

**BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION**

In re:

SIGNAL MOUNTAIN CEMENT COMPANY

Account no. 0008955

Hamilton County

Tangible personal property

Tax years 2008-2009 (Back assessments)

AR Nos. 62119, 62120

Tax years 2010-2011

AR Nos. 64218 & 71140

FINAL DECISION AND ORDER

Statement of the Case

In this matter the assessor challenges the initial decision and order of Administrative Judge Mark Minsky, who set aside back assessments of the subject property for 2008-2009 and reduced the assessor's adjusted assessments of the subject property for 2010-2011. The resulting assessments under the initial decision and order were as follows:

<u>Tax Year</u>	<u>Appraised value</u>	<u>Assessed value</u>
2008	\$12,406,522	\$3,721,957
2009	\$23,574,644	\$7,072,393
2010	\$25,304,052	\$7,591,216
2011	\$21,006,517	\$6,301,955

The appeal was heard in Knoxville on October 24, 2012 before Commission members Walker (presiding) Clanton and Proffit. The taxpayer was represented by its counsel, Christopher Wilson and Charles Trost. Appearing on behalf of the assessor were

staff member John Campbell and contract auditor Byron Ellis, assisted by state Division of Property Assessments Assistant General Counsel John Allen. Based on the evidence and arguments of counsel the Commission does not adopt the findings and conclusions stated in the initial decision and order but nevertheless affirms the assessments recommended in the initial decision and order on the basis of the findings and conclusions stated below.

Findings of Fact and Conclusions of Law

Tangible personal property of businesses is valued for property taxes annually by way of a schedule filed by each business. The business taxpayer reports costs of its personalty on the schedule, according to enumerated categories or groups (e.g., Group 1 includes furniture and fixtures, Group 2 includes computers, and Group 5 includes manufacturing equipment) and also by year of acquisition¹. The law prescribes standard rates of depreciation based on useful lives fixed for these various categories of personalty, with a maximum allowable depreciation of 80% (or as it is generally referred to, a 20% *residual value*). The personalty values resulting from depreciated cost under the statute, known as standard value, must be utilized as the taxable value unless the taxpayer or assessor can document that actual fair market value differs from standard value in a specific instance (nonstandard value).

Signal Mountain Cement Company maintains a cement manufacturing facility in Hamilton County which is the site of the tangible personal property at issue in this case. Plant expansions begun in 1999 were complete by 2001 and the company incurred freight, installation, and transaction taxes as part of the cost of acquiring and bringing machinery and equipment into production. The company did not report these costs on its annual

¹ Tenn. Code Ann. §67-5-903.

rendition to the assessor, and when the assessor became aware of the omission in the course of an audit, he initiated a back assessment for tax years 2008-2009. On the same basis the assessor adjusted the company's filed report for 2010 to add the contested costs, and the assessor rejected the company's 2011 report which asserted a nonstandard value.

Judge Minsky rejected the assessor's view regarding the company's installation, freight and tax costs, on grounds, as argued by Signal Mountain, that including these items in reportable cost either 1) amounted to a tax on intangible personal property, or 2) invariably resulted in 'value-in-use' rather than 'value-in-exchange'. The assessor argues that including these items in reportable cost does not amount to a tax on the items, but rather manifests a statutory presumption that taxable value of tangible personal property includes all costs originally incurred to place the property in service, particularly if such costs were capitalized by the owner for recovery through depreciation. The assessor cites a previous decision of the Commission, *Appeal of Memphis CATV (7/25/07)* in support of his contention. The Commission finds the assessor's argument more persuasive on this point. The Commission agrees, this issue was settled in *Memphis CATV*, a case not cited to Judge Minsky.²

While an appraiser considering the value of a particular item of tangible personal property may properly exclude particular set-up costs in performing a cost approach to value, the Tennessee system for mass appraisal of tangible personal property indulges the reasonable assumption there are certain set-up costs that all owners will incur and they will, if the market permits, seek to recoup those costs along with the balance of their

² As Judge Minsky observed, the assessor was not represented by counsel at the previous hearing, which likely explains why *Memphis CATV* was not cited to Judge Minsky.

investment in the property. The means to challenge the statutory assumption is through a nonstandard value offered in a specific instance, involving specific property, exactly as Signal Mountain did for 2011. From an appraisal standpoint, no blanket rule can be laid down regarding these set-up costs, but for purposes of the statutory presumption, the taxpayer should annually report 'gross capitalized cost' subject to depreciation.³

Moving beyond the arguments about standard value, Judge Minsky determined Signal Mountain had established nonstandard value by unrebutted testimony of expert appraisal witnesses, and the judge cited this evidence as an alternative basis for rejecting the higher value urged by the assessor for tax year 2011. Before the Commission, Signal Mountain again offered expert appraisal testimony as to the fair market value of its tangible personal property for each of the tax years at issue, which the assessor did not attempt to rebut. The Commission finds and concludes this proof conclusively establishes the taxable value of the subject tangible personal property for tax year 2011, and conclusively offsets any additional tax liability related to the back assessments or reassessments for tax years 2008-2010.⁴ Accordingly, for the reasons stated herein, the Commission adopts the assessments determined by Judge Minsky, subject to equalization.

ORDER

By reason of the foregoing, it is ORDERED that the equalized assessments are determined as follows for tax years 2008-2011:

<u>Tax Year</u>	<u>Appraised value</u>	<u>Assessed value</u>
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³ "In the absence of evidence to the contrary, the fair market value of commercial and industrial tangible personal property, except raw materials, supplies, and scrap property, shall be presumed to be either the original cost to the taxpayer less straight line depreciation or the residual value, whichever is greater." Tenn. Comp. R. & Regs. 0600-5-.06 (1).

⁴ Tenn. Code Ann. §67-5-902 (b).

2008	\$12,406,522	\$3,451,370
2009	\$23,574,644	\$7,072,393
2010	\$25,304,052	\$7,591,216
2011	\$21,006,517	\$6,301,955

This Order is subject to:

1. **Reconsideration by the Commission**, in the Commission's discretion.

Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board of Equalization with fifteen (15) days from the date of this order.

2. **Review by the State Board of Equalization**, in the Board's discretion.

This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

3. **Review by the Chancery Court** of Davidson County or other venue as provided by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: January 8, 2013

Robert Walker
Presiding Member *by [signature] / perm.*

ATTEST:

Kelsie Jones
Executive Secretary

cc: Mr. John C. E. Allen, Esq.
Mr. Christopher A. Wilson, Esq.
Mr. Bill Bennett, Assessor