

2008 WL 5383850

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CREATE LEGAL PRECEDENT AND MAY
NOT BE CITED EXCEPT AS AUTHORIZED
BY APPLICABLE RULES. See Ariz. R. Supreme
Court 111(c); ARCAP 28(c); Ariz. R.Crim. P. 31.24
Court of Appeals of Arizona,
Division 1, Department T.

TARGET CORPORATION, a
corporation, Plaintiff–Appellee,
v.

MARICOPA COUNTY, a political subdivision
of the State of Arizona, Defendant–Appellant.

No. 1 CA–TX 07–0013.

|
Dec. 26, 2008.

West KeySummary

1 Taxation

⚙ Time and date of assessment

A retailer was not entitled to a property tax refund based on allegations that the State Board of Equalization and assessor incorrectly classified property as a shopping center because the property was vacant on January one of the valuation year. The assessor was entitled to assess taxes on new construction that occurred after September 30 of the preceding year and before October 1 of the valuation year. There was evidence in the record that the store in question was completed by September 9 of the valuation year. A.R.S. § 42–16251.

Cases that cite this headnote

Appeal from the Arizona Tax Court; Cause No. TX 2004–000759; The Honorable Thomas Dunevant, III, Judge. REVERSED.

Attorneys and Law Firms

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Helm & Kyle Ltd. by Roberta S. Livesay, Lisa J. Bowey, Tempe, Attorneys for Defendant–Appellant.

MEMORANDUM DECISION

HALL, Judge.

*1 ¶ 1 Maricopa County appeals the tax court's judgment changing the classification and reducing the valuation of the real property at issue for the 2003 tax year. For the following reasons, we reverse.

FACTS AND PROCEDURAL HISTORY

¶ 2 Target owns real property in Fountain Hills currently identified as Maricopa County parcel no. 176–09–475. The property was originally identified as parcels no. 176–09–451 and –452. In accordance with Arizona Revised Statutes (A.R.S.) section 42–13051 (2006),¹ the County valued the property as vacant land and set the full cash value of 176–09–451 at \$518,500 and of –452 at \$659,000 as of January 1, 2002 for the 2003 tax year. An agent for Barclay Holdings, which owned the parcels at the time, challenged the valuation by filing a Petition for Review of Real Property Valuation with the county assessor in accordance with A.R.S. § 42–16254 (Supp.2008) on April 9, 2002. The petition pertained to twelve parcels including 176–09–451 and –452. The petition alleged that, based on the market approach to valuation: “Subject overvalued, see subject sale for \$5,850,000. minus parcel to Target for \$2,590,000. Remaining parcels have severe floodplain and topography problems. See 176–09–409 valued at \$2.10 sq. ft. for 1.517 acres.” The Multiple Parcel Appeal Form indicates that parcels 176–09–451 and –452 were sold to Target for \$2,590,000. The form indicates that the owner nonetheless valued –451 at \$248,316 and –452 at \$336,246.

¶ 3 The assessor disputed the existence of any error and, pursuant to § 42–16254(D), met with the agent concerning the valuation claim in July 2002. The parties failed to agree on any modification of the valuation, and Target filed a petition with the State Board of Equalization pursuant to §

42-16254(F). A hearing was held on the petition on October 7, 2002.

¶ 4 Meanwhile, on September 30, 2002, the assessor had mailed a Supplemental Notice to Target pursuant to A.R.S. § 42-15105 (2006). This Notice increased the property valuation for parcel 176-09-452 based on \$4,072,465 in improvements (a Target store) added to the property after January 1, 2002. The assessor also changed the classification of the property from class 2 to class 1. See A.R.S. § 42-12001(8) (2006) (classifying shopping centers as class 1); A.R.S. § 42-12002(1)(e) (2006) (classifying real property not included in class 1, 3, 4, 6, 7, or 8 as class 2).

¶ 5 Despite the intervening supplemental notice to take account of the new Target store built on the property, the parties followed through with the October 7 hearing on the January notice, and the Board affirmed the January notice with respect to the parcels in every respect.

¶ 6 Target never appealed the September 30 supplemental notice, and the County issued tax statements for 2003 in accordance with it. Target paid the taxes, but on May 5, 2004, it filed a Notice of Claim with the county assessor asserting that the land was vacant on January 1, 2002, should have been in class 2, and had a full cash value of \$600,000. The assessor rejected Taxpayer's Notice of Claim and declined to change the tax statement values. On September 30, 2004, the Board affirmed the assessor's classification of the property as class 1 and the assessor's determination of full cash value as \$5,378,952.

*2 ¶ 7 Target then appealed the assessment to the Arizona Tax Court pursuant to A.R.S. §§ 42-16254(G) and 42-16207 (2006). The County and Target filed cross motions for summary judgment on the error correction issue. The tax court granted Target's motion, denied the County's motion, entered judgment, and awarded Target its fees and costs. It also rejected the County's ensuing motion for a new trial. The County appealed, and we have jurisdiction pursuant to A.R.S. § 12-2101(B) (2003).

DISCUSSION

¶ 8 This court reviews the tax court's grant of summary judgment de novo. *Wilderness World Inc. v. Ariz. Dep't of Revenue*, 182 Ariz. 196, 198, 895 P.2d 108, 110 (1995). The construction of statutes raises a question of law likewise

subject to de novo review. *Nordstrom, Inc. v. Maricopa County*, 207 Ariz. 553, 556, 88 P.3d 1165,

¶ 9, 207 Ariz. 553, 88 P.3d 1165, 1168 (App.2004). In construing related statutes, we view them in the context of the statutory scheme and strive to achieve consistency among them. *Bills v. Ariz. Prop. & Cas. Ins. Guar. Fund*, 194 Ariz. 488, 494, ¶ 18, 984 P.2d 574, 580 (App.1999).

¶ 9 Target seeks a tax refund on the basis of § 42-16254, which allows a taxpayer to seek relief if it believes its property "has been assessed improperly as a result of a property tax error." A.R.S. § 42-16254. The applicable definition of "error" is given in A.R.S. § 42-16251(3) (2006). The portions of the statute that Target claims are relevant read as follows:

"Error" means any mistake in assessing or collecting property taxes resulting from:

....

(b) An incorrect designation or description of the use of the property or its classification pursuant to chapter 12, article 1 of this title.

(c) Applying the incorrect assessment ratio percentages prescribed by chapter 15, article 1 of this title.

....

(e) Subject to the requirements of § 42-16255, subsection B, a valuation that is based on an error that is exclusively factual in nature or due to a specific legal restriction that affects the subject property and that is objectively verifiable without the exercise of discretion, opinion or judgment and that is demonstrated by clear and convincing evidence, such as:

....

(v) Any other objectively verifiable error that does not require the exercise of discretion, opinion or judgment. Error does not include a correction that results from a change in the law as a result of a final nonappealable ruling by a court of competent jurisdiction in a case that does not involve the property for which a correction is claimed.

¶ 10 Target's complaint asserts that "the valuation and classification of the Subject Property as determined by the Assessor and the Board are based upon one or more errors as that term is defined in A.R.S. Section 42-16251." In

its Notice of Claim, Target had reported as its “Basis for Claim and Requested Correction” that “Parcel was vacant land as of 01/01/2002 (2003 Tax Year).” On appeal, Target alleges three specific errors: 1) “an incorrect designation and description of the use of the property and its classification,” A.R.S. § 42-16251(3)(b); 2) “application of an incorrect assessment percentage due to the incorrect classification of the property,” A.R.S. § 42-16251(3)(c); and 3) “an erroneous valuation that is objectively verifiable, demonstrated by clear and convincing evidence ... and not requiring the exercise of discretion, opinion, or judgment,” A.R.S. § 42-16251(3)(e) (v).

*3 ¶ 11 We agree with the County that Target has alleged no error in their 2003 tax assessment that is cognizable under § 42-16254. Under § 42-15105, the assessor is entitled to assess taxes on new construction that occurs “after September 30 of the preceding year and before October 1 of the valuation year.” Therefore, Target’s basis for seeking relief—viz., that the “parcel was vacant land as of 01/01/2002” is not grounds for relief. In order to allege that the property was classified and valued incorrectly because the land was vacant, Target would have to allege that the taxed improvements did not exist by October 1, 2002, which it has not done. In fact, there is evidence in the record that the store in question was completed by September 9, 2002.

¶ 12 Target nonetheless claims that the County erred in taxing it in accordance with the Supplemental Notice rather than in accordance with the January notice as that notice was affirmed by the Board at the October 7, 2002 hearing. It argues that “the tax court correctly concluded that the county’s conduct was an ‘error.’” Our reading of § 42-16251(3) leads us to believe that § 42-16254 is intended to provide a mechanism through which taxpayers can seek relief when they have been subject to an incorrect tax. It is not intended to afford relief to taxpayers who, though assessed a correct amount of tax, allege that the County’s “conduct” was somehow erroneous. Target never alleges that the property was not actually class 1 property as of September 30, 2002 and does not dispute its valuation as class 1 property or allege that the taxes imposed were excessive. It alleges only that the procedure followed by the County was improper. This argument is a red herring. As authorized by § 42-15105, the County correctly valued and taxed the parcel as class 1 property pursuant to § 42-12001(8).

¶ 13 The trial court determined that “a valuation different from the one made final by the Board’s decision is by definition erroneous.” This definition of error does not comport, however, with either the language or purpose of the error correction statutes. In effect, Target argues that the County erred by taxing it correctly. This is not the kind of error the statutes are intended to enable taxpayers to address.

¶ 14 Furthermore, to the extent that Target makes an argument that it should be afforded some kind of relief based on a denial of due process, that argument does not succeed. Because the October 7 hearing affirmed the January notice’s classification of the property as class 2 vacant land, Target should have known that the valuation did not take into account the new Target store. If it had wished to appeal the valuation of the improved property, it could have appealed the Supplemental Notice pursuant to § 42-15015(2), pursued the issue at the October 7 hearing, or asked for the hearing to be continued on that basis. The gist of Target’s argument is not that it was denied due process, however, but rather that it should be relieved of paying the taxes on its store for 2003 because, it alleges, the County should have proceeded differently. There is no legal authority for granting tax relief on this basis. Target could have had a hearing on the valuation of the improved land if it had wanted one, and the tax assessments issued for 2003, based on the Supplemental Notice, correctly classified and assessed the property.

CONCLUSION

*4 ¶ 15 Because Target has presented no evidence that its 2003 taxes were excessive or erroneous, we reverse the decision of the tax court and remand for the entry of summary judgment in favor of the County.

CONCURRING: LAWRENCE F. WINTHROP, Presiding Judge and PATRICK IRVINE, Judge.

All Citations

Not Reported in P.3d, 2008 WL 5383850

Footnotes

- 1 We cite the date of the bound volume or supplement when the version of the statute applicable in this case is the same, in relevant portions, as that published in the volume or supplement.

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