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

Ralcorp Holding, Inc.,
Petitioner,

v

MTT Docket No. 292696

City of Battle Creek,
Respondent.

Tribunal Judge Presiding
Patricia L. Halm

OPINION AND JUDGMENT

This case is an appeal of the 2002, 2003 and 2004 true cash and taxable values established by the City of Battle Creek ("Respondent") under the general property tax act (GPTA) for personal property (the "subject property") owned by Ralcorp Holding, Inc. ("Petitioner"). The subject property is located at 150 South McCamly, Battle Creek, Michigan, and is known as Parcel No. 0118-01-100-0. The products produced at the subject property are store brand cereals.

Petitioner submitted valuation disclosures for each of the tax years at issue in which the subject property's true cash value was established utilizing the sales comparison and replacement cost methods of valuing property. Respondent relied upon an asset list provided by Petitioner and utilized the State Tax Commission's (STC) depreciation factors. For the reasons set forth herein, the Tribunal finds that Petitioner did not meet its burden of proof in establishing the subject property's true cash value. As such, the Tribunal adopts Respondent's revised contentions of the subject property's 2002, 2003 and 2004 values.

The values for the subject property as originally established by Respondent are:

Year	TCV	SEV/AV	TV
2002	$25,010,800	$12,505,400	$12,505,400
2003	$24,962,454	$12,481,227	$12,481,227
2004	$25,480,198	$12,740,099	$12,740,099

Respondent's revised values are:

Year	TCV	SEV/AV	TV
2002	$24,197,572	$12,098,786	$12,098,786
2003	$24,196,676	$12,098,338	$12,098,338
2004	$24,752,186	$12,376,093	$12,376,093

Petitioner's contentions of value are:

Year	TCV	SEV/AV	TV
2002	$6,373,243	$3,186,621	$3,186,621
2003	$6,333,803	$3,166,901	$3,166,901
2004	$6,383,278	$3,191,639	$3,191,639

FINAL VALUES

The subject property's 2002, 2003 and 2004 true cash values (TCV), assessed values (AV) and taxable values (TV), as determined by the Tribunal are:

Year	TCV	SEV/AV	TV
2002	$24,197,572	$12,098,786	$12,098,786
2003	$24,196,676	$12,098,338	$12,098,338
2004	$24,752,186	$12,376,093	$12,376,093

PETITIONER'S CASE

Petitioner asserts that the subject property is valued in excess of 50% of its true cash value in violation of Article IX, Section 3 of the 1963 Constitution of the State of Michigan, and MCL 211.27a. To that end, Petitioner submitted valuation disclosures for each of the tax years under appeal. These valuation disclosures, Petitioner's exhibits P-1, P-3, and P-5, were prepared by Mr. Allen Bealmear, of MB Valuation Services, Inc. In the valuation disclosure for the 2004 tax year, Mr. Bealmear provides the following description of the facility at which the subject property is located:

> Ralcorp produces dry cereal products in an approximately 750,000 square foot facility located at 150 South McCamly in Battle Creek, Michigan. Personal

> property consists primarily of corn and rice grain preparation equipment, cleaning, cooking, drying, rolling and forming of dry cereal, bagging, cartoning, bulk filling, palletizing and other assorted equipment, such as air compressors, boilers, conveyors, handling equipment including forklifts, pallet jacks, etc., as well as other office furniture and equipment.
>
> The operation is basically set up as a vertical food processing method utilizing multiple story buildings, which have been built and added to over the last few decades. Generally, the personal property has been maintained on a routine basis and is mostly operable or operating. (P-5, p12)

Petitioner called Mr. Bealmear as its first witness. In his appraisals, Mr. Bealmear states that he is a Senior Member of the American Society of Appraisers (ASA), Machinery/Technical Specialties, and that he is a Certified Equipment Appraiser (CEA) with the Association of Machinery & Equipment Appraisers. Mr. Bealmear testified that he has been appraising personal property for approximately 30 years. Based upon his training and experience, Mr. Bealmear was qualified as an expert in valuing personal property and machinery and equipment.

According to Mr. Bealmear, while MB Valuation Services, Inc. does not specialize in appraising any particular type of personal property, it primarily appraises industrial equipment including, but not limited to, food processing equipment and equipment utilized by chemical plants and steel mills. Mr. Bealmear testified that he has prepared appraisals for hundreds of companies with equipment similar to the subject property. (Transcript 1[1], pp10-11) When asked what type of machinery and equipment is located at the subject property, Mr. Bealmear stated: "They process grain, such as corn, receive it, grind it, transport it, cook it, dry it and convey it to forming equipment, which makes it into a flake or a corrugated square, like Rice Chex, and it's bagged, cartoned, boxed, pelletized and shipped." (T1, p10)

[1] Hereinafter, references to transcripts will be notes as "T1" for the first day and "T2" for the second day of hearing.

Mr. Bealmear testified that there is an active, regular market for the type of equipment under appeal and that it is regularly sold. When asked if he tracks sales and offers of personal property similar to the subject property, Mr. Bealmear testified:

> Yes. That's one of the things that MB Valuation Services does, is that we monitor and gather information regarding sales of any kind throughout the United States, which is inputted into a data base that catalogues by equipment type, and sorts those sales, so that we have a ready source of comparable data and that's done on a daily basis and updated continually. (T1, p11)

Mr. Bealmear further testified that MB Valuation Services, Inc. has staff that do nothing but gather data and input it into its data base.

> The purpose is to support appraisal opinions of machinery and equipment, because we believe that the sales comparison approach is the most valid, and most appraisers believe that the sales comparison approach is the best and most supported, valid way to value equipment, and our data base includes anything from replacement costs gathered from manufacturers, used dealers asking the selling prices, catalogues, auction sales, tabloids and any other resource there might be to get information that we can use as a – for our sales comparison approach. (T1, p12)

Mr. Bealmear testified that he personally inspected and accounted for all of the personal property at the 150 South McCamly location.

> We actually go into the facility. We use digital dictating equipment and actually inventory and certify the existence of all of the personal property owned by Ralcorp or whoever we're appraising. That certification is done by actual observation, gathering information off of every piece of personal property, including office furniture and equipment. Measure machines, where we gather whatever data is necessary in order to – for the reader of the report to know what the property is and to allow us to research it, which would include the manufacturer, the model, the serial number, that's how we get the age. The physical appearance and condition, ratings and anything else that might have to do with describing the equipment. The company personnel are interviewed in order to make sure that anything that's not owned by Ralcorp isn't included in our appraisal and to make sure that we don't omit anything that should be in there. (T1, pp14-15)

Mr. Bealmear further testified that he considered the sales comparison approach, the replacement cost approach and the income approach in arriving at his conclusion of true cash

value. While these three approaches were considered, Mr. Bealmear testified that he did not use the income approach "because it would have been impossible to allocate any specific income to any specific piece of personal property." (T1, p23) Instead, Mr. Bealmear relied primarily on the sales comparison approach. "The cost approach was used only if we couldn't find a sale that was close enough to cover what we consider the sales comparison approach." (T1, p23)

In the sales comparison approach, Mr. Bealmear looked for "direct" and "indirect" comparable sales of the specific item of personal property. According to Mr. Bealmear, "[a] direct comparable would be a match. An indirect comparable would be something close, perhaps close in age, perhaps close in model." (T1, p101) In obtaining information on these sales, manufacturers and competitors are contacted and auction sales are monitored. Mr. Bealmear testified that there are 600 to 700 auctions per year. Of this, approximately 50 auctions would include equipment similar to the subject property. (T1, p163) Mr. Bealmear estimated that approximately 10% of the 600 to 700 auctions would be considered forced sales.

In addition to the data base maintained by his firm, resources such as the *Book* are consulted. (T1, p24) *The Book* "gives the description of whatever equipment is sold, it gives the name of the seller, it gives the location, the type of sale, date and many times other information that just embellishes the description. . . ." (T1, p26)

Mr. Bealmear described one of the adjustments necessary when utilizing the sales comparison approach to value personal property, namely an adjustment for type of buyer.

> Buyers are a combination of users and dealers. We try to establish the type of buyer, because when doing a market value, we're required to do the level of trade adjustment. So if a dealer is buying, then we have an adjustment. If a user is buying, it is a user to user. So we make that analysis and judgment. (T1, p28)

In other words, the requirement is to adjust to a user to user sale. (T1, p34) If the sale is from a dealer, a downward adjustment would be made to account for the dealer's profits, warranties, etc.

The adjustment is made to "the purchase price, not the net to the owner." (T1, p32) The buyer is responsible for removing the equipment from the place it is located, which could be the seller's manufacturing location.

Three examples of the sales comparison approach for the 2004 tax year were included in P-5. P-2 and P-4 also included three examples each, albeit without photographs of the property under consideration, for the 2002 and 2003 tax years, respectively. When asked about the sales comparison examples and why the age of the equipment was not listed, Mr. Bealmear explained that his appraisals are summary appraisal reports and that these examples are provided as:

> . . .an aid to someone who reads a summary appraisal, so they get some feel for how the approaches are done and . . . it is hard to know how far to go, whether we could use the whole description. We could put in more than one photograph, we could put in age. We could put in comments we got from people we talked to. But . . . for thousands of line items, we – that would really be an overly burdensome report that – that's really not done for personal property.
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> We had enough sales so . . . we just picked the ones that were the closest, because they were all the same year supported by the really close serial numbers, and . . . normally, on a personal property appraisal and unlike real estate, you don't do a grid. There's not a grid that shows the address and the buyer and the seller and how many square feet the building is and the land size and the land sales and a percentage adjustment for location and things like that.
>
> For personal property, that's just not the way it's done in the United States or any place I've ever seen. By doing a demonstration, we go further than anybody else as far as I know, in showing the actual item number and supporting it by the three or four sales that we thought were meaningful. To try to lead someone to the same conclusion would be difficult, because a lot of the adjustments were done empirically, you know, 30 years of experience, training and education, I do those adjustments, based on all of the information I have. Sometimes there's a lot, sometimes there's not much. If there's none, then we do the cost approach. (T1, pp50-51)

Turning to the cost approach, Mr. Bealmear testified that approximately 22 items were valued using this appraisal method for the tax year ending December 31, 2003. The process of

valuing equipment utilizing this approach begins by contacting manufacturers and obtaining the price of a new piece of replacement equipment. Deductions from this price are made for physical depreciation, functional or technological obsolescence and economic obsolescence, in that order. An example of the cost approach for the 2002, 2003 and 2004 tax years was included in P-2, P-4 and P-5, respectively. Mr. Bealmear combined the values for the machinery and equipment arrived at by using the cost approach with the values arrived at by using the sales comparison approach and concluded to the values set forth above.

Petitioner submitted the following exhibits, which were admitted into evidence:

1. P-1: Personal Property Appraisal Report as of December 31, 2001 (Tax Year 2002).
2. P-2: Cost Approach and Sales Comparison Approach Demonstrations for 2002 Tax Year Appraisal.
3. P-3: Personal Property Appraisal Report as of December 31, 2002 (Tax year 2003).
4. P-4: Cost Approach and Sales Comparison Approach Demonstrations for 2003 Tax Year Appraisal.
5. P-5: Personal Property Appraisal Report as of December 31, 2003 (Tax Year 2004).

RESPONDENT'S CASE

Respondent presented three witnesses, the first of which was Ms. Lois Buchanan. Ms. Buchanan is Respondent's senior property appraiser. Ms. Buchanan testified that she is certified by the State of Michigan as a level III assessor and that she also holds a personal property certification. Ms. Buchanan is in charge of commercial and industrial properties for the City of Battle Creek and is responsible for its personal property tax roll.

Ms. Buchanan testified that she did a walk-through of the subject property. Ms. Buchanan assessed subject property for the tax years at issue utilizing the personal property

statements submitted by Petitioner and the multipliers established by the State Tax Commission (STC). According to Ms. Buchanan, the STC multipliers were updated in 2000.

Respondent's next witness was Ms. Laurie McGee. Ms. McGee is a licensed CPA employed by the firm of Rehmann Robson. Ms. McGee testified that she specializes in state and local tax, with an emphasis in property tax. Respondent retained Ms. McGee to perform an on-site inspection of the 150 South McCamly facility and compare it to the asset list provided by Petitioner. Having done that, Ms. McGee was asked on direct examination whether she came to any conclusions.

> Absolutely. The first thing I noticed when I was just comparing the fixed asset listing to the property tax. Before I went on the site inspection, I noticed there was no idle schedule filed. That seemed a little odd, most plants have some idle equipment. I also noticed that there [were] a significant number of assets that were very, very old. Like I said, started going from the '30s. . .While I was there, I specifically noted that they had several lines that were idled, an entire corn line, a packaging line. There was a boiler, several other items. (T2, p8)

Ms. McGee testified that while the subject property is older, it is very well maintained. After the walk-through, Ms. McGee prepared a report for Respondent wherein she took Petitioner's personal property statement and made some adjustments. The report contains Ms. McGee's conclusions of the subject property's true cash values. These values are listed above as Respondent's revised values.

Respondent's final witness was Mr. Stewart Shipper, principle owner of Shipper Valuation Company. Mr. Shipper testified that he has a Bachelor of Science Degree in Business Administration from Widen State University. Mr. Shipper is also an Accredited Senior Member of the American Society of Appraisers (ASA) in two disciplines: machinery and equipment and technical valuation cost surveys. Mr. Shipper was retained by Respondent to review Mr.

Bealmear's appraisal. To that end, Mr. Shipper testified that he formed some opinions and that these opinions fell into six categories.

1. Cost of installation: According to Mr. Shipper, Mr. Bealmear did not include the cost of installation in valuing the subject property. Mr. Shipper testified that this is important because "the value to be found is the value in place . . . I heard the Petitioner's appraiser testify that he included a cost of the property including the assembly and delivery cost, but he did not include the installation cost." (T2, p28) According to Mr. Shipper, this would understate the subject property's true cash value. Moreover, "by not including installation costs is an entire component of value that's being missed and it's also like giving a quasi idle status to assets. . . ." (T2, p29)

2. Missing value in 2003: Mr. Shipper compared Mr. Bealmear's 2002 appraisal to his 2003 appraisal and found that only two additional assets were included in the 2003 report. The value of one of these items was $180, while the other was valued at $35,000. Mr. Shipper testified that he knew "from the schedule of assets, that the taxpayer acquired 1.7 million dollars worth of assets during that year." (T2, p29)

3. Missing value in 2004: According to Mr. Shipper, Mr. Bealmear included approximately 25 assets new valued at approximately $867,000 in his 2004 tax year appraisal. Mr. Shipper testified that:

> We also know from this asset schedule, the Petitioner's financial document and from the tax filing, that there's 2.6 million dollars worth of assets added in the very same year. Now, that $800,000 rounded, represents about a third of the cost of those assets in that year. And I'd like you to know that some of these – all of these assets are less than a year old. Some of them may have been installed even in December, some of them in mid year. Yet . . . Petitioner's appraisal has already found the value of them to be about 30 cents on the dollar. And they're not – some of them may be brand new still, very little wear and tear. (T2, pp30-31)

4. Percent good compared to original cost: According to Mr. Shipper, for the eleven years from 1993 to 2004, Petitioner added about $35 million of assets at old cost. Of that, approximately $6 million was added in the last five years. Mr. Shipper compared that to Petitioner's appraisal conclusion of approximately $6.3 million true cash value. Mr. Shipper testified as to the importance of these numbers.

> I've asked myself what percent good is that of the original costs? If you would assume that the assets bought in the last five years are 50 percent good to value, value is 50 percent of good, that would be three million dollars. Just in the last five years, the Petitioner's appraisal is 6.3 million dollars all together. That leaves any assets acquired before the year 2000, a value of three million dollars according to the Petitioner's appraiser. That three million dollars can be compared to 55 million dollars since the founding of the company, but more appropriately, it can be compared to 30 million dollars, 29 million dollars since 1993.
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> So to summarize the meaning of this, if we know that last five years, under my assumptions are three million dollars, that only leaves three million dollars for the rest of the company to make the . . . Petitioner's appraisal on the money.
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> Now, to find a value of three million dollars of assets bought between 1993 and the year 2000, is ten percent good. Three million value on 30 million dollars worth of old acquisition costs, that percentage I have trouble with, because it more resembles a residual value at the end of the life of an asset, rather than in the productive years of [the] asset. (T2, pp32-33)

5. Transparency of the report: According to Mr. Shipper, another way to determine if a report is transparent is to ask whether a user could evaluate the report. Mr. Shipper testified that while Mr. Bealmear included several demonstrations as to the methodology that he used in the back of his report, those demonstrations made up a very small sample of the entire report.

> Those examples explain between two and four assets out of 1,500. And dollar wise, it explains several lines out of six million. Not a very good sample for a user of the report to make a decision as to the quality of the report.
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> Now, I can't evaluate the rest of the report without knowing what – what the sources of information are, what the comparables are, and be able to examine them and say, yes, there is a find job or no, it needs an adjustment. And I don't

> have that information for millions of dollars worth of equipment. So it's not transparent. (T2, p33)

6. Substantial repair and replacement parts were omitted: According to Mr. Shipper, Mr. Bealmear's appraisal did not include a category for the repair and replacement parts that were located at the 150 South McCamly facility. Mr. Shipper testified that there were a significant number of these parts, contained on rows and rows of steel shelving, and occupying a substantial portion of one floor of a building.

Respondent submitted the following exhibits, which were admitted into evidence:

1. R-2a: Copies of Petitioner's appeal to Respondent's 2002 March Board of Review.
2. R-2b: Copies of Petitioner's appeal to Respondent's 2003 March Board of Review.
3. R-2c: Copies of Petitioner's appeal to Respondent's 2004 March Board of Review.
4. R-5: Respondent's Valuation Disclosure prepared by the City Assessor.
5. R-6: Audit of Petitioner's personal property and Valuation prepared by Laurie McGee, CPA.

RESPONDENT'S POST-HEARING ARGUMENTS

Respondent's first argument concerns Petitioner's use of auction sales in determining the subject property's true cash value.

> While MCL 211.27(1) permits the use of auction sales to determine cash value, the statute authorized their use only, "if those sales have become a common method of acquisition in the jurisdiction for the class of property being valued." There was no testimony that such sales were a common method of acquisition of the subject property by cereal manufacturers in Battle Creek. Although Mr. Bealmear confessed to not being an attorney, he opined that the above quoted excerpt from the statute only applied to real estate sales, but also admitted that

> such a distinction does not appear on the face of the statute. (Respondent's Post Hearing Brief, p6)

Respondent next argues that the appraisal reports lack specificity. As Respondent states, each report contains one page titled "Research Data Sources" which lists 17 written data sources, including the internet, and nine contacts utilized by Mr. Bealmear in preparing his report. Respondent objects to the fact that, but for the few examples provided in P-2, P-4 and P-5, the specific source of sales data utilized by Mr. Bealmear was not provided for each of the other items of personal property.

Petitioner's use of offering prices, not actual sales prices, was also of concern to Respondent. This practice was exhibited in Petitioner's 2004 appraisal (P-5) wherein an offering price was utilized in the first of three examples of personal property being valued using the sales comparison approach, and three offering prices were the only prices considered in valuing another. Respondent argues that "[t]he statute, MCL 211.27, clearly contemplates sales, not offering prices. Thus, the demonstrations and values contained in Petitioner's exhibits, to the degree that they rely upon 'offerings,' are seriously flawed." (Respondent's Post-Hearing Brief, p7) Respondent also argues that Mr. Bealmear's credibility is strained given that he utilized a cost approach for one item for one year, stating that there were insufficient sales, when at the same time he utilizes sales and offerings that occurred over a period of three years.

Respondent also expressed concern over the adjustments made by Mr. Bealmear in his sales comparison approach. Respondent argued that "Mr. Bealmear did not provide an adequate basis for the Tribunal to evaluate how adjustments to sales prices were made by him and his staff." (Respondent's Post-Hearing Brief, p8)

Turning to Petitioner's replacement cost approach, Respondent found Mr. Bealmear's development of an economic obsolescence factor troublesome. First, Mr. Bealmear testified that

he developed his estimate of physical depreciation for each item of personal property primarily by observation, gathering "information from operating personnel or plant engineers only 'if necessary.'" (T1, p126) (Respondent's Post-Hearing Brief, p10) In the demonstration presented in P-5, Mr. Bealmear determined that a carton filling line, comprised of many separate machines, had a physical depreciation factor of 45%. The line's functional obsolescence was estimated at 5% due to improved controls in newer machines. To determine the line's economic obsolescence, Mr. Bealmear considered the sale of a case sealer that could be substituted for one piece of machinery in the line. In this instance, Mr. Bealmear utilized the straight-line age/life depreciation method to determine physical depreciation. No functional obsolescence was applied. Using these figures to solve for economic obsolescence, Mr. Bealmear determined that the case sealer's economic obsolescence was 54%. Mr. Bealmear then applied this 54% factor to the entire carton filling line. When questioned, Mr. Bealmear testified "that it is appropriate to take one piece of an entire line and have the same economic obsolescence applied to the whole provided that the equipment is of the same type, category and use." (T1, p168) (Respondent's Post-Hearing Brief, p12)

Respondent also questioned Mr. Bealmear's reliance on physical appearance in valuing two identical air compressors, one at $30,000 and one at $75,000. Mr. Bealmear stated that the difference between the two "has to be appearance and age, although I don't have the age of them." (T1, p150) Mr. Bealmear "offered no further explanation for the wide difference in value other than its appearance and an unquantified and undocumented difference in age." (Respondent's Post-Hearing Brief, p13)

Finally, Respondent discussed "Mr. Bealmear's ex post facto application of [Petitioner's] intent to scrap a drying oven. . . ," in P-5.

> This asset was valued at $150,000 for 2002 and $135,000 for 2003. The value was reduced dramatically to $23,000 for 2004. Although the oven was in operation on December 31, 2003, it was subsequently taken out of service and viewed by Mr. Bealmear in October 2004. He explained the reduction in value because of his perceived difference in physical depreciation to the oven. However, he did not observe the condition of the oven on December 31, 2003, while it was in operation. Instead, his opinion of value is based on [Petitioner's] decision to no longer maintain the drying oven and take it out of production in 2004. There was no testimony as to when maintenance was halted on the oven, or its condition on tax day, but the fact remains that the oven was in operation on December 31, 2003, and was contributing value to the cereal making process. It was only after that date that the oven was pulled out of service and could then properly be viewed as surplus or obsolete property. (Respondent's Post-Hearing Brief, p14)

PETITIONER'S POST-HEARING ARGUMENTS

Petitioner asserts that "Respondent's valuation, based on the Mass Appraisal Methodology, is not the best evidence of true cash value in this case." (Petitioner's Post-Hearing Brief, p8) Respondent did not submit an appraisal, relying instead upon the procedures set forth in the Assessor's Manual.

> That procedure entailed multiplying [Petitioner's] reported acquisition costs for the subject property by the STC multipliers . . . The multipliers that were used depended on the classification of the property and its year of acquisition.
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> ***
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> Michigan law is clear that the STC multipliers "were adopted as mass appraisal tools, or mass appraisal guidelines, thereby providing an approximation of value for purposes of local assessment." *County of Wayne, et al v Michigan State Tax Commission, et al*, 261 Mich App 174; 682 NW2d 100 (2004). The Michigan Court of Appeals further emphasized that the Assessor's Manual does not constitute a binding rule of law that definitively establishes the true cash value of taxable property. (Petitioner's Post-Hearing Brief, pp8-9)

Petitioner further asserts:

> Respondent cannot claim that its "STC multiplier method" of valuation is a recognized application of the cost approach. In *Technidisc, Inc v City of Clawson*, [(Docket No. 214818 (March 20, 1996)], [the respondent] attempted to describe the STC multiplier method as a cost approach. The Tribunal correctly found,

> however, that the STC multiplier method is not a cost approach as is commonly referenced in valuation theory but, rather, a variant method. (Petitioner's Post-Hearing Brief, pp9-10)

In response to Respondent's comments regarding Mr. Bealmear's use of "offering" prices, Petitioner asserts that:

> Respondent's claim stands unsupported and, in fact, is belied by standard appraisal theory. . .The American Society of Appraisers text, *Valuing Machinery and Equipment*, also teaches that not only comparable sales, but "current offerings or listings," are also a valid source of data to use in application of the sales comparison approach. In fact, the text further notes "'[i]f many comparables are being *offered* for sale, prices may be depressed, and there may be little demand for the subject property.' *Valuing Machinery and Equipment*, ASA, pg. 119-120." (Petitioner's Reply Brief, p6)

Regarding Mr. Bealmear's reliance on an asset's physical appearance in determining value, Petitioner states:

> One of the recognized methods of determining physical depreciation under the cost approach is the "observation method." *See Valuing Machinery and Equipment, supra*, at 72-73. The appraisal text explains the observation method this way:
>
> In this method, the appraiser makes a comparison based on the experience he or she has gained by looking at similar properties and comparing them to new properties. The procedure involves actually observing those elements of wear and tear that can be seen and converting those observations into a percentage. It also involves discussions with knowledgeable plant personnel to determine the condition of those things that might not be readily apparent, such as internal corrosion on tanks. On the basis of the facts, the appraiser must develop an opinion of physical depreciation, stated in the form of a percentage, to deduct from replacement or reproduction cost new. (*Valuing Machinery and Equipment* at 72-73). (Petitioner's Reply Brief, pp10-11)

Petitioner responded to Respondent's criticism of Mr. Bealmear's economic obsolescence factor by citing the ASA textbook, *Valuing Machinery and Equipment*. Petitioner asserts that Mr. Bealmear utilized the methodology that "is the appraisal community's recognized and generally accepted method for determining economic obsolescence." (Petitioner's Reply Brief, p11) Mr. Bealmear confirmed "that his development of economic obsolescence for entry 78

only applied to other equipment at Ralcorp within the same category and use, and not for all equipment . . . Moreover, this only applies to property valued under the cost approach."

In response to Respondent's discussion regarding the intent to scrap a drying oven, Petitioner asserts that the reduction in value was due to the difference in physical condition. This is noted by a change in the condition code from a [C-] to a [D].

Regarding Mr. Shipper's review of Mr. Bealmear's appraisal, Petitioner states that Mr. Shipper's criticism is unfounded. Petitioner argues that "Shipper is wrong in his claim that installation costs were not included in Mr. Bealmear's valuation." (Petitioner's Reply Brief, p14) However:

> The most serious of the Shipper criticisms is an allegation that Mr. Bealmear's valuation did not include "installation costs." . . . Shipper asserts that his allegation is important because he believes that the value concept is "value in place." . . . Shipper is simply wrong about Michigan's value concept. The fact that MCL 211.27(1) requires property to be valued "at the place where the property . . . shall be" has never been held to equate to the concept of fair market value "in place" or "installed," and there is no basis in Michigan law for such a holding. (Petitioner's Reply Brief, p14)

In support of this analysis, Petitioner cites *MC Sporting Goods Distributing v City of Troy*, (Docket No. 192750, July 18, 1996). In that case, the petitioner argued that the term "fair market value" meant "fair market value-removal" and not "fair market value in-use," as implemented by the STC. From that decision, Petitioner cites the following language: "The statute in Michigan addresses fair market value. Terms such as fair market value-in continued use, fair market value-installed and fair market value-removal are not defined within the Michigan statute."

Finally, Petitioner asserts that the Uniform Standards of Professional Appraisal Practice (USPAP), Standard 3, is applicable when an appraiser performs an appraisal review, as Mr. Shipper did of Mr. Bealmear's appraisal. This Standard "'requires the reviewer to prepare a

separate report or a file memorandum setting forth the scope of work and the results of the appraisal review.' (USPAP, Standard 3, pg. 33)" (Petitioner's Reply Brief, p16) Petitioner also cites Standards Rule 3-1, 3-2 and 3-3 as being applicable to a review appraisal. Petitioner asserts that Mr. Shipper met none of these requirements.

FINDINGS OF FACT

The Tribunal adopts the following findings of fact submitted and agreed upon by the parties:

1. Petitioner, Ralcorp Holdings, Inc., is appealing the ad valorem personal property tax assessment, tax identification #0118-01-100-0 made by the Respondent, City of Battle Creek.
2. The tax years under appeal are the 2002, 2003, and 2004.
3. The personal property consists of machinery/equipment, furniture, and fixtures used by the Petitioner.
4. Petitioner's plant engages in the manufacturing of ready-to-eat cereal.
5. The affected school districts are Battle Creek Public Schools and Calhoun County Intermediate School District.

In its Post-Hearing Brief, Petitioner proposed the following findings of fact:

1. The subject property consists of all of Ralcorp Holdings Inc.'s tangible personal property, such as furniture and fixtures, computers, and machinery and equipment, as itemized in the appraisal reports of MB Valuation Services for the 2002, 2003 and 2004 tax years.
2. There is an active market for sales of property similar to the great majority of the subject property.
3. Petitioner's appraiser is a senior member of the American Society of Appraisers and a certified equipment appraiser with thirty years experience appraising personal property.
4. Petitioner's appraiser employed the recognized and generally accepted application of the market or sales comparison approach for the great majority of the subject property.
5. Petitioner's appraiser employed the recognized and generally accepted application of the cost approach for those items for which the sales comparison approach could not be preformed.
6. Respondent's valuation was based solely on a mass appraisal technique of applying Petitioner's reported acquisition costs by fixed STC multipliers based on the year of acquisition of the subject property.
7. Petitioner's appraiser's use of the market and cost approaches, based on market-based information and the application of generally accepted appraisal

techniques, was the best evidence of the true cash value of the subject property.

8. The true cash value of Petitioner's personal property for the 2002 tax year is $6,373,243.00.
9. The true cash value of Petitioner's personal property for the 2003 tax year is $6,333,803.00.
10. The true cash value of Petitioner's personal property for the 2004 tax year is $6,383,278.00.

The Tribunal concurs with proposed findings of fact Nos. 2, 3, 4, 5 and 6, and adopts these findings as its own. The Tribunal disagrees with Petitioner's remaining proposed findings of fact and, pursuant to MCL 24.285, rules as follows:

1. Proposed finding of fact No. 1 is not adopted as the Tribunal is not certain that all of Petitioner's personal property is itemized in its appraisal reports. As Respondent pointed out in its cross examination of Mr. Bealmear, the entry numbers assigned to the personal property are not complete. For example, in all three appraisals, entry numbers 665 through 672 are missing. Unfortunately, this is not the only time this occurs. When asked why the entry numbers are not sequential, Mr. Bealmear stated that the computer generated the numbers. This explanation is insufficient. It is logical to expect that the first year for which an appraisal is completed, in this case the 2002 tax year, the numbers would be sequential. Moreover, it appears that at least one item of personal property was assigned different entry numbers in two of the appraisals. In the 2003 appraisal, a Hewlett-Packard computer with tax #500055 was assigned entry number 1511. In the 2004 appraisal, this same item was assigned entry number 1544. For these reasons, the Tribunal does not adopt Petitioner's first proposed finding of fact.

2. Proposed findings of fact Nos. 7, 8, 9 and 10 are not adopted because the Tribunal finds that Petitioner's appraisal was not the best evidence of the subject property's true cash value. Because the Tribunal finds that Petitioner has not met its burden of proof in establishing the subject property's true cash value, findings of fact Nos. 8, 9 and 10 are rejected.

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.

> The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law. 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%. . . . Const 1963, art 9, sec 3.

The Michigan Legislature has defined "true cash value" to mean:

> [T]he 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. The usual selling price *may include sales at public auction* held by a nongovernmental agency or person if those sales have become *a common method of acquisition in the jurisdiction for the class of property being valued.* The usual selling price does not include sales at public auction if the sale is part of a liquidation of the seller's assets in a bankruptcy proceeding or if the seller is unable to use common marketing techniques to obtain the usual selling price for the property. (Emphasis added.) MCL 211.27(1); MSA 7.27(1).

The Michigan Supreme Court has determined that "true cash value" is synonymous with "fair market value." See *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450; 221 NW2d 588 (1974).

Under MCL 205.737(1); MSA 7.650(37)(1), the Tribunal must find a property's true cash value in determining a lawful property assessment. *Alhi Development 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). 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 Limited Dividend Housing Association v City of Holland, 437 Mich 473, 485- 486; 473 NW2d 636 (1991).

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735(1); MSA 7.650(35)(1). The Tribunal's factual findings are to be supported by competent, material, and substantial evidence. *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co* v *Department 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 and Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

"The petitioner has the burden of establishing the true cash value of the property...." MCL 205.737(3). In *Alhi Development, supra*, the Michigan Court of Appeals held that, to meet this burden of proof, a petitioner "need only prove, by the *greater weight of the evidence*, that the assessment is too high." (Emphasis added.) *Id*. p769. Petitioner's burden of proof encompasses two separate concepts: (1) the risk of persuasion, which does not shift during the course of the hearing; and (2) the burden of going forth with the evidence, which may shift to the opposing party. *Jones and Laughlin* at 354-355.

In this case, Petitioner utilized auction sales in valuing the subject property. Respondent argues that these sales are not reliable because "[t]here was no testimony that such sales were a common method of acquisition of the subject property by cereal manufacturers in Battle Creek." (Respondent's Post-Hearing Brief, p6) Petitioner disagrees with Respondent's interpretation of the statute, stating "[t]here is no authority to support Respondent's position that auction sales must be a common method of acquisition of the subject property 'by cereal manufacturers in Battle Creek.'" (Petitioner's Post-Hearing Brief, p3)

The Tribunal agrees with Respondent's statutory interpretation; however, the Tribunal also agrees with Petitioner's statement that "the evidence fully supports that there is an active, regular market for the sale of used machinery and equipment similar to the type used by Ralcorp." (Petitioner's Post-Hearing Brief, p3) Mr. Bealmear testified that approximately 50 auctions are held each year in which property similar to the subject property is sold. While evidence was not presented that Petitioner or any other cereal manufacturer in Battle Creek, Michigan, purchased property from these sales, the Tribunal finds that, given the number of sales, auction sales are a common method of acquisition for the subject property. The Tribunal also finds that this is a method of acquiring property that a prudent business person would utilize. This finding is supported by the American Society of Appraisers. "The used equipment market is an established means of buying and selling equipment. The used market consists of used machinery dealers, *auctions*, and public and private sales, and is often (but not always) the most reliable method of determining certain types of value for certain types of properties." (Emphasis added.) (American Society of Appraisers, *Valuing Machinery and Equipment*, (Washington, D.C., 2000) p116. For these reasons, the Tribunal finds that Petitioner's use of auction sales is appropriate.

As previously cited, the 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 . . . ." MCL 211.27. The Michigan Supreme Court has held that "'[t]rue cash value' is synonymous with 'fair market value.'" *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450; 221 NW2d 588 (1974). Thus, "fair market value" means "the usual selling price at the place where the property to which the term is applied *is at the time of assessment*." (Emphasis added.) In this case, this definition is of particular importance because the parties appear to

disagree as to what the definition means.[2] Specifically, the issue that arose during the hearing was what is included, if anything, in "fair market value." In other words, in addition to the selling price, does fair market value include disassembly, freight, assembly, installation, auctioneer's commission and/or sales tax?

This is not the first time that this question has been presented to the Tribunal and to the Michigan Court of Appeals. In *IBM Credit Corporation v City of Grand Rapids*, unpublished opinion per curiam of the Court of Appeals, decided July 5, 1996 (Docket No. 181519), the petitioner appealed the true cash value of IBM mainframe computers and associated equipment. The Tribunal agreed with petitioner's contentions of value and respondent appealed to the Court of Appeals. On appeal, the respondent argued that "the tax tribunal erred in refusing to allow freight and installation costs to be included in the value of the property taxed." *Id*. The court held since the petitioner "testified that the standard practice of the computer industry is not to include freight and installation costs in the pricing of equipment and defendant did not refute this testimony, freight and installation costs do not need to be calculated in determining the true cash value of [the petitioner's] property." *Id*.

Shortly thereafter, in *MC Sporting Goods v City of Troy*, (Docket No. 192750, July 18, 1996), the petitioner argued that the value-in-use methodology was unconstitutional. The petitioner's appraiser testified as to the various definitions of fair market value and argued that the Tribunal should use "fair market value-removal" to value the personal property instead of value-in-use. As Petitioner noted, in that case the Tribunal stated that "[t]he statute in Michigan addresses fair market value. Terms such as fair market value in continued use, fair market value – installed and fair market value – removal are not defined within the Michigan statute." *Id*. In

[2] As discussed below, the Tribunal is unclear as to Petitioner's position in this regard.

refusing to adopt the petitioner's approach, the Tribunal stated: "The Tribunal cannot write the laws but must apply them as written. Petitioner's agent seeks relief that can only be addressed by the Legislature." *Id*. While it is true that these terms are not defined within Michigan's statutes, nor utilized in the General Property Tax Act, the Legislature has provided a definition of true cash value that requires property to be valued at the place where the property is at the time of the assessment.

In *MC Sporting Goods*, the Tribunal cited *AEG Mictron, Inc v City of Troy*, (Docket No. 192743, May 6, 1996), a similar case dealing with the issue of sales tax, freight and installation. In describing the petitioner's case, the Tribunal stated:

> As noted earlier in this opinion, no part of Petitioner's appraisal theory is supported by independent market data. Equally serious is that the theory of excluding certain costs (sales tax, freight, installation), and the theory of valuation of property as movable, ignore the location-specific provisions of applicable statutes. MCL 211.13[3], *supra*, as to personal property assessment, and MCL 211.27(1), *supra*, as to the definition of true cash value, both require property to be valued at a specific location. It is proper, therefore, that those costs appropriate to locate, install, or construct property at a specific location are also to be considered. Property, real and personal, encounter both cost-of-acquisition to secure the physical entity, and cost-of-placement to provide residence at a specific location. Those expenditures are properly considered in true cash value to the extent that they are reflected in market value. Petitioner errs in rejecting consideration of certain value expenditures, without reference to market information for guidance, and without regard for the location-specific provisions of the applicable statutes. The result is to value all personal property at a near-salvage level. *Id.*

On appeal, the petitioner argued, among other things, that the costs of installation, freight, and sales tax should not be considered in determining the true cash value of its property. The court cited its decision in *Lionel Trains, Inc v Chesterfield Township*, 224 Mich App 350; 568

[3] MCL 211.13(1) states, in pertinent part: "All tangible personal property, except as otherwise provided in this act, shall be assessed to the owner of that tangible personal property, if known, in the local tax collecting unit in which the tangible personal property is located on tax day as provided in section 2."

NW2d 685 (1997), discussed below, and stated that "this Court determined that the costs of sales tax, freight, and installation properly could be considered in true cash value if they were reflected in market value." (*MC Sporting Goods v City of Troy*, unpublished opinion per curiam of the Court of Appeals, decided August 10, 1999, (Docket No. 196918)) The court held that "Petitioner's failure to prove that inclusion of these costs inflated the true cash value of its property well over fair market value was fatal, as petitioner, not respondent, bore the burden of proving true cash value." *Id*.

Later that year, in *Producers Color v City of Clawson*, (Docket No. 216818, December 12, 1996), the Tribunal adopted the petitioner's appraiser's contention of the subject property's true cash value. The property, primarily computer and audio/video production equipment, was valued by the appraiser using both the sales comparison approach and the cost approach. The Tribunal noted that:

> In placing primary reliance on the market data approach, the appraiser considered factors of comparison, did not deduct for selling expenses or cost of removal associated with the sale information, including freight and installation where it was the industry practice, and did not deduct for any special discounts or price reductions that Producers Color might receive. *Id*.

In one of the few published cases dealing with this issue, that being *Lionel Trains, Inc, supra*, the petitioner challenged the use of the STC multipliers, particularly the "in-use" multiplier. In its decision, the court discussed the various multipliers established by the STC.

> Under the STC manual, all personal property that is idle within the state is treated the same. True cash value of that property is calculated utilizing the "idle" multiplier. All personal property that is obsolete or surplus within the state is treated the same. True cash value of that property is calculated utilizing the "economic residual" multiplier, which is the lowest multiplier and gives the lowest value to the property. All property that is not idle, obsolete, or surplus is treated the same. True cash value of property that is not idle, obsolete, or surplus is calculated by using an in-use multiplier. (*Id*., pp351-352)

The petitioner argued "that the use of the in-use multiplier does not result in a determination of the true cash value of the property; and that the calculation of true cash value using the purchase price of the property plus freight, installation, and sales tax is improper." (*Id*., p351) Instead of the in-use multiplier, the petitioner argued that the only multiplier that is indicative of true cash value is the "economic residual multiplier." The court held that the petitioner's argument was without merit.

The *Lionel Trains* court also ruled against the petitioner in its argument that installation, freight, and sales tax should not be considered in determining a property's true cash value. In doing so, the court cited the tribunal's decision wherein the Tribunal stated that "freight, sales tax, and installation could be appropriately included in the true cash value of personal property where such costs are a part of the market, but that a value that includes such costs 'may be adjusted by market evidence on appeal to the tribunal.'" (*Id*., pp354-355)

In *Michigan Sporting Goods v Meridian Township*, unpublished opinion per curiam of the Court of Appeals, decided April 6, 1999, (Docket No. 200363), the petitioner asserted, like others before, that the appropriate method of valuing personal property was by utilizing fair market value-removal. The court held: "The legislature defines fair market value in MCL 211.27(1) and it is directly contrary to Petitioner's contention that removal value is the best indicator of market value." *Id*.

The petitioner also argued that the Tribunal erred by including the cost of freight, sales tax and installation in valuing the property. The court disagreed and provided a very clear explanation as to its reasoning.

> [T]he market for used property is quite *likely* to include costs such as freight, sales tax and installation. A prudent business owner will consider a variety of factors in deciding whether to dispose of his or her property, including the *total* costs in acquiring property, the value already recovered from use of the property, the costs of acquiring replacement

> property, and so forth. Thus, ideally, a manufacturer who spends $10,000 on a piece of equipment plus an additional $5,000 in freight, sales tax and installation is not likely to sell that equipment unless he can recoup $15,000 between the selling price and the financial benefit received from having used the equipment in the manufacturing process. In most cases, if there were no such financial benefit in acquiring the equipment, it would not have been purchased in the first place. Plaintiff's theory presumes that property owners generally lose money when they resell property. This is not necessarily the case, nor has plaintiff presented evidence to support this theory.
>
> Finally, a prudent buyer considers these additional costs when deciding whether to purchase property; that is, is the property *worth* the purchase price plus the additional costs of acquiring it? Does it carry that much *value?* Using the previous example to illustrate this, the manufacturer will not purchase the equipment unless he or she is likely to realize *at least* a $15,000 financial benefit from the equipment, be it in the manufacturing process, reselling the equipment, or a combination of such factors. Theoretically, the *value* of that equipment is at least $15,000. If not, the prudent manufacturer will not spend $15,000 to obtain it.
>
> Plaintiff has failed to provide evidence that true cash value does not, as a rule, include costs beyond the property's purchase price. To the extent that plaintiff relies on *IBM v State of Michigan,* 220 Mich App 83, 86-87; 558 NW2d 456 (1996), such reliance is misplaced. *IBM* addresses *use* tax, not *property* tax. Use tax is not a tax on the *value* of property, but rather a tax measured by the *cost* of property. *Id. Lionel Trains, supra,* at 350, is controlling, and plaintiff's claim of error should fail. *Id*.

In *Spartech Polycom, Inc v City of St. Clair*, unpublished opinion per curiam of the Court of Appeals, decided March 8, 2011 (Docket No. 295334), one of the issues presented to the court was that of freight, installation, and sales tax.

> In *Lionel Trains, Inc v Chesterfield Twp,* 224 Mich App 350, 354–355; 568 NW2d 685 (1997), this Court concluded that installation, freight, and sales tax are appropriately included in true cash value unless there is evidence that such costs are not part of the market. In this case, the tribunal specifically found adequate evidence that freight, installation, and taxes were not included in the market prices of the goods at issue, and under those conditions *Lionel Trains* did not foreclose the tribunal from excluding the additional charges. There is substantial evidence supporting this conclusion. *Id*.

Having reviewed many of the cases in which the issue of whether freight, installation, and sales tax should be included in determining the true cash value of personal property, it is clear that the language “where such costs are a part of the market” and “such costs are not part of

the market," or language similar thereto, has been utilized in many Court of Appeals decisions and may even have originated in a Tribunal decision authored by a different Tribunal member. However, this Tribunal member is at a loss as to how the statutory language in MCL 211.27 requiring property to be valued "at the place where the property . . . is at the time of assessment" could ever be interpreted not to include such things as installation, freight and sales tax. Some, if not all, of these costs may be included in the equipment's purchase price or the purchase price may only include the equipment, as in *Spartech Polycom*. Either way, these costs are paid by the buyer and are part of the market.

For example, if a buyer in Michigan purchases a piece of equipment that is located in Iowa, it would not be taxed in Michigan unless the property is in Michigan at the time of assessment.[4] Moreover, unless otherwise provided, only property physically located in the taxing jurisdiction is subject to tax. See MCL 211.13. Thus, to be taxed in Michigan at the place where the equipment is located at the time of assessment, the equipment would have to have been, at a minimum, transported from Iowa to Michigan. Eventually, the equipment would be installed at the buyer's location and sales or use tax would be paid. These costs will be paid by the buyer either directly or indirectly.

As the Court of Appeals stated in *Michigan Sporting Goods, supra*, these costs are taken into consideration when a prudent buyer decides to purchase a piece of personal property and may impact the price the buyer is willing to pay for the property. The buyer does not purchase the property believing it will remain in Iowa as the equipment is of no use to the buyer at the auction site or at the previous owner's facilities. Thus, the question that must be asked in cases

[4] Pursuant to MCL 211.1(2): "The taxable status of persons 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."

such as this is not whether these costs are part of the market, but whether these costs are included in the purchase price.

Having reached this conclusion, the question remains as to what costs Petitioner's appraiser included in his sales comparison approach. Unfortunately, none of this information was incorporated in any of the three Bealmear appraisals and the Tribunal was left to glean what information it could from Mr. Bealmear's testimony, which was confusing, at best. Notwithstanding the confusion, the Tribunal finds that the following costs were included in Mr. Bealmear's value conclusions: auctioneer's commission, if applicable, disassembly at the seller's location, transportation/delivery, assembly at Petitioner's location, and installation. Mr. Bealmear did not include sales or use tax in these value conclusions. Clearly, depending upon whether the comparable property was located in Michigan or out of state, sales or use tax would have been paid on these purchases.

Assuming that the issue of freight, installation and taxes had been handled correctly, the next issue to be decided is whether Petitioner met its burden of proof in establishing the subject property's true cash value. It is clear, as Respondent asserts, that in assessing personal property, assessors are required to comply with MCL 211.10e, which provides, in pertinent part:

> All assessing officials, whose duty it is to assess real or personal property on which real or personal property taxes are levied by any taxing unit of the state, shall use only the official assessor's manual or any manual approved by the state tax commission, consistent with the official assessor's manual, with their latest supplements, as prepared or approved by the state tax commission as a guide in preparing assessments.

There is no dispute that Respondent correctly utilized the official assessor's manual in establishing the subject property's true cash value for the tax years at issue. However, in *Valassis Communications v City of Livonia*, unpublished decision of the Court of Appeals, decided December 27, 2002 (Docket No. 233676), the court stated:

> [T]here is nothing in the law that prohibits a party from submitting evidence-whether it be an expert report, a valuation, or the proposed new manual to establish the true cash value of the property.
>
> Indeed, our cases indicate that if evidence of a different true cash value is apparent because the manual does not adequately account for a factor relevant to the assessment, a party may obtain a deviation from the manual. This is because it is the true cash value of the property that controls the ultimate determination. The Tribunal is under a duty 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 [individual] circumstances" of each case. Hence, not only is there no rule prohibiting the use of an unofficial manual as evidence in an evidentiary hearing, the law affords great latitude to the Tribunal in making the ultimate determination regarding true cash value. As we stated, the controlling factor is whether the method used most accurately reflects the property's true cash value. (Citations omitted.) *Id*.

In this case, Petitioner submitted an appraisal report for each of the three tax years at issue. In each of these reports, Petitioner relied primarily on the sales comparison approach and, when sufficient sales were unavailable, utilized the replacement cost approach in determining the subject property's true cash value. In *Antisdale*, the Court stated that the sales comparison approach is the only appraisal method that directly reflects the balance of supply and demand for property in marketplace trading. (*Id*., p278) However, the *Antisdale* Court held that 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. (*Id.*, p277)

The Tribunal finds that in this case, the sales comparison approach, if performed properly, would provide the most appropriate method of determining the true cash value of the vast majority of items comprising the subject property. This finding is supported in *Valuing Machinery and Equipment, supra*. "The sales comparison approach is most reliable when there is an active market providing a sufficient number of sales of comparable property that can be independently verified through reliable sources." (*Id*., p116) The cost approach, while

appropriate, by definition requires a great deal more subjectivity on the part of the appraiser and, as such, is not as reliable as the sales comparison approach. One of these areas of subjectivity, particularly in this case, is the estimation of economic obsolescence. As recognized in *Valuing Machinery and Equipment, supra*:

> The difficulty in measuring the full effect of economic obsolescence is one of the weaknesses of the cost approach. Because economic obsolescence is usually a function of outside influences that affect an entire business (i.e., all tangible and intangible assets) rather than individual assets or isolated groups of assets, it is sometimes measured using the income approach or by using the income approach to help identify the existence of economic influences on value. (*Id*., p99)[5]

Petitioner's appraiser indicated that, for the 2004 tax year, he utilized the replacement cost approach in valuing 22 items. Of this, the appraiser provided detailed information, or a "demonstration" of the cost approach for one item, a carton filling line. Because the carton filling line was not a line bought and sold in the assemblage utilized by Petitioner, the appraiser utilized a case sealer, equipment similar to one component of the carton filling line, to determine economic obsolescence for the entire carton filling line. The 1994 case sealer's replacement cost new was $16,215. Petitioner's appraiser estimated that the case sealer had 40% physical depreciation using the age/life method and 0% functional obsolescence. Given this, the appraiser determined that the case sealer's economic obsolescence was 54%. The appraiser then estimated that the replacement cost new for the subject property, the carton filling line, was $265,000. The appraiser then estimated that the line had 45% *observed* physical depreciation and 5% functional obsolescence. The case sealer's 54% economic obsolescence was then applied to the carton filling line to arrive at the line's true cash value.

[5] By including this quotation, the Tribunal does not infer that an income approach should have been used in this case. The Tribunal's intent is merely to demonstrate that the issues in measuring economic obsolescence are well documented.

While this formula is recognized in *Valuing Machinery and Equipment*, *supra*, the Tribunal has concerns with Petitioner's appraiser's application. First, the appraiser determined the subject property's physical depreciation through observation. When asked why the property's age wasn't taken into consideration, the appraiser responded:

> [Y]ou have to make some sort of assumption that the older something is, that the more it doesn't last forever. But in facilities like this, they have to keep their equipment running, so they're maintained and so we don't use the age/life method of determining physical depreciation, although, you can, to support whatever you think the actual depreciation is. Mostly, I don't like it because you don't have to have seen it to do an age/life depreciation. So it seems to me that if you don't see something, you could know the age and the expected life and come up with a physical depreciation, when its – actually, could be scrap. You don't know because you didn't see it. (T1, p130)

However, the appraiser determined the comparable's physical depreciation on an age/life basis. While it may have been impossible to observe the comparable property to determine if it could be scrap, it was not impossible to determine the subject property's physical depreciation on an age/life basis and insure that the properties were compared on an apples-to-apples basis.

Moreover, as previously discussed, the comparable property was a 1994 case sealer. The appraiser estimated that the sealer had an expected life of 20 years. To arrive at the property's 40% physical depreciation, the appraiser divided 20 by 8. However, as of December 31, 2003, the property would have been nine years old, not eight. While this may seem insignificant, a one year increase in the property's age results in an increase in physical depreciation from 40% to 45% and a decrease in economic obsolescence from 54% to 45%. With this change, the subject property's estimated true cash value increased from $64,000 to $76,155. Again, while it may seem insignificant, mistakes such as this draw into question the appraiser's credibility.

In the cost approach demonstrations for the 2002 and 2003 tax years[6], Petitioner's appraiser utilized the same piece of equipment, specifically a boiler. While Mr. Bealmear did not provide the exact age of the boiler, it must be assumed that this is how the physical depreciation was determined given the unlikelihood that this equipment was actually observed. With this assumption, and the assumption that this equipment has an expected life of 20 years, Mr. Bealmear's calculations of 45% physical depreciation for the 2002 tax year are correct. However, Mr. Bealmear's physical depreciation conclusion is exactly the same for the 2003 tax year as it is for the 2002 tax year. In 2003, physical depreciation based on an age/life calculation should have increased to 50%. With this change, economic obsolescence would have been 56%, not 65%, and the value conclusion would have increased from $147,000 to $235,410. Because so few "demonstrations" were provided, and because information was limited in general, it is difficult to determine whether other such mistakes were made. Regardless, in the end the fact that Mr. Bealmear made mistakes in two-thirds of his cost approach demonstrations has the consequence of diminishing his credibility.

As for Mr. Bealmear's sales comparison approach, there was at least one apparent mistake. In his 2004 appraisal report, Mr. Bealmear concludes to a unit value for a drying oven, entry #49, of $145,000. However, the listing for this entry indicates a unit value of $140,000. Oddly, a review of Mr. Bealmear's 2003 appraisal report reveals a unit value for this item of $145,000.

In addition to these mistakes, the appraisal reports contain entries that were either not explained, or not explained to the Tribunal's satisfaction. For example, when asked why the unit value of entry #149 decreased from $135,000 as of December 31, 2002, to $23,000 as of

[6] Again, these demonstrations were not included in the appraisal reports for those tax years.

December 31, 2003, Mr. Bealmear stated that it was due to its observed physical condition. According to Mr. Bealmear, the equipment's condition went from a C- to a D. The Tribunal cannot help but question a decrease in value of $112,000, or 83%, merely based on what appears to be a minor change in a condition code.

Additionally, when asked why there were gaps in the entry numbers assigned to each item of personal property, Mr. Bealmear stated: "Those numbers are generated by our computer. They have no other function . . . I don't know the reason for the jumping from 1511 to 1515. It is likely that 12, 13 and 14 were deleted." (T1, pp134-145) This response is nonsensical; if a computer generated the numbers, a number would not have been deleted without being instructed to do so, at least in the first year under appeal. Furthermore, this wasn't the only time this happened. In the 2002 and 2003 appraisal reports, items 665 through 672 were omitted. Because of this "jumping" number issue, it was impossible to easily ascertain how many items were under appeal.

Furthermore, this numbering issue made it very difficult to compare the property from one year to the next. For example, in the 2003 appraisal report, item #1511 was listed as a Hewlett-Packard Computer Mini-Tower. In 2004, #1511 was omitted, yet this item now appeared under entry #1544.

One entry number that was consistent in all three appraisal reports was that of #60, a listing for a cooler supply fan. Also consistent was the use of an asterisk instead of a unit value. Mr. Bealmear did not testify as to the meaning of this asterisk and an explanation was not readily found in the appraisal reports. Thus, the Tribunal is uncertain as to the unit value of this equipment and whether this value was included in any of the appraisal reports.

Another issue that was not explained to the Tribunal's satisfaction involved two entries that appeared to two pieces of identical equipment, yet one was valued at $75,000 while the other was valued at $30,000. When asked to explain the difference, Mr. Bealmear stated that it had to be due to the equipments' appearance and age, although he could not provide the age of either item.

This testimony summarizes one of the Tribunal's basic concerns with Mr. Bealmear's report. The Tribunal understands that the appraisals were prepared in the format of a "Summary Appraisal Report"; however, the reports contain no information other than a description of each item, a condition code and the method of appraisal, e.g., sales comparison or cost. While it is true that Mr. Bealmear's 2004 appraisal contained one demonstration of the cost approach and three demonstrations of the sales comparison approach, two of the four demonstrations, or 50%, contained errors.

Even if the errors did not diminish the credibility of the reports, the information contained in the reports is simply not sufficient. Mr. Bealmear provided no information as to how each item was valued. It is impossible to tell, for example, whether Mr. Bealmear utilized an internet sale or obtained the comparable sales information from an auction sale. According to Mr. Bealmear, providing more information in a summary appraisal report is "not the way it's done in the United States" and that "[b]y doing a demonstration, we go further than anybody else as far as I know." (T1, p51) However, in cases in which the Tribunal has approved of an appraiser's methodology, substantially more information was provided. Appraisers must take note that in a case filed at the Tribunal, the Tribunal is an intended user. Thus, while Mr. Bealmear may believe that it would be overly burdensome to provide information for thousands of line items, there has to be a "happy medium" wherein enough information is provided that the

Tribunal has confidence in the report. In this case, a "happy medium" was not reached. Moreover, while sampling for demonstration purposes may be an effective tool, if done properly, providing four demonstrations for over 1,500 pieces of equipment is not sufficient. In this case, not only is the number of demonstrations insufficient, demonstrations were not provided for all types of equipment. For example, there were no demonstrations as to computers, office furniture, and other office equipment.

In his sales comparison approach, Mr. Bealmear adjusted for a "dealer to user" sale, the goal being to equate to a "user to user" sale. Mr. Bealmear testified that he "would make a downward adjustment for that sale to account for such things as a dealer's profits or a warranty, or any other thing that involved in the sale that would have affected it." (T1, p34) Given that Mr. Bealmear found it acceptable to utilize auction sales wherein the auctioneer was paid a commission, the Tribunal is unclear as to why Mr. Bealmear did not believe a price that included a dealer's profit was acceptable.

Finally, the Tribunal is concerned that Mr. Shipper's observation of a substantial number of repair parts and equipment was never addressed. As previously discussed, Mr. Shipper testified that there were "rows and rows and rows of steel shelving. I don't know what portion of a floor it took up, but its – I am certain, it's at least in the hundreds of thousands, if not, perhaps – I'd just be guessing if I said more than that, but it takes up a substantial portion of a floor of one of the buildings." (T2, p35) If Mr. Bealmear can omit something of this magnitude, it draws into question what else was omitted.

For these reasons, the Tribunal finds that Mr. Bealmear's appraisals did not provide credible evidence of the subject property's true cash value. Given this, the Tribunal has no alternative but to find that Petitioner did not meet its burden of proof in establishing the subject

property's true cash value. Moreover, Petitioner's evidence did not persuade the Tribunal that the subject property was valued in excess of 50% of the true cash value established by Respondent. While the burden of proof did not shift to Respondent, the Tribunal finds that the report prepared for Respondent by Ms. McGee correctly classified the subject property in terms of category and age and, as such, is the most reliable indicator of value presented in this case. Therefore, the Tribunal adopts the values determined by Ms. McGee.

JUDGMENT

IT IS ORDERED that the subject property's true cash, assessed and taxable values for the 2002, 2003 and 2004 tax years are those shown in the "Final Values" section of this 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 assessed and taxable values in the amounts as finally shown in the "Final Values" section of this Opinion and Judgment, subject to the processes of equalization, within 20 days of the entry of this Opinion and Judgment. 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 Opinion and Judgment within 20 days of the entry of this Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the

amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Order. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ii) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (iii) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (iv) after December 31, 2005, at the rate of 3.66% for the calendar year 2006, (v) after December 31, 2006, at the rate of 5.42% for the calendar year 2007, (vi) after December 31, 2007, at the rate of 5.81% for the calendar year 2008, (vii) after December 31, 2008, at the rate of 3.31% for the calendar year 2009, (viii) after December 31, 2009, at the rate of 1.23% for the calendar year 2010, and (ix) after December 31, 2010, at the rate of 1.12% for the calendar year 2011.

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

MICHIGAN TAX TRIBUNAL

Entered: April 21, 2011 By: Patricia L. Halm