

STATE OF MICHIGAN
COURT OF APPEALS

TROY TECHNOLOGY PARK,

Petitioner-Appellant,

v

CITY OF TROY,

Respondent-Appellee.

UNPUBLISHED

July 25, 1997

No. 193934

Michigan Tax Tribunal

LC No. 00190719

Before: Neff, P.J., and Wahls and Taylor, JJ.

PER CURIAM.

Petitioner appeals as of right from a Michigan Tax Tribunal (Tribunal) judgment affirming respondent's assessment of property taxes on its commercial property. We affirm.

This case involves the valuation of property for ad valorem (i.e., value based) property tax purposes. The case was submitted to the Tribunal on stipulated facts, which included two alternative values: one for the subject property together with the leases in place, i.e., the leased fee interest; and the other for just the subject property itself without the leases in place, i.e., the fee simple interest. The Tribunal selected the higher stipulated value.

Because the parties submitted stipulated facts and there is no allegation of fraud, our review of the decision by the Tribunal is limited to determining whether the Tribunal erred in applying the law or adopted a wrong principle. *Michigan Bell v Treasury Dep't*, 445 Mich 470, 476; 518 NW2d 808 (1994).¹ The adoption of a wrong principle constitutes an error of law that compels reversal. *First City Corp v Lansing*, 153 Mich App 106, 112; 395 NW2d 26 (1986). We also keep in mind that the authority to impose a tax must be expressly authorized by law, that it will not be inferred, and that ambiguities in a tax statute are to be resolved in favor of the taxpayer. *Michigan Bell, supra* at 477.

The property at issue consists of four adjacent parcels located in Troy, Michigan, totaling approximately 26.7 acres. There are ten buildings on the property containing 387,289 square feet of office and light industrial space. The parties stipulated that the income approach to valuation was an appropriate method of determining the value of the property. As of the valuation dates for years 1993, 1994, and 1995, the value of the property based on existing leases, continued occupancy, and market

rent was \$18,161,260. On each of these valuation dates, the buildings were leased and occupied. The value of the property if vacant and available for sale would have been \$14,250,000. The parties agree that the only issue to be decided is a legal one: whether the value of the existing leases is properly taken into account in determining the true cash value of the property. Relying on the principle that true cash value equals fair market value, the Tribunal determined that the proper valuation was one that included the present value of the leases because the property will sell for more due to the leases being in place.

Petitioner claims that there exists no express statutory authority for assessments which include the value of leases in place. We disagree. MCL 211.27(1); MSA 7.27(1) mandates that, among other factors, the present economic income of structures be taken into account in determining true cash value. Section 27(4) defines “present economic income” to mean “in the case of leased or rented property[,] the ordinary, general and usual economic return realized from the lease or rental of property negotiated under . . . contemporary conditions between parties equally . . . familiar with real estate values.” See *Meadowlanes Limited Dividend Housing Ass’n v City of Holland*, 437 Mich 473, 484-486; 473 NW2d 636 (1991) (stating that the goal of the valuation process is an assessment result that reflects all the factors that influence the market value of the property). Further, in *Lionel Trains Inc v Chesterfield Twp*, __ Mich App __ (Docket No. 195787, issued June 27, 1997), this Court stated that existing use is relevant to the fair market value of a property. Therefore, because the Legislature has mandated that income from rental and leased property be included in the determination of a property’s cash value, we reject the argument that there was no statutory authority to include the lease income in valuing the property.

Petitioner’s argument that the leasehold interest represents a personal, intangible asset that cannot be taken into account when determining the true cash value of the property also fails. “Intangibles, consisting of *rights not related to physical things*, are merely relationships between persons, natural or corporate, which the law recognizes by attaching to them certain sanctions enforceable in the courts.” 63A Am Jur 2d, Property, § 11, p 242 (emphasis added). A lease has no value apart from the physical property to which it relates because the rights transferred are the rights to use or occupy that property. Consequently, a lease is not an intangible asset comparable to a patent or stock holding. Compare *Xerox Corp v Oakland Co*, 157 Mich App 640; 403 NW2d 188 (1987) (involving taxation of leased equipment). Furthermore, in *Meadowlanes, supra* at 496, the Supreme Court expressly held that intangibles may be taken into account where they influence the market value of the property. Therefore, even if the leases could be considered to be intangible property, they are properly “considered in the valuation and assessment process in the same manner as tax benefits, location, zoning, and other intangible value influences.” *Id.* See also *Southfield Western, Inc v City of Southfield*, 146 Mich App 585, 589-590; 382 NW2d 187 (1985), and cases cited therein. Consequently, whether the leases constitute an intangible asset is not controlling and is not a ground compelling reversal of the Tribunal.

Petitioner next contends that the property should be valued as if the buildings were vacant because the fee interest is separate from the leasehold interest. However, the parties stipulated, and the Tribunal agreed, that the income approach was the proper method of valuation. In *Antisdale v City of*

Galesburg, 420 Mich 265, 276-277 n 1 (1985), our Supreme Court described the income approach to determining market value as follows:

The income approach is based on the premise that there is a relation between the income a property can earn and its value. A large number of commercial properties are purchased and leased to tenants by the owner who does not get the advantages arising from his own occupancy of the property. Consequently, the future net income the property is capable of earning is the main benefit to the owner. For this reason the worth of the property to prospective purchasers is based largely upon its income. In addition to income earned annually during an ownership term, another important benefit is the net amount received from the sale of the property when ownership is terminated. The earning potential of the property at that time will directly affect its sale price. The net income earning capacity of the property now and at ownership termination is, therefore, an important gauge of its value. The income approach to value translates the estimated future income of a property into total present value by the use of various data and organized mathematical computations. [*Id.*; see also 3 State Tax Comm Assessor's Manual, Ch VIII, p 1.]

Thus, the income approach determines value on the basis of the income produced by the leased interest plus the value of the reversionary interest, i.e., the base value of the property itself in addition to its income-producing potential. Put another way, under the income approach to valuation, the true cash value of the property, or the value of the fee simple estate, equals the value of the leasehold interest plus the value of the reversionary interest. *Meadowlanes*, *supra* at 485, n 20. Accepting petitioner's argument that only the reversionary interest should be valued would result in an assessment below market value and in contravention of MCL 211.27(1); MSA 7.27(1), which specifically mandates that income from the property be taken into consideration. Therefore, the Tribunal properly rejected the claim that the leasehold interest represents an interest separate and apart from the fee.

Petitioner also argues that taking the value of the leases into consideration violates the requirement of uniformity of taxation. The assertion is that a poorly managed property will have a lower lease rate than a property that is well managed and this will result in a lower tax base. That would, it is claimed, amount to a violation of the uniformity of taxation requirement as the well managed property would be taxed higher than an otherwise identical property that is poorly managed. The premise of this argument is flawed because, whether there is good or bad management, with its predictable effects on income, it is irrelevant to the income the property "can earn" or is "capable of earning." This objective evaluation is the relevant question under the income approach to which the parties stipulated. *Antisdale*, *supra* at 276. Accordingly, under the income approach, a poorly managed property, that is otherwise identical to another property that is well managed, should not have a different assessment because the assessor is to consider the income the poorly managed property "can earn" or is "capable of earning," *id.*, and is not to be derailed in this analysis by the lower income that is actually being earned as a result of poor management.

Affirmed.

/s/ Janet T. Neff

/s/ Myron H. Wahls

/s/ Clifford W. Taylor

¹ The Tribunal's reliance on the *Michigan Bell* case was misplaced. The *Michigan Bell* case was decided under a different statute and a different constitutional section. The Tribunal also cited a statement found in *CAF Investment v Saginaw Twp*, 410 Mich 428, 472; 302 NW2d 164 (1981), and described it as "controlling." However, the cited language is found in a concurrence signed by only one justice. Thus, the cited language is not controlling authority. Further, the Tribunal also cited *Safran Printing Co v Detroit*, 88 Mich App 376, 382; 276 NW2d 602 (1979), where this Court stated that it was "the duty of the tribunal to hypothesize the *highest* probable price at which a sale would take place." (Emphasis added). However, the cited language was an obvious misstatement in light of the fact that the statute, MCL 211.27; MSA 7.27, clearly states that cash value means "the *usual* selling price." (Emphasis added). Notwithstanding these errors, we find, as explained in the body of the opinion, that the Tribunal reached the correct decision in this case.