Arizona Supreme Court

Civil Petition for Review - Tax

CV-23-0176-PR — DOVE MOUNTAIN, et al v ADOR

Appellate Case Information

Case Filed: 10-Jul-2023 Archive on: 25-Jun-2034 (planned)

Case Closed: 24-Jun-2024

Dept/Composition

En Banc

Hon. Ann A. Scott Timmer
Hon. Clint Bolick
Hon. John R Lopez
Hon. James P Beene
Hon. William G Montgomery
Hon. Kathryn H. King
Hon. John Pelander

Side 1. DOVE MOUNTAIN HOTELCO, LLC, et al., Plaintiff/Appellant

(Litigant Group) DOVE MOUNTAIN HOTELCO, LLC, et al.

- **Dove Mountain Hotelco LLC**
- **HLS Cottonwood RC Hotel LLC**

Attorneys for: Plaintiff/Appellant

Barbara J Dawson, Esq. (AZ Bar No. 12104)
Edward J Hermes, Esq. (AZ Bar No. 30529)
David P Dorner, Esq. (IL Bar No. daviddorner)

Side 2. ARIZONA DEPARTMENT OF REVENUE, Defendant/Appellee

(Litigant Group) ARIZONA DEPARTMENT OF REVENUE

- **Arizona Department of Revenue**

Attorneys for: Defendant/Appellee

Scot G Teasdale, Esq. (AZ Bar No. 19330)
Kristin K Mayes, Esq. (AZ Bar No. 22584)

CASE STATUS

Jun 24, 2024....Case Closed
Jun 7, 2024.....**Decision Rendered**
Nov 8, 2023.....Oral Argument Granted

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
1 CA 1 CA-TX 22-0003					
ATC TX2019-000448	Transaction Privilege Tax		M Scott McCoy, Authoring Judge of Order Comments: (none)		

CASE DECISION

07-Jun-2024 OPINION

We vacate the court of appeals' opinion, although we agree with its result, and we affirm the tax court's grant of summary judgment in favor of ADOR. Because no refund is due, we deny Dove Mountain's request for attorney fees pursuant to A.R.S. § 12-348.

Filed: **07-Jun-2024** Mandate: **25-Jun-2024**

Decision Disposition
CofA Vacated
Affirmed

William Montgomery.....Author
Ann Timmer.....Concur
Clint Bolick.....Concur
John Lopez.....Concur
James Beene.....Concur
Kathryn King.....Concur
John Pelander.....Concur

21 PROCEEDING ENTRIES

1.	10-Jul-2023	FILED: Petition for Review of Opinion of the Court of Appeals; Certificate of Service; Certificate of Compliance; Opinion (Appellants Dove Mountain et al.)
2.	10-Jul-2023	FILED: Appendix Part 1; Certificate of Service; Appendix Part 2 (Appellants Dove Mountain et al.)
3.	11-Jul-2023	FILED: Letter to [Edward J. Hermes] (Verification of Pro Hac Vice Status David P. Dorner)

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4.	12-Jul-2023	FILED: Notice of Filing Pro Hac Vice Status of David P. Dorner Pursuant to Court Order; Certificate of Service; Order (MCSC) Filed 9/16/19; Pro Hac Vice Applicant Letter (Appellants Dove Mountain et al.)
5.	12-Jul-2023	FILED: Record From CofA: Electronic Record
6.	14-Jul-2023	RECEIPT No.: 2023-00572 ; $280.00, Authorization: 8649501809841601, Applied to: DOVE MOUNTAIN HOTELCO, LLC, et al. - Class A Filing Fee ($280.00) Paid for: DOVE MOUNTAIN HOTELCO, LLC, et al. - By nCourt LLC
7.	14-Aug-2023	FILED: Response to Petition for Review; Certificate of Service; Certificate of Compliance (Appellee ADOR)
8.	8-Nov-2023	ORDERED: Petition for Review of Opinion of the Court of Appeals = GRANTED as to these issues: 1. Did the Court of Appeals err when it equated post-tax funds reserved to reimburse the hotel for the cost of future awards to be "gross income" under A.R.S. §§ 42-5070 and -5001(4), (7) when the funds were paid to the hotel upon point redemption? 2. Did the Court of Appeals err when it equated Dove Mountain's 4.5% remittance to the Marriott rewards program as a payment for membership to a third-party vendor? 3. Did the Court of Appeals err when it decided that Consumers Market did not serve as controlling precedent? FURTHER ORDERED: The case shall be set for oral argument. FURTHER ORDERED: The parties may file simultaneous supplemental briefs, not to exceed 20 pages in length, no later than 20 days from the date of this Court's Minute Letter. Any amicus briefs are due on or before December 13, 2023 and any responses to amicus briefs are due on or before January 4, 2024. Any amicus briefs or responses may not exceed 20 pages in length. FURTHER ORDERED: Request for Attorneys' Fees (Appellants Dove Mountain et al.) = CONTINUED. Chief Justice Brutinel did not participate in the determination of this matter.
9.	13-Nov-2023	NOTICE OF ORAL ARGUMENT: Set for Tuesday, January 23, 2024 at 10: 15 A.M. (twenty [20] minutes per side).
10.	13-Nov-2023	FILED: Notice of Acknowledgment of Oral Argument (David P. Dorner will argue) (Appellants Dove Mountain, et al.)
11.	16-Nov-2023	FILED: Notice of Acknowledgment of Oral Argument (Scot G. Teasdale will argue) (Appellee ADOR)
12.	15-Nov-2023	FILED: Record From CofA: Electronic Record
13.	21-Nov-2023	FILED: Stipulation for Extension of Time to File Supplemental Briefs; Certificate of Service (Appellee ADOR/Appellants Dove Mountain et al.)
14.	22-Nov-2023	On November 21, 2023, the parties filed a "Stipulation for Extension of Time to File Supplemental Briefs." Upon consideration, IT IS ORDERED approving the stipulation. IT IS FURTHER ORDERED extending all briefing dates in this matter. Parties may file simultaneous supplemental briefs, not to exceed 20 pages in length, no later than December 5, 2023. Any amicus briefs are due on or before December 20, 2023, and any responses to amicus briefs are due on or before January 4, 2024. Any amicus briefs or responses may not exceed 20 pages in length. (Hon. Ann A. Scott Timmer)
15.	27-Nov-2023	Chief Justice Brutinel is recused and will not participate in the above captioned matter. Therefore, pursuant to Article 6, Section 3 of the Arizona Constitution, IT IS ORDERED that the Honorable John Pelander, Justice (Retired) of the Arizona Supreme Court is designated to sit on the case until it is finally determined. (Hon. Ann A. Scott Timmer)
16.	5-Dec-2023	FILED: Plaintiff/Appellant Supplemental Brief; Certificate of Service; Certificate of Compliance (Appellants Dove Mountain, et al.)
17.	5-Dec-2023	FILED: Arizona Department of Revenue's Supplemental Brief; Certificate of Service; Certificate of Compliance (Appellee ADOR)
18.	23-Jan-2024	ORAL ARGUMENT - Submitted for decision en banc (Attorneys who argued: David F. Dorner, Scot G. Teasdale)
19.	7-Jun-2024	OPINION - We vacate the court of appeals' opinion, although we agree with its result, and we affirm the tax court's grant of summary judgment in favor of ADOR. Because no refund is due, we deny Dove Mountain's request for attorney fees pursuant to A.R.S. § 12-348. (Hon William G. Montgomery - Author; Hon. Ann A. Scott Timmer - Concur; Hon. Clint Bolick - Concur; Hon. John R. Lopez IV - Concur; Hon James P. Beene - Concur; Hon. Kathryn H. King - Concur; Hon. John Pelander - Concur)

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20.	24-Jun-2024	----CASE STATISTICALLY TERMINATED----
21.	25-Jun-2024	MANDATE TO ARIZONA TAX COURT Issued Mandate and Copy of Opinion to Tax Court. _____