

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Property Tax

NORTHWEST HOSPITAL SERVICE,)
)
Plaintiff,) No. 981765A (Control)
) 982402A; 982403A
v.)
)
MULTNOMAH COUNTY ASSESSOR,)
)
Defendant.) DECISION

Plaintiff has appealed the assessed value of personal property, identified by Account No. P10351000097, for the 1994-95, 1995-96, 1996-97 and 1997-98 tax years.¹ Plaintiff was represented by its counsel, W. S. Phinney. John Kruzinski, ASA, was its witness. Defendant appeared through John Thomas, Assistant Multnomah County Counsel, with testimony from Bob Steiner, of its staff.

STATEMENT OF FACTS

The property at issue is the personal property used by plaintiff at 100 and 200 SW Market St., 1620 and 2000 SW 1st Ave, and 1600 SW 4th Ave in Portland to conduct its business of underwriting health insurance. The categories of personal property fall into six groups- office furniture, personal computers, main frame computers, audio-visual equipment, telephones and fax machines, and office equipment. The roll values for

¹The 1994-95, 1995-96, and 1996-97 tax years were transfers of pending appeals from the Department of Revenue to the Tax Court pursuant to Oregon Laws 1995, chapter 650, section 116. The 1994-95 and 1995-96 tax years were requests that the agency apply its power under ORS 306.115 to order a hearing on the merits of plaintiff's appeal. As the agency elected to do so (In re Northwest Hospital Service Blue Cross/Blue Shield of Oregon, PR No. 97-4132(PR) March 19, 1998), and the 1996-97 tax year was a timely appeal from the board of ratio review, these tax years are properly before the court. The 1997-98 tax year was an appeal to the Magistrate Division from the board of property tax appeals.

the years at issue are as follows:

Tax Year	Roll Value	Defendant's Recommendation ²
1994-95	\$23,075,820	\$22,665,685
1995-96	\$23,420,700	\$23,089,488
1996-97	\$22,875,690	\$22,549,174
1997-98	\$29,361,850	No change.

Plaintiff's argument presents the proposition that the mass appraisal schedules used by defendant to value the personal property do not reflect the correct market values. The appraisal report of Mr. Kruzinski was used to support this argument. Mr. Kruzinski, accredited by the ASA in machinery and equipment, testified that he appraised the property according to its value in use using asset lists and acquisition costs provided by plaintiff.³

In the valuation of the office furniture the witness interviewed two suppliers, First, Inc. and Smith Furniture. The former, First, Inc. did purchase used office furniture from plaintiff, offering \$48,000 (or 8% of original cost) in March of 1998, but ultimately purchasing the items for \$5,500 (or 1% of original cost) in October of 1998, with the plan of reselling the goods at a price 60% greater.⁴ The latter source interviewed by Mr. Kruzinski, Smith Furniture, told of purchasing used furniture in the range of 5% of the original price for wood furniture; 2% to 4% for chairs, workstations and office systems; and 3% to 4% for storage systems. As these companies spoke of a glut in the market⁵ for

²Defendant, in its preparation for this appeal, did recommend the roll be changed to this extent.

³Mr. Kruzinski was provided the list by Joyce Kerstiens, a C.P.A. and Corporate Tax Specialist for plaintiff. Mr. Kruzinski audited the list through a spot check of the business.

⁴First, Inc.'s other expenses would include, among others, the expenses of tearing down, moving, storing, and installing the office furniture.

⁵Attributed to mergers, downsizing, failures, and acquisitions among businesses and financial institutions.

used furniture during the later tax years, Mr. Kruzinski chose to estimate the values of the office furniture by applying the following factors to the items' original acquisition costs for each year at issue, adding an additional 7%⁶ to reflect freight and installation.

<u>Tax Year</u>	<u>Workstation Furniture</u>	<u>Wood Furniture</u>
1997-98	13%	15%
1996-97	21%	23%
1995-96	23%	25%
1994-95	25%	27%

Mr. Kruzinski relied on published price guides, appropriate to each year, to estimate the values of the balance of the property. However, within each category a different factor was applied to represent the expenses of shipping and installing the asset. These factors were uniform across all tax years, and were 5%⁷ for the office and audio-visual equipment; 10% for telephones, fax machines, and personal computers; and 25% for main frame computers.

Mr. Kruzinski applied this process using the 1997 asset list as a base. Properties to be valued for the earlier tax years were determined by removing properties added after the assessment date, and recapturing retirements. From this process the following values were concluded:⁸

<u>Classification</u>	<u>Original Cost</u>	<u>Real Market Value</u>
Office Furniture	\$ 14,333,404	\$ 2,259,433
Office Equipment	\$ 5,241,270	\$ 825,921
Audio-Visual Equipment	\$ 2,187,410	\$ 404,529
Telephone and fax machines	\$ 6,442,602	\$ 1,101,351
Main Frame Computers	\$ 27,193,904	\$ 2,948,094
<u>Personal Computers</u>	<u>\$ 16,188,853</u>	<u>\$ 3,234,836</u>

⁶The 7% factor was based on contacts with five companies.

⁷This 5% represents only a shipping charge, and no installation.

⁸Compare Plaintiff's Exhibits 1, 2, 3, and 6.

Rounded total	\$ 71,590,000	\$ 10,774,164
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1996-97

<u>Classification</u>	<u>Original Cost</u>	<u>Real Market Value</u>
Office Furniture	\$ 9,056,232	\$ 2,034,925
Office Equipment	\$ 3,709,515	\$ 398,783
Audio-Visual Equipment	\$ 2,035,785	\$ 552,168
Telephone and fax machines	\$ 4,785,488	\$ 797,473
Main Frame Computers	\$ 25,035,204	\$ 2,864,231
Personal Computers	\$ 11,816,669	\$ 2,953,119
<u>1996 Retirement Adjustment</u>	<u>\$ 5,206,737</u>	<u>\$ 814,773</u>
Rounded total	\$ 61,645,000	\$ 10,415,472

1995-96

<u>Classification</u>	<u>Original Cost</u>	<u>Real Market Value</u>
Office Furniture	\$ 8,763,475	\$ 2,157,389
Office Equipment	\$ 3,678,188	\$ 446,724
Audio-Visual Equipment	\$ 1,371,100	\$ 349,551
Telephone and fax machines	\$ 4,324,007	\$ 825,804
Main Frame Computers	\$ 23,290,065	\$ 2,838,078
Personal Computers	\$ 7,752,007	\$ 1,747,996
<u>Retirement Adjustment</u>	<u>\$ 5,640,898</u>	<u>\$ 876,857</u>
Rounded total	\$ 54,820,000	\$ 9,242,398

1994-95

<u>Classification</u>	<u>Original Cost</u>	<u>Real Market Value</u>
Office Furniture	\$ 8,451,693	\$ 2,262,188
Office Equipment	\$ 2,800,947	\$ 516,401
Audio-Visual Equipment	\$ 137,343	\$ 25,440
Telephone and fax machines	\$ 3,301,418	\$ 1,000,051
Main Frame Computers	\$ 21,125,705	\$ 5,373,239
Personal Computers	\$ 4,738,865	\$ 1,594,958
<u>Retirement Adjustment</u>	<u>\$ 8,569,423</u>	<u>\$ 1,700,389</u>
Rounded total	\$ 49,125,000	\$ 12,472,665

For its part defendant did not appraise the property, however Mr. Steiner made a series of arguments based on the personal property returns. All returns were of the standard format,⁹ with its declaration, made under penalties of false swearing, that the statements in the return are true. With the exception of the 1995-96 tax year, all the returns

⁹Department of Revenue Form 150-553-004

were filed by Ms. Kerstiens.¹⁰ When the original cost to acquire the assets, as set out in the returns, is compared to the original costs used in plaintiff's appraisal, the costs used in plaintiff's appraisal exceed the costs set out in the returns for the 1995-96, 1996-97, and 1997-98 tax year by approximately 2.5% to 12%; for the 1994-95 tax year the costs set out in the return are some 4% greater than the costs used in the appraisal.¹¹

Defendant looked to this situation to point out that the returns reported more value than the asset list, to the extent of some \$3,301,418 as to the category of telephone and fax machines for the 1994-95 tax year. Plaintiff's retort was that this was only the situation for the 1994-95 tax year. Mr. Steiner went on to point out that there was a \$7,000,000 discrepancy between the cost basis of the 1997 appraisal list and the 1997 return. Plaintiff emphasized that the discrepancy was in such a direction as to create a higher, rather than a lower, assessment. Using 13% of original cost to estimate the value of used furniture was also presented by defendant as overstating the depreciation applicable to items just purchased in that it treats newly-purchased system furniture as losing its value almost immediately. Plaintiff's response was to observe that, as the bulk of its office furniture dates from the 1980s and earlier, any inaccuracy as to later purchases is made up by the overassessment of older items.

After trial plaintiff proposed further changes to its appraisal report. Noting that its original asset list ran for a full calendar year, plaintiff proposed to delete items acquired between July and December of 1997. Plaintiff also removed double entries within the category of personal computers, and increased the factor for used office furniture

¹⁰See Footnote 3.

¹¹Defendant's Exhibit 110.

an additional 3%. The effect of this was to decrease the original cost total of the appraisal to an amount all but identical to that shown on the 1997-98 personal property return,¹² and change the values indicated in plaintiff's appraisal. Defendant objected to this material as an untimely submission.

COURT'S ANALYSIS

ORS 308.290 requires that taxpayers report their acquisitions and dispositions of personal property on their property tax returns. As part of the return the taxpayer must include information as to each piece of property, including its description, the year it was acquired, and its cost. However, the filing of a return does not bar a taxpayer, on a subsequent appeal, from correcting inaccurate or incomplete information as to the listed items on which the tax is assessed. See *Benj. Franklin Savings and Loan v. Dept. of Rev.*, 310 Or 651, 801 P2d 771 (1990). A plaintiff may, on appeal, present information supplementing, or even contradicting, the original returns, and this information may be used to value the subject property, so long as plaintiff meets its burden of demonstrating that this new information is the more reliable and persuasive. Moreover, this personal property need not necessarily be valued according to a depreciation schedule, but instead may have its value fixed through an item-by-item appraisal. *Id.*

Applying this precedent to this appeal results in the conclusion that the asset list used by plaintiff in its appraisal is a reliable basis for appraising the 1997-98, 1996-97, and 1995-96 tax years, but not the 1994-95 tax year. The court bases this conclusion on the observation that as to the 1997-98, 1996-97, and 1995-96 tax years plaintiff always showed higher original acquisition costs in its appraisal as compared to the returns. This

¹²\$65,833,311 as opposed to \$66,045,502.

is a powerful point. However, such was not the case for the 1994-95 tax year, when the return showed a greater acquisition cost than the asset list. Without further testimony as to the 1994-95 tax year, the court is not persuaded that the asset list used by plaintiff accurately captures all the items to be valued.

With this observation the real issue of this appeal emerges, which is the selection of the best method to capture the subsequent real market value of the property—whether by plaintiff's item-by-item appraisal or defendant's use of the Department of Revenue's depreciation schedules. The court is persuaded that, as to the 1996-97 and 1997-98 tax years, Mr. Kruzinski's appraisal is more persuasive.

Mr. Kruzinski, an accredited appraiser, identified the character and condition of the assets, researched the appropriate used equipment markets,¹³ and added the necessary freight and installation charges to value the property according to the use at which plaintiff is to be taxed. Defendant, by way of contrast, did not establish the bona fides of the Department of Revenue's depreciation schedules. Defendant did compare acquisition costs between the 1996-97 and 1997-98 tax years and observe that while plaintiff spent some \$10,000,000 to acquire important assets, Mr. Kruzinski's appraisal showed only an increase in real market value of some \$300,000. From this defendant reasoned that either there is a depressed market for this property, or else plaintiff's appraisal is mistaken. From the court's perspective, the former point was exactly the thrust of Mr. Kruzinski's testimony, and defendant did not develop the latter argument through

¹³The use of used equipment prices has been repeatedly approved by the Oregon Supreme Court. *Hyster Co. v. Dept. of Rev.*, 10 OTR 101 (1985).

evidence either contradicting Mr. Kruzinski's development of the used equipment market,¹⁴ or otherwise validating the Department of Revenue's valuation schedules.

The court's choice of plaintiff's item-by-item appraisal as establishing the real market value of the property does not, however, extend to the 1995-96 tax year. Mr. Kruzinski inspected the property in 1998. The court regards an appraiser's view of the property as an important element of the appraisal process. Without further testimony from plaintiff demonstrating the unchanging status of the assets in the interim, the court does not have the same confidence in the appraisal's conclusion. Moreover, Mr. Kruzinski's sources, especially as to the category of used furniture, did not identify the activities of the market as to the 1994-95 tax year with the same precision that they did in later periods.

Plaintiff has made a case calling for correction to the roll for the 1996-97 and 1997-98 tax years. The conclusion of the court is that for each year the evidence shows respective rounded values of \$10,500,00 and \$11,000,000.¹⁵

CONCLUSION

IT IS THE DECISION OF THIS COURT that plaintiff's appeal is granted as to the 1996-97 and 1997-98 tax years. Relief is denied for the other years at issue.

Dated this _____ day of June, 2000.

¹⁴Defendant did make the argument that plaintiff may have such dominance in the market for office furniture that it may skew the sources used by plaintiff's appraiser. However, the testimony as to completed transactions as to used furniture, in fact the subject matter of this appeal, from First, Inc. was an important validator of the appraiser's conclusion.

¹⁵Plaintiff's materials offered after trial (Plaintiff's Proposed Exhibit D) argues for even lower values. Defendant's point that this offering goes beyond the magistrate's instructions at the close of trial is well taken- the offering's incorporation of an opinion by a second appraiser is an example. However, as true cash value is a range of value, and the values found in plaintiff's excluded material are within the range of value set out in this decision, the court's granting of defendant's objection is a minor point.

SCOT A. SIDERAS
PRESIDING MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97310. YOUR COMPLAINT MUST BE SUBMITTED WITHIN 60 DAYS AFTER THE DATE OF THE DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.

THIS DOCUMENT WAS SIGNED BY MAGISTRATE SCOT A. SIDERAS ON JUNE 30, 2000. THE COURT FILED THIS DOCUMENT ON JUNE 30, 2000.