

ARIZONA TAX COURT

TX 2003-000765

01/19/2006

HONORABLE MARK W. ARMSTRONG

CLERK OF THE COURT
L. Slaughter
Deputy

FILED: _____

JOE SOLIMENO

DONALD P. ROELKE

v.

MARICOPA COUNTY

MICHELLE D'ANDREA

UNDER ADVISEMENT RULING

This matter was taken under advisement after oral argument held November 30, 2005. The Court has considered the Defendant's Motion for Summary Judgment, Plaintiff's Cross-Motion for Summary Judgment and arguments of counsel.

I. THE ISSUE

The issue involves Joe Solimeno's (Plaintiff's) claim that the rollover statute (A.R.S. § 42-16002(B)) in effect during the 2003 calendar year required the rollover of all 2003 valuation decisions of the assessors and Arizona State Board of Equalization regardless of whether or not the decisions granted a change or reduction in valuation. Plaintiff also contends that the applicable statutory provisions were those in existence during calendar year 2003 when the valuations were being determined, administratively appealed, and finalized, before the statute was amended on June 1, 2004.

Plaintiff further contends that the version of this statute cited by Maricopa County (Defendant) is not applicable because it was not enacted until June 1, 2004, and does not apply to the 2004 valuations that were determined during the 2003 calendar year, and because the retroactivity provision of the 2004 amendment enacting the changes in this statute cannot be applied to the 2004 valuations since it violates the Arizona constitutional provision prohibiting the retroactive divestiture of vested rights. Ariz. Const. Art. II, § 4.

Defendant contends that valuation of the subject parcel for 2004 is correct. That the "rollover statute", A.R.S. § 42-16002(B) does not, and never did, freeze property values for a year upon an unsuccessful appeal of valuation by a plaintiff.

II. FACTUAL BACKGROUND

The facts in this case are not in dispute. In calendar year 2002, Plaintiff administratively appealed the Maricopa County Assessor's 2003 valuation for the subject property (a warehouse owned by Mr. Solimeno) of \$246,050 (both full cash value and limited property value) to the Maricopa County Assessor, the first level of the administrative appeal process. The assessor issued his Notice of Decision on June 21, 2002, not changing his valuation for the property. Plaintiff did not further appeal the 2003 valuation for the property.

In 2003 the Maricopa County Assessor determined the 2004 valuation for the subject property to be a full cash value of \$330,337 and a limited property value of \$270,655. Plaintiff appealed this valuation to the Maricopa County Assessor and the Arizona State Board of Equalization. Neither changed the valuation. Plaintiff then appealed the 2004 valuation to this court in August 2003 based solely on the Rollover Statute discussed below. Plaintiff claims he is entitled to have the 2004 valuation for the subject property reduced to \$246,050 pursuant to A.R.S. § 42-16002 (B) because the valuation determined at the highest level of the administrative appeal process for 2003 was \$246,050.

III. ARGUMENTS OF THE PARTIES

- Maricopa County's Arguments -

A. THE "ROLLOVER STATUTE," A.R.S. §42-16002(B).

Before a 2002 amendment, the assessor had discretion as to whether the rollover provision would apply to parcels appealed in the previous year. The relevant portion of the statute read as follows:

- A. In the year subsequent to an appeal, the valuation or classification of property is the valuation or classification that was determined in the preceding year at the highest level of appeal unless the assessor reviews the current facts that apply to a revaluation or change in the classification and determines that an adjustment in the valuation or change in the classification is appropriate.

In 2002, the Legislature amended the statute and limited the assessor's discretion to increase value to only parcels with a change in their condition. The statutory language after the 2002 amendment was:

- B. In the year subsequent to an appeal, the valuation or classification of property is the valuation or classification that was determined in the

preceding year at the highest level of appeal unless there is new construction, a structural change or a change in use on the property.

In 2004, the Legislature again amended the statute, this time to specifically address the situation of an unsuccessful appeal. The current statutory language is:

B. If a review or administrative appeal pursuant to article 2, 3 or 4 of this chapter results in a reduction of the valuation or a change in the classification of property, in the next year the valuation or classification of property shall be the valuation or classification that was determined by the review or appeal unless either:

1. There is new construction, a structural change or a change of use on the property.

2. Chapters 11 through 19 of this title require a specific annual formula for the valuation.

...

This section, as amended by Laws 2004, Ch. 295, applies retroactively to taxable years beginning January 1, 2004.

B. THE PLAIN LANGUAGE OF THE RETROACTIVE STATUTE IS DISPOSITIVE OF THE ONLY ISSUE IN THIS CASE.

The Legislature revised the language of this statute in 2004 to clarify that the rollover provision is only applicable to successful appeals of the previous year's valuation or classification. 2004 Ariz. Sess. Laws Chap. 295 § 5. The amendment specifically states that it is retroactive to taxable years beginning January 1, 2004. *Id.* Tax year is defined as "the calendar year in which the taxes are levied." A.R.S. § 42-11001(14). In this case, the appealed taxes were levied in 2004. So, the statute retroactively applies to this tax appeal. The plain language of the retroactive statute is dispositive of the only issue in this case.

Plaintiff alleges that the retroactivity provision in the current statute is invalid and that he has a vested right in his statutory interpretation that would require rollover of unsuccessful appeals of valuation, in effect, freezing tax values upon any appeal. If Plaintiff's position is correct, then a taxpayer could freeze his 2003 property value for one year even if his appeal of valuation or classification is entirely unconvincing or even frivolous. In fact, if Plaintiff's position is correct, it would allow a taxpayer to indefinitely freeze his or her assessed valuation by bringing an unsuccessful appeal of valuation or classification year after year after year.

Before the Legislature clarified the statutory language in 2004, the Attorney General's office opined that the earlier statutory language did not require rollover of the previous year's valuation if the previous year's tax appeal was unsuccessful. *Ariz. Att'y Gen. Op.* I03-010, 2.

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The opinion was based upon the general rules of statutory construction and on the legislative history of the statute. *Id.* at 7. No opinion has been issued by an appellate court interpreting the statutory language at issue in this matter. Even if the statute is ambiguous, the retroactivity provision of the statute applies the new, clear statutory language to our case. The retroactivity provision does not violate due process because the 2004 amendment was merely a clarification of the statutory language rather than a change.

1. The rollover statute cannot be construed to mean that unsuccessful tax appeals freeze the value of property because it was not the intent of the Legislature and this construction of the language is absurd.

Plaintiff contends that the statute requires rollover of all 2003 valuation decisions of the assessor regardless of whether or not the decisions granted a change in classification or reduction in valuation. The primary goal when interpreting statutory language is to find and give effect to legislative intent. *Mail Boxes v. Industrial Comm'n of Arizona*, 181 Ariz. 119, 121, 888 P.2d 777, 779 (1995). The intent of the Legislature that only successful appeals result in a rollover in value has been consistent throughout the history of the statute. In 2002 when the rollover statute was previously amended, the Legislature intended that only successful appeals would result in rollover of the current year's value. The Senate Revised Fact Sheet for House Bill 2596, which amended the rollover statute in 2002, states: "[f]or valuations that have been successfully appealed, the assessor is required to make the following valuations based on the appeal decision." 45th Leg., 2nd Reg. Sess. In 2004, the Joint Legislative Oversight Committee of Property Tax Assessment and Appeals, which is charged with reviewing tax assessments and appeals and identifies areas of ambiguity, determined that a bill was necessary to clarify that only reductions in value resulting from appeal result in a rollover of the previous year's value. Legislative History of House Bill 2258, HR, 46th Leg., 2nd Reg. Sess. (2004). The Legislature's intent is clear and consistent.

The Supreme Court of Arizona stated that "it is a rule of statutory construction that clear language in a statute is given its usual meaning unless impossible or absurd consequences would result. *In re Marriage of John T. Gray*, 144 Ariz. 89, 91, 695 P.2d 1127, 1129. As the Arizona Attorney General said in its opinion on this topic,

If a "no change" determination [meaning no change in classification or reduction in value] were rolled over, the result would be that property valuations potentially could be frozen indefinitely, without regard to whether the taxpayer won or lost an appeal, simply by appealing the valuation every year. If that were the case, the assessor would be precluded from ever revaluing property based on current market conditions. This interpretation would result in an absurd consequence.

Ariz. Att'y Gen. Op. 103-010, 4.

For these reasons, even if the retroactivity provision of the most recent amendment to the rollover statute fails, the prior statutory language must be interpreted to only allow rollover of property values in the case of a successful appeal. Therefore, Plaintiff's interpretation of the statutory language fails as a matter of law.

2. The retroactivity provision of the 2004 amendment does not violate due process because it merely clarifies the language of the statute rather than changing it.

Plaintiff contends that the retroactivity provision in the 2004 amendment to the rollover statute violates the constitutional provision prohibiting the retroactive divestiture of vested rights. But, in this case, the Legislature was simply clarifying ambiguity without enlarging or restricting the scope of the rollover statute. A statutory amendment, which in effect construes and clarifies prior statute, will be accepted as legislative declaration of original act. *City of Mesa v. Killingsworth*, 96 Ariz. 290, 297, 294 P.2d 410, 414 (1964); *State v. Sweet*, 143 Ariz. 266, 269, 693 P.2d 921, 924. If by amending a statute the Legislature merely clarifies the earlier version of the statute, then the retroactive application of the amendment does not result in substantive change in the pre-existing law, resulting in no violation of due process. *See S & R Properties v. Maricopa County*, 178 Ariz. 491, 499, 875 P.2d 150, 158 (1993). Arizona courts use the *O'Malley* test to determine whether the Legislature intended to clarify or change a statute. *Sweet*, 693 P.2d at 926. That test is:

If the legislative amendment is made after a considerable lapse of time and constitutes a clear and distinct change of the operative language, it is an indication of an intent to change rather than clarify the previous statute.

O'Malley Lumber Co, v. Riley, 126 Ariz. 167, 169, 613 P.2d 629, 632 (App. 1980). In *San Carlos Apache Tribe*, the Supreme Court found that new statutory language can clarify ambiguities in an earlier version of the statute if the statutes were passed by the same Legislature or perhaps within a few years of each other. *San Carlos Apache Tribe v. Superior Court of Arizona*, 193 Ariz. 195, 972 P.2d 179, 210. *See State v. Sweet*, 143 Ariz. 255, 693 P. 2d 921.

In *San Carlos*, a case relied upon by Plaintiff, the Court found that because a considerable length of time passed before the amendment was enacted and because there was a clear and distinct change of the operative language, the statute was changed rather than clarified. *San Carlos Apache Tribe v. Superior Court of Arizona*, 193 Ariz. 195, 972 P.2d 179, 210. Here, the amendment in 2004 occurred only two years after the last amendment and did not distinctly change the operative language but instead clarified its application.

Plaintiff further relies on the *E.C. Garcia and Co.* case for the proposition that the amendment to the statutory language was a change rather than a clarification. This matter differs significantly from that case. In *E.C. Garcia and Co.*, the Court of Appeals had formerly

interpreted the ambiguous statutory language consistent with the interpretation that the taxpayers were propounding. *E.C. Garcia and Co., Inc. v. Ariz. State Dept. of Rev.*, 178 Ariz. 510, 517, 875 P.2d 169, 176 (App. 1993). In this case, there is no such legal precedent for Plaintiff's interpretation of the rollover statute. In fact, the Attorney General's office and the Arizona State Board of Equalization have both provided written opinions agreeing with the assessor that only successful appeals will result in a rollover of the value of the previous year. Because the 2004 amendment to the rollover statute meets the requirements of the O'Malley test, the amendment is merely a clarification of the law and does not change the substantive rights of the plaintiff in violation of due process.

- *Joe Solimeno's Arguments* -

A. APPLICABLE LAW.

1. Retroactive Legislation.

A statute that is merely procedural may be applied retroactively. However, a statute may not attach new legal consequences to events completed before its enactment. In other words, legislation may not disturb vested substantive rights by retroactively changing the law that applies to completed events. A vested right is actually assertable as a legal cause of action or defense or is so substantially relied upon that the retroactive divestiture would be manifestly unjust. *San Carlos Apache Tribe v. Superior Court of Arizona*, 193 Ariz. 195, 205, 972 P.2d 179, 189 (1999).

Substantive law creates and defines rights, while procedural law prescribes the method by which substantive law is enforced or implemented. The right to a reduction and refund of property taxes is a substantive right. It is also a vested right. Such a right qualifies for protection under the due process clause of the state and federal constitutions. *E.C. Garcia and Co., Inc. v. Ariz. State Dept. of Rev.*, 178 Ariz. 510, 517 - 519, 875 P.2d 169, 176 - 178 (App. 1993).

"By amending a statute, the Legislature is entitled to enlarge or restrict its scope; it also may simply clarify ambiguities about the statute's scope without either enlarging or restricting that scope. The difficulty arises, however, when the Legislature adopts significant changes that it then seeks to apply to taxpayer claims filed long before amending legislation. Because we are not persuaded that the 1991 amendment simply "clarified" the scope of the 1974 statute, the retroactive application of the amendment represents a substantive change in the pre-existing law that, if it impairs vested substantive rights of these taxpayers, violates due process." *S & R Properties v. Maricopa County*, 178 Ariz. 491, 499, 875 P.2d 150, 158 (1993).

2. Amendments to Statutes - Presumption.

The courts presume that, by amending a statute, the Legislature intended to change existing law. *Renalwest L.C. v. Dept. of Revenue*, 189 Ariz. 409, 415, 943 P.2d 769, 775 (App.

1997); *Tucson Elec. Power Co. v. Apache County*, 185 Ariz. 5, 22, 912 P.2d 9, 26 (App. 1995); *Turf Paradise, Inc. v. Dept. of Revenue*, 178 Ariz. 246, 248, 872 P.2d 201, 203 (Tax 1994).

3. Statutory Interpretation.

In any case construing a taxing statute, the courts apply the well-settled rule that the statute must be construed liberally in favor of the taxpayer and strictly against the taxing authority. Any ambiguities are to be resolved in favor of the taxpayer. *Brink Elec. Const. Co. v. Dept. of Revenue*, 184 Ariz. 354, 358, 909 P.2d 421, 425 (App. 1995); *City of Phoenix v. Santa Anita Develop. Corp.*, 141 Ariz. 179, 182, 685 P.2d 1331, 1334 (App. 1984); *Honeywell Info. Systems, Inc. v. Maricopa County*, 118 Ariz. 171, 173, 575 P.2d 801, 803 (App. 1978).

Generally, if the purpose of a tax statute is to protect or benefit a taxpayer, the statute is mandatory. Any actions performed by the government that do not comply with a mandatory statute are invalid. *Scottsdale Princess v. Maricopa County*, 185 Ariz. 368, 372, 916 P.2d 1084, 1088 (App. 1995); *Dept. of Revenue v. Southern Union Gas*, 119 Ariz. 536, 539, 582 P.2d 182, 185 (App. 1977).

B. THE AMENDED VERSION OF A.R.S. § 42-16002(B) IS NOT APPLICABLE TO PLAINTIFF'S CLAIM.

The only interpretation of the retroactivity clause of the 2004 legislation amending A.R.S. § 42-16002(B) that renders it constitutional is that the words "applies retroactively to taxable years beginning from and after December 31, 2003" means the 2005 tax year and subsequent years. The 2004 tax year began by March 2003 when the assessors mailed the 2004 Notices of Valuation to property owners as required by A.R.S. § 42-15101, 15102, and 15103. The administrative appeal process for the 2004 valuations was conducted between March and October 15, 2003, when it ended. A.R.S. §§ 42-16108 and 16165; A.R.S. §§ 42-16052 through 16215. The last day for a court appeal of a 2004 valuation was December 15, 2003 (no administrative appeal filed), or 60 days from the mailing of the most recent administrative decision. A.R.S. § 42-16201. For purposes of A.R.S. §§ 42-16001 through 16215, the 2004 tax year began by March 2003 with the mailing of the 2004 Notices of Valuation. Therefore, the 2004 valuations and tax year does not fall within the scope of the retroactivity clause of the 2004 amendment to A.R.S. § 42-16002 (B) and the amendments to this statute are not applicable to the issues in this action.

Furthermore, the 2004 amendments to A.R.S. § 42-16002 (B) cannot be applied retroactively to plaintiff's claim in this action because the amendments divest plaintiff's vested right to a valuation reduction and resulting property tax refund pursuant to the provisions of A.R.S. § 42-16002 (B) that were in effect during calendar year 2003 when the 2004 valuation for this property was determined by the assessor and administratively appealed and finalized. The provisions of A.R.S. § 42-16002 (B) that were in effect prior to the June 2004 amendments provided that the 2004 valuation for plaintiff's property would be the same as the 2003 valuation

determined at the highest level of appeal, absent new construction, a structural change or use on the property.

The 2004 amendments to A.R.S. § 42-16002 (B) completely changed its provisions. First, court appeal decisions for the previous year's valuation or classification were eliminated as a basis for a rollover. Second, the additional requirement that the previous year's valuation must be reduced or classification changed was added. Third, those properties that were valued pursuant to a specific statutory formula were excluded from the statute's application. These changes were not mere clarifications of the statute but major changes to restrict the scope of its application. Such changes must be presumed to be a change in the existing law. Therefore, the amendments violate plaintiff's constitutional right to due process of law if any attempt is made to apply the changes to the 2004 valuation for the subject property.

C. PLAINTIFF'S PROPERTY IS ENTITLED TO HAVE ITS 2003 VALUATION ROLLED OVER FOR 2004 PURSUANT TO THE PROVISIONS OF A.R.S. § 42-16002 (B) THAT WERE IN EFFECT DURING CALENDAR YEAR 2003.

The provisions of A.R.S. § 42-16002 (B) in effect during the 2003 calendar year provided that "the valuation of property is the valuation that was determined in the preceding year at the highest level of appeal." The 2003 valuation appeal process included appeals to the assessor and the assessor's decision. In *Berge Ford, Inc. v. Maricopa County*, 172 Ariz. 483, 485, 838 P.2d 822, 824 (Tax 1992), the Arizona Tax court held that the first level of the administrative appeal process is an appeal to the assessor. Subsequent administrative appeals are to the County Board of Equalization or the Arizona State Board of Equalization.

The opinion of the Arizona Attorney General to the contrary has no support in law or in fact. First, the opinion is based upon the 2004 amendments to A.R.S. § 42-16002 (B), which changed the law and were not clarification of the law. The 2004 amendments cannot be construed to be the interpretation or clarification of the prior statutory provisions when they constitute a major change in the statutory provisions. Second, the conclusion that the rollover of an unchanged valuations will go on in perpetuity by simply appealing it every year is erroneous in that most sensible persons would limit a rollover to one year absent a statutory provision that the rollover would be perpetual. The purpose of A.R.S. § 42-16002 (B) was to provide relief to taxpayers by not requiring them to appeal a new higher valuation for a property every year. It was intended to give the taxpayer a one-year break in the process. Furthermore, Arizona law recognizes that a decision granting no relief or dismissing an action is a valid decision for all legal process purposes. *Rager v. Superior Coach Sales & Service*, 110 Ariz. 188, 190, 516 P.2d 324, 326 (1973); *Gamet v. Glenn*, 104 Ariz. 489, 492, 455 P.2d 967, 970 (1969); *Arizona Com'n of Agriculture & Horticulture v. Jones*, 91 Ariz. 183, 187, 370 P.2d 665, 669 (1962); A.R.S. § 12-901. Therefore, the opinion of the Attorney General is not controlling or persuasive on the issue presented.

IV. THE COURT'S FINDINGS AND CONCLUSIONS

Based on legislative history and the Arizona Attorney General's interpretation (*Ariz. Att'y Gen. Op.* I03-010, 2) of the Rollover Statute (A.R.S. § 42-16002(B)) as amended in 2002, the Court finds that the statute applies only to successful administrative appeals of the valuation or classification of the prior year's classification or valuation. Therefore, since the Plaintiff's appeal of the 2003 valuation of the subject property was unsuccessful, he is not entitled to the 2003 value of his property for 2004. This is the only interpretation consistent with the intent of the Legislature and a common sense reading of the statutory language.

Finding as such, the Court needs not address the 2004 amendment of A.R.S. § 42-16002(B) and its retroactivity provision. Additionally, the Court makes note that Plaintiff withdrew his discrimination claim based on the equal protection clause.

IT IS THEREFORE ORDERED granting Defendant's Motion for Summary Judgment and denying Plaintiff's Cross-Motion for Summary Judgment. The Assessor's 2004 full cash value of the subject parcel in the amount of \$330,377 is affirmed.

IT IS FURTHER ORDERED that each party shall bear their own costs and attorneys' fees.