

THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN THE ARIZONA TAX COURT

TX 2016-000931

05/11/2018

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT

T. Cooley

Deputy

TRANSWESTERN PIPELINE COMPANY

PAUL J MOONEY

v.

ARIZONA DEPARTMENT OF REVENUE, et al. MACAEN MAHONEY

MINUTE ENTRY

The Court has considered Defendants' Motion for Partial Summary Judgment Regrading Valuation, filed February 20, 2018, Plaintiff's response, filed March 29, 2018 and Defendants' reply, filed April 18, 2018. The Court benefited from oral argument on the motion on May 8, 2018, after which it took the matter under advisement.

This case involves an appeal of the Department's calculation of the full cash value of Plaintiff's property. More precisely, it involves the issue of whether that value was properly error-corrected by the Department for the 2016 and 2017 tax years.

2016 Tax Year Valuation

In June 2015 the Department sent Plaintiff an initial valuation of \$713,430,000 for the 2016 tax year. In large part, that valuation was based upon information provided by the Plaintiff in its report/rendition ("First Rendition"). Pursuant to A.R.S. § 42-14002(B) the parties conferred about that valuation. The Department asked Plaintiff to deduct any "acquisition adjustment" from the information it provided in its First Rendition and to submit a second report/rendition, which it did ("Second Rendition"). After Plaintiff did so, the Department, on August 28, 2015, sent a Notice of Decision setting the full cash value at \$639,690,000. Plaintiff petitioned the State Board of Equalization ("SBOE") for a review of that value. The SBOE affirmed the value at \$639,690,000. The instant appeal followed.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2016-000931

05/11/2018

During discovery in this appeal, Plaintiff produced internal documents and emails, including a spreadsheet listing certain of Plaintiff's assets. After reviewing these disclosures, the Department believed that the Plaintiff had erred in the manner in which it calculated the "Arizona Original Costs" used in its Second Rendition. Accordingly, in January 2017, the Department sent a Notice of Proposed Error Correction which increased the 2016 full cash value from \$639,690,000 to \$743,266,000. Plaintiff appealed that error correction to the SBOE, which affirmed it.

2017 Tax Year Valuation

In June 2016, the Department sent Plaintiff an initial valuation of \$614,375,000 for the 2017 tax year. On August 31, 2016, the Department sent Plaintiff a Notice of Decision retaining a full cash value of \$614,375,000. Plaintiff appealed the Department's value directly to this Court.

After reviewing the same spreadsheet produced during discovery, the Department, believed that the value for tax year 2017 was effected by the same errors in the manner the Plaintiff calculated its "Arizona Original Costs" in its Second Rendition as was the value for tax year 2016. Accordingly, the Department issued Plaintiff a Notice of Proposed Error Correction on January 3, 2017, increasing the 2017 value from \$614,375,000 to \$712,891,000.

Error Correction

"Error" is defined in A.R.S. § 42-16251(3) as "any mistake in assessing or collecting property taxes resulting from:

...

(d) Misreporting or failing to report property if a statutory duty exists to report the property.

(e) Subject to the requirements of § 42-16255, subsection B, a valuation or legal classification that is based on an error that is exclusively factual in nature or due to a specific legal restriction that affects the subject property and that is objectively verifiable without the exercise of discretion, opinion or judgment and that is demonstrated by clear and convincing evidence, such as:

(i) A mistake in the description of the size, use or ownership of land, improvements or personal property.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2016-000931

05/11/2018

(ii) Clerical or typographical errors in reporting or entering data that was used directly to establish valuation.

...

(vi) Any other objectively verifiable error that does not require the exercise of discretion, opinion or judgment.

Error does not include a correction that results from a change in the law as a result of a final nonappealable ruling by a court of competent jurisdiction in a case that does not involve the property for which a correction is claimed.

The Department argues that both A.R.S. § 42-16251(3)(d)(misreporting) and A.R.S. § 42-16251(3)(e)(vi)(objective error) apply in this case.

A.R.S. § 42-16251(3)(d) only applies where the taxpayer is under a statutory duty to report, which Plaintiff is, and fails to report property or misreports it. This subsection does not apply to this case.

Plaintiff reported all of its property to the Department, but, the Department argues, calculated, or computed, the sum of its “Arizona Original Costs” using an incorrect method.¹ The Department admits that the information and data the Plaintiff used in its computation had all been provided to it before it calculated the 2016 value.² It argues that the data had been misapplied by Plaintiff and, only upon investigation after receiving the spreadsheet did the miscalculation become known to it. A.R.S. § 42-16251(3)(d) applies only to misreporting of data or information, not to challenges to the manner in which that information is used or computed. Disagreements about such formulistic calculations cannot be addressed by error correction under A.R.S. § 42-16251(3)(d).

A.R.S. § 42-16251(3)(e)(vi) allows for factual, objectively verifiable errors which are demonstrated by clear and convincing evidence to be corrected. Although the Department makes a good argument that the Plaintiff’s calculation of its “Arizona Original Costs” in its Second

¹ Tellingly, nowhere in the Department’s pleadings do they point to an asset reported by Plaintiff in the litigation spreadsheet but not listed or reported previously.

² Also tellingly, the Department’s appraiser’s work papers, submitted with his affidavit in support of the Department’s motion, use the data Plaintiff submitted in support of the First Rendition and Second Rendition. They do not use any information from the spreadsheet produced during litigation. The data is simply calculated differently.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2016-000931

05/11/2018

Rendition may have been flawed, that argument relies heavily on judgment and opinions by its appraiser, not on objective facts which are factual in nature. Even this good argument is not supported by specific evidence rising to the level of being clear and convincing.

ACCORDINGLY, Defendants' Motion for Partial Summary Judgment Regrading Valuation is denied.