

STATE OF MICHIGAN
COURT OF APPEALS

IBM CREDIT CORPORATION

Plaintiff-Appellee,

v

CITY OF GRAND RAPIDS,

Defendant-Appellant.

UNPUBLISHED

July 5, 1996

No. 181519

LC No. 00172989

Before: Smolenski, P.J., and Holbrook, Jr., and F. D. Brouillette,* JJ.

PER CURIAM.

Defendant appeals as of right from the Michigan Tax Tribunal's opinion and judgment revising defendant's tax assessment for certain personal property of plaintiff's, specifically, computers leased to another party. We affirm.

Defendant argues that the tax tribunal did not hear the case de novo as required. *Consolidated Aluminum Corp, Inc v Richmond Twp*, 88 Mich App 229, 232-233; 276 NW2d 566 (1979). Defendant's arguments are without merit. There is no evidence in the record to suggest that the tax tribunal did not make an independent finding of the true cash value of the computers in question.

Defendant argues that the tax tribunal improperly shifted the burden of proof to defendant. Plaintiff had the burden of proof in establishing the true cash value of the property. MCL 205.737(3); MSA 7.650(37)(3). However, defendant was required to discredit plaintiff's proofs or offer testimony of its own witnesses that its assessments were correct. *ALHI Development Co v Orion Twp*, 110 Mich App 764, 768; 314 NW2d 479 (1981). By using *IBM v Detroit*, 7 MTT 850 (1993) and by requiring defendant to discredit plaintiff's proofs or offer other evidence to counter plaintiff's evidence, the tax tribunal did not improperly shift the burden of proof.

Defendant argues that the tax tribunal erred in refusing to allow freight and installation costs to be included in the value of the property taxed. Since Page testified that the standard practice of the

* Circuit judge, sitting on the Court of Appeals by assignment.

computer industry is not to include freight and installation costs in the pricing of equipment and defendant did not refute this testimony, freight and installation costs do not need to be calculated in determining the true cash value of plaintiff's property. Further, MCL 211.10e; MSA 7.10(5) does not mandate the inclusion of freight and installation costs.

Defendant argues that the tax tribunal arbitrarily restricted the scope of review to only a portion of the property taxed. However, after plaintiff appealed only a portion of the property, defendant did not add additional property in its answer. Additionally, defendant does not offer any arguments or support for why the subject property was of the same type as the property appealed, nor does it offer arguments for why it would not be prejudicial to plaintiff to add the property which was not appealed at trial. Therefore, the tax tribunal did not arbitrarily limit the scope of review.

Defendant argues that the evidence presented by plaintiff was neither competent, material, nor substantial. Specifically, defendant argues that plaintiff's main witness was uninformed about the actual sale price of the computer that was sold by plaintiff and did not make an independent finding but rather relied on published information. Defendant's arguments are without merit. The particular computer that was sold was not a part of plaintiff's appeal. Even though the witness used published information, he made an independent finding that the information was applicable to plaintiff's property. Thus, competent, material and substantial evidence existed to support the tax tribunal's findings. *Speaker-Hines & Thomas, Inc v Dep't of Treasury*, 207 Mich App 84, 87; 523 NW2d 826 (1994).

Affirmed.

/s/ Michael R. Smolenski
/s/ Donald E. Holbrook, Jr.
/s/ Francis D. Brouillette