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

Jilbert Dairy, Inc.,
Petitioner,

v

MTT Docket Nos. 320999 and 321000

City of Marquette,
Respondent.

Tribunal Judge Presiding
Patricia L. Halm

FINAL OPINION AND JUDGMENT

On November 2, 2007, the Tribunal issued an Opinion in this matter captioned "Final Opinion and Judgment." However, in spite of the caption, the Opinion was not final as the Opinion did not contain a conclusion as to the subject properties' values. Pursuant to the Opinion, Petitioner was required to "file and serve on Respondent a proposed judgment within 21 days" of entry of the Opinion. The proposed judgment was to list each tax year at issue, the parcel numbers and the correct values pursuant to the Opinion's findings of fact and conclusions of law. The Opinion also stated that Respondent could file objections to Petitioner's proposed values, which it did on December 5, 2007. Thereafter, the parties exchanged additional documentation and on March 10, 2008, notified the Tribunal that they had reached an agreement as to the subject properties' values based on the Tribunal's findings of facts and conclusions of law. These values are:

Parcel No. 9641257

Tax Year	Prior Assessed	Revised Assessed	Prior Taxable	Revised Taxable
2002	$159,400	$100,397	$159,400	$100,397
2003	$184,350	$102,047	$184,350	$102,047
2004	$198,700	$106,928	$198,700	$106,928

Parcel No. 9641258

Tax Year	Prior Assessed	Revised Assessed	Prior Taxable	Revised Taxable
2002	$508,800	$442,316	$508,800	$442,316
2003	$576,600	$508,115	$576,600	$508,115
2004	$564,350	$494,850	$564,350	$494,850

Therefore,

IT IS ORDERED that the "Final Opinion and Judgment" entered by the Tribunal on November 2, 2007, shall be corrected to reflect that it was an interim Opinion and Judgment.

IT IS FURTHER ORDERED that the parties' agreement as to the subject properties' values, as stated herein, are ADOPTED as the Tribunal's conclusions of the subject properties' values.

IT IS FURTHER ORDERED that the parties' agreement is incorporated into the Tribunal's November 2, 2007 Opinion and is adopted as the Tribunal's 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 assessed and taxable values as finally shown herein within 90 days of the entry of this Final Opinion and Judgment, subject to the processes of equalization. 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; and (vii) after December 31, 2007, at the rate of 5.81% for calendar year 2008.

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

MICHIGAN TAX TRIBUNAL

Entered: July 9, 2008

By: Patricia L. Halm

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

Jilbert Dairy, Inc.,
Petitioner,

v

MTT Docket Nos. 320999, 321000

City of Marquette,
Respondent.

Tribunal Judge Presiding
Jack Van Coevering

FINAL OPINION

A hearing was held in this matter on August 21 and 22, 2007, Jack Van Coevering, Tribunal Chair, presiding. Petitioner was represented by attorney Joseph Falcone. Respondent was represented by attorney Richard Reed. Following the conclusion of proofs, the parties were permitted to submit post-hearing briefs on the only remaining legal issue. Briefs were filed on or about October 10, 2007. The facts, as described below, are supported by substantial evidence and are largely undisputed.

Petitioner, Jilbert Dairy, Inc., with headquarters in Marquette, Michigan, manufactures and distributes dairy products throughout northern Michigan and eastern Wisconsin. Until 2007, when the company was sold to Dean Foods, Petitioner was family-owned and operated. For all practical purposes Petitioner has never filed any personal property tax statement or paid any personal property taxes.

Respondent, City of Marquette, hired Tax Management Associates to conduct a personal property tax review of its tax rolls. During the review, Tax Management Associates discovered Petitioner and, in 2004, audited Petitioner for the remaining open years: 2002, 2003 and 2004. The audit largely consisted of a comparison of financial statements, asset summaries and depreciation schedules. Respondent's assessor pursued relief under MCL 211.154 with the State

Tax Commission establishing Petitioner's unreported taxable personal property as:

Tax Year	True Cash Value	Assessed Value	Taxable Value
2002	$1,017,600	$508,800	$508,800
2003	$1,153,200	$576,600	$576,600
2004	$1,128,700	$564,250	$564,350

Petitioner timely appealed to the Tribunal raising five general issues. Two issues – the number of dairy crates existing on December 31 of each tax year and the elimination from Respondent's assessment of scrapped or replaced items of personal property – were resolved by the parties at the hearing. (T 186-188). Petitioner unilaterally withdrew a claim regarding the cost of piping installation. The Tribunal asserted that it had no jurisdiction of Petitioner's fourth claim, namely, that items of omitted personal property were in fact real property. See MCL 211.34(c)(6). In addition, Respondent's assessor testified that no item of personal property that Respondent had identified in the audit as "omitted" had been previously assessed and taxed on the real property roll.

The remaining disputed issue concerned Petitioner's claim that a number of items of personal property were located outside of Respondent's taxing jurisdiction and, as such, were beyond Respondent's taxing authority. Petitioner's accountant acknowledged that Petitioner had failed to file or pay any personal property statement – whether in Marquette or outside Marquette – during the years in issue. Respondent's assessor confirmed that other taxing jurisdictions had no record of receiving any personal property statement or payment of personal property taxes regarding the items of omitted personal property for the years in issue.

Petitioner's owner and manager, John Jilbert, testified that Petitioner provided structural units to its customers that permitted them to store and sell Petitioner's dairy products. These units largely consisted of cabinets, vending machines, dairy dispensers and coolers. Mr. Jilbert testified that some of the units would remain at the customer's business location for as many as seven to eight years while other units were placed for seasonal use. Petitioner frequently moved

units from a customer's location to its headquarters in Marquette and then placed them at another customer's location. At any point in time a number of the items were in storage at Petitioner's headquarters. Initially, Petitioner had no method of tracking the location of the property but developed an "Equipment Loan Agreement" form (Respondent's Exhibit 6) to track the location. Petitioner prepared a summary of the various items with locations but Mr. Jilbert could not state whether the item had been moved. Respondent's assessor identified 25 items from Petitioner's summary that were located in Marquette:

> 5005, 5017, 5026, 5031, 5038, 5044, 5050, 5052, 5058, 5067,5075, 5079, 5081, 5083, 5088, 5149, 5161, 5164, 5173, 5174, 5176, 5177, 5182, 5192, 5201, 5208, 5206, 5234, 5249.
>
> (T 176-179)

In their post-hearing briefs, both parties have agreed that the above items were in the City of Marquette for the tax periods in question. Petitioner went further. In its post-hearing brief, Petitioner conceded that an estimated ten ice cream freezers, listed as small caravels, at a cost each of $568 were stored at Petitioner's headquarters. The Tribunal further accepts that asset 5194 is located on the Jilbert premises.

At the hearing, Respondent's auditor explained that he had recommended that all the items should be sourced to Petitioner's headquarters in Marquette for the purpose of the ad valorem tax. The auditor explained that many taxpayers requested this treatment as it made payment and collection simpler. No lease documents or rental agreements were introduced.

Petitioner contends that the General Property Tax Act permits either the owner or the person possessing the property to file personal property tax statements and to pay the tax. From this, Petitioner invites a number of assumptions: first, that the Tribunal should assume, given the law albeit contrary to Petitioner's own behavior, that the persons utilizing Petitioner's personal property in other taxing jurisdictions filed appropriate statements and paid the tax; and, second, that the Tribunal should also assume that the tax would be imposed twice: once by the persons possessing the property and again by Petitioner; and, third, that the Tribunal should,

alternatively, assume that imposing the tax on Petitioner would rip tax revenue from these smaller deserving taxing units and wrongfully award Respondent.

In response, Respondent argues simply that since its assessments and the actions of the State Tax Commission are presumed correct, Petitioner's assumptions do not amount to much of anything, least of all a preponderance of evidence. Petitioner, a delinquent taxpayer by any standard, has, according to Respondent, miserably failed to carry its burden of proof.

Much can be written about the state of laws and facts that do not exist. The law here is unambiguous:

> (1) All goods and chattels located in a local tax collecting unit other than that in which the owner of the goods or chattels resides shall be assessed in the local tax collecting unit in which the goods or chattels are located.
>
> MCL 211.14(1)

This law does not allow central assessment of personal property let alone allow each taxing jurisdiction to determine that it is the "center." The authority to tax is strictly construed against the taxing unit and in favor of the taxpayer. *Evanston YMCA Camp v State Tax Commission,* 369 Mich 1; 118 NW2d 818 (1962). This precept preserves a constitutional boundary between tax enforcement agencies and the legislature, whose power to tax cannot be surrendered. Mich Const. Art 9 §2. Respondent's theory is not the law and that it served as a basis for the assessment does not magically convert it into law through the allocation of the burden of proof.[1] See *Gainey Transportation Services, Inc v Dep't of Treasury,* 209 Mich App 504, 505-510; 531 NW2d 774 (1995); see also *Danse Corp v City of Madison Heights,* 466 Mich 175, 181; 644 NW2d 721 (2002).

The facts are clear. The Tribunal finds that only those items that have been shown to be located in Marquette are subject to tax. Those items are the ten small freezers that Petitioner identified and the items referenced by asset number and agreed to by the parties. See above.

[1] Respondent's cases are no longer precedent given the change in statute.

The Tribunal recognizes the irony that a vendor could sell milk to school children yet deprive their school districts of money for school books. No excuse justifies Petitioner's thirty-year failure to file or pay personal property taxes. The inequity, however, does not enlarge Respondent's limited authority to tax beyond its statutory mandate or relieve Respondent of the arduous task of ascertaining the taxability of each item of personal property.[2] Therefore,

IT IS ORDERED that Petitioner shall file and serve on Respondent a proposed judgment within 21 days of this order.

IT IS FURTHER ORDERED that the proposed judgment shall, for each tax year at issue and each tax parcel, list the correct values.

IT IS FURTHER ORDERED that Respondent shall have 14 days after service of the proposed judgment to notify the Tribunal that it agrees or disagrees with the values proposed by Petitioner. Respondent shall set out its proposed values.

IT IS FURTHER ORDERED, in the event of a disagreement, a hearing may be held to resolve the parties' differences.

MICHIGAN TAX TRIBUNAL

Entered: November 2, 2007 By: Jack Van Coevering

[2] The burden illustrates a number of aspects of the tax on personal property, such as: the fact that Respondent did not discover the failure to file or pay taxes for 30 years, that the parties are disputing the location of over 50,000 milk crates hidden in dorm rooms and strewn across the wilderness of the Upper Peninsula, or, that neither party was able to provide a method for estimating the location of the items of personal property. The cost of compliance is significant and directly paralleled by the cost of enforcement and the nearly predictable resulting uneven enforcement.