

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2009-000914

02/21/2012

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

S AND S COTTON L L C

MARC J VICTOR

v.

MARICOPA COUNTY

OTIS SMITH

VICKI A LOPEZ
MARK E HALL

MINUTE ENTRY

OCH Courtroom 202

11:07 a.m. This is the time set for oral argument on Defendant's Partial Motion to Dismiss. Plaintiff is represented by counsel, Vicky Lopez appearing for Mark Hall. Defendant is represented by counsel, Otis Smith.

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.

11:25 a.m. Matter concludes.

LATER:

Upon further consideration, the Court finds as follows.

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A.R.S. § 42-16210 must be read in conjunction with A.R.S. § 42-11004, which was enacted simultaneously as part of Laws 1997, Ch. 150. The latter provides, “A person on whom a tax has been imposed or levied under any law relating to taxation may not test the validity or amount of tax, either as plaintiff or defendant, if any of the taxes: 1. Levied and assessed in previous years against the person’s property have not been paid. 2. That are the subject of the action are not paid before becoming delinquent. 3. Coming due on the property during the pendency of the action are not paid before becoming delinquent.” This statute plainly applies to challenges in any forum, including the courts. The former mitigates its effect slightly by permitting appeal to the courts despite a brief period of delinquency. But to qualify for relief under § 42-16210(B), all taxes on the property must be paid, and taxes that are the subject of the action must be paid either before becoming delinquent or pursuant to the specified conditions for relief. Plaintiff’s interpretation of § 42-16210(B) would all but negate § 42-11004, allowing an appeal to the courts if the first half taxes or prior years’ taxes were paid delinquently or even not paid at all, as long as the second half taxes are paid by July 1. Such an interpretation cannot reconcile the two statutes.

A.R.S. § 42-16210(B)(2) provides relief if “the remaining one-half tax that is unpaid” is paid by July 1. The word “remaining” indicates that this portion is separate from the first half tax. Subsection (B)(2) provides no relief for delinquent first half taxes. Once the first half tax is delinquent, and the delinquency is not cured as provided at subsection (B)(1), § 42-11004(2) and/or (3) bars appeal notwithstanding the timeliness of the second half tax payment. As noted by the County, this interpretation is consistent with the statute’s legislative history.

Because Plaintiff failed to pay its first half taxes before they became delinquent and did not cure that delinquency by paying the full year’s taxes by December 31, this Court lacks jurisdiction to hear its appeal for the 2009 tax year.

Accordingly,

IT IS ORDERED granting the County’s Partial Motion to Dismiss. This ruling dismisses the appeal of the 2009 tax year, but the 2010 tax year remains at issue.

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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/>

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.