IN THE SUPREME COURT OF OHIO

Appeal From the Ohio Board of Tax Appeals

SHILOH AUTOMOTIVE, INC.,	:	
	:	
Appellant/Cross Appellee,	:	
	:	Case No. 2006-1384
v.	:	
	:	Appeal from BTA
WILLIAM W. WILKINS, TAX COMMISSIONER OF OHIO,	:	Case Nos. 2004-M-380, 2004-M-1283
	:	
Appellee/Cross-Appellant.	:	

APPENDIX TO BRIEF OF APPELLEE/CROSS-APPELLANT

CHARLES M. STEINES (0011242)
Jones Day
(Counsel of Record)
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114-1190
Telephone: (216) 586-7211
Facsimile: (216) 579-0212
cmsteines@jonesday.com

ATTORNEYS FOR APPELLANT/CROSS-APPELLEE

JIM PETRO (0022096)
Attorney General of Ohio
BARTON A. HUBBARD (0023141)
Assistant Attorney General
(Counsel of Record)
30 East Broad Street, 16th Floor
Columbus, Ohio 43215-3428
Telephone: (614) 466-5967
Facsimile: (614) 466-8226
bhubbard@ag.state.oh.us

ATTORNEYS FOR APPELLEE/CROSS-APPELLANT

TABLE OF CONTENTS

§ 5711.18. Valuation of accounts and personal property; procedure; income yield

In the case of accounts receivable, the book value thereof less book reserves shall be listed and shall be taken as the true value thereof unless the assessor finds that such net book value is greater or less than the then true value of such accounts receivable in money. In the case of personal property used in business, the book value thereof less book depreciation at such time shall be listed, and such depreciated book value shall be taken as the true value of such property, unless the assessor finds that such depreciated book value is greater or less than the then true value of such property in money. Claim for any deduction from net book value of accounts receivable or depreciated book value of personal property must be made in writing by the taxpayer at the time of making the taxpayer's return; and when such return is made to the county auditor who is required by sections 5711.01 to 5711.36, inclusive, of the Revised Code, to transmit it to the tax commissioner for assessment, the auditor shall, as deputy of the commissioner, investigate such claim and shall enter thereon, or attach thereto, in such form as the commissioner prescribes, the auditor's findings and recommendations with respect thereto; when such return is made to the commissioner, such claim for deduction from depreciated book value of personal property shall be referred to the auditor, as such deputy, of each county in which the property affected thereby is listed for investigation and report.

Any change in the method of determining true value, as prescribed by the tax commissioner on a prospective basis, shall not be admissible in any judicial or administrative action or proceeding as evidence of value with regard to prior years' taxes. Information about the business, property, or transactions of any taxpayer obtained by the commissioner for the purpose of adopting or modifying any such method shall not be subject to discovery or disclosure.

HISTORY:

RS § 2739; 83 v 80; GC § 5389; 114 v 715; 115 v 565; 116 v PtII, 253; 118 v 657; 119 v 34; 123 v 777; Bureau of Code Revision, 10-1-53; 129 v 582(957) (Eff 1-10-61); 148 v H 612. Eff 9-29-2000.

5703-3-10 Tangible personal property tax; true value of depreciable assets; application of "true value" or "302" computation.

(A) Tangible personal property used in business in this state must be returned, for purposes of the personal property tax, at its true value in money. The true value of depreciable tangible personal property is its book cost less book depreciation, unless the tax commissioner finds that the depreciated book value is greater or less than the true value of such property.

(B) Application of the composite annual allowance procedure provided for in rule 5703-3-11 of the Administrative Code shall determine the prima facie true value of depreciable tangible personal property used in business. The prima facie valuations can be rebutted by probative evidence of higher or lower valuation.

(1) When an item of tangible personal property is acquired in an arms-length transaction, its true value at the time of purchase is the acquisition cost, including all costs incurred to put the property in place and make it capable of operation, which are normally capitalized in accordance with generally accepted accounting principles.

(2) The true value in money of any tangible personal property may be proved by establishing the amount for which the property would sell in an open market by a willing seller to a willing buyer in an arm's-length transaction. If market value is estimated by an appraisal, the property must be appraised as part of an ongoing business unless the taxpayer can demonstrate that the property is more accurately appraised on the basis of piecemeal liquidation or disposal.

(3) If a taxpayer believes that the composite annual allowance procedure as determined by the commissioner does not accurately reflect the true value in money of the taxpayer's depreciable tangible personal property on hand, the taxpayer may establish more accurate annual allowances by probative evidence.

(a) Such evidence must show that the published composite annual allowance procedures are inappropriate because they cause an unjust or unreasonable result, or must be modified because of special or unusual circumstances.

(b) Such evidence may include, but is not limited to, an aging of disposals study and any other studies, data, or documentation the taxpayer wishes to submit for consideration by the commissioner.

(c) Such evidence must cover a sufficient number of years to demonstrate a pattern in the history of the useful life of the subject property.

(C) A taxpayer must file a claim for deduction from book value for every tax return on which depreciable tangible personal property is returned at a value less than depreciated book value. Such claim must be made in writing at the time of filing the return on form 902, as prescribed by the commissioner, or in a format containing substantially all information as required on form 902.

History

Eff 2-21-86

Rule promulgated under: *RC 5703.14*

Rule authorized by: *RC 5703.05*

Rule amplifies: *RC 5711.02, 5711.03, 5711.09, 5711.18*

5703-3-11 Tangible personal property tax; "true value" or "302" computation.

(A) To assist taxpayers in returning the true value of depreciable tangible personal property used in business in this state, as required by Chapter 5711. of the Revised Code and rule 5703-3-10 of the Administrative Code, and to assist in the efficient administration of the personal property tax, the tax commissioner shall determine a composite annual allowance procedure for use in computing the true value of such property. The application of the composite annual allowance procedure to the original cost of tangible personal property may be referred to as the "true value computation" or the "302 computation."

(B) The valuation determined by the true value computation shall be the prima facie true value in money of taxable tangible personal property.

(C) The composite annual allowance procedure shall take into consideration the type of business conducted, the types and classes of property, the useful life of the property in such classes, physical deterioration, functional and economic obsolescence, repair and maintenance practices, salvage value of property assigned to such classes, and any other factors that the commissioner considers proper in determining the true value of depreciable tangible personal property used in business in this state.

(D) The commissioner shall publish and make available the composite annual allowance procedure, with such instructions and examples as the commissioner deems useful or necessary to assist taxpayers in computing their proper tax liability.

(E) The commissioner shall review and, if necessary, modify the composite annual allowance procedure, from time to time, to assure that such allowance procedure reflects current technology and business experience.

History

Eff 2-21-86

Rule promulgated under: *RC 5703.14*

Rule authorized by: *RC 5703.05*

Rule amplifies: *RC 5711.03, 5711.18, 5711.21, 5711.22*

FOCUS - 1 of 1 DOCUMENT

Columbus Board of Education, Appellant-Appellant, v. Franklin County Board of Revision, et al., Appellees-Appellees

Nos. 89AP-448, 89AP-449, 89AP-450, 89AP-451, 89AP-452, 89AP-453, 89AP-454, 89AP-455, 89AP-456, 89AP-457, 89AP-458

Court of Appeals of Ohio, Tenth Appellate District, Franklin County

1990 Ohio App. LEXIS 82

January 18, 1990, Decided

PRIOR HISTORY: [*1]

APPEALS from the Ohio Board of Tax Appeals.

DISPOSITION:

Judgment affirmed.

COUNSEL:

TEAFORD, RICH, BELSKIS, COFFMAN & WHEELER, MR. JEFFREY A. RICH and MS. REBECCA MILLS GREEN, for appellant.

MR. MICHAEL MILLER, Prosecuting Attorney, and MR. JAMES R. GORRY, Special Counsel for appellees Franklin County Board of Revision and Franklin County Auditor.

ENZ, JONES & LeGRAND, MR. STEPHEN D. ENZ and MR. MARK E. PHILLIPS, for appellee Campus Properties VII, Ltd.

JUDGES:

WHITESIDE, J., BOWMAN and JONES, JJ., concur.

JONES, J., of the Twelfth Appellate District, sitting by assignment in the Tenth Appellate District.

OPINION BY:

WHITESIDE

OPINION:

OPINION

WHITESIDE, J.

Appellant, Columbus Board of Education, appeals from judgments of the Ohio Board of Tax Appeals and sets forth the following assignments of error:

"1. The Board of Tax Appeals erred in finding that the presumption holding that a recent arm's length sale is the best indictor [sic] of the true value of real property had been rebutted.

"2. The Board of Tax Appeals failed to consider at all evidence relevant to the valuation of the subject property.

"3. The Board of Tax Appeals failed to estop Campus Properties from asserting one value for securities, tax and conveyance fee [*2] statement purposes and an entirely different value for real property tax purposes.

"4. The Board of Tax Appeals failed to prevent Campus Properties from maintaining inconsistent positions on the valuation of the subject property."

These cases center around the "true" value of fifteen parcels of land owned by Campus Properties VII, Ltd., one of the appellees in these cases. Campus Properties acquired the land from Albert and Helen DeSantis in May 1986. Mr. DeSantis is the general partner of Campus Properties, a limited partnership. He testified at the hearing before the Board of Tax Appeals that, as general partner, he retained control of the properties and remained responsible for any debt incurred by them after the transfer. Mr. DeSantis further testified that he had acquired the properties over the four months preceding the sale to Campus Properties at a cash cost of $ 832,250. The properties were sold to Campus Properties for $ 1,132,600.

The properties were assessed by appellee Palmer McNeal, Franklin County Auditor, at the "true" value of $ 612,700 for the 1986 tax year. In March 1987, appellant filed a complaint as to that assessment with the Franklin County Board of Revision. [*3] Appellant requested the board to increase the taxable value of the properties to reflect the recent sale price of $ 1,132,600. The board of revision issued its decision on September 1, 1987, increasing the aggregate "true" value of the properties to $ 840,250.

Upon appeal to the Board of Tax Appeals, a hearing was held and evidence was submitted. In its decision, the Board of Tax Appeals determined that, because the transaction between Mr. DeSantis and Campus Properties was not an arm's-length transaction, the board of revision was not required to rely upon the sales price to determine the "true" value of the properties. The Board of Tax Appeals found the board of revision's decision to be reasonable and affirmed it. It is from the decision of the Board of Tax Appeals which plaintiff timely appeals.

R.C. 5717.04 sets forth our standard of review for appeals from the Board of Tax Appeals and provides in pertinent part:

"If upon hearing and consideration of such record and evidence the court decides that the decision of the board appealed from is reasonable and lawful it shall affirm the same, but if the court decides that such decision of the board is unreasonable or unlawful, the [*4] court shall reverse and vacate the decision or modify it and enter final judgment in accordance with such modification."

Therefore, as held in the syllabus of *Bd. of Revision v. Fodor (1968), 15 Ohio. St. 2d 52:*

"* * * [T]his court will not disturb a decision of the Board of Tax Appeals with respect to such valuation unless it affirmatively appears from the record that such decision is unreasonable or unlawful."

Furthermore, the Board of Tax Appeals has wide discretion in considering the weight of the evidence and the credibility of the witnesses. *Cardinal Federal S & L Assn. v. Bd. of Revision (1975), 44 Ohio St. 2d 13,* paragraph three of the syllabus. Accordingly, a reviewing court will not sit as a trier of fact de novo. *Youngstown Sheet & Tube Co. v. Bd. of Revision (1981), 66 Ohio St. 2d 398, 400.*

Turning to appellant's assignments of error, by the first appellate contends that the Board of Tax Appeals erred in determining that the sale between Mr. DeSantis and Campus Properties was not an arm's-lenth transaction. Such a determination is important when determining "true" value of property for tax purposes as required by *R.C. 5713.01. R.C. 5713.03* provides [*5] in pertinent part:

"* * * In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot, or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor shall consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes. * * *" (Emphasis added.)

The auditor is required to utilize the recent sales price as "true" value only if that sale was an arm's-length transaction. Blacks Law Dictionary (5 Ed. Rev. 1982), 100, defines "arm's-length transaction," as follows:

"Said of a transaction negotiated by unrelated parties, each acting in his or her own self-interest; the basis for a fair market value determination. * * * The standard under which unrelated parties, each acting in his or her own best interest, would carry out a particular transaction. * * *"

Likewise, in its decision, the Board of Tax Appeals defined arm's-length transaction at 5, as follows:

"An arm's length sale is one which encompasses bidding and negotiation on the open market between a ready, willing [*6] and able purchaser and a ready, willing and able seller, neither party being coerced or obligated to buy or sell. Generally, such a sale involves non-related or independent parties, payment in cash or by conventional financing, and a reasonable time to effect the sale."

Appellant contends that the definition of "arm's-length transaction" is merely having a willing seller and willing buyer. If neither party is compelled to sell, then by appellant's definition it is an arm's-length transaction. However, appellant fails to take into account the other requisites required for an arm's-length transaction such as unrelated parties and open-market transaction. If having a willing buyer and seller were sufficient, the words "arm's-length transaction" would have no meaning since the statute expressly requires a willing buyer and a willing seller to an "arm's-length transaction."

Both of the above definitions correctly include the conditions of an "open-market" transaction between "unrelated parties." The term "arm's-length transaction" connotes more than just lack of compulsion on the part of the buyer and seller. It means that the willing parties have disinterested interests; i.e., that [*7] they stand separate from each other. The reasons for this principle are apparent. Closely related parties transfer property between themselves for various reasons, and the sales price frequently is not freely negotiated but, rather, is based upon factors between the parties not connected with the value of the property being transferred. While often such transfers are for less than market value, they may also be for more than market value as was found to be the case here.

The Board of Tax Appeals determined that the transaction between Mr. DeSantis and Campus Properties was not an arm's-length transaction. The board reasoned that, as Mr. DeSantis was the seller as well as the buyer (as general partner of the limited partnership), unrelated parties did not exist. Furthermore, it was an open-market sale is it was not listed on the open market (that is it was not offered to other buyers), and there was no process of negotiations. While the absence of these factors may not preclude there being an arm's-length transaction, their absence supports the board's finding.

The decision of the Board of Tax Appeals that this was not an arm's-length transaction is neither unreasonable nor unlawful. [*8] In addition to the factors set forth above, Mr. DeSantis specifically testified, and documents representing the sale specifically indicate that the sale was not the result of an arm's-length transaction. Mr. DeSantis testified that he retained control of the properties and also had total responsibility for all debt upon the properties even after it was sold to Campus Properties. In other words, title may have changed hands, but control and responsibility remained with Mr. DeSantis. The evidence supports the finding that this sale did not represent a transaction negotiated between unrelated parties on the open market. Thus, the sale of these properties by Mr. DeSantis to Campus Properties was not the result of an arm's-length transaction.

Because the board properly found that transfer of the properties by Mr. DeSantis to Campus Properties was not an arm's-length transaction, *R.C. 5713.02* does not require the auditor to consider the sales price as the "true" value. Therefore, the Board of Tax Appeals' decision that the sales price not be used as the "true" value of the property is neither unreasonable nor unlawful. On the other hand, the purchase of the properties by Mr. DeSantis for [*9] a combined total of $ 832,250 just four months prior to the sale of the properties to Campus Properties was apparently an arm's-length transaction and properly could be considered as evidence of a value although not necessarily conclusive because of the apparent assemblage involved. Accordingly, appellant's first assignment of error is not well-taken.

By the second, third, and fourth assignments of error, appellant raises basically one issue concerning the method by which the value was determined by the board of revision and the Board of Tax Appeals. As such, these assignments of error will be addressed together.

As stated previously, this court will not act as a trier of fact and consequently will not reverse a decision of the Board of Tax Appeals unless it appears from the evidence that such decision is unreasonable or unlawful. See *R.C. 5717.04* and *Fodor, supra.*

As held in the first assignment of error, there was not an arm's-length transaction between Mr. DeSantis and Campus Properties, and as a result that recent sales price is not the determinative factor of "true" value. However, even if there had been such an arm's-length transaction, if it is shown that sales price [*10] does not accurately reflect "true" value, then it need not be used. As the court held in the syllabus of Ratner v. Stark Cty. Bd. of Revision (1986), 23 Ohio st. 3d 59 (Ratner I):

"Although the sale price is the 'best evidence' of true value of real property for tax purposes, it is not the only evidence. A review of independent appraisals based upon factors other than the sale price is appropriate where it is shown that the sale price does not reflect true value. (*Columbus Bd. of Edn. v. Fountain Square Assoc., Ltd. [1984], 9 Ohio St. 2d 218, 219,* construed.)"

The Supreme Court has previously ruled that sales price is not the sole evidence which may be considered in determining "true" value. See, also, *Conalco v. Bd. of Revision (1977), 50 Ohio St. 2d 129; Consolidated Aluminum Corp. v. Bd. of Revision (1981), 66 Ohio St. 2d 410; Meyer v. Bd. of Revision (1979), 59 Ohio St. 2d 328.*

Here, with no arm's-length transaction between Mr. DeSantis and Campus Properties, appellant did not present any independent evidence to demonstrate that sales price was the equivalent to the "true" value. On the other hand, Mr. DeSantis testified that he acquired the properties [*11] during the four months preceding the sale to Campus Properties for a total cost of $ 832,500. (Tr. 22.) The "Private Placement Memorandum" (from which Mr. DeSantis read) further indicated that these properties were acquired from "unaffiliated sellers."

The board of revision set the aggregate "true" value for these properties at $ 840,250, and the Board of Tax Appeals affirmed, stating that: "* * * [u]nless such evidence or arguments and evidence submitted by appellant causes a different valuation to be made, the conclusions of the board of revision should not be altered."

Furthermore, absent evidence to the contrary, it will be presumed that the auditor performed his duties correctly in assessing the property. *Ross v. Franko (1941), 68 Ohio App. 485,* affirmed in (1942), *139 Ohio St. 395.* In other words, when the most recent sales price is found not to be indicative of market value, appellant must present evidence to rebut the validity of the auditor's assessment. Here, the Board of Tax Appeals assessment is supported by the total sales price of the property as purchased by Mr. DeSantis. Furthermore, even if the board could have found the value to be the amount of the "sales price" [*12] of the transfer from Mr. DeSantis to Campus Properties, it was not required to do so. The decision made is fully supported by the evidence and is neither unreasonable nor unlawful.

At both the Board of Tax Appeals level and here, appellant has submitted certain tax returns of Campus Properties in an attempt to show a higher "true" value. However, as the Board of Tax Appeals correctly reasoned, all of the evidence submitted by appellant centered around the sale of the properties to Campus Properties. The Board of Tax Appeals also correctly determined that, at least in this case, the tax basis for the properties (i.e., cost) is different than the properties' "true" value. However, this does not necessarily mean, as appellant suggests, that appellees are taking inconsistent positions. It simply means that the properties were not sold at their "true" value to Campus Properties. Whether Campus Properties has "inflated" the price for income tax purposes or whether it merely paid a premium to Mr. DeSantis, or whether there are other reasons for the higher price is not determinative. Although such income tax return evaluation is admissible evidence, it is not conclusive.

As we have already [*13] determined, the sale was not an an arm's-length transaction, and, consequently, the sales price is not conclusive evidence of the "true" value of the properties. Furthermore, appellant has not put forth any independent evidence of "true" value other than evidence based upon sales price. There was no evidence to indicate that independent appraisals had been made to show a different "true" value than found by the board. The Board of Tax Appeals' decision to accept the board of revision's value determination is neither unreasonable nor unlawful and, therefore, must be affirmed. Accordingly, appellant's second, third, and fourth assignments of error are not well-taken.

For the foregoing reasons, all of appellant's assignments of error are overruled, and the decision of the Ohio Board of Tax Appeals is affirmed.

IN THE SUPREME COURT OF OHIO

Appeal from the Ohio Board of Tax Appeals

FILED
JUL 31 2006
BOARD OF TAX APPEALS
COLUMBUS, OHIO

SHILOH AUTOMOTIVE, INC.	:	
	:	
Appellant/Cross-Appellee,	:	
	:	Case No. 2006-1384
v.	:	
	:	Appeal from BTA Case
WILLIAM W. WILKINS, TAX COMMISSIONER OF OHIO,	:	Nos. 2004-M-380; 1283
	:	
	:	
Appellee/Cross-Appellant.	:	

NOTICE OF CROSS APPEAL

CHARLES M. STEINES (0011242)
Jones Day
(Counsel of Record)
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114-1190
Telephone: (216) 586-7211
Facsimile: (216) 579-0212
cmsteines@jonesday.com

ATTORNEY FOR APPELLANT/CROSS-APPELLEE

JIM PETRO (0022096)
Attorney General of Ohio
BARTON A. HUBBARD (0023141)
Assistant Attorney General
(Counsel of Record)
30 East Broad Street, 16th Floor
Columbus, Ohio 43215-3428
Telephone: (614) 466-5967
Facsimile: (614) 466-8226
bhubbard@ag.state.oh.us

ATTORNEYS FOR APPELLEE/CROSS-APPELLANT

FILED
JUL 31 2006
MARCIA J MENGEL, CLERK
SUPREME COURT OF OHIO

IN THE SUPREME COURT OF OHIO

Appeal from the Ohio Board of Tax Appeals

SHILOH AUTOMOTIVE, INC.	:	
	:	
Appellant/Cross-Appellee,	:	
	:	Case No. 2006-1384
v.	:	
	:	Appeal from BTA Case
WILLIAM W. WILKINS, TAX COMMISSIONER OF OHIO,	:	Nos. 2004-M-380; 1283
	:	
	:	
Appellee/Cross-Appellant.	:	

NOTICE OF CROSS-APPEAL

William W. Wilkins, Tax Commissioner of Ohio, hereby gives notice of his cross-appeal as of right, pursuant to R.C. 5717.04, to the Supreme Court of Ohio from the Decision and Order of the Ohio Board of Tax Appeals ("BTA") dated July 7, 2006, in BTA Case Nos. 2004-M-380 and 2004-M-1283, entered on the journal of the proceedings on July 7, 2006. This cross-appeal is filed in accordance with Section 5717.04, Ohio Revised Code, and Section 3(A)(1), S. Ct. Prac. R. II. A true copy of the Decision and Order of the BTA from which appeal is sought is attached hereto and incorporated herein by reference. This notice of cross-appeal is being filed within thirty days of the entry of the attached BTA decision and order as required by statute and rule.

We file this notice of cross-appeal purely as a protective matter for we strongly agree with the holdings of the BTA that that there was no arm's length sale and that the taxpayer failed to provide competent and probative evidence that the values assessed by the Tax Commissioner are unlawful.

In embracing these BTA's holdings, however, the Commissioner, through the attached Motion for Clarification and Memorandum in Support (which is hereby incorporated by reference) sought some slight further guidance from the BTA. We asked the BTA for a clarification or amplification of that portion of the decision and order which provides direction to the Commissioner upon remand.

A week after we had filed our Motion for Clarification with the BTA on July 14, 2006 (only seven days after the BTA's issuance of its Decision and Order), however, the taxpayer filed an appeal to this Court from the BTA's decision and order on July 21, 2006, prior to the BTA's rendering of a ruling on our Motion for Clarification. Thus, because of the taxpayer's appeal to this Court, the BTA was left without jurisdiction to rule on our Motion for Clarification. Accordingly, we seek this cross-appeal to protect against an unreasonable interpretation of the Board's direction upon remand to the Commissioner.

The errors in the decision and order of the BTA of which the Tax Commissioner complains are as follows:

(1) The BTA erred, if at all, only in failing to state in more explicit terms its instructions to the Commissioner upon remand. Specifically, on the last page of its Decision and Order, the BTA directed the Commissioner as follows: "[t]herefore, the matter must be remanded to the Tax Commissioner so that he may properly apply depreciation rates in accordance with MTD's [MTD Products, Inc.'s] acquisition history (bracketed language added)." Decision and Order of the BTA at 13.

The logical import of this directive is that, upon remand, the Commissioner shall undertake the following steps under application of his prescribed "true value computation" methodology. First, the Commissioner shall ascertain the historical acquisition costs that MTD incurred for the various items of the appellant's taxable Schedule 2 and 4 property. Next, for each of these two Schedules, in accordance with that prescribed methodology, the Commissioner shall aggregate such costs by acquisition year, using the acquisition year that such property costs were incurred by MTD. Finally, the Commissioner shall apply the true value allowances for depreciation and obsolescence prescribed for the property under that computation (i.e., for the Schedule 4 property, Class Life III percentages; and for the Schedule 2 property, Class Life V percentages). In all other respects the assessments shall stand as previously issued.

While we believe that the intention and effect of the BTA's directive upon remand is precisely as we have set forth in the immediately preceding paragraph, we assert, as a protective matter, pursuant to this cross-appeal, that the BTA's decision and order should have explicitly set forth, as part of its directive to the Commissioner upon remand, the foregoing language in the immediately preceding paragraph, or substantially similar wording to the same effect. With this clarification/amplification of the BTA's directive to the Commissioner upon remand, the Commissioner is in agreement with the holdings of the BTA's decision and order and the BTA's directive upon remand to the Commissioner.

Respectfully submitted,

JIM PETRO (0022096)
Attorney General

BARTON A. HUBBARD (0023141)
Assistant Attorney General
30 East Broad Street 16th Floor
Columbus, Ohio 43215
Telephone: (614) 466-5967
Facsimile: (614) 466-8226

FILED/RECEIVED
BOARD OF TAX APPEALS
2006 JUL 14 PM 3:39

BEFORE THE BOARD OF TAX APPEALS
STATE OF OHIO

SHILOH AUTOMOTIVE, INC., Appellant,	:	
v.	:	Case Nos. 2004-M-380, 1283
WILLIAM W. WILKINS, TAX COMMISSIONER OF OHIO, Appellee.	:	

MOTION FOR CLARIFICATION

CHARLES M. STEINES
Jones Day
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
(216) 586-7211

ATTORNEY FOR APPELLANT

JIM PETRO
Attorney General
BARTON A. HUBBARD
Assistant Attorney General
30 East Broad Street, 16th Floor
Columbus, Ohio 43215-3428
(614) 466-5967

ATTORNEYS FOR APPELLEE

HAND DELIVERED

BEFORE THE BOARD OF TAX APPEALS
STATE OF OHIO

SHILOH AUTOMOTIVE, INC.,	:	
Appellant,	:	
v.	:	Case Nos. 2004-M-380, 1283
WILLIAM W. WILKINS, TAX COMMISSIONER OF OHIO,	:	
Appellee.	:	

MOTION FOR CLARIFICATION

The appellee, William W. Wilkins, Tax Commissioner of Ohio, strongly agrees with the BTA's decision and order in the present case holding that there was no arm's length sale and that the appellant failed to provide competent and probative evidence that the values assessed by the Tax Commissioner are unlawful. In embracing these BTA's holdings, however, the Commissioner does seek some slight further guidance from the BTA. We ask the BTA for a clarification or amplification of that portion of the decision and order which provides direction to the Commissioner upon remand.

Specifically, our request relates to the BTA's direction to the Commissioner upon remand, as set forth on the last page of the decision and order, as follows: "Therefore, the matter must be remanded to the Tax Commissioner so that he may properly apply depreciation rates in accordance with MTD's [MTD Products, Inc.'s] acquisition history (bracketed language added)." Decision and Order of the BTA at 13.

The logical import of this directive appears to be that, upon remand, the Commissioner shall undertake the following steps under application of his prescribed "true value computation" methodology. First, the Commissioner shall ascertain the historical acquisition costs that MTD incurred for the various items of the appellant's taxable Schedule 2 and 4 property. Next, for each of these two Schedules, in accordance with that prescribed methodology, the Commissioner shall aggregate such costs by acquisition year, using the acquisition year that such property costs were incurred by MTD. Finally, the Commissioner shall apply the true value allowances for depreciation and obsolescence prescribed for the property under that computation (i.e., for the Schedule 4 property, Class Life III percentages; and for the Schedule 2 property, Class Life V percentages). In all other respects the assessments shall stand as previously issued.

We ask the BTA to confirm this understanding by issuing an order clarifying or amplifying its directive upon remand to expressly so provide.. The reasons in support are more fully stated in the attached memorandum.

Respectfully submitted,

JIM PETRO
Attorney General

Bart A. Hubbard

BARTON A. HUBBARD
Assistant Attorney General
30 East Broad Street 16th Floor
Columbus, Ohio 43215
Telephone: (614) 466-5967
Facsimile: (614) 466-8226

MEMORANDUM IN SUPPORT

We request the BTA to clarify or amplify its directive to the Commissioner upon remand to more specifically detail the methodology for the Commissioner to apply in determining the true value of the appellant's taxable Schedule 2 and 4 property. To assist the BTA, in our motion we have set out model language that the BTA could adopt in whole or in substantial part for that purpose. We believe that the language we suggest reflects the BTA's directive and simply constitutes an amplification of that directive which will serve judicial and administrative economies.

True to the intent and effect of the direction of the BTA upon remand, the specific methodology we outline in our motion mandates the Commissioner's use of MTD's acquisition costs, and takes into account the various ages of that property. It amplifies the BTA's directive by then expressly providing that the Tax Commissioner shall apply his prescribed rates of depreciation and obsolescence for the appellant taxpayer's industry. Namely, regarding the appellant's Schedule 2 property (production machinery and equipment) Class Life V percentages shall be used, and regarding the appellant's Schedule 4 property (furniture, fixtures and other non-production fixed assets) Class Life III percentages shall be used.

Our proposed clarification thus would confirm the clear import of the BTA's decision and order, and, in this sense, is not strictly necessary. However, we ask that the BTA grant our motion in order to avoid or minimize the potential argumentation upon remand or appeal by the appellant as to the meaning of that directive.

CONCLUSION

For all these reasons, the Commissioner's motion for clarification should be granted.

Respectfully submitted,

JIM PETRO
Attorney General

BARTON A. HUBBARD
Assistant Attorney General
30 East Broad Street 16th Floor
Columbus, Ohio 43215
Telephone: (614) 466-5967
Facsimile: (614) 466-8226

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Motion For Clarification and Memorandum in Support s was sent by regular U.S. mail to Charles M. Steines, Jones Day, North Point, 901 Lakeside Avenue, Cleveland, Ohio 44114, counsel for appellant, on this 11th day of July, 2006.

BARTON A. HUBBARD
Assistant Attorney General

In The Supreme Court of Ohio

Case Information Statement

Case Name:	Case No.:
Shiloh Automotive, Inc.	2006-1384

I. Has this case previously been decided or remanded by this Court? Yes ☐ No ☒
If so, please provide the Case Name: _____
Case No.: _____
Any Citation: _____

II. Will the determination of this case involve the interpretation or application of any particular case decided by the Supreme Court of Ohio or the Supreme Court of the United States? Yes ☐ No ☒
If so, please provide the Case Name and Citation:_____
Will the determination of this case involve the interpretation or application of any particular constitutional provision, statute, or rule of court? Yes ☐ No ☐
If so, please provide the appropriate citation to the constitutional provision, statute, or court rule, as follows:
U.S. Constitution: Article _____, Section _____ **Ohio Revised Code**: R.C. _____
Ohio Constitution: Article _____, Section _____ **Court Rule**: _____
United States Code: Title _____, Section _____ **Ohio Admin. Code**: O.A.C _____

III. Indicate up to three primary areas or topics of law involved in this proceeding (e.g., jury instructions, UM/UIM, search and seizure, etc.):
1) _____
2) _____
3) _____

IV. Are you aware of any case now pending or about to be brought before this Court that involves an issue substantially the same as, similar to, or related to an issue in this case? Yes ☐ No ☒
If so, please identify the Case Name: _____
Case No.: _____
Court where Currently Pending: _____
Issue: _____

Contact information for appellant or counsel:

Baaton A. Hubbard — Name
0023141 — Atty.Reg. #
(614) 466-5967; (614) 466-8226 — Telephone # Fax #

Address

30 East Broad Street. 16th Floor
Address

Columbus OH 43215-3428
City State Zip Code

Signature of appellant or counsel
Counsel for: Tax Commissioner

OHIO BOARD OF TAX APPEALS

Shiloh Automotive, Inc.,	)	CASE NOS. 2004-M-380
	)	2004-M-1283
Appellant,	)	
	)	(PERSONAL PROPERTY TAX)
vs.	)	
	)	DECISION AND ORDER
William W. Wilkins,	)	
Tax Commissioner of Ohio,	)	
	)	
Appellee.	)	

APPEARANCES:

For the Appellant - Jones Day
Charles Steines
901 Lakeside Avenue
Cleveland, Ohio 44114

For the Appellee - Jim Petro
Attorney General of Ohio
Robert C. Maier
Assistant Attorney General
State Office Tower
30 East Broad Street, 16th Floor
Columbus, Ohio 43215

Entered JUL - 7 2006

Ms. Margulies, Mr. Eberhart, and Mr. Dunlap concur.

These causes and matters come to be considered by the Board of Tax Appeals upon two notices of appeal filed on April 27, 2004 and November 22, 2004. Appellant challenges a final determination of the Tax Commissioner, appellee, dated March 5, 2004 and final assessment certificates dated October 29, 2004, respectively. For tax year 2001, the appellant, Shiloh Automotive, Inc. ("SAI"), applied for final assessment pursuant to R.C. 5711.26. The Tax Commissioner's final determination concluded that the value of certain items of personalty reported by SAI on its 2001 personal property tax report were not correct. Instead, the Tax Commissioner concluded that the property was more accurately valued in accordance with booked costs reported by a previous owner. SAI also challenges value assessed to the same property through the Tax Commissioner's Final Assessment Certificates of Valuation for tax year 2002.

While the procedure by which the matters have been brought before the board are slightly different, the specifications of error are essentially the same. SAI claims that the Tax Commissioner has overvalued certain assets obtained by SAI through the purchase of a division of MTD Products, Inc. ("MTD").

The matters have been consolidated and are considered upon the notices of appeal, the statutory transcripts certified by the Tax Commissioner, the evidence adduced at the evidentiary hearing held before this board, and the briefs filed by the parties. At the hearing, the board accepted the testimony of certain witnesses, which is discussed, infra. Additionally, certain exhibits were introduced and will be considered as a part of the record.

The basic facts surrounding these appeals are not disputed. SAI is a subsidiary of Shiloh Industries, Inc., ("Shiloh"), a publicly traded corporation and the parent of a number of Ohio-based subsidiaries. The automotive subsidiary was incorporated in 1999 and began business later that year when the parent company purchased the automotive division of MTD. The assets of MTD's automotive division were transferred to and became the business of the newly formed automotive corporation.

This purchase is at the heart of the controversy before this board. SAI argues that the purchase of MTD's automotive division was an arm's-length transaction and, as such, the value of the machinery and equipment purchased was established by the sale. The Tax Commissioner argues that the purchase did not meet the indices of an arm's-length transaction and, therefore, SAI's reliance on the sale price as the indication of value of the property purchased is misplaced.

As the determination whether the purchase constituted an arm's-length transaction is essentially a factual one, it is critical to review the events leading up to the sale. There is no dispute that Shiloh and MTD had a business relationship prior to the sale of the automotive division. According to Mr. Theodore Zampetis, Shiloh's president and chief executive officer, prior to the sale 51 percent of Shiloh stock was owned and controlled, directly or indirectly, by MTD, its shareholders and its pension fund. H.R. at 19. After the sale, MTD's percentage of ownership increased to 56 percent. H.R. at 21. Of the nine Shiloh directors, five were either owners of, or affiliated with, MTD. While testimony at hearing revealed that those Shiloh directors affiliated with MTD did not take part in discussions or ultimately vote to purchase the automotive division, it was clear that those directors affiliated with MTD were aware of Shiloh's long-range plans. According to Mr. Ronald Houser, MTD's executive vice president, chief financial officer and board member during the transaction, at the time the MTD board considered selling its automotive division, it compared Shiloh's position as a supplier to major auto manufacturers to other participants in the automotive industry, ultimately concluding that MTD's automotive division offered more to Shiloh with fewer duplicative competencies than the division offered Shiloh's competitors. Mr. Houser testified that MTD's board believed Shiloh would be willing to pay a higher price than other competitors because of the complementary nature of the two businesses. That belief led MTD to direct its offering memorandum prepared by PricewaterhouseCooper Securities LLC only to Shiloh. The offering memorandum was introduced at hearing as Exhibit 14. The memorandum itself acknowledges that the MTD board of directors was aware of Shiloh's goals. Appellant's Ex. 14 at 2, 47-49.

Testimony at hearing revealed that informal discussions regarding the sale of the automotive division began even before a formal presentation to Shiloh's board of directors occurred. H.R. at 26. Once a formal presentation was made, negotiations began in earnest. Negotiations continued from mid-1998 through March 1999, when a second formal presentation was made to Shiloh's board of directors. MTD's initial offering price was "in the low-50s range." H.R. at 162. However, the Shiloh board did not believe the price was supported by the information uncovered during the due diligence phase of the negotiations. Based upon that due diligence, the Shiloh board members without a relationship to MTD were willing to pay approximately $25,000,000 for the automotive division. H.R. at 163. After further negotiations, the non-related directors agreed to purchase MTD's division for $40,000,000, subject to certain price adjustments which would occur after the transfer of the division. Appellant's Ex. 1 at 15. Shiloh's board of directors also obtained a "fairness opinion" from Robert W. Baird & Co. ("Baird"). That opinion indicated that the payment of $20,000,000 in cash, the assumption of certain liabilities, and the transfer of $20,000,000 of Shiloh stock were all a part of the purchase transaction. The Baird opinion letter also acknowledged that either the purchaser or the seller could be obligated to pay or cause to be paid an additional amount based upon the amount of money earned by the automotive division for the first three years after transfer. Appellant's Ex. 1, appendix B; Appellant's Ex. 20.

The import of the Baird opinion letter, according to Mr. Zampetis, was to assure the board of directors that the actions taken were in the best interests of the shareholders. H.R. at 88. The Baird fairness opinion provided assurance to the Shiloh board of directors that the payment for the transaction was fair, from a financial point of view, to Shiloh and its shareholders. Mr. Zampetis testified that the fairness opinion was based solely on financial information dealing with revenue and did not consider the value of the assets acquired. Mr. Zampetis testified:

> "The function of Baird is to look objectively at all the financial performance of a particular company, to look at the stream of revenues, the stream of cash flow generated by it and to advise the Board that based on this particular operating business – realities – this is what this business should be worth; don't pay more, don't pay less." H.R., at 90.

The transaction closed in November 1999. At that time allocations were made to SAI's books, allocating the purchase price of $48,340,479.21 to cash, accounts receivables, inventory, prepaid items (collectively called "current assets") and to land, buildings, machinery and equipment, and office equipment (collectively called "fixed assets"). Adjustments as negotiated in the sales agreement took place on

October 31, 2000, October 31, 2001, and October 31, 2002. After all adjustments, the total purchase price increased to $49,483,785.61. Appellant's Ex. 4.

According to Albert Vondra, a partner with PricewaterhouseCoopers, the accounting firm that assisted SAI in preparing its original books and records, SAI properly accounted for the purchase under Accounting Principles Board Opinion ("APB") 16, which governs a business combination when there has been a transfer of assets. According to Mr. Vondra, the cost paid would be allocated to the net assets. First, the fair market value of "identifiable assets" would be allocated. H.R. at 245. To the extent that there was residual value, that amount would be recorded as goodwill.

Mr. Vondra testified that the appropriate allocation method would be to "go down the balance sheet" of identifiable assets and allocate value based upon the fair market value. H.R. at 246. While cash is not mentioned in ABP 16, Mr. Vondra testified that cash and cash-like assets would be recorded on a dollar-per-dollar basis. Accounts receivables would be based upon the present value less any allowance for doubtful accounts or collection costs. H.R. at 247. Inventories are classified into three types: raw materials, work in progress, and finished goods. According to Mr. Vondra, raw materials are valued on replacement cost and finished goods at selling cost. Finally, prepaid items, such as prepaid insurance or pension, would be valued in accordance with an appraisal. H.R. at 248.

Mr. Vondra testified that his review of the books and records prepared at the time of the transaction indicated that SAI complied with the requirements of

APB 16. However, the purchase price was less than MTD's historically booked costs for all of the assets transferred. Mr. Vondra testified that under APB 16, there is a priority to allocating the purchase price, first to current assets and then, the residual to non-current assets.

On cross-examination, Mr. Vondra testified that if the entities being combined were under common control, or if the seller of the assets owned a majority of the shares of the purchaser, another standard for accounting for the assets may control. H.R. at 259. Mr. Vondra also testified that no appraisal of land, building, machinery, and equipment was performed; the allocation of the purchase price was done on a pro rata formula based upon MTD's historical book values. H.R. at 261.

It is SAI's position that Shiloh's purchase of MTD's automotive division met the indices of an arm's-length transaction. SAI claims that only non-interested directors participated in the negotiations and the transaction took place in the "open market." Additionally, SAI argues, the fairness of the transaction was sanctioned by independent professionals. By virtue of the nature of the transaction, SAI argues, the amount paid should be accepted as the value of the items sold.

The syllabus of *Grabler Mfg. Co. v. Kosydar* (1975), 43 Ohio St.2d 75, provides: "For personal property tax purposes, the best method of determining value is the actual sale of such property on the open market and at arms length, between one who is willing to sell, but not compelled to do so, and one who is willing to buy, but not compelled to do so."

In *Conalco, Inc. v. Monroe County Board of Revision* (1977), 50 Ohio St.2d 129, the court held in a real property valuation matter that the best evidence of "true value in money" is the proper allocation of the lump sum purchase price garnered in an arm's-length transaction. However, in *Heimerl v. Lindley* (1980), 63 Ohio St.2d 309, the court considered the effect of an allocation to personal property after a business transferred through an arm's-length sale. There, the court found that an allocation after an arm's-length sale that resulted in a distortion of value was not a valid indication of value for personal property tax purposes.

In *Tele-Media Co. v. Lindley* (1982), 70 Ohio St.2d 284, the court again faced a situation in which the allocated purchase price resulted in a higher value for personal property than the value for the same property as carried on the seller's books. The Tax Commissioner assessed in accordance with the higher value and the Supreme Court agreed. The court first cited R.C. 5711.18. That statute provides in pertinent part:

> "In the case of personal property used in business, the book value thereof less book depreciation at such time shall be listed, and such depreciated book value shall be taken as the true value of such property, unless the assessor finds that such depreciated book value is greater or less than the then true value of such property in money."

The court held that R.C. 5711.18 is mandatory and it is the intent of the General Assembly that only the Tax Commissioner, as assessor, may place a value other than book value on personalty. The court noted that the arm's-length nature of the transfer was not in dispute; thus a proper allocation of the sales price was the best indication of value of the personalty.

In *Buckeye Internatl., Inc. v. Limbach* (1992), 64 Ohio St.3d 264, the court again considered the value of personal property after an arm's-length sale. Again, the book value of the property after the sale was greater than the value for the same property as carried on the seller's books. The court held that "if the sale is arm's length, actual and recent, and the purchase price is properly allocated, the BTA may adopt the allocation as the true value." Id. at 266. In *Buckeye Internatl.*, the allocation was prepared according to APB 16, the same method employed in the present matter.

Thus, case law instructs that if a business is sold in an arm's-length sale, then personal property included in the sale may be valued in accordance with a proper allocation of the sale price. In the present matter, however, the Tax Commissioner denies that the transaction between Shiloh Industries, Inc. and MTD met the definition of an arm's-length sale.

While the concept of an arm's-length sale has been relied upon in personal property valuation appeals, the elements of an arm's-length sale have been crystallized through real property valuation law. "An arm's length sale is characterized by these elements: it is voluntary, *i.e.* without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision* (1989), 47 Ohio St.3d 23, 25. As is relevant to the issue in this matter, the Franklin County Court of Appeals held in *Columbus Bd.*

of Edn. v. Franklin Cty. Bd. of Revision (Jan. 18, 1990), Franklin App. No. 89AP-448, unreported:

> "Both of the above definitions correctly include the conditions of an 'open-market' transaction between 'unrelated parties.' The term 'arm's-length transaction' connotes more than just lack of compulsion on the part of the buyer and seller. It means that the willing parties have disinterested interests; i.e., that they stand separate from each other. The reasons for this principle are apparent. *Closely related parties transfer property between themselves for various reasons, and the sales price frequently is not freely negotiated but, rather, is based upon factors between the parties not connected with the value of the property being transferred.* While often such transfers are for less than market value, they may also be for more than market value ***." (Emphasis added.)

We now consider the relationship between Shiloh Industries, Inc. and MTD. MTD is the majority shareholder of Shiloh, owning or controlling 51 percent of the shares prior to the sale and 56 percent after. Five persons related to MTD sit on Shiloh's nine-person board of directors. We acknowledge that the directors related to MTD did not participate in Shiloh's decision to purchase the MTD Automotive Division. However, the record does not contain the same evidence with respect to MTD's decision to sell. In fact, because of the close relationship to Shiloh, MTD's board of directors was aware of Shiloh's long-range plans, was able to have informal discussions with the corporation even before the formal proposal was completed, and was able to tailor its proposal to attract Shiloh's interest. Because of this symbiotic relationship between the purchaser and the seller, the board must agree with the Tax

Commissioner that the sale itself does not meet the definition of a qualifying sale for valuation purposes.

This board acknowledges that APB 16 has been accepted as a proper method to allocate value to personal property when the value of the personalty on the books of the purchaser was greater than the value of the same personalty on the books of the seller. *Buckeye Internatl., Inc.*, supra. However, in the cited cases, the arm's-length nature of the transaction was accepted. In the present matter, we cannot find that the sale met the indices of an arm's-length sale.

This board does not suggest that the price paid by Shiloh for the automotive division was more or less than the automotive division would have garnered on the "open market." Indeed, related parties can and do effect transfers at fair market prices. However, a sale must be arm's length if it is used to establish value. *Grabler,* supra; *Tele-Media Co.,* supra. In the present case, SAI attempts to establish value through the use of a sale that is between related parties.

It thus becomes incumbent upon this board to review the record in order to determine whether other evidence of value exists outside the purchase price that is both competent and probative of value. In essence the burden upon SAI is the same as that upon any taxpayer claiming that its book value does not represent the true value of its property. *Youngstown Sheet & Tube Co. v. Kosydar* (1975), 44 Ohio St.2d 96. To support a claim that the Tax Commissioner, as assessor, has overvalued its property, proponents submit appraisals that are often performed concurrent with or immediately after a sale in order to properly value personal property for accounting purposes. However, Mr. Vondra testified that the values used for accounting purposes in the present transaction were derived from a pro rata allocation of the purchase price remaining after allocation to current assets.

SAI argues that the fairness opinion by Baird supports the purchase price paid by Shiloh for the assets in issue. However, the opinion indicates that it was based upon financial considerations independent of the fair market value of the personalty. Thus this board does not find that the Baird fairness opinion speaks to the value of the personalty purchased.

Without other evidence of value this board is unable to determine, as a matter of law, that the appellant provided competent and probative evidence that the values assessed by the Tax Commissioner are unlawful.

As a separate proposition of law, Shiloh argues that it should have been permitted to utilize a Tax Commissioner Inter-Office Communication commonly known as the "Dudgeon Report." The board has previously described the Dudgeon Report as a logical method by which to adjust the class-life system for used equipment. *J & L Specialty Steel, Inc. v. Lawrence* (Aug. 16, 2002), BTA Nos. 1999-M-665, unreported. While the report is used to adjust the class-life system in a lump-sum asset purchase, the report is also intended to be utilized in other transactions when a revaluation is presented on the books of a new owner.

In the present case, it appears that the Tax Commissioner has valued all property owned by SAI and obtained from MTD as if it were acquired in 1999. Thus, while the property is used property, the Tax Commissioner has assessed the property as if it were new property in 1999. S.T., BTA No. 2004-M-380, at 318-321 and S.T., BTA No. 2004-M-1283, at 37-40. We agree with the Tax Commissioner that MTD's historical costs are a more probative basis for the value of the property. However, the effect of such a determination is the recognition that the MTD property was used property at the time of acquisition. Therefore, the matter must be remanded to the Tax Commissioner so that he may properly apply depreciation rates in accordance with MTD's acquisition history.

While not identified as a proposition of law, SAI does raise as an assignment of error the violation of the equal protection and due process clauses of the 14th Amendment to the U.S. Constitution and Sec. 2, Article 1 of the Ohio Constitution. This board is without jurisdiction to consider such claims. *S.S. Kresge Co. v. Bowers* (1960), 170 Ohio St. 405; *Herrick v. Kosydar* (1975), 44 Ohio St.2d 128; *Roosevelt Properties Co. v. Kinney* (1984), 12 Ohio St.3d 7; *Cleveland Gear Co. v. Limbach* (1988), 35 Ohio St.3d 229. We are a recipient of evidence with regard to constitutional challenges. *MCI Telecommunications Corp. v. Limbach* (1994), 68 Ohio St.3d 195.

Considering the record in these matters, the statutes, and case law, it is the order of the Board of Tax Appeals that Tax Commissioner's final determination and final assessment certificates are modified in accordance with the determination herein.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.

Julia M. Snow

Julia M. Snow, Board Secretary

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Notice of Cross-Appeal was sent by certified U.S. mail to Charles M. Steines, Jones Day, North Point, 907 Lakeside Avenue, Cleveland, Ohio 44114-1190, counsel for Appellant/Cross-Appellee on this 31st day of July, 2006.

BARTON A. HUBBARD
Assistant Attorney General

Statement of Financial Accounting Standards No. 94

FAS94 Status Page
FAS94 Summary

Consolidation of All Majority-Owned Subsidiaries

(an amendment of ARB No. 51, with related amendments of APB Opinion No. 18 and ARB No. 43, Chapter 12)

October 1987

Financial Accounting Standards Board
of the Financial Accounting Foundation
401 MERRITT 7, P.O. BOX 5116, NORWALK, CONNECTICUT 06856-5116

Statement of Financial Accounting Standards No. 94

Consolidation of All Majority-owned Subsidiaries

an amendment of ARB No. 51, with related amendments of APB Opinion No. 18 and ARB No. 43, Chapter 12

October 1987

CONTENTS

FAS 94: Consolidation of All Majority-Owned Subsidiaries

an amendment of ARB No. 51, with related amendments of APB Opinion No. 18 and ARB No. 43, Chapter 12

FAS 94 Summary

This Statement amends ARB No. 51, *Consolidated Financial Statements*, to require consolidation of all majority-owned subsidiaries unless control is temporary or does not rest with the majority owner. This Statement requires consolidation of a majority-owned subsidiary even if it has "nonhomogeneous" operations, a large minority interest, or a foreign location.

This Statement also makes certain related amendments to APB Opinion No. 18, *The Equity Method of Accounting for Investments in Common Stock*, and to ARB No. 43, Chapter 12, "Foreign Operations and Foreign Exchange." Among other changes, those amendments preclude use of parent-company financial statements prepared for issuance to stockholders as the financial statements of the primary reporting entity.

This Statement requires that summarized information about the assets, liabilities, and results of operations (or separate statements) of previously unconsolidated majority-owned subsidiaries continue to be provided after those subsidiaries are consolidated.

This Statement is effective for financial statements for fiscal years ending after December 15, 1988. Restatement of comparative financial statements for earlier years is required.

INTRODUCTION

1. Accounting Research Bulletin No. 51, *Consolidated Financial Statements*, adopted by the Committee on Accounting Procedure of the AICPA in 1959, concisely describes the purpose of consolidated financial statements in its first paragraph.

> The purpose of consolidated statements is to present, primarily for the benefit of the shareholders and creditors of the parent company, the results of operations and the financial position of a parent company and its subsidiaries essentially as if the group were a single company with one or more branches or divisions. There

> is a presumption that consolidated statements are more meaningful than separate statements and that they are usually necessary for a fair presentation when one of the companies in the group directly or indirectly has a controlling financial interest in the other companies.

2. Similarly, the first sentence of paragraph 2 describes its general rule of consolidation policy.

> The usual condition for a controlling financial interest is ownership of a majority voting interest, and, therefore, as a general rule ownership by one company, directly or indirectly, of over fifty per cent of the outstanding voting shares of another company is a condition pointing toward consolidation.

3. While ARB 51's general rule is to consolidate all majority-owned subsidiaries, its paragraphs 2 and 3 describe "exceptions to that general rule."

4. Paragraph 2 precludes consolidation of a majority-owned subsidiary under two conditions—"where control is likely to be temporary, or where it does not rest with the majority owners (as, for instance, where the subsidiary is in legal reorganization or in bankruptcy)." It also permits exclusion from consolidation of a subsidiary having a relatively large minority interest and of a foreign subsidiary.[1]

5. The exception in paragraph 3 of ARB 51 has become the basis for excluding from consolidation the greatest number of majority-owned subsidiaries. It has often been called exclusion of "nonhomogeneous" operations because of its wording:

> . . . even though a group of companies is heterogeneous in character, it may be better to make a full consolidation than to present a large number of separate statements. On the other hand, separate statements or combined statements would be preferable for a subsidiary or group of subsidiaries if the presentation of financial information concerning the particular activities of such subsidiaries would be more informative to shareholders and creditors of the parent company than would the inclusion of such subsidiaries in the consolidation. For example, separate statements may be required for a subsidiary which is a bank or an insurance company and may be preferable for a finance company where the parent and the other subsidiaries are engaged in manufacturing operations.

6. Business enterprises have increasingly used "nonhomogeneity" as a basis for excluding from consolidation majority-owned (even wholly owned) subsidiaries considered different in character from the parent and its other affiliates. Subsidiaries most commonly not consolidated on that basis have been finance, insurance, real estate, and leasing subsidiaries of manufacturing and merchandising enterprises.

7. However, certain diversified enterprises consolidate all of their majority-owned subsidiaries despite differences in their operations, and significant questions about the "nonhomogeneity" exception have arisen. Present practice has been criticized not only because apparently similar enterprises use different consolidation policies but also because excluding some subsidiaries from consolidation results in the omission of significant amounts of assets, liabilities, revenues, and expenses from the consolidated statements of many enterprises. Omissions of large amounts of liabilities, especially those of finance and similar subsidiaries, have led to the criticism that not consolidating those subsidiaries is an important factor in what is often called "off-balance-sheet financing."

8. The "nonhomogeneity" exception has only relatively recently become the most prominent reason for excluding majority-owned subsidiaries from consolidation. When ARB 51 was issued, other restrictive consolidation policies—to consolidate only wholly owned subsidiaries, only subsidiaries owned to a specified degree (such as 66 2/3 percent, 75 percent, or 80 percent), only domestic subsidiaries, only North American subsidiaries, and the like—were more common. Those other restrictive policies have become less widely used while exclusion for "nonhomogeneity" has become more widespread.

Consolidation

9. This Statement eliminates three exceptions to the general rule that majority-owned subsidiaries should be consolidated: the exceptions for "nonhomogeneous" operations, for relatively large minority interests (which apparently is seldom used in practice), and for other restrictive policies. It amends ARB No. 43, Chapter 12, "Foreign Operations and Foreign Exchange," to narrow the exception for a majority-owned foreign subsidiary from one that permits exclusion from consolidation of any or all foreign subsidiaries to one that effectively eliminates distinctions between foreign and domestic subsidiaries.

10. The other exceptions noted in paragraph 4—control that is likely to be temporary and control that does not rest with the majority owner because of, for example, corporate reorganization or bankruptcy—have not been reconsidered in this Statement. They relate to the concept of control and its place in consolidation policy, which are not within the scope of this Statement but are part of a broader FASB project on the reporting entity, including consolidations and the equity method (paragraphs 19 and 20). Similarly, consolidation of subsidiaries controlled by means other than ownership of a majority voting interest—control by significant minority ownership, by contract, lease, or agreement with other stockholders, by court decree, or otherwise—has not been reconsidered in this Statement because that subject also is part of the project on the reporting entity.

Continued Disclosure

11. The FASB project on the reporting entity, including consolidations and the equity method,

will consider what disaggregated information should be disclosed with consolidated financial statements. To prevent loss in the meantime of information about unconsolidated subsidiaries now required by APB Opinion No. 18, *The Equity Method of Accounting for Investments in Common Stock,* this Statement requires continued disclosure of that information for subsidiaries that are consolidated as a result of this Statement.

12. The time between issuance of this Statement and one that would require disclosure of specified disaggregated information provides an opportunity for business enterprises to explore ways to provide additional information that is useful to investors, creditors, and others in understanding and assessing the effects of the differing risks and returns of various activities. A number of enterprises have been providing information about consolidated subsidiaries that goes beyond that required by Opinion 18 and FASB Statement No. 14, *Financial Reporting for Segments of a Business Enterprise,* and the Board encourages them to continue with and to strive to improve that disclosure and encourages others to follow their example. That experimentation not only should result in improved disclosure but also will provide the Board and its constituents with experience on which to draw in considering the broad issue of disclosures of disaggregated information.

STANDARDS OF FINANCIAL ACCOUNTING AND REPORTING

Amendments of ARB No. 51, APB Opinion No. 18, and ARB No. 43, Chapter 12

13. Paragraphs 2 and 3 of ARB 51 are amended to read:[2]

> 2. The usual condition for a controlling financial interest is ownership of a majority voting interest, and, therefore, as a general rule ownership by one company, directly or indirectly, of over fifty percent of the outstanding voting shares of another company is a condition pointing toward consolidation. However, there are exceptions to this general rule. A majority-owned subsidiary shall not be consolidated if control is likely to be temporary or if it does not rest with the majority owner (as, for instance, if the subsidiary is in legal reorganization or in bankruptcy or operates under foreign exchange restrictions, controls, or other governmentally imposed uncertainties so severe that they cast significant doubt on the parent's ability to control the subsidiary).
>
> 3. All majority-owned subsidiaries—all companies in which a parent has a controlling financial interest through direct or indirect ownership of a majority voting interest—shall be consolidated except those described in the last sentence of paragraph 2.

14. The heading "Unconsolidated Subsidiaries in Consolidated Statements" and paragraphs 19-21 of ARB 51 are deleted and replaced by the following heading and new paragraph 19:

DISCLOSURE ABOUT FORMERLY UNCONSOLIDATED MAJORITY-OWNED SUBSIDIARIES

19. Information that was disclosed under APB Opinion No. 18, paragraph 20(c), about majority-owned subsidiaries that were unconsolidated in financial statements for fiscal years 1986 or 1987 shall continue to be disclosed for them after they are consolidated pursuant to the provisions of this pronouncement as amended by FASB Statement No. 94. That is, summarized information about the assets, liabilities, and results of operations (or separate statements) shall be provided for those subsidiaries, either individually or in groups, as appropriate, in the consolidated financial statements or notes.

15. Opinion 18 is amended to eliminate its requirement to use the equity method to account in consolidated financial statements for unconsolidated majority-owned subsidiaries and to eliminate its provisions applying to "parent-company financial statements prepared for issuance to stockholders as the financial statements of the primary reporting entity," which are precluded by this Statement.[3] The paragraphs primarily affected are 1, 14, 16, and 17 and the footnotes to them; changes in other paragraphs primarily remove "subsidiaries" or "unconsolidated subsidiaries" from expressions such as "subsidiaries, joint ventures, and other investees which qualify for the equity method" or remove other words or sentences that no longer apply.[4]

a. The second sentence of paragraph 1 is amended to read:

> This Opinion extends the applicability of the equity method of accounting (paragraph 6(b)) to investments in common stock of corporate joint ventures and certain other investments in common stock.

The third sentence and footnote 1 are deleted.

b. Footnote 3 to paragraph 4 is amended to read:

> See paragraphs 2 and 3 of ARB No. 51 as amended by FASB Statement No. 94.

c. Paragraph 14 is amended to read:

> 14. ARB No. 51, paragraphs 2 and 3 (as amended by FASB Statement No. 94), requires consolidation of all majority-owned subsidiaries except the few that meet conditions described in paragraph 2. The equity method is not a valid substitute for consolidation. Moreover, since ARB No. 51 as amended requires the general-purpose financial statements of companies having one or more majority-owned subsidiaries to be consolidated statements, parent-company statements are not a valid substitute for consolidated financial statements.[4]

d. Paragraph 14, footnote 4, is amended to read:

> Paragraphs 2 and 3 of ARB No. 51 (as amended by FASB Statement No. 94) describe the conditions under which a majority-owned subsidiary shall not be consolidated. The limitations in paragraphs 2 and 3 of ARB No. 51 (as amended by FASB Statement No. 94) should also be applied as limitations to the use of the equity method.

e. The second sentence of paragraph 16 is amended to read:

> Therefore, investors should account for investments in common stock of corporate joint ventures by the equity method in consolidated financial statements.[6]

f. The last sentence of paragraph 17 is deleted.
g. The first two sentences of paragraph 19 are deleted.
h. In the third sentence of paragraph 19, the words "unconsolidated subsidiaries" are deleted.
i. In the first sentence of paragraph 19(a), the word "subsidiary" is deleted.
j. Paragraph 20(c) is deleted.
k. Paragraph 20(d) is amended to delete "of 50% or less" from the first sentence.

16. Paragraphs 8 and 9 of ARB 43, Chapter 12, "Foreign Operations and Foreign Exchange," are deleted. (Paragraph 8 and part of 9 are quoted in footnote 1 of this Statement.)

Effective Date and Transition

17. This Statement shall be effective for financial statements for fiscal years ending after December 15, 1988. Earlier application is encouraged. Application to interim financial statements for the year of adoption is not required at the time of their issuance; however, comparative financial statements for earlier periods including those of the year of adoption shall be restated when this Statement is applied.

The provisions of this Statement need not be applied to immaterial items.

This Statement was adopted by the affirmative votes of six members of the Financial Accounting Standards Board. Mr. Brown dissented.

Mr. Brown does not support this Statement's requirement to continue disclosures for subsidiaries formerly exempt from consolidation. He believes that, although this Statement improves financial reporting by requiring consolidation of most subsidiaries formerly exempt from consolidation, the requirement for continued disclosure is not evenhanded and has not been justified. By requiring continued disclosures for subsidiaries that were not consolidated in 1986 and 1987, this Statement would oblige certain business enterprises to disclose information not required of enterprises in similar circumstances. That additional disclosure would not be based on different circumstances but merely on differences in past accounting practices.

Mr. Brown believes that comparability of financial statements will not be enhanced by those disclosure requirements. On the effective date of the Statement, similarly situated enterprises will have different disclosure requirements. That lack of comparability will increase over time because the proportion of subsidiaries subject to those requirements will decline. That decline will occur because newly formed subsidiaries will not be subject to the disclosure requirements and because the number of subsidiaries for which disclosure is initially required will decrease over time due to attrition. The disclosure requirements are characterized as expedient and are expected to be temporary, pending Board consideration of the broad issue of disclosure of disaggregated activities. Mr. Brown notes, however, that this consideration may be some years in the future.

The stated purpose of those disclosure requirements is to avoid possible loss of information previously disclosed. Mr. Brown observes, however, that the importance of the information that might be lost has not been substantiated, nor is it even clear that significant information would be lost. Many subsidiaries that are newly required to be consolidated under this Statement will be segments under FASB Statement No. 14, *Financial Reporting for Segments of a Business Enterprise*. For those enterprises, segment reporting will provide supplementary information. In addition, enterprises may well choose to disclose information voluntarily as suggested by the fact that many enterprises already provide information about consolidated subsidiaries that goes beyond existing requirements. Further, Mr. Brown thinks that enterprises will have strong incentives to provide disclosures to minimize the possibility that investors, creditors, and others will misinterpret financial statements in which formerly unconsolidated subsidiaries are consolidated.

Members of the Financial Accounting Standards Board:

Dennis R. Beresford, *Chairman*
Victor H. Brown
Raymond C. Lauver
James J. Leisenring
David Mosso
C. Arthur Northrop
Robert J. Swieringa

Appendix A: BACKGROUND INFORMATION

18. An AICPA Issues Paper, "Reporting Finance Subsidiaries in Consolidated Financial Statements," dated December 27, 1978, asked the Board to consider whether finance subsidiaries of primarily nonfinancial business enterprises should be required to be consolidated. It said that

the permitted exclusion of finance companies from consolidated financial statements in ARB 51 should be reevaluated because of the increased number and size of unconsolidated finance subsidiaries then in existence. Since 1978, unconsolidated finance subsidiaries have continued to proliferate.

19. The Board added a project on the reporting entity, including consolidations and the equity method, to its agenda in January 1982. The issues in that AICPA Issues Paper, as well as those in several others, were included in the scope of the project.

20. A major goal of the project is to develop a reporting entity concept for business enterprises. Research and deliberation on the reporting entity concept and other consolidation issues are still in progress. The Board has tentatively concluded that the concept should be based primarily on control rather than on ownership of a majority voting interest, which is the most common but not the only means of controlling a subsidiary. However, the Board has not yet reached agreement on some significant issues, including precisely how to determine if means other than majority ownership have resulted in control and what techniques of consolidation would best report the effects of noncontrolling (minority) interests that arise because subsidiaries are only partially owned. Since more consideration of those matters is needed, the Board's tentative conclusions on a concept of reporting entity for business enterprises is not yet ready to be issued.

21. The Board's deliberations on the reporting entity concept have proceeded far enough to establish that consolidation of all majority-owned subsidiaries whose control is not in question is consistent with all of the reporting entity concepts that the Board is considering. Therefore, the Board decided to require consolidation of all majority-owned subsidiaries, because that decision will not be affected by resolution of the remaining issues.

22. This Statement is a major step in resolving the growing problem of off-balance-sheet financing. Unconsolidated majority-owned subsidiaries have been a significant aspect of that problem. The growing size and importance of finance and other unconsolidated majority-owned subsidiaries and the resulting amounts of assets, liabilities, revenues, and expenses that have not been reflected in many consolidated financial statements have made the matter important.

23. The Board issued an Exposure Draft, *Consolidation of All Majority-owned Subsidiaries*, on December 16, 1986. The Board received 232 letters of comment on the Exposure Draft and 21 individuals and organizations presented their views at a public hearing held on May 18 and 19, 1987.

24. The major difference between this Statement and the Exposure Draft is that the Exposure Draft proscribed the equity method for investments in majority-owned companies that remain unconsolidated because of the provisions of paragraph 2 of ARB 51 as amended by this Statement, while this Statement is silent on that subject. The effective date of the Statement also is one year later than that in the Exposure Draft.

Appendix B: BASIS FOR CONCLUSIONS

Introduction

25. This appendix reviews considerations that were deemed significant by members of the Board in reaching the conclusions in this Statement. It includes reasons for accepting certain views and rejecting others. Individual Board members gave greater weight to some factors than to others.

26. The introduction to this Statement notes that practice under ARB 51 has become increasingly diverse as some enterprises have consolidated all their significant majority-owned subsidiaries and other enterprises have excluded some majority-owned subsidiaries from consolidation. That diversity has been criticized as lessening comparability between enterprises' financial statements. The introduction also notes that practice has been increasingly criticized as often omitting significant amounts of assets, liabilities, revenues, and expenses from consolidated financial statements. That result has made exclusion of some majority-owned subsidiaries from consolidation a significant factor in off-balance-sheet financing.

27. Most of those criticisms of practice relate to what has commonly been called the "nonhomogeneity" exception to consolidation of all majority-owned subsidiaries. Significant majority-owned subsidiaries also have been excluded from consolidation for other reasons, but the most prevalent exclusions in practice recently have been finance, insurance, real estate, leasing, and other "nonhomogeneous" subsidiaries by manufacturing and merchandising enterprises. The basis in the authoritative literature for that "nonhomogeneity" exception has been the third paragraph of ARB 51 (paragraphs 5-8 of this Statement).

Highly Diverse and Complex Business Enterprises

28. In the 28 years since ARB 51 was issued, business enterprises have continued to become more diverse and complex. Enterprises have branched into different lines of business and entered many foreign markets. More enterprises that previously were considered nonfinancial have been diversifying into financial services—financing, insurance, real estate, leasing, and investment banking—while more of those that remain primarily nonfinancial enterprises have been forming separate subsidiaries to carry out financial activities that were formerly carried out by the parents or their existing subsidiaries.

29. In an economy in which numerous and varied kinds of activities are commonly combined in a single enterprise, whether organized as a single corporation with branches and divisions or as a parent company and subsidiaries, the argument that part of an enterprise has operations so

different from those of other parts that it should be accounted for in a fundamentally different way has become increasingly tenuous. The Board concluded that the increasingly diverse nature of business activity, and of business enterprises themselves, makes the fact that the business activity of a subsidiary is different from that of its parent and other subsidiaries an insufficient reason to exclude it from consolidation.

30. The managerial, operational, and financial ties that bind an enterprise into a single economic unit are stronger than the differences between its lines of business. Consolidated financial statements became common once it was recognized that boundaries between separate corporate entities must be ignored to report the business carried on by a group of affiliated corporations as the economic and financial whole that it actually is. Similarly, differences between the varied operations of a group of affiliated corporations that constitutes an economic and financial whole do not preclude including them all in consolidated financial statements.

31. Those differences also do not make the equity method a valid substitute for consolidation of majority-owned subsidiaries. Although the equity method described in Opinion 18 usually results in the same net income and the same net assets as consolidation, that method omits significant revenues and expenses from the income statement, omits significant assets and liabilities from the balance sheet, and omits significant receipts and payments from the statement of cash flows. For example, difference in operations has long been rejected as a basis for not consolidating so-called captive leasing subsidiaries. The decision and most of the language now in paragraph 31 of FASB Statement No. 13, *Accounting for Leases*, was in APB Opinion No. 10, *Omnibus Opinion—1966* (and was reaffirmed in Opinion 18):

> The accounts of subsidiaries (regardless of when organized or acquired) whose principal business activity is leasing property or facilities to the parent or other affiliated companies shall be consolidated. The equity method is not adequate for fair presentation of those subsidiaries because their assets and liabilities are significant to the consolidated financial position of the enterprise.

The same reasoning applies to other "nonhomogeneous" majority-owned subsidiaries, whether captive or not.

32. Other restrictive consolidation practices have been to exclude from consolidation, for example, all foreign subsidiaries, all subsidiaries that are not wholly owned, or all subsidiaries that are not 80 percent owned. Those essentially arbitrary restrictions also are not sufficient reasons to exclude majority-owned subsidiaries from consolidation.

33. The central issue is whether financial statements that consolidate some majority-owned subsidiaries and report others as investments in the equity securities of other enterprises adequately report the operating results and financial position of the business enterprise of which all the subsidiaries are a part. The Board concluded that consolidated financial statements that include all majority-owned subsidiaries whose control is not in question better meet the

objectives of financial reporting and more fully possess the qualitative characteristics of useful financial information described in FASB Concepts Statement No. 2, *Qualitative Characteristics of Accounting Information,* especially relevance, representational faithfulness, and comparability.

Objectives and Qualitative Characteristics

34. Investors, creditors, and others who use financial statements need information about a business enterprise that is useful in making investment, credit, or other similar decisions about it (FASB Concepts Statement No. 1, *Objectives of Financial Reporting by Business Enterprises,* paragraphs 34-40). Those who invest in the parent company of an affiliated group of corporations invest in the whole group, which constitutes the enterprise that is a potential source of cash flows to them as a result of their investment.

Relevance and Representational Faithfulness

35. Information that is most relevant to investors, creditors, and other users thus includes consolidated financial statements that "present, primarily for the benefit of the shareholders and creditors of the parent company, the results of operations and the financial position of a parent company and its subsidiaries essentially as if the group were a single company with one or more branches or divisions" (ARB 51, paragraph 1).

36. A set of consolidated financial statements that includes all majority-owned subsidiaries fits that description better than a set that excludes significant parts of an enterprise. If the assets, liabilities, revenues, expenses, and cash flows of "nonhomogeneous" subsidiaries are excluded from consolidation, the consolidated financial statements of the enterprise do not faithfully represent [5] the operating results, financial status, and capital structure of the enterprise described in paragraph 35.

37. A significant aspect of both relevance and representational faithfulness is completeness—

> The inclusion in reported information of everything material that is necessary for faithful representation of the relevant phenomena.
>
> Freedom from bias . . . implies that nothing material is left out of the information that may be necessary to insure that it validly represents the underlying events and conditions.
>
> Relevance of information is adversely affected if a relevant piece of information is omitted, even if the omission does not falsify what is shown. [Concepts Statement 2, "Glossary," and paragraphs 79 and 80]

Consolidated financial statements that exclude some majority-owned subsidiaries provide an incomplete picture of an enterprise. If they are to see the complete picture, investors, creditors, and other users must themselves attempt to consolidate the excluded subsidiaries. Even then, a "do-it-yourself" consolidation can only be a rough approximation of one done by the enterprise itself because consolidation procedures require detailed information about current amounts and past transactions that is seldom provided by general-purpose financial reporting. The representational faithfulness of a user's consolidation is at least questionable, and its comparability with consolidated financial statements or "do-it-yourself" consolidations of other enterprises, or of the same enterprise for an earlier period, is at best doubtful.

38. Unconsolidated majority-owned subsidiaries usually have been accounted for by the equity method in accordance with Opinion 18. The equity method described by Opinion 18 normally results in the same net income and stockholders' equity as consolidation, but the information it provides about specific classes of assets, liabilities, revenues, and expenses is significantly different from, and is not a substitute for, information provided by consolidation. The equity method reports a parent's equity in the net assets of its unconsolidated subsidiaries as a single-line item in the consolidated statement of financial position and generally reports its share of the unconsolidated subsidiaries' reported net income as a single-line item in the consolidated income statement.

39. Although net income and total stockholders' equity are important factors in assessing the enterprise's performance and its financial position, the relative amounts of various assets, liabilities, revenues, and expenses and their relationships to other items in the consolidated financial statements also generally are essential factors in that analysis.

> Although ... simplifications, condensations, and aggregations are both necessary and useful, the Board believes it is important to avoid focusing attention almost exclusively on "the bottom line," earnings per share, or other highly simplified condensations. Summary data, such as the amounts of net assets, comprehensive income, earnings, or earnings per share, may be useful as general indicators of the amount of investment or overall past performance and are often used in efforts to compare an entity with many other entities. But, in a complex business enterprise, summary amounts include many heterogeneous things and events. Components of a financial statement often reflect more homogeneous classes of items than the whole statement. The individual items, subtotals, or other parts of a financial statement may often be more useful than the aggregate to those who make investment, credit, and similar decisions. [FASB Concepts Statement No. 5, *Recognition and Measurement in Financial Statements of Business Enterprises*, paragraph 22]

40. The usefulness of information about amounts of various assets, liabilities, revenues, and expenses is also indicated by the fact that most summary indicators other than net income, earnings per share, and stockholders' equity are affected by whether a subsidiary is consolidated or accounted for by the equity method. Basic analytical tools such as the current ratio, receivables turnover, inventory turnover, times interest earned, and return on total assets are a few examples. The paramount example is the debt-equity ratio, which, for reasons already

described, is much lower if finance or other highly leveraged subsidiaries are accounted for by the equity method rather than consolidated. That effect is one aspect of off-balance-sheet financing that has been criticized because transactions between affiliates and intercompany receivables and payables often make it unlikely that "do-it-yourself" consolidation can adequately approximate debt-equity ratios in consolidated financial statements provided by the enterprises themselves.

41. Use of the equity method for majority-owned subsidiaries that are significant parts of an enterprise diminishes the usefulness of and raises questions about the credibility of consolidated financial statements as those subsidiaries grow in significance. As enterprises become more diversified, the number and variety of their majority-owned subsidiaries that are not consolidated because of "nonhomogeneity" of operations often increase. Thus, the amounts reported as single-line items in consolidated financial statements not only become larger but also the information they convey diminishes—the resulting consolidated financial statements provide less and less information about the enterprise in which its stockholders have invested. Consolidated financial statements of some enterprises have excluded more assets and liabilities than they have included.

Comparability

42. Consolidation of all majority-owned subsidiaries will also improve comparability between enterprises. Investment and credit decisions involve comparing available alternative investment or credit opportunities. Thus:

> Information about an enterprise gains greatly in usefulness if it can be compared with similar information about other enterprises and with similar information about the same enterprise for some other period or some other point in time. The significance of information, especially quantitative information, depends to a great extent on the user's ability to relate it to some benchmark. [Concepts Statement 2, paragraph 111]

43. As Concepts Statement 2 also notes (paragraphs 113-119), comparison involves identifying, understanding, and assessing both similarities and differences. To the extent that similarities and differences stem from financial reporting rather than from the enterprises themselves, financial reporting hinders rather than helps investors and creditors in making their decisions. A significant problem in practice under ARB 51 is that large differences between consolidated financial statements of different business enterprises often have resulted from different consolidation policies rather than from significant differences between the enterprises.

Reporting of Cash Flows

44. Consolidated financial statements that include all majority-owned subsidiaries should also result in more relevant, representationally faithful, and comparable statements of cash flow. Although the equity method and consolidation may report the same net income and net assets,

they do not report the same cash receipts and payments related to operating, investing, and financing activities. Potentially significant information about how an enterprise generates cash through operations, as well as information about its financing and investing activities, is not provided if subsidiaries are not consolidated.

Matters Raised in Comment Letters and at the Public Hearing

45. Many respondents who opposed the conclusion of the Exposure Draft argued that consolidation of "nonhomogeneous" subsidiaries would make the consolidated financial statements less useful. Many asserted that it would impair comparability of the financial data between enterprises and that it would confuse the expected debt-equity (and other) ratios of manufacturing and financial components of diverse business enterprises, resulting in ratios that would accurately reflect neither component. On the other hand, many respondents who supported the conclusion of the Exposure Draft did so because they thought comparability would be enhanced due to more comprehensive disclosure of financial results.

46. Before the Exposure Draft was issued, the Board recognized that opinions of respondents on whether consolidated financial statements were more useful probably would be divided. The Board considered the comments on usefulness with emphasis on comparability and noted that usefulness means more than comparability. The Board's conclusions rely on Concepts Statement 2, which emphasizes relevance and representational faithfulness as much as comparability. Thus, the Board concluded that consolidated financial statements that include all majority-owned subsidiaries whose control is not in question better meet the objectives of financial reporting.

47. Most respondents who opposed the elimination of the "nonhomogeneity" exception acknowledged that it needed some boundaries. Some proposed that finance and insurance subsidiaries ought to be excluded from consolidation by nonfinancial enterprises and suggested the Board establish criteria for excluding certain subsidiaries by examining differences in reported financial ratios or in the operating cycles. Respondents did not suggest a basis for determining threshold values for those criteria, and the Board observed that any choice necessarily would be arbitrary, would differ between industries, and could vary over time due to changes in business practices. Some measures that seem appropriate may not distinguish effectively between subsidiaries. For example, a high debt-equity ratio may reflect either poor financial condition, "nonhomogeneity," or both. The Board concluded that establishing criteria for "nonhomogeneity" based on financial characteristics would be arbitrary and ineffective.

48. Other respondents suggested that the Board narrow the "nonhomogeneity" exception by requiring consolidation of all "captive" subsidiaries—that is, subsidiaries that conduct a majority of their transactions with their parent company. Those respondents argued that consolidating captive subsidiaries improves comparability with enterprises that have not formed subsidiaries but engage in like activities. They argued that consolidating noncaptive, "nonhomogeneous" subsidiaries impairs that comparability. Respondents suggested that the Board look to a subsidiary's relationship to the primary reporting entity to distinguish captive from noncaptive.

The Board observed that as diversification increases so does the difficulty of identifying the primary business of an enterprise. Respondents were unable to provide substantive guidelines for that identification. The Board agreed with respondents that, if a subsidiary is captive, consolidation of that subsidiary improves comparability. However, the Board concluded that other arguments including improved representational faithfulness and relevance justify consolidating noncaptive subsidiaries.

49. Many respondents criticized the Exposure Draft's requirements as representing a "piecemeal" approach to establishing revised consolidation criteria. Most indicated that such an approach created a risk that future decisions by the Board may require the consolidation requirements of the Exposure Draft to be reversed. The Board recognizes that deliberation will continue on the reporting entity concept, which may lead to changed consolidation criteria based on control. However, the Board concluded that the risk of reversing the consolidation requirements of this Statement was minimal because the criteria for excluding subsidiaries from consolidation based on "nonhomogeneity" are unrelated to control.

50. Some respondents recommended that the Board provide guidance for various financial statement display questions that may arise, including how to consolidate a nonclassified statement of financial position used by a financial institution with a classified statement of financial position used by a manufacturing or merchandising company and how to display interest expense of both financial and manufacturing subsidiaries in a consolidated income statement. The Board noted that guidance might reduce diversity of display but concluded that some variety may be appropriate for reporting the financial position and results of diverse enterprises. The Board also noted that the issue is not new because some enterprises have consolidated subsidiaries with those characteristics and have developed reporting formats to present consolidated results effectively.

51. Many respondents requested a delay in the effective date. The most compelling reasons offered for extending the effective date were the need to allow companies additional time to renegotiate loan covenants or other provisions of loan agreements and to familiarize investors, creditors, and other users with the effects of consolidation on financial statement ratios. Respondents indicated that the risk of increased cost of borrowing at the time loan covenants are renegotiated would be mitigated if additional time was available. Respondents also requested additional time to determine the most effective financial statement display. The Board accepted those arguments and delayed the effective date for one year.

52. Several respondents questioned whether direct financing and leveraged leases of a majority-owned leasing subsidiary accounted for under the equity method would be required to be reclassified as sales-type capital leases when the subsidiary is consolidated. Paragraph 19 of Opinion 18, which specifies how to account for those subsidiaries under the equity method prior to their being consolidated as required by this Statement, indicated that net income and stockholders' equity generally would be the same whether the subsidiary was accounted for under the equity method or whether it was consolidated. Thus, whether a leasing subsidiary was

accounted for by the equity method or is now consolidated as required by this Statement, the distinction between a direct financing and a sales-type capital lease is based on application of Statement 13 as if the subsidiary were consolidated. Leases of a manufacturing company's equipment sold to a leasing subsidiary that are accounted for as direct financing leases on the subsidiary's financial statements normally would be sales-type capital leases in the consolidated financial statements. This Statement does not change that requirement.

53. The Exposure Draft's requirement to use the cost method for majority-owned subsidiaries that remain unconsolidated was intended to change Opinion 18 only to the extent necessary to avoid conflict with ARB 51 as amended. However, respondents said that the requirement would change practice because "significant influence" might remain even if control were lost and because of specialized industry practices for investment companies. The Board removed the requirement to use only the cost method, thereby leaving existing pronouncements in effect. The method to be used to account for those subsidiaries will be considered in the broad project described in paragraphs 19 and 20.

Need for Disaggregated Information

54. Some who favor consolidating all majority-owned subsidiaries whose control is not in question are nevertheless concerned that consolidating "nonhomogeneous" subsidiaries will obscure important information about the primary operations of an enterprise, producing less informative financial statements than those that exclude "nonhomogeneous" subsidiaries but append their separate financial statements or equivalent information. An example is a parent that is primarily a manufacturing enterprise that consolidates an insurance or bank subsidiary. That concern was expressed frequently in interviews conducted in the early stages of the FASB project on the reporting entity (paragraphs 19 and 20), both by those who use financial statements and by those who provide them.

55. The Board recognizes that aggregation of assets and liabilities resulting from operations with activities that differ from each other in profitability, risks, and returns can obscure important information about each of those activities. However, the Board also believes that disclosures required under FASB Statement No. 14, *Financial Reporting for Segments of a Business Enterprise*, can provide meaningful information about the different operations within a business enterprise. Consolidated financial statements and adequate disclosure of varied activities are not mutually exclusive.

56. The financial reporting that has followed the issuance of Statement 14 in 1976 has demonstrated that financial reporting can readily provide both consolidated and disaggregated information. For example, when the Securities and Exchange Commission eliminated its requirement to provide separate financial statements of consolidated subsidiaries engaged in "diverse financial-type" businesses in 1981, it said, "The Commission's decision to delete all requirements for additional financial information for consolidated finance-type subsidiaries...was significantly influenced by its conclusion that the disclosures required by [FASB Statement] 14

provide adequate information on these activities to most investors..." (Accounting Series Release No. 302, *Separate Financial Statements Required by Regulation S-X*).

57. The broad project on the reporting entity will consider disclosure of disaggregated information in consolidated financial statements. Business enterprises have the opportunity to experiment with providing additional information in the time between the issuance of this Statement and the completion of that portion of the broader project. The Board encourages experimentation to improve disclosure and to better communicate to investors, creditors, and others. That experimentation should prove beneficial to the preparer and should provide the Board and others with experience that is useful when considering disclosure of disaggregated information in the future.

58. Opinion 18, paragraph 20(c) has required that summarized information about the assets, liabilities, and results of operations of unconsolidated subsidiaries should be presented in the notes of consolidated financial statements or in separate statements. Some of that information is not required by Statement 14. Many comments were received on the general issue of disclosing disaggregated information. Recommendations ranged from requiring no disclosure to requiring consolidating financial statements. Although opposition to the requirement to continue disclosure presently called for by Opinion 18 was substantial, some suggested less information should be required, while others said more, or at least different, information should be required. Users of financial statements expressed strong concern about the possible loss of information that was currently available.

59. The Board acknowledges that this Statement's disclosure requirement represents an expedient solution. The Board concluded, however, that alternatives were less attractive. Increasing disclosure requirements to eliminate what is perceived as this Statement's lack of evenhandedness without reconsidering the broad issue of disclosing disaggregated information probably would not result in meaningful requirements. Dropping that requirement would result in loss of information that users of financial statements urged the Board to retain. The Board concluded that to prevent loss of that information was important. The Board also noted that the requirement is reasonably evenhanded. Most enterprises with what generally have been called "nonhomogeneous" subsidiaries will be required to provide continued disclosure because most of those subsidiaries are not now consolidated. Moreover, the Board recognized that many enterprises would voluntarily provide the disaggregated information they thought necessary to meet concerns they expect to result from the revised consolidation policy. Those enterprises would incur no additional cost to implement the disclosure provision of this Statement. After assessing the matters set forth in this and the previous paragraph, the Board decided to continue Opinion 18's disclosure requirements for subsidiaries that are consolidated as a result of this Statement.

Benefits and Costs of Consolidating All Majority-owned Subsidiaries

60. Paragraphs 25-44 discuss the benefits of requiring consolidation of all majority-owned

subsidiaries whose control is not in question. The Board recognizes that initial adoption of that requirement may cause some enterprises to incur certain costs, for example, to renegotiate debt covenants that are technically in default once highly leveraged finance and similar subsidiaries are consolidated and perhaps to educate some investors and creditors about the change in consolidation policy. However, the Board believes that those costs will be outweighed by the benefits of more relevant, representationally faithful, and comparable consolidated financial statements.

Parent-Company Financial Statements

61. Opinion 18, paragraphs 14, 16, and 17, requires use of the equity method in "parent-company financial statements prepared for issuance to stockholders as the financial statements of the primary reporting entity." This Statement removes those provisions because, if an enterprise has one or more subsidiaries, consolidated rather than parent-company financial statements are the appropriate general-purpose financial statements. The Board is aware of no instances in which parent-company financial statements have been issued as general-purpose financial statements and believes the elimination of those provisions will result in little or no change in practice.

Footnotes

FAS94, Footnote 1--Paragraph 2 permits omission of majority-owned foreign subsidiaries from consolidation by reference to the broad provisions of ARB No. 43, Chapter 12, "Foreign Operations and Foreign Exchange," paragraphs 8 and 9:

> In view of the uncertain values and availability of the assets and net income of foreign subsidiaries subject to controls and exchange restrictions and the consequent unrealistic statements of income that may result from the translation of many foreign currencies into dollars, careful consideration should be given to the fundamental question of whether it is proper to consolidate the statements of foreign subsidiaries with the statements of United States companies. Whether consolidation of foreign subsidiaries is decided upon or not, adequate disclosure of foreign operations should be made.
>
> The following are among the possible ways of providing information relating to such foreign subsidiaries:

a. To exclude foreign subsidiaries from consolidation and to furnish (1) statements in which only domestic subsidiaries are consolidated and (2) as to foreign subsidiaries, a summary in suitable form of their assets and liabilities, their income and losses for the year, and the parent company's equity therein. . . .

FAS94, Footnote 2--Details of the changes: Paragraph 2 of ARB 51 is amended to delete the fourth, fifth, and sixth sentences and to delete "For example," to change "should" to "shall," and to add an example in the parentheses in the third sentence. The deleted sentences read: "There may also be situations where the minority interest in the subsidiary is so large, in relation to the equity of the shareholders of the parent in the consolidated net assets, that the presentation of separate financial statements for the two companies would be more meaningful and useful. However, the fact that the subsidiary has a relatively large indebtedness to bondholders or others is not in itself a valid argument for exclusion of the subsidiary from consolidation. (Also, see Chapter 12 of Accounting Research Bulletin No. 43 for the treatment of foreign subsidiaries.)" Paragraph 3 (most of which is quoted in paragraph 5 of this Statement) is entirely deleted and replaced by a new paragraph 3.

FAS94, Footnote 3--Opinion 18 was silent about parent-company financial statements prepared for purposes other than issuance as the general-purpose financial statements of the primary reporting entity. This Statement also does not consider that subject.

FAS94, Footnote 4--Details of major changes: *Paragraphs 1, 16, and 17*--The deleted parts of all three paragraphs pertain to "parent-company financial statements prepared for issuance to stockholders as the financial statements of the primary reporting entity." A similar provision is also deleted from paragraph 14. *Paragraph 14*--The first sentence, "The Board reaffirms the conclusion that investors should account for investments in common stock of unconsolidated domestic subsidiaries by the equity method in consolidated financial statements, and the Board now extends this conclusion to investments in common stock of all unconsolidated subsidiaries (foreign as well as domestic) in consolidated financial statements," and the third sentence (whose content was just described) are deleted and replaced by new sentences. In the second sentence the words "and should not be used to justify exclusion of a subsidiary when consolidation is otherwise appropriate" are deleted. *Paragraph 19*--The deleted sentences read: "The difference between consolidation and the equity method lies in the details reported in the financial statements. Thus, an investor's net income for the period and its stockholders' equity at the end of the period are the same whether an investment in a subsidiary is accounted for under the equity method or the subsidiary is consolidated (except as indicated in paragraph 19i)."

FAS94, Appendix B, Footnote 5--"Representational faithfulness is correspondence or agreement between a measure or description and the phenomenon it purports to represent. In accounting, the phenomena to be represented are economic resources and obligations and the transactions and events that change those resources and obligations" (Concepts Statement 2, par. 63).

Statement of Financial Accounting Standards No. 141

FAS141 Status Page
FAS141 Summary

Business Combinations

June 2001

Financial Accounting Standards Board
of the Financial Accounting Foundation
401 MERRITT 7, P.O. BOX 5116, NORWALK, CONNECTICUT 06856-5116

Statement of Financial Accounting Standards No. 141

Business Combinations

June 2001

CONTENTS

D12. When accounting for a transfer of assets or exchange of shares between entities under common control, the entity that receives the net assets or the equity interests shall initially recognize the assets and liabilities transferred at their carrying amounts in the accounts of the transferring entity at the date of transfer.

D13. The purchase method of accounting shall be applied if the effect of the transfer or exchange described in paragraph D11 is the acquisition of all or a part of the noncontrolling equity interests in a subsidiary (refer to paragraph 14).

Procedural Guidance

D14. Some transfers of net assets or exchanges of shares between entities under common control result in a change in the reporting entity. In practice, the method that many entities have used to account for those transactions is similar to the pooling method. Certain provisions in Opinion 16 relating to application of the pooling method provide a source of continuing guidance on the accounting for transactions between entities under common control. Paragraphs D15–D18 provide procedural guidance that should be considered when preparing financial statements and related disclosures for the entity that receives the net assets.

D15. In some instances, the entity that receives the net assets or equity interests (the receiving entity) and the entity that transferred the net assets or equity interests (the transferring entity) may account for similar assets and liabilities using different accounting methods. In such circumstances, the carrying values of the assets and liabilities transferred may be adjusted to the basis of accounting used by the receiving entity if the change would otherwise have been appropriate. Any such change in accounting method should be applied retroactively, and financial statements presented for prior periods should be restated (Opinion 16, paragraph 52).

D16. The financial statements of the receiving entity should report results of operations for the period in which the transfer occurs as though the transfer of net assets or exchange of equity interests had occurred at the beginning of the period. Results of operations for that period will thus comprise those of the previously separate entities combined from the beginning of the period to the date the transfer is completed and those of the combined operations from that date to the end of the period. By eliminating the effects of intercompany transactions in determining the results of operations for the period before the combination, those results will be on substantially the same basis as the results of operations for the period after the date of combination. The effects of intercompany transactions on current assets, current liabilities, revenue, and cost of sales for periods presented and on retained earnings at the beginning of the periods presented should be eliminated to the extent possible. The nature of and effects on earnings per share of nonrecurring intercompany transactions involving long-term assets and liabilities need not be eliminated but should be disclosed (Opinion 16, paragraph 56).

D17. Similarly, the receiving entity should present the statement of financial position and other financial information as of the beginning of the period as though the assets and liabilities had

Title: Definition of "Common Control" in Relation to FASB Statement No. 141

Dates Discussed: March 20–21, 2002; June 19–20, 2002

References: FASB Statement No. 141, *Business Combinations*
FASB Technical Bulletin No. 85-5, *Issues Relating to Accounting for Business Combinations*
AICPA Accounting Research Bulletin No. 51, *Consolidated Financial Statements*
APB Opinion No. 16, *Business Combinations*
AICPA Accounting Interpretation 27, "Entities under Common Control in a Business Combination," of APB Opinion No. 16
AICPA Accounting Interpretation 39, "Transfers and Exchanges between Companies under Common Control," of APB Opinion No. 16

ISSUE

1. Consistent with the guidance previously provided in Opinion 16, paragraph 11 of Statement 141 provides that the term *business combination* excludes transfers of net assets or exchanges of equity interests between entities under common control. Paragraph D12 of Statement 141 further provides that, in those situations, related assets and liabilities are to be recorded at their carrying amounts at the date of transfer. Neither Opinion 16 nor Statement 141 defines the term *common control.*

2. Questions exist with respect to whether separate entities are under common control when common majority ownership exists by an individual, a family, or a group affiliated in some other manner. For example, some suggest that the accounting should presume that immediate family members will vote their shares in concert absent evidence to the contrary. If that presumption is appropriate, an additional issue is how to define "immediate family member." Further, some question whether companies owned by

individuals that are not members of an immediate family could ever be under common control.

3. The FASB staff understands that the SEC staff has indicated that common control exists between (or among) separate entities only in the following situations:

a. An individual or enterprise holds more than 50 percent of the voting ownership interest of each entity.
b. Immediate family members hold more than 50 percent of the voting ownership interest of each entity (with no evidence that those family members will vote their shares in any way other than in concert).
   (1) Immediate family members include a married couple and their children, but not the married couple's grandchildren.
   (2) Entities might be owned in varying combinations among living siblings and their children. Those situations would require careful consideration regarding the substance of the ownership and voting relationships.
c. A group of shareholders holds more than 50 percent of the voting ownership interest of each entity, and contemporaneous written evidence of an agreement to vote a majority of the entities' shares in concert exists.

4. The issue is how to determine whether separate entities are under common control in the context of Statement 141 when common majority ownership exists by an individual, a family, or a group affiliated in some other manner.

EITF DISCUSSION

5. The Task Force did not reach a consensus on the issue of how to determine whether common control of separate entities exists. The Task Force discussed the practice being followed by SEC registrants. Some Task Force members expressed uncertainty as to whether common control might exist in situations other than those described above.

6. Additionally, the Task Force noted that the FASB expects to address this Issue in its business combinations project.

7. The SEC Observer stated that SEC registrants should continue to follow the guidance in paragraph 3, above, when determining whether common control of separate entities exists.

STATUS

8. No further EITF discussion is planned.

Ohio Department of TAXATION

Personal Property Tax Division
30 E. Broad Street, 21st Floor
P O Box 530
Columbus, Ohio 43216-0530
(614) 644-3280 Fax (614) 466-8654
www.tax.ohio.gov

CERTIFICATION

The undersigned, John Nolfi, in my capacity as the Administrator of the Ohio Department of Taxation's Personal Property Tax Division, and formerly as the Audit Manager in the matter of the personal property tax audit of Shiloh Automotive, Inc.'s personal property tax returns for the 2001 and 2002 tax years, hereby certify from my personal knowledge, that the enclosed Documents, attached hereto as Exhibit A, consisting of eleven (11) pages, are true and accurate photocopies of the originals maintained in the ordinary course of tax administration in the files of the Personal Property Tax Division, and further aver as follows:

(1) The originals of the attached Documents are the completed Tax Commissioner-prescribed Forms 937 (True Value Computation Forms) which MTD Products, Inc. (MTD) attached to and made a part of its Ohio personal property tax return for the tax year 2000;

(2) The originals of the attached Documents were utilized by the undersigned in the Shiloh Automotive, Inc. audit referenced above, and were the source for the acquisition cost figures for MTD's production machinery and equipment cited in the undersigned's Statement of Facts and Conclusions, which was included in the Tax Commissioner's Statutory Transcript certified to the Board of Tax Appeals and has been included in the Second Supplement filed with the Ohio Supreme Court in the matter upon appeal.

John Nolfi, Administrator
Personal Property Tax Division

MTD PRODUCTS, INC.								
OHIO FORM 937 TRUE VALUE COMPUTATION								
CUYAHOGA COUNTY PARMA SCHOOL DISTRICT								
CLEVELAND								
CLASS:5								
YEAR ACQUIRED	**COST 8/1/98**	**ADDITIONS**		**(1) DISPOSALS**		**COST 7/31/99**	**CLASS 5 %**	**TRUE VALUE**
1999	-	10,803,690		10,803,690		0	94.30%	0
1998	1,629,630	2,985,868	*	4,615,498		(0)	88.10%	(0)
1997	3,937,992			3,937,992		(0)	81.80%	(0)
1996	1,798,444	18,187		1,816,631		(0)	75.60%	(0)
1995	1,710,564			1,710,564		(0)	69.30%	(0)
1994	1,883,333			1,883,333		-	63.10%	-
1993	3,551,524			3,551,524		0	56.90%	0
1992	1,454,802			1,454,802		-	50.60%	-
1991	673,218			673,218		0	44.40%	0
1990	75,971			75,971	*	(0)	38.20%	(0)
1989	2,404,142			2,404,142		-	32.80%	-
1988	375,957			375,957		(0)	29.50%	(0)
1987	1,366,763			1,366,763		-	26.20%	-
1986	265,832			265,832		-	22.90%	-
1985	148,291			148,291		(0)	19.60%	(0)
1984 & PRIOR	3,076,629	40	*	3,076,669		0	16.30%	0
TOTAL	24,353,091	13,807,785		38,160,877		(1)		(1)
	Per FY99 Pers. Prop. Tax Report			38,160,877				

(1) See letter regarding alternative listing date attached.

MTD PRODUCTS, INC.						
OHIO FORM 937 TRUE VALUE COMPUTATION						
CUYAHOGA COUNTY PARMA SCHOOL DISTRICT						
TOOLROOM						
CLASS:5						
YEAR ACQUIRED	COST 8/1/98	ADDITIONS	(1) DISPOSALS	COST 10/31/99	CLASS 5 %	TRUE VALUE
1999	-	-	-	-	94.30%	-
1998	39,600	-	39,600	-	88.10%	-
1997	-	-	-	-	81.80%	-
1996	69,288	-	69,288	0	75.60%	0
1995	119,652	-	119,652	(0)	69.30%	(0)
1994	-	-	-	-	63.10%	-
1993	52,000	-	52,000	-	56.90%	-
1992	79,509	-	79,509	-	50.60%	-
1991	32,653	-	32,653	(0)	44.40%	(0)
1990	899,415	-	899,415	0	38.20%	0
1989	1,005,571	-	1,005,571	0	32.80%	0
1988	361,766	-	361,766	(0)	29.50%	(0)
1987	272,460	-	272,460	-	26.20%	-
1986	15,500	-	15,500	(0)	22.90%	(0)
1985	30,246	-	30,246	0	19.60%	0
1984 & PRIOR	1,328,834	-	1,328,834	-	16.30%	-
TOTAL	4,306,494	-	4,306,494	(0)	-	(0)
	Per FY99 Pers. Prop. Tax Report		4,267,078			

(1) See letter regarding alternative listing date attached.

MTD PRODUCTS, INC.						
OHIO FORM 937 TRUE VALUE COMPUTATION						
MEDINA COUNTY BUCKEYE SCHOOL DISTRICT						
LIVERPOOL						
CLASS:5						
YEAR ACQUIRED	COST 8/1/98	ADDITIONS	(1) DISPOSALS	COST 10/31/99	CLASS 5 %	TRUE VALUE
1999	-	361,928	361,928	(0)	94.30%	(0)
1998	3,141,525	-	3,141,525	0	88.10%	0
1997	3,808,146	-	3,808,146	0	81.80%	0
1996	2,078,703	-	2,078,703	0	75.60%	0
1995	504,915	-	504,915	0	69.30%	0
1994	423,330	-	423,330	(0)	63.10%	(0)
1993	1,627,863	-	1,627,863	-	56.90%	-
1992	303,351	-	303,351	0	50.60%	0
1991	1,655,251	-	1,655,251	0	44.40%	0
1990	1,950,025	-	1,950,025	(0)	38.20%	(0)
1989	194,055	-	194,055	-	32.80%	-
1988	961,631	-	961,631	(0)	29.50%	(0)
1987	940,543	-	940,543	0	26.20%	0
1986	113,419	-	113,419	-	22.90%	-
1985	581,502	-	581,502	-	19.60%	-
1984 & PRIOR	4,266,391	-	4,266,391	0	16.30%	0
TOTAL	22,550,650	361,928	22,912,577	-		1
	Per FY99 Pers. Prop. Tax Report		22,912,577			

(1) See letter regarding alternative listing date attached.

18-0518

MTD PRODUCTS, INC.							
OHIO FORM 937 TRUE VALUE COMPUTATION							
CUYAHOGA COUNTY PARMA SCHOOL DISTRICT							
TOOLROOM							
CLASS:2							
YEAR ACQUIRED	**COST 8/1/98**	**ADDITIONS**		**(1) DISPOSALS**	**COST 10/31/99**	**CLASS 2 %**	**TRUE VALUE**
1999	-	36,341		36341	(0)	92.00%	(0)
1998	-	2,117	*	2,117	0	76.30%	0
1997	148,874	-		148,874	0	60.60%	0
1996	14,265	-		14,265	-	46.10%	-
1995	-	-			-	37.90%	-
1994	8,280	-		8,280	0	29.80%	0
1993	-	-		-	-	21.60%	-
1992 & PRIOR	-	-		-	-	20.00%	-
TOTAL	171,419	38,458		209,877	0		0
	Per FY99 Pers. Prop. Tax Report			209,877			
*See Reconciliation							

(1) See letter regarding alternative listing date attached.

MTD PRODUCTS, INC.						
OHIO FORM 937 TRUE VALUE COMPUTATION						
CUYAHOGA COUNTY PARMA SCHOOL DISTRICT						
TOOLROOM						
CLASS:3						
YEAR ACQUIRED	**COST 8/1/98**	**ADDITIONS**	(1) **DISPOSALS**	**COST 10/31/99**	**CLASS 3 %**	**TRUE VALUE**
1999	-	-	-	-	93.20%	-
1998	-	-	-	-	82.80%	-
1997	-	-	-	-	72.40%	-
1996	-	-	-	-	62.00%	-
1995	-	-	-	-	51.50%	-
1994	-	-	-	-	42.20%	-
1993	-	-	-	-	36.30%	-
1992	-	-	-	-	30.50%	-
1991	-	-	-	-	24.60%	-
1990 & PRIOR	10,986	-	10,986	0	18.80%	0
						-
TOTAL	10,986	-	10,986	0		0
	Per FY99 Pers. Prop. Tax Report		10,986			

(1) See letter regarding alternative listing date attached.

MTD PRODUCTS, INC.						
OHIO FORM 937 TRUE VALUE COMPUTATION						
CUYAHOGA COUNTY PARMA SCHOOL DISTRICT						
CLEVELAND INDUSTRIAL SALES						
CLASS:2						
YEAR ACQUIRED	COST 8/1/98	ADDITIONS	(1) DISPOSALS	COST 10/31/99	CLASS 2 %	TRUE VALUE
1999	-	31,835	31835	0	92.00%	0
1998	-	75,844	75,844	(0)	76.30%	(0)
1997	-	3,738.11	3,738	0	60.60%	0
1996	-	-	-	-	46.10%	-
1995	-	-	-	-	37.90%	-
1994	-	-	-	-	29.80%	-
1993	-	-	-	-	21.60%	-
1992 & PRIOR	-	-	-	-	20.00%	-
TOTAL	-	111,417	111,417	0		0
	Per FY99 Pers. Prop. Tax Report		111,417			

(1) See letter regarding alternative listing date attached.

MTD PRODUCTS, INC.						
OHIO FORM 937 TRUE VALUE COMPUTATION						
CUYAHOGA COUNTY PARMA SCHOOL DISTRICT						
CLEVELAND INDUSTRIAL SALES						
CLASS:3						
YEAR ACQUIRED	COST 8/1/98	ADDITIONS	(1) DISPOSALS	COST 10/31/99	CLASS 3 %	TRUE VALUE
1999	-	229,917	229,917	(0)	93.20%	(0)
1998	-	-	-	-	82.80%	-
1997	-	4,115	4,115	0	72.40%	0
1996	-	-	-	-	62.00%	-
1995	-	-	-	-	51.50%	-
1994	-	-	-	-	42.20%	-
1993	-	-	-	-	36.30%	-
1992	-	-	-	-	30.50%	-
1991	-	-	-	-	24.60%	-
1990 & PRIOR	-	-	-	-	18.80%	-
TOTAL	-	234,032	234,032	0		0
	Per FY99 Pers. Prop. Tax Report		234,032			

(1) See letter regarding alternative listing date attached.

MTD PRODUCTS, INC.						
OHIO FORM 937 TRUE VALUE COMPUTATION						
CUYAHOGA COUNTY PARMA SCHOOL DISTRICT						
CLEVELAND						
CLASS:2						
YEAR ACQUIRED	COST 8/1/98	ADDITIONS	(1) DISPOSALS	COST 10/31/99	CLASS 2 %	TRUE VALUE
1999	-	270,292	270,292	0	92.00%	0
1998	3,054,411		3,054,412 *	(0)	76.30%	(0)
1997	418,581	-	418,581	0	60.60%	0
1996	74,298	-	74,298	0	46.10%	0
1995	148,025	-	148,025	0	37.90%	0
1994	43,231	-	43,232	(0)	29.80%	(0)
1993	18,305	-	18,305	(0)	21.60%	(0)
1992 & PRIOR	476,475	-	476,475	0	20.00%	0
TOTAL	4,233,327	270,292	4,503,620	(0)		(0)

(1) See letter regarding alternative listing date attached.

Class 3

MTD PRODUCTS, INC.						
OHIO FORM 937 TRUE VALUE COMPUTATION						
CUYAHOGA COUNTY PARMA SCHOOL DISTRICT						
CLEVELAND						
CLASS:3						
YEAR ACQUIRED	COST 8/1/98	ADDITIONS	(1) DISPOSALS	COST 10/31/99	CLASS 3 %	TRUE VALUE
1999	-	-	-	-	93.20%	-
1998	-	-	-	-	82.80%	-
1997	-	-	-	-	72.40%	-
1996	224,528	-	224,528	-	62.00%	-
1995	-	-	-	-	51.50%	-
1994	-	-	-	-	42.20%	-
1993	13,508	-	13,507	0	36.30%	0
1992	-	-	-	-	30.50%	-
1991	51,682	-	51,682	-	24.60%	-
1990 & PRIOR	725,911	-	725,912	(0)	18.80%	(0)
TOTAL	1,015,629	-	1,015,629	(0)		0
	Per FY99 Pers. Prop. Tax Report		566,408			

(1) See letter regarding alternative listing date attached.

MTD PRODUCTS, INC.						
OHIO FORM 937 TRUE VALUE COMPUTATION						
MEDINA COUNTY BUCKEYE SCHOOL DISTRICT						
LIVERPOOL						
CLASS:2						
YEAR ACQUIRED	COST 8/1/98	ADDITIONS	(1) DISPOSALS	COST 10/31/99	CLASS 2 %	TRUE VALUE
1999	-	178,978	178,978	(0)	92.00%	(0)
1998	60,402	-	60,402	(0)	76.30%	(0)
1997	270,381	-	270,381	0	60.60%	0
1996	22,148	-	22,148	(0)	46.10%	(0)
1995	25,777	-	25,777	(0)	37.90%	(0)
1994	7,858	-	7,858	-	29.80%	-
1993	20,807	-	20,807	-	21.60%	-
1992 & PRIOR	125,469	-	125,469	-	20.00%	-
TOTAL	532,842	178,978	711,820	(0)		(0)
	Per FY99 Pers. Prop. Tax Report		701,076			

(1) See letter regarding alternative listing date attached.

MTD PRODUCTS, INC.						
OHIO FORM 937 TRUE VALUE COMPUTATION						
MEDINA COUNTY BUCKEYE SCHOOL DISTRICT						
LIVERPOOL						
CLASS:3						
YEAR ACQUIRED	COST 8/1/98	ADDITIONS	(1) DISPOSALS	COST 10/31/99	CLASS 3 %	TRUE VALUE
1999	-	-	-	-	93.20%	-
1998	-	-	-	-	82.80%	-
1997	-	-	-	-	72.40%	-
1996	-	-	-	-	62.00%	-
1995	-	-	-	-	51.50%	-
1994	27,533	-	27,533	-	42.20%	-
1993	-	-	-	-	36.30%	-
1992	2,104	-	2,104	-	30.50%	-
1991	-	-	-	-	24.60%	-
1990 & PRIOR	192,996	-	192,996	(0)	18.80%	(0)
TOTAL	222,633	-	222,633	(0)		(0)
	Per FY99 Pers. Prop. Tax Report		188,032			

(1) See letter regarding alternative listing date attached.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Appendix to Brief of Appellee/Cross-Appellant was sent by regular U.S. mail to Charles M. Steines, Jones Day, North Point, 901 Lakeside Avenue, Cleveland, Ohio 44114-1190, counsel for appellant/Cross-Appellee, on this 28th day of December, 2006.

BARTON A. HUBBARD
Assistant Attorney General