

IN THE SUPREME COURT OF THE STATE OF NEVADA

SILVER STATE ELECTRIC SUPPLY
CO., A NEVADA CORPORATION,
Appellant,
vs.
THE STATE OF NEVADA EX REL.
DEPARTMENT OF TAXATION,
Respondent.

No. 45630

FILED

DEC 26 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a petition for judicial review of a tax commission decision. First Judicial District Court, Carson City; Michael R. Griffin, Judge.

Appellant Silver State Electric Supply Co., a Nevada corporation (Silver State), argues that the district court improperly dismissed its petition for judicial review when it determined that Silver State failed to comply with NRS 360.395.¹ Silver State concedes that it

¹NRS 360.395:

1. Before a person may seek judicial review pursuant to NRS 233B.130 from a final order of the Nevada Tax Commission upon a petition for redetermination, he must:

- (a) Pay the amount of the determination; or
- (b) Enter into a written agreement with the Department establishing a later date by which he must pay the amount of the determination.

2. If a court determines that the amount of the final order should be reduced or that the person does not owe any taxes, the Department shall credit or refund any amount paid by the person

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did not satisfy NRS 360.395 or NAC 360.452.² Nevertheless, it contends that NAC 360.452 exceeds its statutory authority by mandating that a responsible person personally guarantee the agreement required by NRS 360.395(1)(b). Silver State further asserts that NAC 360.452 violates Robert Bigelow's³ due process rights and that NRS 360.395 violates Silver State's right to equal protection. We disagree.

... continued

that exceeds the amount owed, with interest determined in accordance with NRS 360.2935.

²NAC 360.452:

1. An agreement to pay taxes, interest and penalties in installments pursuant to NAC 360.450 or 360.456 must:

(a) Be in writing.

(b) Except as otherwise provided in this paragraph, contain a personal guaranty by two responsible persons in their individual capacities. If there is only one responsible person, the agreement must contain the personal guaranty of that person in his individual capacity.

(c) Be accompanied by the initial payment required by the terms of the agreement.

2. As used in this section, "responsible person" has the meaning ascribed to it in subsection 2 of NRS 372.398.

³Bigelow was a corporate officer, director, and shareholder of Silver State. The Department of Taxation determined that he, as a responsible person, is personally liable for Silver State's tax deficiency determination.

NAC 360.452 is a reasonable interpretation of NRS 360.395

Courts defer to an agency's interpretation of a statute if (1) the agency is charged with enforcing the statute and (2) the interpretation is within the statutory language.⁴ When the legislature acquiesces to an agency's reasonable interpretation, it indicates that the interpretation accords with legislative intent.⁵ The legislature acquiesces to an agency's interpretation when it does not modify the statute.⁶ However, even if the legislature does not alter the statute, this court will declare an administrative regulation invalid if it violates the Constitution.⁷

NRS 360.090 grants the Tax Commission the authority to prescribe regulations "for carrying on the business of the Nevada Tax Commission and of the Department [of Taxation]." Specific to the collection of taxes, NRS 360.2915 grants the Department of Taxation (the Department) the authority to adopt regulations providing for the payment of taxes in installments pursuant to a written agreement. NRS 360.395(1) requires that prior to seeking judicial review of a final order of the Tax Commission, a taxpayer must pay the "amount of the determination" or "[e]nter into a written agreement with the Department." In 2001, under authority of NRS 360.090 and NRS 360.2915, the Tax Commission established NAC 360.452(1), which requires that written agreements to

⁴Meridian Gold v. State, Dep't of Taxation, 119 Nev. 630, 635, 636, 81 P.3d 516, 519, 520 (2003).

⁵Id. at 636-37, 81 P.3d at 520.

⁶See id.

⁷Id. at 635, 81 P.3d at 519.

pay taxes in installments be personally guaranteed by a responsible person. Since 2001, the legislature has not altered the prerequisites to seeking judicial review set forth in NRS 360.395.

NAC 360.452 does not exceed its statutory authority. The legislature granted the Department the authority to collect taxes by written agreements, and NAC 360.452 directly relates to such written agreements. Also, the legislature has not modified NAC 360.452 since the Tax Commission adopted this regulation.

NRS 360.395 does not violate Silver State's equal protection rights

When a party contends that a statute violates a person's equal protection rights but does not allege a violation of a fundamental right, the statute is constitutional if the classification scheme created by that statute is rationally related to furthering a legitimate state interest.⁸

NRS 360.395 protects the state's interest in securing the payment of taxes. Certainly, the state has a legitimate interest in funding public services, and the payment requirement relates to its ability to do so.⁹ We conclude that NRS 360.395 does not deprive Silver State of the equal protection of the laws.

⁸See Vance v. Bradley, 440 U.S. 93, 96-97 (1979); State Farm v. All Electric, Inc., 99 Nev. 222, 225, 660 P.2d 995, 997 (1983).

⁹E.g., Ortwein v. Schwab, 410 U.S. 656 (1973) (upholding filing fee required as a precondition to obtaining judicial review of reductions in welfare payments); United States v. Kras, 409 U.S. 434 (1973) (upholding the filing fee required as a pre-condition to obtaining a discharge in bankruptcy).

Accordingly, we conclude that the district court did not abuse its discretion in dismissing Silver State's petition for judicial review.¹⁰

Therefore, we ORDER the judgment of the district court AFFIRMED.¹¹

Becker, J.
Becker

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Maupin, J.
Maupin

Douglas, J.
Douglas

Parraguirre, J.
Parraguirre

cc: Hon. Michael R. Griffin, District Judge
William F. Buchanan, Settlement Judge
John S. Bartlett
Attorney General George Chanos/Las Vegas
Carson City Clerk

¹⁰Because Silver State does not have standing to raise the issue, we do not address whether Bigelow's due process rights have been violated. Powers v. Ohio, 499 U.S. 400, 410-11 (1991) (stating that to assert the rights of a third party, the third party must, inter alia, have been prevented from bringing its own claim); Tarango v. SIIS, 117 Nev. 444, 462, 25 P.3d 175, 187 (2001) (Maupin, C.J., concurring and dissenting).

¹¹The Honorable Robert E. Rose, Chief Justice, did not participate in the decision of this matter.