Bond Case Briefs

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Cantina Grill, JV v. City & County of Denver County Board of Equalization

Supreme Court of Colorado - March 16, 2015 - P.3d - 2015 CO 15

Concessionaires at city-owned airport sought review of decision by board of equalization valuing their possessory interests for property tax purposes. The District Court concluded that the possessory interests were taxable, and affirmed the valuations. Concessionaires appealed, and the Court of Appeals affirmed. Concessionaires petitioned for writ of certiorari.

The Supreme Court of Colorado held that:

- Concessionaires' possessory interests were sufficiently exclusive to qualify as taxable real property interests;
- Concessionaires' possessory interests provided a revenue-generating capability that was sufficiently independent of city for the interests to qualify as taxable real property;
- City assessor could use the minimum monthly guarantee provided for in the concession agreements to determine the "reasonably estimated future annual rents" on which valuation of the interests was to be based;
- No portion of the future rent represented payments for the right to conduct business, so as to be excludable from the valuation; and
- No portion of the future rent represented reimbursements to city for the costs of operating and maintaining the airport, so as to be excludable from the valuation.

The possessory interests held by airport concessionaires in their respective concession spaces at city-owned airport were sufficiently exclusive to qualify as taxable real property interests, even though concessionaires' agreements with city allowed city to grant other concessionaires the right to operate similar businesses at the airport. Each concessionaire had the right to exclude others from using their particular concession space to operate a concession business, and operation of competing concession businesses at nearby locations had no bearing on the exclusivity of concessionaires' rights.

The possessory interests held by airport concessionaires in their respective concession spaces at city-owned airport provided a revenue-generating capability that was sufficiently independent of city for the interests to qualify as taxable real property, even though concessionaires' agreements with city contained extensive operating restrictions. Concessionaires' revenue came from the traveling public, city did not control the amount of concessionaires' profit, concessionaires were responsible for supplies, equipment, and improvements to and maintenance of their concession spaces, and operating restrictions did not deprive concessionaires of control and supervision of their operations.

In valuing, for tax purposes, the possessory interests held by airport concessionaires in their respective concession spaces at city-owned airport, city assessor could use the minimum monthly guarantee provided for in the concession agreements to determine the "reasonably estimated future annual rents" on which such valuation was to be based, even if most concessionaires paid a percentage of their monthly gross revenues instead of the minimum guarantee. Use of the guarantee was reasonable, given that concessionaires were obligated to pay at least that amount, and assessor inquired into the market rate for the concession spaces but determined that the only comparable market was the airport.

No portion of the future rent to be paid by concessionaires at city-owned airport represented payments for the right to conduct business, so as to be excludable from the tax valuation of concessionaires' possessory interests in their concession spaces. Concession agreements stated that the compensation due under the agreements was for the "rights and privileges" granted by city, which consisted of the "right to occupy, improve, and use" the concession spaces, and valuation of the interests was based on minimum monthly guaranteed rent payments, rather than a percentage of gross revenues, and was representative of market rent.

No portion of the future rent to be paid by concessionaires at city-owned airport represented reimbursements to city for the costs of operating and maintaining the airport, so as to be excludable from the tax valuation of concessionaires' possessory interests in their concession spaces. Concession agreements stated that the compensation due under the agreements was for the "rights and privileges" granted by city, which consisted of the "right to occupy, improve, and use" the concession spaces, and any use by city of payments from concessionaires to operate, maintain, and repair airport did not transform such payments into reimbursements of those costs.