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**ED104000**

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**IN THE MISSOURI COURT OF APPEALS  
EASTERN DISTRICT**

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**ARMSTRONG-TROTWOOD, LLC, et al.,  
Appellants,**

**v.**

**STATE TAX COMMISSION OF MISSOURI, et al.,  
Respondents.**

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**Appeal from the St. Louis County, Missouri Circuit Court  
The Honorable Joseph Walsh, Circuit Judge**

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**State Tax Commission Respondents' Brief**

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**ATTORNEYS FOR  
STATE TAX COMMISSION  
RESPONDENTS**

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## STATEMENT OF FACTS

The Plaintiffs (“Taxpayers”) are Armstrong-Trotwood, LLC; Armstrong-Brittany, LLC; Armstrong-Arbor Village, LLC; Robert S. Rothschild, Jr. and Susan H. Rothschild, who allegedly own “parcels of property situated in St. Louis County as tenants by the entirety” (Vol. I LF 11, ¶ 4); Geiger Real Estate, Inc.; and Josh & Elaine, LLC. LF 8. Taxpayers appealed to the State Tax Commission decisions that the St. Louis County Board of Equalization made in 2011 concerning the St. Louis County Assessor’s assessments of their properties. Vol. I LF 8, 13-14 (¶¶ 14-15). Taxpayers’ properties are located within St. Louis County. App. A-2 (LF 73); see Apps’ Br. at 3.

Taxpayers filed Complaint for Review of Assessment forms with the State Tax Commission stating that their properties were located in St. Louis County. The Complaint for Review of Assessment forms filed by the Rothschilds can be found at Vol. III LF 410-412 and 415-417. The Complaint for Review of Assessment forms filed by Geiger Real Estate, Inc. can be found at Vol. III LF 420-422, 427-429, 432-434, 442-446, 449-451, 454-457, 481-83, 487-489, and 494-496. The Complaint for Review of Assessment forms filed by Josh & Elaine, LLC can be found at Vol. III LF 460-462 and 465-467. The Complaint for Review of Assessment forms filed by Armstrong Trotwood, LLC can be found at Vol. III LF 468-473. The Complaint for Review of Assessment form filed by Armstrong Brittany, LLC can be found at Vol. III

LF 474-476. The Complaint for Review of Assessment form filed by Armstrong Arbor Village, LLC can be found at Vol. III LF 477-479.

Taxpayers did not dispute the true value in money or assessed value that the St. Louis County Board of Equalization set for their properties. See Vol. III LF 410-412, 415-417, 420-422, 427-429, 432-434, 442-446, 449-451, 454-457, 460-462, 465-479, 481-83, 487-489, and 494-496 (Taxpayers' Complaint for Review of Assessment forms). In many cases, the Board's valuations were identical to the St. Louis County Assessor's valuations. See Vol. III LF 410-11, 420-21, 432-34, 449-51, 468-69, 471-73, 474-76, 477-79.

Each Taxpayer checked the box for "discrimination" on the Complaint for Review of Assessment form and referred to an attached Exhibit A. See *id.* The Complaints (through Exhibit A) raised issues of inter-county equalization. See *id.*; Vol. III LF 403; App. A-2 (Vol. I LF 73). Taxpayers did not assert claims of intra-county discrimination. App. A-2 (Vol. I LF 73). Taxpayers asserted that property owners in St. Louis County "are forced to bear a disproportionate share of the cost of operation" of the St. Louis Community College District and the Special School District in comparison with unidentified "owners of undervalued property in Jefferson County and St. Louis City" whom Taxpayers contended were paying less than their fair share. See e.g. Vol. III LF 412, 422, 428. The Rothschilds also contended that they and other St. Louis County property owners were paying a

disproportionate share of the cost of operating the Eureka Fire Protection District and Rockwood School District compared to unidentified “owners of undervalued property” in Jefferson County. Vol. III LF 416.

A Senior Hearing Officer for the State Tax Commission reviewed Taxpayers’ Complaints and ordered Taxpayers to submit a Memorandum of Clarification and Explanation. Vol. III LF 403. Taxpayers’ Memorandum of Clarification and Explanation included the following statement: “Complainants do not contest the appraised values of the subject properties as determined by the St. Louis County Board of Equalization (the BOE)—that is, the BOE’s determination of true value in money of the subject properties.” Vol. II LF 388. Nevertheless, Taxpayers proposed that, for specific, limited purposes—paying taxes to support the St. Louis Community College District, Special School District, Rockwood School District, and Eureka Fire Protection District—their properties’ assessed values should be lowered. Vol. III LF 388-389.

Taxpayers’ appeals were consolidated (Vol. II LF 394) and assigned to Senior Hearing Officer Luann Johnson (Vol. II LF 393). On July 14, 2014, Senior Hearing Officer Johnson issued an order dismissing Taxpayers’ appeals. Vol. II LF 381-386. That order discussed *Westwood Partnership v. Gogarty*, 103 S.W.3d 152 (Mo. App. E.D. 2003) and *Foster Bros. Mfg. Co. v. State Tax Comm’n*, 319 S.W.3d 590 (Mo. 1959). Senior Hearing Officer



Johnson found that Taxpayers were appealing from decisions of their local board of equalization, therefore, the Commission's jurisdiction was derivative of the board of equalization's jurisdiction. Vol. II LF 383. Senior Hearing Officer Johnson found that the St. Louis County Board of Equalization's "obligation was to ensure that all property within the county was appropriately valued and assessed," and that neither the Board of Equalization nor the Commission could "do inter-county equalization" in Taxpayers' appeals. Vol. II LF 385.

Taxpayers filed with the State Tax Commission an application for review of the Senior Hearing Officer's July 14, 2014, decision dismissing their appeals. Vol. I LF 14 (§19). The Commission affirmed the Senior Hearing Officer's decision. Vol. I LF 14 (§20); App. A-2 through A-8; Vol. I LF 73-80. The Commission concluded that:

Intra-county equalization, or lack thereof, may be reviewed by the State Tax Commission in an appeal of an assessment of a particular property under their authority which is derived from the jurisdiction of the Board of Equalization. Inter-county equalization is not subject to attack under the appeal process.

App. A-7; Vol. I LF 78. The Commission determined that it could not use the appeal process to engage in inter-county equalization. App. A-7; Vol. I LF 78.

“The Commission may only engage in inter-county equalization as provided by law under Section 138.390 RSMo.” App. A-7; Vol. I LF 78.

### **Proceedings in the Circuit Court of St. Louis County**

Taxpayers then filed a five count petition against the State Tax Commission, the Chairman of the State Tax Commission in his official capacity, Commissioners Holman and Callahan in their official capacities, St. Louis County, and the St. Louis County Assessor in his official capacity. Vol. I LF 8-29.

Count I “Judicial Review” contains a prayer for relief including declaratory and injunctive relief. Vol. I LF 16-18. The remaining counts are titled “Declaratory Judgment” (Count II) Vol. I LF 18-21, “Mandamus” (Count III) Vol. I LF 21-24, “Judicial Review” (Count IV) Vol. I LF 24-26, and “Certiorari” (Count V) Vol. I LF 26-28. The Circuit Court issued summonses to the Respondents. See Vol. I LF 1-3. The Court did not issue a preliminary writ of mandamus.

Count IV consists of one paragraph incorporating by reference Paragraphs 1-35 of the petition, Paragraph 37, and a multi-paragraph prayer for relief. Vol. I LF 24-26. Paragraph 37 alleges that “[t]he actions of Respondent-defendant Commission in performing inter-county equalization for the 2011 and 2012 tax years are unconstitutional, unlawful,

unreasonable, arbitrary, and capricious, and or involve an abuse of discretion.” Vol. I LF 24.

The State Tax Commission Respondents filed an answer (Vol. I LF 39-53) and State Tax Commission Respondents’ Motion to Dismiss: Claim for Non-contested Case Judicial Review, to Dismiss it as a Party to Plaintiffs’ Claim for Contested Case Judicial Review, and Counts IV and V (Vol. I LF 30-38). On July 17, 2015, Taxpayers filed Suggestions in Opposition to the State Tax Commission Respondents’ Motion to Dismiss. Vol. I LF 5 (docket sheet)<sup>1</sup>. On July 20, 2015, the Circuit Court set the State Tax Commission Respondents’ Motion to Dismiss for hearing on August 20, 2015. Supp. LF. 1. On August 14, 2015, the State Tax Commission Respondents filed their Reply in Support of Motion to Dismiss. Vol. I LF 5, Supp. LF 3-20. On August 20, 2015, the Circuit Court heard arguments on the State Tax Commission Respondents’ Motion to Dismiss, and scheduled further argument on the Motion to Dismiss for September 16, 2015. Supp. LF 21; Vol. I LF 5.

On August 28, 2015, Taxpayers filed a stipulated record before the agency pursuant to §536.130.1 RSMo, consisting of 397 pages, (see

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<sup>1</sup> Taxpayers omitted their suggestions opposing the State Tax Commission Respondents’ Motion to Dismiss from the Legal File.

Stipulation, Vol. III LF 498) with the Circuit Court (Vol. I LF 5). The stipulated record begins at Vol. I LF 66 and ends at Vol. III LF 498.

After the State Tax Commission Respondents' Motion to Dismiss had been fully briefed and argued to the Court, Taxpayers, without leave of Court, filed a document entitled "Relators-Plaintiffs' Supplemental Suggestions in Opposition to State Tax Commission Respondents' Motion to Dismiss or, in the Alternative, to Entry of Judgment on the Pleadings." Vol. III LF 499. Taxpayers attached a November 10, 2015, affidavit of Sandy Rothschild (Plaintiff Robert S. Rothschild, Jr.). Vol. III LF 501-513 (affidavit), 514-583 (exhibits to November 10, 2015, Rothschild affidavit).

On December 9, 2015, St. Louis County and its Assessor moved to dismiss Taxpayers' petition for failure to state a claim for relief. Vol. III LF 584-599. On January 6, 2016, the Circuit Court entered a judgment granting the motions to dismiss and dismissing Taxpayers' petition with prejudice. App. A-1; Vol. III LF 602. The Court "excluded from consideration all matters outside the pleadings" and concluded that Taxpayers' petition had failed to state a claim for relief. App. A-1; Vol. III LF 602.

On February 5, Taxpayers filed their notice of appeal. Taxpayers have not appealed the dismissal of Count III (mandamus) or Count V (certiorari).

## ARGUMENT

### Introduction

Count I of Taxpayers' petition, titled "Judicial Review," does not explicitly state whether review is sought under §536.100 (contested case review) or §536.150 (non-contested case review). Vol. I LF 16-18. Count IV, like Count I, is simply titled "Judicial Review." See Vol. I LF 24.

According to Taxpayers, Count I is a claim for contested case review of the State Tax Commission's decision dismissing their appeals of the St. Louis County Assessor's assessments of their properties. See Apps' Br. at 4-5, 9. But the prayer for relief contained in Count I requests equitable relief, including declaratory and injunctive relief. Vol. I LF 16-18. And "[e]quitable remedies and declaratory judgments are unavailable when contested case review is sought...". *Gordon v. City of Kansas City*, 450 S.W.3d 793, 798 (Mo. App. W.D. 2014).

Taxpayers state that Count IV of their petition asserts an alternative claim for non-contested case review. See Apps' Br. at 5, 12. Count IV does not seek non-contested case review of the Commission's decision to dismiss their appeals. Vol. I LF 24-26; see Apps' Br. at 12. Nor does it seek non-contested case review of a decision rendered by the Commission. Rather, Count IV seeks review of "[t]he actions of Respondent-Commission in performing inter-county equalization for the 2011 and 2012 tax years...". Vol. I LF 24 (¶ 37).

**I. The State Tax Commission correctly dismissed Taxpayers' appeals for lack of jurisdiction. (Responds to Point I)**

In Argument Point I, Taxpayers challenge the Commission's determination that it could not engage in inter-county equalization in deciding their appeals from the St. Louis County Board of Equalization. See Apps' Br. at 9-10. Taxpayers' appeals to the Commission were contested cases. See *State ex rel. J.C. Nichols v. Boley*, 853 S.W.2d 923, 924 (Mo. banc 1993). In reviewing a contested case, this Court reviews the agency's decision, not the circuit court's. *Ringer v. Mo. Dept. of Health & Senior Servs.*, 306 S.W.3d 113, 114 (Mo. App. W.D. 2010). The State Tax Commission dismissed Taxpayers' appeals because it lacked jurisdiction to consider Taxpayers' allegations of inter-county discrimination in Taxpayers' appeals from the board of equalization's decisions concerning the assessments of Taxpayers' properties. App. A-4 to A-5; Vol. I LF 75-76; *Westwood Partnership v. Gogarty*, 103 S.W.3d 152, 160 (Mo. App. E.D. 2003).

The State Tax Commission "possesses only such authority as is expressly conferred by statute." *State ex rel. Jackson County Library Dist. v. Evans*, 232 S.W. 386, 388 (Mo. 1950). Section 138.430 RSMo gives property owners

the right to appeal from the local boards of equalization to the state tax commission... concerning all questions and disputes

involving the assessment against such property... or the assignment of a discriminatory assessment to such property.

Section 138.430.1 RSMo. Section 137.385 RSMo allows property owners to appeal the assessments of their properties to their county boards of equalization. *See DPH Chesterfield, LLC v. State Tax Comm’n of Missouri*, 398 S.W.3d 529, 532 (2013); §137.385; see Vol. II LF 388.

Here, Taxpayers appealed the St. Louis County Board of Equalization’s decisions concerning the St. Louis County Assessor’s assessments of their properties—which Taxpayers concede are located wholly within St. Louis County (see Apps’ Br. at 2-3, 14-15)—to the State Tax Commission<sup>2</sup>. In those appeals, Taxpayers submitted briefing stating that they were not contesting the Board of Equalization’s determinations of their properties’ true value in money. Vol. II LF 388.

Taxpayers did not assert a claim of intra-county discrimination. App. A-2, Vol. I LF 73. Rather, Taxpayers claimed that Jefferson County “is undervaluing property (inter-county discrimination).” App. A-2, A-3 (LF 73,

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<sup>2</sup> The first page of each Complaint for Review of Assessment filed by Taxpayers states that the property in question is located in St. Louis County. See Vol. III LF 410-412, 415-417, 420-422, 427-429, 432-434, 442-446, 449-451, 454-457, 460-462, 465-479, 481-83, 487-489, and 494-496.

LF 74). The State Tax Commission had no jurisdiction or authority to consider issues of inter-county equalization, including claims of inter-county discrimination, in Taxpayers' appeals, *Gogarty*, 103 S.W.3d at 160; *Foster Bros. Mfg. Co. v. State Tax Comm'n*, 319 S.W.3d 590, 595 (Mo. 1958); *May Dept. Stores Co. v. State Tax Comm'n*, 308 S.W.2d 748, 756 (Mo. 1958)<sup>3</sup>.

The Commission's jurisdiction over taxpayer appeals from decisions of a county board of equalization "relating to assessments of property is appellate, or derivative, in nature, and the jurisdiction of the Commission is no more extensive than that of the Board[ ]" of equalization. *Westwood Partnership v. Gogarty*, 103 S.W.3d 152, 160 (Mo. App. E.D. 2003), *citing Foster Bros. Mfg. Co. v. State Tax Comm'n*, 319 S.W.3d 590, 595 (Mo. 1959). The St. Louis County Board of Equalization has power "to adjust, correct, and equalize the valuations of" real property "within the County." *Gogarty*, 103 S.W.3d at 160, *citing Foster Bros.*, 319 S.W.3d at 593-94. "In other words, the

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<sup>3</sup> On pages 11 and 16 of their Brief, Taxpayers reference *State ex rel. Cassilly v. Riney*, 576 S.W.2d 325 (Mo. banc 1979); *State ex rel. Comm'rs of State Tax Comm'n v. Schneider*, 609 S.W.2d 149 (Mo. banc 1980); and *Sperry Corp. v. State Tax Comm'n*, 695 S.W.2d 464 (Mo. banc 1985). Those decisions are discussed in the Commission's response to Taxpayers' Argument Point II. See *infra* at 24-26.



board of equalization deals with intra-county equalization, and the [State Tax] Commission, in hearing an appeal from a ruling of the Board, is limited to considering issues of intra-county equalization.” *Gogarty*, 103 S.W.3d at 160.

In dismissing Taxpayers’ appeals for lack of jurisdiction, the State Tax Commission correctly concluded that the governing body of the county was the taxing authority levying the property taxes on Taxpayers’ real property. See LF 76, 78; *Beatty v. State Tax Commission*, 912 S.W.2d 492, 496 (Mo. banc 1995); §137.055.1 RSMo. The determination of the owner’s tax liability on a parcel of real estate involves two processes: the assessment of the parcel, followed by the levying of the tax. *Beatty* at 496. The county assessor assesses the property and submits his tax book to the county’s governing body. *Id.* Then “the governing body of the county sets the annual tax levy rate.” *Id.*; see §137.055.1 RSMo. That annual tax levy rate includes “[t]he state tax and taxes necessary to pay the funded or bonded debt of the state, county, township, municipality, road district, or school district, the taxes for current expenditures for counties, townships, municipalities, road districts and school districts...” *Beatty*, 912 S.W.2d at 496-97, quoting §137.035 RSMo.

Taxpayers appear to argue that the Commission should have considered issues of inter-county equalization in their appeals because their properties are located within school districts or fire districts that cross county

lines. Taxpayers' properties are located wholly within St. Louis County, the taxing authority levying the property taxes on Taxpayers' real properties. *Beatty*, 912 S.W.2d at 496; §137.055.1 RSMo; see LF 76, 78. School district boundaries may cross county lines, see §162.211 RSMo; see *Eagleton ex rel. Reorganized Sch. Dist. R-I of Miller County v. Van Landuyt*, 359 S.W.2d 773, 778 (Mo. banc 1962), as Taxpayers note (see Apps' Br. at 11), but that does not expand the State Tax Commission's jurisdiction. The correct territorial limit is St. Louis County, not the varying boundaries of fire districts or school districts. See *Gogarty*, 103 S.W.3d 152, 160.

The Commission could not consider assessment practices or alleged discriminatory valuations in counties other than St. Louis County in adjudicating Taxpayers' appeals. See *Gogarty*, 103 S.W.3d 152, 157-58, 160. Taxpayers' appeals to the State Tax Commission did not raise any issues that were within the Commission's appellate jurisdiction. The Commission correctly dismissed Taxpayers' appeals.

**II. Taxpayers’ petition does not challenge a decision of the State Tax Commission that is subject to review as a noncontested case. (Responds to Pt. II)**

Section 536.150 RSMo “requires the rendering of a decision to trigger its provisions. *City of St. Peters v. Dept. of Natural Resources*, 797 S.W.2d 514, 516 (Mo. App. E.D. 1990). “Section 536.150 provides for review of a ‘decision.’” *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). Section 536.150.1 provides in part:

When any administrative officer or body existing... shall have rendered *a decision* which is not subject to administrative review, determining the legal rights, duties or privileges of any person...

Section 536.150.1 RSMo.

Taxpayers are not seeking non-contested case review of a decision of the State Tax Commission. Rather, Taxpayers desire non-contested case review “of the Commission’s action performing inter-county equalization for the 2011 tax year.” App.’s Br. at 12. The petition does not refer to any order of the Commission with respect to inter-county equalization for the 2011 or 2012 tax years. In Count IV of the petition, Taxpayers allege that “[t]he actions of Respondent-defendant Commission in performing inter-county equalization for the 2011 and 2012 tax years are unconstitutional, unlawful,

unreasonable, arbitrary, and capricious and or involve an abuse of discretion.” LF Vol. I at 24 (¶37).

The Commission performs inter-county equalization, equalizing “the valuation of real and tangible personal property among the several counties in the state” (§138.390.1), in the manner provided by §138.390 RSMo. Section 138.390 RSMo; see *Foster Bros. Mfg. Co. v. State Tax Comm’n*, 319 S.W.2d 590, 595 (Mo. 1958). The Commission equalizes “the valuation of each class or subclass of property thereof among the respective counties of the state.” Section 138.390.2 RSMo. The inter-county equalization process described in §138.390 does not constitute a “decision,” nor does §138.390 confer a legal right or entitlement to a privilege upon individual property owners.

Taxpayers do not contend that §138.390 RSMo creates an individual right or privilege. Nevertheless, Taxpayers contend that they have standing under §536.150. But “for a person seeking judicial review under section 536.150 to have standing, the agency *decision* must affect that person’s private rights.” *State ex rel. Stewart*, 120 S.W.3d at 284 (emphasis added). And Taxpayers do not seek non-contested case review of a decision of the State Tax Commission. Vol. I LF 24 (¶37); App.’s Br. at 12.

Further, Taxpayers’ petition does not identify or describe any particular action that the Commission took in performing inter-county equalization for the 2011 or 2012 tax years. The petition does not allege facts

that would show that any plaintiff was directly affected by an action that the Commission took in performing inter-county equalization. Rather, Taxpayers contend that assessors in Franklin and Jefferson counties—who are not parties to this action—have undervalued properties located in those counties, and that appraisal ratios that assessors applied to properties in Franklin and Jefferson counties are lower than the appraisal ratio that the St. Louis County Assessor applied to Taxpayers’ real estate. Apps’ Br. at 14-15; see Vol. I LF 25 (Ct. IV, prayer for relief ¶¶ 2, 3). Moreover, in their appeals to the State Tax Commission, Taxpayers conceded that the St. Louis County Board of Equalization had correctly valued their properties at their true value in money. Apps’ App. at A-2 (LF Vol. I 73); LF Vol. II 383.

Even if Taxpayers’ petition attempted to challenge an inter-county equalization order or decision of the State Tax Commission, Taxpayers could not state a claim under §536.150 in light of the Missouri 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). The Missouri Supreme Court held that the State Tax Commission’s inter-county equalization decisions or orders are not subject to non-contested case judicial review or collateral attack. See *Foster Bros. Mfg. Co. v. State Tax Comm’n*, 319 S.W.2d 590, 595 (Mo. 1958); *May Dept. Stores Co. v. State Tax Comm’n*, 308 S.W.2d 748, 756 (Mo. 1958).

“Section 536.150 allows judicial review of an agency decision in a noncontested case when the agency decision determines the ‘legal rights, duties, or privileges of any person,’ ” *State ex rel. Stewart*, 120 S.W.3d at 284, *citing Mo. Nat. Educ. v. Mo. State Bd. of Educ.*, 34 S.W.3d 266, 275 (Mo. App. W.D. 2000) and *May Dept. Stores Co. v. State Tax Comm’n*, 308 S.W.2d 748, 756 (Mo. 1958). An inter-county equalization decision of the State Tax Commission is not a decision “determining the legal rights, duties, or privileges of” (§536.150.1) individual property owners. *May Dept. Stores*, 308 S.W.2d at 756. Inter-county equalization orders are not subject to non-contested case judicial review under §536.150. *May Dept. Stores*, 308 S.W.2d at 756.

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, as Taxpayers suggest. The fact that a petition for non-contested case review may now be filed at any reasonable time, *see Hagely v. Bd. of Educ. of Webster Groves Sch. Dist.*, 841 S.W.2d 663, 669 (Mo. banc 1992), does not vitiate the Missouri Supreme Court’s analysis in *May Dept. Stores*. Moreover, this Court may not consider any contention that the Missouri Supreme Court incorrectly decided a previous case or cases.

*Doe v. Roman Catholic Archdiocese of St. Louis*, 311 S.W.3d 818, 822 (Mo. App. E.D. 2010).

In *May Department Stores*, the Court concluded that the inter-county equalization order at issue “affected counties and classes of taxpayers, not ‘specific parties’[.]” so it was not a contested case reviewable under §536.100. *May Dept. Stores*, 308 S.W.2d at 756. The Court then turned to the language of the statute providing for non-contested case review of certain administrative decisions. That statute, then codified at §536.105, now §536.150, has not been amended since its enactment. Section 536.150 provides for non-contested case judicial review of a decision of an administrative officer or body that “is not subject to administrative review” that determines “the legal rights, duties, or privileges of any person, including the denial or revocation of a license, [when] there is no other provision for judicial inquiry into or review of such decision...” Section 536.150; *see May Dept. Stores*, 308 S.W.2d at 756. The language of the statute governing non-contested case judicial review “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[.]’ ” *May Dept. Stores*, 308 S.W.2d at 756.

There is no statutory basis for non-contested case or contested case review of inter-county equalization orders or decisions of the State Tax

Commission. Inter-county equalization orders affect counties and specific classes or subclasses of property, not individual property owners. Inter-county equalization orders do not subject individual property owners to a legal duty; rather, such orders impose duties on counties, *see Foster Bros.*, 319 S.W.2d at 595; *see State ex rel. Riney v. Mason*, 537 S.W.2d 181 (Mo. banc 1976).

Contrary to Taxpayers' assertion, *Foster Bros. Mfg. Co. v. State Tax Comm'n*, 319 S.W.2d 590 (Mo. 1958) and *May Dept. Stores Co. v. State Tax Comm'n*, 308 S.W.2d 748 (Mo. 1958) were not "effectively" overruled by *State ex rel. Cassilly v. Riney*, 576 S.W.2d 325 (Mo. banc 1979); *State ex rel. Comm'rs of State Tax Comm'n v. Schneider*, 609 S.W.2d 149 (Mo. banc 1980); or *Sperry Corp. v. State Tax Comm'n*, 695 S.W.2d 464 (Mo. banc 1985). There is no question that the State Tax Commission has authority to engage in both intra-county and inter-county equalization. But the Commission performs inter-county equalization as part of a process, described in §138.390 RSMo, that is separate and distinct from the Commission's adjudication of property owners' appeals of their assessments, *see* §138.430 RSMo. In hearing property owners' appeals from county boards of equalization, the Commission "is limited to considering issues of intra-county equalization." *Westwood Partnership v. Gogarty*, 103 S.W.3d 152, 160 (Mo. App. E.D. 2003).



*Cassilly* addressed the State Tax Commission's general supervisory authority over county assessors and boards of equalization pursuant to §138.410. *Cassilly*, 576 S.W.2d at 330. The Court reversed a writ of mandamus that a trial court had issued against the Commission and St. Louis County officials. *Id.* at 326-27, 329. The writ required the Commission to monitor the St. Louis County Assessor for non-compliance with §137.115 RSMo, and to initiate proceedings to enforce penalties against the Assessor. *Cassilly* at 327. The Court reversed the writ of mandamus, *id.* at 329, in order to afford the Commission the first opportunity to address a circumstance where St. Louis County had failed to reappraise or reassess certain residential properties since 1960. *Cassilly*, 576 S.W.2d at 328, 330-31.

Thereafter, the Commission, in the exercise of its supervisory authority, ordered St. Louis County to “implement a plan for the general revaluation of real property in St. Louis County” and imposed a deadline for completion. *State ex rel. Comm’rs of State Tax Comm’n v. Schneider*, 609 S.W.2d 149, 151 (Mo. banc 1980). St. Louis County sought judicial review of the plan, but the petition was dismissed because the Commission's order was not judicially reviewable, *id.* at 151; *St. Louis County v. State Tax Comm’n*, 608 S.W.2d 413, 414 (Mo. banc 1980). The Commission sought and obtained a writ of mandamus to enforce its order after St. Louis County refused to comply. *Schneider* at 151-52.

*Sperry Corp. v. State Tax Commission*, 695 S.W.2d 464 (Mo. banc 1985) was a consolidated appeal of tangible personal property assessments, *id.* at 465, that were calculated at one-third of true value in money as required by statute, *id.* at 465-66. The Supreme Court rejected plaintiffs' constitutional claims that were premised on the status of efforts to reassess real property in Jackson County, *see id.* at 465-66, 468, a separate class of property, *id.* at 466. The Court briefly referenced *Cassilly* and *Schneider* in discussing Jackson County's efforts to address undervaluations of real property in 1979 and the early 1980s (*see id.* at 465-66, 469), noting the existence of a relationship between Jackson County's county-wide revaluation program and a state-wide revaluation program (supervised by the State Tax Commission), *Sperry Corp.*, 695 S.W.2d at 469-70, that would be completed in 1985, *id.* at 470. *Sperry Corp.*, like *Cassilly* and *Schneider*, has no bearing on this Court's decision in this appeal.

### **Conclusion**

For the reasons stated above, the Commission correctly dismissed Taxpayers' appeals and the Circuit Court correctly granted the State Tax Commission Respondents' Motion to Dismiss.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE AND COMPLIANCE**

I hereby certify that the Brief of the State Tax Commission Respondent  
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I hereby certify that I signed the original of this brief and that it  
contains the information required by Rule 55.03, complies with the  
limitations contained in Rule 84.06(b), and contains 4,737 words exclusive of  
cover, signature block and certificates.

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