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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

LUZ SOCIAL SERVICES, INC.,)
) No. 1 CA-TX 08-0004
)
Petitioner-Appellant,)
) DEPARTMENT T
)
v.)
) **MEMORANDUM DECISION**
) (Not for Publication
ARIZONA STATE BOARD OF)
EQUALIZATION,) - Rule 28, Arizona
) Rules of Civil
) Appellate Procedure)
Respondent-Appellee,)
)
)
BILL STAPLES, in his official capacity)
as Assessor, Pima County,)
)
)
Real Party in Interest-Appellee.)
)
)
)
)
)

Appeal from the Arizona Tax Court

Cause No. TX 2007-000261

The Honorable Thomas Dunevant III, Judge

AFFIRMED

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D O W N I E, Judge

¶1 Luz Social Services, Inc. ("Taxpayer") appeals from the tax court's dismissal of its special action petition and the denial of its petition for an order to show cause. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Taxpayer is a not-for-profit corporation that operates charter schools in Tucson. The schools are located on real property (the "Property") that is at issue in this appeal.

¶3 On July 21, 2004, Taxpayer filed a notice of claim against Pima County (the "County"), alleging entitlement to a property tax exemption under Arizona Revised Statutes ("A.R.S.") sections 42-11104 and -11121 (2006).¹ County Assessor Bill Staples denied the claimed exemption for tax year 2001. The taxes became delinquent.²

¶4 Taxpayer timely appealed to the State Board of Equalization (the "Board") under the error correction statute, A.R.S. § 42-16254(F) (2006). When the Board refused jurisdiction, Taxpayer brought a successful special action. The

¹ We cite the 2006 version of the statute, which duplicated the 1999 language.

² Investors have purchased the tax liens.

court held that the error correction statute provides an avenue for appeal following denial of exempt status and directed the Board to docket and consider Taxpayer's appeal. See *Lyons v. State Bd. of Equalization*, 209 Ariz. 497, 501, ¶ 17, 104 P.3d 867, 871 (App. 2005). The Board accordingly held a hearing in August 2006.

¶15 During the hearing, counsel for the County Assessor argued that Taxpayer was required to pay taxes due on the Property prior to delinquency under A.R.S. § 42-16210 in order to pursue an appeal to the Board. Taxpayer conceded that it had not paid the taxes. The Board issued a decision on October 16, 2006 holding that it lacked jurisdiction. Taxpayer did not appeal from that decision.

¶16 On April 26, 2007, Taxpayer filed a special action complaint and a petition for order to show cause in the superior court. Taxpayer contended that the Board based its decision on an inapplicable statute and failed to decide the appeal on its merits, as it was required to do. The Assessor responded in pertinent part that: (1) a special action was inappropriate because Taxpayer had a remedy by way of appeal; (2) the Board's decision became final and binding after sixty days; (3) payment of taxes was a prerequisite to the superior court's assumption of jurisdiction; and (4) Taxpayer failed to join a necessary party the--County.

¶17 The tax court held a show cause hearing on October 3, 2007. It subsequently denied Taxpayer's petition for order to show cause and dismissed the special action complaint without reaching the merits of the dispute. The tax court signed an order reflecting the dismissal of the special action and the denial of the petition for order to show cause. This appeal followed.³

DISCUSSION

I. The Tax Court Did Not Abuse Its Discretion In Declining To Accept Special Action Jurisdiction.

A. The Tax Court's Ruling Is Not Ambiguous.

¶18 When a party appeals from a special action initiated in superior court, the appellate court conducts a bifurcated review. *Bilagody v. Thorneycroft*, 125 Ariz. 88, 92, 607 P.2d 965, 969 (App. 1979). We must determine whether the superior court exercised its discretion to assume jurisdiction over the claim's merits. *Id.* If so, we may consider the claim's merits. *Id.* If not, the sole issue for review is whether the superior court abused its discretion in declining to accept jurisdiction. *Id.*

³ A different panel of this court previously ruled on portions of appellee Staples' Motion to Strike Exhibits to Appellant's Brief and References to Exhibits in Brief. That panel deferred ruling on the remainder of the motion "until the court considers this appeal on the merits." We now grant the unadjudicated portions of the motion to strike.

¶9 Taxpayer contends that the tax court's action is ambiguous "because it both denied and dismissed the petition/complaint." We disagree. Although the minute entry states that the court is "denying/dismissing" the special action petition and the petition for order to show cause, the tax court's signed order states that it dismissed the special action complaint and denied the petition for order to show cause. We consider the signed order controlling.

¶10 Taxpayer also alleges ambiguity because the tax court's ruling "includes some discussion of the legal merits." Once again, we disagree. The substantive questions were whether the Board's decision was incorrect as a matter of law and whether the Board refused to perform a duty as to which it had no discretion. The tax court did not resolve these issues and instead based its decision on the availability of an appeal from the Board's final decision and Taxpayer's failure to pursue an appeal. The discussion at issue was necessary to resolve whether Taxpayer had a remedy by way of appeal. It did not render the court's specifically worded order ambiguous.

B. Special Action Relief Was Inappropriate Because Taxpayer Forfeited its Appeal Rights.

¶11 Taxpayer alternatively challenges the tax court's refusal to accept special action jurisdiction. We review the decision to accept or decline special action jurisdiction for an

abuse of discretion. *Pima County Assessor v. Ariz. State Bd. of Equalization*, 195 Ariz. 329, 332, ¶ 8, 987 P.2d 815, 818 (App. 1999); *Bilagody*, 125 Ariz. at 92, 607 P.2d at 969.

¶12 The tax court concluded that Taxpayer had an appellate remedy, which it forfeited by failing to appeal within sixty days of the Board's ruling. We agree. As a party dissatisfied with the Board's decision, Taxpayer had a right to appeal to the tax court under A.R.S. § 42-16254 (2006). According to § 42-16254(G), "[a] party that is dissatisfied with the decision of the county board or state board may appeal the decision to court within sixty days after the date the board's decision is mailed" Likewise, "[a]n appeal to court shall be taken within sixty days after the date of the state board's final decision." A.R.S. § 42-16203(C) (2006). If an appeal is not taken within the time prescribed in § 42-16203, "[a]ny decision of the state board of equalization pertaining to the valuation or classification of property is final" A.R.S. § 42-16169 (2006).

¶13 In *Lyons*, we held that an improper denial of an exemption request qualifies as an incorrect designation or description of the use of property or its classification under the error correction statutes. 209 Ariz. at 503, ¶ 24, 104 P.3d at 873. Taxpayer's exemption argument pursuant to those statutes was a challenge to classification, see *id.*, and

accordingly, the Board's decision became final sixty days after mailing on October 16, 2006. See A.R.S. § 42-16169. Taxpayer never appealed that decision. Instead, it filed a special action complaint on April 26, 2007--over four months after its appeal rights lapsed. It consequently abandoned its appellate remedy.

¶14 Arizona has a "strong . . . policy against using extraordinary writs as substitutes for appeals." *State ex rel. Neely v. Rodriguez*, 165 Ariz. 74, 76, 796 P.2d 876, 878 (1990); see *Thielking v. Kirschner*, 176 Ariz. 154, 156, 859 P.2d 777, 779 (App. 1993) (party attempting to correct errors in appealable administrative decision cannot substitute declaratory relief action for timely appeal or avoid requirements of timely appeal by seeking relief via special action). Because Taxpayer did not file a timely appeal, the Board's decision became final, and the doctrine of *res judicata* bars its litigation in a special action proceeding. See *Hurst v. Bisbee Unified Sch. Dist. No. 2*, 125 Ariz. 72, 75-76, 607 P.2d 391, 394-95 (App. 1979) (mandamus does not lie to correct errors in appealable judgment and cannot be used as substitute for ordinary channels of appeal; failure to timely appeal renders underlying decision *res judicata*). None of Taxpayer's cited cases involves a litigant who failed to file a timely appeal and subsequently sought relief by way of special action. See, e.g., *Bechtel v.*

Rose, 150 Ariz. 68, 722 P.2d 236 (1986) (special action review of denial of motion to intervene); *Ariz. Dep't of Pub. Safety v. Super. Ct.*, 190 Ariz. 490, 493, 949 P.2d 983, 986 (App. 1997) (accepting special action jurisdiction to review trial court's grant of preliminary injunction); *Vo v. Super. Ct.*, 172 Ariz. 195, 198, 836 P.2d 408, 411 (App. 1992) (special action brought pursuant to interlocutory ruling denying motion to dismiss a criminal charge).

II. The Failure to Pay Taxes Deprived the Tax Court of Jurisdiction.

¶15 The tax court also determined that it lacked jurisdiction because Taxpayer failed to pay its taxes as required to preserve the right to appeal. The timely payment policy is rooted in Arizona's Constitution, which ensures "that all property in the state" not exempt from tax under the federal or state constitutions "bear[s] its just burden of [] taxes." *Brophy v. Powell*, 58 Ariz. 543, 554, 121 P.2d 647, 652 (1942). Further, "[t]he purpose of a statutory requirement that taxes be paid before delinquency is to ensure the continued fiscal soundness of the government; such requirements are mandatory." *Bull HN Info. Sys. v. State Dep't of Revenue*, 185 Ariz. 393, 397, 916 P.2d 1109, 1113 (App. 1995) (construing former A.R.S. § 42-204). Taxpayers are therefore required to pay taxes before

they become delinquent. A.R.S. §§ 42-16210(A) (2006), -18051(D) (2006), -18052 (2006).

¶16 Timely tax payment is also required to preserve court jurisdiction. According to A.R.S. § 42-16254(G):

A party that is dissatisfied with the decision of the county board or state board may appeal the decision to court within sixty days after the date the board's decision is mailed, but any additional taxes that are determined to be due must be timely paid before delinquency for the court to retain jurisdiction of the matter.

¶17 In this case, Taxpayer filed a special action, not an appeal. Although the statute expressly addresses appeals, not special actions, we do not believe Taxpayer can evade the payment requirement by filing a special action petition after the appellate deadline has passed.

¶18 The primary goal of statutory interpretation "is to discern and give effect to legislative intent." *People's Choice TV Corp. v. City of Tucson*, 202 Ariz. 401, 403, ¶ 7, 46 P.2d 412, 414 (2002). We consider the tax statute as a whole, and take account of its "context, language, subject matter, historical background, effects and consequences, and its spirit and purpose." *State ex rel. Ariz. Dep't of Revenue v. Phoenix Lodge No. 708, Loyal Order of Moose, Inc.*, 187 Ariz. 242, 247, 928 P.2d 666, 671 (App. 1996) (citations omitted).

¶119 The Arizona Legislature has provided an appellate remedy and has stated that payment of taxes is a jurisdictional prerequisite. If a taxpayer could achieve review and avoid payment of taxes by failing to appeal and then bringing a special action, the condition imposed in A.R.S. § 42-16254(G) would be meaningless. We decline to adopt such a construction. See *State v. City Ct.*, 138 Ariz. 244, 246, 673 P.2d 988, 990 (App. 1983) (presuming that the legislature did not intend a futile act when it included a particular requirement in a statute), *abrogated on other grounds by Lind v. Super. Ct.*, 191 Ariz. 233, 954 P.2d 1058 (App. 1998).

¶120 Moreover, another statute requires payment of real property taxes. A person "may not test the validity or amount of tax" if any of the taxes "[t]hat are the subject of the action are not paid before becoming delinquent." A.R.S. § 42-11004(2) (2006). This provision, which appears in the Chapter 11 "General Provisions" Section, does not distinguish between appeals and special actions. It provides additional support for concluding that the payment requirement applies to a special action. See *id.* § 11004(3).

¶121 Furthermore, Taxpayer's approach is at odds with the exemption statutes. As the Board points out, the statutory procedure is to refund pre-paid taxes if the exemption is approved. Because Taxpayer did not timely pay, there could be

no refund. In effect, Taxpayer is requesting that its tax obligation be enjoined. We find no statutory basis for such a request.⁴

III. The Tax Court Properly Denied Taxpayer's Petition for Order to Show Cause.

¶22 Taxpayer also challenges the denial of its petition for order to show cause. The petition asked the tax court to require the Board to show cause (1) why the Board should not be ordered to docket and consider Taxpayer's appeal, and (2) why Taxpayer should not recover its attorneys' fees and costs in prosecuting its petition for order to show cause.

¶23 The Board held a hearing on Taxpayer's petition and rejected its arguments for the same reasons underpinning the tax court's special action decision: a lack of jurisdiction under A.R.S. § 42-16210 due to Taxpayer's failure to pay its taxes. Even if the Board had incorrectly interpreted its jurisdiction under § 42-16210(B), the tax court plainly had no jurisdiction

⁴ Further, there is no non-discretionary act remaining for the Board to perform. Under A.R.S. § 42-16254(F), "[o]n receiving the petition, the appropriate board shall hold a hearing on the proposed correction within thirty days and shall issue a written decision pursuant to the board's rules." Notwithstanding Taxpayer's arguments, the Board complied with these statutory requirements by deciding in writing that the nonpayment of taxes precluded it from taking jurisdiction. The Board thus performed its nondiscretionary duties.

to act because timely payment is a prerequisite under A.R.S. §§ 42-16210 and 16254(G) for the exercise of jurisdiction.

CONCLUSION

¶24 We affirm the tax court's rulings. Our holding obviates the need to consider the failure to join Pima County, collateral estoppel, and other alternative arguments. We deny Taxpayer's request for attorneys' fees on appeal pursuant to A.R.S. § 12-348(B)(1) (2003).

MARGARET H. DOWNIE, Judge

CONCURRING:

JON W. THOMPSON, Presiding Judge

DONN KESSLER, Judge