JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2012-07-17-07 / NON-PRECEDENTIAL**
ID: **P-11-576-K**
DATE: **JULY 17, 2012**
DISPOSITION: **DENIED**
TAX TYPE: **AD VALOREM**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Protestant, COMPANY is represented by MANAGER, Manager-Property Taxes for Protestant. The Ad Valorem Tax Division of the Oklahoma Tax Commission ("Division") is represented by OTC ATTORNEY, Senior Assistant General Counsel, Office of the General Counsel, Oklahoma Tax Commission.

STATEMENT OF THE CASE

Protestant's *Application for Five-year Ad Valorem Tax Exemption for Oklahoma Manufacturing or Research & Development Facilities* ("*Application*"), XM-1 for new personal property (machinery and equipment) acquired in 2010 at a cost of $13,153,493.00 was filed by the COUNTY Assessor with the Division on May 16, 2011. By letter dated September 29, 2011, Protestant sought to amend the *Application* by adding thereto other newly acquired 2010 personal property at a cost of $4,275,544.91 that they admit was overlooked and not included on the *Application*. The Division denied the request by letter dated October 7, 2011, citing Section 2902(E) and (F). On October 5, 2011, the Division inspected Protestant's facilities and approved the *Application* for those assets included on the *Application* filed with the county assessor and Tax Commission.

The Division's file was referred to the Office of the Administrative Law Judges for further proceedings consistent with the Uniform Tax Procedure Code[1] and the Rules of Practice and Procedure before the Office of Administrative Law Judges[2]. It was docketed as a protest and assigned the Case No. P-11-576-K.

A pre-hearing conference was scheduled for November 22, 2011, by *Prehearing Conference Notice* issued October 17, 2011.[3] In accordance with the conference, a *Prehearing Conference Order* was issued setting forth the procedure by which the case would be submitted for decision.[4]

The *Ad Valorem Division's Motion for Summary Disposition* ("*Motion*") was filed December 20, 2011.[5] Protestant's response to the *Motion* was filed January 17, 2012. Exhibits A

[1] 68 O.S. 2011, § 201 et seq., as amended.

[2] Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code* ("*OAC*").

[3] *OAC*, 710:1-5-28(a).

[4] *OAC*, 710:1-5-28(b).

[5] *OAC*, 710:1-5-38(b).

through F were attached thereto. The *Reply of Ad Valorem Division To Protestant's Response to Ad Valorem Division's Motion for Summary Disposition and Supplement to Motion for Summary Disposition* ("*Reply*") was filed January 17, 2012. Attached thereto were documents contained in the Court's file and identified as Exhibits 1 through 3. By *Order* issued February 9, 2012, the record was closed and the *Motion* was submitted for decision.[6]

On February 13, 2012, the *Addendum to Ad Valorem Division's Motion for Summary Disposition* ("*Addendum*") was filed. Attached thereto as Exhibit A is an opinion issued by the Office of the General Counsel, Oklahoma Tax Commission. By *Order Reopening Record* issued February 16, 2012, Protestant was granted time to file a response to the *Addendum*. Protestant did not file a response to the *Addendum* within the time allotted. By letter dated March 1, 2012, the record was closed and the case was submitted for decision.[7]

FINDINGS OF FACT

Upon review of the file and records, including the *Motion*, Protestant's response and attached exhibits, the *Reply* and attached exhibits and the *Addendum* and attachment, the undersigned finds:

1. Protestant's *Application for Five-year Ad Valorem Tax Exemption for Oklahoma Manufacturing or Research & Development Facilities* ("*Application*"), XM-1 for new personal property (machinery and equipment) acquired in 2010 at a cost of $13,153,493.00 was filed by the COUNTY Assessor with the Division on May 16, 2011. *Reply*, Exhibit 1.

2. By letter dated September 29, 2011, Protestant sought to amend the *Application* to include other newly acquired 2010 personal property at a cost of $4,275,544.91 that they admit was overlooked and not included on the *Application*. *Reply*, Exhibit 2.

3. The Division denied the request by letter dated October 7, 2011. *Reply*, Exhibit 3.

ISSUE

The issue presented for decision is whether the provisions of the Ad Valorem Tax Code permit the amendment of a manufacturing facilities exemption application subsequent to the filing of the approved application by the county assessor with the Oklahoma Tax Commission.

The Division contends that there is no provision in the statute for amendment of applications submitted after the terminal date for submission of applications.

Other than citing treatises and other material from other states exemption programs, Protestant's request to amend the exemption application is grounded in equity.

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[6] *OAC*, 710:1-5-38(b)(6) and 710:1-5-39(a).

[7] See Note 6.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law:

1. Jurisdiction of the parties and subject matter of this proceeding is vested in the Oklahoma Tax Commission. 68 O.S. 2011, § 207(c).

2. "All property in this state, whether real or personal, except that which is specifically exempt by law, and except that which is relieved of ad valorem taxation by reason of the payment of an in lieu tax, shall be subject to ad valorem taxation." 68 O.S. 2011, § 2804. In particular to this proceeding, "personal property" for ad valorem taxation purposes includes "[a]ll machinery and materials used by manufacturers, and all manufactured articles", 68 O.S. 2011, § 2807(8); and "all other property, having an actual, constructive or taxable situs in this state, and not included within the definition of real property", 68 O.S. 2011, § 2807(13).

3. "All corporations organized, existing or doing business in this state, other [than those listed], shall, on or before March 15th of each year, return sworn lists or schedules of their taxable property within each county, to the county assessor of such county, and such property shall be listed with reference to amount, kind and value, on the first day of January of the year in which it is listed". 68 O.S. 2011, § 2838(A). See 68 O.S. 2011, § 2832.[8] Any corporation claiming the manufacturing facilities exemption from ad valorem taxation authorized by § 2902 of the Ad Valorem Tax Code ("Code")[9] and OK CONST. art X, § 6B, shall file an application for exemption with the county assessor of the county in which the facility is located by March 15th of each year for which the exemption is claimed. 68 O.S. 2011, § 2902(E). Any taxpayers who fail to list all or any part of their personal property for the current year, on or before March 15, shall be delinquent. 68 O.S. 2011, § 2836(C).

4. "If any personal property is not listed with the county assessor on or before March 15th of any year, the county assessor shall proceed, as soon as the omission is discovered, to ascertain and estimate from the best information obtainable, the amount and value of such property, and shall list and assess the same* * *." 68 O.S. 2011, § 2843(A). "If any real, personal, * * * property is omitted in the assessment of any prior year or years, and the property thereby escapes just and proper taxation, at any time and as soon as such omission is discovered, the county assessor or the county board of equalization, * * * shall at any time cause such property to be entered on the assessment rolls and tax rolls for the year or year omitted, not to exceed the last fifteen (15) years as to real property and the last three (3) years as to personal property, and shall, after reasonable notice to the parties affected, in order that they be heard, assess such omitted property for said periods and cause to be extended against the same on the tax rolls for the current year all arrearage of taxes properly accruing * * *." 68 O.S. 2011, § 2844(A).

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[8] "Property subject to ad valorem taxation shall, unless otherwise provided, be listed for taxation by the owner thereof", § 2382(A); and in the case of "manufacturers and others in the hands of an agent, by such agent in the name of the principal", § 2382(B)(7).

[9] 68 O.S. 2011, § 2801 et seq., which explicitly includes article 29 of title 68. 68 O.S. 2011, §2801.

5. "The return of the taxpayer shall not be conclusive as to the value or amount of any property." 68 O.S. 2011, § 2818(A). The county assessor is authorized and under a duty "to raise or lower the returned value", 68 O.S. 2011, § 2818(A); and to "assess and value all property, both real and personal, which is subject to assessment by him, * * * do all things necessary, including the viewing and inspecting of property, to enable him to assess and value all taxable property, determine the accuracy of assessment lists filed with him, discover and assess omitted property, and determine the taxable status of any property which is claimed to be exempt from ad valorem taxation for any reason", 68 O.S. 2011, § 2818(B).

6. "Each county assessor * * * shall annually prepare an assessment roll" and shall make the same "available to the county board of equalization while the board is in session, in order that the board may correct and adjust the taxable value of the property of the county." 68 O.S. 2011, § 2842(A) and (B). "The county boards of equalization shall hold sessions commencing on April 1, or the first working day thereafter, [except in counties having an assessed valuation in excess of $1,000,000,000.00, where sessions shall commence on the fourth Monday in January] and ending not later than May 31, [except when a special session is approved by the county budget board] for the purpose of correcting and adjusting the assessment rolls". 68 O.S. 2011, § 2863(A). "As soon as practicable after the assessment rolls are corrected and adjusted by the county board of equalization through the first Monday in June, the county assessor shall make out an abstract thereof, containing the total amount of property listed under the various classifications appearing on the blank forms for the listing and assessment of property, and the total value of each class, and it shall be the mandatory duty of the county assessor * * * to transmit this abstract to the Oklahoma Tax Commission not later than June 15 of each year or the first working day thereafter, unless delayed by court action or other cause beyond his control." 68 O.S. 2011, § 2867(A).

7. Manufacturing exemption applications "shall be examined by the county assessor and approved or rejected in the same manner as provided by law for approval or rejection of claims for homestead exemptions" and "[t]he taxpayer shall have the same right of review by and appeal from the county board of equalization, in the same manner and subject to the same requirements as provided by law for review and appeals concerning homestead exemption claims." 68 O.S. 2011, § 2902(F).[10] See *OAC*, 710:10-7-11 through 710:10-7-14.[11] County assessors are required to file any

[10] As originally enacted, this provision (previously § 2902(E)) provided:

> Said application shall be examined by the county assessor and approved or rejected by him in the same manner as provided by law for approval or rejection of claims for homestead exemptions. The taxpayer shall have the same right of review by and appeal from the county board of equalization, in the same manner and subject to the same requirements as provided by law for review and appeals concerning homestead exemption claims.

Laws 1998, c. 162, § 102, eff. Jan. 1, 1992. The provision was amended in 1992 by adding the following language:

> Approved applications shall be filed by the county assessor with the Oklahoma Tax Commission no later than June 15 of the year in which the facility desires to take the exemption. Incomplete applications and applications filed after said date will be declared null and void by the Commission.

Laws 1992, c. 396, § 2, emerg. eff. June 11, 1992. The provision was amended again in 1997 by adding the following substantive language:

In the event that a taxpayer qualified to receive an exemption pursuant to the provisions of this section shall make payment of ad valorem taxes in excess of the amount due, the county treasurer shall have the authority to credit the taxpayer's real or personal property tax overpayment against current taxes due. The county treasurer may establish a schedule of up to five (5) years of credit to resolve the overpayment.

Laws 1997, c. 190, § 5, eff. July 1, 1997.

[11] These rules provide as follows:

710:10-7-11. County assessor to make initial determination of status; examination and valuation of facility; notice upon rejection

(a) The county assessor shall examine each application for the manufacturing exemption from ad valorem taxation and shall determine whether the facility is exempt under the law. In determining whether the exemption application is to be approved, the assessor shall, if necessary, make inspections, make a written request for additional information, or examine any person under oath as provided by law.

(b) The assessor shall complete the assessor's portion of each application, whether approved or rejected, and shall consecutively number each completed application received, whether approved or rejected, retain a copy of each application, and shall deliver the original application, whether approved or rejected, to the County Board of Equalization, on or before the fourth Monday in April each year for its review. After the County Board of Equalization has approved or rejected the application, the original application shall be forwarded to the Oklahoma Tax Commission Ad Valorem Division by June 15th of the current year.

(c) If the manufacturer's first year application is approved, the assessor shall mark the Notice of Approval or Disapproval (OTC Form 900 XMA-B) **"APPROVED"**. It shall then be the duty of the Oklahoma Tax Commission to make a physical inspection of each facility approved for the exemption, determine the fair cash value of the real property, if necessary, and the personal property separately, and to determine the assessed value of each by applying the assessor's assessment percentage to that value. The Tax Commission shall then notify the county assessor of the evaluation.

(d) If the county assessor finds that the exemption should not be allowed by reason of not being in conformity to the law, he shall mark the Notice of Approval or Disapproval (OTC Form 900 XMA-B) **"DISAPPROVED"**, stating the reason for the disapproval, and shall notify the applicant at the address shown in the application. The notice shall be mailed on or before the fourth Monday in April. The assessor shall then immediately proceed to value and assess the property, as provided by law.

710:10-7-12. County Board of Equalization to review

The County Board of Equalization shall review each application for manufacturing exemption from ad valorem taxation in the same time and manner as provided for reviewing homestead exemptions and shall give written notice to the applicant if the board disallows an exemption which had been allowed by the county assessor. The notice shall state the reason for the rejection and the board shall forward a copy of the notice to the Oklahoma Tax Commission, on forms prescribed by the Tax Commission.

710:10-7-13. Hearings before County Board of Equalization

In case the county assessor or County Board of Equalization disallows or rejects an application for a manufacturing exemption from ad valorem taxation, the applicant may obtain a hearing before the Board of Equalization by filing a written complaint with the Secretary of said Board (the county clerk) within ten (10) days from the receipt of the notice. The complaint shall specify the grievances and the pertinent facts in relation [sic] the matter, and the County Board of Equalization shall conduct hearings, as provided by statute. [**See**: 68 O.S. § 2895]

approved exemption applications with the Tax Commission no later than June 15th of the year in which the facility desires to take the exemption.[12] Id. See *OAC*, 710:10-7-5(c).[13] "Incomplete applications and applications filed after June 15 will be declared null and void by the Tax Commission." Id.

8. An application for homestead exemption may be filed at any time with the county assessor of the county in which the homestead is located. 68 O.S. 2011, § 2892(A) and (E). An application for homestead exemption must be filed in order to receive a homestead exemption. 68 O.S. 2011, § 2892(A). See *OAC*, 710:10-5-10(a).[14] A county assessor may only grant a homestead exemption for a given tax year if the application for homestead exemption is filed on or before March 15 of such year. Id. If the application is filed after March 15, the exemption may not go into effect until the following tax year. Id.

9. Both the county assessor and county board of equalization are required to examine or review all applications for homestead exemption and either approve or reject said applications and the amount of exemption. 68 O.S. 2011, §§ 2893 and 2894. "In any case where the county assessor or county board of equalization disallows or rejects an application for homestead exemption or changes the amount of said exemption from that claimed by the applicant, said applicant may obtain a hearing before the county board of equalization by filing a written complaint with the secretary of the board within ten (10) days from receipt of the notice from the county assessor or county board of equalization * * *." 68 O.S. 2011, § 2895(A). "The taxpayer [has] the right to appeal from the finding of the board with reference to his application for homestead exemption, as is or may be provided by law for appeals from the county board of equalization on questions of valuation of property, and the appeal shall be taken in the same manner and subject to the same requirements." 68 O.S. 2011, § 2895(B). Each county assessor is required to make a report to the Tax Commission on or before June 15 of each year unless delayed by court action or other extraordinary circumstances certified by the Tax Commission showing:

> 1. Total number of rural homesteads within his county; total number of acres allowed homestead exemption; total assessed valuation of rural homesteads before exemption; total amount of exemption allowed on the rural homesteads; and the total assessed valuation of rural homesteads, less exemptions allowed.
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> 2. Total number of urban homesteads within his county; total number of lots allowed homestead exemption; total assessed valuation of urban homesteads

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> **710:10-7-14. Appeal from Board of Equalization to district court**
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> The decision of the County Board of Equalization as to the exemption of a manufacturing concern from ad valorem taxation may be appealed to the District Court by either the applicant or the county assessor, as provided by law. [**See:** 68 O.S. § 2879]

Emphasis original.

[12] The exception to this requirement as provided by § 2902.1 of the Code is not applicable in this proceeding.

[13] This rule mirrors the language of § 2902(E) and (F).

[14] This rule mirrors the language of § 2892.

> before exemption; total amount of exemption allowed on the urban homesteads; and the total assessed valuations of urban homesteads, less exemptions allowed.

68 O.S. 2011, § 2899.

10. "The period of exemption granted to qualifying manufacturing concerns shall be computed from the assessment date immediately following the initial qualifying use of the property in the manufacturing process and subject to the statutory requirements for qualification in place at the time of the initial qualifying use." *OAC*, 710:10-7-5(a). An exemption may be claimed on all eligible property for a period not to exceed five (5) years from the initial qualifying use of said property whether or not a previous application for exemption of said property has been filed. Id.

11. "The five-year period of allowable ad valorem manufacturing exemption for any qualifying manufacturing facility property shall begin of January 1 following the initial qualifying use of the property in the manufacturing process as provided by law." *OAC*, 710:10-7-6. Rule 10-7-6 further provides:

> Failure to claim an exemption for which a qualifying manufacturing concern may be eligible shall not toll or extend the five-year period of allowable exemption. Any remaining eligibility for previously acquired assets may be claimed for the following year based on the initial year of acquisition. Oklahoma Constitution Article 10 [sic] Section 22A[15] prohibits the filing of an exemption application for any prior year(s) beginning January 1, 2009. The application must be made in the same year as the exemption is requested.

12. Rules promulgated pursuant to the Administrative Procedures Act[16] are presumed to be valid until declared otherwise by a court of competent jurisdiction. 75 O.S. 2001, § 306(C). They are valid and binding on the persons they affect, have the force of law and are prima facie evidence of the proper interpretation of the matter to which they refer. 75 O.S. 2001, § 308.2(C). The legislature is deemed to have adopted an administrative construction of a statute when, subsequent to such construction, it amends the statute or reenacts it without overriding such construction. ***Branch Trucking Co. v. Oklahoma Tax Commission***, 1990 OK 41, 801 P.2d 686.

The rules and regulations of an administrative agency which implement the provisions of a statute are valid unless they are beyond the scope of the statute, are in conflict with the statute or are unreasonable. See, ***Arkansas Louisiana Gas Co. v. Travis***, 1984 OK 33, 682 P.2d 225; ***Boydston v. State***, 1954 OK 327, 277 P.2d 138. Agency rules need not be specifically

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[15] Added by State Question No. 741, Legislative Referendum No. 344, adopted at election held on Nov. 4, 2008. The Section provides:

> No person, firm, corporation or other legal entity shall be allowed to file for any ad valorem tax exemption provided for in Article X of the Oklahoma Constitution, for any year or years prior to the person, firm, corporation or legal entity filing their original application for said exemption with the county assessor. Eligibility for the applicable exemption shall be established as required by law. The legislature may pass any additional laws that may be required to implement the provisions of this section.

[16] 75 O.S. 2011, § 250 et seq., § 301 et seq.

authorized by statute, but must generally reflect the intent of the Legislature as expressed in the statute. ***Jarboe Sales Company v. Oklahoma Alcoholic Beverage Laws Enforcement Commission***, 2003 OK CIV APP 23, 65 P.3d 289. As a general rule, it is presumed that administrative rules and regulations are fair and reasonable, and that the complaining party has the burden of proving the contrary by competent and convincing evidence. ***State ex rel. Hart v. Parham***, 1966 OK 9, 412 P.2d 142.

13. "Generally, when a statute creates both a right and a remedy for its enforcement the statutory remedy is exclusive." ***R.R. Tway, Inc. v. Oklahoma Tax Commission***, 1995 OK 129, 910 P.2d 972, 978. See, ***Apache Corporation v. Oklahoma Tax Commission***, 2004 OK 48, ¶ 10, 98 P.3d 1061, 1065.[17] Similar to the taxpayer in ***Apache***, *supra*., the right Protestant seeks to enforce is a statutory tax exemption for manufacturers. As the Court in ***Apache*** held, "[t]ax exemptions and deductions are matters of legislative grace" and the available statutory procedure to obtain the exemption must be followed. Id., at ¶ 10. Equity will not be interposed to block the requirements of mandatory procedural tax statutes. Id., at ¶ 11. See Op.Atty.Gen. No. 03-23 (June 3, 2003).[18]

14. The application for a manufacturing facilities exemption is required to be filed with the county assessor of the county in which the facility is located by March 15th of the year in which the facility seeks the exemption. 68 O.S. 2011, § 2902(E). See 68 O.S. 2011, §§ 2838(A) and 2836(C). The county assessor and county board of equalization are required to examine and/or review the application and approve or reject the same. 68 O.S. 2011, § 2902(F). There is no provision in the Ad Valorem Tax Code permitting the amendment of an exemption application subsequent to the adjournment of the regular session of the county board of equalization.[19]

15. The Tax Commission reviews, examines and inspects the assets listed in approved applications by and through the Division. *OAC*, 710:10-7-2(f). If the Division finds that a manufacturing exemption has been erroneously or unlawfully granted, in whole or in part, it shall direct the county assessor, after notice to the assessor and applicant, to immediately value and assess the property. 62 O.S. 2011, § 193(B). *OAC*, 710:10-7-15(a). The determination of the Division is subject to appeal under the rules of the Oklahoma Tax Commission, *OAC* 710:10-7-15(c) and (d); and the Uniform Tax Procedure Code, 68 O.S. 2011, § 201, et seq.

16. Without consideration of whether Protestant was or was not at fault through failure to fulfill any duty enjoined upon it by law for the error and/or the timeliness of Protestant's action, Protestant's recourse is via a petition or complaint to the board of tax roll corrections of COUNTY under the provisions of § 2871 of Title 68 of the Oklahoma Statutes. See

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[17] Specifically citing with approval the language of the Court in ***R.R. Tway***, *supra*.

[18] "A county assessor cannot consider 'good cause' or 'best interests of the public' for applications exempting ad valorem taxes pursuant to title 68, §§ 2902(E) or 2902.2 that are filed after the statutory deadlines."

[19] Unlike the abstract of assessments and the report of homestead exemptions, the filing with the Tax Commission of which may be delayed due to court action, causes beyond the assessor's control or extraordinary circumstances certified by the Tax Commission, the county assessor is required to file approved exemption application with the Tax Commission no later than June 15. In fact, "application filed after June 15 will be declared null and void". 68 O.S. 2011, § 2902(F).

Independent School Dist. No. 9 of Tulsa County v. Glass, 1982 OK , 639 P.2d 1233.[20] The board of tax roll corrections is authorized to hear and determine allegations of error, mistake or difference as to any item or items so contained in the tax rolls with respect to among other items, the assessment of property exempt from taxation. 68 O.S. 2011, § 2871(B) and (C)(2). Subsection F of § 2871 specifically provides:

> Beginning January 1, 1987, notwithstanding the one-year limitations period for filing a claim for refund as provided in subsection D of this section, if there be any error in taxes collected from any person on property constitutionally exempt under Section 6B of Article X of the Oklahoma Constitution, by the county treasurer in counties with a population in excess of five hundred thousand (500,000) persons, according to the latest Federal Decennial Census, to the extent that such county has been reimbursed from the Ad Valorem Reimbursement Fund provided by Section 193 of Title 62 of the Oklahoma Statutes, the overpayment or duplicate payment of any such taxes collected in error may be recovered by the taxpayer as provided by law.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the request to amend the manufacturing facilities exemption application of Protestant, COMPANY be denied as not authorized by law.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.

NOTE: The distinction between a Commission Order designated as "Precedential" or "Non-Precedential" has been blurred because all OTC Orders resulting from cases heard by the Office of Administrative Law Judges are now published, not just "Precedential" Orders. *See* OKLA. STAT. ANN. tit.68, § 221(G) (West Supp. 2009) and OKLA. STAT. ANN. tit. 75, § 302 (West 2002). *See also* OTC Orders 2009-06-23-02 and 2009-06-23-03 (June 23, 2009), which also conclude the language of the Statute is "clear and unambiguous."

[20] If property is erroneously or wrongfully in assessment roll, such action does not make it taxable; likewise, erroneous listing of exempt property by taxpayer does not render it taxable if taxpayer takes timely remedial action to rectify such error.