

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2010-000870

10/25/2011

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

ARIZONA STATE DEPARTMENT OF
REVENUE

KENNETH J LOVE

v.

ARIZONA ELECTRIC POWER COOPERATIVE INC DWIGHT M WHITLEY JR.

MINUTE ENTRY

The Court took this matter under advisement following oral argument on October 24, 2011. The Court has considered Plaintiff/Cross-Appellee's Motion for Partial Summary Judgment and finds as follows.

Whether Cochise County must be named as a party depends on the relief sought. If the only remedy sought is modification of the Board's determination of value, with whatever prospective effects that modification brings about, then ADOR is the only necessary party. *Citizens Telecommunications Co. of the White Mountains v. Arizona Dept. of Revenue*, 206 Ariz. 33, 38 ¶ 19 (App. 2003) ("A county is a necessary party only if it will be required to pay a refund to the taxpayer"). However, to obtain a refund of taxes paid pursuant to the Board's determination of value, the county to which the taxes were paid is a necessary party. As the Court of Appeals stated, "If the county is going to pay the taxpayer's refund, then the judgment should be against the county. If the state is going to pay it, the judgment should be against the state." *Ellman Land Co. v. Maricopa County*, 180 Ariz. 331, 336 (App. 1994). That A.R.S. § 42-16214(A)(1) and (2) use the mandatory "shall" to instruct the county treasurer to pay an adverse judgment does not obviate the need to obtain a judgment against the county.

Accordingly,

IT IS ORDERED granting Plaintiff/Cross-Appellee's Motion for Partial Summary Judgment, filed July 18, 2011.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2010-000870

10/25/2011

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/>

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.