

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

Detroit Lions, Inc., and WCF Land, LLC,
Petitioners,

MTT Docket Nos. 314348, 314349,
327111, 327112, and 352900

v

City of Dearborn and
City of Allen Park,
Respondents.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

Introduction

Petitioners, Detroit Lions, Inc. (“Lions”) and WCF Land, LLC (“WCF”), appeal ad valorem property tax assessments levied by Respondents City of Dearborn (“Dearborn”) (Docket Nos. 314349, 327111, 352900) and City of Allen Park (“Allen Park”) (Docket Nos. 314348, 327112) against the personal property owned by Petitioners for the 2005 through 2009 tax years. Myles B. Hoffert and David B. Marmon, attorneys, appeared on behalf of Petitioners. Stephanie Simon Morita and Carl Rashid Jr., attorneys, appeared on behalf of Respondents. Witnesses appeared on behalf of both parties. Petitioners’ witnesses were Michael Clarkson, appraiser, and Thomas Lesnau, Vice President of Finance and Chief Financial Officer. Alfonso Consiglio, Regional Manager for Tax Management Associates, Inc. (“TMA”) was Respondents’ witness.

The proceedings were brought before this Tribunal on April 5, 2010, to resolve the personal property assessment dispute.

At issue before the Tribunal is the determination of true cash value of Petitioners' personal property for the 2005, 2006, 2007, 2008, and 2009 tax years. The value on the assessment rolls are as follows:

Lions					
		Allen Park	Allen Park	Dearborn	Dearborn
Parcel No.		30-999-00-2003-003	18%	84-0001-398700	82%
Year	Total TCV	TCV	SEV/TV	TCV	SEV/TV
2005	\$1,955,300	\$388,800	\$194,400	\$1,566,500	\$783,250
2006	\$1,436,800	\$258,600	\$129,300	\$1,178,200	\$589,100
2007	\$1,305,200	\$235,000	\$117,500	\$1,070,200	\$535,100
2008	\$1,207,800	\$217,400	\$108,700	\$990,400	\$495,200
2009	\$1,114,500	\$200,600	\$100,300	\$913,900	\$456,950

WCF					
		Allen Park	Allen Park	Dearborn	Dearborn
Parcel No.		30-999-00-2006-034	18%	84-0001-398600	82%
Year	Total TCV	TCV	SEV/TV	TCV	SEV/TV
2005	\$1,519,100	\$0	\$0	\$1,519,100	\$759,550
2006	\$1,207,200	\$238,800	\$119,400	\$1,087,800	\$543,900
2007	\$1,045,600	\$206,800	\$103,400	\$942,200	\$471,100
2008	\$925,200	\$183,000	\$91,500	\$833,700	\$416,850
2009	\$810,100	\$160,200	\$80,100	\$730,000	\$365,000

Respondents' contentions of value based on TMA audit are as follows:

Detroit Lions

Lions					
		Allen Park	Allen Park	Dearborn	Dearborn
Parcel No.		30-999-00-2003-003	18%	84-0001-398700	82%
Year	Total TCV	TCV	SEV/TV	TCV	SEV/TV
2005	\$1,958,153	\$352,468	\$176,234	\$1,605,685	\$802,843
2006	\$1,446,817	\$260,427	\$130,214	\$1,186,390	\$593,195
2007	\$1,315,731	\$236,832	\$118,416	\$1,078,899	\$539,450
2008	\$1,294,634	\$233,034	\$116,517	\$1,061,600	\$530,800

2009	\$1,201,829	\$216,329	\$108,165	\$985,500	\$492,750
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WCF Land, LLC

WCF					
		Allen Park	Allen Park	Dearborn	Dearborn
Parcel No.		30-999-00-2006-034	18%	81-001-398600	82%
Year	Total TCV	TCV	SEV/TV	TCV	SEV/TV
2005	\$1,783,292	\$320,993	\$160,496	\$1,462,299	\$731,150
2006	\$1,573,048	\$283,149	\$141,574	\$1,289,899	\$644,950
2007	\$1,381,341	\$248,641	\$124,321	\$1,132,700	\$566,350
2008	\$1,239,878	\$223,178	\$111,589	\$1,016,700	\$508,350
2009	\$1,110,853	\$199,954	\$99,977	\$910,899	\$455,450

Petitioners' contend the aggregate values are:

Petitioners' Contentions Designated personal property

Year	TCV	SEV	TV
2005	\$1,620,000	\$810,000	\$810,000
2006	\$1,450,000	\$725,000	\$725,000
2007	\$1,280,000	\$640,000	\$640,000
2008	\$1,330,000	\$665,000	\$665,000
2009	\$1,200,000	\$600,000	\$600,000

Items that may have been classified as real property

Petitioners' Contentions

Year	TCV	SEV	TV
2005	\$93,000	\$46,500	\$46,500
2006	\$86,000	\$43,000	\$43,000
2007	\$80,000	\$40,000	\$40,000
2008	\$74,000	\$37,000	\$37,000
2009	\$68,000	\$34,000	\$34,000

The Tribunal finds the values shall be:

Detroit Lions, Inc.

Lions					
		Allen Park	Allen Park	Dearborn	Dearborn
Parcel No.	Total	30-999-00-2003-003 18%		84-0001-398700 82%	
Year	TCV	TCV	SEV/TV	TCV	SEV/TV
2005	\$1,958,153	\$352,468	\$176,234	\$1,605,685	\$802,843
2006	\$1,446,817	\$260,427	\$130,214	\$1,186,390	\$593,195
2007	\$1,315,731	\$236,832	\$118,416	\$1,078,899	\$539,450
2008	\$1,294,634	\$233,034	\$116,517	\$1,061,600	\$530,800
2009	\$1,201,829	\$216,329	\$108,165	\$985,500	\$492,750

WCF Land, LLC:

WCF					
		Allen Park	Allen Park	Dearborn	Dearborn
Parcel No.	Total	30-999-00-2006-034 18%		81-001-398600 82%	
Year	TCV	TCV	SEV/TV	TCV	SEV/TV
2005	\$1,347,168	\$242,490	\$121,245	\$1,104,678	\$552,339
2006	\$1,193,565	\$214,842	\$107,421	\$978,723	\$489,362
2007	\$1,051,465	\$189,264	\$94,632	\$862,201	\$431,101
2008	\$951,011	\$171,182	\$85,591	\$779,829	\$389,914
2009	\$855,621	\$154,012	\$77,006	\$701,609	\$350,805

Background and Introduction

At issue for the tax years under appeal is the true cash value for the personal property located at the Detroit Lions Training Facility located at 222 Republic Drive, Allen Park, Wayne County. The property is located in both Allen Park and Dearborn. The Tribunal in a prior decision determined that the split between the two cities is 82%

located in the City of Dearborn leaving the remaining 18% located in the City of Allen Park. WCF and Lions file separate personal property statements.

Petitioners argue that Respondents have overvalued the personal property.

Petitioners have a market appraisal of the subject property. Petitioners claim that the values submitted are not auction values, but on-line information that Petitioners believe will establish what the market is for various items of personalty. Petitioners challenge the cost new-less depreciation based upon State Tax Commission ("STC") multipliers. Petitioners state that their method is superior to mass appraisal techniques and that the value is in line with the definition of market value.

Respondents argue that Petitioners' inconsistent application of Clarkson's methodology, misrepresentation during testimony, and the failure to value all of the assets makes Petitioners' value grossly understated. Respondents state that using Petitioners' flawed methodology and the timely sales of the actual assets themselves if Petitioners' depreciation methodology was accepted would yield a much higher value. Respondents have prepared an audit of the subject property, which is the basis for their true cash value contentions.

Petitioners' Arguments

Petitioners argue that the true cash value of the subject property is overstated.

Petitioners' valuation was prepared through an appraiser with over thirty years of experience with a variety of personal property. Petitioners argue that the values are

not auction values, but rather are on-line information that establishes the market for various items of personal property located at subject property.

Petitioners also assert that a desk once owned by Harvey Firestone, founder of Firestone Tire, and a customized golf cart should be deemed to be collectibles.

Petitioners assert that neither asset belongs to the Lions or WCF.

Petitioners' Admitted Exhibits:

P-1 Petitioners' valuation disclosure dated January 16, 2010; TCV as of December 31, 2004; December 31, 2005; December 31, 2006; December 31, 2007; and December 31, 2008.

P-2 Technical Valuation Services letter

P-3 April 5, 2010 eBay buy-it-now for MTS Shoulder Press Gym Equipment

Petitioners' Appraisal

Michael Clarkson, personal property appraiser, was qualified as an expert in personal property valuation. He described the process that he used to determine the market value of the personal property. He stated that a physical inspection was made of the subject property with the management initially for approximately three days in 2003 and again in the spring of 2005. The actual appraisal process is explained to the client, and then the property is walked through, room by room, area by area, noting what is located in the area. During the walk-through, an inventory of the personal property items is taken as well as their condition and any identifying characteristics of

the property that will assist in determining a market value. After the inspection, Clarkson meets with management to see if something was missed or if any corrections are in order. He also determines if any additions or disposals have been made for all the tax years at issue that will need to be added to or deducted from the property.

Clarkson determined that the highest and best use of the assets is for what they were originally manufactured for. He estimated that there were close to a thousand assets. Not every asset has marketability; the new assets or special purpose ones are unique and do not have an active market. In those instances Clarkson used a cost approach.

The types of personal property located at the subject property includes: furniture, office machines, athletic exercise and training equipment, as well as video equipment. Outside, the equipment included grounds-keeping equipment, and athletic practice equipment.

After the inspection, Clarkson notes the make, model and condition of equipment. He then uses the internet and e-commerce sites to find similar assets. After the proper item is found Clarkson prints out the page or he requests a printed quote. Prior to the internet, he would use magazine subscriptions, and phone calls to various equipment suppliers to develop a cost estimate.

When questioned if freight, tax, or installation costs were included, Clarkson testified:

The individual items are valued where they are on site. You don't have to move them anywhere. A purchaser can buy a piece of furniture at the

Detroit Lions training camp if it was for sale or they could go across the street and buy similar furniture down the road or in another city to buy similar furniture. So it doesn't need to be moved to anywhere.

I always consider two things when you're making an appraisal, performing an appraisal. One is that a willing buyer and willing seller are two different entities or persons and that the owner is always the seller. And in that case, there's no need for installation cost because a purchaser is not going to pay the seller for costs that he incurred to move it around from one place to the next. Tr. Vol 1, p 67.

Clarkson testified to his appraisal for the years at issue. Using samples of various items he testified as to the number, age, and condition and indicated from what page the print-out from eBay was located. He explained that P-1 pages 14-36 are assets of the Lions, pages 22-60 are WCF assets for tax years 2005, 2006, and 2007. The assets without asset numbers were determined to be items purchased as part of the build-to-suit agreement with Ford Motor Land Development. Clarkson stated that pages 76 through 139 of P-1 contain the same format for tax years 2008 and 2009.

When questioned on what type of equipment was used, Clarkson testified "There's no two same pieces of equipment. They're all similar. Similar make, similar model, similar condition. And if they differ, you adjust for that." Tr Vol 1, p 157. Clarkson stated that age didn't matter.

Clarkson testified on cross that the Chiropractic table¹ is the eBay print-out that describes the Deluxe Hill elevation air drop chiropractic table. The description does not include a weight limit.

¹ P-1 page 55, item 353, page 201, reference no. 1138.

The MTS shoulder press made by Life Fitness was a 2004 purchase; however, a similar professional model was substituted. The \$5,476 actual 2004 acquisition price was of no consequence to Clarkson. He valued the MTS shoulder press at \$1,500 as of December 31, 2004. He further testified that:

Business personal property and exercise equipment specifically have diminished values as soon as they're bought. Their value drops rather quickly in the early part of their life. And there's readily available refurbished equipment all over the marketplace. And I used the market approach for that. Vol II p 43.

Clarkson stated that he doesn't consider the original purchase or acquisition price as a sale. He testified that for item 277 on the asset schedule² he analyzed 90 chairs for the NFL players to sit on. The reference page 1690 shows stackable side chairs by Halm at \$39 for four chairs. When questioned if the chairs would stand up to the abuse of an offensive lineman he answered in the negative. He made a 250% adjustment to the buy-it-now price.

Clarkson did a cost-less-depreciation for some items and used Marshall Swift for depreciation on the remaining assets. Although on cross he testified that for the 20% depreciation factor for the laptops, that he did not use any particular table. He did not know the instances where he used original cost if freight and sales tax were included.

Clarkson made no other adjustments other than what was discussed. He made no market based adjustments³. He did explain the time adjustments as:

² P-1 p17.

³ Tr Vol I p 172.

Because it's a retrospective appraisal, I have to look at the market now and adjust backwards for the effect of time, value, money and depreciation. And I had various factors to appreciate the item from the latest value to the earliest value.

In other words, if it's worth a certain amount of money now, it's going to have less depreciation in the prior year. And so therefore, it should be worth a little bit more. So I add value going backwards. Tr Vol II p 53.

A second appraisal was prepared to include ten items that were not included in Clarkson's appraisal. Items included auditorium seats, built-in display cabinet, lockers, hood ranges, washer and dryers. The aggregate true cash value ranged from \$93,000 as of December 31, 2004, to \$68,000 as of December 31, 2008. The cover letter states: "The function of this letter is to appraise certain items owned by the Detroit Lions Inc, located at DLTC, and may have been previously classified on the local property tax rolls as real property." P-2 p 1.

Clarkson was questioned on cross on various assets, the acquisition cost versus the "market" price, why some assets were left off the appraisal, why some of the assets were based on cost, and his method of depreciation. Clarkson was provided asset lists with depreciation schedules for each year in contention. He did not, however, remember receiving asset schedules for WCF. He did find that the sports memorabilia or collectibles would have additional value.

The actual field turf for the indoor practice field was not considered by Clarkson to be personal property. He did not see a customized Mustang golf cart.

Witness Lesnau

J. Thomas Lesnau, senior vice president and chief financial officer for the Detroit Lions, testified that he was in his 32nd year with the Lions. Lesnau testified in detail regarding the history of the Lions practice facility. The lease on the real estate was designed as a build to suit with an agreement between Ford Motor Land Development and the Detroit Lions, Inc. The lease contained an option to purchase. Approximately 18 months into the lease the cost was determined to be prohibitive. Other means of financing a buy-out were pursued as the Lions did not have sufficient finances to purchase the facility. An option to purchase out of the lease was assigned to Mr. Ford, who formed a single entity, WCF Land, LLC. WCF purchased the facility and rents it back to the team. The original lease that was purchased included the cost of items of personal property.

The original lease included cost for everything in and outside of the practice facility. The hoods and ranges were built into the facility or of a permanent nature. The coolers, kitchen sinks, stainless steel countertops and a buffet table that is bolted to the floor are all part of the original lease. The most notable issue related to the broadcast studio, which was in the original build-to-suit; however, the original intended use never came into practice. Lesnau believes that it is obsolete to the point where they would have to replace it if it were to be utilized.

WCF's purchase of the personal property was based on the original cost contract. Ford Land had to provide a listing of the assets so that WCF could allocate costs. The cost was \$2,368,731 and \$41,000,000 for the real property. However, under generally

accepted accounting principles the excess over costs to various assets had to be marked up because the purchase price was in excess of the original cost. \$2,471,000 is the amount reported every year on the personal property statement for WCF with no additions and no deletions. Lesnau believes that the price paid by WCF for the personal property was not based on a market analysis but on the option price of the agreement. The price was in excess of costs. Lesnau estimated that there was an imputed internal rate of return based on costs over the period held of approximately 18.1% for the total project, including the real property.

Lesnau stated that he did the walk-through with Lott, not Clarkson, for a day. He assisted with the listing as they went through each of the rooms and tried to correspond the listing back to some of the fixed asset records. The fixed asset system is an FAS system. Lesnau indicated he had personal knowledge of the assets that were brought from the Lions Pontiac location or were acquired. He testified that the remainder was Ford Motor Land Development assets that had been purchased in conjunction with the build-to-suit construction of the building. A cost report by White Olsen included various items of property, such as carpeting and kitchen equipment. The same cost report was an exhibit in the real estate hearing on the property tax matter. The cost report was briefly discussed, but no exhibit was offered in the instant case.

Lesnau testified that he actually did the listing of the personal property assets because he knew which entity owned each asset. It took him one day to go through the building

and two days to prepare a list that separated the parcels by asset according to the owner. Lesnau is a CPA and files the personal property statements for both entities. He was not aware that Clarkson spent three days inventorying, but stated that it was Lott that did the actual physical inventory and Lesnau himself did the asset listing. Each year based on the fixed asset records, any assets or deletions during the fiscal year were sent to Clarkson.

Lesnau explained that the x-ray machine from Pontiac was obsolete and Ford Motor Land Development found that they had a lien on a used x-ray machine that was used for the Olympics in Utah. Ford Motor Land Development traded the existing x-ray machine for the one with newer technology. The current x-ray machine is used on a limited basis. The newer technology sends film directly to the computer files and can be e-mailed to the doctors. Lesnau opined that the equipment was originally state of the art, but seven years later it is not, especially the x-ray machine.

Lesnau testified that “the chairs are a little beefier than regular chairs but not special.” He did note “They’re just heavy duty chairs that you can get the upgrade. We’ve already had to replace half of the chairs basically because the original set of chairs, the legs are falling off and caving because people are leaning back on them and breaking the legs.” Tr Vol I p 75-76.

Respondents’ Argument

Respondents believe that the subject property’s assessment does not exceed the applicable ratio of the property’s true cash value, and therefore the properties’

assessments are valid under Michigan Law. Respondents have submitted an audit of the subject properties. The only witness for Respondents is Alphonso Consiglio, a personal property auditor and a Level III Assessor. Consiglio is Regional Manager for Tax Management Associates, Inc. ("TMA"). Consiglio was qualified as an expert witness. Respondents do not have the burden of proof, but have the burden of persuasion if the Tribunal determines that Petitioners have met their burden of proof.

Respondents' admitted exhibits are:

- R-1 Valuation disclosure for MTT Docket 315349; parcel number 84-001-398600.
- R-2 Valuation disclosure for MTT Docket 327111 and 352900; parcel number 84-001-0001-398700.
- R-4 Personal Property Statements with asset list.
- R-7 Expanded version of Ford Motor Land Development sale to WCF Land LLC.

Respondents' Audit

Consiglio testified that he does cost reconciliation between the financial records, statements, depreciation schedules or fixed asset schedules that are maintained. He then reconciles the information from that point to the personal property statements to determine what is or is not reported. While an on site inspection is done, a physical inventory is not part of the audit. A personal property audit was explained as a cost reconciliation of the taxpayer's financial records to the personal property statements that are filed.

Consiglio audited the Lions and WCF for the City of Dearborn. The audit resulted in the true cash value of both entities and then the appropriate allocation per both Respondents. He testified that the true cash value of both entities is as follows⁴:

Detroit Lions		WCF Land LLC	
Year	TCV	Year	TCV
2005	\$1,958,153	2005	\$1,783,292
2006	\$1,446,817	2006	\$1,573,048
2007	\$1,315,731	2007	\$1,381,341
2008	\$1,294,634	2008	\$1,239,878
2009	\$1,201,829	2009	\$1,110,853

Consiglio testified that some changes were made to the personal property statements as a result of the audit. There was an agreement with WCF and the preparer in the earlier years as to what assets should be included on the personal property statements. Those assets were added for WCF. The Lions statement had some adjustments for classification of assets. Some broadcasting equipment was dropped off and was added back to the value. He testified that Lesnau and staff do a great job preparing the personal property returns.

Consiglio explained the following procedure was followed:

We met with Mr. Lesnau in 2006 and we were provided the trial balances and fixed asset schedules for the Detroit Lions. We reconciled the trial balance to the fixed asset schedules and then reconciled those schedules to the personal property statements that he filed for the Detroit Lions.

Aside from errors and classifying the property in the correct groups according to the State Tax Commission rules, and there's some

⁴ Tr Vol III pp 11,12.

exceptions by tax year of some income not being reported, our audit pretty much confirmed the personal property statements that he has filed or that was being filed by the Detroit Lions.

For WCF land, as we've talked as Mr. Lesnau talked about earlier, the schedule of assets were identical for all years under review. So it was just a matter of putting those schedules in the appropriate acquisition years, applying the State Tax Commission multipliers by category and that's how we generated the true cash value indications. Tr Vol II p 166, 167.

The City of Dearborn did not have Lions on the 2005 original assessment roll. Thus, based on the audit the City of Dearborn petitioned the State Tax Commission ("STC") to increase the assessment. The STC accepted the request and increased the 2005 assessment for the Lions in the City of Dearborn (parcel 84-0001-398700).

Consiglio testified that his understanding of the STC multipliers used for personal property is that they are a valuation multiplier. He stated that they trend costs and are a composite multiplier of a trending factor and a depreciation factor, or it is the trending of costs over time. According to Consiglio, when something is purchased ten years ago and it has to be valued today, the multiplier attempts to trend the cost up or down to the current day as well as include some depreciation.

Consiglio found that some Lions assets that were disposed of in 2007 were not included in Clarkson's earlier report. Those assets had an original cost of \$1,214,497. One example is the Lions schedule of assets (R-4 p 31), asset number 198 was not disposed until 2007 and should have been on Clarkson's report with a cost new of \$273,000 and a depreciated cost of approximately \$46,475 as of December 31, 2004 and approximately \$46,000 for each remaining year.

After cross checking Clarkson's asset listings, Consiglio determined that Clarkson did not value most of the WCF assets. The only WCF assets that Clarkson included were \$723,000 in furniture and fixtures and \$16,419 in kitchen equipment, for a total of \$739,918. Clarkson did not value approximately \$1.2 million dollars in equipment for WCF. The true cash value (with multipliers) of property that Clarkson did not include for WCF is as follows⁵:

Year	TCV
2005	\$1,273,000
2006	\$1,121,863
2007	\$989,021
2008	\$871,789
2009	\$779,594

Consiglio was asked on cross if the audit was supposed to be independent in the sense that he is suppose to make the determination of where an asset belongs. His response was:

I don't believe so, no. I mean we go through and make, try to find out the facts about the assets. I mean, it's every audit you run into situations of questions of whether or not something has been valued with, as part of the building or not.

Those questions, either we review a real property record or we ask the assessor if those assets are included in the real estate assessment and ask their direction on how they want those assets treated.

I would not say that I have final say whether something's going to be treated as real or not. Tr Vol III p 74.

⁵ Tr Vol II p 210.

When Consiglio was questioned on who made the decision on how some of the WCF assets⁶ should be treated he stated:

These assets here that were not reported, we asked the City of Dearborn specifically how they wanted those assets treated.

If you go down further you see projection screens and sound equipment items that you would generally feel that are personal property in nature. When they saw this note here, we asked the City of Dearborn not only how these assets had been treated historically but how these assets should be treated under the audit.

And we were advised to treat them as personal property. That's why I included them. Tr Vol III p 75.

Lesnau testified that no assets were added or deleted from WCF's personal property statement. The assessment roll values indicate the depreciated values from the Ford Land original costs.

Tribunal's Findings of Fact

Petitioners were not able to convince the Tribunal that Clarkson's current valuation disclosure was a good replacement for the cost-less-depreciation approach used by Respondents. The theory of determining market value of personal property using an e-bay "buy now" price is an updated method used by personal property appraisers and *can* be a reliable method. The use of the Internet to determine the market value of each specific asset only assists the appraiser in accomplishing the task more efficiently. The ability to print out a specific page also assists the appraiser in documentation. Prior to the Internet, appraisers would have to call individual sellers of similar equipment without any paper documentation. However, the Tribunal finds that

⁶ R-1 p 27.

Respondents were successful in determining that Clarkson's credibility in this instance was damaged.

Respondents' audit identified that Petitioners reported all of their personal property. However, some of the equipment was in an incorrect category resulting in the move of some computer equipment to the manufacturing equipment category. Respondents were not able, however, to testify what any individual asset was, or the value. Respondents were not charged with an inventory of the assets. Respondents followed proper audit procedures and did an acceptable cost approach. Respondents were convincing that the cost approach for the subject property was appropriate in light of the fact that Petitioners failed in their burden of proving that the assessment should be decreased.

Value is defined in Appraisal Institute, *The Dictionary of Real Estate Appraisal*, (Chicago: 4th ed, 2002), as: "The monetary worth of a property, good, or service to buyers and sellers at a given time."

The State Tax Commission⁷ discusses proper audit procedures as:

Verify that the taxpayer has reported the furnishings, machinery and equipment at usual selling price new in the year that each item was originally placed in service. In this regard, the following should be verified:

It should be determined whether the reported cost represents usual selling price new in the year that the property was originally placed in service. See Section O below for specific procedures. Reporting "rebooked costs" is permitted only in cases where the original historic cost and year are **neither** known **nor** reasonably ascertainable. If "rebooked" costs are

⁷ Michigan Department of Treasury, 2008 Property Tax Information, Personal Property Tax Tables; Introduction to Model Audit Program. <http://www.michigan.gov/documents>.

reported, the assessor should appraise the property or follow another of the procedures outlined in the December, 2000, issue of the Michigan Assessor (see Introduction). b) It should be determined whether the cost is based on the correct "level of trade". In other words, the usual selling price is the price at which a dealer in the goods would sell the goods to the end user of the goods. (emphasis added) Frequently, the taxpayer will assert that the usual selling price is a price which he or she paid, even though he or she is not going to be the end user (this is particularly applicable to leasing companies) or, in the alternative, is the price at which he or she could sell the goods to a broker. In fact, it may be the broker who is the dealer and the usual selling price may be the price at which the broker would sell to the end user. c) If the taxpayer acquired a pre-existing business interest, the auditor should be alert to the fact that the allocation of the purchase price may be influenced by the relative bargaining power of the parties and by tax considerations. In addition, in the case of lease interests, the price paid may reflect the value of the income stream rather than the value of the property. (In other words, the value of the lease to the lessee, because of bargain purchase rights, etc. may not be included.)

The State Tax Commission prescribes the method to be used for the cost-less-depreciation method. The STC does not cover in any bulletins the appropriate method to determine the market value of the assets. The Tribunal is on its own when determining the true cash value of personal property assets.

In theory, using a buy-it-now page from the internet is a useful tool, if and only if, the time frame is appropriate and the actual property is of sufficient age that a replacement or rebuilt property would be an acceptable substitute. The market approach should utilize actual sales or offerings of properties that are of similar age, manufacturer, and condition. Petitioners emphatically stated that the age of equipment does not influence the value. The Tribunal finds that the age, condition and actual manufacturer or an appropriate substitute is the basis for comparing an asset to what anyone could purchase as an acceptable substitute. However, when assets are newly acquired or a

few years old, the actual acquisition price and any accrued depreciation are applicable and cannot just be cast aside, contrary to Petitioners' testimony.

The Tribunal finds that Respondents' request that the Tribunal consider Clarkson's whole methodology to be slipshod in nature is appropriate. The misrepresentation that Clarkson did a three-day inspection listing assets was rebutted. Lesnau testified that he did an inspection with Lott, and Lesnau did the listing and sent it to Clarkson. Lesnau testified that he provided Clarkson with the asset listing for each entity; however, Clarkson was not able to distinguish in his valuation disclosure the assets for Lions or WCF.

By matching the assets, Consiglio was able to convince the Tribunal that Clarkson omitted the majority of assets belonging to WCF. The exception was for \$723,499 of furniture and fixtures and \$16,419 in kitchen equipment. He also missed the 2008 acquisitions for the Detroit Lions. The original value of the WCF assets omitted from Clarkson's report was \$2,100,000. This was a large sum to be omitted. Petitioners' counsel was not able to convince the Tribunal that the assets were actually considered to be real property by their appraiser.

Clarkson failed to find comparables that were truly comparable during the five years the case was pending. Respondents were able to convince the Tribunal that with some effort similar comparable properties were available. The majority of Clarkson's internet value estimates were done in the fall of 2006 and fall of 2008 for P-1, and January 22, 2010 for P-2. No adjustments were made for time. The adjustments that

were made were a little hazy as to where they actually came from and how he chose to use them. Some of the adjustments came from Marshall Valuation Services, but Clarkson testified that he uses a combination of inflation and depreciation, just like the personal property multipliers. If, for example, he has a 2009 sale it is adjusted backward in time and value added backward in time. In addition to his market analysis Clarkson also used a cost approach to value assets that are newer, as well as some that are 35 years old. The Tribunal finds that this adds to the inconsistencies.

Clarkson did not regard the original acquisition price as a sale. Only when an asset resold to another user did he consider the transaction a sale⁸. The Tribunal finds this concept illogical. Not considering the original acquisition as a sale makes no sense to this Tribunal.

The market approach that was used by Clarkson is a form of a cost approach but with insufficient documentation for adjustments. He does not apply time relevant sales or adjustments and he backtracks with additions for depreciation. This employs more of a cost approach methodology. Because he failed to use contemporary sales of similar property and adjusting for dissimilarities, it is not a market approach. The theory of using the internet to research sales is a great concept; however, good appraisal techniques should still apply. Clarkson's method reminds the Tribunal of the standard answer to the question "where did the adjustments come from" and the answer is "my experience." This technique is not sufficiently thought out or carried through in this

⁸ Tr Vol I pp 119, 120.

instance. Clarkson was not able to sufficiently answer the question as to where the adjustments came from, when asked on several occasions.

Clarkson's report does not take into consideration that a majority of the purchases were new when they moved into the practice facility in 2001 (or 2002). No additional value was attributed to sports memorabilia⁹, and the 2004 resale of the original assets were not taken into consideration.

Through cross-examination, Respondents appropriately bring out the errors and inconsistencies in Petitioners' appraisal. Petitioners' appraisal was fraught with errors, sales/listings of dissimilar properties, a vague concept of adjustments, and a large error in not placing a value on the majority of WCF's assets. The Tribunal finds the inventory and valuing of individual assets would be a better market value approach if, as in this instance, it did not have large errors. This leaves the Tribunal with Respondents' standard audit, which does not value individual assets, but is more of a check and balance to assure the taxing unit that property owners are correctly reporting the assets.

The Tribunal finds that for WCF, Respondents have included an amount for millwork; however, neither party provided a description of this asset. Millwork is defined as wood doors, windows, and sashes. Moldings are different uses of work done in a mill. Millwork is a permanent improvement and the Tribunal finds that it is already

⁹ Petitioners' closing statement "Unfortunately our Lions have not yet had a winning season since they moved out of Pontiac. As a result there's no iconic athletics that anyone can point to that have used any of these assets in the facility." Tr Vol III p 151

accounted for in the real estate. The Tribunal further finds that the mural painted on the wall is also not removable, but is part of the wall and accounted for in the real estate. The millwork and mural are assets that are removed from the personal property as they are both already considered in the real estate value.

The Tribunal finds that the Lions' personal property statement did contain items that are questionable as to the classification. Lesnau is a CPA, sufficiently familiar with the requirements of the personal property statement, and has been praised by Respondents for the accurate reporting. Consiglio suggested that some of the weight room equipment, football equipment, and outdoor turf are assets that should be reported under Section B, machinery and equipment, rather than Section A, furniture and fixtures (where Petitioner, reported it). Items that were questioned but were reported include the English oak table in Ford's office, an oak conference table, bronze lions and a Yamaha electric golf cart. It was implied that perhaps the items were personal possessions of the Fords. However, Lesnau reported the items on the asset list. The total original cost reported is \$6,805. After application of appropriate multipliers the value is \$1,535 which would in theory reduce the assessed and taxable value by \$767. The Tribunal suggests that Petitioners consider the entity that actually owns the above referenced items and report only what the entity, not the executives, owns. The Tribunal finds that the tables, bronze statues and golf cart are currently included as assets and will not change the value based on an implication that they may not be owned by the Lions. The Tribunal has to base the decision on facts, evidence and testimony, which were not conclusive in identifying the ownership of the items.

Conclusions of Law

Pursuant to Section 3 of Article IX of the State Constitution, the assessment of real property in Michigan must not exceed 50% of its true cash value. 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 the assessment, being the price which could be obtained for the property at private sale and not forced or auction sale. See MCL 211.27(1). The Michigan Supreme Court in *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450 (1974), has also held that true cash value is synonymous with fair market value.

In that regard, the Tribunal is charged in such cases with finding a property's true cash value to determine the property's lawful assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767 (1981). The determination of the lawful assessment will, in turn, facilitate the calculation of the property's taxable value as provided by MCL 211.27a. A petitioner does, however, have the burden of establishing the property's true cash value. See MCL 205.737(3) and *Kern v Pontiac Twp*, 93 Mich App 612 (1974).

The Tribunal may not automatically adopt a respondent's assessment but must make its own findings of fact and arrive at a legally supportable true cash value. *Pinelake Housing Cooperative v Ann Arbor*, 159 Mich App 208,220; 406 NW2nd 832 (1987); *Consolidated Aluminum Corp v Richmond Twp*, 88 Mich App 229, 232-233; 276 NW2d 566 (1979). 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. *Meadowlanes*, at 485-486; *Wolverine Tower Associates v City of Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980). A similar position is stated in *Tatham v City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982): The Tax Tribunal is not required to accept the valuation figure advanced by the taxpayer, the valuation figure advanced by the assessing unit, or some figure in between these two. It may reject both the taxpayer's and assessing unit's approaches.

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 Limited Dividend Housing Assn v City of Holland*, 437, 484-485; 473 NW2d 636 (1991); *Pantlind Hotel Co v State Tax Commission*, 3 Mich App 170; 141 NW2d 699 (1966); 380 Mich 390; 157 NW2d 293 (1968); *Antisdale v City of Galesburg*, 420 Mich 265, 276; 362 NW2d 632 (1984). The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in the marketplace trading. *Antisdale* 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*, at 277.

The Tribunal finds that *Producers Color v City of Clawson*, MTT Docket No. 216818, is a similar case, which states in part:

Therefore, Petitioner's burden of proof, in challenging Respondent's use of the STC Manual and multiplier methodology, is to provide convincing evidence of the subject's market value. Since "true cash value" means "the usual selling price," which is synonymous with "fair market value," the valuation problem here is best addressed by use of applicable and reliable market data, applied to a market-based methodology. That "market-based methodology" for personal property is preferably the market/sales comparison approach, but when appropriate data is not fully available, a cost-less-depreciation approach with market data input; only in unusual circumstances is an income analysis appropriate.

Therefore, critical to a Tribunal finding is consideration of whether Petitioner has presented market methodology and analysis capable of making a *prima facie* case in attempting to carry the burden of proof. Offset against that presentation is further consideration of Respondent's challenge found in its case for rebuttal, and offering of alternate methodology and conclusions for acceptance of its own valuation work. Finally, the Tribunal will make an independent determination of true cash value, for which the results may include these options: (1) accepting Petitioner's case as having met its burden; (2) finding Petitioner to have failed in its burden, and Respondent having succeeded in both rebuttal and presentation of its valuation; (3) a finding resulting from an acceptance in part of one or the other valuation proofs, but with modification to the portion(s) found not to be acceptable; (4) acceptance in part of each of the valuation proofs, with the finding being a combination of each; (5) rejection of both, with a finding based on acceptable data and components excerpted from one, the other, or each party's valuation proofs. (*Meadowlanes* at 485-486; *Tatham* at 597). p 10.

Summary of Opposing Valuation Methodologies. In overview, this case follows a general pattern of contention and methodology reviewed by the Tribunal in prior cases. The observed pattern is one where Petitioner presents a challenge to the assessment by producing an independent appraisal of the personal property's market value. The values reported are based on data usually secured from independent third-party sources, such as contact with sellers/buyers/dealers in the marketplace, or use of published pricing information. That data is then applied to a market comparison process, or if sales/offering data is not readily available, such data as is available forms a cost-less-depreciation analysis. Respondent's case usually consists of placing into evidence the results of its mass appraisal process. That procedure employs the owner's reported personal property original acquisition costs, applied to the STC multipliers, as selected to represent facts of age, and whether in-use or not. Both parties' procedures are buttressed by testimony pertaining to data and method. With variations on the theme, this case falls into that scenario. p 10.

The importance of market data to implement the standard cost approach was stated in *Uniroyal Goodrich Tire Company v City of Troy*, 8 MTT 361 (1994) at 376:

Since market-based answers are mandatory in assessment matters, the valuation expert is faced with a difficult situation where there is a strong reliance upon only the cost approach, or cost-based support. For example, in the cost approach it is essential that available and applicable market data support all components of the cost approach, beginning with cost new, extending into the various forms of value loss (physical deterioration, function and external obsolescence), and ending with land value. Market data is the foundation of all three approaches to value, and is an essential component in the valuation of personal property, just as it is in the valuation of real property. Whether personal property is valued by single-property method using cost and market approaches, as did Petitioner, or by the use of a mass appraisal method as did Respondent, there must be an infusion of market data for the result to be market-based. Respondent's use of a variant cost approach, without reference to any market data in support of that method, renders it difficult to accept the valuation conclusion as being market-based. For the STC Multiplier method to be a reflection of market values, it would be necessary to view evidence of current market information having been introduced at some effective point of the process. Absent such evidence, the Tribunal has only the statement of witness Hobart that the multipliers are being constantly monitored to assure they remain current. While doubt is not being cast upon this being a factual representation, such an assurance, of itself, is not sufficient market evidence.

It appears to the Tribunal that the STC Multiplier method is a valuation process better employed as a mass appraisal technique for its uniformity of result and ease of administration. The method does not appear well-suited to defense as a market-based methodology in Tribunal appeals. A more effective process would be to employ market data directly in support of a market-based appraisal methodology. Respondent had that choice, the choice of changing valuation systems in challenging Petitioner's proofs and defending its own position. It was not necessary that the true cash value upon which the assessment is based be defended by the same assessment mass appraisal system used in its derivation. p 14.

It is interesting to note that Clarkson was the same appraiser in *Producers Color*.

The Tribunal has found in similar cases with Clarkson that the method has changed over the years in gathering information; with e-commerce the result is faster and

provides documentation. That allows appraisers of personal property to do the same gathering of information only much faster, with documentation that can be printed and shared, unlike confirming information over the phone in times past without such documentation. The use of the internet is becoming a common-place method by which a typical buyer will look to price an article. The internet exposes the item for sale to a world-wide audience, unlike days past when a personal property appraiser used contacts and knowledge of what equipment dealers would sell a property for after a phone call or two. The use of the internet generally provides the maximum limit of value that anyone who has the need for a specific asset can purchase. However, in this instance the report is not accepted as having any credibility for the following reasons:

- 1.) Clarkson's report failed to consider approximately \$2.1 million dollars worth of assets for WCF.
- 2.) When questioned on adjustments the answers were vague.
- 3.) There were many examples of comparables that were not sufficiently similar to the asset being valued.
- 4.) No consideration of recent acquisition costs for subject assets as valid sales. While the Tribunal may agree that the original acquisition cost may or may not reflect market value it certainly requires research to make that determination, not just an outright refusal to consider it.
- 5.) Misrepresentation that he spent three days listing the property with Lesnau, which was contradicted by Lesnau; that he was not able to distinguish between Lions and WCF assets when Lesnau testified that he sent both asset listings.

The Tribunal finds that Petitioners have not carried the burden of proving that the assessment is excessive. The Tribunal finds that Petitioners were successful in addressing that there were assets that were already considered in the real property value.

Based upon its examination of the evidence received at the hearing conducted in this matter, the Tribunal concludes the true cash value, state equalized value, and taxable value of the subject property for the 2005, 2006, 2007, 2008 and 2009 tax years are:

Detroit Lions, Inc.

Lions					
		Allen Park	Allen Park	Dearborn	Dearborn
Parcel No.	Total	30-999-00-2003-003	18%	84-0001-398700	82%
Year	TCV	TCV	SEV/TV	TCV	SEV/TV
2005	\$1,958,153	\$352,468	\$176,234	\$1,605,685	\$802,843
2006	\$1,446,817	\$260,427	\$130,214	\$1,186,390	\$593,195
2007	\$1,315,731	\$236,832	\$118,416	\$1,078,899	\$539,450
2008	\$1,294,634	\$233,034	\$116,517	\$1,061,600	\$530,800
2009	\$1,201,829	\$216,329	\$108,165	\$985,500	\$492,750

WCF Land, LLC:

WCF					
		Allen Park	Allen Park	Dearborn	Dearborn
Parcel No.	Total	30-999-00-2006-034	18%	81-001-398600	82%
Year	TCV	TCV	SEV/TV	TCV	SEV/TV
2005	\$1,347,168	\$242,490	\$121,245	\$1,104,678	\$552,339
2006	\$1,193,565	\$214,842	\$107,421	\$978,723	\$489,362
2007	\$1,051,465	\$189,264	\$94,632	\$862,201	\$431,101
2008	\$951,011	\$171,182	\$85,591	\$779,829	\$389,914
2009	\$855,621	\$154,012	\$77,006	\$701,609	\$350,805

Judgment

IT IS ORDERED that the property's assessed and taxable values for the tax years at issue shall be as set forth in the *Introduction* section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 90 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 this Order within 28 days of the entry of this Order. 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 the Tribunal's order. As provided in 1994 PA 254, being MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest rate of the 94-day discount treasury bill rate for the first Monday in each month plus 1%. As provided in 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after January 1, 1996 at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 1995 at the rate of 6.55% for calendar year 1996, (ii) after December 31, 1996 at the rate of 6.11% for calendar year 1997, (iii) after December 31, 1997 at the 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 6.56% 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 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: July 12, 2010

By: Victoria L. Enyart