Clerk of the Superior Court
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THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN THE ARIZONA TAX COURT

TX 2021-000517 09/12/2022

HONORABLE SARA J. AGNE

CLERK OF THE COURT
J. Holguin
Deputy

GRIFFITH ENERGY L L C PAUL J MOONEY

v.

ARIZONA DEPARTMENT OF REVENUE LISA A NEUVILLE

JUDGE AGNE

UNDER ADVISEMENT RULING

The Court held oral argument on August 12, 2022, regarding Defendants Arizona Department of Revenue and Mohave County's Motion for Summary Judgment filed February 4, 2022 ("Department's Motion"), and Plaintiff Griffith Energy, LLC's Cross-Motion for Partial Summary Judgment on Defendants/Counterclaimants' Counterclaim filed March 31, 2022 ("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 Motion and Cross-Motion.

Griffith Energy, LLC ("Griffith") owns an electric power generation facility in Mohave County (the "Subject Property") that was first valued in tax year 2003. (*See* DSOF filed February 4, 2022, at ¶¶1,2, *materially undisputed.*) This case concerns the Department's valuation of the Subject Property for tax year 2022. (Compl., filed December 14, 2021, at 2.) Valuation of electric generation facilities in Arizona is governed by the formulas set out in A.R.S. § 42-14156(A), which defines "cost" for purposes of those formulas in A.R.S. § 42-14156(A)(6).

There, "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)(a). The Department asserts

without support that a purchase price allocation—as it contends Griffith engaged in here—is not an arm's length transaction (Resp. to Cross-Motion, filed April 19, 2022, at 10 n.2).

While the Parties devoted some time to their respective arguments on whether Griffith reported its costs correctly pursuant to A.R.S. § 42-14156(A)(6), the Court has found below that Griffith filed its annual report for tax year 2022 and therefore did not forfeit its right to appeal the valuation pursuant to A.R.S. § 42-14152. The Court's findings herein are not dependent on a determination as to whether Griffith calculated its costs correctly under the statute. Griffith has not filed a motion for summary judgment on that issue.

Each year owners of electric generation facilities must file "a report with the department, under oath, stating the information that the department requires to enable it to make a valuation of the property." A.R.S. § 42-14152(A). Griffith filed Form 82050 for tax year 2022 as if the property had been acquired in 2020. (DSOF ¶¶15, 17, *materially undisputed.*)

The Department then notified Griffith of its position that Griffith had not complied with the reporting requirements. (DSOF ¶19, *materially undisputed*.) Griffith did not provide all of the cost data requested by the Department but asserts that it did not possess the requested information. (DSOF ¶20; Resp. to DSOF filed March 31, 2022, at ¶20.)

The Department asserts that Griffith did not provide the cost information by vintage year, and as a result, the Department could not apply the statutory formulation in A.R.S. § 42-14156—it contends it did not have "the information that the department requires to enable it to make a valuation of the property." (*See* Mot., at 5); *see also* A.R.S. § 42-14152(A). Thus, the Department valued the Subject Property for tax year 2022 at 105% of the tax year 2021 value. (*See* DSOF ¶22, *materially undisputed as to that fact*.)

Griffith filed its Complaint in this action based on its allegations that the full cash value set by the Department exceeds the Subject Property's fair market value. (Compl., at 2-3.) The Department filed a counterclaim seeking a declaration that Griffith failed to timely file its annual report and therefore, forfeited its right to appeal the Department's valuation. (Countercl., filed Jan. 10, 2022, at 4–5.)

Defendants seek summary judgment determining that Griffith improperly reported its cost information based on an allocation of the purchase price of Griffith's membership interests, declaring that Griffith failed to satisfy its statutory obligation to file an annual report, declaring that Griffith therefore forfeited its right to appeal the Department's valuation, and dismissing Griffith's complaint for tax year 2022 with prejudice. (Mot., at 12-13.)

The Department relies on A.R.S. § 42-14152(D) to contend that Griffith forfeited its right to appeal the valuation in this matter. *See id*. ("If the report is not filed by May 20 of the valuation year, the company forfeits its right to appeal the valuation and classification pursuant to § 42-14005.").

The Department supplies Form 82050 to taxpayers in order to obtain the information required to value the property. (*See* A.R.S. § 42-14152(A); *see also* DSOF, Exh. A, at its Exh. 6.) Griffith filed the form by April 1, 2021. (DSOF, Exh. A, at its Exh. 6, at 15 of 18; *see also* PSOF ¶31, *undisputed* that Griffith sent in an annual report form timely; DSOF ¶15, *materially undisputed*.) However, the Department asserts that Griffith failed to report its costs by vintage year for tax year 2022 and that the Department needed such costs to apply the statutory valuation formula. (Mot., at 5.)

Griffith provided cost information based on the purchase price allocation of the 2020 membership interest sale of Griffith. (PSOF ¶¶32-33, *materially undisputed as to this fact*; DSOF ¶17, *materially undisputed*.) Historically, Griffith had filed annual reports for previous tax years 2007, 2012, and 2021 based on the purchase price allocation of the sales in 2006, 2011, 2020. (*See* PSOF ¶¶3–13, 32–35.)

Other cases involving the valuation of other electric power generation facilities support Griffith's position. In *Arizona Dep't of Revenue v. Mesquite* (TX2015-000095), involving tax years 2016 and 2017, the Tax Court observed that ArcLight had "purchased all ownership, membership and other interests in Mesquite in 2015." (PSOF, Exh. J, at 1.)

There, the Court ultimately found "that ADOR correctly utilized A.R.S. § 42-14156(A)(6)(d)(i) for calculating the cost factors subject to the statutory formula." (PSOF, Exh. J, at 3.) That clause of the statute—like its counterpart, A.R.S. § 42-14156(A)(6)(d)(ii)—applies only when a facility is acquired from another taxpayer. In fact, clause (i) applies "if, after the acquisition, the buyer has possession of the cost information," and clause (ii) applies if the opposite scenario, when "the buyer does not possess the cost information." A.R.S. § 42-14156(A)(6)(d)(i), (ii).

Here, Griffith is in the latter scenario, in that it does not possess the cost information after all of its membership interests were acquired by another taxpayer in an arm's length transaction. (*See* PSOF ¶¶13, 15-18; A.R.S. § 42-14156(A)(6)(d)(ii).) The Department does not actually dispute these statements of fact by Griffith; instead, the Department disputes whether Griffith did enough "to see if anyone at ArcLight or its agents had the relevant information." (*See* Resp. to PSOF filed April 19, 2022, at ¶8.)

The Department cites no statute or case law requiring an arm's-length acquirer to take certain steps to investigate or discern cost information from the records of its predecessor in interest in order to satisfy A.R.S. § 42-14152(A) reporting requirements. Reading in such a requirement would render clause (ii) of A.R.S. § 42-14156(A)(6)(d) plainly superfluous. *See Fann v. State*, 251 Ariz. 425, 434 (2021) ("We also avoid interpreting a statute in a way that renders portions superfluous.").

The Department disputes that an acquisition of all of Griffith's membership interests can mean that the electric generation facility was "acquired from another taxpayer," and asserts that the taxpayer here remains Griffith—despite the acquisition noted in PSOF ¶¶11-12. (Resp. to PSOF, at ¶6.) At argument in this and the companion case heard the same day (TX2021-000516), the Department urged the Court to review *Sun Devil Power Holdings, LLC v. ADOR*, 240 Ariz. 339, 341 (App. 2016), for the proposition that an LLC can be a taxpayer for property tax purposes, so the Court should find that Griffith remains the LLC taxpayer here.

The Court does not find that case instructive, however, on the issue of whether an arm's length acquisition of all of the membership interests of an LLC means the identity of the taxpayer has changed, notwithstanding the LLC's name remains the same. *Sun Devil Power Holdings, LLC,* nowhere addresses that particular issue, but in that case, too, the Department was found to be attempting to insert "into the statute a restriction that its plain language does not provide." *Id.* at 344.

Thus, based on the plain statutory language here, the Court cannot conclude that Griffith forfeited its right to appeal the valuation by filing a report that the Department disagrees with. *See* A.R.S. § 42-14152(A) ("each company that is valued pursuant to this article shall file a report with the department, under oath, stating the information that the department requires to enable it to make a valuation of the property"); *see also* A.R.S. § 42-14156(A)(6)(d).

Here it is undisputed that Griffith filed a report and acted consistently with how it included costs in its previous reports and prior Tax Court rulings involving sales of membership interests in the LLC. (DSOF ¶¶15, 17, *materially undisputed*).

The Department essentially argues that a taxpayer could supply 'garbage' information and still comply with the statute under Griffith's position. (Resp. to Cross-Motion filed April 19, 2022, at 10). Yet, Griffith did not provide 'garbage' information, but information based on its calculated costs as permitted by A.R.S. § 42-14156(A)(6)(d)(ii). If Griffith had provided 'garbage' information on the form, perhaps the Court would come to a different conclusion. Here, though **THE COURT FINDS** that Griffith filed its annual report for tax year 2022 and did not forfeit its right to appeal the valuation pursuant to A.R.S. § 42-14152.

Further plain language of the statutes supports this conclusion. A.R.S. § 42-14152(D) states that the taxpayer forfeits its right of appeal *only* "[i]f the report is not filed by May 20 of the valuation year." There is no reference to the Department needing to agree or disagree with the report. The Court's conclusion is also consistent with the doctrine that tax statutes are to be interpreted liberally in favor of the taxpayer and strictly against the government. *See Wilderness World, Inc. v. ADOR*, 182 Ariz. 196, 199 (1995). Therefore, given the foregoing discussion,

IT IS ORDERED denying Defendants/Counterclaimants' Motion for Summary Judgment.

Griffith seeks summary judgment on the Department's counterclaim. The Department's counterclaim seeks the following relief from the Court:

1) Declare that Griffith did not file 'a report with the department, under oath, stating the information that the department requires to enable it to make a valuation of the property' as required by A.R.S. § 42-14152(A) at any time on or before May 20, 2021.
2) Declare that because Griffith failed to file an annual report that conforms with A.R.S. § 42-14152(A) on or before May 20, 2021, it forfeited its right to contest the Department's valuation of the Subject Property for tax year 2022.

(Countercl., at 4–5).

Given the Court's findings and Orders above, **THE COURT FURTHER FINDS** that dismissal of the Department's counterclaim is appropriate.

IT IS FURTHER ORDERED granting Plaintiff's Cross-Motion for Partial Summary Judgment on Defendants/Counterclaimants' Counterclaim.