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

PLAINTIFFS'- APPELLANTS' REPLY BRIEF

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Introduction

In their opening brief, plaintiffs made clear (see opening brief, pp. 1, 2, 5 n. 10, 14, n. 14, 22) that there is more at stake here than the plaintiffs merely seeking refunds for discriminatory tax assessments.[1] The issue of general importance is that, for three decades now, the State Tax Commission ("Commission") has been pleading with the Missouri legislature to require mandatory sales disclosure statewide, "ensuring uniformity in the treatment of taxpayers in this state." Without some meaningful action from the General Assembly, some taxpayers throughout the State will continue to bear a disproportionate share of the cost of operating the approximately 500 multi-county taxing jurisdictions throughout the State (unless the taxpayers were to prevail in a suit such as the one brought here).

Plaintiffs believe now is the time for the appellate courts to provide taxpayers with a remedy to address inter-county discriminatory assessments.[2] "Although legislative power remains the province of legislative bodies, it is a proper role of the courts to compel legislative bodies to meet their constitutional obligations while

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[1] This is a case where neither the plaintiffs nor the defendants have been able to point to a Missouri case which either expressly requires or precludes the Commission from correcting a discriminatory assessment within a multi-county taxing jurisdiction. Plaintiffs assert that the Missouri Constitution requires it. Defendants assert that the applicable statutory scheme precludes it.

[2] Even before the Supreme Court handed down *State ex rel. Cassilly v. Riney*, 576 S.W.2d 325 (Mo. banc 1979), the Commission had been asking the Missouri General Assembly to initiate legislation for the equalization of assessments within the State. The General Assembly never acted until after *Cassilly* was handed down. History reveals the Missouri General Assembly at times needs a push.

leaving it to those bodies to determine how to meet them." *E. Missouri Coal. of Police, Fraternal Order of Police, Lodge 15 v. City of Chesterfield*, 386 S.W.3d 755, 763 (Mo. banc 2012). Plaintiffs hope that this case will nudge the General Assembly to take some meaningful action with regard to tax uniformity. In the absence of some meaningful action from the Missouri legislature, in the words of the State Tax Commission, "[i]t is virtually impossible for counties to comply with statutory and constitutional mandates . . ." LF 502, ¶ 6.

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.

At pages 9 through 12 of their opening brief, plaintiffs showed that the Commission has a duty to equalize the taxes assessed against the plaintiffs' properties within the multi-county territorial limits of the authorities levying the tax. Both the Commission defendants and the St. Louis County defendants ("County") disagree.

The State Tax Commission's Brief

In their brief, the Commission defendants first assert (p. 14) that the Commission possesses only such authority as is conferred by statute. That is so, unless the Constitution confers that authority. However, as the plaintiffs showed in their opening brief (p. 11), the Commission's authority does appear in the Missouri statutes (§ 138.430.1, R.S. Mo., requiring the Commission to "correct ***any***

assessment") and in the Missouri Constitution (Art. X, Sec. 14, requiring the Commission to "equalize assessments as between counties . . ." and "to correct any assessment which is shown to be unlawful, unfair, arbitrary or capricious"). Moreover, the Missouri statutes further provide that the Commission has the duty and authority "to prevent evasions of the assessment and taxing laws, whether the tax is specific or general, to secure just, equal and uniform taxes, and improve the system of assessment and taxation in this state." § 138.380 (4), R.S. Mo.[3] Thus, the Commission does possess the authority to correct the discriminatory assessments at issue here.

Even if that statutory authority were absent, it would be appropriate for this Court to provide plaintiffs with a remedy:

> The conclusion in these and other federal authorities is that such a result as that reached by the Supreme Court of Nebraska is to deny the injured taxpayer any remedy at all because it is utterly impossible for him by any judicial proceeding to secure an increase in the assessment of the great mass of underassessed property in the taxing district. This court holds that the right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute.

Sioux City Bridge Co. v. Dakota Cty., Neb., 260 U.S. 441, 446 (1923). See also, *Savage v. State Tax Comm'n of Missouri*, 722 S.W.2d 72, 79 (Mo. banc 1986) and *Breckenridge Hotels Corp. v. Leachman*, 571 S.W.2d 251, 252 (Mo. 1978) (citing

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[3] If the assessments are not uniform, then the resulting taxes are not uniform. *Savage v. State Tax Comm'n of Missouri*, 722 S.W.2d 72, 78 (Mo. banc 1986) See, e.g., LF 18 (showing a disparity of more than fifty percent within the Lewis County C-1 multi-county school district).

Sioux City Bridge Co. with approval). The right to "reduce the plaintiffs' assessments so that the residential assessment ratios are uniform within the territorial limits of St. Louis County and within Franklin and Jefferson Counties and other assessment jurisdictions, for the multi-county taxing jurisdictions" (LF 17-18, prayer, ¶ C.1.) is grounded in the Missouri Constitution.

In its brief the Commission next points to (pp. 14-15) section 138.430.1, R.S. Mo., to support its argument that it lacks the authority to remedy the discriminatory assessments. That section, however, authorizes the Commission to take up "***all*** questions and disputes involving . . . the discriminatory assessment to such property." It does not limit the Commission's jurisdiction to issues of intra-county discrimination. The Commission also points to (p. 15) section 137.385, R.S. Mo., and to *State ex rel. DPH Chesterfield, LLC v. State Tax Comm'n of Missouri*, 398 S.W.3d 529, 532 (Mo. App. E.D. 2013). Neither limits the Commission's authority to matters of intra-County discrimination.

The Commission continues to argue (p. 16) that it had no authority to consider issues of inter-county equalization in these appeals, and cites *Westwood Partnership v. Gogarty*, 103 S.W.3d 152 (Mo. App. E.D. 2003); *Foster Bros. Mfg. Co. v. State Tax Comm'n*, 319 S.W.3d 590, 595 (Mo. 1958); and *May Dept. Stores Co. v. State Tax Comm'n*, 308 S.W.2d 748, 756 (Mo. 1958).[4] It reasons that the Commission's jurisdiction is no more extensive than that of the Board of Equalization. As plaintiffs explained in their opening brief (p. 11), the tax appeals here concern equalization within taxing jurisdictions which span multiple counties. The Commission has the authority and duty to correct "any" assessment which is shown to be unfair. Art. 10, Sec. 14, Missouri Constitution; § 138.430.1, R.S. Mo.

Moreover, these three cases bear little relevance to the matter at hand. This

[4] The County defendants make the same argument at pp. 10-11 of their brief.

matter concerns multi-county taxing jurisdictions. In contrast, in *Foster Brothers*, the only authority levying a tax was the City of St. Louis. There was no multi-county taxing authority at issue. In *May Department Stores*, all of the taxing authorities were located in a single county. In *Westwood Partnership*, the Court held that the territorial limits of the authority levying the tax was each county, not the state of Missouri. That case also did not deal with multi–county taxing authorities.

The Commission next argues (p. 17) that it correctly concluded that the governing body of the County was the taxing authority levying the tax. It relies upon (pp. 17-18) *Beatty v. State Tax Commission*, 912 S.W.2d 492 (Mo. banc 1995), and §137.055.1 R.S. Mo, for the proposition that St. Louis County is the authority levying the tax. Neither the statute nor *Beatty* supports the argument. In fact, *Beatty* expressly points out that, "[a]ssessment is a process by which the assessor identifies property by parcel and owner, values it, classifies it and lists it so that taxing authorities can apply their tax levies." 912 S.W.2d at 496. The *Beatty* court recognized that the authorities levying the tax include "school districts," one of the multi-county taxing authorities plaintiffs refer to in their petition (LF 11, ¶ 4). *Beatty*, 912 S.W.2d 492, 496-497.

The Commission defendants also cite (p. 18) section 162.211, R.S. Mo., and *State ex inf. Eagleton ex rel. Reorganized Sch. Dist. R-I of Miller County v. Van Landuyt*, 359 S.W.2d 773, 778 (Mo. banc 1962), for the proposition that school district boundaries may cross county lines. They assert (p. 18) that fact does not broaden the Commission's jurisdiction to remedy the discriminatory treatment at issue here. Plaintiffs do not assert that it does. Rather, the Commission's authority is grounded in the Missouri statutes and Art. X, Sec. 14, of the Missouri Constitution.

St. Louis County's Brief

In their brief, the County defendants begin by asserting (p. 9) that it is the burden of the taxpayer to establish intentional discrimination or an assessment so

grossly excessive as to be entirely inconsistent with an honest exercise of judgment. Plaintiffs pointed out in their opening brief (p. 20 n. 17) that they are prepared to present that proof.

The County defendants next argue (p. 12) that the Commission's authority is derivative of the authority conferred upon the County's Board of Equalization, still pointing to *Foster Brothers* and *Westwood Partnership*. However, pursuant to St. Louis County's Charter, the members of the Board of Equalization are sworn to equalize fairly and impartially the valuation of all taxable property in the County. See section 4.390, St. Louis County Charter. The subject properties here are situated in St. Louis County. Accordingly, the Board had the jurisdiction to equalize the valuations of these properties. To the extent that the Commission derives its jurisdiction from the Board, it has the same power.

The County defendants quibble (pp. 12-13) with plaintiffs' statement that the proceeding before the Commission was a proceeding in which a "hearing was required by law." That characterization is entirely correct. The proceeding before the Commission which is the subject of Count I is a contested case. See § 536.010 (4), R.S. Mo. (contested case "means a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing").

The County defendants then argue (page 13) that plaintiffs have no case law to support the argument that the uniformity requirements of Art. X, Section 3, of the Missouri Constitution apply to all taxing jurisdictions, not just to counties. The County defendants assert (p. 13) that none of the cases relied upon by plaintiffs feature the particular fact pattern present in this case. That is correct. It appears that the Missouri courts have not yet confronted the issue of uniformity within the context of a multi-county taxing jurisdiction. A poignant fact here is that more than half of Missouri's school districts are multi-county taxing jurisdictions, with two districts

encompassing parts of five different counties, and nineteen districts including all or parts of four different counties.

The County defendants next argue (p. 14) that plaintiffs misconstrue *State ex rel. Cassilly*. They assert (p. 14) that *State ex rel. Cassilly* holds that the Commission has the duty, right and responsibility to exercise general supervisory authority over all Missouri County Assessors and Boards of Equalization. Plaintiffs agree. However, with that authority comes the responsibility to remedy discriminatory tax treatment. Art. X, Sec. 14, Mo. Const.[5]

Next, the County defendants argue (p. 15) that *Savage v. State Tax Commission* does not support plaintiffs. They assert (p. 15) that "discrimination in effect" is only established when taxpayers show through a "properly conducted and statistically representative ratio study" that their assessments are so grossly excessive as to be entirely inconsistent with an honest exercise of judgment. These plaintiffs have placed such studies before the Commission. LF 123-145; 146-312; 313-380.

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[5] For many years the Commission has been proclaiming to the public that *Cassilly* changed the law, characterizing the decision as "far reaching." An agency's interpretation of a law it is charged with implementing "generally is to be given great weight." *Lincoln Cty. Stone Co., Inc. v. Koenig*, 21 S.W.3d 142, 145 (Mo. App. E.D. 2000) (noting also that a reviewing court must exercise unrestricted, independent judgment concerning an issue of law and correct an erroneous interpretation). In this instance, the Commission has been opining to the public for more than a quarter of a century that "the *Cassilly* case effectually overruled a long line of Missouri cases which 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." See, e.g., LF 520.

The County defendants then insist (p. 17) that the Court's holding in *Savage* "makes clear that any taxpayer's claims of discriminatory assessment are to be measured only by the comparison of the disputed assessment against the assessment placed upon the general mass of other, similarly situated property in the county, not by reference to the assessment placed upon other property in a neighboring county where there are asserted to be taxing districts that cross county territorial lines." That argument, however, reads too much into *Savage*. The Court in *Savage* did not have before it, and therefore did not decide, the question of whether uniformity requirements apply to multi-county taxing authorities. Instead, it dealt with the issue of a taxing authority located only within a single (Greene) County. There were no multi–county taxing authorities before the court in *Savage*. "Consequently, the statement in *[Savage]* . . . was not necessary to the resolution of the issue on appeal and does not constitute a holding of this Court. The statement was dicta that reflected the facts of that case . . ." *Hayes v. Show Me Believers, Inc.*, 192 S.W.3d 706, 707 (Mo. banc 2006). This rule, out of necessity, recognizes that appellate judges are not omniscient. They may not foresee whether broad reasoning they employ in one case with certain facts may become unwarranted in later case with different facts. See *e.g.*, R. Posner, *The Problems of Jurisprudence* 96-97 (Harvard Univ. Press 1990) (discussing an earlier court's use of over broad language which inadvertently encompasses the issue in a later case and the later court's disagreement with the earlier court's analysis, as opposed to the outcome).[6]

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[6] The County defendants also quote from *Drey v. State Tax Commission*, 345 S.W.2d 228, 238 (Mo. 1961) in support of the same argument. That case, also, dealt with the issue of a taxing authority located only within one (Shannon) County. The other two decisions the County defendants cite at page 16 of their brief support plaintiffs. In *Sioux City Bridge Co. v. Dakota Cty., Neb.*, 260 U.S. 441 (1923), the Supreme Court made clear that "the right of the taxpayer whose property alone is

The County defendants next assert (p. 18) that plaintiffs have failed to meet their burden of proof, and cite (p. 18) *Town & Country Racquet Club v. State Tax Comm'n of Missouri*, 811 S.W.2d 403, 404 (Mo. App. E.D. 1991). In *Town & Country Racquet Club*, the Court held that there was "substantial and competent evidence to support the Commission's findings that the taxpayer's study was flawed and non-persuasive." Here, on the motion to dismiss for failure to state a claim, plaintiffs only were required to plead the discriminatory, nonuniform and unfair treatment. The pleading here is sufficient. LF 13-14, ¶ 14; 14-15, ¶ 21.[7]

Lastly the County defendants question (p. 19) whether the plaintiffs are "aggrieved." They point to *State ex rel. St. Louis Retail v. Kraiberg*, 343 S.W.3d 712, 716-717 (Mo. App. E.D. 2011) for the proposition that, to be aggrieved, the interest the person seeks to defend must be one the law protects. In *Kraiberg*, the plaintiffs asserted "that they have standing because they have an interest in being free from illegal competition." This Court properly held that there "is no legal right to be free from economic competition." *State ex rel. St. Louis Retail Grp. v. Kraiberg*, 343 S.W.3d 712, 717 (Mo. App. E.D. 2011). In this matter, plaintiffs have a constitutionally - protected interest in being taxed in a nondiscriminatory, fair and uniform manner. Art. X, Sec. 14, Missouri Constitution.

In summary, plaintiffs have shown that they are aggrieved by a final decision in a contested case. Further, the Commission had a duty to equalize the taxes

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taxed at 100 per cent. of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute." In *Breckenridge Hotels Corp. v. Leachman*, 571 S.W.2d 251, 252 (Mo. banc 1978), the Missouri Supreme Court cited *Sioux City Bridge Co.* with approval.

[7] In these proceedings there is proof of discriminatory treatment. The Commission has declined to examine it.

assessed against the plaintiffs' properties within the territorial limits of the authorities levying the tax. Accordingly, the Commission erred in dismissing the appeals.

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.

At pages 12 through 17 of their opening brief, plaintiffs showed that Count IV of the petition 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. The State Tax Commission defendants disagree.

In its brief the Commission first asserts (p. 19) that section 536.150, R.S. Mo., requires a "decision" to trigger its provisions, citing *City of St. Peters v. Dep't of Nat. Res. of State of Mo.*, 797 S.W.2d 514, 516 (Mo. App. W.D. 1990) and *State ex rel. Stewart v. Civil Serv. Comm'n of City of St. Louis*, 120 S.W.3d 279, 284 (Mo. App. E.D. 2003). Plaintiffs agree, although neither *City of St. Peters* nor *State ex rel. Stewart* is of aid to the Commission here. In *City of St. Peters,* the Court assumed that, for the purposes of its opinion, "the action of the DNR in sending the application back to the City of St. Peters constitutes a decision of that agency." 797 S.W.2d at 516. In *State ex rel. Stewart,* this Court held that the relator was an individual whose private rights were directly affected by the Commission's decision, and appropriately focused upon the issue of relator's "standing to contest that decision." 120 S.W.3d at 284. Plaintiffs agree that standing is the essential issue here.

The Commission defendants next argue (p. 19) that plaintiffs are not seeking review of any "decision" of the Commission, but instead seek review of the "Commission's action performing inter-county equalization for the 2011tax year." Giving the petition its "broadest intendment," the Commission's "action" certainly should be interpreted to include a "decision" of the Commission.

The Commission further argues (p. 19) that the "petition does not refer to any order of the Commission with respect to inter-county equalization for the 2011 or 2012 tax years." That is correct, but of no consequence. The statute requires a "decision," which may or may not be an "order." Section 536.150, R.S. Mo.[8]

The Commission defendants next turn to (p. 20) the Commission's inter-county equalization process (the subject of Count IV of the petition) and argue that the process does not constitute a "decision." The process itself is not a "decision," but the Commission's order at the end of the process certainly is. See *Foster Bros. Mfg. Co. v. State Tax Comm'n of Mo.*, 319 S.W.2d at 595 (characterizing the Commission's decision as an "order").

At last addressing the critical issue pertaining to Count IV, the Commission defendants argue (pp. 21-24) that, even if plaintiffs were challenging an inter-county equalization order or decision of the Commission, they would not state a claim under section 536.150 in light of the Supreme Court's decisions in *May Dept. Stores Co. v. State Tax Comm'n*, 308 S.W.2d 748 (Mo. 1958) and *Foster Bros. Mfg. Co. v. State Tax Comm'n*, 319 S.W.2d 590 (Mo. 1958). They assert (p. 23) that in *May*

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[8] According to the Missouri Supreme Court, the action at issue here is an "order" of the Commission. *Foster Bros. Mfg. Co. v. State Tax Comm'n of Mo.*, 319 S.W.2d 590, 595 (Mo. 1958). As plaintiffs made clear in their opening brief, the critical issue is whether the Commission's order has determined the legal rights, duties or privileges of the plaintiffs. In other words, the issue is whether the plaintiffs have "standing."

Department Stores, the Supreme Court concluded that the Commission's inter-county equalization order "affected counties and classes of taxpayers, not 'specific parties'".

However, plaintiffs showed in their opening brief (pp. 15-17) that the underlying premise for the Supreme Court's holdings in *May* and *Foster Bros*. no longer is correct. Instead, in determining whether a party may assert a claim for judicial review in a non-contested case, the focus of the modern decisions is upon whether the complaining party has "standing."

The Commission defendants retort (p. 22) that the "reasoning behind the Missouri Supreme Court's holding that an inter-county equalization order is not subject to non-contested case judicial review was not solely or primarily based on a former requirement to bring actions for non-contested case review within 30 days, or the challenge of providing timely individual notice." They assert (p. 23) that the Supreme Court also "turned to the language of the statute providing for non-contested case review of certain administrative decisions [and] [t]hat statute, then codified at §536.105, now §536.150, has not been amended since its enactment."

The Commission defendants are correct that in *May Dept. Stores* the Supreme Court did examine the statute governing non-contested case review. After examination, the Court held that the section "clearly comprehends only decisions involving individual rights and interests." 308 S.W.2d at 756. Equally clear, however, is the Court's basis for its holding:

> This section clearly comprehends only decisions involving individual rights and interests; this is indicated by the use of such terms as 'any person,' the 'revocation of a license,' and 'such person'; Section 536.110 requires the filing of proceedings within 30 days after the mailing or delivery of notice of the administrative decision. As previously stated, no individual notice could possibly be contemplated in connection with county equalization orders of the Commission.

Section 536.105, as such, is not applicable to the order of July 6, 1955. *May Dept. Stores*, 308 S.W.2d at 756. It is plainly apparent that the entire basis for the Supreme Court's decision in *May* (and in *Foster Brothers*, which relied upon *May*) was the Court's interpretation that Chapter 536 required a challenge to an agency decision to be brought within thirty days. Because a taxpayer feasibly could not meet the thirty-days deadline to file, the Court determined that the Commission's decision could not possibly involve "individual rights and interests." All of the modern decisions, however, hold that there is no thirty-days deadline in which to seek judicial review of a non-contested agency decision under Chapter 536. See plaintiffs' opening brief at pp. 15-16.

Concluding, the Commission defendants explain (pp. 24-26) that *Foster Brothers* and *May Department Stores* have not been overruled. They, technically, are correct. However, as explained in plaintiffs' opening brief (pp. 15-16), and in the paragraphs immediately above, the modern decisions have refuted the underlying basis for these two cases.[9]

Moreover, plaintiffs showed in their opening brief (p. 16) that a completely separately line of cases have since emphasized the Commission's duty to correct instances of inter-county discriminatory tax assessments. Thus, consistent with *Sioux City Bridge Co. v. Dakota Cty., Neb.*, 260 U.S. 441, 445 (1923) and *Breckenridge Hotels Corp. v. Leachman*, 571 S.W.2d 251, 252 (Mo. 1978), this Court too should recognize "the right of the taxpayer . . . to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute."

For all of the foregoing reasons, Count IV states an alternative claim for

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[9] If this Court is bound by *Foster Brothers* and *May Department Stores*, plaintiffs respectfully request that the Court should transfer this case to the Missouri Supreme Court. Rule 83.01.

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, and the failure of the Commission to perform accurate inter-county equalization for the 2011 tax year. Plaintiffs assert that, if they may not resort to judicial review of the Commission's actions pursuant to chapter 536, R.S. Mo. (Counts I or IV), then plaintiffs have no adequate remedy at law and it would be appropriate for them to seek declaratory relief. The St. Louis County defendants disagree.

In their brief the County defendants first argue (p. 22) that the Commission's dismissal of the appeals was justified because the Commission had no duty to equalize assessments within the multi-county territorial limits of the authorities levying the tax. The argument has been fully briefed in the first point relied on. See pp. 2-9, *supra*.

The County defendants next argue (pp. 22-23) that there is no existing and substantial controversy. They single out (p. 22) one particular phrase from a particular page of plaintiffs' opening brief and ignore the remainder of the prayer for

relief (LF 19-21), ignore the remainder of Count II, which sets forth the controversy (LF 13-19), and ignore the remainder of the opening brief, which fully discusses the issue (see opening brief at pp. 18-19).[10]

The St. Louis County defendants next argue (p. 23) that there is no controversy because plaintiffs have accepted the valuations and assessments of St. Louis County. To the contrary, plaintiffs have set forth the controversy at every stage of this proceeding. See opening brief, p. 4 n. 5, p. 4 n. 7.

The County defendants again argue (p. 23) that plaintiffs have misconstrued *Savage v. State Tax Comm'n of Missouri*, 722 S.W.2d 72 (Mo. banc 1986). They assert (pp. 23-24) that the relief in *Savage* is limited to a taxpayer having his assessment reduced to the percentage of value at which others are assessed in the same county. As plaintiffs explained at pp. 7-8, *supra*, the holding in *Savage* is not so limited.

The County defendants conclude by arguing (pp. 24-25) that it would be inappropriate and unjust for the Commission to reduce the "admittedly correct" assessed valuations to the same appraisal ratio as applied by the Jefferson County assessment authorities. However, discriminatory tax treatment within a multi-county taxing jurisdiction is as discriminatory as if it were occurring solely within a county. The Missouri Constitution does not distinguish one from the other. 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).

For the foregoing reasons, Count II states an alternative claim for declaratory relief.

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[10] Further, plaintiffs have placed in the record their estimates of the dollar amounts to be refunded. LF 388-89.

CONCLUSION

This case has two components. First, plaintiffs seek specific relief for the discriminatory and nonuniform tax assessments within the particular multi-county taxing jurisdictions in which they own property. Second, plaintiffs hope this case will encourage the General Assembly to enact legislation creating a statewide "Certificate of Value" program so that there is state-wide assessment uniformity. Plaintiffs are mindful that this Court must give effect to the language of a statute as written, and issues of public policy must be addressed to the General Assembly. *Wilkendon P'ship v. St. Louis Cty. Bd. of Equalization*, No. ED 103879, 2016 WL 4598534, at *6 (Mo. App. E.D. Sept. 6, 2016). The General Assembly would do well to get a push in that direction.

For the reasons set forth in this brief and in plaintiffs' opening brief, 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 21st day of September, 2016, the foregoing was filed electronically with the Clerk of Court, and thereafter to be served electronically upon counsel for respondents, Mr. Edwar d 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 5,888 words in the brief.

/s/ Bruce A. Morrison