

February 20, 1950

K. D. Lockwood, Director
Income Tax Division
State Tax Commission
Phoenix, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Mr. Lockwood:

RE: Basis of arriving at January 1, 1930
value of real estate for income tax
purposes.

We have your memorandum asking our opinion as to your using the assessed value as the fair market value of real property for January 1, 1930 in the case where land was homesteaded in Arizona and patent received many years prior to January 1, 1930.

As you are aware, the Arizona Income Tax Law was adapted from the Wisconsin Act, which was derived from the Federal Income Tax Laws; therefore, federal decisions, while not conclusive, are extremely persuasive.

We find very few cases directly in point upon your question. However, in Mertens, Law of Federal Income Taxation, in the discussion of valuation of real property for income tax purposes, at Section 59.85 we find the following:

"Property Taxes. Many cities and other local units do not assess their taxes upon a basis equal to the market value. Instead, they base the tax upon some proportion of the market value, such proportion varying throughout the country. Political considerations, frequently the size of the tax and the varying methods used, also often make such assessed values unreliable guides. Assessed valuations as a measure of fair market value must be used with caution; ordinarily not much weight is given to them for income tax purposes. However, the assessed value will usually be lower than the market value. There are, of course, exceptions.

If there is no showing as to the basis of the assessment, that is, if the ratio between market value and assessed value is not proved, no attention will be paid to the tax assessments. Of course, if it is shown affirmatively that the assessed valuation bears little relation to market value because the assessment is based on cost of reproduction, or some other concept, the evidence is considered of slight importance."

The leading case with regard to the weight to be given to assessed valuation of real property appears to be Bessemer Inv. Co. v. Commissioner of Internal Revenue, 31 Fed. 2d 248. Therein the point at issue was the fair market value of certain real property as of March 1, 1913, (The base date in the federal act corresponding to January 1, 1930 in the Arizona Act). The petitioner in that case had carried on its books since 1909 the real property in question valued at the assessed valuation made in the state of New York. However, for the purpose of determining a gain or loss, petitioner claimed a much higher fair market value for the property on March 1, 1913 than the amount of the assessed value. For such purpose the petitioner offered other testimony to show that the fair market value was above that of the assessed valuation. The court, in its opinion, said:

" * * * The admissions made by such book entries (at the assessed valuation) can be overcome by proof as to the true market value of the properties. It has been judicially noticed that real estate in New York is often assessed at values below its true worth. (Citing Cases.) There the court said: ' * * * It is well known that * * * the taxation of real estate throughout the state is generally upon an assessment which represents but part of its actual value. Assessment at the full value is the exception and not the rule.'

Considering the price at which the property was sold in 1919 and the assessed valuation at the time, the latter was but 67 per cent. of the selling price. The sale price is some evidence of its fair market value. * * * We shall reverse this determination, and refer the matter to the Board of Tax Appeals, affording opportunity to both the taxpayer and the Commissioner to offer competent proof as to the fair market value of the properties on March 1, 1913. * * * "(Bracketed Material Supplied.)

See also: Tabor Mfg. Co. v. Commissioner of Internal Revenue,
34 Fed. 2d 140

C. C. Thompson Pottery Co. v. Routzahn, 25 Fed. 2d 897

It is, therefore, our opinion that in view of the fact that it is commonly recognized that assessed valuations of real property in Arizona as well as in New York, seldom, if ever, represent the fair market value or full cash value of the properties assessed, you should not use the assessed valuation of January 1, 1930 as the fair market value. However, following the statement above quoted in Mertens' text, if you can ascertain with some degree of accuracy the ratio between the fair market value and the assessed value of real

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property in the locality in which it is situated as of January 1, 1930, we believe that the assessed valuation may be used as a basis for arriving at the true cash value. We would point out, however, that all other circumstances tending to modify the amount so arrived at must be taken into consideration. In other words, sales of similar property in the locality, testimony of experts familiar with valuation in the locality, etc., must be given due weight and consideration in determining the fair market value.

The method employed by the Tax Commission, approved by the Arizona Supreme Court in State Tax Comm. v. Magma Copper Co., 41 Ariz. 97, 15 P. 2d 961, varies considerably from the methods employed by the fourteen county assessors throughout the State in assessing other real property. For this reason, we cannot agree that, because the Tax Commission set the January 1, 1930 value on producing mines at the then assessed valuation, the same rule must apply with regard to real property in general. It is our opinion that there is not sufficient relationship between the two types of assessment to justify such a conclusion.

Yours very truly,

FRED O. WILSON.
Attorney General

LORNA E. LOCKWOOD
Assistant Attorney General

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