

State Tax Commission of Missouri

WEST COUNTY BMW,)
)
 Complainant,)
)
 v.)
)
 PHILIP MUEHLHEAUSLER, ASSESSOR,)
 ST. LOUIS COUNTY, MISSOURI,)
)
 Respondent.)

Appeal Number 05-12569

RECEIVED MAR 20 2009

DECISION AND ORDER

HOLDING

Decision of the St. Louis County Board of Equalization sustaining the assessment made by the Assessor is **AFFIRMED**. The State Tax Commission finds that the assessment was not grossly excessive as to constitute discrimination.

Complainant appeared by James P. Gamble, Attorney at Law.

Respondent appeared by Edward W. Corrigan, Associate County Counselor.

ISSUE

The Commission takes this appeal to determine: (1) the true value in money for the subject property on January 1, 2005; and (2) whether there was an intentional plan by the assessing officials to assess the property under appeal at a ratio greater than 32% of true value in money, or at a ratio grossly excessive to the average 2005 commercial assessment ratio for St. Louis County.

SUMMARY

The Assessor determined a true value of the property at \$341,300, as commercial property, assessed value of \$109,210. The Board of Equalization sustained the Assessor's value.

Complainant appealed on the ground of overvaluation and discrimination. A hearing was conducted from July 22, 2008, to July 29, 2008, at the St. Louis County Government Center, Clayton, Missouri. Prior to hearing, the parties entered a stipulation as to value of \$383,200. Therefore, the only issue remaining is whether there was an intentional plan by the assessing officials to assess the property under appeal at a ratio greater than 32% of true value in money, or at a ratio grossly excessive to the average 2005 commercial assessment ratio for St. Louis County.

The State Tax Commission, having considered all of the competent evidence upon the whole record, enters the following Decision and Order.

Complainant's Evidence

This action was originated by Steven A. Weber, a real estate tax representative and consultant, working on behalf of Complainant. The tax representative, a Missouri State Certified General Appraiser, conducted a preliminary ratio study for the assessment of commercial property in St. Louis County as of January 1, 2005 (Exhibits E, F). The study was done using sales information from MetroScan, a commercially available database that gathers data from St. Louis County records (Exhibit P). The tax representative gathered sales information from sales occurring between September 1, 2004, and March 21, 2005 (Exhibits E, P). Based upon the information generated, the tax representative estimated that the level of assessment of commercial property in St. Louis County for the 2005 assessment year was 25.8% (Exhibit P). Little effort was made to verify sales and no effort was made to test the sales sample for representativeness. This preliminary ratio study was prepared as part of the decision-making process to determine whether or not discrimination cases should be filed (Tr. 62). The tax representative has no formal training in statistical modeling (Tr. 85-86). After an unsuccessful

appeal to the Board of Equalization, the Complainant made the determination to pursue the appeal to the State Tax Commission. He sought the help of the Public Policy Research Center at the University of Missouri – St. Louis (Exhibit P).

Samrita Lohani is a research specialist (researcher) at the Public Policy Research Center at the University of Missouri – St. Louis (Exhibit O). The researcher's work involves quantitative analysis. She is supervised by Mr. Steve Gardner. The researcher gathered assessor files and sales files (Exhibit O). She trimmed those files to relevant dates and further trimmed the files to include just commercial properties (Tr. 11).

The information from the county consisted of land use codes, property class, property sales information, and county sales validity codes (Tr. 22). A total of 664,715 untrimmed sales were received (Tr. 23). Those sales were trimmed to 112,121 sales which occurred in 2004 and 2005 (Tr. 25). These sales were further trimmed to include only 3,165 commercial properties (Tr. 29, 31). This information was provided to the tax representative's company, Property Assessment Review (hereinafter PAR) (Tr. 38).

Thereafter, the tax representative hired Bob Gloudemans, a mass appraisal consultant and a partner in Almy, Gloudemans, Jacobs & Denne, to prepare a ratio study of assessment levels in St. Louis County for tax year 2005 (Tr. 91). The consultant has experience in ratio related issues including development of the IAAO workshop on Fundamentals of Assessment Ratio Studies, authoring or contributing to numerous appraisal books, and developing standards for ratio studies (Exhibits D, U).

Per IAAO standards, the tax representative selected 995 sales occurring between July 1, 2004, and June 30, 2005 (Tr. 95-96). These 995 sales were sent to the consultant for review (Tr. 91). The file included parcel identifiers, recording numbers and dates, sales prices, sales

validation codes assigned by the County, property addresses, ownership information, property types (land use codes), 2005 appraised and assessed values, and various property characteristics data (Exhibit U).

The consultant assigned a rejection code to 115 sales that the County had coded as unusable because (1) the sale was not an open market sale; (2) changes occurred after sale; (3) the sale was between related parties; (4) the sale was a foreclosure; (5) the sale was a land contract or atypical financing; (6) the sale involved excess personal property; or (7) the sale involved a partial interest (Exhibit U). The remaining sales included 116 sales that the County had validated and 688 sales that were valid based upon a review of the certificate of value but had not been verified (Exhibit U). All 995 sales were sent to Russell Lauer, an MAI appraiser, to review and determine validity for sales which had not already been rejected by the consultant (Exhibit U).

The appraiser and his associate worked on verifying the sales provided to them by the consultant. The associate did most of the verification, but had meetings at least weekly to keep the appraiser advised of progress and to resolve questions that might arise (Tr. 194, 306-307).

The associate has some training in appraisal methodology and was familiar with the IAAO standards of ratio studies, having worked on the 2001 commercial ratio case and the 2003 residential ratio case in St. Louis County (Tr. 148). The consultant provided the appraiser and his company with guidelines for sales validation procedures (Exhibit R). The associate was familiar with these guidelines (Tr. 152). During the course of the validations, the consultant was consulted regarding specific situations and instructed that sales were to be screened according to IAAO standards (Tr. 154).

The associate's initial review indentified 307 sales which were assigned various rejection codes. Also the associate identified multi-parcel or duplicate sales, in which several parcels transferred together from the same buyer to the same seller in the same transaction. Combining these transfers under one parcel for purpose of analysis eliminated 92 transfers. Then the appraiser and his associate reviewed their internal records and identified 87 sales which they considered to be valid either because they had appraised the properties and were familiar with the sales as part of their appraisals or because they had used the sale as comparables in the course of the firm's appraisal practice. Taking into account the 115 sales to which the consultant had already assigned rejection codes, the 91 multi-parcel or duplicates eliminated and the 307 sales eliminated during the initial review, 394 sales were left from the initial sample of 995 sales, requiring further review (Exhibits R, T).

For these 394 sales, the associate attempted to locate contact information for the buyer, the seller, or both for each of the sales. He phoned the buyer or the seller, or both, in an attempt to validate the sale. He made at least one attempt to contact at least one party to each of the sales, and often two or three attempts – leaving messages when possible. When he did contact a party, he questioned them confirming whether the sale price reported in the county records was correct and whether or not there were any unusual conditions that might make the sale invalid for ratio study purposes. Most parties to the sale were cooperative to some extent (Exhibits R, T). If no rejection code was applicable, the sale was to be considered valid (Tr. 188).

For those sales where the associate was not able to reach a party or the parties were unwilling to cooperate, the associate reviewed all of the available information to attempt to determine validity. This review included checking the deed, the certificate of value, Secretary of State records and St. Louis County records. The appraiser and his associate reviewed all of this

information and discussed whether the sale price per square foot of the properties appeared to fall within a reasonable range of value for that type of property. The appraiser and his associate excluded sales in this phase only if the price fell well outside the range of prices typically seen for that type of property in the appraisal practice (Exhibit T).

From the 394 sales, the associate determined that 280 sales were valid and 114 were not. Together with the 87 sales previously determined to valid, the appraiser and his associate determined that a total of 367 sales were valid for including in the ratio study (Exhibit T).

The associate attempted to validate all of the sales but acknowledged that asking all of the questions suggested by the consultant was not always accomplished (Tr. 159-160). If the contact indicated that the sale was a "normal arm's-length transaction," the associate usually didn't ask a lot of follow-up questions (Tr. 159, 187, 189). The appraiser indicated that it was impossible to validate the sales to the extent suggested by the consultant (Tr. 377-378). The consultant later agreed that the problem with sales ratio studies is in the sales screening (Tr. 551).

In preparing the ratio study, the consultant first determined that the correct time period for sales was July, 2004 through June, 2005, bracketing the tax day (Tr. 442). The consultant conducted a "T statistic" test to determine whether a meaningful time trend existed which would require time adjustments to the various sales prices. Based upon the results of this test, the consultant concluded that no time adjustment was warranted (Tr. 444-445).

As sample size increases the reliability of the results increases (Tr. 458). The larger the sample size the more likely that an improper inclusion or exclusion would not have any kind of material effect on the outcome of the statistical validity (Tr. 458). If most of the sales represent market value, sales prices will be centered around that value (Tr. 459). Randomness is a desirable feature, but it is not important in determining representativeness (Tr. 406-407). The

objective of any ratio study is to try to insure that the ratios are representative of the population (Tr. 430).

In order to obtain "representativeness" (1) the appraisal procedures used to value the samples must be similar to those used to value the corresponding population; (2) the sample properties cannot be unduly concentrated in certain areas or among certain types of properties; and (3) the sale prices or independent appraisals must provide good surrogates for market values (Tr. 460, 462).

The consultant determined that it was reasonable to use the county's initial screenings based upon the certificates of value because these screenings usually dealt with sales between related parties and other equally obvious matters; that the criteria for certificate of value screenings were pretty straight forward; and were something that almost any state agency would agree with (Tr. 449). After the initial screenings, the county had assigned codes of "X" or "V" to the sales. About 13% of the sales had already been coded "X" by the county. "X" sales are those which have been validated by the county. "V" sales are those in which certificates of value had been filed but validation had not been completed by the county (Tr. 450-451). Thereafter multi-parcel sales were combined, duplicate sales were dropped out, and properties having re-sales during the determined period of time were limited to only considering the most recent sales information (Tr. 451-456). The consultant divided the sales into five different commercial property types and divided the sales into twelve different market areas (Tr. 456-457).

The consultant prepared a sales validation procedure, including instructions and guidelines (Tr. 480-481). The questionnaire asked for information which the consultant deemed useful in understanding sales (Tr. 482). The consultant chose not to use the questionnaire recommended by the IAAO, because some of the information requested in the IAAO form had

already been provided through the certificate of value or county validation codes and some information, such as financing and interest rates, was not particularly important in the relevant time period because the market remained healthy (Tr. 483, 486). Furthermore, keeping the questions as concise as possible increased the likelihood that people would be willing to provide that information (Tr. 484-485). In addition to the written guidelines, the consultant also had conversations with the appraiser and his associate when specific issues arose concerning validation (Tr. 481).

The consultant used 12 different market areas for stratification. Those market areas were areas developed for the 2001 ratio study (Tr. 494). Stratifying gives the appropriate weight to each market area and a more accurate estimate of the median for the entire jurisdiction (Tr. 506). The consultant also conducted a chi-square test to test the distribution of the sales sample against the distribution of the population. The chi-square test compares the expected frequency of the strata against the actual frequency. Based upon this test, the consultant concluded that there was no significant difference that couldn't be attributed to changes between the distribution of the sample and the distribution of the population (Tr. 533-534).

The consultant computed three medians. He computed the overall total median for the sample to be .249. He computed the median weighted by property type which came out to .239. Finally he computed the median weighted by market area which came out to be .240 (Tr. 545). A 95% confidence interval indicates a pooled median of .233 to .260 (Tr. 546). A 95% confidence level is a high level of confidence. It means that there is only a 5% chance that the true ratio does not fall in the indicated range (Exhibit U). The consultant recommended that the Tax Commission adopt a weighted median of .25 (Tr. 549-550).

The “coefficient of dispersion” (COD) measures uniformity of ratios (Tr. 556-557; Exhibit U). The consultant testified that IAAO finds that for commercial property in large urban jurisdictions a 15% to 20% COD is considered “good dispersion” (Tr. 409-410, 539; Exhibits C and U).

Respondent’s Evidence

Mr. Patrick M. O’Conner testified on behalf of the county. Mr. O’Conner is a Certified General Real Estate Appraiser. He has been involved in mass appraisal since 1973. The appraiser contributed to the writing of the IAAO’s standards on ratio studies. The appraiser prepared a ratio study for the county including a statistical review of commercial sales occurring between 2000 and 2005, employing IAAO standards (Written Direct Testimony, O’Conner). The appraiser testified that the median assessment was 26.4% with a 95% confidence level (Tr. 570).. The appraiser’s ratio study considered only improved commercial properties (Tr. 580).

FINDINGS OF FACT

1. Jurisdiction over this appeal is proper. Complainant timely appealed to the State Tax Commission from the decision of the St. Louis County Board of Equalization.
2. The market value of the property on the subject tax day was \$383,200 (stipulation).
3. Both the Respondent’s appraiser and the Complainant’s consultant are experts in the preparation of sales ratio studies. Their sales ratio studies comply with the industry standards as articulated by the IAAO. Although the Respondent’s appraiser failed to consider sales of vacant commercial properties, that failure was easily remedied and did not distract from his otherwise competent work product. Respondent did not engage in the extensive verification of sales that the Complainant pursued. The studies suggest that the assessment level in St. Louis

County as of January 1, 2005, was between 24.8% and 26%. The State Tax Commission adopts the weighted median of 25%.

4. No evidence was presented suggesting that the Board of Equalization applied anything less than the statutorily required 32% assessment rate to commercial properties when attempting to determine assessed value. Therefore, determining that the actual level of assessment in the county for 2005 was 25% necessarily means that a large portion of the commercial properties within the county were undervalued for tax years 2005 and 2006.

5. The "coefficient of dispersion" (COD) measures uniformity of ratios. The Complainant's consultant testified according to the IAAO standards for commercial property in large urban jurisdictions a 15% to 20% COD is considered "good dispersion." IAAO standards call for a COD of 15% to 20%.

6. The subject property's true value is \$383,200. The property was assessed at \$109,210, or 28.5% of true value.

CONCLUSIONS OF LAW AND DECISION

Jurisdiction

The Commission has jurisdiction to hear this appeal and correct any assessment which is shown to be unlawful, unfair, arbitrary or capricious. The hearing officer shall issue a decision and order affirming, modifying or reversing the determination of the board of equalization, and correcting any assessment which is unlawful, unfair, improper, arbitrary, or capricious.¹

Official and Judicial Notice

Agencies shall take official notice of all matters of which the courts take judicial notice.²

Courts will take judicial notice of their own records in the same cases.³ In addition, courts may take judicial notice of records in earlier cases when justice requires⁴ or when it is

necessary for a full understanding of the instant appeal.⁵ Courts may take judicial notice of their own records in prior proceedings involving the same parties and basically the same facts.⁶

Duty to Investigate

In order to investigate appeals filed with the Commission, the Commission has the duty to inquire of the owner of the property or of any other party to the appeal regarding any matter or issue relevant to the valuation, subclassification or assessment of the property. The Commission's decision regarding the assessment or valuation of the property may be based solely upon its inquiry and any evidence presented by the parties, or based solely upon evidence presented by the parties.⁷

Weight to be Given Evidence

The Commission is not bound by any single formula, rule or method in determining true value in money, but is free to consider all pertinent facts and estimates and give them such weight as reasonably they may be deemed entitled. The relative weight to be accorded any relevant factor in a particular case is for the Commission to decide.⁸

Trier of Fact

The Commission as the trier of fact may consider the testimony of an expert witness and give it as much weight and credit as they may deem it entitled to when viewed in connection with all other circumstances. The Commission is not bound by the opinions of experts who testify on the issue of reasonable value, but may believe all or none of the expert's testimony and accept it in part or reject it in part.⁹

Opinion Testimony by Experts

If specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert on that subject, by knowledge, skill, experience, training, or education, may testify thereto.

The facts or data upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing and must be of a type reasonably relied upon by experts in the field in forming opinions or inferences upon the subject and must be otherwise reliable, the facts or data need not be admissible in evidence.¹⁰

Complainant's Burden of Proof

The taxpayer is the moving party seeking affirmative relief, therefore, the taxpayer bears the burden of proving the vital elements of the case, i.e., the assessment was "unlawful, unfair, improper, arbitrary or capricious," by substantial and persuasive evidence¹¹

Substantial evidence can be defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.¹² *Persuasive evidence* is that evidence which has sufficient weight and probative value to convince the trier of fact. The persuasiveness of evidence does not depend on the quantity or amount thereof but on its effect in inducing belief.¹³

Discrimination

In order to obtain a reduction in assessed value based upon discrimination, the Complainant must (1) prove the true value in money of their property on January 1, 2005; and (2) show an intentional plan of discrimination by the assessing officials resulting in an assessment of that property at a greater percentage of value than other property, generally, within the same class within the same taxing jurisdiction or show that the level of an assessment is so grossly excessive as to be inconsistent with an honest exercise of judgment.¹⁴

There is no evidence that there was an intentional plan of discrimination by the assessing officials so we must determine if the Complainant has presented substantial and persuasive evidence to show that the level of their assessment is so grossly excessive as to be inconsistent with an honest exercise of judgment. "By requiring that the level of an assessment be so grossly excessive as to be inconsistent with an honest exercise of judgment in cases in which intentional discrimination is not shown, the courts and the Commission refrain from correcting assessments which reflect no more than *de minimus* errors of judgment on the part of assessors. Such a standard recognizes that '[w]hile practical uniformity is the constitutional goal, absolute uniformity is an unattainable ideal'." ¹⁵

DECISION

Where there is a claim of discrimination based upon a lack of valuation consistency, Complainant must first prove the level of assessment for the subject property in 2005. This is done by independently determining the market value of the subject property and dividing the market value into the assessed value of the property as determined by the Assessor's office.

Complainant must then prove the average level of assessment for commercial property in St. Louis County for 2005. This is done by (a) independently determining the market value of a representative sample of commercial properties in St. Louis County; (b) determining the assessed value placed on the property by the Assessor's office for the relevant year; (c) dividing the assessed value by the market value to determine the level of assessment for each property in the sample; and (d) determining the mean and median of the results.

The difference between the actual assessment level of the subject property and the average level of assessment for all commercial property, taken from a sufficient representative sample in St. Louis County, must demonstrate a disparity that is grossly excessive. ¹⁶

In this instance, Complainant has demonstrated that the subject property was undervalued on the tax day and that the correct market value of the subject property was \$383,200 on January 1, 2005 (stipulation). Complainant then established that the average assessment ratio for the county for January 1, 2005, was 25% rather than the statutorily mandated 32%. At 25%, the assessed value for the subject property should have been \$95,800. Instead, the assessed value for the subject property, as determined by the Board of Equalization, was \$109,210, or 28.5%. The issue is whether the difference between the average assessment level for the county (25%) and the assessment level for the taxpayer's property (28.5%) is grossly excessive.

In *Savage v. State Tax Commission*, 722 S.W.2d 72 (Mo. banc 1986), the Supreme Court ruled that the State Tax Commission was amply justified in determining that the difference between the average assessment level for the county and the assessment level for the taxpayer's property was grossly excessive and therefore unconstitutionally discriminatory. The State Tax Commission, in *Savage*, found that the average level of assessment for Greene County was 20.9%. It further found that the Taxpayer's property was assessed at 33 1/3 %. The State Tax Commission found that the assessment was grossly excessive. The Court agreed that the disparity in that case was so grossly excessive as to be entirely inconsistent with an honest exercise of judgment and therefore had the effect of intentional discrimination.

The "average level of assessment" means the "arithmetical median of the varying percentages of true value applied by ... the assessor in assessing properties within a taxing district." In the case at bar, the arithmetical median of the varying percentages of true value applied by the assessor in assessing properties within St. Louis County in 2005 is 25%. The Complainant's property was assessed at 28.5% of its true value.

The next step is to compare the average level of assessment for St. Louis County for the 2005 assessment cycle (25%) with the Complainant's assessment (28.5%) to determine if the disparity in this case is so grossly excessive as to be entirely inconsistent with an honest exercise of judgment or simply a "*de minimus* error of judgment on the part of assessor" recognizing that absolute uniformity is an unattainable ideal.

The IAAO sets standards for Assessment Ratio Studies including the acceptable Coefficient of Dispersion (COD). COD measures the average deviation from the median and expresses it as a percentage of the median ratio. The lower the COD, the more uniform the assessments within a particular county. The Complainant's expert testified that IAAO standards call for a COD of 15 percent to 20 percent for commercial properties.

The median level of assessment for St. Louis County for the 2005 assessment cycle is 25% and the Complainant's assessment for the 2005 assessment cycle is 28.5%. Since the Complainant's assessment is within an acceptable range of variance, more specifically, within an acceptable COD threshold (COD of 15-20%), the Complainant's assessment cannot be considered to be so grossly excessive as to be entirely inconsistent with an honest exercise of judgment or inconsistent with a "*de minimus* error of judgment on the part of assessor" recognizing that absolute uniformity is an unattainable ideal.¹⁷

ORDER

The assessed valuation for the subject property as determined by the Assessor and sustained by the Board of Equalization for St. Louis County for the subject tax day is
AFFIRMED.

Judicial review of this Order may be had in the manner provided in Sections 138.432 and 536.100 to 536.140, RSMo within thirty days of the mailing date set forth in the Certificate of Service for this Decision.

If judicial review of this decision is made, any protested taxes presently in an escrow account in accordance with this appeal shall be held pending the final decision of the courts. If no judicial review is made within thirty (30) days, this decision and order is deemed final and the Collector of St. Louis County, as well as the collectors of all affected political subdivisions therein, shall disburse the protested taxes presently in an escrow account in accord with the decision on the underlying assessment in this appeal.

If any or all protested taxes have been disbursed pursuant to Section 139.031(8), RSMo, Complainants may apply to the circuit court having jurisdiction of the cause for disposition of the protested taxes held by the taxing authority.

Any Finding of Fact which is a Conclusion of Law or Decision shall be so deemed. Any Decision which is a Finding of Fact or Conclusion of Law shall be so deemed.

SO ORDERED March 17, 2009.

STATE TAX COMMISSION OF MISSOURI



Bruce E. Davis, Chairman



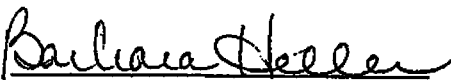
Jennifer Tidwell, Commissioner



Charles Nordwald, Commissioner

Certificate of Service

I hereby certify that a copy of the foregoing has been mailed postage prepaid on this 17th day of March, 2009, to: James Gamble, 8909 Ladue Road, St. Louis, MO 63124, Attorney for Complainant; Edward Corrigan, Associate County Counselor, Attorney for Respondent, County Government Center, 41 South Central Avenue, Clayton, MO 63105; Philip Muehlheausler, Assessor, County Government Center, 41 South Central Avenue, Clayton, MO 63105; John Friganza, Collector, County Government Center, 41 South Central Avenue, Clayton, MO 63105.



Barbara Heller
Legal Coordinator

¹ Article X, section 14, Mo. Const. of 1945; Sections 138.430, 138.431, 138.431.4, RSMo.

² Section 536.070(6), RSMo.

³ State ex rel. Horton v. Bourke, 129 S.W.2d 866, 869 (1939); Barth v. Kansas City Elevated Railway Company, 44 S.W. 788, 781 (1898).

⁴ - Burton v. Moulder, 245 S.W.2d 844, 846 (Mo. 1952); Knorp v. Thompson, 175 S.W.2d 889, 894 (1943); Bushman v. Barlow, 15 S.W.2d 329, 332 (Mo. banc 1929)

⁵ State ex rel St. Louis Public Service Company v. Public Service Commission, 291 S.W.2d 95, 97 (Mo. banc 1956).

⁶ In re Murphy, 732 S.W.2d 895, 902 (Mo. banc 1987); State v. Gilmore, 681 S.W.2d 934, 940 (Mo. banc 1984); State v. Keeble, 399 S.W.2d 118, 122 (Mo. 1966).

⁷ Section 138.430.2, RSMo.

⁸ St. Louis County v. Security Bonhomme, Inc., 558 S.W.2d 655, 659 (Mo. banc 1977); St. Louis County v. STC, 515 S.W.2d 446, 450 (Mo. 1974); Chicago, Burlington & Quincy Railroad Company v. STC, 436 S.W.2d 650 (Mo. 1968).

⁹ St. Louis County v. Boatmen's Trust Co., 857 S.W.2d 453, 457 (Mo. App. E.D. 1993); Vincent by Vincent v. Johnson, 833 S.W.2d 859, 865 (Mo. 1992); Beardsley v. Beardsley, 819 S.W.2d 400, 403 (Mo. App. 1991); Curnow v. Sloan, 625 S.W.2d 605, 607 (Mo. banc 1981).

¹⁰ Section 490.065, RSMo; State Board of Registration for the Healing Arts v. McDonagh, 123 S.W.3d 146 (Mo. SC. 2004); Courtroom Handbook on Missouri Evidence, Wm. A. Schroeder, Sections 702-505, pp. 325-350; Wulfin v. Kansas City Southern Industries, Inc., 842 S.W.2d 133 (Mo. App. E.D. 1992).

¹¹ See, *Westwood Partnership v. Gogarty*, 103 S.W.3d 152 (Mo. App. E.D. 2003); *Daly v. P. D. George Co.*, 77 S.W.3d 645 (Mo. App. E.D. 2002); *Reeves v. Snider*, 115 S.W.3d 375 (Mo. App. S.D. 2003). *Industrial Development Authority of Kansas City v. State Tax Commission of Missouri*, 804 S.W.2d 387, 392 (Mo. App. 1991).

¹² See, *Cupples-Hesse Corporation v. State Tax Commission*, 329 S.W.2d 696, 702 (Mo. 1959).

¹³ *Brooks v. General Motors Assembly Division*, 527 S.W.2d 50, 53 (Mo. App. 1975).

¹⁴ *Savage v. State Tax Commission*, 722 S.W.2d 72 (Mo. banc 1986); *Westwood Partnership v. Gogarty*, 103 S.W.3d 152 (Mo. App. E.D. 2003.)

¹⁵ *Savage v. State Tax Commission*, 722 S.W.2d 72 (Mo. banc 1986).

¹⁶ *Savage v. State Tax Commission*, 722 S.W.2d 72, 79 (Mo. banc 1986).

¹⁷ *Sperry Corp. v. State Tax Commission*, 695 S.W.2d 464, 468 (Mo. banc 1985) (quoting *Sunday Lake Iron Company v. Wakefield Tp.*, 247 U.S. 350, 353, 38 S.Ct. 495, 495, 62 L.Ed. 1154, 1156 (1918)). See also *Brandel v. State Tax Commission of Missouri*, 716 S.W.2d 886, 888-89 (Mo. App. 1986)