

OHIO BOARD OF TAX APPEALS

Oregon Ford Inc.,)	
)	
Appellant,)	CASE NO. 2005-A-111
)	
vs.)	(PERSONAL PROPERTY
)	TAX)
)	
William W. Wilkins, Tax Commissioner)	
of Ohio,)	DECISION AND ORDER
)	
Appellee.)	

APPEARANCES:

For the Appellant - Hall & Hall
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For the Appellee - Jim Petro
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Entered January 27, 2006

Ms. Margulies, Mr. Eberhart, and Mr. Dunlap concur.

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellant from a final determination of the Tax Commissioner. Therein, the Tax Commissioner denied the taxpayer's objections to the assessments issued as the result of an audit of the taxpayer's 2002 and 2003 personal property tax returns.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the Tax Commissioner, the record of the hearing before this board, and the briefs filed by counsel.

In reviewing appellant's appeal, we recognize the presumption that the findings of the Tax Commissioner are valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. It is therefore incumbent upon a taxpayer challenging a finding of the Tax Commissioner to rebut the presumption and establish a right to the relief requested. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138. Moreover, the taxpayer is assigned the burden of showing in what manner and to what extent the Tax Commissioner's determination is in error. *Kern v. Tracy* (1995), 72 Ohio St.3d 347; *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213. Where no competent and probative evidence is presented to this board by the appellant to show that the Tax Commissioner's findings are incorrect, then the Board of Tax Appeals must affirm the Tax Commissioner's findings. *Kern, supra*; *Kroger Co. v. Limbach* (1990), 53 Ohio St.3d 245; *Alcan, supra*.

Specifically, in his final determination, the Tax Commissioner affirmed the assessment of appellant's parking lot lighting as personal property. Appellant contends, as set forth in the notice of appeal, that:

"The primary issue in this case is the assessment of the dealership's parking lot lighting as personal property rather than as part of the real property. In support of our position, we considered R.C. 5701.03, which states that when an item is permanently attached or affixed to the land or to a building, structure, or improvement, the item

is determined to be real or personal property depending on whether the item primarily benefits the realty or the business conducted by the occupant on the premises; we attempted to describe how the lighting enhanced the value of the facility by expanding the available business hours and improving security. Through some circular logic, the Commissioner's representative turned this around, stating that 'these arguments actually prove that the parking lot lighting has been installed for business purposes, to promote late-night business, to meet the customers' expectations, and to keep the customers and inventory secure...'

"The distinction we are attempting to convey is described in R.C. 5701.02; in a real property context, the definition of 'Structure' requires (1) a permanent fabrication or construction other than a building that is attached or affixed to land and (2) increased utilization or enjoyment of the land as a result. Inasmuch as these parcels are commercial property, it is our position that the lights are necessary or beneficial to utilization of the realty; that it is not just our current business operation that is benefitted [sic], but most any activity that could or would be conducted thereon.

"Further, to classify this lighting as personal property raises the specter of double taxation. Even if, as the Commissioner's representative notes, there is no disclosure of parking lot lighting in the property valuation records of the Lucas County Auditor, it is unclear how even an experienced appraiser would totally disregard this factor in arriving at a valuation for the land itself, given the permanent installation of the lighting."

During the audit period in question, appellant, Oregon Ford Inc., operated as a "new and used car dealership offering full service repair and a body shop." S.T. at p. 1. According to the testimony of Paul Becka, Jr., a twenty-year employee of appellant, after the subject business was purchased by appellant and operated for some time, appellant undertook to remodel some of the premises,

including paving the parking lot and adding the lighting in question as well as some fencing. H.R. at 9, 11.

It is the appellant's position that the subject lighting constitutes real property, as defined in R.C. 5701.02 (A) - (E) during the audit years, as follows:

“(A) ‘Real property,’ ‘realty,’ and ‘land’ include land itself, *** and, unless otherwise specified in this section or section 5701.03 of the Revised Code, all buildings, structures, improvements, and fixtures of whatever kind on the land, and all rights and privileges belonging or appertaining thereto. ***

“(B)(1) ‘Building’ means a permanent fabrication or construction, attached or affixed to land, consisting of foundations, walls, columns, girders, beams, floors, and a roof, or some combination of these elemental parts, that is intended as a habitation or shelter for people or animals or a shelter for tangible personal property, and that has structural integrity independent of the tangible personal property, if any, it is designed to shelter.***

“(C) ‘Fixture’ means an item of tangible personal property that has become permanently attached or affixed to the land or to a building, structure, or improvement, and that primarily benefits the realty and not the business, if any, conducted by the occupant on the premises.

“(D) ‘Improvement’ means, with respect to a building or structure, a permanent addition, enlargement, or alteration that, had it been constructed at the same time as the building or structure, would have been considered a part of the building or structure.

“(E) ‘Structure’ means a permanent fabrication or construction, other than a building, that is attached or affixed to land, and that increases or enhances utilization or enjoyment of the land. ‘Structure’ includes, but is not limited to, bridges, trestles, dams, storage silos for agricultural products, fences, and walls.”

The Tax Commissioner believes the subject lighting constitutes personal property and is a business fixture, pursuant to the provisions of R.C. 5701.03 (A) and (B). Specifically, those sections provide:

“(A) ‘Personal property’ includes every tangible thing that is the subject of ownership, whether animate or inanimate, including a business fixture, and that does not constitute real property as defined in section 5701.02 of the Revised Code. * * *

“(B) ‘Business fixture’ means an item of tangible personal property that has become permanently attached or affixed to the land or to a building, structure, or improvement, and that primarily benefits the business conducted by the occupant on the premises and not the realty. ‘Business fixture’ includes, but is not limited to, machinery, equipment, signs, storage bins and tanks, whether above or below ground, and broadcasting, transportation, transmission, and distribution systems, whether above or below ground. ‘Business fixture’ also means those portions of buildings, structures, and improvements that are specially designed, constructed, and used for the business conducted in the building, structure, or improvement, including, but not limited to, foundations and supports for machinery and equipment. ‘Business fixture’ does not include fixtures that are common to buildings, including, but not limited to, heating, ventilation, and air conditioning systems primarily used to control the environment for people or animals, tanks, towers, and lines for potable water or water for fire control, electrical and communication lines, and other fixtures that primarily benefit the realty and not the business conducted by the occupant on the premises.”

Prior to the adoption of the current definition of real property, a line of judicial authority classified property as real or personal predicated upon various characteristics, including a determination of whether the item was physically attached and whether it created a permanent benefit to the land. See, e.g., *Teaff v. Hewitt*

(1851), 1 Ohio St. 511; *Zangerle v. Standard Oil Co.* (1945), 144 Ohio St. 506; *Zangerle v. Republic Steel Corp.* (1945), 144 Ohio St. 529.

In more recent years, however, the court moved away from these earlier pronouncements. In *Rotek, Inc. v. Limbach* (1990), 50 Ohio St.3d 81, the court expressly rejected, as improper, the test found in the *Teaff* and *Zangerle* line of cases. In *Thomas Steel Strip Corp. v. Limbach* (1991), 61 Ohio St.3d 340, the court reiterated its move away from the *Zangerle* cases and set forth its test for determining whether property is real for purposes of taxation:

“We have recently and consistently interpreted this definition of real property and land to mean that any property attached to land is real property for tax purposes, unless otherwise specified. *Green Circle Growers, Inc. v. Lorain Cty. Bd. of Revision* (1988), 35 Ohio St.3d 38, 517 N.E. 2d 899. We have drawn away from earlier rulings that asked whether the improvement primarily benefited the land or business on the land. For example, in *Rotek, Inc. v. Limbach* (1990), 50 Ohio St.3d 81, 552 N.E. 2d 640, we reversed a BTA decision concerning very similar items, because the BTA based its decision on whether the property was primarily devoted to the business conducted on the land. We conclude that R.C. 5701.02 does not require the fact-finder to make this distinction.” Id. at 341.

Subsequent to *Thomas Steel Strip*, however, the General Assembly amended R.C. 5701.02. See 144 Ohio Laws, S.B. No. 272, eff. 7-20-92. The legislature, by such amendment, codified the position taken by the Supreme Court earlier in *Teaff* and *Zangerle*. It is this amended provision which we must now consider and apply in this appeal. As part of the amendment, the General Assembly added statutory definitions for buildings, improvements, structures, and fixtures. Each term designates specific identifying elements. We interpret these changes as requiring

this board, as fact finder, to inquire into the specific characteristics of the property in question to determine whether it falls within the scope of the statutory definition of real property for taxation purposes, that is, whether the property primarily benefits the realty or the business conducted by any occupant on the premises. See *Newcome Corp. v. Tracy* (Dec. 11, 1998), BTA No. 1997-M-320, unreported; *F.P.&E. Inc. v. Tracy* (Mar. 18, 1999), BTA No. 1996-M-806, unreported.

The definition of structure now contained in R.C. 5701.02(E) has three requirements: (1) that the property be attached or affixed to the land; (2) that the attachment be a permanent fabrication or construction, other than a building; and (3) that the property increase or enhance the utilization or enjoyment of the land. These definitional requirements are clearly similar to those expressed by the court in *Teaff* and both *Zangerle* cases, *supra*.

In the instant matter, the parking lot lighting, approximately 30-40 light poles, was “put on the ground and wired underground and put on concrete faces.” H.R. at 9. It was further described as poles, affixed to the ground by a concrete baseboard, to which lights are bolted. H.R. at 16. Based upon the foregoing description, it appears that the light poles are permanently attached to the land. Arguably, the poles cannot be dismantled and moved to another location without destroying them, a signpost of permanency.

However, the final requirement for an item to be classified as a structure is that it must increase or enhance the utilization of the land. In *F.P.&E.*, *supra*, we

determined that gas station canopies, under the statute as amended, qualified as business fixtures, although under the prior version of the statute we had determined the canopies were real property. In addressing this apparent inconsistency, we stated that “it appears to this Board that, under the new statute, the definition [of] ‘business fixture’ includes items which were otherwise considered structures.” Id. at 18, f.n.4.

We held:

“*** [n]o longer is property presumed to be realty because it meets the definition of structure. Now, inquiry must be made into whether the personalty benefits the land or the business thereon. Further, the inquiry now appears weighted more heavily towards finding property to be personalty, regardless of the permanence of attachment to realty. R.C. 5703.03(B) specifically requires that an item that qualifies as a business fixture by virtue of its primary benefit to the business be taxed as personalty even it [sic] is permanently attached or affixed to land.” Id. at 16.

In order to determine whether personalty is so devoted to the land that it must be taxed as realty, in *F.P.&E.* we returned to the Supreme Court’s pronouncement in *Zangerle v. Standard Oil Co.*, supra, where the court delineated a test for such questions. Specifically, to be considered realty, the personalty must “have such relationship to the land or improvements already constructed thereon as to be necessary or beneficial to its enjoyment, independent of the business presently carried on.” Id. at 515. The court relied upon the “intention upon the part of the annexer to make the chattel annexed a permanent accession to the freehold.” Id. at 518. The court provided the following indices upon which to determine intent:

“The intention of the annexer must be determined from the nature of the article affixed; the relation and situation

of the party making the annexation; the structure and mode of annexation; the purpose or use for which the annexation has been made, taking into consideration whether it was made with a view of permanence or with a view of serving a special purpose or business; the economic advantage, if any, of treating the annexed property as real or personal; the relationship between the parties interested in the land and chattel and the resulting equities arising from such relationship; and contracts or agreements between those having ownership of or equitable interests in the chattel, tending constructively to annex such chattel to or to sever it from real estate.

“Intention to render a chattel a fixture is not the mere determination to annex the chattel to the realty, but the determination to devote the chattel to the use and service of the land or structure already a part of the land, in such manner as to enhance the serviceability of the whole as a permanent unit of property to whatsoever use it may be devoted.” *Id.* at 519.

In applying the *Zangerle* test to the facts in *F.P.&E.*, we asked “Would a canopy exist on the property if a service station were not present? Is there an economic advantage to treating the canopy as real or personal property? Does the canopy have intrinsic value separate from the realty? If the owner of the realty is unrelated to the owner of the business, which party believes it to be the owner of the canopy?” *F.P.&E.*, *supra*, at 18. See, also, *Funtime, Inc. v. Wilkins*, 105 Ohio St.3d 74, 2004-Ohio-6890.

Here, the board finds that the evidence establishes that the parking lot lighting does not increase or enhance the utilization of the land. In fact, Mr. Becka testified that there were lights already in place when the business was purchased and those “were just torn down and *** scrapped.” H.R. at 23. Thus, although the lighting is attached to the property with some degree of permanency, it can be

removed, if desired. Accordingly, then, it is not a given that the lighting would or could be utilized on the property if the car dealership business left. Considering the foregoing and the very specific changes made to the statutory framework utilized in making our determination herein, we conclude that the parking lot lighting in question constitutes a business fixture, which primarily benefits the business conducted on the land, not the land itself. Further, as we consider the statutory examples of what constitutes a “structure,” i.e., a bridge, trestle, dam, silo, fence, or wall, we note that all of the examples are items which support or aid in the use of the land on which they are located. The use of the natural land is improved or assisted by a “structure” situated thereon. The lighting does not increase or enhance the utilization of the land on which it is located; on the contrary, it benefits the business conducted on the land, not the land itself. The lighting was not added to the subject property so that appellant’s customers would enjoy the land on which it sits more; the lighting was erected so that customers could shop for cars after daylight hours and appellant’s inventory and business location could be kept secure during the hours the business was closed. The lighting would not necessarily benefit the land if the particular business conducted on the land was terminated. Arguably, the decisions made by appellant when the lighting was added, including the type chosen and its placement on the property, were made based upon the unique requirements of the automobile sales business and consequently, the lighting may not benefit any other use of the land.

Thus, based upon all of the foregoing, we find that the parking lot lighting is a business fixture and constitutes personal property, as defined by R.C.

5701.03, and we therefore concur with the Tax Commissioner's determination regarding such item's taxability. Accordingly, this board finds that the Tax Commissioner's findings were reasonable and lawful. It is the Decision and Order of the Board of Tax Appeals that the decision of the Tax Commissioner must be and hereby is affirmed.

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