


IN THE SUPREME COURT OF THE STATE OF NEVADA

ADVENTURE PHOTO TOURS, INC.,
Appellant,
vs.
NEVADA DEPARTMENT OF
TAXATION; AND NEVADA TAX
COMMISSION,
Respondents.

No. 86170

FILED

AUG 27 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a motion to dismiss a petition for judicial review. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

Appellant Adventure Photo Tours is a corporation that offers tours across the southwest United States. Some of these tours take passengers from Nevada to destinations outside state lines. Common motor carriers in Nevada, like Adventure Photo, became subject to the so-called Transportation Connection Tax (TCT) for those connections originating in Nevada as of 2015. *See* NRS 372B.150. Following an audit, respondent Nevada Department of Taxation issued a deficiency notice, concluding Adventure Photo failed to pay the tax on interstate bus trips for the 2017 to 2019 tax years.

Adventure Photo pursued administrative review to challenge the TCT. In doing so, it primarily argued it did not have to pay the tax on interstate trips because it was preempted by 49 U.S.C. § 14505 (providing that states cannot “collect or levy a tax” on passengers, the transportation

of a passenger, the sale of passenger transportation by a common carrier, or the gross receipts from such transportation in interstate commerce). Adventure Photo was unsuccessful. It then petitioned for judicial review, raising the same preemption argument.

Adventure Photo satisfied the general requirements under NRS 233B for judicial review in filing the petition. It did not, however, satisfy NRS 360.395(1)'s requirement that it either "pay the amount of the determination" at issue or otherwise "[e]nter into a written agreement with the Department establishing a later date by which he or she must pay the amount of the determination."¹ The Department and respondent Nevada Tax Commission moved to dismiss for failure to satisfy this jurisdictional prerequisite. The district court ultimately granted that motion. Adventure Photo appeals, challenging NRS 360.395's applicability and continuing to argue that NRS 372B.150 is preempted by federal law.²

Standard of review

This court uses the same standard of review as that of the district court in reviewing petitions for judicial review, addressing questions of law de novo without deference to agency determinations. *City of Reno v. Bldg. & Constr. Trades Council of N. Nev.*, 127 Nev. 114, 119, 251 P.3d 718, 721 (2011). Such questions of law include the meaning and applicability of statutes. *Beazer Homes Nevada, Inc. v. Eighth Jud. Dist. Ct.*, 120 Nev. 575, 579, 97 P.3d 1132, 1135 (2004); *Arguello v. Sunset Station, Inc.*, 127 Nev.

¹NRS 360.395(2) provides "that the Department shall credit or refund any amount paid by the person that exceeds the amount owed, with interest determined in accordance with NRS 360.2935," "[i]f a court determines that the amount of the final order should be reduced or that the person does not owe any taxes."

²Greyhound Lines filed an amicus brief on the preemption issue.

365, 368, 252 P.3d 206, 208 (2011). And when statutes prescribe requirements that must be met prior to a party's ability to seek judicial review of an agency decision, strict compliance with those statutes is necessary to invoke the court's jurisdiction. *Washoe Cnty. v. Otto*, 128 Nev. 424, 431, 282 P.3d 719, 725 (2012).

NRS 360.395 is a jurisdictional bar to Adventure Photo's arguments on the merits of the TCT

We cannot reach Adventure Photo's preemption argument because we agree with the district court that the petition for judicial review is jurisdictionally barred. NRS Chapter 360 governs "the procedures available for the collection of taxes." See S.B. 483, 68th Leg. (May 17, 1995) (explaining the Act's purpose). NRS 360.395 outlines the procedures for challenging a determination of the Commission, including a deficiency for the TCT. The fact that the Legislature codified the TCT in a separate chapter does not render NRS 360.395 any less applicable. See *Silver State Elec. Supply Co. v. State ex rel. Dep't of Tax'n*, 123 Nev. 80, 82, 157 P.3d 710, 711 (2007) (concluding NRS 360.395 applied in seeking judicial review of sales tax, which is a tax governed by NRS Chapter 372). Indeed, NRS Chapter 372B explicitly states that NRS Chapter 360's provisions "relating to the payment, collection, administration and enforcement of taxes" apply to "the payment, collection, administration and enforcement of" NRS Chapter 372B's excise taxes so long as "those provisions do not conflict with the [Chapter's] provisions." NRS 372B.100. Adventure Photo does not convince us that such conflict exists. Thus, we conclude NRS 360.395 required Adventure Photo to either "pay the amount of the determination" or "[e]nter into a written agreement with the Department establishing a later date by which he or she must pay the amount of the determination."

Because Adventure Photo failed to do either, we have no occasion to address the preemption issue.

To be sure, Adventure Photo’s statutory arguments challenging NRS 360.395’s reach lack merit. First, Adventure Photo’s focus on NRS Chapter 372B as outlining the only applicable jurisdictional requirements ignores that those cited provisions relate specifically to overpayment and refund actions. *See, e.g.*, NRS 372B.210, .220, .240. But this is not an overpayment or refund action. It is a deficiency action, where NRS 360.395’s plain language unambiguously applies. *See Baker Refrigeration Sys., Inc. v. Weiss*, 201 S.W.3d 900, 906 (Ark. 2005) (explaining the difference between deficiency and overpayment actions in tax cases and the attendant procedural requirements). So, contrary to Adventure Photo’s contentions, the provisions within NRS Chapter 372B “do not conflict” with NRS 360.395. NRS 372B.100. In this, Adventure Photo’s reliance on the Taxpayer’s Bill of Rights as compelling statutory construction in the taxpayer’s favor in instances of “doubtful validity or effect” and where there is no applicable “specific statutory provision” fails for similar reasons.³ NRS 360.291(1)(o). Second, we are not persuaded that by paying the TCT tax from 2020 onward, Adventure Photo paid “the amount of the determination” thereby satisfying NRS 360.395. The determination here pertains to a deficiency in tax years 2017 through 2019, which Adventure Photo has not paid.

³We do not consider other provisions in the Taxpayer’s Bill of Rights that Adventure Photo cited for the first time at oral argument. *Rives v. Farris*, 138 Nev. 138, 146 n.6, 506 P.3d 1064, 1071 n.6 (2022) (declining to address argument raised at oral argument for the first time).

Adventure Photo's constitutional challenges also fail. Adventure Photo challenges NRS 360.395 on equal protection grounds, but we have already recognized that this specific statute passes rational-basis review under the Equal Protection Clause. *See Silver State Elec. Supply Co.*, 123 Nev. at 84, 157 P.3d at 712 (concluding that NRS 360.395 did “not deprive” the appellant “of its right to equal protection”). And we decline to depart from this holding. *See Thomas v. Eighth Jud. Dist. Ct.*, 133 Nev. 468, 475 n.7, 402 P.3d 619, 626 n.7 (2017) (noting that we “will not overturn precedent absent compelling reasons for so doing”); *see also Maher v. Roe*, 432 U.S. 464, 471 (1977) (noting the Supreme Court has “never held that financial need alone identifies a suspect class for purposes of equal protection analysis”).⁴

Continuing, Adventure Photo overstates various authorities in making its other constitutional and due process arguments. For one, Adventure Photo relies on *Sullivan v. Eighth Judicial District Court*, 111 Nev. 1367, 1372, 904 P.2d 1039, 1042 (1995), in which we expressed a vital concern “with the preservation of the constitutional right of access” to courts and due process. That limited citation, however, lacks context. The cases *Sullivan* addressed, where pre-payment requirements functionally barred access to the courts, also implicated some additional fundamental right without an alternative to pre-payment. *See Barnes v. Eighth Jud. Dist. Ct.*, 103 Nev. 679, 683-84, 748 P.2d 483, 486 (1987) (explaining that states can restrict filing-fee waivers so long as “the case does not implicate a

⁴In addition to declining to depart from this holding, we note that Adventure Photo's argument about *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971), in an attempt to overcome *Silver State*, is raised for the first time in the reply brief and is therefore waived. *Khoury v. Seastrand*, 132 Nev. 520, 530 n. 2, 377 P.3d 81, 88 n.2 (2016).

fundamental interest and the litigant has some alternative course of action that is not conditioned on the payment of a fee”); *see also, e.g., M.L.B. v. S.L.J.*, 519 U.S. 102, 128 (1996) (invalidating the requirement that a parent had to pay a record fee to appeal in action terminating her parental rights); *Boddie v. Connecticut*, 401 U.S. 371, 382 (1971) (invalidating the requirement that a person seeking divorce had to pay the entire filing fee to obtain a divorce). Lacking implication of such a standalone fundamental right, this case is distinguishable, especially in view of NRS 360.395’s payment-plan alternative—an alternative our review of the record reveals the Department apprised Adventure Photo of in the original deficiency notice.⁵ *Cf. Vt. Golf Ass’n, Inc. v. Dep’t of Taxes*, 57 A.3d 707, 710 (Vt. 2012) (“[T]he paying of a tax before obtaining judicial review does not violate due process.”); *Larson v. United States*, 888 F.3d 578, 587 (2d Cir. 2018) (concluding that a full-payment rule under federal tax law did not violate due process). Next, Adventure Photo stresses Texas caselaw invalidating similar pre-payment requirements. Yet, that caselaw turned on the Texas Constitution’s open courts provision. *See Cent. Appraisal Dist. of Rockwall Cnty. v. Lall*, 924 S.W.2d 686, 690 (Tex. 1996) (invalidating requirement that taxpayers pay the amount of property taxes imposed in the preceding year to obtain judicial review as violating Article I, Section 13 of the Texas Constitution). Nevada’s Constitution contains no similar provision. Taken together, Adventure Photo’s other arguments under either the Nevada or the U.S. Constitution fall short. *Malfitano v. Cnty. of Storey*, 133 Nev. 276, 284, 396

⁵One of the last pages of the tax deficiency notice contained in Adventure Photo’s appendix is titled, “Request for Hearing and Appeal Rights” and includes NRS 360.395 in full.


P.3d 815, 821 (2017) (employing the same analysis for equal protection and due process under the U.S. and Nevada Constitutions).⁶ Accordingly, we

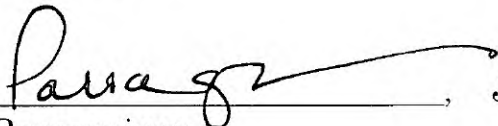
ORDER the judgment of the district court AFFIRMED.⁷

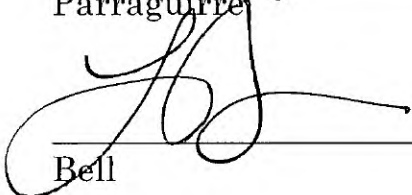

_____, C.J.
Cadish


_____, J.
Stiglich


_____, J.
Pickering


_____, J.
Herndon


_____, J.
Parraguirre


_____, J.
Bell

⁶We have carefully considered the parties' other arguments not specifically addressed in this order, including but not limited to Adventure Photo's separation of powers and NAC Chapter 360 arguments, and conclude that they either lack merit or need not be reached given the disposition of this appeal.

⁷The Honorable Patricia Lee did not participate in this decision.

cc: Hon. Erika D. Ballou, District Judge
William C. Turner, Settlement Judge
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