



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**HAROLD VANGILDER v. DEPARTMENT OF REVENUE, et. al,
CV 20-0040-PR**

PARTIES AND COUNSEL:

Petitioners: Arizona Department of Revenue (“ADOR”); Harold Vangilder, Dan Neidig, and Arizona Restaurant Association (collectively, “Plaintiffs”)

Respondents: Pinal County (“County”) and Pinal Regional Transportation Authority (“RTA”)

Amicus Curiae: The Arizona Tax Research Association and the Arizona Free Enterprise Club, Pinal Partnership, Town of Queen Creek, City of Maricopa, City of Coolidge and Town of Florence.

FACTS: The Pinal Regional Transportation Authority (“the RTA”) is a public improvement and taxing subdivision of the State. It was established in 2015 to coordinate multi-jurisdictional transportation planning, improvements and funding. RTA is authorized to formulate a plan for transportation projects, and to propose an excise tax to pay for them. The proposed tax must be approved by the voters at a countywide election.

In 2017, Pinal County voters simultaneously approved Proposition 416 (“Prop 416”) to adopt a regional transportation plan and Proposition 417 (“Prop 417”) to enact an excise tax to fund the Plan.

After these propositions were passed, litigation began over the validity and scope of the excise tax adopted. In December 2017, Plaintiffs filed a complaint to enjoin ADOR, the County, and the RTA from collecting and/or enforcing the tax, alleging it was invalid and unconstitutional. The tax court invalidated the excise tax. The County and the RTA appealed the ruling. Plaintiffs appealed the tax court’s order denying their request for attorneys’ fees. On appeal, ADOR joined Plaintiffs in arguing that the tax was invalid. ADOR also joined appellants County and RTA in defending Prop 417’s constitutionality and opposing Plaintiffs’ claim for fees.

The court of appeals found the tax to be valid and reversed the order invalidating the tax. The court affirmed the denial of Plaintiffs’ request for attorneys’ fees. ADOR and Plaintiffs filed petitions for review.

1. ISSUES:

ADOR:

Can a county that adopts a tax under A.R.S. [section] 42-6106 exempt from the retail-classification tax base a portion of gross income from the sale of a single item of tangible personal property using the artifice of a "zero rate" when the tax base is statutorily defined to include such proceeds and the underlying TPT statutes do not authorize counties to effect such an exemption?

Plaintiffs:

1. Do A.R.S. §§ 42-6106 and 48-5314 permit a county to adopt a retail sales tax with a carve-out whereby the first \$10,000 of any single item is taxed at one rate, while any amount in excess of that is not taxed?

2. The Regional Transportation Authority (RTA) adopted an Authorizing Resolution pursuant to A.R.S. § 48-5314(A)(2) calling for a retail-only sales tax. After voters approved that, the County Board of Supervisors adopted a Resolution instructing the Arizona Department of Revenue (ADOR) to collect the tax not on retail sales alone, but on all seventeen transaction privilege tax (TPT) classifications. Is this lawful?

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