

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

Richard B. & Robin M. Engel,
Petitioners,

v

MTT Docket No. 314141

Township of Richland,
Respondent.

Tribunal Judge Presiding
Rachel J. Asbury

FINAL OPINION AND JUDGMENT

ORDER DENYING RESPONDENT’S MOTION TO DISMISS

ORDER DENYING PETITIONERS’ MOTION FOR ENTRY OF FINAL
ORDER AND OTHER RELIEF

INTRODUCTION

On April 18, 2007, a hearing was held on the issue of the true cash value, state equalized value, and taxable value of the subject property for tax year 2005. Petitioners were represented by James R. Durant, J. R. Durant and Associates, P.C. Respondent was represented by James Porter, James W. Porter, P.C.

BACKGROUND

Petitioners filed a petition with the Tribunal on April 22, 2005. Petitioners appealed both of the following:

1. An Order issued by the State Tax Commission (1) determining that certain buildings on parcel number 03-23-101-092, commercial real property owned by Petitioners, had been omitted in the original valuations of the subject property for 2002, 2003 and 2004 and (2) establishing an “approved corrected valuation” that increased the assessed and taxable values of the subject property for tax years 2002, 2003, and 2004.
2. The true cash value, state equalized value, and taxable value of the subject property for the 2005 tax year.

On February 15, 2007, the Tribunal held a hearing,

solely on the issue of whether or not property was omitted in the original determination of true cash value, assessed value, state equalized value, and taxable value of the subject property for the 2002, 2003, and 2004 tax years and if property was omitted, whether or not that property was properly included in the adjusted assessments.

The Tribunal determined, and so ordered, that the issue of the subject property's valuation for the 2005 tax year would be decided in a separate hearing to be scheduled and conducted after the conclusion of the February 15, 2007, hearing. On March 16, 2007, the Tribunal issued an Order reversing the State Tax Commission order and finding that,

omitted property is property that existed at the time of assessment and was not accounted for in the assessment. Respondent has the burden of proof to show by a preponderance of the evidence that the property (i) existed at the time of assessment and (ii) was not accounted for in the assessment process.

The evidence produced by Respondent was ambiguous and subject to interpretation. The Tribunal cannot, on the evidence and testimony provided, determine that the property was omitted. The Tribunal finds that Respondent did not meet its burden of proof and did not prove, by a preponderance of the evidence, that the buildings in question were omitted from the original assessment in 2002.

Petitioners contend that the assessment of the subject property is excessive based upon their assertion that there are "comparables of other rental complexes which are assessed at a significantly lower amount"¹ within the Richland Township area.

Respondent asserts that the valuation of the subject property for 2005 was made in accordance with standard assessing practices and accurately reflects the true cash value of the subject property.

¹ Petition

Petitioners' contentions of the property's true cash value, state equalized value, and taxable value are:

Parcel Number: 03-23-101-092

Year	TCV	SEV	TV
2005	\$795,000	\$397,500	\$349,713

Respondent's contentions of the property's true cash value, state equalized value, and taxable value are:

Parcel Number: 03-23-101-092

Year	TCV	SEV	TV
2005	\$1,115,800	\$557,900	\$508,256

The subject property is commercial property known as Spruce Lane Apartments located at 9160 East D Avenue, Richland, Michigan 49083. Based on the information available from

Respondent's property record cards, the property consists of 11 buildings.

1. Building 1 is an eight-unit two story residential apartment building built prior to 1997.
2. Building 2 is a four-unit one story residential apartment building built prior to 1997.
3. Building 3 is a nine-stall garage built prior to 1997.
4. Building 4 is a four-stall garage built prior to 1997.
5. Building 5 is a three-stall pole barn built prior to 1997.
6. Building 6 is a four-unit one story residential apartment building built in 1997.
7. Building 7 is a four-unit one story residential apartment building built in 1997.
8. Building 8 is an eight-stall garage built in 1997.
9. Building 9 is an eight-stall garage built in 1997.
10. Building 10 is a three-stall pole barn built in 2004.²
11. Building 11 is a four-unit one story residential apartment building built in 2004.³

At the outset of the hearing, Respondent moved that Petitioners' Exhibit #2, the appraisal by Cherney and Associates, "be stricken and that expert testimony by Mr. Cherney be precluded."⁴

Respondent argued that Exhibit P2-2 "says that this appraisal was prepared as of January 6th,

² Petition

³ Respondent's Exhibit R6-4

⁴ Transcript page 9, ll 18-19

2006.”⁵ Respondent further argued that Exhibit P2-6 contains the statement “based on my investigation and analysis of pertinent cost, market and income data, and subject to the limiting conditions and assumptions included as part of this appraisal report, the subject property’s market value of the fee simple interest, as of January 6, 2006, and which is its current value, was estimated to be: \$675,000.”⁶ Respondent asserted that Petitioners’ appraisal was flawed “because it was based on the wrong date. And they didn’t say that once or twice or three times but they said it five or six times.”⁷ Additionally, Respondent argued that the cover letter, added “months after the exchange date”⁸ stated that the “appraisal report was done for the years ending December 31st, 2005 and December 31, 2006, and for both of those taxable years, and as of those dates.”⁹ Respondent asserts that “under MCL 211.2, tax day, the only day that’s at issue here, isn’t either of these dates either. Tax day for 2005 is December 31, 2004.”¹⁰

In response to the motion, Petitioners’ counsel first argued that “if [Respondent’s] counsel had an objection to this exhibit, I believe the proper method of approaching this topic would have been a motion in limine...”¹¹ and asked the Tribunal to require Respondent’s counsel to file a brief and allow Petitioners’ counsel to file a brief in response to the motion. In response to the issue of the valuation dates, Petitioners’ counsel argued that “[t]he valuation date... was decided by Mr. Cherney on December 31, 2005 and December 31, 2006. If he did the appraisal for 2005, as of December 31, 2005, that would be the tax year in which we are appealing,”¹² and added

⁵ Transcript page 5, ll 19-20

⁶ Transcript page 5, l 22-page 6 l4; Petitioners’ Exhibit P2-6

⁷ Transcript page 7, ll 19-22

⁸ Transcript page 7, l 25

⁹ Transcript page 8, ll 1-4; Petitioners’ Exhibit P2-1

¹⁰ Transcript page 8, ll 5-8

¹¹ Transcript page 9, ll 22-25

¹² Transcript page 10, ll 15-21

“[t]he appraisal dates are the appraisal dates. Mr. Cherney did them at the time that he did them.”¹³

Respondent moved “to dismiss the 2005 tax year in that Petitioners at this point don’t have any evidence as to value for the 2005 tax year.”¹⁴

Before ruling on that motion, the Tribunal asked that current assessment values be provided on the record. Based upon the Tribunal’s Order of March 16, 2007, Respondent had adjusted the state equalized values and taxable values for the 2002 through 2004 tax years. Respondent’s counsel testified that a new building had been constructed in 2004 and “based upon the State Tax Commission guidelines, the assessor then proceeded to add a pole barn with an SEV of \$10,100 and a building, four-unit building with a \$122,500 SEV that results in the 2005 SEV being \$557,900, taxable \$508,256 based on CPI.”¹⁵

The parties agreed that those additions were “completed and should have been on the assessment roll for 2005.”¹⁶ Petitioners proceeded with their case.

PETITIONERS’ CONTENTIONS

Petitioner, Richard Engel, was called to testify. Petitioner testified that he is “the acting manager of Spruce Lane Apartments and I own a new Chevrolet automobile dealership.”¹⁷ Petitioner further testified that “I owned a company that had a licensed building contract. I had a builder’s

¹³ Transcript page 11, ll 12-14

¹⁴ Transcript page 13, ll 23-25

¹⁵ Transcript page 15, ll 2-8

¹⁶ Transcript page 19, ll 6-7

¹⁷ Transcript page 23, ll 13-14

license through my company.”¹⁸ Petitioner has been involved in the development business and has “developed houses, plats, commercial building for approximately fifteen years.”¹⁹ Petitioner testified to his history of development and building in the area. Petitioner was asked the question, “[a]s an apartment manager and owner, do you do market surveys to determine the amounts of rents that are being charged in the area?”²⁰ Petitioner testified “I went to each apartment and asked for the rent and looked at each apartment. So if that’s considered a survey, yes. I went and found out firsthand on all of the apartments.”²¹ Petitioner further testified that he is “quite familiar” with the “components of what an appraiser looks at when he does his appraisal.”²²

On cross examination, Petitioner agreed with the statements that he “had absolutely no education with regard to assessing real property,” and “no education with regard to performing appraisals....”²³ Petitioner further agreed that basically he is a businessman and his “bottom line was whether or not it had the value that you felt was a fair value when you bought property or developed it....”²⁴

RESPONDENT’S CONTENTIONS

Respondent renewed its motion to dismiss and objection under MRE 701.²⁵

¹⁸ Transcript page 23, ll 17-19

¹⁹ Transcript page 23, ll 22-23

²⁰ Transcript page 28, ll 3-5

²¹ Transcript page 28, ll 6-10

²² Transcript page 28, ll 20-22

²³ Transcript page 29, ll 5-9

²⁴ Transcript page 29, ll 21-23

²⁵ MRE 701. If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

FINDINGS OF FACT

The Tribunal finds that Petitioners submitted as Petitioners' Exhibit #2, an appraisal prepared by Charles R. R. Cherney, State Certified R.E. Appraiser and Alex R. Cherney, State Certified Limited Appraiser of Cherney and Associates.

The appraisal submitted by Petitioners was prepared "as of January 6, 2006." Petitioners' appraisers, in their transmittal letter, states "the subject property's market value,... as of January 6, 2006, and which is its current value, was estimated to be: \$795,000."²⁶

A witness may not testify as to the value of property without submission of a valuation disclosure containing that person's value conclusions and the basis for the conclusions. TTR 283 MCL 211.2(2) provides:

The taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day, any provisions in the charter of any city or village to the contrary notwithstanding. An assessing officer is not restricted to any particular period in the preparation of the assessment roll but may survey, examine, or review property at any time before or after the tax day.

The appraisers state their conclusions of value and effective date of those conclusions, January 6, 2006, on 6 different pages.²⁷ Even taking into account that January 6, 2006 is only 6 days after tax day, it is six days after tax day for the 2006 tax year. The only tax year at issue in this matter is the 2005 tax year. Although Petitioners' appraisers stated a contention as to value for the 2007 tax year, adding the 2008 tax year in his cover letter, Petitioners' appraisal did not reach a conclusion as to value for that tax year.

²⁶ Petitioners' Exhibit P2-1

²⁷ Petitioners' Exhibit 2-1, 2-6, 2-9, 2-46, 2-56, 2-64, and 2-65

When asked to clarify which tax year the conclusions of value were applicable to, Petitioners' Representative stated, "the appraisal dates are the appraisal dates."²⁸ Petitioners did not file, nor request of the Tribunal an opportunity to file, a supplemental valuation disclosure for the tax year at issue or time adjustments for sales or rents to reflect that the information used in the appraisal was applicable to tax years after the tax year at issue.

The Tribunal finds that the valuation disclosure was not prepared for the year in question and the sales information provided was not properly adjusted to reflect the subject property's value for the relevant tax year. Further, Petitioners' appraisers failed to provide sufficient independent information to allow the Tribunal to make a reliable determination of market value from those sales. The appraisers cannot offer an expert opinion and certified determination of a value conclusion, other than that included in the appraisal. The Tribunal must accept what is written and disclosed. The appraisal was for the 2007 tax year on its face. Petitioners' Representative's argument that Respondent should have disclosed this flaw to him prior to hearing does not change the effective dates of the evidence Petitioners presented.

Respondent moved to strike Petitioners' Exhibit P2 and to preclude the testimony of Petitioners' appraiser.²⁹ In granting Respondent's motion, The Tribunal stated that the "appraisal of the value of the land [is] more than a year after the appropriate tax date."³⁰ The Tribunal further ruled that the hearing would proceed allowing Petitioners to present any additional evidence of value. The taxable value of the subject property for the 2004 tax year having been determined pursuant to

²⁸ Transcript page 11, ll 12-13

²⁹ Transcript page 9, ll 17-19

³⁰ Transcript page 11, ll 20-22

the Tribunal's Order entered March 16, 2007, there remained the issue of the additions that the parties agreed had been made during calendar year 2004.

Petitioner Robert Engel testified to his knowledge, as a developer and businessman, of property in the Richland area. Mr. Engel stated that Petitioners' Exhibit P1 contained the documentation of surveys he conducted relative to comparable properties.³¹ Petitioners' Exhibit P1 consists, for several properties, of

1. A typed, unsigned, undated one page description of the property with the 2002 through 2004 SEV for each, with a handwritten notation "based on printout on 02/09/05"
2. Pictures of the property
3. A "History printout for Richland Township" for the property listing the taxable value, assessed value and summer and winter taxes for the 1995 through 2005 tax years
4. For some properties a property record card is included for tax years 2001 through 2004 with handwritten notation and values for "SEV per unit"

Petitioners' Exhibit P1-68 contains a description of the subject property and the statement "Rent \$650.00." There was no notation as to the date for which that rental amount applied.

Petitioners' Exhibit P1-73 is a page labeled "Income Stream 2004." The subject property and five other apartments are listed, giving a number at a value. It appears that this indicates the number of apartments rented at a specific rental amount for each apartment property. These amounts are totaled for a total per month. This document is not signed or dated and it is unclear what the source of information is or who gathered the information.

Petitioners' Exhibit P1-78 is a proposal from Stan Norris Construction dated 10/21/04 for "A 50' x 120' – 60' 14' high – 60' 8' high with the following: frame only material and labor." The

³¹ The Denz, Lake Point Apartments, Hickory Hills, M-89 Storage, and Rolling Pines

proposed cost was \$35,500.00. The Tribunal does not know what this document purports to demonstrate and is unable to determine its applicability to valuation.

Mr. Engel extrapolated a taxable value and state equalized value per unit for each of the properties from the above information and concluded that the evaluations that were made by Diane Gajor are extremely inconsistent.”³² Further, the taxes he paid on his property were excessive in relation to the amount paid by other apartment properties. The documentation he provided was of taxes due and paid, of assessed and taxable value, and was for years prior to the tax year here at issue. There were no comparisons made between the properties; no adjustments to account for different uses, size, location, etc; or conclusions made as to the application of this information to the valuation of the subject property. The documents were not authenticated in any way and the Tribunal does not find them a reliable indicator of value for the subject property. Although Petitioner, Mr. Engel, could demonstrate his knowledge of property management and development, Petitioner is not an appraiser and not adequately qualified to make conclusions of value.

Although Petitioners’ appraisers did not testify, the Tribunal did review the data contained in the appraisal. It was noted in the “Description of Improvements and Condition” portion of the appraisal that a 4-unit building was completed in 2004. This unit is a portion of the additions added by Respondent to the assessment of the subject property for the 2005 tax year. Petitioners’ appraiser states that “the cost approach was not used in this appraisal.”³³ The appraisal does not provide the Tribunal with an estimate as to the value of the pole barn or new 4-unit building, construction of which was completed in 2004.

³² Transcript page 42, ll 6-7

³³ Petitioners’ Exhibit P2-48

The appraisal does include an estimate of value based upon the income approach to valuation. The appraisers determined that the “economic rent for the subject was its current state/contract rents of \$575 to \$700 per month with an estimated average rent for appraisal purposes of \$650 per month.”³⁴ Projected Gross Income was extrapolated from this average. There are no supporting documents for the operating expenses but it appears that the figures were determined based on estimates from other properties. Additionally, although the other apartments in the Richland area, based on the appraisers’ survey, experienced a 100% occupancy rate, a 15% vacancy rate was used based upon the larger Kalamazoo market. The appraisal includes a summary indicating that the appraisers’ “office has regularly surveyed apartment rental rates in Kalamazoo and Battle Creek metropolitan marketplace.”³⁵ Further, in summary form, it is noted that the information has been gathered on an ongoing basis since 1995. However, there are no dates as to when the specific information for this appraisal was gathered or to what years the data provided applied. The conclusion of value based upon the income approach is stated without effective date.

Petitioners’ appraisers also included an estimate of value based on a market sales approach. Four comparable properties were included. Comparable 2 had a sale date of 1/19/2000 and comparable 3 had a sale date of 12/15/1999. These sales are five and six years prior to the tax year at issue thus making questionable their reliability. The appraisers did provide summary data and a separate “market data adjustments” chart.³⁶ The appraiser used a per unit value for comparison, not differentiating between one-bedroom units, two-bedroom units, and townhouse

³⁴ Petitioners’ Exhibit P2-50

³⁵ Petitioners’ Exhibit P2-49

³⁶ Petitioners’ Exhibit P2-62 and 63

units. Further, a 5% time adjustment was made for the 1999 and 2000 sales and no explanation was given to how this adjustment was determined. Adjustments for condition ranged from 10% to 135%, again without explanation as to the basis for how this percentage was derived. An “adjusted mean value... per unit” was determined which was then further adjusted because the “subject was in good condition and an attractive one and two story design.”³⁷ There was no explanation why this second adjustment for condition was made.

Based on the above analysis, the Tribunal finds this information, and the conclusion reflected in the appraisal, to be unreliable indicators of value for the tax year at issue. The Tribunal finds that Petitioners did not meet their burden of proof to establish values for these additions other than the values asserted by Respondent.

The Tribunal finds Respondent’s assessment to be a reliable indicator of value. Respondent’s property record card for the subject property indicates that the 2004 true cash value of the subject property was \$425,300 and the 2004 taxable value was \$367,211. Respondent determined, based upon State Tax Commission guidelines, that the state equalized value of the pole barn completed in 2004 was \$10,100. Further, Respondent determined, based upon State Tax Commission guidelines, that the state equalized value of the new four-unit building completed in 2004 was \$122,500.

On December 1, 2008, Petitioners filed a motion for entry of final order and other relief.

Petitioners assert that

³⁷ Petitioners’ Exhibit P2-63

- “At the 4-18-07 hearing the Tribunal found that the Petitioners did not meet their burden of proof as to the 2002; 2003 and 2004 taxes.
- “... each year since the original hearing on February 15, 2007, the Respondent has continued to assess the Petitioners property as if there was omitted property, notwithstanding the attached Exhibit 1.”
- “... this intentional behavior has caused the Petitioners to file two additional tax appeals, ...”
- “Petitioners are fearful that the Tax Assessor, Diane Gajor, will again improperly assess Petitioners property unless the final Order is entered.

Petitioners ask the Tribunal to enter its final order and further to direct “the Township Assessor to revise her assessment for the parcels for 2007 and 2008, taking into account this Court’s previous rulings relative to omitted property.”

On December 15, 2008, Respondent filed an answer to the above motion. Respondent

- “...denies that it has continued to assess Petitioners’ property as if there was omitted property. Respondent returned the assessment rolls for the tax years at issue to the same levels that they were at prior to the addition of the alleged omitted property.”
- “Subsequent to the 2004 tax year,... additional new construction was added to the tax rolls for subsequent years.”

The Tribunal finds that the final opinion and judgment in this matter being here issued, Petitioners’ motion for entry of such order is moot. The Tribunal further finds that a final opinion and judgment on the issue of the State Tax Commission’s determination of omitted property for the 2002, 2003, and 2004 tax years, on which a hearing was held February 15, 2007, was entered by this Tribunal on March 16, 2007. The Tribunal finds the above-captioned matter relates to the true cash value, state equalized value, and taxable value of the subject property for the 2005 tax year only. As noted in Petitioners’ motion, appeals of the assessment of the subject property for subsequent tax years have been filed and are the issues in separate and distinct cases with the Tribunal. The Tribunal took no testimony or evidence as to the subsequent years and cannot resolve those appeals in this decision.

CONCLUSIONS OF LAW

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

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

Under MCL 205.737(1), the Tribunal must find a property's true cash value in determining a lawful property assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal may not automatically adopt a respondent's assessment but must make its own findings of fact and arrive at a legally supportable true cash value. *Pinelake Housing Cooperative v Ann Arbor*, 159 Mich App 208,220; 406 NW2d 832 (1987); *Consolidated Aluminum Corp v Richmond Twp*, 88 Mich App 229, 232-233; 276 NW2d 566 (1979). The Tribunal may accept one theory and reject the other, it may reject both theories, or it

may utilize a combination of both in arriving at its determination. *Meadowlanes*, at 485-486; *Wolverine Tower Associates v City of Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980). A similar position is stated in *Tatham v City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982): The Tax Tribunal is not required to accept the valuation figure advanced by the taxpayer, the valuation figure advanced by the assessing unit, or some figure in between these two. It may reject both the taxpayer's and assessing unit's approaches.

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

The evidence of value Petitioners attempted to submit in this matter was for tax years other than the tax year at issue, 2005. The appraisal offered by Petitioners established an opinion of value effective as of January 6, 2006. A letter dated October 24, 2006 and signed by Charles R. R. Cherney, submitted as part of Petitioners' Exhibit #2, stated that the appraisal was done for years ending December 31, 2005 and December 31, 2006, reiterating effective dates for tax years other

than the one tax year at issue. Without further supplementation, amendment, or adjustment, the tax years to which the appraisal applies are the 2006 and 2007 tax years. Petitioners offered no such supplemental appraisal evidence.

Based upon the file, the applicable statutory and case law, and the testimony and evidence presented, the Tribunal concludes that Petitioners have failed to meet their burden of proof to establish that the true cash value, state equalized value, and taxable value of the subject property are other than that as assessed. Therefore, the Tribunal concludes that the true cash value, state equalized value, and taxable value, as assessed for the 2005 tax year, are affirmed as follows:

Parcel Number	Year	TCV	SEV	TV
3903-23-101-092	2005	\$1,115,800	\$557,900	\$508,567

JUDGMENT

IT IS ORDERED that the properties' state equalized, assessed and taxable values for the subject property shall be those set forth in the *Conclusions of Law* portion 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 assessed and taxable values in the amounts as finally shown in the "Final Values" section of this Opinion and Judgment, subject to the processes of equalization, within 20 days of the entry of this Order. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Final Opinion and Judgment within 90 days of the 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 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 Opinion and Judgment. As provided by 1994 PA 254 and 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest shall accrue at an interest rate set monthly at a per annum rate based on the auction rate of the 91-day discount treasury bill rate for the first Monday in each month, plus 1%. After December 1, 1995, interest shall accrue at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue: (i) after December 31, 2001, at the rate of 5.56% for calendar year 2002; (ii) after December 31, 2002 at the rate of 2.78% for calendar year 2003; (iii) after December 31, 2003, at the rate of 2.16% for calendar year 2004; (iv) after December 31, 2004, at the rate of 2.07% for calendar year 2005; (v) after December 31, 2005, at the rate of 3.66% for calendar year 2006; (vi) after December 31, 2006, at the rate of 5.42% for calendar year 2007; (vii) after December 31, 2007, at the rate of 5.81% for

calendar year 2008, and (viii) after December 31, 2008, at the rate of 3.31% for calendar year 2009.

IT IS FURTHER ORDERED that Respondent's Motion to Dismiss is DENIED.

IT IS FURTHER ORDERED that Petitioners' Motion for entry of final order and other relief is DENIED.

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

MICHIGAN TAX TRIBUNAL

Entered: January 30, 2009

By: Rachel J. Asbury