ARIZONA COURT OF APPEALS

DIVISION ONE

RICHARD OGSTON, Plaintiff/Appellant v. ARIZONA DEPARTMENT OF REVENUE, et al., Defendants/Appellees.	Court of Appeals Division One No. 1 CA-TX 24-0001 Arizona Tax Court No: TX2023-000342

DEFENDANT/APPELLEE HOSPITAL DISTRICT'S ANSWERING BRIEF

Paul S. Gerding, Jr., Bar No. 017237
Marc R. Lieberman, Bar No. 009180
D. Tyler Milliron, Bar No. 036204
KUTAK ROCK LLP
8601 N. Scottsdale Road
Suite 300
Scottsdale, Arizona 85253
Paul.Gerding.Jr@KutakRock.com
Marc.Lieberman@KutakRock.com
Tyler.Milliron@KutakRock.com
Attorneys for Defendant/Appellee Hospital District No. 1 of Yuma County

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

In this appeal, the Court must decide whether a special taxing hospital district must obtain approval of a majority of the eligible voters in the district before requesting a tax levy to cover the expenses of the district's operation. Appellant Richard Ogston ("**Taxpayer**") claims that A.R.S. § 48-1907(A)(6) commands such a conclusion. *See* Index of Record on Appeal ("**R**") at 1:2.[1] In contrast, Appellee Hospital District No. 1 of Yuma County (the "**District**") argues that A.R.S. § 48-1914 authorizes the County to levy taxes without voter approval to cover the District's operational expenses. *See* R. at 9:2-3.

The Tax Court concurred with the District and dismissed Taxpayer's Complaint (R. at 32:6), which sought a determination that a secondary property tax (T/A # 1069901) (the "**Tax**") levied in August of 2023 by Appellant Yuma County (the "**County**") for the benefit of the District to enable the District to pay legal fees the District incurred in litigation with one of its lessees was unlawful because the County had neither sought nor obtained approval of a majority of the eligible voters in the District before levying the Tax. *See* R. at 1:1-3. The Tax Court held that § 48-1914 authorized imposition of a tax to pay the District's attorneys' fees and other

[1] The citations to the record include the specific document number identified in the Electronic Index of Record, followed by a colon, and the specific page number of the document. If additional pincite information is necessary, such as an exhibit number or paragraph number, it is also indicated after the colon.

operating expenses without voter approval, and that such approval would only be required in the event the District were levying a tax to cover the expenses incurred by the district to perform the tasks specified in § 48-1907(A)(6) or those other provisions of the Hospital District Act specifically conditioning levies on voter approval,[2] none of which are applicable here. R. at 32:5-6.

STATEMENT OF THE CASE

This appeal arises from a Complaint filed by Taxpayer in the Tax Court contesting the legality of the Tax imposed by the County to enable the District to pay the legal fees it was incurring to defend a lawsuit brought against it by the Yuma Regional Medical Center ("**YRMC**"), the District's lessee. *See* R, at 1:1-3,13:2, 32:4. Taxpayer was assessed $32.15 for the Tax on his 2023 property tax notice, which he timely paid, and his Complaint demanded a refund of the assessment under A.R.S. § 42-11005[3] on grounds that the Tax was unlawful because it was not first

[2] *See, e.g.*, A.R.S. § 48-1910(C), which requires voter approval for a hospital district to levy a transaction privilege tax in lieu of any existing secondary property tax imposed in accordance with § 48-1907(A)(6). *See also* A.R.S. § 48-1912(A), which requires voter approval for the issuance of bonds by a hospital district. *But see* A.R.S. § 48-1912(B), which specifies no voter approval is required for a tax levy sufficient to preserve a reserve fund established to cover any deficiency arising from a previously approved bond issue.

[3] Section 42-11005 provides, in relevant part:

approved by the eligible voters within the District pursuant to A.R.S. § 48-1907(A)(6). R. at 1:2-5. The District moved to dismiss Taxpayer's Complaint on two grounds, the first for failure to file a Notice of Claim in accordance with A.R.S. § 12-821.01(A) and the second, for failure to state a claim upon which relief could be granted. R. at 9. The latter defense was based on the District's contention that the voter requirement set forth in A.R.S. § 48-1907(A)(6) did not apply to the instant circumstance, since the Tax was not assessed to facilitate the District's maintenance and operation of a hospital but instead, was assessed to enable the District to pay its legal fees to defend its leasehold rights, expenses which A.R.S. § 48-1914 authorizes tax levies to cover without voter approval. R. at 9:8-13.

The District's Motion to Dismiss was premised on both a Stipulated Statement of Facts submitted by both parties (R. at 13) as well as a separate statement of facts submitted by the District (R. at 19-25), which Taxpayer did not contest.[4] Taxpayer

---

A. Except as provided in chapter 16, article 6 of this title, within one year after payment of the first installment of tax, an action may be maintained to recover any tax that was illegally collected.

B. If the court determines that the tax due is less than the amount paid, the excess shall be refunded in the manner provided by this title with interest at the legal rate computed from the date of overpayment. For the purpose of computing interest under the judgment, if the tax was paid in installments, a pro rata share of the total overpayment is considered to be attributable to each installment.

[4] On appeal, Taxpayer concedes "there are no material factual disputes and this case turns solely on issues of statutory construction…." Opening Br., at 2.

responded to the District's Motion to Dismiss as well as cross moved for summary judgment. *See* R. at 12. The District filed both a Reply to Taxpayer's Response to the District's Motion to Dismiss (R. at 17) and a Response to Taxpayer's Cross Motion for Summary Judgment (R. at 18), and the Tax Court heard argument on the parties' motions May 24, 2024. *See* R. at 32:1. On July 23, 2024, the Tax Court issued a minute entry ruling denying the District's contention that Taxpayer's Complaint was subject to dismissal for failure to file a Notice of Claim but agreeing with the District's argument that the Tax was lawfully assessed because § 48-1907(A)(6) did not apply to the instant circumstances that instead, were controlled by A.R.S. § 48-1914, which the Tax Court held permits tax levies without voter approval in circumstances where such levies are assessed to finance the expenses of operation of the hospital district as opposed to the expenses of operating and maintaining a hospital owned by the district. *See* R. at 32:1-6.

In accordance with its July 23, 2024 ruling, the Tax Court granted the District's Motion to Dismiss and denied Taxpayer's Cross-Motion for Summary Judgment. R. at 32:6. Final Judgment in favor of the District and against Taxpayer was entered September 6, 2024 (R. at 35) and Taxpayer timely filed his Notice of Appeal September 9, 2024 (R. at 37). The District timely noticed a Cross Appeal of the Tax Court's denial of its contention that Taxpayer's Complaint was subject to dismissal for failure to file a Notice of Claim (R. at 39) but pursuant to stipulation,

the Cross-Appeal was dismissed on November 14, 2024 by order of this Court. Therefore, the sole issue presented on appeal is whether the Tax Court correctly concluded that the Tax was lawful despite the fact that the approval of the eligible voters of the District was neither solicited nor obtained before the Tax was levied.

STATEMENT OF FACTS

I. The Parties

Taxpayer is a resident of Yuma County. R. at 13:1. The District is a special taxing hospital district established in 1956 by public vote pursuant to Title 48 of the Arizona Revised Statutes ("**A.R.S.**") (R. at 19:1-2, 20:1). The District owns the real property and improvements that comprise the hospital facilities located at 2400 S. Avenue A in Yuma, Arizona (the "**Hospital**"). R. at 13:1-2, 19:1-2.

Appellee Arizona Department of Revenue (the "**Department**") is an agency of the State of Arizona required to be named as a party to this action in accordance with A.R.S. § 42-11005(C). R. at 13:2. Appellee County is a political subdivision of the State of Arizona which levied the Tax. R. at 13:2, 19:5. To date, after answering Taxpayer's Complaint, neither the Department nor the County have taken an active part in this action. *See* R. at 7–8; *see also* Department's Answering Br., at 4.

II. The Hospital District Act

In 1949, the legislature enacted the Hospital District Act (the "**Act**"). *See* Laws 1949, Ch. 27 and R. at 10:Ex.G; 19:2. At the time of its enactment, the Act

contained a single section (§ 13) providing for counties to levy taxes for the benefit of their hospital districts, the relevant portion of which provided:

> "BUDGET. Annually, not later than July 15, the board of directors shall furnish to the board of supervisors of the county… an estimate in writing of the amount of money necessary to be raised by taxation for all purposes required or authorized by this Act during the next ensuing fiscal year. The board of supervisors… shall thereupon levy upon the taxable property of the district a tax sufficient in amount together with other funds on hand or accruing during the ensuing fiscal year, exclusive of reserves to meet the obligations of the district."

Laws 1949, Ch. 27, § 13. *See also* R. at 10:Ex. G, § 13, 19:2. Section 13 of the original Act is substantially similar to the current version of the provision, now contained in A.R.S. § 48-1914(A)-(B), which states, in relevant part:

> "BUDGET.
>
> A. Annually, not later than July 15, the board of directors shall furnish to the board of supervisors of the county… an estimate in writing of the amount of money needed to be raised by taxation for all purposes required or authorized by this article during the next fiscal year.
>
> B. The board of supervisors of each county where a district or part thereof is located **shall thereupon levy upon the taxable property of the district a tax which will**, together with other funds on hand or which will accrue during the ensuing fiscal year, exclusive of reserves, **provide sufficient funds to meet the financial needs of the district as provided in subsection A**."

See A.R.S. § 48-1914(A)-(B) (emphasis added).

III. The District Leases the Hospital to YRMC, Which Maintains and Operates the Hospital

Since 1973, the District has leased the Hospital to YRMC. R. at 19:2, 20:1. YRMC is a nonprofit corporation organized in Arizona for the "establishment, building, organizing, developing and operating of one or more hospitals and medically related facilities and medical care activities." R. at 19:2-3, 23:Art. IV.

The District financed construction of the Hospital, in part, by issuing general obligation bonds requiring the District to repay the bonds plus interest over a period of years. R. at 19:3, 21:1-2, 24. In 1997, all bonded indebtedness of the District was repaid and a new lease (the "**Lease**") was entered into between the District and YRMC. R. at 19:3, 21:1.

YRMC is self-sufficient and governed by its own board of directors who are elected in the manner provided by YRMC's bylaws. R. at 19:3, 23:Art. V. YRMC has approximately 3,700 employees paid from its own funds, makes its own decisions concerning compensation and employee benefits, and adopts its own operating budget, all without approval of the District. R. at 19:3, 24:Ex.7 at 3. The Hospital is exclusively operated by YRMC. R. at 13:2, 19:3, 24:Ex. 7 at 3. Hospital operations are funded entirely by YRMC's revenue and credit, and YRMC is responsible for purchasing all equipment used in operating the Hospital. R. at 19:3, 24:Ex. 7 at 3. The District does not contribute to the funding of the Hospital, and

any tax revenue the District has received has not been passed on to the Hospital. R. at 19:3-4, 24:Ex. 7 at 3.

Pursuant to the Lease between the District, as landlord, and YRMC as lessee, YRMC "shall operate the Hospital Facilities as a hospital and health care facility" and "shall use and occupy the Hospital Facilities for the purpose of operating a hospital and health care facility and for ancillary or support facilities." R. at 19:4, 21:6 § 6.1. YRMC must also "at its own expense and without any expense to the District," keep and maintain the Hospital Facilities in good, sanitary and neat order, condition and repair, and in as reasonably safe condition as their operating condition will permit. R. at 19:4, 21:8 § 8.1; *see also* R. at 13:2 ¶ 7. The Lease also requires YRMC to indemnify the District against any liabilities related to YRMC's "operation, use, possession, or condition" of the Hospital. R. at 19:4, 21:9 § 10.1. Finally, the Lease prohibits the District from interfering with YRMC's quiet enjoyment of the Hospital. R. at 21:4 § 4.1.

IV. YRMC's Default and the District's Imposition of the Tax

Pursuant to the Lease between YRMC and the District, YRMC is obligated to pay the District all of the District's budgeted expenses, including legal expenses, as rent. R, at 19:4, 21:4 § 3.2. For decades, YRMC complied with its rent payment obligations under the Lease, and as a result, the District relied on YRMC's rent

payments to cover all of the District's operating expenses, including the District's attorneys' fees. R. at 13:2 ¶¶ 7-9, 19:4.

In late 2019, however, following a dispute over YRMC's compliance with the terms of its agreements with the District, YRMC sued the District and thereafter refused to pay that portion of the District's expenses representing the attorneys' fees the District incurred in its litigation with YRMC and other parties. R. at 13:2 ¶¶ 7-9, 19:4. Because the District's sole source of funding prior to the Tax levy was the rent payable by YRMC to the District, which YRMC had refused to pay for several years, the only way the District could pay its attorneys to defend itself in the cases brought against it by YRMC and others was to request that the County impose the Tax. R. at 13:2, 19:4-5.

In accordance with A.R.S. § 48-1914, on July 10, 2023, the District sent the Yuma County Board of Supervisors (the "**Supervisors**") its 2023-2024 fiscal year budget, along with a cover letter informing the Supervisors that the District estimated that it required $1,811,300 to be raised by taxation to "cover certain of [its] expenses for its administration and defense, in particular for legal fees and public outreach costs" in connection with two lawsuits. R. at 13:2-3, 19:5, 24:Ex. 8. The District's letter to the Supervisors also specified that the Tax would *not* be used to operate and maintain the Hospital. R. at 19:5, 24:Ex. 8.

On or about August 21, 2023, the Supervisors voted to impose the Tax. R. at 13:3, 19:5. None of the proceeds of the Tax have been given to YRMC or have been used by the District to support the operation and maintenance of the Hospital. R. at 19:5, 25.

V. Taxpayer's Contest of the Tax

Taxpayer owns real property in Yuma County and as a consequence, is responsible for all property taxes levied on such property. R. at 13:3. Taxpayer was assessed $32.15 for the Tax on his 2023 Property Tax Notice, and after paying the first installment of the Tax then due, filed his Complaint in the Tax Court seeking a refund of the amount of Tax he paid plus a declaration from the Tax Court that the Tax was unlawful. R. at 13:4.

In his Complaint, Taxpayer alleged that the District operated and maintained the Hospital, and because A.R.S. § 48-1907(A)(6) requires tax levies for purposes of funding the "operation and maintenance of a hospital" to first be approved by the voters, the Tax was unlawful since the Tax was imposed without voter approval. R. at 1:2-3. As demonstrated below, and as correctly found by the Tax Court (R. at 32:5), the Tax was not imposed to fund the operation and maintenance of a hospital but instead, to pay the legal expenses incurred by the District to defend its leasehold with YRMC, the entity which actually operates and maintains the Hospital. As a result, since the voter approval requirement set forth in § 48-1907(A)(6) only applies

to levies assessed for purposes of "operation and maintenance of a hospital" or other purposes specified in the statute not applicable here, no prior approval of the Tax by the electorate was required because § 48-1907(A)(6) is not implicated. Instead, the Tax was levied pursuant to A.R.S. § 48-1914, which since 1950, has been recognized by the Arizona Supreme Court as authorizing tax levies without voter approval to fund the budgeted expenses of a hospital district. *See Roberts v. Spray*, 71 Ariz. 60, 67 (1950) (referencing the language in § 13 of the Act (now codified in § 48-1914 (A)-(B)) to conclude that such language [which contains no voter approval requirement] authorizes counties to levy a tax sufficient to meet the budgeted obligations of a district).

STATEMENT OF THE ISSUES

The ultimate issue on appeal is whether voter approval was required before the Tax could be levied. To determine that, the Court must opine:

A. Whether the Tax was for "operation and maintenance" of the Hospital such that prior voter approval of the Tax was required pursuant to A.R.S. § 48-1907(A)(6)?

B. Whether A.R.S. § 48-1914 is merely a procedural mechanism to implement the Tax authorized by A.R.S. § 48-1907(A)(6) or instead, whether § 48-1914 sets forth an independent basis for the Tax levy?

ARGUMENT

I. Standard of Review

Appellate courts review a trial court's factual findings for clear error. *Estate of Chalker*, 245 Ariz. 410, 412 ¶ 12 (App. 2018). The appellate court will defer to the superior court's factual findings and will not set them aside unless they are clearly erroneous. *Ruffino v. Lokosky*, 243 Ariz. 165, 168 ¶ 9 (App. 2018). *See also* R. Civ. P. 52(a)(6) (findings of fact must not be set aside unless clearly erroneous). In contrast, the Court of Appeals will review questions of law *de novo*. *State v. Burgess*, 245 Ariz. 275, 280 ¶ 19 (App. 2018). *De novo* review is also appropriate for an appellate court's interpretation of statutes, as applies here. *Premier Physician's Grp., PLLC v. Navarro*, 240 Ariz. 193 194 ¶ 6 (2016). *De novo* review is also applied in cases like this where the trial court has dismissed the complaint for failure to state a claim upon which relief can be granted. *Coleman v. City of Mesa*, 230 Ariz. 352, 355 ¶ 7 (2012).

II. Voter Approval Was Not Required to Levy the Tax

Taxpayer's principal contention is that A.R.S. § 48-1907(A)(6) required the District to obtain voter approval before asking the County to levy the Tax. Such arguments are contrary to the express language of the statute, the legislative history of the Act, caselaw and statutes which are in *pari materia*.

A. By Its Terms, § 48-1907(A)(6) Only Requires Voter Approval for Levies Which Fund the Operation and Maintenance of a Hospital or Related Facilities

Section 48-1907(A)(6) provides in relevant part:

> A. A hospital district may…
>
> (6) [i]mpose a secondary property tax on all taxable property within the district **for the purpose of funding the operation and maintenance of a hospital**, urgent care center, combined hospital and ambulance service or combined urgent care center and ambulance service that is owned or operated by the district or to pay costs of an ambulance service contract entered into pursuant to this section…. Prior to the initial imposition of such a tax a majority of the qualified electors must approve such initial imposition. The continued imposition of such a tax must be approved by a majority of the qualified electors at least every five years from the date of the initial imposition…. (Emphasis added).

By its terms, the voter approval requirement set forth in § 48-1907(A)(6) only applies when a levy is sought for purposes of "funding the operation and maintenance of a hospital" or related health care facilities or services. It is undisputed, *and the parties in fact stipulated*, that the Tax was not sought for purposes of operating or maintaining the Hospital but instead, to pay the District's legal fees in its litigation with YRMC, its lessee. R. at 13:2. Nevertheless, although the District's rationale for seeking a tax levy was for purposes *other than* operation and maintenance of the Hospital, Taxpayer contends that the District effectively operates the Hospital through YRMC and as a result, any taxes levied fall within the purview of § 48-1907(A)(6). *See* R. at 32:4. The Tax Court found otherwise (R. at

32:4-5), and there is ample evidence in the record which reflects such a finding is not clearly erroneous.

B. The District Has Never Operated or Maintained the Hospital in any Fashion Such that the Tax Was Neither Sought nor Imposed for the Purposes Specified in § 48-1907(A)(6)

In the Tax Court proceedings, the parties stipulated as follows: "The District has never directly operated or maintained the Hospital itself. Instead, the District has leased the Hospital to YRMC, which has operated and maintained the Hospital for several decades pursuant to its Lease." R. at 13:2 ¶ 8. Despite this admission, Taxpayer argues that the District's Lease enables the District to effectively operate and maintain the Hospital through YRMC and consequently, the Tax was for the "operation and maintenance" of the Hospital within the purview of § 48-1907(A)(6). Such arguments are directly refuted by the Court's pronouncements in *Atchison, Topeka & Santa Fe Ry. Co. v. Arizona Dep't of Revenue*, 162 Arizona 127, 137 (App. 1989), disapproved of on a different issue by *Bromley Grp., Ltd. v Arizona Dep't of Revenue*, 170 Ariz. 532 (App. 1991), where the Court found that a hospital district did not effectively "operate" its hospital through a third party manager since the parties' management agreement provided the manager would (i) supervise, operate and manage the hospital, (ii) assume responsibility for the operation and management of the hospital, including establishment and implementation of the hospital's policies and standards affecting operations, services, maintenance and

pricing, (iii) staff the hospital with qualified personnel of its own choosing and who were employed by the manager and (iv) and who was not only an independent contractor but was required to indemnify the district against any liabilities arising out of the manager's use or operation of the hospital. 170 Ariz. at 137. The indications that YRMC, not the District, operates and maintains the Hospital, are even greater than those in *Atchison*.

Here, the District's Lease with YRMC provides that YRMC "shall operate the Hospital Facilities as a hospital and health care facility" and "shall use and occupy the Hospital Facilities for the purpose of operating a hospital and health care facility and for ancillary or support facilities." R. at 19:4, 21:6 § 6.1. YRMC must also "at its own expense and without any expense to the District, keep and maintain the Hospital Facilities in good, sanitary and neat order, condition and repair, and in as reasonably safe condition as their operating condition will permit." R. at 19:4, 21:8 § 8.1. *See also* R. at 13:2 ¶ 7. The Lease also requires YRMC to indemnify the District against any liabilities related to YRMC's "operation, use, possession, or condition" of the Hospital. R. at 19:4, 21:9 § 10.1. Finally, the Lease prohibits the District from interfering with YRMC's quiet enjoyment of the Hospital. R. at 21:4 § 4.1.

Like the manager in *Atchison*, YRMC is a private independent contractor, not an agent of the District whose actions are attributable to the District. YRMC is self-

sufficient and governed by its own board of directors who are elected in the manner provided by YRMC's bylaws. R. at 19:3, 23:Art. V. YRMC has approximately 3,700 employees paid from its own funds, makes its own decisions concerning compensation and employee benefits, and adopts its own operating budget, all without approval of the District. R. at 19:3, 24:Ex.7 at 3. The Hospital is exclusively operated by YRMC. R. at 13:2, 19:3, 24:Ex. 7 at 3. The Hospital operations are funded entirely by YRMC's revenue and credit, and YRMC is responsible for purchasing all equipment used in operating the Hospital. R. at 19:3, 24:Ex. 7 at 3. The District does not contribute to the funding of the Hospital, and any tax revenue the District has received has not been passed on to the Hospital. R. at 19:3-4, 24:Ex. 7 at 3.

Despite all this, Taxpayer contends that the District's entire reason for existence is to operate and maintain the Hospital such that voter approval is required under § 48-1907(A)(6), but this contention is belied by the fact that for the first 32 years of their existence, hospital districts were precluded by the Act from operating and maintaining their hospitals and instead, were required to lease their hospitals to third parties who would operate and maintain them.[5] *Compare Roberts v. Spray*, 71

[5] Taxpayer further contends that "[h]ospital districts are *in the business* of operating and maintaining hospitals" but this is clearly incorrect. *See* Opening Br. at 21. The ordinary meaning of business is "[a] commercial enterprise carried on for profit." *Business*, Black's Law Dictionary (12th ed. 2024). Hospital districts are not commercial enterprises and do not exist to make a profit. They are special taxing

Ariz. 60, 66 (1950) (noting that hospital districts had no original statutory authority to operate and maintain hospitals under the Act and could only lease them) *with* *Atchison*, 162 Ariz. 127, 131 (noting that hospital districts were first permitted to operate and maintain their hospitals in 1981 when § 48-1907(A)(6) was passed). Since § 48-1907(A)(6), which first authorized hospital districts to operate and maintain their hospitals, rather than lease them, was not in effect for the first 32 years of the Act's existence, it cannot be said that hospital districts operate and maintain hospitals as a matter of course. Instead, the Act now gives hospital districts a choice of either (i) leasing their hospitals to third parties to operate them or (ii) operating the hospitals themselves, and only in the latter case, in accordance with § 48-1907(A)(6), must the district obtain voter approval before levying a tax to fund such operations. Indeed, *Atchison* characterized leasing and operating a hospital as "two mutually exclusive approaches" under the Act. *See Atchison*, 162 Ariz. 127, 135.

Taxpayer makes much out of the "impersonal" language in § 48-1907(A)(6), arguing that the voting requirement applies even if a district hires[6] a third-party to

districts. Apart from this, a hospital district that leases its hospital could not be said to be in the business of operating and maintaining a hospital any more than the landlord of property used for commercial manufacturing could be said to be a manufacturer. If the District were in any business, it would be as a landlord.

[6] Taxpayer's use of the word "hire" is a deliberate sleight of hand to obscure the fact that Taxpayer's argument relies on a district making payments to the person hired. Obviously, if a district hires (and thus pays) a third-party to operate and maintain a hospital for it using tax funds, the district will be subject to the voting requirements

operate and maintain the hospital. Opening Br. at 22. Taxpayer implies that YRMC's operation and maintenance of the Hospital is irrelevant because it suggests, without any factual support, that YRMC is the District's agent, but Taxpayer's argument ignores the fact that the District did not "hire" and does not pay YRMC to operate and maintain the Hospital. Rather, the District leases the Hospital to YRMC, who correspondingly, *owes the District rent payments for the right to operate and maintain the Hospital*, and the District has never paid YRMC any tax or other funds. R. at 13:2 ¶¶ 7–9, 19:5 ¶ 25, 25:2 ¶ 11.

Finally, as the Tax Court correctly concluded (R. at 32:4), *City of Phoenix v. Orbitz Worldwide Inc.*, 24 Ariz. 234 (2019), does not compel the conclusion that the District's Lease of the Hospital to YRMC demonstrates that the District effectively operates the Hospital through YRMC. In *Orbitz*, the Arizona Supreme Court found that online travel companies were engaged in the business of operating a hotel for purposes of § 444 of the Model City Tax Code. *See* 247 Ariz. at 238-39 ¶ 13. The Court concluded that § 444 imposes a tax liability on any 'person'—not just a hotel owner or operator—that engages for profit in business activities that are central to keeping brick and mortar lodging places functional or in operation." *Id*. at 240 ¶ 18. Although the word "operate" was at issue, the Tax Court did not find *Orbitz*

---

of § 48-1907(A)(6), but that argument has no application to this case since the District never hired YRMC to operate the Hospital for the District and indeed, YRMC pays the District rent to enable YRMC to operate and maintain the Hospital.

persuasive given its different factual and statutory issues from those at bar, and there is good reason for such a conclusion. In contrast to the situation in *Orbitz*, the District does not assist YRMC in operating the Hospital by booking patients, or by any other means. R. at 19:3 ¶ 12. *Orbitz* does not analyze or even address whether a political subdivision like a hospital district can be said to "operate" the business of its lessee who, like YRMC, exercises complete responsibility over management of its business and remits none of its profits to the lessor. As a result, *Orbitz* has no conceivable application to the circumstances at bar.

C. Section 48-1914 is Not Merely a Procedural Mechanism to Implement the Tax Authorized by § 48-1907(A)(6); Instead, § 48-1914 Sets Forth an Independent Basis for the Tax Levy.

The County expressly levied the Tax pursuant to A.R.S. § 48-1914, which authorizes the County to levy a secondary property tax on behalf of the District "to meet the financial needs of the district." In full, § 48-1914(A)-(B) provides:

> 48-1914. Budget
>
> A. Annually, not later than July 15, the board of directors shall furnish to the board of supervisors of the county in which the district or any part thereof is located a report of the operation of the district for the past year together with an estimate in writing of **the amount of money needed to be raised by taxation for all purposes required or authorized by this article** during the next fiscal year.
>
> B. The **board of supervisors of each county where a district or part thereof is located shall thereupon levy upon the taxable property of the district a tax which will**, together with other funds on hand or which will accrue during 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 tax rolls and collected in the same manner as other secondary property taxes in the respective county or counties in which the district or part thereof is located. Monies collected on behalf of the district shall be remitted promptly to and shall be handled by the county treasurer of the organizing county as other special district funds are handled. The district shall be governed by the budget limitation laws of the state. (Emphasis added).

Taxpayer argues that A.R.S. § 48-1914 does not provide an independent basis for levying the Tax but instead, is merely a procedural mechanism to implement the tax authorized by A.R.S. § 48-1907(A)(6), but such arguments fail for at least six (6) reasons.

1. Sections 48-1907(A)(6) and 48-1914 Involve Different Circumstances and Sovereigns

First, unlike § 48-1907(A)(6), which authorizes a secondary property tax for the limited purpose of "funding the operation and maintenance of a hospital" or related health care facilities or services, § 48-1914(B) authorizes the levy of a secondary property tax to "meet the financial needs of the district as provided under subsection A" of § 48-1914. Subsection A specifies that the amount of the Tax to be levied pursuant to Subsection B of the statute is that "needed to be raised… **for all purposes required or authorized by this article** [*i.e.*, Article 1 of Title 48, which encompasses the entirety of the Act, A.R.S. §§ 48-1901 to -1919]. Read in tandem, subsections A and B of § 48-1914 authorize a hospital district to seek a tax levy to meet the financial needs of the district to perform *any purpose* authorized by the Act.

While such purposes may include "funding the operation or maintenance of a hospital" as authorized by § 48-1907(A)(6) (in which case the statute requires the tax levy to first be approved by the electorate), other purposes authorized to be undertaken by hospital district under the Act include the power to (i) "sue and be sued" (A.R.S. § 48-1907(A)(2)) as well as (ii) lease its hospital (A.R.S. § 48-1907(A)(3)), neither of which, unlike § 48-1907(A)(6), require voter approval. The District sought the Tax for purposes of underwriting its defense of litigation brought against it by YRMC, its lessee. The Tax Court correctly concluded that such purposes are expressly authorized by subsections (A)(2) and (A)(3) of § 48-1907, and that the costs incurred by a hospital district to achieve them can be funded by a secondary property tax levied without voter approval, in accordance with § 48-1914. R. at 32:5.[7]

---

[7] Citing footnote 4 of the *Atchison* case, Taxpayer emphasizes (Opening Br., at 24), that *Atchison* held "that any hospital district may impose a secondary property tax so long as the district complies with the provisions of § 48-1907(A)(6)" but this holding is inapposite to the instant controversy because *Atchison* did not concern whether § 48-1914 also authorized a tax levy. **Indeed, *Atchison* never even mentioned § 48-1914.** Instead, *Atchison* concerned whether a hospital district had authority to seek the imposition of a secondary property tax pursuant to § 48-1907(A)(6) even though the district did not operate its hospital but instead, effectively leased its operation to a management company. 162 Ariz. at 128. Noting that § 48-1907(A)(6) specifically conditioned a tax assessment to enable a hospital district to "fund the operation and maintenance of a hospital," the Court invalidated the levy made by the district pursuant to § 48-1907(A)(6) because the district did not operate its hospital but instead, effectively leased it to a management company, which operated and maintained it. *Id*. at 136-37. The Court's statement that hospital districts may seek the imposition of tax levies so long as they comply with § 48-

Taxpayer nevertheless argues that since the doctrine of *expressio unius est exclusio alterius* provides that a statute which grants an agency enumerated powers means the agency is denied all powers not enumerated (Opening Br., at 14-15), § 48-1914 cannot be an independent basis for levying a tax because § 48-1907 sets forth the powers of a hospital district, and the only provision in that statute which even mentions *a* ***district's right to impose a tax*** is subsection (A)(6) of § 48-1907. This argument is unavailing because Taxpayer is confusing the power to levy a tax with the right to receive the revenue of a tax imposed by another governmental body or sovereign.

The District is not claiming it has the right under § 48-1914 to directly impose a tax as is authorized by § 48-1907(A)(6). The District *agrees* that *it* has no power to directly levy taxes under § 48-1914, but that does not mean it is bereft of the right to receive tax revenue assessed by other governmental bodies for its benefit under that statute. As is evident by the record, the Tax levied here was <u>not</u> levied by the District. Instead, the Tax was levied by the Supervisors, who, pursuant to § 48-1914, have an annual obligation, upon a hospital district's request, to levy a secondary tax sufficient to meet the District's budgeted needs, which needs include the right to defend itself in litigation, a power specifically afforded the District under § 48-

---

1907(A)(6) was made in that context and never touched upon the issue of whether taxes could be imposed under § 48-1914.

1907(A)(2).[8] Thus, the fact that the only authorization for the *District* to levy a tax contained in § 48-1907 is found in subsection (A)(6) of that statute does not compel the conclusion that a hospital district lacks authority to receive the proceeds of a tax imposed by the Supervisors to enable the district to exercise those powers afforded it by § 48-1907(A)(2)-(3). Put another way, the fact that § 48-1907 does not mention that the District can levy a tax to underwrite its budgeted expenses does not preclude the District from getting the benefit of such a levy lawfully made by another sovereign entity—the County, pursuant to § 48-1914.

While the District agrees that hospital districts themselves cannot levy taxes under § 48-1914, that does not mean § 48-1914 is merely a procedural mechanism to implement an assessment under § 48-1907(A)(6). Instead, it is merely a reflection of the Legislature's intention to authorize two separate bodies to impose levies for a hospital district—the hospital district itself for the purposes specified in § 48-1907(A)(6) and the Board of Supervisors for the purposes specified in § 48-1914.

[8] Section 48-1914(A) commands each hospital district to annually provide the board of supervisors with an estimate of the amount of money needed to be raised by taxation for all purposes authorized by the Act for the next fiscal year, and § 48-1914(B) commands the Supervisors to levy a tax "sufficient… to meet the financial needs of the district as provided in subsection A."

Correspondingly, Taxpayer's contention (Opening Br. at 10) that § 48-1914 fails to grant the District the power to tax[9] is of no moment, since the District does not contend that it has such power in accordance with § 48-1914. Similarly, Taxpayer's related argument that tax laws should be construed strictly against the taxing power[10] is also irrelevant, since the District does not maintain it is empowered to levy the Tax in accordance with § 48-1914. And while *Abbey v. Green*, 28 Ariz. 53, 72 (1925), provides that courts should construe laws involving voting rights "so as to uphold and sustain the citizen's right to vote," the District does not dispute that § 48-1907(A)(6) requires a vote of the electorate in circumstances where a tax levy

---

[9] *Citing Vangilder v. Arizona Dep't of Revenue*, 252 Ariz. 481, 488 § 26 (2022). Notably, *Vangilder* cites to *Maricopa Cnty. v. S. Pac. Co.*, 63 Ariz. 342, 348 (1945) for the proposition that "the power to levy a tax is never implied, but must *directly and specifically* be granted." *Id.* In *S. Pac. Co.*, the Court found that language similar to that in A.R.S. § 48-1914 provided a county with specific and direct taxing authority to pay interest and other amounts falling due on county and school district bonds. *Id.* at 344, 348–50. Specifically, the statute stated: "After said bonds are issued the board of supervisors for any county or school district and the governing body for any town or municipal corporation, ***shall*** enter upon their minutes, a record of the bonds sold, their numbers and dates, and ***annually levy and cause to be collected a tax, at the same time and in the same manner as other taxes are levied and collected upon all taxable property in such political subdivisions, sufficient to pay the interest on the same when due***; and likewise, annually, levy a tax sufficient to redeem said bonds when the same shall mature." 63 Ariz. 348 (emphasis added). Here, Taxpayer's argument that specific and direct authority is required to levy a tax also fails because, like in *S. Pac. Co.*, the language in A.R.S. § 48-1914 provides direct and specific authority for the Board of Supervisors to levy a tax for the purposes specified in § 48-1914.

[10] *Citing State v. Superior Ct. for Maricopa Cnty.*, 113 Ariz. 248, 249 (1976) and *Braden v. Yuma Cnty. Bd. of Supervisors*, 161 Ariz. 199, 202 (App. 1989).

is sought by a district to operate and maintain a hospital. However, the Tax here was not imposed for such a purpose and the statutes actually authorizing the Tax (§ 48-1914) to pay for the powers the District is authorized to perform as specified in §§ 48-1907(A)(2)-(3) impose no voting requirement.

The litany of cases cited by Taxpayer in support of his argument that general grants of authority to government entities cannot override specific voter protections are also inapposite. This is hardly like the situation in *City of Casa Grande v. Arizona Water Co*., 199 Ariz. 547, 550 ¶ 7 (App. 2001), where the court concluded that a city charter provision authorizing it to engage in the public utility business was insufficient to relieve it of its statutory obligation to obtain voter approval before acquiring a public utility. The District is not arguing that § 48-1914 authorizes it to levy a tax *contrary* to the provisions of § 48-1907(A)(6). Rather, the District acknowledges that § 48-1907(A)(6) requires voter approval for the District to levy a tax to operate and maintain a hospital. However, § 48-1907(A)(6) does not remotely apply to situations like those at bar, where the Tax was requested not to cover the expense of operating and maintaining the Hospital but instead, to pay for the District's defense of its leasehold, a defense which the District was clearly authorized to mount by §§ 48-1907(A)(2)-(3). Unlike subsection (A)(6) of § 48-1907, neither subsection (A)(2) nor subsection (A)(3) of § 48-1907 require that before a hospital district seeks a tax levy to cover the expense incident to the actions

authorized by those subsections, the voters approve such tax. Thus, cases like *City of Casa Grande*, or similar cases like *Town of Marana v. Pima Cnty.*, 230 Ariz. 142, 150 ¶ 34 (App. 2012) (holding that a town ordinance authorizing the town to acquire a wastewater system did not override a statutory requirement for the voters to approve the acquisition of a sewer system), or *Barry v. School Dist. No. 210*, 105 Ariz. 139, 141 (1969) (holding that a statute authorizing a school board to purchase property and improve school buildings did not allow districts to avoid application of another statute requiring voters to approve the construction of school buildings) are inapposite, for the District here is not arguing that a "general" provision authorizing the District to engage in particular conduct controls over a specific provision requiring that the voters first approve the performance of such conduct. Instead, the District contends that the statute conditioning certain conduct on voter approval (§ 48-1907(A)(6)) is simply not applicable by its very terms because the District has not engaged in such conduct and that instead, a completely different set of statutes (§§ 48-1907(A)(2)-(3), coupled with § 48-1914) controls the conduct actually performed.[11]

[11] Notably, Taxpayer's contention that A.R.S. § 48-1907(A)(6) is the only place where taxing authority is found is belied by the multiple other provisions authorizing taxes for the benefit of a hospital district. *See* §§ 48-1910(C), -1912(B), -1914. If a separate vote is required, it is specified in the section (*see* § 48-1910(C)), which would be surplusage if the voting requirement of A.R.S. § 48-1907(A)(6) already applied. Similarly, if the voting requirement of § 48-1907(A)(6) always applied, it would contradict the requirement that the board of directors "shall levy a tax"

2. Section 48-1914 Cannot Merely Be a Procedural Mechanism Designed to Implement the Tax Authorized by § 48-1907(A)(6) Since (i) § 48-1914 Preceded Enactment of § 48-1907(A)(6) by 32 Years, and (ii) For the Act's First 32 Years of Existence, § 48-1914 Was the Act's Only Mechanism for Levying a Tax.

A second reason A.R.S. § 48-1914 is not merely a procedural mechanism to implement the taxes authorized by A.R.S. § 48-1907(A)(6) but instead, provides an independent basis for levying the Tax without voter approval, is that for the first 32 years of the Act's existence, the sole authorization for hospital districts to receive tax levies was contained in § 13 of the Act, which is substantively similar to § 48-1914, and which contains no requirement that a levy authorized by that statute must first be approved by the electorate. *Compare* § 13 of the Act as originally enacted (R. at 10:Ex. G) *with* Laws 1981, Ch. 229, § 1 (enacting § 36-1237(A)(5), which is now re-codified as 48-1907(A)(6), which required voter approval for levies assessed for a hospital district's operation and maintenance of a hospital). Since by definition, a special taxing district must be empowered to seek tax assessments to fund the district's improvements,[12] and the only means of levying a tax that was originally

---

sufficient to maintain the bond reserve fund because the tax would be conditioned on voter approval every five years.

[12] *See generally* Arizona State Senate Issue Brief, "*Arizona's Special Taxing Districts*" (Nov. 10, 2022), at 2 ("Most special taxing districts are funded by *ad valorum* taxes levied on all real property within the district limits. A special taxing district tax levy is a secondary levy based on the full cash valuation of the property"), found at:

contained in the Act was that set forth in what today is § 48-1914, that section was obviously intended from the outset to set forth an independent basis for a hospital district to receive secondary property tax proceeds. Moreover, since § 48-1914 preceded enactment of § 48-1907(A)(6) by 32 years, § 48-1914 can hardly be said to merely be a procedural mechanism designed to implement the tax authorized by § 48-1907(A)(6).

Nor can it be said that § 48-1907(A)(6) superseded or modified the authority to levy secondary property taxes for the purposes set forth in A.R.S. § 48-1914. There is no language in § 48-1907(A)(6) which expressly or impliedly supersedes or modifies the authority to levy secondary property taxes for the purposes set forth in § 48-1914. Section 48-1907(A)(6) does not even mention § 48-1914, much less provide that voter approval is required for *any* tax levy under the Act. Instead, by its very terms, § 48-1907(A)(6) only applies when a levy is sought for the specific purpose of "funding the operation and maintenance of a hospital" or related health care facilities or services.

The expression in a statute of one or more items in a class generally indicates an intent to exclude all items of the same class that are not expressed. *Pima Cnty. v. Heinfeld*, 134 Ariz. 133, 134 (1982). The voting requirement mandated in § 48-

---

https://www.azleg.gov/Briefs/Senate/ARIZONA'S%20SPECIAL%20TAXING%20DISTRICTS%202022.PDF

1907(A)(6) is limited to the discrete circumstances specified in that provision, namely, tax levies for funding a hospital district's "operation and maintenance of a hospital" or related health care facilities or services. This means that levies for purposes other than those described in § 48-1907(A)(6) do not necessarily require voter approval, including levies for those purposes authorized by § 48-1914. Thus, rather than supersede or modify § 48-1914's authority to levy taxes "for all purposes required or authorized by this article" to "meet the financial needs of the district….", § 48-1907(A)(6)'s voter approval requirement is limited to the circumstances specified in that statute.

Similarly, Taxpayer's argument that the District's interpretation of A.R.S. § 48-1914 would allow the District to "impose a tax any time it wished" is unavailing and incorrect because the tax authorized in A.R.S. § 48-1914 is limited to the terms specified in § 48-1914. In other words, the board of supervisors must only "levy upon the taxable property of the district a tax which will, *together with other funds on hand or which will accrue during the ensuing fiscal year,* exclusive of reserves, provide sufficient funds to meet the financial needs of the district as provided in Subsection A." A.R.S. § 48-1914(B). Subsection A requires a district to estimate in writing the amount to be raised by taxation "for all purposes required or authorized by this article during the next fiscal year." Therefore, the tax is limited to the specific purposes required or authorized by A.R.S. § 48-1901 *et seq.* for the next fiscal year

and may only be assessed where other funds on hand or expected to accrue during the next fiscal year will not cover the expenses.

A hospital district that leases its hospital expects rent payments, and if there is bonded indebtedness, the rent ***must*** provide a fair return on investment and "provide amounts necessary to meet the expenses of the district." *See* A.R.S. § 48-1911(4). A hospital district with a tenant in good standing would have no need for tax funds to be able to meet its financial needs because rent payments would cover its expenses. It is only where there is a problem with the tenant, such as what occurred here, where YRMC stopped paying rent (R. at 13:2 ¶¶ 6–7, 9), that a hospital district that leases its hospital would have a need for tax funds to supplement its other funds. Thus, in the first sixty plus years of the District's existence, it had no need for tax funds. R. at 24:Ex. 8 at 2, 25:2 ¶ 10.

3. Since 1950, the Arizona Supreme Court Has Recognized That § 48-1914 Empowers a County to Levy a Secondary Property Tax to Fund the Expenses of Operating a Hospital District Without Voter Approval.

A third reason A.R.S. § 48-1914 clearly establishes an independent basis for levying a tax without voter approval is because the Arizona Supreme Court and other appellate courts have recognized this. In *Roberts v. Spray*, 71 Ariz. 60, 67 (1950), the Court considered a challenge to the Act in part on grounds that "said Act does not distinctly state that the tax imposed nor the object for which said tax shall be applied" is to operate a hospital. The Court found that a hospital district had no

express or implied power (at that time) to operate a hospital under the Act and therefore, could not impose a tax for that purpose. *Id*. at 66-67. More important to the instant analysis, and quoting the language of the predecessor to § 48-1914, which is essentially preserved in § 48-1914(B), the Court also found that the Act's taxing authority, which required no voter approval, was sufficiently clear:

> "[T]he Act creating the hospital district **provides how and for what purpose taxes may be levied**, specifically limiting the amount of the levy to take care of items set up in the budget presented by the board of directors of the district to the board of supervisors. **The levy is therein limited to a tax 'sufficient** in amount together with other funds on hand or accruing during the ensuing fiscal year, exclusive of reservations, **to meet the obligations of the district**." (Emphasis supplied).

Id., at 67. As noted, it was not until 1981 that "the Arizona Legislature for the first time gave hospital districts statutory authority to operate their own hospitals and impose secondary property taxes to fund their operation and maintenance." *Atchison*, 162 Ariz. at 134. However, with this new authority to operate and maintain a hospital, the Legislature "condition[ed] that authority only on initial approval and periodic reapproval by a majority of the district's qualified electors." *Id.* at 135. Nevertheless, the 1981 amendment to the Act did not expressly or impliedly affect the existing authority of a hospital district to estimate the amount of money it needed to be raised by taxation and the related requirement that the county board of supervisors levy a tax on behalf of the district sufficient to "meet the obligations of the district." *See Roberts*, 71 Ariz. at 67. *See also Prescott Newspapers, Inc. v.*

Yavapai Cnty. Hosp. Auth., 163 Ariz. 33, 35 (App. 1989) (stating that "[t]he Yavapai County Board of Supervisors may levy taxes for the support of the Hospital District" and noting that a prior tax was levied for the hospital district "for the payment of organizational expenses incurred when the district was created in 1960," which was at a time when the sole taxing authority contained in the Act was the predecessor to § 48-1914).[13]

As specified in § 48-1914, no election needs to be held to impose a property tax to "meet the financial needs of the district." All that is required is that a hospital district provide the board of supervisors with an estimate of the amount of money needed to be raised by taxation during the fiscal year for any purpose "required or authorized" under the Act (which encompasses A.R.S. §§ 48-1901 to 1919) and for the board of supervisors to then levy a tax sufficient to meet the financial needs of

[13] Taxpayer will no doubt argue in his Reply Brief that *Roberts v. Spray*, 71 Ariz. 60 (1950) and *Prescott Newspapers, Inc. v. Yavapai Cmty. Hospital Ass'n*, 163 Ariz. 33 (App. 1989), are irrelevant to the instant controversy because the levies there predated the enactment of § 48-1907(A)(6) in 1981. In fact, *Roberts* and *Prescott* are highly relevant because each recognized that the language used in § 48-1914 authorized the assessment of a secondary property tax to fund a hospital district's operations without voter approval. *Roberts*, 71 Ariz. at 67; *Prescott*, 163 Ariz. at 35. That § 48-1907(A)(6) would later condition levies on voter approval *for the specific purposes listed in <u>that</u> statute* does not erase the fact that in accordance with *Roberts* and *Prescott*, § 48-1914 provides an independent basis for levying assessments without voter approval *for the specific purposes identified in § 48-1914*. Nothing in § 48-1907(A)(6) says otherwise.

the district. In contrast, since 1981, when § 48-1907(A)(6) was enacted, levies sought to finance the "operation and maintenance" of a hospital owned by the district (as opposed to levies sought to underwrite the financial needs of a hospital district pursuant to § 48-1914) must be voter approved. That the former requires voter approval whereas the latter does not, does not make the two statutory levy authorizations conflicting. Rather, they both can be applied by their terms harmoniously, depending on the specific purpose for the levy. *See, e.g., Lemons v. Superior Ct. of Gila Cnty.*, 141 Ariz. 502, 505 (1984) (Whenever possible a court should construe the meaning of several statutes so that effect can be given all); *KZPZ Broad., Inc. v. Black Canyon City Concerned Citizens*, 199 Ariz. 30, 35 (App. 2000) (Court must construe statutes regarding same subject matter to harmonize rather than conflict with each other if sound reasons and good conscience allow).

4. Since the Costs to Operate and Maintain a Hospital Are Far Greater than Those to Operate a Hospital District, There Is Good Reason to Require Voter Approval for the Former and Not the Latter.

Fourth, there is good reason the Hospital District's enabling legislation requires some tax levies to be approved by the voters whereas others do not. It makes perfect sense that in the circumstances at issue in § 48-1907(A)(6), where a district is seeking the tens (or more likely, hundreds) of millions of dollars necessary to operate and maintain a hospital, the enormous size of such a levy warrants approval by the electorate. In contrast, the expenses of merely operating a hospital

district (as opposed to operating or maintaining a hospital) are so minute that no election is warranted.[14]

5. Construing § 48-1914 as Providing an Independent Basis for Assessing a Tax Without Voter Approval is Consistent with the Language of Other Special Taxing Districts

A fifth reason § 48-1914 provides an independent basis for assessing the Tax without voter approval is that such a conclusion is consistent with the taxing language of other special taxing districts. Courts may look to statutes that are in *pari materia* for guidance in interpreting the plain language of a statute. *Stambaugh v. Killian*, 242 Ariz. 508, 509 (2018). Other special taxing district tax statutes have a similar purpose to the hospital district tax statutes and can be considered in *pari materia*. Additionally, to the extent there is any ambiguity in the Act, the provisions of other special taxing districts may be considered for the purpose of discerning the Act's language. *Ryan v. Napier*, 245 Ariz. 54, 64 (2018).

That special taxing districts can seek the imposition of taxes without voter approval for some reasons, most often to fund their districts, is not unique to hospital districts. No less than 22 special taxing districts authorize the assessment of taxes to cover the district's expenses without a prior vote of the electorate. R. at 18:Ex. B.

---

[14] The Act's recognizes an exception to this rule in circumstances where a district is situated in such an unpopulated county that it needs to impose a transaction privilege tax in lieu of a secondary property tax to sustain its operations. *See* A.R.S. § 48-1910(C).

The language used among these provisions is remarkably similar to that employed by A.R.S. § 48-1914. As an example, statutes authorizing a community park and maintenance district to receive tax funding state, "the board of directors shall estimate the amount of money necessary to be raised by taxation" and "the board of supervisors… shall levy and cause to be collected… county taxes upon the real property located in the district." *See* A.R.S. § 48-1210(C)-(D). Likewise, statutes authorizing a county television improvement district to levy a tax state, "the board of directors shall prepare a full and complete statement of the financial affairs of the district for the preceding fiscal year and an estimate of the amount of money necessary to be raised to defray district expenses" and "the board of supervisors shall levy a tax sufficient to raise the amount of the estimate." *See* A.R.S. § 48-1104. The language found in other special taxing district statutes which, like § 48-1914, authorize levies to fund district budgets without a vote of the electorate supports the proposition that the legislature intended the District to have such power, and that A.R.S. § 48-1914 is not an aberration but in fact the norm.

What is also similar between the Act's provisions and the enabling legislation of other special taxing districts is that it appears that the ***only*** time those districts require voter approval for a property tax is when a district is requesting that a tax underwrite the district's operation and maintenance of health care facilities rather than to merely underwrite the district's own expenses of operation. Thus, just like §

48-1907(A)(6), which requires voter approval for a hospital district to operate and maintain a hospital, two tax levies imposed by other types of special tax districts also require voter approval to fund the operation and maintenance of health care facilities. *See, e.g.*, A.R.S. § 48-5565(A)-(B) (the majority of a Special Health Care District's qualified electors must vote to approve the initial imposition of a levy for a special health care district for purposes of maintaining and operating the district's facilities); A.R.S. § 48-2223 (same for operation and maintenance of a Health Care District's ambulance service or combined medical clinic). It is telling that across *all* special taxing districts authorized under Title 48, voter approval for a property tax is only required when the district is requesting that a tax underwrite the district's maintenance and operation of health care facilities rather than to merely underwrite a district's expenses.

6. If § 48-1907(A)(6) Were the Sole Provision in the Act to Levy a Tax, Then Hospital Districts Would Have No Means of Exercising Certain of Their Enumerated Powers.

A sixth reason § 48-1914 must be construed as providing an independent basis for assessing the Tax is that if § 48-1907(A)(6) was the sole provision in the Act for levying a tax to fund a hospital district's operations, hospital districts would have no means of exercising certain of their enumerated powers.

By its terms, the voter approval requirement set forth in § 48-1907(A)(6) only applies when a levy is sought for purposes of "funding the operation and

maintenance of a hospital" or related health care facilities or services. If, as Taxpayer contends, § 48-1907(A)(6) is the sole provision in the Act authorizing hospital districts to levy taxes, then hospital districts could only levy taxes to fund the operation and maintenance of a hospital or related health care facilities or services and would have no means of assessing taxes to fund the other activities they are empowered to perform by the first four subsections of § 48-1907, since none of those subsections specify that they can be funded by a tax. For example, Taxpayer's argument that § 48-1907(A)(6) is the sole provision allowing hospital districts to levy taxes would mean that hospital districts could not seek tax levies to "sue and be sued," as authorized by § 48-1907(A)(2) or "purchase…property of every kind and description…" as authorized by § 48-1907(A)(3). The result would be that if § 48-1914 did not serve as an independent mechanism to levy taxes for hospital districts to fund all actions authorized by the Act, hospital districts would be left with no means of exercising their power to sue and be sued and/or purchase property (or deal with lawsuits concerning such property, as was the case here).

Courts must avoid construction of statutes which would render portions of them meaningless or without effect.[15] It follows that constructions which render enumerated powers useless must be avoided. That means § 48-1914 must be construed to be more than a mere procedural mechanism to implement the Tax.

[15] *See, e.g., Campbell v. Superior Ct.*, 18 Ariz. App. 287, 291 (1972).

Instead, as the Arizona Supreme Court put it in *Roberts v. Spray*, § 48-1914 must be construed as an independent authorization for:

> **a tax 'sufficient** in amount together with other funds on hand or accruing during the ensuing fiscal year, exclusive of reservations, **to meet the obligations of the district**." (Emphasis supplied).

Roberts v. Spray, 71 Ariz. at 67.

III. Conclusion

For all of the foregoing reasons, the Tax Court correctly concluded that the Tax was lawfully levied without a vote of the District's eligible voters. As a result, this Court should affirm the Tax Court's dismissal of Taxpayer's Complaint for failure to state a claim upon which relief can be granted.

Dated this 7th day of February 2025.

KUTAK ROCK LLP

By: /s/ Marc R. Lieberman
Paul S. Gerding, Jr., Esq.
Marc R. Lieberman, Esq.
D. Tyler Milliron, Esq.
8601 N. Scottsdale Road
Suite 300
Scottsdale, AZ 85253
Attorneys for Defendant/Appellee Hospital District

ARIZONA COURT OF APPEALS

DIVISION ONE

RICHARD OGSTON, Plaintiff/Appellant/ Cross Appellee, v. ARIZONA DEPARTMENT OF REVENUE, et al., Defendants/Appellees.	Court of Appeals Division One No. 1 CA-TX 24-0001 Arizona Tax Court No: TX2023-000342

DEFENDANT/APPELLEE HOSPITAL DISTRICT'S CERTIFICATE OF COMPLIANCE

Paul S. Gerding, Jr., Bar No. 017237
Marc R. Lieberman, Bar No. 009180
D. Tyler Milliron, Bar No. 036204
KUTAK ROCK LLP
8601 N. Scottsdale Road
Suite 300
Scottsdale, Arizona 85253
Paul.Gerding.Jr@KutakRock.com
Marc.Lieberman@KutakRock.com
Tyler.Milliron@KutakRock.com
Attorneys for Defendant/Appellee Hospital District

1. This Certificate of Compliance concerns the Answering Brief submitted under ARCAP 14.5 by Defendant/Appellee Hospital District No. 1 of Yuma County (the "**District**").

2. The undersigned certifies that the District's Answering Brief uses type of at least 14 points, is double spaced and contains 10,363 words.

3. The District's Answering Brief does not exceed the word limit that is set by ARCAP 14.

Dated this 7th day of February 2025.

By: /s/ *Marc R. Lieberman*
Marc R. Lieberman, Esq.

Attorneys for Defendant/Appellee Hospital District

ARIZONA COURT OF APPEALS

DIVISION ONE

RICHARD OGSTON, Plaintiff/Appellant/ Cross Appellee, v. ARIZONA DEPARTMENT OF REVENUE, et al., Defendants/Appellees.	Court of Appeals Division One No. 1 CA-TX 24-0001 Arizona Tax Court No: TX2023-000342

DEFENDANT/APPELLEE HOSPITAL DISTRICT'S

CERTIFICATE OF SERVICE

Paul S. Gerding, Jr., Bar No. 017237
Marc R. Lieberman, Bar No. 009180
D. Tyler Milliron, Bar No. 036204
KUTAK ROCK LLP
8601 N. Scottsdale Road
Suite 300
Scottsdale, Arizona 85253
Paul.Gerding.Jr@KutakRock.com
Marc.Lieberman@KutakRock.com
Tyler.Milliron@KutakRock.com
Attorneys for Defendant/Appellee Hospital District

The undersigned certifies that on February 7th, 2025, she caused the Defendant/Appellee Hospital District's Answer Brief to be filed via the Court's Electronic Filing System and electronically served a copy to:

The Goldwater Institute
Jonathan Riches, Esq.
John Thorpe, Esq.
Scharf-Norton Center for Constitutional Litigation
at the Goldwater Institute
500 E. Coronado Road
Phoenix, Arizona 85004
litigation@goldwaterinstitute.org

Attorneys for Plaintiff/Appellant Ogston

Kimberly Cygan, Esq.
Chief Counsel, Tax Division
Office of the Attorney General
2005 N. Central Avenue
Phoenix, AZ 85004-1592
Kim.Cygan@azag.gov

Attorney for Arizona Department of Revenue

William Kerekes, Esq.
Chief Civil Deputy County Attorney
Office of the Yuma County Attorney
250 W. 2nd Street, Suite G
Yuma, AZ 85364-2235
Bill.kerekes@yumacountyaz.gov
YCAttyCivil@yumacountyaz.gov

Attorney for Yuma County

By: /s/ *Joanne Krpata*