

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

Max ERA, Inc.,  
Petitioner,

v

MTT Docket No. 441276

City of Midland,  
Respondent.

Tribunal Judge Presiding  
Preeti P. Gadola

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Max ERA, Inc. appeals the ad valorem property tax assessments levied by Respondent, City of Midland, against Parcel No. 42-08-32-602 for the 2012 tax year. The parcel consists of industrial personal property located at 2820 Schuette Drive, the former Evergreen Solar Facility (“Evergreen”). A hearing on this matter was held on August 18 and 20, 2014. Scott D. McDonald and Lawrence S. Gadd, Attorneys appeared on behalf of Petitioner, and Francis J. Keating, Attorney, appeared on behalf of Respondent. Petitioner’s witnesses were Al Lowenstein, Appraiser and Kirk Waibel, Appraiser and Respondent’s witness was Reid Duford, 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 tax years at issue are as follows:

**Parcel Number:** 42-08-32-602

|      | Petitioner  |           |           |
|------|-------------|-----------|-----------|
| Year | TCV         | SEV       | TV        |
| 2012 | \$1,114,950 | \$557,475 | \$557,475 |

PETITIONER’S CONTENTIONS

Petitioner contends that the subject property is assessed in excess of 50% of its true cash value.

Petitioner’s contentions of TCV, SEV, and TV are as follows:

**Parcel Number:** 42-08-32-602

|      | Petitioner  |           |           |
|------|-------------|-----------|-----------|
| Year | TCV         | SEV       | TV        |
| 2012 | \$1,114,950 | \$557,475 | \$557,475 |

#### PETITIONER'S ADMITTED EXHIBITS

- P-1 Appraisal Report prepared by Al Lowenstein
- P-5 Bid-On-Equipment screenshot of 450 Ton Trane Chiller
- P-6 Second Bid-On-Equipment screenshot of 450 Ton Trane Chiller
- P-7 Bid-On-Equipment screenshot of Thermacold Air Cooled Liquid Chiller
- P-9 Popular Mechanics screenshot and article
- P-11 Ideal Vacuum Products screenshot of Mobile Cart Helium Mass Spectrometer Leak Detector
- P-14 Bid-Service screenshot of Used TA Instruments
- P-15 Equipnet screenshot of Varian 450-gc-2003

#### PETITIONER'S WITNESSES

##### **Al Lowenstein**

Petitioner presented testimony from its appraiser, Al Lowenstein. Based on his experience and training, the Tribunal accepted Mr. Lowenstein as an expert in the valuation of personal property and he prepared and communicated an appraisal of the subject property using the sales approach to value, after considering the cost approach. 8/18/14 Tr. at 35. He has 30-years of experience in preparing equipment appraisals and has completed “thousands and thousands” of the same. 8/18/14 Tr. at 19. He is a member of the Association of Machinery and Equipment Appraisers and the Machinery Dealers National Association, a “group of like-minded people involved in machinery and equipment sales.” 8/18/14 Tr. at 18. He has experience and expertise in the valuation of machinery and equipment (“M and E”) related to the solar industry as he was involved in the appraisal of the personal property of Uni-Solar and GE Solar, 8/18/14 Tr. at 26. He testified that the solar industry has declined due to overseas competition and government subsidies as well as less expensive energy technology, such as fracking. He testified

that several solar companies have filed for bankruptcy protection such as Evergreen, which filed in August, 2011. Evergreen constructed silicon carbide high temperature filament which was utilized in the construction of solar wafers. The application of the silicon onto the filament is a chemical process and results in the manufacture of the component of solar wafers which are components of solar panels. The solar panels were constructed at the Evergreen headquarters in Devens, Massachusetts, which property also filed for bankruptcy protection. As noted above, Evergreen filed for bankruptcy protection in August, 2011, closed its doors in October, 2011, was purchased by Petitioner in November, 2011, and was vacant at the time of purchase and on December 31, 2011. The Evergreen Solar building was completed in 2009.

Mr. Lowenstein viewed and photographed the personal property in contention located at Evergreen. He completed a site inspection with Mr. Waibel, who assisted in the appraisal of the subject property, on March 14, 2014. 8/18/20 Tr. at 23,137. At that time he stood “in front of the equipment, list[ed] its make, model, serial number, year of manufacturing, if possible, if not, research the year of manufacturing, and we list any relevant accessories or capacity information that might relate to the machine.” 8/18/14 Tr. at 22. Mr. Lowenstein testified, “We then research to find comparable equipment and we make adjustments based on the subject machinery as compared to whatever you’re comparing it to, and we reach a value conclusion.” *Id.*

Mr. Lowenstein indicated that the market value of the property was determined based on the premise that it would be sold “as-is” with no warranty to the buyer from the seller. The buyer would also be responsible for the transport of the property and any costs for repair. 8/18/14 Tr. at 41-42, P-1 at 8. In his appraisal he wrote, “There are usually two types of buyers in the event the subject assets would be sold piecemeal. The first would be an end user, who would purchase the machinery either to expand existing production capacity or to replace less productive equipment. Once the market of end users has been exhausted, the potential buyer pool usually becomes used machinery dealers and brokers.” *Id.*

Mr. Lowenstein indicated that “Many of the assets were new or very low usage equipment. In most cases the numbers were adjusted upwards to account for the better condition of the subject assets for standard items.” He wrote that the “second classification of equipment is the proprietary or custom built machinery. Due to its special nature and the failed attempts to

sell the assets either in part or whole led us to conclude that its only market value would be scrap value.” P-1 at 17.

With regard to the specific pieces of property, item one was a chilling system which Mr. Lowenstein testified “could be adapted for another purpose.” However, “It might be overcapacity.” 8/18/14 Tr. at 39, 41. He testified that its market value is \$150,000. He testified that he determined the value of the property by looking “at the history of similar items we’ve sold at auction and I adjust for the market timeframe, the additional exposure you would get from the item.”<sup>1</sup> 8/18/14 T. at 43. He also testified that Mr. Waibel assisted him in valuing item one. 8/18/14 Tr. at 44.

Item two was a Vertical Storage and Retrieval System for handling small parts. Mr. Lowenstein testified it could be used elsewhere and its market value was \$10,000. He testified that items one through four and six through eight could be used by any manufacturer. 8/18/14 Tr. at 39-49. He testified that “he sees a fair number of these in the marketplace.” He “feels pretty comfortable assessing as far as the value.” “I watched similar units sell over the course of my career.” “I consulted with the dealer who sells those.” 8/18/14 Tr. at 45-50.

Mr. Lowenstein testified that items nine and ten included customized tanks that were designed for a specific purpose, but “also have general purpose utility to them.” 8/18/14 Tr. at 50. He consulted with the selling dealer in determining the value of the tanks. Item eleven was an “electrical guide frame and tower, all piping, plumbing and electrical.” Mr. Lowenstein valued item eleven at its scrap value per pound, because “it’s cost prohibitive to tear it out and reinstall it.” 8/18/14 Tr. at 53. He was asked, “Q: Now based on years of experience doing this, were you able to think of fairly accurate estimates of the weights that were involved?” “A: Yes.”

When questioned about item twelve (boiler system), Mr. Lowenstein answered, “Q: Is this the type of equipment that you would sell over and over again?” “A: Yes.” “Q: And again that number you believe to be accurate as of December 31, 2011?” “A: Yes.” 8/18/14 Tr. at 55-56. With regard to item thirteen, which “scrubs the fumes leaving the building to make sure that they’re at an acceptable level, whatever government regulations dictate,” Mr. Lowenstein testified, that “scrubbers have application on the secondary market, but they’re rated in a certain

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<sup>1</sup> Mr. Lowenstein testified that the market timeframe was “the tax date of the appraisal.” 8/18/14 Tr. at 43.

capacity, size. They're rated no – they're not universally interchangeable.” 8/18/14 Tr. at 56. Mr. Lowenstein testified that he estimated the cost of item thirteen to be \$600,000, but its market value was \$150,000. He answered, “Q: And you feel that would be a reasonable price for someone to pay for those scrubbers as of December 31, 2011?” “A: Yes.” 8/18/14 Tr. at 58.

Mr. Lowenstein testified that items fourteen (glass washer), sixteen (filter system), nineteen (air heater), and twenty-two are not unique to the solar industry, but are size specific and therefore not as easily adapted to another user. When questioned how he arrived at an estimate market value, Mr. Lowenstein answered, “Experience of other glass washers that sold, what the - what the usable components of the piece of equipment are[,]” and “Experience from selling other systems similar.” 8/18/14 Tr. at 58-63, 73. Items fifteen (two-door bake oven) and eighteen (compressor) trade regularly and are very marketable. Mr. Lowenstein testified that his \$90,000 valuation for item eighteen was “a pretty aggressive number, and that’s driven by the fact that it was in excellent condition.” 8/18/14 TR. at 65.

Item seventeen is a hydraulic freight elevator that Mr. Lowenstein testified could be utilized by another user, but it is designed for a specific space and is the type of thing that is “usually left with the building.” He did assign it a market value of \$50,000, however, because it could be used on the secondary market and “the condition was excellent.” 8/18/14 Tr. at 64. Item nineteen is an industrial air heater that in most cases does not sell well.

Item twenty consists of four propriety machines unique to silicon coating. Mr. Lowenstein testified that “it wasn’t something that anybody would be interested in continuing. It wasn’t profitable for the company that originally designed it, and at the time we didn’t think anyone would have an interest in continuing with it.” 8/18/14 Tr. at 67. Mr. Lowenstein valued the proprietary equipment as partly scrap, “but there are some electrical components that were- that have some value to them, controllers, and such. So it was a package of what somebody would be willing to pay knowing they had to remove it, warehouse it, and come out the other end with profitability into the deal.” 8/18/14 Tr. at 68.

Item twenty-one (toxic gas monitoring system) has some value, but is a niche market. “You would have to find somebody designing a system right when you’re selling it that realizes the cost savings in buying your used equipment. It is very custom and there’s not a lot of people

out there.” 8/18/14 Tr. at 70. Items thirty-one through thirty –five are very common (air compressor, vacuum cleaner, shop equipment, office equipment, among others) and “[T]his stuff we see at every liquidation we do. And my 30 years of experience I walk through and I literally run tape of these items as I go through.” 8/18/14 Tr. at 75. Items five and twenty-three through thirty were valued by Mr. Waibel. In all, Mr. Lowenstein and Mr. Waibel listed thirty-five pieces and/or lots of equipment in Mr. Lowenstein’s appraisal and determined a total fair market value of the equipment of \$1,114,950. P-1, Schedule B.

On cross-examination, Mr. Lowenstein testified that he did not speak to anyone from Petitioner, Max ERA, Inc., or anyone from Evergreen. He was let into the property by “the gentleman who used to work for John E. Green Company that was maintaining the company . . . .” 8/18/14 Tr. at 101. He also used the sale of the assets of Uni-Solar that occurred after the tax date in question and was a bankruptcy sale. He utilized the Uni-Solar sale to determine the sale price of proprietary solar manufacturing equipment: “What I did is I used the results of a sale to show what happens to proprietary equipment when it’s brought to marketplace and there’s not a demand for it.” Also, “What I was trying to compare to Uni-Solar was the results of a product that was taken to market in solar that failed, that was specifically designed to do only one thing, create one product, and how that plays out in the marketplace.” 8/18/14 Tr. at 107-108.

### **Kirk Waibel**

Mr. Waibel is an appraiser who assisted Mr. Lowenstein in appraising the subject personal property. He aided in the appraisal of item one and chiefly appraised items five and twenty-three through thirty. Mr. Waibel has been an equipment appraiser since 1999. He is the founder of Marketplace Machinery where “he appraises industrial and commercial property, primarily.” 8/18/14 Tr. at 133. He has also participated in equipment auction work. Mr. Waibel inspected the subject property with Mr. Lowenstein on March 14, 2014, and aided with the write-up regarding the chilling system, but “focused mainly on the lab equipment.” 8/18/14 Tr. at 138. He did find some comparables to the chilling system that are included as exhibits in this appeal, (P-5, P-6 and P-7) which aided in his determination of the true cash value of the subject chiller for the 2012 tax year.

With regard to item five (Amano bench top microscope), Mr. Waibel testified that it is “usable in many industries. It is a commonly sold item.” 8/18/14 Tr. at 143. He testified, “I don’t know if I’ve sold an exact Amano, but microscopes very similar to this one and I’m comfortable with the \$1,200 value.” *Id.* With regard to items twenty-five to thirty, Mr. Waibel testified that they may be utilized by many industries. Item twenty-five was a tensile-pull tester utilized to determine how much force it would take to pull apart a product. Mr. Waibel testified that “he has experience with these machines. Again, they’re very common in the marketplace. I sold many of them.” 8/18/14 Tr. at 157. Item twenty-six is a microscope camera. He testified, “We see them very, very frequently . . . .” and he valued the item at \$2,000 as of December 31, 2011. When questioned, “Q: Are you comfortable with that opinion?” He answered, “A: I am, yes.” 8/18/14 Tr. at 158.

Item twenty-seven consists of a hand-held equipment that Mr. Waibel testified, “I’ve sold a lot of force gauges, and I don’t think the price on those-well, in the eight years that I was performing public auction sale work, they bring 200 bucks every time.” 8/18/14 Tr. at 159. Item twenty-eight is equipment, “again, is stuff that’s readily used by any other industries.” Item twenty-nine are lab hoods and benches that he’s “sold these in my career . . . . The ones I’ve seen sell at a public auction sale would have been in the \$500 range, so I thought, you know, they looked good.” 8/18/14 Tr. at 163-164. Item thirty is a leak detector “that’s seen in many industries.” 8/18/14 Tr. at 164.

Items twenty-three and twenty-four were an electron microscope and mechanical material analyzer. Mr. Waibel could not find a comparable for item twenty-three so researched its cost and manufacturing date and compared it to December 31, 2011. He determined that the equipment does not have a long useful life and “used my judgment as an appraiser and I assigned \$30,000.” 8/18/14 Tr. at 153. Mr. Waibel did find a comparable to item twenty-four (dynamic mechanical material analyzer) which he “discounted to consider the valuation date here.” 8/18/14 Tr. at 155. Mr. Waibel utilized the Bid-on-Equipment site, Ideal Vacuum Products and Equipnet to find comparables to the subject property. P-4, P-5, P-6, P-11, P-14 and P-15.

On cross-examination Mr. Waibel noted that his comparables were not perfect, some were offerings, some were of equipment slightly different than the subject, some were valued

simply from his experience and he did not have work papers to support every item in his value determination. Mr. Waibel also utilized a sale from Hilco, the company that liquidated Uni-Soar's assets, as a comparable. 8/18/14 Tr. at 169-190. Mr. Waibel testified that he considered the income approach to value, but did not utilize it. 8/18/14 Tr. at 176.

#### RESPONDENT'S CONTENTIONS

Pursuant to its valuation disclosure, Respondent agrees that the subject property is assessed in excess of 50% of its true cash value. Respondent contends, however, that the assessment is not excessive to the extent asserted by Petitioner.

The property's TCV, SEV, and TV as established by the Board of Review for the tax years at issue are as follows:

**Parcel Number:** 42-08-32-602

| Year | TCV         | AV          | TV          |
|------|-------------|-------------|-------------|
| 2012 | \$7,085,600 | \$3,542,800 | \$3,542,800 |

Respondent's revised contentions of value per its valuation disclosure:

**Parcel Number:** 42-08-32-602

| Year | TCV         | AV          | TV          |
|------|-------------|-------------|-------------|
| 2012 | \$6,901,600 | \$3,450,800 | \$3,450,800 |

#### RESPONDENT'S ADMITTED EXHIBITS

R-1 Valuation Disclosure of Reid Duford, Assessor

R-2 Curriculum Vitae of Reid Duford

#### RESPONDENT'S WITNESS

##### **Reid Duford**

Mr. Duford is the Assessor for the City of Midland and has held the title for ten years. One of his responsibilities is to appraise real and personal property located in the City of Midland for ad valorem tax purposes. He is a Michigan master assessing officer and certified personal property examiner. The Tribunal accepted Mr. Duford as an expert in assessing and



property tax valuation. 8/20/14 Tr. at 11, 13. On cross examination, Mr. Duford answered “no” when questioned if he “holds[s] any designations or special training in appraising or assessing solar panel equipment . . . or machinery.” He also answered, “no” when asked if he has “any certification in assessing machinery or equipment other than your state-your general state assessor’s designation?” 8/20/14 Tr. at 13. Finally, he answered, “no” that he did not “have any experience selling machinery or equipment.” 8/20/14 Tr. at 14. He did testify that his certification “qualifies me to assess a property like the City of Midland, with a larger amount of industrial, both personal and real property.” *Id.*

Mr. Duford prepared and communicated a valuation disclosure presenting the true cash value of the subject property as of December 31, 2011. In his disclosure he wrote, “The Michigan Constitution provides for the assessment of all real and tangible personal property not exempted by law. The Michigan Department of Treasury (“Treasury”) prescribes the Form L-4175 to be used for the purpose of obtaining a statement of assessable personal property for use in making a personal property assessment.” R-1 at 13. Further, Mr. Duford wrote, “Petitioner’s predecessor, Evergreen Solar, Inc. filed the required Treasury Form L-4175 for tax year 2011 on February 2, 2011, for the subject personal property. From the report the assessor was able to accurately determine acquisition cost new for all of the subject industrial personal property.” *Id.* To the acquisition costs new, Mr. Duford applied the 2012 STC multipliers to conclude to a final determination of true cash value of the subject property under the cost approach to value.<sup>2</sup>

Mr. Duford prepared his cost approach after inspecting the property on July 8, 2013. He prepared his valuation disclosure based on the 2011 personal property statement filed by Evergreen and “then a statement as well filed by Key Equipment Finance.” (“Key”) 8/20/14 Tr. at 23. Mr. Duford spoke to the preparer of the Key personal property statement and she confirmed that telecommunications equipment leased to Evergreen by Key was surrendered to Evergreen. 8/20/14 Tr. at 31. Mr. Duford therefore included the telecommunications equipment

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<sup>2</sup> “The personal property valuation multipliers were developed by valuing the periodic survivors of representative groups of the various types of personal property and then computing a multiplier for each survivor group to translate historic cost new into a current indication of true cash value for the group.” Michigan Dep’t of Treasury, State Tax Commission/Assessment and Certification Division, *Personal Property Questions and Answers* <[http://www.michigan.gov/documents/treasury/FAQ\\_Personal\\_Property\\_305244\\_7.pdf](http://www.michigan.gov/documents/treasury/FAQ_Personal_Property_305244_7.pdf)> (accessed October 27, 2014)

in his valuation disclosure and also included a photo of such equipment. R-1 at 13. Mr. Duford also included \$4,115,413 in 2012 cost new value, personal property that was previously listed on the 2011 personal property statement as “construction in progress.” 8/20/14 Tr. at 32. With regard to such construction in progress equipment, Mr. Duford was questioned, “Do you know what property that was - that’s referring to?” “A: Machinery and equipment.” “Q: Do you know which machinery and equipment?” “A: I don’t, not exactly.” 8/20/14 Tr. at 76.

Mr. Duford concluded in a true cash value for all the subject personal property of \$6,901,600. He did not value each piece of M and E separately, he testified when questioned, “So of all the machinery and equipment at the facility, there’s not one single piece of equipment or machinery that you attempted to assess at an individual value.” “A: No.” When asked, “I assume you were able to obtain the actual invoices or checks or other information as to what was paid for each individual piece of equipment?” “A: No.” 8/20/14 Tr. at 52.

Mr. Duford testified that Evergreen filed for an Industrial Facilities Exemption (“IFT”) from taxation on June 4, 2008, and that the IFT application certified the cost new of the subject personal property to be \$7,030,000.<sup>3</sup> 8/20/14 Tr. at 35-36, R-1 at 21. Further, he testified that R-1 at 29 was an application for an IFT from Petitioner submitted on May 1, 2012, listing the same value of personal property. Mr. Duford testified that he “used it for support of my final determination of value, as it was reported that [there were] \$7,030,000 worth of personal property costs.” 8/20/14 Tr. at 37.

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<sup>3</sup> P.A. 198 of 1974, as amended, states:

The Plant Rehabilitation and Industrial Development Districts Act, (known as the Industrial Facilities Exemption) PA 198 of 1974, as amended, provides a tax incentive to manufacturers to enable renovation and expansion of aging facilities, assist in the building of new facilities, and to promote the establishment of high tech facilities.

An Industrial Facilities Exemption (IFE) certificate entitles the facility to exemption from ad valorem real and/or personal property taxes for a term of 1-12 years as determined by the local unit of government. Applications are filed, reviewed and approved by the local unit of government, but are also subject to review at the State level by the Property Services Division and the Michigan Economic Development Corporation. The State Tax Commission (STC) is ultimately responsible for final approval and issuance of certificates. Exemptions are not effective until approved by the STC.

Mr. Duford testified that he photographed every piece of the subject personal property during his site inspection in July 2013 and he presented the photographs in his valuation disclosure. He testified that upon inspection, he determined the property to be in excellent condition. 8/20/14 Tr. at 38, 45. He confirmed his conclusion by sitting down with the former Evergreen facilities and maintenance manager, Rob Kaminski. 8/20/14 Tr. at 46. He also testified that Mr. Kucinski “confirmed that all the subject personal property was still in the plant when Evergreen Solar vacated the site.” 8/20/14 Tr. at 47.

On cross examination, Mr. Duford testified that he did not have a chance to inspect the subject property before July, 2013. He testified that he based his conclusion of value on the personal property statements which listed the M and E and other personal property in one lump sum, by class of equipment (M and E, furniture and fixtures, computer equipment) and not by individual pieces. With regard to Evergreen’s IFT application dated June 4, 2008, Mr. Duford was asked, “Q: And as of 6/4/08 that factory wasn’t built yet, correct?” “A: That is correct.” “Q: So these aren’t real cost numbers, there are just projections, these are estimates, correct?” “A: That is correct, yes.” 8/20/14 Tr. at 56. Mr. Duford was also posed the question: “Q: Let me ask you this. If personal property-you’re not bound by what a personal property tax return says, are you, to accept that number?” “A: No.” “Q: So you the assessor are charged with the responsibility of making an independent assessment of the true cash value of the equipment there?” “A: I am.” He also testified, “I accepted the statement with the knowledge of-for the fact at the time I worked closely with Evergreen Solar for the industrial facilities tax exemption. If you refer back to my report, you’ll see that I was in direct contact with their vice president, Mr. Carl Stegerwald.” 8/20/14 Tr. at 55-56.

Mr. Duford testified that the solar panel industry was doing well in Midland as of December 31, 2011, despite the bankruptcy of Evergreen and the fact that its facility was vacant at the time of purchase by Petitioner. He did not, however, research the solar panel industry beyond Midland. 8/20/14 Tr. at 61-62. He was asked, “Did you do any research to determine if there’s any type of market for any of the equipment – specific equipment that is at the - that you viewed at 2820 Schuette?” “A: No, I did not.” 8/20/14 Tr. at 62. He further testified, “I spoke

with Mr. Kucinski about it. He indicated there was a good market for those pieces of equipment.” 8/20/14 Tr. at 62, 64.

Mr. Duford confirmed that he relied on the 2011 personal property statement filed by Evergreen which reported the value of the property as of December 31, 2010 and that “he didn’t prepare an inventory as of 12/31/2010 and compare it to the inventory as of 12/31/11” as he first personally inspected the property in July, 2013. He also testified that he did not know exactly what was in the seven million dollar number he was relying upon. 8/20/14 Tr. at 68.

#### FINDINGS OF FACT

1. The subject property is located at 2820 Schuette Drive, Midland, MI.
2. The subject property is identified as Parcel No. 42-08-32-602.
3. The subject property consists of industrial personal property located in the former Evergreen Solar facility. Evergreen filed for bankruptcy protection in August 2011 and closed its doors on October 15, 2011. It was purchased by Petitioner in November, 2011.
4. Evergreen constructed silicon carbide high temperature filament used in the solar industry. Some of the equipment utilized to apply the silicon to the filament was proprietary equipment specifically for the process while other equipment could be used by any manufacturer.
5. Mr. Duford valued the subject property based on 2011 personal property statements filed by Evergreen and Key, and a conversation he had with the preparer of the Key personal property statement. The personal property statements presented value as of December 31, 2010. Mr. Duford applied 2012 STC personal property cost multipliers to the cost new of the property to conclude in its true cash value for the 2012 tax year of \$6,901,600.
6. Mr. Duford testified that he confirmed his conclusion of value for the subject property with the IFT applications filed by Evergreen and Petitioner listing the estimated cost new of the personal property to be \$7,030,000. This estimated cost new did not include the application of 2012 STC personal property multipliers to determine the property’s market value as of December 31, 2011. The IFT application asks for “itemized listing with month, day and year of beginning of installation plus total.” No itemized listing of personal property was attached to the application.

7. Mr. Duford valued the property in whole as furniture and fixtures, machinery and equipment, computer equipment and telecommunications equipment. He did not value each piece of M and E and other personal property, individually.
8. Mr. Lowenstein prepared an appraisal of the subject personal property using his 30 years of experience in valuing personal property and equipment. The appraisal included thirty five pieces or lots of equipment. Mr. Waibel aided in the preparation of the appraisal by valuing items five and twenty-three through thirty. He also aided in the valuation of item one. Mr. Lowenstein considered and rejected the cost approach to value and Mr. Waibel considered and rejected the income approach.
9. Mr. Waibel presented work papers regarding comparable sales and offerings he found from Bid-on-Equipment, Ideal Vacuum Products and Equipnet. Mr. Waibel has been an M and E personal property appraiser since 1999 and has also auctioned M and E and other personal property. Both Mr. Lowenstein and Mr. Waibel made upward adjustments to their comparable sales to reflect the excellent condition of the subject equipment.
10. Mr. Lowenstein valued the subject proprietary equipment by comparing it to the bankruptcy sale price of Uni-Solar equipment and its scrap value.

#### 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. See MCL 211.27a.

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 . . . .  
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).

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.” *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

“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.” *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal is not bound to accept either of the parties' theories of valuation. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985). “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.” *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991). 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.” *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. MCL 205.735a(2). The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.” *Dow Chemical Co v Dep’t of Treasury*, 185 Mich App 458, 462-463; 462 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, supra* at 352-353.

“The petitioner has the burden of proof in establishing the true cash value of the property.” MCL 205.737(3). “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.” *Jones & Laughlin Steel Corp, supra* at 354-355. 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.” MCL 205.737(3).

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. *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). “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.” *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1). 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. *Antisdale, supra* at 277.

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell. See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

Here, the parties' valuation experts were charged with developing and communicating valuation disclosures of the subject property to assist the Tribunal in making an independent determination of its true cash value for the year under appeal. Petitioner's appraisers, Mr. Lowenstein and Mr. Waibel developed the sales approach to value after considering the cost and income approaches. Respondent's assessor, Mr. Duford, prepared a cost approach to value. The Tribunal has considered the cost, income and sales approaches to value and finds the sales approach is the correct valuation approach to utilize in determining the true cash value of the subject property for the 2012 tax year.

Mr. Duford relied on Evergreen's 2011 personal property statement to determine the true cash value of the subject property for the 2012 tax year. He valued furniture and fixtures, cost new in 2009 of \$64,729, at \$44,663 after application of 2012 STC multipliers. Mr. Duford did not list the individual furniture and fixtures valued, but a lump sum as reported by Evergreen. Mr. Duford valued computer equipment at \$112,607 cost new in 2009 and 2010, at \$37,105 after application of personal property valuation multipliers. Again, he did not present the individual computer equipment in terms of type, brand, modem, monitor, tower, laptop, etc.

Mr. Duford added \$76,742 to Evergreen's personal property valuation for 2012 based on a 2011 personal property statement listing telecommunications equipment as an asset of Key's. Mr. Duford had a conversation with a representative of Key who indicated that it leased the equipment to Evergreen and turned it over to them, however, the equipment is listed as leased equipment to Evergreen by Key on both Evergreen's and Key's 2011 personal property statements and the Tribunal is not persuaded that the asset was owned by Evergreen on December 31, 2011.

Mr. Duford added \$4,037,941 in M and E cost new in 2009 and \$493,419 in cost new in 2010 and applied the appropriate multipliers to determine the market value of the property for 2012. Again, he did not list the individual pieces of equipment; he could not verify what equipment was there in 2009, 2010 or December 31, 2011, as he didn't inspect the property until July 8, 2013. When questioned, "So of all the machinery and equipment at the facility, there's not one single piece of equipment or machinery that you attempted to assess at an individual value." "A: No." 8/20/14 Tr. at 52.

To the 2009 and 2010 cost new of M and E, Mr. Duford added an additional \$4,115,413 in cost new M and E listed on Evergreen's 2011 personal property statement as "personal property construction in progress." As the equipment was "construction in progress," it was valued at half its cost new in 2011. The Tribunal is not persuaded by Mr. Duford's methodology as he added over \$4,000,000 in cost new personal property, assessed at 2012 rates without even inspecting the property in 2010 and comparing it to the personal property present at Evergreen on December 31, 2011. Mr. Duford does not know what specific property Evergreen's personal property statement is referring to, construction in progress or other. Further, as noted above, Evergreen filed for bankruptcy protection in August, 2011, thus the Tribunal queries, why would it continue to install equipment in 2011 if it was spiraling downwards toward bankruptcy? Mr. Duford included photos of the equipment present in the former Evergreen facility on July 8, 2013, but is any of it the construction in progress equipment listed on the personal property statement? The Tribunal does not find the addition of \$4,115,413 in cost new to be appropriate.

It appears to the Tribunal that Mr. Duford accepted as fact the self-reported personal property of Evergreen as of December 31, 2010, as the same property present on December 31,



2011. In his mind he confirmed this conclusion by sitting down with the former Evergreen facilities and maintenance manager, Rob Kucinski who “confirmed that all the subject personal property was still in the plant when Evergreen Solar vacated the site.” 8/20/14 Tr. at 47. Yes, the facilities manager indicated that all of the personal property was present on October 15, 2011, when Evergreen closed its doors, but is that the same personal property listed on the personal property statement as cost new or construction in progress? Was the construction in progress equipment ever purchased and/or installed? The Tribunal queries if Mr. Kucinski even knows what property was reported on the personal property statement? He was not its signatory, was not called as a witness and was not present in the courtroom during the hearing of this matter.

Mr. Duford testified that upon inspection, he determined the property to be in excellent condition. 8/20/14 Tr. at 38, 45. Respondent’s appraisers, Mr. Lowenstein and Mr. Waibel agreed to the same. Mr. Duford testified that “[he] spoke with Mr. Kucinski about it. He indicated there was a good market for those pieces of equipment.” 8/20/14 Tr. at 64. Mr. Lowenstein and Mr. Waibel agreed that there was a good market for most of the equipment. Yet, Mr. Duford also testified when asked, “Did you do any research to determine if there’s any type of market for any of the equipment – specific equipment that is at the - that you viewed at 2820 Schuette?” “A: No, I did not.” “Q: You did not do any investigation as to what market there might be for that equipment?” “A: I did not.” 8/20/14 Tr. at 62. Mr. Duford was asked, “Q: Let me ask you this. If personal property-you’re not bound by what a personal property tax return says, are you, to accept that number?” “A: No.” “Q: So you the assessor are charged with the responsibility of making an independent assessment of the true cash value of the equipment there?” “A: I am.” Here, the Tribunal finds that Mr. Duford did not make an independent assessment of the property, but simply relied on the 2011 personal property statement and 2012 STC multipliers.

In *Detroit Lions, Inc. v City of Dearborn*, 302 Mich App 676, 704; 840 NW2d 168 (3013), the Michigan Court of Appeals stated,

It is undisputed that the personal property values advanced by respondents were based on the STC multiplier tables. The STC multiplier tables are used by taking the property's historical or original cost by year of acquisition and applying a multiplier to convert the cost to current true cash value. *Wayne Co.*, 261 Mich.App. at 181, 682 N.W.2d 100. But the STC multiplier tables are merely

guides, and do not have the force of law. *Danse Corp. v. Madison Heights*, 466 Mich. 175, 182, 644 N.W.2d 721 (2002); *Wayne Co.*, 261 Mich.App. at 245, 682 N.W.2d 100. Respondent's proposed personal property values were incomplete because they were not developed after research and a review of the other traditional methods for determining true cash value. *Meadowlanes*, 437 Mich. at 485–486, 473 N.W.2d 636.

As in *Detroit Lions*, Mr. Duford's personal property values were incomplete because no research or review of any other method was completed. As indicated above, the only method he utilized was the cost approach to value.

As noted above, Evergreen's IFT application dated June 4, 2008, indicated that the estimated cost of "machinery, equipment, furniture and fixtures" was \$7,030,000. R-1 at 21. Petitioner submitted an IFT application to Respondent on May 1, 2012, listing the same \$7,030,000 in estimated personal property costs. R-1 at 29. Mr. Duford, relied on the IFT cost new information from the IFT applications for "support of my final determination of value, as it was reported that [there were] \$7,030,000 worth of personal property costs." 8/20/14 Tr. at 37. The Tribunal is unable to reconcile what the May 1, 2012 estimated costs new have to do with Mr. Duford's \$6,901,600 determination of true cash value as of December 31, 2011 from 2009, 2010 and 2011 costs new adjusted by multipliers. Furthermore, if estimated costs new were \$7,030,000 in 2008, wouldn't that number be adjusted by multipliers to determine 2012 market value, resulting in a number less than \$6,901,600? As noted above, the IFT application requires the attachment of an "itemized listing with month, day and year of beginning of installation, plus total." R-1 at 78, 82. No itemized listing of the personal property of Evergreen was attached to the 2008 or 2012 applications, with month, day and year of beginning installation, therefore the IFT application is about as much aid to the Tribunal, in independently determining the true cash value of the subject property for the 2012 tax year, as personal property statements that list property in bulk.

Mr. Lowenstein and Mr. Waibel prepared a market approach to value the subject property. While Mr. Lowenstein did not provide any work papers to support his contentions of value for the subject property, his 30-years of experience as an M and E appraiser is persuasive to the Tribunal. Mr. Waibel has been an M and E appraiser since 1999, has been involved in

auctioning personal property, and also provided comparable offerings and sales work papers. With regard to the individual equipment, Mr. Lowenstein and Mr. Waibel viewed, photographed and noted the “make, model, serial number, year of manufacturing, if possible, if not, research the year of manufacturing, and we list any relevant accessories or capacity information that might relate to the machine.” 8/18/14 Tr. at 22. Mr. Lowenstein testified, “We then research to find comparable equipment and we make adjustments based on the subject machinery as compared to whatever you’re comparing it to, and we reach a value conclusion.” *Id.* Mr. Lowenstein and Waibel inspected the property in March 2014.

Mr. Lowenstein indicated that the market value of the property was determined based on the premise that it would be sold “as-is” with no warranty to the buyer from the seller, diminishing its value. The buyer would also be responsible for the transport of the property and any costs for repair. 8/18/14 Tr. at 41-42, P-1 at 8. In his appraisal he wrote, “There are usually two types of buyers in the event the subject assets would be sold piecemeal. The first would be an end user, who would purchase the machinery either to expand existing production capacity or to replace less productive equipment. Once the market of end users has been exhausted, the potential buyer pool usually becomes used machinery dealers and brokers.” *Id.*

Mr. Lowenstein indicated, however, that “Many of the assets were new or very low usage equipment. In most cases the numbers were adjusted upwards to account for the better condition of the subject assets for standard items.” He wrote that the “second classification of equipment is the proprietary or custom built machinery.” P-1 at 17. Mr. Lowenstein testified that “it wasn’t something that anybody would be interested in continuing. It wasn’t profitable for the company that originally designed it, and at the time we didn’t think anyone would have an interest in continuing with it.” 8/18/14 Tr. at 67. Mr. Lowenstein valued the proprietary equipment as partly scrap, “but there are some electrical components that were—that have some value to them, controllers, and such. So it was a package of what somebody would be willing to pay knowing they had to remove it, warehouse it, and come out the other end with profitability into the deal.” 8/18/14 Tr. at 68.

Mr. Lowenstein testified that he utilized sales comparables from the Uni-Solar bankruptcy sale as the same was a solar manufacturing company that disposed of proprietary

equipment. Mr. Lowenstein testified, “What I did is I used the results of a sale to show what happens to proprietary equipment when it’s brought to marketplace and there’s not a demand for it.” Also, “What I was trying to compare to Uni-Solar was the results of a product that was taken to market in solar that failed, that was specifically designed to do only one thing, create one product, and how that plays out in the marketplace.” 8/18/14 Tr. at 107-108. The Tribunal finds the use of Uni-Solar sales of proprietary solar industry equipment to be the best evidence of the true cash value of the subject proprietary equipment for the 2012 tax year, given that there appears to be no other market. Further, Mr. Duford answered “no” when questioned if he “holds[s] any designations or special training in appraising or assessing solar panel equipment . . . or machinery,” 8/20/14 Tr. at 13. He answered, “no” that he did not “have any experience selling machinery or equipment.” 8/20/14 Tr. at 14. He was asked, “Did you do any research to determine if there’s any type of market for any of the equipment – specific equipment that is at the - that you viewed at 2820 Schuette?” He answered, “A: No, I did not.” 8/20/14 Tr. at 62.

The fact that the Uni-Solar sale was after tax day in this matter,<sup>4</sup> is not bothersome to the Tribunal. Proper application of the sales comparison approach involves,

[C]omparing similar properties that have recently sold with the property being appraised, identifying appropriate units of comparison, **and making adjustments to the sale prices** (or unit prices as appropriate) of the comparable properties based on relevant, market-derived elements of comparison. Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14<sup>th</sup> ed, 2013), p 377. [Emphasis added].

The Tribunal finds the use of after tax day sales are acceptable as long as properly adjusted. Mr. Lowenstein indicated that the sale prices were adjusted upwards to account for the better condition of the subject assets. Adjustments were also applied to the sales and offerings to adjust to value as of December 31, 2011. 8/18/20 Tr. at 69. Further, MCL 211.2(2) states:

The taxable status of personal and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day, any provisions in the charter of any city or village to the contrary notwithstanding. **An assessing officer is not restricted to any particular period in the preparation of the assessment roll but may survey,**

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<sup>4</sup> It occurred in June, 2012.

**examine, or review property at any time before or after the tax day.**  
[Emphasis added].

The above quoted stature allows Mr. Duford to examine sales after tax day, yet Respondent improperly objects to Mr. Lowenstein's consideration?

When testifying about any of the particular pieces or lots of equipment, Mr. Lowenstein testified that he "feels pretty comfortable assessing as far as the value." "I watched similar units sell over the course of my career." "I consulted with the dealer who sells those." 8/18/14 Tr. at 45-50. With regard to a retrospective conclusion of value, when questioned about item twelve (boiler system), for example, Mr. Lowenstein answered, "Q: Is this the type of equipment that you would sell over and over again?" "A: Yes." "Q: And again that number you believe to be accurate as of December 31, 2011?" "A: Yes." 8/18/14 Tr. at 55-56. Mr. Lowenstein testified many times that he was valuing the subject property as of December 31, 2011.

Mr. Waibel appraised the subject lab equipment, shop equipment and office area personal property. He was familiar with the property and consulted on the Bid-on-Equipment site, Ideal Vacuum Products and Equipnet to find comparables to the subject property. With regard to item five (Amano bench top microscope), for example, Mr. Waibel testified that it is "usable in many industries. It is a commonly sold item." 8/18/14 Tr. at 143. He testified, "I don't know if I've sold an exact Amano, but microscopes very similar to this one and I'm comfortable with the \$1,200 value." *Id.* With regard to items twenty-five to thirty, Mr. Waibel testified that they may also be utilized by many industries. Item twenty-five was a tensile-pull tester utilized to determine how much force it would take to pull apart a product. Mr. Waibel testified that "he has experience with these machines. Again, they're very common in the marketplace. I sold many of them." 8/18/14 Tr. at 157. Item twenty-six is a microscope camera. He testified, "We see them very, very frequently . . ." and he valued the item at \$2,000 as of December 31, 2011. When questioned, "Q: Are you comfortable with that opinion?" He answered, "A: I am, yes." 8/18/14 Tr. at 158.

As indicated in Mr. Lowenstein's and Mr. Waibel's testimony, above, many of the subject pieces of personal property are usable by any manufacturer and can be sold on the open used equipment market. There are a few pieces, however, that would better stay with the

building (elevator, electric guide frame and tower, piping, plumbing and electrical), are capacity specific (item 16, waste treatment multi-media filter system and item 22, heat recovery system, among others) or proprietary equipment. As indicated above, Mr. Lowenstein valued the proprietary equipment for its usable component parts and the rest for scrap value. He also opined that piping, plumbing and electrical would be more cost effective to buy new rather than tear out and install elsewhere. 8/18/14 Tr. at 53. The elevator “is usually left with the building.” 8/18/14 Tr. at 64. The capacity specific items such as the filter and heat recovery systems are “specific capacity and size to the process” or “ordered to size,” therefore can be utilized by other manufacturers, but don’t sell as well. 8/18/20 Tr. at 62, 73. The Tribunal is persuaded by Mr. Lowenstein and Mr. Waibel’s determination of the true cash value of all of the subject property for the 2012 tax year, after their careful examination of each piece or lot of equipment and its market, and utilization of years of experience and/or sales comparables to determine value, rather than taking a lump sum off a personal property statement and applying multipliers meant to be guidelines, without any market verification.

After careful, deliberate and independent examination of the admitted exhibits and testimony in this matter, the Tribunal finds that the subject property’s TCV, SEV, and TV for the tax years 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 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 year at issue shall correct or cause the assessment rolls to be corrected to reflect the properties’ 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 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, 2014, at the rate of 4.25%.

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

By: Preeti P. Gadola

Entered: Nov 14, 2014