

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2010-000308

05/06/2013

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

PIMA COUNTY, et al.

TERRI A ROBERTS

v.

RAYTHEON COMPANY

RICHARD M ROLLMAN

UNDER ADVISEMENT RULING

The Arizona Tax Court took this matter under advisement following a trial to the bench March 5-7, 2013. Following further consideration of the evidence and argument, the Court rules as follows.

Background

Defendant Raytheon is the owner of improvements on possessory rights (“IPRs”) located on land owned by the City of Tucson, which is leased to Raytheon. The land is in Pima County, Arizona. The IPRs consist of buildings, paved parking lots, and retaining walls. The Pima County Assessor valued 19 Raytheon IPRs for the 2009 tax year and classified them as Class 1 (Commercial) with a 22% assessment ratio. The Pima County Assessor valued 19 Raytheon IPRs for the 2010 tax year and classified them as Class 1 (Commercial) with a 21% assessment ratio. Raytheon appealed the valuations for both 2009 and 2010 first to the Assessor and then to the State Board of Equalization (“SBOE”). The SBOE lowered the valuations for 2009 and 2010 to \$25,639,840, respectively.¹ The Pima County Assessor (Mr. Bill Staples) appealed the SBOE’s valuation of 19 IPRs for 2009 and 18 IPRs for 2010 to this court requesting an increase in the values from the SBOE’s values. Raytheon filed counterclaims for both tax years requesting a reduction in the SBOE’s values for the same IPRs. Plaintiff has the burden of proving that the SBOE’s values are too low. Defendant has the burden of proving that the SBOE’s values are too high.

¹ Because the appeal for the 2010 tax year excludes one of the IPRs (IPR No. 940567489158), which was valued by the SBOE at \$20,000.00, the appealed SBOE value for the 18 IPRs in the 2010 tax year is \$25,619,840.

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Both sides' appeals from the SBOE were timely filed, and this court has jurisdiction to resolve those appeals. There is no statutory method of determining the full cash value. Therefore, for property tax purposes, "full cash value is synonymous with market value which means the estimate of value that is derived annually by using standard appraisal methods and techniques." A.R.S. § 42-11001(6).

In addition to disagreeing about the value of the IPRs for both tax years 2009 and 2010, the parties also disagree on the valuation date that should be used for the IPRs in those years. The Assessor argues that the IPRs should be valued on January 1 of the year prior to the tax year, in the same manner that real property is valued. Raytheon argues that the IPRs should be valued on January 1 of the tax year itself, in the same manner as personal property is valued. The Court begins by addressing this dispute.

Appropriate Date of Valuation

A.R.S. § 42-11001(19) says, "Valuation year' means: (a) For real property and property valued by the department, the calendar year preceding the year in which the taxes are levied.(b) For personal property, the calendar year in which the taxes are levied." That much is clear. What is not clear is whether improvements on tax-exempt land are real or personal property. "Real estate" is defined in the same statute as "the ownership of, claim to, possession of or right of possession to lands or patented mines;" "personal property" is all property that is not real estate. This dichotomy would suggest that all improvements, not being lands or patented mines, are personal property, a view that has support in some, albeit old, case law. *Maricopa County v. North Central Development Co.*, 115 Ariz. 540, 544 (App. 1977) (distinguishing between improvements and "the underlying real property"). But neither party is urging this position, which is not consistent with more recent case law; *see, e.g., Eurofresh, Inc. v. Graham County*, 218 Ariz. 382 (App. 2007) (greenhouses valued as real property). The statutes and case law simply do not answer the question of the appropriate valuation year.

The Department of Revenue's Personal Property Manual, on the other hand, unambiguously declares improvements on tax-exempt land to constitute personal property, which would mean they are valued as of the year in which the tax is levied. However, the authority of the Manual is less clear. The Manual describes itself as "a guide" "provided to assist assessment personnel," not as controlling authority. But A.R.S. § 42-13002(A)(1) requires the Department to "exercise general supervision over county assessors in administering the property tax laws to ensure that all property is uniformly valued for property tax purposes." In light of the mandatory language of the statute, which would otherwise be unimplemented in this not-uncommon situation, and the legislature's express purpose to ensure uniformity in valuation, which would otherwise depend on the individual interpretations of the fifteen county assessors,

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the Manual should be regarded as binding, although couched in language perhaps more suitable to A.R.S. § 42-13002(A)(3)(c).

Additionally, there is at least some compelling evidence that until this case the Pima County Assessor's office agreed with this position. In fact, the Notices of Value mailed to Raytheon by the Assessor's office for the IPRs in both tax years 2009 and 2010 indicate a valuation date on January 1 of the tax year. The trial testimony of employees of the Assessor's office took a contrary position, however, the testimony was somewhat equivocal, and did not seem entirely credible, particularly in light of the Notices of Valuation that were mailed to the taxpayer.

Based on the foregoing, as well as the arguments made by the taxpayer, the Court concludes that for the 2009 tax year, the valuation date of the IPRs is January 1, 2009. For the 2010 tax year, the valuation date is January 1, 2010.²

Valuation

As to four of the IPRs, the Court finds that neither party met its burden of demonstrating that the SBOE's valuation was either too high or too low. These are parking lots that were each valued at \$500 by the SBOE in both tax years. They are: IPR nos. 94056740089136, 94056740089150, 94056740089158, and 94056740089163. Because neither party met their burden of proof as to these four IPRs, the values set by the SBOE are affirmed for both tax years.

Additionally, as Raytheon's appraiser's values were higher than those of the SBOE in both tax years, the Court further finds that Raytheon did not meet its burden of proof that the SBOE's values were too high, necessitating a reduction.³

As to the remaining IPRs (15 in 2009 and 14 in 2010), the Court finds that the evidence presented by the Assessor was sufficient to meet its burden and overcome the presumption of correctness of the SBOE's values. The Court declines to reject, wholesale, Mr. Brekan's opinions as urged by Raytheon. Here, the Court finds that both experts' testimony was useful and generally complied with standard appraisal methods and techniques. Having said that, however, the Court also found areas of concern within each expert's reports/opinions that prevent the Court from adopting either expert's opinion as the value in this matter. In general,

² Per the agreement of the Court and the parties at trial, the Court will also determine a value of the IPRs as of January 1, 2008, based upon the evidence presented. By so doing, in the event that an appellate court takes an alternative position regarding the appropriate valuation date for IPRs, this matter may not need to be re-tried on remand.

³ Raytheon did not vigorously argue for a reduction in the SBOE's values, however, its counterclaims seeking such a reduction were never dismissed or withdrawn.

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the Court found Mr. Wood's opinion more persuasive than Mr. Brekan's, however, as previously mentioned neither opinion is adopted *in toto*. Following additional review and consideration of the evidence presented and arguments made, the Court determines the full cash value for the remaining IPRs as follows:

IPR#	FMV ON JAN. 1, 2008 ⁴	FMV ON JAN. 1, 2009	FMV ON JAN 1, 2010
94056740089140	1,562,010	1,431,843	1,405,809
94056740089142	6,627,000	6,074,750	5,964,300
94056740089144	494,610	453,393	445,149
94056740089146	5,021,640	4,603,170	4,519,476
94056740089148	4,698,120	4,306,610	4,228,308
94056740089152	3,420	3,135	3,078
94056740089154	4,075,530	3,735,903	3,667,977
94056740089155	114,180	104,665	102,762
94056740089160	30,000	27,500	Not at issue
94056740089162	5,049,090	4,628,333	4,544,181
94056740183782	534,000	489,500	480,600
94056740183785	127,170	116,573	114,453
94056740183787	1,346,760	1,234,530	1,212,084
94056740183789	1,821,000	1,669,250	1,638,900
94056740183790	6,952,230	6,372,878	6,257,007

⁴ As discussed above, these figures are only included in the event an appellate court overrules this Court's determination of the correct date of valuation.

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