

## Publications

### Multistate Review of Property Tax Decisions and Developments

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Recently, there have been several notable decisions from courts and tax boards in jurisdictions across the country including Ohio, Illinois, Michigan, Colorado, Tennessee, Minnesota, Indiana and North Carolina. These decisions related to numerous real estate tax areas including exemptions and assessments. Read more about these decisions below.

### OHIO SUPREME COURT FINDS KROGER'S APPRAISER PROPERLY ADJUSTED FOR SMALL SITE SIZE AND VALUED PROPERTY AT ITS FEE SIMPLE VALUE

*Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision, Slip Opinion No. 2018-Ohio-2909.*

The Ohio Supreme Court reversed the decision of the BTA and found that Kroger's appraiser's valuation was the best indication of value because it was consistent with the statutory requirement that the property value be based on "the true value of the fee simple estate, as if unencumbered."

The property at issue is a Kroger grocery store and the parcel only contains the Kroger store, and not parking for the store, due to its small size. Parking is available for the store on an adjacent parcel; however, this parcel is not owned by Kroger. The BOR found that Kroger's appraisal was the best indication of value, based primarily upon the sales comparison approach to value including making an adjustment to the comparables properties to account for the small size of the Kroger's property in comparison to the other properties. The BTA reversed the decision of the BOR and concluded that the adjustment to reflect the parking situation improperly removed the benefit of the parking easement from the value of the parcel.

The Supreme Court determined that the BTA erred by analyzing the facts under incorrect law and found that Kroger's appraiser properly accounted for the property at issue by adjusting for the site size. Additionally, the Court concluded that the adjustment was consistent with statutory requirements and property valued the property at issue on a fee simple basis. Therefore, the Court reversed the BTA's decision

and reinstated the BOR's valuation.

## **OHIO BOARD OF TAX APPEALS FINDS NO ERROR IN TAXPAYER'S USE OF GOVERNMENT RESTRICTED RENTS TO VALUE HUD SECTION 202 HOUSING**

*Massillon City Schools Bd. of Edn. v. Stark Cty. Bd. of Revision*, Ohio BTA No. 2017-86, July 30, 2018

The Ohio BTA affirmed the Stark County BOR's decision adopting taxpayer's appraisal evidence to set value for a HUD Section 202 property for tax year 2015. The taxpayer, National Church Residences of Massillon, presented appraisal evidence that utilized the actual government-restricted rents to value the property. The board of education argued that conventional market rents should be utilized, but did not present any appraisal evidence.

In affirming BOR's decision, the BTA cited to the Ohio Supreme Court's decision in *Notestine Manor, Inc. v. Logan Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-2, reconsideration denied, March 14, 2018, wherein the Supreme Court rejected an "iron rule – that a market-rent approach is required and a contract-rent approach is precluded in all cases." The property in *Notestine Manor* was HUD Section 202. The BTA further recognized the Court's "guiding principal" regarding government-restricted properties in "that the valuation method must account for the 'affirmative value' of government subsidies, i.e., the tendency of government subsidies to inflate the value above what the market would otherwise bear." Based upon *Notestine Manor*, the BTA found no error in the taxpayer's use of government-restricted rents.

## **ILLINOIS APPELLATE COURT AFFIRMS ARM'S-LENGTH SALE PRICE AS BEST EVIDENCE OF FAIR MARKET VALUE**

*Gateway-Walden, LLC v. Pappas*, Ill App. Ct., No. 1-16-2714, June 29, 2018

The First Judicial District Illinois Appellate Court affirmed a circuit court's ruling that valued multi-tenant office buildings based upon a recent arm's-length sale. The Appellate Court recognized the long-held principal that a recent, arm's length sale of property is the best evidence of its fair market value. Accordingly, the recent sale of the office buildings was sufficient to overcome the presumption that the taxes, assessments and levies are correct. The Appellate Court refused to overturn the circuit court's factual findings that the sale was arm's-length.

## **OHIO BOARD OF TAX APPEALS FINDS THAT PROPERTY OWNER FAILED TO MEET ITS BURDEN OF PROOF TO OVERCOME REBUTTABLE PRESUMPTION THAT A RECENT ARM'S-LENGTH SALE IS BEST EVIDENCE OF VALUE**

*Spirit Master Funding IX, LLC v. Cuyahoga Cty. Bd. of Revision*, Ohio BTA No. 2017-72, June 8, 2018

The Ohio Board of Tax Appeals (BTA) affirmed the Cuyahoga County Board of Revision's decision finding that a December 2014 sale was the best evidence of value for tax year 2015. The board recognized the Ohio Supreme Court's decision in *Terraza 8, L.L.C v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, wherein the Supreme Court held that the presumption of a sale as the best evidence of value was a rebuttable presumption as a result of a change in statute. However, the board found that the

property owner failed to meet its burden because no witness with personal knowledge of the sale provided testimony. Furthermore, the underlying lease was not presented as evidence as support that the lease rate was above-market.

### **MICHIGAN TAX TRIBUNAL REJECTS ASSESSOR'S VALUATION WHERE IT CONTAINED NO ANALYSIS OF LEASE TERMS, CAPITALIZATION RATE, AND CONTAINED UNSUPPORTED PRORATED VALUATION FROM PRIOR SALE IN 10 UNIT CONDOMINIUM DEVELOPMENT**

*Kroger Co. of Michigan v. City of Howell, Michigan Tax Tribunal, 2016-002784*

The Michigan Tax Tribunal modified and reduced Kroger Co.'s property tax assessment on the condominium development finding that the City of Howell's failed to properly appraise the subject property. The Kroger Co. parcel was subject to a ground lease in a condominium development with ten separate units. The MTT found that Kroger provided sufficient evidence to support its valuation in its sales comparison approach which contained 10 comparable vacant land sales. The MTT concluded that the city's prorated value and income approach should be given no weight because the city failed to consider the complexity of the subject lease given that the lease was tied to the entire development and not simply the Kroger unit. Furthermore, the city failed to consider the subject lease rate as compared to other market leases or conduct any analysis and relied, improperly, on the prior appraisal.

### **COLORADO BOARD OF ASSESSMENT APPEALS REJECTS HOTEL OWNER'S INCOME APPROACH AS UNRELIABLE**

*Austria Haus Dev. Group v. Eagle County Board of Equalization, 2018 STT 119-7, June 19, 2018*

The Colorado Board of Assessment Appeals found that a hotel owner's income approach to valuation for a Vail, Colorado hotel property was not reliable and maintained the county board's valuation. In its critique of the hotel's income approach, the board commented that the hotel owner improperly deducted a fee to one of the hotel's partners for asset management when the fee was a function of a partner's ownership interest. The board also found that the management fee of 10%, which was based on the actual management fee, was excessive and not supported by the market. Last, the board found that the hotel improperly applied a capitalization rate derived from local comparable sales. Specifically, the board found that capitalization rate using anticipated future income following a renovation was too speculative.

### **TENNESSEE STATE BOARD OF EQUALIZATION REDUCES ASSESSMENT FOR DATA CENTER BY \$53 MILLION**

*DC Franklin Road LLC Case No. 103014 TN State Board of Equalization*

Recently the Tennessee Board of Equalization reduced the AT&T data center from the assessment at \$98.88 million to \$45.7 million. The panel recognized that the 2013 sale of the property was a sale leaseback transaction and not indicative of market value. The panel concluded that the sale was an arm's-length transaction, but the sale was not indicative of market value because it was a leased fee sale. AT&T requested a value for the property at \$21.85 million, contending that the highest and best use was for re-

development. The board determined a value of \$25 per square foot utilizing the income approach to value and found value at \$45.7 million.

## **MINNESOTA TAX COURT REDUCES ASSESSMENT FOR PIPELINE BY MORE THAN A BILLION DOLLARS:**

*Enbridge Energy, LP v Commissioner of Revenue, Minn T.C., No. 8579-R, May 15, 2018.*

The Minnesota Tax Court recently ruled that the Minnesota Department of Revenue had significantly overvalued a pipeline that extends for hundreds of miles through thirteen counties in the northern part of the state. The Tax Court judge rejected the department's valuation methodology, which was first adopted in 2012 and triggered the initial petition, and supported the use of an income approach to value the pipeline for tax assessment purposes for the 2012-2014 tax years. The Tax Court's decision reduced the pipeline's 2012 tax year assessment from \$3.75 billion to \$3.6 billion, the 2013 tax year assessment from \$4.18 billion to \$3.29 billion, and the 2014 tax year assessment from \$5.6 billion to \$3.42 billion. Enbridge Energy Partners LP, the owner and operator of the pipeline, has separate litigation for the 2015-2017 tax year assessments for the pipeline that has yet to be decided by the Tax Court.

## **COMCAST SETTLES PROPERTY TAX DISPUTE IN OREGON FOR \$155 MILLION:**

*Comcast Corp. v. Oregon Department of Revenue, Oregon Tax Court, Nos. TC 4909, TC 4976, TC 5142, TC 5199, TC 5235, TC 5268, TC 5290, and TC 5316.*

*Comcast Corp. v. Oregon Department of Revenue, Oregon Supreme Court, No. S065596*

Comcast Corporation and the State of Oregon have agreed to a \$155 million settlement to resolve all pending litigation regarding property tax disputes that spanned eight tax years and affected ten counties. Comcast had initiated the tax disputes after Oregon changed the nature of its tax assessment for the company's property in 2009. The new broader assessment methodology had resulted in an increase in the value of the company's property and put the maximum assessed value of the property at more than \$1 billion for each tax year. As part of the settlement, the parties also agreed to set the adjudicated real market value of the property at \$950 million for the 2018-2019 through 2022-2023 tax years.

## **INDIANA TAX COURT HOLDS SALE PRICE NOT PROBATIVE OF VALUE FOR EARLIER TAX YEARS**

*Nova Tube Indiana II LLC v. Clark Cty. Assessor, Indiana Tax Court, 2018 STT 100-21.*

The Indiana Tax Court reversed the Indiana Board of Tax Review's property tax assessment on a manufacturing property after concluding that the Board abused its discretion when relying on a 2014 sale. The case involved tax years 2011, 2012, and 2013. The Court ruled that the assessor (who had the burden of proof since the increase was more than 5% from the previous value) failed to trend the sale or otherwise relate the sale price to the earlier valuation dates. The owner's appraisals for each of the tax years provided further probative evidence of value.

## INDIANA TAX COURT REINSTATES ORIGINAL VALUE AFTER CONCLUDING THAT APPRAISAL EVIDENCE WAS NOT RELIABLE

*Switzerland Cty. Assessor v. Belterra Resort Indiana LLC, Indiana Tax Court, 49T10-1705-TA-00009.*

The Indiana Tax Court reinstated a resort's \$102.3 million valuation after determining that both the resort's appraisal and the assessor's appraisal were flawed and therefore lacked probative value. The court concluded that the taxpayer's appraiser failed to adjust for differences between the subject property and the data upon which he based his value. The assessor's appraiser failed to support with reliable evidence the projections he used to compute the resort's going concern value. Finding neither appraisal probative of value, the original value was reinstated.

## OHIO SUPREME COURT REMANDS BIG BOX VALUATION MATTER TO OHIO BOARD OF TAX APPEALS FOR FURTHER CONSIDERATION

*Lowe's Home Ctrs., Inc. v. Washington Cty. Bd. of Revision, Slip Opinion No. 2018-Ohio-1974.*

The Ohio Supreme Court vacated a BTA decision, which found value consistent with the appraiser retained by the county. Both the taxpayer and county retained appraisers to value a Lowe's store located in rural Marietta, Ohio. The appraiser for Lowe's opined to value at \$5.7 million. The appraiser for the county opined to value at \$8.8 million. The BTA found that the county's appraisal was more probative of value because the county's appraiser included sales of first-generation and build to suit properties subject to long term leases.

In its decision the Court found that the BTA must evaluate the evidence based upon case law decided after the BTA issued its decision. This case law established that comparable properties used to determine the fee simple market value must be adjusted to reflect any leases that may affect the sale price. The Court concluded that the BTA must make express findings about the property-rights-conveyed analysis on remand.

## OHIO SUPREME COURT FINDS THAT TAXPAYER PROPERLY INVOKED CONTINUING COMPLAINT JURISDICTION

*Novita Industries L.L.C. v. Lorain Cty. Bd. of Revision, Slip Opinion No. 2018-Ohio-2023.*

The Ohio Supreme Court found that the property owner properly invoked the continuing complaint jurisdiction of the board of revision. In this case, the taxpayer filed a complaint seeking to reduce the value of its property, an industrial property, for tax year 2009.

In the initial complaint, the taxpayer sought a reduction in value based upon its recent purchase in June 2009. The BOR retained the auditor's original valuation for tax year 2009 and Novita appealed. During the pendency of the 2009 complaint, Lorain County reappraised the property for tax year 2012 at a value of \$1,647,310. On April 15, 2014, the BTA issued a decision for the 2009 tax year finding that the value should be adjusted to the sale price. In July 2014 Novita filed a request with the BOR to take jurisdiction over tax years 2012-2014. The BOR held a hearing on the continuing complaint and concluded that the law did not permit the carryover of value. Novita appealed the BOR decision on the continuing complaint to the BTA and

presented an appraisal. The BTA adopted the appraiser's valuation for 2012 and 2013, but determined it lacked jurisdiction to find value for 2014. On appeal the Court held that Novita's request was properly submitted to the BOR by including the BTA decision on its 2012 letter requesting a hearing and the BTA erred by not taking jurisdiction over tax year 2014.

## **NORTH CAROLINA PROPERTY TAX COMMISSION FINDS COUNTY OVERVALUED SHOPPING MALL PROPERTY**

*Shelby Mall LLC v. Cleveland County Board of Equalization and Review, Case No. 16 PTC 0452.*

The North Carolina Property Tax Commission ruled that Cleveland County overvalued a local shopping mall. The commission found that the mall should be valued near \$8.2, instead of the \$12 million, as determined by Cleveland County. At hearing the mall owners presented the testimony of the management company and an appraiser. Both witnesses opined to values based upon the income approach to value. The county also presented an appraiser, who also utilized the income approach to value. The commission found that the mall owners provided convincing evidence that the board's value exceeded the true value of the property. The commission further found that the mall owner rebutted the presumption of correctness by presenting evidence that the county's assessment substantially exceeded its true value.

While the commission did not adopt the values asserted by any of the witnesses for either party, it determined that the county appraiser's revised net operating income was most appropriate after reviewing all of the witnesses' estimates. Finally, the commission determined an appropriate capitalization rate based upon the survey information from the parties, finding that the overlapping survey data supported a capitalization rate in the middle at 13%. Utilizing this capitalization rate the commission found value at \$8,212,893.