Clerk of the Superior Court
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THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN THE ARIZONA TAX COURT

TX 2020-000778 04/11/2023

HONORABLE SARA J. AGNE

CLERK OF THE COURT
J. Holguin
Deputy

ROCKAUTO L L C DOUGLAS S JOHN

v.

ARIZONA DEPARTMENT OF REVENUE SCOT G TEASDALE

JUDGE AGNE

UNDER ADVISEMENT RULING

The Court held oral argument on January 27, 2023, regarding Plaintiff's Motion for Summary Judgment filed September 2, 2022 ("Plaintiff's Motion"), and the Arizona Department of Revenue's ("the Department") Motion for Summary Judgment, filed that same date, ("Defendant's Motion"), as well as subsequent filings related thereto each of those, including Plaintiff's Supplemental Authority filed in support of its Motion, on February 3, 2023, and the Department's Response to the same, filed February 9, 2023.

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-movants, respectively—hereby finds as follows regarding the Motions.

Plaintiff RockAuto, LLC ("RockAuto" or "taxpayer"), seeks summary judgment in its favor on its claim that the Department's Assessment of transaction privilege tax ("TPT") for an audit period of April 1, 2013, through April 30, 2019, violates the nexus requirement of the Commerce Clause of the U.S. Constitution (U.S. CONST. art. I, § 8, cl.3). (*See* Compl., filed June 10, 2020, at ¶16 and Count One.) Summary judgment in RockAuto's favor on that Count obviates the rest of its Complaint. (*See id.* at Counts Two, Three (alleged in the alternative in the event this Court finds a substantial nexus).)

The Department seeks summary judgment in its favor, agreeing with Plaintiff that the "sole issue is whether Arizona has nexus (taxing jurisdiction) under pre-*Wayfair* cases." (Def.'s Mot., at 1.) Nexus is one part of a four-part Commerce Clause analysis set forth in precedent, including in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977) (encapsulating taxes as being upheld against Commerce Clause challenges when they were "applied to an activity with a substantial nexus with the taxing State, . . . fairly apportioned, [did] not discriminate against interstate commerce, and [were] fairly related to the services provided by the State.")

Wayfair refers to *South Dakota v. Wayfair, Inc.*, 138 S.Ct. 2080 (2018), which overruled precedent setting forth a "bright line" rule requiring either actual physical presence or in-state representatives engaged in activities 'significantly associated with the taxpayer's ability to establish and maintain a market in the state' for nexus to be found. *See National Bellas Hess, Inc. v. Dep't of Revenue*, 386 U.S. 753, 758 (1967); *Tyler Pipe Industries, Inc. v. Washington State Dep't of Revenue*, 483 U.S. 232, 250 (1987); *Quill Corp. v. North Dakota*, 504 U.S. 298, 318 (1992). *Wayfair* opted instead for a nexus rule based on "economic and virtual contacts" with a state. 138 S.Ct. at 2099.

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). Further, the burden of proof generally lies with the taxing authority "relevant to [factual issues regarding] ascertaining the liability of a taxpayer." A.R.S. § 42-1255. In cases such as this, the Department must demonstrate that activities on RockAuto's "behalf in Arizona were 'significantly associated with the taxpayer's ability to establish and maintain a market in this state for the sales.'" *See ADOR v. Care Computer Sys., Inc.*, 197 Ariz. 414, 417 (App. 2000).

The Department contends that "RockAuto's extensive use of its [at least six] in-state Affiliates (which it calls suppliers) to fulfill orders in-state, and other in-state actions . . . show that the necessary physical presence exists." (Resp. to Supp. Auth., at 2.) The Department "see[s] no reason to treat [RockAuto] differently for tax purposes merely because it employed agents to do in Arizona what it could have done itself." *See Service Merch. Co., Inc. v. ADOR*, 188 Ariz. 414, 416 (App. 1996).

The Department acknowledges that TPT is "an excise tax on the privilege or right to engage in an occupation or business in the State of Arizona," but glosses over the niceties of the pre-*Wayfair* nexus analysis. *See ADOR v. Mountain States Tel. & Tel. Co.*, 113 Ariz. 467, 468 (1976). Specifically, nexus exists where "the activities performed in this state on behalf of the taxpayer are significantly associated with the taxpayer's ability to establish and maintain a market in this state for the sales." *See Tyler Pipe Industries, Inc. v. Washington State Dep't of Revenue*, 483 U.S. 232, 250 (1987).

While it is undisputed that RockAuto spent $132,964 in advertising allocated to Arizona during the audit period, and it provided magnets, goodie bags, or other promotional items to more than 500 events in Arizona during the audit period, RockAuto is indisputably an online retailer located in Madison, Wisconsin. (*See* DSOF, filed September 2, 2022, at ¶¶ 1, 17, 18.) Its provision of those items to Arizona—the latter items upon request of the event organizers—does not make that Arizona-based activity. (*See* PCSOF, filed October 31, 2022, at ¶¶ 17, 18.)

It is also undisputed that roughly “89% of orders RockAuto placed with Arizona suppliers shipped to customers outside of Arizona,” while “83% of RockAuto’s sales to Arizona customers came from suppliers outside Arizona.” (PSOF, filed September 2, 2022, at ¶¶ 18, 19.) (While the Department did not dispute these statements of material fact, it lodged relevance, foundation, and hearsay objections to them. The Court **overrules** each of those as unfounded.)

The Department rests its analysis on “the important fact [] that the in-state activity is effective in creating and maintaining the in-state market,” but fails to countenance those material facts that RockAuto’s Arizona suppliers do not generally or significantly direct their activities for RockAuto at establishing or maintaining an Arizona market. *Cf. Scripto, Inc. v. Carson*, 362 U.S. 207, 211 (1960) (upholding use tax imposition where the only incidences of a sales transaction that were nonlocal were the acceptances of the orders).

Indeed, RockAuto does not at all control whether an Arizona customer is served by an Arizona supplier (an independent contractor with RockAuto) or one of its other network of suppliers. The Department admits that “it is the customer who decides.” (DCSOF, filed October 28, 2022, at 4, ¶ 3.) Customers have an option to allow the RockAuto system to “Choose for Me to Minimize Cost,” where different brands of the same auto part might be selected among in a way to minimize total cost of the part plus shipping cost (DSOF ¶ 52, *undisputed*), but RockAuto provides several evidentiary examples of Arizona customers’ orders that were fulfilled by suppliers outside Arizona, whether for reasons of cost, speed, or efficiency. (Resp. to Def’s Mot., filed October 31, 2022, at 5–6.)

Simply, Arizona suppliers are not selected to help RockAuto establish a market in Arizona as Defendant asserts. “Instead, suppliers are selected on their ability to fulfill an order at the lowest price and ship it in the quickest manner.” (Resp. to Def’s Mot., at 6; PCSOF ¶ 33.) Imposing a pre-*Wayfair* nexus finding on RockAuto here would require a legal basis for implying a volume element to that analysis, simply based on the facts that approximately eleven percent of RockAuto’s orders placed with Arizona suppliers are shipped to Arizona customers and resulted in $80,769,971.28 in audited gross receipts (State/County TPT) and $71,298,315.02 in audited gross receipts (City (MCTC) TPT) during the audit period. (DSOF ¶ 2, *undisputed*.) The Department presents no legal basis for such an element.

Instead, under both United States Supreme Court and Arizona precedent, the operative finding required is that RockAuto lacks the requisite physical presence to generate a substantial nexus between its activity and the taxing jurisdiction here. *See National Bellas Hess, Inc.*, 386 U.S. at 758; *Tyler Pipe Industries, Inc.*, 483 U.S. at 250; *Quill Corp.*, 504 U.S. at 318; *ADOR v. O'Connor, Cavanagh, Anderson, Killingsworth & Beshears, P.A.*, 192 Ariz. 200, 206 ("Many of the activities associated with Dunbar's ability to establish and maintain a market in Arizona were performed in this state."); *ADOR v. Care Computer Sys., Inc.*, 197 Ariz. 414, 416 (App. 2000) (*quoting Tyler Pipe*, 483 U.S. at 250). The Court finds both *O'Connor Cavanagh* and *Care Computer* distinguishable on their facts as set forth in Plaintiff's Response to Defendant's Motion, at 12. Therefore, given the foregoing discussion,

IT IS ORDERED granting Plaintiff's Motion for Summary Judgment, as **THE COURT FINDS** the requisite nexus lacking. Thus,

IT IS FURTHER ORDERED denying the Department's Motion for Summary Judgment.

IT IS FURTHER ORDERED that not later than twenty (20) calendar days after the filing of these Orders by the Clerk of the Superior Court, Plaintiff may submit a verified application for awards of attorney's fees and costs. If an application is submitted that Defendant wishes to oppose, a response must be filed not later than 20 calendar days after service. Plaintiff is not permitted to file a reply unless requested to do so by the Court.

IT IS FURTHER ORDERED that not later than twenty (20) calendar days after the filing of these Orders by the Clerk of the Superior Court, Plaintiff must also submit a proposed form of judgment. That form of judgment may incorporate by reference from this minute entry ruling but otherwise should be confined to fees and costs being awarded, along with Rule 54(c), Ariz. R. Civ. P., language.