



# *Pennsylvania Tax Reports*

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## ***COURT MAY SPLIT THE DIFFERENCE BETWEEN EXPERTS***

In an unreported decision, a panel of the Commonwealth Court held that in valuing a property for real estate tax purposes, a trial court could properly split the difference between expert opinions, notwithstanding that the court had found fault with both experts. *Appeal of Adelfia Communications Corp.*, No. 2757, C.D. 2003 (Pa. Cmwlth. Oct. 28, 2004) (unreported).

The taxpayer challenged the market value found by the trial court on the grounds that the Pennsylvania Supreme Court held that a court may split the difference between experts only when the court is presented with conflicting testimony by equally credible experts. *Westinghouse Electric Corp. v. Board of Property Assessment, Appeal and Review*, 652 A.2d 1306 (Pa. 1995). The taxpayer claimed that the trial court did not find the experts equally credible, and in fact rejected a number of their arguments. The Commonwealth Court properly rejected the taxpayer's interpretation of *Westinghouse*. No doubt what the court meant in *Westinghouse* was that a trial court can split the difference between two *competent* experts. The word *credible* probably was not used in the sense of telling the truth, but in the sense of being persuasive. Rarely in a real estate tax assessment appeal is an expert unbelievable, in the sense that he or she is mendacious or incompetent. Rather, competent experts tend to find a value that is both supportable and consistent with their client's point of view. Thus, the questions typically are whether the expert is persuasive, and on what points. In an appraisal, an expert might make seven persuasive points but be unpersuasive on the eighth, with the result that the overall value claimed is not persuasive. A court should be free to sort through the appraisal of experts and find a realistic value. It should not matter that the court disagrees with a competent expert on one, several, or indeed all points advanced.