

evidence sufficiently supported the court's ruling that the principles of equitable estoppel prevent the City from enforcing its assessment. We conclude that legally sufficient evidence supports the judgment and therefore affirm.

STANDARD OF REVIEW

¶2 We view the facts in the light most favorable to sustaining the judgment. *Lewis v. Pleasant Country, Ltd.*, 173 Ariz. 186, 188, 840 P.2d 1051, 1053 (App. 1992). Moreover, we defer to the tax court's determination of a witness's credibility and the weight to give conflicting evidence. *Premier Fin. Servs. v. Citibank (Ariz.)*, 185 Ariz. 80, 85, 912 P.2d 1309, 1314 (App. 1995). But we are not bound by the tax court's conclusions of law. *Gary Outdoor Adver. Co. v. Sun Lodge, Inc.*, 133 Ariz. 240, 242, 650 P.2d 1222, 1224 (1982). We may infer additional findings of fact and conclusions of law to support the judgment as long as those findings are reasonably supported by the evidence and not in conflict with any express findings. *Johnson v. Elson*, 192 Ariz. 486, 489, ¶ 11, 967 P.2d 1022, 1025 (App. 1998).

PERTINENT FACTS AND PROCEDURAL HISTORY

¶3 The tax base used for calculating the City's retail transaction privilege tax for the construction contracting business equals 65% of the taxpayer's gross income from the business. Glendale Model City Privilege (Sales) Tax Code ("Code") § 21.1-415(a), (b)(2). The tax base used for the retail sales business is

100% of the taxpayer's gross sales or gross receipts from the business. Code § 21.1-460(a).

¶4 Before February of 1995, the City treated the business of selling and installing manufactured housing as "construction contracting" if the taxpayer filed an "affidavit of affixture." See Code § 21.1-415.2(c). Absent such an affidavit, the City considered the business to be one for retail sales of personal property.

¶5 The City's August 1993 informational brochure entitled "City Contracting Taxes" provided as follows:

Examples of taxable contracting activities include, but are not limited to:

. . . .

* Manufactured buildings (consult with the city of Glendale for guidelines).

¶6 Effective February of 1995, the City amended Code section 21.1-427 to tax 100% of the gross income from the business of "selling manufactured buildings," including site preparation and set-up charges. At the same time, the City amended Code section 21.1-415(a) to provide: "(3) gross income from construction contracting shall not include gross income from the sale of manufactured buildings taxable under section 21.1-427." Despite the change in the law, however, the City re-issued its "City Contracting Taxes" brochure in May of 1996 without deleting "manufactured buildings" as an example of taxable *contracting*

activities. The City eventually deleted that reference in the April 1998 edition of the brochure.

¶7 The audit period at issue in this case is January 1996 through February 1997. During this time period, Discount engaged in the business of selling and installing manufactured homes. Jeffrey Getz and his wife incorporated and operated Discount from their home in Phoenix. In July 1995, Discount applied for a Glendale Transaction Privilege Tax permit, listing its business as "Retail Sales of New and Used Mobile Homes." In January 1996, Discount moved its business to Glendale and applied for a new permit at that location.

¶8 Discount's sales people were initially instructed to collect Glendale privilege taxes on 100% of mobile home sale prices. But Discount had and reported no gross receipts for January or February 1996.

¶9 In March or April of 1996, Mr. Getz phoned the City to ensure that Discount was correctly reporting privilege tax information to the City. An unidentified woman told Getz that if Discount's business was contracting, Discount could use the lower tax base, but if the business was retail, Discount could not. She asked him if Discount did "any of the contracting of any of the work" in selling mobile homes and whether it was selling them at retail prices. He answered both her questions in the affirmative.

¶10 After spending several minutes discussing the issue, the woman placed Getz on hold to check with her supervisor. After several more minutes passed, she returned and told Getz that Discount was entitled to use the lower tax base. The woman did not warn Getz that her advice did not bind the City.

¶11 Soon after Getz's conversation with the City employee, Discount hired John Jensen as its bookkeeper. In mid-May 1996, Jensen called the City in order to confirm the tax information previously given to Getz. Jensen spoke to "Anna," identified himself as Discount's accountant, and related that Discount sells new, manufactured homes. He then asked her if Discount was entitled to use the 65% tax base. According to Jensen, Anna answered as follows:

A. She said, yes, you are. And I said, okay. I'd like to go through the calculation of your tax. 1.3 percent, if I take it times 65 percent, I come up with .85 percent sales tax.

Q. And was there a reaction to that?

A. I was told that that was correct.

Anna did not tell Jensen he could not rely on her advice.

¶12 Relying on Anna's representations, Discount continued to use the lower tax base reserved for construction contracting businesses. A month or two later, Getz obtained a copy of the City's brochure on "City Contracting Taxes" when he delivered Discount's monthly transaction privilege tax payment to the City.

After Jensen read the brochure, he concluded it verified the oral representations of Anna and the unidentified city employee.

¶13 During the audit period, Discount remitted to the City \$17,472.23 less than it owed in privilege taxes on its taxable mobile home sales. This deficiency was almost entirely attributable to Discount's use of the tax base reserved for construction contracting businesses. The City eventually identified the deficiency and assessed it against Discount with interest and penalties. After Discount protested the outcome of the audit, a City hearing officer abated the penalties but sustained the assessment of the deficiency amount with interest.

¶14 Discount filed this action in the tax court under Code section 21.1-575 seeking an abatement of the City's assessment. At trial, the tax court ruled that Discount had established all elements of the test for equitable estoppel against a taxing authority set forth in *Valencia Energy Co. v. Ariz. Dep't of Revenue*, 191 Ariz. 565, 576-81, ¶¶ 35-54, 959 P.2d 1256, 1267-72 (1998) and therefore entered judgment for Discount.

DISCUSSION

¶15 In *Valencia*, the supreme court held that equitable estoppel may lie against a taxing authority under the following four circumstances: (1) the taxing authority engaged in affirmative conduct inconsistent with a position it later adopted that is adverse to the taxpayer, (2) the taxpayer actually and

reasonably relied on the taxing authority's prior conduct, (3) the taxing authority's repudiation of its prior conduct caused the taxpayer to suffer a substantial detriment because the taxpayer changed its position in a way not compelled by law, and (4) applying estoppel against the taxing authority would neither unduly damage the public interest nor substantially and adversely affect the exercise of governmental powers. 191 Ariz. at 577-78, ¶¶ 35-40, 959 P.2d at 1267-68.

¶16 The City does not dispute that the third and fourth elements set forth in *Valencia* were present here. The City argues, however, that the tax court erred by finding the existence of the first two elements necessary to apply the doctrine of equitable estoppel against it. We address each contention in turn.

I. The City's Conduct

¶17 Relying on *Valencia*, the City first argues Discount failed to establish that the City engaged in affirmative conduct inconsistent with a position it later adopted. In *Valencia*, the supreme court stated that such conduct must "bear some considerable degree of formalism under the circumstances," and must be taken by or have the approval of a person authorized to act in the area. 191 Ariz. at 577, ¶ 36, 959 P.2d at 1268. The court cautioned that the state may not generally be estopped due to the casual acts, advice, or instructions issued by non-supervisory personnel. *Id.*

¶18 The City emphasizes that the representations on which Discount relied were strictly oral, and Discount did not see the City's brochure until some time after Discount had decided to claim the 35% contracting deduction. Thus, the City argues, the only affirmative acts relied upon were casual, off-the-cuff advice imparted by non-supervisory employees that cannot serve to estop the City from imposing its delinquent tax assessment on Discount. See *id.* We disagree.

¶19 *Valencia* indeed notes that "[i]t is rare that satisfactory evidence of an absolute, unequivocal, and formal state action will be found unless it is in writing." *Id.* But the *Valencia* court did not hold that such evidence is categorically insufficient. Further, the tax court could reasonably have concluded from the testimony of Getz and Jensen that their conversations with City employees did not involve merely "off-the-cuff opinions" or "casual advice." Getz testified that the employee with whom he spoke asked him whether Discount performed any "contracting" in connection with its sales of mobile homes and whether Discount sold the homes at retail prices. The employee then placed Getz on hold for several minutes and when she returned gave him a positive, unequivocal answer to his question. The tax court could reasonably have concluded from this evidence that the employee gathered specific information needed to answer Getz's

question and thereafter either consulted a supervisor or an authoritative research source before relaying an answer.

¶20 Additionally, Getz and Jensen both testified that they described Discount's business to the employee or employees to whom they spoke as the selling of manufactured housing. Consequently, Discount conveyed all the information necessary under Code sections 21.1-415(a) and 21.1-427(a) to enable the City to conclusively and accurately advise Discount that it was not entitled to the 35% contracting deduction. Accordingly, Discount's inquiry did not require "a measure of research or deliberation" that would necessarily make the employees' statements off-the-cuff opinions, which could not bind the City. *Id.* at 577, ¶ 36, 959 P.2d at 1268.

¶21 Moreover, Discount's telephone conversations with City employees did not stand alone. Although Discount did not rely on the City's erroneous "Contracting Tax" brochure in making its initial decision to claim the 35% contracting deduction, the existence and general availability of that brochure, and its replacement in May 1996 with a revision that carried the error forward, reasonably suggests that the tax status of the mobile homes sales business was misunderstood more generally and at a higher level within the City organization than that of one or two customer-service employees. Additionally, the brochure's content fully supported the twice-repeated oral advice that Discount received. As Jensen testified, the brochure naturally "solidified"

the effect of that advice on Discount's personnel, who continued to use the lower tax base in Discount's monthly remittance.

¶22 Based on the above-described evidence, the tax court did not err in concluding that Discount proved the first prong of the *Valencia* estoppel test.

II. Reliance

¶23 The City next argues that the trial court erred in its ruling because the evidence did not support a conclusion that Discount actually relied on the City's erroneous advice in deciding to claim the lower tax base. After pointing out that Discount's tax return for March 1996 was prepared on April 16, 1996, the City contends Discount failed to establish that Getz's call to the City took place prior to that date. Moreover, because Jensen's follow-up call to the City was made after that date, the City asserts, Discount could not have relied on it in choosing to use the lower tax base. We reject the City's argument because it ignores the evidence produced at trial.

¶24 Getz testified he called the City in "*March or April*" of 1996, and that he was sure of the time frame because he knew "it was before we paid the tax" and "wanted to verify how it was done before we paid it." This testimony supports a conclusion that Getz placed his call prior to the April 16 filing date. Moreover, for each monthly filing Discount made it had the choice whether to continue to claim the 35% contracting deduction. The tax court

could reasonably have determined that Discount's later decisions on that issue were made in reliance on both telephone conversations to which Getz and Jensen testified and on the brochure they later obtained at the City's offices. The City is simply wrong in contending Discount failed to prove actual reliance.

¶25 The City finally contends Discount failed to prove its reliance was reasonable under the circumstances because neither Getz nor Jensen consulted the Code or conferred with Discount's Certified Public Accountant about the issue. Once again, the City relies on *Valencia*, wherein the court noted that a taxpayer does not reasonably rely on erroneous advice if it acted with "careless indifference to means of information reasonably at hand or ignore[d] highly suspicious circumstances which should warn . . . of danger or loss" 191 Ariz. at 580, ¶ 45, 959 P.2d at 1271 (quoting *Suburban Pump & Water Co. v. Linville*, 60 Ariz. 274, 284-85, 135 P.2d 210, 214 (1943)). According to the City, Discount acted with such "careless indifference" by failing to read the Code, which was a readily available public record, or consult with a CPA. We acknowledge that Discount's failure to directly consult the Code or confer with its CPA suggests that Discount unreasonably relied on the City's advice. But we cannot agree that the tax court's contrary finding was legally precluded by this evidence.

¶26 Discount was an unsophisticated taxpayer that had opened for business in the City of Glendale less than three months before

the tax issue in question arose, employed a single part-time public accountant, and had a "very expensive" CPA. Discount twice consulted City personnel, one of whom testified at trial that her duties as "billing and compliance specialist" included "answer[ing] questions, look[ing] up information, process[ing] payments for . . . sales tax customers." Both times Discount received the same answer – that Discount's business was entitled to the 35% contracting deduction. Discount later obtained a brochure issued by the City that buttressed that answer. The tax court reasonably found under these circumstances that Discount did not act with the type of "careless indifference to means of information reasonably at hand" that would preclude a finding of reasonable reliance. *Valencia, id.*

REQUEST FOR ATTORNEYS' FEES

¶27 Discount requests an award of attorneys' fees on appeal pursuant to Arizona Revised Statutes Annotated ("A.R.S.") section 12-348(B) (Supp. 2000). We grant the request, limited to the maximum of \$30,000 for "each level of judicial appeal" provided by A.R.S. section 12-348(E) (5) (Supp. 2000). *Cf. Southwest Airlines co. v. Ariz. Dep't of Revenue*, 197 Ariz. 475, 477-78, ¶¶ 5-10, 4 P.3d 1018, 1020-21 (App. 2000) (\$20,000 limitation of attorney's fees award under pre-amendment A.R.S. section 12-348(E) (5) applies in the aggregate to trial and appeal proceedings) (rev. den. Nov. 2, 2000). Discount may establish the amount of its award, subject

to maximum permissible amount, by complying with Rule 21(c), Arizona Rules of Civil Appellate Procedure ("ARCAP").

CONCLUSION

¶28 For the foregoing reasons, we affirm. We additionally award Discount its attorneys' fees on appeal, subject to its compliance with ARCAP 21(c).

Ann A. Scott Timmer, Judge

CONCURRING:

Jefferson L. Lankford, Presiding Judge

Susan A. Ehrlich, Judge