

STATE OF MICHIGAN  
DEPARTMENT OF LABOR AND ECONOMIC GROWTH  
MICHIGAN TAX TRIBUNAL

Richardson Foods,  
Petitioner,  
v  
Township of Commerce,  
Respondent

MTT Docket No. 315352  
Tribunal Judge Presiding  
Rachel J. Asbury

**OPINION AND JUDGMENT**

A hearing on the above-captioned case was held December 13, 2006 on Petitioner's appeal of the valuation of personal property. Myles Hoffert and Kimbal R. Smith, III represented Petitioner and Gregory Need represented Respondent.

**FINAL VALUES**

Based upon the evidence and testimony presented at the hearing, the Tribunal concludes that the true cash value ("TCV"), assessed value ("AV"), state equalized value ("SEV"), and taxable value ("TV") for the subject property for tax years 2005 and 2006, is as follows:

Parcel No. 99-80-005-022

Tax Year	TCV	AV	SEV	TV
2005	\$210,000	\$105,000	\$105,000	\$105,000
2006	\$216,940	\$108,470	\$108,470	\$108,470

**BACKGROUND**

This action involves certain personal property located in the Township of Commerce that is identified by tax parcel number 99-80-005-022. Petitioner, in a timely fashion, invoked the jurisdiction of the Tribunal for tax years 2005 and 2006. At issue are the property’s TCV, AV, SEV and TV for the 2005 and 2006 tax years.

Information relevant to the property’s contested true cash, assessed and taxable values is as follows:

**Year**     **ID Number**  
 2005     99-80-005-022

	TCV	SEV	TV
Petitioner’s Contention	\$ 63,700	\$ 31,850	\$ 31,850
Respondent’s Contention	\$210,000	\$105,000	\$105,000
Amount in Contention	\$146,300	\$ 73,150	\$ 73,150

**Year**     **ID Number**  
 2006     99-80-005-022

	TCV	SEV	TV
Petitioner’s Contention	\$ 59,367	\$ 29,684	\$ 29,684
Respondent’s Contention	\$216,940	\$108,470	\$108,470
Amount in Contention	\$157,573	\$ 78,786	\$ 78,786

**THE SUBJECT PROPERTY**

The subject property is located at 8115 Richardson Road, Township of Commerce, Michigan, 48390. The subject property is comprised of personal property of a varied nature including light

machinery and equipment, appliances, fixtures, and other miscellaneous property associated with the restaurant business.

#### PETITIONER'S CONTENTIONS

Richardson Foods contends that it purchased the subject property in May 2004. Petitioner seeks a reduction in the assessment of its personal property. In establishing the TCV, Petitioner contends that the proper valuation is derived by looking at the market to establish TCV.

Petitioner alleges that the property is assessed in excess of fifty percent (50%) of its TCV for the 2005 and 2006 tax years.

#### PETITIONER'S EXHIBITS

Petitioner, in support of its position, presented the following exhibits, which were admitted without objection:

- (1) Agreement of Sale for real estate, dated May 21, 2004.
- (2) Purchase Agreement with C.J. Brewing Company, Inc. including equipment lists.
- (3) 2005 Personal Property Statement and Depreciation Schedule.
- (4) 2006 Personal Property Statement and Depreciation Schedule.

#### PETITIONER'S WITNESS

Petitioner presented one witness, Mr. Kausey Asker, president and sole shareholder of Richardson Foods. (TR p 7, ll 19-22) Mr. Asker stated that the purchase of the subject property was not the first of its kind that he has negotiated with regard to various locations. (TR p 8, ll 15-19) Mr. Asker additionally stated that, in the past, he has been involved with the Jet's America franchise business (TR p 8, ll 3-11) and that he engages in such purchases for a living.

(TR p11, ll 9-10) Mr. Asker testified that he negotiated the purchase of the equipment at issue, the agreement in evidence, and the terms of that agreement. (TR p 9, ll 4-9) He testified that the purchase price of \$100,000 was allocated \$5,000 for goodwill, \$25,000 for the non-compete agreement, and \$70,000 for fixtures. (TR p 9, ll 14-20) Mr. Asker was asked if, based upon his experience, the purchase price was correct and whether it was an overpayment or underpayment. Mr. Asker indicated that he believed the purchase price was correct and that it was “pretty accurate.” (TR p 10, ll 9-15) Mr. Asker testified that the purchase price of the personal property, as it was allocated, is what he and the seller, an experienced food-related business owner, “felt” the equipment was worth. (TR p 10, ll 2-7) Petitioner’s counsel then stated that any testimony provided by Mr. Asker is based on his personal experience, as Mr. Asker had not been qualified as an expert. (TR p 11, ll 7-9)

Under cross-examination, Mr. Asker stated that in addition to his position with Richardson Foods, he is also the managing member and sole owner of Commerce Management, which owns the real property where the personal property is located. Respondent asked Mr. Asker whether he had purchased new equipment for the facility. Mr. Asker explained that he had done some upgrading and maintenance, especially of some ovens, but had made no purchases. (TR p 17, ll 6-13) Mr. Asker was unable to point out the pieces of upgraded or maintained equipment he referenced on the list attached to the purchase agreement, Petitioner’s Exhibit 2. (TR p 18, ll 6-13) Mr. Asker could not explain the origin of the equipment lists, who compiled them, or what they represented. (TR p 23, ll 8–25) Mr. Asker conceded that there were no values attached to any of the pieces of equipment on any of the lists. (TR p 24, l 15) Mr. Asker testified that CJ Brewing Company, the seller, sold the personal property to Mr. Askar as Richardson Foods and

the real property to Mr. Asker as Commerce Management. (TR p 24 ll 14–p 25 l 4) Mr. Asker then testified that the negotiations for the purchase of the real property and the personal property were two separate transactions that took place on different dates. (TR p 25, ll 14-22)

#### RESPONDENT’S CONTENTIONS

Respondent maintains that the subject property had been properly assessed at 50% of its TCV for the years in question and that the TV had been properly determined. Respondent notes that Petitioner did not submit an appraisal report as to the subject property and that Petitioner did not timely submit a personal property tax statement for the 2006 tax year.

#### RESPONDENT’S EXHIBITS

Respondent, in support of its position, presented the following four exhibits, which were admitted without objection:

- (1) Valuation Disclosure of Respondent, Richardson Foods v Township of Commerce Docket No. 315352.
- (2) Supplemental Valuation Disclosure of Respondent, Richardson Foods v Township of Commerce Docket No. 315352.
- (3) Valuation Disclosure of Respondent, Commerce Management v Township of Commerce Docket No. 315353.
- (4) Supplemental Valuation Disclosure of Respondent, Commerce Management v Township of Commerce Docket No. 315353.

#### RESPONDENT’S WITNESS

Respondent presented one witness, Barbara L. McDermott, a Level III Assessor for Oakland County Equalization (“OCE”). (TR p 32, ll 8-11) Ms. McDermott testified that she became familiar with the subject property through litigation and that the assessor who was responsible

for doing the canvassing that included the subject property discussed the property with her. (TR p 33, ll 24-25, p 34, ll 1-3) Ms. McDermott testified that she had personally inspected the property. (TR p 34, ll 4-10) Ms. McDermott indicated that the valuation disclosure established the TCV of the property as of December 31, 2004 for the 2005 tax year as \$210,000. (TR p 37, ll 4-6, ll 9) Ms. McDermott testified that she usually relies on the taxpayer's personal property tax rendition and when audits are conducted for equalization purposes, the taxpayer's financial records are requested to support the costs as reported on their personal property tax statements. (TR p 34, ll 16-24) Ms. McDermott discussed the valuation process indicating that the assessment was based on audits that were conducted for equalization purposes for Oakland County and on the original financial statements of the owner. (TR p 37, ll 11-16) Ms. McDermott explained that the prior owner's personal property tax statement is used to determine original cost. (TR p 38, ll 12-13) The State Tax Commission ("STC") multipliers were applied to those costs each year to establish the assessment. (TR p 38, ll 17-20) The STC multipliers are appropriate if there is nothing unique about Petitioner's business or property. (TR p 40, ll 13-15) Ms. McDermott indicated that neither allocated costs nor "used" costs are permitted in the grid. (TR p 41, ll 10-12) The STC multipliers were not designed to be implemented on "used" costs or on allocations. Respondent did not use Petitioner's contended value of \$70,000 because this figure was a reflection of assets purchased used and is an allocated figure. (TR p 46, l 25, p 47, ll 1-4) Ms. McDermott testified that Petitioner did not timely file a 2006 personal property tax statement and that the "county's procedure, if a taxpayer is to file late, is to place an assessment on the property , which was done." TR p60, l 17-19) Ms. McDermott further testified that Petitioner's assessment for the 2006 tax year increased slightly "approximately by inflation for our presumption that the ongoing business purchased some new assets." (TR p 60, l 22-23)

Petitioner cross-examined Ms. McDermott on her personal knowledge of the condition of the subject property on December 31, 2004. Ms. McDermott was asked to explain the composite dollar amounts from asset lists compiled as part of the audit. She was unable to break the costs down. (TR p 70, ll 8-25, p 71, ll 25) Petitioner went on to ask Ms. McDermott whether she had any evidence in her records to lead her to believe that the sale to Petitioner was not an arm's length sale, to which Ms. McDermott responded she did not know and that she had nothing in her possession indicating that the transaction was either conducted at arm's length or not at arm's length. (TR p 77, ll 10-18)

#### **APPLICABLE LAW**

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735(1); MSA 7.650(35)(1). The Tribunal's factual findings are to be supported by competent, material, and substantial evidence. *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Dept of Treasury*, 185 Mich App 458, 462-463; 452 NW2d 765 (1990). "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence." (Citations omitted) *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

"The petitioner has the burden of establishing the true cash value of the property . . . ." MCL 205.737(3); MSA 7.650(37)(3). *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379; 576 NW2d 667, (1998) "This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing; and (2) the burden of

going forward with the evidence, which may shift to the opposing party.” *Jones & Laughlin* at 354-355, citing: *Kar v Hogan*, 399 Mich 529, 539-540; 251 NW2d 77 (1976); *Holy Spirit Ass’n for the Unification of World Christianity v Dept of Treasury*, 131 Mich App 743, 752; 347 NW2d 707 (1984).

“There are three traditional methods of determining true cash value, or fair market value, which have been found acceptable and reliable by the Tax Tribunal and the courts. They are: (1) the cost-less-depreciation approach, (2) the sales-comparison or market approach, and (3) the capitalization-of-income approach.” *Meadowlanes Limited Dividend Housing Assn v City of Holland*, 437 Mich 473, 484-485; 473 NW2d 636 (1991); *Antisdale* at 276-277, n1. The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in marketplace trading. *Antisdale* at 276, n1. “Variations of these approaches and entirely new methods may be useful if found to be accurate and reasonably related to the fair market value of the subject property.” *Meadowlanes* at 485, referencing *Antisdale* at 277, n1. It is the duty of the tribunal to make an independent determination of TCV, utilizing an approach which provides the most accurate valuation under the circumstances of the individual case. *First City Corp v City of Lansing*, 167 Mich App 248; 421 NW2d 651, (1988)

Under MCL 205.737(1); MSA 7.650(37)(1), the Tribunal must find a property’s true cash value in determining a lawful property assessment. *Alhi Development Co v Orion Twp*, 10 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal may not automatically accept 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 is not bound to accept either of the parties' theories of valuation. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 377 NW2d 908 (1985). 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." True cash value is synonymous with fair market value. *WPW Acquisition Co. v City of Troy*, 250 Mich App 287; 646 NW2d 487, (2002)

In *Electronic Data Systems Co v Twp of Flint*, MTT Docket No. 235159, October 15, 1998, the Tribunal stated that adjustments or considerations for costs such as sales tax, transportation and installation should be reflected in true cash value/fair market value. The theory of excluding such costs 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 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 considered. Both cost of acquisition to secure property

and cost of placement to place the property at a specific location, are properly considered in true cash value to the extent they are reflected in market value.

### **FINDINGS OF FACT**

The case file, coupled with the evidence submitted and the testimony at trial, warrants this Tribunal's decision that Respondent's determination of the TCV is the best indication of value.

Based on the case file, the testimony, and the evidence presented before the Tribunal, the Tribunal finds that the subject personal property was purchased on May 21, 2004, pursuant to a valid Asset Purchase Agreement ("Agreement"). Petitioner alleges that a reduction in the assessment of this property to the cost paid by Petitioner is warranted based on Mr. Asker's experience in buying and selling similar businesses and the market for similar purchases.

However, the Tribunal finds that the evidence presented by Petitioner is insubstantial.

According to the court in *Great Lakes Div of Nat'l Steel Corp, supra*, the burden is on Petitioner to establish true cash value of property. MCL 205.737. This means that it falls on the taxpayer's shoulders to demonstrate to the Tribunal why his or her valuation is proper and should be accepted by the Tribunal. Even after a party demonstrates their formulation of valuation, the Tribunal need not accept either of the parties' theories. *Teledyne, supra*. Rather, the Tribunal's duty is to make an independent determination of TCV that provides the most accurate valuation under the circumstances of the individual case. *First City Corp, supra*. The presentation of Petitioner's exhibits and the testimony of one witness, Mr. Asker, fall short of meeting Petitioner's burden of proof.

The Tribunal finds that Petitioner did not submit reliable documentation to support its \$70,000 contention of value. While various items of personal property are listed in the exhibits, to attach value to any of the items the Tribunal would be forced to speculate as to the quantity and value of each item. Petitioner would have the Tribunal rely solely on Mr. Asker's testimony. The Tribunal must be able to support its findings based on substantial evidence. *Antisdale*.

Furthermore, according to the court in *Jones & Laughlin Steel Corp*, "[s]ubstantial evidence must be more than a scintilla of evidence." Petitioner comes before the Tribunal claiming that the valuation should be changed without the support of an independent appraisal.

The Tribunal also finds that there exists a discrepancy between Mr. Asker's testimony and the documentary evidence. Mr. Asker stated that the negotiation of the purchase of the real and personal property were two separate transactions, negotiated on different dates. However, the exhibits submitted reveal that the sales agreements are both dated May 21, 2004.

### **CONCLUSIONS OF LAW**

Based on these facts and circumstances, the Tribunal finds that Petitioner has failed to meet its burden of proof as to the valuation of the subject property. Therefore, the Tribunal finds that Respondent's determination of true cash value of the personal property, as derived through the use of the State Tax Commission's multiplier tables, results in the best indicator of value. The Tribunal finds the 2005 true cash value, state equalized value, and taxable value for the subject property is \$210,000, \$105,000, and \$105,000 respectively and that the 2006 true cash value, state equalized value, and taxable value for the subject property is \$216,940, \$108,470, and

\$108,470 respectively. These findings are set forth in the “Final Values” section of this Opinion and Judgment.

### **JUDGMENT**

IT IS ORDERED that the true cash value and the lawful assessment for the subject property in the 2005 tax year at issue shall be \$210,000 and for the 2006 tax year shall be \$216,940 as set forth in the Final Values section of this Opinion.

IT IS FURTHER ORDERED that the officer charged with keeping the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the above within 21 days of the entry of this Order.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Order within 20 days of the entry of this Order. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Order. 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, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for calendar year 1998, (iv) after December 31, 1998, at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999, at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000, at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001, at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ix) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (xi) after December 31, 2005, at the rate of 3.66% for calendar year 2006, and (xii) after December 31, 2006, at the rate of 5.42% for calendar year 2007.

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

MICHIGAN TAX TRIBUNAL

Entered: February 26, 2007

By: Rachel J. Asbury, Tribunal Judge