

ARIZONA TAX COURT

TX 2004-000209
TX 2004-000334
(Consolidated for Ruling)

02/02/2006

HONORABLE MARK W. ARMSTRONG

CLERK OF THE COURT
L. Slaughter
Deputy

FILED: _____

ARIZONA STATE DEPARTMENT OF
REVENUE, et al.

LISA A NEUVILLE

v.

FRANK BARRETT, et al.

BRIAN J CAMPBELL

JACK B SCHIFFMAN

UNDER ADVISEMENT RULING

Defendants' Consolidated Motions for New Trial were taken under advisement after oral argument on January 23, 2006. The Court has considered the papers and arguments of counsel.

The Court ruled in Plaintiff's favor on cross-motions for summary judgment in a minute entry filed July 22, 2005. The pending motions challenge that ruling on two grounds: (1) That the Court erred in finding that the class administrative claim did not survive the Bohn settlement for purposes of tolling; and (2) That the Court erred in finding that fiscal and administrative considerations outweighed the interest of the taxpayers in not being unconstitutionally taxed.

With respect to Defendants' second ground, the Court would clarify that it did not employ any balancing test as suggested by Defendants. Rather, the Court found that there was no tolling as a matter of law when, as here (1) the class was never ultimately certified by a court, and (2) the Bohn claimants finally settled their claims with the Department. The Court was simply observing that although it had sympathy for the Defendants, there are countervailing considerations.

With respect to Defendant's first ground, the Court believes it was correct in the first place and hereby affirms its prior decision.

IT IS THEREFORE ORDERED denying Defendants' Consolidated Motions for New Trial.