01-0421
TAX TYPE: PERSONAL PROPERTY- LOCALLY ASSESSED
TAX YEAR: 1995-1999
DATE SIGNED: 6-4-2012
COMMISSIONERS: B. JOHNSON, M. JOHNSON, M. CRAGUN
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal No. 01-0421 Account No. ##### Tax Type: Personal Property / Locally Assessed Tax Years: 1995 - 1999 Judge: Chapman

This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process.
Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected.

Presiding:
Marc B. Johnson, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: REPRESENTATIVE FOR TAXPAYER-1, Attorney
REPRESENTATIVE FOR TAXPAYER-2, Attorney
REPRESENTATIVE FOR TAXPAYER-3, Witness
REPRESENTATIVE FOR TAXPAYER-4, Witness
REPRESENTATIVE FOR TAXPAYER-5, Witness
For Respondent: RESPONDENT-1, Deputy Salt Lake County District Attorney
RESPONDENT-2, Deputy Salt Lake County District Attorney
RESPONDENT-3, from Salt Lake County Assessor's Office
RESPONDENT-4, from Salt Lake County Assessor's Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on June 21 and 22,

2010. In February and April 2012, the parties submitted post-hearing briefs and proposed Findings of Fact, Conclusions of Law, and Final Decisions. Based upon the evidence and testimony, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is property tax.

2. The tax years at issue are 1995, 1996, 1997, 1998 and 1999 (the "audit period").

3. TAXPAYER brings this appeal from the decision of the Salt Lake County Board of Equalization ("County BOE") regarding the valuation of its personal property that resulted from a personal property audit.

4. TAXPAYER is a company that manufactured COMPUTER SOFTWARE at manufacturing facilities located in a number of states. In or around October 1994, TAXPAYER purchased COMPUTER SOFTWARE manufacturing assets from CORPORATION-1, including real estate (i.e., plants), accounts receivable, and machinery and equipment for two facilities, one in Salt Lake County and another one in STATE-1 (the "TAXPAYER PLANTS"). At the time TAXPAYER purchased the TAXPAYER PLANTS, it also owned two other COMPUTER SOFTWARE plants in STATE-2 and another one in STATE-3. TAXPAYER closed the Utah TAXPAYER PLANT in 2000.

5. At the end of 1999 and the beginning of 2000, the County Assessor's Office conducted an audit of TAXPAYER'S personal property that was located at the Utah TAXPAYER PLANT for the 1995 through 1999 tax years. On April 10, 2000, the County Assessor's Office issued its audit findings, which TAXPAYER appealed to the County BOE.

6. A hearing was held before the County BOE in 2000. On January 17, 2001, the County BOE sustained the County's audit for all five tax years. TAXPAYER timely appealed the County BOE's decision to the Tax Commission, where the matter was stayed pending a bankruptcy proceeding.

7. Once the bankruptcy proceeding was dismissed, the matter was scheduled for an Initial Hearing. On November 6, 2008, the Commission issued its Initial Hearing Order in the matter.

8. On December 3, 2008, TAXPAYER timely requested to proceed to a Formal Hearing.

9. The taxpayer asks the Commission to reduce the fair market value established by the County BOE for each year, while the County asks the Commission to sustain the County BOE values. For each tax year at issue, the chart below shows: 1) the audit value that the County BOE sustained and that the County also asks the Commission to sustain; and 2) TAXPAYER'S proposed value.[1]

Tax Year	County BOE Value & County's Proposed Value	TAXPAYER's Proposed Value
1995	$$$$$	$$$$$
1996	$$$$$	$$$$$
1997	$$$$$	$$$$$
1998	$$$$$	$$$$$
1999	$$$$$	$$$$$

10. REPRESENTATIVE FOR TAXPAYER-3, who was a facilities manager for TAXPAYER, testified about the different processes involved in manufacturing COMPUTER SOFTWARE. He explained that once the design of a COMPUTER SOFTWARE was determined, the design information would be relayed to TAXPAYER'S engineering department, which is referred to as the "CAD department." The CAD

[1] The methodology that TAXPAYER used to calculate its proposed values is found in Petitioner's Exhibit 1 ("Ex. P-1"). Some of the percent good factors that TAXPAYER used to derive its proposed values are slightly different from the factors that actually existed in Rule 33 for each tax year. Accordingly, even if the Commission were to accept all of TAXPAYER'S arguments concerning the County's audit assessment, TAXPAYER'S proposed values would need to be slightly adjusted to reflect the correct percent good factors.

department would then turn the design into “Gerber data,” which is the programming language recognized by CNC (computer numeric control) machines used in the manufacturing process. REPRESENTATIVE FOR TAXPAYER-3 explained that CNC machines serve two functions in the COMPUTER SOFTWARE manufacturing process: 1) to drill holes into the COMPUTER SOFTWARE; and 2) to perform a routing function with “cutting bits.” He testified that the CNC machines are generally referred to as drills and routers.

11. REPRESENTATIVE FOR TAXPAYER-3 further explained that after the board is drilled, it goes to the photo department where a Mylar film is placed on the board. Then, the board goes into a UV printer that prints the image from the Mylar film onto the board. Next, the board goes through machines that remove anything that was not exposed by the UV light. The board next goes to the “plating department” where the lines on the board are “built up” with copper. Then, the board would be “etched” and would go to have “solder mask” and, if applicable, gold applied. After all these steps, the board would go the “routing department” for routing.

12. Following this process, a customer had the option to have TAXPAYER test the COMPUTER SOFTWARE. The board would be sent to the “test department” where TAXPAYER would test those “points” on the board that the customer requested. REPRESENTATIVE FOR TAXPAYER-3 explained that the testing was to ensure that points on the board were “connected” in accordance with the engineering design. After these steps, TAXPAYER would deliver a “bare board” to its customer, after which the customer could install components such as resistors, capacitors, computer chips, etc.

13. For the tax years at issue, TAXPAYER reported the acquisition costs of the personal property located at its Utah plant not only on its federal income tax depreciation schedule, but also on the annual personal property affidavits filed with the County Assessor. The acquisition costs reported on TAXPAYER’s federal depreciation schedule did not match the amounts reported on the personal property affidavits.

14. For example, TAXPAYER reported on its federal depreciation schedule that it acquired $$$$$ of personal property at its Utah plant prior to 1994. These acquisition costs appear to relate to the price TAXPAYER paid CORPORATION-1 in 1994 for personal property located at the Utah plant. On the other hand, on TAXPAYER'S 1995 annual affidavit, it only reported personal property with acquisition costs of $$$$$ for personal property purchased prior to 1995. These acquisition costs appear to have been CORPORATION-1 acquisition costs that were carried forward to TAXPAYER's affidavit instead of TAXPAYER reporting its own acquisition costs, as it was required to do.

15. In the County's audit assessment, the County did not use the CORPORATION-1 acquisition costs that TAXPAYER had erroneously carried over on its affidavits. Instead, the County used TAXPAYER'S acquisition costs, as reported on TAXPAYER'S federal depreciation schedule, as the primary basis of its assessment for each year. The first four columns of the following chart shows information from TAXPAYER'S federal depreciation schedule for its Utah personal property, specifically: 1) the year of acquisition; 2) the description of the property; 3) the acquisition cost; and 4) the property's "life" in years. Also shown is the County's description of the property in its assessment and an indication of whether TAXPAYER contests the County's assessed value of the property.

Year of Acquisition	Property Description in Depr. Schedule	Acquisition Cost	"Life" in Years	Property Description in County's Audit	Value in Dispute?
1994	Vehicles	$$$$$	5	(not assessed)	No
	Leasehold Improvements	$$$$$	39	Leasehold Improvement	No
	Furniture	$$$$$	5	Furniture & Fixtures	No
	Machinery & Equipment	$$$$$	3	Industrial Machinery	Yes
	Machinery & Equipment	$$$$$	5	Industrial Machinery	Yes
	Machinery & Equipment	$$$$$	7	Industrial Machinery	Yes
1995	Vehicles	$$$$$	5	(not assessed)	No
	Machinery & Equipment	$$$$$	3	Industrial Machinery	Yes

	Machinery & Equipment	$$$$$	5	Industrial Machinery	Yes
	Machinery & Equipment	$$$$$	7	Industrial Machinery	Yes
1996	Leasehold Improvements	$$$$$	15	Leasehold Improvement	Yes
	Machinery & Equipment	$$$$$	7	Industrial Machinery	Yes
1997	Machinery & Equipment	$$$$$	7	Industrial Machinery	Yes
	Computer Equipment	$$$$$	5	Computer Equipment	Yes
1998	Machinery & Equipment	$$$$$	7	Industrial Machinery	Yes
	Computer Equipment	$$$$$	5	Computer Equipment	Yes

16. The County also assessed value each year to electronic trade fixtures ("test fixtures") located at TAXPAYER's Utah plant. TAXPAYER assembled test fixtures to test the COMPUTER SOFTWARE it manufactured. Although TAXPAYER did not list them as capitalized assets on its depreciation schedule, the County assessed a value for the test fixtures each year that ranged between $$$$$ and $$$$$. TAXPAYER is also contesting the value that the County assessed to the test fixtures.

Issues Concerning Computer Software

17. TAXPAYER contends that four of the items listed on its federal depreciation schedule and in the County's audit assessment concern computer software that it purchased between 1994 and 1998, specifically: 1) $$$$$ of Machinery and Equipment purchased in 1994; 2) $$$$$ of Machinery and Equipment purchased in 1996; 3) $$$$$ of Computer Equipment purchased in 1997; and 4) $$$$$ of Computer Equipment purchased in 1998.

18. **Issues Concerning 1994 Purchase**. TAXPAYER reported on its federal depreciation schedule that in 1994, it acquired $$$$$ of machinery and equipment with a 3-year life for depreciation purposes. For each year, the County identified this property as industrial machinery and valued it by using the 1994 acquisition cost of $$$$$ and applying to it the percent good factors found in Utah Admin. Rule R884-24P-33(C)(7) ("Rule 33") for Class 8 - Machinery and Equipment ("Class 8"). TAXPAYER contests

the assessment of this property on three bases: 1) the property is computer software that should be valued with the percent good tables in Rule 33(C)(1) for Class 1 – Short-Life Property ("Class 1"); 2) one-half of the $$$$$ amount should be removed from the audit for all years because it is computer software that is located at the STATE-1 plant; and 3) the entire $$$$$ amount should be removed from the audit for the 1998 and 1999 tax years because it "retired" the software in 1997.

19. Property Classification. TAXPAYER contends that this $$$$$ of property is computer software that it acquired from CORPORATION-1 in 1994 when it purchased the TAXPAYER PLANTS. TAXPAYER contends that computer software should be valued using the Class 1 percent good factors instead of the Class 8 factors that the County used in its audit. Rule 33(C)(1) identifies "canned computer software" as an example of Class 1 property. Classifying the $$$$$ of property as Class 1 property instead of Class 8 property would be advantageous to TAXPAYER because Class 1 property is depreciated to a residual value 3 years after acquisition whereas Class 8 property is not depreciated to a residual value until 11 years after acquisition.

20. REPRESENTATIVE FOR TAXPAYER-5, who was CEO of TAXPAYER, testified that the $$$$$ of property was computer software based on his company's practice to depreciate computer software as 3-year life property. The only Utah property that TAXPAYER reported on its depreciation schedule with an acquisition date of 1994 and a 3-year life for depreciation purposes is the $$$$$ of property at issue.

21. TAXPAYER submitted a 1995 copy of the Internal Revenue Service's Publication 946 (How to Depreciate Property) ("Pub. 946"). On page 7 of the publication, it indicates that software can be depreciated over 3 years if a taxpayer meets certain conditions.

22. On TAXPAYER's annual personal property affidavits for the years at issue, it reported the computer software that was acquired from CORPORATION-1. The affidavits show that TAXPAYER reported "Short Life" property with total acquisition costs of $$$$$ and acquisition dates of 1987 and 1989

under County Code 155 for each year. County Code 155 was defined on the affidavits as "Short Life Property," which includes "[c]anned computer software, motel linen, silverware, pots, pans, utensils, plants, pallets, clothing and custom rentals, video tapes. . . ."

23. The acquisition costs of all property that TAXPAYER reported on its depreciation schedule with an acquisition date in 1994 totals $$$$$. TAXPAYER does not have a list of all property that comprises this total acquisition cost.

24. However, around the time TAXPAYER purchased the Utah plant from CORPORATION-1 in 1994, it obtained an appraisal of the personal property located at the plant, which lists in detail numerous items of personal property located at the plant ("Appraisal"). In the Appraisal, which has an effective date of August 29, 1994, the "orderly liquidation value"[2] of the personal property located at the Utah plant is estimated to be $$$$$. There is no computer software specifically identified and valued in the Appraisal.

25. The difference between the total 1994 acquisition costs of $$$$$ for personal property that TAXPAYER reported on its depreciation schedules and the $$$$$ value from the 1994 Appraisal is $$$$$. REPRESENTATIVE FOR TAXPAYER-5 testified that when TAXPAYER decided to "open the books" for the Utah plant, it took the $$$$$ value from the Appraisal and added some other items not shown in the appraisal, such as $$$$$ for the CORPORATION-1 computer software. REPRESENTATIVE FOR TAXPAYER-5 testified that from his experience in purchasing five plants, it is standard practice for "machine and equipment" appraisers not to include software in their appraisals.

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[2] In the Appraisal, "orderly liquidation value" is defined as "[a]n opinion of the expected gross dollar amount to be realized at an orderly negotiated sale held within a reasonable period of time as of the date of the appraisal." The County submitted evidence to show that the American Society of Appraisers defines "orderly liquidation value" as "the estimated gross amount, expressed in terms of money, that could be typically realized from a liquidation sale, given a reasonable period of time to find a purchaser (or purchasers), with the seller being compelled to sell on an as-is, where-is basis, as of a specific date."

26. Based on the foregoing, the Commission finds that the $$$$$ of property acquired in 1994 and reported on TAXPAYER's depreciation schedule as 3-year life machinery and equipment is computer software.

27. Location of Computer Software Acquired in 1994. TAXPAYER contends that the acquisition cost of $$$$$ for the computer software that it purchased from CORPORATION-1 is erroneous and that the correct acquisition cost should only have been $$$$$. REPRESENTATIVE FOR TAXPAYER-5 testified that the $$$$$ amount mistakenly included not only the CORPORATION-1 software it purchased for the Utah plant, but also the CORPORATION-1 software it purchased for the STATE-1 plant. REPRESENTATIVE FOR TAXPAYER-5 estimates that an equal amount of software was purchased for each plant. As a result, he asserts that 50% of the $$$$$ acquisition cost should be deleted from the audit report because it represents the value of property not located in Utah.

28. REPRESENTATIVE FOR TAXPAYER-5 testified that Utah was the headquarters for TAXPAYER'S CORPORATION-1 or TAXPAYER PLANT operations (i.e., the Utah and STATE-1 plants) and that the books for both the Utah and STATE-1 plants were kept in Utah. Because the books were kept in Utah, he stated that the CORPORATION-1 computer software for both plants was erroneously put on the books for the Utah plant only.

29. TAXPAYER'S depreciation schedule, however, suggests otherwise. The depreciation schedule lists the personal property that TAXPAYER purchased for all of its plants, including the STATE-1 plant. On the schedule, TAXPAYER reported that in 1994, it purchased $$$$$ of machinery and equipment for the STATE-1 plant that it depreciated as 3-year life property. The Commission has already found that machinery and equipment that TAXPAYER depreciated as 3-year life property is computer software, based on the evidence discussed earlier. Accordingly, the Commission finds that TAXPAYER purchased $$$$$ of computer software for the STATE-1 plant in 1994.

30. TAXPAYER reported on its depreciation schedule that in 1994, it purchased $$$$$ of computer software for the Utah plant and $$$$$ of computer software for the STATE-1 plant. Based on this evidence, the Commission finds that the $$$$$$ of computer software reported for the Utah plant does not include software for the STATE-1 plant. The $$$$$ amount is found to represent the acquisition cost of the computer software located at the Utah plant only.

31. "Retirement" of Computer Software Purchased from CORPORATION-1. TAXPAYER contends that in 1997, it discontinued using the computer software that it had purchased from CORPORATION-1 in 1994. TAXPAYER contends that it started using different software at its Utah plant in 1997. As a result, TAXPAYER argues that the computer software acquired in 1994 for $$$$$ should be removed from the audit for the 1998 and 1999 tax years.

32. TAXPAYER'S argument concerning the retirement of its CORPORATION-1 software is associated with two of the other items from the federal depreciation schedule that are at issue, specifically: 1) the 1995 acquisition of $$$$$ of Machinery and Equipment, which the County assessed with the Class 8 percent good factors; and 2) the 1997 acquisition of $$$$$ of Computer Equipment, which the County assessed with the percent good factors found in Rule 33(E)(12) (1999) for Class 12 – Computer Hardware ("Class 12"). TAXPAYER contends that both of these acquisition costs were for the development of new computer software that was intended to replace the computer software it purchased from CORPORATION-1.

33. REPRESENTATIVE FOR TAXPAYER-5 testified that after TAXPAYER'S acquisition of TAXPAYER'S PLANTS in 1994, it wanted to "centralize" its manufacturing software because the Utah and STATE-1 plants were using the CORPORATION-1 software, which was different from the software being used in its other three plants. REPRESENTATIVE FOR TAXPAYER-5 testified that TAXPAYER contracted with a software developer in STATE-2 to develop common software that could be used in all five plants. He also testified that the cost of this software was expected to be around $$$$$.

34. REPRESENTATIVE FOR TAXPAYER-5 stated that in 1995, TAXPAYER paid a deposit of $$$$$ under the contract towards the development of the software, which TAXPAYER has identified on the depreciation schedule as Machinery and Equipment with a 3-year life for depreciation purposes.[3]

35. REPRESENTATIVE FOR TAXPAYER-5 stated that the company TAXPAYER hired to develop the new software worked on the project for a couple of years without success. REPRESENTATIVE FOR TAXPAYER-5 stated that in 1997, TAXPAYER made another payment of $$$$$ to the company in the hopes that the software would eventually become usable. On TAXPAYER'S depreciation schedule, however, the property with the $$$$$ acquisition cost is identified as Computer Equipment that has a 5-year life for depreciation purposes.

36. REPRESENTATIVE FOR TAXPAYER-5 explained that it was eventually determined that the company with which it had contracted could not produce software that worked, which led to TAXPAYER abandoning the project sometime in 1997. He stated that the company went out of business.

37. Because the new software never worked, TAXPAYER continued to use the CORPORATION-1 software in its TAXPAYER PLANTS, including the Utah plant. REPRESENTATIVE FOR TAXPAYER-5 testified that TAXPAYER subsequently decided to replace the CORPORATION-1 software with "home-grown" software called BBX, which was eventually used in all five plants. He stated that it took TAXPAYER about six months to develop the BBX software. However, it was unclear whether the BBX software was already existing in the other plants in 1997 or whether TAXPAYER began developing the BBX software in 1997.

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[3] In 1995, TAXPAYER paid $$$$$ for computer software for the STATE-1 plant. It was not disclosed at the hearing whether or not this payment was also associated with the contract to replace the CORPORATION-1 computer software located at the Utah and STATE-1 plants.

38. RESPONDENT-4, the employee of the personal property division of the Salt Lake County Assessor's Office, testified that once software has been taken off machines and is no longer usable, it would almost certainly be given a $$$$$ value.

39. TAXPAYER asks the Commission to find that the $$$$$ of CORPORATION-1software that it purchased in 1994 was retired in 1997 and to remove this item from the audit assessment for the 1998 and 1999 tax years. TAXPAYER also asks the Commission to remove the 1995 purchase of computer software for $$$$$ from the audit completely because the software never worked. Furthermore, TAXPAYER asks the Commission to find that the 1997 purchase of $$$$$ was not for computer equipment, as TAXPAYER reported, but was, instead, a purchase for computer software. Lastly, if the Commission finds that the $$$$$ purchase was for computer software, TAXPAYER asks the Commission to remove the purchase from the audit completely because the software never worked.

40. Sometime in 1997 or 1998 (depending on how long it took to develop the BBX software), the $$$$$ of CORPORATION-1 software that TAXPAYER purchased in 1994 was no longer being used after it was replaced by TAXPAYER's BBX software. Because the evidence is unclear, the Commission finds that the CORPORATION-1software was retired in 1998. Although it is unclear whether the BBX software was installed at the plant or operated remotely, the Commission finds that BBX software was located and used at the Utah plant beginning in 1998.

41. However, TAXPAYER never reported on its annual personal property affidavits that it disposed of the CORPORATION-1software. In fact, TAXPAYER reported that it still had the CORPORATION-1software on its 1998 and 1999 affidavits. Furthermore, there is no evidence on either TAXPAYER's depreciation schedule or its annual affidavits of the value of the new BBX software.

42. The Commission finds that the property TAXPAYER acquired in 1995 at a cost of $$$$$, which it reported as 3-year life property, was computer software.

43. REPRESENTATIVE FOR TAXPAYER-5 testified that the computer software acquired in 1995 never worked and that TAXPAYER decided in 1997 to abandon the project to complete the software. Although there is no other testimony or any documents to corroborate REPRESENTATIVE FOR TAXPAYER-5's assertion, his testimony was explicit enough for the Commission to find that TAXPAYER decided in 1997 that the software would not be used.

44. The Commission does not find that the property for which TAXPAYER paid $$$$$ in 1997 and which TAXPAYER reported on its depreciation schedule as 5-year life computer equipment is computer software. TAXPAYER has demonstrated that it reports purchases of computer software as 3-year life machinery and equipment. The 1997 purchase for $$$$$ is described as 5-year life computer equipment. Without some additional evidence to corroborate REPRESENTATIVE FOR TAXPAYER-5's testimony about this purchase, the Commission declines to find that the purchase is for computer software and not for computer equipment as reported.

45. **1998 Purchase of $$$$$.** TAXPAYER reported on its depreciation schedule that in 1998, it acquired $$$$$ of 5-year life computer equipment. For the 1999 tax year, the County assessed this property by using the $$$$$ acquisition cost and applying to it the Class 12 percent good factors for computer equipment.

46. REPRESENTATIVE FOR TAXPAYER-5, however, claims that this property is computer software, not computer hardware. As a result, TAXPAYER contends that the property should be valued with the Class 1 percent good factors for computer software instead of the Class 12 percent good factors for computer hardware.

47. The Commission does not find that the property for which TAXPAYER paid $$$$$ in 1998 and which TAXPAYER reported on its depreciation schedule as 5-year life computer equipment is computer software. TAXPAYER has testified that it reports purchases of computer software as 3-year life machinery

and equipment. The 1998 purchase for $$$$$ is described as 5-year life computer equipment. Without some additional evidence to corroborate REPRESENTATIVE FOR TAXPAYER-5's testimony about this purchase, the Commission declines to find that the purchase is for computer software and not for computer equipment as reported.

Classification of TAXPAYER's Machinery and Equipment under Rule 33

48. TAXPAYER contends that the County has used the incorrect Rule 33 classification to value the property that it reported on its depreciation schedule as 5-year life and 7-year life machinery and equipment and that the County assessed as Class 8 machinery and equipment. TAXPAYER contends that this property comprises the machinery and equipment located at its Utah plant and that it is used to manufacture printed COMPUTER SOFTWARE.

49. TAXPAYER contends that this property should be valued with the percent good factors found in Rule 33(C)(2) for Class 3 - Short Life Trade Fixtures ("Class 3") instead of the Class 8 factors used by the County. Classifying this property as Class 3 property instead of Class 8 property would be advantageous to TAXPAYER because Class 3 property is depreciated to a residual value 5 years after acquisition whereas Class 8 property is not depreciated to a residual value until 11 years after acquisition.

50. The acquisition costs at issue for this machinery and equipment are: 1) $$$$$ for property acquired in 1994 ($$$$$ of 5-year life property and $$$$$ of 7-year life property); 2) $$$$$ for property acquired in 1995 ($$$$$ of 5-year life property and $$$$$ of 7-year life property); 3) $$$$$ for 7-year life property acquired in 1996; 4) $$$$$ for 7-year life property acquired in 1997; and 5) $$$$$ for 7-year life property acquired in 1998.

51. TAXPAYER acknowledges that the Class 8 factors were developed to value machinery and equipment. TAXPAYER, however, believes that the machinery and equipment listed as examples for Class 8 are generally mechanical-type machinery and equipment, whereas a printed COMPUTER SOFTWARE plant

generally has electronic-type machinery and equipment. TAXPAYER points out that the Commission's Recommended Personal Property Valuation Schedules indicate that Class 3 property includes "electronic types of equipment [and items] subject to rapid functional and economic obsolescence or severe wear and tear."

52. TAXPAYER contends that machinery and equipment used to manufacture printed COMPUTER SOFTWARE is subject to more "wear and tear" and, thus, has a shorter life than most other manufacturing machinery and equipment. In addition, TAXPAYER contends that COMPUTER SOFTWARE machinery and equipment has a shorter life because of technological changes in the COMPUTER SOFTWARE industry that result in machinery and equipment becoming obsolete very quickly.

53. REPRESENTATIVE FOR TAXPAYER-3 testified that technology for COMPUTER SOFTWARE manufacturing machinery and equipment changes rapidly. He explained that as devices get smaller (i.e., cell phones, etc.), the COMPUTER SOFTWARE in them get smaller and that manufacturing equipment must evolve to drill smaller holes for the boards. He explained that the CNC (computer numeric control) drills used at TAXPAYER's plant have a CNC control panel next to the drill to operate the drill and that the unit is purchased as a package. He stated that the CNC drills and routers would have a 6-to-7-year life if they were located in a clean room. TAXPAYER's manufacturing machinery and equipment, however, is not located in clean room. REPRESENTATIVE FOR TAXPAYER-3 testified that given the contaminants and corrosive fumes present in a COMPUTER SOFTWARE plant, he estimated that CNC drills and routers would have a 5-to-6-year life because they deteriorate more rapidly. He explained that the corrosive fumes come from plating baths that contain sulfuric acid, nitric acid, and alkalines. He also explained that the machines are often run twenty-four hours a day, seven days a week, leading to excessive wear and tear.

54. REPRESENTATIVE FOR TAXPAYER-3 also stated that at least two-thirds of the machinery and equipment in a COMPUTER SOFTWARE plant is electronic. He testified that the CNC

drilling machines appear to meet the criteria for classification under Rule 33(E)(2) for Class 2 – Computer Dependent Machinery ("Class 2"), which is depreciated to a residual value 8 years after acquisition. He stated, however, that TAXPAYER's machinery and equipment are more appropriately classified under Class 3 instead of Class 2 because of the rapid obsolescence of COMPUTER SOFTWARE machinery and due to the wear and tear and corrosive nature of the processing procedures.

55. REPRESENTATIVE FOR TAXPAYER-4, who held the title of vice president and general manger of TAXPAYER, stated that he also believed that Class 3 is the class with which TAXPAYER's machinery and equipment should be classified. He stated that the examples of Class 8 property listed in Rule 33 are not the electronic-type of machinery and equipment found in a COMPUTER SOFTWARE plant. He stated that a COMPUTER SOFTWARE plant is fortunate if its machinery and equipment lasts five or six years. He admitted that some of TAXPAYER's equipment could fall within the Class 2 designation. However, he stated that due to the "incredibly caustic environment" of a COMPUTER SOFTWARE plant, Class 3 is a better classification than Class 2. He also explained that due to the rapid technology that takes place in the industry, machinery is needed to "produce the newer, higher-tech, denser print COMPUTER SOFTWARE." He stated that the technology usually "shifts" in three to five years, requiring upgrading of manufacturing equipment.

56. REPRESENTATIVE FOR TAXPAYER-5 testified that printed COMPUTER SOFTWARE manufacturing machinery and equipment is most similar to the property described in Rule 33(E)(15) for Class 15 – Semiconductor Manufacturing Equipment, which is depreciated to a residual value 5 years after acquisition (but at faster deprecation rate than Class 3 property which is also depreciated to a residual value after 5 years). However, because the Commission stated in its Initial Hearing Order that it could not apply Class 15 due to the County stating that it did not exist during the audit period,[4] REPRESENTATIVE FOR

[4] Class 15 did not exist in Rule 33 for the 1995 tax year. It was, however, adopted for the 1996 tax

TAXPAYER-5 explained that TAXPAYER is now asking the Commission to classify its machinery and equipment as Class 3 property for valuation purposes. REPRESENTATIVE FOR TAXPAYER-5 also testified that approximately two-thirds of the plant's equipment is CNC (computer numeric control) equipment and that the remainder is not CNC. He further explained that although one-third of the machinery and equipment is not CNC, some of the remaining one-third was, nevertheless, "computer dependent equipment" described in Class 2.

57. IRS Pub. 946 shows that assets used to manufacture "printed circuit substrates" have a "class life" of 6 years, a MACRS (Modified Accelerated Cost Recovery System) recovery period of 5 years, and an ADS (Alternative Recovery System) recovery period of 6 years. (REMOVED SENTENCE). In comparison, the IRS information for "semiconductor manufacturing equipment" shows that it has a "class life" of 5 years, a MACRS recovery period of 5 years, and an ADS recovery period of 5 years. A majority of the "manufacturing" asset classes listed in IRS Pub. 946 have a "class life" in excess of 10 years.

58. RESPONDENT-4 testified that the County classified TAXPAYER's machinery and equipment as Class 8 machinery and equipment because TAXPAYER had always classified its property on its personal property affidavits as County Code 020 property, which the County equates to Class 8 property. RESPONDENT-4 stated that it might be appropriate to change the classification of some of TAXPAYER'S machinery and equipment if there was a fixed asset list identifying each item of property and its acquisition cost. He stated that it was "very likely" that because of the special circumstances in a COMPUTER SOFTWARE manufacturing plant, TAXPAYER'S CNC machinery would qualify as Class 3 or Class 15 property instead of Class 2 property. However, without a fixed asset list, the County contends that its classification of the machinery and equipment under Class 8 should be sustained.

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year and was in effect for the 1996, 1997, 1998, and 1999 tax years.

59. The evidence shows that machinery and equipment used to manufacture printed COMPUTER SOFTWARE, including the CNC equipment used in the process, has an expected life of five to six years.

60. TAXPAYER does not have a list of the machinery and equipment that comprises the total acquisition costs that are set forth in Finding of Fact #49. TAXPAYER contends, however, that the Appraisal it obtained in 1994, when it purchased the Utah plant, provides an approximate list of and values for the machinery and equipment it acquired in 1994.

61. TAXPAYER notes that the Appraisal shows an "orderly liquidation value" of $$$$$ for the personal property located at the plant in 1994. REPRESENTATIVE FOR TAXPAYER-5 testified that when TAXPAYER decided to "open the books" for Utah, it used the $$$$$ value shown on the Appraisal and added some other items not shown in the Appraisal. He testified that TAXPAYER used the Appraisal value to allocate value to the machinery and equipment on its balance sheet and to be the basis of the values it reported on its federal depreciation schedule. He also testified that "orderly liquidation value" and "fair market value" are close to one another.

62. TAXPAYER points out that the Appraisal value of $$$$$ is close to the $$$$$ of 5-year life and 7-year life machinery and equipment that it reported on its federal depreciation schedule as acquired in 1994. As a result, TAXPAYER believes that the descriptions provided in the Appraisal show most, if not all, of the manufacturing machinery and equipment that it purchased in 1994.

63. The County argues that it would not use the Appraisal as a substitute for a fixed asset list because it is unknown whether the items listed in the Appraisal are complete and because the "orderly liquidation values" estimated in the Appraisal are not the same as "fair market values." The County, however, offered no opinion on whether these two values are close to one another.

64. In addition, TAXPAYER does not have itemized lists of the 5-year life and 7-year life machinery and equipment it reported on its depreciation schedule as being acquired in 1995, 1996, 1997, and

1998. Although some of these items were listed on the “acquisitions” section of TAXPAYER’S annual personal property affidavits, the acquisitions reported on the affidavits are less than the acquisitions reported on the depreciation schedule. TAXPAYER states that the lower amounts reported on its affidavits are due to its “netting” its new acquisitions against the old machinery and equipment it was retiring in those years.

65. The Appraisal shows that much of the equipment located at the Utah plant in 1994 is CNC machinery and equipment and that much of it was relatively old in 1994. The fact that much of the machinery and equipment that TAXPAYER purchased from CORPORATION-1 was old supports TAXPAYER’s argument that it retired much of the CORPORATION-1machinery and equipment and replaced it with new machinery and equipment in 1995, 1996, 1997, and 1998.

Retirement of Machinery and Equipment Purchased from CORPORATION-1

66. TAXPAYER contends it “retired” a large portion of the machinery and equipment it purchased from CORPORATION-1 in 1994 because it was old and because much of it could not be used to produce the more advanced printed COMPUTER SOFTWARE that TAXPAYER was going to produce at the Utah plant. TAXPAYER asks the Commission to remove from the County’s audit assessment the items that it retired.

67. TAXPAYER reported on its federal depreciation schedule that it acquired $$$$$ of 5-year life and 7-year life machinery and equipment in 1994 from CORPORATION-1 ($$$$$ of 5-year life property and $$$$$ of 7-year life property). The County assessed this property for all 5 tax years.

68. TAXPAYER submitted a list of the CORPORATION-1 equipment that it claims to have retired in 1994 and 1995. For most items, TAXPAYER also lists its “orderly liquidation value,” as shown in the 1994 Appraisal that was previously discussed. When totaled, the list indicates that in 1994 and 1995, TAXPAYER retired $$$$$ of the $$$$$ of machinery and equipment it purchased in 1994. It shows that TAXPAYER retired $$$$$ of the $$$$$ total in 1994 (i.e., immediately or almost immediately after

TAXPAYER purchased CORPORATION-1 Utah plant) and that it retired the remaining $$$$$ in 1995. TAXPAYER does not indicate that it retired any of the CORPORATION-1 equipment in 1996, 1997, or 1998.

69. Because of these retirements, TAXPAYER asks the Commission to reduce the $$$$$ total acquisition cost of the 5-year life and 7-year life machinery and equipment that it reported that it purchased from CORPORATION-1 in 1994. TAXPAYER asks the Commission to reduce this amount by $$$$$ for all five years and by another $$$$$ for the 1996, 1997, 1998, and 1999 tax years. Put another way, TAXPAYER asks the Commission to amend the $$$$$ acquisition cost of this property to $$$$$ ($$$$$$- $$$$$) for the 1995 tax year and to $$$$$ ($$$$$- $$$$$- $$$$$) for the 1996, 1997, 1998, and 1999 tax years.

70. The County contends that none of the 1994 acquisition costs should be removed from the assessment. The County argues that it makes no business sense for a company to pay in excess of $$$$$ for machinery and equipment and then retire a majority of it within a year.

71. REPRESENTATIVE FOR TAXPAYER-5, however, explained that TAXPAYER was not purchasing only personal property from CORPORATION-1. He explained that the purchase was a bulk asset sale of real estate, personal property, and accounts receivable in two states and that TAXPAYER acquired all of the assets for a price below their total "book value." As a result, he explained that TAXPAYER was willing to pay more for CORPORATION-1 personal property than its value would be to TAXPAYER. REPRESENTATIVE FOR TAXPAYER-5 testified that he viewed the machinery and equipment at the Utah plant to be worth $$$$$ or $$$$$ at the time of the 1994 purchase and nowhere close to the $$$$$ plus price that they paid for it. REPRESENTATIVE FOR TAXPAYER-5 also stated it was part of TAXPAYER'S business plan that a significant portion of the machinery and equipment at the CORPORATION-1 plants would need to be replaced.

72. REPRESENTATIVE FOR TAXPAYER-3 testified that when TAXPAYER bought the CORPORATION-1 assets, he came to the Utah plant and determined that the CORPORATION-1 drills were just "old junk" that would not work for TAXPAYER's purposes. He stated that TAXPAYER stored the old drills at the plant. When the plant closed in 2000, he stated that TAXPAYER tried to auction the old drills, but that "everybody laughed when they saw them" and that he ended up throwing them in the garbage.

73. REPRESENTATIVE FOR TAXPAYER-4 testified that he visited the Utah plant when it was purchased in 1994 and was concerned about the machinery and equipment that TAXPAYER had purchased from CORPORATION-1. He testified that the drilling department of the Utah plant had the most out-of-date equipment in the facility. He stated that he was concerned that TAXPAYER could not attract the customer (CUSTOMER-1) it was trying to attract without a "total upgrade in that area." He stated that the drilling equipment purchased from CORPORATION-1 had "almost no value."

74. The testimony of TAXPAYER's witnesses about the need to retire portions of the machinery and equipment purchased from CORPORATION-1 is supported by other evidence TAXPAYER submitted. The 1994 Appraisal listed 10 drills with orderly liquidation values that ranged between $$$$$ and $$$$$ per drill. It also showed that 2 of these drills were "not in service" and that at least 7 of them were 10 years old in 1994. Of the 10 drills, 7 of them were "Trudril" models, 2 were Mark IV models, and 1 was a Mark VI model.

75. Prior to TAXPAYER's 1994 purchase of CORPORATION-1 assets, CORPORATION-1 had prepared an April 27, 1994 evaluation of its drills to show how many panels of COMPUTER SOFTWARE a week could be produced by the drills in the Utah plant. The April 27, 1994 report estimated that 6 of the 10 drills at the Utah plant could not be used to produce any panels. Of the 4 drills that CORPORATION-1 considered to be functional, 3 of them were Trudril models. All 10 of these drills shown in the report are also listed and valued in the 1994 Appraisal.

76. REPRESENTATIVE FOR TAXPAYER-4 testified that any of the Trudril drills shown on the Appraisal had to be replaced after TAXPAYER purchased the Utah plant. REPRESENTATIVE FOR TAXPAYER-5 testified that TAXPAYER determined that no Trudril drill "could be functional." The Appraisal shows that the 7 Trudril drills were all purchased in 1984. The Appraisal valued these drills at $$$$$ to $$$$$ per drill.

77. TAXPAYER also submitted evidence showing that it was either obtaining bids for new drills in 1994 or that it had purchased a new drill in 1994. The evidence shows the cost of a new Dynamotion drill that would be delivered to the Utah plant for a cost of around $$$$$. REPRESENTATIVE FOR TAXPAYER-5 testified that this would have been the cost for 1 drill only and that TAXPAYER eventually bought 6 Dynamotion drills in 1995 at a discounted price of about $$$$$ per drill.

78. REPRESENTATIVE FOR TAXPAYER-5 testified that when the 7 Trudril and 2 Mark IV drills where replaced, they went to a "scrap equipment room" at the Utah plant. He stated that the plant's scrap equipment room was approximately 900 square feet in size (30 feet by 30 feet). He also stated that when CUSTOMER-1 came to the Utah plant in 1994 to conduct a "plant audit," he remembered that the Trudril and Mark IV drills had already been moved to the scrap equipment room.

79. REPRESENTATIVE FOR TAXPAYER-5 testified that the retired machinery and equipment was used for "scrap parts" (for pumps, rotors, air valves, etc.). REPRESENTATIVE FOR TAXPAYER-5 also testified that because of the age of the retired machinery and equipment, TAXPAYER could not sell it because there was no market for such old equipment. For these reasons, REPRESENTATIVE FOR TAXPAYER-5 believes that all of the retired machinery and equipment had a $$$$$ value and should be removed from the audit.

80. REPRESENTATIVE FOR TAXPAYER-5 testified that around 2001, TAXPAYER produced the list of retired machinery and equipment that it submitted as evidence to show that it retired $$$$$ of the

CORPORATION-1 equipment in 1994 and another $$$$$ of it in 1995. Although REPRESENTATIVE FOR TAXPAYER-5 did not prepare the list, he stated that he asked questions about the list at the time it was prepared for the County BOE hearing in 2001.

81. REPRESENTATIVE FOR TAXPAYER-5 stated that the amounts of the retired property, as shown on the 2001 list, can be verified by comparing the amount of new acquisitions it reported on its federal depreciation schedule and the amount of "net" acquisitions it showed on its personal property affidavits. REPRESENTATIVE FOR TAXPAYER-5 explained that TAXPAYER reported on its federal depreciation schedule that it acquired $$$$$ of machinery and equipment in 1995. He then explained that if one subtracts the $$$$$ of property that TAXPAYER claims it retired in 1994 from the $$$$$ of acquisitions shown on the depreciation schedule, the result is $$$$$.

82. He then explained that TAXPAYER reported on its 1996 annual personal property affidavit that it had $$$$$ of "net" acquisitions of machinery and equipment at its Utah plant in 1995. Because the $$$$$ amount is relatively close to the $$$$$ amount produced earlier, he contends that it proves that TAXPAYER retired around $$$$$ of property in 1994.

83. This methodology, however, is not convincing. First, on TAXPAYER 1996 personal property affidavit, it should have listed each item of property it acquired in 1995 and each item it retired in 1995. Instead, TAXPAYER purports to have listed a $$$$$ "net" amount of the property it acquired in 1995 minus the property it retired in 1994. Not only is there no evidence to show how the $$$$$ net acquisition cost was derived, but this purported net amount mixes tax years by netting 1995 "acquisitions" against 1994 "disposals."

84. Second, TAXPAYER contends that $$$$$ of the CORPORATION-1 property was retired in 1995 and that $$$$$ was retired in 1996, 1997, and 1998. These amounts or amounts near them are not produced by comparing the amounts of new acquisitions TAXPAYER reported on its federal depreciation

schedule and the amounts of "net" acquisitions it reported on its personal property affidavits for the subsequent years. For these reasons, TAXPAYER has not shown through its tax filings that it retired $$$$$ of the CORPORATION-1 equipment in 1994 and another $$$$$ of it in 1995.

85. Although the $$$$$ and $$$$$ total amounts that TAXPAYER listed as retired property cannot be verified through TAXPAYER'S tax filings, it is clear that TAXPAYER retired a significant amount of the property that it acquired from CORPORATION-1 immediately or soon after the 1994 purchase. The Commission will examine the items of property that TAXPAYER listed to determine if sufficient evidence was provided to show that specific items were retired.

86. Of the $$$$$ amount that TAXPAYER claims was retired in 1994, it identified $$$$$ of this amount as "miscellaneous other" property. There is no property in the 1994 Appraisal that totals to this amount. In addition, there was no evidence to show what property this amount refers to or that such property was retired. As a result, the evidence is insufficient to show that TAXPAYER retired this $$$$$ of property.

87. TAXPAYER lists 57 specific items that it claims was retired in 1994 and 1995 and lists their values, as shown in the 1994 Appraisal. Of these items, TAXPAYER has provided sufficient evidence to show that 7 Trudril and 2 Marc IV drills were retired. These items have a total value of $$$$$. Accordingly, this amount of CORPORATION-1 machinery and equipment should be considered as retired in 1994.

88. Furthermore, REPRESENTATIVE FOR TAXPAYER-5 testified that the CORPORATION-1 testing equipment ("testers") was retired because they would not work on the CUSTOMER-1 boards that TAXPAYER was going to produce. REPRESENTATIVE FOR TAXPAYER-5 stated that the CORPORATION-1 testers were not programmable to test any boards other than NAME OF BUSINESS boards and that they tested a "lower tech" board than TAXPAYER was going to produce. This evidence is sufficient to show that "testers" with a total value of $$$$$ were retired in 1994 and that another tester with a value of $$$$$ was retired in 1995.

89. REPRESENTATIVE FOR TAXPAYER-5 also specifically testified about the retirement of three related items in 1995, specifically a Wabash 7576, a Maresco U2177, and Caul Plates, which have a combined value of $$$$$. He also testified that the Dynachem Lamination System, which has a value of $$$$$, was replaced in 1995. These 4 items total $$$$$. This evidence is sufficient to show that TAXPAYER retired this $$$$$ of CORPORATION-1 equipment in 1995.

90. There is also sufficient evidence in the Appraisal and on the list of retired items to show that 5 more items were retired, specifically: 1) an ATI400 drill/router with a value of $$$$$ was retired in 1994; 2) an X-ray inspection machine with a value of $$$$$ was retired in 1994; 3) a Marc V router with a value of $$$$$ was retired in 1994; 4) an ATI400 rooter with a value of $$$$$ was not in service and was retired in 1994; and 5) a Rich VCM Developer with a value of $$$$$ was retired in 1995.

91. TAXPAYER has not provided sufficient information for the Commission to find that the remaining items that it purchased from CORPORATION-1 were retired.

92. TAXPAYER reported that it acquired $$$$$ of 5-year life and 7-year life machinery and equipment in 1994 from CORPORATION-1. Based on the foregoing, the Commission finds that TAXPAYER has provided sufficient evidence to show that it retired $$$$$ of this machinery and equipment in 1994 and another $$$$$ in 1995.

93. The parties disagree on how "retired" property should be treated for valuation purposes. TAXPAYER contends that any retired property should be removed from the audit because it has no value. The County, on the other hand, contends that property that is kept at the plant and used for parts has a "salvage" value and should not be removed from the audit completely.

94. TAXPAYER'S witnesses testified that the retired equipment was placed into the plant's scrap equipment room and used for parts. TAXPAYER provided no evidence to show that any of the retired equipment was sold or removed the plant prior to 2000. In addition, when the plant closed in 2000 and

TAXPAYER auctioned off its personal property, some of the items that were retired in 1994 and 1995 were included in the auction. For these reasons, the Commission finds that all of the retired CORPORATION-1 machinery and equipment was kept at the Utah plant and used for spare parts.

95. RESPONDENT-4 stated that if property is no longer being used for the purpose for which it was designed and if that property is kept for spare parts, the property is still in existence even though it may not be used at its highest and best use. In that case, the County would consider the property to be "salvage property."

96. RESPONDENT-4 further stated that salvage property should be valued by using its original acquisition cost and the appropriate percent good factor based on its age, then applying "an additional obsolescence factor" to the resulting value to account for its being salvage property. He stated that the "rule of thumb" that the County has been given by Property Tax Division is that the obsolescence factor would be an "additional fifty percent depreciation." He stated that the County has never assigned a $$$$$ value to salvage property.

Drill Bits

97. In the 1994 Appraisal of the personal property that TAXPAYER purchased from CORPORATION-1, the appraiser identified a "lot" of "approximately 225,000 drills," which he estimated to have an orderly liquidation value of $$$$$.

98. TAXPAYER contends that the 225,000 drills identified in the Appraisal are drill bits, not drills. TAXPAYER'S explanation appears logical because the appraiser had previously identified and valued each drill at the CORPORATION-1 plant and because the appraiser estimated that this large number of items (225,000) would have an average value of less than $$$$$ per item. Accordingly, the Commission will consider the 225,000 drills identified in the Appraisal report to be drill bits that had an orderly liquidation value of $$$$$ in 1994.

99. TAXPAYER also contends that the drill bits' estimated value of $$$$$ was part of the $$$$$ of 5-year life property that it reported on its federal depreciation schedule as being acquired in 1994 and that the County has assessed for all 5 tax years.

100. TAXPAYER states that it mistakenly reported the $$$$$ of drill bits as 5-year life machinery and equipment on its federal depreciation schedule due to its using the Appraisal's orderly liquidation values as the basis of the acquisition costs it booked for the CORPORATION-1 property. TAXPAYER explained that its practice is to classify drill bits as "consumables" and not to put them on its books as capitalized items. Because of this mistake, TAXPAYER asks the Commission to subtract $$$$$ from the $$$$$ of 5-year life property that it acquired in 1994 and reported on the federal depreciation schedule.

101. RESPONDENT-3, the County's personal property EMPLOYEE-2, testified that if the drill bits are consumable items, they should be assessed at a 100% of their value under "supplies."

102. TAXPAYER did not show that its drill bits were taxed elsewhere in the County's audit assessment. TAXPAYER reported on its annual personal property affidavits that it had $$$$$ of supplies at its Utah plant for each year, which the County has assessed. The $$$$$ amount assessed for supplies is too low to include the value of the drill bits, which had a value of $$$$$ in 1994.

103. Neither party provided testimony concerning the typical life of a drill bit. Nor did either party indicate whether TAXPAYER replenished its drill bits during the audit period by purchasing new drill bits to replace any of the CORPORATION-1 drill bits that may have been consumed.

Machinery and Equipment in STATE-1 or Utah

104. TAXPAYER reported on its federal depreciation schedule that in 1995, it acquired $$$$$ of 5-year life machinery and equipment and $$$$$ of 7-year life machinery and equipment for its Utah plant. Because this property was acquired in 1995, the County assessed it for the 1996, 1997, 1998, and 1999 tax years.

105. TAXPAYER contends that it made an error when it reported that it had acquired $$$$$ of 5-year life machinery and equipment for the Utah plant. TAXPAYER contends that the $$$$$ amount represents the acquisition costs of six Dynamotion drills, four of which were placed into service at the Utah plant and two of which were placed into service at the STATE-1 plant. TAXPAYER contends that the six drills cost approximately $$$$$ a piece, which would result in the two drills placed into service at the STATE-1 plant having an acquisition cost of approximately $$$$$. On the basis that two of the drills were in STATE-1 for all years at issue, TAXPAYER asks the Commission to subtract $$$$$ from the $$$$$ acquisition cost it reported for 5-year life machinery and equipment acquired in 1995 and located at the Utah plant.

106. REPRESENTATIVE FOR TAXPAYER-5 indicated that two of the Dynamotion drills were kept on the Utah books, but were actually located at the STATE-1 plant.

107. TAXPAYER submitted an August 19, 1994 letter from NAME-1 at CORPORATION-1 Retail Services concerning TAXPAYER'S "purchase orders to purchase and install drills at TAXPAYER PLANT STATE-1 & TAXPAYER PLANT Utah." The letter indicated that the "[f]irst high speed drill in STATE-1 has been installed and is running" and that the "[s]econd high speed drill for Utah needs approval for purchase and installation." A notation on the letter appears to be a direction from TAXPAYER to NAME-1 instructing him not to pay for the drills because TAXPAYER was intending to obtain financing and pay the supplier pursuant to "our contract" and a "second drill agreement."

108. The taxpayer also submitted evidence to show that in 1994, Dynamotion drills had an "estimated capital cost" of approximately $$$$$. REPRESENTATIVE FOR TAXPAYER-5 testified that TAXPAYER was able to reduce the cost to around $$$$$ per drill by purchasing six of them.

109. In 2003, TAXPAYER auctioned off personal property located at its various plants. The auction information shows that TAXPAYER was auctioning off four Dynamotion drills located at the Utah plant and one Dynamotion drill located in STATE-1.

110. TAXPAYER reported on its federal depreciation schedule that in 1995, it acquired $$$$$ of 5-year life and 7-year life machinery and equipment for its STATE-1 plant. However, there is no information to show the purchase prices of the items of machinery and equipment that comprised this amount and whether these acquisition costs included amounts paid for Dynamotion drills.

111. In addition, when TAXPAYER retired a large portion of the CORPORATION-1 machinery and equipment in 1994 and 1995, it claims to have replaced not only the drills, but also other machinery and equipment, including testers, routers, developers, and lamination systems. TAXPAYER claims that the $$$$$ of 5-year life machinery and equipment at issue represents its acquisition costs for six drills only. However, there is no documentation to show the items that comprised the $$$$$ amount or a contract to show that TAXPAYER purchased six drills for this amount, with two of them being shipped to STATE-1. Without such information, it is unclear whether the $$$$$ amount reported on the federal depreciation schedule could have included acquisition costs for other new machinery and equipment purchased for the Utah plant and whether it partially represents the costs of drills purchased for the STATE-1 plant. Accordingly, the Commission finds that TAXPAYER has not shown that the $$$$$ amount includes $$$$$ of acquisition costs for drills located in STATE-1.

Roof or Leasehold Improvement

112. TAXPAYER reported on its federal depreciation schedule that in 1996, it acquired a 15-year life leasehold improvement for the Utah plant at an acquisition cost of $$$$$. Because this property was reported as personal property that was acquired in 1996, the County assessed it for the 1997, 1998, and 1999

tax years and valued it using the percent good tables in Rule 33(C)(22) for Class 24 – Leasehold Improvements ("Class 24").

113. TAXPAYER claims that the leasehold improvement should be removed from the County's audit for all years for which it was assessed because the $$$$$ acquisition cost represents the price it paid for real property, specifically the amount it paid to have a new roof installed on the Utah plant. TAXPAYER claims that it made a mistake when it reported the $$$$$ acquisition cost on its federal depreciation schedule as a leasehold improvement instead of reporting it as real property.

114. TAXPAYER was not a tenant at the Utah plant. It purchased the Utah plant from CORPORATION-1 in 1994. On its federal depreciation schedule, TAXPAYER reported that in 1994, it acquired a "building" in Utah that had a 39-year life for depreciation purposes.

115. REPRESENTATIVE FOR TAXPAYER-5 testified that he was very much involved in contracting for the roof and contends that the $$$$$ acquisition cost is the price TAXPAYER paid for the roof. TAXPAYER, however, did not submit any documents to show that it received a bid or an invoice for a roof for the Utah plant.

116. Not only did TAXPAYER report that it acquired a leasehold improvement in 1996 for its Utah plant on its federal depreciation schedule (at a cost of $$$$$), but it also reported that it acquired a leasehold improvement in 1996 for its Utah plant on its annual personal property affidavit (at a cost of $$$$$).

117. It is clear that TAXPAYER did not always report amounts spent on its buildings in a consistent manner. On its federal depreciation schedule, TAXPAYER reported that it acquired building improvements for the Utah plant in 1995 at an acquisition cost of $$$$$. However, on its annual personal property affidavit, it also reported the $$$$$ amount as a leasehold improvement (described as "walls").[5]

[5] The property acquired for $$$$$ was not assessed and taxed in the County's audit assessment because

118. RESPONDENT-4 stated that a roof would not normally be taxed as personal property (i.e., as a leasehold improvement). RESPONDENT-4 admitted that it appears that TAXPAYER's accounting personnel made an error in reporting a leasehold improvement for a building it owned because the amount an owner expended on a building would not be a leasehold improvement. However, he stated he would need to see more evidence before removing this item from the audit. RESPONDENT-3 testified that leasehold improvements are typically put in by tenants who do not own the building.

Test Fixtures

119. TAXPAYER contests the County's assessment of the test fixtures that were located at the Utah plant for each year of the audit period. For each year, the County identified the test fixtures on its audit report as "Electronic Trade Fixtures" with a cumulative acquisition cost of $$$$$.

120. The test fixtures at issue are pieces of plastic equipment that TAXPAYER would assemble and use as a "platform" to test the individual printed COMPUTER SOFTWARE that TAXPAYER had manufactured for its customers. The test fixture and the printed COMPUTER SOFTWARE being tested would both be placed on a test machine in order for the test to be performed.

121. The County valued the test fixtures each year by applying to the $$$$$ acquisition cost the Class 3 percent good factor applicable to property with a "rolling" age of two years. For example, for the 1995 tax year, the County valued the test fixtures with the Class 3 percent good factor applicable for property acquired in 1993. For the 1996 tax year, the County valued the test fixtures with the percent good factor applicable for property purchased in 1994, and so forth for the remaining tax years.

122. With this methodology, the County assessed a value of $$$$$ to $$$$$ to the test fixtures for each year at issue. Although the acquisition cost remained constant at $$$$$, the value derived for each year

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it was not reported as a leasehold improvement on TAXPAYER's federal depreciation schedule, which served as the basis of the County's audit assessment.

varied because the Class 3 percent good factor for two-year old property varied between 67% and 70% during the audit period.

123. The County "backed" into the $$$$$ acquisition cost once it determined that there were approximately 1,200 test fixtures at the Utah plant at any time during the audit period and that each test fixture would have a value of approximately $$$$$ for a total value of $$$$$ (1,200 test fixtures times $$$$$ per fixture). The County stated that it determined that an acquisition cost of $$$$$ depreciated with the Class 3 percent good factors that ranged between 67% and 70% for two-year old property would produce assessed values ($$$$$ to $$$$$) that were near the $$$$$ value it had estimated for the test fixtures.

124. TAXPAYER believes that the test fixtures have $$$$$ value, but does not contest them being assessed under the County's methodology if the $$$$$ acquisition cost is reduced to $$$$$, in accordance with the Commission's decision in its Initial Hearing Order. In the Initial Hearing Order, the Commission determined that "the cost value" of the test fixtures should be $$$$$ ($$$$$ per fixture for 1,200 fixtures) and that they should be valued using the same percent good factors used by the County in its assessment.

125. Based on an acquisition cost of $$$$$ and Class 3 percent good factors for "rolling" two-year old property (which range between 67% and 70%), the test fixtures would have an assessed value that ranges between $$$$$ and $$$$$ for each year at issue.

126. RESPONDENT-3 explained that the County determined that there were 1,200 test fixtures at the Utah plant and that they were worth $$$$$ a piece, as follows. The County sent an auditor, NAME-2, to tour TAXPAYER'S Utah plant prior to issuing its audit. The tour was guided by NAME-3, who TAXPAYER had recently hired as the internal accountant for its Utah plant. The County claims that during the tour, NAME-2 asked about the test fixtures and that NAME-3 told him that they could be valued up to $$$$$ each.

127. RESPONDENT-3 further stated that NAME-2 estimated that there were 500 test fixtures at the plant and that he multiplied the 500 test fixtures by $$$$$ per fixture to arrive at a preliminary value of $$$$$ for all of the test fixtures.

128. RESPONDENT-3 stated that NAME-2 transmitted his preliminary value of $$$$$ to NAME-3, who contacted NAME-2 to tell him that his estimate was “crazy.” RESPONDENT-3 indicated that NAME-2 asked NAME-3 to provide a better number. RESPONDENT-3 stated that NAME-3 subsequently left NAME-2 a voicemail in which he indicated that he and an “operations person” at TAXPAYER had counted 1,200 test fixtures and that they could be valued between $$$$$ and $$$$$ per fixture. Based on this information, the County estimated that there were 1,200 test fixtures with a value of $$$$$ per fixture and a total value of $$$$$.

129. The County argues that under Utah law, the cost of the test fixtures should include not only the raw materials used to make them, but also the engineering costs, the programming costs, and the labor costs that TAXPAYER incurred to make them.

130. NAME-3 had worked at the Utah plant three or four months at the time when he took NAME-2 on the tour. REPRESENTATIVE FOR TAXPAYER-5 testified that when the tour occurred, NAME-3 had practically no knowledge of the different equipment in the plant and how it operated.

131. TAXPAYER argues that even though it may have charged a customer in the thousands of dollars to test a printed COMPUTER SOFTWARE, the majority of this cost was to program the test machine and perform the test and that very little of this charge would represent the cost to produce the plastic test fixture that was placed on the test machine.

132. REPRESENTATIVE FOR TAXPAYER-4 testified that test fixtures are made of Plexiglas and drilled with specific hole locations in which “pogo” pins are asserted so that during the testing process, they can “pick up” test points on a printed COMPUTER SOFTWARE. REPRESENTATIVE FOR

TAXPAYER-3 explained that the testing will show if the test points "connect" like they were engineered to do. The Plexiglas panels that comprise a test fixture are separated by plastic "spacers."

133. REPRESENTATIVE FOR TAXPAYER-3 testified that it did not cost "that much" to build or make a test fixture. He testified that there is no programming that goes into making the test fixture. He stated that the programming, or Gerber data, that is used to drill the printed COMPUTER SOFTWARE being tested is also used to drill the test fixture used to test it. As a result, there is no additional programming needed to drill the holes on the Plexiglas portion of a test fixture.

134. REPRESENTATIVE FOR TAXPAYER-4 also testified that it is an inexpensive process to make a test fixture, confirming that the costs involved are the costs of the Plexiglas, pins, and spacers and the cost to drill the holes on the Plexiglas. He stated that TAXPAYER could not take a printed COMPUTER SOFTWARE and test it without first creating a program to tell the testing equipment what to do. He indicates that the main portion of any testing charge is not for the test fixture, but for the programming of the testing machines and the testing itself. He explained that the programming of the testing equipment is different from any engineering or labor cost needed to create the test fixture.

135. REPRESENTATIVE FOR TAXPAYER-4 testified that when a customer wanted a printed COMPUTER SOFTWARE to be tested, the cost charged to the customer would generally be between $$$$$ and $$$$$, depending on how many test points were on the printed COMPUTER SOFTWARE. He testified that the material and labor costs to construct the test fixture would be about $$$$$ of the total test charge. He also testified that testing is often done by an entity other than the one that manufactured the printed COMPUTER SOFTWARE.

136. REPRESENTATIVE FOR TAXPAYER-5 testified that programming costs needed to test a printed COMPUTER SOFTWARE were up to around $$$$$. He also explained the to go from a prototype COMPUTER SOFTWARE to a COMPUTER SOFTWARE ready for production, several revisions are

usually made and that a new test fixture would have to be made for each test. REPRESENTATIVE FOR TAXPAYER-5 said the cost of the materials used to make the test fixtures is about $$$$$ for the Plexiglas and $$$$$ or $$$$$ dollars for the pins. He stated that the majority of the $$$$$ to $$$$$ cost per test fixture is primarily the cost to drill the holes and put the test fixture together.

137. Once a printed COMPUTER SOFTWARE was tested, the test fixture was placed in a room at the plant. A test fixture could be used again if a customer ordered the same printed COMPUTER SOFTWARE. More often, though, the test fixture was never used again. TAXPAYER claims that once a test fixture has been used, its only value would ordinarily be to use it for parts when assembling a new test fixture to test a different printed COMPUTER SOFTWARE.

138. REPRESENTATIVE FOR TAXPAYER-4 explained that the life of a specific printed COMPUTER SOFTWARE is only about a year before changes are needed. Accordingly, a test fixture prepared to “match” a specific version of a printed COMPUTER SOFTWARE will be usable for only the life of that version of the printed COMPUTER SOFTWARE, or about a year. If a customer wants the test fixture once it is no longer needed for testing, TAXPAYER gives it to the customer. If not, he explained, the test fixture is scrapped.

139. REPRESENTATIVE FOR TAXPAYER-5 testified that when TAXPAYER purchased the Utah plant, a number of test fixtures existed for CORPORATION-1 main customer, NAME OF BUSINESS. He testified that the test fixtures present prior to the sale stayed in the plant after the 1994 purchase, even though TAXPAYER produced no boards for NAME OF BUSINESS. He stated that the old fixtures could only be used for scrap parts, such as pins and spacers that go in between the Plexiglas plates. He stated that the test fixtures that CORPORATION-1 left were not sold to TAXPAYER. He stated that it is the plant’s duty to ask a customer if it wants its test fixtures and, if it does, to send the fixtures to the customer.

140. REPRESENTATIVE FOR TAXPAYER-5 estimated that there were 400 to 600 test fixtures at the plant at any one time. REPRESENTATIVE FOR TAXPAYER-5 also estimated that in 1995, there were maybe 200 test fixtures because the NAME OF BUSINESS printed COMPUTER SOFTWARE had been tested on “fixed” test equipment that did not require test fixtures. He also testified that at any one time, there would be approximately 100 “active” test fixtures at the Utah plant that could still be used as test fixtures and not as scrap only.

141. REPRESENTATIVE FOR TAXPAYER-4 stated that test fixtures are the property of the customer and that TAXPAYER did not carry the cost of the test fixtures on its book and that it did not “inventory” the fixtures. Test fixtures were not included in the 1994 Appraisal of personal property located at the Utah plant.

142. TAXPAYER has provided sufficient evidence to show that the $$$$$ or $$$$$ of dollars that it charged its customers to test a printed COMPUTER SOFTWARE is not all or mostly attributable to the cost of the test fixtures used in the testing process. The majority of the testing charge is for programming of the testing machines and for the testing itself. The cost of a test fixture, including any engineering and labor charges to construct the test fixture, is $$$$$ to $$$$$ per test fixture.

APPLICABLE LAW

1. Utah Code Ann. §59-2-1005[6] provides that a personal property owner may appeal the value at which its personal property is assessed to the county legislative body, which shall hear the property owner’s appeal and issue a written decision. Subsection (4) provided that “[i]f any taxpayer is dissatisfied with the decision of the county legislative body, the taxpayer may file an appeal with the commission as established in Section 59-2-1006.”

6 All cites are to the 1995 version of Utah law, unless otherwise indicated.

2. UCA §59-2-103(1) provides that "[a]ll tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law."

3. UCA §59-2-102(8) defined "fair market value" as "the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. . . ."

4. Utah Admin. Rule R884-24P-33 ("Rule 33") was adopted to provide guidance for establishing the fair market value of personal property for property tax purposes. The 1995 version of Rule 33 provided in pertinent part as follows (emphasis added):[7]

> A. Definitions.
>
> 1. "Percent good" means an estimate of value, expressed as a percentage, based on a property's cost new, adjusted for depreciation and appreciation of all kinds.
>
> a) The percent good factor is applied against the acquisition cost or the book value to derive taxable value for the property.[8]
>
> . . . .
>
> 2. "Cost new" means the suggested retail price or the actual cost of the property when purchased new.[9]
>
> 3. "Acquisition cost" means all costs required to put an item into service, including purchase price, freight and shipping costs; installation, engineering, erection or assembly costs; and excise and sales taxes.
>
> a) Indirect costs such as debugging, licensing fees and permits, insurance or security are not included in the acquisition cost.
>
> b) Acquisition cost may correspond to the cost new for new property, or it may differ from the cost new for used property.[10]
>
> 4. "Computer dependent machines"[11] are machines controlled by built-in computers

[7] Any significant changes to the 1995 version of Rule 33 for the 1996 through 1999 tax years will be identified.

[8] Beginning in 1997 and effective for the rest of the audit period, the words "book value" were replaced by the words "cost new."

[9] For the 1997 tax year only, this subsection also provided that "[f]or property purchased used the cost new may be estimated by dividing the used purchase price by the percent good for the applicable model year from the schedule effective for the acquisition year." For the 1998 and 1999 tax years, this subsection also provided that "[f]or property purchased used the cost new may be estimated by the taxing authority."

[10] For the 1998 and 1999 tax years, the clause "or it may differ from the cost new for used property" was amended to "or cost used for used property".

[11] The definition for "computer dependent machines" only appears in Rule 33 for the 1995 tax year,

that cannot be practically replaced without replacing the entire piece of equipment. Computer dependent machines or equipment are classified as short life trade fixtures (Class 3).

a) If the computer components can be replaced separately and feasibly, the computer components should be treated as Class 3 personal property, and the balance of the components should be valued using the appropriate property class schedule.

b) For purposes of the allocation described in 4.a), the taxpayer bears the burden of proof for establishing the amount of value attributed to the computer components. Absent such proof, the equipment shall be valued as an entire unit using the appropriate percent good schedule for the subject property.

B. Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

. . . .

3. County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

C. All taxable personal property is classified by expected economic life as follows:

1. Class 1 – Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.

a) Examples of property in this class include:

(1) barricades/warning signs;
(2) library materials;
(3) patterns, jigs and dies;
(4) pots, pans, and utensils;
(5) canned computer software;
(6) hotel linen;
(7) wood and pallets; and
(8) video tapes.

b) With the exception of video tapes, taxable value is calculated by applying the percent good factor against its acquisition cost of the property.

. . . .

[The Class 1 percent good table shows that property in this class is depreciated to a residual value in the 3rd year of the property's life.]

2. Class 3 – Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.

a) Examples of property in this class include:

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when computer dependent machines was identified as an example of property included in Class 3 – Short Life Trade Fixtures. As explained later, for all years of the audit period except for 1995, "computer dependent machinery" was removed from Class 3 – Short Life Trade Fixtures and placed into a newly created class identified as Class 2 – Computer Dependent Machinery.

(1) office and accounting machines;
(2) computer equipment;[12]
(3) computer dependent machines;[13]
(4) alarm systems;
(5) bank machines;
(6) basic research equipment;
(7) carpeting;
(8) data processing equipment and peripherals;
(9) drive-up bank windows;
(10) music systems;
(11) drapes and rods;
(12) vending machines; and
(13) video game machines.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

[The Class 3 percent good table shows that property in this class is depreciated to a residual value in the 5th year of the property's life.]

. . . .

7. Class 8 – Machinery and Equipment. Property in this class is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.

a) Examples of property in this class include:

(1) manufacturing machinery;
(2) amusement rides;
(3) bakery equipment;
(4) distillery equipment;
(5) refrigeration equipment;
(6) nonpetroleum drill rigs;
(7) machine shop equipment;
(8) incinerators;[14]
(9) leased farm equipment;
(10) mining equipment;
(11) ski lift machinery;
(12) printing equipment; and
(13) bottling or cannery equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

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12 Beginning in the 1997 tax year, "computer equipment" was removed from Class 3 and placed in a new class that was created and identified as "Class 12 – Computer Hardware." The information about Class 12 will be cited after the 1995 version of Rule 33 cite is completed.

13 In 1996, "computer dependent machines" was removed from Class 3 and placed in a new class that was created and identified as "Class 2 – Computer Dependent Machinery." The information about Class 2 will be cited after the 1995 version of Rule 33 cite is completed.

14 In 1999, "incinerators" was removed and "processing equipment" was added as an example of Class 8 property.

[The Class 8 percent good table shows that property in this class is depreciated to a residual value in the 11th year of the property's life.]

. . . .

22. Class 24 – Leasehold Improvements.

a) This class includes short life leasehold improvements to real property installed by a tenant, including:

(1) walls and partitions;
(2) plumbing and roughed-in fixtures;
(3) floor coverings other than carpet;
(4) store fronts;
(5) decoration;
(6) wiring;
(7) suspended or acoustical ceilings;
(8) heating and cooling systems; and
(9) iron or millwork trim.

b) Taxable value is calculated by applying the percent good factor against the cost of installation.

[The Class 24 percent good table shows that property in this class is depreciated to a residual value in the 12th year of the property's life.]

D. Other taxable personal property that is not included in the listed classes includes:

1. Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.

. . . .

5. In 1996, Rule 33 was amended to include a percent good table for property identified as Class 2 – Computer Dependent Machinery, which had previously been valued under Class 3. No specific examples of property included in this class were provided in the rule for the years at issue. For all years of the audit period except for 1995, Rule 33(E)(2) (1996) specifically identified Class 2 property, as follows in pertinent part (emphasis added):

E. All taxable personal property is classified by expected economic life as follows:

. . . .

2. Class 2 - Computer Dependent Machinery. Machinery shall be classified as computer dependent machinery if all of the following conditions are met:

a) The equipment is sold as a single unit. If the invoice(s) breaks out the computer separately from the machine, the computer must be valued as Class 3[15] property and

[15] For 1996 only, this subsection provided that where an invoice breaks out the computer separately from the machine, the computer was to be valued as Class 3 property (Short Life Trade Fixtures). In 1997, this subsection was amended and provided that where an invoice breaks out the computer separately from the

the machine as Class 8 property.
b) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.
c) The machine can perform multiple functions and is controlled by a programmable central processing unit.
d) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.
e) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

[The Class 2 percent good table shows that property in this class is depreciated to a residual value in the 8th year of the property's life.]

6. In 1996, Rule 33 was also amended to include a percent good table for property identified as Class 15 – Semiconductor Manufacturing Equipment. Prior to 1996, semiconductor manufacturing equipment had not been specifically mentioned in Rule 33. For all years of the audit period except for 1995, Rule 33(E)(15) (1996) specifically identified Class 15 property, as follows in pertinent part (emphasis added):

E. All taxable personal property is classified by expected economic life as follows:

. . . .

15. Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products.

a) Examples of property in this class include:
(1) crystal growing [equipment];
(2) die assembly [equipment];
(3) wire bonding [equipment];
(4) encapsulation [equipment];
(5) semiconductor test equipment;
(6) clean room equipment;
(7) chemical and gas systems related to semiconductor manufacturing;
(8) deionized water systems;
(9) electrical systems; and
(10) photo mask and wafer manufacturing dedicated to semiconductor production.

[The Class 15 percent good table shows that property in this class is depreciated to a residual value in the 5th year of the property's life.]

7. In 1997, Rule 33 was also amended to include a percent good table for property identified as

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machine, the computer was to be valued under Class 12 property (Computer Hardware). As mentioned earlier, Rule 33 was amended in 1997 to include a new percent good table for property identified as Class 12 – Computer Hardware. Prior to 1997, "computer equipment" had been identified as an example of Class 3 property.

Class 12 – Computer Hardware, which had previously been valued under Class 3. For the 1997, 1998, and 1999 tax years, Rule 33(E)(12) (1997) specifically identified Class 12 property, as follows in pertinent part (emphasis added):

> E. All taxable personal property is classified by expected economic life as follows:
>
> . . . .
>
> **12. Class 12 – Computer Hardware.**
>
> a) Examples of property in this class include:
>
> (1) data processing and peripherals equipment;
>
> (2) computers;
>
> (3) main frame computers;
>
> (4) PC computers;
>
> (5) cad/cam systems; and
>
> b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.
>
> [The Class 12 percent good table shows that property in this class is depreciated to a residual value in the 6th year of the property's life.]

8. For a party who is requesting a value that is different from that determined by the County BOE to prevail, that party must: 1) demonstrate that the value established by the County BOE contains error; and 2) provide the Commission with a sound evidentiary basis for reducing or increasing the valuation to the amount proposed by the party. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm'n*, 590 P.2d 332, (Utah 1979); *Beaver County v. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996); and *Utah Railway Co. v. Utah State Tax Comm'n*, 5 P.3d 652 (Utah 2000).

DISCUSSION

I. Computer Software Issues.

TAXPAYER contests four items listed on its depreciation schedule and in the County's audit assessment that it claims to be computer software, specifically: 1) $$$$$ of Machinery and Equipment purchased in 1994; 2) $$$$$ of Machinery and Equipment purchased in 1996; 3) $$$$$ of Computer Equipment purchased in 1997; and 4) $$$$$ of Computer Equipment purchased in 1998.

A. $$$$$ of Computer Software Purchased in 1994. The County assessed this portion of TAXPAYER's property by using its acquisition cost of $$$$$ and applying the Class 8 percent good factors for machinery and equipment. TAXPAYER asks the Commission to value this property with the Class 1 percent good factors. The County argued that the Commission should not reclassify any of TAXPAYER'S property because TAXPAYER did not provide it with a "fixed asset list" that would list and describe each item of TAXPAYER'S personal property and list the acquisition cost of each item. The Commission, however, does not believe that such a list is necessary for TAXPAYER to contest items of the County's assessment.

While such a list would be helpful in determining a taxpayer' personal property tax liability, the Commission is unaware of any Utah law or rule that requires a party to submit a fixed asset list in order to contest a personal property assessment. Accordingly, if TAXPAYER provides other evidence that is sufficient to show that a portion of the County's assessment is incorrect, then that portion of the assessment should be amended.

Earlier, the Commission found that TAXPAYER provided sufficient evidence to show that the $$$$$ of property it acquired in 1994 and that the County assessed as Class 8 machinery and equipment is computer software that TAXPAYER acquired from CORPORATION-1. Rule 33(C)(1) provides that "canned computer software" is an example of the property that should be valued with the Class 1 percent good factors. TAXPAYER agrees that its software would be subject to taxation as "canned computer software" under Class 1 (except for software that never worked, that had been retired, or that was located in STATE-1, which will be discussed below). The County did not argue that it would be inappropriate to value computer software with the Class 1 percent good factors. Accordingly, the County's assessment should be amended so that $$$$$ of the property that TAXPAYER acquired in 1994 and that the County assessed as Class 8 machinery and equipment is changed to and valued as Class 1 property.

TAXPAYER asserted that this computer software's acquisition cost of $$$$$ should be reduced by 50% (from $$$$$ to $$$$$) because half of the computer software was located in STATE-1, not Utah. Earlier, the Commission determined that TAXPAYER did not provide sufficient evidence to show that any of the $$$$$ of computer software was located in STATE-1. Accordingly, the acquisition cost of $$$$$ used by the County to assess this portion of TAXPAYER'S property should not be changed.

Lastly, TAXPAYER asserts that the $$$$$ of CORPORATION-1 computer software was retired in 1997 and, as a result, should not be valued at all for the 1998 and 1999 tax years. Earlier, the Commission determined that the evidence concerning the implementation date of the BBX software was ambiguous and, instead, found that the CORPORATION-1 software was retired in 1998. TAXPAYER'S argument that the CORPORATION-1 software was taken out of service is persuasive because of its 1995 investment to replace it and because of the testimony about the BBX software. The County agrees that computer software no longer in use should be assessed at a $$$$$ value. Accordingly, the Commission finds that the $$$$$ of CORPORATION-1 computer software acquired in 1994 should be removed from the audit for the 1999 tax year.

B. BBX Computer Software. Earlier, the Commission found that the BBX software was installed in 1998 to replace the retired CORPORATION-1 software. It is also noted that TAXPAYER did not list any acquisition cost for the BBX software on either its depreciation schedule or its personal property affidavit. As a result, the County did not assess any value to the BBX software on its audit assessment. Because the Commission has removed the CORPORATION-1 software from the assessment for the 1999 tax year, it is concerned that TAXPAYER will be underassessed for 1999 if the Commission does not assess some value to the BBX software. Inasmuch as there is no evidence of the acquisition cost of the BBX software, the Commission will use as a substitute the $$$$$ acquisition cost attributed to the investment of new software development in 1995. Accordingly, for the 1999 tax year, the Commission finds that the BBX software should be valued using the Class 1 percent good factor that is appropriate for computer software that was acquired in 1998 and that has an acquisition cost of $$$$$.

C. $$$$$ of Computer Software Purchased in 1995. The County assessed this portion of TAXPAYER'S property by using its acquisition cost of $$$$$ and applying the Class 8 percent good factors for machinery and equipment. TAXPAYER asks the Commission to find that this property is computer software that never worked and, as a result, to remove it from the audit completely.

The Commission found that sufficient evidence existed to find that this property was computer software that was intended to replace the CORPORATION-1 software. The Commission also found that sufficient evidence existed to find that this computer software never worked and that in 1997, TAXPAYER abandoned the project trying to get the software to work. The County stated that computer software would be given a $$$$$ value once it was taken off machines and was no longer usable. If this case, however, TAXPAYER believed that this new software had some value until 1997, when it decided that it was not going to work and when it abandoned the project. As a result, the Commission finds that the software that TAXPAYER acquired in 1995 had value until it was decided in 1997 that it would not work. Accordingly, the Commission finds that the $$$$$ of computer software should be assessed for the 1996 and 1997 tax years. However, it should be removed from the audit completely for the 1998 and 1999 tax years. Furthermore, for the 1996 and 1997 tax years, it should be valued with the Class 1 percent good factors.

D. $$$$$ of Computer Equipment Purchased in 1997. The County assessed this property by using its acquisition cost of $$$$$ and applying the Class 12 percent good factors for computer equipment. TAXPAYER asks the Commission to find that this property is computer software that never worked and, as a result, to remove it from the audit completely. The Commission found that TAXPAYER did not provide sufficient evidence to show that this property was computer software instead of computer equipment, as it reported on its depreciation schedule. As a result, the Commission finds that the County properly valued it as Class 12 property and that it should not be removed from the audit.

E. $$$$$ of Computer Equipment Purchased in 1998. The County assessed this property by using its acquisition cost of $$$$$ and applying the Class 12 percent good factors for computer equipment. TAXPAYER asks the Commission to find that this property is also computer software and to value it with the Class 1 percent good tables. Again, the Commission found that TAXPAYER did not provide sufficient evidence to show that this property was computer software. As a result, the Commission finds that the County properly valued it as Class 12 property.

II. Rule 33 Classification of COMPUTER SOFTWARE Manufacturing Machinery and Equipment.

Machinery and equipment in printed COMPUTER SOFTWARE plants has a shorter life than machinery and equipment used in many other types of manufacturing plants, due to the corrosive environment of a COMPUTER SOFTWARE plant and the rapid technological changes that affect the COMPUTER SOFTWARE industry. For these reasons, the Commission has found that COMPUTER SOFTWARE manufacturing machinery and equipment has a life of 5 or 6 years. It is clear that the Class 8 factors used in the County's assessment overvalue TAXPAYER'S machinery and equipment because Class 8 does not depreciate property to a residual value until 11 years after acquisition (the Commission's Recommended Personal Property Valuation Schedules indicate that Class 8 property has an economic life of 12 years or more).

The County, nevertheless, asserts that the Commission should not change the Class 8 classification because TAXPAYER does not have a fixed asset list that describes each item of property and shows its acquisition cost. The Commission finds such a result unjust, especially when the evidence and testimony overwhelmingly shows that TAXPAYER'S machinery and equipment is misclassified and overvalued.

TAXPAYER'S Appraisal provides a list of most of the property it purchased from CORPORATION-1 in 1994 and the "orderly liquidation value" of each item. TAXPAYER claims that the values shown in the Appraisal were the basis of the acquisition costs it reported on its federal depreciation schedules and that the County used as the basis of its audit assessment. Regardless of whether "orderly liquidation value" or "fair market value" are close to one another, the orderly liquidation values are TAXPAYER'S acquisition costs for the property it purchased from CORPORATION-1 in 1994.

The Commission recognizes that the $$$$$ total orderly liquidation value shown in the 1994 Appraisal does not exactly match the $$$$$ of 5-year life and 7-year life machinery and equipment that TAXPAYER reported on its federal depreciation schedule that was acquired in 1994 and that the County has assessed. However, the amounts are relatively close, and the Appraisal clearly shows that most of the property appraised in it is used to manufacture printed COMPUTER SOFTWARE. With this evidence, the Commission finds that TAXPAYER has shown that the property it reported on its depreciation schedule as 5-year life and 7-year life machinery and equipment should be reclassified for valuation purposes. Such a finding is more appropriate than knowingly misclassifying a majority of TAXPAYER'S property, especially where the County had an auditor visit the plant and does not indicate that *any* item is properly classified under Class 8 and where the County does not suggest any alternative ways to classify any of the property.

Remaining at issue is the correct Rule 33 class under which TAXPAYER'S machinery and equipment should be reclassified. Class 3, which is found in Rule 33(C)(2) (1995), is developed for short-life equipment, including electronic equipment, and depreciates property to a residual value 5 years after acquisition. For purposes of the Formal Hearing, TAXPAYER proposes that all of its machinery and equipment should be reclassified to Class 3. This class appears in Rule 33 for all five tax years at issue.

Class 15, which is found in Rule 33(E)(15) (1996), is developed for semiconductor manufacturing equipment and also depreciates property to a residual value 5 years after acquisition (but at a faster rate than

Class 3). REPRESENTATIVE FOR TAXPAYER-5 testified that he believes that printed COMPUTER SOFTWARE manufacturing machinery and equipment is similar to the property in Class 15. While Class 15 did not exist in Utah law for the 1995 tax year at issue, it was adopted in 1996 and existed for the 1996, 1997, 1998, and 1999 tax years.

Class 2, which is found in Rule 33(E)(2) (1996), is a class developed for computer dependent machinery, and it depreciates property to a residual value 8 years after acquisition. TAXPAYER'S witnesses testified that this class would be appropriate for a majority of its machinery and equipment if it were not for the caustic conditions of the printed COMPUTER SOFTWARE plant and the obsolescence caused by rapid technological changes in the industry. While Class 2 did not exist in Utah law for the 1995 tax year at issue, it was adopted in 1996 and existed for the 1996, 1997, 1998, and 1999 tax years.

Because of the conditions in a COMPUTER SOFTWARE plant and the rapid technological changes in the industry, Class 2 does not appear to be an appropriate class to value TAXPAYER'S machinery and equipment, even though much of it may be computer dependent machinery. TAXPAYER'S machinery and equipment has a life of 5 or 6 years, whereas Class 2 does not depreciate property to a residual value until 8 years after acquisition. Both Class 3 and Class 15, which depreciate property to a residual value in 5 years, seem a more reasonable choice. Although REPRESENTATIVE FOR TAXPAYER-5 testified that Class 15 property is more similar to TAXPAYER'S property than Class 3 property, TAXPAYER asks the Commission to classify its property under Class 3. TAXPAYER'S request may be influenced by the Initial Hearing Order, which concluded that Class 15 did not exist during any portion of the audit period. Accordingly, the Commission will review the facts to see whether Class 3 or Class 15 is more appropriate.

IRS Pub. 946 indicates that the "life" of printed COMPUTER SOFTWARE manufacturing equipment is 6 years and that the life of semiconductor manufacturing equipment is 5 years. As a result, it appears that TAXPAYER'S machinery and equipment does not depreciate as quickly as semiconductor manufacturing equipment. The Commission also notes that in general, Class 3 property is valued at 84% of its acquisition cost in its first year after acquisition, whereas Class 15 property is valued at 74% of acquisition cost in the first year. There is no evidence to show that TAXPAYER'S property depreciates to 74% of its acquisition cost in the first year. For this reason and because TAXPAYER'S machinery and equipment is estimated in IRS. Pub. 946 to have an additional year of "life" than semiconductor manufacturing equipment, the Commission finds that Class 3 is the appropriate class to value TAXPAYER'S machinery and equipment.

Accordingly, the Commission finds that the property that TAXPAYER reported on its federal depreciation schedule as 5-year life and 7-year life machinery and equipment, which the County assessed as Class 8 industrial machinery and equipment, should be reclassified to Class 3 property.

III. TAXPAYER'S Claim that Some of its Machinery and Equipment Should be Removed from the Assessment.

TAXPAYER asks the Commission to remove a portion of the 5-year life and 7-year life machinery and equipment that it reported on its federal depreciation schedule as being acquired in 1994 and 1995 and that the County has assessed. Specifically, TAXPAYER ask the Commission to remove: 1) $$$$$ of the machinery and equipment that it acquired from CORPORATION-1 in 1994 and that it claims that it retired in 1994 and 1995; 2) $$$$$ of drill bits that it purchased from CORPORATION-1 in 1994; and 3) $$$$$ of machinery and equipment that it acquired in 1995 and reported as Utah property and that it now claims was located in STATE-1, not Utah.

A. <u>Retirement of Property Purchased from CORPORATION-1</u>. In 1994 and 1995, TAXPAYER retired a large portion of the machinery and equipment that it purchased from CORPORATION-1in 1994. TAXPAYER reported on its federal depreciation schedule that it acquired $$$$$ of 5-year life and 7-year life machinery and equipment in 1994 from CORPORATION-1. The County has assessed this property for all 5 tax years. Although TAXPAYER claims that it retired $$$$$ of the CORPORATION-1 machinery and equipment in 1994 and another $$$$$ of it in 1995, the Commission found earlier that TAXPAYER did not provide sufficient evidence to show that these amounts had been retired. However, the Commission considered each item of retired property and found that TAXPAYER had provided sufficient evidence to show that it retired $$$$$ of the CORPORATION-1 machinery and equipment in 1994 and another $$$$$ in 1995.

The evidence also showed that TAXPAYER kept the retired property at its Utah plant and used it for spare parts. The parties disagreed on how retired property should be treated for valuation purposes if the property is kept for spare parts. TAXPAYER contends that any retired property should be removed from the audit because it has no value, while the County contends that such property has a "salvage" value and should not be removed from the audit completely. The Commission finds the County's position not only to be more persuasive, but also to be supported by the taxpayer's own Appraisal. Even though much of the CORPORATION-1 personal property that was appraised in 1994 was old and even though some of the items were identified as "not in service," the appraiser still determined that such property had some value. Accordingly, the Commission rejects the taxpayer's proposal to find that the retired property has no value and to remove it from the County's audit assessment.

Remaining at issue is how to value the retired property. RESPONDENT-4 stated that salvage property should be valued by using its original acquisition cost and the appropriate percent good factor based on its age, then applying "an additional obsolescence factor" to this value to account for its being salvage property. He stated that the County applies an additional 50% obsolescence factor to such property. The County's methodology appears reasonable and is the only methodology provided other than the taxpayer's proposal to give the property no value, which the Commission has rejected.

Accordingly, for each year of the audit period, the $$$$$ of CORPORATION-1 machinery and equipment that was both acquired and retired in 1994 should be valued with the appropriate Class 3 percent good factor for each year and, to this value, a 50% obsolescence deduction should be applied. For the 1995 tax year, the $$$$$ of CORPORATION-1 machinery and equipment that was acquired in 1994 and retired in 1995 should be valued with the appropriate percent good factor for 1995 without any obsolescence adjustment. For the 1996, 1997, 1998, and 1999 tax years, the $$$$$ of CORPORATION-1 machinery and equipment that was acquired in 1994 and retired in 1995 should be valued with the appropriate percent good factor for each year and, to this value, a 50% obsolescence deduction should be applied.

B. Drill Bits. In 1994, TAXPAYER purchased approximately 225,000 drill bits with an orderly liquidation value of $$$$$$ from CORPORATION-1. TAXPAYER contends that its acquisition cost of $$$$$ for the drill bits should be removed from the County's audit assessment because TAXPAYER erroneously classified the drill bits as depreciable machinery and equipment on its federal depreciation schedule instead of expensing them as consumables.

Drill bits are personal property. The 225,000 drill bits also have significant value because they are estimated in the 1994 Appraisal to have an orderly liquidation value of $$$$$. Section 59-2-103(1) provides that all tangible property is to be assessed and taxed. To remove the drill bits from the audit, as TAXPAYER proposes, would result in the drill bits not being assessed at all. TAXPAYER has not shown that the drill bits were accounted for and assessed in a different area of the County's audit. Accordingly, TAXPAYER'S request to remove the drill bits from the audit report completely is denied.

Remaining at issue is whether or not the $$$$$ of drill bits should be "moved" from its current assessment as depreciable machinery and equipment to non-depreciable supplies, which are assessed at 100% of their acquisition cost for each year. Rule 33(D)(1) provides that supplies on hand as of the lien date (such as office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business) are assessed at total cost. The County stated that if the drill bits are consumable drill bits, they should be assessed at a 100% of their value under supplies.

However, neither party provided evidence concerning the life of a drill bit. They also did not provide any information to show whether TAXPAYER purchased any new drill bits during the audit period to replace the CORPORATION-1 drill bits that may have worn out during the audit period. Without such information, the Commission declines to assess the drill bits as non-depreciable supplies during the audit period.

Accordingly, the Commission sustains the drill bits' current assessment as machinery and equipment with an acquisition cost of $$$$$ that TAXPAYER purchased in 1994. Previously, the Commission found that all of TAXPAYER'S machinery and equipment should be classified as Class 3 property for purposes of valuation. Based on the limited information known about the drill bits, the Commission finds no reason to assess the drill bits other than Class 3 property, as well.

C. $$$$$ of Property TAXPAYER Claims to be Located in STATE-1. TAXPAYER has provided sufficient evidence to show that after its purchase of the CORPORATION-1 plants, it purchased four Dynamotion drills for the Utah plant and at least one Dynamotion drill for the STATE-1 plant. TAXPAYER, however, has not provided sufficient information to show that it reported the acquisition costs for two drills located in STATE-1 as property located at the Utah plant.

TAXPAYER provided no documentation to support its claim that the $$$$$ of 5-year life machinery and equipment it reported as being acquired for the Utah plant in 1995 is the price it paid for six Dynamotion drills. TAXPAYER was purchasing other new machinery and equipment for the Utah plant after the retirement of a large amount of CORPORATION-1 property in 1994 and 1995. Without evidence to show otherwise, the $$$$$ amount could have included costs of machinery and equipment other than drills.

TAXPAYER has also provided no documentation to show that it acquired more than one Dynamotion drill for the STATE-1 plant. Furthermore, TAXPAYER reported that it acquired $$$$$ of machinery and equipment for the STATE-1 plant in 1995. There is no documentation to show that this amount did not include the cost for one or more drills purchased for the STATE-1 plant. For these reasons, the Commission finds that TAXPAYER has not shown that the acquisition cost of $$$$$ at issue should be reduced by $$$$$ to account for drills that TAXPAYER claims to have reported on its books for the Utah plant, but were located at the STATE-1 plant.

IV. Roof or Leasehold Improvement.

TAXPAYER reported on its federal depreciation schedule that in 1996, it acquired a 15-year life leasehold improvement for the Utah plant at an acquisition cost of $$$$$, which resulted in the County assessing this property as personal property for the for the 1997, 1998, and 1999 tax years with the Class 24 percent good tables for leasehold improvements. TAXPAYER claims that the property at issue is a roof it purchased for its Utah plant and that this item is real property that should be removed from the personal property audit assessment.

Rule 33(C)(22)(a) specifically provides that Class 24 – Leasehold Improvements "includes short life leasehold improvements to real property installed by a **tenant**" (emphasis added). TAXPAYER purchased the Utah plant from CORPORATION-1 in 1994. It was the owner of, not a tenant at, the Utah plant when it acquired the property in 1996 that it reported as a leasehold improvement. RESPONDENT-4 admitted that it appears that TAXPAYER'S accounting personnel made an error in reporting a leasehold improvement for a building it owned because the amount an owner expended on a building would not be a leasehold improvement. RESPONDENT-3 also testified that leasehold improvements are typically put in by tenants who do not own the building.

Based on Rule 33(C)(22)(a) and the County's statements, it appears likely that TAXPAYER erroneously reported a real property improvement as a leasehold improvement when it reported the $$$$$ leasehold improvement on its federal depreciation schedule. Furthermore, it is clear that TAXPAYER did not consistently report its real property improvements as real property. It reported its 1995 acquisition of walls at the Utah plant as a real property improvement on its federal depreciation schedule and as a leasehold improvement on its annual personal property affidavit. This also supports REPRESENTATIVE FOR TAXPAYER-5 claim that the property acquired in 1996 for $$$$$ was a roof that was erroneously classified for accounting purposes. For these reasons, the $$$$$ of property that TAXPAYER acquired in 1996 and reported as a leasehold improvement is not personal property and should be removed from the County's audit report.[16]

V. Test Fixtures.

The County has assessed the test fixtures located at TAXPAYER'S Utah plant at a total value that ranges between $$$$$ and $$$$$ for each year. TAXPAYER asks the Commission to re-adopt its decision from the Initial Hearing Order and value the test fixtures on the basis of an acquisition cost of $$$$$, which would result in a total value for the test fixtures that ranges between $$$$$ and $$$$$ for each year.

Although TAXPAYER charges its customers $$$$$ or $$$$ of dollars to test a COMPUTER SOFTWARE, very little of the testing charges are attributable to the test fixtures that TAXPAYER builds and uses in the testing process. TAXPAYER'S three witnesses all explained that the majority of the testing charges relate to programming the test equipment on which the test fixture and printed COMPUTER SOFTWARE are placed for testing (not for programming or engineering the test fixture) and to performing the testing. TAXPAYER'S witnesses also all indicate that the only costs associated with building the test fixture are the costs for materials and labor to drill the holes in the Plexiglas. They testified that no additional programming costs are needed to drill the holes into the Plexiglas because that program has already been developed to drill the same holes in the printed COMPUTER SOFTWARE. The evidence shows that the cost

[16] It is noted that the County also assessed a leasehold improvement that TAXPAYER reported that it acquired in 1994 for $$$$$. TAXPAYER, however, did not contest this item. For this reason and because it is unknown whether this property was purchased before or after TAXPAYER purchased the plant, the Commission will not disturb this portion of the County's assessment.

to build a test fixture is $$$$$ to $$$$$ per test fixture. The County produced no witnesses who provided testimony to show otherwise.

The parties disagree on the number of test fixtures located at the Utah plant at any one time. The County has estimated the number at 1,200 based on information it claims to have received from a TAXPAYER employee at the time of the audit. REPRESENTATIVE FOR TAXPAYER-5 estimated that the number of test fixture was between 400 and 600. The exact number of test fixtures located at the Utah plant during the audit period is unknown because TAXPAYER did not inventory the fixtures. For purposes of this decision, it is estimated that the number was between 600 and 1,200.

The evidence also shows that at any one time, a majority of the test fixtures located at the Utah plant could no longer function as test fixtures and would only have value as scrap materials. REPRESENTATIVE FOR TAXPAYER-5 estimated that approximately 100 test fixtures were "active" and could be used as test fixtures at any one time given that printed COMPUTER SOFTWARE are usually retired within a year.

If there were 100 active fixtures at the Utah plant at any one time, the total cost of these 100 test fixtures would be between $$$$$ and $$$$$ (based on each test fixture costing between $$$$$ and $$$$$ to build). The remaining fixtures would only have value as scrap materials and would number between 500 and 1,100 (based on the total number of fixtures ranging between 600 and 1,200 and subtracting the 100 active fixtures). Based on the testimony of TAXPAYER'S witnesses, the scrap value of a test fixture would be approximately $$$$$, based on the original cost of the pins. Accordingly, the 500 to 1,100 of scrap test fixtures would have a value estimated between $$$$$ and $$$$$ (at $$$$$ per pin). When the cost of the active test fixtures (between $$$$$ and $$$$$) is added to the value of the scrap test fixtures (between $$$$$ and $$$$$), the total estimated value of all test fixtures would be no more than $$$$$. TAXPAYER, however, did not ask for its test fixtures to be valued with this methodology.

Instead, TAXPAYER asks the Commission to value its test fixtures at $$$$$ to $$$$$ for each year by using the County's methodology and reducing the total acquisition cost from $$$$$ to $$$$$. It is clear that the County's methodology is incorrect and that TAXPAYER'S methodology results in values that better reflect the values of its test fixtures. Accordingly, the Commission finds that the County's methodology should be used to value the test fixtures, except that the total acquisition cost should be reduced to $$$$$.

CONCLUSIONS OF LAW

1. The Commission finds that a "fixed asset list" is not necessary for a party to contest a personal property assessment issued by the County. If a taxpayer provides other evidence that is sufficient to show that any portion of the County's assessment is incorrect, then that portion of the assessment should be amended.

2. TAXPAYER has provided sufficient evidence to show that $$$$$ of the property that TAXPAYER acquired in 1994 and that the County assessed as Class 8 machinery and equipment is computer software that should be valued as Class 1 property. Although TAXPAYER has not provided sufficient evidence to show that part of this CORPORATION-1 computer software was located in STATE-1, it has, however, provided sufficient evidence to show that the CORPORATION-1 software was retired in 1998. Accordingly, this $$$$$ of property that was acquired in 1994 should be valued with the Class 1 percent good factors for the 1995, 1996, 1997, and 1998 tax years, but should be removed from the County's audit assessment for the 1999 tax year.

3. The Commission has found that TAXPAYER replaced its CORPORATION-1 software with BBX software in 1998 and that the BBX software has not been valued in the County's audit assessment. The Commission has also found that the acquisition cost of the BBX software should be estimated at $$$$$ (i.e., the same amount invested for new software in 1995). As a result, for the 1999 tax year only, the Commission

finds that the BBX software should be valued using the Class 1 percent good factor that is appropriate for computer software that was acquired in 1998 and that has an acquisition cost of $$$$$.

4. TAXPAYER has provided sufficient evidence to show that $$$$$ of the property that it acquired in 1995 and that the County assessed as Class 8 machinery and equipment is computer software that should be valued as Class 1 property. TAXPAYER has also provided sufficient evidence to show that this property should be removed from the audit for the 1998 and 1999 tax years. However, it is subject to taxation for the 1996 and 1997 tax years.

5. TAXPAYER has not provided sufficient evidence to show that the $$$$$ of property that it purchased in 1997 and that the County assessed as Class 12 computer equipment is computer software. Similarly, TAXPAYER has not provided sufficient evidence to show that the $$$$$ of property that it purchased in 1998 and that the County assessed as Class 12 computer equipment is computer software. Accordingly, the County's assessment of these properties is sustained.

6. TAXPAYER has provided sufficient information to show that the property that it reported on its federal depreciation schedule as 5-year life and 7-year life machinery and equipment and that the County assessed as Class 8 industrial machinery and equipment should be reclassified to Class 3 property. Specifically, the property that should be reclassified from Class 8 to Class 3 are those with acquisition costs of: 1) $$$$$ for property acquired in 1994 ($$$$$ of 5-year life property and $$$$$ of 7-year life property); 2) $$$$$ for property acquired in 1995 ($$$$$ of 5-year life property and $$$$$ of 7-year life property); 3) $$$$$ for 7-year life property acquired in 1996; 4) $$$$$ for 7-year life property acquired in 1997; and 5) $$$$$ for 7-year life property acquired in 1998.

7. Of the $$$$$ of property that TAXPAYER acquired from CORPORATION-1 in 1994 and that it reported on its federal depreciation schedule as 5-year life and 7-year life machinery and equipment, TAXPAYER has provided sufficient information to show that it retired $$$$$ of the property in 1994 and

another $$$$$ in 1995. The Commission finds that the retired property is salvage property that should receive some value. For years subsequent to the property's being retired, its value should be determined by applying a 50% obsolescence adjustment to the value determined under Rule 33. Accordingly, for each year of the audit period, the $$$$$ of machinery and equipment that TAXPAYER both acquired and retired in 1994 should be valued using the appropriate Class 3 percent good factor and, to this value, a 50% obsolescence deduction should be applied. For the 1996, 1997, 1998, and 1999 tax years, the $$$$$ of machinery and equipment acquired in 1994 and retired in 1995 should be valued using the appropriate Class 3 percent good factor and, to this value, a 50% obsolescence deduction should be applied.

8. TAXPAYER has provided sufficient evidence to show that $$$$$ of the acquisition costs that it reported as 5-year life machinery and equipment acquired in 1994 represents the $$$$$ of drill bits it purchased from CORPORATION-1. TAXPAYER, however, has not provided sufficient information to show that the drill bits should be removed from the assessment or that they were assessed elsewhere in the audit report. In addition, the County has not provided sufficient information to show that this $$$$$ of property should, instead, be taxed as non-depreciable supplies. Accordingly, the $$$$$ of drill bits should continue to be assessed as 5-year life machinery and equipment with an acquisition cost of $$$$$ and an acquisition year of 1994. In addition, the drill bits' value should be determined with the same Class 3 percent good factors used to value all of TAXPAYER'S machinery and equipment.

9. TAXPAYER has not provided sufficient evidence to show that the $$$$$ of 5-year life machinery and equipment it reported as being acquired for the Utah plant in 1995 should be reduced by $$$$$ to account for drills located at the STATE-1 plant.

10. TAXPAYER was the owner of, not a tenant at, the Utah plant in 1996, when it acquired $$$$$ of property that it reported as a leasehold improvement. Evidence submitted at the hearing supports TAXPAYER'S claim that the property was a roof that was mistakenly reported as a leasehold improvement.

Accordingly, the property acquired in 1996 for $$$$$ and that the County assessed as a leasehold improvement for the 1997, 1998, and 1999 tax years should be removed from the audit.

11. TAXPAYER has submitted sufficient information to show that the cost to produce a test fixture, including any engineering and labor costs, is only $$$$$ to $$$$$ per test fixture. TAXPAYER has also submitted sufficient evidence to show that the value of the test fixtures should be determined with the methodology the County used to assess them, except that the total acquisition cost of the test fixtures should be reduced to $$$$$ for each year.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the County's audit assessment, except for the following amendments:

1. Value for BBX computer software is to be added to the audit assessment for the 1999 tax year only. It is to be assessed under Rule 33 as Class 1 short life property that was acquired in 1998 and that has an acquisition cost of $$$$$.

2. For all years of the audit period, the County assessed $$$$$ of property that TAXPAYER acquired in 1994 as Class 8 machinery and equipment under Rule 33. The Commission finds that this property should be valued as follows:

a) $$$$$ of the $$$$$ is computer software to be assessed under Rule 33 as Class 1 short life property for the 1995, 1996, 1997, and 1998 tax years. This $$$$$ of property is to be removed from the audit assessment for the 1999 tax year;

b) $$$$$ of the $$$$$ is machinery and equipment to be assessed under Rule 33 as Class 3 short life trade fixtures. Because this $$$$$ of property is salvage property for all 5 tax years, the value determined with the Class 3 percent good factor for each year is to be reduced by a 50% obsolescence deduction;

c) $$$$$ of the $$$$$ is machinery and equipment to be assessed under Rule 33 as Class 3 short life trade fixtures. For the 1996, 1997, 1998, and 1999 tax years only, this $$$$$ of property is salvage property, and the value determined with the Class 3 percent good factor for each of these years is to be reduced by a 50% obsolescence deduction; and

d) the remaining $$$$$ of the $$$$$ is machinery and equipment to be assessed under Rule 33 as Class 3 short life trade fixtures.

3. For the 1996, 1997, 1998, and 1999 tax years, the County assessed $$$$$ of property that TAXPAYER acquired in 1995 as Class 8 machinery and equipment under Rule 33. The Commission finds that this property should be valued as follows:

a) $$$$$ of the $$$$$ is computer software to be assessed under Rule 33 as Class 1 short life property for the 1996 and 1997 tax years. This $$$$$ of property is to be removed from the audit assessment for the 1998 and 1999 tax years; and

b) the remaining $$$$$ of the $$$$$ is machinery and equipment to be assessed under Rule 33 as Class 3 short life trade fixtures for the 1996, 1997, 1998, and 1999 tax years.

4. For the 1997, 1998, and 1999 tax years, the County assessed $$$$$ of property that TAXPAYER acquired in 1996 as Class 8 machinery and equipment. This property is to be assessed under Rule 33 as Class 3 short life trade fixtures for these three years.

5. For the 1998 and 1999 tax years, the County assessed $$$$$ of property that TAXPAYER acquired in 1997 as Class 8 machinery and equipment. This property is to be assessed under Rule 33 as Class 3 short life trade fixtures for these two years.

6. For the 1999 tax year, the County assessed $$$$$ of property that TAXPAYER acquired in 1998 as Class 8 machinery and equipment. This property is to be assessed under Rule 33 as Class 3 short life trade fixtures for the 1999 tax year.

7. For the 1997, 1998, and 1999 tax years, the property assessed as a leasehold improvement with an acquisition date of 1996 and an acquisition cost of $$$$$ is real property, not personal property, and is to be removed from the audit.

8. For each tax year, the County assessed the test fixtures under Rule 33 as Class 3 short life trade fixtures, using an acquisition cost of $$$$$ and a "rolling" age of two years. The County's methodology to assess the test fixtures is sustained, except that the acquisition cost of $$$$$ is to be reduced to $$$$$.

The Salt Lake County Auditor is ordered to adjust its records in accordance with this decision. It is so ordered.

DATED this ________ day of ________________________, 2012.

R. Bruce Johnson Commission Chair	Marc B. Johnson Commissioner
D'Arcy Dixon Pignanelli Commissioner	Michael J. Cragun Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601et seq. and 63G-4-401 et seq.