

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

R.C.W. REAL ESTATE, LTD., an	)	
Arizona limited partnership;	)	1 CA-TX 99-0017
JUDITH BRATTON, an individual,	)	
C. ANNE BOISVERT, an	)	
individual, and ROBERT	)	
SINCLAIR, an individual,	)	DEPARTMENT T
	)	
Plaintiffs-Appellants,	)	
	)	
v.	)	
	)	<b>MEMORANDUM DECISION</b>
PIMA COUNTY STADIUM DISTRICT, a	)	(Not for Publication-
municipal corporation, and the	)	Rule 28, Arizona Rules
ARIZONA DEPARTMENT OF REVENUE,	)	of Civil Appellate
an agency of the State of	)	Procedure)
Arizona,	)	
	)	
Defendants-Appellees.	)	
	)	<b>FILED 04-12-01</b>

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Appeal from the Arizona Tax Court

Cause No. TX 97-00167

The Honorable Jeffrey S. Cates, Judge

**AFFIRMED**

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Stubbs & Schubart, P.C.	Tucson
By Thomas M. Parsons	
Damian M. Fellows	
Attorneys for Plaintiffs-Appellant	
Barbara LaWall, Pima County Attorney	Tucson
By Katharina Richter, Deputy County Attorney	
Attorneys for Defendants-Appellees	

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**S U L T**, Judge

¶1 R.C.W. Real Estate, Ltd., Judith Bratton, C. Anne Boisvert, and Robert Sinclair, Plaintiffs, appeal from summary

judgment for the Pima County Stadium District on their claim to invalidate the recreational vehicle space rental surcharge levied by the District pursuant to the authority of Arizona Revised Statutes ("A.R.S.") section 48-4235 (1997 and Supp. 1999).<sup>1</sup> Plaintiffs complain that the statute violates the Equal Protection Clauses of the United States and Arizona Constitutions and the prohibition in Arizona Constitution Article 4, Part 2, Section 19, against special or local laws. Plaintiffs also appeal from the tax court's decision to strike a letter written by a tax analyst that discusses the interpretation and application of section 48-4235. For the following reasons, we affirm.

#### BACKGROUND

¶2 In 1990 and 1991, the Arizona legislature enacted legislation permitting counties to create stadium districts in the nature of tax-levying public improvement entities in order to construct or renovate spring training facilities for the major league baseball clubs that train in the state or could be attracted here. A.R.S. §§ 48-4201 to 48-4255 (1997 and Supp. 1999). Section 48-4233 authorized a one-quarter percent add-on to existing transaction privilege taxes, and section 48-4236 permitted the electorate to increase this by one-tenth of a percent for up to

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<sup>1</sup> Section 48-4235 was repealed in the 2000 legislative session. 2000 Ariz. Sess. Laws, ch. 314, § 2. Any surcharge imposed under the statute, however, will remain in place until all obligations secured by the surcharge are satisfied. *Id.* § 5.

five years. Section 48-4234 authorized a car rental surcharge of \$2.50 to \$3.50 per motor vehicle lease or rental of less than one year. Finally, section 48-4235 authorized a daily RV space surcharge of up to fifty cents on leases or rentals of spaces for parking recreational vehicles that were not intended to serve as either the "principal or permanent place of residence for the lessee or renter" or as a place to store an unoccupied recreational vehicle. In 1991, the legislature set forth certain findings in connection with this legislation, as follows:

The legislature hereby finds and concludes that the public health, welfare and economy of this state is furthered by the continuation of major league baseball's spring training in Arizona, and that the economy of this state will suffer if such spring training does not continue. The legislature further finds that the condition of the existing spring training facilities, stadiums, structures, utilities, roads, parking areas and other buildings necessary to provide for major league baseball spring training in Arizona are deteriorating and in need of reconstruction, repair and renovation and also that new stadiums and other such facilities are needed within the state to attract additional major league teams or retain existing teams for such spring training operations, and that it is in the public interest and therefore a public purpose that the various counties of this state be provided the opportunity to obtain funds for the purpose of acquiring land and constructing, financing, furnishing, maintaining, improving, operating and promoting major league baseball spring training facilities, stadiums and other structures, utilities, roads, parking areas, or other buildings necessary to provide adequate facilities for such spring training and for other sports and other purposes. Therefore the continuation of major league spring training operations in Arizona is hereby determined to be a public purpose and this act shall further such public purpose.

1991 Ariz. Sess. Laws, ch. 285, § 1.

¶3 Pursuant to the authority of section 48-4235, the District levied an RV space surcharge of fifty cents per day, effective July 1, 1997. Plaintiffs challenged the levy by commencing this action against the District and the Arizona Department of Revenue on June 10, 1997.<sup>2</sup> At all times material to this litigation section 48-4235 provided in pertinent part:

A. If the board of directors determines that it is necessary in order to retain, attract or relocate a major league baseball spring training operation, the board may levy and, if levied, the department of revenue shall collect a recreational vehicle spaces surcharge pursuant to subsection B of this section in addition to or in lieu of other revenues collected pursuant to this article to be used and expended for the purposes set forth in § 48-4204, subsection B. The surcharge is effective and shall be collected beginning January 1 or July 1, whichever date first occurs at least three months after the board approves the surcharge.

B. The board shall set the recreational vehicle spaces surcharge at a rate not to exceed fifty cents per day on the lease or rental of a parking space for recreational vehicles, as defined in § 41-2142, in the district. . . . Leases or rentals of spaces for parking recreational vehicles that are intended to serve as the principal or permanent place of residence for the lessee or renter or as a place to store an unoccupied recreational vehicle are not subject to the surcharge. For purposes of this subsection, "principal or permanent place of residence" is the lease or rental of a recreational vehicle parking space for a total of at least twelve consecutive months, or leases or rentals of different parking spaces within the same recreational vehicle park that are leased or rented for the same recreational vehicle for at least twelve consecutive months, provided such recreational

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<sup>2</sup> The Department of Revenue's answer alleged it was strictly a nominal party to this controversy and would play no role in defending against Plaintiffs' claims. Neither the District nor Plaintiffs controverted this allegation, and all parties have acted in accordance with it.

vehicle is subject to personal property taxes in this state pursuant to title 42.

¶4 Plaintiffs' complaint alleged that the RV space surcharge violated their rights under the Equal Protection Clauses of the United States and Arizona Constitutions, the Arizona constitutional prohibition against special or local laws, and the Commerce Clause of the United States Constitution.<sup>3</sup> The District and Plaintiffs filed cross-motions for partial summary judgment on Plaintiffs' equal protection and local law theories. The District also moved to strike a letter by an Arizona Department of Revenue tax analyst that Plaintiffs had submitted. The tax court struck the letter and found for the District on the constitutional challenges. The tax court also denied the Plaintiffs' motion for reconsideration. This appeal followed.

## **ANALYSIS**

### **The Analyst's Letter**

¶5 Plaintiffs submitted a copy of a letter from Department of Revenue tax analyst Patrick O'Neil to Pima County Administrator C. H. Huckelberry concerning the District's first-ever imposition of an RV space surcharge under section 48-4235. The letter sought to bring to Huckelberry's attention "the unusual aspects of the statutory provision for exemption. . . ." The letter principally summarized and quoted from the statute. Concerning the eligibility

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<sup>3</sup> The Commerce Clause challenge was dismissed below on stipulation of the parties.

of an RV space rental for exemption from the surcharge as a "principal or permanent place of residence," the letter stated in part:

Although the surcharge may have been intended to be aimed at all *transient* recreational vehicles, i.e., recreational vehicles which are frequently moved into the state and from park to park, it appears that the surcharge will additionally affect many permanent residents who choose to keep their recreational vehicles currently licensed.

¶6 Because the letter was O'Neil's statement made other than while testifying at a trial or hearing, and the statement was offered to prove the truth of the matter asserted, it was hearsay. Ariz. R. Evid. 801(a), (c). The letter was not excepted from the hearsay rule as an admission by a party-opponent under Rule 801(d) because it was offered against the District and not against nominal party Arizona Department of Revenue, on whose behalf the statement was made. Nor was the letter excepted as a public agency's report of "factual findings resulting from an investigation made pursuant to authority granted by law" under Rule 803(8)(C). The letter contained no factual findings, but rather summaries of statutory and constitutional provisions and expressions of opinion concerning how those provisions would apply in collecting and administering the RV space surcharge. Moreover, Plaintiffs presented no evidence to show that the letter in fact resulted from any official investigation authorized by law. Thus, because the letter was

hearsay, and because it did not fall within any exception to that rule, the tax court properly excluded the letter.

### Local Law Challenge

¶7 Arizona Constitution Article 4, Part 2, Section 19 provides that "[n]o local or special laws shall be enacted in any of the following cases . . . [a]ssessment and collection of taxes." With respect to the definition of a local law, we stated in *Tucson Electric Power Co. v. Apache County*:

To qualify as a general law as opposed to a special or local law, a statute must meet three criteria. First, the classification that it creates must have a rational basis. *Republic Inv. Fund I v. Town of Surprise*, 166 Ariz. 143, 149, 800 P.2d 1251, 1257 (1990). The judgment of the legislature that a statutory classification is reasonable controls the courts unless palpably arbitrary. *Chevron Chemical Co. v. Superior Court*, 131 Ariz. 431, 441, 641 P.2d 1275, 1285 (1982). Second, the statute must "legitimately" classify by population, geography, or time limitations, or, stated differently, must encompass all members of the "relevant" class. Finally, the statutory class must be elastic, allowing members to move into or out of the class as their circumstances change. *Republic Inv. Fund I*, 166 Ariz. at 149, 800 P.2d at 1257. If the statute does not meet all three criteria, it is a special or local law. *State Compensation Fund v. Symington*, 174 Ariz. 188, 193, 848 P.2d 273, 278 (1993). A law may have limited application and still qualify as a general law if it satisfies the governing criteria. *Arizona Downs v. Arizona Horsemen's Foundation*, 130 Ariz. 550, 558, 637 P.2d 1053, 1061 (1981).

185 Ariz. 5, 13, 912 P.2d 9, 17 (App. 1995).

¶8 The second step of the analysis required under *Tucson Electric*, and the focus of Plaintiffs' principal attack on the statute, concerns the relevant class contemplated by the statute.

Plaintiffs contend that an analysis of the statute reveals that the class "should include, at a minimum, all transient or seasonal visitors or the facilities that serve them." This is so, Plaintiffs contend, because the taxing mechanism created for stadium districts was designed "to raise funds for the stadium district by taxing those people who would benefit from it." However, Plaintiffs reason, section 48-4235 falls short of encompassing all members of this relevant class because the surcharge does not affect any transient or seasonal visitors except those who rent RV spaces. Moreover, some "transient" RV owners (those who remain in Arizona for more than six months, rent RV spaces for more than twelve consecutive months, and pay personal property taxes on their RVs) escape the RV space surcharge, while permanent Arizona residents who register their RVs as motor vehicles are swept within the surcharge regardless of their non-transient status. Thus, Plaintiffs conclude, because the statute not only misses part of the relevant class but also encompasses an unwanted segment, section 48-4235 constitutes an invalid local law.

¶9 The fundamental defect in Plaintiffs' analysis is their assumption that the legislative purpose of section 48-4235 was to enable stadium districts to exact funding exclusively from all who attend spring training games or otherwise benefit from the operation of such games. However, Plaintiffs infer a far more specific purpose for section 48-4235 than the statute's language or

history would support. Neither section 48-4235 nor the purpose statement in 1991 Arizona Session Laws chapter 285, section 1, express any intent to impose the RV space surcharge as a *quid pro quo* for benefits experienced or received from the operation of spring training games. Like the car rental surcharge authorized in section 48-4234 and the transaction privilege tax authorized in section 48-4236, the purpose of the RV space surcharge was simply to provide another way for stadium districts to raise needed revenues to support major league baseball spring training activities. There is no evidence of any legislative intention to circumscribe the relevant class as Plaintiffs would have us do.

¶10 We also observe that Plaintiffs' rationale, if accepted, would invalidate all the state's existing transaction privilege taxes as impermissible local laws. Transaction privilege taxes are imposed to raise general revenues for the state. However, such taxes are not imposed on all state residents. The incidence of transaction privilege taxes is only on those who carry on certain discretely defined business activities within the state. Because these taxes do not encompass all businesses and residents in Arizona, under Plaintiffs' analysis they would fail the "relevant class" step of the *Tucson Electric* analysis.

¶11 It is clear, however, that the non-universal application of transaction privilege taxes does not render them constitutionally invalid. Well established Arizona law in fact is to the

contrary. In 1935, the legislature imposed a luxury tax on sales of cosmetics, toilet preparations, cigars, cigarettes, chewing tobacco, playing cards, and golf equipment for the purpose of raising funds to support welfare and unemployment relief. *Stults Eagle Drug Co. v. Luke*, 48 Ariz. 467, 469, 62 P.2d 1126, 1127 (1936). *Stults Drug* challenged the tax in part on the theory that the classification on which it was based was arbitrary, unreasonable, discriminatory, and had no reasonable relation to the purpose of the act, in violation of equal protection principles. *Id.* at 470, 62 P.2d at 1127. Our supreme court rejected that contention, stating:

[In imposing excise taxes] the legislature may select certain classes of privileges, businesses, or occupations and leave others untaxed. As is said by Cooley in his work on Taxation, fourth edition, volume IV, section 1685:

"All occupations need not be taxed. One or more may be taxed and others not taxed. The sovereignty may, in the discretion of its legislature, levy a tax on every species of property within its jurisdiction, or, on the other hand, it may select any particular species of property, and tax that only, if in the opinion of the legislature that course will be wiser. And what is true of property is true of privileges and occupations also; the state may tax all, or it may select for taxation certain classes and leave the others untaxed."

*Id.* at 476, 62 P.2d at 1130.

¶12 Here the legislature did no more than *Stults* held was within its power. It chose to enable stadium districts to raise

money to support spring training by, *inter alia*, levying a surcharge on the business of renting or leasing RV spaces within its territory. The legislature was not compelled to allow or require imposition of the surcharge on all other individuals or businesses that might arguably also benefit from activities related to spring training. Neither was the legislature required to include in the authorizing statute such exemptions as would ensure that all individuals and businesses who arguably would not benefit from spring training activities would remain free of the surcharge.

¶13 Plaintiffs' analysis also disregards the true objectives of the local law prohibition:

The purpose of proscribing special or local legislation is to prevent the legislature from providing benefits or favors to certain groups or localities. Such a prohibition also "confine[s] the power of the legislature to the enactment of general statutes conducive to the welfare of the state as a whole, to prevent diversity of laws on the same subject, to secure uniformity of law throughout the state as far as possible, and to prevent the granting of special privileges." In addition, it "prevents the enlargement of the rights of persons in discrimination against others' rights. . . ."

*State Compensation Fund v. Symington*, 174 Ariz. 188, 192, 848 P.2d 273, 277 (1993) (citations omitted). Section 48-4235 neither favors certain groups or localities, nor permits the granting of special privileges, nor threatens the uniformity of Arizona laws. Like the retail transaction privilege tax, the prime contracting transaction privilege tax, and all other business and occupation excises in this state, the RV space surcharge authorized by section

48-4235 merely permits the taxing entity to impose a non-universal excise to fund its legitimate governmental activities. It is not an invalid local law.

#### **Equal Protection Challenge**

¶14 Plaintiffs next argue that section 48-4235 violates their equal protection rights and runs afoul of the first step in the local law analysis because the classification it creates bears no rational relationship to its purpose. The rational basis review to which we subject legislation for local law analysis is the same review we give to statutes subject to an equal protection challenge under the Equal Protection Clauses of the United States Constitution or Arizona Constitution, so long as the challenged statutory classification is not based on a "suspect class" and does not impinge on a "fundamental right." See *Arizona Downs v. Arizona Horsemen's Foundation*, 130 Ariz. 550, 555-57, 637 P.2d 1053, 1058-60 (1981). Because section 48-4235 is economic legislation and does not implicate a suspect class or fundamental right, it is subject to rational basis review only and Plaintiffs do not assert otherwise.

¶15 Like their "relevant class" argument, Plaintiffs' equal protection argument depends on their own characterization of the statutory purpose, namely that it enables stadium districts to seek support for their spring training activities from those who directly benefit from those activities, and no others. Plaintiffs

analysis thus focuses on the absence of "substantive discussion regarding the propriety or basis for the imposition of the Surcharge on transient recreational vehicle owners" in the legislative history and on the legislature's alleged awareness of an economic study of spring training operations in Tucson covering "the characteristics of game attendees in Tucson."

¶16 As we have already noted, Plaintiffs' characterization of the purpose of section 48-4235 is mistaken. That purpose was not to require only those who enjoy or benefit from spring training activities to pay for them, but merely to enable stadium districts to raise needed revenues to support those activities. By authorizing the RV space surcharge, section 48-4235 rationally furthered that purpose.

¶17 Plaintiffs' approach also ignores a key principle of rational basis analysis. The United States Supreme Court has stated that a legislature need never articulate the purpose or rationale that supports a statutory classification it creates:

[I]t is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature. Thus, the absence of "legislative facts" explaining the distinction "[o]n the record," has no significance in rational-basis analysis. In other words, a legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data.

*Federal Communications Commission v. Beach Communications, Inc.*, 508 U.S. 307, 315 (1993) (citations omitted). Our supreme court added in *Arizona Downs*:

Nor is it relevant that the . . . statute may be unwise or undesirable. It is for the Legislature to balance the advantages and disadvantages of an economic regulation such as this.

130 Ariz. at 556, 637 P.2d at 1059; see also *Kenyon v. Hammer*, 142 Ariz. 69, 78, 688 P.2d 961, 970 (1984) (under rational basis test, equal protection is violated "only if the classification rests on grounds wholly irrelevant to the achievement of the state's objective." (quoting *McGowan v. Maryland*, 366 U.S. 420, 425 (1961))).

¶18 Plaintiffs have been unable to meet their burden of demonstrating that section 48-4235 establishes a classification that bears no rational relationship to any legitimate legislative goal. *Martin v. Reinstein*, 195 Ariz. 293, 309-10, ¶ 52, 987 P.2d 779, 795-96 (App. 1999) (rational basis review imposes on the parties challenging the statute's constitutionality the burden of demonstrating that there is no conceivable basis for it). Plaintiffs have instead offered information and arguments that are in essence legislative. However, as the authorities we discuss above make clear, we are not concerned with what the legislature might or might not have considered, ignored, or believed when it enacted section 48-4235. We are concerned only with whether the statute has some rational basis, and we conclude that it does. By

authorizing the RV space surcharge, section 48-4235 rationally furthers the purpose of enabling stadium districts to raise needed revenues to support major league baseball spring training activities. Though Plaintiffs do not concede that this is a legitimate legislative goal, we disagree and therefore find section 48-4235 passes the rational basis test.

**CONCLUSION**

¶19 Section 48-4235 does not constitute a local law in violation of the Arizona Constitution nor does it violate the Equal Protection Clauses of either the United States or Arizona Constitutions. We therefore affirm the tax court's ruling upholding the validity of the statute.

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James B. Sult, Judge

CONCURRING:

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Rebecca White Berch, Presiding Judge

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Sheldon H. Weisberg, Judge