



Pennsylvania Tax Reports

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By: Joseph C. Bright
Wolf, Block, Schorr and Solis-Cohen LLP
Philadelphia, PA
e-mail: jbright@wolfblock.com

POWER PLANT CORRECTLY ASSESSED

In a third trip to the appellate courts, the Commonwealth Court en banc affirmed that a power plant was correctly valued for real estate tax purposes using the cost method with a discount for obsolescence. *Allegheny Energy Supply Co. LLC v. County of Greene*, No. 261 C.D. 2004 (Pa. Commw. Feb. 23, 2005) (*Allegheny III*). Two judges concurred in the result. The prior decisions are *Allegheny Energy Supply Co. v. County of Greene*, 288 A.2d 1085 (Pa. Commw. 2001) (*Allegheny I*), and (*Allegheny Energy Supply Co. v. Greene County Board of Assessment Appeals*, 837 A.2d 665 (Pa. Commw. 2003) (*Allegheny II*), *appeal denied*, 853 A.2d 363 (Pa. 2004).

Most of *Allegheny III* reaffirms principles stated in the first two decisions, but one point merits particular comment. As stated, the Commonwealth Court affirmed the trial court's decision that the property was correctly valued using the cost method, and then applying a 35% discount for obsolescence. In support, the court repeated the statement made in prior decisions that the value of a property for a specific use and the value of that use to the owner are not relevant, citing *F & M Schaeffer Brewing Co. v. Lehigh County*, 610 A.2d 1 (Pa. 1992). However, the statement that specific use is not relevant is contrary to what was actually done by the trial court. The trial court did exclude from the valuation of the land the use of the property as a power plant. However, in valuing the improvements, the trial court valued the power plant using the cost method, which is inevitably tied to current use. Under the cost method, the cost is estimated of reproducing the same building using current costs, to which discounts are applied for depreciation and obsolescence. One of the principal fights in the litigation was whether a discount for functional and economic obsolescence was appropriate; the appellate courts held that it was. A discount for obsolescence can, to a degree, depart from current use, but only to the extent that the current use is no longer viable. The determination to what extent current use is viable does not constitute a prohibition against considering current use; rather, it estimates how a buyer in the market would regard the desirability of the present use. Thus, the discount for obsolescence is generally a matter of degree, not a matter of kind.

What the trial court did was consistent with a recent decision by the New Jersey tax court in *General Motors Corp. v. Linden City*, No. 20-09-091A-2-83D (NJ T.C. Feb. 2, 2005). The court stated:

[F]or property tax assessment purposes, the New Jersey courts and courts of other states have valued viable, operating, limited-market properties, such as the subject

property, at highest and best uses which are the same as their respective existing uses, that is, in the condition in which the properties were held as of the applicable valuation dates. . . .

Such a highest and best use determination is not based on value in use because the determination is a function of property use and not a function of a particular owner's use or subjective judgment as to how a property should be used. . . . Thus, the highest and best use determination is based on use value not value in use. **Use value** is defined as follows: "In real estate appraisal, [use value is] the value of a specific property has for a specific use; [it] may be the highest and best use of the property or some other use specified as a condition of the appraisal;..." The Dictionary of Real Estate Appraisal, *supra*, at 303. **Value in use** is defined as "[t]he value a specific property has to a specific person or a specific firm as opposed to the value to persons or the market in general." *Id.* at 306.

(Slip. Op. 63-64) (emphasis added).

The analysis by the Tax Court seems correct. If property is to be valued at fair market value, the ultimate question is what will a buyer in the market place pay for it. If the improvements are constructed for a particular use, and if that use remains viable, then a buyer will take into account the potential use in making an offer to buy. In *General Motors*, the question was whether a facility constructed for the purpose of automobile manufacturing had continuing utility. The court held that it did, and therefore that the use should be taken into account in determining the value. However, the *use value* is distinct from the *value to a particular user* -- in the New Jersey case, for example, the value to General Motors. Both New Jersey and Pennsylvania law prohibit taking into account the value to the owner or to any particular user.

Thus, the statement that specific use is irrelevant for Pennsylvania assessment purposes should be treated with caution.