

Summary of SC89529, *State ex rel. Ashby Road Partners, LLC, et al. v. State Tax Commission of Missouri, Philip Muehlheausler, Assessor of St. Louis County*
Appeal from the Cole County circuit court, Judge Patricia S. Joyce

Attorneys: The taxpayers were represented by Byron E. Francis and Cynthia A. Petracek of Armstrong Teasdale LLP in St. Louis, (314) 621-5070; the commission was represented by Mark E. Long of the attorney general's office in Jefferson City, (573) 751-3321; and the county assessor was represented by Patricia Redington and Paula J. Lemerman of the St. Louis County counselor's office in Clayton, (314) 615-7042.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: Taxpayers, who own certain commercial properties in St. Louis County, allege the county assessor discriminated against them by assessing their properties at a higher percentage than other similar properties in the same taxing area. They appeal the circuit court's judgment affirming the state tax commission's order requiring them to present evidence of the true market value of their properties. In a unanimous decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri affirms the circuit court's decision. Procedurally, although the circuit court issued a summons rather than a preliminary order in the underlying action in prohibition, it served the purpose of a preliminary order, so the taxpayers have the right to appeal the circuit court's denial of their petition. Substantively, the commission is not bound by the assessor's determination of true market value and was within its authority to order the taxpayers to provide evidence of the true market value of their properties. Whether they use the assessor's determination of true market value – which they do not dispute – as their only evidence of market value is their choice. A statute prohibiting the assessor from advocating for an assessed valuation higher than his prior determination does not preclude him from presenting evidence of a higher true market value in defense of a discrimination claim.

Facts: Section 137.115.5(3), RSMo 2000, requires that commercial property be assessed at 32 percent of the property's true, or fair, market value. Nearly 30 taxpayers who own commercial property in St. Louis County allege the county assessor discriminated against them by assessing their properties at 32 percent, as required by statute, while assessing other similar commercial properties in the same taxing area at lower than 32 percent, thereby systematically undervaluing the comparable properties. After failing to obtain relief from the county board of equalization, they filed complaints for review of the assessments with the State Tax Commission of Missouri. The hearing officer the commission assigned ordered the taxpayers to designate a lead case for each group for the purpose of determining market value and the assessment ratio. They objected, arguing they need not prove their properties' true market values as they do not dispute the assessor's determination of the true market value of their properties. The hearing officer

overruled their objections, and the commission agreed, holding that, to prove their discrimination claims, the taxpayers were required to prove the true market values of their properties to determine the actual levels at which the properties had been assessed. The taxpayers petitioned the circuit court for a writ prohibiting the commission from enforcing its ruling. After a hearing on the merits, the circuit court denied the petition. The taxpayers appeal.

AFFIRMED.

Court en banc holds: (1) The taxpayers are entitled to appeal the merits of the circuit court's judgment denying their petition in prohibition. Proceedings in prohibition are governed by Rule 97, which provides that, once a relator files a petition for a writ of prohibition in the appropriate court, the court considers the petition and determines whether it should issue a preliminary order. The purpose of a preliminary order is to notify the respondent that a petition has been filed and to direct the respondent to file an answer within a specified amount of time; the preliminary order also may order the respondent to refrain from all or some action. Under the rule, if a court issues a preliminary order but later denies a permanent writ, the proper remedy is for the relator to appeal. Here, however, instead of issuing a preliminary order, the circuit court denied the preliminary order but then issued a summons, and the commission filed a response. The court then held a hearing on the merits of the petition and determined the taxpayers were not entitled to a permanent writ of prohibition. Although the court called the document it issued a summons rather than a preliminary order, in substance, the summons met the purpose of a preliminary order and triggered the taxpayers' right to appeal.

(2) The commission was within its authority to order the taxpayers to provide information regarding the true market value of the property in the lead case. Article X, section 3 of the Missouri Constitution requires uniform taxation of the same class of real property. The burden is on the taxpayer to establish discrimination. To prove discrimination by undervaluation of other property, a taxpayer must prove intentional systematic undervaluation by public officials of other taxable property in the same class. To do so, the taxpayer first must prove the true market value of all the properties at issue – including the taxpayer's own – and then prove the taxpayer's property has been assessed at a greater percentage than the other property. Here, the taxpayers want their acceptance of the assessor's market values for their properties to be conclusive proof that their properties were assessed accurately at 32 percent of the properties' true market values. Despite the taxpayers' assumption underlying this argument, the commission is not bound by the assessor's determination of true market value of any of the properties at issue. Although they bear the burden of proving discrimination, the taxpayers cannot be compelled to present evidence in any particular form. Here, whether to present the assessor's determinations as the only evidence of their properties' true market values is the taxpayers' choice.

(3) Section 138.060, RSMo 2000, does not preclude the admission of evidence of the true market value of the property owners' commercial properties. It does not prohibit the relevant evidence the commission can request, and section 138.430, RSMo 2000, authorizes the commission to inquire of the property owner about any issue relevant to the valuation or assessment of the property. As noted above, the true market values of the taxpayers' properties are relevant and necessary to their claims of discrimination. Although section 138.060 prevents the assessor from advocating for a higher assessed valuation than that he finally determined for the relevant assessment period, it does not prevent him from presenting evidence of a higher true market value in defense of a discrimination claim.