

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2011-000654

05/20/2013

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

H U B PROPERTIES TRUST

PAUL J MOONEY

v.

MARICOPA COUNTY, et al.

KATHLEEN A PATTERSON

JENNIFER A PRENDIVILLE

MINUTE ENTRY

Courtroom 202-Old Courthouse

10:57 a.m. This is the time set for oral argument on Plaintiff's Motion for Partial Summary Judgment and Defendant's Cross-Motion for Partial Summary Judgment. Plaintiff is represented by counsel, Paul Mooney and Jennifer Prendiville. Defendant is represented by counsel, Kathleen Patterson.

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 of Plaintiff's Motion for Partial Summary Judgment and Defendant's Cross-Motion for Summary Judgment, the Court finds as follows.

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Notwithstanding the reams of paper expended in the motion practice, the issue can be summarized in one sentence: Is an exemption from taxation fixed on the date of valuation, or does it cease as of the date it ceases to have a basis in law? There is no dispute as to the material facts. Until March 4, 2011, the land occupied by the Arizona Center was owned by the City of Phoenix, and therefore was covered by the constitutional exemption from tax of municipal property, A.R.S. Const. Art. IX § 2(1). As of that date, the land entered private ownership, and neither that nor any other constitutional exemption applied to it.

The Court believes that *City of Phoenix v. Elias*, 64 Ariz. 95 (1946), remains controlling case law. In it, the Supreme Court held, “After the sale of property to the state, as in this case for taxes, and until such time as the state makes a sale again to an individual, if the same is made, no taxes can be levied and assessed against the property because the state is exempt from taxation under the provisions of Article 9, Section 2 of the Constitution of Arizona.” *Id.* at 97. The period of exemption, in other words, begins on the date the property enters government ownership and ends on the date it leaves government ownership. It is automatic, requiring no statutory reclassification of the property. Plaintiff’s position that taxable status is fixed on the valuation date would, in the reverse of the facts here, result in a violation of *Elias*: property purchased by the government from a private, taxable owner after the valuation date would be subject to taxation for a period, potentially more than a year. And while *Elias* might perhaps be read so as not to exclude an asymmetrical result – property acquired by the government drops off the tax rolls immediately, while property sold by the government into private hands goes back onto the tax rolls only after some interval – it would be difficult to defend such a result on equal protection grounds (what rational basis could exist for discriminating between otherwise similar properties solely because of prior public ownership?) and nothing in Title 42 suggests to the Court that the legislature had any such intention.

Elias can be squared with the *Fox Riverside* line of cases. *Maricopa County v. Fox Riverside Theatre Corp.*, 57 Ariz. 407 (1941), dealt with the taxability of leasehold interests on public land. The Supreme Court held that, while there was no constitutional bar to taxing them, the legislature had not historically taxed property of that nature. *Id.* at 414. The distinction is between taxing or not taxing property based on its nature, and taxing or not taxing property based upon its owner or prior owner: one is based on the absence of a statute imposing a tax, while the other is based on the constitutional exemption which overrides a statute that is on the books. Neither *Fox Riverside* nor any of its progeny address the latter. In a case such as this one the general taxation statutes are available to supply the mechanism lacking in *Fox Riverside*.

There is plainly no double taxation here. “Double taxation occurs when the same property or person is taxed twice for the same purpose for the same taxing period by the same taxing authority.” *Miami Copper Co. v. State Tax Comm.*, 121 Ariz. 150, 154 (App. 1978) (internal

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quotation marks omitted). Here there are two distinct taxes and two distinct taxing authorities. While the Court imagines that the legislature could by statute set up a system by which the overlap of the GPLET and the general property tax on that portion of the property's value representing the value of the leasehold could be addressed, it has not done so and the Court does not believe it is constitutionally obligated to do so, especially when, as here, the property was in private hands on the date of the formal assessment by the Board of Supervisors.

The Court does not see how the Plaintiff here is situated, for procedural due process analysis, differently than any other new owner. That the prior public owner would have no reason to appeal does not affect the new owner's rights.

Based on the foregoing, as well as the other arguments made by the County,

IT IS ORDERED denying Plaintiff's Motion for Partial Summary Judgment filed December 28, 2012.

IT IS FURTHER ORDERED granting Maricopa County's Cross-Motion for Partial Summary Judgment filed February 27, 2013.

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.