SUPREME COURT OF VERMONT

GP Burlington South, LLC v. Department of Taxes

2010 VT 23 (Vt. 2010) · No. No. 08-387 · Decided March 11, 2010

SUMMARY

The Vermont Supreme Court held that GP Burlington South, LLC's appeal concerning a land gains tax refund was premature because the Commissioner had not conducted the required contested-case hearing or issued a determination. The court reconciled conflicting refund statutes, remanded the matter for a hearing and decision by the Commissioner, and held that the taxpayer could then appeal to the superior court. The court declined to resolve the merits of the land-value allocation issue at that stage.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Burgess, J.; Reiber, C.J.; Dooley, J.; Johnson, J.; Skoglund, J.
JURISDICTION	Vermont
DECIDED	March 11, 2010
DOCKET	No. 08-387
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Taxpayer appealed the Vermont Superior Court's partial grant of its claim for a refund of land gains tax. The Supreme Court concluded that the superior-court proceedings were premature because the taxpayer had not obtained a contested-case hearing and determination from the Commissioner.
STANDARD OF REVIEW	The Supreme Court reviewed the statutory scheme governing tax-refund claims and administrative appeals. Judicial review of agency decisions is presumed to be on the administrative record and deferential rather than de novo absent clear legislative authorization for a different standard.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Vermont
PARTIES	GP Burlington South, LLC v. Department of Taxes

TOPICS

tax | tax refunds | tax court procedure | administrative law | statutory interpretation

PRACTICE AREAS

tax | administrative law | appellate procedure

QUESTIONS PRESENTED

1. Whether the taxpayer's appeal to the superior court was premature because it had not first petitioned the Commissioner for a contested-case hearing and determination after the Department denied its refund claim.
2. How 32 V.S.A. §§ 5883 and 5884(a) should be construed together concerning Department-level refund claims, deemed denials, administrative appeals to the Commissioner, and subsequent judicial review.
3. Whether the Department could rely on a later administrative decision and technical bulletin as evidence of its rationale for denying the refund claim.
4. Whether the court should decide in the first instance whether the Department's method of valuing land based in part on the value of structures was inconsistent with Vermont's land gains tax.

HOLDINGS

1. The appeal was premature because the taxpayer bypassed the required contested-case hearing and determination by the Commissioner following the Department's denial of the refund claim.
2. To reconcile the statutory provisions, the term "commissioner" in § 5884(a), except in the provision requiring a hearing, must be read as referring to the Department; the Department's failure to refund within six months constitutes a deemed denial that may be followed by a petition to the Commissioner and a contested-case hearing.
3. The Department's 2006 administrative decision and January 2007 technical bulletin were relevant to the extent they clarified the Department's evolving interpretation and rationale, even though they postdated the 2004 transaction.

KEY QUOTATIONS

> *“This construction of the statutes is necessary not only to reconcile § 5883 with § 5884(a), cf. Gavala v. Claassen, 2003 VT 16, ¶¶ 7-8, 175 Vt. 487, 819 A.2d 760 (mem.) (reconciling inconsistent statute that called for on-the-record review but required reviewing court to allow presentation of additional evidence based on nothing more than party's request), but also to reduce the likelihood that the superior court will be put in the position of adjudicating, in the first instance, claims concerning policies within the Department's expertise”* (185)

> *“De novo review, whereby the superior court would simply substitute its judgment for that of the director, necessarily usurps power delegated to the executive branch; therefore that standard is inappropriate unless the statute expressly so provides.”* (186)

> *“Reversed and remanded for further proceedings consistent with this opinion.”* (186)

FACTUAL BACKGROUND

In 2000, GP Burlington South purchased an industrial site in Burlington and allocated portions of the purchase price between land and buildings for land-gains-tax purposes. After improving the property, it sold the north parcel in 2004 and paid $434,046 in land gains tax. In 2006, the taxpayer filed a modified refund petition claiming that the proper tax was $107,447 and seeking a refund of $326,599 plus interest. The Department denied the claim, and the taxpayer sought judicial review without first obtaining a contested-case hearing and determination by the Commissioner.

PROCEDURAL HISTORY

GP Burlington South paid land gains tax in connection with its 2004 sale of an industrial parcel and later filed a modified refund petition. The Department denied the refund request, and the taxpayer appealed directly to the superior court. The superior court denied the Department's request to remand for an administrative hearing, partially granted the refund claim, and rejected the taxpayer's remaining challenges. The Supreme Court reversed and remanded for a contested hearing before the Department and a decision by the Commissioner.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the Department for a contested-case hearing and a decision by the Commissioner. The taxpayer may appeal any adverse Commissioner's decision to the superior court.

CASES CITED

- Conservation Law Found. v. Burke, 162 Vt. 115, 126-27, 645 A.2d 495, 501-02 (1993)
- Dep't of Taxes v. Tri-State Indus. Laundries, Inc., 138 Vt. 292, 294-95, 415 A.2d 216, 218-19 (1980)
- Gavala v. Claassen, 2003 VT 16, ¶¶ 7-8, 175 Vt. 487, 819 A.2d 760 (mem.)
- State v. Colby, 2009 VT 28, ¶¶ 8-10, 185 Vt. 464, 972 A.2d 197
- Town of Victory v. State, 2004 VT 110, ¶ 16, 177 Vt. 383, 865 A.2d 373