**STATE TAX COMMISSION OF MISSOURI**

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| WILLIAM & SANDRA CROTEAU | ) |  |  |
|  | ) |  |  |
|  Complainant, | ) |  |  |
|  | ) |  |  |
| v. | ) |  | Appeal No. 18-79500 |
|  | ) |  | Account 1-45435-0 |
| RITA LEMMON, ASSESSOR | ) |  |  |
| POLK COUNTY, MISSOURI | ) |  |  |
|  | ) |  |  |
|  Respondent. | ) |  |  |

**DECISION AND ORDER**

**HOLDING**

 The assessment made by Rita Lemmon, Assessor of Polk County, Missouri (Respondent), is AFFIRMED. Complainants William and Sandra Croteau (Complainants) did not present substantial and persuasive evidence to establish the true value in money (TVM) of the subject property as of January 1, 2018.

 Complainants appeared *pro se.*

 Respondent appeared *pro se*.

 Case heard and decided by Senior Hearing Officer John J. Treu (Hearing Officer).

**ISSUE**

 Complainants appealed the TVM of three motor vehicles, solely on the ground of overvaluation. Respondent set the TVM of the subject vehicles as follows:

|  |  |  |
| --- | --- | --- |
| **Description** | **Assessor TVM** | **Assessor Assessed Value** |
| 2004 Chevrolet Avalanche 1500 Crew Cab | $4,800 | $1,600 |
| 2010 Chevrolet Silverado 1500 Extended Cab | $11,910 | $3,970 |
| 2015 Chevrolet Silverado 1500 Crew Cab | $27,325 | $9,110 |

The State Tax Commission (STC) takes this appeal to determine the TVM for the subject property as of January 1, 2018.

 The Hearing Officer, having considered all of the competent evidence upon the whole record, enters the following Decision and Order.

**FINDINGS OF FACT**

1. ***Jurisdiction.*** Jurisdiction over this appeal is proper. Complainant timely appealed to the STC.
2. ***Evidentiary Hearing.*** The issue of overvaluation was presented at an evidentiary hearing on December 14, 2018, at the Polk County Courthouse, Bolivar Missouri.
3. ***Identification of Subject Property.*** The three subject vehicles are valued by Respondent under account number 1-45435-0. (Complaint for Review)
4. ***Description of Subject Property.*** The three vehicles are a 2004 Chevrolet Avalanche 1500 Crew Cab, a 2010 Chevrolet Silverado 1500 Extended Cab, and a 2015 Chevrolet Silverado 1500 Crew Cab.
5. ***Assessment.*** Respondent initially valued the subject property as follows, as of January 1, 2018:

|  |  |  |
| --- | --- | --- |
| **Description** | **Assessor TVM** | **Assessor Assessed Value** |
| 2004 Chevrolet Avalanche 1500 Crew Cab | $4,800 | $1,600 |
| 2010 Chevrolet Silverado 1500 Extended Cab | $11,910 | $3,970 |
| 2015 Chevrolet Silverado 1500 Crew Cab | $27,325 | $9,110 |

1. ***Board of Equalization (BOE).*** No BOE proceeding occurred. Complainants were notified of the valuation of their vehicles upon receiving their property tax bill.
2. ***Complainants’ Evidence.*** Complainants assert that all three motor vehicles are overvalued. To support their assertion, Complainants offered their direct testimony and the following exhibits:

|  |  |  |
| --- | --- | --- |
| Exhibit | Description | Ruling |
| A | 2016 Personal Property Tax Receipt | Admitted |
| B | 2017 Personal Property Tax Receipt | Admitted |
| C | 2018 Personal Property Tax Statement | Admitted |
| D | NADA Value Report 2004 Chevrolet Avalanche (12/9/2018) | Admitted |
| E | KBB Value Report 2004 Chevrolet Avalanche (12/9/2018) | Admitted |
| F | Edmunds Value Report 2004 Chevrolet Avalanche (12/9/2018) | Admitted |
| G | NADA Value Report 2010 Chevrolet Silverado (12/9/2018) | Admitted |
| H | KBB Value Report 2010 Chevrolet Silverado (12/9/2018) | Admitted |
| I | Edmunds Value Report 2010 Chevrolet Silverado (12/9/2018) | Admitted |
| J | NADA Value Report 2015 Chevrolet Silverado (12/9/2018) | Admitted |
| K | KBB Value Report 2015 Chevrolet Silverado (12/9/2018) | Admitted |
| L | Edmunds Value Report 2015 Chevrolet Silverado (12/9/2018) | Admitted |

Complainants testified that the three vehicles are overvalued and that the valuations shown in Exhibits D through L evidence this fact. Complainants also testified regarding the high mileage on at least two of the vehicles. Exhibits D and F show a negative mileage adjustment range of $675 to $1,244 for the 2004 Chevrolet Avalanche as of 12/9/2018. Exhibit E shows no adjustment. Exhibits G and I show a negative mileage adjustment range of $0 to $200 for the 2010 Chevrolet Silverado as of 12/9/2018. Exhibit H shows no adjustment. Exhibits J and L show a positive mileage adjustment range of $499 to $1,000 for the 2015 Chevrolet Silverado as of 12/9/2018. Exhibit K shows no adjustment.

1. ***Respondent’s Evidence.*** Respondent advocated that her original valuation should be affirmed. Respondent offered the following evidence:

|  |  |  |
| --- | --- | --- |
| Exhibit | Description | Ruling |
| 1 | October 31, 2017 NADA 2004 Chevrolet Avalanche | Admitted |
| 2 | October 31, 2017 NADA 2010 Chevrolet Silverado | Admitted |
| 3 | October 31, 2017 NADA 2015 Chevrolet Silverado | Admitted |
| 4 | Handwritten Notes Regarding Vehicles and Odometer Readings | Admitted |
| 5 | 2018 Data Entry Notes for Assessment List | Admitted |

Respondent testified that the property was valued by utilizing the average trade in value of each vehicle published in the October 2017 issue of the National Automobile Dealers’ Association (NADA) Official Used Car Guide. Respondent acknowledged that she did not take into consideration the mileage of the subject vehicles. Respondent also testified that her office utilizes a mileage deduction guideline that is based upon 20,000 miles per year which has been utilized in the office of the Polk County Assessor for years.

1. ***TVM Not Established.*** Complainant’s evidence was not substantial and persuasive to establish the TVM of the subject vehicles on January 1, 2018.

**CONCLUSIONS OF LAW AND DECISION**

**Jurisdiction**

The Commission has jurisdiction to hear this appeal and correct any assessment which is shown to be unlawful, unfair, arbitrary, or capricious, including the application of any abatement. The Hearing Officer shall issue a decision and order affirming, modifying or reversing the determination of the Board of Equalization, and correcting any assessment which is unlawful, unfair, improper, arbitrary, or capricious. *Article X, Section 14, Mo. Const. of 1945; Sections 138.430, 138.431, 138.431.4, RSMo.*

**Basis of Assessment**

The Constitution mandates that real property and tangible personal property be assessed at its value or such percentage of its value as may be fixed by law for each class and for each subclass. *Article X, Sections 4(a) and 4(b), Mo. Const. of 1945.* The constitutional mandate is to find the true value in money for the property under appeal. By statute, real property and tangible personal property are assessed at set percentages of true value in money: residential property at 19%; commercial property at 32%; and agricultural property at 12%.  *Section 137.115.5 RSMo.*

**Valuation of Motor Vehicles**

Pursuant to Section 137.115.9 RSMo “[t]he assessor of each county and each city not within a county shall use the trade-in value published in the October issue of the National Automobile Dealers’ Association Official Used Car Guide, or its successor publication, as the recommended guide of information for determining the true value of the motor vehicles described in such publication. The assessor shall not use a value that is greater than the average trade-in value in determining the true value of the vehicle without performing a physical inspection of the motor vehicle. …”

**Investigation by Hearing Officer**

In order to investigate appeals filed with the Commission, the Hearing Officer may inquire of the owner of the property or of any other party to the appeal regarding any matter or issue relevant to the valuation, subclassification, or assessment of the property. *Section 138.430.2 RSMo.* The Hearing Officer’s decision regarding the assessment or valuation of the property may be based solely upon his inquiry and any evidence presented by the parties or based solely upon evidence presented by the parties.  *Id.*

**Complainants’ Burden of Proof**

To obtain a reduction in assessed valuation based upon alleged overvaluation, a Complainant must prove the true value in money of the subject property on the subject tax day. *Hermel, Inc., v. State Tax Commission,* 564 S.W.2d 888, 897 (Mo. banc 1978)*.*  True value in money is defined as the price that the subject property would bring when offered for sale by one willing but not obligated to sell it and bought by one willing or desirous to purchase but not compelled to do so. *Rinehart v. Bateman,* 363 S.W.3d 357, 365 (Mo. App. W.D. 2012)*; Cohen v. Bushmeyer,* 251 S.W.3d 345, 348 (Mo. App. E.D. 2008)*; Green County v. Hermel, Inc.,* 511 S.W.2d 762, 771 (Mo. 1974)*.* True value in money is defined in terms of value in exchange and not in terms of value in use. *Stephen & Stephen Properties, Inc. v. State Tax Commission,* 499 S.W.2d 798, 801-803 (Mo. 1973)*.* In sum, true value in money is the fair market value of the subject property on the valuation date. *Hermel, Inc.,* 564 S.W.2d at 897.

To prove TVM, substantial and persuasive evidence must be presented. *Substantial evidence* can be defined as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Cupples Hesse Corp. v. State Tax Commission,* 329 S.W.2d 696, 702 (Mo. 1959)*. Persuasive evidence* is evidence that has sufficient weight and probative value to convince the trier of fact. *Cupples Hesse Corp.,* 329 S.W.2d at 70*2.* The persuasiveness of evidence does not depend on the quantity or amount thereof but on its effect in inducing belief. *Brooks v. General Motors Assembly Division,* 527 S.W.2d 50, 53 (Mo. App. 1975)*. See also, Westwood Partnership v. Gogarty,* 103 S.W.3d 152 (Mo. App. E.D. 2003)*; Daly v. P.D. George Co.,* 77 S.W.3d 645 (Mo. App E.D. 2002); *Reeves v. Snider,* 115 S.W.3d 375 (Mo. App. S.D. 2003).

There is no presumption that the taxpayer’s opinion is correct. The taxpayer in a Commission appeal still bears the burden of proof. The taxpayer is the moving party seeking affirmative relief. Therefore, the Complainant bears the burden of proving the vital elements of the case, i.e., the assessment was “unlawful, unfair, improper, arbitrary or capricious.” *Westwood Partnership, 103 S.W.3d 152* (Mo. App. E.D. 2003)*; Daly v. P.D. George Co.,* 77 S.W.3d 645 (Mo. App E.D. 2002)*; Reeves v. Snider,* 115 S.W.3d 375 (Mo. App. S.D. 2003*); Industrial Development Authority of Kansas City v. State Tax Commission of Missouri,* 804 S.W.2d 387, 392 (Mo. App. W.D. 1991)*.*

Generally, a property owner, while not an expert, is competent to testify to the reasonable market value of his own land. *Cohen,* 251 S.W.3d at 348-49; *Carmel Energy, Inc v. Fritter*, 827 S.W.2d 780, 783 (Mo. App. W.D. 1992). “However, when an owner’s opinion is based on improper elements or foundation, his opinion loses its probative value.” *Carmel Energy, Inc,*, 827 S.W.2d at 783. A taxpayer does not meet his burden if evidence on any essential element of his case leaves the Commission “in the nebulous twilight of speculation, conjecture and surmise.” *See Rossman v. G.G.C. Corp. of Missouri*, 596 S.W.2d 469, 471 (Mo. App. E.D. 1980)

**Weight to be Given Evidence**

The Hearing Officer is not bound by any single formula, rule or method in determining true value in money and is free to consider all pertinent facts and estimates and give them such weight as reasonable they may be deemed entitled. The relative weight to be accorded any relevant factor in a particular case is for the Hearing officer to decide. St. *Louis County v. Sercurity Bohomme, Inc.*, 558 S.W.2d 655, 659 (Mo. banc 1977); *St. Louis County v. STC*, 515 S.W.2d 446, 450 (Mo. 1974); *Chicago, Burlington & Quincy Railroad Company v. STC,* 436 S.W.2d 650 (Mo. 1968).

The Hearing Officer, as the trier of fact, may consider the testimony of an expert witness and give it as much weight and credit as deemed necessary when viewed in connection with all other circumstances. *Beardsley v. Beardsley*, 819 S.W.2d 400, 403 (Mo. App. W.D. 1991). The Hearing Officer, as the trier of fact, is not bound by the opinions of experts but may believe all or none of the expert’s testimony or accept it in part or reject it in part. *Exchange Bank of Missouri v. Gerlt,* 367 S.W.3d 132, 135-36 (Mo. App. W.D. 2012)

**Discussion**

 Complainants’ evidence was neither substantial nor persuasive to support an opinion as to the TVM of the subject vehicles as of January 1, 2018. Although Complainants testified about the current condition of the subject vehicles, including the mileage on each, Complainants presented no evidence of the TVM of each vehicle on January 1, 2018, the applicable date of valuation. Complainants offered evidence of NADA and Edmunds high mileage deductions as of December 9, 2018 and the values of the vehicles as of December 9, 2018. To set a TVM other than that set by Respondent, substantial and persuasive evidence of the TVM of the subject vehicles on January 1, 2018, was required. No such evidence was offered by Complainants. The Hearing Officer would be required to resort to speculation and conjecture to determine a value of each vehicle as of January 1, 2018. Therefore, Complainants did not fulfill their burden of proof.

**ORDER**

 The TVM for the subject vehicles as determined by Respondent is AFFIRMED. The assessed value for the subject vehicles is as follows:

|  |  |  |
| --- | --- | --- |
| **Description** | **Assessor TVM** | **Assessor Assessed Value** |
| 2004 Chevrolet Avalanche 1500 Crew Cab | $4,800 | $1,600 |
| 2010 Chevrolet Silverado 1500 Extended Cab | $11,910 | $3,970 |
| 2015 Chevrolet Silverado 1500 Crew Cab | $27,325 | $9,110 |

***Application for Review***

 A party may file with the Commission an application for review of this decision within thirty days of the mailing date set forth in the Certificate of Service for this Decision. The application shall contain specific facts or law as grounds upon which it is claimed the decision is erroneous. Said application must be in writing addressed to the State Tax Commission of Missouri, P.O. Box 146, Jefferson City, MO 65102-0146, or emailed to Legal@stc.mo.gov, and a copy of said application must be sent to each person listed below in the certificate of service.

 ***Failure to state specific facts or law upon which the application for review is based will result in summary denial.*** *Section 138.432, RSMo.*

***Disputed Taxes***

 The Collector of Polk County, as well as the collectors of all affected political subdivisions therein, shall continue to hold the disputed taxes pending the possible filing of an Application for Review, unless said taxes have been disbursed pursuant to a court order under the provisions of Section 139.031.8 RSMo.

 Any Finding of Fact which is a Conclusion of Law or Decision shall be so deemed. Any Decision which is a Finding of Fact or Conclusion of Law shall be so deemed.

SO ORDERED, January 3rd, 2019.

STATE TAX COMMISSION OF MISSOURI



John J. Treu

Senior Hearing Officer

Certificate of Service

I hereby certify that a copy of the foregoing has been sent electronically or mailed postage prepaid this 3rd day of January, 2019, to: Complainant(s) and/or Counsel for Complainant(s), the County Assessor and/or Counsel for Respondent and County Collector.



Jacklyn Wood

Legal Coordinator