Michael K. Jeanes, Clerk of Court
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04/26/2017 8:00 AM

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

TX 2014-000212 04/24/2017

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT
T. Cooley
Deputy

SIETE SOLAR L L C, et al. PAUL J MOONEY

v.

ARIZONA DEPARTMENT OF REVENUE, et al. MACAEN MAHONEY

MINUTE ENTRY

Courtroom 201-OCH

10:01 a.m. This is the time set for Oral Argument re: Motion for Summary Judgment. Plaintiffs are represented by counsel, Paul J. Mooney and Bart Wilhoit. Defendants are represented by counsel, Macaen Mahoney and Kenneth Love.

A record of the proceedings is made digitally 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.

10:37 a.m. Matter concludes.

LATER:

The Court has considered Plaintiffs' Motion for Summary Judgment filed June 16, 2015, Defendants' Combined Response and Cross-Motion to Dismiss filed December 16, 2016,

Plaintiffs' Combined Response and Reply filed January 20, 2017, and Defendants' Reply filed January 31, 2017. The Court benefited from oral argument on the competing motions on April 24, 2017.

This case involves the 2015 statutory valuations of three solar energy generation facilities and a wind farm, all of which constitute "renewable energy equipment." Such equipment is valued pursuant to a statutory formula set forth in A.R. S §42-14155. The issue, however, is exclusively one of law.

Pursuant to A.R.S. §42-14155, renewable energy equipment is valued at 20% of its "depreciated costs." On April 30, 2014, the Legislature amended A.R.S. § 42-14155. That amendment provided that renewable energy equipment is to be valued by deducting depreciation from the taxable original cost, which is the original cost "reduced by the value of any investment tax credits, production tax credits or cash grants in lieu of investment tax credits applicable to the taxable renewable energy equipment." A.R.S. § 42-14155(C)(4) (2014).

The legislature did not specify an effective date for the amendments or declare them to be retroactive; thus, they became law on July 24, 2014, the ninetieth day after the end of the legislative session. Ariz. Const. Art. IV Pt. 1 § 3.

The Department argues that the memorandum decision of the Court of Appeals in *Siete Solar, LLC v. Arizona Dept. of Revenue*, 2015 WL 8620672 (Ariz. App. 2015), which decided among other issues the date on which the amendments to A.R.S. § 42-14155 took effect, is binding on the present case under the doctrine of issue preclusion.

"Issue preclusion binds a party to a decision on an issue of fact or law litigated in a prior lawsuit if that issue was actually litigated in the prior lawsuit, the party to be estopped had a full and fair opportunity and motive to litigate the issue, and a final judgment was entered in the prior lawsuit, provided such issue or fact was essential to the prior judgment." *Baier v. Mayer Unified School Dist.*, 224 Ariz. 433, 439 ¶ 20 (App. 2010). "For purposes of issue preclusion, a court must determine what issue was actually litigated and decided in the prior lawsuit. As recognized by the Restatement, this question involves a balancing of important interests: on the one hand, a desire not to deprive a litigant of an adequate day in court; on the other hand, a desire to prevent repetitious litigation of what is essentially the same dispute." *Id.* at 440 ¶ 21 (internal quotation marks omitted). "Issue preclusion may apply when successive claim stages have issues of fact or of law in common." *Miller v. Industrial Comm. of Arizona*, 240 Ariz. 257, 259 ¶ 8 (App. 2016). The same principle applies here. Although Plaintiffs are correct that every new tax year stands on its own, *Stearns v. Arizona Dept. of Revenue*, 231 Ariz. 172, 178 (App. 2012), that does not prevent preclusion of issues common to the two actions.

As to the Plaintiffs that were parties to the earlier litigation, they had a full and fair opportunity and motive to litigate the issues, and their counsel undoubtedly did so with the same skill that they have consistently displayed before this Court. The memorandum decision, at ¶ 11, reflects that Plaintiffs did in fact argue that the amendment applied to the 2014 case, and that the Department contested it on the ground that the law existing at the time of the valuation year was controlling.

Plaintiff Arlington Valley is in a different position from the others, in that it was not a party and is apparently not in privity with the other Plaintiffs. The motion to dismiss fails against it. The Court will note, however, that, while the memorandum decision is not binding precedent, the Court may and does treat it as *very* strong persuasive authority.

Returning to the three remaining Plaintiffs, the Court of Appeals found "the valuation method employed by the Department in this case was statutorily mandated to be the method in place on January 1, 2013 unless the legislature specifically provided otherwise." *Siete Solar, supra* at ¶ 16-17. This holding that the date of valuation controls is not dicta, but rather is essential to the determination of the case. *See Golonka v. General Motors Corp.*, 204 Ariz. 575 n.8 (App. 2003). In order to decide whether a statute is effective as of the date of some action, it is necessary to find the date on which the statute became effective and compare that date to the date of the contested action; otherwise, it would be impossible to say whether the statute applied or not. The appeal in the 2014 case was filed on January 10 (Siete and Mesquite) and 14 (Perrin Wind), 2014. Comparing that date to the valuation date for tax year 2014, the Court of Appeals found the amendments to be inapplicable. *Id.*, ¶ 18.

Plaintiffs argue that the two cases differ in that, for tax year 2014, the valuation had been finally set, although appeals were still pending, while for 2015, as the levy date had not yet passed, there remained the possibility that the assessor might change the assessment. Nothing in the memorandum decision suggests that the court's holding is limited to cases which have reached finality or that the levy date is material at all. Rather, the decision identifies the valuation date as the "operative event[] which result[s] in vesting" the parties' entitlement under the law. *Aranda v. Industrial Comm. of Arizona*, 198 Ariz. 467, 472 (2000); *see also Waddell v. 38th St. Partnership*, 173 Ariz. 137, 140-41 (Tax 1992) (taxpayer's right does not exist until "event [that is] the final characteristic which makes the right assertable as a legal cause of action"). Had the Court of Appeals meant to make the levy date the operative event provided it had not yet passed as of the effective date of the statute, it would have said so. Instead, it identified the valuation date alone as the statutorily mandated operative event. *Id.*, ¶ 17.

The present case deals with the 2015 taxes, so the relevant valuation date is January 1, 2014. This date preceded the effective date of the amended A.R.S. § 42-14155. The amendments therefore do not apply to tax year 2015.

Given the above, Plaintiffs' argument that issue preclusion does not apply because of an intervening change in the law is not on point. The Court of Appeals' ruling means that the change in the law was not in effect at the material time and so did not intervene.

Therefore, it is ordered granting the Department's Cross-Motion to Dismiss with respect to Siete Solar, Mesquite Solar I, and Perrin Ranch Wind, and denying it as to Arlington Valley Solar Energy II.

Plaintiffs' motion for summary judgment is denied.