

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2007-000663

04/12/2013

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

GENERAL MOTORS CORP

JEFFREY B SMITH

v.

MARICOPA COUNTY

ROBERTA S LIVESAY

UNDER ADVISEMENT RULING

The Court took Plaintiffs' Motion for Summary Judgment and Defendant's Cross-Motion for Summary Judgment under advisement following oral argument on February 25, 2013. Upon further consideration, the Court finds as follows.

A.R.S. § 42-16004(B) reads, "If a review or administrative appeal pursuant to article 2, 3 or 4 of this chapter or a judicial appeal pursuant to article 5 of this chapter results in a reduction of the valuation or a change in the classification of property, in the next year the valuation or classification of property shall be the valuation or classification that was determined by the review or appeal unless either: 1. There is new construction, a structural change or a change of use on the property. [or] 2. Chapters 11 through 19 of this title require a specific annual formula for the valuation." Subsection 2 does not apply to this property; nor has there been new construction or a structural change. The question the Court faces is whether a sale-leaseback that leaves unchanged the improvements and activity on the property establishes a "change of use on the property."

The first issue is whose use of the property and is the critical one. Before the sale-leaseback, GM's use was as an automobile testing facility; it is acknowledged by the parties that GM's use did not change after the sale-leaseback. DMB entered the picture after the tax years already resolved at trial. It does not use the property as an automobile testing facility or apparently for any purpose other than as part of an investment portfolio. It goes without saying that the legal incidence of the property tax falls on the owner, regardless of any private

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arrangement between the owner and the lessee. The Court must therefore look to DMB's use of the property, to the extent that it has one.

The County's own argument illustrates the difficulty of its position. "The 'use' that was 'current' on the date of value was for the owner's property development business, and not as an owner-occupied single use property." Response and Cross-Motion at 2:10-11; *see also* Maricopa County's Statement of Facts at 2:1-2. The law looks to what the current use *is*, not what that use is *for*; the Court cannot find anywhere in the County's briefing where DMB's current use is pinned down. The problem is not unique to DMB and GM. Rarely, it seems to the Court, would a lessor have any purpose other than making a profit from his property. (For that matter, neither would most lessees; there is no suggestion that GM, when it owned the property, was not motivated by profit, with automobile testing a means to that end.) But if making a profit is the lessor's use, then the actual use on the ground by the lessee is immaterial; so a change in the lessee's use (as long as it does not involve new construction, a structural change, or conversion into an activity taxed by a statutory formula) would not prevent a rollover. This, reached by another route, is the same "absurd result" disparaged by the County in its Reply. Nor would application of the rollover to a new owner be prevented by the County's interpretation; indeed, it strikes the Court that sales from one lessor to another lessor, which would not result in a change of use even if the lessee and his use also change (both lessors have the same use of maximizing profit), are probably much more common than sale-leaseback arrangements. The Court sees no reason to think that the legislature intended to exclude new owners from taking advantage of the rollover provision; had it wished to do so, it could easily have done so.

The Court believes that the most natural reading of A.R.S. § 42-16004(B) focuses on the objective use to which the property is put. New construction and structural changes result in something that is objectively verifiable by reference to the property itself. A "change of use," whether "on" or "of" the property, should be equally verifiable by reference to the property, not to its owner. Here, the property is objectively being used as an automobile testing facility. This use is certainly intended by DMB; it is specifically envisioned and authorized in Section 4 of the lease. It can therefore be fairly ascribed to DMB, and by the same token DMB can be fairly bound by it.

As there is no dispute that the objective use of the property in tax year 2008 is as it was in tax year 2007 litigated before this Court, and based upon the foregoing analysis, as well as the briefs and argument of the Plaintiff,

IT IS ORDERED Plaintiffs' Motion for Summary Judgment is granted and Maricopa County's Cross-Motion for Summary Judgment is denied.

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IT IS FURTHER ORDERED directing Plaintiff to lodge a form of judgment and file any Application and Affidavit for Attorney's Fees and Statement of Taxable Costs by May 17, 2013.

IT IS FURTHER ORDERED vacating the trial scheduling conference set on September 16, 2013 in this division.