

## ***SolarCity Corporation v. Arizona Department of Revenue***

**Citation:** CV-17-0231-PR, 2018 WL 1354069 (Ariz. 2018).

**Date Filed:** March 16, 2018

**Author:** Justice Timmer

**Joined by:** Chief Justice Bales, Vice Chief Justice Brutinel, Justices Pelander, Bolick, Gould, and Lopez.

**Facts:** SolarCity is in the business of leasing solar panels to property owners. Property owners generate power for their homes and businesses with the panels located on their property. Because the solar panels can harness more energy than is needed to power a particular property, any excess energy can be transferred to utility companies' power grids. The utility companies enter into agreements with these property owners, giving them a credit for the retail value of any extra energy generated.

In the years leading up to this lawsuit, no taxing authority attempted to value or tax SolarCity's solar panels. In 2015, the Arizona Department of Revenue (ADOR) valued the panels and notified SolarCity that it would be taxed on them.

**Procedural history:** The case is currently before the Arizona Supreme Court. SolarCity sued ADOR in tax court, seeking a declaratory judgment that:

- (1) its solar panels have no value under section 42-11054(C)(2) of the Arizona Revised Statutes and thus cannot be assessed property tax, and
- (2) sections 42-14151 and 42-14155 do not give ADOR the power to value the panels, because they are not "renewable energy equipment"<sup>1</sup> used to operate an "electric generation facility."<sup>2</sup>

ADOR argued that:

- (1) it did properly value the solar panels and
- (2) even if it did not, section 42-11054(C)(2), assigning the panels "zero value,"<sup>3</sup> violated both the Exemptions Clause and Uniformity Clause of the Arizona Constitution.

On cross-motions for summary judgment, the tax court held that the solar panels are "general property."<sup>4</sup> Thus, it is not ADOR's responsibility to value the leased solar panels. Rather, the county is responsible for valuing the panels under section 42-13051(A). The tax court also held that section 42-11054(C)(2) violated both the Exemptions Clause and the Uniformity Clause.

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<sup>1</sup> ARIZ. REV. STAT. ANN. § 42-14155(A) (2018).

<sup>2</sup> *Id.* § 42-14151(A).

<sup>3</sup> *Id.* § 42-11054(C)(2).

<sup>4</sup> *SolarCity Corp. v. Ariz. Dep't of Revenue*, No. CV-17-0231-PR, 2018 WL 1354069, at \*2 (Ariz. Mar. 16, 2018).

The court of appeals affirmed in part and reversed in part. The court affirmed the tax court's holding that sections 42-14151 and 42-14155 do not authorize ADOR to value the solar panels. But, the court held that ADOR, not the counties, has the power to value the panels under sections 42-11054(A) and 42-11054(C)(2). The court reasoned that because section 42-11054(A) requires ADOR to set forth appraisal guidelines and section 42-11054(C)(2) deems the panels to have no value, ADOR must both value the panels and assign them a value of zero.

**Issues:**

1. Under Arizona law, ADOR is authorized to value property used “to operate an electric generation facility.”<sup>5</sup> SolarCity leased solar panels to its customers, who used the panels to generate electric for themselves. In so doing, is SolarCity operating an electric generation facility?
2. Arizona law prescribes a valuation method for county assessors to use when valuing business personal property. SolarCity leases solar panels to its customers for profit. Does section 42-13054 give counties the authority to value SolarCity's leased solar panels?
3. Under Arizona law “solar energy devices” and “any other device or system designed for the production of solar energy primarily for on-site consumption” have no value for property tax purposes.<sup>6</sup> SolarCity leased solar panels to its customers, who used the panels to generate electric for themselves. Are SolarCity's panels solar energy devices with zero value for purposes of section 42-11054(C)(2)?

**Holding:**

1. No, because SolarCity's is not operating an electric generation facility, ADOR is not authorized to value the solar panels SolarCity leases to its customers.
2. The court held that because SolarCity leases its solar panels to make a profit, the panels are business personal property. The court did not hold on the issue of whether section 42-13054 authorizes counties to value the panels.
3. The court did not hold on this issue.

**Disposition:** The tax court's judgment is **AFFIRMED** to the extent it holds that ADOR is not authorized to value SolarCity's solar panels.

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<sup>5</sup> § 42-14151(A).

<sup>6</sup> § 42-11054(C)(2).

The remainder of the tax court’s judgment is REVERSED and REMANDED to answer whether (1) the county is authorized to value the panels, and (2) section 42-11054(C)(2)’s zero-value provision violates the Exemptions Clause and Uniformity Clause of the Arizona Constitution.

The opinion of the court of appeals is VACATED.

**Rule:** ADOR does not have authority under section 42-14151(A) to value the solar panels of a business that leases them to its customers who use the panels to generate electricity themselves.

**Reasoning:**

- **ADOR’s Authority to Value the Solar Panels.**

1. **A.R.S. §§ 42-14151 and 42-14155.**

- The court began by citing ADOR’s statutory authority to value property used “to operate an electric generation facility” under section 42-15141(A).<sup>7</sup> If the energy generated is “not intended for self-consumption,” the property is classified as “renewable energy equipment,” taxed under the method provided in section 42-14155(A).<sup>8</sup>
- The court held that SolarCity is not operating an electric generation facility.<sup>9</sup> The court reasoned that SolarCity does not itself have a facility that generates electric from solar energy.<sup>10</sup> Further, SolarCity does not deliver electric to its customers.<sup>11</sup> The customers generate their own power with SolarCity’s panels.<sup>12</sup>
- Because SolarCity is not operating an electric generation facility, the court held that ADOR does not have authority to value the panels under section 42-15141(A).<sup>13</sup> As a result, the court also held that section 42-15155(A)’s valuation methods also do not apply.<sup>14</sup>

2. **A.R.S. § 42-11054.**

- The court held that section 42-11054(A) does not authorize ADOR to value SolarCity’s solar panels.<sup>15</sup> This section “charges ADOR with prescribing guidelines” for valuing property.<sup>16</sup> The court held that this language does not

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<sup>7</sup> § 42-14151(A).

<sup>8</sup> § 42-14155(A).

<sup>9</sup> *SolarCity*, 2018 WL 1354069, at \*3.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> ARIZ. REV. STAT. ANN. § 42-11054(A) (2018).

authorize ADOR to value property.<sup>17</sup> The statute only calls for ADOR to prescribe “standard appraisal *methods and techniques*.”<sup>18</sup> Moreover, the court noted that the statute states that both ADOR and county assessors must use these methods when valuing property.<sup>19</sup> Thus, the court held that section 42-11054 neither applies only to ADOR nor grants ADOR the power to value any property.<sup>20</sup>

- **County Assessors’ Authority to Value Solar Panels.**

- 1. Valuation as real property.**

- The court held that the county assessor does not have authority under 42-13051(A) to value the solar panels.<sup>21</sup> This statute requires county assessors to value real property,<sup>22</sup> and the court held that the leased solar panels are not real property.<sup>23</sup> The court, equating “real property” with “real estate,” found that the solar panels are not real estate in the form of either land, mines, or fixtures.<sup>24</sup> Thus, the court held they are personal property, and section 42-13051(A) does not apply.<sup>25</sup>

- 2. Valuation as personal property.**

- ADOR argued that county assessors have the power to value the panels as business personal property under section 42-13054.<sup>26</sup> ADOR argued that section 42-11054(C)(2)’s zero-value provision is inapplicable because section 42-13054(A) prescribes its own valuation methods.<sup>27</sup>
- The court held that the solar panels are business personal property,<sup>28</sup> but did not decide whether the county has authority to value the solar panels under section 42-13054.<sup>29</sup> The court also did not decide whether section 42-11054(C)(2) applies, which would give the solar panels zero value.<sup>30</sup> Finally, the court did not decide whether section 42-11054(C)(2) violates either the Exemptions Clause or Uniformity Clause of the Arizona Constitution.<sup>31</sup>

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<sup>17</sup> *SolarCity*, 2018 WL 1354069, at \*3.

<sup>18</sup> § 42-11054(A) (emphasis added).

<sup>19</sup> *SolarCity*, 2018 WL 1354069, at \*3.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> ARIZ. REV. STAT. ANN. § 42-13051(A) (2018).

<sup>23</sup> *SolarCity*, 2018 WL 1354069, at \*3.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at \*4.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

- The court remanded these issues to the tax court, reasoning that neither lower court has decided the issues “as now framed.”<sup>32</sup> Moreover, because the court held that ADOR lacks authority to value and tax the leased solar panels, the counties now have a “substantial interest” in the case and can join on remand.<sup>33</sup>

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.*