

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.