

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2012-000613

03/03/2014

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Heras
Deputy

ONE THOMAS BUILDING L L C

ROBERT M KARBER

v.

MARICOPA COUNTY, et al.

DAVINA DANA BRESSLER

MINUTE ENTRY

Old Courthouse- Courtroom 202

10:03 a.m. This is the time set for Oral Argument on Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction filed October 30, 2013. Plaintiff, One Thomas Building L.L.C., is represented by counsel, Robert Karber. Defendant, Maricopa County, is represented by counsel, Davina D. Bressler.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Arguments are presented.

For the reasons stated on the record,

IT IS ORDERED taking this matter under advisement.

10:16 a.m. Matter concludes.

LATER:

The Court has reviewed the legislative documents accompanying the present version of A.R.S. § 42-16205.01. The final House fact sheet for HB 2092 states that the new appeal language "Allows new homeowners [sic] to judicially appeal the valuation of their property if the former owner did not receive final judgment or dismissal related to an appeal of the valuation or legal classification in tax court." The final Senate version (this statute was added as a Senate amendment, so no analysis was provided in earlier House versions) is similar: it "Allows the new

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owner of a property to continue an appeal process started by a previous owner or file a new appeal, if the previous owner's appeal did not receive final judgment or a dismissal from Tax Court." There is no suggestion that the new language is a clarification of the language it replaced. The natural conclusion is that this appeal right was not allowed in the prior version of the statute. However, the Court concludes that the new statute applies in the narrow circumstances of this case. As of its effective date, the statute granted a new right of appeal for owners who meet the criteria in subsection A, as the County concedes Plaintiff does. Nothing in the statutory language limits its application to properties purchased after the effective date. The statute specifically allows the new owner either to tack onto the appeal rights of the former owner or to initiate a new appeal, provided only that there had been no final determination in court.

This ruling is not counter to previous decisions of this Court concerning the retroactive application of tax statutes because, under the facts of this case, the statute is not being applied retroactively to an appeal filed before its effective date. A statute is not retroactive in application simply because it may relate to antecedent facts. *Tower Plaza Investments Ltd. v. DeWitt*, 109 Ariz. 248, 250 (1973). Here, the appeal was filed at a time when the legislature had conferred jurisdiction upon this Court to hear it. That there was an earlier time when, arguably, jurisdiction had not been conferred has no bearing on this case. The Court does not address whether the statute should apply retroactively to an appeal filed before its effective date but not as of that date dismissed or otherwise concluded.

The effect of this ruling will obviously be a limited one, applying only to properties purchased between December 15 or 16, 2011 (the statute is ambiguous as to the treatment of a property purchased on December 15) and August 2, 2012.

Based on the foregoing,

IT IS ORDERED denying the Motion to Dismiss for Lack of Subject Matter Jurisdiction, filed October 30, 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/>

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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.