) the Tribunal is required to make an independent determination of true cash value. As stated above, the Tribunal concludes that the items listed in the "buildings on leased land" parcel are exempt from ad valorem property tax. However, the Tribunal's decision

to include the contested improvements once listed by Respondent as "commercial personal" to "building on leased land" has not only caused the make-up of the parcels to change, but it has also caused the corresponding taxable values of each parcel to change. However, after giving due consideration to the parties' briefs, pleadings, testimony, and other documentary evidence filed with the Tribunal, the Tribunal concludes that Petitioner's contentions as to the State Equalized and Taxable Value of the "Building on Leased Land" parcel are accurate. Furthermore, Petitioner's contentions of "commercial personal" parcel adequately reflect the change in True Cash Value, State Equalized Value, and Taxable Value. As such, the Tribunal finds that the True Cash Value, State Equalized Value, and Taxable Value of the subject parcels are as follows:

**Parcel Number**: **70-15-18-601-001 (Building on leased land)**

| Year | TCV | SEV | TV |
|---|---|---|---|
| 2004 | Exempt | Exempt | Exempt |
| 2005 | Exempt | Exempt | Exempt |
| 2006 | Exempt | Exempt | Exempt |
| 2007 | Exempt | Exempt | Exempt |
| 2008 | Exempt | Exempt | Exempt |
| 2009 | Exempt | Exempt | Exempt |

**Parcel Number**: **70-99-00-417-800 (Commercial Personal)**

| Year | TCV | SEV | TV |
|---|---|---|---|
| 2004 | 89,800 | 44,900 | 44,900 |
| 2005 | 80,540 | 40,270 | 40,270 |
| 2006 | 84,680 | 42,340 | 42,340 |
| 2007 | 75,780 | 37,890 | 37,890 |
| 2008 | 70,540 | 35,270 | 35,270 |
| 2009 | 124,220 | 62,110 | 62,110 |

## JUDGMENT

IT IS ORDERED that all items listed as part of "Building on Leased Land" parcel are exempt from ad valorem property taxes.

IT IS FURTHER ORDERED that Respondent shall cause its records to be corrected to reflect the newly established "commercial personal" and "building on leased land" parcels.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Final Opinion and Judgment within 90 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (ii) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (iii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (iv) after December 31, 2007, at the rate of 5.81% for calendar year 2008, and (v) after December 31, 2008, at the rate of 3.31% for calendar year 2009.

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

MICHIGAN TAX TRIBUNAL

Entered: December 2, 2009 By: Kimbal R. Smith III