

STATE OF MINNESOTA

IN SUPREME COURT

A22-1022

Tax Court

Gildea, C.J.

Enterprise Leasing Company of Minnesota,

Respondent,

vs.

Filed: March 29, 2023
Office of Appellate Courts

County of Hennepin,

Relator.

A22-1024

Avis Budget Car Rental, LLC,

Respondent,

vs.

County of Hennepin,

Relator.

Timothy A. Rye and Bryan J. Huntington, Larkin Hoffman Daly & Lindgren Ltd.,
Minneapolis, Minnesota, for respondents.

Mary F. Moriarty, Hennepin County Attorney, Sara L. Bruggeman, Assistant County
Attorney, Hennepin County Attorney's Office, Minneapolis, Minnesota, for relators.

S Y L L A B U S

The tax court did not clearly err by excluding the “concession fee” from rental income in the income-capitalization approach the court used to assess market value.

Affirmed.

Considered and decided by the court without oral argument.

O P I N I O N

GILDEA, Chief Justice.

Two rental car companies at the Minneapolis-St. Paul International Airport, Enterprise Leasing Company of Minnesota and Avis Budget Car Rental, LLC, separately appealed to the tax court from Hennepin County’s valuation of their respective properties. Hennepin County then appealed both cases to our court after the tax court’s estimated market value in each case was lower than the value that Hennepin County sought at trial. The appeals—which we consolidate for purposes of this opinion—raise the same issue: whether the tax court erred in declining to include a “concession fee” as rental income attributable to the property under the income-capitalization approach to property valuation. Because we conclude that the tax court did not err, we affirm in both cases.

F A C T S

Avis Budget Car Rental, LLC, and Enterprise Leasing Company of Minnesota operate car rental companies at the Minneapolis-St. Paul International Airport. Avis and Enterprise lease their facilities from the Metropolitan Airports Commission (MAC). The companies entered into separate General Terms Agreements and several Supplemental Lease Agreements with MAC. Under the General Terms Agreements, Avis and Enterprise

pay a “concession fee” to MAC. The concession fee is 10 percent of the revenue earned at these properties and is paid for “use of the facilities and access to the Airport market.” Under the Supplemental Lease Agreements, the companies also pay “rent” for use of the premises.

Even though MAC is exempt from property tax, state statute obligates Avis and Enterprise to pay property tax as lessees “in the same amount and to the same extent as though the lessee or user was the owner of such property.” Minn. Stat. § 272.01, subd. 2(a) (2022); *see also* Minn. Stat. § 360.035 (2022) (stating that MAC is exempt from property tax). Accordingly, Hennepin County assessed Avis and Enterprise for the value of their airport facilities. Hennepin County’s assessor valued the Avis properties at \$20,465,000 and the Enterprise properties at \$34,873,000.

Avis and Enterprise appealed Hennepin County’s valuation of the properties to the tax court; they asserted that the assessed market value exceeded the actual market value. *See* Minn. Stat. § 278.01, subd. 1 (2022) (providing for appeals of assessed value to the tax court). The tax court held a joint trial to determine the market value of the Avis and Enterprise properties.

The tax court and the parties focused at trial on two different approaches to determining the market value of the properties: the cost approach and the income-capitalization approach.¹ The cost approach is “founded on the proposition that an

¹ The third approach our case law recognizes is “the market comparison,” which examines “the prices paid for comparable properties.” *Am. Express Fin. Advisors v. Carver County*, 573 N.W.2d 651, 657 (Minn. 1998). The tax court did not use the market-comparison approach, and the parties do not raise any issue as to that decision on appeal.

informed buyer would pay no more for the property than the cost of building a new property with the same utility as the subject property.” *Am. Express Fin. Advisors v. Carver County*, 573 N.W.2d 651, 657 (Minn. 1998).

The income-capitalization approach is “predicated on the capitalization of the income the property is expected to generate.” *Id.* Rental income attributable to the property is included within the income-capitalization approach. *See* Appraisal Institute, *The Appraisal of Real Estate* 421 & 448 (15th ed. 2020) (“Any rent attributed to specific leases is disregarded in the income analysis except to the extent that these leases may be indicative of market rent.”).

A central issue at trial—and the only issue on appeal—is whether the concession fee was rental income under the income-capitalization approach. Avis and Enterprise argued that the fee was not rental income and therefore should not be included in the income-capitalization approach. Hennepin County argued that because the concession fee was part of the rental income earned from the leased property, the fee had to be included in the income-capitalization approach. The tax court agreed with Avis and Enterprise, relying on the testimony from their expert, Scot Torkelson.

Torkelson testified to market value based on his assessment of the property value in the relevant tax year. *See Avis Budget Car Rental, LLC v. County of Hennepin*, No. 27-CV-19-4728, 2022 WL 1670020, at *3 (Minn. T.C. May 23, 2022) (hereinafter

Likewise, the parties do not challenge the tax court’s use or application of the cost approach.

Avis II); *Enterprise Leasing Co. of Minn. v. County of Hennepin*, No. 27-CV-19-4730, 2022 WL 1669010, at *3 (Minn. T.C. May 23, 2022) (hereinafter *Enterprise II*). Torkelson did not include the concession fee as rental income in the income-capitalization approach because he thought the concession fee was comparable to a “franchise fee,” which is business income that is not attributable to the real estate. Torkelson based this conclusion on several factors, including a review of the lease terms.

Torkelson explained that car rental companies that occupy only small counter-service areas at the airport still pay a fee of 10 percent of their revenue for access to airport patrons. Because other car rental companies pay the same fee, even if they use only minimal space from the airport, he found no relationship between the fee and the real estate. Torkelson also noted that car rental companies typically pay a fee of approximately 10 percent at other airports, regardless of whether the car rental companies operate at facilities leased from the airport. This fact further supported Torkelson’s finding that the concession fee was not rent. Finally, Torkelson noted that including the concession fee as rental income in the income-capitalization approach would result in a market value that far exceeded the value that would be arrived at using the cost approach.

Hennepin County’s expert did not conduct an independent property tax assessment, but rather, he reviewed a previous tax year’s assessment by Torkelson, modified parts of the previous appraisal, and highlighted purported flaws with the prior analysis. Based on this analysis, Hennepin County’s expert offered an opinion on the market value for the applicable tax year. As part of that opinion, Hennepin County’s assessor explained that he would characterize the concession fee as a percentage lease based on his lease

interpretation, which he said makes the concession fee income attributable to the subject property. Accordingly, he included the concession fee in his income-capitalization approach.

After trial, the tax court found Torkelson’s testimony and approach more reliable than that offered by Hennepin County. *See Avis II*, 2022 WL 1670020, at *10–13 *Enterprise II*, 2022 WL 1669010, at *4–5. Consistent with Torkelson’s approach, the tax court found that the concession fee was best allocated as business income, not rental income, and the court therefore did not include the concession fee as rental income in the income-capitalization approach. *Avis II*, 2022 WL 1670020, at *13.

In conducting its analysis, the tax court acknowledged that we have previously considered a question involving concession fees. *See Avis Budget Car Rental LLC v. County of Hennepin*, 937 N.W.2d 446, 449–51 (Minn. 2020) (hereinafter *Avis I*) (citing Minn. Stat. § 278.05, subd. 6 (2022)); *see also Enterprise Leasing Co. of Minn. v. County of Hennepin*, 937 N.W.2d 428, 430 (Minn. 2020) (hereinafter *Enterprise I*). In *Avis I* and *Enterprise I*, Avis and Enterprise failed to disclose documents showing that the concession fee was paid to MAC, even though the mandatory-disclosure provision of the statute governing property tax appeals required disclosure of “year-end financial statements, rent rolls and identification of lease agreements (including base rent and square footage leased), and anticipated income and expenses relative to the property.” *Avis I*, 937 N.W.2d at 450; *Enterprise I*, 937 N.W.2d at 429; *see also* Minn. Stat. § 278.05, subd. 6. We held that the concession fees “were rent or, at least, income that needed to be disclosed under the statute, whether in the required financial statements, as rent information, or as anticipated income.”

Avis I, 937 N.W.2d at 450 (emphasis added); *Enterprise I*, 937 N.W.2d at 430 (“For the reasons explained in *Avis*, the tax court did not err in dismissing Enterprise’s petition because the concession fees were rent, or at least income, and thus subject to the mandatory-disclosure requirements of Minn. Stat. § 278.05, subd. 6.”).²

Rather than ground a result in *Avis I*, the tax court considered the evidence in reaching its decision not to include the concession fee as rental income. The tax court acknowledged that the General Terms Agreement states that the concession fee is for “use of the facilities and access to the Airport market.” *Avis II*, 2022 WL 1670020, at *11 (emphasis omitted). But the court ultimately concluded “that the concession fee is consideration for access to the airport car rental market, rather than rent paid for use of the ‘Leased Premises’ ” for the income-capitalization approach and declined to include the concession fee in the income-capitalization approach. *Id.* at *13. The tax court cited three reasons to support its determination.

First, the tax court noted, as Torkelson testified, that off-airport car rental companies—rental car companies that do not lease space from the airport—pay a 10 percent fee for access to the airport market. *Id.* at *12. Second, the tax court noted that if the concession fee was considered rent, the lease rate would be ten times greater. *Id.* The tax court found that this variance was plainly unreasonable. *Id.* And finally, the tax court found that including the concession fee as rental income made other calculations that the county’s assessor relied on unreasonably high. *See id.* at *13 (“Including the

² Because *Enterprise I* relied upon “the reasons explained in *Avis*,” we cite primarily to *Avis I* in this opinion.

concession fee as rent, however, would increase management expense to \$163,588, an annual figure plainly unreasonable for one-tenant facilities on 5-year leases.”).

The tax court’s approach resulted in the following value calculations:

Avis			
Approach	Indicator	Weight³	Product
Cost Approach	\$12,510,450	90%	\$11,259,405
Income-Capitalization Approach	\$12,380,000	10%	\$ 1,238,000
		Total:	\$12,497,405

Enterprise			
Approach	Indicator	Weight	Product
Cost Approach	\$21,179,586	90%	\$19,061,627
Income-Capitalization Approach	\$20,450,000	10%	\$ 2,045,000
		Total:	\$21,106,627

The tax court’s estimated market values—\$12,497,405 for Avis and \$21,106,627 for Enterprise—are lower than the values Hennepin County presented at trial.⁴ Hennepin County challenged the tax court’s values in petitions for certiorari review to our court under Minn. Stat. § 271.10, subd. 1 (2022) (“A review of any final order of the Tax Court may be had upon certiorari by the supreme court upon petition”).

ANALYSIS

The sole issue in this appeal is whether the concession fee is income attributable to the subject property that needed to be included in the valuation under the income-capitalization approach. The parties and the tax court agree that income generated by the

³ The weight that the tax court attributed to each approach is unchallenged, so we do not consider whether it was error for the tax court to place less weight on the income-capitalization approach.

⁴ Specifically, at trial Hennepin County valued the Avis properties at \$20,560,000 and the Enterprise properties at \$31,620,000.

subject property for use of the property—rental income—should be included in the income-capitalization approach and that other forms of income—business income—should not. Hennepin County asserts that the concession fee is rental income because our prior opinion in *Avis I* and the terms of the lease documents say as much. The tax court disagreed.

When we review a tax court’s valuation of a property, we “defer to the tax court’s determination unless it clearly misvalued the property or failed to explain its reasoning.” *Minn. Energy Res. Corp. v. Comm’r of Revenue (MERC)*, 886 N.W.2d 786, 792 (Minn. 2016). Our review is limited and deferential because real estate appraisal is not an exact determination. *Menard, Inc. v. County of Clay*, 886 N.W.2d 804, 811 (Minn. 2016). We consider “whether the tax court lacked subject matter jurisdiction, whether the tax court’s decision is supported by evidence in the record, and whether the tax court made an error of law.” *Hohmann v. Comm’r of Revenue*, 781 N.W.2d 156, 157 (Minn. 2010).

Hennepin County argues primarily that the tax court’s decisions are contrary to law. Specifically, the County contends that the tax court erred as a matter of law in determining not to include the concession fee in its calculation of market value under the income-capitalization approach. The County asserts that *Avis I* compels the tax court to include the concession fee as part of the rental income for the properties. For their part, Avis and Enterprise argue that *Avis I* is not dispositive of the issue and that the tax court had discretion over how to use the concession fee within the income-capitalization approach. We agree with Avis and Enterprise.

Our holding in *Avis I* did not resolve the question of whether the concession fee was rental income that must be included in the income-capitalization approach to real estate

valuation. *Avis I* was not about the tax court’s valuation of property. That decision instead concerned the interpretation of the mandatory-disclosure provision in Minn. Stat. § 278.05, subd. 6. 937 N.W.2d at 449–51. This provision requires that property taxpayers who challenge the county’s assessed value of their “income-producing property” disclose to the county certain information about that property. Minn. Stat. § 278.05, subd. 6. In *Avis I*, *Avis* did not disclose information about the concession fee and Hennepin County argued that the statute required that information to be disclosed. 937 N.W.2d at 449. We agreed with Hennepin County. We said that the concession fee was “rent—or at least income—subject to the mandatory-disclosure provision.” *Id.* at 451.

Avis I does not control here because the question of whether information must be disclosed under the statute is a different question from whether that same information must be used in the tax court’s market value analysis. Indeed, we have recognized that the mandatory-disclosure provision is broader than the valuation inquiry. *See Wal-Mart Real Est. Bus. Tr. v. County of Anoka*, 931 N.W.2d 382, 388 (Minn. 2019) (“Whether or not the information provided by a taxpayer gives an accurate picture of a property’s actual value is a question that goes to the merits of the petition itself. The mandatory-disclosure rule applies without regard to the merits of the tax petition, however.”). Thus, our ruling in *Avis I* that the concession fee was “rent—or at least income” that needed to be disclosed under the mandatory-disclosure provision did not resolve the current dispute over whether the concession fee should be included as rental income in the income-capitalization approach. 937 N.W.2d at 451.

Separate from its argument that *Avis I* compels the conclusion that the tax court erred as a matter of law, Hennepin County argues that the plain text of the lease documents compels a conclusion that the concession fee was rental income attributable to the subject property. The County notes that the General Terms Agreement states that the concession fee is for “use of the facilities and access to the Airport market.” Based on its reading of the agreement, the County asserts the concession fee was rent as a matter of law and thus had to be included within the income-capitalization approach. We are not persuaded.

As the tax court found, the terms of the lease documents support the conclusion that the concession fee is both rental income and business income. We agree with the tax court. The General Terms Agreement provides that the fee is for “use of the facilities and access to the Airport market.” Under these terms then, the concession fee is at least in part for “access to the Airport market,” and Hennepin County does not dispute that fees paid for access would be business income.⁵

Once the tax court acknowledged that the concession fee is—as a matter of contract interpretation—both rental income and business income, the tax court properly sought to answer the next question before it: “whether fee payments for these combined purposes can be reliably allocated” between business income and rental income. *Avis II*, 2022 WL 1670020, at *11. Because the lease documents did not resolve the question, the tax

⁵ Hennepin County emphasizes that “[f]ees to ‘access’ property are equivalent to fees to ‘use’ property.” But fees to access airport *property* and fees to access *the airport market* could be different, and, as the tax court found, the lease documents do not definitely resolve that difference.

court turned to the evidence to decide how to treat the concession fees.⁶ *Cf. TMG Life Ins. Co. v. County of Goodhue*, 540 N.W.2d 848, 853 (Minn. 1995) (deferring to tax court’s factual determination that actual lease terms did not represent market rent and affirming the tax court’s reliance on expert testimony to determine market rent).

Ultimately, the evidence supports the tax court’s finding that the concession fee was not rent for purposes of the income-capitalization approach. The tax court considered competing expert testimony presented by the parties and found Torkelson’s testimony more reliable. *See Avis II*, 2022 WL 1670020, at *12–13. As the factfinder, the tax court “was entitled to resolve the conflicts in the record and determine how much weight to give each expert report.” *MERC*, 886 N.W.2d at 794.

Based on Torkelson’s testimony, the tax court noted that off-airport car rental companies pay the same 10 percent fee,⁷ that the income-capitalization approach with the concession fee resulted in an estimated market value that was unreasonably high, and that

⁶ Hennepin County asserts that the necessary implication of the tax court’s conclusion is that lease agreements that “create[] only a privilege to access property . . . do[] not result in the imposition of tax.” The tax court did not write such a broad rule of law, expressly or implicitly. The tax court merely concluded that when lease agreements include a fee that is in part not attributable to the subject property, it should rely on evidence and expertise to determine how to allocate that income in the income-capitalization approach. *See MERC*, 886 N.W.2d at 794.

⁷ Hennepin County asks us to overturn the tax court’s factual finding that off-airport car rental companies pay the same fee but do not pay property taxes on that fee. For support, the County offers one citation to a tax court case that eventually settled. *See* *Petition, Auto Rental LLC dba Ace Rent A Car, formerly Auto Rental LLC dba Sixt Rent a Car MSP Airport v. County of Hennepin*, No. 27-cv-20-14415 (Henn. Cnty. Dist. Ct. filed November 9, 2020). We will not overturn the tax court’s factual finding absent a showing of clear error, and Hennepin County presents no evidence of clear error.

including the concession fee as rent “deranges other figures the County’s review appraisal considered reasonable.” *Avis II*, 2022 WL 1670020, at *12–13. Because there is evidentiary support for the tax court’s decision to exclude the concession fee from rental income, that decision was not clearly erroneous.

CONCLUSION

For the foregoing reasons, we affirm the decisions of the tax court.

Affirmed.