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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2007-000598 03/05/2010

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

ASARCO L L C

PAUL J MOONEY

v.

ARIZONA STATE DEPARTMENT OF REVENUE, et al.

KENNETH J LOVE

MINUTE ENTRY

The Court took this matter under advisement following oral argument on February 1, 2010. The Court finds as follows.

The Court has considered the Department of Revenue's Motion for Summary Judgment Re Department's Use of Income Approach to Valuing Mission Mine and ASARCO's Cross-Motion for Partial Summary Judgment. It appears that ASARCO challenges the use of the income approach only based on the alleged federal ownership of the land, not whether the Mission Mine operated at a loss during tax years 2008 and 2009. There also appears to be no dispute that the Mission Mine is predominantly, as the term is used in R15-4-206, located on the land held by ASARCO under federal patent.

First, it has long been established that the court, not the Department of Revenue, determines the application of a constitutional exemption to specific property. *Oglesby v. Poage*, 45 Ariz. 23, 26 (1935). Thus, the understanding of Mr. Langlois and Mr. McElhaney, as well as the unknown authors of earlier Tax Manuals, is of no consequence.

Pima County v. American Smelting & Refining Co., 21 Ariz.App. 406, 408-09 (1974), is readily distinguishable from the present action. In that case, ASARCO extracted minerals under a lease; the Papago (Tohono O'Odham) tribe retained the fee interest, as was expressly required by the federal law holding reservation land in trust. Here, ASARCO holds the land and its

mineral rights in patent. The issuance of a patent extinguishes the federal government's interest in the patented property (subject to reversion should the land no longer be used for mining, a stipulation not applicable to the producing Mission Mine) and provides the patentee with fee simple title in the land as well as in the minerals. *See, e.g., Cook v. United States*, 37 Fed.Cl. 435, 437 (Ct.Cl. 1997) (distinguishing patent from unpatented mining claim, which confers right to possession and enjoyment but leaves title to the land in the federal government). Significantly (and consistent with *Fresno County*, *infra*), *American Smelting & Refining* held that, notwithstanding the tribe's fee ownership of the land and minerals, there would be no constitutional bar to taxing ASARCO on its leasehold interest, presumably based on the value of the minerals extracted, were there a statute authorizing such a tax, *id*. at 409. There is sufficient basis in Arizona statute for taxation of mining revenues on patented lands held in fee simple by the taxpayer.

ASARCO argues that R15-4-206 as written violates the state constitution in that it permits the taxation of federal property on which any percentage, not just the predominant part, of a mine is located. *See also Pima County v. American Smelting & Refining Co.*, 115 Ariz. 175, 177 (App. 1977) (unit valuation inappropriate where portion of mining operation is exempt from taxation). A.R.S. Const. Art. IX § 2 declares exempt from taxation "all federal … property." This limitation was imposed upon the people of Arizona by the Enabling Act, § 20: "no taxes shall be imposed by the state upon lands or property therein belonging to or which may hereafter be acquired by the United States or reserved for its use." However, if the federal government transfers some or all of its ownership rights to a private possessor or user, the state's taxation of the private party on that possession or use does not violate federal supremacy. *United States v. Fresno County*, 429 U.S. 452, 462 (1977). There is no reason to believe that the state constitutional exemption was intended to grant the federal government more than its entitlement as sovereign or to go beyond the mandate of the Enabling Act.

A patent grants "full equitable title" in the land, vesting in the patentee "all the rights and obligations of ownership." *Benson Mining & Smelting Co. v. Alta Mining & Smelting Co.*, 145 U.S. 428, 432 (1892). This bundle of rights transferred from the federal government to the patentee constitutes ownership in fee. *Freese v. United States*, 639 F.2d 754, 755 (Ct.Cl. 1981). Thus, there remains no federal title in the patented property to bar state taxation of it. (*Smith v. Dept. of Revenue*, 998 P.2d 675 (Or. 2000), which reaches the same conclusion, does not appear to rely on the distinct Oregon statute; rather, it concluded that the patentee held the patented land in fee simple and rejected the taxpayer's argument that as patentee, he inherited the federal government's immunity from taxation, *id.* at 676-77.) The question of whether Art. IX § 2 prohibits use of the income method when any part of the underlying land is tax-exempt is therefore not ripe.

Because the land comprising the Mission Mine is not predominantly tax-exempt, R15-4-206(B)(1) does not preclude use of the income method as the primary method of valuation. As the regulation mandates primary use of the income method unless at least one of the six specified situations exists, and ASARCO does not allege the existence of any of the remaining five, use of the income method as the primary method of valuation is proper.

In accordance with the foregoing,

IT IS ORDERED granting Defendants' Motion for Summary Judgment Re: Department's Use of Income Approach to Valuing Mission Mine.

IT IS FURTHER ORDERED denying Plaintiff's Cross-Motion for Partial Summary Judgment.