

Westlaw.

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Tax Court of Arizona.
 SMP II LIMITED PARTNERSHIP
 v.
 ARIZONA DEPARTMENT OF REVENUE; Mari-
 copa County.
 No. TX 92-00619.

March 30, 1994.

Taxpayer appealed from county's appraisal of the value of its resort hotel. The Arizona Tax Court, Schafer, J., held that the evidence supported the taxpayer's claim that the resort hotel was worth \$6,780,000, not \$8,400,000 as claimed by the county's appraiser, who used a 366-day year in calculating income, who failed to adjust expense and income items attributable to golf course operations that were not in dispute, and whose other computations resulted in an inflated value.

Ordered accordingly.

West Headnotes

[1] Taxation 371 ↪ 2722

371 Taxation
 371III Property Taxes
 371III(H) Levy and Assessment
 371III(H)11 Evidence in General
 371k2722 k. Presumptions. Most Cited

Cases
 (Formerly 371k493.7(3))

Presumption that government's valuation of property is correct and lawful is one of fact and may be overcome by competent evidence. A.R.S. § 42-178, subd. B.

[2] Taxation 371 ↪ 2722

371 Taxation
 371III Property Taxes
 371III(H) Levy and Assessment

371III(H)11 Evidence in General
 371k2722 k. Presumptions. Most Cited

Cases
 (Formerly 371k493.7(6))

To overcome presumption that government's valuation of property is correct and lawful, taxpayer must present sufficient evidence contradicting presumption, from which Tax Court can determine full cash value of property. A.R.S. § 42-178, subd. B.

[3] Taxation 371 ↪ 2722

371 Taxation
 371III Property Taxes
 371III(H) Levy and Assessment
 371III(H)11 Evidence in General
 371k2722 k. Presumptions. Most Cited

Cases
 (Formerly 371k493.7(6))

For Tax Court to make its own determination of full cash value of property, evidence must be presented to rebut presumption that government's valuation of property is correct and lawful, and Court must make preliminary finding that valuation is excessive or insufficient. A.R.S. § 42-178, subds. B, C.

[4] Taxation 371 ↪ 2514

371 Taxation
 371III Property Taxes
 371III(H) Levy and Assessment
 371III(H)5 Valuation of Property
 371k2512 Real Property in General

371k2514 k. Matters Considered and Methods of Valuation in General. Most Cited Cases

(Formerly 371k493.7(6))
 Evidence supported taxpayer's claim that resort hotel was worth \$6,780,000, not \$8,400,000 as claimed by county; county's appraiser used 366-day year in calculating income, he failed to adjust expense and income items attributable to golf course operations that were not in dispute, and flaws in other computations resulted in inflated value.

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A.R.S. § 42-178, subds. B, C.
 **204 *249 Donald P. Roelke and Paul J. Mooney,
 Phoenix, for plaintiff.

Helm & Kyle by John D. Helm, Tempe, for defend-
 ant.

stream for 1992 from an estimated occu-
 pancy rate of 62% and an estimated aver-
 age daily room rate of \$72.00-estimates
 higher than the Sheraton San Marcos has
 ever actually achieved. In contrast, SMP II
 derived its income stream by using 1992
 estimates of a 60% occupancy rate and an
 average daily room rate of \$70.00.

OPINION

SCHAFFER, Judge.

The issue in this case is the valuation of the
 Sheraton San Marcos Resort.

The San Marcos is a 295-room full-service resort
 hotel, including a golf course, located **205 *250
 in Chandler, Arizona. It opened in 1913 with 35
 guest rooms and operated until 1979. It re-opened
 in 1987 after extensive renovations and expansion.
 Even with the expansion and renovations the hotel
 continues to perform below area averages for aver-
 age daily room rates and occupancy rates.

For tax year 1992, Maricopa County set the full
 cash value of the San Marcos at \$15,649,535. SMP
 II Limited Partnership (SMP II), the owner of the
 hotel, filed an administrative appeal and the State
 Board of Tax Appeals reduced the full cash value to
 \$11,110,457. It is that valuation which has been ap-
 pealed.^{FN1}

FN1. Parcel numbers 303-08-002 through
 303-08-012, 303-08-113A, 303-08-014,
 303-08-090A through 303-08-105,
 303-08-106A and 303-08-005A are in-
 cluded in this appeal. The valuation of the
 golf course property and associated parcels
 are not being appealed.

SMP II contends that the full cash value of \$11 +
 million is excessive and should be lowered to
 \$6,780,000. The County concedes that \$11 + mil-
 lion is excessive, but asserts that the value should
 be lowered only to \$8.4 million.^{FN2}

FN2. The County derived its income

ANALYSIS

[1][2] When a valuation is appealed to the Tax
 Court, there is a presumption that the government's
 valuation is correct and lawful. A.R.S. § 42-178(B).
 The presumption is one of fact and may be over-
 come by competent evidence. *Department of Prop-
 erty Valuation v. Trico Electric Cooperative, Inc.*,
 113 Ariz. 68, 70, 546 P.2d 804, 806 (1976). To
 overcome the presumption, a taxpayer must present
 sufficient " 'evidence contradicting the presumption
 ... from which the trial court can determine the full
 cash value of the property in question.' " *Depart-
 ment of Property Valuation v. Trico Electric Co-
 operative, Inc.*, *supra*, 113 Ariz. at 69 and 70, 546
 P.2d at 805 and 806 (quoting *Graham County v.*
Graham County Electric Coop., Inc., 109 Ariz. 468,
 512 P.2d 11 (1973)).

[3] The Tax Court may make its own determination
 of full cash value only after two conditions are met.
 First, evidence must be presented to rebut the pre-
 sumption. A.R.S. § 42-178(C); *Department of*
Property Valuation v. Trico Electric Cooperative,
Inc., *supra*, 113 Ariz. at 70, 546 P.2d at 806. And
 second, the Court must make a preliminary finding
 that the valuation is excessive or insufficient.
 A.R.S. § 42-178(C).

[4] Here, the parties are in agreement that the
 County's original valuation of \$11,110,457 is ex-
 cessive and should be reduced but they cannot
 agree on what the reduction should be. Therefore, it
 is up to the Court to determine the full cash value.

SMP II presented testimony and evidence to estab-

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lish a full cash value of \$6,780,000 while the County presented evidence showing \$8,400,000^{FN3}. The Court finds the full cash value to be \$6,780,000.

FN3. The County stipulated prior to trial that it would not request a valuation higher than \$8,400,000. In its post trial memoranda the County agrees to stand by its stipulation while suggesting that the Court would be justified in increasing the valuation to \$8,790,000 due to the Court's granting of Taxpayer's motion to dismiss parcel 107A from the appeal. The Court will hold the County to its stipulation.

To support its position that the value should be lowered to \$8.4 million, the County presented expert testimony and an appraisal of the property. The appraisal was prepared by Lawrence Bloom, a certified MAI appraiser and consultant. He inspected the property and reviewed the hotel's financial and operating statements. He derived his final valuation of approximately \$8,460,625 by utilizing the income approach to value with a direct capitalization rate of 9.5%.

There are several flaws in Mr. Bloom's analysis. Those flaws include Mr. Bloom's use of a 366-day year in his calculations rather than the appropriate 365-day year, his failure to adjust certain items of expense and income attributable to those golf course operations of the resort not the subject of this appeal, his overadjustment of some expense**206 *251 items to inaccurately reflect the estimated operating expenses, and his failure to make other necessary adjustments to the income, expenses and the capitalization rate used in his approach to valuation. These flaws resulted in an inflated value.

SMP II also presented an appraisal of the property to support its reduction in value to \$6,780,000. Its appraisal was done by Tom Turner, also a certified MAI appraiser and consultant. Mr. Turner used each of the three commonly accepted appraisal

methods to arrive at the \$6+ million value, but, like Mr. Bloom, he relied most heavily on the income approach. He used a discounted cash flow analysis rather than the direct capitalization method used by Mr. Bloom. In arriving at his valuation under the income approach, he did an analysis of the hotel's historical operating data and, using that as a starting point, prepared a forecast of occupancy and daily room rates, which reflect a build-up over the four year period from 1992 through 1996. This build-up approach was necessary in order to reach stabilized occupancy and daily room rates. He then made adjustments to the hotel's expenses and revenues to reflect stabilized operations and present a realistic operating picture. The end result was a valuation of \$6,780,000.

Mr. Turner's approach took into consideration the San Marcos's actual operating expenses and revenue while forecasting realistic increases or decreases in certain expense and revenue items. He also made realistic adjustments to the hotel's expenses and revenue to reflect where *this* hotel, with its unique circumstances, should be performing when stabilized as compared to national averages of similar hotels. In contrast, Mr. Bloom's analysis and adjustments did not accurately reflect this hotel's actual expense history and anticipated needs, nor did it fully account for the hotel's location and other shortcomings.

This Court finds that as of January 1, 1992, the full cash value of the Sheraton San Marcos property was \$6,780,000.

CONCLUSION

IT IS ORDERED that the full cash value for 1992 of the Sheraton San Marcos property be lowered to \$6,780,000 and the tax rolls be corrected accordingly. The County is **ORDERED** to issue a refund of the excess property taxes paid which results from the difference in the initial property valuation and this corrected valuation, plus interest. Finally, **IT IS ORDERED** that the County pay SMP II's costs

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associated with this appeal.

This opinion is not a final, appealable judgment and other orders will follow. See *Devenir Associates v. City of Phoenix*, 169 Ariz. 500, 821 P.2d 161 (1991).

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