

"TAX TIPS: Tax relief may be on the way for property owners"



Carl J. Grassi | Saturday, April 9, 2016

Dramatic changes in the real estate market over the last decade have led to more frequent disputes between property owners and tax authorities regarding the appropriate value of real estate subject to real estate taxes.

A recent decision by the Ohio Supreme Court may make it easier for property owners to get some relief when the value of the property has declined since it was acquired.

Property owners are generally prevented from arguing for a lower valuation than that established by a recent purchase price for the property.

In its recent decision, the court considered whether an appraiser's report could rebut the presumptive validity of a tax valuation based upon a recent sale price.

In this case, the property owner, which had purchased a Comfort Inn hotel in 2007, filed a complaint for tax year 2009 seeking a reduction of the value assigned to the property from \$3.49 million down to a little more than \$2 million.

At the Board of Revision hearing, the hotel owner's expert appraiser explained that the 2007 sale price of \$3.49 million was not representative of the property's value.

Specifically, the appraiser relied upon evidence indicating that the Comfort Inn hotel and other comparable hotels were experiencing a precipitous decline in revenue streams from 2007 through 2009 based upon significantly reduced occupancy levels attributable to the economic crash in the fall of 2008.

The Board of Revision found the appraiser's report and testimony to be well supported and reduced the property value from \$3.49 million down to \$2.6 million.

The Board of Education appealed this decision to the Board of Tax Appeals.

The Board of Tax Appeals acknowledged the presumptive merit subscribed to the 2007 sale price, but held that its "recency" was rebutted by information provided and relied upon by the owner's appraiser, and further reduced the property value to about \$2.53 million.

On appeal to the Ohio Supreme Court, the central issue was whether the assumed validity of a property valuation based upon a recent sale price can be rebutted by an appraisal report and testimony.

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The court first observed the general rule that the presumptive validity of the sale price may be rebutted by evidence showing that the sale is not recent, not at arm's length, or not voluntary.

The court then instructed that it is permissible to rely upon information contained in an appraisal report and testimony to conclude that the presumptive validity of the sale price is not reflective of the property's actual value.

The court warned, however, that the mere fact that an expert has opined that the property value should be reduced is not sufficient to undermine the validity of the sale price.

Rather, specific information bearing on the question of recency, the arm's length character of the sale, or the voluntariness of the sale proffered by an expert appraiser, through a report or testimony, may be sufficient to successfully rebut the presumption of sale price validity.

At issue on this appeal was evidence of recency, and, curiously, whether the transaction was at arm's length.

With respect to recency, the court found compelling that a significant downward market shift for hotels had occurred between January 2007 and the Jan. 1, 2009, tax lien date.

Because the appraiser convincingly articulated that a "softening" of the market had developed between the approximate time of the sale and the tax lien date, the Supreme Court of Ohio held that the 2007 sale could not be deemed recent relative to the Jan. 1, 2009, tax lien date.

With respect to the arm's length transaction component, the owner's appraiser opined that the sale was not truly arm's length because the owner did not act as a fully knowledgeable, typically motivated buyer. The appraiser reached that conclusion based upon his finding that the owner paid too much given the hotel's ongoing performance issues at the time of the sale.

Possibly because the school board did not oppose that argument, the court held that an arm's length transaction had not occurred and therefore the 2007 sale price was not representative of the tax valuation.

The primary takeaway of this decision is that evidence proffered through an expert appraiser can overcome the presumption of sale price validity even when the sale at issue occurred only two years prior to the tax lien date.

Consequently, litigants challenging the valuation of property based upon a sales price that is unrepresentative of the actual value of the property would be wise to explore the reasons for that variance and articulate, through expert testimony, how such reasons diminish the property valuation.

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Carl J. Grassi

Team member bio