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Recommended Citation

Cox, Judy Carol, "Summary of Silver State Elec. V. State, Dep't of Tax, 123 Nev. Adv. Op. 11" (2007).
Nevada Supreme Court Summaries. 502.
<https://scholars.law.unlv.edu/nvscs/502>

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***Silver State Elec. V. State, Dep't of Tax, 123 Nev. Adv. Op. 11,
(May 3, 2007)***¹

ADMINISTRATIVE LAW - TAX

Summary

A company appealed a district court's dismissal of its petition for judicial review of a tax commission decision that it had not met the necessary requirements under NRS 360.395 in order to avoid having to immediately pay the determination amount.

Disposition/Outcome

The Court affirmed the district court's dismissal of Appellant's petition for judicial review of a tax commission decision because NRS 360.395 does not violate Appellant's equal protection rights, and NAC 360.452 does not exceed statutory authority.

Factual and Procedural History

After the Nevada Department of Taxation sent a notice of deficiency determination to Silver State Electric Supply Co. for approximately \$200,000 in sales tax, Silver State petitioned for a re-determination and requested a hearing. The hearing officer upheld the determination, and Silver State appealed to the Nevada Tax Commission. The Commission also affirmed. Silver State petitioned for judicial review of the Commission's decision, and the Tax Department moved to dismiss based on Silver State's failure to meet NRS 360.395. One of the company's corporate officers offered to pay the deficiency only if the Tax Department would agree to reimburse him if it was determined later that he was not a responsible person. The Department rejected the offer and Silver State ceased efforts to comply with the statute. The district court dismissed the company's petition because it found that Silver State never complied with the statute. Silver State appealed.

Discussion

NRS 360.395 allows an entity to either pay a deficiency determination amount immediately or enter into an agreement to pay the amount at a later date. Under NAC 360.452, written agreements to pay taxes in installments must be personally guaranteed by a responsible person.

Silver State asserts that NRS 360.395 violates its equal protection rights; however, the company did not belong to a suspect class and no fundamental right was claimed. The statute's requirement to pay taxes is rationally related to furthering the State's legitimate interest in securing tax payments to fund public services; therefore, NRS 360.395 does not violate Appellant's equal protection.

¹ By Judy Carol Cox

Silver State also asserts that NAC 360.452 exceeds the scope of the statute and is therefore invalid. The Tax Commission has authority to collect taxes by written agreements and the authority to adopt regulations related to such agreements. NAC 360.452 regulates the kind of written agreement that the Tax Department is permitted to enter into with an entity and is therefore directly related to the statutory scheme. Because the Legislature has not modified NRS 360.395 since the Department created NAC 360.452 in 2001, the Court noted that the Department's interpretation of NRS 360.395 must be consistent with legislative intent.

Conclusion

NAC 360.452 does not exceed statutory authority. NRS 360.395 does not violate Appellant's equal protection rights. Silver State was required to comply with the regulation and its failure to do so resulted in the district court's decision to dismiss its petition for judicial review. The district court's dismissal is affirmed.