SUPREME COURT OF NEVADA

County of Clark v. LB Properties, Inc.

129 Nev. 909 (2013) · Decided December 12, 2013

SUMMARY

The Nevada Supreme Court held that Nevada Tax Commission Regulation NAC 361.61038, which established an apportionment formula for valuing remainder parcels for tax-abatement purposes, could not be applied retroactively to a valuation made before the regulation took effect. The court further held that the assessor's pre-regulation multifactor valuation method did not violate Nevada's constitutional uniformity requirements or governing statutes. The court reversed the district court and upheld the Nevada Tax Commission's decision.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Pickering, C.J.; Gibbons, J.; Hardesty, J.; Parraguirre, J.; Douglas, J.; Cherry, J.; Saitta, J.
JURISDICTION	Nevada
DECIDED	December 12, 2013
DISPOSITION	reversed
PROCEDURAL POSTURE	LB Properties petitioned for judicial review of the Nevada Tax Commission's decision upholding the Clark County Assessor's valuation method. The district court reversed the Commission and ordered it to apply a later-promulgated regulation retroactively. The County appealed.
STANDARD OF REVIEW	The court reviewed the district court's order on a petition for judicial review of the Nevada Tax Commission's administrative decision and independently addressed the legal questions concerning retroactivity, statutory authority, and constitutional uniformity of taxation.
PRECEDENTIAL VALUE	Published and precedential
PARTIES	County of Clark, through the Clark County Assessor v. LB Properties, Inc.

TOPICS

property tax · judicial review of agency action · administrative law · statutory interpretation · constitutional law

PRACTICE AREAS

property taxation | administrative law | constitutional law | real property valuation

QUESTIONS PRESENTED

1. Whether NAC 361.61038, a regulation promulgated in 2007 to establish an apportionment formula for valuing remainder parcels, could be applied retroactively to a valuation occurring before the regulation's effective date.
2. Whether the Clark County Assessor's pre-2007 multifactor valuation method violated Nevada's constitutional requirement of uniform and equal assessment and taxation or otherwise conflicted with Nevada law.

HOLDINGS

1. NAC 361.61038 is a legislative regulation that establishes a substantive valuation method, not merely an interpretive regulation, and it may not be applied retroactively to a valuation occurring before its effective date absent a clearly manifested legislative or regulatory intent to do so.
2. The assessor's pre-2007 multifactor method did not violate Nevada law or the constitutional requirement of uniform and equal taxation because the record did not show that the method produced unequal taxation or conflicted with existing statutory requirements and practice.

KEY QUOTATIONS

> *""Retroactivity is not favored in the law.""* (912)

> *"Because NAC 361.61038 was not enacted until 2007 and the valuation at issue occurred prior to that time, application of the regulation would be impermissibly retroactive."* (913)

> *"Since the Assessor's approach did not conflict with existing statute or practice, we conclude that the Assessor's methods did not violate the Constitution."* (914)

FACTUAL BACKGROUND

Nevada's 2005 tax-abatement statute addressed the valuation of remainder parcels but did not specify a detailed valuation method. In 2007, the Nevada Tax Commission promulgated NAC 361.61038, establishing an apportionment formula for valuing remainder parcels. LB Properties owned a remainder parcel created before the regulation's enactment; the assessor valued it under the pre-2007 multifactor approach, while LB Properties sought application of the new formula.

PROCEDURAL HISTORY

LB Properties appealed the assessor's valuation to the Nevada Tax Commission, seeking application of NAC 361.61038. An administrative law judge recommended applying the regulation, but the Commission rejected that recommendation and upheld the assessor's pre-regulation valuation. The district court reversed and directed the Commission to use the regulation's apportionment formula. The Nevada Supreme Court reversed the district court and upheld the assessor's method.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The district court's order directing the Nevada Tax Commission to apply NAC 361.61038 was reversed. No further specific remand instructions were stated.

CASES CITED

- Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 208 (1988)
- State ex rel. State Bd. of Equalization v. Barta, 124 Nev. 612, 188 P.3d 1092 (2008)
- Fmali Herb, Inc. v. Heckler, 715 F.2d 1385, 1387 (9th Cir. 1983)
- Jerri’s Ceramic Arts, Inc. v. Consumer Prod. Safety Comm’n, 874 F.2d 205, 207 (4th Cir. 1989)
- Slippery Rock Area Sch. Dist. v. Unemployment Comp. Bd. of Review, 983 A.2d 1231, 1236 (Pa. 2009)
- Borough of Pottstown v. Pa. Mun. Ret. Bd., 712 A.2d 741, 743 (Pa. 1998)
- Smiley v. Citibank (South Dakota), N.A., 517 U.S. 735, 740-41, 744 n.3 (1996)
- Pauly v. U.S. Dep’t of Agric., 348 F.3d 1143, 1152 (9th Cir. 2003)
- Pope v. Shalala, 998 F.2d 473, 483 (7th Cir. 1993)
- Johnson v. Apfel, 189 F.3d 561 (7th Cir. 1999)
- State ex rel. State Board of Equalization v. Bakst, 122 Nev. 1403, 148 P.3d 717 (2006)
