

STATE OF MICHIGAN  
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH  
MICHIGAN TAX TRIBUNAL

Enbridge Pipelines (Toledo), Inc.,  
Petitioner,

v

MTT Docket No. 367653

Lyndon Township, Washtenaw County,  
Respondent.

Tribunal Judge Presiding  
Kimbal R. Smith III

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY  
DISPOSITION

FINAL OPINION AND JUDGMENT

**I. INTRODUCTION**

Petitioner, Enbridge Pipelines (Toledo), Inc, ("Enbridge"), is appealing the taxable values determined for the subject property by Respondent, Lyndon Township, Washtenaw County, for tax years 2009 and 2010. On August 11, 2010, Petitioner filed a motion requesting the Tribunal to render a judgment in its favor pursuant MCR 2.116(C)(10). Respondent has not filed a response to Petitioner's Motion for Summary Disposition.

**II. PETITIONER'S CONTENTIONS**

Petitioner contends that "Enbridge filed this taxable value only appeal because Respondent, Lyndon Township, failed to properly determine the 2009

taxable value for the subject property, parcel number 99-03-985-021.” Petitioner further contends a motion to add the 2010 tax year was granted. Petitioner states the 2008 taxable value for parcel number 99-03-985-021 was established as \$780,585. Petitioner argues that, pursuant to MCL 211.27a(2), after the year 1995, the taxable value for each parcel of property shall be the lesser of the following:

- (a) The property’s taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions. For taxes levied in 1995, the property’s taxable value in the immediately preceding year is the property’s state equalized valuation in 1994.
- (b) The property’s current state equalized valuation.

Petitioner argues that “based on the above statute, the Michigan State Tax Commission issued Bulletin No. 9 on October 27, 2008, and stated that the inflation factor to be used in 2009 was 1.044.... Further, the bulletin explained that the 2009 taxable value cap for a parcel was to be determined pursuant to the following formula: The 2009 Capped Value Formula is as follows: 2009 CAPPED VALUE = (2008 Taxable Value – LOSSES) X 1.044 + ADDITIONS.” Petitioner argues that “[b]ecause there were no additions and no losses with respect to this parcel, the 2009 capped value is:  $(\$780,585 - \$0) \times 1.044 + 0 = \$814,930$ . Since the state equalized value for 2009 was \$2,157,000 and is greater than the 2009 capped value, the 2009 taxable value for this parcel is \$814,930.”

Petitioner contends that, based on MCL 211.27a, “the Michigan State Tax Commission issued Bulletin No. 10 on October 13, 2009, and stated that the inflation factor to be used in 2010 was 0.997.... Further, the bulletin explained that the 2010 taxable value cap for a parcel was to be determined pursuant to the following formula: The 2010 Capped Value Formula is as follows: 2010 CAPPED VALUE = (2009 Taxable Value – LOSSES) X 1.044 + ADDITIONS.” Petitioner argues that “because there were no additions and no losses with respect to this parcel, the 2010 capped value is:  $(\$814,930 - \$0) \times 0.997 + 0 = \$812,485.$ ” Petitioner further argues that “[s]ince the state equalized value for 2010 was greater than the 2010 capped value; the 2010 taxable value for this parcel is \$812,485.”

Petitioner argues that “[g]ranted this motion for summary disposition is appropriate pursuant to TTR 230... TTR 111(4) also provides that where an applicable Entire Tribunal Rule does not exist, the Michigan Court Rules shall govern....” Petitioner argues that under MCR 2.116(C)(10), “Where there is no issue as to any material fact then the moving party is entitled to judgment as a matter of law.”

Petitioner further argues that,

[R]ecently, the Michigan Tax Tribunal has set forth the standard for granting a motion for summary disposition pursuant to MCR 2.116(C)(10) in *Leverett v Charter Township of Watertown*, MTT

Docket No. 328982 (August 1, 2008) stating: Under MCR 2.116(C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law. *Smith v Global Life Insurance*, 460 Mich 446, 454-455; 597 NW2d (1999).

Lastly, Petitioner claims that “[t]he grant of summary disposition is proper based on undisputed facts set forth above which are supported by the affidavit.” As a result, Enbridge is entitled to judgment as a matter of law that the 2009 taxable value for this parcel is \$814,930 and for the 2010 year the taxable value for this parcel is \$812,485.

### **III. FINDINGS OF FACT**

The property under appeal is classified as utility personal property, for purposes of property taxes, and is identified as parcel number 99-03-985-021. A Consent Judgment entered on March 17, 2009 determined the 2008 taxable value of the subject property to be \$780,585. According to a Stipulation for Entry of Consent Judgment filed on April 28, 2010, the original state equalized value and taxable values for 2009 were listed as \$2,157,000. The same Stipulation listed the 2010 original state equalized value and taxable values as \$2,194,200. Petitioner asserts that the appropriate taxable value is \$814,930 in 2009 and \$812,485 in 2010. The amount in contention for 2009 is \$1,342,070 and the amount in contention for 2010 is \$1,381,715.

Petitioner timely filed a petition with the Tribunal on May 29, 2009, solely contesting the taxable value for the subject property for tax year 2009. On April 28, 2010, Petitioner filed a Motion to Amend Petition to Add Subsequent Year (2010) and filed a Stipulation for Entry of Consent Judgment. The Motion to Amend Petition to Add Subsequent Year was granted May 10, 2010. The Stipulation for Entry of Consent Judgment was denied on May 10, 2010 for failure to provide any justification for the proposed values.

As communicated in the State Tax Commission's Bulletin No. 9 issued on October 27, 2008,

[T]he inflation rate, expressed as a multiplier, to be used in the 2009 Capped Value formula is 1.044. The 2009 Capped Value Formula is as follows:  $2009 \text{ CAPPED VALUE} = (2008 \text{ Taxable Value} - \text{LOSSES}) \times 1.044 + \text{ADDITIONS}$ . The preceding formula does not include 1.05 because the inflation rate multiplier of 1.044 is lower than 1.05.

Further, as communicated in the State Tax Commission's Bulletin No. 10 of 2009, issued on October 13, 2009,

[T]he inflation rate, expressed as a multiplier, to be used in the 2010 Capped Value Formula is 0.997. The 2010 Capped Value Formula is as follows:  $2010 \text{ CAPPED VALUE} = (2009 \text{ Taxable Value} - \text{LOSSES}) \times 0.997 + \text{ADDITIONS}$ . The formula ... does not include 1.05 because the inflation rate multiplier of 0.997 is lower than 1.05.

Petitioner asserts that there were no additions or losses to parcel number 99-03-985-021 in the 2009 or 2010 tax years. Further, a senior associate from Duff &

Phelps, the authorized tax representative for Enbridge, filed an affidavit stating that she has “[r]eviewed the tax records of Enbridge Energy... and the facts set forth in the motion and brief in support of summary disposition are true and accurate.” The affidavit supports the assertions that there were no additions or losses to parcel number 99-03-985-021 in the 2009 or 2010 tax years.

Respondent has failed to file a response to Petitioner’s Motion for Summary Disposition.

#### **IV. APPLICABLE LAW**

A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact. Under subsection (C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Insurance*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under subsection (C)(10) will be denied. *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

The Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by

the parties in the light most favorable to the non-moving party. *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)). The moving party bears the initial burden of supporting his position by presenting his documentary evidence for the court to consider. *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id.* Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *McCart v J Walter Thompson*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1992).

## V. CONCLUSIONS OF LAW

This Tribunal has carefully considered Petitioner's Motion for Summary Disposition under the criteria for MCR 2.116(C)(10) and, based on the pleadings and other documentary evidence filed with the Tribunal, determines that granting Petitioner's Motion is appropriate.

The Tribunal concludes that the pleadings and documentary evidence prove that there is no genuine issue with respect to any material fact. Specifically, the Tribunal concludes that the subject property's taxable value was incorrectly determined by Respondent pursuant to MCL 211.27a(2). MCL 211.27a(2) states, in pertinent part, that after 1995, the taxable value for each parcel of property shall be the lesser of the following: "The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions. For taxes levied in 1995, the property's taxable value in the immediately preceding year is the property's state equalized valuation in 1994."

The 2008 State Equalized Value was stipulated by the parties in the Motion for Joint Stipulation for Entry of Consent Judgment, which was granted by the Tribunal on March 17, 2009. Applying the inflation rate for 2009 of 1.044, as provided in Michigan State Tax Commission Bulletin No. 9 to the 2008 stipulated taxable value of \$780,585, results in the correct taxable value for the subject property in 2009 of \$814,930. Petitioner's Motion to Amend to Add Subsequent Tax Year was granted. Applying the inflation rate for 2010 of .997, as provided in Michigan State Tax Commission Bulletin No. 10 to the 2009 taxable value of \$814,930, results in the correct taxable value for the subject property in 2010 of \$812,485. Petitioner correctly determined the taxable value of the subject property for the 2009 and 2010 tax years. Thus, since the sole issue in dispute in the above-

captioned case is the taxable value of the subject property for 2009 and 2010, the Tribunal finds that Petitioner has established that there are no genuine issues of material fact in this case and Petitioner is entitled to judgment as a matter of law under MCR 2.116(C)(10).

Furthermore, Respondent has provided no documentary evidence to support the finding of a genuine issue of material fact. Therefore, the Tribunal finds that granting Petitioner's Motion is appropriate.

As such, the property's final taxable value for the tax years at issue is as follows:

Parcel Number: 99-03-985-021

Year	TV
2009	\$814,930
2010	\$812,485

## **VI. JUDGMENT**

**IT IS ORDERED** that Petitioner's Motion for Summary Disposition is **GRANTED**.

**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 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 as required by the Final Opinion and Judgment within 28 days of the entry of the Final 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 Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for calendar year 1998, (iv) after December 31, 1998,

at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999, at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000, at the rate of 5.56% for calendar year 2001, (vii) after December 31, 2001, at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ix) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (xi) after December 31, 2005, at the rate of 2.07% for calendar year 2005, (xi) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (xii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, and (xiii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, (xiv) after December 31, 2008, at the rate of 3.31% for calendar year 2009, and (xv) after December 31, 2009, at the rate of 1.23% for calendar year 2010.

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

MICHIGAN TAX TRIBUNAL

Entered: October 12, 2010  
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By: Kimbal R Smith III