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

My Auto Import Center,
Petitioner,

MTT Docket No. 329242

v

Township of Fruitport,
Respondent.

Tribunal Judge Presiding
Patricia L. Halm

OPINION AND JUDGMENT

This case is an appeal of a decision by the State Tax Commission denying a request by My Auto Import Center (Petitioner) to (1) change the category for some of its personal property as reported on its 2005 personal property statement[1], (2) remove some items of personal property from the statement as Petitioner now believes these items should be classified as real property instead of personal property, (3) remove some of the reported items as they were displays that included the cost of inventory, and (4) remove other property that Petitioner believes is exempt from tax as a "special tool." Respondent, the Township of Fruitport, utilized the statement submitted by Petitioner to establish the 2005 true cash and taxable values for the property, known as Parcel No. 15-900-251-5287-00 (the subject property). Because Respondent failed to file an Answer to Petitioner's Petition, and failed to cure the resulting default, a default hearing was held in this case. Respondent did not attend the hearing. For the reasons set forth below, the Tribunal finds that Petitioner met its burden of proof as to some of the requested changes and did not meet its burden of proof as to others.

[1] This form is now known as Form 632, formally known as Form L-4175.

The subject property's 2005 true cash value (TCV), state equalized/assessed value (SEV/AV) and taxable value (TV), as originally established by Respondent are:

Year	TCV	SEV/AV	TV
2005	$386,644	$193,322	$193,322

Petitioner's contentions of value are:

Year	TCV	SEV/AV	TV
2005	$260,814	$130,407	$130,407

FINAL VALUES

The subject property's 2005 true cash value (TCV), state equalized/assessed value (SEV/AV) and taxable value (TV), as determined by the Tribunal are:

Year	TCV	SEV/AV	TV
2005	$375,886	$187,943	$187,943

PETITIONER'S CASE

Petitioner's representative, Mr. Myles B. Hoffert, was the only witness to testify on behalf of Petitioner. Mr. Hoffert testified that the 2005 personal property statement filed by Petitioner was prepared by Petitioner's CPA. After the statement was filed, Petitioner requested that Mr. Hoffert review the statement to determine if the property was correctly reported. Having reviewed the statement and Petitioner's property, Mr. Hoffert concluded that several items of personal property were reported in an incorrect category, that other items reported on the statement were, in fact, real property and not personal property, and that other items were tax exempt. Mr. Hoffert filed an appeal with the State Tax Commission requesting that the statement be corrected. Specifically, Mr. Hoffert requested the following changes:

1. Removal of property listed as "service railings" as this property is attached to the building and considered to be real property, not personal.
2. Removal of property listed as "blinds-window treatments" as this property is attached

to the building and considered to be real property, not personal.

3. Removal of property listed as "showroom lighting" as this property is attached to the building and considered to be real property, not personal.

4. Removal of several items of property listed as "displays" as the value reported related to the items on display and for sale, and not the value of the display rack, which was minimal.

5. Re-categorize the refrigerators and microwave from "Section A: Furniture and Fixtures" to "Section D: Office, Electronic, Video and Testing Equipment."

6. Remove several items listed as "special tools." These items were claimed to be exempt under MCL 211.9b.

Petitioner submitted the following documents, which were admitted into evidence:

P1: August 11, 2005 letter to the State Tax Commission;

P2: Notice by Owner of Property Incorrectly Reported or Omitted from Assessment Roll, dated 8/3/05;

P3: 2005 Original Personal Property Tax Return;

P4: 2005 Original Personal Property Tax Return Work Papers; and

P5: 2005 Personal Property Tax Amended Return.

RESPONDENT'S CASE

As previously stated, due to Respondent's failure to file an answer to Petitioner's Petition, and to cure the resulting default, the hearing in this matter was a default hearing. In other words, Respondent was not permitted to submit evidence or present witnesses. Respondent was notified of the date and time of the default hearing but did not attend.

FINDINGS OF FACT

The subject property consists of one parcel of personal property known as Parcel No. 15-900-251-5287-00, owned by Petitioner, My Auto Import Center. Petitioner is located at 1820 E. Sternberg Road, in the Township of Fruitport, Michigan, as is the subject property.

Sometime during early 2005[2], Petitioner filed a personal property tax statement (Form L-4175) with Respondent. Respondent utilized this statement in establishing the subject property's 2005 true cash and taxable values.

On August 11, 2005, Petitioner filed an appeal with the State Tax Commission on a form known as Form 628 (formerly known as L-4155) titled "Notice by Owner of Property Incorrectly Reported or Omitted from Assessment Roll." This form was signed by Myles B. Hoffert and was dated August 3, 2005. The form provides the following property description: "Personal property located in an automotive dealership, which on the original rendition the taxpayer included real property (such as the furnaces), special tools (such as specific automotive tools for specific manufacturer's models) and software (for its standard computer system)." Petitioner requested that the subject property's 2005 assessed and taxable values be reduced from $193,300.00 to $130,407.00. In a letter dated October 3, 2006, the State Tax Commission notified Petitioner that its request for a change of assessment was denied. On October 6, 2006, Petitioner filed this appeal.

On its 2005 personal property statement, Petitioner reported personal property in Section A (furniture and fixtures), Section B (machinery and equipment), Section D (office, electronic, video and testing equipment), Section F (computer equipment), Section J (leased property, not

[2] The exact date is unknown as the statement submitted by Petitioner was neither signed nor dated.

qualified personal property), and Section M (leasehold improvements). The total cost of the personal property was $820,165; as depreciated, the property's true cash value was $386,644.

Petitioner's Exhibit P5, the "2005 Amended Return," consisted of a revised 2005 personal property statement, a document titled "Furniture and Fixtures Schedule A" containing two pages, and a three-page document titled "Tax Property Detail."

CONCLUSIONS OF LAW

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

In Michigan, the assessment of real and personal property is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value.

> The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not . . . exceed 50%. . . . Const 1963, art 9, sec 3.

The Michigan Legislature has defined "true cash value" to mean:

> . . .the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale. MCL 211.27(1); MSA 7.27(1).

The Michigan Supreme Court has determined that "true cash value" is synonymous with "fair market value." See *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450; 221 NW2d 588 (1974).

At issue in this case are Petitioner's personal property and the personal property statement filed by Petitioner in 2005. The requirement to file a personal property statement is set forth in MCL 211.19. Specifically, Subsection 2 provides:

> The supervisor or other assessing officer shall require any person whom he or she believes has personal property in their possession to make a statement of all the personal property of that person whether owned by that person or held for the use of another. The statement shall be completed and delivered to the supervisor or assessor on or before February 20 of each year. (MCL 211.19(2))

Additionally, Subsection 5 provides that the statement must be in a form prescribed by the State Tax Commission. (MCL 211.19(5)) This statement must be signed manually, by facsimile, or electronically. (MCL 211.19(6)) In this case, the statement submitted by Petitioner, P3, did not contain a signature. However, because Petitioner's representative testified as to this statement, the Tribunal will consider that the statement was signed either by facsimile or electronically.

As previously discussed, Petitioner claims that the 2005 personal property statement it filed with Respondent is incorrect. Petitioner made four separate claims as to the errors contained in the statement. Each error, if found to be an error and corrected, would result in a change in the subject property's true cash value. Pursuant to MCL 205.737(3): "The petitioner has the burden of establishing the true cash value of the property. . . ." This burden encompasses two separate concepts: (1) the risk of persuasion, which does not shift during the course of the hearing; and (2) the burden of going forward with the evidence, which may shift to the opposing party. *Jones & Laughlin* at 354-355.

The first of Petitioner's four claims is that specific items included on its personal property statement are affixed to the building in which Petitioner is located and are, in fact, real property. These items include a service railing, window treatments and showroom lighting. The Tribunal finds that Petitioner has met its burden of proof in establishing that the service railing and showroom lighting are real property and that the value of these items should be removed from the personal property statement. However, the Tribunal disagrees as to Petitioner's claim regarding the window blinds.

During the hearing, Petitioner's representative argued that the window blinds should be considered to be real property because nobody takes the window treatments if the building is sold. (T, p5) However, this is not the position taken by the State Tax Commission. As required by MCL 211.19(5), the State Tax Commission prescribed the statement on which personal property is to be reported. This form is known as Form L-4175. The instructions for this form require that window treatments are to be reported under Section A. While Petitioner's representative may not take the window treatments with him when he sells a building, there are others that would. More importantly, window treatments are not affixed so that they become fixtures to a building. For these reasons, the Tribunal affirms the State Tax Commission's requirement that window treatments be reported in Section A.

Petitioner's second claim concerns its refrigerators and microwave. While Petitioner acknowledges that these items are taxable personal property, Petitioner argues that they should be included under Section D: Office, Electronic, Video and Testing Equipment, and not under Section A: Furniture and Fixtures, as reported in the statement it filed with Respondent. The Tribunal disagrees. Clearly, refrigerators and microwaves are not considered electronic, video or

testing equipment. Therefore, Petitioner's claim must be that these items are office equipment. Again, pursuant to L-4175, office equipment includes office machines, non-computerized cash registers, copiers, faxes, mailing and binding equipment, shredders, telephones, etc. The Tribunal does not believe that this is the correct category under which to report a refrigerator or a microwave. While it does not appear that refrigerators and microwaves are specifically included in any category, the Tribunal finds that these items should continue to be reported under Section A. Section A includes, among other things, decorations, seating, and furniture for offices.

Petitioner's next claim is that items of personal property listed as "displays" were, in fact, inventory. For example, Petitioner asserts that while there may have been a display made of cardboard that held items such as floor mats, the value reported on the statement was actually that of the mats and not the display. As the mats are considered inventory, they should be exempt from tax. The Tribunal agrees and finds that the values associated with items reported as "displays" will be removed from the statement.

Petitioner's final claim is that some items of personal property are exempt under MCL 211.9b. To that end, the general property tax act provides that "all property, real and personal, within the jurisdiction of this state, **not expressly exempted**, shall be subject to taxation." MCL 211.1. (Emphasis added.) The rule to be applied when construing tax exemptions was well summarized by Justice Cooley as follows:

> [I]t is a well-settled principle that, when a specific privilege or exemption is claimed under a statute, charter or act of incorporation, it is to be construed strictly against the property owner and in favor of the public. This principle applies with peculiar force to a claim of exemption from taxation. Exemptions are never presumed, the burden is on a claimant to establish clearly his right to exemption, and **an alleged grant of exemption will be strictly construed** and cannot be made out by inference or implication but **must be beyond reasonable doubt.** In other words, since taxation is the rule, and exemption the exception,

> the intention to make an exemption ought to be expressed in clear and unambiguous terms; it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain; and the burden of establishing it is upon him who claims it. Moreover, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the State has granted in express terms all it intended to grant at all, and that unless the privilege is limited to the very terms of the statute the favor would be extended beyond what was meant. *Michigan Bell Telephone Company v Department of Treasury*, 229 Mich App 200, 207; 582 NW2d 770 (1998), quoting *Detroit v Detroit Commercial College*, 322 Mich 142, 149; 33 NW2d 737 (1948), quoting 2 Cooley, Taxation (4th ed), §672, p 1403.

As in *Michigan Bell*, there is no dispute that the subject property, but for any exemption afforded it, is subject to property tax. (*Id.*, p207)

It is also well settled that a petitioner seeking a tax exemption bears the burden of proving that it is entitled to the exemption. The Michigan Court of Appeals, in *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002), discussed Justice Cooley's treatise on taxation and held that:

> [T]he **beyond a reasonable doubt** standard applies only when a petitioner. . . attempts to establish a class of exemptions; the **preponderance of the evidence** standard applies to a petitioner's attempts to establish membership in an already exempt class. (Emphasis added.) (*Id.*, pp494-495)

In this case, Petitioner asserts that specific items of personal property are exempt from property taxes because they are "special tools" under MCL 211.9b. Because special tools have been recognized as an exempt class of personal property, and because Petitioner is attempting to establish membership in this class, the preponderance of evidence standard applies.

Pursuant to MCL 211.9b:

> (1) A special tool is exempt from the collection of taxes under this act.
>
> (2) The statement required under section 19 may provide for a separate line for providing the aggregate total original cost of excluded exempt special tools.
>
> (3) As used in this section:

> (a) "Product" means an item of tangible property that is directly created or produced through the manufacturing process. A product may be any of the following items:
>
> (i) A part.
>
> (ii) A special tool.
>
> (iii) A component.
>
> (iv) A sub-assembly.
>
> (v) Completed goods that are available for sale or lease in wholesale or retail trade.
>
> (b) "Special tool" means a finished or unfinished device such as a die, jig, fixture, mold, pattern, special gauge, or similar device, that is used, or is being prepared for use, to manufacture a product and that cannot be used to manufacture another product without substantial modification of the device. The length of the economic life of the product manufactured shall not be considered in making a determination whether a device used to manufacture that product is a special tool. Special tools do not include the following:
>
> (i) A device that differs in character from dies, jigs, fixtures, molds, patterns, or special gauges.
>
> (ii) Standard tools.
>
> (iii) Machinery or equipment, even if customized, and even if used in conjunction with special tools.
>
> (c) "Standard tool" means a die, jig, fixture, mold, pattern, gauge, or other tool that is not a special tool. Standard tool does not include machinery or equipment, even if customized, and even if used in conjunction with special tools or standard tools.

While Petitioner argues that the property at issue is exempt, Petitioner provided no evidence as to the items it claimed were special tools. Petitioner merely submitted a list of personal property that contained the name of the property, the year it was placed in service, and the property's values. Some of the property Petitioner claims to be a special tool contained the term "special tools" within the product name, while other property was listed as a shop tool or a tool box. Without a specific description as to each of these items, the Tribunal cannot find that

Petitioner, an automotive dealership, owns "finished or unfinished [devices] such as a die, jig, fixture, mold, pattern, special gauge, or similar device, that is used, or is being prepared for use, to manufacture a product and that cannot be used to manufacture another product without substantial modification of the device." That is not to say that the Tribunal finds it impossible that Petitioner would own such a tool, only that evidence was not provided so as to enable the Tribunal to determine whether the item was a special tool, a standard tool, or something else. For this reason, the Tribunal finds that Petitioner did not meet its burden of proof and, as such, the value of these items will not be removed from Petitioner's personal property statement.

Finally, the Tribunal finds that the amended 2005 statement provided by Mr. Hoffert did not carry forward the grand totals from page 3 or page 4. In other words, the amended return did not contain an entry on line 11a or 12a. While this omission does not impact the subject property's true cash or assessed values, the subject property's true costs are not reflected.

To summarize, with the adjustments previously referenced, the Tribunal finds that the subject property's 2005 total costs are $805,264, the 2005 true cash value is $375,886, and the state equalized, assessed, and taxable values are $187,943.

JUDGMENT

IT IS ORDERED that the subject property's 2005 true cash, state equalized, and taxable values shall be those set forth in the "Final Values" section of this Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the assessed and taxable values in the amounts as finally shown in the "Final Values" section of this Opinion and Judgment, subject to the processes of equalization, within 20 days of entry of this

Order. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Opinion and Judgment within 28 days of the entry of this Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Opinion and Judgment. As provided by 1994 PA 254 and 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest shall accrue at an interest rate set monthly at a per annum rate based on the auction rate of the 91-day discount treasury bill rate for the first Monday in each month, plus 1%. After December 1, 1995, interest shall accrue at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue: (i) after December 31, 2004, at the rate of 2.07% for calendar year 2005; (ii) after December 31, 2005, at the rate of 3.66% for calendar year 2006; (iii) after December 31, 2006, at the rate of 5.42% for calendar year 2007; and (iv) after December 31, 2007, at the rate of 5.81% for calendar year 2008; (v) after December 31, 2008, at the rate of

3.31% for calendar year 2009; (vi) after December 31, 2009, at the rate of 1.23% for calendar year 2010; and (vii) after December 31, 2010, at the rate of 1.12% for calendar year 2011.

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

MICHIGAN TAX TRIBUNAL

Entered: June 10, 2011

By: Patricia L. Halm