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TAX - ARIZONA

[Vangilder v. Arizona Department of Revenue](#)

Supreme Court of Arizona - March 8, 2022 - P.3d - 65 Arizona Cases Digest 31 - 2022 WL 678899

Consumer filed complaint seeking to enjoin Department of Revenue (DOR), county, and regional transportation authority (RTA) from collecting and/or enforcing excise tax approved by voters and enacted to fund regional transportation plan, alleging tax was invalid and unconstitutional.

The Arizona Tax Court granted summary judgment for consumer and invalidated tax. County and RTA appealed the invalidation, and consumer cross-appealed, challenging the denial of his request for attorney fees. The Court of Appeals affirmed in part and reversed in part, upholding the tax as valid and affirming the denial of request for attorney fees.

The Supreme Court held that:

- Board of Supervisors' inclusion of a partial description of transportation excise tax did not invalidate resolution to request that Board place a transportation excise tax on the ballot or placement of tax on ballot;
- Publicity pamphlet provided the requisite notice for resolution;
- Transportation excise tax clearly applied to all transaction privilege tax (TPT) classifications, and therefore did not impermissibly apply only to retail sales;
- Two-tiered structure violated state law; and
- Statement of legislative intent did not support validity of two-tiered structure.

Transportation excise tax statute does not require the Regional Transportation Authority (RTA) to specify or describe the details of the transportation excise tax that would later be placed on the ballot, such that county Board of Supervisors' inclusion of a partial description of transportation excise tax did not invalidate resolution to request that Board place a transportation excise tax on the ballot or placement of tax on ballot.

Publicity pamphlet, which was approved by county Regional Transportation Authority (RTA) and distributed to voters, provided the requisite notice for resolution to request that county Board of Supervisors place a transportation excise tax on the ballot, as would support validity of resolution and placement of transportation excise tax on the ballot; publicity pamphlet sent to voters before the election explained that transportation excise tax would be assessed on the same business transactions that were subject to the State of Arizona transaction privilege tax, and identified each of the business classifications subject to the transaction privilege tax, specifying the rate that would apply to each classification, including the two-tiered rate structure for retail sales.

Transportation excise tax clearly applied to all transaction privilege tax (TPT) classifications, and therefore did not impermissibly apply only to retail sales, such that county complied with state law in adopting transportation excise tax; publicity pamphlet listed the tax rate for each of the TPT classifications in addition to the rate for retail sales, indicating that the transportation excise tax would apply to all classifications, and ballot asked voters if they agreed to the levy of a

transportation excise (sales) tax including a two-tiered tax on retail sales, indicating that the tax applied to all TPT classifications.

Two-tiered retail transaction privilege tax (TPT) that proposed new transportation excise tax to fund regional transportation plan, but which imposed a zero percent rate upon retail sales of a single item of personal property over \$10,000, violated state law governing levying and collecting of county transportation excise tax, absent express delegation from legislature to counties for authority to implement tiered-rate tax on specified businesses; legislature delegated authority to establish a modified or variable rate, but TPT structure was not a variable or modified rate as it set fixed tax rates that never varied and were never subject to change, and county did not have an already-existing transportation excise tax that tax sought to change, and statutory scheme did not contemplate two-tiered retail tax structure.

Statement of legislative intent recognizing need to create a new source of funding for certain counties, and noting that transportation funding needs were unmet by any existing transportation-specific funding mechanisms within area, that there were constitutional limitations placed on the use of highway user revenues, that specific areas possessed unique characteristics, and that needs produced by these characteristics must be addressed by certain unique strategies did not support validity of county's two-tiered retail transaction privilege tax (TPT) structure for transportation excise tax, even if cities and towns, under the Model City Tax Code, could exempt proceeds from their retail tax; legislature did not indicate it was granting unrestricted, open-ended taxing authority to counties, and Model City Tax Code only applied to a city or town, not counties.