

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

TX 2018-000002

10/23/2018

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT
T. Cooley
Deputy

MARIK L L C

DAVID A SELDEN

v.

STATE OF ARIZONA E S A TAX UNIT

SUZANNE M CHYNOWETH

JUDGE WHITTEN

MINUTE ENTRY

The Court has the Department's Request for Preliminary Ruling Regarding Application of A.R.S. § 41-1993(D)(1), which is fully briefed.

It is unorthodox for a party to ask the Court to interpret a legal term, even one as critical as is seen here, outside the context of the case being presented. As there is no actual motion before it, the court cannot ake a ruling. In the interest of judicial economy, however, it does express its informal and nonbinding first impression.

The Court does not view "or" as employed here to be conjunctive leaving it two options. As the Department's counsel stated, it would be unlikely that the legislature would expressly offer the Court a choice between distinct laws, then provide it with no guidance on which to choose.

Grammatically, "or" most often serves as a conjunctive, the partner of a stated or implied "either." But among its other functions, as found at the reliably pedantic Oxford Dictionaries website, is "introducing a synonym or explanation of a preceding word or phrase." En.oxforddictionaries.com/definition/or#h7009600989980 (accessed Oct. 4, 2018).

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Though it might be logically clearer, if stylistically clumsy, for an English speaker, were the two alternatives reversed, the sense is not “take your pick between the two versions,” but rather, “if Section 613.01 as it exists as of the time of filing remains in force, apply it, otherwise apply the amended version,” explaining what the legislature meant by “Section 23-613.01.”

This, then, is how the Court interprets the statutory language. A.R.S. s 41-1993 (D) (3) first directs the Court to apply the version of s 23-613.01 current at the time the appeal was filed, as opposed to some earlier time, such as the time when the alleged violation occurred. It would most commonly be the case that the statute went unamended throughout the appeal process, leaving the Court with no decision to make. But laws do change, and s 23.613.01 is no exception. So the time-of-filing version of Section 613.01 likely applies except in the hypothetical event that an amendment has been enacted in the interim, in which case the amended version likely prevails.