

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 69860

Petitioner:

UNIVAR USA INC,

v.

Respondent:

DENVER COUNTY BOARD OF EQUALIZATION.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on September 14, 2017, Diane M. DeVries, James R. Meurer and Gregg Near presiding. Petitioner was represented by Alan Poe, Esq. Respondent was represented by Noah M. Cecil, Esq. Petitioner is protesting the 2016 classification of the subject property.

Petitioner's Exhibits 1-8 and 10-22 were admitted into evidence as well as Respondent's Exhibits A-H and J-Q.

Subject property is described as follows:

**4300 Holly Street
Denver, Colorado
Denver County Schedule No. 156-421-000**

The subject property is located within an industrial warehouse constructed in 1960 containing 67,322 square feet situated on a 217,687- square foot (five acres) site. Per Petitioner, the building is used primarily as a warehouse and distribution facility with 30 bulk tanks and a rail spur for eight cars.

The issue at hand is the classification of the subject property by the Assessor as taxable personal property which Petitioner argues is building improvements and services. The valuation of the subject property is not disputed.

As a result of an audit, the Assessor determined that Petitioner provided an incomplete asset listing and should have reported additional items as taxable personal property. Consequently, the Assessor issued retroactive assessments for 31 items that Assessor classified as Univar USA Inc.'s ("Univar") taxable personal property.

Prior to the hearing, the parties stipulated that out of 31 items initially identified by the Assessor as taxable personal property eight do not constitute taxable personal property; two constitute taxable personal property; and one item constitutes an allocation between taxable and non-taxable property. The parties agreed that the stipulation with respect to the above-mentioned 11 line items results in a decrease in subject's 2016 actual value by \$111,639.32.

The classification of the remaining 20 items is still in dispute and is the subject of this appeal. According to Petitioner, those remaining line items are improvements to real property and services, not taxable personal property, and therefore should be removed from the assessment. Petitioner requests the Board to make a finding that the disputed 20 items are not taxable personal property and to approve the parties' pre-hearing stipulation as to the 11 line-items.

Petitioner's witness, Mr. Bryan Blodget, Branch Operations Manager for Univar USA, Inc., described the physical plant as a distribution building receiving bulk shipments of chemicals that are redistributed to customers in smaller amounts. According to the witness, no manufacturing activities take place at the facility.

Mr. Blodget indicated that an inspection by the Fire Department in the early 2000s deemed the facility to not be in compliance with certain fire code requirements. Therefore, Univar began the process to bring the building into compliance by upgrading its fire suppression system. 15 out of 20 contested line items pertain to the Univar's efforts to bring the building into compliance with the requirements of the Fire Department.

Mr. Blodget testified concerning the 15 items that relate to the Univar's fire suppression system upgrades. He provided documents from Univar reflecting approximately \$3,069,000 in expenses associated with the upgrading of the fire suppression system to bring the building up to the Fire Department's code. The witness relied on photographs of the warehouse facility contained in Petitioner's exhibits to illustrate the various portions of the building and the types of improvements that were completed/upgraded. Additional exhibits illustrated various engineering and architect contracts as well as building and electric permits for the project.

According to the witness's testimony, the Univar's fire suppression system upgrades are not used in any type of Univar's operation at the facility; they are incorporated into the building and could not be removed without damaging the structure; and their only function is to provide fire suppression in the event of an emergency. On cross-examination, Mr. Blodget stated that Univar's fire suppression system is not unique to Univar's facility and comparable fire suppression systems may or may not be required by similar warehouse facilities in the area, depending on a determination by the Fire Department.

The remaining five contested line items do not directly pertain to the Univar's fire suppression system project. In his testimony, Mr. Blodget addressed each of the five items describing them as follows: (1) upgrades to ventilation systems; (2) Ethernet cabling conversion; (3) UFC compliance upgrade; (4) new shed; (5) new high-speed door.

Respondent presented Mr. David Driver, a Senior Tax Auditor in the Treasury Division of the Department of Finance of the City and County of Denver, as a witness. Mr. Driver testified to an inspection of the subject property in performance of an audit. The inspection determined assets had been omitted from Petitioner's asset listing reported to the County for purposes of calculating the actual value of Univar's business personal property. Mr. Driver testified to the process that the Assessor's Office followed in identifying, classifying and valuing the subject property.

Mr. Driver referenced the Assessor's Reference Library ("ARL"), first pointing to the definition of "real property" as "all lands or interests in lands . . . and improvements" per Section 39-1-102(14), C.R.S. The statutory definition of "improvements" includes ". . . all structures, buildings, fixtures, fences. . ." ARL, Vol. 5 at page 1.2. Further, the witness referenced the statutory definition of "fixtures" as representative of articles that were once movable chattels that have "become an accessory to or a part of real property by having been physically incorporated therein or annexed or affixed thereto. Fixtures include systems for the heating, air conditioning, ventilation, sanitation, lighting, and plumbing of a building." ARL, Vol. 5 at page 1.2. The Board also heard testimony that such fixture systems do not include machinery, equipment or other articles related to a commercial or industrial operation. ARL, Vol. 5 at page 1.2.

Further, the witness referred to the ARL section that cites Colorado statute that defines "personal property" to include machinery, equipment or other articles related to the business operation as opposed to components of fixture systems that are necessary for the proper operation of the improvements. ARL, Vol. 5, page 1.3.

Mr. Driver testified that in his opinion the Univar's fire suppression system, which the witness described as "unique," is related to Univar's business operation and, as such, constitute taxable personal property.

On cross-examination, Mr. Driver confirmed that in his opinion, subject items depicted in Petitioner's Exhibit 8, pages 5, 14 and 15, including a shed, a high speed door, and other building upgrades such as windows, vents and piping constitute taxable personal property. The witness also testified that some of the items within Univar's facility related to UFC Compliance were classified as taxable personal property and some as non-reportable. Similarly, some of the line items referenced as Fire Code Project (Engineering) were determined to be taxable personal property and some non-taxable personal property.

After considering the testimony and evidence presented at the hearing, as well as the documents and legal authorities provided by the parties, the Board is convinced that the subject property was incorrectly classified by the Denver County Assessor as taxable personal property.

The Board was most persuaded by Petitioner's witness, Mr. Blodget, who provided a detailed description of the subject property and explained each of the contested item's purposes and uses

within the warehouse facility. Mr. Blodget's testimony, supported by the photographs within Petitioner's exhibits, convinced the Board that the subject property has been physically incorporated, annexed or affixed to the commercial improvement itself. Moreover, the Board was also convinced, based on the evidence presented, that the subject property is used for proper operation and protection of the improvements; no business is generated from the use of the subject property.

The Board did not find convincing the testimony of Respondent's witness, Mr. Driver, that the subject property is primarily tied to commercial or industrial operations conducted by Petitioner. The Board did not find support for Respondent's argument that the building's fire suppression system is unique and atypical for other industrial buildings and thus is required solely as a result of the warehouse housing chemical materials.

Petitioner presented sufficient probative evidence and testimony to convince the Board that 2016 tax year classification of the subject property was incorrect.

ORDER:

The Petition is granted. Respondent is ordered to remove the subject property from the Assessor's personal property assessment roll. The Board approves the parties' pre-hearing stipulation concerning 11 line items.

The Denver County Assessor is directed to change his/her records accordingly.

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.

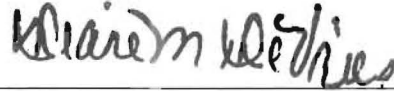
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may

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 24th day of October, 2017.

BOARD OF ASSESSMENT APPEALS



Diane M. DeVries



James R. Meurer

Gregg Near

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



Milla Lishchuk