



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



BSI Holdings LLC v. Ariz. Dep't of Transp., CV-17-0241- PR

PARTIES:

Petitioner: BSI Holdings, LLC (“BSI”)

Respondent: Arizona Department of Transportation (“ADOT”)

FACTS:

BSI is a limited liability company that was formed to purchase, operate, and maintain a dual engine turbo-jet airplane. The jet is primarily located in Arizona and used to fly one member of BSI in and out of the Scottsdale Airport.

Under Arizona law, a non-commercial aircraft is subject to one of three tax regimes, depending upon how many days the plane is “based” in the state:

1. if the aircraft is owned by an Arizona resident and based here for 210 days or more in a calendar year, it is taxed based on 0.5% of the average fair market value of the aircraft, *see* A.R.S. § 28-8335(B);
2. if the aircraft is owned by a nonresident and “is based in this state for more than ninety days but less than two hundred ten days in a calendar year,” it is subject to a tax based on 0.1% of the average fair market value of the aircraft, A.R.S. § 28-8336; and
3. if the aircraft is “owned by a nonresident who operates [the] aircraft for a period not in excess of ninety days in one calendar year,” it is subject to no tax, Ariz. Const. art. 15, § 15(3); *see also* A.R.S. § 28-8322(D)(2) (same).

In 2004, BSI and ADOT executed an agreement settling a dispute regarding the aircraft taxes owed on the jet for years 2003 and 2004. Under that agreement, for 2004 BSI was required to pay the non-resident rate of 0.1% applicable to aircraft in the state for between ninety and 210 days. For 2005 to 2012, BSI filled out the same form it had in 2004 and ADOT calculated the tax using the 0.1% rate and billed BSI. Thus, BSI paid that same rate for tax years 2005 through 2012.

In 2012, ADOT conducted an audit and determined that the jet had been “based” in Arizona for more than 210 “days” a year for each year during the 2005-2012 period and thus was subject to taxation based on 0.5%, rather than 0.1%. According to ADOT, for purposes of A.R.S. § 28-8322, a “day” means any calendar day during which a nonresident aircraft is on the ground in Arizona for any period of time. ADOT issued an assessment for approximately \$161,000 and recorded a lien against the jet.

BSI filed an administrative appeal, arguing that a “day” should be interpreted consistent with ADOT’s automobile regulation, Ariz. Admin. Code R17-4-301, which defines a “day” as

“the 24-hour period from one midnight to the following midnight.” ADOT rejected the argument in the administrative appeal.

BSI then filed a complaint in the tax court. Both parties moved for summary judgment regarding the proper calculation of the “days” the jet had been “based in this state” under A.R.S. § 28-8336. The tax court held that the word “day” as used in the statute was not defined and was consequently ambiguous. The court held that the term must be construed liberally in favor of the taxpayer and defined the word as “any period of twenty four hours.”

The court of appeals reversed. The court agreed with the tax court that the statute is ambiguous, but held that ADOT’s interpretation of the word “day” was consistent with the “long-standing common-law concept” that “the law takes no notice of fractions of a day and deems any fraction of a day to be a ‘day.’” *BSI Holdings, LLC v. Ariz. Dep’t of Transp.*, 242 Ariz. 621, 624-25 ¶ 15 (App. 2017). The court stated that ADOT’s interpretation furthers the “implicit goals” of the statutory scheme to generate funds for airport facilities as an aircraft’s usage increases. *Id.* at 625 ¶ 17. The court also rejected BSI’s argument that ADOT had violated the Administrative Procedures Act, A.R.S. §§ 41-1001 to 41-1092.12, by adopting a definition of “day” without a formal rule-making process; the court held that it was “the statute itself, as opposed to ADOT’s interpretation and implementation of it, that has affected BSI’s rights.” *Id.* at 627 ¶ 21. The court remanded for further proceedings and to address arguments not previously ruled upon.

ISSUE:

Whether the Court of Appeals erroneously defined ‘day’ under A.R.S. § 28-8336?

CONSTITUTIONAL AND STATUTORY PROVISIONS:

Ariz. Const. art. 9, § 15(3) provides:

Commencing January 1, 1965, a license tax is imposed on aircraft registered for operation in Arizona . . . but nothing in this section shall be deemed to apply to:

. . . .

3. Aircraft owned by a nonresident who operates aircraft for a period not in excess of ninety days in any one calendar year, provided that such aircraft are not engaged in any intrastate commercial activity.

A.R.S. § 28-8336 provides:

The license tax for a nonresident whose aircraft is based in this state for more than ninety days but less than two hundred ten days in a calendar year is equal to one-tenth of one per cent of the average fair market value of the particular make, model and year of aircraft if the aircraft is not engaged in any intrastate commercial activity.

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