

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

JD Norman Industries,
Petitioner,

v

MTT Docket No. 436350

City of Leslie,
Respondent.

Tribunal Judge Presiding
Marcus L. Abood

OPINION AND JUDGMENT

Petitioner, JD Norman Industries, appeals the ad valorem property tax assessment levied by Respondent, City of Leslie, against the real property owned by Petitioner for the 2012 tax year.

A hearing was held on January 23, 2014, to resolve the real property tax dispute. Clyde W. Maudlin, attorney at Abbott, Thomson, Maudlin, Parker and Beer, PLC, appeared on behalf of Petitioner. Thomas M. Hitch, attorney at McGinty, Hitch, Housefield, Person, Yeadon & Anderson, PC, appeared on behalf of Respondent. Teresa DeBaeke and Gary Wilhite were Petitioner's witnesses. Charles Zemla was Respondent's assessment witness.

SUMMARY OF JUDGMENT

The subject property's 2012 True Cash Values (TCVs), State Equalized Values (SEVs), and Taxable Values (TVs), as determined by Respondent, are:

Parcel Number	Year	TCV	SEV	TV
33-17-14-90-900-220	2012	\$6,219,900	\$3,109,950	\$3,109,950

Petitioner's contentions of the property's TCV, SEV, and TV:

Parcel Number	Year	TCV	SEV	TV
33-17-14-90-900-220	2012	\$1,672,000	\$836,000	\$836,000

The Tribunal's conclusions are:

Parcel Number	Year	TCV	SEV	TV
33-17-14-90-900-220	2012	\$6,219,900	\$3,109,950	\$3,109,950

GENERAL PROPERTY DESCRIPTION

The subject personal property is located in the city of Leslie and within the county of Ingham, Michigan. The subject personal property is classified as industrial personal property.

SUMMARY OF PETITIONER'S CASE

Petitioner presented testimony from Teresa DeBaeke, an employee of JD Norman Industries. She described her background, education, and experience relative to Petitioner's business operations. Petitioner's second witness was Gary Wilhite, an employee of JD Norman Industries. He described his background, education, and experience relative to Petitioner's business operations.

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

- P-1: 2012 Personal Property Statement for parcel ending in 900-010.
- P-2: 2012 Personal Property Statement for parcel ending in 900-012.
- P-3: 2012 Personal Property Statement for parcel ending in 900-013.
- P-4: 2012 Personal Property Statement for parcel ending in 900-014.
- P-5: 2012 Personal Property Statement for parcel ending in 900-016.
- P-6: 2012 Personal Property Statement for parcel ending in 900-020.
- P-7: Subject Property – Asset Purchase Agreement.
- P-9: Schedule of Equipment Values.
- P-10: Equipment Summary.

Ms. DeBaeke described the marketing and purchase transaction for the subject property. Prior to her employment with JD Norman Industries, she was the Chief Financial Officer for Len Industries. JD Norman Industries purchased Len Industries on November 3, 2011 for

approximately \$6,600,000. Conway McKenzie, a restructuring and merging acquisition firm, was involved in the marketing and the asset purchase agreement. (TR, pp 14-15, 22) Likewise, Ms. DeBaeke assisted in the marketing and purchase of the subject property, including the review of seven or eight different letters of intent to purchase the company. Next, she described her duties in preparing and signing the personal property statements for the subject personal property.

Mr. Wilhite has been employed by Petitioner since 2006 as Director of Finance. Petitioner's operations have grown to include nine acquisitions. Mr. Wilhite was involved in three acquisitions prior to the Len Industries purchase. He described the acquisition process, including the initial research, review, letter of intent, and internal due diligence. (TR, pp 45-47) In addition, financial statements and other records were reviewed in preparation of the purchase of the subject property.

SUMMARY OF RESPONDENT'S CASE

Respondent presented testimony from its assessor, Charles Zemla. In support of its value contentions, Respondent offered the following exhibits, which were admitted into evidence:

- R-1: 2010 Personal Property Record Card for parcel ending in 900-220.
- R-3: 2011 Personal Property Record Card for parcel ending in 900-220.
- R-5: 2012 Personal Property Record Card for parcel ending in 900-220.
- R-7: 2013 Personal Property Record Card for parcel ending in 900-220.

Charles Zemla developed and communicated the overall assessment of the subject property. He described his background, education, and experience in assessing. Based on his background, the Tribunal accepted Mr. Zemla as an expert in assessment.

Mr. Zemla described the process for assessing personal property in the city of Leslie. Initially, personal property statement surveys are sent out to businesses in the last week of December through the first week of January. In the instant case, Respondent received personal

property statements from Petitioner. Respondent relies on the signed certifications made to the personal property statements. (TR, p 93) Further, Respondent derived the personal property assessments based on historical costs in accordance with State Tax Commission (STC) guidelines. (TR, pp 94-95)

FINDINGS OF FACT

1. The subject property is identified as industrial personal property located in the city of Leslie, the county of Ingham, and the state of Michigan.
2. The subject personal property was purchased by JD Norman Industries from Len Industries on November 3, 2011 for a base sales price of \$6,672,000. (TR, p 29-30)
3. Petitioner purchased Len Industries as a business; Petitioner was not purchasing separate assets. (TR, p 72)
4. Petitioner's witnesses are employees of JD Norman Industries. Teresa DeBaeke is the chief financial officer and Gary Wilhite is the director of finance for Petitioner. Neither individual is an expert in the valuation of personal property.
5. Ms. DeBaeke was not involved in the preparation of the asset purchase agreement. (TR, p 38)
6. Petitioner's Exhibit P-9 illustrates the personal property assets, including the specific boldface reference to the subject's personal property ending in parcel number 900-220.
7. Petitioner's Exhibit P-9 was admitted for the delineation and illustration of personal property assets and not for valuation purposes. (TR, p 26)
8. Prior to Petitioner's purchase of Len Industries, Ms. DeBaeke admits that Len Industries lost money from 2007 to 2011. (TR, p 39)
9. Petitioner's total purchase price of the personal property is identified as a liquidation value. (TR, p 23)
10. Petitioner admits that Petitioner's Exhibit P-9 was prepared a week before trial and that the exhibit details were taken directly from the DoveBid appraisal report. (TR, pp 24-25 and 40-41)
11. Petitioner engaged the services of DoveBid to develop and communicate an appraisal of the subject personal property for banking purposes (liquidation value). (TR, pp 52-54)
12. Petitioner's personal property statements are not the equivalent of market values.¹
13. Petitioner's testimony regarding the sale price of Len Industries to JD Norman Industries is distinguishable from market value. The sale price² of a property is technically viewed as a fact and not as value³ which is an economic concept.
14. Petitioner relies on acquisition costs and not historical costs for the subject personal property. (TR, p 42)
15. Petitioner did not provide an admissible valuation disclosure to support its contentions of true cash value for the subject personal property. Further, Petitioner's witness list (within

¹ Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 14th ed, 2013), p 58.

² Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 5th ed, 2010), p 149.

³ *Id.*, p 205.

the prehearing statement) did not include the names of any valuation witnesses relative to any valuation disclosures.

16. Respondent's valuation disclosure is the subject personal property record cards.
17. Respondent utilized historic costs and depreciation multipliers as set forth by the State Tax Commission (STC) in the personal property statement instructions. (TR, pp 94 and 101)

APPLICABLE 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 percent. . . Const 1963, art 9, sec 3.

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

. . . the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale. MCL 211.27(1)

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

A proceeding before the Tax Tribunal is original, independent and de novo. MCL 205.735a(2). The Tribunal's factual findings must be supported by competent, material, and substantial evidence. See *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Dept of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990). "Substantial evidence must be more than a scintilla of evidence, although it may be substantially

less than a preponderance of the evidence.” *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

“The petitioner has the burden of proof in establishing the true cash value of the property.” MCL 205.737(3). “This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing; and (2) the burden of going forward with the evidence, which may shift to the opposing party.” *Jones & Laughlin, Supra* at 354-355.

Under MCL 205.737(1), the Tribunal must find a property’s true cash value in determining a lawful property assessment. *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal is not bound to accept either of the parties’ theories of valuation. See *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. See *Meadowlanes Ltd Dividend Housing Ass’n*, 437 Mich 473, 485-486; 473 NW2d 636 (1991).

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. See *Meadowlanes*, at *Supra* 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966), *aff’d* 380 Mich 390 (1968). 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. See *Antisdale, Supra* at 277.

CONCLUSIONS OF LAW

The testimony and evidence of Petitioner's purchase price of Len Industries demonstrates a base of knowledge on the part of both Teresa DeBaeke and Gary Wilhite. There is no question that Petitioner's intentions were to purchase an on-going industrial business. The market offering of Len Industries through Conway McKenzie was manifested by the pending Chrysler and GM bankruptcies. However, the reasons for the asset purchase agreement of the personal property do not culminate in the support for Petitioner's contentions of market value for the subject personal property. As noted in the findings of fact, personal property statements are not the equivalent of market value. Further, the sale price of personal property is not necessarily synonymous with market value. Moreover, the definition of liquidation value⁴ is entirely different than market value. Petitioner's continuous reference to the interchangeability of cost, price, and value (TR, pp 32, 60, 70) demonstrates either an unwillingness or inability to focus on the very crux of this appeal which is market value. Petitioner's testimony regarding the sale of the personal property does not rise to the level of comparative sales analysis that would result in the indication of market value. The premise of a logical application of data resulting in a market value conclusion does not apply in this instance. Again, Petitioner acknowledges the subject sale price without the application of market data to arrive at a value conclusion. Petitioner's bank appraisal was not admissible because the authors to the report were not named witnesses in advance of the hearing. The admissibility of a valuation document is directly linked to the signing author of the report. (See R 792.10237) Simply, Petitioner's purchase price was not applied to the market for this valuation appeal. The data within Petitioner's exhibits is insufficient for the Tribunal to arrive at an independent determination of market value.

⁴ Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 5th ed, 2010), pp 115-116.

Therefore, Petitioner's sale price of the subject's personal property is given no weight and credibility in the independent determination of value for the subject parcels.

Both parties have submitted trial briefs which were not requested by the Tribunal. Petitioner's reference to an appraiser's professional standards and ethics is misplaced.⁵ Nonetheless, the Tribunal has sufficient evidence and testimony through the course of the hearing to arrive at an independent determination of value for the subject personal property.

The Tribunal finds that Petitioner's evidence does not show that the subject parcels were over-assessed for the tax years under appeal. As such, and in light of the above, the Tribunal finds that Petitioner has not succeeded in meeting its burden of persuasion with competent evidence on the issue of true cash value and taxable value. Respondent's exhibits contain the record cards for the 2012 year under appeal. Respondent's analysis of record cards provides a basis and determination for the valuation of the subject personal property. Petitioner has failed to demonstrate any error in Respondent's property record cards. Respondent's indication of historical values and depreciation is properly and reasonably applied. As such, it is concluded, based upon independent review of the valuation evidence, that Respondent's record card evidence is reliable and supports the current assessed and taxable values.

JUDGMENT

IT IS ORDERED that the subject property's true cash, state equalized, and taxable values for the 2010, 2011, and 2012 tax years are those shown in the "Summary of Judgment" section of this Opinion and Judgment.

⁵ Had Petitioner provided an admissible valuation disclosure that invoked professional appraisal standards, the proper edition for the 2012 year under appeal would not have been the 2005 Edition of the Uniform Standards of Professional Appraisal Practice (USPAP).

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 “Summary of Judgment” 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, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09% for calendar year 2012, and (iv) after June 30, 2013, through December 31, 2013, at a rate of 4.25%, and (v) after December 31, 2013, and through June 30, 2014, at the rate of 4.25%.

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

Entered: 3/26/14

By: Marcus L. Abood