SUPREME COURT OF OHIO

Crown Communication, Inc. v. Testa

136 Ohio St. 3d 209 (Ohio 2013) · No. 2012-0780 · Decided July 23, 2013

SUMMARY

The Supreme Court of Ohio held that a taxpayer who received a final personal-property tax assessment accompanied by erroneous instructions for appealing a preliminary assessment could rely on those instructions and treat the assessment as preliminary. The court reversed the Board of Tax Appeals and remanded for the tax commissioner to issue a merits-based final determination, after which the taxpayer could appeal to the Board.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Kennedy, J.; O'Connor, C.J.; Pfeifer, J.; O'Donnell, J.; Lanzinger, J.; French, J.; O'Neill, J.
JURISDICTION	Ohio
DECIDED	July 23, 2013
DOCKET	2012-0780
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the Ohio Board of Tax Appeals' decision affirming the tax commissioner's dismissal of Crown's petition for reassessment and concluding that Crown had failed to timely appeal its final personal-property-tax assessments.
STANDARD OF REVIEW	BTA decisions are affirmed if reasonable and lawful, and factual findings are affirmed if supported by reliable and probative evidence; legal questions are reviewed de novo.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Crown Communication, Inc., Crown Castle GT Company v. Tax Commissioner Testa

TOPICS

property tax · tax court procedure · appellate procedure · administrative law · statutory interpretation

PRACTICE AREAS

taxation administrative law appellate procedure

QUESTIONS PRESENTED

1. Whether the tax commissioner's erroneous inclusion of preliminary-assessment appeal instructions with final assessments permitted Crown to treat the assessments as preliminary and preserve administrative and BTA jurisdiction.
2. Whether the tax commissioner was estopped from relying on the erroneous instructions.
3. Whether the period for appealing the final assessments never began because the commissioner sent incorrect instructions.
4. Whether the erroneous instructions violated Crown's due-process rights.

HOLDINGS

1. When the tax commissioner labels an assessment final but includes instructions for appealing a preliminary assessment, the taxpayer may elect to follow those instructions and treat the assessment as preliminary for purposes of obtaining further review.
2. Crown could not prevail on its estoppel theory because the narrow exception recognized in prior cases applies when the tax commissioner has maintained a particular construction of tax law over an extended period and later attempts a retroactive change; that circumstance was absent here.
3. The doctrine that an appeal period does not begin until an agency properly serves its decision did not apply because Crown received the final assessments and the case did not involve the service requirements of R.C. Chapter 119.
4. The commissioner waived the evidentiary challenge by failing to object before the Board of Tax Appeals, and there was no plain error in the BTA's reliance on Crown's uncontroverted affidavit.

KEY QUOTATIONS

> *"We hold that by including instructions for filing a petition for reassessment with an assessment that identified itself as "final," the commissioner conferred on Crown the option to follow the instructions and thereby treat the assessment as preliminary rather than final for appeal purposes."* (¶ 31)

> *"When the commissioner issued appeal instructions calling for the assessment to be treated as if it were preliminary and the taxpayer followed those instructions, the taxpayer did not suffer the loss of its right to obtain further review."* (¶ 37)

FACTUAL BACKGROUND

Crown owned cellular telephone towers in Ohio and received an increased personal-property-tax assessment for tax year 2006. After Crown requested a final assessment, the tax commissioner issued final-assessment certificates but enclosed instructions applicable to a preliminary assessment, directing Crown to file a petition for reassessment with the commissioner rather than appeal directly to the Board of Tax Appeals. Crown followed those instructions, but the commissioner dismissed the petition as jurisdictionally improper, and the Board of Tax Appeals affirmed.

PROCEDURAL HISTORY

The tax commissioner issued final personal-property-tax assessment certificates for tax year 2006 with instructions directing Crown to file a petition for reassessment, although final assessments ordinarily are appealed directly to the Board of Tax Appeals. Crown followed those instructions, and the commissioner later dismissed the petition for lack of jurisdiction. The Board of Tax Appeals affirmed, concluding that Crown's subsequent appeal was untimely. The Supreme Court of Ohio reversed and remanded.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

The tax commissioner must issue a final determination addressing Crown's assessment on the merits. Crown may then appeal that determination to the Board of Tax Appeals under R.C. 5717.02.

CASES CITED

- Crown Communication, Inc. v. Levin, BTA No. 2009-A-3187, 2012 WL 1257412 (Apr. 5, 2012)
- Ormet Corp. v. Lindley, 69 Ohio St. 2d 263, 431 N.E.2d 686 (1982)
- Sekerak v. Fairhill Mental Health Ctr., 25 Ohio St. 3d 38, 495 N.E.2d 14 (1986)
- Satullo v. Wilkins, 111 Ohio St. 3d 399, 2006-Ohio-5856, 856 N.E.2d 954
- Toledo v. Levin, 117 Ohio St. 3d 373, 2008-Ohio-1119, 884 N.E.2d 31
- Akron Centre Plaza, L.L.C. v. Summit Cty. Bd. of Revision, 128 Ohio St. 3d 145, 2010-Ohio-5035, 942 N.E.2d 1054
- Plain Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision, 130 Ohio St. 3d 230, 2011-Ohio-3362, 957 N.E.2d 268
- Gen. Motors Corp. v. Limbach, 67 Ohio St. 3d 90, 616 N.E.2d 204 (1993)
- Recording Devices, Inc. v. Bowers, 174 Ohio St. 518, 190 N.E.2d 258 (1963)
- Sun Refining & Marketing Co. v. Brennan, 31 Ohio St. 3d 306, 511 N.E.2d 112 (1987)
- Elyria v. Lorain Cty. Budget Comm., 117 Ohio St. 3d 403, 2008-Ohio-940, 884 N.E.2d 553
- Colonial Village Ltd. v. Washington Cty. Bd. of Revision, 114 Ohio St. 3d 493, 2007-Ohio-4641, 873 N.E.2d 298
- Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision, 124 Ohio St. 3d 27, 2009-Ohio-5932, 918 N.E.2d 972
- Brown v. Levin, 119 Ohio St. 3d 335, 2008-Ohio-4081, 894 N.E.2d 35
- Gaston v. Medina Cty. Bd. of Revision, 133 Ohio St. 3d 18, 2012-Ohio-3872, 975 N.E.2d 941
- Hal Artz Lincoln-Mercury, Inc. v. Ford Motor Co., 28 Ohio St. 3d 20, 502 N.E.2d 590 (1986)