

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TX 2008-000372

09/28/2010

HONORABLE DEAN M. FINK

CLERK OF THE COURT  
S. Brown  
Deputy

INFRASTRUCTURE DYNAMICS INC

DOUGLAS TOBLER

v.

CITY OF TEMPE

DAVID M PARK

MINUTE ENTRY

The Court took this matter under advisement following oral argument on September 27, 2010. The Court has considered Plaintiff's Motion for Summary Judgment and Defendant's Cross-Motion for Summary Judgment.

At page 4 of its motion for summary judgment, IDI states that, while it received some of its fees for non-taxable remediation work, for the purposes of the motion it would not raise the issue. The Court takes it at its word and disregards the discussion of remediation fees in the reply.

Sales taxes on materials paid to other jurisdictions are not deductible from gross income under Tempe City Code Section 16-200(a), and therefore constitute taxable income. A.R.S. § 42-6003, which prohibits double taxation on the "same transaction," does not bar the tax here. "Double taxation in the prohibited sense can exist only if the subject of both taxes is the same, if both taxes are imposed upon the same property, for the same purpose, by the same state or government, during the same tax period.... There is no double taxation when two separate and distinct privileges are being taxed even though the subject matter to which each separate transaction pertains may be identical, and two separate and distinct levies under the same act on two separate and distinct entities do not constitute double taxation." *City of Prescott v. Town of Chino Valley*, 163 Ariz. 608, 622 (App. 1989), *vacated in part on other grounds*, 166 Ariz. 480 (1990) (quoting *McGowan v. Marx*, 537 So.2d 426, 430 (Miss. 1988)). (The Court does not regard this as dictum, although the Court of Appeals acknowledged an alternate ground on which

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the same result might have been reached.) Here, Tempe seeks tax from IDI on the money it received from Vestar for construction contracting, while in the other transactions IDI's vendors paid tax on the money they received from IDI for materials. These are plainly separate transactions, and there is no bar to levying tax on both.

There is sufficient ambiguity as to just what IDI was paid and whether remediation costs were properly deducted before computation of the Tempe tax to prevent summary judgment as to the exact liability. The Court believes that the evidentiary objections raised in the parties' respective motions to strike are more appropriately considered at trial, should the matter go so far.

IT IS ORDERED GRANTING Tempe's Motion for Summary Judgment on the legal issue raised therein, without prejudice to further consideration of the actual sums involved.

IT IS FURTHER ORDERED IDI's Motion for Summary Judgment, IDI's Motion to Strike Defendant's Response to Plaintiff's Statement of Facts Paragraph Three, and Tempe's Cross Motion to Strike are denied. As discussed at the oral argument, the Court further orders that a new stipulated scheduling order be submitted no later than October 27, 2010.