SUPREME COURT OF ARIZONA

KAREN FANN, an individual; RUSSELL "RUSTY" BOWERS, an individual; DAVID GOWAN, an individual; VENDEN LEACH, an individual; REGINA COBB, an individual; JOHN KAVANAGH, an individual; MONTIE LEE, an individual; STEVE PIERCE, an individual; FRANCIS SURDAKOWSKI, M.D., an individual; NO ON 208, an Arizona political action committee; ARIZONA FREE ENTERPRISE CLUB, an Arizona non-profit corporation,

Plaintiffs/Appellants,

v.

STATE OF ARIZONA; KIMBERLY YEE, in her official capacity as Arizona State Treasurer; ARIZONA DEPARTMENT OF REVENUE, an agency of the State of Arizona,

Defendants/Appellees,

And

INVEST IN EDUCATION (SPONSORED BY AEA AND STAND FOR CHILDREN), a political action committee.

Intervenor-Defendants/Appellees.

Arizona Supreme Court
No. CV-21-0058-T/AP

Court of Appeals
Division One
No. 1 CA-CV 21-0087

Maricopa County Superior Court
No. CV2020-015495
No. CV2020-015509
(Consolidated)

BRIEF OF *AMICUS CURIAE* TAX PROFESSOR ERIN SCHARFF
Filed based on blanket consent of all parties

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INTEREST OF AMICUS AND INTRODUCTION

This case addresses critical issues of public policy and significant questions of Arizona constitutional law, including questions about the scope of the people's initiative power. This Court will certainly have an opportunity to address these questions. However, the merit of the underlying claims is only indirectly before the Court. Rather, the Plaintiffs have appealed on the basis of a much narrower question: whether the superior court abused its discretion in denying their application for a preliminary injunction.

Amicus Erin Scharff is an Associate Professor of Law at Arizona State University's Sandra Day O'Connor College of Law.[1] She studies state and local taxation, including state tax administration. She writes to help the Court better understand the important questions this case raises about taxpayer remedies and administration.

Like many taxpayers unhappy with legislation, the taxpayers Plaintiffs claim that a revenue law is unconstitutional. Such a claim is not sufficient to justify a preliminary injunction under Arizona law. Whatever this Court thinks of the merits of Plaintiffs' underlying case, Arizona law requires these

[1] Academic affiliation provided for identification purposes only.

merits questions to be resolved through the normal mechanisms of tax adjudication. Prior to filing a tax return, taxpayers can seek declaratory relief. After filing a tax return, taxpayers can seek a refund. These are sufficient remedies to prevent any irreparable harm to most taxpayers, including the taxpayer Plaintiffs.

To add preliminary injunctions to the menu of standard remedies available to taxpayers would undermine the orderly administration of the tax laws. Constitutional challenges to state tax laws occur frequently because of the numerous fiscal provisions in Arizona's constitution, and the potential federal constitutional questions raised when the state chooses to tax interstate income. Allowing courts to intervene and prevent the execution of the laws whenever a taxpayer finds a new constitutional objection would significantly impair the collection of state revenues. This is why Arizona statutory law limits the ability of taxpayers to seek injunctive relief.

I. Arizona's Statutory Bar Limits Injunctive Relief for All Taxpayers

Arizona's tax statutes are crafted to give taxpayers a variety of opportunities to challenge state and local tax assessments. Arizona law further provides taxpayers with a "Bill of Rights" to protect against overly

aggressive tax enforcement. A.R.S. § 42-2051 et. seq. Arizona law does not, however, allow taxpayers to litigate their claims in any manner of their choosing or to seek all remedies. Rather, Arizona's tax statues and courts have long recognized that tax injunctions would "at least temporarily . . . emasculate all tax measures." *Lane v. Superior Ct.*, 72 Ariz. 388, 391 (1951).

The current tax version of the statutory bar appears as A.R.S. § 42-11006. This provision bars a court from issuing:

> an injunction, writ of mandamus or any other extraordinary writ in any action or proceeding against the state, a county or municipality or a state, county or municipal officer to prevent or enjoin:
>
> 1. Extending an assessment on the tax roll.
> 2. Collecting an imposed or levied tax.

While Plaintiffs make much of the chapter title in arguing that the statute only bars injunctive relief for property taxpayers, neither the statute's text nor this Court's precedent supports such a limited reading. By its own terms, the bar applies to "any action or proceeding." It applies to any proceeding against any taxing entity, whether state or local. And it applies to suits seeking to enjoin the collection of "an imposed or levied tax." Nothing in the provision suggests that the prohibition on enjoining collection applies only to property taxes.

This plain reading is supported by statutory history and this Court's precedent. Arizona's statutory bar on injunctions was included in the Revised Statutes of 1913 (Civil Code) as § 4939. The language of that statute clearly implied that the bar on injunctions applied to "any tax." Civil Code § 4939 (1913) ("[N]o injunction shall ever issue in any suit, action, or proceeding in any court against this state, or against any county, municipality, or officer thereof, to prevent or enjoin the collection of *any tax* levied under the provisions of law; but after payment, action may be maintained to recover any tax illegally collected, in such manner and at such time as may now or hereafter be provided by law."). *Id.* (emphasis added)

In 1931, this anti-injunction provision was relocated to § 73-841, A.C.A.1939. Laws 1931, Ch. 103, § 55. Section 73-841 read, in full:

> No person upon whom a tax has been imposed under any law relating to taxation shall be permitted to test the validity thereof, either as plaintiff or defendant, unless such tax shall first have been paid to the proper county treasurer, together with all penalties thereon. No injunction shall ever issue in any action or proceeding in any court against this state, or against any county, municipality, or officer thereof, to prevent or enjoin the collection of any tax levied. After payment an action may be maintained to recover any tax illegally collected and if the tax due shall be determined to be less than the amount paid, the excess shall be refunded in the manner hereinbefore provided.

In *Lane v. Superior Court*, this Court relied in part on § 73-841 in refusing to enjoin a license tax on motor carriers. Lane v. Superior Ct., 72 Ariz. 388,

390-91 (1951). This license tax was not a property tax; it was measured by gross receipts, not the value of the property owned. *Id.* at 389; *see also White Mountain Apache Tribe v. Bracker*, 120 Ariz. 282, 287 (App. 1978), *rev'd on other grounds*, 448 U.S. 136 (1980) (finding that a motor carrier license tax was not a property tax as it was "imposed on gross receipts and as such is in the nature of a tax on the privilege of doing business in this state."); *Stults Eagle Drug Co. v. Luke*, 48 Ariz. 467, 474–75 (1936) ("If a tax is imposed directly by the legislature without assessment, and its sum is measured by the amount of business done . . . irrespective of the nature or value of the taxpayer's assets, it is regarded as an excise; but if the tax is computed upon a valuation of property, and assessed by assessors . . . it is considered a property tax." (citations omitted)).

In *Lane*, this Court held that both the statutory bar on injunctive relief and a statute specifically barring injunctions of motor carrier license taxes "clearly indicate the well-established policy of this state to prevent the validity of a tax from being tested by injunctive means." *Lane*, 72 Ariz. at 391. Nothing in *Lane* suggests the Court believed that § 73-841 applied exclusively to the property tax. *See also Crane Co. v. Arizona State Tax Comm'n*, 63 Ariz. 426, 447 (1945), overruled on other grounds by *Valencia*

Energy Co. v. Arizona Dep't of Revenue, 191 Ariz. 565 (1998) (declining to apply the statutory bar on injunctions because there was no adequate remedy at law, but assuming that § 73-841 generally applied to sales taxes).

Though Plaintiffs make much of the location of the current A.R.S. § 42-11006 in Title 42, this placement is result of the reorganization suggested by the Code Commission and enacted by the Arizona Legislature in 1956 as the Arizona Revised Statutes. This reorganization created current Titles 42 and 43, the former for general tax provisions, including property tax provisions, and the latter for provisions specific to the state's income tax.

In the new, Arizona Revised Statutes, the statutory bar on tax injunctions appeared, as it currently does in, in the Article on "General Provisions" as part of what was then a single chapter on "Real Property and Secured Personal Property Taxes." *See* Table of Contents for Title 42 and Chapter 2 (1956) (APP001-APP009).

The new § 42-204 separated the sentences of § 73-841 into separately demarcated paragraphs (A) through (D). Section 42-204(B) contained the taxing injunction bar, which was virtually unchanged from § 73-841: "No injunction shall issue in any action or proceeding in any court against the

state or against any county, municipality, or officer thereof, to prevent or enjoin the collection of any tax imposed or levied."[2]

This relocation should not be understood as substantive change in the meaning of the law. Not only did the language of the statutory bar on injunctions not change meaningfully, but the Code Commission lacked the authority to propose substantive changes. Laws 1951, Ch. 103, § 3 ("The commission shall not however, undertake to make any change of existing laws, but shall harmonize, clarify and remove inconsistencies where the same are found to exist; it being the intention of this Act that said commission shall in no manner assume to exercise legislative power, but shall otherwise seek to bring about the thorough revision, codification and annotation of the laws of the state of Arizona.").

In 1951, the *Lane* court applied the tax injunction bar beyond the property tax, and nothing about this construction of the statutory bar on injunctions changed following its reenactment as part of § 42-204 of the

[2] In its recodified form, the statutory language changed slightly. First, the new statute read "[n]o injunction shall issue," where § 73-841 had read "[n]o injunction shall *ever* issue (emphasis added). Second, the bar now applied against "*the* state," where the bar in § 73-841 applied to "this state." Third, the new statute applied the bar on enjoining collections to "any tax levied *or imposed*, "where § 73-841 barred enjoining the collection of only "any tax levied."

Arizona Revised Statutes. As a result, this Court should not read the provision's placement in Title 42 as a substantive limit on the plain text of the statute.

Nothing in the subsequent statutory history suggests an intent to limit the injunctive bar to the property tax. In 1964, the Legislature amended § 42-204(B) to make clear the ban also applied to injunctions against an officer of the state. Laws 1964, Ch. 40 § 1.

The Legislature also extended the bar on injunctions beyond collection and barred enjoining "the extending upon the tax roll of any assessment made for tax purposes." *Id.* Plaintiffs contend this language suggests the provision should be limited to the property tax. While Plaintiffs are correct that "tax roll" is unmistakably the language of the property tax, it makes little sense to read the legislature's addition of a new limit on the injunction remedy as an effort to restrict the original bar on enjoining tax collection to the property tax. *C.f.* *Drachman v. Jay*, 4 Ariz. App. 70, 73 (1966) (noting that this amendment was passed in the wake of this Court's decision in *Southern Pacific Co. v. Cochise County*, 92 Ariz. 395, 402 (1963) which held that the prior version of § 42-204 only barred injunctions against collection and not future assessment).

In 1967, the Legislature again amended the statute to expand its scope and limit not only injunctive remedies, but also "writ[s] of mandamus or other extraordinary writ[s]." Laws 1967, Ch. 107, § 9.

The statutory bar on injunctions was recodified as § 42-11006 in 1997, as part of a reorganization of the Title 42. Once again, this reorganization did not significantly change the language of the statute. Laws 1997, Ch. 150, § 172. Section 42-11006 was placed in the article covering "General Provisions" of the property tax, closely paralleling the placement of § 42-204 by the Code Commission in 1956.

This statutory history does not suggest an intent to limit the injunction to the property tax; if anything it evinces efforts by the Legislature to expand the scope of the bar on tax injunctions.

Nor does the policy supporting a bar on tax injunctions apply differently in the income tax context. In fact, today enjoining the collection of the income tax would be a greater constraint on the State of Arizona's tax revenue than an injunction on property tax collection. Ariz. Dep't of Administration, FY 2020 Annual Financial Report 5 (2020), (showing that in FY 2020, income tax revenue accounted for almost 40% of the state's general

revenue, while property taxes were listed only as part of a broader "other tax" category that represented together only 6.1% of revenue).

Consistent with the plain language, the statutory history, and this Court's precedent, this Court should hold that the bar on tax injunctions applies to the income tax.

II. The Narrow, Judicially Created Exception to the Statutory Injunction Bar Emerged From An Older, Common Law Tradition Limiting Equitable Relief And Should Be Construed Narrowly.

Arizona's statutory limit on tax injunctions is consistent with an older common law tradition of limited equitable relief in tax cases. *See, e.g.*, *Campbell v. Bashford*, 2 Ariz. 344, 346 (1888) ("If it appear[ed] that a party has an adequate remedy at law, he must go there, and the jurisdiction of a court of equity fails."). As early Arizona courts noted, our state's courts followed federal law in establishing a rule that disfavored injunctive relief in tax cases. *See Cochise Cty. v. Copper Queen Consol. Min. Co.*, 8 Ariz. 221, 232 (1903) ("In addition to illegality, hardship, or irregularity, the case must be brought within the recognized foundations of equitable jurisdiction, and that mere errors or excess in the valuation, or hardship or injustice of the law, or any grievance which can be remedied by a suit at law, either before or after payment of taxes, will not justify a court of equity to interpose

by injunction to stay collection of a tax.") (citing *State Railroad Tax Cases*, 92 U.S. 575, 614 (1875)).

However, this equitable rule was not enforced uniformly and some exceptions were well-recognized. *See State v. Cull*, 32 Ariz. 532, 544 (1927) (finding statutory bar inapplicable and discussing exceptions to equitable bar on tax injunctions").[3] At the time of *Cull*, these equitable exceptions included "where the assessment is under an unconstitutional statute, or on unconstitutional principles, or the property to be assessed is exempt, or the assessment would for other reasons be clearly unwarranted," as well as "where necessary to prevent a multiplicity of suits, or to prevent irreparable injury to complainant, or to prevent a cloud on the title, where there is no adequate remedy at law." *Id.*

In *Crane*, this Court suggested that these exceptions survived the enactment of the statutory bar on injunctions. *Crane Co. v. Arizona State Tax Comm'n*, 63 Ariz. 426, 447 (1945), overruled on other grounds by *Valencia*

[3] At the time *Cull* was decided, the statute only applied to "collection." Based on this language and the fact that the statute's title at that time referred to "delinquent taxes," the Court decided the statute did not a bar an injunction to extending upon the assessment roll. *Cull*, 23 Ariz. at 542. In 1964, the Legislature amended the statute to prohibit such injunctions. Laws 1964, Ch. 40 § 1.

Energy Co. v. Arizona Dep't of Revenue, 191 Ariz. 565 (1998) ("If the payment of the tax under protest and suit for recovery constitutes, as it ordinarily does, an adequate remedy at law, that course must be followed. Here, however, as we have pointed out, unless the tax is enjoined the result will be a multiplicity of suits, and, therefore, the remedy at law is not adequate.").

Subsequent decisions have criticized the breadth of *Crane*'s judicially implied exception to the statute. *See Drachman v. Jay*, 4 Ariz. App. 70, 74 (1966) ("We believe that A.R.S. s 42—204, as amended, is clearly not a codification of 'the general rule on the subject.' To hold that A.R.S. s 42—204, subsec. B applies only when taxing officials are rightfully proposing to extend an assessment on the tax rolls would completely frustrate the clear intent of the legislature."); *Lane v. Superior Ct.*, 72 Ariz. 388, 391-92 (1951) (characterizing *Crane* as somewhat inconsistent with prior precedent and holding that an "injunction will not lie to restrain the assessment of taxes imposed by law so long as the tax official acts with semblance of authority").

To the extent this Court continues to recognize an exception to the "seemingly absolute anti-injunction statute," *Church of Isaiah 58 Project of Arizona, Inc. v. La Paz Cty.*, 233 Ariz. 460, 465 (App. 2013), it should, as the

Court of Appeals held, be construed narrowly "to comport with separation of powers principles." *Id.* Here, there is no question that Proposition 208 enacted an income tax surcharge. This is sufficient "semblance of authority," as Plaintiffs' complaint "neither includes allegations of nor gives rise to a reasonable inference of legal fraud or the equivalent." *Id.* at 466 (internal citations omitted).

III. Plaintiffs Have Not Shown Irreparable Harm

Even if the Court reads § 42-11006 more narrowly than argued above, it should still deny the requested preliminary relief. Preliminary injunctions are an extraordinary remedy, which require that plaintiffs establish irreparable harm. The taxpayer Plaintiffs can make no such showing.[4]

The taxpayer Plaintiffs allege that without injunctive relief they would suffer irreparable harm because Proposition 208 violates the Arizona constitution. This claim is seemingly based on their assertion that "the infringement of a constitutional right 'unquestionably causes irreparable

[4] This brief does not directly address the standing of legislative Plaintiffs, nor whether they will suffer an irreparable injury. However, there are parallel dangers in allowing legislators to assert that the need for "certainty" is an irreparable harm. Arizona voters regularly pass statutory initiatives on budgetary and regulatory issues. Litigation creates no more uncertainty than other types of uncertainty that the Legislature encounters as part of its constitutional duties.

injury.'" Plaintiff's Opening Brief at 41 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). A finding that the alleged constitutional deficiencies in Proposition 208 result in irreparable harm to taxpayers would have serious repercussions for tax administration in this state.

A. Plaintiffs Face No Imminent Harm, Let Alone Irreparable Harm

In their complaint, taxpayer Plaintiffs make clear that their injury is the possibility that they will owe the Proposition 208 surcharge *next year*.[5] Complaint at ¶¶ 14-16. This injury is not sufficient to warrant a preliminary injunction. Should the taxpayers be required to pay the Proposition 208 surcharge and it later be proven unconstitutional, they can be made whole through the refund process.

However, taxpayers need not rely on the refund process. As the superior court observed, no Arizona taxpayers, including the taxpayer Plaintiffs, will be required to pay the Proposition 208 surcharge before a final adjudication on the merits. APPV2-106. As a result, the taxpayer Plaintiffs do not face *any* harm prior to this case's resolution on the merits.

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[5] Taxpayers also suggest that they will be required to "replenish the public coffers for the unlawful expenditures that will occur as a result of Proposition 208." Complaint ¶¶ 14-16.[5] To the extent that no unlawful expenditures are imminent, this alleged harm does not seem irreparable.

B. Plaintiffs Are Incorrect In Asserting *All* Constitutional Violations Result Irreparable Injury

Plaintiffs suggest that "[t]he infringement of a constitutional right 'unquestionably constitutes irreparable injury.'" Plaintiff's Opening Brief at 41 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). But that is not the law, and making it the law would dramatically undermine tax administration.

As the superior court correctly found and Plaintiffs concede, Arizona courts have not adopted a presumption that any constitutional violation results in irreparable harm.[6] APPV2-106; Plaintiff's Opening Brief at 42. Nor has federal law, and the federal law relied upon by Plaintiffs does not suggest otherwise.

For example, Plaintiffs rely on *Elrod v. Burns* for the proposition that "[t]he infringement of a constitutional right 'unquestionably constitutes irreparable injury.'" But in *Elrod*, the Supreme Court concluded only that "[t]he loss of *First Amendment* freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod*, 427 U.S. at 373

[6] In their reply brief, Defendant-Intervenors cite other federal cases holding that a plaintiff alleging a constitutional violation must still show a particularized irreparable harm to merit injunction relief.

(emphasis added). The Court said nothing about any other constitutional rights.

Other cases cited by the Plaintiffs concern constitutional violations that standing alone cause irreparable injury, such as invasions of privacy, *Nelson v. NASA*, 530 F.3d 865, 872 (9th Cir. 2008), *rev'd and remanded*, 562 U.S. 134 (2011), or harmful conditions of confinement, *Mitchell v. Cuomo*, 748 F.2d 804, 806 (2d Cir. 1984). Another case cited by Plaintiffs, *Associated General Contractors of California*, indicated that pleading constitutional injury was *insufficient* to establish irreparable harm, and would at most establish a *presumption* of such harm. *Associated Gen. Contractors of California, Inc. v. Coal. for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991) ("In this case, we need not determine whether [plaintiff's] allegations would be entitled to such a presumption of harm. Instead we find that, whether or not plaintiff would be entitled to such a presumption, the organization has not demonstrated a sufficient likelihood of success on the merits of its constitutional claims to warrant the grant of a preliminary injunction.").

Of the cases cited by the Plaintiffs, *American Trucking Associations v. City of Los Angeles* perhaps best supports their theory that *any* constitutional violation results in irreparable harm. 559 F.3d 1046, 1059 (9th Cir. 2009)

(internal citations omitted). In that case, the court considered a preemption claim, *id.* at 1048, and cited *Nelson, supra*, for the proposition that "constitutional violations . . . generally constitute irreparable harm." *Id.* at 1059 (internal citations omitted). However, the court also found that plaintiffs faced other serious, potentially irreparable injuries. *Id.* at 1058. Taxpayer Plaintiffs here do not allege any irreparable injury apart from the constitutional violations themselves.

Plaintiffs' proposed standard for irreparable injury would allow any taxpayer with a constitutional claim to seek preliminary relief. Such a standard would significantly expand access to preliminary injunctions generally and could dramatically change tax administration. After all, state taxpayers frequently raise federal constitutional claims; multistate taxpayers often raise due process and dormant commerce clause challenges. And, as this case illustrates, the Arizona Constitution contains numerous fiscal provisions that govern the constitutionality of state and local taxes. Expanding the standard of irreparable harm as suggested by the Plaintiffs would interfere with tax collection by allowing courts to enjoin tax collection without a final adjudication on the merits.

Conclusion

Granting a preliminary injunction in this case has the potential to seriously undermine the efficient administration of Arizona's tax system. Expanding irreparable harm to encompass any constitutional claim raised by taxpayers invites the possibility that taxpayers will frequently seek preliminary injunctions when they raise these claims. The statutory bar on tax injunctions exist to prevent just such frequent judicial interference in tax administration. This Court should affirm the decision below.

RESPECTFULLY SUBMITTED this 22nd day of March, 2021.

By /s/ Erin Adele Scharff

Erin Adele Scharff
Attorney for Amicus Curiae

SUPREME COURT OF ARIZONA

KAREN FANN, an individual; RUSSELL "RUSTY" BOWERS, an individual; DAVID GOWAN, an individual; VENDEN LEACH, an individual; REGINA COBB, an individual; JOHN KAVANAGH, an individual; MONTIE LEE, an individual; STEVE PIERCE, an individual; FRANCIS SURDAKOWSKI, M.D., an individual; NO ON 208, an Arizona political action committee; ARIZONA FREE ENTERPRISE CLUB, an Arizona non-profit corporation, Plaintiffs/Appellants, v. STATE OF ARIZONA; KIMBERLY YEE, in her official capacity as Arizona State Treasurer; ARIZONA DEPARTMENT OF REVENUE, an agency of the State of Arizona, Defendants/Appellees, And INVEST IN EDUCATION (SPONSORED BY AEA AND STAND FOR CHILDREN), a political action committee. Intervenor-Defendants/Appellees.	Arizona Supreme Court No. CV-21-0058-T/AP Court of Appeals Division One No. 1 CA-CV 21-0087 Maricopa County Superior Court No. CV2020-015495 No. CV2020-015509 (Consolidated) **Amicus Curiae Tax Professor's Appendix in Support of Brie**f

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ANNOTATIONS TO STATUTES

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TAXATION

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Motor carriers, license tax on, see § 40–641 et seq.
Motor vehicle fuel tax, see § 28–1501 et seq.
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State bonds, tax levy for amortization of, tax rate, etc., see § 35–427.
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"Double taxation" applies to any case where the same intrinsic values are twice taxed even though the legal and ultimate equitable titles thereto might be in separate and independent hands. Brophy v. Powell (1942) 58 Ariz. 543, 121 P.2d 647.

Rev.St.1887, § 2633, provided for taxing the property of corporations. Laws 1897, Act No. 51, provided for taxing shares of stock of banks. This did not provide for double taxation as to banks, but simply for a different method of taxation from other corporations. Western Investment Banking Co. v. Murray (1899) 6 Ariz. 215, 56 P. 728.

3. Property subject to taxation, in general

Sheep, increase of those distributed to Indian by government, owned by his son outside reservation, were subject to state taxation. U. S. v. Porter (C. C.A.1927) 22 F.2d 365.

Where a holder of public land scrip selected his land thereunder, and was entitled to a patent without further act, subject only to a possible shifting of his boundary lines to conform to the United States survey thereafter to be made, the land was subject to territorial taxation prior to the issuance of the patent; the United States being the mere depository or trustee of the title for the benefit of the owner. De La Vergne v. Territory (1893) 4 Ariz. 10, 77 P. 617.

Organic Act, § 1839, provides that it shall not "include any territory which, by treaty with any Indian tribe, is not, without the consent of such tribe, to be embraced within the territorial limits or jurisdiction of any state or territory." In the absence of such a treaty, a railroad track and right of way through an Indian reservation was subject to taxation by the territory. Persons, etc., in Delinquent List of Maricopa County for 1888–89 v. Territory (1891) 3 Ariz. 302, 26 P. 310, affirmed 15 S.Ct. 391, 156 U.S. 347, 39 L.Ed. 447.

4. Repeal

Act March 16, 1891 (Laws 1891, pp. 61, 62), exempted from taxation for the period of 20 years railroads constructed pursuant to the statute; Civ.Code 1901, § 3834, provided that all property of every kind and nature within the territory should be subject to taxation; and § 4235 repealed all acts of certain Legislatures, except an act approved March 16, 1891, for the encouragement of the construction of railroads. The exemption statute was not repealed by section 3834. Bennett v. Nichols (1905) 9 Ariz. 138, 80 P. 392.

§ 42-203. Taxes on improvements as lien on real estate

Taxes on improvements upon real estate assessed to a person other than the owner of the real estate shall be a lien upon the land and improvements.

Historical Note

Source:

§§ 9, 10, Ch. 35, L. '13, 3rd S.S.; §§ 4847, 4848, R.S. '13; § 3067, R.C. '28; 73–202, C. '39, in part.

Cross References

Taxation of improvements on state land, see § 37–292.

§ 42-204. Payment of tax as prerequisite to testing validity thereof; injunctive relief prohibited; refunds

A. Any person upon whom a tax has been imposed or levied under any law relating to taxation shall not be permitted to test the

validity thereof, either as plaintiff or defendant, unless the tax is first paid to the county treasurer authorized to collect the tax, together with all penalties thereon.

B. No injunction shall issue in any action or proceeding in any court against the state or against any county, municipality or officer thereof, to prevent or enjoin the collection of any tax imposed or levied.

C. After payment of the tax, an action may be maintained to recover any tax illegally collected, and if the tax due is determined to be less than the amount paid, the excess shall be refunded in the manner provided by this chapter.

Historical Note

Source:

§ 102, ch. 35, L. '13, 3rd S.S.; § 4939, R.S. '13; § 3136, R.C. '28; § 55, Ch. 103, L. '31; 73-841, C. '39.

Notes of Decisions

1. In general

Neither the listing of a number of mining claims en masse for taxes, nor payment of a part of the unlawful tax as a condition of injunction, nor payments under compromise subsequently held invalid, estopped the owner from contesting the enforcement of the tax, because the board of equalization unlawfully increased the assessment on a part of the property by singling out some of the claims. Territory of Arizona ex rel. Gaines v. Copper Queen Consol. Min. Co. (1914) 34 S.Ct. 546, 233 U.S. 87, 58 L.Ed. 863.

Five hours' notice of hearing before State Board of Equalization on proposed increase in assessed valuation of property was insufficient. Yuma County v. Arizona Edison Co. (1947) 65 Ariz. 332, 180 P.2d 868.

Where tax commission was no longer sitting as a Board of Equalization at time that secretary of the commission, in response to an inquiry by clerk of local Board of Supervisors, directed that increase in assessed valuations ordered by Board be prorated, the directions in the nature of an equalizing order could have no effect. Id.

An order of the State Board of Equalization directing a blanket increase in