

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>RSL COM USA, INC.,</p> <p>v.</p> <p>Respondent:</p> <p>PROPERTY TAX ADMINISTRATOR.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Adam W. Chase, Esq. Oreck, Bradley, Crighton, Adams & Chase</p> <p>Address: 2045 Broadway, Suite 100 Boulder, Colorado 80302</p> <p>Phone Number: (303) 444-2993</p> <p>Attorney Reg. No.: 20750</p>	<p>Docket Number: 40234</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on May 9, 2003, Karen E. Hart and Steffen A. Brown presiding. Petitioner was represented by Adam W. Chase, Esq. Respondent was represented by Larry A. Williams, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

State Assessed – Division of Property Taxation File Number TX835

Petitioner is protesting the 2002 actual value of the subject property, the operating property of RSL Communication USA, Inc., including real and personal property, tangibles and intangibles, owned and leased property.

ISSUES:

Petitioner:

Petitioner contends that two errors were made wherein gross figures rather than net figures were used and there is a need to correct them.

Respondent:

Respondent contends that all three approaches to value were taken into consideration and a fair and accurate value was placed on the property based on the information received.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Norman D. Kasal, agent, presented the following indicators of value:

Market:	Not Used
Cost:	\$2,690,242.00
Income:	Not Used

2. Mr. Kasal testified to the reconciled unit value in Petitioner's Exhibit A, indicating a value of \$2,690,242.00 and a Colorado assessed value of \$780,170.00. Mr. Kasal testified that none of this information was new and he did not alter the figures or content given to him by Mr. David Odrey, Director of Finance for RSL COM USA, Inc.

3. Mr. Kasal testified that an error had been discovered when he reviewed the income in Respondent's Exhibit 3 (page 3, line 4) where some legitimate expenses were omitted, which when corrected, would yield a negative net operating income (NOI). Because of this, the income approach would not be viable.

4. Mr. Kasal testified that the Net Book Value System should be the only value method used which is the cost: $\$7,916,700.00 \times 6.81\%$ allocation factor $\times 99\%$ equalization $\times 29\%$ assessed value. This methodology yields a final taxable value of \$154,783.44 rounded to \$154,783.00.

5. Mr. Kasal testified that the assets outstripped the income and that the cost approach would be the most appropriate since there is a negative net operating income (NOI). In addition, the Petitioner was in bankruptcy at the time and had used a gross figure rather than the net figure of \$154,783.00.

6. Under cross-examination, Mr. Kasal admitted the Annual Statement of Property shown in Respondent's Exhibits 2 and 3, as well as a statement submitted in June 2002 concerning income and expenses, were returned incomplete. Even though RSL was in business in 1999 and 2000, it was not reported on page 3 of Respondent's Exhibit 3. In addition, no book value was shown on page 7 of Respondent's Exhibit 3, but was reported on pages 9 and 9A.

7. Regarding Respondent's Exhibit 3, page 4, Mr. Kasal testified RSL owned property in

Colorado, listed on page 9 and 9A, and indicated this was probable new property, but he was not sure.

8. Regarding errors, the first error is found in Respondent's Exhibit 3, page 3, line 4 "Other Operating Expenses." An amount of \$57,148,366.00 representing sales, general expenses and other administrative expenses (SG&A) as shown on page 3A of Respondent's Exhibit 2 should have been there. He did not know if these figures had been audited, but they would lead to a negative \$48,963,000.00 NOI.

9. In re-direct, Mr. Kasal testified that there was no distinction between the NOI and net income since the Respondent has it in one form and Petitioner has it in another form.

10. Upon questions from the Board, Mr. Kasal testified that he has filled out the forms for several years and admitted to the mistake of not filling out line 4 of the income statement. Mr. Kasal then attempted to clarify what the \$57,184,366.00 consisted of between sales, general and administrative expenses, again testifying they used the Book Value Approach because of a negative income.

11. Petitioner is requesting a 2002 actual value of \$2,690,242.00 for the subject property.

12. Respondent's witness, Mr. James R. "Bill" Hyde, Property Tax Specialist III and Appraiser with the Division of Property Taxation, presented the following indicators of value:

Market: (Stock and Debit)	Considered, not used
Cost:	\$ 7,916,700.00 Net Operating Property (PP&E)
Income:	\$111,186,500.00 Total Company Value

13. Based on the system value or going concern value, Respondent's witness presented an assigned value of \$10,983,201.00 for the subject property; the total actual value in Colorado.

14. Mr. Hyde testified that records show Petitioner has been in the telecommunications reseller business via leased lines and satellites in Colorado since 1999 and has submitted annual statements each year.

15. Mr. Hyde testified RSL filed three different "ASOP" forms, which were not completed correctly. Mr. Hyde described the NOI as general revenues less operating expenses and referred to page 3A of Respondent's Exhibit 2, which shows income statements from RSL COM USA, INC. and subsidiaries. This statement does not show the Net Operating Income, but does show a SG&A expense of \$57,184,366.00 which was not listed on the form. Therefore, Mr. Hyde could not tell if there were any expenses since page 3 was only partially filled out. In addition, pages 1 and 3 of Respondent's Exhibit 3 were only partially completed and there was no reference to the operating expenses or prior years' income and expenses which are needed to stabilize income for capitalization.

16. Mr. Hyde testified that, since there was no backup for the expenses shown in Respondent's Exhibit 2, page 3A; he considered both the income and net book value, but placed most weight on the income due to the nature of the business. The cost approach does not reflect

value since it does not capture the intangible value. He also did not receive information on leases. As for the cost approach, Mr. Hyde used the value reported by the company and calculated the value by following the steps shown on page 17 of Respondent's Exhibit 1, and by using the current assets from page 4 of Respondent's Exhibit 3 of \$32,992,302.00. Finally, the net book value is not used to value resellers in Colorado.

17. As to the income approach, Mr. Hyde explained the steps as outlined in Respondent's Exhibit 1, pages 24 through 32. However, Mr. Hyde testified that since the company entered into bankruptcy protection in March 2001, it would be inappropriate to average or weight the 2002 reported income amounts with prior years. Mr. Hyde did not have any information on some write-downs because of the bankruptcy; he had received no audited statements; and there were no 10K reports. Mr. Hyde pointed out that RSL is a service company with a lot of leases; and because of the lack of prior information, he believed the reported 2002 net income was the most reliable and was the basis for calculating the income approach to value.

18. Respondent recommended a reduction in actual value to \$7,497,700.00 for the subject property for tax year 2002 for the total Colorado allocated actual value.

CONCLUSIONS:

1. Sufficient probative evidence and testimony was presented to prove that the subject property was incorrectly valued for tax year 2002.

2. The Board has carefully reviewed all the evidence and testimony and understands that errors can happen. The Board, however, is not convinced that such a large amount, namely \$57,148,366.00, would go unnoticed considering the company's financial position and the resulting consequences.

3. The Board is concerned with Petitioner's testimony admitting they failed to provide full and adequate information on the Annual Statement of Property (ASOP) as requested on three separate occasions since the information requested could be used to determine value.

4. CRS 39-4-108(4) allows the Administrator to require the production of records necessary to arrive at a proper determination of value. The Board agrees with Respondent that every effort was made to procure this information, and due to the lack of proper response, a "best information available" situation was deemed to be appropriate.

5. After careful consideration, the Board affirms Respondent's recommended reduced value of \$7,497,700.00.

ORDER:

Respondent is ordered to reduce the 2002 actual value of the subject property to \$7,497,700.00.

APPEAL:

This order may be subject to appeal as provided in 39-4-109(1) CRS to the Court of Appeals for judicial review within 45 days from the date of this decision.

DATED and MAILED this 25th day of June, 2003.

BOARD OF ASSESSMENT APPEALS

Karen E Hart

Karen E. Hart

Steffen A Brown

Steffen A. Brown

This decision was put on the record

JUN 25 2003

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

Penny S. Lowenthal
Penny S. Lowenthal

