

Solar City v. Arizona Department of Revenue

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The essentials

- A recent court decision found that leased rooftop solar equipment is subject to valuation by county assessors
- Residential and commercial owners of rooftop solar will likely be assessed and taxed for the real added value of their leased rooftop solar.
- The lawsuit is currently going through the appellate phase. Neither party has filed an appeal yet.

Plaintiffs, SolarCity and Sunrun, Inc. filed suit against the Arizona Department of Revenue (“ADOR”) on June 30, 2014, after ADOR’s decision to tax leased rooftop solar panels.¹ Plaintiffs claimed the taxes would reduce demand for leased rooftop solar and violate state statutes that exempted rooftop solar. Plaintiffs moved for summary judgment, and ADOR cross-motivated for summary judgment. Below is a summary of the arguments for both sides and the [order](#) handed down by the court.

Plaintiffs’ Arguments:

Plaintiffs argued ADOR cannot assess leased rooftop solar equipment under [A.R.S. § 42-14151\(B\)](#) because leased rooftop solar cannot be treated as an electric generation facility. Electric generation facilities are centrally assessed by ADOR under [A.R.S. § 42-14155\(B\)](#). Plaintiffs argued that the leasing companies are not an electric generation facility, and therefore, ADOR cannot assess the added value of rooftop solar. Instead a local assessment is made by the county subject to [A.R.S. § 11054\(C\)\(2\)](#), which declares that the value added by leased rooftop solar is zero:

“Solar energy devices . . . grid-tied photovoltaic systems and any other device or system designed for the production of solar

¹ Ryan Randazzo, *Solar Companies Sue to Stop Property Taxes on Leased Rooftop Panels*, ARIZONA REPUBLIC (June 30, 2014), <http://www.azcentral.com/story/money/business/2014/06/30/solar-companies-sue-stop-property-taxes-leased-rooftop-panels/11806043/?from=global&sessionKey=&autologin=>

energy primarily for on-site consumption are considered to have no value and to add no value to the property on which such device or system is installed.”²

Therefore, a local assessment by the county would show no increase in value to the property and the property tax would not be affected by the addition of leased rooftop solar.

Defendant’s Arguments:

ADOR claims that because residential solar units are most often leased, the companies that lease the panels act as a utility company, or rather, an electric generation facility.³ This would allow ADOR to centrally value the leased rooftop solar at 20 percent of depreciated cost under [A.R.S. § 42-14151\(B\)](#).

ADOR’s cross motion for summary judgment asked the court to declare [A.R.S. § 42-11054\(C\)\(2\)](#), which valued leased solar at zero, unconstitutional. In the event the court required local assessment by the county, county assessors would be required to assess the true added value of leased rooftop solar.

Court’s Holding:

a.) Solar Leasing Companies are not an electric generation facility under A.R.S. § 42-14151(B)

The court sided with the Plaintiffs regarding whether leasing companies were electric generating units. The court held,

“The logic required to apply this definition to Plaintiffs, or to the individual lessees or owners, is tortured. Even if the utility is considered the “customer” for the electricity, the system owners do not deliver it to the utility through the transmission and distribution network; instead, they transfer the electricity to the meter, where the utility receives it and begins to deliver it to its customers through its own transmission and distribution network.”⁴

² Ariz. Rev. Stat. § 11054(C)(2) (2015).

³ Randozo, *supra* note 1.

⁴ *SolarCity Corp., et al. v. Ariz. Dept. of Rev.*, TX 2014-000129, 1, 1 (June 1, 2015), <http://www.courtminutes.maricopa.gov/docs/Tax/062015/m6855833.pdf>.

“Thus, these solar devices are not within the category of “solar generation facility” to be centrally valued by the Department.”⁵

This means that ADOR cannot centrally value the property at 20 percent of depreciated cost. Instead, the property “is subject to valuation by the county assessors according to the general rule of A.R.S. § 42-13051.”⁶ This requires county assessors to identify all real property subject to taxation by December 15 each year, and to “determine the full cash value of all such property as of January 1.”⁷

b.) A.R.S. § 42-11054(C)(2) violates the Arizona Constitution’s Uniformity Clause

The court sided with ADOR when determining whether the valuation of solar panels in A.R.S. § 42-11054(C)(2) violated Arizona’s constitution. The court held,

“Valuation is distinct from classification, and is normally left to the department and the county assessors . . . The legislature may choose not to tax certain kinds of property, but may not exempt otherwise taxable property from taxation.”⁸

“Section 11054(C)(2) accomplishes its result, not by directly excluding the value added by qualified solar devices from taxation, but by declaring such value to be zero. This is a distinction without a difference: whether no tax is assessed or a tax is assessed on a value of zero, the result is zero tax. The very existence of § 11054(C)(2) presupposes the legislature’s understanding that, but for it, the increased value would be taxable under either § 14155 or the general taxation statutes. It therefore constitutes a prohibited exemption.”⁹

Additionally, because the statute applied to solar units used “primarily for onsite consumption,” it violated the Uniformity clause of the constitution. The court held, “Similar property used in the same industry for the same

⁵ *Id.*

⁶ *SolarCity Corp., et al. v. Ariz. Dept. of Rev.*, TX 2014-000129, 1, 1 (Oct. 19, 2015), <http://www.courtminutes.maricopa.gov/docs/Tax/102015/m7064009.pdf>

⁷ Ariz. Rev. Stat. § 42-13051(A), (B)(2) (2015).

⁸ *SolarCity supra* note 4, at 2

⁹ *Id.*

purpose may not be taxed differently based on characteristics of its owner such as his size, wealth, or location.”

Overview of Property Taxation in Arizona

The court decision shifts the taxation authority over leased solar panels from ADOR to the county. In general, ADOR and county assessor’s office divide the duties of valuing property for tax purposes in Arizona. “The ADOR values utilities, airlines, railroads, mines and other geographically dispersed properties often located in more than one county.”¹⁰ The county assessor values the locally assessed properties and business personal property. County assessors use ADOR standards and manuals, and the Arizona Revised Statutes when assessing properties.

“Equipment owned by a taxable leasing company and leased to an exempt entity, including governments and exempt schools, is not exempt.”¹¹ Leased solar panels on government properties are likely not exempt from taxation, and are based on the status of the owners of the equipment, the leasing company.

Conclusion

The court held that ADOR could not centrally assess the value of leased solar panels, but also ruled that local county assessor could not assess the added value of leased solar at zero.

For now, this ruling suggests that residential and commercial owners of rooftop solar will likely be assessed and taxed for the real added value of their leased rooftop solar. Additionally, leasing companies will be taxed for the value of their equipment, even if on government property. No timeline has been given for this action. The Maricopa County Assessor’s office said they were not currently valuing the panels.

On December 18, 2015, ADOR filed a notice of appeal with the Arizona Court of Appeals. The docket number is 1 CA-TX 15-0008. This brief will be updated after the Court of Appeals’ decision.

¹⁰ MARICOPA COUNTY DEPARTMENT OF FINANCE, OVERVIEW OF ARIZONA STATE PROPERTY TAX SYSTEM IN MARICOPA COUNTY 1 (2013), <https://www.maricopa.gov/Finance/PDF/Tax/PropertyTaxOverview%2010222013.pdf>

¹¹ ARIZONA DEPARTMENT OF REVENUE, 2014 PERSONAL PROPERTY MANUAL 2.28 (2014), <https://www.azdor.gov/Portals/0/Brochure/AZ-Personal-property-Manual.pdf>.

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County Assessor Websites:

Cochise County - <https://www.cochise.az.gov/assessor/home>
Coconino County - <http://www.coconino.az.gov/assessor.aspx?id=9902>
Gila County - <http://www.gilacountyaz.gov/government/assessor/>
Graham County - <http://www.graham.az.gov/county-assessor-2/>
Greenlee County - <http://www.co.greenlee.az.us/assessor/>
La Paz County - <http://www.co.la-paz.az.us/assessor.html>
Maricopa County - <http://mccassessor.maricopa.gov/>
Mohave County - www.co.mohave.az.us/ContentPage.aspx?id=111
Navajo County - <http://www.navajocountyaz.gov/Departments/Assessor>
Pima County - <http://www.asr.pima.gov/>
Pinal County - <http://www.pinalcountyaz.gov/Assessor/Pages/home.aspx>
Santa Cruz County - <http://www.santacruzcountyaz.gov/180/Assessor>
Yavapai County - <http://www.yavapai.us/assessor/>
Yuma County - <http://assessor.yumacountyaz.gov/assessor/web/>