

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

TX 2021-000401

11/03/2023

HONORABLE SARA J. AGNE

CLERK OF THE COURT
J. Holguin
Deputy

J S J VENTURA DEVELOPMENT 2200 L L C

MICHAEL T DENIOUS

v.

MARICOPA COUNTY

PETER MUTHIG

JUDGE AGNE

UNDER ADVISEMENT RULING

After considering the Parties' papers and arguments, the record of the case, and the relevant authorities, regarding Defendant Maricopa County's Motion to Dismiss for Lack of Subject Matter Jurisdiction, filed July 12, 2023 ("Motion"), fully briefed August 2, 2023, and under advisement after oral argument as of September 7, 2023, the Court finds as follows.

Plaintiffs brought this action on November 2, 2021, appealing the proper classification/use and full cash value of properties for the 2021 and 2022 tax years. (*See Compl.*, filed 11/02/2021.)

Defendant, meanwhile, has postured the Motion in part as one contesting subject matter jurisdiction under Rule 12(h)(3), 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 (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 58 Project of Arizona, Inc.*, 233 Ariz. at 463. The Court has determined that there are no factual disputes in this matter for which resolution thereof would assist the Court in resolving the jurisdictional question.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2021-000401

11/03/2023

The Parties are in agreement on the facts: Plaintiffs paid the entirety of their 2021 tax year bill at issue on July 7, 2022, without making any tax payments for 2021 prior to that date. (*See Mot.*, at 2; *Resp.*, filed July 31, 2023, at 4.) Plaintiffs paid the entirety of their 2022 tax year bill at issue on March 7, 2023, and did not make any payments for 2022 prior to that date. (*See Mot.*, 2; *Resp.*, at 4.) There being no objection, the Court also takes judicial notice pursuant to Ariz. R. Evid. 201 of the tax summary reports attached as Exhibit A to the Motion.

Plain statutory language of A.R.S. § 42-16210 requires the result here:

A. All taxes levied and assessed against property for the year on which an appeal has been filed by the property owner shall be paid before they become delinquent.

B. If the taxes are not paid before becoming delinquent, the court shall dismiss the appeal except when either of the following occur:

1. The full year tax for the year is paid on or before December 31 of the tax year pursuant to § 42-18053.
2. The remaining one-half tax that is unpaid is delinquent after the immediately following May 1 at 5:00 p.m. is paid by July 1, including all interest due.

Plaintiffs accomplished neither of the statutory requirements as applicable to either tax year. The full amount for tax year 2021 was not paid until after July 1 of the *following* tax year, and the full amount for tax year 2022 was not paid until March of the *following* tax year. Plaintiffs argued that eventual payment cured any jurisdictional defect, but the statutory language uses the mandatory “shall dismiss,” without any language allowing late cure. And Plaintiffs’ argument that because the full amount of tax year 2022 taxes was paid before May 1, 2023, subsection (B)(2) saves that part of their appeal would render superfluous the language of (B)(1), as well as the due dates set forth in A.R.S. § 42-18052(B). These requirements are jurisdictional, not to be waived or deemed cured by the Tax Court. *See Sonoran Peaks, LLC v. Maricopa Cty.*, 236 Ariz. 399, 401 (App. 2015). Therefore,

IT IS ORDERED granting the Motion in full. No later than **November 17, 2023**, Defendant shall lodge with the Court a proposed form of judgment. Ariz. R. Civ. P. 58 provides the timeframes for objections and replies regarding the proposed judgment. The Court will rule thereafter.