

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2004-000293

09/25/2007

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT
S. Brown
Deputy

MC DONNELL DOUGLAS HELICOPTER
COMPANY, et al.

PAUL MOORE

v.

MARICOPA COUNTY, et al.

KATHLEEN A PATTERSON

UNDER ADVISEMENT RULING

(Plaintiff's combined Motion For Summary Judgment and Defendant's Cross-Motion For Summary Judgment)

The salient facts are these. Due to the sale of part of Plaintiff's property, the Maricopa County Assessor reconfigured the parcels involved. However, apparently due to delays within the Assessor's Office, the new parcel numbers were not activated until January 22, 2003, after the statutory date for providing notices of valuation for both the 2003 and 2004 tax years. As a result, while Plaintiff was timely notified of the valuation of the parcels in their original configuration (and in fact appealed that valuation for both tax years), it did not receive notification of the realigned values of the new parcels until the mailing of supplemental notices in September 2003. Plaintiff asserts that the Assessor's delay in providing notification until after the date established in A.R.S. § 42-15105 results in forfeiture of the right to collect any tax on the new parcels for those tax years. The County responds that it mailed out supplemental notices in a timely manner.

The Court's analysis must begin with the language of the Arizona Constitution: "All property in the state not exempt ... shall be subject to taxation." A.R.S. Const. Art. IX § 2(13). Plaintiff does not claim that its property is exempt under any provision of law. Rather, it asserts that, its property is *effectively* exempt for the two years in question because the County Assessor failed to meet the statutory deadline for issuing notices of valuation. This misconstrues the

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nature of the government's taxing power. Uniform collection of taxes on non-exempt property is an obligation rather than a right. It is mandatory, not discretionary, and the power to do so may never be surrendered. A.R.S. Const. Art. IX § 1. Thus, while the legislature may dictate the manner in which valuation is to be made by the counties and communicated to the taxpayer, it is without authority to require that, if those provisions are not strictly adhered to, the counties' power to collect the tax is forfeited. *See Shumway v. State*, 63 Ariz. 400, 407-08 (1945).

Subsequent to the sale of the ATK parcel, Plaintiff appealed the valuation of the entire property to the State Board of Equalization. Plaintiff does not indicate that it objected for the record that the value per acre of the split parcels was in fact materially different from that of the property as a whole, or that it even brought the split to the attention of the Board at all. Nor does Plaintiff allege such prejudice from having to pay the tax as to equitably estop the county from collecting it, as provided by *Valencia Energy Co. v. Arizona Dept. of Revenue*, 191 Ariz. 565 (1998). If there was error, then, not only is it harmless, but it was in significant part the result of Plaintiff's choice to remain silent rather than bring the Assessor's delay in splitting the parcels to the attention of the county and the Board. (Plaintiff argues, almost in passing, that the County initially set a full cash value of one dollar for each parcel. The County affirms that this is merely a placeholder pending a real valuation, in no way reflecting any estimate of true value. Plaintiff does not argue that the one dollar figure accurately reflects the value of its property, or that the penny or two that this figure would generate in taxes would properly fulfill the obligation to tax that property in a uniform manner. The one dollar figure therefore cannot be taken as a genuine estimate of full cash value.)

The Court does not minimize the importance of timely action by the county assessors in the timeline so carefully crafted by the legislature. However, the sanction of forfeiture is simply not permitted by our Constitution. Plaintiff's property must be taxed. If Plaintiff objected to the accuracy of the valuations, its proper course would have been to appeal promptly upon receiving the notices; due process would have guaranteed Plaintiff the right to appeal a late-noticed valuation notwithstanding that the lateness of the notice prevented appeal by the statutory deadline. The issue of rollover was raised for the first time in Plaintiff's reply argument in open court, and is not addressed by the Court at this time.

Therefore, IT IS ORDERED granting Defendant's Cross-Motion For Summary Judgment and denying Plaintiff's Motion For Summary Judgment.