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

TX 2022-000024 11/06/2025

HONORABLE ERIK THORSON

CLERK OF THE COURT
A. Smith
Deputy

MARSHALL FOUNDATION JODI A BAIN

v.

PIMA COUNTY JOSHUA CARDEN

ORAL ARGUMENT

East Court Building- Courtroom 912

10:30 a.m. This is the time set for Oral Argument regarding Plaintiff's *Objection to Subpoena Duces Tecum and Motion to Quash*, filed May 27, 2025. Plaintiff, Marshall Foundation, is represented by counsel, Timothy M. Medcoff, and co-counsel, Michael P. Harnden, on behalf of counsel of record, Jodi A. Bain. Defendant, Pima County, is represented by counsel, Joshua Carden, co-counsel Javier A. Gherna, and co-counsel, Krystal De La Ossa.

A record of the proceedings is made digitally in lieu of a court reporter.

Discussion is held regarding the status of the case and arguments are heard.

Based upon matters presented to the Court,

IT IS ORDERED taking this matter under advisement.

10:58 p.m. Matter concludes.

LATER: Upon review after full briefing and oral argument on Plaintiff Marshall Foundation, LLC's Objection to Subpoena *duces tecum* and Motion to Quash, **THE COURT FINDS** as follows.

It has long been a principle of Arizona tax law that in a property tax valuation appeal "the trial court is limited in determining the true value to evidence which was in existence at the time the assessment was made." *State Tax Comm'n v. United Verde Extension Mining Co.*, 39 Ariz. 136, 141 (1931).

The Arizona Supreme Court so held in response to the question of whether a court in such an appeal "is confined in determining value to evidence *as it existed as of the date of the assessment*, or whether it may take into consideration other facts not then existing or known, in determining the true value as of the prior date." *Id.* In answering it, our Supreme Court also noted that the information must be "in existence and *relevant*," yielding a valuation result that is a "reasonable inference from such existing and *relevant* evidence only." *See id.* at 141-42 (emphases added).

The question answered by *United Verde* matters in this case, because Defendant Pima County has issued a third-party bank subpoena regarding post-valuation date (post-January 1, 2021) documents related to a "recapitalization of certain membership interests in October 2021." (*See* Mot., at 3.) The term 'post-valuation date' is a bit of a moving target due to another impactful principle of Arizona tax law.

A.R.S. § 42-15105 provides, as predecessor tax statutes seem to have, that "in the case of new construction, additions to, deletions from or splits or consolidations of assessment parcels and changes in property use that occur after September 30 of the preceding year and before October 1 of the valuation year," then the "assessor shall notify the owner of the property of any change in the valuation or legal classification on or before September 30 of the valuation year." A.R.S. § 42-15105(1).

The Parties disagree as to whether the proper read of that statute is that it creates a new "valuation date" (Defendant's position), sweeping in temporally more relevant evidence for purposes of discovery and disclosure and ultimately, for the Court's consideration, or that the "valuation date" remains January 1, 2021 (Plaintiff's position), here, even though the statute was used by the Assessor to change the value and notify Plaintiff of the same.

The statutory language itself does not provide a new valuation date in cases in which it has been applied—instead it sets forth a deadline for assessors to notify property owners of any change in valuation or legal classification after the statute has been found to apply. In this case, Defendant's Assessor applied the statute, deeming the property "new construction," so "the Supplemental Notices [required by A.R.S. § 42-15105] captured the added value of the improvements . . . ." (Resp., filed May 29, 2025, at 2.)

Plaintiff points out that deeming the property at issue "new construction" to change the value is at odds with a July 30, 2021, Assessor Level Notice of Decision that several times noted the property as '100% complete' as of the original January 1, 2021, valuation date. (Reply, filed June 16, 2025, at 2.) The property also underwent an administrative lot split in mid-2021 at Plaintiff's urging. (*Id.* at 4.) A.R.S. § 42-15105 provides for changes in value due to lot "splits," should they "occur after September 30 of the preceding year and before October 1 of the valuation year."

But the statute's language still does not indicate that this represents a change in the valuation date that would allow the in-sweep of more information existing as of a new valuation date, like that sought by the subpoena issued by Defendant. Cases cited by Defendant indicate that appellate courts in Arizona *might* hold this to be the case. For example, *Magellan S. Mountain Ltd. P'ship v. Maricopa Cty.*, 192 Ariz. 499, 502 (App. 1998) uses the heading "Propriety of Valuation Date Other Than January 1," in discussing this concept as set out in a predecessor statute to A.R.S. § 42-15105.

On the other hand, *Swift Transp. Co., Inc. v. Maricopa Cty.*, 225 Ariz. 262, 267 (App. 2010), found that the language of A.R.S. § 42-15105 refers to "events triggering a new unitary valuation," but the decision—like the statute—is silent as to whether this pushes the original date of value into the future, and, if so, when the new date of value might be.

And finally, *Premiere RV & Mini Storage LLC v. Maricopa Cty.*, 222 Ariz. 440, 447 ¶29 (App. 2009) does not answer the question of whether an A.R.S. § 42-15105(1) notice bears a new date of valuation, but it does "hold that a split occurs when the Assessor completes the process of identifying and valuing the new parcels resulting from the split in the tax roll."

Premiere also recites in its operative facts section that "[t]he valuation date for the 2005 tax year was January 1, 2004," despite the fact that the assessor in that case used information about December 2003 sales received in April 2004 to then administratively effectuate a lot split in the tax roll after September 30, 2004, that then had an effect on valuation for tax year 2006. *Id.* at 442, ¶3.

Premiere construed statutory language to determine what a "split" means and when it occurs but not whether it changes the valuation date and thus the cutoff date for relevant information in a property tax appeal. Given its discussion and holding that "the term 'split' refers to the [final result of the] administrative process conducted by the Assessor," it would seem odd to this Court that the Assessor would then be in total control, in a case like this, as to the cutoff date for relevant and discoverable information.

Yet whether A.R.S. § 42-15105 portends a changed or new valuation date should remain an open question a while longer, as *Premiere* is determinative here in another way. To wit, Ariz. R. Civ. P. 26(b)(1) provides that the permissible scope of discovery and disclosure is "any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case" considering a number of pertinent individualized factors.

It is undisputed that the documents sought by Defendant via subpoena here "arise from a change in membership interests and were created solely for that different purpose." (Reply, at 6.) One of *Premiere*'s major premises is that from "the standpoint of Arizona's property tax scheme, there is no inherent significance in a change in ownership." *Id.* at 445, ¶17.

Given the ambiguities in the statutory scheme about whether A.R.S. § 42-15105 created a new valuation date, but more importantly given that the subpoenaed documents arising only from a change in membership interests cannot be relevant to value,

IT IS ORDERED sustaining Plaintiff's objection to the subpoena and **granting** its Motion to Quash.