

STATE OF MICHIGAN
COURT OF APPEALS

VALASSIS COMMUNICATIONS,

Petitioner-Appellee,

v

CITY OF LIVONIA,

Respondent-Appellant.

UNPUBLISHED

December 27, 2002

No. 233676

Tax Tribunal

LC Nos. 00-269813

00-269815

00-269816

Before: Griffin, P.J., and White and Murray, JJ.

PER CURIAM.

Respondent appeals as of right from the Tax Tribunal's (Tribunal) opinion and judgment in favor of petitioner, holding that the personal property multipliers effective for tax year 2000 could be used to determine the true cash value of the subject property for tax year 1999. We affirm.

Respondent argues that there are two reasons why the Tribunal should be reversed. First, respondent asserts that the Tribunal erred in retroactively applying multipliers effective for tax year 2000 to determine true cash value for tax year 1999. Second, respondent argues that even if the Tribunal did not err on the first issue, petitioner nevertheless failed to meet its burden of proving the true cash value of the subject property as mandated by MCL 205.737(3). We disagree on both accounts.

Appellate review of the Tribunal's decisions is limited to whether its factual findings are supported by competent, material, and substantial evidence on the record. *Professional Plaza, LLC, v City of Detroit*, 250 Mich App 473, 474; 647 NW2d 529 (2002). Substantial evidence is that which a reasonable mind would accept as reasonable to support a conclusion and is more than a mere scintilla of evidence but less than a preponderance. *In re Payne*, 444 Mich 679, 692; 514 NW2d 121 (1994). When there is sufficient evidence, a reviewing court must not substitute its discretion for that of the administrative tribunal even if the court might have reached a different result. *Black v Dep't of Social Services*, 195 Mich App 27, 30; 489 NW2d 493 (1992). It does not matter that alternative findings also could have been supported by substantial evidence on the record. *In re Payne, supra*. In the absence of an allegation of fraud, this Court reviews the Tribunal's decisions to determine whether it committed an error of law or adopted

the wrong legal principle. *Michigan Milk Producers Ass'n v Dep't of Treasury*, 242 Mich App 486, 490; 618 NW2d 917 (2000).

Petitioner has the burden of proof in establishing the true cash value of the property. *Great Lakes Division of National Steel Corp v Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998); MCL 205.737(3). However, the Tribunal cannot merely affirm the assessment as made by the assessing authority, but must make its own independent determination of the true cash value of the property, taking into consideration the parties' theories of valuation and all relevant circumstances that may affect the property value. *Great Lakes Division of National Steel Corp*, *supra* at 389-390, 398-399 (citations omitted). In all cases, the Tribunal's "duty is to determine the most accurate valuation under the individual circumstances of the case." *Id.* at 399.

Respondent asserts that MCL 211.10e requires assessors to use the assessor's manual and the manual that was in effect for the 1999 tax year included the old multipliers. Thus, respondent concludes that it was improper for the Tribunal to find that the new multipliers, effective for the 2000 tax year, could be used to determine the true cash value of the subject property for the 1999 tax year. MCL 211.10e provides, in relevant part:

All *assessing officials*, whose duty it is to assess real or personal property on which real or personal property taxes are levied by any taxing unit of the state, *shall use only* the official assessor's manual or any manual approved by the state tax commission, consistent with the official assessor's manual, with their latest supplements, as prepared or approved by the state tax commission as a guide in preparing assessments. [Emphasis added.]¹

Although respondent correctly notes that the language of MCL 211.10e specifies that the only guide for assessors to utilize is the approved assessor's manual, respondent has provided no law indicating that an unofficial manual cannot be submitted as *evidence in an administrative hearing* to determine true cash value. In other words, although it is undisputed that when respondent assessed property taxes on December 31, 1998 for the 1999 tax year it correctly utilized the only official manual available, there is nothing in the law that prohibits a party from submitting evidence – whether it be an expert report, a valuation, or the proposed new manual – to establish the true cash value of the property.

Indeed, our cases indicate that if evidence of a different true cash value is apparent because the manual does not adequately account for a factor relevant to the assessment, a party may obtain a deviation from the manual. See, e.g., *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992). This is because it is the true cash value of the property that controls the ultimate determination. See generally *Washtenaw Co v State Tax Comm*, 422 Mich 346, 364-368; 373 NW2d 697 (1985). The Tribunal is under a duty to determine the appropriate method of arriving at the true cash value of the property, "utilizing

¹ The State Tax Commission provides an assessor's manual as a guide for assessing personal property and requires respondent to utilize the manual in preparing assessments in order to provide uniformity in the taxation of property as required by the Michigan Constitution. *Lionel Trains, Inc v Chesterfield Twp*, 224 Mich App 350, 351; 568 NW2d 685 (1997); Const 1963, art 9, § 2.

an approach that provides the most accurate valuation under the [individual] circumstances” of each case. *Great Lakes Division of National Steel Corp, supra* at 389. Hence, not only is there no rule prohibiting the use of an unofficial manual as evidence in an evidentiary hearing, the law affords great latitude to the Tribunal in making the ultimate determination regarding true cash value. As we stated, the controlling factor is whether the method used most accurately reflects the property’s true cash value. See *id.* at 389, 399.²

Accordingly, we must next determine whether petitioner presented sufficient evidence that the old multipliers did not accurately reflect the true cash value of the subject property, and that the new ones provided a more accurate number. Petitioner presented sufficient evidence that the old multipliers did not accurately reflect true cash value. John Maurice, the property tax manager with BDO Seidman, testified that the old multipliers did not substantially reflect true cash value. As a result, the new multipliers were constructed. The evidence further indicated that the tables contained in the then-existing manual were approximately thirty years old and, based on industry and technology changes, an update was necessary. Based on this evidence, petitioner presented sufficient evidence that the old multipliers did not accurately represent the true cash value of the subject property. Further, there was sufficient evidence in the record to support the Tribunal’s determination that the new multipliers provided a better estimate of true cash value than the old multipliers for machinery/equipment, furniture, fixtures, and computer assets in existence on December 31, 1998. Thus, the Tribunal’s factual findings that the unofficial multipliers more accurately reflected the true cash value of the subject property were supported by competent, material, and substantial evidence on the record. *Professional Plaza, LLC, supra*. As such, the Tribunal did not err in finding that petitioner met its burden of proving the true cash value of the subject property using the new multipliers.³ Consequently, we are unable to conclude that the Tribunal erred in applying the law or adopted the wrong legal principle in applying the 2000 multipliers to the 1999 tax year in this particular case. *Michigan Milk Producers Ass’n, supra*.⁴

² In light of this conclusion we cannot accept respondent’s argument that the Tribunal retroactivity applied MCL 211.10e. The admission into evidence of the proposed new manual does not result in the retroactive application of a statute, because the statute applies to the *assessor’s* utilization of the manual, not to the Tribunal’s or parties’ utilization of the manual. If the statute required everyone involved in the process to utilize the manual, then what occurred in this case would have been a retroactive application of a statute.

³ The fact that neither Maurice nor Mark Hilpert expressed opinions about the true cash value of the subject property does not lead to the conclusion that petitioner failed to meet its burden of proof, where respondent based its findings of the true cash value of petitioner’s property solely on the old multipliers without the assessor touring the subject property, and where the new multipliers, by way of mass appraisal valuation, provided more accurate evidence of the subject property’s true cash value.

⁴ We further note that our holding in this case is, of course, based on the evidence submitted to the Tribunal, and is therefore limited to the facts of this particular case.

Affirmed.

/s/ Richard Allen Griffin

/s/ Helene N. White

/s/ Christopher M. Murray