

# **Bond Case Briefs**

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## **TAX - OHIO**

### **Harrah's Ohio Acquisition Company, L.L.C. v. Cuyahoga County Board of Revision**

**Supreme Court of Ohio - October 30, 2018 - N.E.3d - 2018 WL 5778882 - 2018 -Ohio- 4370**

School board sought judicial review of a decision of the Board of Tax Appeals adopting a value for a horse-racing facility provided by owner's appraisal.

The Supreme Court of Ohio held that:

- Adjustment of comparable sales to account for value of potential video-lottery-terminal (VLT) licenses was proper;
- Reduction of facility's market value to account for value of owner's VLT license was proper;
- Board was required to consider appraisal of facility as if generating income under hypothetical lease;
- Board properly denied motion for judicial notice that some casinos operated on leased real estate; and
- Facility's sale price in bankruptcy proceeding was not relevant evidence of facility's minimum value.

Appraiser's reduction, as part of his sales-comparison analysis, of real-property values of his comparable sales by allocating 50 to 60% of the comparable-sales prices to the value of racing and potential video-lottery-terminal (VLT) licenses was not contrary to law, in proceeding before the Board of Tax Appeals regarding the real-property valuation of a horse-racing facility; appraiser simply placed value on an intangible asset, namely, the opportunity to acquire valuable licenses.

Appraiser's reduction, as part of his income-capitalization analysis, of \$50 million from the market value of a horse-racing facility, representing the value of a video-lottery-terminal (VLT) license, was not contrary to law, in proceeding before the Board of Tax Appeals regarding the real-property valuation of the facility; that there were territorial restrictions on the conduct of VLT licensees did not make their licenses part of the real property on which the licensees operated, and non-transferability of a VLT license did not render such license part of the real property.

Board of Tax Appeals was required to consider an appraisal of an owner-occupied horse-racing facility as if it were leased, in proceeding regarding the real-property valuation of the facility; a property owner could realize the value of its property by encumbering it with a lease, so that an appraiser could take that possibility into account when valuing it, and appraising the facility as if generating income under a hypothetical lease was consistent with real-estate valuation statute's directive to determine "the true value of the fee simple estate, as if unencumbered," so long as the appraisal assumed a lease that reflected the relevant real-estate market.

Board of Tax Appeals properly denied school board's motion for judicial notice that some casinos operated on leased real estate or, alternatively, to allow introduction of evidence supporting the assertion three months after hearing before the Board closed, in proceeding regarding the real-

property valuation of a horse-racing facility; rule permitting judicial notice did not override general rule requiring parties to present their evidence before the hearing record closed, school board's new evidence existed at the time of the hearing, and board did not show that it was prevented from timely presenting the evidence.

Sale price of a horse-racing facility and related assets in a bankruptcy proceeding was not relevant evidence of the facility's minimum value, in proceeding before the Board of Tax Appeals regarding the real-property valuation of the facility.