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10/01/2010 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2007-000139 09/30/2010

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

MICROCHIP TECHNOLOGY INCORPORATED — PETER C GUILD

v.

ARIZONA STATE DEPARTMENT OF REVENUE, et al. — SCOT G TEASDALE

MINUTE ENTRY

The Court took this matter under advisement following oral argument on September 20, 2010. The Court has considered the parties' motions for summary judgment.

A.R.S. § 43-1170, like all statutes granting tax credits, is strictly construed against the taxpayer seeking the credit. *Watts v. Arizona Dept. of Revenue*, 221 Ariz. 97, 101 ¶ 15 (App. 2009). Subsection (B) defines the property entitled to the credit as "that portion of a structure, building, installation, excavation, machine, equipment or device and any attachment or addition to or reconstruction, replacement or improvement of that property that is directly used, constructed or installed in this state for the purpose of meeting or exceeding rules or regulations adopted by the United States environmental protection agency, the department of environmental quality or a political subdivision of this state to prevent, monitor, control or reduce air, water or land pollution that results from the taxpayer's direct operating activities in conducting a trade or business in this state." A.R.S. § 43-1170(B). Microchip's position, that subsection (A) defines the scope of the credit, cannot stand. If the credit applies to all "real or personal property that is used in the taxpayer's trade or business in this state to control or prevent pollution," then a list of such items, such as the list of qualifying property contained in subsection (B), would be superfluous. The Court must interpret statutes to avoid superfluity. *Pinal Vista Properties, L.L.C. v. Turnbull*, 208 Ariz. 188, 190 ¶ 10 (App. 2004). This principle, along with the standard rule of

statutory interpretation inclusio unius est exclusio alterius, requires that the credit be limited to those items enumerated in subsection (B).

The statute, employing the definite article, requires that compliance with pollution control regulations be "*the* purpose" of the property. Thus, such a benefit cannot be merely *a* purpose of property having another purpose as well. Furthermore, the statute limits the credit to property used to comply with governmental regulations "adopted … to prevent, monitor, control or reduce air, water or land pollution." The evidence in the record, which Microchip does not rebut, is that the Tempe and Chandler regulations that Microchip uses the property to comply with are not pollution control regulations, but were adopted for other purposes. Instead, Microchip relies on the assertion that storm water and sewage are pollutants. As far as it goes, the assertion is probably unobjectionable. However, that storm water and sewage are pollutants does not mean that either city enacted its regulation to prevent, monitor, control, or reduce them as pollutants. The New Hampshire Supreme Court opinion offered by Microchip, *In re Town of Rindge*, 959 A.2d 188 (N.H. 2008), highlights the point. There, the relevant statutory language granted a tax exemption to "[a]ny person, firm or corporation which builds, constructs, installs, or places in use in this state any treatment facility, device, appliance, or installation wholly or partly for the purpose of reducing, controlling, or eliminating any source of air or water pollution." *Id*. at 191 (quoting RSA 72:12-a). In New Hampshire, the tax benefit is available if the *owner's* purpose (or one of his purposes; the statute uses the "wholly or partly" language contained in the original Arizona bill but deleted before its enactment) is to reduce, control, or eliminate air or water pollution. In Arizona, preventing, monitoring, controlling, or reducing pollution must be the *government's* purpose in enacting the rule or regulation; the relevant owner's purpose must be to satisfy that rule or regulation. An owner who invests in property with his own purpose of reducing pollution, however socially admirable, does not qualify for the tax credit.

On its face, subsection (B) limits the credit to machinery and improvements, not to the land on which they are placed. Even subsection (A) limits it to property expensed during the taxable year. Microchip's real property is therefore ineligible even under the broadest interpretation.

Accordingly,

IT IS ORDERED GRANTING Defendant Arizona State Department of Revenue's Motion for Summary Judgment filed March 1, 2010.

IT IS FURHTER ORDERED DENYING Plaintiff's Motion for Summary Judgment on Issue of Qualification filed March 1, 2010.