

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2012-000049

10/07/2013

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

MARICOPA COUNTY

KATHLEEN A PATTERSON

v.

METAL MANAGEMENT ARIZONA L L C, et
al.

VINCENT J MONTELL

RITA J BUSTOS

UNDER ADVISEMENT RULING

The Court took Defendants' Motion for Summary Judgment and Plaintiff's Cross-Motion for Summary Judgment under advisement following oral argument on October 4, 2013. Upon further consideration, the Court finds as follows.

It is long-established law that, if it is in direct or inferential conflict with the statutory provisions governing tax appeals, the Administrative Procedure Act does not apply. *Arizona State Tax Comm. v. Phelps Dodge Corp.*, 116 Ariz. 175, 177 (1977). However, it is not necessary in this case to pursue the matter, for the SBOE's action fails even under A.R.S. § 12-910. The A.R.S. § 42-15055(D) issue is resolved by its language: "If the person fails to deliver the report as required by § 42-15053, the assessor shall add a penalty of an additional ten per cent to the value of the property for the tax year." Unlike the preceding subsection B, which specifies that a person who "knowingly fails or refuses" to furnish the assessor with the required information is guilty of a class 2 misdemeanor, subsection D contains no scienter requirement: all that matters is that the taxpayer fails to deliver the report. Metal Management Arizona concedes that it failed to deliver the reports for tax years 2008 and 2009. That it erroneously believed it had – in other words, that it lacked scienter – is not a mistake on the County's part. Thus, as to § 42-15055(D), there was no error to correct, and the SBOE erred in concluding that there was one.

Turning to the penalty under A.R.S. § 42-15053(F)(2), this penalty and the penalty under § 42-15055(D) apply to different things: the 15055(D) penalty applies to all property that should

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have been reported, while the 15053(F)(2) penalty applies only to property that was discovered to have escaped taxation due to not being reported or being reported incorrectly as determined by audit. There is no bar to assessing both penalties against property that falls under both statutes. *Bonn & Jensen Chartered v. Arizona Dept. of Revenue*, 177 Ariz. 170 (Tax 1993), does not lead to a different conclusion. In that case, the State had assessed three distinct statutory penalties. The court concluded that only one of the penalties (that under what is now 15053(F)(2)) was consistent with the facts, but never suggested that multiple penalties were not permitted as a matter of law; indeed, had it so decided, its analysis of the facts underlying each asserted basis for penalties would have been unnecessary once the 15053(F)(2) penalty was upheld. There are situations, and this is plainly one of them, where application of both laws yields a harsh result. But the Court may not decline to enforce, much less prevent the County from enforcing, multiple valid laws. If there is to be a remedy, it lies with the legislature.

IT IS ORDERED Defendants' Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED Plaintiff's Cross-Motion for Summary Judgment is granted.

IT IS FURTHER ORDERED directing Plaintiff to lodge a form of judgment and file any Application and Affidavit for Attorney's Fees and Statement of Taxable Costs by November 1, 2013.