

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2013-000242

07/16/2015

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT
A. Quintana
Deputy

KOHL'S PENNSYLVANIA INC

PAUL J MOONEY

v.

ARIZONA DEPARTMENT OF REVENUE

SCOT G TEASDALE

ORAL ARGUMENT

Courtroom 201 (OCH)

11:32 a.m. This is the time set for Oral Argument regarding *Defendant's Motion to Dismiss*, filed on March 24, 2015. Plaintiff is represented by counsel, Paul Moore. Defendant is represented by counsel, Benjamin Updike.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Discussion is held with the Court regarding the status of the case.

Oral Argument is presented to the Court.

Based upon the matters presented,

IT IS ORDERED taking this matter under advisement.

11:50 a.m. Matter concludes.

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LATER:

To qualify for a refund, the requirements of A.R.S. § 42-1118(E) must be strictly complied with. *McNutt v. Dept. of Revenue*, 196 Ariz. 255, 266 ¶ 37 (App. 1998). The June 18, 2010 letter, Exhibit D to Defendant's Statement of Facts, does not meet those requirements. It lacks the "specific grounds" on which the claim was based. That the Department might have "known" what those grounds were by way of an "informal claim" does not matter. *McNutt, supra* at 265-66 ¶ 34-37. (The May 2012 oral amendment, which Plaintiff has withdrawn, would have been found invalid for the same reason.)

The September 15, 2010 letter, Exhibit E to Defendant's Statement of Facts, does meet the requirements. It contains the taxpayer's name, in exactly the form used by the Department, and an address at which it could be contacted. It also includes the amount of refund requested, the specific time period involved (using the term "audit period" which is defined previously in the letter), and the specific grounds on which the claim is founded (*Qwest Dex* and *Val-Pak*). It is thus facially a basis for the claim. That is the extent to which the Court can go in ruling on a motion to dismiss. The legal questions surrounding its effectiveness and timeliness are likely to be complicated, deserving of their own motion practice.

The motion to dismiss is granted with respect to claims deriving from the June 2010 and May 2012 submissions and denied with respect to claims deriving from the September 2010 letter.

Arizona Tax Court - ATTENTION: eFiling Notice

Beginning September 29, 2011, the Clerk of the Superior Court will be accepting post-initiation electronic filings in the tax (TX) case type. eFiling will be available only to TX cases at this time and is optional. The current paper filing method remains available. All ST cases must continue to be filed on paper. Tax cases must be initiated using the traditional paper filing method. Once the case has been initiated and assigned a TX case number, subsequent filings can be submitted electronically through the Clerk's eFiling Online website at <http://www.clerkofcourt.maricopa.gov/>

NOTE: Counsel who choose eFiling are strongly encouraged to upload and e-file all proposed orders in Word format to allow for possible modifications by the Court. Orders submitted in .pdf format cannot be easily modified and may result in a delay in ruling.

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