



STATE TAX COMMISSION OF MISSOURI

DAVID PAUL ABERNATHY)
)
 Complainant(s),)
) Appeal No. 22-10463
v.)
)
 JAKE ZIMMERMAN, ASSESSOR,)
 ST LOUIS, COUNTY, MISSOURI,)
 Respondent.)

DECISION AND ORDER

David Paul Abernathy (Complainant) appealed valuation of the subject personal property determined by Jake Zimmerman, Assessor, St. Louis County, Missouri (Respondent). Complainant did not appeal to the St. Louis County Board of Equalization (BOE), but appealed directly to the State Tax Commission (STC).¹ Respondent determined the true value in money of the subject property to be \$22,400. Complainant claimed overvaluation but did not produce substantial and persuasive evidence establishing overvaluation. Respondent presented substantial and persuasive evidence to

¹ Complainant contends that he first received notification of the 2022 valuation when he received his tax bill in November or December, 2022. Respondent contends that Complainant received notice no later than February 26, 2022 when Complainant signed his 2022 Personal Property Declaration which listed assessed values for the two vehicles Complainant owned on January 1, 2022.

establish the true value in money of the subject property as of January 1, 2022.²

Complainant appeared at the hearing which was conducted via the WebEx platform.

Respondent was represented at the hearing by counsel, Steven Robson.

FINDINGS OF FACT

1. Subject Property. The subject property is a 2012 Acura TL and a 2016 Nissan Pathfinder.

2. Respondent and BOE. Respondent determined the trade-in value of the subject property on January 1, 2022, was \$9,075 for the 2012 Acura TL and \$13,325 for the 2016 Nissan Pathfinder. Respondent used the October, 2021 issue of the National Automobile Dealers' Association Official Used Car Guide or its successor publication pursuant to Section 137.115.9. There was no Board of Equalization decision regarding the property.

3. Complainant's Evidence. Complainant testified as to the current mileage on the two vehicles, but did not offer any other evidence. Complainant testified that he appealed because he believes that Respondent failed to comply with the notice provisions of Section 137.355 RSMo and, as a result, his 2022 personal property tax should be the same (for the two vehicles) as it was in 2021.

4. Respondent's Evidence. Respondent submitted the following Exhibits:

Exhibit	Description	Ruling
R1	2022 Personal Property Declaration dated 2/26/2022	Admitted

² Complainant timely filed a complaint for review of assessment. The State Tax Commission (STC) has authority to hear and decide Complainant's appeal. Mo. Const. art. X, Section 14; section 138.430.1, RSMo 2000. All statutory citations are to RSMo 2000, as amended.

R2	J.D. Power used car guide as of October 1, 2021 pertaining to a 2012 Acura TL	Admitted
R3	J. D. Power vehicle information sheet as of October 1, 2021 pertaining to a 2016 Nissan Pathfinder	Admitted

Suzanne Strain, personal property manager in the St. Louis County Assessor’s office, testified that Respondent utilized the average trade-in values indicated for the vehicles. After calculating one third of the average trade-in values for the vehicles as required by law, Respondent assessed the 2012 Acura TL at \$3,030, rounded, and the 2016 Nissan Pathfinder at \$4,440, rounded.³

5. Value. Respondent’s evidence was substantial and persuasive to establish the true value in money of the subject vehicles on January 1, 2022.

CONCLUSIONS OF LAW

1. Assessment and Valuation

Pursuant to Article X, Sections 4(a) and 4(b), Mo. Const. of 1945 real property and tangible personal property is assessed at its value or such percentage of its value as may be fixed by law for each class and for each subclass. Article X, Sections 4(a) and 4(b), Mo. Const. of 1945. Personal property is assessed at 33.33% of its true value in money as of January 1 of each year. Section 137.115.5. Pursuant to Section 137.115.9 “[t]he assessor of each county and each city not within a county shall use the trade-in value published in the October issue of the National Automobile Dealers’ Association

³ The process of rounding caused the assessed value of the 2012 Acura TL to exceed one third of its true value in money. Respondent concedes that the 2012 Acura TL should have been assessed at \$3,020 rather than \$3,030. See the Conclusion and Order, below.

Official Used Car Guide, or its successor publication, as the recommended guide of information for determining the true value of the motor vehicles described in such publication. The assessor shall not use a value that is greater than the average trade-in value in determining the true value of the vehicle without performing a physical inspection of the motor vehicle. ...". "True value in money is the fair market value of the property on the valuation date, and is a function of its highest and best use, which is the use of the property which will produce the greatest return in the reasonably near future." *Snider v. Casino Aztar/Aztar Mo. Gaming Corp.*, 156 S.W.3d 341, 346 (Mo. banc 2005) (internal quotation omitted). The fair market value is "the price which the property would bring from a willing buyer when offered for sale by a willing seller." *Mo. Baptist Children's Home v. State Tax Comm'n*, 867 S.W.2d 510, 512 (Mo. banc 1993). Determining the true value in money is a factual issue for the STC. *Cohen v. Bushmeyer*, 251 S.W.3d 345, 348 (Mo. App. E.D. 2008). The "proper methods of valuation and assessment of property are delegated to the Commission." *Savage v. State Tax Comm'n*, 722 S.W.2d 72, 75 (Mo. banc 1986).

2. Evidence

The hearing officer is the finder of fact and determines the credibility and weight of the evidence. *Kelly v. Mo. Dep't of Soc. Servs., Family Support Div.*, 456 S.W.3d 107, 111 (Mo. App. W.D. 2015). The hearing officer "may inquire of the owner of the property or of any other party to the appeal regarding any matter or issue relevant to the valuation, subclassification or assessment of the property." Section 138.430.2. The Hearing Officer's decision regarding the assessment or valuation of the property may be

based solely upon his inquiry and any evidence presented by the parties, or based solely upon evidence presented by the parties. *Id.*

3. Complainant's Burden of Proof

The Complainant bears the burden of proving the vital elements of the case, i.e., the assessment was “unlawful, unfair, improper, arbitrary or capricious.” *Westwood Partnership*, 103 S.W.3d 152 (Mo. App. E.D. 2003); *Daly v. P.D. George Co.*, 77 S.W.3d 645 (Mo. App E.D. 2002); *Reeves v. Snider*, 115 S.W.3d 375 (Mo. App. S.D. 2003); *Industrial Development Authority of Kansas City v. State Tax Commission of Missouri*, 804 S.W.2d 387, 392 (Mo. App. W.D. 1991). The taxpayer's evidence must be both "substantial and persuasive." *Id.* "Substantial evidence is that evidence which, if true, has probative force upon the issues, and from which the trier of fact can reasonably decide the case on the fact issues." *Savage*, 722 S.W.2d at 77 (internal quotation omitted). Evidence is persuasive when it has "sufficient weight and probative value to convince the trier of fact." *Daly v. P.D. George Co.*, 77 S.W.3d 645, 651 (Mo. App. E.D. 2002); *see also White v. Dir. of Revenue*, 321 S.W.3d 298, 305 (Mo. banc 2010) (noting the burden of persuasion is the "party's duty to convince the fact-finder to view the facts in a way that favors that party"). A taxpayer does not meet his burden if evidence on any essential element of his case leaves the STC “in the nebulous twilight of speculation, conjecture and surmise.” *See, Rossman v. G.G.C. Corp. of Missouri*, 596 S.W.2d 469, 471 (Mo. App. 1980).

4. Complainant Did Not Prove Overvaluation.

Complainant did not submit any evidence as to overvaluation.

The testimony of Respondent's witness, Suzanne Strain, was credible.

Respondent determined the true value in money of the property using the method prescribed by law.

5. Respondent's Alleged Noncompliance with Section 137.355.

Complainant testified that he appealed his 2022 personal property assessment for the sole reason that, in his view, the 2022 increase in value should not be allowed because the Respondent failed to comply with the notice provisions of Section 137.355.

Specifically, Respondent did not notify Complainant of an increase in valuation of the vehicles either in person or by mail sent to Complainant's home. Complainant believes that the increase in the assessed value of the two vehicles must be disallowed and that the assessment should remain at the 2021 level.

With respect to tangible personal property, Section 137.355 provides that "[i]f an assessor increases the valuation of any tangible personal property as estimated in the itemized list furnished to the assessor . . . he shall forthwith notify the record owner of the increase either in person or by mail directed to the last known address . . ."⁴

Complainant does not claim that he never received any notice of the 2022 assessment. Manifestly, if he had not received any notice (in the form of a tax bill or

⁴ Note that the term "forthwith" is not defined in the statutes applicable to assessment of property. The General Assembly has not provided a date by which counties are *required* to provide change of assessment notices for personal property.

otherwise) he would not have been able to file this appeal. Rather, he claims that he never received notice delivered to him in person or mailed to his home. However, it is not necessary to examine what notice of assessed value Respondent provided, if any, because Complainant's entire argument is based on a statute that does not apply to St. Louis County. The Missouri General Assembly has provided in Section 137.325 that Sections 137.325 to 137.420 (including 137.355) are applicable *only* to first class counties. St. Louis County is not a first class county – it is a charter county. Charter counties are not classified as first class counties, even though they may otherwise meet the criteria for first class counties. Charter counties comprise their own, separate class of counties.

Section 48.020 provides that “[a]ll counties of this state are hereby classified . . . into four classifications . . .” (first, second, third and fourth class). The statute was enacted under the provisions of Article VI, Section 8 of the Constitution of Missouri. Article VI, Section 8 provides for the classification of counties by general laws not to exceed four classes.

However, in 1995, Missouri voters amended Article VI, Section 18(a) of the Missouri Constitution. Article VI, Section 18(a) provides: “Counties which adopt or which have adopted a charter or constitutional form of government shall be a separate class of counties outside of the classification system established under section 8 of this article.”

In *Leiser v. City of Wildwood*, 59 S.W.3d 597 (Mo. App. E.D. 2001), the court addressed Section 72.424 which, on its face, applied to land located in municipalities

“within a *county of the first classification having a charter form of government* and having a minimum population of nine hundred thousand . . . “ (emphasis added). The court observed:

St. Louis County has a charter form of government pursuant to Article VI, section 18(a) of the Missouri Constitution and has a population over nine hundred thousand, but it is not a county “of the first classification.” That is because Art VI, section 18(a), as amended in 1995, provides: “Counties which adopt or which have adopted a charter or constitutional form of government shall be a separate class of counties outside of the classification system established under section 8 of this article.”

...

As written, with the inclusion of the words “of the first classification,” section 72.424 would not apply to any county in Missouri because no county in Missouri can be a county of the first class and have a charter form of government. Because the inclusion of these words creates an absurd law, incapable of being enforced, we may strike this phrase as being improvidently inserted.

Id. at 603.

Therefore, Missouri no longer has charter counties of the first class. Counties are either charter counties or first class counties, but not both⁵ Consequently, Complainant’s argument fails.

CONCLUSION AND ORDER

⁵ There are several examples in Chapters 137 and 138 of differing requirements applicable to charter counties and first class counties. For example, requirements for notifying owners of real property of valuation increases in charter counties are set forth in Section 137.180.2. Similar, but somewhat different, requirements applicable to first class counties are set forth in Section 137.335.2. Another example: boards of equalization in charter counties generally have until the fourth Saturday in August each year to complete all business, but boards in first class counties must generally complete their work by July 31 each year. Section 138.050.

The true value in money of the 2012 Acura TL as of January 1, 2022 was \$9,075 with an assessed value of \$3,020. The true value in money of the 2016 Nissan Pathfinder as of January 1, 2022 was \$13,325 with an assessed value of \$4,440.

Application for Review

A party may file with the Commission an application for review of this decision within 30 days of the mailing date set forth in the certificate of service for this decision. The application "shall contain specific detailed grounds upon which it is claimed the decision is erroneous." Section 138.432. The application must be in writing, and may be mailed to the State Tax Commission, P.O. Box 146, Jefferson City, MO 65102-0146, or emailed to Legal@stc.mo.gov. A copy of the application must be sent to each person listed below in the certificate of service.

Failure to state specific facts or law upon which the application for review is based will result in summary denial. Section 138.432.

Disputed Taxes

The Collector of St Louis County, as well as the collectors of all affected political subdivisions therein, shall continue to hold the disputed taxes pending the possible filing of an application for review, unless said taxes have been disbursed pursuant to a court order under the provisions of section 139.031.

So ordered July 14, 2023.
STATE TAX COMMISSION OF MISSOURI

Gregory Allsberry
Senior Hearing Officer

Certificate of Service

I hereby certify that a copy of the foregoing has been electronically mailed and/or sent by U.S. Mail on July 14th, 2023, to:

Complainant(s) and/or Counsel for Complainant(s), the County Assessor and/or Counsel for Respondent, and County Collector.

Stacy Ingle
Legal Assistant