

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TX 2008-000794

11/07/2011

HONORABLE DEAN M. FINK

CLERK OF THE COURT  
S. Brown  
Deputy

B V AT HAYDEN FERRY LAKESIDE L L C

PAUL J MOONEY

v.

MARICOPA COUNTY

ROBERTA S LIVESAY

BART WILHOIT  
RAUSHANAH DANIELS

MINUTE ENTRY

OCH Courtroom 202

2:04 p.m. This is the time set for an oral argument on Defendant's Motion for Summary Judgment. Plaintiff is represented by counsel, Bart Wilhoit. Defendant is represented by counsel, Roberta Livesay and Raushanah Daniels.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Argument is presented to the Court.

IT IS ORDERED taking this matter under advisement.

2:33 p.m. Matter concludes.

**LATER:**

Upon further consideration, the Court rules as follows.

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A.R.S. § 42-15105 and § 33-1204 are imperfectly harmonized (perhaps because the latter, although expressly governing property taxation, is inaptly placed in title 33), but the mandate of § 33-1204 is clear: as long as the entire property is owned by a declarant, it must be taxed and assessed as a single parcel, but once any unit has been sold to a non-declarant, all the units must be taxed and assessed separately. The statute specifically, and more than once, refers to the property being “taxed and assessed,” which the Court takes to mean that not only the assessment but the actual collection of the tax must be based on separate valuation as soon as the first sale occurs. This being the case, in order to have a valid separate valuation on the date of taxation, there must be a retrospective separate valuation covering the date of assessment – in other words, a supplemental notice. The enumeration of events triggering a new valuation in § 42-15105 does not limit the assessor’s re-valuation authority to the consequences of those events. *Swift Transp. Co, Inc. v. Maricopa County*, 225 Ariz. 262, 267 ¶ 23 (App. 2010). Still less can it be construed to prohibit what another statute requires. The Court therefore grants partial summary judgment that A.R.S. § 33-1204 requires separate valuation in this case.

There is sufficient evidence in the record, despite the parties’ uncertainty as to the proper method of valuation, to establish a fact question concerning the full cash value under separate valuation. There may also be a fact question as to the effect of A.R.S. § 42-11001(6); although the Court disagrees with Plaintiff’s position that this statute overrides § 33-1204 (rather, it sets an upper limit on the valuation reached by the statutory method), it certainly would apply, subject to establishment of the appropriate market value (which itself may not be entirely unambiguous).

Accordingly,

**IT IS ORDERED** granting in part and denying in part Defendant Maricopa County’s Motion for Summary Judgment filed July 15, 2011.

Arizona Tax Court - ATTENTION: eFiling Notice

Beginning September 29, 2011, the Clerk of the Superior Court will be accepting post-initiation electronic filings in the tax (TX) case type. eFiling will be available only to TX cases at this time and is optional. The current paper filing method remains available. All ST cases must continue to be filed on paper. Tax cases must be initiated using the traditional paper filing method. Once the case has been initiated and assigned a TX case number, subsequent filings can be submitted electronically through the Clerk's eFiling Online website at <http://www.clerkofcourt.maricopa.gov/>

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NOTE: Counsel who choose eFiling are strongly encouraged to upload and e-file all proposed orders in Word format to allow for possible modifications by the Court. Orders submitted in .pdf format cannot be easily modified and may result in a delay in ruling.