

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2011-000427

04/18/2013

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

K L P ENTERPRISES INC

ERIC D GERE

v.

STATE OF ARIZONA DEPARTMENT OF
REVENUE

SCOT G TEASDALE

CALLIE N PARKINSON

UNDER ADVISEMENT RULING

The Court took Plaintiff's Motion for Summary Judgment and Defendant's Cross-Motion for Summary Judgment under advisement following oral argument on March 28, 2013. Upon further consideration, the Court finds as follows.

The essential facts are not in dispute. These motions can therefore be decided on the application of the law to the undisputed facts.

The Court first observes that, if a regulation conflicts with a statute, the regulation must yield. *Arizona Board of Regents ex rel. Arizona State University v. Arizona State Personnel Board*, 195 Ariz. 173, 175 (1999). The scope of an administrative agency's rulemaking authority is defined by the enabling legislation. *Grove v. Arizona Criminal Intelligence System Agency*, 143 Ariz. 166, 169 (App. 1984). It follows that, if the enabling legislation is materially changed, a pre-existing regulatory "interpretation" of the changed language is not entitled to deference. Therefore, to the extent that R15-5-606(E) declares to be not taxable activities that are made taxable by the subsequently enacted A.R.S. § 42-5075(J)¹, the regulation has no force. Section 5075(J) states, "The gross proceeds of sales or gross income derived from landscaping activities are subject to tax under this section. Landscaping includes installing lawns, grading or leveling ground, installing gravel or boulders, planting trees and other plants, felling trees, removing or

¹ At the time the tax in this case was levied, this was subsection I. It was redesignated by Laws 2012, Ch. 328, § 6.
Docket Code 926 Form T000 Page 1

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2011-000427

04/18/2013

mulching tree stumps, removing other imbedded plants, building or modifying irrigation berms, repairing sprinkler or watering systems, installing railroad ties and installing underground sprinkler or watering systems.” The list of activities constituting “landscaping” is not further limited by a requirement that they be performed for aesthetic purposes, or conversely by their exclusion if performed for agricultural purposes, nor is the term “landscaping” limited to ground modification around homes and buildings. Thus, any of the listed activities is deemed to be landscaping and taxed accordingly regardless of its purpose. Three of the activities, grading or leveling ground, felling trees and removing stumps, and building or modifying irrigation berms, are activities at issue here.

Turning to R15-5-606(E), that regulation excluded from the prime contracting tax activities that are “directly related to the production of crops on improved farm land,” but not those that are “not directly related” to that purpose. Included in the former category are cultivating, disking, planting, plowing, and seeding; in the latter are installation and repair of drainage or irrigation delivery systems and work on farm buildings and structures. Plainly, under the regulation irrigation, notwithstanding that it is vital to crop production, is considered to be not directly related. Laser leveling, rebuilding berms, and backhoeing irrigation ditches are three of the four categories of activity Plaintiff performed, and Plaintiff’s stated purpose for all three was in some way to facilitate irrigation. They therefore do not qualify for the exclusion. The Concise Explanatory Statement, even if controlling, does not extend the scope of the exclusion; instead, it further defines the exclusion by making clear that original clearing and leveling is never excluded.

The demolition of the former citrus orchard was also not directly related to the production of crops. There is no difference between removing an exhausted citrus orchard to plant crops and removing a building to plant crops; that the former once produced fruit does not transform its removal into “crop rotation.” With perhaps one exception, it too does not qualify for exclusion. Invoice 7011 identifies part of the work done as “disking,” which does qualify for exclusion. But apparently invoice 7011 does not specify the amount charged for the disking and how much for the other work. Because Plaintiff cannot show what exclusion it is entitled to, it cannot claim any.

IT IS ORDERED Plaintiff’s Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED Defendant’s Cross-Motion for Summary Judgment is granted.

IT IS FURTHER ORDERED vacating the trial scheduling conference set August 5, 2013 in this division.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2011-000427

04/18/2013

IT IS FURTHER ORDERED directing Defendant 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**.