2013 WL 5880135 (Ky.Bd.Tax.App.)

Board of Tax Appeals

Commonwealth of Kentucky

HAI AND MUOI LE, APPELLANTS

v.

MCCREARY COUNTY PROPERTY VALUATION ADMINISTRATOR, APPELLEE

Order No. K-24102
File Nos. K12-S-43, K12-S-44
October 24, 2013

***1** An evidentiary hearing was held in these consolidated property tax cases on March 26, 2013. The Board having reviewed the record after the hearing, entered partial findings of fact and conclusions of law for the 2012 tax year, and remanded the case to the Appellee in order for the PVA to place an agricultural valuation on the farm's improvements and to value the acreage at its agricultural valuation using the Department of Revenue's assessment guidelines. The parties have filed their final pleadings in the case following remand and this Board makes the following final findings of fact and conclusions of law.

BACKGROUND

The property in question is a poultry farm with 36.82 acres, a separate 5.54 acres, a residential home with detached garage and three acres, assorted miscellaneous outbuildings and 2 chicken houses. The PVA originally valued the property as a farm; however, the local board of assessment appeals reversed this assessment and ruled that the property should be valued at its fair cash value.

Upon consideration of the testimony presented at the hearing, the Board made the finding at the hearing, that the property was indeed being used as a pullet farm and concluded that the property in question should be valued as a farm at its agricultural value. The McCreary Board of Assessment Appeals ruling to the contrary, is reversed. (TR 3:53-57; 4:01-02; 4:05, 4:11; 4:15)

The Board further finds that all of the acreage in question, except that surrounding the residence, is entitled to be valued at its agricultural valuation. KRS 132.010 sets forth the definitions for “agricultural land” and “agricultural value” in pertinent part as follows:

(9) “Agricultural land” means:(a) any tract of land, including all income-producing improvements, of at least ten (10) contiguous acres in area used for the production of livestock, livestock products, poultry, poultry products and/ or the growing of tobacco and/or other crops including timber, (emphasis added)

(11) “Agricultural value”... means the use value of “agricultural land” based upon income-producing capability and comparable sales of farmland purchased for farm purposes where the price is indicative of farm use value, excluding sales representing purchases for farm expansion, better accessibility, and other factors which inflate the purchase price beyond farm use value, if any considering the following factors as they affect a taxable unit:

(a) Relative percentages of tillable land, pasture land and woodland;

(b) Degrees of productivity of the soil;

(c) Risk of flooding;

(d) Improvements to and on the land that relate to the production of income;

(e) Row crop capability including allotted crops other than tobacco;

***2** (f) Accessibility to all-weather roads and markets; and

(g) Factors which affect the general agricultural or horticultural economy, such as: interest, price of farm products, cost of farm materials, and supplies, labor or any economic factor which would affect bet farm income, (emphasis added).

Nowhere in the statutory definition of agricultural land is there a requirement that the land actually be producing income, before it qualifies for the classification. There were income-producing requirements previously in the statute, but they were removed by the legislature in 1992. Subsequent to that 1992 amendment, and to current date, the statute requires only that the land have an "income-producing capability." Clearly, any pasturelands and woodlands in question, as do all pasturelands and woodlands in the Commonwealth, have income-producing capabilities and are considered to be agricultural lands, under the controlling statute. The acreage in question in this consolidated case meets the statutory requirements for the classification of agricultural land and should be valued accordingly by class, at its agricultural value.

Agricultural valuation of the acreage

Because there was no breakdown presented at the hearing of the acreage into classes of agricultural land, the PVA was directed on remand to value the acreage in question at the agricultural values as set forth in the Department of Revenue's Assessment Guidelines. While the PVA filed additional information upon remand, and "Ex. C," appears to set forth the Department of Revenue guidelines for the valuation of agricultural property, the PVA has still not set forth a breakdown of the taxpayer's acreage by class type with a calculation of the agricultural valuation for tax year 2012 using the Department's guidelines. The PVA is directed to provide the taxpayer with such a breakdown for tax year 2012 and to assess the 36.82 acres and the 5.54 acres accordingly for that year, based upon the Department of Revenue's agricultural valuation guidelines.

Agricultural valuation of the farm improvements

This Board further concluded, upon review of the controlling statutes, that both parties erroneously valued the farm improvements at their fair cash value rather than their agricultural value, as is required by the statute for income producing improvements which are located on agricultural land. The controlling statute specifically includes the "income producing improvements" in the definition of agricultural land. KRS 132.010(9)(a). The definition of agricultural value also requires that "improvements to and on the land that relate to the production of income" be considered as a part of the agricultural value. KRS 132.010(11). While the residence is to be valued at its fair cash value by statute, the farm improvements are to be valued at their agricultural value.

The PVA did not value the farm improvements at their agricultural value. He valued the poultry houses at $98,000 each. (TR 4:11) The taxpayer did not offer any evidence as to the farm improvements' agricultural value, as opposed to its fair cash value. All that was presented at the hearing was evidence of the improvements' fair cash value. This Board concluded that the farm improvements were entitled to classification as agricultural property and should have been assessed at their agricultural value based upon the controlling statutes.

***3** On remand, the PVA has submitted the following valuations for the farm improvements using Marshall and Swift cost data. It appears, however, that he has actually raised the value of the poultry houses on remand from an assessment of $98,000 each: Poultry house $306,089

Material Storage Shed $1,354

Farm Implement Shed $16,036

At the hearing, Mr. Li presented an appraisal as a part of his Appellant's Exhibit 1. While the appraiser was not present to testify, the PVA did not object to the introduction of the appraisal. (TR 3:52). While the PVA has submitted Marshall Swift cost data as a new basis for his valuation of the farm improvements, this Board concludes that the best evidence presented as to the agricultural value of the farm improvements is set forth in the taxpayer's appraisal of the property. The appraiser reviewed recent actual sales of comparable poultry operations in Green, Whitley and Clinton Counties. The appraiser notes that the highest and best use of the poultry improvements is their agricultural use. The Board concludes that in this instance, the fair cash value and the agricultural value are the same.

Mr. Li has met his burden of showing that the PVA's agricultural valuation for the farm improvements is too high. The taxpayer's total claim of value for the farm improvements is $138,276, as set forth in the appraisal for the property, and the Board finds that this claim of value, which is supported by the comparable sales evidence, is the agricultural value for the farm improvements for 2012.

Fair cash valuation of the residence and surrounding acreage

Finally, the parties agreed that the residence on the farm and the detached garage should have been valued at their fair cash value. The taxpayer's appraisal set forth a value for the residence of $129,165 and a value for the garage of $8,437.00, or a total of $137,602. The PVA had the house and garage valued at $260,000 and presented no supporting evidence for his value. While the PVA has attempted to present additional Marshall & Swift information concerning the valuation of the house, on remand, the PVA was only directed on remand to address the valuation of the farm acreage and improvements, because this Board had already made a finding as to the fair cash value for the residence. The Board finds that the taxpayer has met his burden of proving that the PVA's assessment was too high and that the taxpayer's claim of value for the house and garage of $137,602 is supported by the evidence and is the value of the property for tax year 2012.

This is a final and appealable order. All final orders of this agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. The Board of Tax Appeals statute, KRS 131.370 (1), provides that for any final orders entered by the Board on the rulings of a county board of assessment appeals, the Circuit Court of venue is the Circuit Court of the county in which the appeal originated. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

***4** A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:
(a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;

(b) A stay is permitted by the agency and granted upon request; or

(c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

Within twenty (20) days after service of the petition of appeal, or within further time allowed by the Circuit Court, the Kentucky Board of Tax Appeals shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

DATE OF ORDER AND MAILING: October 24, 2013

Full Board Concurring

Cecil Dunn
Chair

2013 WL 5880135 (Ky.Bd.Tax.App.)

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2013 WL 5880124 (Ky.Bd.Tax App.)

Board of Tax Appeals

Commonwealth of Kentucky

CHRISTOPHER AND JENNIFER REEDER, APPELLANTS
v.
MCCREARY COUNTY PROPERTY VALUATION ADMINISTRATOR, APPELLEE

Order No. K-24101
File Nos. K11-S-55, K12-S-46
October 24, 2013

***1** This Board held an evidentiary hearing in this consolidated property tax case on March 26, 2013. Prior to this hearing, the parties had been asked to brief the issue of whether the property in question was entitled to the classification of "agricultural property" and should be valued at its agricultural valuation. The Board made partial findings of fact and conclusions of law for the 2011 and 2012 tax years following the hearing and remanded the case to the Appellee to value the farm improvements at their agricultural value rather than at their fair cash value. The parties have now filed their final pleadings in this case and the Board hereby makes the following final findings of fact and conclusions of law.

BACKGROUND

The Reeders are the equitable owners of the poultry farm in question pursuant to a land contract. There is a 3500 square foot residence, which both parties agree is to be valued at fair cash value, and four breeder hen houses and associated outbuildings all located on 55 acres of land. The PVA had originally only valued 5 acres of land associated with the breeder houses as Order No. K-24101 agricultural land. Thirty-five acres (35) of this land are woodlands while the remaining 12 acres are pasturelands, from which hay is removed.

The PVA did not dispute that 35 acres of the land are woodlands and 12 acres are pasturelands. The PVA argued, that in order to be classified as agricultural land and receive the reduced agricultural value, farm property must actually be producing income and that the property in question is not. The taxpayer argued that the PVA's classification of this property as non-agricultural property is inconsistent with the applicable statutes and with the guidelines utilized by the Department of Revenue to provide assistance to the 120 PVAs across the state. To support this argument, the taxpayers presented a Department of Revenue witness to testify about the Department's position and presented the legislative history for the controlling statute, KRS 132.010(11).

The parties further disagreed as to the value of the residence and its surrounding three acres, four poultry barns, the generator shed and fencing. Both parties valued these improvements at differing fair cash values and only presented testimony at the hearing concerning their fair cash value.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Agricultural valuation of the acreage

This Board concluded at the evidentiary hearing that the 52 acres were entitled to the agricultural land classification and an agricultural value based upon its review of the legislative history for the applicable statutes and the testimony of Mr. Tom Crawford, a long-time employee of the Department of Property Valuation. The McCreary County PVA's application of the statutory agricultural land classification to the contrary, was concluded to be erroneous as a matter of law.

***2** KRS 132.010 sets forth the definitions for "agricultural land" and ""agricultural value" in pertinent part as follows:

(9) “Agricultural land” means:

(a) any tract of land, including all income-producing improvements, of at least ten (10) contiguous acres in area used for the production of livestock, livestock products, poultry, poultry products and/ or the growing of tobacco and/or other crops including timber, (emphasis added) (11) “Agricultural value”... means the use value of “agricultural land” based upon income-producing capability and comparable sales of farmland purchased for farm purposes where the price is indicative of farm use value, excluding sales representing purchases for farm expansion, better accessibility, and other factors which inflate the purchase price beyond farm use value, if any considering the following factors as they affect a taxable unit:

(a) Relative percentages of tillable land, pasture land and woodland;

(b) Degrees of productivity of the soil;

(c) Risk of flooding;

(d) Improvements to and on the land that relate to the production of income;

(e) Row crop capability including allotted crops other than tobacco;

(f) Accessibility to all-weather roads and markets; and

(g) Factors which affect the general agricultural or horticultural economy, such as: interest, price of farm products, cost of farm materials, and supplies, labor or any economic factor which would affect bet farm income, (emphasis added).

Nowhere in the statutory definition of agricultural land is there a requirement that the land actually be producing income, before it qualifies for the classification, as the PVA argues. As Department employee Tom Crawford testified, there were specific income producing requirements previously in the statute, but they were removed by the legislature in 1992. (Appellants' Exhibit 1, Tab 15; TR 1:35) Subsequent to that 1992 amendment, and to current date, the statute requires only that the land have an “income-producing capability.” Clearly, the pasturelands and woodlands in question, as do all pasturelands and woodlands in the Commonwealth, have income-producing capabilities and are considered to be agricultural lands, under the controlling statute. This is also the position of the Department of Revenue as set forth by Mr. Crawford during the hearing and as set forth in the Department's Recommended Agricultural Assessment Guidelines. (TR 1:31-34; Appellants' Ex. 1 Tab 7). The 47 acres in question in this case meet the statutory requirements for the classification of agricultural land and should be valued accordingly, at their agricultural value.

At the hearing, the PVA agreed to value the additional 47 acres at the agricultural value as set forth in the Department's guidelines. (TR 3:26) Accordingly, the 47 acres and the 5 acres associated with the poultry barns are valued at a total agricultural value of $8,144.93 for tax years 2011 and 2012, pursuant to the Department's valuation guidelines.

Agricultural valuation of the farm improvements

***3** This Board further concluded, upon further review of the controlling statutes, that both parties erroneously valued the four poultry barns, the generator shed and fencing at their fair cash value rather than their agricultural value as is required by the statute for income-producing improvements which are located on agricultural land. The controlling statute specifically includes the “income producing improvements” in the definition of agricultural land. KRS 132.010(9)(a). The definition of agricultural value also requires that “improvements to and on the land that relate to the production of income” be considered as a part of the agricultural value. KRS 132.010(11). The Department of Revenue in its guidelines states, that “[a]ll farm improvements will then be valued separately and added to the total land value for final determination of the overall agricultural value for

farms." (Appellants' Ex. 1, Tab 7, p. 4) While the residence is to be valued at its fair cash value by statute, the farm improvements are to be valued at their agricultural value.

The PVA did not value the farm improvements at their agricultural value. He testified that he could not "ag the chicken houses." (TR 3:17). The taxpayers did not offer any evidence as to the farm improvements' agricultural value. All that was presented at the hearing was evidence of the improvements' fair cash value. This Board concluded that the farm improvements were entitled to classification as agricultural property and should have been assessed at their agricultural value based upon the controlling statutes. This Board remanded the case to the PVA in order for him to have an opportunity value the farm improvements at their agricultural value. On remand, however, the PVA presented the taxpayer with a new fair cash valuation for the residence and five acres; a new value for the agricultural lands; and a new value for the farm improvements. While the parties filed a joint status report following this Board's remand order, the PVA's new values were not set forth in this document and no additional pleadings were filed by the PVA concerning the agricultural valuation of the farm improvements. The only issue that remained open on remand was the proper valuation of the farm improvements at their agricultural value.

Following the submission of the joint status report, the taxpayers filed a "Motion for Final Ruling and to Limit the Record to Existing Evidence." In this motion, to which no response was filed, the taxpayers argue that the evidence they produced at the hearing as to the valuation of the farm improvements provides this Board with the agricultural value of those improvements. The taxpayer argues that the highest and best use of the poultry barns is their agricultural use, so that the fair cash value and the agricultural value are the same.

The taxpayers presented evidence at the hearing of three actual sales of comparable poultry operations in both Clinton and Wayne Counties between 2010 and 2012. (TR 2:43-2:50) The PVA had based his original valuation of the farm improvements upon the replacement cost for new poultry improvements with deductions only for the newer items that would not appear on the taxpayer's older poultry buildings. (TR 3:29) The PVA presented no further evidence other than the replacement cost under the insurance policy, which included tangible property. The Board finds that, based upon the comparable sales evidence presented, the taxpayer met its burden of showing that the PVA's valuation of the improvements was too high and that the taxpayer's claim of value was supported by the only comparable sales evidence presented. The Board finds that the agricultural value of the farm improvements for the 2011 and 2012 tax years is as follows:

***4** Four poultry barns—$300,000

Generator Shed—$5000.00

Fencing—$8000

Fair cash valuation of the residence and surrounding acreage

Finally, the only remaining issue, for which this Board must make a determination, is the fair cash value of the residence and the three acres surrounding it, which everyone agrees, is to be valued at its fair cash value pursuant to KRS 132.450(2)(a). The taxpayer argues that its value is $180,000 fair cash value. The PVA assessed the house and acreage at $250,000. The taxpayer presented evidence that the property had been appraised in 2007 at $180,000 and was a 40 year old house that needed some work. (TR 2:31-36; Appellants' Ex. 1, Tab 10) While the appraiser was not present to testify, counsel for the PVA did not object to the introduction of the appraisal, and the PVA did not present any evidence to the contrary. The Board finds that the taxpayers met their burden of proving that the assessment was too high and the fair cash value of the house and acreage for the 2011 and 2012 tax years is $180,000.

This is a final and appealable order. All final orders of this agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided

in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. The Board of Tax Appeals statute, KRS 131.370 (1), provides that for any final orders entered by the Board on the rulings of a county board of assessment appeals, the Circuit Court of venue is the Circuit Court of the county in which the appeal originated. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:
(a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;

(b) A stay is permitted by the agency and granted upon request; or

(c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

Within twenty (20) days after service of the petition of appeal, or within further time allowed by the Circuit Court, the Kentucky Board of Tax Appeals shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

***5 DATE OF ORDER AND MAILING: October 24. 2013**

Full Board Concurring

Cecil Dunn
Chair

2013 WL 5880124 (Ky.Bd.Tax App.)

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2015 WL 3444481 (Ky.Bd.Tax App.)

Board of Tax Appeals

Commonwealth of Kentucky

JAMIE CLAIRE CORUM, APPELLANT
v.
HARLAN COUNTY PROPERTY VALUATION ADMINISTRATOR, APPELLEE

Order No. K-24840
File Nos. K09-S-210, K11-S-06, K12-S-03, K13-S-06, K14-S-02
May 19, 2015

***1** An evidentiary hearing was held in this consolidated case on November 18, 2014. The parties filed post-hearing briefs. Upon review of those briefs and the record before it, this Board enters the following Findings of Fact and Conclusions of Law.

BACKGROUND

The method of valuation which the Department of Revenue has developed for the assessment of agricultural property and woodlands, more specifically, is set forth in its "Course 90 Farm Real Property Appraisal" (Hereinafter "Course 90"; Appellant's Ex. 1) Land is divided into eight classes to reflect the different types of farm property and different soil classes across the state. This information derives from the USDA's soil surveys. (Appellant's Ex. 1 p. 4-2) The mass appraisal methodology for all agricultural lands is based upon a calculation which uses estimated cash rents for the land divided by a capitalization rate of 9.20% in order to obtain the property's income producing capacity or "indicated use value," i.e., its agricultural value. Because there is no available cash rent information for woodlands in classes VI, VII, and VIII, the Department adjusts the cash rent amounts for the next highest classification of land—Class V pastureland, downward by different percentages in the three woodland classes listed in the classes of land chart. (80%, 60%, and, 40% of Class V) (Step 1, 2011-2014 Quadrennial Recommended Assessment Guidelines, Appellant's Ex. 1; TR 11:07) The taxpayer's 992 acres of woodland property were valued by the Harlan County PVA at $125 an acre under Class VI of the land class chart within the guideline. (TR 10:48; 10:50) The descriptions of Class V and VI properties are as follows:

CLASS V—These soils have limitations that restrict the kind of plants that can be grown and that prevent normal tillage of cultivated crops. They are nearly level but some are wet, are frequently overflowed by streams, are stony, have climatic limitations, or have some combination of these limitations. This class has few erosion problems but is subject to frequently and severe flooding. This class should be kept in hay and pastureland continuously.

CLASS VI—Physical conditions of soils placed in this class are such that it is practical to apply range or pasture improvements, if needed, such as seeding, liming, fertilizing, and water control with contour furrow, drainage ditches, diversions, or water spreaders. This class has severe limitations that make it generally unsuitable for cultivation. Land in this class should be limited to pasture, woodland, or wildlife and cover. No row crops can be grown on this class. This class represents land having a slope up to 40%. (emphasis added)

The taxpayer does not disagree with the Class VI designation for her property. Nor does she disagree with the capitalization rate of 9.20%, which the assessment method uses. (TR 11:16) The taxpayer argues that the method of assessment used by the PVA to value her managed woodlands has violated KRS 132.010 and Section 172A of the Constitution, because the use of adjusted pasture rents from Class V as a basis for the estimated income for managed woodlands in Classes VI is arbitrary and capricious. She argues that the Department of Revenue must change its mass appraisal methodology in regard to managed woodlands and base it instead upon potential income from timber and should use an approximation of the income a landowner would receive from a year's growth of timber. She advocates the use of an alternative estimated mass appraisal method for managed woodlands

prepared by the two forestry experts from the University of Kentucky, who previously conducted a formal study. (Hereinafter "UK study method" Appellant's Exs. 5 and 8) She seeks a valuation of $12.85 an acre for her property and asks this Board to "command the Harlan PVA" to replace the Department of Revenue's percentage adjustment calculation using Class V rents, with her proposed alternative method for estimating income capacity.

***2** This consolidated case involves tax years as far back as 2009. This case had previously been held in abeyance upon joint motions of the parties, pending the study that was conducted by the University of Kentucky, Department of Forestry, and completed in 2011 on the issue of whether woodland properties were being overvalued by the Department of Revenue's method of assessment. (Appellant's Ex. 4). Prior to that study, there had also been an earlier study conducted by the Legislative Research Commission. (Dated 2003, referenced in Appellant's Ex. 1), and a 2007 master's thesis prepared by Scott Brodbeck at the University of Kentucky. (Appellant's Ex. 3) None of these studies, however, resulted in a change by the Department to its guideline for the assessment of woodland properties. Nor did this taxpayer file an original action in circuit court to challenge the constitutionality of the method of assessment used to value such property. This taxpayer chose instead to challenge the assessment method and her value before this Board in her appeals from the rulings of the local board of assessment appeals, which she is clearly permitted to do. See In re Gillis, 836 F.2d 1001 (6th Cir. 1988) ("We agree that if respondent's claim simply alleged denial of the right to have land assessed... in accordance with the Kentucky Constitution, it would not present the type of constitutional challenge excepted from exhaustion requirements..."). Because this case challenges the constitutionality of the method of assessment for woodland property, numerous other woodland property tax cases have been held in abeyance by this Board, pending the final resolution of this case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The requirement that the use value of woodland property is to be used for property tax purposes is set forth in Section 172A of the Kentucky Constitution and in KRS Chapter 132. Section 172A provides in pertinent part:

The General Assembly shall provide by general law for the assessment for ad valorem tax purposes of agricultural and horticultural land according to the land's value for agricultural or horticultural use.

KRS 132.010 (9) defines "agricultural land" as follows:

> (a) Any tract of land, including all income-producing improvements, of at least ten (10) contiguous acres in area used for the production of livestock, livestock products, poultry, poultry products and/or the growing of tobacco and/or other crops including timber.

KRS 132.010(11) defines "agricultural value" as follows:

The use value of "agricultural or horticultural land based upon income-producing capability and comparable sales of farmland purchased for farm purposes where the price is indicative of farm use value, excluding sales representing purchases for farm expansion, better accessibility and any other factors which inflate the purchase price beyond farm use value, if any, considering the following factors as they affect a taxable unit:

***3** (a) Relative percentages of tillable land, pasture land and woodland;

(b) degree of productivity of the soil;

(c) risk of flooding;

(d) improvements to and on the land that relate to the production of income; row crop capability including allotted crops other than tobacco;

(e) accessibility to all-weather roads and markets; and

(f) factors which affect the general agricultural or horticultural economy, such as: interest, price of farm products, cost of farm materials and supplies, labor, or any economic factor which would affect net farm income

(emphasis added)

Nowhere in the statutory definition of agricultural value is there a requirement that the land actually be producing income, before it qualifies for the classification. There were specific income producing requirements previously in the statute, but they were removed by the legislature in 1992. (1992 Ky. Acts Chapter 397, Sec. 1) Subsequent to that 1992 amendment, and to current date, the statute requires only that the land have an "income-producing capability." The Department's guideline does not distinguish between managed and unmanaged woodlands. No one from the Department of Revenue testified about the method of assessment. It is presumed, however, that all woodlands are treated alike, because they have an income producing capability and there are no income requirements in the statute. (Appellant's Ex. 1)

While the Department has provided the PVAs with agricultural assessment guidelines, which includes the valuation of woodlands, the Department does not mandate that the PVAs use its guidelines for valuing woodland property. In the cover memo to the Assessment Guidelines, the Executive Director of the Office of Property Valuation specifically stated:

The Kentucky Department of Revenue has developed new recommended assessment models for the assessment of Ag property...In some instances, however, the PVA may have information that could be more useful in assessing property in his or her individual county, which may necessitate a departure from these guidelines. (Appellant's Ex. 1)

Kentucky courts have long held that PVAs are not bound to use a particular method of assessment. In the case of Borders v. Cain, 252 S.W.2d 903 (Ky. 1952), the Court explained as follows:

The assessment when made is the act of the tax commissioner and he is responsible for it. Tax assessors have always received advice and counsel on the valuation of property. The advice might come from a friend, a neighbor, the owner of the property to be assessed, or even from the personnel of the State Revenue Department. One assessor might use one method and another a different method in arriving at the same result. We know of no law which restricts him to one specific method and another a different method in arriving at the same result. We know of no law which restricts him to one specific method or limits him in his search for advice and counsel. Nor do we know of any law which gives the taxpayer the right to object to the method used so long as the assessment is fair and equitable. If he is dissatisfied with the assessment, his right to have it reviewed on appeal may not be abridged. (emphasis added)

***4** While it was appropriate for the Department of Revenue to develop a guideline and a proposed method of assessment for use by the PVAs, when challenged, that method of assessment must be examined using the standard which the Kentucky courts have developed to determine whether a particular method of assessment meets the requirements of the Constitution. While neither party discusses this standard in the post-hearing briefs, it is controlling in this appeal and must be examined.

In Fayette County Board of Sup'rs v. O'Rear, 275 S.W2d 577, 579 (Ky. 1954), the taxpayer claimed that the method of assessment violated the Constitution and did not produce a fair cash value for the property. In rejecting the claim, the Court stated:

In substance, the contention is that the methods employed in assessing must be designed to acquire information as to what the market value actually is, rather than to form an estimate of what the market value logically should be. It is our opinion that an assessment cannot be held invalid merely because of the method employed in making it, so long as the method is fairly designed for the purpose of reaching and reasonably tends to reach, an approximation of the fair voluntary sales price.... We think the

assessment here had sufficient prima facie validity to require it to be upheld in the absence of a showing by the taxpayer that the assessment exceeded the fair voluntary sales price. (emphasis added).

In Commonwealth v. Kroger Co., 503 S.W.2d 722, 724 (Ky. App. 1973), the Board of Tax Appeals had reviewed the tangible method of assessment used to value the property, but determined that the taxpayer had presented more specific actual sales information in support of his claim of overvaluation. The Court agreed with the Board and stated:

We believe that the formula may be accepted as prima facie meeting the test of being fairly designed for the purpose of reaching, and reasonably tending to reach, an approximation of the fair voluntary sales price.... However, the strength of its prima facie validity is another matter. In view of that evidence, we cannot say that the Board of Tax Appeals was required to accept the assessment based on the formula... [W]e think the Board was warranted in rejecting the formula-assessed value and in fixing the lower value based on Kroger's evidence. (emphasis added).

Finally, in Revenue Cabinet v. Gillig, 957 S.W.2d 206 (Ky. 1997), the Court concluded that the method of assessment to value unmined coal as set forth by the Revenue Cabinet in the returns and instructions, was not unconstitutional. The taxpayer argued that the Cabinet failed to consider various factors which affect the value of coal. The Court ruled:

While the aforementioned factors listed by appellees may affect the value of their coal in varying degrees, we agree with the Cabinet that all of these factors and any others which may affect the value of unmined coal need not be considered by the Cabinet in a fee type appraisal in order for the estimate of fair cash value to pass constitutional muster.... The cabinet is not required to consider all factors that affect the value of unmined coal, only those factors which will allow it to make a logical estimate of the property's fair cash value.. We note, however, that the factors which the appellee asserts are important ...are precisely the kind of information that a taxpayer would provide pursuant to the additional information request found in the self-reporting informational return used by the Cabinet. (emphasis added)

***5** Based upon this guidance from the courts, and the record before it, this Board's task is to determine whether the Course 90 method of assessment is entitled to prima facie validity. In reviewing the evidentiary record, this Board finds that this taxpayer has failed to present any evidence that would compel it to conclude that the Course 90 method of assessment for woodland properties has overvalued the property beyond its agricultural value.

The taxpayer offered the UK study method as evidence that the PVA's assessment overvalued the property. The Board, however, finds that it cannot rely upon the UK study method as evidence that the property was only worth $12.85 an acre for several reasons. First, the taxpayer's proposed alternative mass appraisal method utilizes timber prices from 2005-2010 in its calculation, and despite testimony that there has been an uptrend in timber prices since 2010 and that ""timber values change," no additional information was provided in the calculation process to reflect any changes or uptrends in later years. (TR 11:02-11:04) In addition, the proposed method of assessment, which focused upon a 70-year growing cycle, did not recognize that the property might already have mature trees nor did it consider whether periodic harvestings had and were occurring on the property. (TR 12:20; 12:25; 2:29; 2:51)

Finally, the UK witnesses testified that they were using a growing cycle of 70 years "based on current market conditions." (TR 12:46; Appellant's Ex. 8) No supporting information was provided, however, for the use of the 70-year number versus any other number. The actual 2011 UK study, upon which the method's calculations were based, was never presented to the Board and was not made a part of the evidentiary record for its review. Only Exhibits 5 and 8 were introduced, which set forth the calculations based upon the study, and a summary article about the study was introduced. The thesis study used the average age of trees /rotation length of 60 years. (Ex. 3 p. 19) The woodland magazine summary referenced growing cycles from 60-80 years. (Appellant's Ex. 4) Under the UK study, the higher the number picked for the growth cycle, the lower the taxes. In fact, a note to Table 1 on Ex. 4 states, "Values change with different assumptions about discount rates, timber prices, site quality and rotation age (time to harvest)."

The forestry experts assumed a 70-year growth cycle for the hearing, and the resultant agricultural value for the taxpayer's property using their formula was only $12.85 an acre. The entire 992 acre property was only worth $12,747.00 by their calculations. As was explained in Board of Tax Appeals v. Gess, 534 S.W.2d 247, 249 (Ky. 1976), Section 172A "asks for a fictitious or hypothetical figure: what would the property bring if its use for the indefinite future were restricted by law to agricultural and horticultural purposes." While this $12.85 an acre figure may have been a more bearable tax value for this and other woodland taxpayers, it is difficult to believe that the taxpayer would also sell the property for this per acre amount, "if its use for the indefinite future were restricted by law to agricultural and horticultural purposes."

***6** The PVA's witness, Herbert Pritchett, who is a certified MAI appraiser, and who was a Board member of the Kentucky Real Estate Appraisers Board at the time of the hearing, testified that he had examined woodland sales in Harlan County in 2006 during a significant valuation project, and that he had never seen any price as low as $12.85 an acre for the sale of a woodland property (TR 2:40-2:42).

As for specific valuation evidence about the woodland property at issue, the taxpayer did not testify; she did not present any farm income and expense records; nor, did she provide an actual appraisal for the property. The only evidence about the actual farm itself came from the two University of Kentucky forestry experts who testified, and this evidence was limited. There was no testimony from the UK witnesses concerning the farm's actual expenses or the farm's actual managed timber practices, other than general testimony about kudzu removal and the general statement that the taxpayer participates in managed woodland practices. (TR 11:30-11:33, 36, 39) There was no testimony about actual harvesting or thinning schedules other than a statement that thinning might be difficult in the Corum's region and that some stands on the Corum property couldn't support thinning. (TR 11:29-30; 12:25-12:28). It was not clear from that testimony whether there was any harvesting or thinning of trees occurring on the 992 acres, or whether any such thinning was generating any income. There was no specific evidence of the actual managed timber practices; any expenses incurred; any income realized; or the resulting economic effects of those managed practices on the taxpayer's farm.

While it was made clear by the taxpayer's witnesses that trees are multi-year crops and that managed woodland owners in general may have expenses for many years before they realize any income, the taxpayer failed to present any evidence as to the actual agricultural use value of her farm upon which this Board could base a decision that her farm had been overvalued by the PVA's estimate of agricultural value. While it would have been helpful for the only appraiser at the hearing, to have produced specific recent comparable woodland sales for continued use as woodlands, in support of his testimony, it was not the PVA's burden to prove that the method of assessment resulted in the property's actual agricultural value. It was the taxpayer's burden to prove that her property had been overvalued and was only worth $12.85 an acre and this she failed to do. Gillig, 957 S.W.2d at 210.

In the absence of such a showing by the taxpayer that the assessment exceeded the property's agricultural value, this Board finds that the method used to assess the taxpayer's property resulted in a reasonable estimate of agricultural value, and concludes, that the method has sufficient prima facie validity to require it to be upheld. As the courts have explained, the PVA's assessment is an estimate of agricultural value only—not its actual agricultural value. The Board finds that the PVA's method of assessment presents a logical estimate of agricultural value for both managed and unmanaged woodlands; that it sufficiently takes into account differences between woodlands and pasturelands; and, that it sufficiently takes into account the slope and soil characteristics of a woodland property. It is doubtful that a PVA could determine from a drive-by review of a property whether a woodland was managed or unmanaged and if managed, to what extent. If anything, the extent to which a woodland is well-managed, might even require an adjustment upward. As the forestry expert so noted in the summary article, Exhibit 4, "[t]hese practices could potentially increase use value compared to woodlands under the passive management typical of most ownerships."

***7** While the taxpayer argues that adjusted pasture rents should not be used to value woodlands in Class VI, the USDA itself classifies pasture and woodlands together in its soil classification study. The USDA does not differentiate between pastures and woodlands in Soil Class VI -the class contains both pasture and woodlands. (Appellant's Ex. 1 p. 4-2) The Department takes an additional step and recognizes any differences between pasturelands in Class V and those pasturelands /woodlands in Classes

VI, VII and VIII, by adjusting the Class V pasture cash rents downward by estimated percentages, presumably in an attempt to quantify any differences set forth in the descriptions for the properties in Class V and the remaining classes. Finally, The PVA's witness, who had experience appraising farmlands as an appraiser, testified that in his recent experience, woodland acreage on a farm is typically 50% of the contributory value of pastureland. He opined that the Department's estimated adjustments that it makes to Class V pasture rents, are consistent with what he has seen. (TR 2:25; 2:42).

The determination as to whether woodland property owners should qualify for and be entitled to tax incentives is clearly a policy question for the state legislature. While other state legislatures may have offered woodland owners favorable tax incentives in order to encourage their management of forests, Kentucky's legislature has not done so to date. At the current time, in order to lower their property taxes, woodland taxpayers must present actual income and expense information about their properties or appraisals of their properties to the PVA; to the local board; and, to this Board during the appeal process and be prepared to prove that their properties have been overvalued. This Board, which is bound by the requirements of the Constitution; the caselaw as set forth above; the burden of proof; and, the record before it, finds that this taxpayer has failed to prove that the assessments for 2009, 2011, 2012, 2013 and 2014 by the Harlan County PVA for this property are above their agricultural value.

FINAL ORDER

This is a final and appealable order. All final orders of this agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. The Board of Tax Appeals statute, KRS 131.370 (1), provides that for any final orders entered by the Board on the rulings of a county board of assessment appeals, the Circuit Court of venue is the Circuit Court of the county in which the appeal originated. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

***8** A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:
(a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;

(b) A stay is permitted by the agency and granted upon request; or

(c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

Within twenty (20) days after service of the petition of appeal, or within further time allowed by the Circuit Court, the Kentucky Board of Tax Appeals shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

DATE OF ORDER AND MAILING: May 19, 2015

Full Board Concurring

Cecil Dunn

Chair

2015 WL 3444481 (Ky.Bd.Tax.App.)

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