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

TX 2023-000002 09/30/2024

HONORABLE SARA J. AGNE

CLERK OF THE COURT
J. Holguin
Deputy

SUN STREAMS 2 L L C PATRICK DERDENGER

v.

STATE OF ARIZONA DEPARTMENT OF REVENUE KIMBERLY J CYGAN

LISA NEUVILLE
JUDGE AGNE

MINUTE ENTRY

The Court held oral argument on August 2, 2024, regarding Plaintiff's Motion for Summary Judgment, filed March 1, 2024 ("Plaintiff's Motion"), and Defendants' Combined Cross Motion for Summary Judgment and Response to Plaintiff's Motion for Summary Judgment, filed April 2, 2024 ("Cross Motion"), as well as subsequent filings related thereto.

The Court has considered the filings and arguments of the Parties, the relevant authorities and applicable law, as well as the entire record of the case, and—considering all facts and reasonable inferences therefrom in the light most favorable to the non-movants, respectively—hereby finds as follows regarding the Motions.

Plaintiff Sun Streams 2, LLC owns a solar energy generation facility in Maricopa County, Arizona (the "Facility"). (Plaintiff's Statement of Facts in Support of Its Motion for Summary Judgment, filed March 1, 2024 ("PSOF"), at ¶1, *undisputed*.) The Facility includes renewable energy equipment (the "Equipment") subject to valuation under A.R.S. § 42-14155 and identified by the Department as Centrally Valued Property ID number 54-595. (PSOF ¶2, *undisputed*.) Plaintiff began construction of the Equipment in 2020 (PSOF ¶5, *undisputed*.) The Equipment was placed into service on July 1, 2021. (PSOF ¶5, *undisputed*.)

Plaintiff's actual cost to construct the Equipment was $245,293,281. (PSOF ¶¶6, 41–42, *disputed as to the inclusion of development cost*.) This included a final contract price with McCarthy Building Companies, Inc. of $111,885,819; solar modules at an approximate price of $74,016,368; taxes and permit fees of $2,088,751; insurance, environmental and engineering consultants, and substation and interconnection costs of $11,520,692; financing costs of $7,117,677; development costs of $38,475,225; and miscellaneous costs of $188,749. (PSOF ¶¶7–13, *undisputed*.)

Plaintiff has owned the Equipment at all relevant times including the January 1, 2022, and January 1, 2023, valuation dates. (PSOF ¶¶3, 35, *undisputed*.) However, ownership of Sun Streams 2, LLC changed before the Equipment was placed into service on July 1, 2021. (PSOF ¶¶ 5,16, *undisputed*.) In 2021, Sun Rivers 2, LLC sold its 100% membership interest in Sun Streams 2, LLC (the "Membership Interest") to SS2 Partners, LLC ("SS2P"). (PSOF ¶17, *undisputed*.) SS2P paid $340,196,473 (the "Purchase Price") for the Membership Interest. (PSOF ¶¶17, 34, *undisputed*.)

Plaintiff's construction costs were audited and reported as part of SS2P's Consolidated Financial Statements and Independent Auditor's Report For the Period from March 24, 2021 through December 31, 2021. (PSOF ¶14, *disputed as to relevance*.) Plaintiff explains that the difference of the costs reported on Plaintiff's capital expenditures report of $245,293,281 and the total property, plant, and equipment reported in SS2P's audit financial statements of $263,003,000 is because the capital expenditures report is based on cash accounting and the audited financial statements are based on generally accepted accounting principles. (PSOF ¶15, *disputed as to relevance*.)

The Purchase Price was determined using a market value appraisal dated July 1, 2021 (the "Appraisal") prepared by DAI Management Consultants, Inc. ("DAI"). (PSOF ¶18, *undisputed*.) DAI weighed the cost approach and income capitalization approach equally in the Appraisal and used the midpoint of $340,196,473 for its valuation. (PSOF ¶¶20, 26–27, *undisputed*.) The Department determined full cash values of $47,103,000 for tax year 2023 and $45,479,000 for tax year 2024 based on an original cost of $340,196,473. (Defendants' Separate Statement of Facts, filed April 2, 2024 ("DSSOF"), at ¶111, *undisputed*.)

Plaintiff seeks summary judgment finding that the Equipment was erroneously valued for the 2023 and 2024 tax years in excess of the value prescribed in A.R.S. § 42-14155. (Plaintiff's Mot., at 1–2.) Plaintiff requests that the Court find that the Equipment's full cash value is $33,196,000 for 2023 and $32,051,655 for 2024 based on an original cost of $245,293,281. (Plaintiff's Mot., at 17.)

Summary judgment is appropriate if "there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." Ariz. R. Civ. P. 56(a); *General Motors Corp. v. Maricopa Cty.*, 237 Ariz. 337, 339 ¶7 (App. 2015). "The valuation or classification as approved by the appropriate state or county authority is presumed to be correct and lawful." A.R.S. § 42-16212(B).

The Legislature has set forth a statutory method for the valuation of renewable energy and storage equipment. *See* A.R.S. § 42-14155. "The full cash value of renewable energy and storage equipment is twenty percent of the depreciated cost of the equipment. Depreciated cost shall be determined by deducting depreciation from taxable original cost. Depreciation shall not exceed ninety percent of the adjusted original cost." A.R.S. § 42-14155(B).

Taxable original cost is defined as "the original cost reduced by the value of any investment tax credits, production tax credits or cash grants in lieu of investment tax credits applicable to the taxable renewable energy and storage equipment." A.R.S. § 42-14155(D)(6).

The crux of the Parties' dispute is the determination of original cost. (Plaintiff's Mot., at 2, 9; Cross Mot., at 2.) "'Original cost' means the actual cost, without trending, of acquiring or constructing property, including additions, retirements, adjustments and transfers." A.R.S. § 42-14155(D)(4).

"In construing a statute, [the Court] look[s] to the plain language of the statute, giving effect to every word and phrase, and assigning to each word its plain and common meaning." *See Ponderosa Fire Dist. v. Coconino Cty.*, 235 Ariz. 597, 602 ¶24 (App. 2014) (citations omitted). Here, the plain language states that original cost is "the actual cost . . . of acquiring *or* constructing property." A.R.S. § 42-14155(D)(4) (emphasis added).

"[The] meaning of 'original cost' is the cost to the person first devoting the property to service." *SFPP, L.P. v. Ariz. Dep't of Revenue*, 210 Ariz. 151, 155 ¶19 (App. 2005). The issue in *SFPP* was whether "original cost" in A.R.S. § 42-14204 meant the acquisition cost of the partnership interest to the current owner *or* the cost of tangible property to the first person who placed it in service. *Id*. at 152, 154, ¶¶1, 13. Here, SS2P purchased the Membership Interest prior to the Equipment being placed in service. (PSOF ¶16, *undisputed*.) Therefore, *SFPP* does not resolve the issue at hand.

Plaintiff contends that original cost is the construction cost of $245,293,281—not the Purchase Price of $340,196,473 for the Membership Interest. (Plaintiff's Mot., at 2.) Plaintiff contends that using the Purchase Price is incorrect as "Arizona courts are not allowed 'to judicially inject market value concepts into a statutory method of valuation when, as here, the

language of the legislature is to the contrary.'" (Plaintiff's Mot., at 2, 13–14, *citing SFPP*, 210 Ariz. at 156, ¶24.)

Defendants contend that the fact that appraisal techniques may have been used to determine the Purchase Price does not mean that the Purchase Price should not be used as a statutory acquisition cost. (Defendants' Reply, at 3.) Defendants contend that $340,196,473 is the amount an investor paid to acquire the Equipment and also reflects the actual total construction cost—including compensation to the second-stage developer. (Cross Mot., at 2.)

Plaintiff's contentions overlook the plain language in A.R.S. § 42-14155(D)(4) defining "original cost" as "the actual cost . . . of *acquiring or constructing* property." (emphasis added.) The statute does not state that the cost must be determined by the construction costs—rather, the cost can be either acquisition cost *or* construction costs.

Plaintiff contends that the Court should look to A.R.S. § 42-14156(A), which addresses valuation of electrical generation facilities, to determine how "cost" should be established. (Plaintiff's Combined Resp. to Cross-Mot. and Reply, filed May 3, 2024 ("Resp. to Cross Mot."), at 6–9.) In A.R.S. § 42-14156(A)(6)(a), cost is defined as "the cost of constructing the property or acquiring the property in an arm's length transaction." A.R.S. § 42-14156(A)(6)(d) sets forth how to determine cost after an acquisition depending on whether the buyer is in possession of the cost information. Relying on A.R.S. § 42-14156(A), Plaintiff concludes that "original cost" for purposes of A.R.S. § 42-14155(D)(4) "means Sun Streams 2, LLC's actual, out-of-pocket costs to construct of [*sic*] the Equipment." (Resp. to Cross-Mot., at 9.) But again, Plaintiff's conclusion ignores the plain language of A.R.S. § 42-14155.

Here, the Department has used the Purchase Price that SS2P incurred to acquire the Membership Interest. (PSOF ¶¶17, 34, *undisputed*.) As Defendants point out, the Purchase Price is not an estimate but the actual cost incurred in the acquisition. (Cross-Mot., at 15.) *See also Griffith Energy LLC v. Ariz. Dep't of Revenue*, 548 P.3d 358 (Ariz. Tax Ct. 2022) (Taxpayer did not forfeit right to appeal valuation when, in its annual report, taxpayer provided cost information based on the purchase price allocation of a membership interest sale rather than the cost information by vintage year to determine valuation of electric generation facility under A.R.S. § 42-14156.).

THE COURT FINDS that the Department may use the Purchase Price as the original cost for purposes of calculating full cash value of renewable energy equipment to the extent the Purchase Price is allocated to the equipment.

Plaintiff contends that the Purchase Price included tax benefits and future revenue streams in addition to the value of the Equipment. (Resp. to Cross-Mot., at 6 n.4, 10–13.)

Plaintiff contends that the Appraisal identified intangible assets including the interconnection agreement and other project agreements. (Resp. to Cross-Mot., at 11; *see also* PSOF, Exh. G, at A2-7.) The Appraisal states, "DAI believes the pricing in the PPA is not above-market and DAI assigns no incremental intangible value to these agreements beyond that identified in the Cost Segregation Study." (PSOF, Exh. G, 2-2.) Plaintiff contends that this does not mean the agreement has no value but that DAI did not apply an incremental value. (Resp. to Cross-Mot., at 12.)

The Appraisal states that DAI was "to provide an estimate of the Fair Market Value ("FMV") of the Sun Streams II solar project (the "Project"), at utility-scale photovoltaic ("PV") project . . . [that] comprises a single-axis tracker, ground-mounted PV system." (PSOF, Exh. G, at 1-1.)

While Defendants contend that the Appraisal valued only the Equipment, **THE COURT FINDS that** disputed facts remain as to whether the Appraisal valued only the Equipment. (*See* Defendants' Reply, at 7–9; *see also* DSSOF ¶¶76–77 and Response to Defendants' Separate Statement of Facts, filed May 3, 2024, at ¶¶76–77; *see, e.g.,* PSOF, Exh. G at 2-2 ("Approximately 257 acres of land are owned by Project, while the remaining 1,130 acres are controlled under the Land Lease with the Arizona State Land Department."); PSOF Exh. G at 2-6 ("DAI did not identify any other intangible assets, beyond those identified in the Cost Segregation Study . . . ."); PSOF Exh. G at 7-3 (IRC § 1060 Purchase Price Allocation).)

IT IS ORDERED granting in part Defendants' Cross Motion for Summary Judgment, filed April 2, 2024, as to the use of the Purchase Price as the original cost for purposes of calculating full cash value of renewable energy equipment to the extent the Purchase Price is allocated to the Equipment.

IT IS FURTHER ORDERED denying in part Defendants' Cross Motion for Summary Judgment, filed April 2, 2024, as to the amount of the Purchase Price allocated to the Equipment and the resulting calculation of full cash value.

IT IS FURTHER ORDERED denying Plaintiff's Motion for Summary Judgment, filed March 1, 2024.