

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2014-000444

10/29/2015

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT
H. Bell
Deputy

B S I HOLDINGS L L C

CHRISTOPHER T RAPP

v.

ARIZONA DEPARTMENT OF
TRANSPORTATION, THE

BENJAMIN H UPDIKE

MINUTE ENTRY

Courtroom 201-OCH

9:00 a.m. This is the time set for Oral Argument re: Plaintiff's Motion for Partial Summary Judgment, Defendant's Cross-Motion for Summary Judgment, and Plaintiff's Cross-Motion for Summary Judgment. Plaintiff is represented by counsel, Christopher Rapp. Defendant is represented by counsel, Mark Ingle.

A record of the proceedings is made by audio and/or videotape 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.

9:31 a.m. Matter concludes.

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LATER:

The Court has considered Plaintiff's Motion for Partial Summary Judgment, filed May 5, 2015, Defendant's response Cross-Motion for Summary Judgment, filed June 9, 2015, and all related pleadings. The Court benefited from oral argument on the motion on October 29, 2015.

In drafting A.R.S. § 28-8336, the legislature did not define the word "day," nor did it define what being "based in" Arizona means. While the usual rules of statutory interpretation apply to tax statutes just as to all others, when the legislative intent cannot be determined, they are to be construed liberally in favor of the taxpayer. *State ex rel. Arizona Dept. of Revenue v. Capitol Castings, Inc.*, 207 Ariz. 445, 447 ¶ 9-10 (2004). The Court simply has nothing before it to indicate whether the legislature intended for "day" to mean an entire 24-hour period or some lesser portion of it. Defining "day" as either a 12 hour period, in either one or two consecutive calendar days, or as a 24 hour period, as suggested by Plaintiff, results in the same conclusion: Plaintiff's aircraft was present for more than 90 days, but less than 210 days, in each of the subject tax years.

Plaintiff's Motion for Partial Summary Judgment is granted. Defendant's Cross-Motion for Summary Judgment is denied.