

**IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT
No. ED104000**

ARMSTRONG-TROTWOOD, LLC, et al.,

Plaintiffs-Appellants,

vs.

STATE TAX COMMISSION OF MISSOURI, et al.,

Defendants-Respondents.

**On appeal from the Circuit Court of St. Louis County, Division 17,
The Hon. Joseph Walsh, presiding
No. 15SL-CC00145**

BRIEF OF PLAINTIFFS-APPELLANTS

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JURISDICTIONAL STATEMENT

This appeal is taken from a final judgment of the Circuit Court of St. Louis County. LF 602.¹ The case presents no question to invoke the exclusive jurisdiction of the Supreme Court. Jurisdiction is vested in this Court. Article V, Section 3, Missouri Constitution.

STATEMENT OF FACTS

“Undeniably, mandatory sales disclosure universally is recognized by the assessment community as the ‘silver bullet,’ ensuring uniformity in the treatment of taxpayers in this state. The State Tax Commission cannot over-emphasize the need for sales disclosure in Missouri. . . . Assessment uniformity cannot be achieved on a consistent basis without the benefit of having accessibility to accurate sales data. The inadequate sales data severely thwarts the attempt by assessors to facilitate uniform and equitable assessments throughout the State.”

State Tax Commission Annual Report - 2013. LF 521-522.

Introduction

This case is about the efforts of seven plaintiffs to obtain specific relief (including refunds) for discriminatory and nonuniform tax assessments within certain multi-county taxing jurisdictions where the seven plaintiffs own parcels of real property. The broader, factual setting is that for more than the past quarter century, the State Tax Commission has been calling for the enactment of legislation creating a statewide “Certificate of Value” program requiring the mandatory disclosure of the sales price of property at closing. As the Commission has made clear,

assessing officers without laws mandating full disclosure work under a severe handicap . . . Assessment uniformity cannot be achieved on a

¹ The Legal File is cited as “LF __.”

consistent basis without the benefit of having accessibility to accurate sales data. The absence of certificates of value severely thwarts the attempts by assessors to facilitate uniform and equitable assessments throughout the State. . . . Passage of statewide certificates of value will provide critical sales data, which will pave the way for the implementation of a sales appraisal sales ratio study that requires fewer personnel [and] . . . preserves the integrity of the assessment program.

Sixty-Third Annual Report of the Proceedings and Decisions of the State Tax Commission of Missouri, page 7. Affidavit of Sandy Rothschild, ¶ 4, LF 501-502.

The Plaintiffs and the Multi-County Taxing Jurisdiction Properties

Collectively, the plaintiffs consist of two natural persons, one corporation, and four limited liability companies. LF 8. Throughout 2011 and 2012, each plaintiff owned parcels of property in St. Louis County. LF 9-12. These parcels of property are located within multi-county taxing jurisdictions. LF 9-12. All of the plaintiffs pay taxes to various taxing jurisdictions arising out of their respective ownership of these properties. LF 9-12.

All of the plaintiffs' properties which are the subject of this suit are located within two multi-county taxing jurisdictions (LF 9-12), except for a parcel of property owned by plaintiffs Robert and Susan Rothschild. The Rothschild's Eureka, Missouri, property is located within four multi-County taxing jurisdictions - a multi-county school district, a multi-county fire district, the St. Louis County Special School District, and the St. Louis Community College District. LF 11, ¶ 4.

The St. Louis County Defendants

For the 2011 and 2012 tax years, defendants St. Louis County and its Assessor assessed the plaintiffs' properties in a discriminatory, nonuniform and unfair manner when compared to similar properties located within other assessment jurisdictions but within the same taxing jurisdictions. LF 13-14, ¶ 14. Specifically, the appraisal ratio

in St. Louis County for the plaintiffs' properties was significantly greater than the appraisal ratio for similar properties located within Franklin and Jefferson Counties which fail to conform to the statutory requirements for residential assessments. LF 14, ¶ 21.A.² Further, the plaintiffs' properties were appraised significantly greater than the appraisal ratios for similar properties located within a majority of other assessment jurisdictions, all of which levy a property tax and collect the Blind Pension Fund levy. LF 15, ¶ 21.B. Further, the plaintiffs' properties were assessed at a higher proportion of value in St. Louis County than similar properties in other taxing jurisdictions. LF 15, ¶ 21.C.³

² The record before the Commission (and the court below) includes a Property Tax Appraisal to Price Ratio Study (LF 123-145) and two Multi-county Jurisdiction Studies (LF 146-312, 313-380). These studies show that nonuniformity within a significant number of multi-County taxing jurisdictions is more than de minimis, the significance of which is discussed at page 20 n. 17, *infra*.

³ The estimated monetary consequences to the plaintiffs for the 2011 tax year, caused by the discriminatory assessments, are set out in the record at LF 388-389. Because the appraisal levels are significantly disparate, the plaintiffs and their properties are forced to bear a disproportionate share of the cost of operating the multi-county taxing jurisdictions, while owners of undervalued property are paying less than their fair and lawful obligation. See, e.g., LF 416 (plaintiffs Rothschild's property at 206 Weber Dr. is located within the Rockwood School District, which has territory in Jefferson County; the Eureka Fire Protection District, which has territory in Jefferson County; the St. Louis Community College District, which has territory in Jefferson County; and the Special School District of St. Louis County, which has territory in Jefferson County). (The St. Louis Community College District is also located in the City of St. Louis but its assessment level was within the statutorily

Plaintiffs appealed the discriminatory assessments to St. Louis County's Board of Equalization ("the Board"). LF 14, ¶ 15. In each instance, the Board sustained the Assessor's valuation. LF 14, ¶ 16.⁴

The State Tax Commission Defendants

Plaintiffs next appealed the Board's decisions to the Commission. LF 14, ¶ 17.⁵ Commission Senior Hearing Officer Luann Johnson dismissed the appeals *sua sponte*. LF 14, ¶ 18.⁶

Plaintiffs next applied to the Commission for review of the Hearing Officer's dismissal. LF 14, ¶ 19.⁷ On December 16, 2014, the Commission affirmed the

mandated level. Other jurisdictions shared by the City and County were not cited for the same reason.)

⁴ The decisions of the Board concerning the subject properties are in the record at LF 411, 417, 421, 429, 434, 446, 451, 455, 462, 467, 470, 473, 476, 479, 483, 489, and 496.

⁵ The Complaints for Review of Assessments for the subject properties are in the record at LF 410, 415, 420, 427, 432, 444, 454, 460, 465, 468, 471, 474, 477, 481, 487, and 494.

⁶ The hearing officer's order of dismissal is in the record at LF 381-386.

⁷ See LF 112-122, Application for Review, Appeal Nos. 11-10827 through 11-10830, 11-11018 through 11027, and 11-13959 through 11-13961. The Application for Review attached a *Property Tax Appraisal to Price Ratio Study for Franklin County, Jefferson County, Saint Louis County, and Saint Louis City*, authored by William H. Rogers, Associate Professor of Economics, University of Missouri at St. Louis, August 12, 2014 (LF 123-145), along with a *Multi-County Jurisdiction Study*, Fourth Edition (LF 146-312).

Hearing Officer's decision to dismiss the appeals. LF 14, ¶ 20.⁸

On January 15, 2016, plaintiffs brought this action in the Circuit Court of St. Louis County, challenging the actions of the State Tax Commission and its members, as well as the actions of St. Louis County and its Assessor. LF 1.

Proceedings Below

The petition is in five Counts.⁹ LF 8-29. Count I is a claim for judicial review of a contested case, Count II is an alternative claim for declaratory relief, and Count IV is an alternative claim for judicial review of a non-contested case.¹⁰ Id.

On April 13, 2015, the Commission defendants answered the petition (LF 39), and further moved to dismiss Counts IV and V, and to dismiss the Commission from Count I. LF 30. The St. Louis County defendants answered the petition on April 16, 2015. LF 54.

The parties subsequently stipulated to the relevant parts of the record filed with the Commission. LF 498. This record was filed with the court below on August 28,

⁸ The Commission's order is in the record at LF 73-80.

⁹ Counts I, II, and IV are subjects of this appeal.

¹⁰ In addition to setting out the specific injuries to the plaintiffs, the petition noted an issue of general importance and concern. For at least the past twenty-five years (in addition to the 2011 tax year which is the subject of this suit), the Commission has failed to perform timely and accurate inter-county equalization (LF 15, ¶ 24). That is because for the 2011 tax year, as well as for other years, the Commission has lacked the data which would have allowed it to perform accurate inter-county equalization concerning plaintiffs' properties. LF 15, ¶ 25. In fact, the record filed with the court below includes a plea from the Commission to the General Assembly "to develop statutory language mandating the use of statewide certificates of value" to resolve the problem. LF 521.

2015. LF 66.

After several case management conferences (LF 3, 4, 5 (during which the Circuit Judge made clear his desire to seek guidance from a higher court)), plaintiffs filed supplemental suggestions in opposition to the Commission defendants' motion to dismiss, attaching the affidavit of Sandy Rothschild. LF 499-583. Subsequently, on December 9, 2015, the St. Louis County defendants moved to dismiss the suit for failure to state a claim upon which relief can be granted. LF 584-585. The Circuit Judge then entered judgment for the defendants, concluding that the petition does fail to state a claim. LF 602.

This appeal followed. LF 603.

POINTS RELIED ON

- I. The State Tax Commission erred in dismissing plaintiffs' appeals, and the court below erred in entering judgment for defendants, ruling that the petition fails to state a claim upon which relief can be granted, because Count I of the petition states a claim for judicial review of a contested case, in that plaintiffs are aggrieved by the State Tax Commission's final decision dismissing plaintiffs' appeals, because the territorial limits of the taxing authorities in this matter span multiple counties, and the State Tax Commission had a duty to equalize the taxes assessed against the plaintiffs' properties within the territorial limits of the authorities levying the tax, instead of dismissing the appeals.

Article X, Section 3, Missouri Constitution

Sperry Corp. v. State Tax Com'n, 695 S.W.2d 464 (Mo. banc 1985)

State ex rel. Cassilly v. Riney, 576 S.W.2d 325 (Mo. banc 1979)

State ex rel. Com'rs of State Tax Commission v. Schneider,
609 S.W.2d 149 (Mo. banc 1980)

- II. The court below erred in entering judgment for defendants, ruling that the petition fails to state a claim upon which relief can be granted, because Count IV of the petition states, in the alternative, a claim for judicial review of a non-contested case, in that the action of the Commission in performing inter-county equalization for the 2011 tax year constitutes a decision of an administrative body which is not subject to administrative review and which determined the legal rights, duties or privileges of the plaintiffs within the meaning of § 536.150, R.S. Mo., and there is no other provision for judicial review of that Commission action.

Comm. for Educ. Equal. v. State, 294 S.W.3d 477 (Mo. banc 2009)

Hagely v. Board of Educ. of Webster Groves School Dist.,
841 S.W.2d 663, 669 (Mo. banc 1992)

State ex rel. Cassilly v. Riney, 576 S.W.2d 325 (Mo. banc 1979)

- III. The court below erred in entering judgment for defendants, ruling that the petition fails to state a claim upon which relief can be granted, because Count II of the petition does state an alternative claim for relief for a declaratory judgment, in that the action of the Commission dismissing the plaintiffs' appeals, together with the failure of the Commission to perform accurate inter-county equalization for the 2011 tax year, have created a justiciable controversy between the parties concerning the issues of whether the assessments for the plaintiffs' properties are discriminatory and not uniform, and plaintiffs have no adequate remedy at law.

Missouri Health Care Ass'n v. Attorney Gen. of the State of Mo.,
953 S.W.2d 617 (Mo. banc 1997)

Schaefer v. Koster, 342 S.W.3d 299 (Mo. banc 2011)

Sioux City Bridge Co. v. Dakota Cty., Neb., 260 U.S. 441 (1923)

ARGUMENT

STANDARD OF REVIEW

The court below dismissed this case for failure to state a claim upon which relief can be granted. Review of a dismissal for failure to state a claim is de novo. *Hess v. Chase Manhattan Bank, USA N.A.*, 220 S.W.3d 758, 768 (Mo. banc 2007); *Chochorowski v. Home Depot U.S.A., Inc.*, 295 S.W.3d 194, 197 (Mo. App. E.D. 2009). All of the plaintiffs’ averments are accepted as true, granting to plaintiffs all reasonable inferences. *Nazeri v. Missouri Valley College*, 860 S.W.2d 303, 306 (Mo. banc 1993). The “petition is reviewed in an almost academic manner, to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case.” *Nazeri*, 860 S.W.2d at 306; *Chochorowski*, 295 S.W.3d at 197.

Further, with regard to Count I, review of a contested case is a review by both the trial and appellate courts of the record created before the administrative body. *City of Valley Park v. Armstrong*, 273 S.W.3d 504, 506 (Mo. banc 2009).

I. The State Tax Commission erred in dismissing plaintiffs’ appeals, and the court below erred in entering judgment for defendants, ruling that the petition fails to state a claim upon which relief can be granted, because Count I of the petition states a claim for judicial review of a contested case, in that plaintiffs are aggrieved by the State Tax Commission’s final decision dismissing plaintiffs’ appeals, because the territorial limits of the taxing authorities in this matter span multiple counties, and the State Tax Commission had a duty to equalize the taxes assessed against the plaintiffs’ properties within the territorial limits of the authorities levying the tax, instead of dismissing the appeals.

Count I is a claim for judicial review of a contested case. The Commission dismissed the plaintiffs’ appeals *sua sponte*. The proceeding was one in which a

hearing was required by law. Without question, each plaintiff is a “person who has exhausted all administrative remedies provided by law, and who is aggrieved by a final decision in a contested case” within the meaning of § 536.100, R.S. Mo. The central issue here, however, is whether the Commission had a duty to equalize assessments within the multi-county territorial limits of the authorities levying the tax. It did.

In dismissing the appeals, the Commission determined that its jurisdiction is limited to correcting valuations within a County, and that it lacks jurisdiction to rule on allegations of inter-county discrimination. LF 76. Relying upon (LF 75) *Foster Bros. Mfg. Co. v. State Tax Commission of Mo.*, 319 S.W.2d 590 (Mo. 1958), and *Westwood Partnership v. Gogarty*, 103 S.W.3d 152 (Mo. App. E.D. 2003) (LF 75-76, 78), the Commission reasoned that “Article X, Section 3 requires uniformity of taxes upon the same class of properties within the territorial limits of the authority levying the taxes,” and that “the governing body of the county is the taxing authority.” LF 78. The Commission further reasoned that the “fact that a few political subdivisions cross county lines does not authorize county assessors or county boards of equalization to engage in inter-county equalization.” LF 78.

Thus, in dismissing the appeals, the Commission confined its authority to correcting valuations within a particular county, but the Missouri Constitution requires more. Under the Constitution, “[t]axes . . . shall be uniform upon the same class or subclass of subjects within the territorial limits of the authority levying the tax.” Mo. Const. Art. X, § 3. The Missouri Constitution’s uniformity clause expressly requires uniformity within the territorial limits of the authority levying the tax - not simply uniformity within the territorial limits of a particular county - apparently the Commission’s desired outcome here. In this matter the territorial limits of the taxing authorities span multiple counties.

Further, time and again, the Missouri Supreme Court has held that the

Commission has a duty to equalize assessments between counties, as required by the Missouri Constitution (Art. X, § 14), as well as by statute (§ 138.380, R.S. Mo.), and further to “correct any assessment or valuation which is shown to be unlawful, unfair, improper, arbitrary or capricious.” § 138.430.1, R.S. Mo. For example, the Supreme Court held emphatically in *State ex rel. Cassilly v. Riney*, 576 S.W.2d 325 (Mo. banc 1979) that the Commission has responsibility for both inter-county equalization and intra-county equalization. 576 S.W.2d at 330-31.¹¹ See also, *State ex rel. Com’rs of State Tax Commission v. Schneider*, 609 S.W.2d 149 (Mo. banc 1980) and *Sperry Corp. v. State Tax Com’n*, 695 S.W.2d 464, 470 (Mo. banc 1985) (the “commission has the duty to equalize inter-county valuations as well as intra-county valuations”).

Here, however, rather than follow *Cassilly*, the Commission dismissed the plaintiffs’ appeals *sua sponte*, relying upon *Foster Bros.* and *Westwood Partnership*. Neither is applicable. The tax appeals here, unlike those in *Foster Brothers* and *Westwood Partnership*, concern equalization within taxing jurisdictions which span multiple counties. For example, the properties of plaintiff Armstrong-Trotwood are located within two multi-county taxing jurisdictions. LF 9, ¶ 1. One of these jurisdictions is partly within St. Louis County and partly within Franklin and Jefferson Counties. The other is located partly in St. Louis County and partly in Jefferson County. LF 9, ¶ 1. Also, for example, one of Robert and Susan Rothschild’s properties is located within four multi-county taxing jurisdictions - a multi-county school district (Rockwood R-VI), a multi-county fire district (Eureka Fire Protection District), the St. Louis County Special School District, and the St. Louis Community College District. LF 11, ¶ 4.

¹¹ The Commission, in fact, acknowledges that “the *Cassilly* case effectually overruled a long line of Missouri cases that held that the State Tax Commission had no authority over intra-county equalization of assessments, but could only exercise authority to equalize assessments on an aggregate basis as between counties.” LF 520.

Accordingly, the Commission erred in dismissing the appeals. The uniformity requirements of Art. X, Sec. 3, of the Missouri Constitution apply to all taxing jurisdictions, not just to counties. They apply equally to the multi-county taxing authorities which have levied a tax against the plaintiffs' properties.

In summary, plaintiffs are aggrieved by a final decision in a contested case. Further, the Commission had a duty to equalize the taxes assessed against the plaintiffs' properties within the territorial limits of the authorities levying the tax. Accordingly, the Commission erred in dismissing the appeals. Count I of the petition states a claim upon which relief can be granted.

II. The court below erred in entering judgment for defendants, ruling that the petition fails to state a claim upon which relief can be granted, because Count IV of the petition states, in the alternative, a claim for judicial review of a non contested case, in that the action of the Commission in performing inter-county equalization for the 2011 tax year constitutes a decision of an administrative body which is not subject to administrative review and which determined the legal rights, duties or privileges of the plaintiffs within the meaning of § 536.150, R.S. Mo., and there is no other provision for judicial review of that Commission action.

In the alternative, in Count IV of their petition, plaintiffs seek judicial review (as a non-contested case) of the Commission's action performing inter-county equalization for the 2011 tax year.¹² Judicial review of a non-contested case is governed by section 536.150 of the Missouri Administrative Procedure Act:

When any administrative officer or body existing under the constitution or by statute or by municipal charter or ordinance shall have rendered a decision which is not subject to administrative review, determining the legal rights, duties or privileges of any person, including the denial or revocation

¹² Section 138.390, R.S. Mo., requires the Commission to perform this action.

of a license, and there is no other provision for judicial inquiry into or review of such decision, such decision may be reviewed by suit for injunction, certiorari, mandamus, prohibition or other appropriate action Section 536.150, R.S. Mo.

As Professor Alfred S. Neely explains, whether a complaining party may assert a claim for judicial review turns upon whether the complaining party has standing. Thus,

The issue involves a complex task of drawing lines between those with and without standing. The focus of analysis is a person's personal stake in the outcome of the controversy. . . . The determination is made in context. As such, 'whether the party opposing the administrative decision has standing is an ad hoc determination to be made by the courts under the particular facts of the case. . . . What is required is a specific and legally cognizable interest in the subject matter of the administrative decision and that the decision will have a direct and substantial impact on that interest.' This is the prevailing general standard, and appears to be whether the case at issue is either a contested or noncontested under the MAPA.

A. Neely, *Administrative Practice and Procedure*, section 13.3, pages 265-266, 269, 271-272 (Thomson West fourth edition). See also, e.g., *Comm. for Educ. Equal. v. State*, 294 S.W.3d 477, 484 (Mo. banc 2009) ("Standing requires that a party seeking relief has some legally protectable interest in the litigation so as to be affected directly and adversely by its outcome, 'even if that interest is attenuated, slight or remote.'") (quoting *Mo. State Med. Ass'n v. State*, 256 S.W.3d 85, 87 (Mo. banc 2008)).

Here, the plaintiffs allege specific and legally cognizable interests in the subject matter of the Commission's action, and allege further that the action of the Commission has had a direct and substantial impact on these interests. Specifically, the complained-of action (or decision) which is the subject of Count IV is the

Commission's effort, or lack thereof, to perform inter-county equalization for the 2011 tax year. See LF 24, ¶ 37.¹³ See also LF 15, ¶¶ 24, 25.¹⁴

Further, the specific and legally cognizable interest the plaintiffs have in the Commission's action is that the Commission's action has resulted in property tax assessments which are discriminatory, nonuniform and unfair. LF 13-14, ¶ 14. The result is that the plaintiffs and their properties are forced to bear a disproportionate share of the cost of operating the multi-county taxing jurisdictions, while owners of undervalued property are paying less than their fair and lawful obligation. Specifically, the appraisal ratio in St. Louis County for plaintiffs' properties is significantly greater than the appraisal ratio for similar properties located within

¹³ Some of plaintiffs' anticipated proof of the Commission's failure to perform inter-county equalization adequately for the 2011 tax year is attached as exhibits one through eight to the affidavit of Sandy Rothschild. The proof includes the 2011-2012 State Tax Commission Ratio Studies (LF 514-517), as well as Mr. Rothschild's assessment of the number of counties out of compliance with the International Association of Assessing Officers standard (which the State Tax Commission has adopted for use in its ratio study and prints in its Assessor's Manual) (LF 523-525).

¹⁴ The record filed with the court below includes excerpts from the Commission's annual messages to the Gen. Assembly from 1988 through 2010 in which the Commission states that, "[a]ssessment uniformity cannot be achieved on a consistent basis without the benefit of having accessibility to accurate sales data. The inadequate sales data severely thwarts the attempt by assessors to facilitate uniform and equitable assessments throughout the State." LF 391-392. (For the 2011-2012 tax year, the Commission added the message, "[i]t is virtually impossible for counties to comply with statutory and constitutional mandates with an assessment program which is significantly underfunded." LF 502, ¶ 6.)

Franklin and Jefferson Counties which fail to conform to the statutory requirements for residential assessments. LF 14, ¶ 21.A. Further, the properties are appraised significantly greater than the appraisal ratios for similar properties located within a majority of other assessment jurisdictions. LF 15, ¶ 21.B. Moreover, plaintiffs' properties are assessed at a higher proportion of value in St. Louis County than similar properties in other taxing jurisdictions. LF 15, ¶ 21.C.¹⁵

Thus, plaintiffs meet the standing requirements as set out in virtually all of the modern decisions concerning judicial review of a non-contested case. However, approximately sixty years ago, and soon after the enactment of the Missouri Administrative Procedure Act, in *May Dep't Stores Co. v. State Tax Comm'n*, 308 S.W.2d 748, 756 (Mo. 1958), the Missouri Supreme Court held that the Commissions' inter-county equalization orders were not subject to judicial review as a non-contested case. The *May* Court based its decision upon this interpretation of the Missouri Administrative Procedure Act -- a petition for review of a non-contested case must be filed within thirty days of the agency decision. Accordingly, no "individual notice" within that thirty-days time frame "could possibly be contemplated" in connection with county equalization orders. Eleven months after its decision in *May*, the Supreme Court decided *Foster Bros. Mfg. Co. v. State Tax Commission of Mo.*, 319 S.W.2d 590, 595 (Mo. 1958), and relied upon its holding in *May* ("we have recently held that such annual order of intercounty equalization is not subject to collateral attack and is not subject to review in a landowner's appeal from a specific valuation such as is involved in the instant case").

Since the Supreme Court's decisions in *Foster Bros.* and *May*, however, the Missouri appellate courts (including the Missouri Supreme Court) uniformly have held that there is no thirty-days time limit within which to petition for review of a non-

¹⁵ For the 2011 tax year these specific interests are expressed in monetary terms at LF 388-389.

contested agency decision. *E.g., Hagely v. Board of Educ. of Webster Groves School Dist.*, 841 S.W.2d 663, 669 (Mo. banc 1992); *Wooldridge v. Greene Cnty.*, 198 S.W.3d 676, 683 (Mo. App. S.D. 2006).

Thus, the underlying premise for the Supreme Court's decisions in *May* and *Foster Bros.* (that there is not enough time for individual notice which would allow a party to seek judicial review within thirty days) is no longer correct. Instead, as explained at page 13, *supra*, in determining whether a party may assert a claim for judicial review of a non-contested case, the focus of the modern decisions is upon whether the complaining party has "standing." There has been no reexamination of *May* or *Foster Bros.* within the context of the modern cases, nor has there been a re-examination of *May* or *Foster Bros.* since the courts uniformly have held that there is no thirty-days time limit within which to petition for judicial review of a non-contested agency decision. Plaintiffs respectfully suggest that if *May* and *Foster Bros.* were decided today, the Supreme Court would decide them differently.

Further, after *May* and *Foster Bros.*, the Missouri Supreme Court handed down its decisions in *Sperry Corp. v. State Tax Com'n*, 695 S.W.2d 464 (Mo. banc 1985), *State ex rel. Com'rs of State Tax Commission v. Schneider*, 609 S.W.2d 149 (Mo. banc 1980), and *State ex rel. Cassilly v. Riney*, 576 S.W.2d 325 (Mo. banc 1979).

In *Cassilly*, the Supreme Court held emphatically that the Commission has responsibility for both inter-county equalization and intra-county equalization. 576 S.W.2d at 330-31. The Court stated specifically that "cases thought to carry implications to the contrary are not controlling." *Id.* at 331.

In *Schneider*, the Supreme Court enforced its holding in *Cassilly*.

In *Sperry Corp.*, the Supreme Court reiterated that the Commission "has the duty to equalize inter-county valuations as well as intra-county valuations." 695 S.W.2d at 470.

Thus, in addition to virtually all of the modern cases having held that there is no

thirty-days time limit governing judicial review of a non-contested case, *May and Foster Bros.*, effectively, have been overruled by the *Cassilly, Schneider, and Sperry Corp.* line of cases.

In summary, Count IV states an alternative claim for judicial review as a non-contested case of the Commission's action performing inter-county equalization for the 2011 tax year.

III. The court below erred in entering judgment for defendants, ruling that the petition fails to state a claim upon which relief can be granted, because Count II of the petition does state an alternative claim for relief for a declaratory judgment, in that the action of the Commission dismissing the plaintiffs' appeals, together with the failure of the Commission to perform accurate inter-county equalization for the 2011 tax year, have created a justiciable controversy between the parties concerning the issues of whether the assessments for the plaintiffs' properties are discriminatory and not uniform, and plaintiffs have no adequate remedy at law.

In the alternative, in Count II of the petition, plaintiffs seek a declaratory judgment concerning the actions of the Commission dismissing the plaintiffs appeals, together with the failure of the Commission to perform accurate inter-county equalization for the 2011 tax year. If plaintiffs may not resort to judicial review of the Commissions' actions pursuant to chapter 536 (Counts I and IV), then plaintiffs have no adequate remedy at law, and it would be appropriate for them to seek declaratory relief. Thus,

A court may grant a declaratory judgment if presented with: (1) a justiciable controversy that presents a real, substantial, presently existing controversy admitting of specific relief, as distinguished from an advisory decree upon a purely hypothetical situation; (2) a plaintiff with a legally protectable interest at stake, consisting of a pecuniary or personal interest directly at

issue and subject to immediate or prospective consequential relief; (3) a controversy ripe for judicial determination; and (4) an inadequate remedy at law.

Schaefer v. Koster, 342 S.W.3d 299, 300 (Mo. banc 2011). See also *Foster v. State*, 352 S.W.3d 357, 359 (Mo. banc 2011) (a justiciable controversy exists when the plaintiff: (1) has a legally protectable interest at stake; (2) a substantial controversy exists between parties with genuinely adverse interests; and (3) that controversy is ripe for judicial determination.)

Further, a “substantial controversy” is a “presently-existing controversy admitting of specific relief, as distinguished from an advisory decree upon a purely hypothetical situation.” *Missouri Soybean Ass’n v. Missouri Clean Water Comm’n*, 102 S.W.3d 10, 25 (Mo. banc 2003). “In other words, ‘[t]he facts on which the decision is demanded must have accrued so that the judgment declares the existing law on an existing state of facts.’” [Internal citations omitted]. *Century Motor Corp. v. FCA US LLC*, 477 S.W.3d 89, 95 (Mo. App. E.D. 2015). See also *Foster v. State*, 352 S.W.3d 357, 360 (Mo. banc 2011) (a substantial controversy exists where one party’s interests in preserving his assets are genuinely adverse to the state’s interests in seizing those assets.)

As explained below, if plaintiffs are precluded from seeking judicial review of the Commission’s actions, then plaintiffs would have a claim for declaratory relief.

First, with regard to the issue of whether there is an existing justiciable and substantial controversy between the parties, the prayer for relief seeks a refund of taxes in amounts to be determined by the court. LF 21.¹⁶ Thus, this matter presents a controversy “admitting of specific relief, as distinguished from an advisory decree upon a purely hypothetical situation.” *Missouri Soybean Ass’n v. Missouri Clean*

¹⁶ The preliminary and estimated dollar amounts to be refunded are set out in the record at LF 388-89.

Water Comm'n, 102 S.W.3d 10, 25 (Mo. banc 2003). The prayer also seeks an order requiring the defendants to reduce the plaintiffs' assessments so that the residential assessment ratios are uniform within the territorial limits of St. Louis, Franklin, and Jefferson Counties and other assessment jurisdictions, for the multi-county taxing jurisdictions, and to provide them with appropriate tax refunds. LF 20.

Further, the specific relief requested is the appropriate relief. When assessments are discriminatory and not uniform, the remedy is to reduce these assessments so that the residential assessment ratios are uniform among the taxing jurisdictions. *Sioux City Bridge Co. v. Dakota Cty., Neb.*, 260 U.S. 441, 445 (1923); *Savage v. State Tax Comm'n of Missouri*, 722 S.W.2d 72 (Mo. banc 1986); and *Boonville Nat. Bank v. Schlotzhauer*, 298 S.W. 732, 741 (Mo. banc 1927).

Moreover, the specific relief requested is appropriate for the following reasons:

- The assessments for plaintiffs' properties are discriminatory and not uniform;
- The appraisal ratio in St. Louis County for plaintiffs' residential properties is significantly greater than the appraisal ratio for similar properties located within other taxing jurisdictions;

- Plaintiffs' properties are assessed at a higher proportion of value in St. Louis County than similar parcels in other assessment jurisdictions which share the same taxing authorities;

- St. Louis County and its Assessor have failed to tax fairly and impartially plaintiffs' properties which are the subject of this action;

- The Commission has failed to fulfill its duties to secure just, equal, and uniform taxes and to correct assessments or valuations which are unlawful, unfair, improper, arbitrary or capricious concerning the properties which are the subject of this action; and

- The Commission has the authority and the duty to engage in inter-county equalization when hearing taxpayers' appeals.

LF 18-19, ¶ 29.

Next, concerning the issue of whether the plaintiffs have a “legally protectable interest” at stake, a “legally protectable interest” is a “pecuniary or personal interest directly at issue and subject to immediate or prospective consequential relief.” *Lane v. Lensmeyer*, 158 S.W.3d 218, 222 (Mo. banc 2005). In other words, the issue is one of standing. *Missouri Ass’n of Nurse Anesthetists, Inc. v. State Bd. of Registration for Healing Arts*, 343 S.W.3d 348, 354 (Mo. banc 2011); *Battlefield Fire Prot. Dist. v. City of Springfield*, 941 S.W.2d 491, 492 (Mo. banc 1997) (“When seeking declaratory or injunctive relief, the criterion for standing is whether the plaintiff has a legally protectable interest at stake”).

Plaintiffs have shown that they have standing at pp. 13-15, *supra*.¹⁷ They have a pecuniary interest which is subject to immediate or prospective consequential relief.

¹⁷As this Court gives the petition its “broadest intendment,” plaintiffs respectfully suggest that the Court look to the record before the Commission (filed with the court below), along with the affidavit of Sandy Rothschild as indicators of specific facts encompassed within the general allegations of the petition. One crucial fact in the record is that, within the territorial limits of four authorities levying a tax - the St. Louis Community College District, the Special School District of St. Louis County, the Rockwood School District, and the Eureka Fire Protection District - the residential appraisal ratio in part of those territorial limits (in St. Louis County) was thirteen percentage points higher than the residential appraisal ratio in another part of those territorial limits (in Jefferson County). LF 82. This discrepancy meets the standard set forth in *Savage v. State Tax Com’n*, 722 S.W.2d 72, 78-79 (Mo. banc 1986) of being “so grossly excessive as to be inconsistent with an honest exercise of judgment.” Further, this discrepancy is greater than what is allowed by the standards of the International Association of Assessing Officers. LF 397. It would not be considered a *de minimis* error of judgment. See *Savage* at 79.

See petition, Count II, prayer for relief, LF 20 - 21.

Next, concerning the issue of ripeness, this matter is ripe for determination. “A ripe controversy is a controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. . . . A ripe controversy exists if the parties’ dispute is developed sufficiently to allow the court to make an accurate determination of the facts, to resolve a conflict that is presently existing, and to grant specific relief of a conclusive character.” *Missouri Health Care Ass’n v. Attorney Gen. of the State of Mo.*, 953 S.W.2d 617, 621 (Mo. banc 1997) (internal citations omitted).

This controversy is overripe. None of the defendants here proposes to take any further action to remedy the discriminatory tax assessments. In the absence of judicial intervention, the plaintiffs will be stuck with having paid excessive, discriminatory, and nonuniform assessments, the amounts of which are capable of determination. Within the relief requested, plaintiffs seek refunds.¹⁸ The relief requested is the sort of “specific relief” of a “conclusive character” which satisfies the ripeness standard. *Missouri Health Care Ass’n v. Attorney Gen. of the State of Mo.*, 953 S.W.2d 617, 621 (Mo. banc 1997); *Commonwealth Ins. Agency, Inc. v. Arnold*, 389 S.W.2d 803, 806 (Mo. 1965).

Finally, with regard to whether there exists an adequate remedy at law, “[w]hen a remedy at law is lacking, a plaintiff may resort to a separate suit in a court of equity or to the Declaratory Judgment Act for redress.” *Matthey v. St. Louis Cty.*, 298 S.W.3d 903, 907 (Mo. App. E.D. 2009). If plaintiffs are precluded from seeking judicial review of the Commission’s actions pursuant to Chapter 536 (Counts I and IV), then an adequate remedy at law is lacking, and plaintiffs should be able to seek a declaratory judgment here.

In summary, Count II states an alternative claim for declaratory relief.

¹⁸ See LF 388-89 for the preliminary and estimated dollar amounts to be refunded.

CONCLUSION

For the past quarter century the State Tax Commission, annually, has been cautioning the Missouri General Assembly that, “[a]ssessment uniformity cannot be achieved on a consistent basis without the benefit of having accessibility to accurate sales data [and that] [t]he inadequate sales data severely thwarts the attempt by assessors to facilitate uniform and equitable assessments throughout the State.” LF 391-392. For the 2011-2012 tax year in particular, the Commission added the message, “[i]t is virtually impossible for counties to comply with statutory and constitutional mandates with an assessment program which is significantly underfunded.”

With regard to these particular plaintiffs, for the 2011 tax year, they have been directly and adversely affected by the discriminatory and nonuniform tax assessments within the multi-county taxing jurisdictions which are the subject of this suit. As the Commission warned the General Assembly, the defendants here have failed to comply with the statutory and constitutional mandates requiring uniform and equitable tax assessments.

Accordingly, this Court should reverse the judgment of the court below, and remand this matter to either the State Tax Commission or the Circuit Court, as this Court determines to be appropriate.

Respectfully submitted,

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Certifications

The undersigned certifies that on this 6th day of June, 2016, the foregoing was filed electronically with the Clerk of Court, and thereafter to be served electronically upon counsel for respondents, Mr. Edward W. Corrigan Ms. Emily A. Dodge, by operation of the Court's electronic filing system.

The undersigned further certifies that the brief contains the information required by Rule 55.03, the brief complies with the limitations contained in rule 84.06 (b), and that there are 7,284 words in the brief.

/s/ Bruce A. Morrison