

## ***BSI Holdings, LLC v. Arizona Department of Transportation***

**Full Citation:** BSI Holdings, LLC v. Ariz. Dep't of Transp., 417 P.3d 782 (Ariz. 2018).

**Date Filed:** May 24, 2018

**Opinion's Author:** Justice Bolick

**Joined By:** Chief Justice Bales, Vice Chief Justice Brutinel, and Justices Pelander, Timmer, Gould, and Lopez.

*Practitioners: For quick reference, please see the "Issue" and "Holding" sections.*

**Facts:** BSI Holdings ("BSI"), an Oregon limited liability company, was formed to purchase, operate, and maintain a jet used by Richard Burke (Arizona resident and BSI member) and his family for personal purposes.

In 2004, BSI and the Arizona Department of Transportation ("ADOT") agreed that BSI would pay a nonresident tax rate (according to Arizona Revised Statute section 28-8336) for the years 2005 through 2012. This nonresident tax rate applied to aircraft based in Arizona for more than ninety but fewer than 210 days per year.

ADOT conducted a subsequent audit and concluded that, because the jet was based in Arizona for more than 210 days in each year from 2004 through 2012, BSI was subject to a higher tax rate (according to Arizona Revised Statute section 28-8335). ADOT assessed BSI for \$161,004 and recorded a lien against the jet.

**Procedural History:** The case is before the Arizona Supreme Court. BSI filed a motion in tax court to challenge ADOT's assessment. Both BSI and ADOT filed cross-motions for summary judgment disputing the meaning of the term "day" in A.R.S. section 28-8336. The tax court granted partial summary judgment for BSI, concluding that the term "day" in A.R.S. section 28-8336 was unclear, citing *State ex rel. Arizona Department of Revenue v. Capitol Castings, Inc.*<sup>1</sup> The tax court held that "when statutes' legislative intent cannot be determined, they are to be construed liberally in favor of the taxpayer" and that BSI was entitled to the discounted, nonresident tax rate after clarifying that "day" meant any period of twenty-four hours.<sup>2</sup>

ADOT appealed the judgment, and the court of appeals vacated and remanded judgment.<sup>3</sup> The appeals court advised that the rule that the tax court used to construe the meaning in favor of the taxpayer could only be used if the statute was ambiguous *after* using tools of statutory construction.<sup>4</sup> The appeals court deferred to the agency interpretation of the term "day," concluding that it described any fraction of a day where the aircraft was on the

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<sup>1</sup> 88 P.3d 159, 161 (Ariz. 2004) (en banc).

<sup>2</sup> BSI Holdings, LLC v. Ariz. Dep't of Transp., 417 P.3d 782, 784 (Ariz. 2018) (quoting BSI Holdings, LLC v. Ariz. Dep't of Transp., 023, TX 2014-000444, at 2 (Ariz. Tax Ct. Oct. 29, 2015)).

<sup>3</sup> BSI Holdings, LLC v. Ariz. Dep't of Transp. 399 P.3d 696, 701 (Ariz. Ct. App. 2017).

<sup>4</sup> *Id.* at 699.

ground.<sup>5</sup> The appeals court remanded the case for a decision consistent with the agency's definition of "day."<sup>6</sup>

The Arizona Supreme Court granted review on the statutory construction issue.

**Issue:** Arizona Revised Statute section 28-8336 applies to aircraft "based in [the] state for more than ninety days but less than two hundred ten days" in a year.<sup>7</sup> What is the intended meaning of the term "day" as written in the statute, and how should the statute be construed in its entirety?

**Holding:** The court should count all days (or fractions thereof) when an aircraft is based in the state of Arizona, even if it was not physically present there, for the purposes of Arizona Revised Statute section 28-8336. Days where the aircraft momentarily landed in Arizona, however, should not be counted. The construction of the statute is still incomplete, however, as the tax court needs to determine the meaning of the term "based in" under section 28-8336 to appropriately determine the aircraft in question's status.

**Disposition:** Court of appeals opinion vacated; case remanded to the tax court for determination of the term "based in" and with proceedings consistent with the definition of "days" as discussed in this opinion.

**Rule:** Under Arizona Revised Statute section 28-8336, "day" means any full day or fraction of a day when an aircraft is based in the state of Arizona, even if the aircraft was not physically present in the state on that day or fraction of a day. Momentarily landing in Arizona does not constitute a day under section 28-8336 if the aircraft was not based in Arizona on that day.

**Reasoning:**

- **The word "day" has no fixed meaning, although it is a commonly-used word.** The term is used to reference full twenty-four hour days (e.g. the first hundred days of a presidential administration), to differentiate between days and nights (e.g. forty days and forty nights), and to refer to fractions of a twenty-four hours period (e.g. working five days a week).<sup>8</sup> The listener is forced to discern the meaning of the term based on the context in which it is used. Both legal and ordinary dictionaries reflect the divergent meanings of the term, and therefore do not support a finding one way or another.<sup>9</sup>

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<sup>5</sup> *Id.* at 698.

<sup>6</sup> *Id.* at 700.

<sup>7</sup> ARIZ. REV. STAT. ANN. § 28-8336 (2018).

<sup>8</sup> *BSI Holdings*, 417 P.3d at 785.

<sup>9</sup> *Id.*

- **Common law definition of “day” as any fraction of a day, as argued by ADOT, is unpersuasive in this case.** The common law definition involves terms of days, such as statutes of limitation (where the days as defined are typically consecutive), and does not necessarily apply to taxation statutes (which don’t always involve a term of consecutive days).<sup>10</sup>
- **Agency deference to interpretation is inappropriate for the term “day.”** Agencies are afforded deference when their expertise allows them to define a relatively technical term, and “[t]he term [in this case] is not a technical one requiring expertise to construe it.”<sup>11</sup> Furthermore, ADOT has promulgated rules in other contexts defining “day” as full twenty-four hour periods, contrary to their argument in this case.<sup>12</sup>
- **When interpreting statutory terms, those terms must be interpreted in their overall context, not in isolation.** In this case, the term “day” is used in conjunction with the phrase “based in” to identify aircraft which are based in Arizona for a period of days. Because the statutory definition of the term “based in” is unclear, the definition of the other terms “cannot be meaningfully applied without also knowing what ‘based in’ means.”<sup>13</sup> ADOT has said that it determines whether an aircraft is “based in” Arizona using a number of factors but has not explained how those factors are applied.<sup>14</sup> Because “base” might have a technical meaning in the context of this statute, this court cannot make a determination as to the meaning of the term, and therefore the court “cannot fully resolve the case without further proceedings.”<sup>15</sup>

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

<sup>11</sup> *Id.* at 786.

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

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

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

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