IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA, STATE BOARD OF EQUALIZATION,
Appellant,
vs.
DAY & ZIMMERMAN HAWTHORNE CORPORATION, A NEVADA CORPORATION,
Respondent.

No. 37725

FILED

FEB 06 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
DEPUTY CLERK

ORDER OF REVERSAL

This appeal arises from a dispute over the taxation of railroad tracks located on the Hawthorne Army Ammunition Plant, which Day & Zimmerman Hawthorne Corporation (DZHC) operates under contract with the United States Department of the Army (United States). In assessing property taxes against DZHC, the Mineral County Assessor included the taxable value of the railroad tracks.

DZHC appealed the assessor's valuation of the property before the Mineral County Board of Equalization, which found that the railroad tracks were not taxable pursuant to a settlement agreement between the United States, DZHC, and Mineral County. The assessor appealed from the county board's decision, and the Nevada State Board of Equalization found that the railroad tracks were taxable because DZHC put them to a beneficial use. The state board assessed the value of the railroad tracks based on DZHC's reported percentage of tracks used (11 percent) and percentage of time used (100 percent). DZHC petitioned the district court for judicial review, and the district court concluded that the railroad tracks should not be taxed because DZHC lacked autonomy over them. The State appealed.

On appeal, the State argues that the state board properly assessed the value of the railroad tracks, and thus, the district court erred in vacating the state board's valuation of the railroad tracks. We conclude that the state board did not apply a fundamentally wrong principle or refuse to exercise its best judgment in finding that DZHC put the railroad tracks to a beneficial use.[1] Likewise, we conclude that the state board did not err in its valuation of the railroad tracks.

NRS 361.227 dictates how real property that is taxable pursuant to NRS 361.157 should be appraised. NRS 361.227(3) states that the taxable value of the assessed property should be reduced by a percentage of the taxable value that is equal to the:

> (a) Percentage of the property that is not actually leased by the lessee or used by the user during the fiscal year; and
>
> (b) Percentage of time that the property is not actually leased by the lessee or used by the user during the fiscal year, which must be determined in accordance with NRS 361.2275.

DZHC first reported that it used 11 percent of the railroad tracks 100 percent of the time. Although DZHC changed its position before the state board, we conclude that the state board did not apply a fundamentally wrong principle or refuse to exercise its best judgment in determining that DZHC's initial report of 100 percent time-usage was accurate.

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[1]See Imperial Palace v. State, Dep't Taxation, 108 Nev. 1060, 1066, 843 P.2d 813, 817 (1992) (observing that decisions of the state board are presumed valid unless it can be shown that the board applied a "fundamentally wrong principle" or "refused to exercise its best judgment").

DZHC also argues that the railroad tracks should not be taxed because their taxable value exceeds their full cash value—"scrap value." We have stated that as long as the state board uses an appropriate method of valuation pursuant to NRS 361.227, it does not apply a fundamentally wrong principle.[2] Because the assessor used a proper valuation method and the assessor's valuation carries a presumption of validity,[3] we conclude that the state board did not apply a fundamentally wrong principle or refuse to exercise its best judgment when it accepted the assessor's appraisal of the cash value of the railroad tracks.

Finally, DZHC argues that the state board erred in assessing the railroad tracks in light of the settlement agreement. We disagree. We conclude that the terms of the settlement agreement do not prevent taxation of the railroad tracks for the year in question, and moreover, such an agreement would be void to the extent that it affects tax liability for future years.[4]

Accordingly, we conclude that the state board correctly assessed the railroad tracks and

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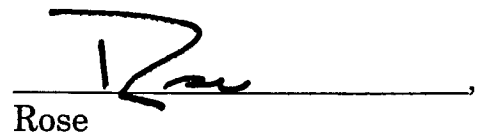
[2]Washoe County v. Golden Road Motor Inn, 105 Nev. 402, 406, 777 P.2d 358, 360-61 (1989).

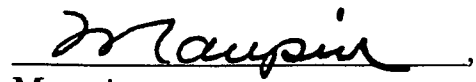
[3]See Pittsburg Silver Peak v. Tax Commission, 49 Nev. 46, 52, 235 P.2d 643, 644 (1925).

[4]See Snowpine Village Condo. Bd. v. Great Valley, 545 N.Y.S.2d 1004, 1005, 1008 (App. Div. 1989) (noting that "the difficulty of reaching an agreement of compromise providing for future limitation on assessments and in turn on taxes is the statutory obligation imposed upon an assessor" to use his own judgment in assessing taxes, and thus, concluding that an agreement to maintain assessments at a reduced rate in exchange for the taxpayer's promise not to sue was unenforceable).

ORDER the judgment of the district court REVERSED.



_____, J.
Rose



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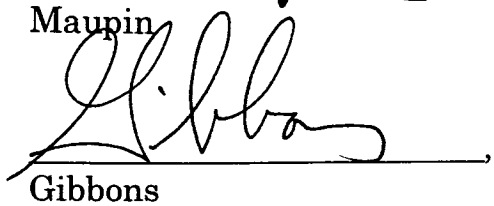

_____, J.
Gibbons

cc: Hon. John P. Davis, District Judge
Attorney General
Hawkins Folsom Muir Kelly & Vallas
Mineral County Clerk