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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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STEPHEN H. BENNETT,

Plaintiff and Appellant,

v.

STATE BOARD OF EQUALIZATION,

Defendant and Respondent.

C070263

Super. Ct. No.

34201180000911CUWMGDS

Plaintiff Stephen H. Bennett, an accountant acting without counsel, believes defendant State Board of Equalization (BOE) has misinterpreted statutes implementing Proposition 13, regarding when real property may be reassessed. After filing objections to various BOE publications, Bennett filed a mandamus petition to compel BOE to change its interpretation. The trial court sustained without leave to amend BOE's demurrer, based on lack of standing, and Bennett timely appeals from the judgment. We agree with the trial court, and therefore shall affirm.

## BACKGROUND

By statute, BOE gives directions to local property tax assessors. (See Gov. Code, § 15608.) Very broadly speaking, Proposition 13 limits reassessment of real property except when a “change in ownership” occurs. (See Cal. Const., art. XIII A, § 2, subd. (a).) Urgent legislation implementing Proposition 13 was passed, effective July 10, 1979. (See Stats. 1979, ch. 242.) This legislation, based on a task force report, defined what constitutes a “change of ownership” under Proposition 13. (See *Auerbach v. Assessment Appeals Bd. No. 1* (2006) 39 Cal.4th 153, 160-165; *Phelps v. Orange County Assessment Appeals Bd. No. 1* (2010) 187 Cal.App.4th 653, 658-659.) The definitions are located in Chapter 2 of Part 0.5 of Division 1 of the Revenue and Taxation Code (Rev. & Tax. Code, § 60, et seq.), and BOE has adopted regulations fleshing out these definitions (see Cal. Code Regs., tit. 18, § 462.001, et seq.).

Bennett’s writ petition alleges that although the 1979 implementing legislation was prospective in effect, BOE has improperly interpreted it to be retrospective. Bennett sought declarations stating Part 0.5 of the Revenue and Taxation Code “has no retrospective effect on any owner’s real property rights,” BOE has improperly instructed assessors “to apply Part 0.5 retrospectively,” BOE acted “unlawfully” by denying Bennett’s requests that BOA amend its rules and depublish certain documents, and BOE violated its duty to sue assessors to prevent “giving retrospective effect to Part 0.5.” Bennett’s pleadings show he made unsuccessful efforts to convince BOE to change its understanding of what actions trigger a change of ownership.

The trial court sustained BOE’s demurrer without leave to amend on two grounds: “(1) [Bennett] lacks standing based on a beneficial interest or standing to enforce a public duty and (2) an adequate legal remedy in the form of a refund action pursuant to Revenue and Taxation Code section 5140 precludes a mandate action.”

Bennett timely appealed from the judgment.

### DISCUSSION

We must begin by presuming the trial court was correct, but Bennett has failed to present coherent arguments, supported by pertinent authority, explaining how the trial court erred, therefore he has failed in his basic duty, as an appellant, to show error. (See *In re S.C.* (2006) 138 Cal.App.4th 396, 408.)<sup>1</sup>

The trial court correctly found Bennett lacked standing because he was not a beneficially interested party.

“As a general rule, a party must be ‘beneficially interested’ to seek a writ of mandate. (Code Civ. Proc., § 1086.) ‘The requirement that a petitioner be ‘beneficially interested’ has been generally interpreted to mean that one may obtain the writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large. [Citations.] . . . ‘One who is in fact adversely affected by governmental action should have standing to challenge that action if it is judicially reviewable.’” [Citations.] The beneficial interest must be direct and substantial.” (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 165.)

In *Sacramento County Fire Protection Dist. v. Sacramento County Assessment Appeals Bd.* (1999) 75 Cal.App.4th 327 (*SCFPD*), we addressed standing in the context of a dispute about property tax assessments. We concluded a fire district lacked standing to challenge a finding lowering a property owner’s assessment, although it would impact the budget of all taxing agencies within the county, in part stating: “With respect to the assessed valuation assigned to a particular piece of property, the District does not have ‘some special interest to be served or some particular right to be preserved or protected over and above the interest [it holds] in common with the public at large.’ [Citation.]

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<sup>1</sup> Because we find the grounds stated by the trial court are correct, we do not address other grounds proposed by BOE. For the same reason, we deny Bennett’s request for judicial notice of certain legislative documents, as such materials are not relevant to our disposition of this appeal.

The District and its residents, and indeed the public at large, share a common interest in seeing that the District's public function is effectively funded." (*SCFPD, supra*, 75 Cal.App.4th at pp. 332-334.) Nor did we permit standing based on a "public interest exception," in part stating, "This is not a situation where the issue raised by the District will be removed from judicial review if standing is denied." (*SCFPD, supra*, at p. 334.)

Similarly, Bennett has no special interest in proper assessments to advance beyond the interest of all citizens, nor is "public interest" standing needed.<sup>2</sup>

As the trial court correctly found, Bennett has an adequate remedy for any particular assessment that violates Proposition 13, as does any other aggrieved party, namely, a tax refund suit. (See Rev. & Tax Code, § 5140; 9 Witkin, Summary of Cal. Law (10th ed. 2005) Tax, § 292, pp. 426-427.) Not only is that an *adequate* remedy, the trial court correctly viewed it as the *sole* remedy for imposition of an improper tax, in light of the anti-injunction rule. (Cal. Const., art. XIII, § 32; see *State Bd. of Equalization v. Superior Court* (1985) 39 Cal.3d 633, 638-640; *Pacific Gas & Electric Co. v. State Board of Equalization* (1980) 27 Cal.3d 277, 280 ["a court order invalidating an assessment will in effect 'prevent or enjoin the collection' of the tax"].)

Accordingly, Bennett cannot compel BOE to change the manner in which it interprets the statutes implementing Proposition 13. If a property owner believes an

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<sup>2</sup> Bennett's brief cites statutes authorizing him to petition BOE to adopt, amend or repeal regulations. (Gov. Code, §§ 11340.6, 11340.7.) Bennett *did* petition BOE, unsuccessfully. Bennett does not explain, via coherent argument and authority, how a right to petition BOE confers the right to dictate the outcome. (Cf. *Sklar v. Franchise Tax Board* (1986) 185 Cal.App.3d 616, 622-626.) And even if Bennett had filed this as an administrative declaratory relief action to challenge the regulations, he would have had to show he is an "interested person[.]" (Gov. Code, § 11350, subd. (a).) That is someone who "is or may well be impacted by a challenged regulation." (*Environmental Protection Info. Ctr. v. Department of Forestry & Fire Protection* (1996) 43 Cal.App.4th 1011, 1017-1018.) Bennett will not be impacted unless his property is reassessed, in which case he may pay the tax and file a refund suit.

assessor has improperly found a change of ownership, the property owner may pay the tax, file a tax refund suit, and litigate the matter.

**DISPOSITION**

The judgment is affirmed. Bennett shall pay BOE's costs on appeal. (Cal. Rules of Court, rule 8.278.)

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DUARTE, J.

We concur:

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BLEASE, Acting P. J.

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ROBIE, J.