

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

Put-in-Bay Boat Line Company

Court of Appeals No. OT-10-029

Appellant

Trial Court Nos. 2008-K-1329
2008-K-282

v.

Richard A. Levin,
Tax Commissioner of Ohio

DECISION AND JUDGMENT

Appellee

Decided: March 4, 2011

* * * * *

R. Kent Murphree and Gary O. Sommer, for appellant.

Mike DeWine, Attorney General of Ohio, and
Ryan P. O'Rourke, Assistant Attorney General, for appellee.

* * * * *

HANDWORK, J.

{¶ 1} Appellant, Put-in-Bay Boat Line Co., appeals from a decision issued by the Ohio Board of Tax Appeals in the above-captioned case. For the reasons that follow, we affirm the judgment of the board.

{¶ 2} On August 12, 2008, appellant filed a notice of appeal with the Ohio Board of Tax Appeals seeking review of two final determinations issued by appellee,

Richard A. Levin, Tax Commissioner of Ohio, denying appellant's petitions for reassessment of public utility personal property tax assessments for tax years 2006 and 2007. Specifically, appellant, which operates a water transportation business, objected to appellee's apportionment of the taxable value of appellant's watercraft to the Port Clinton taxing district, rather than to the Put-in-Bay taxing district.

{¶ 3} The matter began when appellant provided in its annual reports for tax years 2006 and 2007 that all of its taxable property, including its watercraft, was in the Put-in-Bay taxing district. The Put-in-Bay taxing district is where appellant's principal place of business is located. Although appellant's general service area includes Put-in-Bay, Ohio, Port Clinton, Ohio, and the surrounding area, during the winter season, appellant houses all of its watercraft in a marina located in the Port Clinton taxing district.

{¶ 4} Upon audit of appellant's reports for the 2006 and 2007 tax years by the Ohio Department of Taxation, appellee issued an assessment against appellant for each of the relevant tax years, in each case apportioning the taxable value of appellant's watercraft to the Port Clinton taxing district and apportioning the remainder of appellant's taxable property to the Put-in-Bay taxing district.

{¶ 5} In response to the assessments, appellant filed petitions for reassessment, objecting not to the assessed value of its property, but only to appellee's decision to apportion the taxable value of appellant's watercraft to the Port Clinton taxing district.

{¶ 6} Appellee, in his "Final Determination," issued on June 12, 2008, affirmed the assessments, and explained his methodology for arriving at those assessments as follows:

{¶ 7} "* * * Upon review of the petitioner's tax return, the Department issued the subject assessment pursuant to the apportionment requirement set forth in R.C. 5727.15(D). The Department interprets that apportionment requirement as first requiring the determination of the total cost of personal property as of tax lien day in each taxing district where the public utility taxpayer has property. The determination is made based upon the cost in each taxing district as reported by the taxpayer. This is explained to taxpayers in the instructions to the Annual Report each water transportation company must file, wherein it states 'enter the cost of all taxable property physically located in the taxing district. The cost of watercraft must be reported in the taxing district in which the watercraft is physically located as of December 31, lien day.' (Emphasis in original.) The Department's interpretation next requires apportionment of the total taxable value of the taxpayer's personal property based upon the ratio of cost of personal property in each taxing district to total cost of personal property in Ohio.

{¶ 8} "The apportionment methodology used by the Department to generate the subject assessment was consistent with its historical interpretation of R.C. 5727.15(D). For tax year 2007, the tax lien day was December 31, 2006. The tax agent determined during review of the Annual Report that on December 31, 2006, the petitioner's watercraft were located in the Port Clinton City/Port Clinton CSD taxing district, though

the petitioner had reported their cost in the Put-In-Bay Twp.-Put-In-Bay Corp.-Put-In-Bay LSD taxing district. Therefore, the Department attributed the cost of the watercraft to the Port Clinton City/Port Clinton CSD taxing district, which resulted in an apportioned taxable value of the petitioner's taxable personal property of \$836,280 to that taxing district. The other taxing district where the petitioner had property on tax lien day was Put-In-Bay Twp.-Put-In-Bay Corp.-Put-In-Bay LSD, which received \$182,570 in apportioned taxable value."

{¶ 9} Appellant appealed from appellee's Final Determination to the Ohio Board of Tax Appeals. The board, according deference to appellee, as the Tax Commissioner, affirmed his assessments as issued. It is from the board's decision that appellant currently appeals, raising the following assignments of error:

{¶ 10} I. "The Ohio Board of Tax Appeals erred by concluding that since Appellant did not raise in its Petitions for Reassessments the reliance of the Tax Commissioner on its 'instructions for filing an Annual Report' therefore, it lacked jurisdiction to consider whether those instructions are in contravention of statute or should have been promulgated as a rule pursuant to R.C. Chapter 119."

{¶ 11} II. "The Ohio Board of Tax Appeals erred by determining that the Tax Commissioner is entitled to deference based upon his 'instructions for filing an Annual Report.'"

{¶ 12} III. "The Ohio Board of Tax Appeals erred by determining that the Tax Commissioner's interpretation of the subject statutes is entitled to deference because such interpretation is unreasonable."

{¶ 13} We begin our analysis with an examination of appellant's third assignment of error, which challenges appellee's interpretation of applicable statutes as unreasonable.

{¶ 14} Appellant is a "water transportation company," as defined in R.C. 5727.01(D)(7). As a "water transportation company," appellant is deemed a "public utility," under R.C. 5727.01(A), and therefore is required, under R.C. 5727.08, to file an annual report of its taxable property. The purpose of the required filings is "to enable the tax commissioner to make any assessment or apportionment required under [R.C. Chapter 5727]." R.C. 5727.08. Pursuant to R.C. 5727.10, "[t]he commissioner shall be guided by the information contained in the report filed by the public utility and such other evidence and rules as will enable the commissioner to make these determinations."

{¶ 15} As indicated by the Supreme Court of Ohio, in *UBS Fin. Servs. v. Levin*, 119 Ohio St.3d 286, 2008-Ohio-3821, the Tax Commissioner's interpretation of a statutory scheme that he is entrusted to administer is entitled to deference. *Id.* at ¶ 34; see, also, R.C. 1.49(F) (calling for consideration of "the administrative construction of the statute" in determining legislative intent of ambiguous statutes). In addition, the law is well established that, "[a]n agency's interpretation of a statute that it has a duty to enforce will not be overturned unless the interpretation is unreasonable." *State ex rel. Clark v. Great Lakes Constr. Co.*, 99 Ohio St.3d 320, 2003-Ohio-3802, 791 N.E.2d 974, ¶ 10.

{¶ 16} R.C. 5727.15, the statute upon which appellee relied in arriving at his determinations, pertinently provides as follows:

{¶ 17} "When all the taxable property of a public utility is located in one taxing district, the tax commissioner shall apportion the total taxable value thereof to that taxing district.

{¶ 18} "When taxable property of a public utility is located in more than one taxing district, the commissioner shall apportion the total taxable value thereof among the taxing districts as follows:

{¶ 19} "* * *

{¶ 20} "(D) In the case of all other public utilities [including water transportation companies], the taxable value of the property to be apportioned shall be apportioned to each taxing district in proportion to the entire value of such property within this state."

{¶ 21} Both parties agree: (1) that appellant's watercraft constitute taxable property; and (2) that the law is silent as to precisely how to apportion public-utility owned or operated watercraft among applicable taxing districts.

{¶ 22} Appellant argues that the value of its watercraft should be apportioned, not based upon the location of the watercraft on a particular date—in this case, on December 31, "lien day," of the relevant tax years—but, rather, based upon the location of the company's principal place of business. In support of this position, appellant urges this court to look, for guidance, to R.C. 5711.07, which pertinently states:

{¶ 23} "Personal property used in business shall be listed and assessed in the taxing district in which such business is carried on. If such business is carried on in more than one taxing district in the same county, the return shall set forth the amount of the property used therein which is situated in each taxing district in such county, and the value of all the personal property used in business shall be apportioned to and assessed in each of such taxing districts in proportion to the value of the personal property situated therein. * * * *Ships, vessels, boats, and aircraft, and shares and interests therein, shall be listed and assessed in the taxing district in which the owner resides.*" (Emphasis added.)

{¶ 24} Appellant concedes, however, that R.C. 5711.07 is applicable to general business taxpayers, and not to public utilities.

{¶ 25} In the final analysis, we find that we are left to choose between appellant's interpretation of the apportionment statute (which relies upon personal property tax laws that are expressly inapplicable to public utility taxpayers) and that of the official entrusted with the "exclusive power" to administer the public utility personal property tax, *Toledo Edison Co. v. Galvin* (1974), 38 Ohio St.2d 210, 212, and whose interpretation of applicable statutes is entitled to deference. See *UBS Fin. Servs. v. Levin*, supra. Inasmuch as appellee's interpretation does conform with, and in no way falls afoul of, the applicable statutory scheme, we find that it is reasonable and, therefore, should be accorded deference in this case. Accordingly, appellant's third assignment of error is found not well-taken.

{¶ 26} With respect to appellant's first and second assignments of error, both dealing with the Tax Commissioner's instructions for filing an annual report, appellant recognizes for the first time in its reply brief that appellee's position in this case is that he merely "communicated" his interpretation of the statutory scheme through his instructions, and did not specifically rely upon those instructions in making his assessment decisions. With that understanding, appellant acknowledges that the issues underlying his first and second assignments of error have essentially been set aside. Accordingly, we find appellant's first and second assignments of error are rendered moot and, therefore, will not be considered further.

{¶ 27} For all of the foregoing reasons, the judgment of the Ohio Board of Tax Appeals is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: <http://www.sconet.state.oh.us/rod/newpdf/?source=6>.