

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2010-000398

04/19/2012

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

SULPHUR SPRINGS VALLEY ELECTRIC
COOPERATIVE INC

MICHAEL G GALLOWAY

v.

ARIZONA STATE DEPARTMENT OF
REVENUE, et al.

KENNETH J LOVE

UNDER ADVISEMENT RULING

The Court took this matter under advisement following oral argument on April 16, 2012. Upon further consideration of Plaintiff's Motion for Summary Judgment and Defendants' Cross-Motion for Summary Judgment, the Court finds as follows.

The Court assumes *arguendo* that the Department is subject to the Administrative Procedure Act, A.R.S. § 41-1021 et seq.; *but see* A.R.S. § 42-1005(A)(1) ("The director ... shall: Make such administrative rules as he deems necessary and proper to effectively administer the department and enforce this title [42] and title 43."). It appears that the formal rulemaking process prescribed by the APA was never brought to a conclusion. But what is the consequence if there is no valid rule?

Sulphur Springs makes an argument dating from the early years of statehood, that the absence of a valid rule means that property which would otherwise have been valued under that rule cannot be taxed at all. *See Maricopa County v. Fox Riverside Theatre Corp.*, 57 Ariz. 407, 412-14 (1941); *Maricopa County v. Trustees of Arizona Lodge No. 2, F. & A. M.*, 52 Ariz. 329, 339-43 (1938). The Court of Appeals has explained the reasoning of these two cases. "The court in *Fox Riverside* made explicit what was merely implicit in the court's earlier decision in *Trustees of Arizona Lodge*. The legislature's omission of equalization and collection procedures for taxation of leaseholds was not itself the reason for the *Fox Riverside* holding that such

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intangibles were not then taxed. That omission was instead the evidence on which the court founded its true holding – that the legislature had intended to refrain altogether from taxing that category of property.” *Airport Properties v. Maricopa County*, 195 Ariz. 89, 103 ¶ 55 (App. 1999). The question the Court must answer is whether the legislature intended to tax the subject property. *Southwest Airlines Co. v. Arizona Dept. of Revenue*, 217 Ariz. 451, 453 ¶ 8 (App. 2008). Unlike the intangibles in *Trustees of Arizona Lodge* and the leasehold interests in *Fox Riverside*, the legislature intended that the property of member-owned non-profit electric distribution cooperatives be subject to tax. A.R.S. § 42-14151(A)(5). That intent cannot be defeated by the Department’s omission, if such there was.

A second argument made by Sulphur Springs is that, even if its property is taxable and must perforce be valued, it cannot be valued according to the Methodology because the Methodology was not formally made a rule. Absent a statutory formula, the Department must assess property at its full cash value (market value) as derived annually by standard appraisal methods and techniques. A.R.S. § 42-11001(6). If it determines, within its range of administrative discretion, that the Methodology comprises standard appraisal methods and techniques (as Sulphur Springs concedes that it does), it has the authority to apply it, subject of course to the appeals process for any particular valuation. *Navajo County v. Four Corners Pipe Line Co.*, 106 Ariz. 511, 522 (1970); *London Bridge Resort, Inc. v. Mohave County*, 200 Ariz. 462, 467 ¶ 24 (App. 2001). That the Department applies the Methodology on a regular basis does not at a certain point somehow disqualify it from further use unless it is formally codified as a rule. Even if Sulphur Springs were to persuade the Court of the superiority of the Missouri approach, the Court could not impose it on the Department. *Four Corners Pipe Line, supra*.

To the extent that use of the Methodology to value the property of member-owned non-profit electric distribution cooperatives is perceived by the Department as mandatory pursuant to a purported rule, the Court finds that no such valid rule exists. This finding in no way prohibits the Department from employing the Methodology to value such property as it deems appropriate.

IT IS ORDERED denying the taxpayer’s Motion for Summary Judgment.

The Court is frankly not clear just what the Department is cross-moving for summary judgment on. Plainly, the case is not ripe for a decision on the merits, and whether full cash value has best been estimated by the Department’s use of the Methodology is a factual inquiry. Accordingly,

IT IS ORDERED Defendants’ Cross-Motion for Summary Judgment is denied.