

THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN THE ARIZONA TAX COURT

TX 2016-001024

12/07/2016

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT

T. Cooley

Deputy

EMPIRE SOUTHWEST L L C

JAMES M SUSA

v.

ARIZONA DEPARTMENT OF REVENUE, et al. BENJAMIN H UPDIKE

MINUTE ENTRY

Courtroom 201-OCH

10:01 a.m. This is the time set for Oral Argument re: Motion for Summary Judgment and Cross-Motion for Summary Judgment. Plaintiff is represented by counsel, James M. Susa. Defendants are represented by counsel, Benjamin H. Updike.

A record of the proceedings is made digitally in lieu of a court reporter.

Oral argument is presented.

Based upon matters presented to the Court,

IT IS ORDERED taking this matter under advisement.

10:22 a.m. Matter concludes.

LATER:

Plaintiff's Motion for Summary Judgment, filed July 22, 2016 is fully briefed and pending. The Court benefited from oral argument on the motion on December 7, 2016.

A.R.S. § 42-5061(B)(2) exempts from TPT “[m]ining machinery, or equipment, used directly in the process of extracting ores or minerals from the earth for commercial purposes,

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including equipment required to prepare the materials for extraction and handling, loading or transporting such extracted material to the surface.” The question in this case, one which has occupied the courts for many years, is what “used directly” means.

Plaintiff urges a broad reading, one that effectively exempts anything used in the process, based upon a definition from *Duval Sierrita Corp. v. Arizona Dept. of Revenue*, 116 Ariz. 200, 206 (App. 1977): “the boundaries of the exempt operation must be drawn taking into consideration the entire operation as it is ‘commonly understood’ which operation must, of necessity, include those items which are essential to its operation and which make it an integrated system.”

The Court cannot accept the *Duval Sierrita* definition uncritically, however, as it has been refined by subsequent case law. The Supreme Court in *State ex rel. Arizona Dept. of Revenue v. Capitol Castings, Inc.*, 207 Ariz. 445, 447 ¶10 (2004), reaffirmed that tax exemptions are strictly construed against the taxpayer, while adding the new caveat that they should not be so strictly construed as to defeat or destroy the legislative intent. “Items essential or necessary to the completion of the finished product are more likely to be exempt. The prominence of an item’s role in maintaining a harmonious ‘integrated synchronized system’ with the indisputably exempt items will also directly correlate with the likelihood that the exemption applies. The closer the nexus between the item at issue and the process of converting raw materials into finished products, the more likely the item will be exempt. As part of its analysis, the court should consider whether the item physically touches the raw materials or work in process, whether the item manipulates or affects the raw materials or work in process, or whether the item adds value to the raw materials or work in process as opposed to simply reducing costs or relating to post-production activities.”

Most recently, the Court of Appeals in *Chevron U.S.A. Inc. v. Arizona Dept. of Revenue*, 238 Ariz. 519 (App. 2015), held that oils and greases used to lubricate machinery used directly in qualified equipment were exempt. In doing so, it extended the holding of *Capitol Castings*: the machinery or equipment need not be used directly in the process of extracting ores or minerals or even as an adjunct to some machine or equipment that is used directly, only exist as part of an “integrated synchronized system” that at some point in the nexus involves machinery or equipment that is used directly. *Id.* at 522 ¶ 14.

On the basis of *Chevron U.S.A.*, the Court concludes that the fuel trucks are exempt. Fuel, obviously, is necessary to the functioning of the loaders, even though it plays no direct part in extracting the ore; a vehicle that transports the fuel to the loaders is therefore part of an “integrated synchronized system.”

Accordingly, Plaintiff’s Motion for Summary Judgment is GRANTED.