

10-1-1959

Property—Abatement of Taxes-Basis for Adjustment of Controlled Rent

Buffalo Law Review

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Recommended Citation

Buffalo Law Review, *Property—Abatement of Taxes-Basis for Adjustment of Controlled Rent*, 9 Buff. L. Rev. 175 (1959).
Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol9/iss1/106>

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COURT OF APPEALS, 1958 TERM

It is submitted that although this decision adds little substantively to the law of public authorities, it does reflect an important point of policy in this area of law. The exigencies of government have caused the number of public authorities, performing a wide variety of functions, to increase and multiply in recent years. They might as well not be created if their separate, corporate existences are to be overridden whenever it is convenient to do so. It was not the intention of the Legislature to establish public authorities in name only, having the powers but lacking status and responsibilities of independent corporate entities. In that event their standing would be undermined and their usefulness impaired.

CHANGE OF CITY WARD BOUNDARIES: EFFECT ON COUNTY ELECTORAL SYSTEM

During the 1958 Term, the Court of Appeals was presented with the question of the power of a city to change its ward boundaries, that power being exercised without referendum. A challenge to the exercise of power was grounded upon the effect of the change upon the election of county supervisors. *Baldwin v. City of Buffalo* is not noted here in view of its inclusion in a general treatment of the problem by Dean Jacob D. Hyman and Emil Cohen, appearing at 9 BUFFALO L. REV. 1, *supra*.

PROPERTY

ABATEMENT OF TAX BASIS FOR ADJUSTMENT OF CONTROLLED RENT

Does the State Rent Administration have the power to revise rent increases which were previously granted to compensate a landlord for the installation of a capital improvement when the landlord thereafter obtains an abatement of taxes by reason of the same improvement? This was the question presented in the case of *225 East 70th Street v. Weaver*.¹

In 1955 the appellant's predecessor installed central heating and obtained an increase in rents on the basis of such installation.² On December 31, 1955 the City of New York enacted a law permitting tax abatement to any owner who installed central heating.³ The owner made an application in 1956 for such benefit, which was granted. In 1957 the appellant purchased the premises and in connection with the sale, submitted the rent roll, which reflected the increases earlier allowed, to the Rent Commission. The Commission certified the rent roll as submitted. In 1958 the Local Rent Administration began a proceeding under Section 33 of the Rent Regulations⁴ to revise and adjust the 1955 allowances to the appellant's predecessor on the ground that there had been a substantial change in the basis on which the allowances had been granted. Some weeks later the rents were reduced by order of the Local Ad-

1. 6 N.Y.2d 225, 189 N.Y.S.2d 175 (1959).

2. N.Y. UNCONSOL. LAWS, Appendix, Rent and Eviction Regulations, § 33.

3. N.Y. CITY LOCAL LAWS 1955, No. 118.

4. *Supra* note 2.

ministrator. The landlord then brought a proceeding to review and annul the order. The Supreme Court confirmed the order,⁵ and on appeal the confirmation was affirmed by the Appellate Division and the Court of Appeals.⁶

The State Rent Administrator has very broad powers and may, under appropriate circumstances, change his determination.⁷ Section 33 gives the Administrator the power, at any time where the necessity for an adjustment granted no longer exists in whole or in part, to modify or revoke the same.⁸ Where there has been a substantial change in the basis upon which rent adjustments were granted,⁹ the Administrator is under an obligation to modify such rent adjustments.¹⁰

In view of the fact that appellant was previously granted rent increases based upon the then existing taxes as part of operating expenses, the application and the gaining of a tax abatement substantially changed the basis upon which the Administrator's rent adjustments had been granted.¹¹ As a result, the Rent Administrator was correct in reducing the rents received by the appellant. Thus, the decision of the Court properly carried out the purpose of Section 33 of Rent and Eviction Regulations.

BASIS FOR MAXIMUM CONTROLLED RENT

The Residential Rent Law permits an increase in rent to a maximum of six percent of the investment in the property as determined by the assessed value or by recent sales of the property if there are any.¹² When the property is leased by the owner to a realty management firm, and the latter seeks an increase in rent, the problem arises as to whose investment is entitled to earn six percent, the owner's or the lessee's. In *Ackerman v. Weaver* the owner of property subject to the Rent Law leased it for fifteen years to a realty manage-

5. *225 East 70th Street Corp. v. Weaver*, 7 A.D.2d 900, 182 N.Y.S.2d 334 (1st Dep't 1959), *aff'd* 6 N.Y.2d 197, 189 N.Y.S.2d 153 (1959).

6. *Almac Estates, Inc. v. McGoldrick*, 2 N.Y.2d 87, 156 N.Y.S.2d 853 (1956); *Cupo v. McGoldrick*, 278 App. Div. 108, 103 N.Y.S.2d 633 (1st Dep't 1951); *Yasser v. McGoldrick*, 306 N.Y. 924, 119 N.E.2d 605 (1954).

7. *Supra* note 2.

8. When determining the amount of rent to be charged, the Rent Administrator takes into account the amount of capital invested plus operating expenses. The amount of rent to be charged is that which will give a landlord a return of 6% based on the combination of these two factors. A change in either one of these factors used to determine the basis, automatically necessitates an adjustment in rent. RENT AND EVICTION REGULATIONS § 33.

9. *Hiltzik v. Weaver*, 16 Misc. 2d 629, 183 N.Y.S.2d 396 (Sup. Ct. 1958).

10. *Aronson v. Temporary State Housing Rent Comm.*, 17 Misc. 2d 71, 188 N.Y.S.2d 1032 (Sup. Ct. 1958). Receipt of a tax abatement substantially changes the basis upon which rent adjustments have been made. In re *Sherman Taylor Corp.*, 15 Misc. 2d 646, 183 N.Y.S.2d 395 (Sup. Ct. 1958).

11. *Rochester Transit Corp. v. Public Service Comm.*, 271 App. Div. 406, 66 N.Y.S.2d 593 (3rd Dep't 1946), *Building Reality and Securities Corp. v. McGoldrick*, — Misc. —, 137 N.Y.S.2d 707 (Sup. Ct. 1954).

12. N.Y. UNCONSOL. LAWS §§ 8584 (4)(a)(1):

Provision shall be made pursuant to regulations prescribed by the commission, for individual adjustment of maximum rents where (1) the rental income from a property yields a net annual return of less than six per centum of the valuation of the property. Such valuation shall be the current assessed valuation established by a city . . . ; except where there has been a *bona fide* sale. . . .