

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**
1313 Sherman Street, Room 315
Denver, Colorado 80203

**Docket No.: 75185
Docket No.: 75191
Docket No.: 75192**

Petitioner:

**WAL-MART STORE, INC. NO. 1231,
SAM'S WEST, INC. NO. 4745,
WAL-MART STORE, INC. NO. 4747**

v.

Respondent:

ADAMS COUNTY BOARD OF EQUALIZATION.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on August 1, 2019, Diane M. DeVries and Louesa Maricle presiding. Petitioners were represented by Brian Huebsch, Esq. Respondent was represented by Meredith P. Van Horn, Esq. Petitioners are protesting the 2018 actual value of the subject property.

Prior to hearing, the parties stipulated that the three docket numbers shown would be consolidated for the August 1st hearing, representing three different types of stores: a Walmart Super Center, a Walmart Neighborhood Center, and a Sam's Club store. Petitioners filed personal property valuation protests for 11 properties in Adams County for tax year 2018. The Board has heard evidence only for the three dockets presented at hearing.

Subject property is described as follows:

**Docket No. 75185:
Personal Property of Walmart Store, Inc. No. 1231
9901 Grant Street, Thornton, CO
Adams County Schedule No. P0006071**

**Docket No. 75191:
Personal Property of Sam's West, Inc. No. 4745
9601 Grant Street, Thornton, CO
Adams County Schedule No. P0021481**

**Docket No. 75192:
Personal Property of Walmart Store, Inc. No. 4747
10755 Washington Street, Northglenn, CO
Adams County Schedule No. P0033588**

The property consists of all the personal property associated with the three Walmart and Sam's stores cited. Petitioners and Respondent agree the inventories of personal property are not in dispute. Both parties agreed the use of the Cost Approach for valuation of the subject personal property is the most reliable method. However, the parties applied different cost methodologies to determine value.

Petitioners claim Respondent failed to recognize significant external obsolescence in the valuation of the personal property at each store. Petitioners contend equipment such as that found in the three subject stores has been flooding into the secondary market causing a disequilibrium and reducing resale values. Petitioners also claim the personal property equipment percentage good tables provided by the Colorado Division of Property Taxation (DPT), required to be used by Respondent and all other counties in the state, do not adequately reflect retail store closings and the amount of equipment on the secondary market.

Respondent contends it has followed the personal property valuation guidelines set forth in the Assessor's Reference Library, Vol. 5 (ARL) and in compliance with State law. It further claims Petitioners have omitted some required costs that must be included in establishing value for personal property, resulting in inaccurate analysis of external economic obsolescence.

Petitioners are requesting the following actual personal property values for tax year 2018:

| | |
|-------------------|-----------|
| Docket No.: 75185 | \$485,860 |
| Docket No.: 75191 | \$636,050 |
| Docket No.: 75192 | \$597,270 |

Respondent assigned the following actual personal property values for tax year 2018:

| | |
|-------------------|-------------|
| Docket No.: 75185 | \$1,884,597 |
| Docket No.: 75191 | \$1,287,206 |
| Docket No.: 75192 | \$1,206,243 |

The Board admitted into evidence Petitioners' Exhibits 1 through 22, and Rebuttal Exhibits 23 through 25, subject to a list of objections presented at hearing by Respondent. The Board admitted Respondent's Exhibit A, and Rebuttal Exhibits B through L, subject to Petitioners' objections to Exhibits H, I, and J.

PETITIONERS' EVIDENCE

Petitioners presented Mr. Stanley Johnson, Sr. Manager II, Property Tax, Wal-Mart Inc. as their first witness. Mr. Johnson described the types of personal property that Walmart typically owns and testified that personal property in each store is similar across the various Walmart store concepts. The witness further stated that when Walmart opens a new store or remodels, it furnishes the newly opened or newly remodeled space with new equipment. Used property is rarely purchased by Walmart due to the specialized nature of Walmart equipment that makes it difficult to match. Mr. Johnson added that the equipment within Walmart stores undergoes a lot of wear and tear due to 24-hour operations requiring remodeling and updating every six to ten years.

Petitioners' second witness, Mr. Dennis Kaptein, Managing Partner and part owner of Crossbid, LLC, provided testimony regarding sales of Walmart personal property on the secondary market. Crossbid is a private company that manages the disposition of all used assets, except computer equipment, for Walmart stores in the United States. Walmart is Crossbid's only client. Mr. Kaptein testified that secondary market for used equipment had declined in the recent years due to oversaturation of available business assets in the marketplace.

Mr. Kaptein described different methods of disposing of the used equipment, including online auctions, live auctions at the site and advertisement campaigns in an effort to attract end user purchasers. Petitioners' Exhibits 1-4 and 7 contain inventory lists and corresponding sale prices of five bulk sales of all personal property assets of five Colorado Walmart stores. Two of the sales occurred outside the applicable base period. The remaining Exhibits 5 and 6 catalogue sale prices of individual pieces of equipment that were sold as a result of remodeling of various Walmart stores in Colorado between 2012 and 2018. Mr. Kaptein testified that buyers of used equipment prefer to buy locally to save the cost of shipping. In addition, buyers typically take down/remove the equipment and transport it. However, the lists of sale prices of Walmart's used equipment prepared by Crossbid do not include the transportation, installation, or sales tax costs customarily paid by the buyers.

Mr. Kaptein's staff performed inventories of the Walmart stores under appeal cataloguing each item of personal property. When asked by the Board if he compared the Crossbid physical inventories with the personal property declaration inventories submitted by Walmart to Respondent, the witness testified that he did but a direct comparison was not possible because inventory lists often include bulk inventory of multiple types of equipment listed as a single line item.

Petitioners then presented the testimony of their third witness, Mr. John Ray Sr., Vice President of BVA Group in Texas, who testified regarding his valuation of the subject personal property. Mr. Ray presented a cost approach to derive a market-adjusted cost value for the subject properties. In developing the cost approach, Mr. Ray used inventory lists compiled by Crossbid. All the assets on the inventory lists were grouped into two classes: retail store machinery and equipment, and retail store furniture and fixtures. Mr. Ray's scope of work did not include valuing any computer equipment at the properties. All other assets and liabilities were excluded from the analysis.

In developing the cost approach, Mr. Ray first estimated a replacement cost new (RCN) for each asset based on the inventory description information. The replacement cost was estimated using

pricing guides, catalogs and other source material and discussions with original equipment manufacturers. Mr. Ray testified that he did not inspect the property and made an assumption that the assets were in average condition for their age. The witness then utilized the market extraction method to develop depreciation factors for quantifying depreciation and obsolescence. To develop depreciation factors, transactional data consisting of approximately 4,000 asset sales of various types of Walmart equipment obtained from Crossbid was used. The witness calculated total depreciation for each item as the difference between the RCN and the sale price of used equipment on the secondary market. Next, the witness calculated a depreciation rate for each sale item based on its age at the time of sale and total depreciation. A depreciation rate was then calculated for each category of asset from the population of market data analyzed. The witness concluded to the total of all three stores of \$1,353,950 representing replacement cost new less depreciation and obsolescence. Next, to account for the value in use concept, the witness increased the cost of replacement of the assets to reflect freight, installation and taxes paid by the buyer. Mr. Ray relied on a 27% cost factor estimate provided to him by Walmart, Inc. to account for freight, installation and taxes. That figure was based on an internal estimate of those added costs for new equipment or furniture. Mr. Ray concluded to the 2018 value in use for all three stores of \$1,719,180.

Mr. Ray testified that he valued the property as of January 1, 2018, without trending back to the correct June 30, 2016 date of value. However, according to Mr. Ray his value could easily be trended back to the appropriate date by the application of a rollback factor of 0.98 which would reduce his value conclusion by 2%.

RESPONDENT'S EVIDENCE

Respondent called Mr. Michael Krueger, Property Tax Specialist, Department of Property Taxation as its first witness. Mr. Krueger went over the process of valuing personal property in Colorado. According to Mr. Krueger, the ARL requires that all personal property in Colorado be valued as value in-use to the end user. The witness further stated that almost all personal property is valued using the cost approach with the application of the personal property tables contained in the ARL. Mr. Krueger detailed how the tables are developed. According to Mr. Krueger, the tables are updated and revised annually. The Division initiates the revisions by a publicly noticed meeting. Before revisions can be adopted, the statutory advisory committee, state board of equalization and the office of legislative services must approve the revisions. At any time, any member of the public may challenge the validity of the tables. According to Mr. Krueger's testimony, Division is open and able to revise the tables to make sure that tables are accurate.

Next, Mr. Krueger described how personal property tables are applied when valuing personal property. While the tables may be used to account for typical functional and physical depreciation, they do not encompass an adjustment for extraordinary functional or external obsolescence. The witness stated that according to the ARL, if it is shown that additional obsolescence exists, an adjustment must be quantified and made. There is a number of things to look at to determine if there is economic obsolescence, such as changes in general economic conditions, labor or material shortages, and new restrictive legislations. Store closures alone do not necessarily indicate that economic obsolescence exists.

Respondent next called Mr. Loren Morrow, Personal Property Appraiser with Adams County Assessor's Office. Mr. Morrow performed field inspections of most of the Walmart stores in Adams County, reviewed personal property declarations submitted by Petitioners and prepared an appraisal of the subject properties. Mr. Morrow described that the subject personal property consists primarily of retail fixtures, cooler equipment, compactors, forklifts, bakery equipment, pharmacy fixtures, vegetable display units, signage, security equipment, checkout stands, and computers.

Mr. Morrow stated that he considered all three approaches to value but developed only the cost approach because Petitioners did not provide him with sufficient detail concerning the property descriptions to enable him to develop other approaches to value. Moreover, development of the income approach was not practical considering the amount of items involved. In developing the cost approach, Mr. Morrow applied the average economic life to each item of personal property by determining the industry category and applying the year of acquisition and the cost basis for each item of personal property. Afterwards, Mr. Morrow applied the Colorado statute mandated cost tables to arrive at a value based on the cost approach to value. However, as stated in the Assessor's Reference Library, Volume 5, page 4.4, the cost tables only reflect ordinary physical and functional obsolescence and, if documented to exist, any additional functional/technological and/or economic obsolescence must be measured and additional adjustments made.

Mr. Morrow's research of the market conditions and his observations during the field inspections of Walmart stores led him to a conclusion that no additional obsolescence existed. He provided a copy of Stores: NRF's Magazine naming Walmart as national industry leader in terms of sales. He also provided new construction statistics indicating a fast-developing Adams County market. He testified that during the field inspections of Walmart stores, he observed that subject personal property was well maintained with no unusual wear and tear that would indicate atypical physical deterioration. Having applied no additional adjustments for obsolescence beyond those mandated by the ARL personal property tables, Mr. Morrow concluded to the 2018 value in use for the subject property of \$4,378,046 for all three stores.

BOARD'S FINDINGS

Petitioners presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2018.

In Colorado, the assessment date for personal property is defined by Section 39-1-105, C.R.S., as January 1 of each year. However, after a current value is established, it is rolled back to the June 30 appraisal date established for real property, using the factors found in Chapter 4, Personal Property Tables, as required by Section 39-1-104(12.3)(a)(I), C.R.S. According to Section 39-5-108, C.R.S., the assessor values all taxable personal property owned by, in the possession of, or under the control of each taxpayer in the county based upon the characteristics and condition of the property as of January 1. *ARL, Vol. 5, page 2.2*

The current actual value of personal property as of the assessment date must be adjusted to the level of value in effect for real property as required by Section 39-1-

104(10.2)(a) and (12.3)(a)(I), C.R.S. The Division publishes Level of Value (LOV) Factors to adjust the actual value of personal property to the level applicable for real property. *ARL, Vol. 5, Page 1.6.*

For Colorado personal property assessment purposes, the actual value is the value in use, as installed. Colorado statutes require that personal property be valued inclusive of all costs incurred in acquisition and installation of the property. The costs of acquisition, installation, sales/use tax, and freight to the point of use must be considered in the personal property valuation. The inclusion of these costs requires that personal property be valued in use. Therefore, the actual value of personal property is based on its value in use. *ARL, Vol. 5, page 3.1.*

Replacement cost new (RCN) is the cost to replace the property being appraised (subject) with another property that is equivalent in function and utility. When using the cost approach, the appraiser must clearly denote the cost sources used and what RCN represents. *ARL, Vol. 5, Page 3.5.*

In the year in which the personal property has reached its minimum residual percent good floor, the applicable RCN trending factor in use at that time is "frozen" and the Level of Value (LOV) adjustment factor is "frozen" at 1.0. For the assessment years that follow, the RCNLD value does not change unless the personal property has been reconditioned or upgraded to extend its remaining economic life. *ARL, Vol. 5, Page 3.5.*

The Board finds Petitioners' witness, Mr. Ray, incorrectly used the January 1, 2018 assessment date as the date of value, rather than the correct June 30, 2016 date of value for tax year 2018. In making this error, Mr. Ray failed to trend the personal property values he presented back to the appropriate date.

In Colorado, personal property inventories, acquisition dates and prices, and in-place costs are self-reported by taxpayers who certify that information is true and correct and can be relied upon by county assessors for ad valorem purposes. Mr. Ray testified he did not have the detailed in-place costs provided on the declaration forms to Respondent by the taxpayers. Instead, he relied on the personal property inventories for the three Walmart and Sam's Club properties provided by Crossbid. The Board takes notice that Mr. Kaptein, with Crossbid, testified he tried to compare the Crossbid physical inventories for each store with the property declaration forms filed with Respondent but it was difficult because the company inventory lists can include many examples of bulk inventory of multiple types of equipment recorded under a single line item that cannot be identified in detail.

In response to Board questions, Mr. Ray testified he did not attempt to adjust the replacement cost new figures for the specific personal property line items for any enhancements or upgrade features the new personal property would have relative to the older subject personal property. An example given by the Board was the added cost of remote operation capability for new refrigeration units relative to the subject units that do not have that upgrade. Although both refrigeration units have the same function, the Board finds it is likely the remote operation capability of the new

equipment has a different cost than a new unit would have without that capability. The Board concludes that by not considering those potential adjustments across the spectrum of personal property being valued, the RCN could be overstated and, in turn, the extraction method estimate of depreciation from all sources would be overstated as well when compared to sales on the secondary market of used equipment that does not have the latest enhancements. Also, the Board takes notice of testimony that Walmart purchases personal property in bulk, and that new personal property comes with warranties that used personal property no longer has.

The Board finds that Mr. Ray's methodology of determining a secondary market sale price for used personal property and adding a flat 27% factor for freight, installation, and sales tax to determine a value in use to the buyer was not persuasive. The 27% factor was provided to Mr. Ray by Walmart, Inc. and was reportedly based on an internal estimate of those soft costs for purchases of new equipment packages for its stores. The Board also notes Mr. Kaptein's testimony that secondary market buyers prefer to buy locally to avoid high freight costs. No information was provided by Petitioners to clarify if long or short shipping distances are reflected in the 27% soft cost estimate used by Mr. Ray. Further, Mr. Ray did not independently support the 27% factor he used through local market buyers. Based on the evidence presented, the Board is not convinced the 27% soft cost factor is reasonable. Therefore, the Board is not persuaded that the conclusions of secondary market sale prices Mr. Ray deducted from his RCN estimates are reliable.

The Board finds that the evidence presented during the hearing did not sufficiently support Petitioners' claim that large adjustments for external economic obsolescence due to retail market conditions are warranted for these subject properties. To the contrary, the Board was convinced that Adams County and Colorado in general are strong markets for Petitioners. Mr. Ray testified he did not think there were any Walmart, Inc. store closings in Adams County during the 2018 tax year base period.

Further, the Board finds the exclusion of computer equipment from Petitioners' estimates of value is improper. The Board acknowledges the valuation of that equipment was not included in Mr. Ray's scope of work. Nonetheless, the Board concludes it should have been included in Petitioners' estimates of value in accordance with Colorado assessment procedures.

Regarding Petitioners' claim that the LOV adjustment factors and percentage good tables published by the DPT and used by Respondent in valuing the subject personal property are outdated and/or do not reflect current retail market conditions, the Board relies on *Huddleston v. Grand County*, 913 P. 2d 15 (Colo. 1996). In *Huddleston*, the Colorado Supreme Court recognized and affirmed the Property Tax Administrator's broad authority to prepare manuals and procedures, as well as to require that the Colorado county assessors utilize these manuals and procedures to carry out their responsibilities pursuant to Colorado Constitution, Article X, Section 3. The Board found the testimony presented by Mr. Krueger regarding the annual review and approval process of the published tables used for personal property valuation, including incorporation of third party cost and depreciation studies and information from stakeholders credible. The Board concludes Respondent's reliance on the published DPT tables is appropriate.

Based on these findings, the Board concludes Petitioners' valuation methodology does not produce more credible results than Respondent's analysis.

The Board concludes Respondent's analysis followed prescribed procedures including reliance on the self-reported inventories and in-place costs provided by Petitioners. Using the taxpayer self-reported property declaration costs as a starting point eliminated the need to adjust for upgrade features new replacement equipment might have compared to the subject personal property. The declaration inventories also would compare more directly with the ages and conditions of used secondary market equipment sales. Respondent properly relied on the DPT published tables and procedures for the required trending of values and determination of appropriate depreciation. The Board concludes that Respondent's analysis and value conclusions are more credible.

ORDER:

The petition is denied.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

DATED and MAILED this 27th day of August, 2019.

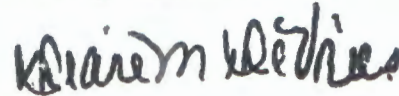
BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Louesa Maricle

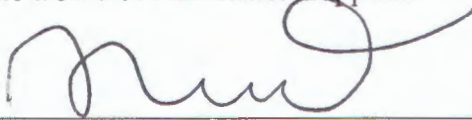
Concurring Board Member:



Diane M. DeVries,
*concurring without modification pursuant to
Section 39-2-127(2), C.R.S.*



I hereby certify that this is a true
and correct copy of the decision of
the Board of Assessment Appeals.



Milla Lishchuk