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

RICHARD OGSTON, Plaintiff, vs. ARIZONA DEPARTMENT OF REVENUE; YUMA COUNTY; HOSPITAL DISTRICT 1, YUMA COUNTY, Defendants,	Case No. TX2023-000342 **PLAINTIFF'S RESPONSE TO HOSPITAL DISTRICT 1, YUMA COUNTY'S MOTION TO DISMISS** **-and-** **PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT** **(Assigned to Honorable Sara Agne)**

INTRODUCTION

Yuma County's special hospital district (the "District") has imposed a secondary property tax without voter approval, in violation of the statutory requirement that "[p]rior to the initial imposition of such tax a majority of the qualified electors must approve such initial imposition." A.R.S. § 48-1907(A)(6). Plaintiff seeks a refund of the tax installment he paid last fall, as well as a declaratory judgment to settle the legality of this tax (which the District has imposed for the third year in a row) going forward.

The District moved to dismiss Plaintiff's action for a refund, arguing that Plaintiff's entire action is barred under Arizona's general notice-of-claim statute, and that A.R.S. Section 48-1914, which specifies how counties meet their financial needs, effectively overrides Section 1907(A)(6). These arguments are wrong. The notice-of-claim statute does not apply to tax refund actions, let alone equitable claims for prospective relief. And Section 1914 is a procedural statute that specifies how the government should implement

an *already-approved* tax; it does not sanction an end-run around Section 1907(A)(6)'s voter approval requirement.

In addition to opposing the District's Motion to Dismiss, Plaintiff moves for summary judgment pursuant to Arizona Rule of Civil Procedure 56 on both counts in his complaint, based on the stipulated statement of facts filed together with this motion.

BACKGROUND

The District is a special taxing district and a political subdivision of the State, established by Yuma County pursuant to Arizona Revised Statutes Title 48. Parties' Stipulated Statement of Facts ¶ 11. At the District's behest, the County has imposed a secondary property tax to support the District's financial needs every year since 2021. *Id.* ¶ 5. These taxes have never been voted on by Yuma County's electorate. *Id.* ¶ 10.

On July 10, 2023, the District sent the Yuma County Board of Supervisors (the "Board") its 2023–2024 fiscal year budget, along with a cover letter informing the Board that "the District require[d] $1,811,300.00 to be immediately raised by taxation pursuant to A.R.S. § 48-1914(A)." ¶ 11. The cover letter stated that the District needed this money "to cover certain of [its] expenses for its administration and defense, in particular for legal fees and public outreach costs" in connection with "two ongoing separate lawsuits" against the Yuma Regional Medical Center (YRMC) and its affiliates. *Id.* ¶ 12. On or about August 21, 2023, the Board voted to impose a secondary property tax, T/A # 1069901, at a rate of 0.1219, to fund the District (the "Tax"). *Id.* ¶ 13.

Plaintiff Richard Ogston is a Yuma County resident and property owner, and he is responsible for paying all taxes on his Yuma property. *Id.* ¶¶ 1, 14, 15. He was assessed $32.15 for the Tax on his 2023 Property Tax Notice, and he timely paid the first installment when it came due on November 1, 2023. *Id.* ¶¶ 16–18. No additional installments of the Tax have yet come due. *Id.* ¶ 19.

DISCUSSION

I. Legal Standard

A complaint may only be dismissed "if 'as a matter of law [] plaintiffs would not be entitled to relief under any interpretation of the facts susceptible of proof.'" *Coleman v. City of Mesa*, 230 Ariz. 352, 356 ¶ 8 (2012) (citation omitted). Motions to dismiss are disfavored and should not be granted unless it is "'certain that plaintiff would not be entitled to relief.'" *State ex rel. Corbin v. Pickrell*, 136 Ariz. 589, 594 (1983) (citation omitted). "[C]ourts must assume the truth of all well-pleaded factual allegations and indulge all reasonable inferences," relying on the complaint and any "exhibits" or "public records" referenced in the complaint. *Coleman*, 230 Ariz. at 356 ¶ 9.

Summary judgment is appropriate "if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgement as a matter of law." Ariz. R. Civ. P. 56(a). A plaintiff is permitted to move for summary judgment after a 12(b)(6) motion to dismiss is filed by the defendant. Ariz. R. Civ. P. 56(b)(1).

II. The District bypassed statutory voter approval requirements and the tax is therefore invalid.

The District has *only* those powers granted it by statute. *Facilitec, Inc. v. Hibbs*, 206 Ariz. 486, 488 ¶ 10 (2003) (explaining that special districts are "creatures of statute" and therefore "'[have] no powers other than those the legislature has delegated to [them].'"). If the District has any power to tax, that power must be explicitly granted by statute because "the power to levy a tax is never implied, but must *directly and specifically* be granted." *Vangilder v. Arizona Dep't of Revenue*, 252 Ariz. 481, 488 ¶ 26 (2022) (citation omitted).

What's more, Arizona courts construe tax laws "strict[ly] … against the taxing power," *State v. Superior Ct. for Maricopa Cnty.*, 113 Ariz. 248, 249 (1976); *see also Braden v. Yuma Cnty. Bd. of Supervisors*, 161 Ariz. 199, 202 (App. 1989) ("[T]axpayers should be afforded every procedural protection provided by the legislature for their

benefit."). Additionally, Arizona courts construe laws involving voting rights broadly "so as to uphold and sustain the citizen's right to vote." *Abbey v. Green*, 28 Ariz. 53, 72 (1925).

With those principles in mind, let us turn to the statute. Section 48-1907(A)(6) authorizes hospital districts to:

> [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.

Critically, this grant of taxing power comes with a condition: "Prior to the initial imposition of such a tax a majority of the qualified electors must approve such initial imposition."[1] *Id.*

This is the *only* taxing power the District can legitimately claim. Aside from the rule against inferring any taxing power, *Vangilder*, 252 Ariz. at 488 ¶ 26, basic principles of statutory construction—particularly the rule of *expressio unius est exclusio alterius*—militate against the idea that the District has a separate power to tax apart from Section 1907(A)(6). *City of Surprise v. Arizona Corp. Comm'n*, 246 Ariz. 206, 211 ¶ 13 (2019).

Section 1907 lists the powers of hospital districts, and the Legislature took care to list *all* the District's powers in that Section. These include the power to "[a]dopt and use a corporate seal," "[s]ue and be sued," "[p]urchase, receive, have, take, hold, lease, use and enjoy property of every kind and description within the limits of the district," "[a]dminister trusts declared or created for the hospital district," "[p]rovide for the operation and maintenance at a single location within the district of a hospital," and "[c]ontract with an existing hospital, ambulance service, city, town or fire district within the district to provide ambulance services." A.R.S. § 48-1907(A)(1)–(7).

[1] Moreover, voter approval must be renewed "at least every five years from the date of the initial imposition." *Id.*

When, as here, the law vests an entity with a list of specific, well-defined powers, this means the entity lacks other powers *not* enumerated. *See, e.g.*, *City of Surprise*, 246 Ariz. at 211 ¶ 13. The only taxing power to be found is the one provided by Section 1907(A)(6). *That* is the sole statutory provision that "directly and specifically" gives the District any taxing authority. *Vangilder*, 252 Ariz. at 488 ¶ 26 (citation omitted).

Thus, contrary to the District's argument that there are two different taxing powers in the statute, *see* MTD at 10 (arguing the statute "requires some tax levies to be approved by voters while others do not"), the only taxing power the District has is that created directly and specifically by Section 1907. And, of course, when the District uses that power, it must *strictly* comply with statutory procedural requirements. *Braden*, 161 Ariz. at 202 ("[Arizona courts] require[e] strict adherence to taxation statutes."). That means the tax here must receive the approval of "a majority of the qualified electors" "[p]rior to the initial imposition of such a tax and "at least every five years" afterward. A.R.S. § 48-1907(A)(6).

Thus, the Court of Appeals has held that "any hospital district may impose a secondary property tax so long as the district complies with the provisions of § 48-1907(6)."*Atchison, Topeka & Santa Fe Ry. Co. v. Arizona Dep't of Rev.*, 162 Ariz. 127, 136 n.4 (App. 1989); *see also* Ariz. Att'y Gen. Op. I87-149 (1987) ("[T]he authority to impose a tax for the operation and maintenance of a hospital is expressly conditioned upon approval of the voters"). Of course, that did not happen. The Tax is therefore unlawful.

III. Section 1914 does not authorize a bypass of Section 1907.

A. The District's attempt to imply an unspoken second taxing power is unavailing.

The District's entire justification for the Tax relies on its claim that another statute, A.R.S. § 48-1914, independently gives it a *different* taxing power—one not subject to the voter approval requirement. The District claims that instead of imposing a tax through the Section 1907 voter-approval mechanism, it can simply "furnish" the Board of Supervisors

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," whereupon the Board "is required to levy" a tax sufficient to "meet the financial needs of the district." MTD at 2 (quoting A.R.S. § 48-1914(A), (B)). This allegedly separate Section 1914 tax is, of course, not subject to voter approval.

The District's argument misreads Section 1914, which does not create a second taxing power, but merely establishes *procedural* requirements for how the District must exercise its Section 1907 powers. Rather than giving the District an implicit, alternate taxing power, Section 1914 *limits* the District's powers by setting out specific procedures it must follow when implementing the Section 1907 taxing power: the District must give the Board "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 … during the next fiscal year." A.R.S. § 48-1914(A). Section 1914(B) also instructs county boards of supervisors and treasurers how to "compute[]," "collect[]," and "handle[]" tax funds and how to apportion taxes among multiple counties when "a district lies in more than one county." A.R.S. § 48-1914(B) & (C).

All these procedures are premised on the assumption that the District has the taxing power in the first place; that is, they only come into play once a tax has been voter-approved *pursuant to Section 1907*.

One indication that Section 1914 only mandates *procedures*,[2] and does not create some special taxing power outside of Section 1907, is that Section 1914 lacks any of the language the Legislature ordinarily uses when granting powers. Section 1907 uses classic

[2] In establishing procedures, not granting powers, Section 1914 functions like other provisions in Title 48, Chapter 3: it prescribes ways in which districts may exercise the powers enumerated in Section 1907, not as independent grants of powers or duties. *See Atchison, Topeka & Santa Fe Ry.*, 162 Ariz. at 135 (holding provisions in Section 1910 on leasing hospitals "does not suggest an intention to impose a mandatory leasing requirement" separate from Section 1907, but "instead signals an intent merely to regulate the manner in which a district may exercise its leasing authority under § 48-1907(3), assuming it chooses to do so at all").

vesting language: "A hospital district may … ." This is the same language that appears in many other laws, such as Section 48-3214 ("In exercising the powers granted or permitted by law, the [irrigation and water conservation] district may…").[3] But no such vesting phrase appears in Section 1914, nor does any other vesting language like "the district is authorized." If the Legislature meant to authorize the District to tax without voter approval in Section 1914, it would have done so explicitly. Indeed, it was *required* to do so explicitly. *Vangilder*, 252 Ariz. at 488 ¶ 26. It did not do so in Section 1914.

Indeed, if Section 1914 created a second, separate taxing power as the District argues, that would mean that the District could bypass voter approval whenever it chose—which would render Section 1907(A)(6) superfluous. That, of course, would violate basic rules of statutory interpretation. *See City of Phoenix v. Orbitz Worldwide Inc.*, 247 Ariz. 234, 238 (2019) ("If possible, we give meaning 'to every word and provision so that no word or provision is rendered superfluous.'" (citation omitted)). It is also contrary to the fundamental principle that the government may not "do indirectly what it is prohibited from doing directly"— i.e., impose a tax without voter approval. *Cave Creek Unified Sch. Dist. v. Ducey*, 231 Ariz. 342, 352 ¶ 30 (App. 2013) (citation omitted).

B. The District's argument that it does not "operate" a hospital is also unavailing.

The District's theory is based on the idea that it does not "operate" the hospital, as contemplated by Section 1907, and therefore was not required to follow Section 1907's voter approval requirement. MTD at 8–9. This argument is unavailing.

Section 1907 authorizes the District to impose a tax to fund activities falling within the District's purpose for existence, namely:

> *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.

A.R.S. § 48-1907(A)(6) (emphasis added).

[3] The phrases "a district may," or "the district may," appear 361 times in Title 48 (Special Taxing Districts).

But the District says that while it "own[s]" the hospital, it doesn't "operate[]" the hospital. Therefore it, says, the Tax at issue here fell not within Section 1907, but instead within the general "financial needs of the District," which (the District argues) are governed instead by Section 1914, and the allegedly implicit taxing power that Section contains. *See* MTD at 12.

The problem with that argument is that "operation and maintenance" of something includes the administrative and other costs an entity may incur while providing that thing. The Supreme Court recently said so in *Orbitz Worldwide Inc.*, 247 Ariz. 234, which concerned the taxation of online travel companies ("OTCs"). There, the court found that OTCs were subject to taxation as brokers because the statute defined brokers as entities that "operate" hotels. *Id.* at 236 ¶ 1. To "operate," said the court, means "to put or keep in operation," *id.* at 240 ¶ 18, and this includes not just proprietors or owners of hotels, but anyone engaged in "business activities that are central to keeping brick-and-mortar lodging places functional or in operation." *Id.* This includes OTCs, which "facilitate all aspects of the transaction" when a customer books a hotel. *Id.* ¶ 19.

Just so, the District "operates" a hospital regardless of whether it directly runs the hospital itself or "facilitate[s]" it by "contract[ing]" with a third party, as the District argues. *Id.* at 240–41 ¶¶ 21–22. Indeed, the District is not merely a property manager generically leasing out County real estate. It is a *hospital district*. Its purpose is to provide hospital services to Yuma residents, either directly or by contract. Ex. F to MTD (Lease) at 6 (requiring YRMC to "operate the Hospital Facilities as a hospital and health care facility for the benefit of the residents of Hospital District No. 1 of Yuma County, Arizona").

Hospital districts are in the business of operating and maintaining hospitals, and when the Legislature enumerated those districts' powers in Section 1907, it authorized them to impose taxes for that purpose—subject to voter approval. It makes no difference whether a particular expense is attributable to the *direct* or the *indirect* operation of a

hospital. Were it otherwise, government entities could easily evade the voter approval requirement by contracting with private parties to "operate" entities, then levying taxes without voter approval to fund those private parties—as is the case here.

The District's argument relies on an artificially narrow construction of the term "operation and maintenance," as applying only to situations where the District *directly* runs its own facility. That's contrary to the ordinary meaning of the statutory terms, and to the definition provided in *Orbitz Worldwide Inc.* The District's argument also reverses every applicable rule of statutory construction. It violates the *exclusio alterius* rule. *City of Surprise*, 246 Ariz. at 211 ¶ 13. It violates the rule that the taxing power is never implied, *Vangilder*, 252 Ariz. at 488 ¶ 26. It violates the rule that the District has only those powers statutorily granted to it. *Hibbs*, 206 Ariz. at 488 ¶ 10. It contradicts the rules that tax statutes are narrowly construed and voting rights broadly construed. *Superior Ct. Maricopa Cnty*., 113 Ariz. at 249; *Green*, 28 Ariz. at 72.

It's also contrary to common sense; the Legislature would hardly impose stringent voter-approval requirements on special hospital districts when they raise money for their core statutory purpose (running a hospital), and then create a broad (yet implicit) second taxing power that enables districts to raise money for any *other* reason *without* voter approval.

C. No legislative history or precedent supports bypassing voter approval.

The District's arguments about legislative history are unpersuasive. First, legislative history cannot "supersede the unambiguous words in [this] statute." *Qasimyar v. Maricopa Cnty.*, 250 Ariz. 580, 590 ¶ 33 (App. 2021). Here, the relevant statutory text is "clear and unambiguous," *id.* (citation omitted), that Section 1907(A)(6) grants the power to tax, while Section 1914 merely specifies procedures for exercising that power.

Second, the District's "legislative history" argument is a misnomer, as it never actually cites any legislative history. It offers no hearing testimony, fact sheets, or other contemporaneous statements about the legislation to show that the Legislature intended Section 1914 to create some taxing power other than the one provided by Section 1907.

Instead, the District merely observes that the language in Section 1914 dates back "70 plus years,"[4] then speculates that it would "make[] sense" to require voter approval for the expensive endeavor of operating and maintaining a hospital while omitting this requirement for the District's administrative costs. MTD at 10.

Not only is this pure speculation; it misconstrues the statutes' plain language. Again, Section 1914's procedures are for "money needed … for *all purposes* required or authorized by this article." A.R.S. § 48-1914(A) (emphasis added). If the District were correct that Section 1914 gives it a second taxing power (one not subject to voter approval), that Section would authorize taxes for "all purposes"—which includes the direct costs of running a hospital as well as administrative expenses. But that would completely subsume Section 1907's voter approval requirement, which would mean that *no* tax levies would need to be voter-approved.[5] And nothing in legislative history suggests the Legislature meant Section 1914 as a broad grant of taxing authority that would render Section 1907 a nullity.

In any event, the Court must apply the statute as written, not, as the District desires, to rewrite it to serve what it believes "makes sense." *State v. Gonzalez*, 216 Ariz. 11, 14 ¶ 10 (App. 2007).

The District argues that "caselaw holds that no voter approval is required for a hospital district to levy a tax to cover its expenses." MTD at 11. But none of the cases it cites (or any other relevant authority) supports its view that Section 1914 independently authorizes a hospital district to impose taxes without voter approval.

Atchison, Topeka & Santa Fe Ry. Co., for example, actually contradicts the District's argument. *See* 162 Ariz. at 136 n.4 ("[A]ny hospital district may impose a secondary property tax *so long as the district complies with the provisions of § 48-*

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[4] Without any actual statements regarding legislative intent, it is entirely unclear what inference to draw from this, particularly since the Legislature fundamentally restructured the hospital district statutes in the intervening decades.

[5] The District apparently recognizes this elsewhere. *See* MTD at 12 (arguing that "A.R.S. § 48-1914 allows taxes for *all* authorized purposes").

1907(A)(6)." (emphasis added)). To be sure, *Atchison* held that a hospital district "lacked authority" to tax *at all* because it did not "operate" the facility in question.[6] But the court never suggested that the district could have just bypassed Section 1907(A)(6) and imposed a tax under Section 1914 instead. *Id.* at 137.

Prescott Newspapers, Inc. v. Yavapai Community Hospital Ass'n, 163 Ariz. 33, 35 (App. 1989), does not interpret the voter-approval requirement at all, and its reference to a prior tax levied "for the payment of organizational expenses incurred when the District was created in 1960" sheds no light here because it predates the voter-approval requirement. *Roberts v. Spray*, 71 Ariz. 60 (1950), also predates the voter-approval requirement and sheds no light on it. Moreover, while *Roberts* held that the statutes at that time did not authorize a district to directly operate a hospital (only to "lease the hospital and its equipment" to a third party, *id.* at 66), that decision did not construe the term "operation and maintenance," which was not then a part of the statutory scheme. *Roberts* therefore provides no guidance on how to interpret that term as part of a broad, exhaustive grant of powers to a hospital district.

D. Other special district statutes are irrelevant to the Tax's legality.

The District claims that "[n]o voter approvals are required for district expense tax levies" for several other types of special taxing districts. MTD at 13. But even if this is true, it's irrelevant to the question before this Court: whether, under the specific powers and limitations applicable to *hospital* districts in Arizona, the District could bypass Section 1907(A)(6)'s voter approval requirement and impose a tax under Section 1914 instead. As the relevant statutes and case law expressly prohibit what this District has done, the Court should decline the invitation to rewrite the law for hospital districts based on how the Legislature has chosen to govern "Antinoxious Weed Districts" and other unrelated entities. MTD at 13.

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[6] Apparently that district merely "leased" its own hospital to a private party and "subsidize[d] the hospital's operating costs," with no meaningful involvement in "supervis[ing], operat[ing], or manag[ing] the … facility." *Id.* at 129, 136. That does not appear to be the case here.

IV. Arizona's general notice-of-claim statute is no obstacle to Plaintiff's challenge.

The District argues that Plaintiff should have filed a notice of claim pursuant to A.R.S. Section 12-821.01, which states:

> Persons who have claims against a public entity, public school or a public employee shall file claims with the person or persons authorized to accept service for the public entity, public school or public employee … within one hundred eighty days after the cause of action accrues.

A.R.S. 12-821.01(A).

But this general notice-of-claim statute does not apply to tax refund actions, and it certainly does not apply to Plaintiff's claim for declaratory relief.

A. Section 12-821.01 Does Not Apply to Tax Refund Actions.

Section 12-821.01 is inapplicable to tax refund claims, and Defendants cite no tax cases that show otherwise.

Tax refund claims have their own procedural requirements, which Title 42 sets out in detail. For example, a taxpayer seeking a refund must pay the challenged tax before it comes due, A.R.S. § 42-11004, bring the action "within one year after payment of the first installment of the tax," *id.* § 42-11005(A), name the Department of Revenue as a defendant, *id.* (C), and, if disputing the valuation or classification of property, undergo a specific administrative review process, *id.* (D); §§ 42-16001–16259; § 42-1118(E) (setting out procedures for administrative refund process); *see also Moulton v. Napolitano*, 205 Ariz. 506, 512 ¶ 14 (App. 2003) ("This court has unfailingly held that tax matters must be exhausted within ADOR before being brought in superior court.").[7]

Thus, the Arizona Supreme Court recognized that Section 12-821.01 (which it called "the general claims statute") does not apply to tax refund actions in *Arizona Dep't of Revenue v. Dougherty*, when it compared and contrasted that statute with Section 42-

[7] Notably, when a challenge does not dispute the valuation or classification of property, but the legality of the tax itself, the challenger need not pursue administrative remedies before bringing a judicial challenge. *In re Westward Look Dev. Corp.*, 138 Ariz. 88, 89 (App. 1983).

1118(E) ("the claim statute for tax refunds"), and made clear that the latter statute, "the general claims statute," applies in tax cases. 200 Ariz. 515, 517 & n.4, 520–22 (2001).

Applying the general notice-of-claim statute where tax law imposes its own specific, distinct, and often more stringent requirements would violate "the ancient interpretive principle that the specific governs the general." *Nitro-Lift Techs., L.L.C. v. Howard*, 568 U.S. 17, 21 (2012). It would also set a dangerous and destabilizing precedent of importing requirements from non-tax statutes that were never meant to govern tax disputes. The general notice-of-claim procedures in Section 12-821.01 simply do not contemplate tax refund claims like Plaintiff's, and thus, the applicable standards are instead found in Title 42's procedures for refund actions.

Finally, contrary to the District's warning, granting Plaintiff's refund claim would not "result in the Tax being rescinded for each of the County's taxpayers, *amounting to millions of dollars*." MTD at 6. Only Plaintiff is bringing this refund action, and any other Yuma taxpayer who wanted to bring a similar action would have to follow Title 42's requirements, including a one-year time bar. To be sure, this Court's decision may serve as instructive authority on whether Defendants can lawfully collect this tax (or impose similar taxes) on others in the future. But that happens every time a court interprets a tax law; this does not transform every tax controversy into a damages suit subject to Section 12-821.01.

B. Even if Section 12-821.01 applied to refund actions, it would not bar declaratory relief.

In general, Section 12-821.01 does not apply to claims for equitable relief. *Martineau v. Maricopa Cnty.*, 207 Ariz. 332, 337 ¶ 25 (App. 2004). "The statute applies only when monetary damages are sought—it does not apply to claims for declaratory or injunctive relief." *UMB Bank, NA v. Parkview Sch., Inc.*, 254 Ariz. 383, 386 ¶ 15 (App. 2023). Thus, even if Section 12-821.01 did bar Count One (seeking a refund of tax Plaintiff has already paid), it would not bar Count Two (seeking a declaration that the tax was unlawfully imposed).

The District argues that Section 12-821.01 *does* apply to Plaintiff's claim for declaratory relief, citing the exception that "if a claim for declaratory or injunctive relief is merely a predicate to a damages claim, the notice of claim statute still applies." *Id.* But Plaintiff's declaratory relief claim is not a "predicate to a damages claim"; it merely seeks a *prospective* declaration regarding the Tax's validity, and by itself it would not entitle him—or any other Yuma taxpayer—to a cent from Defendants.

Arpaio v. Maricopa County Board of Supervisors (not a tax case) is inapposite. 225 Ariz. 358 (App. 2010). There, Maricopa County officials sued the County Board of Supervisors over a "one-time transfer" of $24 million in county funds to the state, but never filed a notice of claim. *Id*. at 361 ¶ 9. At the time of appeal, "[t]he funds at issue [were] no longer within the [c]ounty's control; they [were] irretrievable." *Id.* at 361 ¶ 8. Insofar as the challengers asked the court to order the board to "reinstate" or "replenish[]" the transferred funds, the Court of Appeals found that this relief was "the equivalent of a damages claim," and would have required a notice of claim. *Id.* at 362 ¶ 12.

Here, in contrast, Plaintiff's request is genuinely prospective. It would not require Defendants to return any funds; it would simply establish whether Defendants may lawfully collect *additional* taxes in the future without first obtaining voter approval.

The District, citing *Martineau*, 207 Ariz. at 336, suggests that Section 12-821.01 applies to any "claims which will affect a public entity's financial planning and budgeting." MTD at 4 (quotation marks omitted, alterations adopted). But *Martineau* simply observed that the *purposes* of Section 12-821.01 were "to allow the public entity to investigate and assess liability, to permit the possibility of settlement prior to litigation, and to assist the public entity in financial planning and budgeting." 207 Ariz. at 335–36 ¶ 19. It did not hold that a lawsuit that might conceivably affect a public entity's "financial planning and budgeting," *id.*, is subject to notice-of-claim requirements.

Indeed, declaratory judgments always have *some* effect on the parties, including indirect financial effects. They are not simply a restatement of the law in the abstract; they are "designed to afford security and relief against uncertainty with a view to avoiding

litigation and to settle rights." *Ariz. St. Bd. of Directors for Junior Coll. v. Phoenix Union High Sch. Dist.*, 102 Ariz. 69, 73 (1967); *cf. Kondaur Capital Corp. v. Pinal Cnty.*, 235 Ariz. 189, 193 ¶ 8 (App. 2014) ("It is not an appellate court's function to declare principles of law which cannot have any practical effect in settling the rights of litigants." (citation omitted)). But if a plaintiff had to satisfy Section 12-821.01 whenever declaratory relief might indirectly lead to additional costs for a government entity, then the exception would swallow the rule, and virtually *every* claim for equitable relief would require a notice of claim—contrary to *Martineau* and *UMB Bank*.

Here, declaratory relief would clarify whether the County can collect future installments of the Tax as they come due, and whether Defendants can impose additional taxes (as they have done for three years running) without voter approval. But such relief by itself would not entitle Plaintiff to any money from the County, the District, or any other governmental entity. Thus, it is not a "predicate to a damages claim," *UMB Bank*, 254 Ariz. at 386 ¶ 15, and Section 12-821.01 does not apply.

CONCLUSION

For the foregoing reasons, the Court should deny the Motion to Dismiss, grant Plaintiff's Cross-Motion for Summary Judgment, and enter judgment in Plaintiff's favor on all claims.

RESPECTFULLY SUBMITTED this 1st day of April, 2024.

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CERTIFICATE OF SERVICE

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