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TAX - OREGON

Seneca Sustainable Energy, LLC v. Department of Revenue

Supreme Court of Oregon - November 8, 2018 - 363 Or. 782 - 429 P.3d 360

Taxpayer brought action challenging Department of Revenue's determination as to its industrial property's real market value, the assessor's notation of the assessed value on the assessment roll, and enterprise zone's sponsor's imposition of a public benefit contribution.

Following bench trial, the Tax Court issued opinion setting the real market value of taxpayer's electric cogeneration facility at \$38.2 million and \$19.1 million for two tax years. The Department appealed.

The Supreme Court of Oregon held that:

- Taxpayer's claims all fell within the sole, exclusive, and final judicial authority of the Tax Court;
- Taxpayer had standing to challenge the Department's erroneous real market value determination; and
- Evidence was insufficient to support Department of Revenue's real market value determination with regard to taxpayer's electric cogeneration facility.

Taxpayer's claims, which challenged the Department of Revenue's determination as to its electric cogeneration facility's real market value, the assessor's notation of the assessed value on the assessment roll, and enterprise zone's sponsor's imposition of a public benefit contribution, all fell within the sole, exclusive, and final judicial authority of the Tax Court, regardless of whether or not the facility was exempt from taxation during the years at issue; taxpayer was subject to taxation, irrespective of whether it owed any taxes in a given year, all the statutes that related to taxpayer's claims bore on tax liability, the first arising out of the Department's obligation to determine real market value for industrial properties, and the second arising out of the assessor's obligation to ensure that the tax rolls accurately reflected assessed values, and at all material times, taxpayer was paying property taxes on the real property underlying its electric cogeneration facility.

Taxpayer was aggrieved by Department of Revenue's erroneous real market value determination with regard to taxpayer's electric cogeneration facility, and because the erroneous act affected taxpayer and its property, taxpayer had standing to challenge that determination in the Tax Court; taxpayer alleged a wrong, the erroneous real market value determination, as well as a private interest that was different from that of the general public, the imposition of an excessive public benefit contribution directly resulting from that erroneous determination, along with an attendant increase in property taxes.

Evidence was insufficient to support Department of Revenue's real market value determination with regard to taxpayer's electric cogeneration facility for the tax year in question; the Department's appraiser relied on a power purchase agreement that provided taxpayer with revenues significantly in excess of what a purchaser of the property on the assessment dates would have been able to negotiate for, for electricity, capacity, and renewable energy credits (REC), and erroneously considered intangible assets by valuing taxpayer's entire property and business under the income

approach, subtracting only an amount for working capital.

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