

Legal Update

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Court of Appeals Tax Decisions

(J) Vista Verde Homeowners Ass. V. Maricopa County, 1 CA-TX 14-0014 (11/24/15) (Memorandum Decision)

HELD: Taxpayer can obtain relief under error correction statute if County improperly designated or described the use or classification of property.

- County valued the common area of an HOA development as residential rural subdivided use because land was not deeded to HOA and thus did not qualify for common area treatment.
- Although owner not entitled to treatment as common area, owner could use the error correction statutes to challenge the use designation of the property.
- Court of Appeals remanded case to tax court for factual inquiry into proper designation or description of use or classification in order to determine the appropriate value of the property.

(M)Chevron U.S.A. Inc. v. Department of Revenue, 1 CA-TX 14-0013 (12/3/15).

HELD: Gross receipts from the sale of oils and greases used in mining machinery are exempt from the sales tax.

- Mining machinery or equipment used directly in extracting ores is exempt from transaction privilege tax. Expendables used in the mining process are not exempt and are taxable.
- Mine owner Freeport-McMoRan purchased oils and greases from Chevron for use in the machinery and equipment used in mining operations. The oils and greases were used up in seconds, hours, days or months. Department said such items were taxable because they were expendables.
- Court of Appeals noted that the “exception” language that if the expendable material functioned like machinery and equipment, it would be exempt. Court said the greases and oil functioned like machinery and equipment and were necessary to the mining process, and therefor qualified for the machinery and equipment exemption.

(M)Siete Solar, LLC v. ADOR, No. 1 CA-CV 15-0126 (12/10/15); Petition for Review Declined

HELD: Under pre-amendment language of A.R.S. § 42-14155, taxpayer could not deduct value of federal tax credits and grants when reporting cost of equipment.

- 2014 amendment allowing deduction of federal tax credits and grants from determination of cost passed without a retroactivity clause, so amended statute did not apply to valuations determined in 2013 valuation year;
- 2014 amendment was a change in the law, not a clarification, because it added new concepts that changed the valuation formula;
- The plain and unambiguous language of cost is the cost paid to purchase something. Because Taxpayers had to pay the full cost of solar equipment before they were entitled to federal credits or grants, the Department properly ignored the credits and grants when valuing the property under the pre-amendment language of A.R.S. § 42-14155.

(J)Phoenix Cement v. Yavapai County, 1 CA-TX 14-0010 (2/4/16)(Memorandum Decision).

HELD: Appraisal report that utilized highest projected production as starting point for calculating economic obsolescence not persuasive.

- Phoenix Cement asserted that the dramatic economic downturn in the construction industry significantly reduced the demand for cement and therefore, the company's personal property should be reduced in value due to temporary economic obsolescence.
- County countered that while cement production had clearly declined the equipment itself had been valued based upon a depreciated basis, which took into account economic obsolescence.
- Court of Appeals held that the use of the peak production for determining an economic obsolescence penalty was rejected by the Tax Court at trial and using the deferential standard of review for trial court findings of fact, that determination was upheld.

(J)Arizona Cattle Growers Association v. Yavapai County, 1 CA-TX 15-0003 (3-29-16)(Memorandum Decision).

HELD: Wholesale use of government lease rates in determining agricultural land values inappropriate.

- Assessor set value of \$7.56 per acre for ranch land for 30+ years. Newly elected Assessor raised the value to \$25 per acre based on the Assessor's use of information from a rent study produced by the Department of Revenue.
- Approximately 70 ranchers who owned 430,000 acres filed suit to contest the new value. At trial, the ranchers' expert concluded a value that was 80% lower than the Assessor's value, utilizing leasing rates for private and public agricultural lands. The Tax Court reduced the value by 60%, to approximately \$10/acre.
- Court of Appeals affirmed the Tax Court's per acre value and rejected the use of the public lease rates (BLM, State Land Dep't) when determining the land value. The taxpayer's own appraiser testified that public rates are significantly below the actual market rental rates for public grazing lands.

(J) Peters v. Prescott, 1 CA- TX 15-0004
(3/29/16)(Memorandum Decision).

HELD: Individual charged city sales tax by golf course did not have standing to contest city sales tax.

- City imposed a 2% sales tax upon the gross income of golf courses. Peters is a member of the Golf Club at Prescott Lakes and the city's sales tax was passed on by the Golf Club to Peters.
- Peters filed a petition for review to contest the validity of the tax.
- The municipal tax hearing office, Tax Court and Court of Appeals all held Peters had no standing under the city tax code to file such petition because he was not a "taxpayer" of the sales tax, the golf club was the taxpayer.

(J)Davidsonlaw, P.C. v. Dep't of Economic Security, 1 CA-TX 15-0002 (5/19/16)
(Memorandum Decision)

HELD: Mail delivery rule only applies if a notice of mailing is “properly addressed.”

- Firm did not appear for an administrative law hearing, asserted that it did not receive notice of hearing, and asserted that the notice of hearing did not include firm's address on the mailing certificate.
- Administrative law judge and tax court held that the mail delivery rule (presumption that mail sent is received) applied, and accordingly that the firm could not overcome the presumption that it had received notice of the hearing.
- CoA reversed and remanded, holding that there were factual issues as to whether notice was “properly addressed,” and even if it was, that the firm could overcome the mail delivery rule presumption with evidence that delivery of the notice did not occur or that the firm had good cause for not appearing.

(M) Sundevil Power Holdings, LLC v. Arizona Dep't of Revenue, 1CA-TX 15-0001 (7/7/16).

HELD: Valuation of electric power facility may be based on seller's "book costs" if buyer possesses them.

- Sundevil Power Holdings acquired a 50% interest in an electric power plant from Gila River. Gila had acquired the plant in a bankruptcy court proceeding in 2005.
- Gila utilized the bankruptcy court's determination of the value of the acquisition to declare the cost for the plant's assets, as did Sundevil.
- Department rejected Sundevil's cost filing and used its higher purchase price to value the plant on the theory that Gila's book cost figures did not meet the definition of "cost information."
- Court of Appeals held the Department's actions contravened the statute's clear wording. Sundevil had "cost information" from Gila and could use it. It also overturned the tax court's ruling, holding that taxpayer could not use Rule 15(c) "relation back" to amend its complaint after failing to name the County as a defendant.
- The Department filed Petition for Review on September 8, concerning the "cost information" holding.

Pending Court of Appeals Matters

(M)South Point v. ADOR/Mohave

1 CA-TX 15-0005, 0006.

- Department's motions to dismiss were granted by the Tax Court. The property owner appealed. The case involves separate error correction and illegal tax receipt claims. The Tax Court held that the property owner was bound by the prior Court of Appeals' decision in *Calpine Construction Finance Company v. ADOR* and that collateral estoppel applied to the property owner's claim for illegal tax receipt. The court also held that there was no "error" for the prior year because the Department followed the Calpine decision, which the Tax Court deemed good law.

(M)Solarcity Corporation v. ADOR

1 CA-TX 15-0008

- Solarcity and SunRun sought declaratory judgment that their rooftop solar equipment, owned and operated by those companies but leased to their electrical customers, were not subject to central valuation by the Department because they did not constitute an “electric generation facility.” They also sought a declaration that their equipment “had no value” for tax purposes, pursuant to a valuation statute applicable to rooftop solar equipment. The Tax Court held their equipment could not be valued by the DOR because it was not an electric generation facility. It also held that the “have no value” statute as applied to their equipment violated the Exemptions Clause and the Uniformity Clause under the State Constitution, and that that statute as applied to their equipment was unconstitutional. Because the equipment was taxable but not by the Department, the court held that county assessors had to value equipment. All parties have appealed.

(M)AEPCO v. ADOR

1 CA-TX 2014-000458

- AEPCO is a utility in Southern Arizona that purchased coal and natural gas from vendors who were not subject to the Arizona TPT, thus it accrued and paid use tax on the purchases. AEPCO filed a \$7+ million refund claim asserting that the purchases were not subject to the use tax under two theories: (1) because coal and natural gas are tangible personal property and because electricity is tangible personal property, the coal and gas are purchased for resale as electricity; (2) coal and natural gas become an ingredient part of the electricity and therefore qualify for an exemption. The Tax Court rejected both arguments and the utility appealed.

(J)Saban Car Rental v. ADOR

1 CA-TX 16-0007

- Saban filed a class action seeking a refund of the car rental surcharge collected by the Department on behalf of the Tourism and Sports Authority dba The Arizona Sports and Tourism Authority (“AzSTA”). The surcharge money is used to fund the fiscal needs of AzSTA whose responsibilities include developing and operating sports facilities in Maricopa County. Saban challenged the validity of the surcharge on two bases. One was a violation of the Commerce Clause. The other was a violation of the Arizona Constitutional provision requiring certain taxes to be utilized for highway related projects. The Tax Court held that the surcharge did not violate the Commerce Clause but it did violate the Arizona Constitution because the revenues were not used for highway related projects. Saban subsequently filed a motion that all future tax revenues collected be deposited into an escrow account. The Tax Court denied Saban’s motion so the surcharge money is still provided to AzSTA. After the Tax Court granted the Department’s motion for an interlocutory judgment, the Department and AzSTA filed an appeal and Saban filed a cross appeal.

(M)Excelsior Mining v. ADOR

1 CA-TX 16-0008

- Excelsior purchased a mine and brought suit as the “new owner,” contesting the current year and prior year valuations. The Department moved to dismiss the lawsuit for the current year because the prior owner had not filed the annual valuation declaration by the May 20th delinquent filing date, thereby forfeiting its right to appeal the Department’s value. The taxpayer contended that it was entitled to new-owner relief pursuant to A.R.S. § 42-16205.01. The Department also moved to dismiss the prior year appeal because the taxpayer had not cured a deficiency in its tax payments: the taxpayer paid only the amount due as of the time it acquired the mine rather than the entire amount of taxes due. The Tax Court granted both motions and the mine’s new owner appealed.

(J)APS v. City of San Luis

1 CA-TX 16-0009

- The City of San Luis audited APS for city privilege tax compliance. The audit disallowed credits APS had taken on its tax returns for franchise fees paid to San Luis. The tax code contained a provision allowing the tax credits. The City claimed that the tax code had been amended by ordinance in 2013 and thereafter no such tax credits were allowed, thus leading to the disallowed credits in the tax assessment. APS claimed that the failure of the City to publically amend its tax code in 2013 to reflect the repeal of the provision allowing for the tax credits violated APS' due process rights. The Tax Court agreed that the failure of the City to amend its tax code and provide notice to various entities such as the Municipal Tax Code Commission. The City appealed.