

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

GLE Scrap Metal, Inc.,  
Petitioner,

v

MTT Docket No. 16-000900

City of Warren,  
Respondent.

Tribunal Judge Presiding  
Marcus L. Abood

ORDER DENYING PETITIONER’S MOTION IN LIMINE

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, GLE Scrap Metal, Inc. (“GLE”), appeals the denial of its ad valorem personal property tax exemption by Respondent, City of Warren, for Parcel No. 99-04-520-740 for the 2016 tax year. Paul V. McCord and Paul C. Mallon, Attorneys, represented Petitioner, and Laura M. Hallahan, Attorney, represented Respondent.

On September 1, 2017, Petitioner filed a Motion In Limine requesting the Tribunal limit Respondent from raising seven issues, identified by Petitioner in its Motion, during the hearing. Respondent did not file a response to the Motion. The Tribunal finds the Motion was not filed to provide Respondent sufficient time to respond and finds that the issues addressed in the Motion were more properly raised during hearing, if applicable, rather than by Motion.

A hearing on this matter was held on September 7-8, 2017. Petitioner’s witnesses were Brandon Finkel, Steven Weinberg and Curtis Ruppal. Respondent’s witness was Michael Fontana.

Based on the evidence, testimony, and case file, the Tribunal finds that Respondent’s denial of the tax exemption shall be upheld for the 2016 tax year.

The subject property’s true cash value (“TCV”), state equalized value (“SEV”) and taxable value (“TV”) for the tax year at issue shall be as follows:

**Parcel Number:** 99-04-520-740

Year	TCV	SEV	TV
2016	\$840,000	\$420,000	\$420,000

### PETITIONER'S CONTENTIONS

Petitioner contends its personal property meets the definition of eligible manufacturing personal property ("EMPP") to qualify for the Essential Services Assessment ("ESA") because that property is predominantly used in industrial processing. In support, Petitioner relies on its fixed asset list. It also relies on a sales and use tax audit determination regarding the personal property at issue generated by the State of Michigan ("SOM") on June 18, 2015. The subject's personal property is identified on Petitioner's Exhibit P-14 as of December 31, 2015 ("tax day").<sup>1</sup>

Petitioner contends its business and industrial uses did not change from the SOM audit determination date through tax day. It further contends that the personal property in place was mostly identical between the SOM audit determination date through tax day.

Petitioner asserts it satisfied its burden of proof by proving its personal property is located on occupied real property, that it is predominantly used in industrial processing according to Petitioner's witnesses, and that the property was determined by an SOM auditor to be used in industrial processing. It further contends that some equipment included in Petitioner's predominant use calculation was used in direct integrated support and that Respondent has failed to acknowledge or account for that usage.

Additionally, Petitioner argues Respondent relies on a number of red herrings in its arguments, including the suitability of the SOM auditor to determine the industrial processing use for exemption purposes, the date of the audit, and the importance of determining the personal property's original cost.

### PETITIONER'S ADMITTED EXHIBITS

In support of its value contentions, Petitioner offered the following exhibits, which were admitted into evidence:

- P-4: GLE – 2016 Form 5278.
- P-5: GLE – 2016 EMPP Exemption Denial – Assessor.
- P-6: GLE – 2016 Notice of BOR Denial.
- P-7: GLE – Aerial View.
- P-8: GLE – Street View.

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<sup>1</sup> Tr., Day 1, 115.

- P-9: GLE – Warren Yard.
- P-10: GLE – Pictures of Equipment.
- P-11: GLE – Fixed Assets – Warren Yard.
- P-12: GLE – Fixed Assets Lists – Predominant Use.
- P-13: Michigan Department of Treasury – Preliminary Audit Determination.
- P-14: GLE – Asset Reconciliation.

#### PETITIONER’S WITNESSES

Petitioner’s first witness, Brandon Finkel, has been the controller for GLE for seven years. He testified to his involvement with and knowledge of Petitioner’s personal property located at its Warren and Melvindale locations. Mr. Finkel stated that Petitioner is in the ferrous and nonferrous scrap metal business. He stated that the occupied real property at which the personal property is located is owned by Petitioner’s commonly controlled entity. Mr. Finkel described the process by which customers deliver materials to the Warren yard and how it is weighed and sorted as well as the different ways that Petitioner processes materials, i.e. stripping casing from wire and putting material into a machine which bales.<sup>2</sup> He further testified that he relied solely on the SOM audit for the percentages indicating the personal property’s use in industrial processing and further admitted that some personal property as of tax day may not have been included in the SOM audit.<sup>3</sup> Mr. Finkel testified that Petitioner’s certified public accountant (“CPA”) prepares Petitioner’s asset lists based upon information provided by Mr. Finkel. He also testified that Petitioner purchases some of its equipment used.

Petitioner’s second witness, Steven Weinberg, described his background and experience as Petitioner’s CPA for the past 15 years.<sup>4</sup> He testified he is familiar with Petitioner’s personal property and was involved in the SOM audit of Petitioner’s industrial processing.<sup>5</sup> Mr. Weinberg prepared the necessary asset list for the subject personal property as well as the EMPP 5278 Form for the ESA exemption.<sup>6</sup> Mr. Weinberg testified he was the individual who sorted the fixed asset list by the date upon which Petitioner acquired or paid for the property at issue for

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<sup>2</sup> Tr., Day 1, 55-57.

<sup>3</sup> Tr., Day 1, 159-161.

<sup>4</sup> Tr., Day 1, 173-174.

<sup>5</sup> Tr., Day 1, 174, 182.

<sup>6</sup> Tr., Day 1, 175-177.

purposes of completing Form 5278.<sup>7</sup> He was also the person who answered questions during the SOM audit regarding how Petitioner's personal property assets were actually used.<sup>8</sup> Mr. Weinberg testified that Petitioner relied on the results of the SOM audit to determine whether individual items of personal property were used in industrial processing when calculating Petitioner's eligibility for ESA<sup>9</sup> or whether they were exempt from the calculation for other reasons, such as being a licensed vehicle.<sup>10</sup> As a result of his calculations, Mr. Weinberg claims that the subject parcel's predominant use calculation was 75% as of tax day<sup>11</sup> based upon his records and exclusively accounting for property located at Petitioner's Warren location as of tax day.<sup>12</sup> Lastly, he testified that use of the SOM audit, although prepared for a different tax year, was appropriate in this case.<sup>13</sup>

Petitioner's third witness, Curtis Ruppel, CPA, described his background and experience in the specialization of state and local taxes.<sup>14</sup> He states that he is very familiar with the relevant statutes for the ESA exemption relative to personal property in an industrial processing capacity.<sup>15</sup> He testified that the conclusions from the SOM audit are relevant because there was little change to Petitioner's personal property from the audit period at issue to the relative tax day.<sup>16</sup> As a result of this belief, Mr. Ruppel states it was appropriate for Petitioner to rely upon the SOM audit when preparing Form 5278.<sup>17</sup> He explained his role in assisting Petitioner in preparing Form 5278 and that his determination for the predominant use of Petitioner's personal property is at least 75.2% industrial processing and is a conservative estimate.<sup>18</sup> He remarks he did not account for Petitioner's use of equipment in direct integrated support because the conclusions regarding industrial processing were sufficient for him to determine that Petitioner's equipment qualified as EMPP.<sup>19</sup> Testimony includes the creation of Petitioner's response to

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<sup>7</sup> Tr., Day 1, 178-180.

<sup>8</sup> Tr., Day 1, 184-185.

<sup>9</sup> Tr., Day 1, 189.

<sup>10</sup> Tr., Day 1, 196-197.

<sup>11</sup> Tr., Day 1, 198-199.

<sup>12</sup> Tr., Day 2, 215.

<sup>13</sup> Tr., Day 2, 226.

<sup>14</sup> Tr., Day 2, 233-239.

<sup>15</sup> Tr., Day 2, 239-240, 241-246.

<sup>16</sup> Tr., Day 2, 252, 255-256.

<sup>17</sup> Tr., Day 2, 261.

<sup>18</sup> Tr., Day 2, 262-264, 269-270.

<sup>19</sup> Tr., Day 2, 272-273.

Respondent's first discovery requests but not Petitioner's subsequent discovery answers.<sup>20</sup> He admits that Petitioner's responses to Respondent's discovery requests had discrepancies but, upon being made aware of these discrepancies, he reviewed the documents and found that the original discovery answers (R-3) reflecting the calculation made at the time the exemption claim was filed were accurate.<sup>21</sup> He stated this is true because assets included in the subsequent discovery answers (R-5) included assets exempt from ad valorem personal property taxation and should not have been included in Petitioner's EMPP calculation.<sup>22</sup> Mr. Ruppel confirmed prior testimony that Petitioner used purchase price as the cost on its fixed assets list.<sup>23</sup>

### RESPONDENT'S CONTENTIONS

Respondent contends that Petitioner is not eligible for a personal property tax exemption because Petitioner did not prove its personal property is predominantly used in industrial processing and direct integrated support.

Respondent contends Petitioner has not properly accounted for the specific personal property located exclusively at the Warren scrapyard location ("occupied real property"). Additionally, Petitioner also has personal property located at its Melvindale location, as well as possibly at a Sterling Heights location owned by a commonly controlled third party. The SOM audit indicated Petitioner's personal property was kept at three locations. Respondent argues that Petitioner's asset list was not sufficiently specific to determine which assets were located at the subject property. Moreover Respondent was unable to coordinate an acceptable date with Petitioner to observe the personal property within the Warren scrapyard.

Respondent argues that Petitioner failed to account for the original cost of its personal property assets as required by statute and instead used the acquisition cost (aka "re-booked costs") of those assets, which Petitioner maintains on its fixed asset list.

Respondent further contends Petitioner does not engage in industrial processing under the sales and use tax acts as required to qualify for ESA. Respondent contends that just because part of personal property has "industrial processing" uses does not mean that it automatically qualifies for the ESA exemption. Respondent points to Petitioner's separate predominant use

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<sup>20</sup> Tr., Day 2, 293-295, 299.

<sup>21</sup> Tr., Day 2, 297-298.

<sup>22</sup> Tr., Day 2, 301.

<sup>23</sup> Tr., Day 2, 320.

calculations that do not reconcile with one another and that those varying calculations undercut the veracity of Petitioner's calculations.

#### RESPONDENT'S ADMITTED EXHIBITS

In support of its value contentions, Respondent offered the following exhibits, which were admitted into evidence:

- R-1: Petitioner's November 7, 2016 Answers to Respondent's First Set of Interrogatories.
- R-3: Tab 10 attached to Petitioner's Answers to Respondent's First Set of Discovery Requests.
- R-5: Exhibit B attached to Petitioner's March 2016, 2017 Discovery Answers.
- R-8: State Tax Commission's Assessor Guide to Eligible Manufacturing Personal Property Tax Exemption and ESA.

#### RESPONDENT'S WITNESS

Respondent's witness, Michael Fontana, assessing auditor for Respondent's assessor, testified that he is familiar with the EMPP requirements that Petitioner must meet to qualify for ESA.<sup>24</sup> He did not inspect Petitioner's personal property but, based upon the testimony of Petitioner's witnesses, testified he does not believe Petitioner qualifies for an exemption for that property.<sup>25</sup> He asserts that the SOM audit is not relevant in determining Petitioner's qualification for ESA because it occurred more than a year prior to tax day<sup>26</sup> and the use of such property can change from one tax year to the next.<sup>27</sup> He further stresses that Petitioner's predominant use calculation is not reliable because of the large discrepancies between numbers provided in the R-3 and R-5 answers to Respondent's discovery requests<sup>28</sup> as well as the unexplained removal of assets.<sup>29</sup> Lastly, Respondent's assessing auditor reviewed Petitioner's 2015 Personal Property Tax Statement and indicates that there may have been omitted property.<sup>30</sup>

#### FINDINGS OF FACT

1. The subject personal property is located in the City of Warren and within Oakland County.

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<sup>24</sup> Tr., Day 2, 349.

<sup>25</sup> Tr., Day 2, 349-350.

<sup>26</sup> Tr., Day 2, 352.

<sup>27</sup> Tr., Day 2, 353.

<sup>28</sup> Tr., Day 2, 359.

<sup>29</sup> Tr., Day 2, 362.

<sup>30</sup> Tr., Day 2, 395.

2. GLE owns personal property located at the subject property in Warren, at a corporate office in a different location in Warren, and at another scrap yard location in Melvindale.<sup>31</sup>
3. The commonly controlled entity Zack Investments-Sherwood owns the real property which is the subject's Warren scrap yard location.<sup>32</sup>
4. Petitioner's controller, Brandon Finkel, is not familiar with the admitted asset list which was purportedly prepared by Mr. Weinberg.<sup>33</sup>
5. A SOM sales and use audit was conducted for all of Petitioner's personal property located at the Warren, Melvindale and Sterling Heights locations. The audit period ended July 31, 2014.<sup>34</sup>
6. The SOM audit is a sampling of personal property from all of Petitioner's real property locations.<sup>35</sup>
7. Petitioner's controller compiled the fixed asset list approximately three years ago with the assistance of Mr. Weinberg. The controller admits the use percentages for each personal property item were determined by the state auditor.<sup>36</sup>
8. The admitted equipment pictures are depictions and not actuals images of Petitioner's personal property.<sup>37</sup>
9. Some of Petitioner's personal property was transferred from the subject occupied real property to a different facility<sup>38</sup> and Petitioner's personal property assets sometimes move between the various scrap yards.<sup>39</sup>
10. Petitioner maintains one fixed asset list for all personal property located at Petitioner's various locations.<sup>40</sup>
11. Petitioner's controller did not create the fixed asset list for Petitioner.<sup>41</sup>

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<sup>31</sup> Tr., Day 1, 76.

<sup>32</sup> Tr., Day 1, 20.

<sup>33</sup> Tr., Day 1, 33.

<sup>34</sup> Tr., Day 1, 37-38, 83.

<sup>35</sup> Tr., Day 2, 210-211, 213, 224, 250, 310, 357.

<sup>36</sup> Tr., Day 1, 45-48, 67.

<sup>37</sup> Tr., Day 1, 58-59.

<sup>38</sup> Tr., Day 1, 66.

<sup>39</sup> Tr., Day 1, 181.

<sup>40</sup> Tr., Day 1, 71.

<sup>41</sup> Tr., Day 1, 72.

12. Petitioner admits its fixed asset list is a “live” document.<sup>42</sup> In other words, changes to the document are ongoing. Petitioner’s asset lists are modified monthly.<sup>43</sup>
13. Petitioner’s CPA did not prepare the predominant use calculation labeled as Respondent’s Exhibit R-5.<sup>44</sup> Further, he is unaware who prepared the footnotes for this document.<sup>45</sup>
14. The subject personal property was inspected by Ruppal, Weinberg, Finkel and the SOM auditor on October 2, 2014.<sup>46</sup>
15. Ruppal prepared page 1 of Petitioner’s Exhibit P-14.<sup>47</sup>
16. Ruppal admits that he did not inspect every personal property asset at the subject location.<sup>48</sup>
17. Ruppal relied on a 2014 walk-through inspection of the Warren yard as well as information from Petitioner’s controller for the personal property.<sup>49</sup>
18. Petitioner acquired personal property after the SOM audit concluded.<sup>50</sup>
19. Petitioner did not offer any witnesses that actually work in the subject scrap yard.
20. Petitioner acknowledges SLC Acquisitions LLC, an industrial recycler, is a direct competitor to Petitioner but also ships undisclosed materials to SLC.
21. Respondent’s assessor testified that SLC Acquisitions LLC is an industrial recycler.<sup>51</sup>

#### CONCLUSIONS OF LAW

Regarding Petitioner’s September 1, 2017 Motion, the Tribunal finds that Petitioner’s Motion was not filed in a manner to allow Respondent sufficient time to respond and the Tribunal to consider the substantive issues raised by the Motion prior to the commencement of the hearing. Given that Petitioner did not file a motion for immediate consideration, Respondent had 21 days from the date Petitioner’s Motion was filed to file its response;<sup>52</sup> but, the Motion was filed six days prior to the commencement of the hearing in this matter. The Tribunal finds

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<sup>42</sup> Tr., Day 1, 72 and Day 2, 208.

<sup>43</sup> Tr., Day 2, 219.

<sup>44</sup> Tr., Day 2, 228.

<sup>45</sup> Tr., Day 2, 316.

<sup>46</sup> Tr., Day 2, 249.

<sup>47</sup> Tr., Day 2, 266-267.

<sup>48</sup> Tr., Day 2, 302-303, 310-311.

<sup>49</sup> Tr., Day 2, 311.

<sup>50</sup> Tr., Day 2, 317.

<sup>51</sup> Tr., Day 2, 347-348.

<sup>52</sup> See TTR 225(4).

that the issues raised in Petitioner's Motion were better suited to be raised at hearing, if applicable. Thus, Petitioner's Motion was rendered moot by the Entire Tribunal hearing conducted in this case. As a result, denying Petitioner's Motion In Limine is appropriate.

The parties disagree as to whether the personal property at issue is exempt from ad valorem property taxes as qualified new personal property and qualified existing personal property. "In general, tax exemption statutes are to be strictly construed in favor of the taxing authority."<sup>53</sup> The petitioner must prove, by a preponderance of the evidence, that it is entitled to an exemption.<sup>54</sup>

Only qualified new personal property and qualified previously existing personal property are eligible for a personal property tax exemption under ESA. "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."<sup>55</sup> "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."<sup>56</sup>

EMPP is defined as:

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

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<sup>53</sup> *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 664; 378 NW2d 737 (1985); *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 753-754; 298 NW2d 422 (1980).

<sup>54</sup> *ProMed Healthcare v Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002).

<sup>55</sup> MCL 211.9m.

<sup>56</sup> MCL 211.9n.

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)].<sup>57</sup>

Direct integrated support means any of the following:

- (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.<sup>58</sup>

Original cost is defined as:

[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.<sup>59</sup>

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<sup>57</sup> MCL 211.9m(8)(c).

<sup>58</sup> MCL 211.9m(8)(b).

<sup>59</sup> MCL 211.9m(8)(h).

In order to reach the conclusion that the parcel at issue qualified for the ad valorem tax exemption in this case, Petitioner must prove the mathematical calculation established by MCL 211.9m(8)(c) is satisfied. At minimum, this formula requires the Tribunal to determine: (i) what personal property was and was not located at Petitioner's occupied real property<sup>60</sup> 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. The Tribunal finds that Petitioner did not meet its burden of proof to qualify for a personal property tax exemption under MCL 211.9m and MCL 211.9n for the 2016 tax year due to its failure to establish accurate values for several of these elements by a preponderance of the evidence.

To begin, the testimony provided by Petitioner's witnesses was not consistent or cohesive. The role of company controller carries an expectation of certain management skills as well as internal financial responsibilities. Mr. Finkel's purported control over all personal property assets was not bolstered by convincing testimony. For example, Finkel denied having familiarity with Petitioner's answers to Respondent's interrogatories seeking information about the assets at issue.<sup>61</sup> He admits he participated in the SOM audit but testified he was unfamiliar with the asset headings listed in the audit document upon which Petitioner relies.<sup>62</sup> Upon specific examination of Petitioner's evidence, Finkel was unable to differentiate between Petitioner's purported asset lists and the SOM audit document while admitting that the documents do not contain the same personal property items.<sup>63</sup> Moreover, Finkel does not know who specifically determined the total acquisition costs that then result in the calculated percentage of industrial usage.<sup>64</sup> When questioned, Finkel is unable to recall where specific personal property was located between Petitioner's Warren and Melvindale yards as of tax day.<sup>65</sup> Likewise, he was unable to recall which of Petitioner's agents responded to Respondent's discovery requests.<sup>66</sup>

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<sup>60</sup> MCL 211.9m(8)(g).

<sup>61</sup> Tr., Day 1, 102-105.

<sup>62</sup> Tr., Day 1, 107.

<sup>63</sup> Tr., Day 1, 118.

<sup>64</sup> Tr., Day 1, 132.

<sup>65</sup> Tr., Day 1, 137.

<sup>66</sup> Tr., Day 1, 138-139.

Next, the controller's lack of recollection is not limited to his control of personal property assets but also extends to his duties regarding Petitioner's personal property acquisitions. Finkel offered no distinction or regard for whether personal property costs listed on Petitioner's asset sheets were original costs or re-booked costs. When specifically questioned, Finkel was not even familiar with the concept of re-booked costs<sup>67</sup> although he agreed that full acquisition costs must be reported for personal property.<sup>68</sup> Further, Finkel is not aware of the descriptions given to the personal property assets when they are placed on the asset list,<sup>69</sup> nor does he distinguish whether they are purchased new or used.<sup>70</sup> Finkel, in the typical course of his duties, only reports to Weinberg the actual cost of any acquired property and does not attempt to estimate or identify the original cost of any used property.<sup>71</sup>

In turn, Mr. Weinberg, Petitioner's CPA, was unable to further illuminate these gaps in Petitioner's evidence. Weinberg admits he controls the asset list upon which Petitioner's purported predominant use calculation is based. However, he does not have any direct knowledge as to the amount of time GLE's personal property is used for industrial uses and instead relies on Finkel and the SOM audit. Likewise, Mr. Weinberg was not provided with any written logs for personal property used in industrial processing at the Warren facility.<sup>72</sup>

Petitioner appears to not have any controls in place enabling it to track the transference of its personal property between its locations. Petitioner's provided spreadsheets for its fixed asset lists offered various column headings and footnotes alleging to list the locations of Petitioner's personal property. However, Petitioner failed to identify any method for accounting when that personal property moves between the various business locations. Petitioner's strenuous objections don't change the impact of three sets of interrogatories and responses to answers that do not clarify the acquisition, use, and location of the subject's personal property.

Petitioner's inconsistent methods for calculating the predominant use percentages of Petitioner's personal property even after initiating this appeal are equally troubling. For example, Petitioner's responses to Respondent's discovery requests in R-3 and R-5 paint an

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<sup>67</sup> Tr., Day 1, 101.

<sup>68</sup> Tr., Day 1, 140-141.

<sup>69</sup> Tr., Day 1, 120-121.

<sup>70</sup> Tr., Day 1, 121-123.

<sup>71</sup> Tr., Day 1, 122-123.

<sup>72</sup> Tr., Day 2, 227.

inconsistent picture. More specifically, Petitioner makes an additional deduction from total assets to then arrive at the final denominator in the predominant use calculation in R-3 but failed to do so or account for that discrepancy in R-5. Upon cross-examination by Respondent, Petitioner's witnesses were not even able to identify the person who wrote the responses in R-5.

These gaps in reporting and maintaining the information necessary to precisely determine the location and original costs of purported EMPP are Petitioner's burden. Petitioner's reliance on the SOM audit is not solely sufficient to establish that its personal property qualifies as EMPP. Even Mr. Ruppal, Petitioner's outside audit specialist and ESA expert, testified that some reliance must be placed on the taxpayer for maintaining personal property information, including Petitioner's use of specific assets.<sup>73</sup> In further questioning, Ruppal admitted that Petitioner's controller would have the most intimate knowledge and understanding of the personal property.<sup>74</sup>

The sum result of the foregoing is that no individual is sufficiently in control, or no controlled process is sufficiently implemented within Petitioner's chain of command, to ensure that assets are accounted for in a manner sufficient to determine Petitioner's EMPP usage. The controller is responsible for reporting property costs to the CPA but does not differentiate between acquisition cost and the ESA definition of original cost where there might be a difference between the two. The fixed asset list does not typically identify whether property is purchased new or used. There is no business process to track the specific location of Petitioner's personal property as of tax day. There is no explanation as to how percentage used in industrial processing is determined except for reliance upon an ever-aging SOM audit. Petitioner's witnesses were not able to explain the criteria used by the SOM auditor in reaching the audit conclusions.<sup>75</sup> Further, neither the controller nor the CPA is ultimately responsible for Petitioner's exemption claim in its Form 5278 for the tax year at issue. Another person, Nathan Zack, actually signed the 2016 Affidavit and Statement for EMPP and ESA. However, he was not present nor did he testify at the hearing.

Further, Petitioner's lack of any attempt to calculate its property's percentage usage in direct integrated support, as required by statute, is strong evidence that Petitioner has not made a

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<sup>73</sup> Tr., Day 2, 254-255.

<sup>74</sup> Tr., Day 2, 339.

<sup>75</sup> Tr., Day 1, 113.

good-faith effort to determine whether the personal property was actually used predominantly as EMPP. Petitioner's representative argued the predominant use percentage in this case would have been even higher had Petitioner analyzed the direct integrated support uses of its personal property yet provided no explanation as to why Petitioner purposefully chose to weaken its own case by not providing evidence to support this contention. Petitioner was required by law to analyze the personal property's use both in industrial processing and direct integrated support, but Petitioner's agent admitted it did not do so.<sup>76</sup> Further, Petitioner's agents did not attempt to assign any of the subject property a use percentage based upon that property's classification as direct integrated support.

Respondent even attempted to save Petitioner from itself in seeking to inspect Petitioner's personal property but was not accommodated. Petitioner allowed the SOM auditor to access the subject real property for inspection of Petitioner's personal property yet could not make time for Respondent's assessor to do the same for purposes of determining the subject property's predominant use in industrial processing and direct integrated support.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the subject property does not qualify for a tax exemption under MCL 211.9m and MCL 211.9n for the tax year at issue. The subject property's TCV, SEV, and TV for the tax year at issue are as stated in the Introduction section above.

#### JUDGMENT

IT IS ORDERED that Petitioner's Motion In Limine is DENIED.

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.<sup>77</sup> 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

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<sup>76</sup> Tr., Day 1, 199.

<sup>77</sup> See MCL 205.755.

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, 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, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, and (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%.

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

#### 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 required filing fee within 21 days from the date of entry of the final decision.<sup>78</sup> 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 exemption and, if so, there is no filing fee.<sup>79</sup> A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof

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<sup>78</sup> See TTR 261 and 257.

<sup>79</sup> See TTR 217 and 267.

demonstrating that service must be submitted with the motion.<sup>80</sup> Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.<sup>81</sup>

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an “appeal by right.” If the claim is filed more than 21 days after the entry of the final decision, it is an “appeal by leave.”<sup>82</sup> A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.<sup>83</sup> The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.<sup>84</sup>

By Marcus L. Abood

Entered: December 14, 2017  
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<sup>80</sup> See TTR 261 and 225.

<sup>81</sup> See TTR 261 and 257.

<sup>82</sup> See MCL 205.753 and MCR 7.204.

<sup>83</sup> See TTR 213.

<sup>84</sup> See TTR 217 and 267.