

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2011-000063

08/08/2011

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

CHURCH OF THE ISAIAH 58 PROJECT OF
ARIZONA INC

STEVEN D KEIST

v.

LA PAZ COUNTY, et al.

SAMUEL E VEDERMAN

FRED H WELCH
ANDRE E CARMAN
R GLENN BUCKELEW

MINUTE ENTRY

The Court took this matter under advisement following oral argument on July 25, 2011. The Court has considered the La Paz County Defendants' Motion to Dismiss and finds as follows.

First, the Court takes the motion to dismiss to be based, not on Rule 12(b)(6), but on Rule 12(b)(1), lack of subject matter jurisdiction pursuant to A.R.S. § 42-16201, 16210, 11004, and 18352. The distinction does not affect the analysis.

A.R.S. § 42-18352(E) cannot provide relief. That statute says in relevant part, "A property owner who is aggrieved by an adverse determination ... and who pays the tax may maintain an action to recover the tax alleged to be illegally collected." An action under § 18352(E) is one to recover taxes already collected illegally, not to prevent the collection of illegal taxes. The Church acknowledges that it did not pay the taxes. It cannot bring an action to recover taxes it did not pay.

The Church, according to its characterization to the Board of Supervisors as repeated in the complaint and most recently at 4:3-4 of its memorandum in opposition, "presented evidence to the county treasurer that there was 'an error or omission resulting in an improper imposition of

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a property tax” (internal quotation marks in original of memorandum) and sought relief on that ground, not on the ground of illegality. As the Court previously noted, the error correction statute may not be used to authorize an independent review of a classification that could have been appealed pursuant to other statutory provisions. A.R.S. § 42-16255(B). “[I]f the taxpayer knew of or reasonably should have discovered an ‘error’ ... in sufficient time to assert it through a tax appeal, then [the error correction statutes] cannot later provide a remedy.” *Pima County Assessor v. State of Arizona Bd. of Equalization*, 195 Ariz. 329, 336 ¶ 26 (App. 1999). Obviously, the Church knew all along that it was a church; it thus would have realized the assessor’s “error” as soon as it was informed of the decision to deny the exemption. This, according to the complaint, occurred on or about October 18, 2006, well before the December 15 deadline for filing an appeal for tax year 2007 (and naturally for subsequent tax years).

Even if the Church’s claim is truly one for the imposition of an illegal tax, its action is barred. Although the Church, at paragraph 116 of the complaint, asserts that “the tax statutes are not a [sic] neutral law of general applicability,” an argument not urged in the memorandum in opposition, its chief contention is that the assessor wrongly concluded that it was not exempt from the statute. It is the right of the taxing authority in the first instance to determine whether a taxpayer falls into a particular classification. *Smotkin v. Peterson*, 73 Ariz. 1, 5 (1951). If the taxpayer disagrees and an avenue of appeal is available, the taxpayer’s exclusive remedy is to follow the prescribed appeal process. *Id.* A.R.S. § 42-16201 et seq. provide such a process. That the process might entail some financial hardship (and had the appeal been timely filed, any hardship would have been reduced by two-thirds, only one year’s worth of taxes instead of three being owed) does not render the remedy inadequate.

The Church’s discussion of I.R.C. § 508(c)(1)(A) is beside the point. Nothing in either the Internal Revenue Code or the Arizona Revised Statutes forbids the assessor from requiring documentation beyond that which the federal government deems sufficient for its own tax collectors. In fact, although it does not require an applicant to submit a 501(c)(3) letter, A.R.S. § 42-11154(B) authorizes the assessor to require documentation beyond the applicant’s affidavit; it does not forbid that documentation to be a 501(c)(3) letter or Arizona Department of Revenue equivalent. “It is incumbent upon one who would claim the exemption to show by satisfactory proof that he falls within one of the classes named.” *Calhoun v. Flynn*, 37 Ariz. 62, 67 (1930). The Church does not state what evidence, prior to the 2009 DOR letter, it submitted or offered to submit to the assessor. If there was any, evidently the assessor found it unsatisfactory; again, if the Church disagreed either with the decision or with the documentation demanded, the remedy was to appeal pursuant to the statutory procedure. Insisting, if the assessor did insist, on a 501(c)(3) letter does not render the tax illegal.

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The Court does not find the free exercise arguments persuasive. There is no suggestion that the assessor required the Church to pay property taxes because it is a church; rather, the assessor concluded, rightly or wrongly, that it was not an exempt religious organization. Logically, if the Church was not considered a religious organization, there could have been no design to pressure the Church, as a religious organization, to modify its beliefs or behavior in violation of FERA. There is no indication that the IRS provides 501(c)(3) letters only to churches that hold or renounce specific beliefs, so even if the assessor were to require one, the Establishment Clause mandate to remain neutral as among religions would not be not breached. Assuming there are churches that object on doctrinal grounds to obtaining a 501(c)(3) letter and whose rights under the Free Exercise Clause might therefore be violated by requiring it, this Church does not suggest that its own beliefs so constrain it, so its rights are not violated. That the IRS procedure is costly and time-consuming does not raise a constitutional issue.

Based on the foregoing,

IT IS ORDERED granting Defendants' Motion to Dismiss.

IT IS FURTHER ORDERED Defendant shall lodge a form of judgment, and file any Application and Affidavit for Attorney's Fees and a Statement of Taxable Costs within thirty (30) days of the filing date of this minute entry.