



Ohio Legislative Service Commission

Bill Analysis

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S.B. 199

128th General Assembly
(As Introduced)

Sens. Gibbs, Cates, Seitz

BILL SUMMARY

- Requires for-profit, daily-fee golf courses for which there is no recent arm's length sale to be valued using the income approach for real property tax purposes.
- Authorizes the county auditor to request income and expense data from owners of golf courses.
- Requires all other golf courses, and for-profit golf courses that do not submit necessary income and expense data to the county auditor, to be valued using a combination of the market data approach and the cost approach.
- Designates as "business fixtures"--and therefore tangible personal property--the following: cart paths, irrigation systems, and structures that consist of soil and natural materials requiring regular maintenance that are depreciable under the Internal Revenue Code, making them nontaxable under the property tax, and potentially shifting liability for sales and use tax from the person installing or constructing such property to the person for whom the installation or construction is performed.

CONTENT AND OPERATION

Golf course valuation

Current real property valuation

Under current law, the guiding legal standard for assessing the value of real property is to determine the property's "true value in money" or "fair market value," the price for which real property would sell on the open market. The true value in money standard is mandated by the Ohio Constitution, Article XII, Section 2: "Land and

improvements thereon shall be taxed by uniform rule according to value ... " A recent sale price in an arm's length transaction is considered the best evidence of true value but, failing such a recent sale, an appraisal must be conducted. See *State, ex rel. Park Investment Co., v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964). Under the administrative rules governing appraisals for taxation, three approaches are recognized: the market data, income, and replacement cost approaches. Generally, the market data approach compares properties with similar ones that have recently sold; the income approach estimates value based on discounted net income from the property; and the replacement cost approach estimates the current cost of replacing property with a similar improvement. The rules encourage the application of a combination of approaches. (See Ohio Adm. Code sec. 5703-25-07.) Whichever approaches are applied, "the ultimate result of such an appraisal must be to determine the amount which such property should bring if sold on the open market." *Park Investment*, at p. 412.

The bill

(R.C. 5713.031)

The bill prescribes specific valuation methods to be applied to golf courses for which there has been no recent arm's length transaction, and for which appraisal based on use as a golf course is justified either as the highest and best use or as a special purpose use.¹ The valuation method to be applied depends on whether or not a golf course is operated for profit and on a daily-fee basis.

If a golf course is operated for profit on a daily-fee basis, the income approach prescribed in the state's tax assessment rules is to be used. (See Ohio Adm. Code sec. 5703-25-07(D)(2).) The value of all tangible and intangible personal property that contributes to the net operating income of the taxable property is to be deducted from the value obtained from the income approach. The bill specifies that the capitalization rate is to reflect all anticipated risks of operating a golf course, including weather-related risks and competition from tax-exempt golf courses.

¹ "Highest and best use," generally, is the use of real property that would result in the greatest value, considering legal restrictions, physical limitations, and other considerations. It is conceptually distinguished from whatever the actual, current use of property is, which may not, in fact, be the economically most valuable.

"Special purpose" property is not defined in Ohio statute, but is defined in a Minnesota Supreme Court decision cited by an Ohio Supreme Court decision as "property that is treated in the market as adapted to or designed and built for a special purpose." *Federal Reserve Bank v. State*, 1981 Minn. LEXIS 1546, 313 N.W. 2d 619 (1981), cited by *Dinner Bell Meats, Inc. v. Cuyahoga County Bd. of Rev.*, 12 Ohio St.3d 270 (1984). In those cases it is stated that appraisal using the replacement cost approach is appropriate for special purpose property because the lack of comparable properties on the market precludes the use of the market data approach.

For all other golf courses (i.e., those that are not for-profit and daily-fee basis courses), the valuation methods to be applied are the market data approach in combination with the replacement cost approach.

The bill authorizes county auditors to request income and expense data from the owner of a for-profit, daily-fee basis golf course to enable auditors to determine the golf course's value based on the income approach. If an owner of a golf course does not provide the required data and the auditor is unable to determine the true value in money of golf course real property using the income approach, then the auditor is to use a combination of the market data approach and the cost approach. Under the bill, income and expense information provided by the owner of a golf course in connection with the request by a county auditor is confidential and exempt from public disclosure under the public records law.

Golf course property as "business fixtures"

(R.C. 5701.03)

Current law distinguishes real property from tangible personal property for the purpose of taxation. For property tax purposes, real property is taxable, and tangible personal property is taxable only if it is used to render a public utility service (or until 2011, used as telephone or telecommunications property). For sales and use tax purposes, transactions involving tangible personal property are taxable (unless specifically exempted or excluded), whereas sales of real property are not. Further, the person who is liable for paying sales or use tax may depend on whether tangible personal property is incorporated into real property, as may occur in a construction contract or other manner of installing tangible personal property so that it becomes part of real property. For example, if a construction contractor purchases tangible personal property to incorporate into real property, the construction contractor is the consumer of the property and owes sales or use tax on the price of the property. (Ohio Adm. Code sec. 5703-9-14.)

Business fixtures are a form of tangible personal property. (R.C. 5701.03.) Business fixtures include, but are not limited to, "machinery, equipment, signs, storage bins and tanks, and broadcasting, transportation, transmission, and distribution system" that primarily benefit the business and not the building. Business fixtures do not include fixtures that are common to buildings such as heating, ventilation, and air conditioning systems to control the environment for people, and other systems that primarily benefit the property rather than the business conducted by the occupant.

The bill specifies that cart paths, irrigation systems, and structures that consist of soil and natural materials requiring regular maintenance that are depreciable under

Section 167 of the Internal Revenue Code are business fixtures for Ohio tax purposes. The property tax effect of the bill would be to make such property nontaxable if it is currently considered to be real property. And, since such property is defined as a business fixture--and, therefore, as tangible personal property--its contribution to the net operating income of a golf course would be deducted in appraising the true value of the golf course when the income approach is applied as prescribed by the bill (see R.C. 5713.031(A)).

The bill also appears to shift sales and use tax liability for sales involving such property (or materials used in the construction or installation of such property) from the person that constructed or installed the property or materials (e.g., the construction contractor) to the person for whom the property is constructed or installed (i.e., the property owner or lessee), because the property, being a business fixture, does not become real property. Further, repairs to the property appear to become taxable. (R.C. 5739.01(B)(3)(a); also see *Funtime, Inc. v. Wilkins*, 105 Ohio St.3d 74, 75 (2004).)

HISTORY

ACTION	DATE
Introduced	11-05-09

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