

OHIO BOARD OF TAX APPEALS

Aristech Chemical Corporation,)	CASE NO. 97-M-586
)	
Appellant,)	(PERSONAL PROPERTY TAX)
)	
vs.)	DECISION AND ORDER
)	
Roger W. Tracy, Tax)	Appealed to Ohio Supreme Ct.
Commissioner of Ohio,)	Joint Motion to Affirm
)	July 17, 2000
Appellee.)	

APPEARANCES:

For the Appellant -

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Entered March 17, 2000

Mr. Johnson, Ms. Jackson and Mr. Manoranjan concur.

This cause and matter comes to be considered by the Board of Tax Appeals as a result of a Notice of Appeal filed herein by Aristech Chemical Corporation, Inc. (“Aristech”), appellant herein. Appellant appeals three final determinations of the Tax Commissioner, appellee herein, wherein said official modified, and affirmed as modified, personal property assessments for tax years 1990, 1991 and 1992.

Appellant's Notice of Appeal specifies the following as error:

"1. As to personal property tax years 1990 through 1992, the Appellee based his determination of the true value in money of Appellant's personal property upon adjusted Accounting Principles Board Opinion 16 ('APB 16') amounts arising from accounting for a purchase of the taxpayer's shares of stock, rather than upon the depreciated historical costs of the personal property. The APB 16 amounts result in an assessment of tangible personal property at an amount that exceeds its true value in money, in that the assessment includes the elements of property values other than those of tangible personal property, contrary to R.C. 5711.18.

"2. As to personal property tax years 1991 and 1992, the Appellee determined the true value in money of certain personal property by using Class Life V in applying his True Value Computation ('302') method to Appellant's personal property. Appellee failed to adjust his 302 Computation to reflect the special or unusual circumstances under which Appellant operates its machinery and equipment, or the unjust, unreasonable, erroneous and inappropriate results that were produced by the 302 method assessment. Rigid application of the 302 True Value Computation is prohibited under these circumstances, or when it produces these results. Accordingly, Appellant's property is assessed for property tax purposes in excess of its true value in money, contrary to R.C. 5711.18.

"3. As to personal property tax years 1990 through 1992, the Appellee computed the value of Appellant's machinery and equipment without reduction to reflect the appellant's retirement of capitalized asset and rebuild costs, resulting in taxation of tangible personal property which is no longer used in business by the Appellant. Such property is not 'taxable property' pursuant to R.C. 5711.01(A), inasmuch as it is not subjected to taxation under R.C. 5709.01(B)(1).

“4. As to personal property tax years 1990 through 1992, the Appellee failed to exclude from his assessment of Appellant’s personal property the value of rail cars (sic) that were not located in Ohio on tax listing day. Rail cars (sic) which are not within the State of tax-listing day are not ‘taxable property’ pursuant to R.C. 5711.01(A), inasmuch as they are not subjected to taxation under R.C. 5709.01(B)(1).

“5. As to personal property tax years 1990 through 1992, the Appellee included the cost of engineering drawings in computing the taxable value of Appellant’s personal property for tax purposes. Pursuant to R.C. 5701.03(A) and R.C. 5709.01(B) such drawings are excluded from property subject to taxation where the drawings are not for sale in the ordinary course of business and their value is not included in the valuation of inventory produced for sale.

“6. As to personal property tax years 1990 through 1992, the Appellee’s assessment renders the provisions of Chapter 5711 of the Revised Code of Ohio, void as applied, in that such statutory provisions, as implemented by administrative practices and actions, administered and applied, deprive Appellant of due process of law and equal protection of the laws in violation of Article 1, Section 8, Clause 3 and Amendment XIV, Section 1, of the Constitution of the United States, as well as Article 1, Sections 2 and 16, and Article XII, Section 55, Clause 1, of the Constitution of Ohio.”

Appellant is a manufacturer of “commodity” chemical products. Commodity chemicals are basic formulations of chemicals produced by a number of producers in the national and international market. The producers of such chemicals generally compete with other manufacturers of identical compositions on price and availability. (In contrast, “specialty” chemicals are unique formulations produced for specific purposes.) Aristech, headquartered in Pittsburgh, Pennsylvania, has a plant in Haverhill, Ohio which produces

petroleum-based chemicals such as phenol, acetone, bisphenol A, aniline, dephenylamine and polypropylene.

The Haverhill, Ohio facility is not Aristech's only manufacturing plant. During the audit period, the company had eleven plant and distribution centers and a research and development facility located in fifteen different states. Originally a subsidiary of USX Corporation, Aristech was a publicly traded company before it was acquired by a subsidiary of Mitsubishi Corporation ("Mitsubishi").

To effect the acquisition, Mitsubishi formed two subsidiaries. Ultimately, the shares of the new subsidiaries were merged into Aristech, resulting in Mitsubishi directly owning all shares of the previously public-held company. The transaction was valued as of January 29, 1990 and completed on March 7, 1990. The purchase price paid was \$27.00 per share, significantly more than the market price of the shares and \$2.00 more than the nearest bidder. The aggregate purchase price for the acquisition of Aristech's shares was \$877,000,000.

Because of the nature of the transaction, generally accepted accounting principles suggested that Aristech's books and records for financial reporting purposes should be changed to reflect the purchase. Aristech allocated the stock purchase price according to Accounting Principles Board Opinion No. 16 ("APB 16").

In its 1990 inter-county personal property tax return (valuation date December 31, 1989), Aristech reported Schedule II taxable personal property based upon historical costs. (S.T., p. 23, 32) In its 1991 and 1992 inter-county personal property tax returns, Aristech reported Schedule II personal property based upon its application of APB 16 and consistent with its financial reporting. Aristech included a 902 claim, deducting from the value reported an amount it believed reflected the inflated value of its assets resulting from the allocation made

under APB 16.¹ (S.T., p. 36, 42, 55-57)

The Commissioner readjusted values to reflect APB 16 values for 1990 and denied the 902 deduction claim for 1991 and 1992. Aristech seeks review of these determinations. Additionally, Aristech provided evidence that certain railroad cars were not within the State of Ohio during the pertinent tax years. Aristech also requests that the values of the railcars be removed from its reports. Finally, Aristech claims that certain machinery and equipment had been taken out of service and the value of certain engineering drawings were included in the assessment.

This matter is considered upon Aristech's Notice of Appeal, the Statutory Transcript certified to this Board by the Tax Commissioner, the record of the hearing held in this matter and the legal argument provided by counsel.

Aristech's initial claim is that the Tax Commissioner erred when he employed values attributable to APB 16 allocations to value the corporation's personal property. Aristech argues that the allocation of the stock purchase price distorts the true value of its machinery and equipment, which, in and of itself is a ground for rejection of the allocation. However, this Board does not accept Aristech's claim that the Commissioner's reliance upon the APB 16 allocations was in error.

The valuation of taxable tangible personal property is prescribed by R.C. 5711.18, which 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

¹ Aristech's 1990 inter-county personal property tax report also contained a 902 deduction claim. This claim was not discussed at hearing. It appears from the record that the claim was a carryforward of a reduction to book value for the Haverhill facility granted by the Tax Commissioner to USX Corporation in earlier tax periods. (See S.T., p. 125-130, 169-171)

or less than the then true value of such property in money.
***.”

R.C. 5711.18 imposes the duty upon the Tax Commissioner to determine true value of personal property used in business. *Wheeling steel Corp. v. Evatt* (1944), 143 Ohio St.71. In the present appeal, the values determined by the Commissioner were based upon allocations made pursuant to APB 16 under generally accepted accounting principles (“GAAP”). GAAP required the allocation because of the nature of the Aristech stock purchase. Determinations of the Tax Commissioner, as chief assessor of personal property, are presumptively valid and the burden is upon the taxpayer challenging the assessment to prove that the assessment is in error. *Hatchadorian v. Lindley* (1986) 21 Ohio St.3d 66.

Case law applicable to stock purchases holds that a recent, valid sale, properly allocated, establishes the best evidence of “true value in money.” *Tele-Media Co. v. Lindley* (1982), 70 Ohio St.2d 284. While Aristech argues that the transaction involved the purchase of stock, as opposed to physical assets, in *Buckeye Internatl., Inc. v. Limbach* (1992), 64 Ohio St.3d 264. the Court considered a similar stock sale and concluded “*** 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.”

Aristech relies upon *Heimerl v. Lindley* (1980), 63 Ohio St.2d 309, to support its position that the Commissioner is not bound to an arbitrary apportionment for federal tax purposes. In that case, the Court affirmed this Board’s finding that a federal tax allocation was greater than the true value of certain tangible personal property. However, this Board finds that *Heimerl* is not inconsistent with *Buckeye Internatl., Inc. v. Limbach, supra*. In *Heimerl*, the Court reiterated that the assessment may rely on values derived from a sale found to be a valid sale and the purchase price properly allocated. A properly allocated purchase price would not be arbitrary. *Tele-Media v. Lindley, supra*, footnote 4.

Thus, this Board's first task is to review the transaction and determine whether the elements of an arm's length sale in the context of *Buckeye Internatl., Inc.* have been satisfied. If the purchase of stock by Mitsubishi from Aristech meets the requirements set forth by the Court, then the Commissioner may be authorized to value in accordance with the APB 16 allocations.

The test for arm's length sale in valuing personal property is similar to the test for valuing real property. *Tele-Media Co., supra*; See, also *Alcoa v. Kosydar* (1978), 54 Ohio St.2d 477. The test regularly applied in real property valuation cases is set forth in *Walters v. Knox County Board of Revision* (1989), 47 Ohio St.3d 23. An arm's length sale is one that 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.

At hearing, Aristech presented the testimony of Mr. Michael J. Prendergast, its Chief Financial Officer and Senior Vice President. Mr. Prendergast began employment with Aristech when the corporation was a subsidiary of USX Corporation and has remained with the surviving corporation through its publicly held period after the purchase by Mitsubishi. Mr. Prendergast was familiar with the sale of Aristech's stock to Mitsubishi and the events which transpired both before and after the sale. Aristech also introduced Appellant's Exhibit 7. Exhibit 7 is the Tender Offer Statement filed under the requirements of the Securities and Exchange Act of 1934. Under the heading "Special Factors," the history of the Aristech sale is detailed, beginning 30 months before the actual sale to Mitsubishi's subsidiary. (Appellant's Exh. 7, pages 5-19)

It is clear from Mr. Prendergast's testimony and the historical account presented in the Tender Offer Statement that there was no relationship between Aristech and Mitsubishi or their respective boards of directors before the sale that might affect the arm's length nature of the sale. Each corporation acted in a self-interested manner and the purchase occurred in the open market. Thus, the Board

finds that the stock purchase transaction qualified as an arm's length sale.

Aristech attempts to argue that, notwithstanding the arm's length nature of the sale, the price received in the Mitsubishi transaction does not represent true value because intervening factors affected the actual price paid by the seller and accepted by the buyer. In *Ratner v. Stark Cty. Bd. of Revision* (1986), 23 Ohio St.3d 59, the Court held that factors such as favorable financing, mode of payment, sale-lease arrangements and abnormal economic conditions may affect the use of sale price as the best evidence of value. Aristech offers the following factors which it claims cause the Mitsubishi stock purchase price not to be reflective of the "true value in money" of Aristech's machinery and equipment:

"1. Mitsubishi's acquisition of Aristech was a purchase of capital stock, not assets;

"2. Favorable, insider financing was utilized by Mitsubishi.

"3. The Japanese yen was unusually strong, relative to the U.S. dollar;

"4. Mitsubishi was a "strategic" buyer;

"5. Mitsubishi paid a high premium for Aristech's capital stock and

"6. Drastic, unforeseen and unforeseeable changes were occurring in the chemical industry during the Mitsubishi Stock Acquisition of Aristech."

(Appellant's post-hearing brief, p. 27)

To provide factual support for its position, Aristech offered the testimony of Mr. Michael Kratochwill, Director of the Financial Practice with Chem Systems, an IBM subsidiary. In his employment with Chem Systems, Mr. Kratochwill regularly advises the chemical industry on valuation issues. Mr.

Kratochwill was familiar with the entire petrochemical industry, both nationally and internationally. The witness discussed the history of the commodity chemical industry generally in the United States over the last 20 years, with a focus upon the commodity chemicals produced by Aristech. Mr. Kratochwill also presented a report covering the same information, which was received into evidence as Appellant's Exhibit 20.

The essence of Mr. Kratochwill's testimony was that the petrochemical industry, an industry which originated with coal-based chemicals and shifted to the development of petroleum-based chemicals in the 1950's and 60's, grew virtually unabated during the 1970's. Whether the general economy was expanding or contracting, the petrochemical industry, driven by new technology, escaped general economic trends.

In 1979, the oil embargo caused the cost of petroleum to increase so drastically that the industry could not absorb the increased product prices. For the first time, the petrochemical industry experienced a downturn. The downturn lasted until the mid-1980's when the industry again began to experience rapid growth. Insiders believed that the petrochemical industry would return to pre-1980 growth, with no future cyclical downturns.

At first such a prediction proved prescient. While demand had a small dip in the late 1980's, the industry recovered quickly. Manufacture was near capacity and construction of new plants was forecasted. It was at this time Japanese investors began to make large investments in the United States, not only in the petrochemical industry, but also in real estate and other industries as well.

In retrospect, however, 1988 turned out to be a peak year for petrochemicals. While forecasters at the time were predicting a small cyclical dip in production and profitability during the early 1990's, it turned out that the cyclical dip was deeper and longer than expected. It appears to industry watchers that the petrochemical industry now mirrors the mainstream economy, with the

same expectant forces causing cyclical up- and downturns.

It was in the late 1980's that Aristech was originally split from USX Corporation. It was separately operated until it was acquired, in 1990, by the subsidiary of Mitsubishi. According to Mr. Krachotwill's description of the marketplace, Aristech was sold during a period when prices on most of Aristech's products were dropping and cash margins were falling. (H.R. II, p. 220-222; Appellant's Exh. 20) Nevertheless, Mr. Krachotwill surmised, Mitsubishi was still interested in making the purchase of Aristech because of internal motivations not dependent upon the marketplace. Mr. Krachotwill described Mitsubishi as a "strategic" investor, one more motivated by individual business needs than the marketplace in general. Mr. Krachotwill speculated that Mitsubishi needed a source of commodity chemicals; wished to enter the United States economy because it saw the United States as a country rich in natural resources; and had the capital to make such moves. These reasons, Aristech now argues, militate against the use of the purchase price paid by Mitsubishi as an indication of fair market value.

However, the historical account in the Tender Offer Statement presents a different perspective. Such historical account reveals that at the time control of the corporation's stock was sought, advisors were counseling Aristech's board of directors that a competitive offer of \$25.00 per share made by Huntsman Chemical Corporation ("Huntsman") was inadequate. (Appellant's Exh. 7, p. 10) Representatives of Shearson Lehman compared the Huntsman Chemical Corporation offer to other sales of chemical companies then occurring in the marketplace and suggested that the \$25.00 per share offer was at the low end of the value range. (Appellant's Exh. 7, p. 11) Based upon discounted cash flow analyses, the Shearson Lehman advisors were proposing stock value significantly more than the \$27.00 per share the board of directors ultimately accepted from Mitsubishi. (Appellant's Exh. 7, p. 11)

While Aristech's witness was well versed in the state of the petrochemical industry in general, this Board does not find that his testimony is competent and probative evidence that the sales price was not the best evidence of value under *Ratner* standards. First, we note that the *Ratner* standards do not encompass motivational aspects. *Ratner*, rather, concerns tangible evidence which affects price. The types of conditions the Court referred to in *Ratner* should be evident from either agreements made by the parties or generally known economic conditions.

Only three of Aristech's six listed reasons for discounting the Mitsubishi sale may be classified as tangible evidence which affects price. The first is that the transaction was a purchase of stock and not of assets. However, this Board and the Supreme Court have approved valuations based upon stock purchases in the past. *Buckeye Internatl., Inc., supra*. Therefore, reliance upon the price received in a stock transaction is not in and of itself violative of the arm's length sale standard.

The second tangible reason given to discount the purchase was that the Japanese yen was unusually strong, causing a high purchase price paid in American dollars to have less of an effect on a Japanese investor. However, the facts relating to the Huntsman offer and Shearson Lehman's recommendations based upon market sales negate such a finding. The final tangible reason was favorable insider financing. However, Aristech provided no evidence to support this claim other than Mr. Kratochwill's suppositions concerning Mitsubishi's relationship with Japanese financial institutions.

The other reasons given for discounting the purchase price – that Mitsubishi was a strategic buyer, that it paid a premium for the capital stock and that unforeseen and unforeseeable changes were occurring in the industry – all rely upon the motivations of an individual purchaser. Such motivations in specific instances have been taken into consideration when valuing property. *Lakeside*

Avenue Ltd. Partnership v. Cuyahoga Cty. Bd. of Revision (1996), 75 Ohio St.3d 540. However, in *Lakeside Avenue Ltd. Partnership*, the testimony relied upon was that presented by the entity whose motivations were in issue. Here, we have no testimony from anyone associated with Mitsubishi. Therefore, we are unable to infer any rationale for Mitsubishi's actions. The testimony we do have before us is merely the opinion of a person, admittedly knowledgeable of the surrounding market conditions, but without reliable inside information, necessary to overcome what appears to be a presumed fairly negotiated, open market transaction.

Moreover, even if all Aristech's evidence were accepted, this Board finds that the stock sale is the best evidence of value. Aristech's witness identified three contemporaneous purchases of chemical manufacturers, the petrochemical arm of Citgo Corp., Rexene and Sterling Chemical, all of which were acquired at near record prices. (H.R. II, p. 252-255) We acknowledge that these companies' values dropped in later years. However, a subsequent decline in value does not always indicate that an earlier sale is not reflective of then current market conditions. The historical rendition and the contemporaneous sales all evidence a market in which Aristech was able to command a generous price for its stock at the time of sale. We do not find that the additional factors presented by Aristech either affect the arm's length nature of the sale or reflect the true value of the property.

While we find that the Commissioner was within his authority to rely upon the APB 16 values for personal property tax purposes, we note that the Commissioner used the APB 16 values and depreciated those values using his 302 computations. So that the Commissioner's value determinations are uniform, he has established the "302" computation directive, which, in essence is a straight-line depreciation schedule applied to original cost. *Jacob B. Sweeney Equip. Trust v. Limbach* (1991), 74 Ohio App.3d 82. The values derived under this method are *prima facie* indications of true value. *Gahanna Heights, Inc. v. Porterfield* (1968),

15 Ohio St.2d 189; *W.L. Harper v. Peck* (1954) 161 Ohio St. 300; *Wheeling Steel Corp v. Evatt* (1944) 143 Ohio St. 71.

A taxpayer may prove that special or unusual circumstances exist or rigid application of the 302 directives would result in an unjust or unreasonable result. *PPG Industries v. Kosydar* (1981), 65 Ohio St.2d 80. However, the burden is on the taxpayer to prove that its property is overvalued.

Therefore, even though we reject Aristech's claim that the sale price does not reflect true value, we consider Aristech's evidence that the APB 16 allocations as depreciated under 302 computations do not represent true value. Aristech first presented testimony from E. Scott Snyder, an accountant and business consultant with PriceWaterhouseCoopers. Mr. Snyder discussed the purpose of APB 16 allocations and why Aristech was required to value its property in accordance with such principles. Mr. Snyder disclosed that valuation under APB 16 was based on "fair value" which is not synonymous in many cases with "fair market value." However, because of the suggested method of valuing machinery and equipment for APB 16 purposes, Mr. Snyder disclosed that, in many cases, appraisals contemporaneous with stock sales are prepared. He further testified that he was aware that a contemporaneous appraisal of Aristech's machinery and equipment had been completed.² (H.R. III, p. 400, 401). However, Aristech did not offer any appraisal evidence prepared at the time of the sale which supported a different value. Aristech, further, did not offer any evidence describing how the actual allocation of the purchase price was made, applicable to the Schedule II taxable personal property.

Before this Board, Aristech presented the appraisal testimony of Mr. Kal Barrow, ASA. Mr. Barrow was an employee of Arthur Andersen LLP when

² In *Buckeye Internatl., supra*, the Court referred to the fact that the appellant in that appeal did not present appraisal evidence which the purchased company had prepared "shortly before the purchase." *Id.* at 267.

the appraisal was performed. At the time of hearing, Mr. Barrow was Vice President of Technical Services with Nationwide Consulting Company. Mr. Barrow has appraised machinery and equipment for over 35 years, working for a variety of companies as well as independently. He is an Accredited Senior Appraiser with the American Society of Appraisers.

Mr. Barrow testified that near the close of 1993, Arthur Andersen LLP was engaged to conduct an appraisal of the machinery and equipment at Aristech's Haverhill facility. Mr. Barrow was in charge of the engagement, but another employee, Mr. Gregory Davis performed the business enterprise valuation. The appraisal valued the property for years 1989, 1990 and 1991 (personal property tax years 1990, 1991 and 1992).

When valuing the machinery and equipment, Mr. Barrow considered all three common approaches to valuing property – the cost approach, the income approach and the market approach. Mr. Barrow discounted both the income approach and the sales approach, the income approach because of the difficulty of attributing value derived under such approach down to an individual piece of equipment and the market approach because the appraiser was unable to find a viable marketplace for chemical processing equipment.

Mr. Barrow then valued the equipment using the cost approach, specifically the reproduction cost approach. Mr. Barrow divided the assets into classes. There were certain classes of property, such as railcars located outside the state, improvements to land and environmental and capital engineering costs, that Aristech believed should not be included in the valuation study. Mr. Barrow accepted the items to be excluded and their values as presented to him by Aristech. The appraiser then obtained the original costs of the items to be valued, trended the costs forward to the valuation dated and then estimated a depreciation schedule for each class of assets. Mr. Barrow concluded to residual values for those assets which had reached a fully depreciated stage.

Mr. Barrow's cost valuations accounted for both physical and functional obsolescence. To determine the presence of economic obsolescence, Mr. Barrow relied upon the business enterprise analysis performed by another employee of Arthur Andersen, Mr. Gregory Davis. That analysis appears in the appraisal document. However, Mr. Davis was not present at hearing to testify concerning his conclusions. It was Mr. Barrow's testimony that the business enterprise analysis displayed no measure of economic obsolescence.

On cross-examination, Mr. Barrow acknowledged that he did not consider the Mitsubishi stock purchase transaction in March of 1990 nor did he consider the APB 16 allocations following that sale. Mr. Barrow evidenced no knowledge of the transaction or the actual allocations of value to the taxable personal property.

Based upon Mr. Barrow's opinion of value, Aristech urges this Board to find that the ABP 16 allocations did not accurately value the subject property and Mr. Barrow's opinion more accurately identifies value. The Tax Commissioner, however, argues that the appraisal evidence presented by Aristech is not competent and probative evidence of value because the appraiser ignored the stock purchase.

We must agree. While Aristech has consistently argued that the stock purchase should be ignored, we find no legal or evidentiary reason which would support such a conclusion. The APB 16 values reported are a measure of self-assessment. Aristech, at the very least, must explain its method of allocating value to the individual assets and the reason why it now believes such value is not supportable for personal property tax purposes. See *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129, Paragraph 2 of the Syllabus ("In valuing real property sold within three days of the tax lien date in an arm's length transaction, the best evidence of 'true value in money' is the proper allocation of the lump-sum purchase price and not an appraisal ignoring the contemporaneous sale.")

Thus, we must find that an appraisal, which completely ignores a recent purchase of either stock or assets without some justification, does not provide competent and probative evidence of value. *Buckeye Internatl., Inc., supra*, permits appraisal evidence to be introduced in stock purchases. However, appraisals should take into consideration all relevant facts taking place both before and after the valuation date. *Youngstown Sheet & Tube v. Mahoning Cty. Bd. of Revision* (1981), 66 Ohio St.2d 398. Without some acknowledgement of the purchase transaction, this Board is unable to determine whether such factor would have affected the appraiser's ultimate opinion of value.

Aristech's next claim is that the Tax Commissioner failed to exclude from his assessment railcars that were not located in the state on tax listing day. R.C. 5709.01 provides authority to tax only personal property located and used in business in this state. Ostensibly, any personalty outside the state is not subject to personal property tax.

At hearing, Aristech presented three exhibits. Each exhibit listed the railcars owned by the corporation and their location as of December 31 of the relevant year. The exhibit also included relevant pages from the corporation's general ledger which listed the individual railcars as to their cost basis and cumulative depreciation for each pertinent year.

Through brief, the Commissioner now accepts Aristech's claim that the cost of the railcars outside the state should be excluded from personal property taxation. Counsel states:

“At the BTA hearing, Aristech submitted, as exhibits 16-18, breakdowns of the railcars and costs, for which they were claiming a deduction, and copies of excerpts from the ledger showing the costs from which they would take the deduction. It also presented testimony respecting the manner in which the claim was calculated.

“Based on a review of the record of testimony and exhibits, the Tax Commissioner accepts the claim of a

deduction for the assessed costs attributable to those railcars identified in Exhibits 16-18. He agrees to exclusion of the cost of such railcars as follows.

“The Tax Commissioner notes the testimony of Aristech’s witness that the ledgers included in Ex. 16 for December 31, 1989, do not reflect the APB 16 adjustments of the booked costs of Aristech’s railcars. (R.76) Consistent with the Tax Commissioner’s argument in the first proposition of law of this brief, it is submitted that APB 16 adjusted cost figures should be used for all three tax years in issue in computing the value of railcars located in Ohio and excluding from the assessment those railcars shown to have been located outside Ohio on tax listing date.” (Appellee’s brief at p. 34-35)

This Board agrees that Aristech has presented sufficient competent and probative evidence with which to accurately value such property outside the state. The records clearly reflect historical values and increased ABP 16 values. (Appellant’s Exh. 16, 17, 18; H.R. I, p. 113, witness’ explanation of Aristech’s ledger sheets) As we have determined that APB 16 values employed by the Commissioner are the proper method of valuation, we agree with the Commissioner that such values should, correspondingly, be used to value the exclusion approved for property outside the state.

Aristech next claims that certain engineering costs and pollution control costs were erroneously taxed within the state. We can find no specific reference to such costs in either the legal arguments or the hearing record, except for Mr. Barrow’s exclusion of certain costs from his appraisal analysis. However, the appraiser acknowledged that the valuations amounts excluded were provided him by Aristech. We do note that the Commissioner’s agent increased Aristech’s original assessment by 30 per cent of engineering costs, considering such costs related to items other than drawings. (S.T., p. 5, 11, 18) Aristech has a duty to present evidence concerning the percentage of engineering costs that reflect the

cost of excludable drawings. R.C. 5701.03; *National Distillers & Chemical Corp. v. Limbach* (March 5, 1993), B.T.A. No. 90-X-552, unreported; affirmed (1994), 71 Ohio St.3d 214. We find nothing in the record to support Aristech's claim that all of its engineering costs relate to non-taxable drawings.

Finally, Aristech makes certain constitutional claims. While the Aristech claims that the statutes should be "void as applied," it makes no legal argument related to its constitutional argument. This Board considers its role to be that of the receiver of evidence for future appeal. *MCI Telecommunications Corp. v. Limbach* (1994), 68 Ohio St.3d 195.

Considering the record before us, the Board of Tax Appeals finds and determines that the sale of stock of Aristech to Mitsubishi was an arm's length transaction. We further find that, under *Buckeye Internatl.*, the Commissioner was within his authority to consider the allocations made under APB 16 principles when assessing the personalty within the state. This Board further finds that the Aristech failed to prove by sufficient competent and probative evidence that the APB 16 allocations did not represent true value of the personalty. We further find that the Aristech did not carry its burden with respect to its claims relating to engineering costs. Therefore, the Commissioner findings with respect to valuation of personalty are affirmed. However, the Commissioner's findings with respect to the removal of valuation of the railcars are reversed. Therefore, the matter is affirmed in part and reversed in part, consistent with this Decision and Order.