

THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN THE ARIZONA TAX COURT

TX 2015-000957

06/13/2016

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT
T. Cooley/L. Stogsdill
Deputy

EXCELSIOR MINING J C M INC

JUSTIN J HENDERSON

v.

STATE OF ARIZONA DEPARTMENT OF
REVENUE, et al.

MACAEN MAHONEY

RULING

Two fully briefed motions to dismiss are fully briefed and pending:

- (1) Defendants' Motion to Dismiss Tax Year 2015 Appeal, filed March 24, 2016; and
- (2) Defendants' Motion to Dismiss Tax Year 2016 Appeal filed April 6, 2016.

The Court benefited from oral argument on both motions on June 7, 2016.

Initially, the Court declines to consider the constitutional challenges to the tax statutes which were not raised in the parties' briefs. Plaintiff's assertion that the arguments were not made in their briefs because they only address new arguments raised for the first time in Defendants reply brief is not persuasive, as the remedy for raising new issues in a reply is to have those new arguments stricken, not simply raising important constitutional arguments for the first time at oral argument.

To begin with the issue overarching both the 2015 and 2016 appeals, the language of A.R.S. § 42-16205.01(A)(1) is plain: "A new owner of property that was valued by the assessor and that changed ownership before December 15 of the valuation year may appeal the valuation or legal classification to court on or before December 15 of the valuation year." Had the legislature meant this provision to apply to owners of all property, regardless of who performed its valuation, it would not have included the limiting words "that was valued by the assessor." The Court must interpret the statute "so that no part will be void, inert, redundant, or trivial." *City of Phoenix v. Yates*, 69 Ariz. 68, 72 (1949). Plaintiff's property is centrally valued by the

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2015-000957

06/13/2016

department pursuant to A.R.S. § 42-14051 et seq., not by the county assessor. The relief granted to certain new owners therefore does not benefit Plaintiff.

Turning to the 2015 tax year, Plaintiff's reliance on A.R.S. § 42-16210(B) is not well-founded. That statute provides a safe harbor when, if the first half payment is delinquent, the full year's taxes are paid by December 31, or, if the first half payment is timely and the second half payment is delinquent, the second half payment with interest is made by July 1. *Sonoran Peaks, L.L.C. v. Maricopa County*, 236 Ariz. 399, 401 ¶ 9 (App. 2015). The first half payment was not timely made here; the second alternative was therefore unavailable. Plaintiff was not responsible for the untimeliness of the first half payment, but there was nothing to prevent it from exercising the first option and paying the entire tax by December 31, thereby preserving its right to appeal.

As for the 2016 tax year, A.R.S. § 42-14052(A) requires each covered taxpayer to "file a report with the department, under oath, stating the information that the department requires to enable it to make a valuation of the company." Plainly, if it is deprived of essential data, the department's ability to make a correct valuation is severely limited. It is only natural that the taxpayer should bear the consequent risk of an incorrect result by losing its right to contest it; indeed, the statute is generous by allowing the taxpayer until May 20, after the department has made its valuation based on the alternative methods, to file the report and thereby retain the right to appeal. Again, Plaintiff was not responsible for the report not having been filed by the deadline. Plaintiff did, however, purchase the property from an entity which it should have known did not timely file the report. It therefore should have known, at the time that it purchased the property, that it might have no ability to appeal the 2016 tax. The department has been obligated to make its valuation lacking the necessary information, and the counties have made their levies in reliance on that valuation. That valuation therefore inhered in the property when Plaintiff acquired it.

Absent statutory provision to the contrary, a new owner stands in the shoes of his predecessor in interest and has no appeal rights that his predecessor lacked. *Forum Development, L.C. v. Arizona Dept. of Revenue*, 192 Ariz. 90, 98 (App. 1997). As of the relevant dates, Plaintiff's predecessor in interest Nord Resources had no right to appeal the valuation of its property for tax years 2015 and 2016. That right did not spring up again upon the sale of the property.

Accordingly, the Defendants' Motion to Dismiss Tax Year 2015 Appeal and the Defendants' Motion to Dismiss Tax Year 2016 Appeal are both granted