

STATE OF ALABAMA  
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. INC. 88-137

SAM, JR. & AUSLIE DAMSON  
P.O. Box 639  
Montrose, AL 36559,

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Taxpayers.

§

ORDER

The Revenue Department assessed income tax against Sam, Jr. and Auslie Damson ("Taxpayers") for the year 1985. The Taxpayers appealed to the Administrative Law Division and a hearing was conducted on January 13, 1989. Certified public accountant Samuel F. Parker appeared for the Taxpayers. Assistant counsel Duncan Crow represented for the Department. Based on the evidence presented in the case, the following findings of fact and conclusions of law are hereby entered.

FINDINGS OF FACT

The Taxpayers and six other investors purchased 359 acres of undeveloped property located on Weeks Bay in Baldwin County, Alabama in 1967 for approximately \$138,000.00. The subject property was subsequently sold for approximately \$538,500.00 on January 9, 1985 to the Nature Conservancy, an organization organized exclusively for conservation purposes and qualifying under §170(f)(3)(B) of the Internal Revenue Code for charitable purposes.

The Taxpayers determined that the fair market value of the property at the time of sale was \$1,300,000.00 and consequently

claimed a charitable contribution based on their proportionate share (with adjustments) of the excess of the property's fair market value over the sales price. The fair market value of \$1,300,000.00 used by the Taxpayers was based on an appraisal of the property by Mr. M. D. Bell, M.A.I.

Mr. Bell is a qualified appraiser of real property and has extensive appraisal experience in Baldwin and Mobile counties. Mr. Bell appraised the fair market value of the subject parcel to be \$1,300,000.00 based on a waterfront foot value using three relatively comparable sales in the area. However, Mr. Bell testified that the \$1,300,000.00 estimate included a 30 percent artificial increase based on the assumption that the property would be financed according to the usual terms as customary in the area.

That is, a fair market cash value for the property would be 30 percent less, or \$910,000.00.

The Revenue Department reviewed the Taxpayers' return, determined that the fair market value of the property at the time of sale was \$761,140.00, and accordingly adjusted the charitable deduction downward.

The fair market value used by the Department was based on the average value for property in the area as computed by the Department's Ad Valorem Tax Division in conjunction with the Baldwin County Tax Assessor's Office. The value was determined using a uniform sales ratio study which sets uniform values for various classes of property on a per acre basis. The subject

property involved five separate parcels. The Taxpayers' appraiser, Mr. Bell, admitted that the Department's method of determining the average value of land for ad valorem tax purposes is efficient and reasonably accurate.

#### CONCLUSIONS OF LAW

At issue is the true fair market value of the subject property. The Department's estimated value of approximately \$761,000.00 is based on a board sales ratio study done by the Ad Valorem Tax Division in conjunction with the County Assessor's Office. The Taxpayers' appraiser concedes that the method used by the Department is reasonably accurate.

However, the Taxpayers presented an independent appraisal based on three specific comparable sales of like-kind property in the area. That appraisal is also reasonably accurate and would provide for a proper estimated value but for the fact that the value of the' subject property was artificially increased by 30 percent under the assumption that the property would be financed by the seller. Such a 30 percent artificial increase clearly inflates the value of the property and should not be considered in determining the property's actual fair market value. The appraiser concedes that a cash value would be 30 percent less. Thus, the appraised value based only on the three comparable sales and not adjusted the 30 percent would indicate a fair market value of \$910,000.00 (70 percent of \$1,300,000.00). That amount is between the two values offered by the parties and in view of all the evidence is

reasonable under the circumstances.

The above considered, it is hereby determined that the reasonable fair market value of the property at the time of sale was \$910,000.00. The Department is hereby directed to recompute the assessment in issue based on the above finding. The assessment should thereafter be made final, with applicable interest as required by statute.

Entered this the 22nd day of February, 1989.

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BILL THOMPSON  
Chief Administrative Law Judge