SUPREME COURT OF OREGON

Oakmont, LLC v. Dept. of Rev.

359 Or. 779 (2016) · No. S062342 · Decided June 30, 2016

SUMMARY

The Oregon Supreme Court affirmed the Tax Court’s judgment concerning the Department of Revenue’s supervisory jurisdiction to correct a likely valuation error on a prior property-tax roll. The court held that the taxpayer and county assessor agreed to facts indicating a likely error when they substantially reduced the property’s valuation for a subsequent tax year. It further held that the Department may consider later agreements and facts learned after the assessment date if those facts were reasonably discoverable as of that date.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Kistler, J.; Balmer, C.J.; Walters, J.; Landau, J.; Baldwin, J.; Brewer, J.; Nakamoto, J.
JURISDICTION	Oregon
DECIDED	June 30, 2016
DOCKET	S062342
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Oregon Tax Court concerning the Department of Revenue's supervisory jurisdiction to correct an allegedly erroneous property-tax assessment after the taxpayer's ordinary appeal period had expired.
STANDARD OF REVIEW	The Supreme Court reviewed the department's legal determination independently and reviewed the factual determination for evidentiary support. The court explained that abuse-of-discretion review does not apply generically where the agency's ruling rests on both legal and factual premises.
PRECEDENTIAL VALUE	Published Oregon Supreme Court opinion; precedential.
PARTIES	Department of Revenue, State of Oregon, Clackamas County Assessor v. Oakmont, LLC

TOPICS

property tax | tax court procedure | administrative law | construction defects | appellate procedure

PRACTICE AREAS

property tax | administrative law | tax appeals | appellate procedure | construction law

QUESTIONS PRESENTED

1. Whether the parties agreed to facts indicating a likely error on the 2008-09 tax roll, thereby satisfying the jurisdictional prerequisite under OAR 150-306.115(4)(b)(A).
2. Whether facts discovered or agreed upon after the assessment date may be considered when determining whether a property-tax valuation likely was erroneous, if those facts were reasonably discoverable as of the assessment date.
3. Whether the Department of Revenue had supervisory jurisdiction to consider, in the first instance, whether the 2008-09 assessment contained an actual error and whether to exercise its discretion to correct it.

HOLDINGS

1. The Department of Revenue erred in concluding that the parties had not agreed to facts indicating a likely error. The county's agreement to reduce the property's value by approximately 60 percent for the following tax year, based on construction defects, necessarily indicated a likely error in the preceding year's valuation.
2. In determining whether the parties agreed to facts indicating a likely error, the department may consider an agreement made after the assessment date concerning facts learned after that date, provided the facts were reasonably discoverable as of the assessment date.

KEY QUOTATIONS

> *"The agreed facts "indicate" that it is at least "likely" that a reasonable inspection would have uncovered the existence of construction defects and that the error in the assessment for the 2008-09 tax year should be corrected."* (359 Or. at 795)

> *"The Tax Court correctly held that the department had supervisory jurisdiction over Oakmont's petition to reduce the assessed value of the property for the 2008-09 tax year."* (359 Or. at 795)

FACTUAL BACKGROUND

Oakmont owned a 266-unit apartment complex in Clackamas County that was assessed at $22,914,810 for the 2008-09 tax year. Construction defects and related water intrusion and wood rot were discovered in 2008, after the assessment date but in circumstances indicating that a reasonable inspection could have revealed them as of January 1, 2008. After Oakmont appealed the assessment for the 2009-10 tax year, Oakmont and the county agreed to reduce the property's value from $21,726,425 to $8,500,000 because of the construction defects. Oakmont then sought correction of the prior year's assessment through the Department of Revenue's supervisory jurisdiction.

PROCEDURAL HISTORY

Oakmont did not appeal the 2008-09 assessment through the ordinary statutory process. After Oakmont and the county later agreed to substantially reduce the property's value for the 2009-10 tax year, Oakmont petitioned the Department of Revenue to correct the 2008-09 roll under ORS 306.115. The department concluded that it lacked supervisory jurisdiction; the magistrate division affirmed, but the regular division of the Oregon Tax Court granted Oakmont summary judgment and remanded for a merits hearing. The Oregon Supreme Court affirmed the Tax Court and remanded to the department for further proceedings.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

Remand to the Department of Revenue to determine in the first instance whether there was an actual error or omission on the 2008-09 tax roll and, if so, whether the department should exercise its discretion to correct the roll.

CASES CITED

- Flavorland Foods v. Washington County Assessor, 334 Or. 562, 54 P.3d 582 (2002)
- ESCO Corp. v. Dept. of Rev., 307 Or. 639, 772 P.2d 413 (1989)
- Willamette Estates II, LLC v. Dept. of Rev., 357 Or. 113, 346 P.3d 1207 (2015)
- ADC Kentrox v. Dept. of Rev., 19 Or. Tax 91 (2006)
- Martin Bros. v. Tax Commission, 252 Or. 331, 449 P.2d 430 (1969)
- Ghazi-Moghaddam v. Dept. of Rev., 20 Or. Tax 288 (2011)
- Espinoza v. Evergreen Helicopters, Inc., 359 Or. 63, ___ P.3d ___ (2016)
- State v. Rogers, 330 Or. 282, 4 P.3d 1261 (2000)
- Bay v. State Board of Education, 233 Or. 601, 378 P.2d 558 (1963)
- Sabin v. Dept. of Rev., 270 Or. 422, 528 P.2d 69 (1974)
- Truitt Brothers, Inc. v. Dept. of Rev., 302 Or. 603, 732 P.2d 497 (1987)
- Ernst Brothers Corp. v. Dept. of Rev., 320 Or. 294, 882 P.2d 591 (1994)
- Crystal Communications, Inc. v. Dept. of Rev., 353 Or. 300, 297 P.3d 1256 (2013)