

10-1-1960

## Taxation—Voluntary Purchase Price Held Indicative for Determining Real Estate Tax Assessment

Buffalo Law Review

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/buffalolawreview>



Part of the [Taxation-State and Local Commons](#)

---

### Recommended Citation

Buffalo Law Review, *Taxation—Voluntary Purchase Price Held Indicative for Determining Real Estate Tax Assessment*, 10 Buff. L. Rev. 218 (1960).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol10/iss1/98>

This The Court of Appeals Term is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact [lawscholar@buffalo.edu](mailto:lawscholar@buffalo.edu).

TAXATION

VOLUNTARY PURCHASE PRICE HELD INDICATIVE FOR DETERMINING  
REAL ESTATE TAX ASSESSMENT

*860 Fifth Avenue Corporation v. Tax Commission of the City of New York*<sup>1</sup> reviewed a real estate tax assessment. The real estate upon which the questionable assessment was made is a nineteen story penthouse co-operative apartment building located on Fifth Avenue in New York City and completed in 1950. In 1948, the promoters of the co-operative bought the land and subsequently sold it to the co-operative corporation which they had organized. The aggregate sale price of the property and the building was \$6,500,000. The tax commission of the City of New York assessed the real estate at \$4,800,000 for each of the taxable years 1954-1958.<sup>2</sup> The Supreme Court, Special Term, New York County, reduced the assessments to \$4,375,000.<sup>3</sup> The Appellate Division in a memorandum decision reversed and reinstated the assessment as originally levied.<sup>4</sup> The taxpayer contends that the prices paid for the plots of land in contemplation of the erection and sale of a new co-operative building were under circumstances which obviously inflated the selling price above normal. It contends that the price paid was inflated by the prospect of a quick profit and that the consideration paid was not a true indication of fair market value, but was rather a speculative price and therefore distinguishable from fair value upon which the assessment should be based.

The fair market value of real estate, for assessment purposes has been defined as the price at which a sale would take place between a willing seller and a willing buyer, neither being under compulsion to trade and both having reasonable knowledge of the facts.<sup>5</sup> It has also been defined as the amount which one desiring but not compelled to purchase will pay under ordinary conditions to a seller who desires but is not compelled to sell.<sup>6</sup> The Court of Appeals decided six months earlier, in a memorandum case similar to the instant one, that there was no error in refusing to give weight to an earlier sale to the co-operative corporation, but that it was sufficient that the evidence of the original costs of the land and building plus evidence of the sharp increase in values since the time of the sale were enough to sustain the assessed evaluation.<sup>7</sup> The Court has also held that proof of sale prices of comparable parcels of land in the

1. 8 N.Y.2d 29, 200 N.Y.S.2d 817 (1960).

2. The following is a table showing the assessments as found by the lower courts and by the City's Expert and the Petitioner's Expert.

	1954-55	1955-56	1956-57	1957-58
App. Div.	\$4,800,000	\$4,800,000	\$4,800,000	\$4,800,000
Special Term	\$4,375,000	\$4,375,000	\$4,375,000	\$4,375,000
City's Expert	\$5,300,000	\$5,400,000	\$5,450,000	\$5,500,000
Petitioner's Exp.	\$3,790,000	\$3,710,000	\$3,630,000	\$3,560,000

3. *Supra* note 2.

4. 8 A.D.2d 605, 184 N.Y.S.2d 669 (1st Dep't 1959).

5. *Phipps v. Commissioner* 43 B.T.A. 1010 (1941).

6. *In re Board of Water Supply of New York*, 277 N.Y. 452, 14 N.E.2d 789 (1938).

7. *In re 5 East 71st Street Inc. v. Boyland*, 7 N.Y.2d 859, 196 N.Y.S.2d 944 (1959).

same vicinity may be received on direct examination of an expert on value as a criterion in evaluating the land in controversy.<sup>8</sup>

The Court of Appeals, in the instant case, unanimously affirmed the decision of the Appellate Division. They held that the sale prices of the land to the promoters and the subsequent resale to the co-operative corporation in which the promoters had no equity, was an indication of the value of the premises. The builder of the co-operative was not compelled to buy unless he chose to do so on account of the advantage of the location. It is not to be expected that a prospective builder would pay more than necessary for the purchase of suitable land and the fact that the corporation was able to sell the co-operative to the tenant owners at a price high enough to secure a profit indicates that the land and buildings were adapted to the site and worth what they cost when they were acquired and constructed.

There are many variables in the assessing process which make the determination difficult and controversial. Assessors are commonly directed to seek the price that the property would command in a voluntary arms length sale. The assessor's in the instant case did exactly that and the Court upheld their determination. Under New York State Tax Law, Section 8,<sup>9</sup> assessment of realty for tax must be at the actual value of the property to the taxpayer. The price he was willing to pay was surely an indication of the actual value and could be used as the basis for determining real estate assessments.

#### WHEN CONSTRUCTION IS COMMENCED UNDER NEW YORK CITY ADMINISTRATIVE CODE

The New York City Administrative Code contains the following provision: "A building in course of construction, commenced since the preceding twenty-fifth day of January and not ready for occupancy on the twenty-fifth day of January following, shall not be assessed unless it shall be ready for occupancy or a part thereof shall be occupied prior to the fifteenth day of April."<sup>10</sup> As a result, builders have a fifteen month tax exemption, a period calculated to coincide with the time in which the building would not be producing income.

In *Sutton-53rd Corp. v. Tax Commission of New York City*,<sup>11</sup> plaintiff made objection to the Tax Commission's assessment of \$3,875,000 on his property and improvement on the grounds that \$3,000,000 of said amount was exempted under the above-quoted provision. It was undisputed that plaintiff's building was not ready for occupancy until April 18, 1952. The issue was whether construction had commenced *prior*, or *subsequent* to, January 25,

---

8. Village of Lawrence v. Greenwood, 300 N.Y. 231, 90 N.E.2d 53 (1949).

9. New York State Tax Law § 8:

All real property subject to taxation shall be assessed at the full value thereof.

10. § 157-1.0.

11. 7 N.Y.2d 416, 198 N.Y.S.2d 298 (1960).