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

Devon Energy Production Co LP,
Petitioner,

v

MTT Docket No. 457474

Richfield Township,
Respondent.

Tribunal Judge Presiding
David B. Marmon

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Devon Energy Production Co LP, appeals ad valorem property tax assessments levied by Respondent, Richfield Township, against Parcel No. 010-299-002-000 for the 2013 tax year. Markland Roland Headley, its accountant represented Petitioner, and Gerard F. Brabant, Attorney, represented Respondent.

A hearing on this matter was held on August 31, 2015. Petitioner's sole witness was Mr. Headley. Respondent's sole witness was Julie Tatro, its assessor.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash values ("TCV"), state equalized values ("SEV"), and taxable values ("TV") of the subject property for the 2013 tax year is as follows:

Parcel No.	Year	TCV	SEV	TV
010-299-002-000	2013	0	0	0

PETITIONER'S CONTENTIONS

Petitioner contends that it reported all costs on its personal property return associated with the drilling of an oil well per STC Bulletin 9 of 2012, which was subsequently rescinded. The well drilled turned out to be a dry hole, and while valued at over $21 Million by Respondent in 2013, it was valued at zero by Respondent in 2014. Petitioner contends that the value of the personal property, consisting of cement and piping buried in a hole, was also worth zero in 2013.

PETITIONER'S ADMITTED EXHIBITS

P-1 2013 Personal Property Return

P-2 Drilling Cost details

P-3 DEQ Site inspection records

P-4 STC Bulletin 9 of 2012

P-5 2014 Personal Property Return

PETITIONER'S WITNESS

Markland Roland Headley was Petitioner's sole witness. Headley testified that he prepared the 2013 personal property return, per STC Bulletin 9 of 2012[1] and reported $21,723,813 in costs to complete this dry well in 2012. He testified that Petitioner hired out companies which had their own equipment to drill. Petitioner doesn't actually own any of the equipment. In answer to the bench's query, Headley testified:

> Well, we didn't rent anything. We just hired out companies to come in and drill it. Our company doesn't actually own any of the equipment to drill or anything like that. We just hire -- hired out two companies that specialize in that.
>
> JUDGE MARMON: And they're unrelated to you?
>
> THE WITNESS: Yes, that's correct.
>
> JUDGE MARMON: And that's where most of the 20 million went?
>
> THE WITNESS: Yes.[2]

RESPONDENT'S CONTENTIONS

Respondent contends that it properly assessed the subject based upon Petitioner's personal property return for 2013, and that a change in the subject well's status with the Department of Environmental Quality ("DEQ") as of December 31, 2012 had not yet been applied for. Accordingly, even though its assessment of the subject for tax year 2014 was zero, $21,723,813 was the correct true cash value for 2013.[3]

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[1] T. p. 8
[2] T. p. 8-9
[3] Per testimony at hearing from Julie Tatro. Respondent's Prehearing statement lists the actual tax of $312,081.22, and does not list the subject's true cash, assessed, or taxable value. Petitioner's Prehearing Statement wrongly lists the subject's assessed value as its true cash value, and incorrectly takes 50% of this number for the assessed and taxable value on the roll. Per Petitioner's 2013 Personal Property Tax Return, $21,723,813 was the cost of acquisition in 2012. At hearing, Respondent failed to use the multiplier of .89, which renders a true cash value of $19,334,194.

RESPONDENT'S ADMITTED EXHIBITS

R-1 STC Bulletin 6 of 2011

RESPONDENT'S WITNESS

Julie Tatro, Respondent's assessor, was its only witness. She testified that she assessed the subject based solely upon the Personal Property statement filed by Petitioner for 2013.[4] For 2014, she valued the subject at zero.[5] She testified that she never observed anything at the site, and had no idea what was there. After reviewing the Personal Property Statement, she testified that the 2013 true cash value was $21,723,813.[6]

FINDINGS OF FACT

1. Petitioner filed Form L-4175, its Personal Property Return for 2013, reporting $21,723,813 in acquisition costs for a single well in Richfield Township.
2. Roland Headley, Petitioner's accountant testified that he prepared Form L-4175 in conformance with STC Bulletin 9 of 2012.
3. STC Bulletin 9 of 2012 in part directs that costs to be reported include tangible and intangible costs.
4. Headley testified, and its cost sheet corroborates that the only equipment placed into the well was cement casings and metal tubing.
5. Headley testified that Petitioner did not own, nor did it lease any of the equipment needed to install the casings and tubing in the ground.
6. On January 6, 2013, Petitioner filed an application to the DEQ to change the well's status.
7. On June 30, 2013, the DEQ updated the well's status to "record of well plugging."
8. Julie Tatro testified that she never inspected the subject property.
9. Roland Headley filed Form L-4175 for tax year 2014 with Respondent, reporting assets at zero.
10. Respondent assessed the subject property for 2014 at zero.

[4] T. p. 15
[5] T. p. 16
[6] T. p. 17

11. STC Bulletin 9 of 2012 was explicitly rescinded by the STC upon its filing of Bulletin 6 of 2014.

12. Bulletin 6 of 2014 no longer required the reporting of intangible costs in drilling a well.

CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value.[7]

> The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. 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 percent. . . .[8]

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.[9]

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous."[10]

"By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property assessment."[11] The Tribunal is not bound to accept either of the parties' theories of valuation.[12] "It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case."[13] In that regard, the Tribunal "may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination."[14]

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[7] See MCL 211.27a.
[8] Const 1963, art 9, sec 3.
[9] MCL 211.27(1).
[10] *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).
[11] *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).
[12] *Teledyne Continental Motors v Muskegon Twp,* 145 Mich App 749, 754; 378 NW2d 590 (1985).
[13] *Meadowlanes Ltd Dividend Housing Ass'n v Holland,* 437 Mich 473, 485; 473 NW2d 636 (1991).
[14] *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

A proceeding before the Tax Tribunal is original, independent, and de novo.[15] The Tribunal's factual findings must be supported "by competent, material, and substantial evidence."[16] "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."[17]

"The petitioner has the burden of proof in establishing the true cash value of the property."[18] "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."[19] However, "[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question."[20]

The three most common approaches to valuation are the capitalization of income approach, the sales comparison, or market, approach, and the cost-less-depreciation approach.[21] "The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading."[22] The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances.[23]

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.[24]

The subject property in this appeal is certain buried equipment installed in an oil well, which was plugged and abandoned in 2013. Respondent contends that for 2013, the property's status must be determined as of December 31, 2012. The Tribunal agrees with this statement. A

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[15] MCL 205.735a(2).
[16] *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).
[17] *Jones & Laughlin Steel Corp, supra* at 352-353.
[18] MCL 205.737(3).
[19] *Jones & Laughlin Steel Corp, supra* at 354-355.
[20] MCL 205.737(3).
[21] *Meadowlanes, supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968).
[22] *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).
[23] *Antisdale, supra* at 277.
[24] See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

property's taxable status is determined on "tax day," which is December 31 of the previous year.[25] Petitioner testified that it did not own the equipment that installed the casings. Rather, the bulk of its costs went to paying companies to do the actual drilling. The actual property to be assessed is therefore, the casings and steel equipment owned by Petitioner and buried in the ground. What would a potential buyer pay for this buried equipment as of December 31, 2012, when an application to plug the oil well was submitted to the DEQ six days later? The Tribunal concludes that a knowledgeable buyer would not pay anything on tax day for buried pipe and casings in a dry oil well on tax day for tax year 2013. Respondent in fact agrees that the value of the subject property was zero for tax year 2014. It is hard to accept that the same property was in fact worth $21,723,813 one year earlier.

Petitioner's accountant testified that he complied with STC Bulletin 9 of 2012 which required the reporting of all costs, tangible and intangible in drilling the well where the subject equipment was installed. Upon reviewing Petitioner's Expense Statement,[26] supporting its 2013 Personal Property Tax Return, the Tribunal can only conclude that Petitioner zealously complied with this Bulletin. Among the many cost entries reported were $9,810.11 for airfare, $5,122.26 for car rental, and $5,543.98 for hotel expenses; $345,403.17 for well testing, $1,364,665.14 for technical and professional consulting, $1,674.88 for legal fees, and $1,007,180.52 for liquid fuels. These costs appear to be for intangibles, rather than for the actual equipment, and are only indirectly related to its installation. While Petitioner was apparently willing to pay these costs along with many more, totaling over $21 Million in anticipation of extracting oil at the time of installation, a rational, well informed buyer of the cement casings and metal piping buried in the ground on tax day would not pay these costs, or anything at all, unless acquiring them as part of a functioning, productive oil well, at a time where the price per barrel would justify these costs. Here, an application to plug the well was applied for by Petitioner six days after tax day. While STC Bulletins in effect at the time, and subsequently, require an assessor to value oil wells based upon their DEQ status as of tax day, a rational buyer of wells would certainly demand to see test results before paying any money for the well, and its equipment. An STC Bulletin, (let alone a rescinded STC bulletin) can only provide guidance. It cannot supersede the statute that it was

[25] MCL 211.2.
[26] Exhibit P-2

designed to interpret.[27] In Michigan, only tangible property is to be assessed an ad valorem tax.[28] Further, property can only be assessed based upon its true cash value.[29] As Petitioner applied to plug the well and abandon the subject property a mere six days after tax day, the Tribunal can only conclude that value in exchange of the buried casings and piping was exceeded by the cost of extracting it from the ground. The value of this property, "at the place where the property to which the term is applied is at the time of assessment" must be zero.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the subject property's TCV, SEV, and TV for the tax year(s) at issue are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the property's state equalized and taxable values for the tax year(s) at issue are MODIFIED as set forth in the Introduction section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. 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

[27] See *Danse Corp v. Madison Heights*, 466 Mich 175; 644 NW2d 721 (2002).
[28] MCL 211.14.
[29] MCL 211.27

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, 2009, at the rate of 1.23% for calendar year 2010; (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011; (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09%; and (iv) after June 30, 2012, through December 31, 2015, at the rate of 4.25%.

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

APPEAL RIGHTS

If you disagree with the Tribunal's final decision in this case, you may either file a motion for reconsideration with the Tribunal or a claim of appeal directly to the Michigan Court of Appeals ("MCOA").

A motion for reconsideration with the Tribunal must be filed, by mail or personal service, with the $50.00 filing fee, within 21 days from the date of entry of this final decision.[30] A copy of a party's motion for reconsideration must be sent by mail or electronic service, if agreed upon by the parties, to the opposing party and proof must be submitted to the Tribunal that the motion for reconsideration was served on the opposing party.[31] However, unless otherwise provided by the Tribunal, no response to the motion may be filed, and there is no oral argument.[32]

A claim of appeal to the MCOA must be filed, with the appropriate entry fee, unless waived, within 21 days from the date of entry of this final decision.[33] If a claim of appeal is filed with the MCOA, the party filing such claim must also file a copy of that claim, or application for leave to appeal, with the Tribunal, along with the $100.00 fee for the certification of the record on appeal.[34]

By: David B. Marmon

Entered: September 15, 2015

[30] See TTR 257 and TTR 217.
[31] See TTR 225.
[32] See TTR 257.
[33] See MCR 7.204.
[34] See TTR 213 and TTR 217.