

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. INC. 88-141

MAX V. & NIKKI J. MCLAUGHLIN §
4670 Old Shell Road
Mobile, AL 36608, §

§

Taxpayer. §

ORDER

The Revenue Department assessed income tax against Max V. & Nikki J. McLaughlin (Taxpayers) for the years 1984, 1985 and 1986.

The Taxpayers appealed to the Administrative Law Division and a hearing was conducted on April 10, 1989. Joe Sullivan, Jr., Esq., and Manley L. Cummins, III, Esq. appeared for the Taxpayers. Assistant counsel Duncan Crow represented the Department. The following findings of fact and conclusions of law are hereby entered based on the evidence and arguments submitted by the parties.

FINDINGS OF FACT

The Taxpayers and several other individuals jointly purchased approximately 839 acres of undeveloped property on the Ft. Morgan Peninsula in Baldwin County, Alabama in 1972. The property is bordered on the west by Bon Secour Bay, on the east by Oyster Bay, and on the north by the Intracoastal Waterway (approximately 6,560 feet). Almost one-third of the property is marshland.

In the early 1980's, the owners became interested in selling the property. One of the options considered was a "bargain sale"

to a qualified charitable organization, which would allow a tax deduction for the difference between the bargain sales price and the fair market value of the property. The owners finally decided to sell the property to the Nature Conservancy in 1984 for \$1,150,000.00. The Nature Conservancy is a qualified charitable organization under 26 U.S.C.A. §170 and purchases property for perpetual conservation purposes. The property was subsequently sold by the Nature Conservancy to the U. S. Fish and Wildlife Service.

The Taxpayers claimed a charitable contribution on the sale based on their proportionate share of the difference between the property's appraised fair market value of \$3,150,000.00 and the sales price of \$1,150,000.00. The fair market value used by the Taxpayers was based on an appraisal performed in 1983 by the Mobile appraisal firm of Courtney and Morris Appraisals, Inc. (Courtney and Morris). The Department rejected the Courtney and Morris appraisal and revalued the property at \$1,248,000.00 based on information from the Baldwin County Tax Assessor's office. The charitable contribution was disallowed accordingly.

The Courtney and Morris appraisal was performed in large part by Mr. Edward N. Morris. Mr. Morris was familiar with and had done a considerable amount of appraisal work in the area. Mr. Morris physically viewed the property and studied various maps showing topography, soil conditions and the area in general.

The Courtney and Morris appraisal divided the property into an Intracoastal Waterway section and an interior/Bon Secour Bay/Oyster Bay section. The Intracoastal Waterway property was valued at \$2,400,000.00 based on five comparable sales in the vicinity. The remaining property was valued at \$750,000.00 based on six comparable sales. The combined fair market value was thus determined to be \$3,150,000.00.

The Intracoastal Waterway property is encumbered by a perpetual spoilage easement which allows the U. S. Corp of Engineers to deposit dredge material from the canal on the property. However, the easement document also provides that dredge material cannot be dumped on any improved property.

Mr. Morris testified that in his 16 years of appraisal experience he has seen numerous improvements such as slips, building, etc. along the Intracoastal canal, and that the Corp of Engineers regularly allows such improvements along the waterway.

Based thereon, Mr. Morris assumed that the canal property could be developed for industrial purposes and valued it accordingly.

A second appraisal of the property was done by Mr. M. D. Bell in 1984. Mr. Bell was hired by the Nature Conservancy and is a qualified appraiser with extensive appraisal experience in Baldwin and Mobile Counties. Mr. Bell also used the comparable sales method, but in doing the appraisal assumed that the Intracoastal Waterway property could not be used for industrial purposes or otherwise developed because of the perpetual spoilage easement.

Mr. Bell's assumption that the property could not be developed was based only on his knowledge that the easement existed, and not on his personal knowledge that the canal property in fact could not be developed. Mr. Bell determined that the fair market value of the property was \$1,258,500.00.

Mr. Bell was approached in 1987 by an attorney representing the Taxpayers and was requested to reconsider his earlier appraisal under the assumption that the Intracoastal Waterway property could be used for industrial purposes. With that stipulation, Mr. Bell recomputed the 1984 fair market value of the property to be \$3,250,000.00.

The Revenue Department rejected the Courtney and Morris appraisal and conducted its own appraisal based on the records in the Baldwin County Tax Assessor's Office. The Tax Assessor value real property for ad valorem tax purposes mass appraisal using a uniform sales ratio is required to value real property for ad valorem tax purposes and does so by mass appraisal using a uniform sales ratio study. Using the values of comparable property as computed by that the fair market value of the subject property in 1984 was \$1,248,000.00.

The Department disputes the Courtney and Morris appraisal, arguing that the comparable sales used in the appraisal were substantially different from the subject property in configuration, topography, allowable use, and location. Conversely, while the Taxpayers agree that the Tax Assessor does a good job of mass

appraising property for ad valorem tax purposes, they argue that the uniform values computed by the Assessor cannot be used to accurately determine the fair market value of a specific tract of land. The Taxpayers illustrated their point by giving several examples where recent sales of various parcels were not considered by the Tax Assessor in determining the property's fair market value. The Taxpayers also contend that some of the comparable used by the Department were non-arm's length transactions.

The primary discrepancy between the appraisals in evidence concerns the proper value of the canal property. The Department argues that the spoilage easement effectively prevents development of the canal frontage. However, the evidence indicates that other property along the canal has been developed, which establishes that the Corp of Engineers will allow improvements in some instances.

Further, the easement document itself states that dredge materials cannot be dumped on any improved property, which further indicates that the property can be improved.

A reasonable conclusion from the evidence presented is that the canal frontage can be improved and used for industrial purposes, in which case the Courtney and Morris appraisal and the 1987 Bell appraisal would present a more accurate value of the property in 1984.

CONCLUSIONS OF LAW

Alabama law allows a charitable deduction to the same extent as

allowed by 26 U.S.C.A. §170, see Code of Ala. 1975, §40-18-15(a)(10). Section 170 allows a deduction for any gift or contribution measured by the fair property less any value received. The fair market value of property is defines as "the price at which it could be purchased by a willing buyer from a willing seller; neither being under any compulsion and both having reasonable knowledge of relevant facts". I.R.C. Reg. Section 1.170A-1(c)(2).

As concluded in the above findings of fact, the fair market value of the property was properly computed in the Courtney and Morris appraisal to be at least \$3,150,000.00. Accordingly, the charitable deductions claimed by the Taxpayers which are based on the Courtney and Morris appraisal should be allowed.

The above considered, the assessments in issue should be reduced and made final showing no additional tax due.

Entered this the 28th day of September, 1989.

BILL THOMPSON
Chief Administrative Law Judge