

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

TX 2021-000388

10/17/2024

HONORABLE SARA J. AGNE

CLERK OF THE COURT  
T. Aird  
Deputy

REBUILD THE BLOCK L L C

PAUL J MOONEY

v.

ARIZONA DEPARTMENT OF REVENUE

BENJAMIN H UPDIKE

MARK INGLE  
JUDGE AGNE

**UNDER ADVISEMENT RULING**

The Court held oral argument on September 13, 2024, regarding the Arizona Department of Revenue’s Motion for Summary Judgment, filed June 7, 2024 (the “Motion”), as well as subsequent filings related thereto.

The Court has considered the filings and arguments of the Parties, the relevant authorities and applicable law, as well as the entire record of the case, and—considering all facts and reasonable inferences therefrom in the light most favorable to the non-movant—hereby finds as follows regarding the Motion.

The Court previously found that Plaintiff Rebuild the Block, LLC (“RTB”) is a speculative builder for purposes of the speculative builder tax applicable to the sales of the nine properties at issue in this case, granting the Department summary judgment on that issue. (Minute Entry, filed September 25, 2023, at 3–4.) The Court also found that disputed facts remained as to the calculation of the amount of the tax and any deductions and exemptions to be included. (Minute Entry, filed September 25, 2023, at 4.)

The Department now seeks summary judgment on those remaining issues and asks the Court to affirm the Department’s assessment in the amount of \$79,992.91 plus interest. (Mot., at 1, 15.) The issue before the Court is whether RTB has met its burden to prove it is entitled to any exemptions, deductions, or credits. (Mot., at 2.)

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RTB provided a spreadsheet of expenses for the properties to the Department to support its claims for additional deductions. (Department's Statement of Facts, filed June 7, 2024 ("DSOF"), at ¶8, *undisputed*.) The Department contends anything else provided was insufficient to allow it to verify the amounts listed in the spreadsheet. (*See* DSOF ¶12.) The Department reviewed each line item of the spreadsheet. (DSOF ¶15, *materially undisputed on that point*.)

After its review and allowing for possible and verifiable deductions, the Department reduced the total speculative builder tax from \$114,538.85 to \$79,992.91. (DSOF ¶72, *undisputed that that is the amount now sought*.) The Department also asserts that RTB owes \$29,719.48 in interest as of June 15, 2024, for a total of \$109,712.39. (DSOF ¶73, *undisputed but RTB objects to payment of interest*.)

Summary judgment is appropriate if "there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." Ariz. R. Civ. P. 56(a); *General Motors Corp. v. Maricopa Cty.*, 237 Ariz. 337, 339 ¶7 (App. 2015). "In the tax field, we liberally construe statutes imposing taxes in favor of taxpayers and against the government, . . . but strictly construe tax exemptions because they violate the policy that all taxpayers should share the common burden of taxation." *State ex rel. Ariz. Dep't of Revenue v. Capitol Castings, Inc.*, 207 Ariz. 445, 447 ¶10 (2004) (internal citations omitted).

The City of Phoenix imposes a privilege tax "equal to two and three-tenths percent (2.3%) of the gross income from the business activity upon every person engaging or continuing in business as a speculative builder within the City." Phoenix City Code ("City Code") § 14-416(a). "[I]t shall be presumed that all gross income . . . is subject to the tax until the contrary is established by the taxpayer." City Code §14-400(c).

"The gross income of a speculative builder considered taxable shall include the total selling price from the sale of improved real property at the time of closing of escrow or transfer of title." City Code § 14-416(a)(1). The City Code allows for various deductions, credits, and exemptions. *See* City Code § 14-416(b) and § 14-416(c).

The Motion is based on arguments that RTB has not provided sufficient documentation to show its entitlement to some deductions and credits under City Code § 14-416(c)(2)(A) and City Code § 14-416(c)(3)(A); RTB does not qualify for some credits under City Code § 14-416(c)(3)(B); some of the claimed development fees do not fall under the exemption set forth in City Code § 14-416(c)(1)(E)(iii); and some of the claimed fees for architectural or engineering services are not excludable under City Code § 14-416(b)(5). (Mot., at 9–15.)

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RTB contends that the Declaration of Mr. Anderson, filed July 12, 2024, shows that there are still issues of fact regarding the calculation of the assessment that should be resolved at trial. (Resp., filed July 12, 2024, at 3.) The Court agrees.

For example, Mr. Anderson states that records provided to the City of Phoenix and the Department reflect the amounts RTB paid for non-taxable services related to the nine properties and the amounts RTB paid to subcontractors. (Dec. of N. Anderson, filed July 12, 2024, at ¶¶8–9.) Mr. Anderson also states that the subcontractors were all licensed contractors and that the subcontractors paid TPT on the gross receipts paid to them by RTB. (Dec., at ¶¶10–11.) Mr. Anderson testifies that the amount of the assessment should be no more than \$56,414.00. (Dec. at ¶31.)

While the Court understands the Department’s position regarding its review and its asserted erring to RTB’s benefit with the exemptions, deductions, and credits it has allowed, **THE COURT FINDS that** disputed facts remain, and RTB is entitled to go to trial on the issue of the calculation of the amount of the tax.

The Department contends that Mr. Anderson’s Declaration is insufficient to create an issue of fact because it does not cite to any documentation to support RTB’s position. (*See* Reply, filed August 5, 2024, at 5–6.) However, **THE COURT FINDS that** Mr. Anderson’s Declaration is sufficient to defeat summary judgment. Whether Mr. Anderson’s testimony will be sufficient to prove the deductions and credits at trial is a separate issue for resolution at trial. “[S]ummary judgment is not appropriate if the court must evaluate the credibility of witnesses with different versions of material facts, weigh the quality of evidence, or choose among competing inferences.” *Purdy as Tr. of Survivors of Jones v. Metcalf in & for Cty. of Pima*, 252 Ariz. 270, 274 ¶14 (App. 2021) (citations omitted).

As to the Department’s contention that testimony RTB may offer at trial regarding taxes paid without documentation would be hearsay and inadmissible under Ariz. R. Evid. 801 and 802 (*see* Reply, at 6), **THE COURT FINDS that** any hearsay challenges are more appropriately addressed during trial. Therefore, given the foregoing,

**IT IS ORDERED denying** the Arizona Department of Revenue’s Motion for Summary Judgment, filed June 7, 2024.

**IT IS FURTHER ORDERED** setting a Trial Setting Conference on **November 1, 2024, at 9:15 AM (15 minutes allotted) on Court Connect.**

Please join the hearing via:

<https://tinyurl.com/AZtaxcourt>

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You may need to type the link directly into your browser in lieu of clicking.

You can also dial in using your phone.

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You may wish to download the Microsoft Teams application first before using the above link or typing it into your browser; for more on Court Connect, please visit:

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