

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

TX 2015-000572

08/21/2017

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT

A. Durda/T. Cooley

Deputy

STATE OF ARIZONA DEPARTMENT OF
REVENUE

PENNY TAYLOR MOORE

v.

JOSEPH S BURROUGHS, et al.

D'ARCY M DOWNS-VOLLBRACHT

MINUTE ENTRY

Courtroom 201-OCH

10:31 a.m. This is the time set for Oral Argument re: Plaintiff's Motion for Summary Judgment, filed March 7, 2017. Plaintiff is represented by counsel, Penny T. Moore. Defendants are represented by counsel, D'Arcy M. Downs-Vollbracht.

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.

11:09 a.m. Matter concludes.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2015-000572

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LATER:

The Court has considered Plaintiff's Motion for Summary Judgment filed March 7, 2017, Defendants' Response filed May 3, 2017, and Plaintiff's Reply filed May 23, 2017. The Court benefited from oral argument on August 21, 2017.

"Laches will generally bar a claim when the delay [in filing suit] is unreasonable and results in prejudice to the opposing party. Delay alone is not sufficient for a laches defense. When determining whether laches should preclude a claim, a court considers all factors, including not only the length of the delay, but also the magnitude of the problem at issue. Finally, we note delay by itself does not equate to prejudice when a governmental entity delays in performing an official act within the time specified in a statute deemed to be directory. The critical inquiry concerns whether the party claiming the delay caused prejudice actually suffered any prejudice." *State v. Unkefer*, 225 Ariz. 430, 436 ¶ 22-23 (App. 2010), *disapproved on other grounds*, *Hoffman v. Chandler ex rel. County of Pima*, 231 Ariz. 362 (2013) (internal citations omitted). Defendant argues that he has little money, and never has had much. This does not reflect a change in circumstances, but rather a stable condition. And Defendant shows no prejudice from being allowed to use the money for almost a decade. The defense of laches fails.

It is far too late for Defendant to argue that the administrative law judge's decision in 2006, as to both the date of filing notice of appeal and whether the State met its burden of proof, was wrong. A.R.S. § 42-1254(D)(2) provides thirty days after the decision becomes final for an appeal to be filed. *State ex rel. Arizona Dept. of Revenue v. Dillon*, 170 Ariz. 560, 562-63 (App. 1991). The alleged appeal could not be perfected, either by Mr. Burroughs's sole proprietorship or by the later corporation, through "representation" by the office manager. Rule 31(d)(13) of the Rules of the Supreme Court permits, in addition to representation by a licensed attorney or, for a sole proprietorship, by the individual, representation by a CPA or a federally authorized tax practitioner. A corporation can be represented by an employee with specific authorization, but that would not affect the appeal of the sole proprietorship.

The administrative judgment created a personal debt of Mr. Burroughs and his marital community. This personal debt was not extinguished by subsequent incorporation. *See Spence v. Huffman*, 15 Ariz.App. 99, 100 (1971).

IT IS THEREFORE ORDERED that Plaintiff's Motion for Summary Judgment is granted.