



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



CASE SUMMARY

**STATE OF ARIZONA, EX. REL THE ARIZONA DEPARTMENT OF REVENUE v.
CAPITOL CASTINGS 1 CA-TX 01-0007; 1 CA-TX 02-0014 (consolidated)**

CV-03-0250-PR

- Petitioner:** Capitol Castings is represented by Charles Pulaski, Barbara Dawson, and Martha Gibbs of Snell & Wilmer.
- Respondent:** The Arizona Department of Revenue is represented by Sara Branscum, Assistant A.G.
- Amicus Curiae:** The Arizona Tax Research Association is represented by Steven Partridge, Fennemore Craig.

Facts:

Capitol Castings produces grinding balls and custom castings from molten scrap metal and alloys. Most of the materials used during the molding process are destroyed due to the extreme heat of the process. At issue in this case is the application of Arizona's use tax to Capitol's purchase of sand and other materials that constitute the components that Capitol uses to construct the sand molds that it then uses to form castings, its end product. Also at issue is the taxability of the lime and cement that Capitol uses to neutralize noxious fumes admitted during processing, and the refracting materials that Capitol uses to protect its equipment from the intense heat of the molten metal used to make its castings.

In *Capitol Castings I*, the court of appeals determined that the materials used by Capitol were expendable and therefore could not be exempt under A.R.S. § 42-5159(C)(1) as it was then codified. 193 Ariz. at 95, 970 P.2d at 449. A.R.S. § 42-5159(B)(1) did at the time of *Capitol Castings I*, and still does, exempt from the use tax machinery or equipment used directly in processing or manufacturing operations. At the time *Capitol Castings I* was issued by the court, § 42-5159(C)(1) excluded expendable materials from that exemption. Because the materials in issue here were expendable, the court of appeals in *Capitol Castings I* ultimately deemed moot the question of whether the materials that are at issue in this dispute are machinery or equipment under § 42-5159(B), because the court determined

that the materials were expendable and were therefore not exempt under §42-5159(C)(1). However, the court inferred, in what is arguably *dicta*, that what constitutes machinery or equipment must be narrowly construed. 193 Ariz. at 93-95, §§ 14-25, 970 P.2d at 447-450. *Capitol Castings I* reversed the Tax court's ruling that Capitol was entitled to a use tax exemption for the materials in issue.

In 1999, the Legislature amended the exemption statute relating to expendable materials, retroactively to May 19, 1977, so that the statute would provide that tangible personal property otherwise exempt from the use tax under § 42-5159(B), including machinery or equipment used for manufacture or fabrication, see § 42-5159(B)(1), was no longer classified as "expendable materials" "regardless of the cost or useful life of that property." A.R.S. § 42-5159(C)(1)(emphasis added).

On remand, the tax court entered judgment against Capitol for approximately \$1.157 million in delinquent use taxes and interest. Following the retroactive amendment of the statute, Capitol moved for relief from that judgment pursuant to Rule 60(c)(6), Arizona Rules of Civil Procedure. Tax Court Judge Cates granted Capitol's motion, finding that the retroactive amendment exempted Capitol's materials from the use tax. However, Judge Katz assumed the tax court docket and reversed the ruling, relying on the "*dicta*" from *Capitol Castings I* that held that Capitol's materials were not "equipment" under A.R.S. § 42-5159(B)(1), and therefore the materials were not exempt from tax, despite the 1999 amendment to the statute.

In *Capitol Castings II*, the case at issue here, the court of appeals affirmed Judge Cates' order granting Capitol Rule 60(c) relief, and also affirmed Judge Katz' entry of summary judgment for the Department. The court acknowledged that the 1999 amendment "effectively reversed the holding in *Capitol Castings I*." Opinion at ¶ 12 (discussing the equity of enforcing a delinquent tax court judgment against Capitol). However, the Court relied on its holding in *Capitol I*, which the court deemed to remain viable despite the 1999 amendment to the statute. The court ruled that Capitol's materials were not "machinery or equipment" for purposes of the exemption afforded by § 42-5159(B)(1). Opinion at ¶ 27.

Issue:

"Did the court of appeals err by refusing to apply the Legislature's amendment of the use tax exemption to certain non-metal materials purchased by Capitol Castings, even though the Legislature specifically adopted the amendment retroactively to reverse the holdings in *Capitol Castings I* [*State ex. rel. Arizona Dep't of Revenue v. Capitol Castings, Inc.*, 193 Ariz. 89, 970 P.2d 443 (App. 1998)], and even though that amendment (which, as a tax statute, should be liberally construed) clarified that Capitol's materials come within the definition of "machinery or equipment?"

Definitions :

Amicus Curiae: An amicus curiae is an entity or person that has an interest that is germane to the issues presented in the case. An amicus curiae are not a party to the law suit being considered by the court. Rather, amicus curiae have received permission from the court to file a brief raising arguments germane to the presented issues, with the hope that the amicus curiae brief will assist the court in resolving the presented issues.

Dicta: Dicta consists of comments made by the Court in a decision that do not relate exactly to the presented issues. Because dicta concerns issues tangential to the presented issues, court may or may not follow the holdings in dicta.

This Summary was prepared by the Arizona Supreme Court Staff Attorney's Office solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.