

1935

TAXATION - ASSESSMENT FOR PROPERTY TAXES

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Property Law and Real Estate Commons](#), and the [Tax Law Commons](#)

Recommended Citation

TAXATION - ASSESSMENT FOR PROPERTY TAXES, 33 MICH. L. REV. 1116 (1935).

Available at: <https://repository.law.umich.edu/mlr/vol33/iss7/19>

This Recent Important Decisions is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

TAXATION — ASSESSMENT FOR PROPERTY TAXES — In 1926 the plaintiff purchased a lot with the building thereon for \$41,000 and expended \$10,000 in the improvement of the premises. In the same year the property was leased for a period of fifteen years under an agreement that the rent was to be \$6,000 for the first five years, \$8,000 for the second five, and \$10,000 for the third. Plaintiff objected to the tax assessment of \$68,660 for the years 1929, 1930, 1931, and 1932 on the grounds that the court based its valuation on (1) actual earnings instead of earning capacity, and on (2) gross, as distinguished from net, earnings. *Held*, that inasmuch as the present market value would not be a just criterion for the determination of value, the court might consider other factors such as actual earnings, gross income, the cost of the property and the cost of reproduction. *Somers v. City of Meriden*, (Conn. 1934) 174 Atl. 184.

The criterion usually adopted in order to determine value for purposes of taxation has been the "market value" of the property taxed, which has been defined as "the price which the property would bring in an open market on a free, not forced, sale between a willing buyer and willing seller."¹ The application of this test has raised especially acute problems of valuation during the financial depression of the past few years. Narrowly construed, the test would

¹ *People ex rel. Sebring v. Dowd*, 206 App. Div. 727 at 728, 200 N. Y. S. 500 at 501 (1923); *Long Dock Co. v. State Board*, 78 N. J. L. 44, 73 Atl. 53 (1909).

mean that the valuation must be determined by the "prevailing market price,"² but a broader construction would permit a valuation determined by "normal value" such as would be realized in a normal market.³ The reluctance of the courts to accept the former test has been justified on two grounds:⁴ (1) that current market prices are too abnormal to reflect "real value," and (2) that the taxpayer has no grievance unless his property is relatively over-assessed so as to impose on him an undue share of the tax burden of the community.⁵ The result of the inapplicability of the usual method of valuation has been a fictitious valuation determined by treating the test as purely hypothetical.⁶ Consequently, the courts have turned to other factors which might be considered for that purpose. The assessor may capitalize the net income⁷ producing capacity⁸ of the property over a period of years, but when the property is being put to the use for which it is best adapted, actual earnings may be considered important.⁹ The lower court in the principal case capitalized the gross income at 10 per cent, thus intending to allow a certain percentage thereof for legitimate deductible expenses. Other factors which may be considered are the cost of reproduction of the property, and the original cost of the property plus improvements and less depreciation,¹⁰ but no one of these methods should be controlling. Inasmuch as the methods used for determining valuation are so uncertain and involve judgment

² Fair cash value on the date of assessment: *Kentucky River Coal Corp. v. Knott County*, 245 Ky. 822, 54 S. W. (2d) 377 (1932); *Atlantic States Coal Corp. v. Letcher County*, 246 Ky. 549, 55 S. W. (2d) 408 (1932); *Letcher County v. Kentucky River Coal Corp.*, 250 Ky. 7, 61 S. W. (2d) 891 (1933).

³ The following courts leaned toward the "normal value" theory without expressly adopting it: *Tremont & Suffolk Mills v. City of Lowell*, 271 Mass. 1, 170 N. E. 819 (1930); *Central Realty Co. v. Board of Equalization and Review*, 110 W. Va. 437, 158 S. E. 537 (1931).

⁴ See Bonbright, "The Valuation of Real Estate for Tax Purposes," 34 *COL. L. REV.* 1397 at 1411 (1934), an excellent article on this subject.

⁵ *People ex rel. Rickey v. Hunt*, 241 App. Div. 261, 271 N. Y. S. 842 (1934); *Sloman-Polk Co. v. City of Detroit*, 261 Mich. 689, 247 N. W. 95 (1933).

⁶ Wisconsin seems to have been the only state that adhered strictly to an actual market price: *State v. Petrick*, 172 Wis. 82, 178 N. W. 251 (1920); *State v. Weiher*, 177 Wis. 445, 188 N. W. 598 (1922); *State ex rel. Flambeau Paper Co. v. Windus*, 208 Wis. 583, 243 N. W. 216 (1932). New York expressly threw over the market value test when it was inapplicable in *People ex rel. New York Stock Exchange Bldg. Co. v. Cantor*, 221 App. Div. 193, 223 N. Y. S. 64 (1927), *aff'd*, 248 N. Y. 533, 162 N. E. 514 (1928). The Connecticut court said that the test must be the "true and actual value," but it failed to define the terms used: *Underwood Typewriter Co. v. City of Hartford*, 99 Conn. 329, 122 Atl. 91 (1923). New Jersey adopts the "market value" criterion but sets up a hypothetical market with willing buyers and sellers: *Turnley v. City of Elizabeth*, 76 N. J. L. 42, 68 Atl. 1094 (1908).

⁷ *Johnson v. Wells Fargo & Co.*, 239 U. S. 234, 36 Sup. Ct. 62 (1914); *Railroad & Telephone Co's. v. Board of Equalizers*, 85 Fed. 302 (1897).

⁸ *State v. Nevada C. R. Co.*, 28 Nev. 186, 81 Pac. 99 (1905); *State ex rel. Miller v. Thompson*, 151 Wis. 184, 138 N. W. 628 (1912).

⁹ *State v. Illinois C. R. R.*, 27 Ill. 64 (1861).

¹⁰ See 3 COOLEY, *TAXATION*, 4th ed., sec. 1146 (1924); also *People ex rel. Boston H. T. & W. R. R. v. Wilder*, 3 N. Y. St. Rep. 159 (1886).

or discretion to such a large degree, the appellate courts very properly require a clear showing of error before they will reverse the decision of the trial court.

E. W. A.