

Westlaw.

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Tax Court of Arizona,
 MARICOPA COUNTY,
 v.
 TWC CHANDLER, et al.
 No. TX 2003-000198.

Oct. 3, 2003.

County brought action appealing State Board of Equalization's (SBOE) property tax valuation decision and requesting declaratory relief regarding SBOE's alleged failure to comply with statutes and rules governing listing of improvements on the tax roll for subject property. The Tax Court, Katz, J., held that county was entitled to bring a declaratory judgment action.

Ordered accordingly.

West Headnotes

[1] Declaratory Judgment 118A ⚡ 302.1

118A Declaratory Judgment
 118AIII Proceedings
 118AIII(C) Parties
 118Ak302 Government or Officers as Parties
 118Ak302.1 k. In General. Most Cited Cases

County which was aggrieved by a decision of State Board of Equalization (SBOE) was entitled to bring a declaratory judgment action asking either Superior Court or Tax Court to review authority and/or jurisdiction of SBOE to take certain actions.

[2] Declaratory Judgment 118A ⚡ 303

118A Declaratory Judgment
 118AIII Proceedings
 118AIII(C) Parties

118Ak302 Government or Officers as Parties

118Ak303 k. State or State Officers. Most Cited Cases
 While State Board of Equalization (SBOE) and its members are immune from personal monetary judgment, SBOE is not immune from declaratory judgment jurisdiction of Tax Court.

[3] Taxation 371 ⚡ 2603

371 Taxation
 371III Property Taxes
 371III(H) Levy and Assessment
 371III(H)6 Assessment Rolls or Books
 371k2603 k. Amendment or Alteration. Most Cited Cases
 (Formerly 371k438)

Taxation 371 ⚡ 2807

371 Taxation
 371III Property Taxes
 371III(K) Collection and Enforcement Against Persons or Personal Property
 371III(K)1 In General
 371k2807 k. Authority to Collect in General. Most Cited Cases
 (Formerly 371k550)

Tax assessor could not initially pick up new changes to property through error-correction procedure, but was permitted to timely correct errors regarding existing changes and collect additional taxes for three years prior to mailing of notice of error. A.R.S. § 42-16256, subd. B.
 ***468 *293 Roberta S. Livesay, Helm & Kyle, Ltd, Counsel for Plaintiff.

Rex C. Nowlan, Assistant Attorney General, **Paul J. Mooney**, Fennemore Craig, P.C., Counsel for the Defendants.

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UNDER ADVISEMENT RULING

PAUL A. KATZ, Judge.

The Court having taken Defendant Arizona State Board of Equalization's (the "SBOE") Motion to Dismiss and Defendant TWC-Chandler, L.L.C.'s ("TWC") Motion to Dismiss under advisement; having reviewed the memoranda of the parties and the legal authorities cited therein; and good cause appearing, enters the following Opinion,

Opinion

Nature of the case

This action involves three (3) of more than a dozen real estate parcels that make up the Chandler Fashion Center ("CFC"). Originally, the CFC consisted of two parcels, however the property owner/developer asked the Maricopa County Assessor (the "Assessor") on several successive occasions to split the parcels consistent with its development plan for this shopping center. Maricopa County (the "County") alleges the Assessor mistakenly crossed off the improvement values from the split/combining form for several parcels, which had the effect of showing no improvement values for those parcels. On September 11, 2002, the County mailed Notices of Proposed Correction on these three parcels of land owned by TWC (the "Subject Property"), proposing to correct what the County claimed was an "error" in the values **469 *294 assigned to the Subject Property and proposing to increase the values assigned to each of these parcels. TWC disputed the proposed correction and appealed the Assessor's decision to the SBOE. The SBOE issued its decision on February 7, 2003, upholding TWC's objection to the proposed error correction and reducing the values back to those originally determined for the Subject Property by the Assessor for the 2002 tax year. The SBOE eliminated all value associated with the existing improve-

ments, effectively removing the improvements from the County tax roll, and valued the land only. On April 4, 2003, the County filed a complaint that was amended on April 24, 2003, appealing the SBOE's valuation decision and requesting declaratory relief regarding the SBOE's alleged failure to comply with the statutes and rules governing the listing of improvements on the tax roll for the Subject Property.

Issues

The County is seeking: 1) the Court's *de novo* review of the valuation of the subject properties, including the improvements, and 2) a declaration that the SBOE, in removing the improvements, acted without authority and in excess of its jurisdiction. The first issue is a matter routinely accomplished by the Court pursuant to A.R.S. § 42-16203, which usually results in *de novo* review of value without any comment on the legality of the SBOE's actions. The Court finds that the only way to effectively resolve the issue as to whether the SBOE has the authority to add or remove property after agency adjudication is by way of declaratory judgment relief.

Legal Discussion

[1][2] The Court of Appeals in *Estate of Bohn v. Scott*, 185 Ariz. 284, 915 P.2d 1239 (App.1996), recognized the right to declaratory relief in tax matters but only when the action is not a challenge to the constitutional validity of a tax statute and only upon the exhaustion of all administrative remedies. In the case at bar, there is no challenge as regards the constitutionality of a tax statute and there is no requirement to exhaust administrative remedies before bringing a tax valuation appeal. Absent the taxpayer or the County having the right to seek review of claimed unlawful action of the SBOE by way of special action prior to the final administrative decision or by way of a declaratory action after the agency's final decision, the Court would never

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be in the position to determine the legality of the agency's actions in such a way as to give the agency or future litigants any guidance as to the scope of such agency's jurisdiction. While the Court, in *de novo* review, might by way of *dicta* determine the jurisdiction of the SBOE to add or delete property from the County tax roll, the Court's review would not be binding precedent as that issue would not be the focus of the Court's determination in a trial pursuant to A.R.S. § 42-16203. The Court further finds that while the SBOE and its members are immune from personal monetary judgment, the SBOE is not immune from the declaratory judgment jurisdiction of the Arizona Tax Court and therefore will remain a party to this action.

[3] The Court further finds that the Assessor cannot initially pick up new changes to the property through the error-correction procedure, but the Assessor is permitted to timely correct errors regarding existing changes and collect additional taxes for the three years prior to the mailing of the notice of error. A.R.S. § 42-16256(B). The Legislature, purportedly being aware of *In re Westward Look Development Corp., Inc.*, 138 Ariz. 88, 673 P.2d 26 (App.1983), promulgated A.R.S. § 42-16256(A) to address the concern that a significant tax burden could be passed without notice to a subsequent purchaser of the property. The Legislature limited the retroactive collection of taxes under the error-correction statutes to the period during which the current owner of record held title to the property.

TWC may be correct that the appeal should have been brought under A.R.S. § 42-16252(G) rather than A.R.S. § 42-16203, however, a proper appeal was taken within sixty (60)-days of the SBOE decision as is required under either statute. Accordingly, the Court will determine on the merits whether the value of the improvements was ****470 *295** properly added by the Assessor or properly removed by the SBOE.

The Court further finds that the issue of whether the

County's proposed value violates A.R.S. § 42-16251 is outside the scope of the immediate Motion to Dismiss and is not the basis for dismissal of this action; it may later be the basis for a motion for summary judgment.

Conclusion

The essence of the Court's holding is that a party aggrieved by a decision of the SBOE may bring a declaratory judgment action asking either the Superior Court of Arizona or the Arizona Tax Court to review the authority and/or jurisdiction of the SBOE to take certain actions. Without this Court's ability to hear such matters as a declaratory judgment action, there is no effective way for the Court to ever review the propriety of the SBOE's actions. Now therefore,

IT IS ORDERED denying both the SBOE's and TWC-Chandler's Motions to Dismiss.

IT IS FURTHER ORDERED denying the County's Motion for Sanctions regarding TWC-Chandler's Motion to Dismiss.

IT IS FURTHER ORDERED designating this opinion for publication.

Ariz.Tax,2003.
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