

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2012-000230

02/03/2015

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT
A. Quintana
Deputy

SOUTHWEST AIRLINES CO, et al.

MICHAEL G GALLOWAY

v.

STATE OF ARIZONA DEPARTMENT OF
REVENUE

KIMBERLY J CYGAN

UNDER ADVISEMENT RULING

Plaintiffs' Motion for Summary Judgment filed August 13, 2014, and the Department's Cross Motion for Summary Judgment filed September 17, 2014, are both pending and fully briefed. The Court benefited from oral argument on the motions on January 12, 2015.

Southwest Airlines claimed an enterprise zone credit for tax years 1998 through 2000. For 1998, it claimed a total of 37 eligible positions, based on the percentage of new hires living in the same county as the enterprise zone; for the two remaining years, it claimed 99 and 63 eligible positions respectively, without regard for the county in which those employees resided. In 1999 and 2000, however, Southwest Airlines certified to the Department of Commerce that it had 45 and 27 new qualified employees respectively.

At issue is the meaning of A.R.S. § 43-1161(B)(2) as it then stood, which provided that:

To qualify for a credit under this section: ... thirty-five percent of the employees with respect to whom a credit is claimed for the first year of employment must reside in an enterprise zone that is located in the same county in which the business is located on the date of hire.

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The question is strictly one of statutory interpretation, and so is amenable to summary judgment for one side or the other. *Bither v. Country Mut. Ins. Co.*, 226 Ariz. 198, 199 ¶ 5 (App. 2010).

Subsection B(1) of the statute restricted the credit without temporal limitation: “All of the employees with respect to whom a credit is claimed must reside in this state.” In contrast, subsection B(2) applied only to credits claimed for “the first year of employment.”

The issue raised by Plaintiff is whether the first year is the only relevant one, as the Department argues, as the amount of the credit is fixed at the end of the first year irrespective of what may happen in years two and three.

In re Microage Corp., 305 B.R. 328, 332 (Bankr.D.Ariz. 2004), an Arizona federal bankruptcy court held that the credit, although paid out over three years, is “one credit essentially paid out on an installment plan.” Despite the unartful language in A.R.S. § 43-1161(B)(2) which might be read to suggest otherwise, a fair reading of the entire statutory structure suggests that this holding is correct.

Even if the statute was read as Southwest Airlines suggests, however, the result would be the same in this case. Subsection B(2) must be read *in pari materia* with A.R.S. § 41-1525(A)(2), which required the business owner, as a condition of receiving the credit, to “certif[y] to the department of commerce that at least thirty-five per cent of the new qualified employees are residents of the zone on the date of employment.”

Whether the credit was singular, needing only certification in the first year to receive all three installments, or annual, necessitating certification for each year to receive that year's portion, the taxpayer is limited to receiving the credit for the number of new qualified employees in each yearly cohort certified to the department of commerce. For Southwest, that number is 37.

For these reasons, the Plaintiff's Motion for Summary Judgment filed August 13, 2014, is DENIED and the Department's Cross Motion for Summary Judgment filed September 17, 2014, is GRANTED.

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Arizona Tax Court - ATTENTION: eFiling Notice

Beginning September 29, 2011, the Clerk of the Superior Court will be accepting post-initiation electronic filings in the tax (TX) case type. eFiling will be available only to TX cases at this time and is optional. The current paper filing method remains available. All ST cases must continue to be filed on paper. Tax cases must be initiated using the traditional paper filing method. Once the case has been initiated and assigned a TX case number, subsequent filings can be submitted electronically through the Clerk's eFiling Online website at <http://www.clerkofcourt.maricopa.gov/>

NOTE: Counsel who choose eFiling are strongly encouraged to upload and e-file all proposed orders in Word format to allow for possible modifications by the Court. Orders submitted in .pdf format cannot be easily modified and may result in a delay in ruling.