

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

TX 2017-000183

03/07/2018

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT

T. Cooley

Deputy

RANDA DRIVER

RANDA DRIVER

12865 E MERCER LN

SCOTTSDALE AZ 85259

v.

ARIZONA DEPARTMENT OF REVENUE

BENJAMIN H UPDIKE

MINUTE ENTRY

The Court has considered Defendant's Motion for Summary Judgment filed October 13, 2017, Plaintiff's Motion for Summary Judgment (which the Court treats as a Cross-Motion and the Response to Defendant's Motion) filed November 8, 2017, Defendant's Reply and Response filed January 5, 2018, and Plaintiff's Reply and Reply filed January 19, 2018. The latter motion the Court treats as only a reply to Plaintiff's motion, as it is an improper surrejoinder to the Department's motion. Rule 7.1(a)(3).

Despite alleging that the personnel at CD2U are "criminals" whose records cannot be trusted, Plaintiff has presented no evidence of her own that those records are incorrect, nor has she offered an explanation why a tax-evading seller, evidently not concerned about the risk of keeping customer records in general, should keep deliberately incorrect records. (She has not objected under Rule 803(6), which renders business records inadmissible hearsay if the source of the information indicates a lack of trustworthiness.) As the absence of legitimate stamps was addressed in the Department's motion and is not separately controverted in her cross-motion, that argument is waived; in any event, she offers no more than speculation based on the allegedly "common practice [of] criminals" to affix counterfeit stamps on untaxed cigarettes to show that the cigarettes sold to her had apparently-valid stamps. Thus, whether or not CD2U legally should have paid the tax, Plaintiff was or should have been on notice that it had not, and that she was

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therefore obligated to do so with Form 800DS. She does not contend that she ever submitted Form 800DS or any money to pay the tax. The statute of limitations therefore does not apply. A.R.S. § 42-1104(B)(1)(b).

Accordingly, Defendant's motion is granted. Plaintiff's motion is denied.