

Westlaw.

501 N.Y.S.2d 509

117 A.D.2d 65, 501 N.Y.S.2d 509

(Cite as: 117 A.D.2d 65, 501 N.Y.S.2d 509)

**C**

Supreme Court, Appellate Division, Third Department, New York.

Robert KERWICK, as Assessor of the Town of Denning, et al., Respondents,

v.

NEW YORK STATE BOARD OF EQUALIZATION AND ASSESSMENT, Appellant.

In the Matter of Walter F. HELEY, Jr., as Assessor of the Town of Hardenburgh,

Ulster County, New York, et al., Respondents,

v.

NEW YORK STATE BOARD OF EQUALIZATION AND ASSESSMENT, Appellant.

May 1, 1986.

Town and its assessor brought declaratory judgment action to declare entire regulations part illegal and to enjoin the Board from employing those regulations, and town and its assessor moved for summary judgment. Another town and its assessor brought separate Article 78 proceeding seeking to annul Board's revision of assessments the town had proposed and the Board had approved, and to declare the same regulations part illegal and unenforceable. The Supreme Court at Special Term, Conway, J., granted motion of plaintiff town and its assessor for summary judgment and declared the 9 NYCRR part 199 illegal, and granted application of petitioner town and its assessor to annul Board's assessment of state-owned lands, and the Board appealed. The Supreme Court, Appellate Division, Weiss, J., held that: (1) Board's appeal was not rendered moot by Board's substantial amendment of the regulation part following Special Term's decision; (2) regulations setting forth formulas for determining "aggregate additional assessments" for specified areas, setting forth formula for determining transition assessments, and directing that copies of assessment be sent to various interested parties were valid; but (3) regulations setting forth

lands based on differing physical characteristics and allowing board to rescind final assessment based on change in assessment value may not be due to change in valuation were

Modified by reversing in part, and as affirmed.

West Headnotes

**[1] Declaratory Judgment** ↪ 392.1

118Ak392.1 Most Cited Cases

(Formerly 118Ak392)

State Board of Equalization and Assessment appeal from judgment invalidating 9 NYCRR in its entirety was not rendered moot by substantial amendment of the regulations. Special Term's decision, where the injunction continued to affect those sections which had not amended.

**[2] Taxation** ↪ 2521

371k2521 Most Cited Cases

(Formerly 371k348.1(1))

State Board of Equalization and Assessment setting forth guidelines relative to state-owned lands based on differing characteristics were invalid.

**[3] Taxation** ↪ 2569

371k2569 Most Cited Cases

(Formerly 371k362)

State Board of Equalization and Assessment setting forth formulas for determining "aggregate additional assessments" for specified areas was valid pursuant to statutes authorizing to make those minimum assessments. Real Property Tax Law § 542, subd. 1. ECL § 15-2115.

**[4] Taxation** ↪ 2513

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ition assessments authorized by real property tax statute was valid. McKinney's Real Property Tax Law § 545.

**[5] Taxation** ↪ **2572**

371k2572 Most Cited Cases

(Formerly 371k363)

State Board of Equalization and Assessment's regulation subparts directing that copies of assessment be sent to various interested parties were proper.

**[6] Taxation** ↪ **2567**

371k2567 Most Cited Cases

(Formerly 371k360)

State Board of Equalization and Assessment's regulation allowing the Board to rescind a final assessment based on a change of assessment level that could easily be due to a change in valuation was invalid.

**\*\*510 \*66** Robert Abrams, Atty. Gen., Dept. of Law (Jane Levine, of counsel), New York City, for appellant.

Oppenheim & Meltzer, (Stephen L. Oppenheim, of counsel), Monticello, for Robert Kerwick and another, respondents.

Howard C. St. John & Associates, (Howard C. St. John, of counsel), Kingston, for Walter F. Heley, Jr., and another, respondents.

Before KANE, J.P., and CASEY, WEISS, LEVINE and HARVEY, JJ.

**\*\*511** WEISS, Justice.

The instant appeal involves two separate challenges to the role of the State Board of Equalization and Assessment (SBEA) in the assessment of taxable State-owned lands. Plaintiffs, **\*67** the Town of Denning and its assessor, commenced a declaratory judgment action to declare 9 NYCRR part 199 illegal and to enjoin SBEA from employing these

ers, the Town of Hardenburgh and its assessor, compared the 1984-1985 assessment roll with the full values suggested by SBEA [FN1] for State-owned land in the Town of Hardenburgh and provided copies of the assessments to SBEA for its approval under the Real Property Tax Law § 542 [3]. On July 1, 1984, SBEA approved the assessments and issued the necessary certification (*see, id.*). Thereafter, on August 27, 1984, SBEA rescinded its earlier certification due to a purported change in the level of more than 2% (*see, 9 NYCRR 199.1*) and reduced the previously approved value of State-owned lands from \$12,501,100 to \$11,003,490. Petitioners commenced a CPLR article 78 proceeding seeking to annul SBEA's revised assessments and to declare 9 NYCRR part 199 illegal and unenforceable. In *combining* both challenges together, Special Term held 9 NYCRR part 199 illegal in its entirety and enjoined SBEA from utilizing said regulations. The court found that the revised assessments of State-owned lands conformed to the requirements of Real Property Tax Law § 542 and annulled SBEA's revised assessments of State-owned lands in the Town of Hardenburgh, with the initial assessments certified as of July 1, 1984. This appeal by SBEA ensued.

FN1. SBEA has since discontinued its practice of providing suggested values for State-owned lands (*see, Matter of Town of State Bd. of Equalization & Assessment v. State Bd. of Equalization & Assessment*, 63 N.Y.2d 442, 445, n. 2, 483 N.E.2d 161, 472 N.E.2d 989).

[1] As a threshold matter, both plaintiffs maintain that the appeal is moot because SBEA has substantially amended 9 NYCRR part 199 following Special Term's decision. Plaintiffs agree. SBEA's challenge to Special Term's annulment of 9 NYCRR part 199 in its entirety is moot because it seeks to affect those sections which SBEA has amended (in particular 9 NYCRR 199.1).

regulations relative to the assessment of taxable 199-2.3, 199-2.4, 199-2.5, 199-5.1, 19  
State lands situated in the Town of Denning, Ulster  
County. After joinder of issue, plaintiffs moved  
for summary judgment. In the meantime, petition-

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199-7.1 [c], [d], [e][1], [2] ). Consequently, the appeal may not be considered moot (*see, Dworsky v. Murphy*, 98 A.D.2d 917, 470 N.Y.S.2d 910). We note that SBEA concedes that the deleted or amended regulations were invalid and does not \*68 challenge Special Term's decision in this regard. The validity of 9 NYCRR part 199 as amended, however, is not before us and we focus solely on the continuing validity of the unamended regulations.

In *Matter of Town of Shandaken v. State Bd. of Equalization & Assessment*, 63 N.Y.2d 442, 483 N.Y.S.2d 161, 472 N.E.2d 989, decided after the commencement of the present action but prior to Special Term's decision, the Court of Appeals clarified that the exclusive responsibility for the valuation of State-owned lands for tax assessment purposes is vested in the local assessors and that SBEA has no authority to change that valuation (*id.* at 447-448, 483 N.Y.S.2d 161, 472 N.E.2d 989; *see, Matter of State Bd. of Equalization & Assessment v. Kerwick*, 72 A.D.2d 292, 299, 425 N.Y.S.2d 640, *affd.* 52 N.Y.2d 557, 439 N.Y.S.2d 311, 421 N.E.2d 803). SBEA's responsibility is simply to ensure that the assessment percentage employed by local assessors conforms to the equalization rate in the particular taxing district (*id.*). SBEA acknowledges that so much of 9 NYCRR part 199 as intruded on the local assessors valuation function was invalidated by the *Shandaken* decision, and that the regulations were amended subsequent to Special Term's decision in an effort to delete the offending sections.

**\*\*512** The statute governing tax assessments of State-owned lands provided, during the time period in question, in pertinent part, that such property was to "be valued as if privately owned and assessed at the same percentage of full valuation as other taxable real property in the assessing unit" (Real Property Tax Law former § 542[1] ). [FN2] The procedural sequence continues to be that local assessors make the initial assessments, and submit the same

Law § 202[1][d]; § 542[3] ). SBEA is adopt rules and regulations necessary cise of its review function (Real Prop § 202[1][l] ), but such regulations ma the scope of its statutory authority (*see*, 2 N.Y.Jur.2d, Administrative La 151-152).

FN2. Real Property Tax Law § amended by the Laws of 1985 ( 16, eff. July 1, 1985).

[2][3][4][5] Turning to the unamended review, it is clear that 9 NYCRR 199-2.3, 199-2.4 and 199-2.5 set forth relative to the valuation of State-owned on differing physical characteristics, outside SBEA's domain. Special Term deemed these sections invalid. The next, 9 NYCRR 199- 5.1, sets forth for \*69 determining "aggregate additional for specified areas, including Adirond cells and river regulating districts. Since statutorily authorized to make these assessments (*see*, Real Property Tax Law ECL 15-2115), the regulation is valid firm the validity of 9 NYCRR 199-6. forth a formula for determining transitions, as authorized by Real Property 545. Insofar as 9 NYCRR 199- 7.1(c) ect that copies of assessments be sent terested parties, we find no impropriety

[6] We reach a different conclusion on NYCRR 199-7.1(e). [FN3] As noted specifically relied on 9 NYCRR 199- revise the Town of Hardenburgh's assessments of State-owned lands after the final assessment was filed. The revision was premised on the information contained in the assessor's report submitted to SBEA on August 21, 1984, indicating that the level of assessment greater than 2% and the assessor maintains that the revision did not affect

to SBEA for final approval (*see*, Real Property Tax but was designed to assure that the as centage conformed to the equalization tioners counter that the revision appli

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equalization rate to State-owned land than was applied to the remaining town property, in direct conflict with Real Property Tax Law former § 542

(1). The validity of these contentions need not detain us, for the issue is readily resolved by the fact that SBEA lacked statutory authorization for 9 NYCRR 199-7.1(e). [FN4] A regulation allowing SBEA to rescind a final assessment based on a change in assessment level that could easily be due to a change in valuation is clearly unauthorized (see, *Matter of Town of Shandaken v. State Bd. of Equalization & Assessment*, 63 N.Y.2d 442, 483 N.Y.S.2d 161, 472 N.E.2d 989, *supra*). As *Shandaken* instructs, SBEA enjoyed neither initial nor final valuation authority (*id.* at 447). It follows that Special Term properly declared 9 NYCRR 199-7.1(e) illegal. Having so determined, we need not decide whether the challenged revision was timely within the procedural framework of Real Property Tax Law § 542 (3).

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FN3. We note that this section has been amended in part by deleting 9 NYCRR 199-7.1(e)(3), which authorized SBEA to rescind approved assessments based on "a change in the market value ratio" (*id.*; see, 9 NYCRR 199-7.1(e) eff. May 17, 1985).

FN4. Since the inception of these proceedings, the Legislature has authorized SBEA to adjust approved assessments due to changes in the level of assessment by enacting Real Property Tax Law §§ 1220 and 1222 (as added by L.1985, ch. 280, § 6, eff. July 1, 1985).

**\*\*513 \*70** Judgment modified, on the law, without costs, by reversing so much thereof as declared 9 NYCRR 199-5.1, 199-6.2 and 199-7.1(c) and (d) illegal; said provisions are declared to be legal; and, as so modified, affirmed.

KANE, J.P., and CASEY, LEVINE and HARVEY,  
JJ., concur.

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