

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2012-000680

04/14/2014

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

B C AIR L L C

MONICA RYDEN

v.

ARIZONA DEPARTMENT OF
TRANSPORTATION

JERRY A FRIES

BENJAMIN H UPDIKE

UNDER ADVISEMENT RULING

Courtroom 202 – Old Courthouse

9:04 a.m. This is the time set for an Oral Argument on Defendant's Motion for Summary Judgment and Plaintiff's Cross-Motion for Summary Judgment. Plaintiff is represented by counsel, Monica Ryden. Defendant is represented by counsel, Benjamin Updike.

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.

9:17 a.m. Matter concludes.

LATER:

Upon further consideration of the argument presented, the Court finds as follows.

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A.R.S. § 28-8328(2) provides, “The assessment is final thirty days after notice is deemed to be complete, unless, before that time, the department receives a written objection to the assessment and a request for a hearing from the owner.” The text of Plaintiff’s January 30 letter reads, in full, “In response to the Aircraft License Tax Assessment Notice received via Certified Mail, I have enclosed our New Mexico registrations for years 2008 to current as the aircraft is based in and operated out of New Mexico. I can be reached at [New Mexico telephone number] with any questions.” This letter may fairly be construed as a written objection to the assessment. However, the statute requires both a written objection and a request for a hearing, and nothing in the letter can fairly be construed as the latter. Thus, the January 30 letter fails even had it been timely. The February 8 letter properly contains both required elements. However, it was untimely. Notice is deemed to be complete at the time of mailing or of personal delivery; as the notice was mailed rather than personally delivered, it is the date of mailing that determines timeliness. (That “personal delivery” means something other than delivery by certified mail is evident not only from this statute, which distinguishes the act of mailing a letter from personal delivery, but from several other statutes in Title 28 in which both personal delivery and certified mail are specified as acceptable forms of notice; *see* A.R.S. §§ 28-4453(D) and 4496(B), and *also see* former A.R.S. § 28-4498(A), enacted in amended form with A.R.S. § 28-8328 as part of SB 1076 (1996).) Notice was mailed on December 28; thirty days from that date is January 27. The second letter was dated and presumably received February 8, twelve days too late (even if an additional five days for mailing is allowed, and even if the date of completion is deemed to have been December 30, it was still late).

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

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

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 16, 2014.

Effective April 15, 2014 new civil rules and forms are in effect for managing cases moving to trial. Be sure to review the new Civil Rules 16, 26, 37, 38, 72 through 74 and 77.

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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.