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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN THE ARIZONA TAX COURT**

RICHARD OGSTON,

Plaintiff,

vs.

ARIZONA DEPARTMENT OF REVENUE, an
Agency of the State of Arizona; YUMA
COUNTY, a political subdivision of the State of
Arizona; HOSPITAL DISTRICT 1, YUMA
COUNTY, a special taxing district and political
subdivision of the State of Arizona,

Defendants,

Case No.

**COMPLAINT FOR DECLARATORY
RELIEF**

INTRODUCTION

1. This case challenges the legality of a secondary property tax to fund Hospital District 1, Yuma County (the “District”), a special taxing district organized under Title 48 of the Arizona Revised Statutes. Yuma County has imposed a secondary property tax for the District without first obtaining voter approval as required by Arizona law.

PARTIES, JURISDICTION, AND VENUE

2. Plaintiff RICHARD OGSTON is a resident of Yuma County, Arizona, where he owns real property located in Yuma County (“Subject Property”), Parcel No. 693-22-027.

3. Plaintiff is responsible for paying all property taxes levied and assessed against the Subject Property.

4. Defendant ARIZONA DEPARTMENT OF REVENUE is a state agency and is named in this action pursuant to A.R.S. § 42-11005(C).

1 15. All, or nearly all, of the funds raised through these taxes have been to pay the
2 District’s legal fees for its ongoing litigation against the Yuma County Medical Center
3 (“YRMC”).

4 16. On or about July 10, 2023, the District sent the Yuma County Board of
5 Supervisors (“Board”) its 2023–2024 fiscal year budget, along with a cover letter informing the
6 Board that “the District require[d] \$1,811,300.00 to be immediately raised by taxation pursuant to
7 ARS § 48-1914(A).” Exhibit 1 (District letter to Board).

8 17. The July 10, 2023 cover letter stated that the District needed this money “to cover
9 certain of [its] expenses for its administration and defense, in particular for legal fees and public
10 outreach costs” in connection with “two ongoing separate lawsuits” against the YRMC and its
11 affiliates.

12 18. The statute the District cited, A.R.S. § 48-1914, gives the District no authority to
13 justify its request to directly impose a secondary property tax without voter approval. Instead,
14 Section 1914(A) sets out the procedures for the District’s reporting obligations, including a
15 requirement that the District provide the Board an annual budget “together with an estimate in
16 writing of the amount of money needed to be raised by taxation.”

17 19. Section 1914 details the procedures for determining the *amount* of a tax to levy,
18 where such a tax has already been voter-approved. It does *not* provide a separate authorization,
19 independent of A.R.S. § 48-1907(A)(6), to bypass the voter approval requirement and impose a
20 tax directly.

21 20. On or about August 21, 2023, the Board voted to impose a secondary property tax,
22 T/A # 1069901, at a rate of 0.1219, to fund the District (the “Tax”).

23 21. Plaintiff was assessed \$32.15 for the Tax on his 2023 Property Tax Notice.

24 22. The first installment of the Tax came due on November 1, 2023, and Plaintiff
25 promptly paid half of the \$32.15 toward the Tax for the Subject Property.

26 23. Plaintiff has timely paid the first installment of the Tax, notwithstanding his
27 objections to its validity.
28

1 24. No additional taxes have yet come due, and Plaintiff intends to timely pay any
2 future taxes levied and assessed against the subject property, notwithstanding any objections he
3 may have to their validity.

4 25. All taxes levied and assessed against the subject property in previous years have
5 been paid.

6 26. This dispute does not concern the valuation or classification of the subject
7 property, but simply the validity of the Tax under Arizona law.

8 **COUNT ONE: REFUND**

9 **A.R.S. § 42-11005**

10 27. Plaintiff incorporates the allegations in paragraphs 1–26 above.

11 28. The Tax is unlawful and invalid, and was illegally collected from Plaintiff,
12 because it was enacted without statutory authority, and contrary to the requirements in Title 48,
13 Chapter 13 for imposing a hospital district tax.

14 29. The first installment of the Tax has already been levied and assessed against the
15 subject property, and Plaintiff has paid this installment of the Tax in full.

16 30. Less than a year has passed since Plaintiff paid the first installment of the Tax.

17 31. Plaintiff is entitled to a refund of the full amount he has paid for the first
18 installment of the Tax, as well as any additional amounts he pays for future installments of the
19 Tax that come due during the pendency of this lawsuit.

20 **COUNT TWO: DECLARATORY RELIEF**

21 **A.R.S. § 12-1831**

22 32. Plaintiff incorporates the allegations in paragraphs 1–31 above.

23 33. A real and substantial controversy exists over the validity of the Tax.

24 34. Plaintiff is therefore presently suffering harm and, unless the Tax is enjoined,
25 declared unlawful, or otherwise prohibited by this Court, he will continue to be harmed by
26 Defendants' enforcement of the Tax, because he faces substantial uncertainty as to whether the
27 Tax is lawful, and whether he will continue to be obligated to pay the Tax for the subject
28 property.

1 35. Plaintiff has no plain, speedy, and adequate remedy at law. Accordingly, Plaintiff
2 is entitled to declaratory relief stating that the tax is invalid, void, and of no effect.

3 **REQUEST FOR RELIEF**

4 Wherefore, Plaintiff prays for a judgment against Defendants as follows:

5 A. For a refund of the Tax he has already paid, and any additional amounts he pays
6 during the pendency of this lawsuit, plus interest at the legal rate, pursuant to A.R.S. § 42-11005.

7 B. For a declaration from this Court that the Tax is ultra vires, void, illegally
8 collected, and of no effect because it was imposed without authority of law;

9 C. For an award of taxable costs under A.R.S. § 12-341;

10 D. For attorney fees pursuant to A.R.S. § 12-348 and the private attorney general
11 doctrine;

12 E. For any other relief that this Court deems fair and just.

13
14 **RESPECTFULLY SUBMITTED** this 14th day of December, 2023.

15
16 GOLDWATER INSTITUTE

17 */s/ John Thorpe*

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25 *Attorneys for Plaintiff*

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July 10, 2023

Via Hand Delivery

Martin Porchas
Board Chairman
Yuma County Board of Supervisors
198 S. Main Street
Yuma, AZ 85364

Re: Report of Operation and Estimate of Money to Be Raised by Taxation for
Next Fiscal Year (July 1, 2023 — June 30, 2024)

Dear Mr. Porchas:

Pursuant to ARS § 48-1914, attached please find the 2023 - 2024 fiscal year budget ("Budget") for the Hospital District No. 1 of Yuma County, Arizona ("Hospital District"), unanimously approved by the Board of Directors of the Hospital District on June 29, 2023. The budget calls for annual fiscal year anticipated expenditures in the amount of \$1,992,400.00. The Hospital District has neither reserves nor a sinking fund.

Given the foregoing, the District requires \$1,811,300.00 to be immediately raised by taxation pursuant to ARS § 48-1914(A). It is our understanding that pursuant to ARS § 48-1914(B), the Yuma County Board of Supervisors:

... shall thereupon levy upon the taxable property of the district a tax which will, together with funds on hand or which will accrue the ensuing fiscal year, exclusive of reserves, provide sufficient funds to meet the financial needs of the district as provided under subsection A. The tax shall be computed, entered upon the rolls and collected in the same manner as other secondary property taxes in the respective county ... in which the district ... is located.



Exhibit 1

The Hospital District requires \$1,811,300.00 to be immediately raised by taxation to cover certain of the Hospital District's expenses for its administration and defense, in particular for legal fees and public outreach costs as delineated within the attached Budget to meet the financial needs of the Hospital District as provided by ARS § 48-1914(A). None of the District's Administrative Expenses or expenditures within the Budget are for purposes of operating or maintaining a hospital.

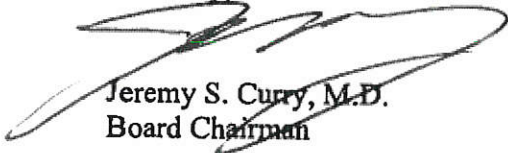
It is worth noting that in the entirety of its existence, the Hospital District has only since 2021 been required to exercise its taxing authority. This action has been taken as a last resort and is necessary because the Yuma Regional Medical Center (YRMC) has, despite repeated due demand, failed to pay its obligations to the District since the Fall of 2019.

The Hospital District's longstanding lease and agreements with the YRMC authorizes YRMC to utilize the District's real property, buildings, fixtures and equipment in exchange for the District's payment of rent, equal to the Hospital District's designated Administrative Expenses. Additionally, the YRMC is required to provide the Hospital District with regular financial and operational reports. The reports and related information are necessary to allow the District Board to uphold its statutory responsibility to ensure that as owner of the District's real property and Hospital Facilities, those assets are being used in the best interests of the community. For years this relationship flourished until 2019, when YRMC unilaterally decided to end its reporting responsibilities. In addition to withholding crucial information from the District and the community it serves, the YRMC (a tenant of the District since 1973) has also withheld certain lease payments required for the District's necessary Administrative Expenses. Those Administrative Expenses include the Hospital District's legal fees and costs generated, in part, to defend itself in two ongoing separate lawsuits (greatly increasing the Hospital District's expenses), one filed by the YRMC against the District and another funded by the YRMC and filed by the YRMC's counsel on behalf of a single Plaintiff against the District, the County Board of Supervisors, and the Yuma County Recorder.

Without the tax levy or the full reimbursement of its administrative costs, the Hospital District has no way to effectively continue its operations, defend itself, and protect the community which it serves. With this action today, the Board renews its commitment to the District's statutory purpose to ensure the District contracts with a not-for-profit hospital which is operated in the best interest of all Hospital District No. 1 of Yuma County, Arizona residents.

If you have any questions, please feel free to contact me.

Sincerely,



Jeremy S. Curry, M.D.
Board Chairman

Hospital District No. 1
 Yuma County, Arizona
 Budget July 1, 2023-June 30, 2024

	<u>Budget</u>	<u>Tax Levy</u>
Office Supplies	\$ 2,000	\$
Computer and AV Equipment	4,000	
Meeting Meals	1,000	
Legal Fees	1,750,000	1,750,000
Audit Fees	15,000	
Recording Secretary	30,000	
Advertising and Publications	2,000	2,000
Land Consultation Fee (Survey)	69,000	
Insurance-Directors	20,000	20,000
Election	60,000	
Storage	300	300
Meeting Room	4,000	4,000
PO Box	100	
Web site/Technology/Domain etc.	5,000	5,000
Public Outreach and Communication	30,000	30,000
	<u>\$ 1,992,400</u>	<u>\$ 1,811,400</u>