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In re Equalization Appeal of Kansas Star Casino, L.L.C.

Court of Appeals of Kansas - November 20, 2015 - P.3d - 2015 WL 7375845

Kansas Star Casino, L.L.C. appealed from the ruling by the Kansas Court of Tax Appeals (COTA) that the appraised value of its property, a 195.5 acre tract of land located in the northeast corner of Sumner County and used for casino operations, was \$80,510,000 for the tax year 2012. In reaching its conclusion, COTA determined that the value for Kansas Star's land was \$16,931,250. This amount was based on the actual price Kansas Star's parent company paid for the land.

On appeal, Kansas Star argued that COTA erroneously inflated the value of its land and that the land should have been valued based on sales of agricultural property in the surrounding area. The County cross-appealed, arguing COTA erred in declining to include various additional costs as part of its valuation.

The Court of Appeals affirmed, holding that:

- Highest and best use of land was for casino operations, and, thus, appraisal complied with the law;
- Value added to land due to taxpayer's selection as gaming facility manager was not exempt from taxation;
- Option acquisition payment was properly included in property value;
- Taxpayer did not purchase land under undue compulsion; and
- County did not meet its burden to prove that taxpayer's marquee sign was personal property.

In appraising property for purposes of ad valorem taxation, highest and best use of tract of land was for operation of casino, where taxpayer was hired by state pursuant to Expanded Lottery Act as gaming facility manager via management contract to construct and own casino improvements and infrastructure and manage gaming operations, and no other entity was permitted to build a casino in south central gaming zone.

Value that was added to taxpayer's tract of land by Kansas Expanded Lottery Act (KELA) and management contract that allowed taxpayer to construct and own casino improvements and infrastructure and manage gaming operations on tract did not represent value that was separate from tract's property value so as to be exempt from ad valorem taxation.

In assessing ad valorem taxes, option acquisition payment was required to be included as part of value of real property, on which taxpayer was entitled under management contract with state to construct and own casino improvements and infrastructure and manage gaming operations on property. Without buying option, there would have been encumbrance on the tract, and taxpayer would not have possessed a fee simple interest.

Taxpayer's purchase of real property, on which taxpayer would operate casino pursuant to management contract with state, was not result of undue compulsion, and thus use of purchase price to determine fair market value property for purposes of ad valorem taxation was warranted, where taxpayer entered into options for property voluntarily in open and competitive market, and taxpayer

was neither forced to pay a certain price nor to exercise its options after it was awarded contract.

County did not meet its burden to prove that taxpayer's marquee sign was personal property for purposes of valuing property for ad valorem taxation, where county pointed only to testimony that was largely conclusory.

Costs associated with trailer rentals for Racing and Gaming Commission (RGC) was not a "soft cost" subject to ad valorem taxation regarding real property used for casino operations by taxpayer, which was hired by the State pursuant to the Expanded Lottery Act as gaming facility manager via a management contract to construct and own the casino improvements and infrastructure and manage the gaming operations, although presence of RGC employees was necessary for licensing and approval of vendors. Requirement that RGC employees be present related to the management contract, not the construction of the casino itself.

Costs in organizational, administrative, and legal expenses were not "soft costs" subject to ad valorem taxation of property used for casino operations by taxpayer, which was hired by the State pursuant to the Expanded Lottery Act as gaming facility manager via a management contract to construct and own the casino improvements and infrastructure and manage the gaming operations, where the costs were for business start-up and preopening expenses, such as regulatory fees, preopening payroll, preopening marketing, preopening training and uniforms.

County did not meet its burden to prove that financing costs were soft costs subject to ad valorem taxation of property used for casino operations by taxpayer, which was hired by the State pursuant to the Expanded Lottery Act as gaming facility manager via a management contract to construct and own the casino improvements and infrastructure and manage the gaming operations, where appraiser's projected financing costs were called into question because they were based on 12 months, rather than the actual nine-month production cycle.