

IN THE SUPREME COURT OF OHIO

ST. BERNARD SELF STORAGE,
LLC

Appellant

v.

HAMILTON COUNTY BOARD
OF REVISION, et al.

Appellees

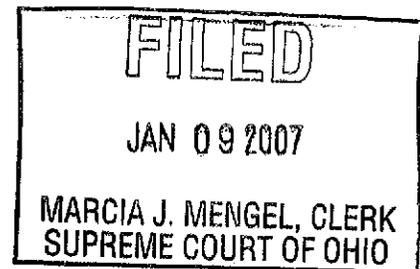
CASE NO. 06-884

Appeal from the Ohio
Board of Tax Appeals

Board of Tax Appeals
Case No. 2003-T-1532

MERIT BRIEF OF APPELLEE
ST. BERNARD SCHOOL DISTRICT,
BOARD OF EDUCATION

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The Board of Tax Appeals erred to the prejudice of the Appellant taxpayer by ignoring the sale price of the real property and relying upon Appellee’s appraisal which ignored the contemporaneous sale of the subject real property, contrary to established precedent. (Decision and Order of BTA entered April 28, 2006.)..... 4

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Where there is a sale of real property recent to the tax lien date in an arm’s length transaction, the best evidence of “true value in money” is the proper allocation of the lump sum purchase price between real property and the personal property sold in this transaction, and not an appraisal ignoring the contemporaneous sale.....4

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II. STATEMENT OF FACTS

Appellee School District adopts the Statement of Facts contained in Appellee Auditor's Brief on the Merits. Appellant's Third and Fourth Assignments of Error are merely restatements of the issues dealt with in the first two Assignments of Error, so Appellee School District will not deal with those separately. We adopt the analysis and arguments set forth by Appellee Auditor for the third and fourth Assignments of Error.

III. ARGUMENT

Appellant's First Assignment of Error:

The Board of Tax Appeals erred to prejudice of the Appellant taxpayer by disregarding the recent arm's length sale of the subject property, contrary to established precedent. (Decision and Order of BTA entered April 28, 2006.)

Appellant's Proposition of Law No. 1:

Where real property has been the subject of a recent arm's length sale between a willing seller and a willing buyer, the sale price of the real property shall be the true value for taxation purposes.

We agree that a recent arm's length sale of the subject property is the best evidence of value for tax purposes. The BTA properly applied that rule in this case, in adopting the actual sale price. Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision (2005), 106 Ohio St.3d 269, 2005-Ohio-4979, 834 N.E.2d 782.

Appellee also agrees that business value, if it exists and if it is proven to be separable from the value inherent in the real estate itself, should not be included in the valuation of the real estate. We disagree strongly with Appellant's assertion that the parties to a sale transaction can unilaterally allocate and assign a business value to a real estate transaction. As correctly noted in the Appellee Auditor's Brief, such a position could result in parties

assigning a \$1 value to the real estate, and a \$10 million value to a business portion, which would have no rational relationship to the actual value of the real estate.

The BTA adopted a fair and reasonable test for such situations: the taxpayer has the burden of proving that some business value exists separate from the real estate value, and then must prove the exact amount of the business value. This Court, in Higbee Co. v. Bd. of Revision (2006), 107 Ohio St.3d 321, 2006-Ohio-2, stated as follows at 334:

The business factors and the real-property factors must be separated when the real property is being valued for tax purposes. How the business factors and the real-property factors are separated in valuing real property is a matter of proof. (Italics added).

In the instant case, the BTA decided that the taxpayer failed to prove the existence of a business value that was separate from the self-storage property sold. This Court has repeatedly held that the BTA is vested with wide discretion in reviewing the evidence presented and the credibility of witnesses. Higbee, supra at 331. See also Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision (1975), 44 Ohio St.2d 13, 336 N.E.2d 433; Orange City School District Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision (1996), 74 Ohio St.3d 415, 659 N.E.2d 1223.

In short, Appellee School District does not see the need for this Court to spend time and effort determining whether self-storage facilities have a business value or not. This case can be easily resolved using long-standing principles that this Court sees virtually every day: allow the BTA to determine the weight of evidence and credibility of witnesses, and do not disturb its decision unless it abuses its discretion.

We know that the BTA had ample basis for its rejection of business value in this case:

1. Common Sense: If separate business values are not carved out for apartment buildings and office buildings, which have much higher management expenses than self-storage units, common sense dictates that business values are not present here. How can a rapid-turnover highly transient customer list have a significant value?

2. Lack of probative evidence: As Appellee Auditor's Brief describes in detail, the witnesses provided by the taxpayer were grossly deficient. Both appraisers they used had never appraised this sort of business before, and Fletcher invented a valuation methodology that had no industry support. Such sloppy and wildly speculative approaches were properly rejected by the BTA.

Appellant's Second Assignment of Error:

The Board of Tax Appeals erred to the prejudice of the Appellant taxpayer by ignoring the sale price of the real property and relying upon Appellee's appraisal which ignored the contemporaneous sale of the subject real property, contrary to established precedent. (Decision and Order of BTA entered April 28, 2006.)

Appellant's Proposition of Law No. 2

Where there is a sale of real property recent to the tax lien date in an arm's length transaction, the best evidence of "true value in money" is the proper allocation of the lump sum purchase price between the real property and the personal property sold in this transaction, and not an appraisal ignoring the contemporaneous sale.

The BTA relied on the sale price. Berea, supra. It did not ignore the sale price, but in fact adopted it. The BTA had wide discretion to reject the assertions of the taxpayer concerning its unilateral allocations of business value. Higbee, supra.

Appellant raises a "red herring" that should be commented on: The fact that the state chooses to charge a sales tax on storage revenue is not relevant to the issues at hand. The state also chooses to charge a commercial activity tax. Since law firms are subject to

the CAT tax, should we deduct business value on the sale of an office building that has law firms as tenants? Of course not; the revenues that the state chooses to tax have no one-to-one relationship with the classification of real property. If the legislature intended to redefine real property classification, it would have changed the laws specific to property classification.

IV. CONCLUSION

This case is a simple one - - did the BTA properly exercise its discretion in determining that the taxpayer failed to prove the existence and amount of business value that was included in the sale. Obviously, a self-storage facility rents space in a building, and such rents reflect a return on a real estate venture.

Respectfully submitted



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V. CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Merit Brief of Appellee, St. Bernard School District, Board of Education" was served by ordinary U.S. Mail, postage prepaid, this 8 day of January, 2007 upon the following counsel of record:

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