STATE OF MICHIGAN

IN THE COURT OF APPEALS

VALASSIS COMMUNICATIONS,

Petitioner-Appellee,

Docket No. 233676

-vs-

MTT Docket No. 269813

CITY OF LIVONIA,

Respondent-Appellant.

_____/

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MICHIGAN MUNICIPAL LEAGUE'S AMICUS CURIAE BRIEF IN SUPPORT OF THE POSITION OF RESPONDENT-APPELLANT CITY OF LIVONIA

ORAL ARGUMENT REQUESTED

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Dated: November 28, 2001

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COUNTER-STATEMENT OF JURISDICTION AND STANDARD OF REVIEW

The Amicus Curiae Michigan Municipal League (hereafter referred to as "Amicus") states that jurisdiction over this matter is conferred on the Michigan Court of Appeals by the Michigan Tax Tribunal Act at MCLA 205.753. The Michigan Court of Appeals' review of the Michigan Tax Tribunal's March 21, 2001, Opinion and Judgment is limited to whether the Michigan Tax Tribunal committed an error of law or adopted a wrong legal principle. Jones and Laughlin Steel Corporation v City of Warren, 193 Mich App 348 (1992) and Section 8 of Article VI of the Michigan Constitution. Failure to base a decision on competent, material and substantial evidence on the record constitutes an error of law requiring reversal. Oldenburg v Dryden Township, 198 Mich App 696 (1993).

COUNTER-STATEMENT OF QUESTIONS INVOLVED

I.

Whether the Michigan Tax Tribunal's March 21, 2001, Opinion and Judgment and its holding that the 2000 personal property multipliers could be applied retroactively to the subject property for the 1999 tax year was an error of law and the application of wrong legal principles on the part of the Michigan Tax Tribunal.

The Amicus Curiae Michigan Municipal League answers "yes".

The Respondent-Appellant answers "yes".

The Petitioner-Appellee answers "no".

The Michigan Tax Tribunal answers "no".

II.

Whether the Petitioner-Appellee failed to sustain its legally mandated burden of proof in establishing the true cash value of the subject property for the 1999 tax year.

The Amicus Curiae Michigan Municipal League answers "yes".

The Respondent-Appellant answers "yes".

The Petitioner-Appellee answers "no".

The Michigan Tax Tribunal answers "no".

COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

This case arises out of the Petitioner-Appellee Valassis Communication's (hereinafter referred to as "Petitioner-Appellee") appeal of the true cash values, assessed values and taxable values for the 1999 tax year of certain personal property owned by the Petitioner-Appellee in the City of Livonia, Michigan. Specifically, the Respondent-Appellant City of Livonia (hereinafter referred to as the "Respondent-Appellant") is appealing to this Court the Michigan Tax Tribunal's March 21, 2001, Opinion and Judgment in which the Michigan Tax Tribunal held that the new personal property multipliers established by the Michigan State Tax Commission for the 2000 tax year and subsequent tax years applied retroactively to the Petitioner-Appellee's personal property for the 1999 tax year.

On October 15, 2001, the Amicus filed with this Court its Motion of Michigan Municipal League for Leave to File Amicus Curiae Brief in Support of the Position of Respondent-Appellant City of Livonia requesting this Court allow the Amicus to appear in the instant case and to allow the Amicus to also file a Brief to help address the very critical issue presented in this case. On November 7, 2001, this Court entered an order granting the Motion of Michigan Municipal League for Leave to File Amicus Curiae Brief and providing that the Amicus Curiae Brief shall be filed with this Court within twenty-one days. This Brief is submitted by the Amicus pursuant to the Michigan Court of Appeals' November 7, 2001, Order, which Order is attached hereto, incorporated herein by reference and designated Exhibit A.

The Petitioner-Appellee's property in the instant case (hereinafter referred to as the "subject property"), is personal property consisting of furniture and fixtures, machinery and equipment, computers and peripheral equipment. The subject property has tax identification numbers 46-999-00-7981-000, 46-999-00-3783-000 and 46-998-01-9891-036. The Petitioner-

Appellee appealed to the Michigan Tax Tribunal the true cash values, assessed values and taxable values of the subject property for only the 1999 tax year, and therefore the relevant tax day for the 1999 tax year pursuant to MCLA 211.13 is December 31, 1998. The true cash value, assessed value and taxable values on the rolls for the subject property for the 1999 tax year are as follows:

Parcel No.	True Cash Value	Assessed Value	Taxable Value
46-999-00-7981-000	$16,352,480	$8,176,240	$8,176,240
46-999-00-3783-000	$6,700,920	$3,350,460	$3,350,460
46-998-01-9891-036	$2,780,360	$1,390,180	$1,390,180

Pursuant to the requirements of MCLA 211.10e, the Respondent-Appellant's assessor, Sherron Schultz, testified at Trial that she established the values of the subject property for the 1999 tax year by utilizing the Michigan State Tax Commission personal property multipliers that were in place as of December 31, 1998 (hereinafter referred to as the "old multipliers"), and further Ms. Schultz testified at trial that for the 1999 tax year she utilized the old multipliers in valuing all personal property within the City (see Transcript, pages 161-162).

The Michigan State Tax Commission, through a bid process, contracted with BDO Seidman, L.L.P., hereinafter referred to as "BDO", to review, study and analyze the old multipliers for personal property and, if appropriate, prepare new personal property multipliers, which new multipliers were prepared by BDO and proposed to the State Tax Commission. After the BDO study was completed, the State Tax Commission at its September 2, 1999, meeting adopted new personal property multipliers (hereinafter referred to as the "new multipliers"), which new multipliers Michigan State Tax Commission Chairman Mark Hilpert testified at Trial became official effective for assessing personal property on December 31, 1999, for tax year 2000 (see Transcript, page 78). Mr. Hilpert testified at trial that assessors

throughout the State of Michigan were notified of the new multiplier through the State Tax Commission website and through written State Tax Commission Bulletin No. 12 of 1999, which was dated November 17, 1999 (see Respondent-Appellant's Exhibit No. 1 and Transcript, pages 84-85).

As a result, assessors throughout the State of Michigan, including the Respondent-Appellant's assessor, did not officially receive a detailed written description of the Michigan State Tax Commission's adoption of the new multipliers until, at the earliest, November 17, 1999, which was when Michigan State Tax Commission Bulletin No. 12 was forwarded to said assessors. In fact, Ms. Schultz testified at trial that she first became aware of the State Tax Commission's adoption of the new multiplier when she received from the State Tax Commission the November 17, 1999, State Tax Commission Bulletin No. 12 (see Transcript, page 160). As a result, as of December 31, 1998, the tax day by which Ms. Schultz established the subject property's true cash values, assessed values and taxable values for the 1999 tax year, she had no choice but to utilize the old multipliers inasmuch as the new multipliers did not exist yet, as they were not adopted by the Michigan State Tax Commission until September 2, 1999 (approximately eight months after tax day for the 1999 tax year), and assessors were not notified of the adoption of the new multipliers until the Michigan State Tax Commission Bulletin No. 12 of 1999, dated November 17, 1999, was forwarded to the assessors (approximately 10½ months after tax day for the 1999 tax year).

Sometime after the Respondent-Appellant's assessor established the true cash values, assessed values and taxable values of the subject property on the City's tax roll for the 1999 tax year, the Petitioner-Appellee filed its Petition with the Michigan Tax Tribunal challenging the true cash values, assessed values and taxable values of the subject property for the 1999 tax year,

said cases being assigned Michigan Tax Tribunal Docket Nos. 269813, 269815 and 269816. At the July 26, 2000, Prehearing Conference held in the instant case, the Michigan Tax Tribunal consolidated Docket Nos. 269813, 269815 and 269816 for the purpose of hearing and ultimate decision by the Michigan Tax Tribunal.

In late December, 2000, Trial was held in the instant case before Michigan Tax Tribunal Judge Victoria Enyart. At the trial, the Petitioner-Appellee presented as witnesses Mark Hilpert, Michigan State Tax Commission Chairman, John Maurice of BDO, Ann Whittaker, Property Tax Analyst for John C. Sansone Company, and Sherron Schultz, City of Livonia Assessor. Respondent-Appellant presented at trial as its expert witness Sherron Schultz, City of Livonia Assessor.

At the Trial, Ms. Schultz testified that she has twenty years of assessing experience, is a Level 4 Assessor, and is also certified by the State of Michigan as a personal property examiner (see Transcript, pages 157-158). In addition, Ms. Schultz testified that she had approximately seven to ten years experience in assessing personal property and that she had been certified as a personal property examiner by the State of Michigan for at least 17 years (see Transcript, pages 157-158). Ms. Schultz testified that the multipliers used by her to determine the true cash values, assessed values and taxable values for the subject property for the 1999 tax year were the ones that were established by the Michigan State Tax Commission and in place on December 31, 1998 (tax date for the 1999 tax year), and that she utilized the new multipliers that were adopted by the State Tax Commission and in place as of December 31, 1999, to determine the true cash values, assessed values and taxable values for the subject property for the 2000 tax year (see Transcript, page 145). Ms. Schultz testified that she first became aware of the adoption of the new multipliers upon receipt of Michigan State Tax Commission Bulletin

No. 12 in November, 1999, and that she believed it would be inappropriate to use the new multipliers to establish the true case values, assessed values and taxable values for the subject property for the 1999 tax year because to utilize the new multipliers would destroy uniformity and equity for the 1999 tax year (see Transcript, pages 160-162).

Mr. Maurice testified at Trial that he had been hired by BDO in September, 1998, and had no previous experience with respect to assessing personal property (see Transcript, pages 45-46). Furthermore, Mr. Maurice testified that while he was a Level 3 Assessor, he was not certified by the State of Michigan as a personal property examiner (see Transcript, pages 37-38) and that he had no experience assessing personal property (see Transcript, pages 45-47). Notwithstanding Mr. Maurice's admitted lack of experience in assessing personal property, Mr. Maurice testified that he still was one of the nine BDO employees who worked on the study that resulted in the State Tax Commission adoption of the new personal property multiplier tables.

Also testifying at trial was Michigan State Tax Commission Chairman Mark Hilpert. Mr. Hilpert testified that the new multipliers became officially effective for assessing personal property on December 31, 1999, for tax year 2000. Mr. Hilpert also testified that the State Tax Commission adopted the new multipliers at its meeting on September 2, 1999, and that assessors throughout the State of Michigan were notified of the new multipliers' adoption by the State Tax Commission by the State Tax Commission forwarding to said assessors Michigan State Tax Commission Bulletin No. 12 of 1999, dated November 17, 1999 (see Transcript, pages 83-85). At Trial, Mr. Hilpert also testified with respect to Exhibit P8, which was a memo dated March 14, 2000, pertaining to personal property appeals pending before the Michigan Tax Tribunal. Specifically, paragraph 2 of Exhibit P8 provides as follows:

2) Other Appeals

> The State Tax Commission believes that it is not unreasonable for local units of government to settle "other appeals" based on the new personal property multipliers, especially when the new multipliers result in significantly different answers from the old multipliers. However, this is a matter for the parties to the appeals to decide.

Mr. Hilpert at Trial admitted that he did not draft the memorandum dated March 14, 2000, which is Exhibit P8, and he was also unable to define the term "significantly different" as contained in the Memorandum (see Transcript, pages 102-103).

Also testifying at Trial on behalf of the Petitioner-Appellee was Ann Whittaker, who is allegedly a personal property analyst for Joseph Sansone Company, which company allegedly represents the Petitioner-Appellee in all personal property matters. Ms. Whittaker's testimony primarily focused on Petitioner-Appellee's Exhibits 2a, 2b and 2c, which were personal property statements for Petitioner-Appellee that were prepared by another employee in Ms. Whittaker's office, Tammy Frost, who apparently moved to Singapore in January, 2000 (see Transcript, pages 132-134). Ms. Whittaker testified at Trial that she did not prepare and/or have input in preparing Petitioner-Appellee's Exhibits 2a, 2b and 2c and Ms. Whittaker had to speculate as to how the numbers and values contained in said exhibits were calculated (see Transcript, page 139-141).

At the Trial, Mr. Maurice, Mr. Hilpert and Ms. Whittaker all testified that they had never toured the Petitioner-Appellee's facility and that they did not examine the subject property (see Transcript, pages 56-57, page 102 and page 138). Furthermore, Mr. Maurice testified at trial that he had no opinion as to whether the new multipliers more closely reflected true cash values for the 1999 tax year (as of December 31, 1998) for the categories of furniture and fixtures and machinery and equipment, than did the old multipliers (see Transcript, page 38). At Trial, Mr.

Maurice also testified that he had no opinion relative to the value of the subject personal property for the 1999 tax year (see Transcript, page 57). Mr. Hilpert at Trial also provided no testimony as to the true cash value of the subject property for the 1999 tax year and, when asked if the new multipliers were a better estimate of true cash value than the old multiplier for property in existence on December 31, 1998, Mr. Hilpert gave the noncommittal answer of "Generally, yes." (See Transcript, pages 81-82.) Finally, Ms. Whittaker also offered no testimony as to the value of the subject property.

On March 21, 2001, Michigan Tax Tribunal Judge Victoria Enyart issued her Opinion and Judgment ruling in favor of the Petitioner-Appellee and holding that the new multipliers could be applied retroactively to determine the true cash values, assessed values and taxable values of the subject property for the 1999 tax year. A copy of the Michigan Tax Tribunal's March 21, 2001, Opinion and Judgment is attached hereto, incorporated herein and designated Exhibit B. Specifically, the Michigan Tax Tribunal held on page 3 of its Opinion and Judgment:

> The Tribunal concludes that Petitioner has met its burden of proof, and that the application of the 2000 multipliers to determine true cash value for tax year 1999 is appropriate.

Furthermore, the Michigan Tax Tribunal provided on page 33 of the Opinion and Judgment:

> The Tribunal is convinced through the preponderance of evidence and through the experts' testimony that the information used in the sales study analysis to develop the new multipliers would apply retroactively. The Tribunal is convinced that the construction of the depreciation tables establish that the study included sufficient valid sales for each category that would also cover the type of personal property category currently under appeal.

As a result of the Michigan Tax Tribunal's holding that the new multipliers could be applied retroactively to determine the true cash values, assessed values and taxable values of

the subject property for the 1999 tax year, the Michigan Tax Tribunal established in its March 21, 2001, Opinion and Judgment the following values for the subject property:

Parcel No.	True Cash Value	Assessed Value	Taxable Value
999-00-7981-000	$14,964,330	$7,482,165	$7,482,165
999-00-3783-000	$5,815,517	$2,907,758	$2,907,758
998-01-9891-036	$2,502,333	$1,251,166	$1,251,166

As will be established by the Amicus in the Argument portion of this Brief, the Michigan Tax Tribunal's March 21, 2001, Opinion and Judgment and its holding that the 2000 personal property multipliers (the new multipliers) may be applied retroactively to the subject property for the 1999 tax year was an error of law and the application of wrong legal principles on the part of the Michigan Tax Tribunal. Furthermore, it will be demonstrated by the Amicus herein that the Petitioner-Appellee failed at Trial to sustain its legally mandated burden of proof in establishing the true cash value of the subject property for the 1999 tax year. As a result, this Honorable Court should reverse the March 21, 2001, Opinion and Judgment of the Michigan Tax Tribunal and should affirm the true cash values, assessed values and taxable values of the subject property for the 1999 tax year as contained on the Respondent-Appellant's tax rolls.

ARGUMENT

I.

THE MICHIGAN TAX TRIBUNAL'S MARCH 21, 2001, OPINION AND JUDGMENT AND ITS HOLDING THAT THE 2000 PERSONAL PROPERTY MULTIPLIERS COULD BE APPLIED RETROACTIVELY TO THE SUBJECT PROPERTY FOR THE 1999 TAX YEAR WAS AN ERROR OF LAW AND THE APPLICATION OF WRONG LEGAL PRINCIPLES ON THE PART OF THE MICHIGAN TAX TRIBUNAL.

In the instant case, the Michigan Tax Tribunal was asked to determine whether it was appropriate to retroactively apply the new personal property multipliers to determine the true

cash values, assessed values and taxable values for the subject property for the 1999 tax year. (See pages 2 and 3 of the Michigan Tax Tribunal's March 21, 2001, Opinion and Judgment.) The Michigan Tax Tribunal's March 21, 2001, Opinion and Judgment and its holding that the 2000 personal property multipliers could be applied retroactively to the subject property for the 1999 tax year was an error of law and the application of wrong legal principles on the part of the Michigan Tax Tribunal and, as a result, this Court should reverse the decision of the Michigan Tax Tribunal.

The standard of review that controls the Michigan Court of Appeals' review of the Michigan Tax Tribunal's March 21, 2001, Opinion and Judgment is contained at Section 28 of Article VIII of the Michigan Constitution, which provides:

> Sec. 28 All final decisions, findings, ruling and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. Findings of fact in workmen's compensation proceedings shall be conclusive in the absence of fraud unless otherwise provided by law.
>
> Property tax valuation or allocation; review
>
> In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation. (Emphasis added.)

When fraud is not alleged in an appeal of a decision of the Michigan Tax Tribunal, the Michigan Court of Appeals' review is whether the Michigan Tax Tribunal committed an error of law or adopted a wrong legal principle. Jones and Laughlin Steel Corporation v City of Warren,

193 Mich App 384 (1992); First Federal Savings and Loan Association of Flint v City of Flint, 104 Mich App 609 (1981) reversed on other grounds, 415 Mich 702 (1982); Tatham v City of Birmingham, 119 Mich App 583 (1982); Antisdale v City of Galesburg, 109 Mich App 627, reversed on other grounds, 420 Mich 265 (1981); Rogoski v City of Muskegon, 101 Mich App 786 (1980).

An assessment of all property in a municipality must be made by the assessor each year. MCLA 211.10. The assessment made for property for the 1999 tax year is based upon the official "tax day" for such year, which was December 31, 1998. MCLA 211.13. The assessment roll in a municipality must be completed by the assessor by the first Monday in March for each year. MCLA 211.24. Using the tax day as the basis (which for the 1999 tax year would be December 31, 1998), it is necessary for the assessor to undertake the analysis and prepare the assessment, and, provide notices of an increase in assessments to taxpayers at least ten days before the meeting of the Board of Review. MCLA 211.24c(1) and (4). If a property owner believes they are aggrieved by the assessment for the 1999 tax year, it is necessary for the taxpayer to contest the assessment before the local Board of Review pursuant to MCLA 205.735(1), which Board of Review met and heard objections to assessments for the 1999 tax year in the City of Livonia in March, 1999. MCLA 211.30. If a property taxpayer was not granted relief by the Board of Review in March, 1999, that property taxpayer could file a Petition in the Michigan Tax Tribunal appealing the true cash value, assessed value and/or taxable value for their property for the 1999 tax year, provided that the Petition was filed with the Michigan Tax Tribunal on or before June 30, 1999.

MCLA 211.10e provides:

211.10e. Assessment of real and personal property; state tax commission official assessor's manual, maintenance of records

Sec. 10e. 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.

Specifically, MCLA 211.10e requires that assessors use the official assessor's manual and its latest supplements as prepared and/or approved by the Michigan State Tax Commission as a guide in preparing their assessments. The Respondent-Appellant's assessor, Ms. Schultz, testified that for the 1999 tax year she utilized the old multipliers in establishing the assessment of the Petitioner-Appellee's subject property, as well as all other personal property in the City inasmuch as those were the only personal property multipliers in existence as of December 31, 1998 (see Transcript, pages 161-162). As was previously established in this Brief, the new multipliers were not even adopted by the Michigan Tax Tribunal until September 2, 1999, and assessor's throughout the State of Michigan, including the Respondent-Appellant's assessor, were not notified in writing of the State Tax Commission's adoption of the new multipliers until they received STC Bulletin No. 12 dated November 17, 1999, from the State Tax Commission. Furthermore, Michigan State Tax Commission Chairman Hilpert testified that the new personal property multipliers became officially effective for assessing personal property on December 31, 1999, for the 2000 tax year (see Transcript, page 78) and Ms. Schultz testified that for the 2000 tax year she utilized the new multipliers in establishing the 2000 true cash values of the subject property and for all other personal property in the City of Livonia.

The Michigan Tax Tribunal's March 21, 2001, Opinion and Judgment and its holding that the new multipliers could be applied retroactively for the subject property for the 1999 tax year represents material error, both in terms of the litigants to the instant case and litigants of cases pending throughout the State of Michigan, inasmuch as the Michigan Tax Tribunal's holding represents:

a. A significant contradiction to the long and consistently applied rule of prospective, rather than retroactive, application of new non-remedial laws and rules unless a directive for retroactive application may be found in the law or rule itself, and, even in the event of this type of directive, retroactive application would be subject to the Michigan and United States Constitutions.

b. A material error of law, in that the Michigan Tax Tribunal's ruling mandates that a city assessor was to have applied a rule that did not exist at the time its application would have been required, a rule which, due to its non-existence, could not possibly have been relied upon by a Petitioner in seeking relief at the Board of Review and/or filing for relief with the Tribunal for the tax year at issue. In addition, as a condition to appealing an assessment to the Michigan Tax Tribunal, a property owner must protest the assessment to the Board of Review, MCL 205.735(1), and, like the assessor, the Board of Review could not have granted relief based upon rules that were non-existent when the Board of Review met in March, 1999. Accordingly, given the fact that Michigan Tax Tribunal jurisdiction is based upon the action of the assessor and the Board of Review, it could not be the intent of the Michigan Legislature to allow the Michigan Tax

Tribunal to determine value based upon rules not available to either the assessor or the Board of Review.

c. A material error of law, in that the Michigan Tax Tribunal's ruling would require a city assessor to apply a rule for the benefit of one Petitioner (or those few Petitioners with cases pending) that could not have been applied to all of the other taxpayers in the City (because the rule did not exist when the assessments were prepared), thus resulting in a violation of the mandate of Const 1963, Article 9, Section 3, for uniform taxation of property.

d. An abhorrent public policy, in that the application of the Michigan Tax Tribunal's ruling would undermine the substance and process of municipal budgeting, which must be undertaken in reliance upon rules in place for purposes of making reasonable projections of revenue; and, the retroactive application of previously non-existent rules would create material shortfalls in revenue in relation to budgeted expenditures (already expended in fact), thus causing havoc upon a city's financial stability and adversely affecting its bond-rating – both of material consequence in terms of future well-being of a city. Such material shortcomings would be magnified to a greater extent, and with a greater degree of adverse consequences than simply the case before the Court, recognizing that there are many other pending cases in the Michigan Tax Tribunal, including cases with 1997 and 1998 taxes at issue.

The Courts in the State of Michigan have long and consistently applied a rule of prospective, rather than retroactive, application of new non-remedial laws and rules. The Michigan Supreme Court in the case of Frank W. Lynch and Companies v Flex Technologies,

463 Mich 578 (2001) held that the Sales Representatives Commissions Act, MCLA 600.2961, et seq., should be given prospective effect only. Specifically, the Michigan Supreme Court held:

> In determining whether a statute should be applied retroactively or prospectively only, "[t]he primary and overriding rule is that legislative intent governs. All other rules of construction and operation are subservient to this principle." *Franks v White Pine Copper Division*, 422 Mich 636, 670; 375 NW2d 715 (1985). Moreover, "statutes are presumed to operate prospectively unless the contrary intent is clearly manifested." Id. at 671; see also *Hughes v Judges' Retirement Bd*, 407 Mich 75, 85; 282 NW2d 160 (1979). This is especially true if retroactive application of a statute would impair vested rights, create a new obligation and impose a new duty, or attach a disability with respect to past transactions. See *Franks*, *supra* at 671-674.

See also the cases of Cheron, Inc. v Don Jones, Inc., 244 Mich App 212 (2000), Alma Piston v Department of Treasury, 236 Mich App 365 (1999) and Landgraf v USI Film, 511 US 244, 144 S Ct 1483, 128 LEd 2d 229 (1994), all of which cases were cited and discussed in detail by the Respondent-Appellant in its Brief on Appeal in the instant case. The common theme running through all of the above-cited cases is that the Courts have required statutes, rules and/or regulations to be given prospective effect and that said statutes, rules and/or regulations are presumed to operate prospectively unless a contrary intent is clearly manifested by the legislature and that this is especially true if retroactive application of a statute, rule and/or regulation would impair vested rights, create new obligations and impose a new duty, or attach disability with respect to past transactions.

In the instant case there is not a clear intent manifested by the Michigan State Tax Commission to have the new multipliers apply retroactively to tax years before 2000 inasmuch as Michigan State Tax Commission Chairman Hilpert testified at trial that the new multipliers became officially effective for assessing personal property on December 31, 1999, for tax year 2000. Therefore, based on the statement of the Michigan State Tax Commission Chairman

himself, the clear intent of the Michigan Tax Commission was that the new multipliers that were adopted on September 2, 1999, would apply prospectively to future tax years beginning in the year 2000. Furthermore, if the new multipliers were applied retroactively to years before 2000, it would result in the impairment of rights on the part of those taxpayers owning personal property in the City of Livonia for tax years prior to 2000 who relied on the right to uniformity of taxation and expected that the true cash values for their personal property would be established by using the same old multipliers that had been used throughout the City for tax years prior to the 2000 tax year. Because the State Tax Commission did not adopt the new multipliers for personal property until September 2, 1999, those property owners who now might desire to have their personal property valued for the 1999 tax year utilizing the new multiplier would be precluded by law from appealing the 1999 tax year to the Michigan Tax Tribunal inasmuch as said appeal would have had to been filed by June 30, 1999, which was three months prior to the State Tax Commission's adoption of the new multipliers. The Michigan Tax Tribunal's ruling that the new multipliers can be applied to the 1999 tax year also has the ludicrous impact of mandating that a City assessor was to have applied a rule (the new multipliers) that did not exist at the time its application would have been required, a rule which, due to its non-existence, could not possibly have been relied upon by a Petitioner in seeking relief at the Board of Review and/or filing for relief with the Michigan Tax Tribunal for the 1999 tax year. Furthermore, a condition of appealing an assessment to the Michigan Tax Tribunal is that a property owner must protest the assessment before the Board of Review pursuant to MCLA 205.735(1) and like the assessor, the Board of Review could not have granted relief for the 1999 tax year based upon rules (the new multipliers) that were non-existent when the Respondent-Appellant's Board of Review met in March, 1999. As a result, it could not be the intent of the Michigan Legislature

to allow the Michigan Tax Tribunal to determine value of personal property for the 1999 tax year based upon the new multipliers that were not available to either the assessor or the Board of Review.

Michigan courts have held that the presumption of prospective application of statutes, rules and regulations is especially true if retroactive application would attach a "disability with respect to past transactions". In the instant case, it is clear that the Michigan Tax Tribunal's ruling that the 2000 personal property multipliers could be applied retroactively to the subject property for the 1999 tax year does attach a disability with respect to past transactions for the City of Livonia and, for that matter, other municipalities throughout the State of Michigan. As was noted by the Respondent-Appellant in its Brief on Appeal, by the time that the City Assessor was notified by the State Tax Commission of the State Tax Commission's adoption of the new multipliers, the assessor was in the process of preparing the tax roll for the 2000 tax year, with the relevant tax date for the 1999 tax year, December 31, 1998, having past some nine months earlier. As Respondent-Appellant further noted in its Brief on Appeal, that in order for a municipality, such as the City of Livonia, to stay solvent, it must timely assess and collect taxes and for the 1999 tax year, personal property taxes comprised nearly 18% of the City's total tax roll and by applying the new multipliers retroactively, the Michigan Tax Tribunal has severely hampered the City's ability to levy and collect past due personal property taxes. Respondent-Appellant in its Brief on Appeal also expressed grave concerns that the Michigan Tax Tribunal's retroactive application of the new multipliers in the instant case and possible similar application as to other pending personal property tax appeals for tax years prior to 2000 in the City of Livonia could damage the City's excellent bond rating. In general, the application of the Michigan Tax Tribunal's ruling that the new multipliers could be applied retroactively to tax

years prior to 2000 is an abhorrent public policy that would undermine the substance and process of municipal budgeting for all municipalities that levy taxes in the State of Michigan, which process must be undertaken and relies upon rules in place for purposes of making reasonable projections of revenue. The retroactive application of previously non-existent rules (the new multipliers) would create material shortfalls in revenue in relation to budgeted expenditures (already expended in fact), thus causing havoc upon municipalities' financial stability and adversely affecting their bond ratings, both of which are of material consequence in terms of the future well-being of municipalities throughout the State of Michigan. Such material shortcomings to municipalities throughout the State of Michigan would be magnified to a greater extent, and with a greater degree of adverse consequences, then simply the City of Livonia cases before the Court recognizing that there are many other pending cases in the Michigan Tax Tribunal, including cases with 1997 and 1998 taxes at issue.

The Michigan Tax Tribunal's March 21, 2001, Opinion and Judgment and its holding that the 2000 personal property multipliers could be applied retroactively to the subject property for the 1999 tax year is clearly contrary to and violates the mandate of the Michigan Constitution for "uniform taxation of property". Specifically, the pertinent portion of Section 3 of Article IX of the Michigan Constitution of 1963 provides:

> The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxies levied for school operating purposes.

The Michigan Constitution requires uniform treatment of taxpayers. Ready-Power Company v City of Dearborn, 336 Mich 519 (1953). The methods used in assessing property for purposes of taxation should be uniform. Kingsford Chemical Company v Kingsford, 347 Mich 91 (1956). The primary concern in assessments for ad valorem taxation is the principle of

equal treatment regardless of cash value. Consumers Power Company v Muskegon, 13 Mich App 334 (1968).

The Michigan Court of Appeals in the case of Lionel Trains v Chesterfield Township, 225 Mich App 350 (1997), lv den 458 Mich 873 (1998) held that the Michigan Constitution requires uniformity in taxation of personal property and also held that the State Tax Commission's system for mass appraisals of personal property results in the uniform taxation of personal property. Specifically, the Michigan Court of Appeals held in the Lionel Trains case:

> The Michigan Constitution calls for the uniform taxation of property. Const 1963, art 9, § 2. The STC system for mass appraisals of personal property results in the uniform taxation of personal property. The STC manual sets forth the guidelines for assessing personal property, and respondent was required to utilize the manual in preparing petitioner's assessment. MCL 211.10e; MSA 7.10(5).

State Tax Commission Chairman Hilpert testified at trial that the multiplier tables are designed to "mass appraise" personal property and serves as a way of assigning value to a large number of personal property assets (Transcript, pages 107-108). The Michigan Tax Tribunal on page 30 of its Conclusions of Law portion of the March 21, 2001, Opinion and Judgment specifically provided that the State Tax Commission system for mass appraisal of personal property utilizing multipliers results in the uniform taxation of personal property and that the State Tax Commission manual sets forth the guidelines for assessing personal property and that Respondent-Appellant was required to use the manual as a guide in preparing the assessment of the subject property. Specifically, the Michigan Tax Tribunal held on page 30 of its March 21, 2001, Opinion and Judgment:

> The STC's system for mass appraisal of personal property results in the uniform taxation of personal property. The STC manual sets forth the guidelines for assessing personal property

> and respondent was required to use the manual as a guide in preparing petitioner's assessment. MCL 211.10e; MSA 7.10(5).

Based on the above, it is clear that the State Tax Commission's system of utilizing personal property multipliers established by the State Tax Commission for mass appraisals of personal property results in the constitutionally mandated uniform taxation of personal property by municipalities. Pursuant to the constitutionally mandated uniformity of taxation for personal property, the City's Assessor, Ms. Schultz, utilized the old multipliers to establish the 1999 values for the Petitioner-Appellee's personal property, as well as the 1999 values for all other personal property within the City. (See Transcript, pages 161-162.) As Ms. Schultz correctly testified at Trial, it would have been inappropriate to use the new multipliers to establish values for personal property for tax years prior to the 2000 tax year inasmuch as it would destroy uniformity and equity (see Transcript, pages 161-162).

Inasmuch as the utilization of the State Tax Commission multipliers for mass appraisals of personal property results in the uniform taxation of personal property that is mandated by the Michigan Constitution, and inasmuch as the Respondent-Appellant's assessor utilized the State Tax Commission's old multipliers to mass appraise the personal property in the City of Livonia for the 1999 tax year, there would be uniformity of taxation for personal property in the City of Livonia for the 1999 tax year. For the Michigan Tax Tribunal to rule in its March 21, 2001, Opinion and Judgment that the 2000 personal property multipliers (the new multipliers) could be applied retroactively to the subject property for the 1999 tax year is contrary to and in violation of the constitutionally mandated uniformity of taxation as it would allow the Petitioner-Appellee's subject property, as well as presumably other properties located in the City of Livonia that currently have cases pending before the Michigan Tax Tribunal for the 1999 tax year, to be valued by utilizing the new multipliers while the remainder of the personal property in the City of

Livonia will have been valued by the utilization of the old multipliers for the 1999 tax year, thereby resulting in non-uniformity of personal property in the City of Livonia for the 1999 tax year.

The Michigan Tax Tribunal's holding in its March 21, 2001, Opinion and Judgment that the 2000 personal property multipliers can be applied retroactively to the subject property for the 1999 tax year completely ignores and disregards the Michigan Tax Tribunal's own statement on page 31 of its Opinion and Judgment that "the STC's system for mass appraisal of personal property results in uniform taxation of personal property." It is clear that the Michigan Tax Tribunal's March 21, 2001, Opinion and Judgment and its holding that the 2000 personal property multipliers (the new multipliers) can be applied retroactively to the subject property for the 1999 tax year is a material error of law and that Tribunal's ruling would require the Respondent-Appellant's assessor to apply a rule (the new multipliers) for the benefit of one petitioner (or those few petitioners with cases currently pending in the Michigan Tax Tribunal for tax years prior to 2000) that could not have been applied to all of the other taxpayers of the City because the new multipliers did not exist when the 1999 assessments were prepared, thus resulting in a violation of the constitutionally mandated uniform taxation of property.

Therefore, based on the above, it is clear that the Michigan Tax Tribunal's March 21, 2001, Opinion and Judgment and its holding that the 2000 personal property multipliers can be applied retroactively to the subject property for the 1999 tax year was an error of law and the application of wrong legal principles on the part of the Michigan Tax Tribunal. Inasmuch as the Michigan Tax Tribunal's holding:

a. Represents a significant contradiction to the long and consistently applied rule of prospective, rather than retroactive, application of new nonremedial laws, rules and/or regulations unless a directive for retroactive

application may be found in the law, rule and/or regulation itself.

b. Represents a material error of law, in that the Michigan Tax Tribunal ruling mandates that a City assessor was to have applied a rule (the new multipliers) that did not exist at the time its application would have been required, a rule which, due to its nonexistence, could not possibly have been relied upon by a Petitioner in seeking relief at the Board of Review and/or filing for relief with the Michigan Tax Tribunal for the 1999 tax year.

c. Represents a material error of law in that the Michigan Tax Tribunal's ruling would require a City assessor to apply a rule for the benefit of one Petitioner (or those few Petitioners with cases pending) that could not have been applied to all of the other taxpayers in the City (because the rule did not exist when the assessments were prepared), thus resulting in a violation of the mandate of Section 3, Article IX, of the Michigan Constitution of 1963 for uniform taxation of property.

d. Represents an abhorrent public policy, in that the application of the Michigan Tax Tribunal's ruling would undermine the substance and process of municipal budgeting, which must be undertaken in reliance upon rules in place for purposes of making reasonable projections of revenue; and, the retroactive application of previously nonexistent rules would create material shortfalls in revenue in relation to budgeted expenditures (already expended in fact), thus causing havoc upon a City's financial stability and adversely effecting its bond rating, both of material consequence in terms of future well-being of a City. Such material shortcomings would be magnified to a greater extent, and with a greater degree of adverse consequences, then simply the case before this Court, recognizing that there are many other pending cases in the Michigan Tax Tribunal, including cases with 1997 and 1998 taxes at issue.

This Court should reverse the decision of the Michigan Tax Tribunal and should affirm the true cash values, assessed values and taxable values of the Petitioner-Appellee's property for the 1999 tax year as contained on the Respondent-Appellant's tax roll.

II.

THE PETITIONER-APPELLEE FAILED TO SUSTAIN ITS LEGALLY MANDATED BURDEN OF PROOF IN ESTABLISHING THE TRUE CASH VALUE OF THE SUBJECT PROPERTY FOR THE 1999 TAX YEAR.

The Michigan Tax Tribunal Act provides at MCLA 205.737(3) that the Petitioner-Appellee has the burden of proof in establishing the true cash value of the property in a Michigan Tax Tribunal proceeding. See, also, Kern v Pontiac Township, 93 Mich App 612 (1979), Alhi Development Company v Orion Township, 110 Mich App 764 (1981), City of Troy v Cleveland Pneumatic Tool Company, 109 Mich App 361 (1981). Specifically, MCLA 205.737(3) provides:

> The Petitioner has the burden of proof in establishing the true cash value of the property. The assessing agency has the burden of proof in establishing the ratio of the average legal of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question.

Because the subject case is the Petitioner-Appellee's challenge to the 1999 true cash values, assessed values and taxable values of the Petitioner-Appellee's personal property, it is an assessment matter for which the Petitioner-Appellee must carry its burden of proof of going forward and presenting proofs, persuasive arguments and in establishing the merits of its claim. In the usual assessment appeal case, the petitioner has the burden of establishing the true cash value of the property. MCLA 205.737(3). Meadow Lanes Limited Dividend Housing Association v City of Holland, 437 Mich 473 (1991). The Tribunal is not bound to accept either of the parties' theories of valuation. Teledyne Continental Motors v Muskegon Township, 145 Mich App 749 (1985). To succeed in an assessment proceeding, the Petitioner-Appellee must prove by the greater weight of the evidence that the assessment is too high. Alhi Development Company v Orion Township, 110 Mich App 764 (1981).

In the instant case, the Petitioner-Appellee failed at Trial before the Michigan Tax Tribunal to sustain its legally mandated burden of proof in establishing the true cash value of the subject property for the 1999 tax year. All of the Petitioner-Appellee's witnesses at Trial testified that they did not tour the Petitioner-Appellee's facilities and did not examine the subject property. (See Transcript, pages 56-57, page 102 and page 138.) Furthermore, none of the Petitioner-Appellee's witnesses were able to testify at Trial as to what their opinions were for the specific true cash value of the subject property for the 1999 tax year. On page 19 of the Michigan Tax Tribunal's Opinion and Judgment, the Michigan Tax Tribunal specifically held that Mr. Maurice and Mr. Hilpert were not valuation experts and could not express an opinion of a true cash value of the subject property. Specifically, the Michigan Tax Tribunal provided on page 19 of its March 21, 2001, Opinion and Judgment:

> The Tribunal notes that Petitioner's expert witnesses Maurice and Hilpert were not valuation witnesses and could not express an opinion of the true cash value of the subject property. Neither prepared a valuation disclosure necessary to testify on behalf of Petitioner as a valuation expert as required pursuant to TTR 283(3).

In addition, the Petitioner-Appellee did not prepare and file with the Michigan Tax Tribunal a Prehearing Valuation Disclosure/Appraisal of the true cash value of the subject property for the 1999 tax year (and/or any other tax year for that matter). Despite the fact that none of the Petitioner-Appellee's witnesses were able to testify at Trial as to their opinion of the specific true cash value of the subject property for the 1999 tax year, and also despite the fact that the Petitioner-Appellee did not file a Prehearing Valuation Disclosure/Appraisal valuing the subject property for the 1999 tax year, the Michigan Tax Tribunal incredulously still managed to find that the Petitioner-Appellee carried its burden of proof as a result of the BDO study that

resulted in the new multipliers (which did not even become officially effective until December 31, 1999 for the 2000 tax year).

As previously established in this Brief, the Michigan Tax Tribunal committed a clear error of law in holding that the 2000 personal property multipliers applied retroactively to the subject property for the 1999 tax year, and therefore the Michigan Tax Tribunal should not have utilized and/or even considered the new multipliers in establishing the 1999 true cash value of the subject property. Furthermore, the Michigan Tax Tribunal's reliance on BDO's study that resulted in the new multipliers is subject to serious question inasmuch as Mr. Maurice, who was apparently one of the key BDO employees working on the study testified at Trial as follows:

1. He had no prior work experience involving the assessment or appraisal of personal property (Transcript, pages 45-46);

2. That while he had achieved a Level 3 Assessor's designation from the State of Michigan Assessors' Board, he was not certified by the State of Michigan as a personal property examiner (Transcript, pages 37-38);

3. That when he worked for the Oakland County Equalization Department, he only served as a real property assessor and had no experience assessing personal property (Transcript, pages 45-47);

4. That he was never involved in the assessment of personal property (Transcript, page 47);

5. His experience in studying machinery and equipment used in the printing business was limited solely to his work in gathering information for the BDO's study.

Furthermore, the Tribunal's reliance on the new multipliers to establish the true cash value for the subject property for the 1999 tax year is misplaced inasmuch as State Tax Commission Chairman Hilpert himself testified that the new personal property multipliers became officially effective on December 31, 1999, for the 2000 tax year.

As was noted by the Respondent-Appellant in its Brief on Appeal, this case should be decided in the same manner as the Louisiana Pacific Corporation v Township of McMillan, MTT Docket No. 270519, appeal and the case of Electronic Data Systems Corp (EDS) v Township of Flint, MTT Docket No. 235159.

In Louisiana Pacific Corporation v Township of McMillan, supra, the Petitioner was challenging the assessment of its personal property for the 1999 tax year and was claiming that the 2000 personal property multipliers should be retroactively applied to the Petitioner's personal property because it was more current than the old multipliers. The Petitioner in the Louisiana Pacific Corporation case did not file a Prehearing Valuation Disclosure or Appraisal with the Michigan Tax Tribunal, but did submit as an exhibit the State Tax Commission Bulletin No. 12 of 1999 dated November 17, 1999, which advised assessors of the September 2, 1999, adoption of the 2000 personal property multipliers. Notwithstanding the fact that the Respondent Township of McMillan never filed an Answer to the Petitioner's Petition and did not appear at the hearing, Michigan Tax Tribunal Judge Victoria Enyart (who is the same judge that issued the March 21, 2001, Opinion and Judgment in the instant case) ruled against the Petitioner and held that the 2000 personal property multipliers should not be applied retroactively to the Petitioner's personal property for the 1999 tax years with Judge Enyart specifically providing on page 2 of her Opinion:

> The evidence submitted was not sufficient to establish the property's true cash value. Under the circumstances of this case, the Tribunal cannot make an independent determination of true cash value of the property because it has insufficient evidence on which to base such a determination and must, therefore, affirm the assessment at issue. As stated by the Michigan Court of Appeals in *Country Meadows, G.P., et al v Township of Macomb*, COA Docket No. 182305 (April 1, 1997), "[a] contrary holding would be tantamount to requiring the tribunal to hire its own appraiser.

Furthermore, Judge Enyart also ruled on page 3 of her Opinion:

> In that regard, the Tribunal is charged in such cases with finding a property's true cash value to determine the property's lawful assessment. *Alhi Development Co v Orion Township*, 110 Mich App 764, 767 (1981). The determination of the lawful assessment will in turn, facilitate the calculation of the property's taxable value as provided by MCL 211.27a. The petitioner does, however, have the burden of establishing the property's true cash value. See MCL 205.737(3) and *Kern v Pontiac Twp*, 93 Mich App 612 (1974). In this instant matter, Petitioner's evidence did not support its contention as to the true cash value of the property at issue. As such, Petitioner failed to establish the property's true cash value. Under the circumstances of this case, the Tribunal cannot make an independent determination of the true cash value of the property because it has not evidence upon which to base such a determination and must, therefore, affirm the assessment at issue.

It is interesting to note that the Michigan Tax Tribunal in the Electronic Data Systems Corporation case, supra, also held that the Petitioner failed to meet its burden of going forward because the Michigan Tax Tribunal could not make an independent determination of true cash value because it has no evidence presented by the Petitioner to rely on and that a contrary holding by the Michigan Tax Tribunal would have been tantamount to requiring the Tribunal to hire its own appraiser, a situation factually analogous to the instant case where the Petitioner-Appellee has not presented to the Michigan Tax Tribunal a Prehearing Valuation Disclosure/Appraisal of the property under appeal.

Therefore, based on the above, it is clear that the Petitioner-Appellee failed at the Trial before the Michigan Tax Tribunal in the instant case to sustain its legally mandated burden of proof in establishing the true cash value of the subject property for the 1999 tax year. As a result, the Michigan Tax Tribunal's March 21, 2001, Opinion and Judgment should be reversed

and the true cash values, assessed values and taxable values of the subject property for the 1999 tax year as contained on the Respondent-Appellant's tax roll should be affirmed.

CONCLUSION AND RELIEF REQUESTED

For the reasons set forth above, the Amicus Curiae Michigan Municipal League respectfully requests that the Michigan Court of Appeals reverse the March 21, 2001, Opinion and Judgment and ruling of the Michigan Tax Tribunal and that this Honorable Court also affirm the true cash values, assessed values and taxable values of the Petitioner-Appellee's property for the 1999 tax years as contained on the Respondent-Appellant's tax roll.

SECREST, WARDLE, LYNCH, HAMPTON, TRUEX AND MORLEY

BY: _____

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Dated: November 28, 2001

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IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: **Valassis Communications v City Of Livonia**
Docket No. **233676**
L.C. No. **00-269813; 00-269815; 00-269816**

Richard A. Bandstra, Chief Judge, acting under MCR 7.211(E)(2), orders:

The motion to file an amicus curiae brief on behalf of the Michigan Municipal League is GRANTED. The brief shall be filed within 21 days of the Clerk's certification of this order.

STATE OF MICHIGAN COURT OF APPEALS

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

November 7, 2001
Date

Sandra Schultz Mengel
Chief Clerk

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
MICHIGAN TAX TRIBUNAL

01 JUL 26 AM 8:33
BOARD OF ASSESSORS

Valassis Communications,
Petitioner,

v

City of Livonia,
Respondent.

MTT Docket Nos. 269813, 269815, 269816

RECEIVED
JUL 30 2001
CITY OF LIVONIA
FINANCE DEPARTMENT

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Valassis Communications (also "Valassis"), appeals ad valorem property tax as levied by Respondent, City of Livonia (also the "City"), against the subject personal property, located in the City of Livonia, based upon the use of the personal property multipliers as established by the State Tax Commission (also "STC"), as of December 31, 1998. Nanci Wolf Freedman, Attorney, appeared on behalf of Valassis, and Barbara J. Scheer, Attorney, appeared on behalf of the City.

The above referenced cases were consolidated for hearing and decision at the Prehearing held on July 26, 2000.

The STC is the agency responsible for maintaining and approving the Assessor's Cost Manual. The manual includes costs for real and personal property to used as a guide by assessors when determining the cost new of property. The guidelines for valuing

personal property are found in Chapter 15 of the Assessor's Manual approved by the STC. While personalty is fungible, personal property does not differ from real property when applying the appropriate statutes. MCL 211.27a states "...property shall be assessed at 50% of its true cash value...." MCL 211.27(1) also applies "...cash value means the usual selling price at the place where the property to which the term is applied is at the time of the assessment...." The STC has in place guidelines that are to be followed by the appropriate agencies. All property owners (or possessors) of personal property are required to file a personal property statement, annually, by February 20, MCL 211.19, with the assessing officer of the unit where the property has situs. Situs is the location of the personal property on tax day. The personal property statement to be filed by the owner is the form approved by the STC. The estimated true cash value of personal property for assessment purposes is determined annually by applying the appropriate STC personal property multipliers to the original cost by year installed. These multipliers are the main subject of this appeal. There exists two sets of multipliers, an old set of multipliers and a new set of multipliers.

The STC, through a bid process, contracted with BDO Seidman, LLP (BDO), to review, study and analyze the old original cost multipliers for personal property. If the review revealed that the multipliers were not reflective of true cash value, as determined by law, then new original cost multiplier tables would be constructed. The STC approved new original cost multiplier tables September 2, 1999, to be used to value personal property as of December 31, 1999. The instant case requests the Tribunal to determine

whether it is appropriate to retroactively apply the new multipliers to determine true cash value for subject property as of December 31, 1998. Petitioner believes that the new multipliers are a better indication of true cash value. Respondent argues that the old multipliers have a presumption of validity. Respondent also argues that uniformity would be destroyed if the same method were not employed in all matters of personal property within the city.

The appeal involves three separate parcel identification numbers. The property's values for the 1999 tax year are:

PARCEL NO.	AV*	TV	PET'S TCV	RESP'S TCV
46-999-00-7981-000	8,176,240	8,176,240	14,964,330	16,352,480
46-999-00-3783-000	3,350,460	3,350,460	5,815,517	6,700,920
46-998-01-9891-036	1,390,180	1,390,180	2,502,333	2,780,360

*AV refers to assessed value, TV refers to taxable value, TCV refers to true cash value.

This appeal revolves around the question of whether the retroactive application of the "2000" personal property depreciation multipliers (also new multipliers) used as a guide by assessors in determining the depreciated value of personal property, in lieu of better evidence, is a better indication of true cash value than the prior multipliers. The Tribunal concludes that Petitioner has met its burden of proof, and that the application of the 2000 multipliers to determine true cash value for tax year 1999 is appropriate. Petitioner presented evidence and testimony that the new multipliers were developed

with substantial market information that was based upon sales of personal property from 1990 to 1999.

FINDING'S OF FACT

The subject property is personal property consisting of furniture and fixtures, machinery and equipment, computers and peripheral equipment. The parties do not dispute the property that was reported by Petitioner on its personal property statement for December 31, 1998 is the property at issue. Petitioner's contention of true cash value was derived by applying the new multipliers to the property owned by Petitioner on December 31, 1998. Respondent contends the true cash value should be derived by applying the existing old depreciation multipliers, and to do otherwise would be inappropriate because it would destroy uniformity and equity. Both parties agree the STC Letter dated March 14, 2000 (P-8) gave assessors the discretion to settle or not settle pending personal property appeals as they deemed appropriate. (tape 17:30).

PETITIONER'S ARGUMENTS

Valassis contends that for 1999 each of its personal property statements as accepted by the City of Livonia should use the new multipliers adopted by the STC on September 2, 1999, to estimate true cash value. The old multipliers were used by the assessor in determining the value of subject properties. Valassis presented as witnesses: Mark

Hilpert, Chairperson of the STC; John Maurice, Manager of Property Tax for BDO Siedman (BDO); Ann Whittaker, property tax analyst for John C. Sansone Company, as Petitioner's representatives; and Sherron Schultz, Livonia Assessor. Petitioner presented the following evidence: P-1 consolidated case summary, P-2a depreciation schedule for 999-00-7981-000, P-2b depreciation schedule for parcel 999-00-3783-00, P-2c depreciation schedule for parcel 998-01-9891-036, P-3 July 7, 1999, Memo RE: Personal Property Tax Multiplier Study, P-3a Count of samples per table that was not copied in original memo, P-4 BDO Seidman Draft Report to the STC, P-5 STC September 2, 1999, adoption of the personal property tables, P-6 BDO Seidman Final Report to the STC, P-7 October 3, 2000, letter from Maurice to Hilpert clarifying the design of the multiplier tables, and P-8 March 14, 2000, STC memo RE: Personal Property Appeals before the Michigan Tax Tribunal.

Maurice was Petitioner's first witness; he testified he is a manager for BDO. His role in BDO's contract with the STC was reviewing the old multipliers and generating new tables from the compiled information. BDO's assignment was to determine if the old multipliers were accurate and, if not, then new multipliers were to be created. It became apparent early in the process that new multipliers would have to be developed due to the problems with the existing multipliers. Maurice testified that sales data was gathered from both public and private sources, old multipliers were reviewed, and new multipliers were generated. New tables were generated by taking samples of assets. Maurice then looked at acquisition cost, acquisition date, and market data to determine

what happened to the property value over time. He then put the information into categories (furniture, fixtures, industrial, computer etc). The depreciation tables were then generated by using the underlying sales data by category. The BDO report was drafted taking into consideration Michigan tax laws and then sent to the STC for its approval.

Maurice, when questioned on the use of personal property multipliers to determine values prior to December 31, 1999, testified that initially there was no discussion with the STC on the retroactive application. P-7 is a memo that was drafted on October 3, 1999, in response to a question from the STC, stating how the tables were generated and the applicability of the multipliers for years other than the contracted years. The specific age of the asset did not tie to the year it was acquired. BDO considered the age of the asset and the percentage of original asset cost for which it sold. The new tables were based upon age of the asset, not the date of acquisition. Maurice testified that the way the tables were generated would allow them to be retroactively applied as depreciation multipliers.

Maurice did not tour the specific facility that Petitioner owns, and cannot testify as to the specific value of Valassis's personal property. Maurice was subpoenaed to testify to the validity of the new personal property multipliers and the basis for the new multipliers.

Hilpert testified that he has been Chairperson of the STC since 1994. Hilpert's prior positions include Deputy Treasurer of the Michigan Department of Treasury, Tribunal

Member, Legislative Analyst, and an associate with Coopers and Lybrandt. Hilpert's extensive experience and position qualify him as an expert witness.

Hilpert testified that the STC is responsible for overseeing property tax administration, bulletins that are issued to the assessors throughout the year on various issues, and the preparation of the assessor's manual as a guide for assessors in valuing real and personal property. The Assessor's Manual is approved by the STC. Personal property multipliers are part of the assessor's manual. The STC states that the assessor's manual as approved is used as a guide for the estimation of true cash value. The STC contracted a study of the existing multipliers for a variety of reasons: the depreciation multipliers appeared to have lost their presumption of validity, they were thirty (30) years old, and the Tribunal appeared to be finding for taxpayers where they presented market evidence refuting the old multipliers. Changes in technology necessitated that new computer tables be implemented over the years as a piecemeal attempt to validate the multipliers. Hilpert stated (tape 12:47) there was a general acknowledgment in the industry that in some categories an intuitive belief that an up date to the old multipliers was necessary. The old multipliers were originally implemented in the middle 1960's, however, there currently exists no evidence as to the basis for the old multipliers (i.e. cost, market, income approach). BDO's role in studying the old multipliers was to determine whether the current percentages were accurate and, if not, to develop an alternative. It was found early in the process that the structure or format of the previous tables was adding to the inaccuracies, as the categories of personal property were too

broad. As a result the categories of personal property were narrowed, resulting in separate categories for Machinery and Equipment (which includes Computer-controlled Equipment); Office Machines, Electronic/Video/test Equipment; Coin-operated Equipment; Furniture and Fixtures; Consumer-utilized Equipment (Video Games and Video Tapes); and Computer and Peripheral Equipment. Once BDO recategorized the assets, the results were significantly different from the old system, so the first step was no longer necessary, and was abandoned.

Throughout the process the STC frequently met with BDO. Suggestions were made or areas that may require attention were discussed. Assessors and the private sector assisted in the process by sharing information.

Hilpert[1] testified that the July 7, 1999, Letter (P-3) and attachments were the documents prepared by BDO, which indicate: the number of samples per table, documents for sample size, break out of adjustments, and specific scatter diagrams for each individual table that BDO recommended. BDO was responsible for the remainder of P-3 and P-3a. The letter and the attachments were posted on the STC web site in response to interested parties, requesting more background data after the issuance of the draft report from BDO.

[1] Maurice's testimony on this document was objected to by Respondent, therefore, Hilpert testified on the contents and an explanation of the relevance.

Hilpert explained the scatter diagrams and their relevance. The personal property multipliers are a mass appraisal instrument, relying upon averages or measures of central tendencies. Each asset is not individually appraised like real property, thus there is a reliance on statistical measures of central tendencies. On the scatter diagram, each dot represents an observation (original cost and market price) plotted on a graph, then a measure of central tendency was developed, which is called a best fit line, and given the sample that is BDO's best estimate of where the factor for each year and where the particular line crosses the horizontal axis.

Hilpert testified and explained the September 2, 1999 memo (P-5). This was the final adoption of most of the personal property categories. The memo also explains the difference between the BDO study and the adoption by the STC. Those differences are: 1) Machinery and Equipment and Computer-controlled Equipment tables were combined and shortened from 30-year life to 15 years. Restaurant equipment also was combined in machinery and equipment, with no separate table for restaurant equipment; 2) The Office Machines and Electronic/Video and Test Equipment tables were combined and shortened to a 15-year life; 3) Furniture and Fixtures table was shortened to a 15-year table, and 4) Computer and Peripheral Equipment was shortened to seven years. The memo also contained instructions for tools, dies, jigs, fixtures, molds, pattern and gauges, obsolete or surplus equipment, and procedures for valuing construction-in-progress.

The March 14, 2000 memo (P-8), drafted by the STC, and signed by Hilpert, stated in part: "Units may settle position in part, because of prior statements." When asked if it was his position that the new multipliers provide a better basis for true cash value than the prior ones for property in existence as of December 31, 1998 for machinery, equipment, furniture, fixtures, and computer equipment, Hilpert answered "generally yes."

Whittaker, Valassis's next witness, testified that her position was as agent for Petitioner. She is a personal property analyst for Joseph Sansone Company. The company is hired to review assets and determine if they are properly valued. They have a contract to represent Valassis in all personal property matters. She has a letter of authorization that allows the company to review the personal property, appeal at board of review, and represent Valassis at the Tribunal.

Whittaker testified that P2a, P2b, P2c are personal property statements prepared by an associate that is currently out of the country. The basis for her expert testimony is her degree in accounting. She described the personal property reporting process as the the actual acquisition cost is reported. There is a factor applied to equal the depreciated true cash value for personal property value is placed on the property. The same assets were used on the personal property return filed with the City of Livonia, however, the depreciation factors applied were the new multipliers, versus the old multipliersThis resulted in the reduced true cash value as purported by Petitioner.

Schultz was the last witness called by Valassis. She testified to her experience, education, and position as city assessor. Schultz accepted the personal property statement sent by Valassis and used the existing depreciation multipliers. Schultz agreed that if the new multipliers were used to calculate subject property's true cash value, the figures used by Petitioner are confirmed (P-2a, P-2b, P-2c).

Valassis, in closing arguments, cites *Antisdale* v *Galesburg*, 420 Mich 265; 362 NW2d 632 (1984), in quoting the STC assessor's manual, ch VI, pp1-2. The *Antisdale* Court held "When accurate information is available, case law clearly supports the market approach as the preferred method of valuation." Valassis also cites *IBM Credit Corp* v *City of Warren*, MTT 172986 (1995) which states:

> The market value of a given property is estimated by comparison with similar properties which have recently been sold or offered for sale in the open market....Of all appraisal methods the market data approach is the most direct, the best understood, and the only one directly reflecting the balance of supply and demand for a whole property in actual trading place.

Valassis further states that the Tribunal is under a duty to apply its expertise to the facts of a case to determine the appropriate method of arriving at the true cash value of a property utilizing an approach that provides the more accurate valuation under the circumstances. *Jones and Laughlin Steel Corp* v *City of Warren*, 193 Mich App 348, 353; 483 NW2d 416 (1992). Petitioner contends that the new multipliers provide the most accurate valuation under the circumstances. Valassis states that this position is

supported by Livonia's assessor's admission (tape 16:40) that she is not aware of any reasons why the new multipliers would not establish a reliable true cash value.

Valassis continues in its closing brief that Hilpert testified extensively as to why the old multipliers were no longer considered presumptive of true cash value. The BDO sales study confirmed the STC's belief that the study of hundreds of purchases and sales of assets found the old multipliers not reflective of true cash value.

Valassis cites *Allstate Insurance Company* v *Township of Mundy*, MTT Docket No. 267937 (2000), a Small Claims case involving the use of the multipliers. The Tribunal concluded that application of the new multipliers was appropriate in that case.

Valassis contends that Respondent's reliance on the old multipliers because they were in effect on December 31, 1998 is misplaced. MCL 211.10e provides in pertinent part:

> All assessing officials...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...

(Emphasis supplied.)

Valassis states that Hilpert agreed that the manual be used as a guide. (tape 12:46). A "guide" does not require strict adherence when supplied with information that would result in a more accurate valuation. (Petitioner's Reply Brief p. 9).

Petitioner concludes in its Closing Brief at p. 10 that it is unrebutted that the new multipliers are more reflective of true cash value than the old multipliers for December 31, 1998, as well as December 31, 1999 and forward. As a result, it is a violation of the assessor's duty not to concur in the application of the new multipliers to the property at issue for December 31, 1998.

Petitioner cites Schultz's testimony that she had not inspected the Valassis sites. (tape 16:42). Further, she knew of no characteristics about the property at issue that would require adjustments to the standard published multipliers. In fact, Schultz accepted the personal property statements Valassis filed for both December 31, 1998 and December 31, 1999, without change. Valassis contends that if the Valassis statements were accepted without change, it is unrebutted testimony that the new multipliers would provide a more accurate true cash value than the old multipliers.

CITY'S ARGUMENTS

The City offered as its expert City Assessor Schultz. Respondent offered R-1 Bulletin Number 12, New Personal Property Multiplier Tables and Other Procedures for Valuing Personal Property as its exhibit.

Schultz testified that she has twenty years assessing experience, is a Level 4 Assessor, and is also certified as a personal property examiner. Her responsibilities would include overseeing the assessment of real and personal property within the city.

Schultz testified that the multipliers used to determine the true cash value for subject propery were the ones approved by the STC (tape 16:45). The multipliers used for tax year 1999 were the ones in place on December 31, 1998 and the multipliers that determined tax year 2000 are the new multipliers that were in place December 31, 1999. The use of the new multipliers is pursuant to the direction of the STC. Schultz stated that she first became aware of the adoption of the new multipliers upon receipt of STC Bulletin No. 12 in November, 1999. Schultz stated that it would be inappropriate to use the new multipliers for the 1999 assessment, because to do so would destroy uniformity and equity. The March 14, 2000, letter from Hilpert (P-8), in Schultz's opinion, gave assessors the discretion to settle or not settle pending personal property appeals as they deemed appropriate. (tape 17:30).

Respondent, in its closing brief, discredits Petitioner's witnesses, stating that Maurice is a short-term employee of BDO, who had no prior work experience concerning the valuation of personal property; Whittaker's training and education relative to the valuation of personal property is limited to on-the-job training; and that Hilpert's testimony shed very little light on the sub-issue of the applicability of the "new" personal property multipliers.

Respondent, in closing arguments, states that Maurice's experience in personal property is limited solely to his work in gathering data for the BDO study that resulted in the adoption of the new multipliers. When asked by Petitioner's counsel if he had an opinion relative to the value of the subject personal property, Maurice stated that he had no opinion as to the true cash value. (tape 12:34).

Respondent emphasizes the introductory paragraph to the BDO final report, page III (P-6):

> IMPORTANT NOTE TO THE READERS OF THIS DOCUMENT:
>
> The authors of this report have studied the accuracy and validity of the current original cost multipliers for personal property and, as necessary, built revised or new multiplier tables for the Michigan State Tax Commission. Uniform Standards of Professional Appraisal Practice (USPAP) Standard 6 discusses models, however this assignment reaches no value conclusions. Standards 4 and 5 discuss consulting services, however this assignment meets none of the standard appraisal consulting formats described. Thus, the authors of this document believe that this study is outside the scope of the USPAP requirements.
>
> (Emphasis added)

The City states the new multipliers became officially effective for assessment purposes on December 31, 1999 for tax year 2000 based upon Hilpert's testimony. (tape 13:16). Respondent states that Hilpert offered no testimony regarding the true cash value of the subject property. Hilpert did not examine the property at issue. Hilpert explained that

the tables are designed to "mass appraise" personal property, a way of assigning value to a large number of assets. (tape 15:36).

The City cites the March 14, 2000, memo (P-8), which states in part:

> 2) Other Appeals
>
> The State Tax Commission believes that it is not unreasonable for local units of government to settle "other disputes" based on the new personal property multipliers, especially when the new multipliers result in significantly different answers from the old multipliers. However, this is a matter for the parties to the appeals to decide.

Hilpert testified that he did not draft the March, 2000, memo, but may have edited it. The City asked for a definition of "significantly different," which appears in the memo, and Hilpert was unable to answer. Hilpert also testified that the STC has not issued any subsequent documents clarifying the issue of the applicability of the new personal property multipliers. (tape 15:35).

The City urges the Tribunal to give no weight whatsoever to Petitioner's Exhibits 2a, 2b and 2c for the reasons that the purported author of the documents was not present at the hearing to testify and the documents were never properly authenticated. Respondent argues that Whittaker offered nothing to establish the true cash value of the subject property.

Respondent believes that Petitioner has failed to prove, by the greater weight of evidence, that the assessments are too high. Witnesses Hilpert and Maurice did

nothing to establish the true cash value of the subject property. Hilpert offered no specific testimony relative to the subject property and had no opinion when asked if the new multipliers more closely reflect true cash value as of December 31, 1998 for the categories of furniture, fixtures, machinery and equipment.

The City urges the Tribunal to follow the reasoning in *Louisiana-Pacific* v *Township of McMillan*, MTT 270519 (2000) and *Electronic Data Systems Corp (EDS)* v *Twp of Flint*, MTT 235158 (1998), and refrain from making an independent determination of true cash value because it lacks evidence on which to base a decision.

Respondent contends that compliance with MCL 211.10e and the Michigan Constitution was met by applying the multipliers that were in effect on tax day, December 31, 1998. The City states that Petitioner has failed to meet its burden of going forward by offering reliable, competent and material evidence to support its contention of true cash value.

The City's reply brief (p12-13) concludes "To apply the 'new multipliers' to the subject property would not only destroy the uniformity and equity of the tax rolls, but would be contrary to state law." Respondent states that discretion was exercised and the new multipliers were not used to settle the instant case.

CONCLUSIONS OF LAW

Pursuant to MCL 205.737(3); MSA 7.650(37):

> The petitioner has the burden of proof in establishing the true cash value of the property, and the assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district.

While a conclusive presumption of the validity of an assessment cannot be made, the burden of proof in a property tax valuation proceeding is on the taxpayer to establish, with a preponderance of the evidence, the true cash value of the property. *Kern* v *Pontiac Tp*, 93 Mich App 612; 287 NW2d 603 (1979); *Alhi Development Co* v *Orion Tp*, 110 Mich App 764; 314 NW2d 479 (1981). Petitioner having brought forth evidence, Respondent was required to go forward with its evidence.

The issue is not one of typical valuation, although the value of the personal property is in controversy. The method by which to depreciate the assets of the personal property is the main issue, old personal property multipliers versus new personal property multipliers as approved by the STC. The State of Michigan, through the State Tax Commission, publishes a cost manual that the assessors of the state are to use as a guide when determining the true cash value of real and personal property. Personal property is a specific classification of property and is valued using the acquisition costs as self-reported by the property's owners and depreciating the total assets (acquired by

year) by a "multiplier" that was changed for the 2000 tax year. There currently exist two sets of depreciation multipliers termed "old" multipliers and "new" multipliers. The old multipliers were in use until December 31, 1999, and the new multipliers that are in use as of December 31, 1999.

The STC, through a bid process, selected BDO to study the personal property multipliers. The purpose of the study is to review, study and analyze the original cost multipliers. The basis for the original cost multipliers could not be determined, therefore, new original cost multiplier tables were constructed. These tables are commonly referred to as the new multipliers. The application of the new multipliers to value personal property for the year prior to their effective date of December 31, 1999, is the question at issue. The Tribunal finds that BDO had experts conduct the sales study, and analysis, and recommend asset categories. The result was the recommendation of depreciation tables.

The Tribunal notes that Petitioner's expert witnesses Maurice and Hilpert were not valuation witnesses and could not express an opinion of the true cash value of the subject property. Neither prepared a valuation disclosure necessary to testify on behalf of Petitioner as a valuation expert as required pursuant to TTR 283(3).

Pursuant to MCR 702, Testimony by Experts:

> If the court determines that recognized scientific, technical, or other specialized knowledge will assist the trier of fact to understand the

> evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Maurice and Hilpert were the parties responsible for the new personal property multipliers, that is, Hilpert as Chairperson of the STC at the time the contract was given to BDO and Maurice, a manager for BDO, was the contact person for the STC and assisted in the gathering, preparation, and the recommendation of the multipliers to the STC for final adoption. The Tribunal accepts the testimony of the expert witnesses Hilpert and Maurice, pursuant to MCR 702.

Respondent's inclination to discount Maurice as an expert witness because he did not appraise the subject property, nor holds a personal property examiner's certification, is not accepted by the Tribunal.

MCR 702.2 Determining Whether a Proffered Witness is an expert states in pertinent part:

> The determination of whether a witness is an "expert" is within the discretion of the trial court, and the decision will not be reversed on an appeal absent an abuse of discretion. The fundamental inquiry for the trial court is whether permitting the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue, and whether the opinion will confuse or mislead the trier of fact, and whether the facts and data upon which the expert bases the opinion are reliable.
>
> ... An expert need not be a licensed professional. While a proposed expert's expertise may not be as extensive as the opposing side expert's, such consideration goes to the weight of the evidence rather than the admissibility. It is for the trier of fact to decide what weight is to be given to the evidence.

Maurice testified as an expert witness as the contact person for BDO with the STC. The argument was not the actual assets owned by Valassis and reported on their personal property statement, rather it is the actual multipliers that are to be applied to the assets to depreciate the acquisition cost new. This process is similar to the way real property is depreciated, based upon age, condition, etc. The depreciation tables are merely multipliers that adjust the acquisition cost new including sales tax, freight, and installation for the actual age of a group of assets.

The Tribunal finds that Whittaker's testimony carried no weight in the decision. The exhibits testified to were not prepared by Whittaker. P-2a, P-2b, and P-2c are the subject's 1999 personal property statement recalculated by using the new multipliers instead of the old multipliers. Schultz confirmed the calculations.

Testimony from both Maurice and Hilpert substantiate the reasons for abandonment of the old multipliers early in the process. The old multipliers were thirty years old, the Tribunal appeared to have cases finding for the taxpayers who presented market evidence, and the tables lost their presumption of validity. Evidence could not be found that determined how the tables were originally derived. BDO found the format of the previous tables was in itself adding to the inaccuracies, and that the categories of the assets were too broad. Therefore, the initial step of reviewing, studying and analyzing the current cost multipliers ended and the new tables were constructed.

Maurice testified that the plan was executed as stated in the final report to the STC from BDO. The plan and methodology as outlined in the BDO Final Report (P-6) pages 2-3:

> 1) Define the mass appraisal problem. The task required the study of the existing composite valuation multipliers to determine their accuracy and validity and, if necessary as a result of our study, develop multipliers that when multiplied by the original cost will result in a reliable estimate of true cash value.
>
> 2) Plan the sampling methodology. Of the seven original tables in existence, three are industry related, three are age/life based and one is property type based. The project team concluded that samples would be collected related to property type. This methodology permits a greater degree of statistical reliability.
>
> 3) Identify the subject properties. A broad based scope of property is included in the study. Data was sought from numerous sources that are discussed in Section II.
>
> 4) Begin data collection. Property types were reviewed. Software requirements were analyzed and the software was purchased. Review procedures were set in place. Reports were delivered to the Michigan State Tax Commission every two weeks either in writing, in person or via the phone.
>
> 5) Apply appropriate value estimation techniques. Valuation methodology was consistent within the project team and was applied uniformly to all samples.
>
> 6) Reconciliation and finalization of composite multipliers. The composite tables were finalized.
>
> 7) Model conclusions. Data evaluations were applied consistently and in accordance with quality control procedures that were in place throughout the project.
>
> 8) The written report. This report includes recommended composite multiplier tables based on property type. A representative list of fixed asset types and business types, where necessary, is included. Also included are valuation recommendations for reporting utility properties and cable equipment.

Maurice described under oath, that the steps taken followed the eight steps above. BDO sampled the assets, looked at the acquisition cost, date, and market data to determine over time what the value of the asset does (appreciate/depreciate) and put the data into categories. The tables were generated with the underlying sales data. The STC was not involved, because the contract already outlined the steps BDO was expected to take and what the STC's expectations were. Once the final tables were drafted, the contract ended. BDO had no input as to how the tables should be used.

Hilpert requested information from BDO regarding the applicability of the year 2000 personal property multipliers to prior years' assets to arrive at market value. On October 3, 2000, Maurice wrote a letter (P-7), explaining in pertinent part:

> ...The market information utilized to produce the multiplier tables was **not** specifically *tied* to the year **1999**. The market data ranged in acquisition date from 1978 to 1998 and in **sale date** from **1990 to 1999**.
>
> The purpose of this letter is to clarify that the design of the multiplier tables was meant to be applicable to an asset of a certain year in age, not to be tied to a specific date of acquisition....
>
> Emphasis added.

Maurice testified that the purpose of the letter was to explain that the tables have applicability to years other than 1999. The way the tables were generated they could be retroactively applied. Part of the role of BDO was to compile information, contact assessors and the private sector, gather sales information, prepare spreadsheets, which would then be the guiding force to separate all data into separate classifications,

and create scatter diagrams, which end in the generation of the tables. The intent of the tables is to assist assessors in depreciating the assets by year of acquisition to arrive at the true cash value of personal property.

The following is Maurice's testimony summarizing the process taken by BDO in arriving at the new multipliers:

> (Tape at 12:35) Judge: I have some questions, Mr. Maurice. What was the time frame of the sales used for the study?
>
> Maurice: 1990 to 1999.
>
> Judge: I need a brief explanation of how the tables were constructed and what do the depreciation multipliers mean.
>
> Maurice: Well, the tables were constructed...what we did, first, was the information-gathering phase, soliciting information from local assessors, equalization departments, as well as private sector. And the information that we solicited, in addition to original acquisition costs of assets, which would appear on fixed asset schedules of companies. Sales information that may have been related to Tribunal cases. Any auction sale information that they had, appraisals of property that they had, and all of this information was compiled and matched up to basically say that this asset with this original acquisition cost had this sale later in time, whether it be one year later, 6 months later, 12 years later, what have you. And from that point what we did was to look for patterns that evolved to help us in classification of the assets that appeared in general population. Through these patterns, we developed different classifications, combined some classifications, split out and arrived at the seven tables that appear in the report. So these tables tied to actual market data that we collected and provide the basis for valuing the underlying property. So the second part of your question was how they are to be utilized, and you'd take a look at the tables and really it is kind of a simple thing where the tables generated from the scatter diagrams, with the two axis percent good which is percent of original acquisition cost, taking into account sales tax, freight, and installation and the percent good, actually the other is the age of the

> asset. This age is your sale date at a point in time, minus your original acquisition cost and these conform to the way that the tables appeared to be formed, really the same type of tables just with different numbers. So the answer to your last question is original acquisition cost including sales tax, freight and installation is to be multiplied by the percent good as appears in the tables.
>
> The age is...well, there are no assets that are zero years old so even if an asset is purchased on December 31 of a specific year, its age is going to be one. That's where the table starts, going back in time, the age increases by one year.

Hilpert substantiated Maurice's testimony that the first phase of the study was to determine the validity of the old personal property multipliers. BDO was responsible to frequently meet with the STC prior to the draft to point out areas that needed revisions. Hilpert testified that substantial input was given from outside BDO. The best evidence of that imput is the BDO final draft (p. 4) industry and government was encouraged to submit any and all data they wanted considered for the valuation study. Over 1,500 letters were mailed to municipalities encouraging them to participate by submitting valuation information of assessable personal property.

Hilpert understood the process and testified to his knowledge of the steps taken by BDO, and described in the final draft. The steps taken were the valuation information was gathered, sampled numbers of assets, considered age, acquisition cost, and market data at the time of sale. The data was arrayed and plotted on a graph for each property category. Each data point shows the age and percent good of a sample at a specific point in time. Mathematics and statistical professionals measured the

confidence level and confirmed the results. The underlying premise of the study was the market approach.

Hilpert testified to the number of samples per table by category by furnishing the Tribunal with a missing second page of Petitioner's Exhibit 3. The STC and BDO letter on July 7, 1999, provided a memo to interested parties; the documents are intended to provide additional information and explanation regarding the personal property tax draft. The documents include a listing of the sample sizes for each category of asset; a breakout of the adjustments that were made to the different types of market data for different types of assets, and scatter diagrams for each category of asset. For some categories, the recommended tables represent the blended results of the age-life method and market approach. The computer and peripheral equipment included 575 observations, machinery and equipment had 566, computer-controlled machinery and equipment 68, furniture and fixtures 118, office machines 256, electronic, video and test equipment 294, restaurant equipment 72. The age-life method was used for the following categories; improvements, consumer-coin-operated equipment and consumer utilized equipment. The proposed adjustments to asking prices and auction prices were included to show the average. Scatter diagrams are relevant as a mass appraisal instrument to measure central tendencies. Each dot represents an observation, plotted on a graph, and the measure is a best-fit line. The factor for each year and where the line crosses is the horizontal axis.

Hilpert testified on the final report and the changes the STC made in the adoption. Those changes were outlined in the September 12, 1999 memo (P-5) and included the combined and shortened tables.

Although, Petitioner did not argue the point, the Tribunal, in making its independent determination of value, questioned Maurice on the basis for the determination of depreciation multipliers. Maurice testified that the basis (with some final modifications by the STC) was actual market data. Sales of assets of different categories of personal property were considered. Maurice used an example of machinery and equipment that had hundreds of sales[2]. The sales used are akin to the two-year real property sales study utilized by assessors and equalization departments and the STC's property tax division to determine true cash value of real estate for assessing and equalization purposes.

The Tribunal finds that Petitioner's reliance on the Small Claims Division decision *Allstate Insurance Company* v *Township of Mundy*, MTT Docket 267937 (2000), is misplaced. MCL 205.765 states that Small Claims Division decisions are not precedential unless so designated by the Tribunal. The Small Claims Division of the Tribunal uses an informal hearing process without formal transcripts. The case cited is not precedential and carries no weight with the Tribunal in this case.

[2] The Tribunal notes 566 sales were used in this category as documented by P-3a.

Respondent cited *Louisiana-Pacific Corporation* v *Township of McMillan*, MTT Docket 270519 (2000), in which the same judge presided, as being similar in its contentions. However, the hearing was a default hearing, no witnesses were available, with a few similar exhibits, but no testimony. The Tribunal finds the case is dissimilar because Petitioner in *Louisiana-Pacific Corporation* failed to present any testimony, and lacked the back-up exhibits presented in the instant case. Respondent in *Louisana-Pacific Corporation* was not represented.

In Respondent's second citation, *Electronic Data Systems Corporation* v *Township of Flint*, MTT Docket 235159 (1998), the Tribunal, found based upon the evidence and proofs presented, that the multipliers in place were proper. Petitioner failed to provide proper market support and documentation. Petitioner failed to offer evidence that the multipliers did not calculate true cash values for personal property that are close to the values that such property would bring on the open market.

The Tribunal finds that Respondent provided no documentation in the instant case that the old multipliers provide a better basis for determining the true cash value of the subject property. The City admitted that an appraisal of the subject property was not done, and that the individual personal property statements were accepted as received.

The Tribunal does not find fault in Respondent's initial reasoning that the personal property multipliers were applied equitably in all of the personal property within the City

of Livonia. However, in cases under appeal, the mass-appraisal technique is not as applicable. The property under appeal is singled out, and could require an individual appraisal to determine the true cash value of the property based upon appropriate appraisal techniques. Assessors may not have available the details, analysis, and perhaps the basis for the new multipliers for the personal property. Testimony and evidence was presented that convinced the Tribunal the new multipliers were based upon competent data gathered over a time frame that would include the 1999 assessment year.

The Michigan Constitution calls for the uniform taxation of property. Const 1963, art 3 §3. The Court of Appeals, in *AEG Mictron, Inc* v *City of Troy,* unpublished states in part:

> The STC system for mass appraisals of personal property results in the uniform taxation of personal property. The STC manual sets forth the guidelines for assessing personal property and respondent was required to utilize the manual in preparing petitioner's assessment. MCL 211.10e; MSA 7.10(5).
>
> Petitioner argues that the STC method of assessing personal property is improper because it taxes property based upon the uses of the property and not upon the true cash value of the property. Petitioner offered no evidence that the STC multipliers do not calculate true cash values for personal property that are close to the values that such property would bring on the open market....However, where the use of the property bears no relationship to what a likely buyer would pay for the property, reliance by the tribunal on the existing use in determining the property's valuation is error. *Safran Printing Co* v *Detroit*, 88 Mich App 376, 382; 276 NW2d 602 (1979). Here, there is no evidence that the "in-use" multiplier inflates the value of personal property above what it would receive on the open market.

The Tribunal finds that Petitioner, through the STC, submitted a form of market data evidence although in a different format than the recognized current market data for real property. The use of substantial market information by BDO (P-7) as stated in the October 3, 2000, letter, (market data ranged in acquisition date from 1978 to 1998 and sales from 1990 to 1999) is sufficient market information to show the old multipliers lost their validity through the application of the new market based multipliers.

The STC's system for mass appraisal of personal property results in the uniform taxation of personal property. The STC manual sets forth the guidelines for assessing personal property and respondent was required to use the manual as a guide in preparing petitioner's assessment. MCL 211.10e; MSA 7.10(5).

The assessor computed the personal property value in accord with Chapter 15 of the STC assessor's manual, using the 1994 personal property statement filed by Petitioner, and the STC original-cost multiplier tables.

The Tribunal found in *Technidisc, Inc* v *City of Clawson*, MTT Docket No. 214818 (1996), the first of several cases, that the valuation of personal property using STC multipliers is a variant of the cost method, stating in part:

> The cost new component of this approach is original acquisition cost without trending to current date, whereas the standard application uses current market information to establish cost new as of the date of valuation. Depreciation and obsolescence in the STC method is

> predetermined by a fixed factor (multiplier), whereas the standard method extracts the various forms of value loss from current market information.

Technidisc, Inc. further states: The importance of market data to implementation of the standard cost approach was stated in *Uniroyal Goodrich Tire Company* v *City of Troy*, 8 MTT 361, 376 (1994):

> Since market-based answers are mandatory in assessment matters, the valuation expert is faced with a difficult situation where there is a strong reliance upon only the cost approach, or cost-based support. For example, in the cost approach it is essential that available and applicable market data support all components of the cost approach, beginning with cost new, extending into the various forms of value loss (physical deterioration, function and external obsolescence), and ending with land value.

The Tribunal continued to discuss the use of the variant cost approach at p.9

> "...without reference to any market data in support of the method, renders it difficult to accept the valuation conclusion as being market-based. For the STC multiplier method to be a reflection of market values, it would be necessary to view evidence of current market information having been introduced at some effective point of the process..."

The Tribunal in the precedential *Technidisc, Inc.*, p 4, states that:

> "... the STC multiplier method is a valuation process better employed as a mass appraisal technique for its uniformity of results, and ease of administration. The method does not appear well suited to defense as market-based technology in Tribunal appeals. A more effective process would be to employ market data directly in support of a market-based appraisal methodology...."

The Tribunal has held in previous decisions that the assessor is not bound by the original assessment process when appearing before the Tribunal. In *Uniroyal* at 378-389 the Tribunal cited *Unocal Corporation* v *Township of Beaver Creek*, 8 MTT 550, 555. The Tribunal wrote:

> As part of the appraisal requirements of assessing, the Tribunal recognizes that the manual, and its procedures, are a necessary aspect of the assessment stage of valuation. It serves as an instructional guide to implementation of the statutes and case law, a means of addressing uniformity, and, most importantly, as a process for mass appraisal. However, in presenting cases before the Tribunal, assuming uniformity issues are not in contention, the purpose is to convince the hearer of fact that the contention of true cash value is correct, and established in accord with applicable statutes. An assessor/appraiser may well decide to continue with the mass appraisal procedures of the STC manual when appearing before the Tribunal. But, the assessor/appraiser also has the choice of employing different methods and approaches, either by writing a new appraisal, or through the hiring of an independent expert. These new methods may differ in valuation procedure or value conclusions from that employed during the mass appraisal process of assessment. In short, the assessor is not bound by the original assessment procedure when appearing before the Tribunal to provide proofs in True Cash Value matters.

The City chose not to use any other method available, the assessor did not inspect the subject property, and does not know the specific description of equipment being valued, other than the general category.

Market data is the basis of all three approaches to value, and is necessary in the valuation of personal property, just as it is in real property. Respondent had a choice,

the assessor had a choice of using the existing personal property multipliers or a market appraisal. The assessor did not have to defend the true cash value upon which the assessment was made by the same assessment mass appraisal system that was used.

The Tribunal received eight exhibits, as well as testimony from the STC and BDO that explained how the new multipliers were developed and the process used to determine the amount of market information that went into the development, and the reasons why the old multipliers were replaced. The Tribunal is convinced through the preponderance of evidence and through the experts' testimony that the information used in the sales study analysis to develop the new multipliers would apply retroactively. The Tribunal is convinced that the construction of the depreciation tables establish that the study included sufficient valid sales for each category that would also cover the type of personal property category currently under appeal.

The following values are adopted by the Tribunal to be reflective of subject property true cash value for the tax year 1999:

PARCEL NO.	TCV	AV	TV
999-00-7981-000	14,964,330	7,482,165	7,482,165
999-00-3783-000	5,815,517	2,907,758	2,907,758
998-01-9891-036	2,502,333	1,251,166	1,251,166

JUDGMENT

IT IS ORDERED that the subject property's true cash, assessed, and taxable values shall be revised for the tax year at issue as provided in the "Conclusions of Law" section of this Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with keeping the assessment rolls for the tax years at issue shall correct or cause the roll to be corrected to reflect the property's revised assessed and taxable values as provided in the "Conclusions of Law" section of this Opinion and Judgment within 20 days of the date of the entry of this Order.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Order within 20 days of the entry of this Order. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. A sum determined by the Tribunal to have been unlawfully paid shall bear interest for any time period prior to 28 days after the issuance of this Order. As provided in 1994 PA 254 and 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest shall accrue at an interest rate set monthly at a per annum rate based on the auction rate of the 91-day discount treasury bill rate for the first Monday in each

month, plus 1%. After January 1, 1996, interest shall accrue at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for the calendar year 1998, (iv) after December 31, 1998, at a rate of 6.01% for the calendar year 1999, and (v) after December 31, 1999, at a rate of 5.49% for the calendar year 2000.

MICHIGAN TAX TRIBUNAL

Entered: MAR. 21 2001

Victoria A. Enyart

STATE OF MICHIGAN

IN THE COURT OF APPEALS

VALASSIS COMMUNICATIONS,

Petitioner-Appellee,

Docket No. 233676

-vs-

MTT Docket No. 269813

CITY OF LIVONIA,

Respondent-Appellant.
_____/

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PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF OAKLAND)

JULIE A. HINKLE, first being duly sworn, deposes and states that on the 28th day of November, 2001, she served a true copy of the within Michigan Municipal League's Amicus Curiae Brief in Support of the Position of Respondent-Appellant City of Livonia, upon:

Sean P. Kavanaugh
Attorney for Petitioner-Appellee
33000 Civic Center Drive
Livonia, MI 48154

Nanci Wolf Freedman
Attorney for Respondent-Appellant
32100 Telegraph Road, Suite 200
Bingham Farms, MI 48025-2454

by depositing same in the United States mail with postage fully prepaid thereon.

JULIE A. HINKLE

Subscribed and sworn to before me this
28th day of November, 2001.

Notary Public

_____ County, Michigan

My Commission Expires: _____

PAULA M VAUGHN
NOTARY PUBLIC MACOMB CO., MI
MY COMMISSION EXPIRES Nov 11, 2002
ACTING IN OAKLAND COUNTY, MI