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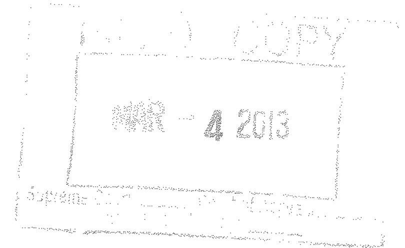
IN THE SUPREME COURT OF THE STATE OF IDAHO

ASHTON URBAN RENEWAL,	)	
	)	**Docket No. 40348-2012**
Petitioner/Respondent,	)	
	)	
v.	)	
	)	
ASHTON MEMORIAL, INC.,	)	
	)	
Respondent/Appellant.	)	
________________________________	)	



APPELLANTS' REPLY BRIEF

Appeal from the District Court of the Seventh Judicial District of
the State of Idaho, in and for the County of Fremont

Honorable Gregory W. Moeller, District Judge, presiding.

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I. Introduction

On January 8, 2013, appellant Ashton Memorial, Inc. (hereinafter Ashton Memorial) filed Appellant's Brief. On February 17, 2013, respondent Ashton Urban Renewal Agency (hereinafter AURA) filed Respondent's Brief. Ashton Memorial now files Appellant's Reply Brief.

II. AURA cannot be aggrieved by the Board of Equalization's decision to exempt property because Idaho Code § 50-2908(2) provides that AURA is to receive the balance, if any, of taxes actually levied.

The right and responsibility to determine what property is exempt and what property is taxable has been delegated to county boards of equalization, which is made up of the county commissioners. I.C. §§ 63-501, 50-2908(1). Not everyone can appeal a decision of the board of equalization. The right to appeal from decisions of the board of equalization is restricted by I.C. § 63-511(1) which reads as follows:

> Any time within thirty (30) days after mailing of notice of a decision of the board of equalization, or pronouncement of a decision announced at a hearing, an appeal of any act, order or proceeding of the board of equalization, or the failure of the board of equalization to act may be taken to the board of tax appeals. *Such appeal may only be filed by the property owner, the assessor, the state tax commission or by a person aggrieved when he deems such action illegal or prejudicial to the public interest.* Nothing in this section shall be construed so as to suspend the payment of property taxes pending said appeal.

Emphasis added.[1] AURA asserts that because it expected to receive revenue from Ashton

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[1]The B.T.A. cited to *State ex rel. St. Francois County School Dist. R-III v. Lalumondier*, 518 S.W.2d 638 (Mo. 1975). Neither of the parties has emphasized out of state case law in their briefing. Although similar issues have been addressed in other states, the decisions are largely dependent on the statutes involved and of limited value outside the respective states. *See cases collected at* 5 A.L.R.2d 576, *Who may complain of underassessment or nonassessment of property for taxation*, section (II)(a), Public as complainant (superseded by 9 A.L.R.4th 428 which does not address public entities); *District No. 55 v. Musselshell County*, 802 P.2d 1252

Memorial's property taxes, when the Fremont County Board of Equalization found Ashton Memorial to be exempt, it lost the expected revenue and qualifies as a "person aggrieved" and is therefore entitled to appeal. Resp. Br. 9-11. However, AURA does not address the portions of the Idaho Code that make clear that urban renewal agencies receive a portion only of taxes actually levied and make clear that they may receive nothing at all. I.C. § 50-2908(2)(b).

AURA asserts that it must have a right to appeal a decision that has a significant impact on its finances.[2] However, that assertion is not consistent with Idaho's statutes regarding urban renewal agencies. As both AURA and the district court point out, urban renewal agencies are not taxing districts. The Idaho legislature has not seen fit to allow urban renewal agencies to levy taxes. Urban renewal agencies are passive recipients of a portion of the taxes levied by the taxing district involved. The taxing district receives its portion of the tax revenues first. The urban renewal district then receives "*the balance, if any*, of the taxes levied on the taxable property located within the revenue allocation area." I.C. § 50-2908(2)(b) (emphasis added). As such, urban renewal agencies' revenue will be dependent on decisions of the associated taxing districts and the county board of equalization – those tasked with raising and levying taxes. AURA argues that if the decisions by these other governmental entities result in less revenue to AURA, that it has been harmed and is entitled to a remedy. Resp. Br. 10. However, that is not

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(Mont. 1990); *Avon Lake City School Dist. v. Ohio Dept. of Taxation*, 563 N.E.2d 754 (Ohio Ct. App. 1989); *Appeal of Moravian Home, Inc.*, 382 S.E.2d 772 (N.C. Ct. App. 1989). Also a number of the cases collected at 74 A.L.R. 1221, *Who is aggrieved within statutes providing remedies in tax cases,* involve governmental entities.

[2]In Respondent's Brief, AURA asserts that it relied on and budgeted for the receipt of the funds. Resp. Br. 5. However, the record contains no information regarding AURA's budget or its reliance on these funds.

the case, AURA has not been harmed as it has received everything it is entitled to receive – the balance of the taxes levied on taxable property located with its revenue allocation area. The mere fact that AURA expected to receive more does not make it aggrieved. AURA has no "personal, pecuniary, or property right" to unlevied taxes. *Application of Fernan Lake Village*, 80 Idaho 412, 415, 331 P.2d 278, 279 (1958). Its right, if any, extends only to levied taxes.

The Idaho legislature anticipated that decisions of this nature would be made by boards of equalization during the life of an urban renewal agency. The Local Economic Development Act anticipates that during the life of an urban renewal agency, property within its revenue allocation area may cease being taxable and become exempt or, conversely, cease being exempt and become taxable. The definition of "base assessment roll" makes clear that if the tax status of property changes from taxable to exempt or from exempt to taxable, the value of the property is to be deducted or added to the base assessment roll. I.C. § 50-2903(4). The legislature was aware that decisions regarding the tax status of property would continue to be made during the life of an urban renewal agency. Yet the statutes are clear that urban renewal agencies funds come from "taxes levied by the taxing district or on its behalf on taxable property" and even then, only the balance, if any, after the taxing district receives it allocation. I.C. § 50-2908(2). Nothing in the statute gives an urban renewal agency a right to taxes not levied or potential taxes from property found to be exempt. AURA cannot be a person aggrieved as it has no right to potential unlevied taxes.

III. The Board of Tax Appeal's decision that AURA is not a *person aggrieved* pursuant to Idaho Code § 63-511(1) does not read the phrase out of the statute as there are various other situations where there could be a person aggrieved.

AURA asserts that denying it a right to appeal makes the "person aggrieved" clause in I.C. § 63-511(1) a nullity and such a reading is highly disfavored. Resp. Br. 10. However, that is not the case. The fact that an urban renewal agency does not qualify as a person aggrieved under I.C. § 63-511(1) does not mean that no one will. Neither this court nor counsel is required to imagine every possible scenario in which a person could qualify as a "person aggrieved" under the statute. However, it is not difficult to imagine such a case. For example, it is not unusual for a party entering into a long-term lease to assume the obligation to pay property taxes. In that case, the lessee would not qualify as a property owner, but would qualify as a person aggrieved as his "personal, pecuniary, or property rights" would be directly affected. *For example see Ames Dept. Stores, Inc. v. Assessors*, 511 N.Y.S.2d 707 (N.Y. App. Div. 1987). The fact that AURA is not a person aggrieved does not make the clause a nullity as other persons may qualify as aggrieved under the clause.

IV. AURA's interests are not any different from that of any other urban renewal agency or other taxing district and AURA's reading of I.C. § 63-511(1) would allow any urban renewal agency or taxing district to challenge any decision by a county board of equalization that reduces its tax revenues.

AURA's reading of I.C. § 63-511(1) would allow any urban renewal agency or any other agency or entity that receives some portion of levied property taxes to appeal exemption and appraisal decisions which result in a diminishment of their expected revenue. This is contrary to the plain meaning of I.C. 63-511(1) which specifically lists two governmental entities authorized to appeal a decision from the board of equalization – the assessor and the state tax commission.

The specification of these representatives of the state should be read to exclude all others. *KGF Development, LLC v. City of Ketchum*, 149 Idaho 524, 528, 236 P.3d 1284, 1288 (2010) (reaffirming the maxim *expressio unius est exclusio alterius*). The use of the word *only* indicates that the list is intended to be exclusive.

It should be noted that the state tax commission has both the authority, and the responsibility, to correct exemptions improperly granted a county board of equalization. Idaho Code section 63-105A gives state commission both the power and duty to do the following:

> (1) To supervise and coordinate the work of the several county boards of equalization.
> (4) To require all assessments of property in this state to be made according to law; and for that purpose to correct, when it finds the same to be erroneous, any assessments made in any county, and require correction of the county assessment records accordingly.
> (6) To instruct, guide, direct and assist the county assessors and county boards of equalization as to the methods best calculated to secure uniformity in the assessment and equalization of property taxes, to the end that all property shall be assessed and taxed as required by law.
> (7) To reconvene, whenever the state tax commission may deem necessary, any county board of equalization, notwithstanding the limitations of chapter 5, title 63, Idaho Code, for equalization purposes and for correction of errors.

If a county board of equalization grants improper exemptions, the state tax commission has both the duty and the power to correct the errors.

AURA and the district court correctly point out that AURA's interests are not identical to those of the government entities involved. However, this is true of all governmental entities or all recipients of tax money. The interests of the county are not identical to the interests of the cemetery district and both are distinct from those of a school district, city, or highway district. However, the legislature has seen fit to give boards of equalization the responsibility to value

property and rule as to its exempt status. All government entities that receive property taxes are impacted by the decisions of the board of equalization in the same manner as AURA. Nothing in I.C. § 63-511(1) indicates that the legislature intended to give all governmental entities the right to appeal decisions of the board of equalization in which their only interest is an expectation of receiving some portion of the tax revenue. The interests of taxing districts and others who receive funds from property taxes are provided for by having the assessments and exemption decisions made by the board of equalization. Because the board of equalization is also the board of county commissioners, it has a built in interest in ensuring that the valuations are accurate and inappropriate exemptions are not granted – the county receives its funding from the same property taxes that fund the other governmental entities.

V. AURA and all urban renewal districts are creations of the state and do not enjoy due process or equal protection rights as against their creator.

AURA correctly points out that it is an "independent body corporate and politic" and is not an alter ego for the city for purposes of the debt restrictions in Article VIII, §§ 3 and 4 of the Idaho Constitution. Resp. Br. 15. However, it is a creation of the state and exists for the purpose of carrying out government functions. Just as any other subdivision of the state, it exists and operates at the state's pleasure and consistent with the state statutes controlling it. In a recent case involving the distinction between political subdivisions of the state of Idaho, the U.S. Supreme Court stated the principle as follows:

> A private corporation is subject to the government's legal authority to regulate its conduct. A political subdivision, on the other hand, is a subordinate unit of government created by the State to carry out delegated governmental functions. A private corporation enjoys constitutional protections, *see First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 778, n. 14, 98 S.Ct. 1407, 55 L.Ed.2d 707

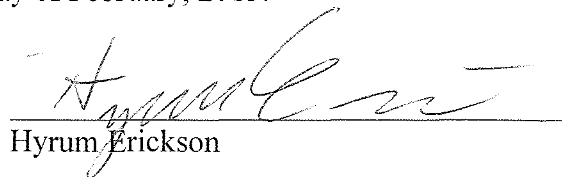
> (1978), but a political subdivision, "created by the state for the better ordering of government, has no privileges or immunities under the federal constitution which it may invoke in opposition to the will of its creator." *Williams v. Mayor of Baltimore*, 289 U.S. 36, 40, 53 S.Ct. 431, 77 L.Ed. 1015 (1933); *see Trenton v. New Jersey*, supra, at 185, 43 S.Ct. 534 (municipality, as successor to a private water company, does not enjoy against the State the same constitutional rights as the water company: "[T]he relations existing between the State and the water company were not the same as those between the State and the City").

Ysursa v. Pocatello Educ. Ass'n, 555 U.S. 353, 363-364, 129 S.Ct. 1093, 1101 (2009). The principle is cited by numerous state courts as well. *See Kenai Peninsula Borough v. State, Dept. of Community & Regional Affairs*, 751 P.2d 14 (Alaska, 1988); and cases cited therein. AURA has no ability or right to invoke constitutional protections as against its creator. If the Idaho legislature determined that urban renewal districts were to be done away with, AURA could not claim that doing so violates its rights. The Idaho Legislature has made, and continues to make, changes to the manner in which urban renewal districts are funded. For example, in 2012, it passed H.B. No. 697, which created an additional type of school levy that takes priority over urban renewal district funding. 2012 Idaho Laws Ch. 339. If this legislation diminishes funds available to AURA or any urban renewal agency, it is not entitled to assert due process or equal protection claims against the State. Similarly, the Idaho legislature has determined that AURA is to receive only the remainder, if any, of taxes levied, and did not provide AURA any input into what taxes are, in fact, levied. AURA may not claim that doing so violates its rights.

VI. Conclusion

Because AURA is not a person aggrieved pursuant to I.C. § 63-511 and for the reasons contained in Appellant's Brief, the Court should reverse the district court's decision, affirm the decision of the Board of Tax Appeals, and dismiss AURA's appeal.

RESPECTFULLY SUBMITTED this 28th day of February, 2013.



Hyrum Erickson

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DATED this 28th day of February, 2013.

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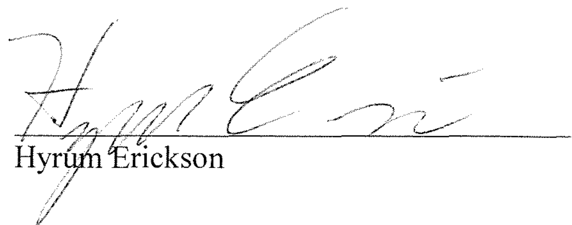

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