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Questioning Authority: Presumptions in Property Tax Cases



Presumption of Correctness

- In property tax appeals, the assessor's determination of value typically has a presumption of correctness, which the taxpayer must overcome in order to get relief.
- What does the Presumption of Correctness mean?
- Why is there a Presumption of Correctness?
- How is the Presumption overcome? Is a competing appraisal sufficient?

- Burden of Production

- “[T]he presumption that the taxing authority’s valuations are not excessive ... is not evidence but serves in place of evidence until the opposing party comes forward with his proof, whereat disappears. It has no weight as evidence and is never to be considered in weighing evidence. In other words, it merely obviates any necessity on the part of the assessors, of going forward with proof of the correctness of their valuation. So understood, ‘the presumption of correctness’ is merely another way of saying that the burden of proof in a proceeding to review an assessment is on the relator-taxpayer.” *Evans Oil & Gas Co*, 367 S.W. 2d 453, 454 (Ky. Ct. App.1963)

- Burden of Proof

- Preponderance of the Evidence
- Clear and Convincing Evidence
- Other super burdens

Presumption of Correctness in Sampling of SEATA States

- Florida
 - After 2009 legislative changes, Florida assessors have a presumption of correctness if they show by a preponderance of the evidence that the assessment complied with the statutory criteria for a valid assessment and with professionally accepted appraisal practices, including mass appraisal standards, if appropriate.
 - The taxpayer may overcome this presumption by showing by a preponderance of the evidence that the assessed value does not represent the just value of the property or is arbitrarily based on appraisal practices that are different from the appraisal practices generally applied by the property appraiser to comparable property within the same county.
 - If either the assessor does not establish the presumption of correctness or the taxpayer overcomes the presumption, then the review board or court may set the value if there is competent, substantial evidence of value in the record that meets the statutory criteria and professionally accepted appraisal practice (otherwise it must remand for new value determination).

Presumption of Correctness in Sampling of SEATA States

- Georgia
 - Courts indicate that the party initiating the appeal has the burden of persuasion (by a preponderance of the evidence) on value but that the assessor's determination of value is not entitled to any presumption of correctness.
 - 1999 statutory change expressly states that in the appeal to court, "The board of tax assessors shall have the burden of proving their opinions of value and the validity of their proposed assessment by a preponderance of evidence." O.C.G.A. 48-5-311.
 - Example of what happens when the board of tax assessors does nothing; they lose. Hodson v. Duckett, 219 S.E.2d 634 (Ga. Ct. App. 1975).

Presumption of Correctness in Sampling of SEATA States

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- Alabama
 - The Tax Assessor's assessment is deemed to be *prima facie* correct and the burden is on the taxpayer to produce competent evidence that the assessment is incorrect. *Lake Forest Property Owners Assn., Inc. v. Baldwin County Board of Equalization*, 659 So.2d 605 (Ala.Civ.App.1994).
- Mississippi
 - In order to overcome the presumption of validity of the Department's corrected returns, the taxpayer must produce competent evidence, identified with or supported by its books or records at the hearing. See *Marx v. Bounds*, 528 So.2d 822, 825-6 (Miss.1988); *Rebelwood, Ltd. v. Hinds County*, 544 So. 2d 1356, 1369 (1989).

Presumption of Correctness in Sampling of SEATA States

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- West Virginia
 - There is a presumption in favor of the validity of tax assessments regularly made and the taxpayer has the burden of showing by **clear and convincing evidence** that the assessment is erroneous. *In re Tax Assessment of Foster Foundation's Woodlands Ret. Cmty.*, 223 W. Va. 14 (2008).

Why is there a presumption of correctness?

- Procedural Reasons. Party initiating a challenge in court generally has the burden of proof as a matter of civil procedure. “It is a well-established rule of law that in civil actions the party seeking relief must prove his right thereto.” In re Foster Foundation’s Woodlands Retirement Community, 223 W. Va. 14 (2008).
- Practical Reasons. Courts want to avoid frivolous claims. “The purpose underlying the presumption of correctness arises out of the obvious futility of allowing a taxpayer to fix the final value of his property for purposes of ad valorem taxation. If the presumption did not attach, then every taxpayer would have unlimited freedom to challenge the valuation placed upon his property, regardless of the merit of such challenge.” In re Appeal of Amp, Inc., 287 N.C. 547, 563 (1975). “Neither is it a denial of due process to impose more stringent standards upon a complaining taxpayer in an attempt to prevent frivolous tax assessment challenges.” In re Foster Foundation’s Woodlands Retirement Community, 223 W. Va. 14 (2008).

Why is there a presumption of correctness?

- Separation of Powers. “[C]ourts must be hesitant, within reasonable bounds, to set aside the judgment of assessors; otherwise, the courts will become boards of assessment thereby abrogating to themselves the function of duly constituted tax authorities.” City of Richmond v. Gordon, 224 Va. 103, 110 (1982). The Supreme Court has held that when Congress grants an agency broad authority to prescribe rules and procedures, these rules should receive deferential treatment from reviewing courts. Commissioner v. Portland Cement Co., 450 U.S. 156, 169 (1981).
- Governmental Good Faith. It expresses the view that in tax matters it is to be presumed that governmental authority has been exercised correctly and in accordance with law. An officer charged with making an assessment is presumed to have performed his duties in good faith and in conformity with state law. Cox v. Bristol, 183 Tenn. 82 (1945). “The good faith of tax officers and the validity of their official actions are presumed” City of Tampa v. Palmer, 89 Fla. 514, 520 (1925).

Why is there a presumption of correctness?

- Recognition of Assessor's Discretion. The law contemplates that a wide discretion be accorded to the tax assessor in the valuation of property for the purposes of taxation. German-American Lumber Co. v. Barbee, 59 Fla. 493, 498 (1910). Also a recognition that this discretion is necessary because valuation is an inexact science.
- Institutional Reasons. Courts may be generally reluctant to involve themselves in ad valorem tax matters because they do not want to interfere with the essential revenue raising mechanism and cause turmoil in delivery of essential governmental functions. Furthermore, they may recognize the technical nature of determination of tax and that technically competent tax administrators are better equipped to determine the challenges.
- Other reasons?

AL Taxpayer Does Not Carry Burden

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- Gordon, Dana, Still, Knight & Gilmore, LLC v. Jefferson County, 2009 WL 1818406 (Ala. Civ. App. 6/26/2009), cert. denied, 2010 WL 753330 (Ala. 3/5/2010).
- Assessor determined value of personal property value based on mass appraisal grid system guidelines.
- Taxpayer presented expert appraisal testimony that the value was less than the value derived under the grids and that the grid system did not arrive at fair market value.
- Court determined that the Taxpayer had not carried its burden. Use of the grid guidelines was appropriate and did not discriminate. The assessor has broad discretion. Found no reason to depart from the schedules even though actual appraisal evidence showed a lower value.
- How would a Taxpayer ever prove a departure from the mass appraisal schedule?

NC Taxpayer Carries Burden

- In re Appeal of IBM Credit Corp., 689 S.E.2d 487 (N.C. Ct. App. 2009).
- Assessor determined value of computer equipment based on mass appraisal schedules.
- Taxpayer presented expert appraisal testimony regarding lower value and testimony that the schedules did not properly account for functional and economic obsolescence.
- Court held that assessor's evidence was sufficient to establish presumption of correctness, but that the taxpayer's evidence was enough to overcome the presumption. The taxpayer's evidence was "competent, material and substantial evidence tending to show that the county used an arbitrary method of valuation which led to the assessment substantially exceeding the true value of the property." As a result of overcoming the presumption, the burden of persuasion shifted to the county to prove that its method in fact produces true value.

NC Taxpayer Carries Burden

- This requires true consideration of the methodology. The county did not carry this burden as it failed to provide evidence showing the market value of the property being appraised. The county further failed to explain why one valuation approach is better than another; the useful life of the property; why the appraiser was not required to make further adjustments for functional or economic obsolescence. Such omissions result in conclusions which lack evidentiary support and are therefore arbitrary and capricious.
- “Where the taxpayer calls to the attention of the appraiser and the Commission facts and circumstances which require special consideration of additional factors, the decision of the county tax appraisers must be evaluated and explained.”
- Court also rejected county’s argument that all counties use the schedule and it takes into account obsolescence. “[I]f this contention prevails, then tax appeals would simply be limited to determining whether or not the proper government schedule was employed. This is not what is contemplated in the burden shifting analysis.”

VA Taxpayer Carries Burden

- Keswick Club, LP v. County of Albemarle, 273 Va. 128 (2007).
- County assessor valued golf club property under cost approach. Assessor explained testified that he looked at all three approaches to value but chose to use the cost approach because it rendered the most accurate appraisal of the property and is appropriate when you have a special-use property such as a golf course.
- Taxpayer presented appraisal evidence utilizing the income approach and the sales comparison approach.
- Presumption of Correctness: “a taxing authority’s assessment of a property’s fair market value is presumed valid and a circuit court will reject and correct a taxing authority’s assessment only if the taxpayer demonstrates that the taxing authority committed manifest error or disregarded controlling evidence in making the assessment.”

VA Taxpayer Carries Burden

- Court held that the county was not entitled to this presumption of correctness because its categorical application of the cost approach to the valuation of the property resulted in a failure by the county to consider and properly reject other valuation methods. The county had not investigated the income data or sales comparison data and instead had automatically applied the cost approach. The fact that the county did not attempt to obtain the financial information that would be crucial to a determination whether the income approach would be feasible or appropriate further indicates that the county arbitrarily determined to use the cost method in appraising the property without properly considering the feasibility of the income approach.
- Since the county was not entitled to a presumption of correctness, the taxpayer was required only to show that the county's assessment was erroneous, not that county committed manifest error or disregarded controlling evidence.

- More recently, in West Creek Associates, LLC v. County of Goochland, 276 Va. 393 (2008), the Virginia court made clear that manifest error can be established simply by evidence showing that real property is assessed at more than its fair market value. However, when a taxpayer attempts to prove manifest error solely by showing a significant disparity between fair market value and assessed value without showing that the taxing authority employed an improper methodology in arriving at the property's assessed value, the taxpayer cannot prevail "so long as the assessment comes within the range of a reasonable difference of opinion, ... when considered in light of the presumption in its favor."

Questions?

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