



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**DOVE MOUNTAIN HOTELCO, LLC et al. v. ARIZONA
DEPARTMENT OF REVENUE
CV-23-0176-PR
255 Ariz. 324, 531 P.3d 386 (App. 2023)**

PARTIES:

Petitioners: Dove Mountain Hotelco, LLC, dba Ritz-Carlton Dove Mountain Hotel and Spa (“Dove Mountain”) and HSL Cottonwood RC Hotel, LLC

Respondent: Arizona Department of Revenue (“ADOR”)

FACTS:

This case involves Dove Mountain’s appeal from the tax court’s grant of summary judgment in favor of ADOR, in which the court found that Dove Mountain owed transaction privilege tax (“TPT”) on monies it received from the redemption of customer rewards points under a loyalty rewards program.

Dove Mountain is a Marriott International Inc. (“Marriott”) branded hotel that participates in Marriott’s and Ritz-Carlton’s loyalty marketing programs (collectively, the “Rewards Program”). The Rewards Program is available to Marriott hotel guests and is operated and administered by Marriott Rewards LLC. Members of the program earn points by paying for stays at Marriott hotels, using credit cards, and other methods. Points are credited to the member’s Rewards Program account and can be redeemed for lodging at Marriott branded hotels and for other items.

To fund and administer the Rewards Program, participating hotels make payments into the program for paid stays by program members. When a member stays at a Marriott branded hotel, the member earns points for each dollar paid on the amount of the folio (with some exceptions), and the hotel pays the program a percentage of room revenue plus a tax component. The monthly payments Dove Mountain makes to the Rewards Program are determined on a monthly basis. For the tax reporting period at issue in this case, Dove Mountain remitted 4.5% of a member’s hotel lodging costs to the Rewards Program and reported and paid lodging TPT on this amount.

Marriott hotels provide hotel rooms when Rewards Program points are redeemed for lodging. When a program member redeems points for lodging, the Rewards Program remits payment to the participating hotel as determined by a formula. The monthly payments the Rewards Program makes to Dove Mountain are determined on a monthly basis. The formula used to reimburse hotels for participation in the program is adjusted annually so that, for the overall program, payments into the program cover payments out of the program as well as marketing and administrative costs.

All participating hotels pay a set percentage of a member’s lodging receipts into the Reward Program. However, because members choose when and where to use their points, points are not redeemed equally among the hotels. As a result, Marriott hotels that are in less demand for point

redemption stays pay proportionally more into the program and receive less payments from the program. In some months, Dove Mountain pays more money into the program than it receives back from the program. In other months, Dove Mountain receives more money back from the program than it pays into the program.

In May 2016, Dove Mountain filed refund claims with ADOR for lodging TPT that Dove Mountain paid on amounts received from the Rewards Program. ADOR denied Dove Mountain's refund request. Dove Mountain then appealed ADOR's decision to the tax court. The tax court granted summary judgment in favor of ADOR, and Dove Mountain appealed. The court of appeals affirmed in a split opinion.

The majority rejected Dove Mountain's argument that imposing TPT on monies received from the Rewards Program results in double taxation under the principles set forth in *State Tax Commission v. Consumers Market, Inc.*, 87 Ariz. 376 (1960). The majority found *Consumers Market* distinguishable for three reasons. First, unlike *Consumers Market*, no evidence was offered here to support a finding that members' paid hotel stays included a built-in mark-up such that any tax otherwise due on gross receipts from the subsequent "free stays" had already been paid. Second, unlike the retail transaction classification at issue in *Consumers Market*, the tax imposed here falls within the transient lodging classification of A.R.S. § 42-5070. Third, unlike the grocery store chain in *Consumers Market*, Dove Mountain received additional compensation for providing complimentary lodging to members through a rewards program with an "intermediary structure."

The dissent characterized the funds Dove Mountain receives from the Rewards Program as equivalent to post-tax reserves that are held and released by the program for future use. The dissent acknowledged that Dove Mountain's payments into the program cover marketing costs to some extent. However, the dissent did not agree that using part of the post-tax reserves for marketing and administration purposes is sufficient to transmute the remaining part into new, non-post-tax income. According to the dissent, the use of a third-party "intermediary structure" to hold reserves for later distribution does not change the nature and character of the reserves into non-reserves. The dissent also found *Consumers Market* controlling and disagreed with the majority's attempt to factually distinguish it.

ISSUES:

1. Did the Court of Appeals err when it equated post-tax funds reserved to reimburse the hotel for the cost of future awards to be "gross income" under A.R.S. §§ 42-5070 and -5001(4), (7) when the funds were paid to the hotel upon point redemption?
2. Did the Court of Appeals err when it equated Dove Mountain's 4.5% remittance to the Marriott rewards program as a payment for membership to a third-party vendor?
3. Did the Court of Appeals err when it decided that *Consumers Market* did not serve as controlling precedent?

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