

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NOS. ADV. 86-144
THROUGH ADV. 86-215
AND ADV. 86-217

VARIOUS CHOCTAW COUNTY
LANDOWNERS,

§

§

Petitioners.

RECOMMENDED ORDER

This case concerns the valuation of property in Choctaw County, Alabama for ad valorem tax purposes for the tax year October 1, 1984 through September 30, 1985. The primary question addressed herein concerns the average value of C-2 timberland as of October 1, 1984. Objections involving individual parcels other than C-2 timberland will be addressed separately. A hearing was held in the matter on August 26, 1986 at the Choctaw County Courthouse in Butler, Alabama. The protesting landowners were represented principally by attorney Joseph W. Hutchinson, III, with assistance from attorneys Mark Ezell and Wallace H. Lindsey, III.

Several individual landowners were present and represented themselves. The Revenue Department was represented by assistant counsel Ron Bowden. Based on the evidence taken at the hearing, and in consideration of the arguments and authorities presented by the parties, the following proposed findings of fact and conclusions of law are hereby made and submitted.

FINDINGS OF FACT

In Weissinger v. Boswell, 330 F.Supp. 615 (1971), the United States District Court for the Middle District of Alabama found that

Alabama's ad valorem tax system was unconstitutional, and consequently ordered the State to equalize the assessment of ad valorem tax within and among the various counties in the State. Toward that end, over the next ten years the Revenue Department completed two statewide reappraisal programs. Since the second reappraisal, the Department has sought to maintain equalization of values throughout the State on a continuing basis.

Under the Department's present equalization scheme, a yearly assessment sales ratio study is conducted in every county of the State. The Revenue Department, with assistance from the local tax assessor, gathers data from recent land sales in the county and thereafter compares the average sales price for different classifications of property (Class A - row crop; Class B - pastureland; Class C - timberland) with the value at which that class of property is assessed for tax purposes by the county tax assessor. It is undisputed that the use of comparable sales data (market approach) is the most accurate method available of determining the fair market value of property. If the assessed value is less than 85% or more than 105% of the fair market value, as determined by the sales ratio study, then the property must be reappraised at least once every five years, regardless of the findings of the sales ratio study.

The Department has established numerous guidelines for conducting the sales ratio study. Only sales which occur during the six months (April 1 - September 30) immediately prior to the

tax date of October 1 are used. Further, a sale does not qualify for the study if it was not an arms-length transaction. Sales that are unacceptable involve sheriff's deeds, family transactions, government transactions, bankruptcy proceedings, and sales involving special financing, among others. Every sale that qualifies for the sales ratio study must be verified with either the grantor, the grantee or another involved party. Verification is done by an employee of the Department or the local tax assessor's office, and relates to the gross sales price, number of acres involved, and the value of timber and personal property on the land.

The Department has also established a continuing and in-depth training program for appraisers, including numerous instructional courses and seminars conducted by Auburn University. Upon completion of the training program, the employee is certified as a qualified Alabama appraiser.

The Department's initial sales ratio study in Choctaw County showed that the average value of C-2 timberland as of October 1, 1984 was \$350.00 per acre. The value was determined using approximately fourteen qualified sales that occurred between April 1, 1984 and October 1, 1984. Information from surrounding counties was also used to insure the accuracy of the study. Accordingly, the value places on C-2 timberland in Choctaw County by the tax assess for the year in dispute was \$350.00 per acre.

Various landowners appealed their property valuation to the

Choctaw County Board of Equalization as allowed under Code of Alabama 1975, §40-3-19. Upon hearing the objections, the Board of Equalization reduced the value of C-2 timberland to \$200.00 per acre, with other classes decreased proportionately. The Revenue Department subsequently set aside the Board's reduced values under the authority of Code of Alabama 1975, §§40-2-11 and 40-2-15, and revalued C-2 timberland back to the original \$350.00 per acre. It is from the Department's action in revaluing the C-2 property that various landowners filed objections with the Department as allowed under Code of Alabama 1975, §40-2-15. At the request of the landowners, the hearing was conducted at the Choctaw County Courthouse in Butler, Alabama.

As stated, the primary issue concerns the average value of C-2 timberland as of October 1, 1984. At the hearing, the Department put on several witnesses in support of its position. The first witness, James K. Green, Chief of the Ad Valorem Tax Division, testified generally as to the history and present status of the Department's reappraisal program, the method by which the sales ratio studies are done, and the training and qualifications required of the Department's reappraisal personnel. The next witness, Mr. Tommy Alan Richardson, was the Choctaw County appraiser during the period in issue. Mr. Richardson testified that as county appraiser he assisted in developing the county rural land study using comparable sales information, and that in his

opinion the value of C-2 timberland in Choctaw County for the period in question was \$350.00 per acre. Mr. Thomas R. Sangster, an experienced and qualified appraiser familiar with Choctaw County property, then testified that in his opinion the general classification used by the Department as to row crop, pastureland and timberland in Choctaw County was properly done. Mr. Sangster also testified that the C-2 valuation of \$350.00 per acre was correct.

The State's final witness was Mr. Walter Frazier, supervisor of the Ad Valorem Division's Southwest District, which includes Choctaw County. Mr. Frazier supervised the rural land study and the assessment sales ratio study in Choctaw County. Mr. Frazier testified that a subsequent comparable sales ratio study was done to verify the initial findings of \$350.00 per acre. As a result of the subsequent study, the Department, through Mr. Frazier, submitted at the hearing a chart of thirteen comparable sales which occurred between January 1, 1984 and July 31, 1985. The parties had agreed that only sales which occurred within the eighteen month period were to be used at the hearing.

Each sale included in the Department's comparable sales study was reviewed and verified as to total acreage, gross sales price and values allocated for timber and personal property by either the grantor, the grantee or the Federal Land Bank. The landowners established through cross-examination that two of the sales had been verified by an uncertified Department trainee. It was also

established that one of the thirteen sales was between relatives, which should have disqualified the sale under Department guidelines.

Mr. Frazier further testified as to how the price per acre was determined and how much, if any, value was deducted for timber and personal property in arriving at the fair market value per acre for the raw land. The average value as established by the Department's study, after deducting the value of timber and personal property, was \$428.00 per acre. The gross sales price per acre, prior to deductions for timber and personal property, was approximately \$645.00 per acre.

The landowners attacked the Department's study through the testimony of expert witness Mr. R. C. Otterberg. Mr. Otterberg testified that he had viewed or cruised each of the parcels used by the Department in its verifying sales ratio study, and based thereon offered his opinion as to the value of any timber, personal property, hunting rights, mineral rights, etc. that should have been deducted from the sales price in arriving at the value per acre of the land. The fair market value arrived at by Mr. Otterberg was \$181.25 per acre. Included in that figure were three sales in addition to the Department's thirteen sales which the landowners argued should have been used in the study. The largest of the three additional sales, involving 1,090 acres, was a court ordered sale for division. The Department moved to exclude the sale because it involved a Register's Deed and was thus excludable

under Department guidelines.

The major difference between the Department's average price of \$428.00 per acre and the landowners' value of \$181.25 per acre was the greater timber value allowed by Mr. Otterberg. After deducting for timber value, with minor adjustments for minerals, hunting rights and location, Mr. Otterberg's estimated raw land value per acre on several of the parcels was negligible, and one parcel was even determined to have a negative land value.

It was further established that Mr. Otterberg had done appraisal work for federal estate tax purposes, and that in doing so he had attempted to arrive at the lowest acceptable value so that as little tax would be due as possible.

The landowners' principal argument is that the Department failed to establish a reasonable fair market value for C-2 timberland. Further, in addition to challenging the Department's sales ratio study through the testimony of Mr. Otterberg, the landowners also argue that the study was defective because the Department violated its own guidelines and used unqualified appraisers. Finally, the landowners assert that the Department's failure to set aside the Board of Equalization's decision within thirty days was a violation of the landowners' constitutional guarantees of equal protection and due process.

CONCLUSIONS OF LAW

The Department's case is supported mainly by its two

assessment sales ratio studies. As stated, the initial study, the particulars of which were not introduced at the hearing, indicated a fair market value of \$350.00 per acre, and was the basis for the tax assessor's original valuation. The second study was done in verification and support of the original study and showed a fair market value of approximately \$428.00 per acre. The Department offered detailed testimony as to each sale used in the subsequent ratio study. In addition, the Department offered the testimony of four witnesses familiar with land values in Choctaw County, each of which testified as to his opinion that the \$350.00 per acre value applied by the Department was reasonable and correct. The landowners have objected to the testimony of the State's witnesses as unqualified opinion evidence. However, opinion evidence as to market value is allowable if, as in the present case, the witness is familiar with the property and has had an opportunity to form a proper opinion. Code of Alabama 1975, §12-21-114. See generally, Blount County v. Campbell, 109 So.2d 678 (1959); Whetstone v. Caudle, 307 So.2d 697 (1975).

On the other hand, the landowners' expert witness presented evidence in direct conflict with the findings of the Department's witnesses. The expert testified as to each sale used by the Department in its ratio study and based thereon concluded that the average fair market value of C-2 timberland was \$181.25 per acre, and further that the general fair market value of C-2 timberland in

Choctaw County during 1984 was between \$150.00 and \$200.00 per acre.

There is substantial evidence to indicate that the sales ratio studies used by the Department were carried out by qualified appraisers. The only evidence to the contrary is that two of the sales were verified by an uncertified trainee. However, while the use of an uncertified trainee may have technically violated Code of Alabama 1975, §40-7-67, which requires the use of qualified appraisers, the use of a trainee to verify two of the sales is insufficient grounds to nullify the entire appraisal study, or even to reject the two sales involves. Obviously, the verification of a sale as to the number of acres, the sales price, and the amount of timber involved does not require the use of a trained appraiser.

However, even if the two sales were removed, the ratio study would still substantially uphold the Department's case.

As to the landowners' contention that the Department failed to follow its guidelines, there is evidence only that one sale of the thirteen used by the Department was not acceptable because the grantor and grantee were related. Otherwise, all of the sales occurred within the acceptable time frame (or at least within the time frame agreed upon by the parties), were verified as to sales price, acreage, timber value, etc., and as far as discernible involved arms-length transactions between unrelated and willing buyers and sellers. As to the one unqualified sale, its use

benefited the landowners because a sale between relatives would normally involve a lower than fair market value sales price, which would result in a lower value per acre. The same is true of the sale for division offered by the landowners as an addition to the Department's study. In any case, as with the sales involving the trainee, even if the sale between related parties was removed, the study would still substantially support the Department's case.

Clearly, the Department has made a good faith effort to properly value C-2 timberland as well as all property in Choctaw County. The one weak aspect of the Department's case, aside from the use of the trainee and the inclusion of an unqualified sale in its sales ratio study, which are not fatal, concerns the Department's valuation of the timber involved in the sales. The Department arrived at the timber values in large part from information provided by the grantor or grantee. How those parties determined the fair market value of the timber, or their qualifications to do so, was not established. Thus, there may be some question as to the exactness of the Department's allocated timber values.

On the other hand, the conclusions reached by the landowners' expert witness are also questionable. For example, the method used in arriving at the raw land value is flawed. The expert determined the net land value by subtracting his estimate of the full fair market value of the timber from the gross sales price. That method resulted in several parcels having a negligible value per acre, and

in one case the raw land value was negative. Any method by which the fair market value of land is determined to be zero or a negative amount is clearly faulty. The expert's explanation was that the buyer had gotten a good buy on the land. However, just as easily it could be argued that the good price was a result of an undervaluation of the timber, and not an undervaluation of the land. Consequently, the Department's method of accepting the timber values as allocated by the grantor or grantee, while not exact, is the more reasonable method, especially when Department personnel are used to verify the allocations and values so as to minimize mistakes.

Further, the expert admitted valuing property as low as acceptable (versus fair market value) for federal estate tax purposes so that the estate would owe as little tax as possible.

There is no reason not to believe that his valuation of property for ad valorem tax purposes would also be low. The explanation offered that a different method of valuation is allowed by the Internal Revenue Service is insufficient. The proper measure for both federal estate tax and ad valorem tax purposes is the fair market value of the asset, not the lowest acceptable value that will get by without challenge.

There will always be individual variations from a county wide appraisal study through which the results can be attacked. However, from the evidence it is clear that the Department made a good faith effort to find the fair market value of C-2 timberland,

and substantially complied with the law and Department guidelines in doing so. The only firm evidence in favor of the landowners is that the Department's allocated timber values may have been low in some cases.

In consideration of all of the evidence, it must be determined that the Department's position is substantially correct. Giving allowance for the possible undervaluation of timber by the Department on several of the sample parcels, the best estimate of the air market value of average timberland in Choctaw County in 1984 is \$325.00 per acre. That figure is slightly higher than the average of the values offered by the two sides ($\$181.00 + 428.00 - 2 = \304.50). However, the Department's expertise and experience in mass appraisal must be given due consideration, along with the fact that the Department's reappraisal program is carried on under the supervision of the federal courts, which have approved of the current methods and guidelines used by the Department.

A final procedural question raised by the landowners concerns whether the Department was required to set aside the Board of Equalization's actions within 30 days, which is the time limit set for taxpayers to appeal to circuit court under Code of Alabama 1975, §§40-3-24 and 40-3-25. However, those sections apply specifically only to taxpayers. The Department is not required to appeal to circuit court. Rather, it is specifically authorized under Code of Alabama 1975, §40-2-11 to set aside any assessment

that it deems incorrect, as it did in the present case. Thus, the 30 day time limit does not apply to the Department.

This recommended order, along with a copy of the transcript and exhibits taken at the hearing in this matter, is hereby submitted to the Commissioner of Revenue for his review and subsequent action.

Done this 22nd day of October, 1986.

BILL THOMPSON
Chief Administrative Law Judge