

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

TX 2012-000730

07/14/2016

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT

H. Bell

Deputy

P6 3550 NORTH CENTRAL L L C

DONALD P ROELKE

v.

MARICOPA COUNTY

RACHELLE ZOLLER LEIBSOHN

RULING

The Court has considered the forms of judgment filed by each party, and each party's objections to the other's form of judgment.

There is a critical difference between the Plaintiff here and La Paz County, the prevailing party in *La Paz County v. Yuma County*, 152 Ariz. 162 (1987). In that case, the opposing parties were co-equal counties, neither enjoying sovereign status over the other. The Supreme Court was thus free to award interest based on the equitable abhorrence of unjust enrichment. *See id.* at 168. The principle of unjust enrichment, however, does not apply to a county acting as sovereign. *Suzico, Inc. v. Maricopa County*, 187 Ariz. 269, 272 (App. 1996). The rule remains that, "where interest is not stipulated for or authorized by statute or contract, it cannot be awarded against a sovereign government." *Miners & Merchants Bank v. Heron*, 46 Ariz. 71, 83 (1935) (quoting *State Tax Comm. v. United Verde Extension Mining Co.*, 39 Ariz. 136, 145 (1931)). (The Court is not concerned with the age of the leading cases; *Suzico*, decided in 1996, cited an even older precedent, *Richards v. Green*, 3 Ariz. 227, 234 (Ariz.Terr. 1890).)

Does A.R.S. § 42-16214(A), enacted after *Miners & Merchants Bank*, require the payment of interest on all tax judgments against the government or only on those where the private party's entitlement to interest is specifically provided by statute or contract? This question has not been addressed by the appellate courts; the cases interpreting subsection (A)(3), such as *Arizona Dept. of Revenue v. Trico Elec. Co-Op., Inc.*, 151 Ariz. 544 (1986), all deal with

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underpayments, on which A.R.S. § 42-1123(C) expressly requires that interest be paid, *see Waddell ex rel. Arizona Dept. of Revenue v. Mayo Foundation for Medical Education & Research*, 176 Ariz. 178, 179 (Tax 1993) (interpreting prior version of statute). The Court does not read A.R.S. § 44-1201(B), a general commercial statute contained in an article headed “Miscellaneous Provisions Relating to Loans,” as a blanket waiver of a perquisite of governmental sovereignty. Nor can it find in § 42-16214, which concerns the rate of interest and the date from which it accrues, authority to impose interest in the first place. There is certainly no overpayment analogue to § 42-1123(C). The Court believes that *Suzico, supra* at 272, and even more directly *Richards, supra* at 266, require something of the sort to authorize payment of interest on overpayments.

The Court holds to its earlier determination that operation of the rollover statute is automatic; although the valuation in the rollover year is determined by the Court’s judgment in the prior tax year, it is not the subject of the judgment.

The County does not appear to object to payment of the judgment into Plaintiff’s counsel’s trust account.

Plaintiff is ordered to submit an amended proposed form of judgment comporting to the above.