

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TX 2010-000559  
TX 2012-000415

10/03/2014

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT  
A. Quintana  
Deputy

DESERT EAGLE ESTATES L P

MICHAEL G GALLOWAY

v.

MARICOPA COUNTY

RACHELLE ZOLLER LEIBSOHN

UNDER ADVISEMENT RULING

Defendant's "Motion to Dismiss" is fully briefed and pending. The Court heard Oral Argument on the motion on September 10, 2014.

In these two related but, as of the date of the filing of these motions, unconsolidated cases, the Plaintiff challenges Maricopa County's determination of the value of its property for tax years 2011 and 2013. While these cases were pending, Plaintiff became delinquent in its tax for the 2012 tax year. Defendant argues that the cases must, therefore, be dismissed pursuant to A.R.S. § 42-11004. Plaintiff responds that A.R.S. § 42-11004 is inapplicable and that, instead, A.R.S. §42-16210 is the relevant statute.

The tax court previously addressed this issue in *RCJ Corp v. Ariz. Dept. of Revenue*, 168 Ariz. 328 (Tax Ct., 1991), but under the statutory scheme which preceded A.R.S. §42-11004 and 42-16210. In 1997 the legislature completely overhauled the statutory scheme for state taxes.

Like the present case, *RCJ Corp.* was a valuation case. As Judge Maroney pointed out in that case, the statutes then existing set forth two mutually exclusive methods for taxpayers to challenge taxes imposed upon them. What was then A.R.S. §42-204 (A) was used for challenges to the *legality* of a tax and A.R.S. §42-204(E) (and, by reference there, A.R.S. § 42-176, -177 and -178) were used for challenges to the *valuation or classification* of property.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TX 2010-000559  
TX 2012-000415

10/03/2014

Under those statutes, challenges to the *legality* of a tax were required to be dismissed if the taxpayer became delinquent in taxes for any tax year while the case was pending. Challenges to the *valuation or classification* of property, however, were only required to be dismissed if the taxpayer became delinquent in taxes owed in the tax year being challenged.

When the legislature overhauled the tax statutes in 1997, A.R.S. §42-402(A) became §42-11004. A.R.S. §42-402 (E) became §42-1105 and §42-177 became §42-16210.

A.R.S. §42-11004 now provides:

A person on whom a tax has been imposed or levied **under any law relating to taxation** may not test the validity **or amount** of tax, either as plaintiff or defendant, if any of the taxes:

1. Levied and assessed in previous years against the person's property have not been paid.
2. That are the subjects of the action are not paid before becoming delinquent.
3. coming due on the property during the pendency of the action are not paid before becoming delinquent.

(emphasis added)

The Defendant describes the emphasized words above - “under the law relating to taxation” and “or amount” - as clearly and unambiguously announcing the legislative intent that A.R.S. §42-11004 cover both challenges to the *legality* of taxes and challenges to *value or classification*. At first blush, this argument is attractive. Upon closer inspection, however, it fails.

The exact same language Defendant cites - “under the law relating to taxation” and “or amount” - was used in A.R.S. §12-204 (A). In 1991 in *RCJ Corp.*, Judge Maroney found these exact same words did not mean that property tax appeals challenging the valuation or classification of property should be dismissed if the tax for year other than the year challenged were to become delinquent.

The Court presumes that the legislature knew of, and understood, Judge Maroney’s interpretation of A.R.S. §12-204 (A) when it retained these exact same words in A.R.S. §12-

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TX 2010-000559  
TX 2012-000415

10/03/2014

11004. By using the exact same words, the legislature must have intended that the rule announced in *RCJ Corp.* remain unchanged.

This conclusion is supported by a review of the legislative history of the restructuring of the tax statutes, which indicates that the purpose of the recodification was not to “make any substantive changes in the manner of administration, determining, or processing taxes based solely on changes that may have been made to the text or arrangement of the tax code by this act.” Laws 1997 Ch. 150 §§175 (B)).

Finally, this conclusion is supported by viewing the current statutory structure from a higher elevation. Lawsuits to recover *illegal* tax are now brought exclusively under Chapter 11 of Title 42, which includes §42-11004. Lawsuits challenging *valuation or classification* of property are now brought exclusively under Chapter 16 of Title 42, which includes A.R.S. §42-16210.

Had the legislature intended to have only one rule to control mandatory dismissal of all tax appeals when the taxpayer becomes delinquent in taxes, it would not have needed to have two rules, different in scope from one another, placed in different chapters - one in the chapter for challenging *illegal* taxes and another in the chapter for challenging *valuation or classification*.

The Court presumes the legislature kept these two separate and different rules, and placed them in the new statutory scheme as they did, for a reason: it intended two different rules to apply – one to challenges of the *legality* and another to apply to challenges of *valuation or classification*.

In sum, nothing in the 1997 restructuring of the tax statutes suggest that the holding in *RCJ Corp.* is no longer good law.

For these reason, Defendant’s Motion to Dismiss is denied.

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

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TX 2010-000559  
TX 2012-000415

10/03/2014

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.