Clerk of the Superior Court
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THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN THE ARIZONA TAX COURT

TX 2023-000342 07/22/2024

HONORABLE SARA J. AGNE

CLERK OF THE COURT
J. Holguin
Deputy

RICHARD OGSTON JOHN N THORPE

v.

ARIZONA DEPARTMENT OF REVENUE JERRY A FRIES

WILLIAM J KEREKES
MARC R LIEBERMAN
JUDGE AGNE

MINUTE ENTRY

The Court held oral argument on May 24, 2024, regarding Defendant Hospital District's Motion to Dismiss, filed February 26, 2024 ("District's Motion"), and Plaintiff's Response to Hospital District 1, Yuma County's Motion to Dismiss and Plaintiff's Cross-Motion for Summary Judgment, filed April 1, 2024 ("Taxpayer's Motion"), as well as subsequent filings related thereto.

The Court has considered the filings and arguments of the Parties, the relevant authorities and applicable law, as well as the entire record of the case, and considering all facts and reasonable inferences therefrom in the light most favorable to the non-movants, respectively—hereby finds as follows regarding the Motions.

Defendant Hospital District 1 of Yuma County (the "District") is a special taxing hospital district established under A.R.S. Title 48. (Parties' Stipulated Statement of Facts, filed April 1, 2024 ("SSOF"), at ¶2.) The Arizona Department of Revenue ("ADOR") is named as a defendant pursuant to A.R.S. § 42-11005(C). (SSOF ¶3.) Yuma County (the "County") levied the tax at issue. (SSOF ¶4.)

The District owns the hospital located at 2400 S. Avenue A in Yuma, Arizona (the "Hospital"). (SSOF ¶6.) Yuma Regional Medical Center ("YRMC") leases the Hospital pursuant to a lease with the District (the "Lease") wherein YRMC is to operate and maintain the Hospital. (SSOF ¶¶6–7.) The District has never directly operated or maintained the Hospital. (SSOF ¶8.) The District is involved in ongoing litigation with YRMC ("YRMC Litigation"). (SSOF ¶6.)

In 2023, the County levied a secondary property tax, T/A # 1069901 ("the Tax"), to pay the District's operating expenses and has done so every year since 2021. (SSOF ¶5.) Prior to levying the Tax, the District's sole income was rent payable by YRMC to the District. (SSOF ¶9.) YRMC has largely refused to pay rent to the District for several years. (SSOF ¶¶7, 9.) In August 2023, the Yuma County Board of Supervisors (the "Board") voted to impose the Tax to fund the District's operating expenses and legal fees related to the YRMC Litigation pursuant to A.R.S. § 48-1914(A). (SSOF ¶¶5, 13.)

Plaintiff taxpayer Richard Ogston ("Taxpayer") filed this action seeking to declare the Tax unlawful. (SSOF ¶20.) Taxpayer seeks a refund for the full amount he has paid for the Tax and a declaration that the Tax is ultra vires, void, illegally collected, and of no effect because it was allegedly imposed without authority. (SSOF ¶¶21, 22; *see also* Compl., filed December 14, 2023.)

The District contends that the complaint should be dismissed for failure to provide a Notice of Claim pursuant to A.R.S. § 12-821.01 and for failure to state a claim upon which relief can be granted. (District's Mot., at 1.) Taxpayer seeks summary judgment on both of his claims. (Taxpayer's Mot., at 2.)

Summary judgment is appropriate if "there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." Ariz. R. Civ. P. 56(a); *General Motors Corp. v. Maricopa Cty.*, 237 Ariz. 337, 339 ¶7 (App. 2015).

It is undisputed that Taxpayer never sent a Notice of Claim to the District containing the information set forth in A.R.S. § 12-821.01(A). (SSOF ¶29.) Taxpayer contends that A.R.S. § 12-821.01 does not apply to tax refund claims. (Taxpayer's Mot., at 12–13.) "A basic principle of statutory interpretation instructs that specific statutes control over general statutes." *Mercy Healthcare Arizona, Inc. v. Arizona Health Care Cost Containment Sys.*, 181 Ariz. 95, 100 (App. 1994) (citations omitted). Here, the Title 42 sets forth specific procedures for seeking a tax refund. Therefore, Taxpayer's claims are not barred by A.R.S. § 12-821.01. *See Ariz. Dep't of Revenue v. Dougherty*, 200 Ariz. 515, 517 & n.4 (2001).

Taxpayer further contends that even if A.R.S. § 12-821.01 did apply, it would not bar the Taxpayer's claim for declaratory relief. (Taxpayer's Mot., at 13–15.) The District contends that

the declaratory relief sought by the Taxpayer is a predicate to his refund claim and therefore must be treated as the equivalent of a damages claim. (District's Mot., at 4–5.) The District relies on *Arpaio v. Maricopa Cnty. Bd. of Supervisors*, 225 Ariz. 358 (App. 2010). (District's Mot., at 4–5.) However, *Arpaio* is distinguishable. In *Arpaio*, Plaintiff sought to "reinstate" funds transferred from Maricopa County to the Arizona Health Care Cost Containment System Administration. 225 Ariz. at 360–362, ¶¶2, 12. The Arizona Court of Appeals found that the relief sought was "the equivalent of a damages claim . . . subject to the notice of claim statute." *Id*. at 362, ¶12.

Here, Taxpayer has asserted a claim for declaratory relief seeking a declaration "that the Tax is ultra vires, void, illegally collected, and of no effect." (Compl., at 5.) The Court does not find that such relief is the equivalent of a damages claim requiring compliance with A.R.S. § 12-821.01. **THE COURT FINDS that** dismissal of Taxpayer's claims based on the failure to file a notice of claim is not warranted.

Turning now to the lawfulness of the Tax, A.R.S. § 48-1907 sets forth the powers of the District including the power to:

> Impose a secondary property tax on all taxable property within the district for the purpose of funding the operation and maintenance of a hospital, urgent care center, combined hospital and ambulance service or combined urgent care center and ambulance service that is owned or operated by the district . . . Prior to the initial imposition of such a tax a majority of the qualified electors must approve such initial imposition. . . .

A.R.S. § 48-1907(A)(6). Taxpayer contends that the only taxing power given to the District is set forth in A.R.S. § 48-1907(A)(6). (Taxpayer's Mot., at 4–5.) Taxpayer therefore contends that the Tax required approval by the voters. (Taxpayer's Mot., at 5.)

The District contends that voter approval is not required before the Board levies a tax to meet the financial needs of the District under A.R.S. § 48-1914. (District's Mot., at 2–3.) A.R.S. § 48-1914 provides:

> A. Annually, not later than July 15, the board of directors shall furnish to the board of supervisors of the county in which the district or any part thereof is located a report of the operation of the district for the past year together with an estimate in writing of the amount of money needed to be raised by taxation for all purposes required

> or authorized by this article [A.R.S. §§ 48-1901 to 1919] during the next fiscal year.
>
> B. The board of supervisors of each county where a district or part thereof is located shall thereupon levy upon the taxable property of the district a tax which will, together with other funds on hand or which will accrue during the ensuing fiscal year, exclusive of reserves, provide sufficient funds to meet the financial needs of the district as provided under subsection A. . . .

A.R.S. § 48-1914(A) and (B). Here, the Tax was issued pursuant to A.R.S. § 48-1914. (SSOF ¶5.) The District contends that no voter approval was required to levy the Tax because there is no reference to voter approval in A.R.S. § 48-1914. (District's Mot., at 9.)

The Parties do not dispute that the District leases the Hospital to YRMC. (SSOF ¶¶6–7.) At issue is whether leasing the Hospital constitutes "the operation and maintenance of a hospital" under A.R.S. § 48-1907(A)(6).

"In construing a statute, [the Court] look[s] to the plain language of the statute, giving effect to every word and phrase, and assigning to each word its plain and common meaning." *Ponderosa Fire Dist. v. Coconino Cty.*, 235 Ariz. 597, 602 ¶24 (App. 2014) (citations omitted).

The District contends that Taxpayer does not allege that the Tax was imposed to operate or maintain a hospital but rather to pay the District's legal fees for the YRMC Litigation. (District's Mot., at 8.) The District relies on *Atchison, Topeka & Santa Fe Ry. Co. v. Ariz. Dep't of Rev.*, 162 Ariz. 127 (App. 1989). (Resp. to Cross-Mot., filed May 2, 2024, at 7–8.) In *Atchison*, the Arizona Court of Appeals found that the hospital district did not operate the hospital that it owned when a third-party operated the hospital pursuant to a management agreement. 162 Ariz. at 136–37.

On the other hand, Taxpayer contends that the District operates a hospital by either running it directly or contracting with a third party. (Taxpayer's Mot., at 8.) Taxpayer relies on *City of Phoenix v. Orbitz Worldwide Inc.*, 247 Ariz. 234 (2019). (Taxpayer's Mot., at 8.) In *Orbitz*, the Arizona Supreme Court found that online travel companies were engaged in the business of operating a hotel for purposes of Model City Tax Code § 444. 247 Ariz. at 238–39, ¶13. The Arizona Supreme Court "conclude[d] that § 444 imposes a tax liability on *any* 'person'—not just a hotel owner or operator—that engages for profit in business activities that are central to keeping brick-and-mortar lodging places functional or in operation." *Id*. at 240, ¶18. Although the word "operate" was at issue, the Court does not find *Orbitz* persuasive given the different factual and statutory issues presented here.

THE COURT FINDS that the District is not operating and maintaining a hospital for purposes of A.R.S. § 48-1907(A)(6) by leasing the Hospital to YRMC.

Next, the Court considers whether the District's reliance on A.R.S. § 48-1914 to levy the Tax was proper. The District contends that under A.R.S. § 48-1914 a tax can be levied for all authorized purposes, but A.R.S. § 48-1907(A)(6) applies to taxes for "funding the operation and maintenance of a hospital." (District's Mot., at 12.) As the Court found above, the District is not operating or maintaining the Hospital for purposes of A.R.S. § 48-1907(A)(6).

Taxpayer contends that A.R.S. § 48-1914 establishes the procedural requirements for the District to exercise the powers set out in A.R.S. § 48-1907. (Taxpayer's Mot., at 6–7.) Taxpayer contends that A.R.S. § 48-1914 does not use vesting language typically used by the Legislature. (Taxpayer's Mot., at 6–7.) Taxpayer also contends that if A.R.S. § 48-1914 created a separate taxing power it would render A.R.S. § 48-1907(A)(6) superfluous. (Taxpayer's Mot., at 7.) Taxpayer contends that the District's interpretation that A.R.S. § 48-1914 gives it a second taxing power for "all purposes" would subsume A.R.S. § 48-1907's voter approval requirement, so no tax levies would ever need voter approval. (Taxpayer's Mot., at 10.) The Court disagrees.

A.R.S. § 48-1907(A)(6) gives the District power to impose a tax "for the purpose of funding the operation and maintenance of a hospital, urgent care center, combined hospital and ambulance service or combined urgent care center and ambulance service that is owned or operated by the district."

Under A.R.S. § 48-1914(A), the District's board of directors is to provide the board of supervisors "an estimate in writing of the amount of money needed to be raised by taxation for all purposes required or authorized by this article [A.R.S. §§ 48-1901 to 1919] during the next fiscal year." Then the board of supervisors is to levy a tax to "provide sufficient funds to meet the financial needs of the district." A.R.S. § 48-1914(B).

The tax authorized in A.R.S. § 48-1914 encompasses more than "funding the operation and maintenance of a hospital" referenced in A.R.S. § 48-1907(A)(6). For example, the District may "[s]ue and be sued in all courts and places and in all actions and proceedings." A.R.S. § 48-1907(A)(2). The District may also "[p]urchase, receive, have, take, hold, lease, use and enjoy property of every kind and description within the limits of the district, and control, dispose of, convey, encumber and create leasehold interests in such property for the benefit of the district." A.R.S. § 48-1907(A)(3).

The Parties do not dispute that the District is involved in ongoing litigation with YRMC. (SSOF ¶6.) In the coverletter to the board of supervisors, the District stated that it needed the

additional funds "to cover certain of [its] expenses for its administration and defense, in particular for legal fees and public outreach costs" related to "two ongoing separate lawsuits" against YRMC. (SSOF ¶12.)

While voter approval is required to impose a tax to fund the operation and maintenance of a hospital under A.R.S. § 48-1907(A)(6), **THE COURT FINDS that** voter approval is not required for a tax levied under A.R.S. § 48-1914. Therefore, the Tax was properly authorized under A.R.S. § 48-1914.

IT IS ORDERED granting Defendant Hospital District's Motion to Dismiss, filed February 26, 2024.

IT IS FURTHER ORDERED denying Plaintiff's Cross-Motion for Summary Judgment, filed April 1, 2024.