RENDERED: May 24, 2002; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001229-MR

COMMONWEALTH OF KENTUCKY,
JEFFERSON COUNTY PROPERTY VALUATION
ADMINISTRATOR APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JUDITH MCDONALD-BURKMAN, JUDGE
ACTION NO. 00-CI-003010

LHR PARTNERS, LTD.; COMMONWEALTH OF
KENTUCKY, KENTUCKY STATE FAIR BOARD;
KENTUCKY FAIR EXPOSITION CENTER; AND
KENTUCKY BOARD OF TAX APPEALS APPELLEES

OPINION
REVERSING

** ** ** ** **

BEFORE: GUDGEL, CHIEF JUDGE; JOHNSON AND TACKETT, JUDGES.

JOHNSON, JUDGE: The Commonwealth of Kentucky and the Jefferson County Property Valuation Administrator have appealed from an opinion and order entered by the Jefferson Circuit Court on May 23, 2001, which affirmed an order of the Kentucky Board of Tax Appeals, reducing the tax liability of LHR Partners, Ltd., for the tax years 1994-1998. Having concluded that the Board's decision was not supported by substantial evidence, since it failed twice to follow required mathematical formulas, we reverse.

LHR is the owner of a leasehold interest in the Hyatt Regency Hotel in Louisville, Jefferson County, Kentucky. This first-class, 380-room hotel includes numerous meeting rooms, a health club, a swimming pool, and two restaurants. The hotel facility is situated on a two-acre parcel of land owned by the Kentucky State Fair Board. LHR leases the property from the Commonwealth of Kentucky for the sum of $270,000.00 per year, plus a percentage of the hotel's annual gross receipts.[1] The lease will expire at the end of 2007 unless LHR exercises its option to renew the lease. It has the right to renew the lease for two, 10-year periods at a cost of $2,500.00 per renewal. If both lease renewal options are exercised, the lease would extend through 2027.[2]

Since the Commonwealth of Kentucky owns the land upon which the hotel is situated, the real property, and all improvements to the real property, are exempt from taxation.[3] However, LHR's leasehold interest in the hotel is subject to ad valorem property taxes based on the fair cash value of the

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[1]LHR has never paid additional rent based on a percentage of annual gross receipts.

[2]At the conclusion of the lease, LHR is required to deliver the physical structure of the hotel, including all its fixtures and furnishings, to the Commonwealth in good condition and free and clear of any liens and encumbrances.

[3]<u>See</u> Kentucky Constitution, § 170.

leasehold.[4] The responsibility of assessing the fair cash value of LHR's leasehold lies with the Jefferson County PVA.

In 1994, the Jefferson County PVA dramatically increased the assessed value of LHR's leasehold interest in the hotel. Following standard administrative procedures, LHR appealed this new assessment to the Jefferson County Board of Assessment Appeals. After the Board of Assessment Appeals affirmed the PVA's assessment, LHR appealed to the Kentucky Board of Tax Appeals.

On May 11, 1999, an evidentiary hearing was held before the Board of Tax Appeals. The Board heard conflicting testimony in support of differing assessments from each party's expert witness. LHR's expert, Lin Bell, applied the income approach in evaluating the leasehold interest. First, Bell totaled the income generated by the hotel's various components, including real property, furniture, fixtures, equipment, and goodwill. Second, in order to arrive at the fair cash value of LHR's leasehold interest, Bell used a 14% discount rate[5] to estimate the present value of this income stream for the remaining years of the leasehold. While acknowledging the favorable terms of the option to renew the lease, Bell testified that it would be

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[4] See Kentucky Constitution, § 172; Kentucky Revised Statutes (KRS) 132.195(1).

[5] The discount rate was calculated by assuming an 11% expected rate of return for a potential buyer's investment, a 1.6% tax base component, and a 1.4% component to reflect expected increases in income over the remaining term of the lease.

improper to include in the evaluation a renewal of the lease which might not occur.

The PVA's expert, Ron Galloway, used a combination of three valuation approaches: the cost approach, Bell's income approach, and the sales comparison approach. In light of the favorable terms of the lease, Galloway assumed that the options to extend the lease for two, 10-year periods would be exercised. Additionally, he included the hotel's income from off-site catering fees.

The Board of Tax Appeals chose to use Bell's income method in setting the fair cash value of the leasehold. However, the Board rejected Bell's 14% discount rate, replacing it with a 12.5% discount rate; and the Board assumed a 20-year extension of the lease in calculating the value of the leasehold.

The Commonwealth appealed the Board's order to the Jefferson Circuit Court. The Commonwealth claimed the Board committed two computation errors in calculating the present value of the hotel's future income stream. In support of its claim, the Commonwealth sought to introduce before the circuit court a discount rate table from a treatise entitled Capitalization Theory and Techniques.[6] The Commonwealth argued that the table demonstrates that beginning with the year 1994 the Board mistakenly applied the second-year discount factor to the hotel's first year's income stream, and that this mistake in turn caused

[6]Akerman, Charles B., Capitalization Theory and Techniques (Appraisal Institute).

all the succeeding years of the term of the leasehold to be computed with the wrong discount factor. Similarly, the Commonwealth argued that the Board miscalculated the fair cash value for the years 1995, 1996, 1997 and 1998 by using incorrect discount factors. These computation errors for 1995 through 1998 occurred when the Board shortened the length of the leasehold term by eliminating one year from the leasehold term for each successive tax year. Instead of applying the same discount factor for the first year of each new leasehold term and decreasing the discount factor each successive year of the leasehold term, the Board took the highest discount factor off of the leasehold term for each subsequent tax year. Instead, the discount factors should have been the same for each leasehold term with the exception of the discount factor for the final year of the previous leasehold term, which would be eliminated. In other words, the discount factor used to compute the value of the leasehold in the second year of the leasehold term for year 1994 was mistakenly used as the discount factor for the first year of the tax year 1995; the discount factor used in the third year of the leasehold term for year 1994 was mistakenly used as the discount factor for the first year of the tax year 1996; the discount factor used in the fourth year of the leasehold term for year 1994 was mistakenly used as the discount factor for the first year of the tax year 1997; and the discount factor used in the fifth year of the leasehold term for year 1994 was mistakenly used as the discount factor for the first year of the tax year

1998. These alleged errors can best be demonstrated by referring to the computation table used by the Board:

YEAR	ADJUSTED NET INCOME[7]	12.5% DISCOUNT FACTOR	NPV[8]	INDICATED VALUE	LESS GOODWILL	INDICATED VALUE OF INCOME
1994	2489_	0.790123	$1,966,616	$28,098,175	$4,200,000	$23,898,175
1995	2215	0.702332	$1,556,665	$26,131,559	$4,200,000	$21,931,559
1996	3050	0.624295	$1,904,100	$24,575,893	$4,200,000	$20,375,893
1997	3455	0.554929	$1,917,280	$22,671,794	$4,200,000	$18,471,794
1998	3541	0.493270	$1,746,669	$20,754,514	$4,200,000	$16,554,514
1999	3630	0.438462	$1,591,617	$19,007,845		
2000	3721	0.389744	$1,450,237	$17,416,228		
2001	3971	0.346439	$1,375,709	$15,965,990		
2002	4223	0.307946	$1,300,456	$14,590,281		
2003	4478	0.273730	$1,225,763	$13,289,825		
2004	4736	0.243315	$1,152,340	$12,064,062		
2005	4996	0.216280	$1,080,535	$10,911,722		
2006	5258	0.192249	$1,010,845	$ 9,831,187		
2007	5523	0.170888	$ 943,814	$ 8,820,342		
2008	5633	0.151901	$ 855,728	$ 7,876,528		
2009	5746	0.135023	$ 755,860	$ 7,020,800		
2010	5861	0.120020	$ 703,443	$ 6,244,940		
2011	5978	0.106685	$ 637,792	$ 5,541,497		
2012	6098	0.094831	$ 578,264	$ 4,903,704		
2013	6220	0.084294	$ 524,291	$ 4,325,440		
2014	6344	0.074926	$ 475,358	$ 3,801,149		
2015	6471	0.066603	$ 430,993	$ 3,325,791		
2016	6600	0.059202	$ 390,763	$ 2,894,798		
2017	6733	0.052624	$ 354,291	$ 2,504,036		
2018	6867	0.046777	$ 321,225	$ 2,149,744		
2019	7004	0.041580	$ 291,247	$ 1,828,519		
2020	7145	0.036960	$ 264,064	$ 1,537,272		
2021	7287	0.032853	$ 239,416	$ 1,273,208		
2022	7433	0.029203	$ 217,073	$ 1,033,793		
2023	7582	0.025958	$ 196,811	$ 816,720		
2024	7734	0.023074	$ 178,444	$ 619,909		
2025	7888	0.020510	$ 161,787	$ 441,466		
2026	8046	0.018231	$ 146,886	$ 279,679		
2027	8207	0.016205	$ 132,993	$ 132,993		

The Commonwealth's first claim is that the correct discount factor for the first year of the leasehold based on a

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[7]Amounts are in thousands.

[8]Net present value.

12.5% discount rate should be 0.88889 and not 0.790123. The Commonwealth's second claim is that the discount rate of 0.88889 must be used for the first year of each succeeding tax year. The Jefferson Circuit Court rejected the Commonwealth's arguments. The circuit court stated that it could not take judicial notice of the discount rate table, and affirmed the order of the Board. This appeal followed.

When a reviewing court examines the decision of an administrative agency, the court must determine whether the agency's decision is arbitrary.[9]

> "In determining whether an agency's action was arbitrary, the reviewing court should look at three primary factors. The court should first determine whether the agency acted within the constraints of its statutory powers or whether it exceeded them. Second, the court should examine the agency's procedures to see if a party to be affected by an administrative order was afforded [her] procedural due process. The individual must have been given an opportunity to be heard. Finally, the reviewing court must determine whether the agency's action is supported by substantial evidence. If any of these three tests are failed, the reviewing court may find that the agency's action was arbitrary" [citations omitted].[10]

The Commonwealth does not claim that the Board either exceeded its statutory authority or denied it procedural due process, but the Commonwealth does claim that the Board's

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[9]<u>Commonwealth, Transportation Cabinet v. Cornell</u>, Ky.App., 796 S.W.2d 591, 594 (1990).

[10]<u>Bowling v. Natural Resources & Environmental Protection Cabinet</u>, Ky.App., 891 S.W.2d 406, 409 (1994)(quoting <u>Cornell</u>, <u>supra</u>).

assessments were arbitrary and capricious because they were not supported by substantial evidence. The Commonwealth states in its brief that the Board's mathematical computations are "empirically wrong." The Commonwealth points out that "there is absolutely no evidence in the record for the proper mathematical conversion for a 12.5% discount factor" [emphasis original]. The Commonwealth also argues that "the failure of the Board to acknowledge that each successive tax year should be treated as its own year, . . . is clearly erroneous." The Commonwealth observes that if the year 1995 is viewed separate and apart from the other years, then it becomes clear that the 1995 year would be valued by taking "the value of the income stream beginning January 1, 1995, through 2027. The year 1994 would be of no relevance to this computation." We agree with the Commonwealth on both issues.

Substantial evidence has been defined as evidence "which, when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the mind of a reasonable person."[11] When analyzing whether an administrative agency decision is supported by substantial evidence, it should also be noted that the agency is afforded great latitude in evaluating evidence and in determining the credibility of witnesses, and although a reviewing court might have come to a different conclusion had it heard the case de novo, such a

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[11]Id. (citing Kentucky State Racing Commission v. Fuller, Ky., 481 S.W.2d 298, 308 (1972); and Blankenship v. Lloyd Blankenship Coal Co., Inc., Ky., 463 S.W.2d 62 (1970)).

disagreement does not deprive the agency's decision of support by substantial evidence.[12] "[T]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence."[13] Indeed, an administrative agency's trier of facts may hear all the evidence and choose the evidence that he believes.[14]

However, when an administrative agency's finding involves a mathematical error in calculating the discount factor and an error in applying the discount factor to the term of the leasehold, that finding is not supported by substantial evidence and is arbitrary and capricious. While we decline to take judicial notice of the specific present value table sought to be introduced by the Commonwealth, we will take notice of common mathematical formulas,[15] and we will correct obvious mathematical errors when they are evident.[16] The Board applied a discount factor of 0.790123 in calculating the present value of the hotel's projected income stream for the first year of the

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[12]Id. at 410.

[13]Fuller, supra at 307.

[14]Bowling, supra at 410 (citing Cornell, supra at 594).

[15]See Pattie A. Clay Infirmary Association v. First Presbyterian Church of Richmond, Ky., 551 S.W.2d 572, 574 (1977)(holding that courts may take judicial notice of facts which are susceptible to immediate and accurate determination by resort to readily accessible and indisputable sources).

[16]See Penrod v. Penrod, Ky., 489 S.W.2d 524 (1972)(holding that reviewing court will correct obvious mathematical errors committed by a trial court).

leasehold based on a 12.5% discount rate. Given the 12.5% discount rate as found by the Board in its ruling, the correct discount factor for the first year is 0.888889. Such a fact is easily verified by consulting any standard present value chart or by mathematical calculation.[17] The discount factor of 0.790123,

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[17]Assuming a discount factor of 12.5%, the mathematical calculation for the first year is as follows:

$$\text{Discount factor} = \frac{1}{(1 + R)^n}$$

R = The discount rate

n = The number of years

$$DF = \frac{1}{(1 + R)^n}$$

$$DF = \frac{1}{(1 + 12.5\%)^1}$$

$$DF = \frac{1}{(1 + .125)^1}$$

$$DF = \frac{1}{1.125^1}$$

$$DF = \frac{1}{1.125}$$

$$DF = 0.\ 888889$$

SECOND YEAR:

$$DF = \frac{1}{(1 + 1.25)^2}$$

$$DF = \frac{1}{1.125^2}$$

$$DF = \frac{1}{1.265625}$$

$$DF = 0.790123$$

which was erroneously used by the Board for the first year, is actually the discount factor to be applied to the income stream in the second year. The Board's error becomes even more obvious when one considers that LHR's suggested discount factor for year one, which employed a more generous 14% discount rate, was 0.877193. Obviously, since the Board chose a discount rate of 12.5%, a rate less favorable to LHR than the 14% discount rate it suggested, the discount factor for the first year would have to be greater than 0.877193, not less. Furthermore, the same discount factor for year one of the leasehold term that is used for tax year 1994, must be used for year one of the remaining leasehold terms of each additional tax year. The tax year of 1994 will include the leasehold discounted values for a 34-year period; 1995, a 33-year period; 1996, a 32-year period; 1997, a 31-year period; and 1998, a 30-year period, respectively. While each succeeding year will have one less year included in the term of the leasehold, the decrease in the length of the term of the leasehold does not change the starting point of the computation for each tax year. The discount rate of 12.5% is the same for each tax year, and accordingly, the discount factor of 0.88889 must be the same for the first year of each leasehold term for each tax year. The one year decrease in the term of the leasehold is taken off at the end of the present value factor column, not at the beginning.

The correct computations for the five tax years are as follows:

Year	Adjusted Net Income	12.5% Discount Factor	NPV	Indicated Value	Less Goodwill	Indicated Value of Income
1994	$2,489,000	0.888889	$2,212,445	$31,610,286	$4,200,000	$27,410,286
1995	$2,215,000	0.790123	$1,750,122			
1996	$3,050,000	0.702332	$2,142,113			
1997	$3,455,000	0.624295	$2,156,939			
1998	$3,541,000	0.554929	$1,965,004			
1999	$3,630,000	0.493270	$1,790,570			
2000	$3,721,000	0.438462	$1,631,517			
2001	$3,971,000	0.389744	$1,547,673			
2002	$4,223,000	0.346439	$1,463,012			
2003	$4,478,000	0.307946	$1,378,982			
2004	$4,736,000	0.273730	$1,296,385			
2005	$4,996,000	0.243315	$1,215,602			
2006	$5,258,000	0.216280	$1,137,200			
2007	$5,523,000	0.192249	$1,061,791			
2008	$5,633,000	0.170888	$962,612			
2009	$5,746,000	0.151901	$872,823			
2010	$5,861,000	0.135023	$791,370			
2011	$5,978,000	0.120020	$717,480			
2012	$6,098,000	0.106685	$650,565			
2013	$6,220,000	0.094831	$589,849			
2014	$6,344,000	0.084294	$534,761			
2015	$6,471,000	0.074926	$484,846			
2016	$6,600,000	0.066603	$439,580			
2017	$6,733,000	0.059202	$398,607			
2018	$6,867,000	0.052624	$361,369			
2019	$7,004,000	0.046777	$327,626			
2020	$7,145,000	0.041580	$297,089			
2021	$7,287,000	0.036960	$269,328			
2022	$7,433,000	0.032853	$244,196			
2023	$7,582,000	0.029203	$221,417			
2024	$7,734,000	0.025958	$200,759			
2025	$7,888,000	0.023074	$182,008			
2026	$8,046,000	0.020510	$165,023			
2027	$8,207,000	0.018231	$149,622			

Year	Adjusted Net Income	12.5% Discount Factor	NPV	Indicated Value	Less Goodwill	Indicated Value of Income

1995	$2,215,000	0.888889	$1,968,889	$33,023,186	$4,200,000	$28,823,186
1996	$3,050,000	0.790123	$2,409,875			
1997	$3,455,000	0.702332	$2,426,557			
1998	$3,541,000	0.624295	$2,210,629			
1999	$3,630,000	0.554929	$1,965,004			
2000	$3,721,000	0.493270	$1,835,458			
2001	$3,971,000	0.438462	$1,741,133			
2002	$4,223,000	0.389744	$1,645,889			
2003	$4,478,000	0.346439	$1,551,354			
2004	$4,736,000	0.307946	$1,458,432			
2005	$4,996,000	0.273730	$1,367,555			
2006	$5,258,000	0.243315	$1,279,350			
2007	$5,523,000	0.216280	$1,194,514			
2008	$5,633,000	0.192249	$1,082,939			
2009	$5,746,000	0.170888	$981,922			
2010	$5,861,000	0.151901	$890,292			
2011	$5,978,000	0.135023	$807,167			
2012	$6,098,000	0.120020	$731,882			
2013	$6,220,000	0.106685	$663,581			
2014	$6,344,000	0.094831	$601,608			
2015	$6,471,000	0.084294	$545,466			
2016	$6,600,000	0.074926	$494,512			
2017	$6,733,000	0.066603	$448,438			
2018	$6,867,000	0.059202	$406,540			
2019	$7,004,000	0.052624	$368,578			
2020	$7,145,000	0.046777	$334,222			
2021	$7,287,000	0.041580	$302,993			
2022	$7,433,000	0.036960	$274,724			
2023	$7,582,000	0.032853	$249,091			
2024	$7,734,000	0.029203	$225,856			
2025	$7,888,000	0.025958	$204,757			
2026	$8,046,000	0.023074	$185,653			
2027	$8,207,000	0.020510	$168,326			

Year	Adjusted Net Income	12.5% Discount Factor	NPV	Indicated Value	Less Goodwill	Indicated Value of Income
1996	$3,050,000	0.888889	$2,711,111	$34,941,151	$4,200,000	$30,741,151
1997	$3,455,000	0.790123	$2,729,875			
1998	$3,541,000	0.702332	$2,486,958			
1999	$3,630,000	0.624295	$2,266,191			

2000	$3,721,000	0.554929	$2,014,392
2001	$3,971,000	0.493270	$1,958,775
2002	$4,223,000	0.438462	$1,851,625
2003	$4,478,000	0.389744	$1,745,274
2004	$4,736,000	0.346439	$1,640,735
2005	$4,996,000	0.307946	$1,538,498
2006	$5,258,000	0.273730	$1,439,272
2007	$5,523,000	0.243315	$1,343,829
2008	$5,633,000	0.216280	$1,218,305
2009	$5,746,000	0.192249	$1,104,663
2010	$5,861,000	0.170888	$1,001,575
2011	$5,978,000	0.151901	$908,064
2012	$6,098,000	0.135023	$823,370
2013	$6,220,000	0.120020	$746,524
2014	$6,344,000	0.106685	$676,810
2015	$6,471,000	0.094831	$613,651
2016	$6,600,000	0.084294	$556,340
2017	$6,733,000	0.074926	$504,477
2018	$6,867,000	0.066603	$457,363
2019	$7,004,000	0.059202	$414,651
2020	$7,145,000	0.052624	$375,998
2021	$7,287,000	0.046777	$340,864
2022	$7,433,000	0.041580	$309,064
2023	$7,582,000	0.036960	$280,231
2024	$7,734,000	0.032853	$254,085
2025	$7,888,000	0.029203	$230,353
2026	$8,046,000	0.025958	$208,858
2027	$8,207,000	0.023074	$189,368

Year	Adjusted Net Income	12.5% Discount Factor	NPV	Indicated Value	Less Goodwill	Indicated Value of Income
1997	$3,455,000	0.888889	$3,071,111	$36,315,606	$4,200,000	$32,115,606
1998	$3,541,000	0.790123	$2,797,826			
1999	$3,630,000	0.702332	$2,549,465			
2000	$3,721,000	0.624295	$2,323,002			
2001	$3,971,000	0.554929	$2,203,623			
2002	$4,223,000	0.493270	$2,083,079			
2003	$4,478,000	0.438462	$1,963,433			
2004	$4,736,000	0.389744	$1,845,828			
2005	$4,996,000	0.346439	$1,730,809			
2006	$5,258,000	0.307946	$1,619,180			

2007	$5,523,000	0.273730	$1,511,811
2008	$5,633,000	0.243315	$1,370,593
2009	$5,746,000	0.216280	$1,242,745
2010	$5,861,000	0.192249	$1,126,771
2011	$5,978,000	0.170888	$1,021,568
2012	$6,098,000	0.151901	$926,292
2013	$6,220,000	0.135023	$839,843
2014	$6,344,000	0.120020	$761,407
2015	$6,471,000	0.106685	$690,359
2016	$6,600,000	0.094831	$625,885
2017	$6,733,000	0.084294	$567,552
2018	$6,867,000	0.074926	$514,517
2019	$7,004,000	0.066603	$466,487
2020	$7,145,000	0.059202	$422,998
2021	$7,287,000	0.052624	$383,471
2022	$7,433,000	0.046777	$347,693
2023	$7,582,000	0.041580	$315,260
2024	$7,734,000	0.036960	$285,849
2025	$7,888,000	0.032853	$259,144
2026	$8,046,000	0.029203	$234,967
2027	$8,207,000	0.025958	$213,037

Year	Adjusted Net Income	12.5% Discount Factor	NPV	Indicated Value	Less Goodwill	Indicated Value of Income
1998	$3,541,000	0.888889	$3,147,556	$37,400,060	$4,200,000	$33,200,060
1999	$3,630,000	0.790123	$2,868,146			
2000	$3,721,000	0.702332	$2,613,377			
2001	$3,971,000	0.624295	$2,479,075			
2002	$4,223,000	0.554929	$2,343,465			
2003	$4,478,000	0.493270	$2,208,863			
2004	$4,736,000	0.438462	$2,076,556			
2005	$4,996,000	0.389744	$1,947,161			
2006	$5,258,000	0.346439	$1,821,576			
2007	$5,523,000	0.307946	$1,700,786			
2008	$5,633,000	0.273730	$1,541,921			
2009	$5,746,000	0.243315	$1,398,088			
2010	$5,861,000	0.216280	$1,267,617			
2011	$5,978,000	0.192249	$1,149,265			

2012	$6,098,000	0.170888	$1,042,075
2013	$6,220,000	0.151901	$944,824
2014	$6,344,000	0.135023	$856,586
2015	$6,471,000	0.120020	$776,649
2016	$6,600,000	0.106685	$704,121
2017	$6,733,000	0.094831	$638,497
2018	$6,867,000	0.084294	$578,847
2019	$7,004,000	0.074926	$524,782
2020	$7,145,000	0.066603	$475,878
2021	$7,287,000	0.059202	$431,405
2022	$7,433,000	0.052624	$391,154
2023	$7,582,000	0.046777	$354,663
2024	$7,734,000	0.041580	$321,580
2025	$7,888,000	0.036960	$291,540
2026	$8,046,000	0.032853	$264,335
2027	$8,207,000	0.029203	$239,669

For the foregoing reasons, the opinion and order of the Jefferson Circuit Court, which affirmed the order of the Kentucky Board of Tax Appeals, is reversed.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR APPELLANT:

Lawrence E. Osterhage
Louisville, Kentucky

BRIEF AND ORAL ARGUMENT FOR APPELLEE:

Robert L. Ackerson
Louisville, Kentucky