

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

Chatham Capital Corporation,
Petitioner,

v

MTT Docket No. 411654

City of Ypsilanti,
Respondent.

Tribunal Judge Presiding
Preeti Gadola

OPINION AND JUDGMENT

ORDER OF DISMISSAL

Introduction

Petitioner, Chatham Capital Corporation, appeals the ad valorem property tax assessments levied by Respondent, City of Ypsilanti, against the personal property fine artwork reported by Petitioner for the 2006-2010 tax years (parcel number: 11-99-21-340-003). Petitioner alleges that the property was over-assessed due to a mutual mistake of fact under MCL 211.53a and it is entitled to a refund of the excess tax paid. Petitioner filed its appeal with the Tribunal on October 18, 2010 and paid its 2006 winter tax bill on February 7, 2007 and its 2006 summer tax bill on February 26, 2008. Petitioner was represented by Jason Conti, attorney, and Scott Aston, property tax consultant, and Respondent was represented by Nevin Rose and Claudia Rose, attorneys. Mr. Randall Pittman, Chairman of Chatham

Capital Corporation, testified on behalf of Petitioner and Diane Mathews, Personal Property Examiner, and Douglas Shaw, Assessor, testified on behalf of Respondent. The hearing of this matter occurred on June 18, 2013.

The Tribunal finds that no mutual mistake of fact occurred under MCL 211.53a. Therefore, the Tribunal has no jurisdiction over the tax years at issue under that statute. The Tribunal further finds that it has no jurisdiction over the 2006-2010 tax years under appeal pursuant to MCL 205.735, MCL 205.735a, or MCL 211.53b.

PETITIONER'S ADMITTED EXHIBITS

P-1 Originally filed 2006 Personal Property Tax Return

P-2 2006 Return – Supporting fixed asset listing

P-3 Originally filed 2007 Personal Property Tax Return

P-4 March 18, 2008 Board of Review Appeal Letter

P-5 March 2008 Board of Review Decision

P-6 Revised fine art schedule supporting amended 2006-2010 true cash value

P-7 Pictures of subject artwork

P-8 Pictures of subject artwork

PETITIONER'S CONTENTIONS

Petitioner contends that it over-reported the value of the subject personal property fine artwork on its 2006-2010 personal property statements. Petitioner contends that an asset list dated January 27, 2006, which is also the date Petitioner's personal property statement was filed in 2006, was the basis of the incorrect filing.

Petitioner contends that the personal property statement implies that all of the subject artwork was located in Ypsilanti when some of it was actually located in California or in other locations in Michigan. Petitioner appealed to the Respondent's March 2008 Board of Review with a personal property statement and fine arts schedule listing what artwork, in actuality, was located in Ypsilanti, and the Board lowered the assessed value ("AV") and taxable value ("TV") of the property from \$3,013,500 to \$262,800 based on the personal property statement and schedule. Petitioner contends, at this time, that the March, 2008 Board of Review also over-assessed the subject property as Petitioner further refined its fine art schedule to reflect that a portion of the artwork listed on that schedule was also located outside of Ypsilanti. Petitioner contends that the AV, state equalized value ("SEV") and TV of the property should be \$194,800 for all the tax years in question, based on a mutual mistake of fact by Petitioner and Respondent with

regard to what assessable personal property artwork was actually located in Ypsilanti in the tax years in question.

PETITIONER'S WITNESS

Randall Pittman

Mr. Pittman testified that he is the Chairman of Chatham Capital Corporation (“Chatham”). He testified that Chatham is a holding company that owns about thirty subsidiaries, mostly related to health care. (Transcript, p. 22) Chatham has an office located at 135 S. Prospect in Ypsilanti, MI and an executive office referred to as “UTC,” which stands for University Towne Centre, located in San Diego, California. (Transcript, p. 23) Mr. Pittman testified that Chatham reports on its books and records pieces of fine artwork located in Ypsilanti, MI; Holland, MI; Bay Harbor, MI; UTC; or at his residences in California. Mr. Pittman testified that all of the art work is reported by Chatham as personal property because “we have a single insurance policy to cover all of the art in all of the locations that Chatham has and that I have personally.” (Transcript, p. 23)

Mr. Pittman was presented with an asset report of artwork that he testified was prepared for insurance purposes but relied upon by Chatham’s subsidiary’s (Forest Health Services) staff accountants to report as personal property on its 2006 and

2007 personal property statements filed with the City of Ypsilanti. He testified that the asset report appeared to be a listing of art and art purchases with some individual listings and some listings in a group. He testified that the book value of the artwork presented on the asset report was \$4,980,991 and that he was primarily responsible for the purchase of the artwork. (Transcript, pp. 24-25) Mr. Pittman testified that, as of 12/31/05 through 12/31/09, that not all of the artwork that makes up the \$4,980,991 was located in Ypsilanti, MI. (Transcript, pp. 26-27)

Mr. Pittman testified that Chatham's 2006 and 2007 personal property statements listed an acquisition cost of the subject property artwork of \$4,980,991. He testified regarding the asset list for that amount, that \$215,180 of the \$4,980,991 in artwork was purchased in 1998 for his home in Holland, MI (which was clarified to be Park Township, MI). He testified that in 1999 he thought that \$57,737 of the \$4,980,991 in artwork was also purchased for his home in Park Township, and in 2000, he thought \$34,200 of the \$4,980,991 in artwork was purchased for the offices in Ypsilanti. Mr. Pittman further testified that in 2001, he thought art purchases of \$261,602 out of \$4,980,991 were for Ypsilanti; in 2002, he thought most of \$1,266,404 out of \$4,980,991 in art was purchased for Chatham's California offices; and in 2003, \$2,602,322 out of \$4,980,991 in artwork was

purchased for California offices and homes. Mr. Pittman testified that in 2004, he thought \$529,929 out of \$4,980,991 in artwork was purchased for California, and in 2005, \$13,617 out of \$4,980,991 in artwork was purchased “for things other than Ypsilanti.” (Transcript, pp. 29-30) When asked to give an example of “things other than Ypsilanti,” Mr. Pittman responded: “Well, I have homes and properties in Michigan outside of Ypsilanti, and I have homes and offices in California and have businesses around the country, so, you know, when you ask me is this exactly for one place, I can’t say it was for this building.” (Transcript, p. 31)

Mr. Pittman identified, from photographs taken for insurance purposes, artwork in P-7 and P-8 as paintings, prints, and sculptures located in California and other parts of Michigan, but not in Ypsilanti, MI, during the tax years in question, which were part of the \$4,980,991 listed on the 2006 and 2007 personal property statements and list of assets. (Transcript, pp. 38-39) He testified that he could identify the location of the artwork based on the special lighting installed in his UTC offices, the unique “ultra modern, light paneling” in that office, and certain pieces of art that were designed specifically for the UTC office. (Transcript, p. 40) He also testified that pieces of art in exhibits P-7 and P-8 were located in his La Jolla, California homes, in his Holland home, or on his boat and that he could recognize

and identify their location in his homes, like over the fireplace, outside his daughter's room, and in the "lake room." (Transcript, pp. 40-73) Mr. Pittman further testified regarding the artists who created the majority of the paintings and sculptures. The artwork that is the subject of this proceeding are originals and prints of paintings created by artists such as Edgar Payne, Picasso, Coignard, Appel, Chagall, Lautrec, Degas, and Russell Chatham. The personal property also consists of sculptures created by various artists.

Mr. Pittman testified that Chatham mistakenly reported the art work in P-7 and P-8 on its 2006-2010, Ypsilanti personal property statements and that none of the artwork was located in the City of Ypsilanti, MI for those tax years. Mr. Pittman further testified that it was his understanding that a fine arts schedule of the artwork that was believed to be located in Ypsilanti during 2006-2010 was prepared and submitted to Respondent's March 2008, Board of Review. (P-6) Mr. Pittman testified that it was also his understanding that the fine arts schedule was later further refined as it came to his/Petitioner's attention that some of the art listed in the fine arts schedule as located in Ypsilanti in 2008 was actually located outside of the jurisdiction. The revised schedule lists a value of the artwork situated in Ypsilanti in 2006-2010 as \$389,583. (Transcript, pp. 73-76)

Upon Mr. Pittman's determination that the subject property artwork was over-reported on the personal property statements (which was brought to his attention by Petitioner's in-house counsel, Larry Lenz), Petitioner appealed the assessment to the March 2008 Board of Review and submitted a personal property statement and fine arts schedule listing the value of the artwork located in Ypsilanti to be \$525,583. Petitioner received a reduction in the assessed and taxable values of the subject property to \$262,800 from \$3,013,500, based on the personal property statement and fine arts schedule. (Transcript, pp. 77-78, 94; P-5)

On cross-examination, Mr. Pittman testified that a staff accountant for Forest Health Services (one of Petitioner's subsidiaries), named Ron Hinz, prepared the personal property statement for 2006 for the subject property. Mr. Pittman testified that Mr. Hinz worked in the facilities at 135 S. Prospect, but that he knew nothing about the art located there or elsewhere. He was given the asset list that was created for insurance purposes, and he mistakenly indicated that the artwork on the list was located in Ypsilanti. (Transcript, pp. 92-93) Mr. Pittman was asked if he knew the preparer of the 2008 personal property statement for the subject property, Michael Beeman, and he answered in the affirmative. He testified that

Mr. Beeman worked for Forest Health Services at one time, but that he was fired. (Transcript, p. 105) Mr. Pittman was asked if he knew who appeared before the Board of Review in 2008, and he answered in the negative. (Transcript, p. 103)

Mr. Pittman was also asked to verify his statement that the photographs of the artwork in Exhibits 7 and 8 were taken for insurance purposes, and he answered in the affirmative. He testified that he could not specifically match all of the artwork included in Exhibits 7 and 8 with what was included on the asset list as some of the asset list, listings include phrases such as “Sutton’s Bay Galleries,” and not the name of the individual piece of artwork. (Transcript, p. 89) He also indicated that the insurance documents did not list where the individual paintings were located as the policy covered all the locations of the artwork. (Transcript, p.92) Mr. Pittman was asked if he had any shipping records regarding artwork that was shipped to California, and he indicated that he did not. He was questioned as to whether or not he knew if personal property statements for the subject artwork were filed in California or in other jurisdictions within Michigan, and he answered that he did not know. (Transcript, p. 101-102) Mr. Pittman testified that he, personally, did not file any personal property statements. (Transcript, p. 94)

RESPONDENT'S ADMITTED EXHIBITS

R-1 Petitioner's listing, in detail, of 69 separate items of artwork that were referenced in its personal property statements

R-2 Petitioner's 2006 personal property statement prepared by Petitioner's employee, Ron Hinz

R-3 Petitioner's 2007 personal property statement prepared by Petitioner's employee, Jason Villeneuve

R-4 Petitioner's 2008 personal property statement prepared by Michael Beeman, Controller for Petitioner, with cover letter attached from Michael Beeman to Sharon Doom, dated 3/18/08

R-5 Petitioner's 2008 personal property statement dated 10/8/10, prepared by Troy T. Holmes, Controller

R-6 Petitioner's 2009 personal property statement dated 2/20/09 prepared by Troy Holmes, Controller

R-7 Petitioner's 2009 personal property statement dated 9/28/10 prepared by Troy T. Holmes, Controller

R-8 Petitioner's 2010 personal property statement dated 9/28/10 prepared by Troy T. Holmes, Controller

R-9 Memo dated 5/1/12 from T. Schnelle of Michigan's STC, with documents attached

R-11 Petitioner's responses to Respondent's interrogatories and Request for Production of Documents, including all documents attached thereto

R-12 Affidavit of Diane Mathews

R-13 Two e-mails dated 9/26/12 from Patricia Feeley, Supervising Appraiser, San Diego County Assessor's Office, Business Division, to Diane Mathews concerning the subject property.

R-14 Two e-mails dated 9/11/12 to and from John Gehres of the Petosky, Michigan Assessor's Office concerning the subject property

R-15 Two e-mails to and from Diane Mathews and Patricia Feeley, Supervising Appraiser, San Diego County Assessor's Office, Business Division, dated 5/7/13

R-16 Two e-mails to and from Diane Mathews to Al Nykamp of the Park Township Assessor's Office dated 5/7/13

R-17 E-mail dated 5/7/13 from Diane Mathews to John Gehres of the Petosky, Michigan Assessor's Office and letter from John Gehres to Diane Matthews dated October 29, 2003.

R-22 Letter dated 12/21/10 from Sharon Doom to Petitioner concerning the receipt of 2008 Personal Property Statement signed by Michael Beeman with a copy of the statement attached and a copy for the Board of Review decision.

RESPONDENT'S CONTENTIONS

Respondent contends that Petitioner has not met its burden of proof with regard to demonstrating where the subject personal property was located in the 2006-2010 tax years. Respondent contends that Petitioner has no shipping documents, from a gallery or the City of Ypsilanti, for example, to indicate where the subject property was shipped to or from, and was therefore located in 2006-2010. Respondent further contends that Petitioner's and Mr. Pittman's insurance policy covering all of its/his artwork did not list its location. Respondent contends that Petitioner's

accountants, housed in Chatham's office located at 135 S. Prospect, Ypsilanti (where the artwork was situated) filed 2006 and 2007 personal property statements from the actual building the artwork was located in and therefore must have been familiar with it. Respondent claims that Mr. Michael Beeman, Controller of Petitioner in 2008, indicated that an inventory of the artwork located in 135 S. Prospect was completed, and a lesser amount from the 2006 and 2007 values was reported on Petitioner's 2008 personal property statement and fine arts schedule, from which the Ypsilanti Board of Review allegedly made its reduction in the assessed value of the property. Respondent reiterates that Petitioner, at present, requests a further reduction in the true cash value ("TCV"), AV, SEV, and TV of the subject property based on another error in reporting the specific artwork that was located in Ypsilanti in 2006-2010, even after the 2008 inventory. Respondent contends that Petitioner did not file any personal property statements in 2006-2010 in the jurisdictions, outside of Ypsilanti, that it alleges the property was actually located in those tax years. Respondent contends that there no mutual mistake of fact between Petitioner and Respondent with regard to the incorrect location of the subject property artwork outside of the City of Ypsilanti.

RESPONDENT'S WITNESSES

Diane Mathews

Ms. Matthews is a personal property examiner and was hired to review the subject personal property statements, to try to determine the location of the property during the tax years in question, and to talk to the assessor employed at the time the property was valued in 2006-2010 to determine the basis of that assessor's valuation. Ms. Mathews specifically testified regarding each of the personal property statements prepared by Petitioner, at the hearing of this matter. With regard to Chatham's 2006 personal property statement, Ms. Matthews testified that it was prepared by Ron Hinz whose name and address (135 S. Prospect) were listed on the statement. (Transcript, p. 122; R-2) The total dollar amount of assessable personal property listed on the 2006 statement was \$4,980,991. A description of the property, on Forest Health Services stationary, was attached to the personal property statement which listed the paintings' acquisition cost and year from 1997 – 2005. The 2006 personal property statement is dated January 27, 2006, which is also the date the asset list of personal property artwork is dated. (R-1, R-2) With regard to Chatham's 2007 personal property statement, Ms. Mathews testified that it was prepared by Jason Villenueve, 135 S. Prospect, Ypsilanti, MI. The 2007 statement also lists an assessable value of the property of \$4,980,991 and

the same description of the artwork acquisition year and cost, as in 2006.

(Transcript, p. 124; R-3) A letter was attached to the personal property statement, on Forest Health Services stationary, indicating that Chatham, among other companies, operate out of 135 S. Prospect and was signed by Jason Villeneuve, Senior Staff Accountant. (Transcript, pp. 125-126; R-3)

In 2008, Michael Beeman sent a letter to Sharon Doom, Assessor, Ypsilanti in which he requested a protest by Chatham before the March 2008 Board of Review because an inventory of the artwork located at 135 S. Prospect was done by “cognizant management,” and it was determined that the basis for the assets located at Prospect was actually \$525,583. (Transcript, pp. 129-130; R-4) A fine arts schedule was attached to the letter, along with a 2008 personal property statement, indicating what art was specifically located at 135 S. Prospect. The letter to Sharon Doom is dated March 18, 2008, and also stated that the remainder of the artwork on the 2007 and prior personal property statements was located out-of-state or in other jurisdictions within the state. (Transcript, p. 130; R- 4)

With regard to 2009, a personal property statement was prepared by Troy Holmes, Controller, 135 S. Prospect, Ypsilanti, MI, and it lists \$525,583 in personal

property artwork for Chatham. The 2009 personal property statement was dated February 20, 2009. The same fine arts schedule was attached to the 2009 statement as was attached to the 2008 statement. (Transcript, p. 136; R-6) On September 28, 2010, an amended personal property statement was prepared by Troy Holmes, listing \$389,583 in assets for Chatham for 2009. Also on that date, a personal property statement was prepared for 2010 listing \$389,583 in assets. On October 8, 2010, an amended personal property statement was prepared by Troy Holmes listing \$389,583 in assets for 2008. (Transcript, pp. 133-142; R-5, R-6, R-7, R-8) Ms. Mathews also testified that amended personal property tax statements were prepared for tax years 2006 and 2007 listing assets of \$389,583; however the amended statements were not signed, have no date, and are not stamped as received by the assessor's office. (Transcript, pp. 131-132)

Ms. Mathews was asked to read into the record Petitioner's response to Respondent's interrogatory. She read, "With respect to the artwork included within your personal property for each tax day state the address of the location of each piece of artwork." (Transcript, p. 147; R-11) Petitioner answered the interrogatory as such: As of the relevant tax days the artwork was located at (1) 9255 Towne Centre Drive, Suite 600, San Diego, California; (2) 8344 Prestwick,

La Jolla, CA; or (3) 8391 Whale Watch Way, La Jolla, CA. (Transcript, p. 147; R-11) Ms. Mathews testified that it was her impression, from the interrogatory answer, that Mr. Pittman did not know exactly where Chatham's artwork was located on the tax days in question, but that he thought it might have been located in one of three places in California, but not in Michigan. (Transcript, pp. 151-152)

Ms. Mathews was questioned regarding various e-mails back and forth with assessing jurisdictions where Mr. Pittman alleged that the subject artwork was located during the tax years in question. The purpose of the e-mail exchanges was to determine if personal property taxes were paid on the artwork in other jurisdictions, thereby providing some evidence as to where the artwork was located in 2006-2010. The personnel from the other jurisdictions searched the names Randall Pittman and Chatham Capital Corporation and came up with no personal property statements filed by either within their jurisdictions (There were, however, two accounts for Chatham at 9255 Towne Centre, but they had a nil value and were not assessed). (Transcript, p. 158) In California the addresses for UTC, Prestwick, and Whale Watch Way were searched and it appeared that no statements were filed. (Transcript, pp. 152-173) Ms. Mathews further testified that the reason she inquired with the other jurisdictions, in which the personal property

could be located, as to whether Chatham or Mr. Pittman filed personal property statements there, was to determine if there were duplicate assessments and if so, to resolve this matter. (Transcript, pp. 187-188)

On cross-examination, Ms. Mathews testified that she did not conduct a site inspection at 135 S. Prospect as she was not the assessor during the tax years in question, but was hired as a consultant for this matter. She also testified that Sharon Doom, Ypsilanti assessor in 2006-2010 did not view the art work. Ms. Matthews testified that Ms. Doom relied on the personal property statements filed by Chatham to assess the subject property. (Transcript, pp. 177-179)

Douglas Shaw

Mr. Shaw testified that he is the assessor for the City of Ypsilanti and has been since 2011. He testified that the three important things that he looked at, in trying to determine the location of the subject property during the tax years in question, were whether a personal property statement was filed in another jurisdiction, whether any type of proof of insurance showed that there was a detailed listing of the location of the artwork, or whether there were any shipping documents or costs that would identify where the artwork was shipped to or from. (Transcript, p. 234)

FINDINGS OF FACT

1. The subject property (parcel number: 11-99-21-340-003) consists of artwork reported by Petitioner, Chatham Capital Corporation, as personal property.
2. Chatham Capital is a holding company with ownership interest in approximately thirty subsidiaries. One of its subsidiaries is Forest Health Services.
3. The subject property artwork is classified as personal property. Petitioner filed its appeal with the Tribunal on October 18, 2010 and paid its 2006 winter tax bill on February 7, 2007 and its 2006 summer tax bill on February 26, 2008.
4. Petitioner has an office located at 135 S. Prospect in the City of Ypsilanti. Forest Health Services is also located at 135 S. Prospect in the City of Ypsilanti.
5. Petitioner has personal property artwork located in the 135 S. Prospect office.
6. In 2006 and 2007, the subject personal property was assessed to Petitioner based on \$4,980,991 in acquisition costs for the artwork allegedly located at

135 S. Prospect, Ypsilanti, MI; however, the assessed value of the property for 2007 was higher than the assessed value in 2006.

7. Some of the artwork that is the subject of this appeal may have been located in California during the tax years in question (2006-2010).
 8. Some of the artwork that is the subject of this appeal may have been located in Michigan in taxing jurisdictions other than Ypsilanti, during the tax years in question.
 9. Some of the artwork that is the subject of this appeal may have been located in Ypsilanti during the tax years in question.
10. Mr. Randall Pittman is the chairman of Chatham Capital Corporation.
11. Mr. Pittman **thinks** some of the art work that is the subject of this appeal was purchased for his California executive office or his residences; his Michigan residences outside of Ypsilanti, or the office located at 135 S. Prospect in the City of Ypsilanti.
12. A personal property statement was prepared by Ron Hinz, staff accountant of Forest Health Services (located at 135 S. Prospect), for the subject personal property on January 27, 2006, listing \$4,980,991 in assessable personal property to Petitioner.

13.A personal property statement was prepared by Jason Villeneuve, senior staff accountant, Forest Health Services (located at S. 135 Prospect), for the subject personal property on February 6, 2007, listing \$4,980,991 in assessable personal property to Petitioner.

14.An asset list was prepared on January 27, 2006, listing \$4,980,991 in artwork as located in Ypsilanti, MI. Mr. Pittman alleges the asset list was prepared for insurance purposes.

15.The asset list was relied upon by Mr. Hinz and Mr. Villeneuve with regard to the amount of assessable personal property reported by Petitioner.

16.A letter was prepared and sent by Michael Beeman, Controller, Chatham Capital Corporation to Sharon Doom, Assessor, City of Ypsilanti requesting an appeal of the 2008 assessment of the subject property to the Ypsilanti, March, 2008 board of review.

17.The basis of the 2008 appeal to the Board of Review was the alleged overstatement of personal property artwork in the City of Ypsilanti, which property was actually located in taxing jurisdictions other than Ypsilanti.

18.A 2008 personal property statement, prepared by Michael Beeman, was submitted to the Board of Review with a fine arts schedule listing which artwork was allegedly actually located in Ypsilanti. The conclusion on the

personal property statement was that \$525,583 in artwork was actually located in Ypsilanti during the 2008 tax year and prior years.

19. The Ypsilanti Board of Review lowered Chatham's personal property assessment from \$3,013,500 to \$262,800 in assessed and taxable value based on the 2008 personal property statement and fine arts schedule.

20. The reason given by the Board of Review for the reduction in assessed and taxable value was "amended personal property."

21. Troy Holmes, Controller for Chatham in 2009, prepared a personal property return for 2009 on February 20, 2009, listing \$525,583 in artwork as assessable personal property. The personal property statement is unsigned.

22. On September 28, 2010, Troy Holmes, Controller for Chatham in 2010, prepared a personal property statement for Chatham for 2010 with an assessable personal property amount of \$389,583.

23. On September 28, 2010, Troy Holmes, Controller for Chatham in 2010, prepared an amended personal property tax statement for Chatham for 2009 listing \$389,583 in assessable personal property.

24. On October 8, 2010, Troy Holmes, Controller of Chatham for 2010, prepared an amended personal property tax statement for Chatham for 2008 with an assessable personal property amount listed to be \$389,583. The

amended personal property statement is not stamped received by Respondent.

25.Respondent testified that it appeared that Petitioner filed amended personal property statements for Chatham for 2006 and 2007 listing assessable personal property of \$389,583. Respondent testified that the amended personal property statements were unsigned, undated, and were not stamped received by Respondent.

26.Petitioner alleges that both Petitioner and Respondent relied on inaccurate personal property statements in assessing the subject art work in 2006-2010.

27.Petitioner contends that the subject property assessments should be lowered to the amount of assessable personal property alleged to actually be in the City of Ypsilanti during the tax years in question; or \$389,583 in true cash value and \$194,800 (rounded) in assessed, state equalized, and taxable value.

28.Respondent contends that Petitioner cannot prove with certainty the location of the \$4,980,991 in assessable personal property in 2006-2010.

CONCLUSIONS OF LAW

In this matter, the Tribunal must determine if a mutual mistake of fact occurred between Respondent's assessing officer and Petitioner for the 2006-2010 tax years. If the Tribunal determines that a mutual mistake of fact occurred, it must adjust the TCV, SEV, and TV of the subject property for the tax years in question.

MCL 211.53a states:

Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest.

The Michigan Supreme Court in *Ford Motor Co v Woodhaven*, 475 Mich 425, 442; 716 NW2d 247 (2006) held that “mutual mistake of fact” means “an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction.” The test the Court used required the parties to share “a mistaken belief about a material fact that went to the very nature of the transaction....” *Id.*, p. 443.

A proceeding before the Tax Tribunal is original, independent, and de novo. See MCL 205.735(2) and MCL 205.735a(2). The Tribunal's factual findings are to be

supported by competent, material, and substantial evidence. See *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 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.” *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

In a proceeding before the Michigan Tax Tribunal, the petitioner has the burden of proof. “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 supra* at 354-355.

Petitioner, Chatham Capital Corporation, has a physical address at 135 S. Prospect, Ypsilanti, MI. The corporation is a holding company for about thirty subsidiaries, including Forest Health Services. It reports artwork as assessable personal property located at the Prospect address and the issue in this matter is to determine what artwork was actually located at 135 S. Prospect during the 2006-2010 tax years, in order to determine its assessable value. The Tribunal must then determine

if both Petitioner and Respondent's assessor relied on inaccurate information regarding the art's location and therefore provided and determined an inaccurate assessable value of the art.

Mr. Randall Pittman, Chairman of Chatham, testified that staff accountants of Forest Health Services, which is also located at 135 S. Prospect, prepared personal property statements in 2006 and 2007 based on a computerized print out for insurance purposes of artwork allegedly located at 135 S. Prospect. The print out was entered into the record as P-2 and R-1. The personal property statement listed an acquisition cost for the subject property of \$4,980,991 and it was assessed by Respondent based on that cost basis. Mr. Pittman testified at the hearing of this matter that the artwork listed on the printout was not all located in Ypsilanti, Michigan during the 2006-2010 tax years, but located in California at his offices at UTC, his residences in California on Whale Watch Way and Prestwick, or at his residence in Holland, Michigan. Mr. Pittman testified that, in 2008, Petitioner's in-house counsel noticed that the subject property was misreported as all being located in Ypsilanti during the 2006 and 2007 tax years. Petitioner protested to the Ypsilanti Board of Review in March 2008, with a fine arts schedule and personal property statement indicating the fine artwork actually located in Ypsilanti. The

Board lowered the assessed and taxable values of the subject property, based on the amended personal property statement and fine arts schedule, to \$525,583. The Board of Review value was carried forward by Respondent as the value of the assessable personal property for the 2009 and 2010 tax years.

At this time, Petitioner alleges that the 2008-2010 personal property statements, listing an assessable personal property amount of \$525,583, were also incorrect. Petitioner alleges that an additional amount of artwork that was reported to be located at 135 S. Prospect in 2006-2010 was actually located in California or Bay Harbor, MI and has submitted a revised fine arts schedule. (P-6) Petitioner comes before the Tribunal for an adjustment of TCV, SEV, and TV based on the most recent fine arts schedule for 2006-2010 and requests the adjustment based on an alleged mutual mistake of fact, wherein both Petitioner and Respondent's assessor relied on incorrect personal property statements in determining the TCV, SEV, and TV of the subject property for the tax years in question.

As stated above, a list of assets was filed in 2006 on the same date the 2006 personal property statement was prepared. The list of assets included \$4,980,991

in assessable personal property artwork. In Mr. Pittman's testimony, he attempted to go through the list and testify to the location of all the artwork on the list. He testified that \$215,180 of the \$4,980,991 in artwork was purchased in 1998 for his home in Holland, MI (which was clarified to be Park Township, MI). He testified that in 1999 he thought that \$57,737 of the \$4,980,991 in artwork was also purchased for his home in Park Township: "**I think** that was also for the house in Holland", and in 2000, \$34,200 of the \$4,980,991 in artwork was purchased: "**I think** that it was for the offices in Ypsilanti" (offices located at 135 S. Prospect, Ypsilanti) (Transcript, p. 29) [emphasis added.] Mr. Pittman further testified that in 2001, art purchases of \$261,602 of the \$4,980,991: "**I think** [were] for Ypsilanti", in 2002 he thought most of \$1,266,404 of the \$4,980,991 in art was purchased for Chatham's California offices: "**I think** most of that art was for the California offices," and in 2003 \$2,602,322 of the \$4,980,991 in artwork was purchased for California offices and homes. (Transcript, p. 30) [Emphasis added.] Mr. Pittman testified that in 2004, \$529,929 of the \$4,980,991 in artwork was purchased for California, "**I think most of it** was for California," and in 2005, \$13,617 of the \$4,980,991 in artwork was purchased "for things other than Ypsilanti." (Transcript, p. 30) [Emphasis added.] When asked to give an example of "things other than Ypsilanti," Mr. Pittman responded, "Well, I have homes and properties in

Michigan outside of Ypsilanti, and I have homes and offices in California **and have businesses around the country**, so, you know, when you ask me is this exactly for one place, I can't say it was for this building." (Transcript, p. 31)

[Emphasis added.]

The Tribunal finds that Mr. Pittman is not certain of the location of the fine artwork presented on the asset list in P-2 and R-1. The testimony above is an example of the confusion surrounding the location of the artwork that is the subject of this matter: Mr. Pittman "**thinks** [the artwork acquired in 1999, for example] ... was also for the house in Holland", and "**he can't say [the artwork] was for this building.**" He also testified that he has "**businesses around the country,**" where the Tribunal opines that some sort of artwork may be located. (Transcript, p. 31)

[Emphasis added.] Another example of the confusion in the location of the artwork would be Mr. Pittman's testimony regarding artwork acquired in 1999, quoted above. According to the asset list, no artwork was acquired in 1999. (P-2; R-1) Further, Petitioner alleges that \$389,583 is the correct true cash value of the artwork located in Ypsilanti for the tax years in question; however, Mr. Pittman's testimony indicates that \$295,802 in artwork was located in Ypsilanti according

the asset list.¹ In Respondent's interrogatories to Petitioner, Respondent asked, "With respect to the artwork included within your personal property for each tax day, state the address of the location of each piece of artwork." 9 (Transcript, p 147; R-11) Petitioner answered the interrogatory as such: "As of the relevant tax days the art work was located at either (1) 9255 Towne Centre Drive, Suite 600, San Diego, California, 92121, (2) 8344 Prestwick Drive, La Jolla, California 92037 (beginning April 30, 2008), or (3) 8391 Whale Watch Way, La Jolla, California 92037. (until June 22, 2006)" (Transcript, p.147; R-11) Petitioner did not answer that the artwork was located in Ypsilanti or other places in Michigan.

Mr. Pittman testified at length regarding some artwork that was part of the asset list of \$4,980,991 that was allegedly not located in Ypsilanti, MI, but was located in California at UTC, his homes in California on Prestwick and Whale Watch Way, or in Holland, MI. (Photographs of the art work are provided in P-7 and P-8.) The gist of his testimony was that the artwork in P-7 and P-8 was not located in Ypsilanti, but located outside of the jurisdiction, was acquired in 1997-2005, and

¹ Mr. Pittman's testimony was that \$34,200 in art work, acquired in 2000, was purchased he thought for Ypsilanti as well as \$261,602 he thought was acquired in 2001 for the offices in Ypsilanti. (Transcript, pp. 29-30) He did however also testify: "We purchased a little bit more, and once we purchased the art for the offices in Ypsilanti, there was no need to purchase anything more." (Transcript, p. 31)

“they weren’t moved.” (Transcript, pp. 38, 104) The flaw in Mr. Pittman’s testimony, however, is that he could not match up the artwork in P-7 and P-8 with the artwork on the asset list. For example, the asset list states artwork was acquired from “Sutton’s Bay Galleries” but does not list the individual pieces. In his testimony, Mr. Pittman was questioned, “So if we talk about the first two items, the Suttons Bay Galleries, you can’t show us where those are in the pictures in seven and eight?” Mr. Pittman replied, “Correct.” (Transcript, p. 89) From Mr. Pittman’s testimony about the paintings in P-7 and P-8, the Tribunal was unable to confirm that those actual, specific pieces were mistakenly reported to be located in Ypsilanti.² Michael Beeman, Controller of Chatham, requested an appeal of the subject property assessment, by letter to Sharon Doom, to the 2008 March Board of Review in Ypsilanti, MI on behalf of Petitioner. Along with the appeal letter, Petitioner included a fine arts schedule and personal property statement. (R-4) In his appeal letter, Michael Beeman, wrote:

² With regard to the testimony of Ms. Mathews, that she contacted assessing personnel in jurisdictions where Mr. Pittman alleged the subject personal property was located during the tax years in question, (to determine if personal property statements were filed by Mr. Pittman or Chatham to ascertain whether the pieces were located outside of Ypsilanti), the Tribunal does not find such information to be reliable. The Tribunal is unable to question the assessing personnel regarding the method of their search for personal property statements; confirm what names, addresses, or phrases were searched; or whether the assessing personnel were qualified to do a search in the first place. Further, no affidavits have been taken of the assessing officials and filed in this matter.

In this connection, cognizant management at Chatham completed an inventory of all personal property located within your taxing jurisdiction at the designated date and have determined the basis for those assets was \$525,583. . . . This material difference is attributable to the fact that for the tax years 2007 and prior, staff accountants incorrectly reported all assets owned by Chatham as being located at this location although most were located physically either out-of-Michigan or out-of-your taxing jurisdiction. (R-4)

The fine arts schedule included with the letter listed the artwork allegedly located in Ypsilanti and concluded with an assessable personal property amount of \$525,583. The March 2008 Ypsilanti Board of Review lowered the assessed and taxable values of the property to \$262,800, or half of \$525,600, which was the rounded assessable personal property amount listed on the fine arts schedule and 2008 personal property statement. The reason for the Board of Review decision is listed as “amended personal property.” (P-5) There was no further information provided by either party as to why the Board of Review decision was made. The assessed value of the personal property continued at \$262,800 for tax years 2009 and 2010; however, the Tribunal is again unable to match all the artwork on the fine arts schedule with the artwork on the January 2006 asset list.

At this time, Petitioner alleges that the fine arts schedule presented in 2008 was incorrect and had “a minor error....” (Transcript, p. 16) It has included as an

exhibit in this matter a revised fine arts schedule indicating which pieces of artwork were allegedly located in Ypsilanti in 2006-2010. The revised fine arts schedule consists of the 2008 fine arts schedule with several paintings crossed off the list and notated with “CA” or “Bay Harbor.” (P-6) The revised indication of assessable personal property listed on the revised fine arts schedule is \$389,583 or \$194,800 in AV, and TV (rounded).

In analyzing the fine arts schedule submitted in 2008 and the revised fine arts schedule, the Tribunal notes from the testimony above that the paintings on both schedules are alleged to be located in Ypsilanti by Petitioner. However, there are two paintings, “Evening at Cheeseman Canyon,” acquired in 2004, and “Bighorn Valley,” acquired in 2005, that are listed on the fine arts schedule and revised fine arts schedule as located in Ypsilanti and were also on the 2006 asset list. However, Mr. Pittman, in his testimony, stated that in 2004, \$529,929 in artwork on the asset list (including “Evening at Cheeseman Canyon”) was purchased for California, “I think most of it was for California,” and in 2005, \$13,617 in artwork from the asset list (including “Bighorn Valley”) was purchased “for things other than Ypsilanti.” Again, the Tribunal finds that there is too much confusion and contradictory evidence and testimony for it to determine where the many pieces of fine artwork

on the asset list were located in the tax years in question in order to conclude that there were errors on the personal property statements.

Respondent inquired of Mr. Pittman as to whether the insurance policy covering all of Petitioner's art work listed the location of the art work. He replied in the negative. (Transcript, p. 96) Respondent inquired of Mr. Pittman if he had any shipping records indicating where the artwork was shipped to and from. He replied in the negative. Mr. Hinz, staff accountant of Forest Health Services, located at 135 S. Prospect, prepared a personal property statement for Petitioner for 2006 listing assessable personal property of \$4,980,991 located in the building he was housed in and presumably may have viewed. Jason Villeneuve, senior staff accountant for Forest Health Services, prepared the 2007 personal property statement for Petitioner listing assessable personal property valued at \$4,980,991 in the building he was housed in. Michael Beeman, Controller of Petitioner in 2008, indicated that "cognizant management" did an inventory of Petitioner's artwork at 135 S. Prospect and determined as assessable amount of \$525,583 as listed on a fine arts schedule, and the Ypsilanti Board of Review lowered the assessed value based on "amended personal property." Now, Petitioner comes before the Tribunal, requesting a correction in the TCV, SEV, and TV of the

property for the 2006-2010 tax years based on the same fine arts schedule with paintings crossed off the list as determined to be located out of Ypsilanti, yet two of the paintings on the list alleged to be in Ypsilanti “may be” be in California and outside of Ypsilanti. The testimony and evidence above does not allow for Petitioner to meet its burden of proof in this matter that a mutual mistake of fact occurred under MCL 211.53a, as the location of the subject personal property was not definitively identified by Petitioner as outside of Ypsilanti. The Tribunal, therefore, finds that it does not have jurisdiction over the 2006-2010 tax years under MCL 211.53a, MCL 205.735, MCL 205.735a , or MCL 211.53b.

JUDGMENT

It is ORDERED that the above-captioned case is DISMISSED.

This Opinion and Judgment and Order of Dismissal resolve all pending claims in this matter and closes the case.

By: Preeti Gadola

Entered: August 09, 2013