Clerk of the Superior Court
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THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN THE ARIZONA TAX COURT

TX 2024-000440 11/18/2025

HONORABLE ERIK THORSON

CLERK OF THE COURT
G. Duran
Deputy

JOHNATHAN BARTH

STACY C SKANKEY

v.

HOME BUILDERS ASSOCIATION OF CENTRAL ARIZONAPL

ANDREW GEORGE PAPPAS
SCOT G TEASDALE

RULING

The Court held oral argument on September 19, 2025, regarding Defendant Arizona Department of Revenue's Motion to Dismiss, filed March 31, 2025, and Defendant Town of Gilbert's Motion to Dismiss, filed March 31, 2025, as well as subsequent filings related thereto. The Court has considered the filings and arguments of the Parties, the relevant authorities and applicable law, as well as the entire record of the case. The Court hereby finds as follows regarding the Motions.

Plaintiffs challenge the Town of Gilbert's increased transaction privilege tax rates for transient lodging, construction contractors, and speculative builders. (*See generally* Amended Compl., filed March 10, 2025.) Plaintiffs contend that the ordinance enacting the taxes violates article IX § 25 of the Arizona Constitution and seek to enjoin Defendants from enforcing the subject taxes. (*See generally* Amended Compl.)

The Town of Gilbert seeks to dismiss Plaintiffs' Complaint based on the following arguments: (1) Arizona courts lack jurisdiction to enjoin collection of a tax; (2) Plaintiffs failed to exhaust mandatory administrative remedies; (3) Plaintiff Homebuilders Association of Central Arizona ("HBACA") lacks standing because individualized analysis of its members' tax transactions would be necessary for the case to proceed with it as an organizational plaintiff; and

(4) facial challenges to constitutionality fail because not all potential applications within the broad categories would be unconstitutional. (Gilbert's Mot., at 1–2.)

Similarly, the Arizona Department of Revenue ("ADOR") seeks to dismiss Plaintiffs' Complaint based on the following arguments: (1) lack of subject matter jurisdiction because of Plaintiffs' failure to exhaust administrative remedies; (2) failure to state a claim because the tax on transient lodging is not a tax on services; (3) lack of standing because HBACA is not a taxpayer; (4) failure to state a claim because contracting should be evaluated at a department level; and, finally, (5) an injunction is prohibited. (*See generally* ADOR's Mot.)

Defendants have postured the Motions in part as contesting subject matter jurisdiction under Rule 12(b)(1), Ariz. R. Civ. P., with subject matter jurisdiction being this Court's statutory or constitutional power to hear and determine a particular type of case. *See Church of Isaiah 58 Project of Arizona, Inc. v. La Paz Cty.*, 233 Ariz. 460, 462–63 ¶9 (App. 2013) (*citing State v. Maldonado*, 223 Ariz. 309, 311 ¶14 (2010)).

In resolving such a challenge, the Court may take evidence and resolve factual disputes essential to its disposition of the motion. *See Church of Isaiah*, 233 Ariz. at 463 ¶9. The Court has determined that there are no factual disputes in this matter at this point for which resolution thereof would assist the Court in resolving the jurisdictional question. At this point, on this record, the Court resolves it in Plaintiffs' favor as further discussed below.

In Response to the issues raised by Defendants, Plaintiffs contend that (1) their claims are not barred by the relevant anti-injunction statute because it only applies to property tax, and Plaintiffs are only challenging the constitutionality of the tax rather than seeking monetary relief; (2) administrative exhaustion is not required and is futile; (3) the Ordinance is facially unconstitutional because construction contracting and hotel/lodging are always "services;" and (4) Plaintiff HBACA has associational standing. (Resp. filed May 12, 2025, at 2.)

"It is the well-established policy of this state to prevent the validity of a tax from being tested by injunctive means." *Church of Isaiah*, 233 Ariz. at 464 ¶17 (internal quotations omitted). In an appeal to the Tax Court, "[a]n injunction, writ of mandamus or other legal or equitable process may not issue in an action in any court in this state against an officer of this state to prevent or enjoin the collection of any tax, penalty or interest." A.R.S. § 42-1254(D)(1). The plain language of A.R.S. § 42-1254(D)(1) and that of the pertinent statutory scheme does not limit its application to property tax as Plaintiffs contend. Yet Plaintiffs also contend that they are not seeking monetary relief but only challenging the constitutionality of the tax. (Resp., at 2.)

In addition, it is "unfailingly held that tax matters must be exhausted within ADOR before being brought in superior court." *Moulton v. Napolitano*, 205 Ariz. 506, 512 ¶14 (App.

2003). However, Plaintiffs contend that exhaustion is not required here because ADOR has no authority to declare a law unconstitutional—the substantive relief Plaintiffs seek. (Resp., at 11.) *See Stagecoach Trails MHC, L.L.C. v. City of Benson*, 231 Ariz. 366, 370 ¶16 (2013) ("Exhaustion is not required when the pursuit of administrative remedies would be futile."); *see also Moulton*, 205 Ariz. at 513 ¶20 ("ADOR is unable to declare a law unconstitutional."); *cf. Vangilder v. Arizona Dep't of Revenue*, 252 Ariz. 481 (2022) (affirming the Tax Court invalidating a tax).

**THE COURT FINDS** that Plaintiffs may have pleaded, but have not yet pressed, relief that would violate the relevant anti-injunction statute and also that exhaustion would be futile based on the substantive relief sought.

The purpose of a Rule 12(b)(6) motion, on the other hand, is to test the sufficiency of the Complaint. In ruling on the motion, the Court will "assume the truth of the well-pled factual allegations and indulge all reasonable inferences therefrom." *Cullen v. Auto-Owners Ins. Co*., 218 Ariz. 417, 419 ¶7 (2008). "Because Arizona courts evaluate a complaint's well-pled facts, mere conclusory statements are insufficient to state a claim upon which relief can be granted." *Id.*

Yet, Arizona law disfavors motions to dismiss for failure to state a claim upon which relief can be granted. *State ex rel. Corbin v. Pickrell*, 136 Ariz. 589, 594 (1983). Moreover, such motions are not to be used as a vehicle to resolve disputes about the facts or merits of the case. *Coleman v. City of Mesa*, 230 Ariz. 352, 363 ¶46 (2012). Instead, the narrow question presented by the Motions pursuant to Rule 12(b)(6), Ariz. R. Civ. P., is whether the facts alleged by Plaintiffs are sufficient "to warrant allowing [them] to attempt to prove their case" on those claims. *See id*.

As to HBACA's standing, "[t]he issue in Arizona is whether, given all the circumstances in the case, the association has a legitimate interest in an actual controversy involving its members and whether judicial economy and administration will be promoted by allowing representational appearance." *Armory Park Neighborhood Ass'n v. Episcopal Cmty. Services in Arizona*, 148 Ariz. 1, 6 (1985). Additionally, standing is a prudential rather than a jurisdictional concern in Arizona. *See Dobson v. State*, 233 Ariz. 119, 122 ¶9 (2013).

Given the foregoing, **THE COURT FURTHER FINDS that** the issues raised by Defendants are more properly addressed in cross-motions for summary judgment or similar briefing. Arizona is a notice pleading jurisdiction, and so perfection in pleading is not required. *See Rosenberg v. Rosenberg*, 123 Ariz. 589, 592–93 (1979). In any event, Defendants appear to be well on their way to formulating responsive pleadings that fairly respond to the substance of the allegations at issue. Ariz. R. Civ. P. 8(c)(2). Therefore,

**IT IS ORDERED denying** Defendant Arizona Department of Revenue's Motion to Dismiss, filed March 31, 2025.

**IT IS FURTHER ORDERED denying** Defendant Town of Gilbert's Motion to Dismiss, filed March 31, 2025. Defendants are directed to comply with Ariz. R. Civ. P. 12(a)(2)(A) within the timeframes stated in that rule.

**IT IS FURTHER ORDERED** directing the Parties to meet and confer on a proposed schedule for this matter and to make an appropriate joint filing with the Court, pursuant to the deadline set forth in the Court's Order filed June 24, 2025. Disputes regarding scheduling or other disputes related to the content of any proposed scheduling order may be addressed in the joint filing and proposed order, and the Court will resolve them before entering it.