Plug Power Inc,
Petitioner,

v

City of Warren,
Respondent.

MICHIGAN TAX TRIBUNAL

MTT Docket No. 23-000800

Presiding Judge
Joshua M. Wease

FINAL OPINION AND JUDGMENT

ORDER OF DISMISSAL OF PARCEL 12-99-01-168-361

INTRODUCTION

Petitioner appeals the assessment of its personal property for tax year 2023. A hearing was held on April 21, 2026.[1] The subject property's taxable value (TV) for the 2023 tax year at issue shall be as follows:

Parcel No.	TV
12-99-01-168-360	$12,548,246

Parcel 12-99-01-168-361 is dismissed.

PETITIONER'S CASE

Petitioner contends that its personal property is exempt under MCL 211.9m (Section 9m) because it is eligible manufacturing personal property (EMPP) predominantly used in direct integrated support of industrial processing and is located on occupied real property at 21500 and 22800 Mound Road in Warren, Michigan. Petitioner presented one witness, Martin Hull, retired Chief Accounting Officer, who testified about the property, its maintenance, and how it is used in the manufacturing process. Petitioner's appeal involves two parcels, however, Petitioner had no information as to why Parcel No. 12-99-01-168-361 existed or why it had a $0 assessment. Petitioner included the parcel in the appeal as a precaution. Petitioner's contentions of 2023 TV are as follows:

[1] Jason Conti appeared on behalf of Petitioner. Seth O'Loughlin appeared on behalf of Respondent. Petitioner's admitted exhibits are available on Tax Docket Lookup at line 48. Respondent's admitted exhibits are available on Tax Docket Lookup at lines 49 and 50. The trial transcript is available on Tax Docket Lookup at line 51.

Parcel No.	TV
12-99-01-168-360	$0
12-99-01-168-361	$0

RESPONDENT'S CASE

Respondent contends that Petitioner is not entitled to the exemption. Respondent did not present any witnesses. The property's TV, as confirmed by the BOR, for the 2023 tax year at issue:

Parcel No.	TV
12-99-01-168-360	$12,548,246
12-99-01-168-361	$0

ISSUE AND APPLICABLE LAW

The issue here is whether Petitioner's hydrogen fuel cells, dispensing equipment, and hydrogen storage equipment, which are located at its customer's manufacturing facility, qualify as EMPP.

Petitioner must prove, by a preponderance of the evidence, that it is entitled to an exemption.[2] This requires demonstrating that the personal property is "eligible manufacturing personal property," which is defined by Section 9m(6)(c).

> "Eligible manufacturing personal property" means all personal property located on occupied real property if that personal property is predominantly used in industrial processing or direct integrated support. [3]

Petitioner must also prove the property's predominate use, which must exceed 50% of its use is industrial processing or direct integrated support, with formulas prescribed in Section 9m(6)(c)(i) and (ii).

Determining whether property is entitled to an exemption under Section 9m requires close attention to how the statute defines several terms including "direct integrate support" under Section 9m(6)(b), "industrial processing" under Section 9m(6)(e), and "occupied real property" under Section 9m(6)(g). The statue also has rules that are applicable to leasing companies under Section 9m(2)(b).

A proceeding before the Tax Tribunal is original, independent, and de novo.[4] The Tribunal's factual findings must be supported "by competent, material, and

[2] *ProMed Healthcare v Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002).
[3] MCL 211.9m(6)(c).
[4] MCL 205.735a(2).

substantial evidence."[5] "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."[6]

Only qualified new personal property and qualified previously existing personal property are eligible for a personal property tax exemption under the State Essential Services Assessment (ESA).[7] "Qualified new personal property for which an exemption has been properly claimed … is exempt from the collection of taxes under this act. … 'New personal property' means property that was initially placed in service in this state or outside of this state after December 31, 2012 or that was construction in progress on or after December 31, 2012 that had not been placed in service in this state or outside of this state before 2013. … 'Qualified new personal property' means property that … [i]s (EMPP) [and] [i]s new personal property."[8] "Qualified previously existing personal property for which an exemption has been property claimed … is exempt from the collection of taxes under this act. … 'Qualified previously existing personal property' means personal property that … [i]s (EMPP) [and] [w]as first placed in service within this state or outside this state more than 10 years before the current calendar year."[9]

Section 9m(6)(c) provides the meaning of EMPP:

> All personal property located on occupied real property if that personal property is predominantly used in industrial processing or direct integrated support. … Personal property located on occupied real property is predominantly used in industrial processing or direct integrated support if the result of the following calculation is more than 50%: (i) Multiply the original cost of all personal property that is subject to the collection of taxes under this act and all personal property that is exemption from the collection of taxes under sections 7k, 9b, 9f, 9n, and 9o and this section that is located on that occupied real property and that is not construction in progress by its percentage of use in industrial processing or in direct integrated support. For an item of personal property that is used in industrial processing, its percentage of use in industrial processing shall equal the percentage of the exemption the property would be eligible for under section 4t of the general sales tax act, 1933 PA 167, MCL 205.54t, or section 4o of the use tax act, 1937 PA 94, MCL 205.94o. … (ii) Divide the result of the calculation under subparagraph (i) by the total original cost of all personal property [included in the calculation under subparagraph (i)].[10]

Section 9m(6)(b) provides the meaning for "direct integrated support."

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[5] *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).
[6] *Jones & Laughlin Steel Corp, supra* at 352-353.
[7] PA 92 of 2014; MCL 211.1051 *et seq*.
[8] MCL 211.9m.
[9] MCL 211.9n.
[10] MCL 211.9m(8)(c).

(i) Research and development related to goods produced in industrial processing and conducted in furtherance of that industrial processing.
(ii) Testing and quality control functions related to goods produced in industrial processing and conducted in furtherance of that industrial processing.
(iii) Engineering related to goods produced in industrial processing and conducted in furtherance of that industrial processing.
(iv) Receiving or storing equipment, materials, supplies, parts, or components for industrial processing, or scrap materials or waste resulting from industrial processing, at the industrial processing site or at another site owned or leased by the owner or lessee of the industrial processing site.
(v) Storing of finished goods inventory if the inventory was produced by a business engaged primarily in industrial processing and if the inventory is stored either at the site where it was produced or at another site owned or leased by the business that produced the inventory.
(vi) Sorting, distributing, or sequencing functions that optimize transportation and just-in-time inventory management and material handling for inputs to industrial processing.[11]

Section 9m(6)(g) provides for the meaning of "occupied real property."

(i) A parcel of real property that is entirely owned, leased, or otherwise occupied by a person claiming an exemption under this section or under section 9n.
(ii) Contiguous parcels of real property that are entirely owned, leased, or otherwise occupied by a person claiming an exemption under this section or under section 9n and that host a single, integrated business operation engaged primarily in industrial processing, direct integrated support, or both. A business operation is not engaged primarily in industrial processing, direct integrated support, or both if it engages in significant business activities that are not directly related to industrial processing or direct integrated support. Contiguity is not broken by a boundary between local tax collecting units, a road, a right-of-way, or property purchased or taken under condemnation proceedings by a public utility for power transmission lines if the 2 parcels separated by the purchased or condemned property were a single parcel prior to the sale or condemnation. As used in this subparagraph, "single, integrated business operation" means a company that combines 1 or more related operations or divisions and operates as a single business unit.

[11] MCL 211.9m(8)(b).

(iii) The portion of a parcel of real property that is owned, leased, or otherwise occupied by a person claiming the exemption under this section or under section 9n or by an affiliated person.

Section 9m(6)(h) provides the meaning for "original cost."

> [T]he fair market value of personal property at the time of acquisition by the first owner. There is a rebuttable presumption that the acquisition price paid by the first owner for personal property reflects the original cost of that personal property. The department of treasury may provide guidelines for 1 or more of the following circumstances:
> (i) Determining original cost of personal property when the actual acquisition price paid by the first owner for personal property is not determinative of the original cost of that personal property.
> (ii) Estimating original cost of personal property when the actual acquisition price paid by the first owner for the personal property is unknown.
> (iii) Adjusting original cost of personal property when the personal property is idle, is obsolete or has material obsolescence, or is surplus.[12]

Petitioner must prove that the personal property located on occupied real property is predominantly used in industrial processing or direct integrated support at an amount more than 50% under a calculation provided for in Section 9m(6)(c)(i)-(ii). At minimum, this formula requires Petitioner to establish:

(i) what personal property was and was not located at Petitioner's occupied real property[13] as of tax day,
(ii) whether that personal property is of the type required to be included in the EMPP calculation,
(iii) the original cost of all personal property included in the EMPP calculation, and
(iv) the percentage of use in industrial processing or direct integrated support of all personal property included in the EMPP calculation.

ANALYSIS

A. Background

Petitioner sells hydrogen to Stellantis NV (Stellantis), who in turn uses the hydrogen to fuel its forklifts in its manufacturing facility in Warren, Michigan. Stellantis uses forklifts to handle and move production material, raw materials, and finished goods around its plant. Forklifts are also used to receive, move, and store materials and goods. In 2021, Stellantis engaged Petitioner to provide it with a hydrogen solution to power a portion of its forklifts. Petitioner supplies hydrogen fuel cells that power the

[12] MCL 211.9m(8)(h).
[13] MCL 211.9m(8)(g).

forklifts, hydrogen cell refueling stations located throughout the plant, and hydrogen storage and processing equipment that convert liquid hydrogen into gas hydrogen for the use in the fuel cells. The fuel cells, which take the place of lead-acid batteries, are integrated into Stellantis forklifts. Petitioner provides personnel who are regularly stationed at the plant to repair and maintain the subject property. All costs for the personal property, personnel, and hydrogen are built into the price that Stellantis pays for the hydrogen in kilograms.

Petitioner argues that they meet all of the requirements to receive an exemption under MCL 211.9m. Petitioner argues that the legislature intended for Stellantis's industrial manufacturing to be exempt under MCL 211.9m. The forklifts are a direct integrated support to the manufacturing process. Without the forklifts, Stellantis would not be able to conduct its stamping or vehicle manufacturing activities. Petitioner contends that the subject property is EMPP because: (1) the subject property is located on occupied real property; (2) the subject property is either used in industrial processing or in direct integrated support; and (3) such use is predominant.

B. The subject property (Parcel No. 12-99-01-168-360)

The subject property is described in multiple documents provided by Petitioner. Petitioner provided two proposals executed with Stellantis for their Turn-Key Fuel Cell Solution, which provide details about the personal property supplied to Stellantis. Petitioner also provided the master lease and bill of sale, which provide detailed descriptions of the fuel cells. This parcel contains hydrogen fuel cells, dispensing and storage equipment. Petitioner provided a list of 291 fuel cells, which includes series type, model numbers and serial numbers.[14] The infrastructure listed in the same document is not itemized and merely states: "Turnkey GenFuel Hydrogen Infrastructure as more particularly described in the appraisal report prepared by the Appraiser in connection herewith."[15] Petitioner did not provide or offer the appraisal into evidence. It further states: "All other ancillary equipment to include but not limited to gauges, valves, hoses, display panels, receptacles, cables and other piping necessary to make a complete turnkey GenFuel system."[16] It also states: "Equipment Location: Stellantis US, LLC Truck and Stamping Facilities, 21500 Mound Road and 22800 Mound Road, Warren, Michigan."[17] The proposals include some detail about the infrastructure, which includes:

Qty	Description
1x	Construction of wall around pad location
1x	Installation of trestle for conduit raceway
1x	18k Gallon Liquid Hydrogen Tank
1x	Pressure Building Vaporizer for LH2 Tank
1x	Common Platform Skid Manifold & Controls

[14] Exhibit P9, P0065-P0072.
[15] Exhibit P9, P0072.
[16] *Id.*
[17] Exhibit P9, P0065; See also Exhibit P14, at 3.

8x*	PDC-4 3-Stage Gaseous Hydrogen Diaphragm Compressors
8x*	PDC-4 Compressor Control Panels
8x*	Low Pressure Vaporizers
8x	3-Cylinder High Pressure Gas Storage Cylinder Sets

*1x is a space claim in the case of future expansion needs.[18]

Petitioner did not explain where these items were located in the plant. While the Tribunal can surmise that the 18,000-gallon liquid hydrogen tank is outside based on pictures entered into evidence,[19] none of the other items were described enough to identify them, understand their role in providing hydrogen, or location in the plant.

Mr. Hull testified about the maintenance area. Petitioner's employees repair the fuel cells. Petitioner provides personnel who are regularly stationed at the plant five days a week and on call 24 hours a day, seven days a week at the plant to repair and maintain the subject property. Within the plant, there are several designated areas for the subject property and for Petitioner's personnel to perform maintenance and repair duties on the fuel cells. Again, other than a general description of the maintenance area, Petitioner did not provide details on their number, size, location, and what personal property were generally kept at the maintenance area.

Petitioner is not a leasing company

The parties disagree whether Petitioner is a leasing company, which cannot claim an EMPP exemption under Section 9m(2)(b). Petitioner argues that the personal property it leases is installed at Stellantis to facilitate Petitioner's sale and distribution of hydrogen. Respondent argues that Petitioner is a leasing company because they are providing the personal property to Stellantis to use for a fee.

Petitioner's business with Stellantis involves a sophisticated financial transaction involving a sale-lease back. First, Petitioner sold the fuel cells and equipment to Signature Finance LLC (Signature). Petitioner provided a Bill of Sale, which listed the fuel cells individually and the other infrastructure generally. Petitioner did not explain whether they created this property or purchased it from someone else. This is a critical issue in the determination of the property's acquisition cost and whether it constitutes new property later in the analysis. Second, Petitioner leased that same property back from Signature. There is a 78-month master lease between Petitioner and Signature.[20] Schedule 1 of the lease provides a description of the property by fuel cell and includes model numbers and serial numbers.[21] Schedule 2 lists the 78-month rent payment schedule in the amount of $346,992.22.[22] Last, Petitioner supplied the equipment to Stellantis to facilitate selling hydrogen to Stellantis. Each proposal provides a rate table

[18] Exhibit P14, at 5.
[19] Exhibit P12.
[20] Exhibit P9, P0073-0075.
[21] Exhibit P9, P0065-P0072.
[22] Exhibit P9, P0073-P0075.

of the consideration for each class of personal property in terms of hydrogen cost per kilogram (kg).

The proposal dated November 8, 2021, was for the Warren Stamping Plant (WSP).[23] The WSP proposal for fuel cells totaled 130 Fork Truck (Class 1: 1700-48) that are priced at $6.35/kg.[24] The hydrogen infrastructure, which includes construction, hydrogen pad equipment, and six dispensers, are priced at $2.09/kg. The dispensed hydrogen molecule is priced at $5.38/kg.[25] The total annual minimum cost for all three product classes was $479,611 and an annual cost estimate of $1,659,326.[26]

The proposal dated November 30, 2021, was for Warren Truck Assembly Plant (WTAP).[27] The WTAP proposal for fuel cells totaled 142 fuel cells that include 88 Fork Truck (Class 1: 1700-48) and 54 Tugger (Class 3: 6000-36), which are priced at $6.42/kg.[28] It has an annual minimum cost of $363,051 and annual cost estimate of $657,105. Second is the hydrogen infrastructure, which includes construction, hydrogen pad equipment, and seven dispensers, are priced at $2.15/kg.[29] It has an annual minimum cost of $121,582 and an annual cost estimate of $373,795. Third, the dispensed hydrogen molecule is priced at $5.38/kg.[30] This has an annual minimum cost of $0 and an annual cost estimate of $608,478. This provides a total annual minimum cost for all three classes of product $484,633 and a total annual cost estimate of $1,639,378.[31]

Petitioner's proposals to Stellantis are calculated based on consumption of hydrogen. The sale of hydrogen, a useful but volatile element, necessarily requires special equipment to store, handle, and use. Petitioner admits that they are a lessee of the personal property. Section 9 of the master lease provides that Signature holds title to the personal property.[32] Therefore, Petitioner does not have title to sell or otherwise transfer the property to Stellantis.[33] Mr. Hull testified that the cost of the equipment is accounted for in the per kilogram charge that Stellantis pays. He also testified that Petitioner does not lease the equipment to Stellantis.[34]

The statute does not define the term "leasing company." Consultation of the dictionary also yields no definition. The fundamental question is whether Petitioner provides property for its customers under a lease. The dictionary defines "lease" as "a contract by which one conveys real estate, equipment, or facilities for a specified term and for a specified rate." Neither party provides any authority that a contract must be

[23] Exhibit P14, at 16-29.
[24] Exhibit P14, at 19.
[25] *Id.*
[26] *Id.*
[27] Exhibit P14, at 1-14
[28] Exhibit P14, at 4.
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] Exhibit P9, P0027.
[33] Exhibit P9, at P0027.
[34] Tr. 108:16.

called a lease in order to be a legally binding lease. A reasonable definition of a leasing company would be a company that is in the business of providing property for a specific term, for a specified rate.

While the Stellantis proposals are not called leases, they satisfy the definition of a lease. Stellantis is in a contract with Petitioner, in which Petitioner conveys equipment for a term of six years, for a specified rate of consideration. While the proposals have no provision for disposing of the equipment at the end of the six-year term, Petitioner is bound by the terms of the lease it has with Signature and must renew the lease, purchase the personal property, or return the property to Signature.[35] Meaning that at the end of the six-year term with Stellantis, depending on when that overlaps with Petitioner's lease term with Signature, Petitioner may have to retrieve the property from Stellantis. Even though the consideration for the fuel cells and infrastructure is tied to the rate of hydrogen consumption, that is not fatal to the conclusion that they are leased for a specified rate of consideration. Each proposal has line-item consideration for the provision and use of specifically identified personal property. From an ordinary person's standard, Petitioner's transaction with Stellantis looks and acts like a lease, even if it is not called a lease. Meaning Petitioner is in the business, at least in part, of leasing property to other companies and could be considered a leasing company.

Though not addressed by either party, there could be an argument of whether Petitioner's predominant business is selling hydrogen or leasing property. For instance, under the WTAP proposal, the annual sale of dispensed hydrogen is $608,478 compared to the total consideration of $1,639,378.[36] The sale of dispensed hydrogen represents 37.1% compared to approximately 63% conveyed for use of the personal property. Under the WSP proposal, the sale of dispensed hydrogen for $611,446 is 36.8% of the total consideration of $1,659,326.[37] Under both proposals, the predominant source of the consideration is attributable to the use of personal property. Further, the Signature bill of sale demonstrates that Petitioner has a specific cost for the personal property that Petitioner is recouping from its lease of the property. Whereas, the dispensed hydrogen, acquired elsewhere, has its own separate cost that is not in evidence. While Petitioner's predominant source of revenue in this isolated transaction with Stellantis is leasing property, that is not enough evidence to conclude that Petitioner is a leasing company. Such an inquiry would require further evidence of Petitioner's total business operations for each tax year at issue. Therefore, the Tribunal finds that based on the available evidence, Petitioner is not a leasing company.

Occupied Real Property

Petitioner argues that at all relevant times the subject property has been located at the Stellantis plant. Petitioner relies on *Liberty Hill Housing Corp v City of Livonia,*[38] for the proposition that occupancy only requires a regular physical presence and does

[35] Exhibit P9, at P0030.
[36] Exhibit P14, at 4.
[37] Exhibit P14, at 19.
[38] *Liberty Hill Housing Corp v City of Livonia*, 480 Mich 44; 746 NW2d 282 (2008).

not require Petitioner to occupy the entire plant.[39] Respondent argues that reliance on *Liberty Hill* is misplaced because that case involves a charitable exemption under Section 7o, which is distinguishable from the EMPP exemption at issue here. The Tribunal agrees that *Liberty Hill* is distinguishable and not applicable here. Instead, although not addressed by Petitioner, the statute provides the necessary rules to resolve the issue.

The statute has two requirements for "occupied real property." First, "[p]ersonal property that is not owned, leased, or used by the person who owns or leases occupied real property where the personal property is located is not eligible manufacturing personal property, unless the personal property is located on the occupied real property to carry on a current on-site business activity." Parsing this requirement takes several steps. While Stellantis uses the personal property and owns the real property, there is a question of whether Petitioner satisfies the definition of "occupied real property." Under Section 9m(6)(g), "occupied real property" means the following:

> (i) A parcel of real property that is entirely owned, leased, or otherwise occupied by a person claiming an exemption under this section or under section 9n.
> (ii) Contiguous parcels of real property that are entirely owned, leased, or otherwise occupied by a person claiming an exemption under this section or under section 9n and that host a single, integrated business operation engaged primarily in industrial processing, direct integrated support, or both.
> …
>
> (iii) The portion of a parcel of real property that is owned, leased, or otherwise occupied by a person claiming the exemption under this section or under section 9n or by an affiliated person.[40]

Under each of the three parts, occupied real property applies to a person[41] claiming the exemption. Note that the occupancy requirement goes to a person, not the personal property. There is no evidence that Petitioner entirely owns, leases or occupies the entire parcel or contiguous parcels, so parts (i) and (ii) are not satisfied. Further, Stellantis cannot qualify as the occupying person because they are not claiming the exemption. Part (iii) allows a portion of a parcel of real property owned, leased, or otherwise occupied by a person claiming the exemption. So, part (iii) could apply to the extent that Stellantis owns the portions of the parcel that Petitioner occupies as the person claiming the exemption. The last clause of the sentence provides an alternative where "the personal property is located on the occupied real property to carry on a current on-site business activity." This would also apply to personal property located in

[39] Tr. 11:16-12:17.
[40] MCL 211.9m(6)(g).
[41] "Person" means an individual, partnership, corporation, association, limited liability company, or any other legal entity. MCL 211.9m(i).

those areas that Petitioner occupies to carry on a current on-site business activity of repairing fuel cells or supplying hydrogen.

As for the portion of the parcel that Petitioner occupied, Petitioner states that Petitioner's employees occupy a portion of the plant to provide service to the fuel cells. The photographic evidence and Mr. Hull's testimony establish that most of the fuel cells are installed in the forklifts that Stellantis employees drive around the plant. Meaning that most of the personal property is located in areas of the parcel that Petitioner does not occupy. Further, there is no evidence that Petitioner's employees occupy the locations where the hydrogen storage tank is located, which is outside of the plant. Nor is there any evidence that Petitioner's employees occupy the dispensing stations where Stellantis employees drive the forklifts to refill them with hydrogen. Petitioner's photographic evidence depicts nine hydrogen dispensers, numbered 2-10,[42] however, there is no evidence that the dispensers are located in the maintenance areas. The storage tanks, dispensing units, and the infrastructure do not satisfy the occupied real property rule. Further, there is no evidence to quantify with any certainty the amount of personal property located in the service areas.

The second requirement provides that: "[p]ersonal property that is placed on occupied real property solely to qualify the personal property for an exemption under this section or section 9n is not eligible manufacturing personal property." There is considerable evidence that Petitioner has placed its property at the Stellantis plant to facilitate the sale of hydrogen. Respondent has not provided any evidence that the personal property is located at the plant solely to qualify for the exemption. Therefore, Petitioner does not violate this rule. With that said, Petitioner has provided little evidence about their service area and what personal property may be located there, thus the Tribunal finds that Petitioner has not met their burden of persuasion that they meet the occupied real property rule for most of their personal property.

The subject property is not utility personal property

Next, Respondent argues that the subject property is not exempt because it is utility personal property. Section 9m(6)(c) excludes two kinds of personal property. First, "[u]tility personal property as described in section 34c(3)(e)." Section 34c(3)(e) states:

> Utility personal property includes the following:
> (i) Electric transmission and distribution systems, substation equipment, spare parts, gas distribution systems, and water transmission and distribution systems.
> (ii) Oil wells and allied equipment such as tanks, gathering lines, field pump units, and buildings.
> (iii) Inventories not exempt by law.
> (iv) Gas wells with allied equipment and gathering lines.

[42] Exhibit P11.

(v) Oil or gas field equipment stored in the open or in warehouses such as drilling rigs, motors, pipes, and parts.
(vi) Gas storage equipment.
(vii) Transmission lines of gas or oil transporting companies.

Reading this definition as a whole, the legislature intended this section to apply to utility companies. There are references to electric transmission, water transmission, oil and gas wells, and oil or gas fields. While hydrogen is a gas, its use as a power source is relatively recent. The overall thrust of this provision, more likely, only comprehends petroleum gas, which is a derivative of oil. Second, "personal property used in the generation, transmission, or distribution of electricity for sale are not eligible manufacturing personal property."[43] While Petitioner's personal property is used to power the forklifts, its hydrogen gas is not used to generate, transmit, or distribute for sale of electricity. They sell hydrogen gas, not electricity. The Tribunal finds that Petitioner's personal property is not excluded by Section 9m(6)(c) as utility property.

Industrial processing or direct integrated support

First, Petitioner argues that the subject property is used in both industrial processing and direct integrated support activities. Petitioner relies on *Tomra of N America v Dep't of Treasury*[44] for the proposition that manufacturing is occurring at the Stellantis plant because industrial processing begins when tangible personal property begins movement from raw material storage. Further, Petitioner argues that the fuel cells and infrastructure meet the definition of industrial processing under MCL 205.4t(3)(a) production or assembly, (j) production material handling, and (k) storage of in-process materials. Respondent counters that providing hydrogen to forklifts does not constitute industrial processing or direct integrated support.

Industrial processing under the act means that term as defined in Section 4t of the General Sales Tax Act, MCL 205.54t(8)(b) defines industrial processing as:

> 'Industrial processing' means the activity of converting or conditioning tangible personal property by changing the form, composition, quality, combination, or character of the property for ultimate sale at retail, for use in the manufacturing of a product to be ultimately sold at retail or to be affixed to and made a structural part of real estate located in another state, or for the exempt purposes described in subsection (3)(l) or (4)(i). Industrial processing begins when tangible personal property begins movement from raw materials storage to begin industrial processing and ends when finished goods first come to rest in finished goods inventory storage.

[43] MCL 211.9m(6)(c).
[44] 325 Mich App 289; 926 NW2d 259 (2018).

Section 4t identifies a number of activities that constitute industrial processing, which includes "production material handling."[45] Further, certain personal property is eligible for an industrial processing exemption. First, this includes, "[f]uel or energy used or consumed for an industrial processing activity."[46] Meaning that the hydrogen fuel itself, if used in conjunction with industrial processing equipment, could be considered EMPP. Second, "[m]achinery, equipment, or materials used within a plant site or between plant sites operated by the same person for movement of tangible personal property in the process of production."[47] Forklifts in a heavy manufacturing plant are necessary for production material handling, and the movement of tangible personal property in the production process. Petitioner provided pictures of forklifts moving product and materials throughout the plant.[48] However, the parties dispute whether the fuel cells, which are a part of the forklifts, constitute a part of industrial processing. Petitioner has provided credible evidence that the fuel cells are a necessary part of the forklift for its operation. The fact that it is easily removable to repair does not change its fundamental nature of being a necessary part of operating the forklift. The Tribunal finds that the fuel cells are used in industrial processing.

However, this analysis does not apply to the hydrogen infrastructure, storage tanks, or dispensing units. Pursuant to subsection 6(a), industrial processing does not include "purchasing, receiving, or storage of raw materials."[49] If raw materials for manufacturing do not constitute industrial processing, then the storage of hydrogen for forklifts would not qualify either.

Direct integrated support includes six different functions under subsection 6(b). Of those, the forklifts would satisfy three of them.

> Receiving or storing equipment, materials, supplies, parts, or components for industrial processing, or scrap materials or waste resulting from industrial processing, at the industrial processing site or at another site owned or leased by the owner or lessee of the industrial processing site.[50]
>
> Storing of finished goods inventory if the inventory was produced by a business engaged primarily in industrial processing and if the inventory is stored either at the site where it was produced or at another site owned or leased by the business that produced the inventory. [51]
>
> Sorting, distributing, or sequencing functions that optimize transportation and just-in-time inventory management and material handling for inputs to industrial processing. [52]

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[45] MCL 205.4t(3)(b).
[46] MCL 205.4t(4)(e).
[47] MCL 205.4t(4)(f).
[48] Exhibit P10.
[49] MCL 205.54t(6)(a).
[50] MCL 211.9m(6)(b)(iv).
[51] MCL 211.9m(6)(b)(v).
[52] MCL 211.9m(6)(b)(vi).

The Tribunal finds that while the fuel cells, which power the forklifts, constitute direct integrated support, Petitioner must still prove that its personal property is predominantly used for direct integrated support according to the formula provided in the statute.

Predominant use

Petitioner argues that the subject property more than meets the predominance requirement because the subject is only used in connection with powering the forklifts, including the hydrogen power cells, the refueling stations, as well as the hydrogen storage and processing station. Further, Petitioner argues that the personal property was located at the plant at all relevant times. Essentially, Petitioner is arguing that the subject property's predominant use is 100% for industrial processing and/or direct integrated support. Respondent argues that Petitioner has not provided the necessary data to satisfy the statutory calculation provided in Section (6)(c)(i) and (ii). Further, Respondent argued that some of the fuel cells were not EMPP because they were pictured sitting on the floor and not in use.

To calculate the predominant use, the statute requires calculating the "original cost of all personal property that is subject to the collection of taxes under this act and all personal property that is exempt from the collection of taxes under sections 7k, 9b, 9f, 9n, and 9o and this section *that is located on that occupied real property* and that is not construction in progress."[53] "'Original cost'" means the fair market value of personal property at the time of acquisition by the first owner. There is a rebuttable presumption that the acquisition price paid by the first owner for personal property reflects the original cost of that personal property."[54] That amount is then multiplied by the percentage of use in industrial processing or in direct integrated support.[55] Last, that product is divided by the total original cost of the taxable and exempt property.

The Bill of Sale dated November 12, 2021, states that the sale price of the 291 fuel cells and related infrastructure equipment to Signature is $33,021,700.[56] The Bill of Sale provides for the same listing of fuel cells, down to the serial numbers, as does the Schedule 1 in the Master Lease.[57] The purchase price Signature paid to Petitioner for the property was allocated between the fuel cells and the infrastructure. The parties allocated $20,423,000 to the fuel cells and $12,598,700 to the infrastructure.[58] However, Petitioner did not explain where they acquired all this equipment to sell to Signature in the first place. It is unknown if Petitioner made the products or bought them from someone else. This is problematic because the "original cost" means "the fair market value of personal property at the time of acquisition by the first owner."[59] Further, "[t]here is a rebuttable presumption that the acquisition price paid by the first

[53] MCL 211.9m(6)(c)(i) (Emphasis added).
[54] MCL 211.9m(6)(h).
[55] MCL 211.9m(6)(c)(ii).
[56] Exhibit P17at P0050-P0060, P-18 at P062.
[57] Exhibit P17, P0053-P0060.
[58] Exhibit P17, at P0061; Tr. 70:15-71:2.
[59] MCL 211.9m(6)(h).

owner for personal property reflects the original cost of that personal property."[60] Each of these rules only apply to the first owner. If Petitioner manufactured this personal property, then Signature is the first owner of the property. If Petitioner purchased this property from somewhere else, then Signature would be the second owner. Petitioner did not provide sufficient evidence to determine if Signature is the first owner of the personal property or not. However, this is a minor issue given the other discrepancies in the evidence.

Next, there is a significant discrepancy between the number and type of fuel cells provided in the proposals, those listed in the master lease, and allegedly provided to Stellantis. The fuel cells from the master lease and the two proposals, when tallied by series description, results in the following.

	Lease[61]	WTAP[62]	WSP[63]
1700 Series 48V GenDrive Fuel Cell	233	88	130
6000 Series 36V GenDrive Fuel Cell	31	54	0
1500 Series 36V GenDrive Fuel Cell	4	0	0
1600 Series 48V GenDrive Fuel Cell	18	0	0
1700 Series 36V GenDrive Fuel Cell	2	0	0
2400 Series 36V GenDrive Fuel Cell	3	0	0
	291	142	130

The WTAP proposal calls for 142 fuel cells, which include 88 of the 1700 Series 48V and 54 of the 6000 Series 36V. Petitioner does not explain how it supplied 54 of the 6000 Series 36V when it only leased 31 of them from Signature. Meaning that there are 23 of the 6000 Series 36V that Petitioner could not have supplied to Stellantis. The two proposals require a total of 218 of the 1700 Series 48V, leaving 15 that are not accounted for between the lease and the proposals. There is also no evidence regarding the location or use of the 27 other fuel cells (*i.e.*, 1500 Series 36V, 1600 Series 48V,1700 Series 36V, and 2400 Series 36V) that are listed in the lease. Mr. Hull's testimony left the disposition of the fuel cells in further doubt. Mr. Hull testified that Petitioner only supplied 230 fuel cells, which does not comport with the proposals or the lease.[64] If Mr. Hull's testimony proposes that Petitioner supplied 19 fuel cells less than listed in the proposals with Stellantis and 61 fuel cells less than listed in the lease with Signature. Mr. Hull did not provide any details about which of the various series were included in the 230 fuel cells allegedly supplied to Stellantis. Petitioner has failed to establish by a preponderance the number and type of fuel cells (of the various series) that were located at the Stellantis plant for the tax years at issue.

Further, the Tribunal cannot determine the number of fuel cells located in the occupied real property (maintenance area). For instance, the number of fuel cells in the

[60] *Id.*
[61] See Exhibit P17, P0053-P0060 and Exhibit P18, P0065-P0072.
[62] Exhibit P14, at 4.
[63] Exhibit P14, at 19.
[64] Tr. 40:1-6.

maintenance area must be considerably less than 230 because some unknown number of them were installed in the forklifts that Stellantis employees were driving around the plant. The inability to determine the amount and type of fuel cells supplied to Stellantis and that occupy the occupied real estate further undermines the calculation of original cost.

Next, Petitioner did not provide credible evidence regarding original cost of the personal property for the predominant use calculation. First, Petitioner did not adequately account for which of the 291 fuel cells were actually provided to Stellantis. Second, there were six different series of fuel cells, and it is unknown if each fuel cell series would have the same original cost given that they differed in voltage and wattage capacity. Third, Petitioner did not provide evidence that Stellantis was the first owner of the property. Last, of the fuel cells that were provided to Stellantis, Petitioner did not offer any evidence of how many fuel cells (and other personal property) were located in the occupied real property, which is limited to the service area(s). While Repsondent made a valid argument that fuel cells just sitting on the floor (which may include broken ones that need repair) may not constitute property that is supporting the industrial process, addressing this argument is moot because Petitioner has failed to meet their burden of proof on several fronts. Therefore, the original cost of the exempt fuel cells that were located in the occupied real property cannot be determined. This means that the original cost of the taxable fuel cells cannot be determined. As discussed above, there is no evidence that the dispensing units, storage tank, and infrastructure satisfy the occupied real property rule. Therefore, its original cost of $12,598,700 – if true – would be included in the calculation as taxable personal property.[65] This is of little consequence because without the original costs of the taxable and exempt fuel cells, the calculation fails.

Finally, Petitioner argues that the subject property is qualified new personal property that was initially placed in service in this state or outside of this state after December 31, 2012. Respondent has not provided any evidence that would challenge Petitioner's evidence that this property was placed into service in 2021. However, consideration of this point does not change the conclusion that Petitioner's personal property does not qualify as EMPP for other reasons.

Parcel No. 12-99-01-168-361

This parcel is unknown to Petitioner, and they could not explain why this parcel was created or what it contained. The parcel was assessed at $0. Respondent did not provide any explanation about this parcel. The Tribunal finds that there is no evidence as to whether there is property associated with this parcel number, and if so, why it would warrant a $0 assessment. Petitioner included this parcel in its appeal out of an abundance of caution, but Petitioner would still have the burden of production.

[65] The Tribunal recognizes that the proposals stated that the cost of the infrastructure also includes construction costs of installing the personal property, which would have to be deducted from the original cost of the personal property. However, those construction costs are unknown.

Therefore, the Tribunal finds that there is no evidence regarding this parcel and that this parcel should be dismissed.

FINDINGS OF FACT

The Tribunal's Findings of Fact concern only evidence and inferences found to be significantly relevant to the legal issues involved; the Tribunal has not addressed every piece of evidence or every inference that might lead to conflicting conclusions and has rejected evidence contrary to those findings.

1. The subject property is located at 21500 and 22800 Mound Road, Warren, in Macomb County.
2. Parcel No. 12-99-01-168-360 consists of personal property that includes fuel cells, an 18,000-gallon tank, and other unidentified personal property and infrastructure.
3. No evidence was submitted about the identification, use, or purpose of Parcel No. 12-99-01-168-361.
4. The subject property is classified as commercial personal.
5. The subject property is not utility personal property.
6. Petitioner sold the subject property, described as 291 fuel cells, related hydrogen storage and infrastructure property to Signature for $33,021,700 in 2021. How and when Petitioner acquired this personal property is unknown.
   a. Petitioner and Signature allocated the purchase price as $20,423,000 for the fuel cells and $12,598,700 for the hydrogen storage and infrastructure.
   b. Signature holds title to the subject personal property.
7. Petitioner leased the subject property it sold to Signature in 2021 for a term of 78 months.
   a. Petitioner's monthly lease payment for the personal property is $346,992.22.
8. Stellantis pays for hydrogen by the kilogram.
9. Petitioner and Stellantis signed a November 8, 2021 proposal for the Warren Stamping Plant (WSP) for a term of six years.
   a. The WSP proposal for fuel cells totaled 130 Fork Truck (Class 1: 1700-48) that are priced at $6.35/kg.
   b. The hydrogen infrastructure, which includes construction, hydrogen pad equipment, and six dispensers, are priced at $2.09/kg.
   c. The dispensed hydrogen molecule is priced at $5.38/kg.
   d. The total annual minimum cost for all three product classes was $479,611 and an annual cost estimate of $1,659,326.
   e. Under the WSP proposal, the sale of dispensed hydrogen for $611,446 is 36.8% of the total consideration of $1,659,326.
10. Petitioner and Stellantis signed a November 30, 2021 proposal for Warren Truck Assembly Plant (WTAP) for a term of six years.
    a. The WTAP proposal for fuel cells totaled 142 fuel cells that include 88 Fork Truck (Class 1: 1700-48) and 54 Tugger (Class 3: 6000-36), which are priced at $6.42/kg.

   b. It has an annual minimum cost of $363,051 and annual cost estimate of $657,105.
   c. The hydrogen infrastructure, which includes construction, hydrogen pad equipment, and seven dispensers, are priced at $2.15/kg. It has an annual minimum cost of $121,582 and annual cost estimate of $373,795.
   d. The dispensed hydrogen molecule is priced at $5.38/kg. This has an annual minimum cost of $0 and an annual cost estimate of $608,478.
   e. This provides a total annual minimum cost for all three classes of product $484,633 and a total annual cost estimate of $1,639,378.
   f. The sale of dispensed hydrogen represents 37.1% compared to approximately 63% conveyed for use of the personal property.
11. The November 30, 2021 proposal contained a combined equipment and infrastructure list for both WTS and WTAP that included:
   a. 18,000-gallon liquid hydrogen tank;
   b. Pressure building vaporizer for LH2 tank;
   c. Common platform skid manifold and controls;
   d. PDC-4 3-stage gaseous hydrogen diaphragm compressors;
   e. PDC-4 compressor control panels;
   f. Low pressure vaporizers; and
   g. 3-cylinder high pressure gas storage cylinder sets.
12. Petitioner leases the subject personal property to Stellantis.
13. Petitioner's employees are in the maintenance area at the Stellantis plant eight hours a day, five days a week.
   a. Petitioner's employees are on call 24 hours per day.
   b. Petitioner's employees repair the subject personal property in prescribed maintenance areas.
14. Petitioner's photographic evidence depicts nine hydrogen dispensers, numbered 2-10. Photographs also depict a large outdoor storage tank.
15. The subject property's predominant use cannot be calculated.

CONCLUSIONS OF LAW

1. Petitioner did not meet its burden of production regarding Parcel No. 12-99-01-168-361.
2. Petitioner met its burden of production regarding Parcel No. 12-99-01-168-360.
3. Petitioner did not meet their burden of proof that they are entitled to an exemption for Parcel No. 12-99-01-168-360 because the subject property does not satisfy all the requirements of Section 9m.
   a. Petitioner met its burden of proof that its employees occupy the designated service area(s), which satisfy the occupied real property rules under Section 9m(6)(g).
   b. Petitioner did not meet its burden of proof that the fuel cells, hydrogen storage, and infrastructure personal property are located in the occupied real property pursuant to Section 9m(6)(g).
   c. Petitioner did not meet its burden of proof that the personal property meets the predominant use test under MCL 9m(6)(c)(i),(ii).

JUDGMENT

IT IS ORDERED that Parcel No. 12-99-01-168-361 is DISMISSED.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year at issue shall correct or cause the assessment rolls to be corrected to reflect the property's exemption within 20 days of entry of this Final Opinion and Judgment, subject to the processes of equalization.[66] 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 within 28 days of 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 penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2013, through June 30, 2016, at the rate of 4.25%, (ii) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (iii) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (iv) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (v) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (vi) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (vii) after December 31, 2018, through June 30, 2019, at the rate of 5.9%, (viii) after June 30, 2019, through December 31, 2019, at the rate of 6.39%, (ix) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, (x) after June 30 2020, through December 31, 2020, at the rate of 5.63%, (xi) after December 31, 2020, through June 30, 2022, at the rate of 4.25%, (xii) after June 30, 2022, through December 31, 2022, at the rate of 4.27%, (xiii) after December 31, 2022, through June 30, 2023, at the rate of 5.65%, (xiv) after June 30, 2023, through December 31, 2023, at the rate of 8.25%, (xv) after December 31, 2023, through June 30, 2024, at the rate of 9.30%, (xvi) after June 30, 2024, through December 31, 2024, at the rate of 9.50%, (xvii) after December 31, 2024, through June 30, 2025, at the rate of 9.47%, (xviii) after June 30, 2025, through December 31, 2025, at the rate of 8.66%, (xix) after December 31, 2025, through June 30, 2026, at a rate of 8.48%, and (xx) after July 1, 2026, through December 31, 2026, at a rate of 7.85%.

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

[66] See MCL 205.755.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A motion for reconsideration must be filed with the Tribunal with the required filing fee within 21 days from the date of entry of the final decision. Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is $50.00 in the Entire Tribunal and $25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty or disabled veterans exemption and, if so, there is no filing fee. You are required to serve a copy of the motion on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion. Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.

Alternatively, you may file a claim of appeal with the Michigan Court of Appeals. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal of right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave." A copy of the claim of appeal must be filed with the Tribunal to certify the record on appeal. There is no certification fee.

By: /s/ Joshua M. Wease

Entered: October 27, 2026
jmw

PROOF OF SERVICE

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provided by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk