IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

PENN RACQUET SPORTS, INC., an Ohio corporation, *Plaintiff/Appellant*,

v.

MARICOPA COUNTY, a political subdivision of the State of Arizona; ARIZONA DEPARTMENT OF REVENUE, an Agency of the State of Arizona, *Defendants/Appellees*.

No. 1 CA-TX 13-0001
FILED 12-10-2013

Appeal from the Arizona Tax Court
No. TX2011-000208
The Honorable Dean M. Fink, Judge

AFFIRMED

COUNSEL

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MEMORANDUM DECISION

Presiding Judge Lawrence F. Winthrop delivered the decision of the Court, in which Judge Jon W. Thompson and Judge Diane M. Johnsen joined.

W I N T H R O P, Presiding Judge:

¶1 This is a personal property tax case. Penn Racquet Sports, Inc. ("Taxpayer") appeals from a summary judgment denying relief under the error correction statute for valuation of its plant property. Finding no legal error or genuine dispute of material fact, we affirm the judgment.

BACKGROUND

¶2 Taxpayer, an Ohio corporation, manufactures tennis and racquet balls in Phoenix. Taxpayer acquired manufacturing property (the "Property") subject to tax under class one of Arizona's personal property tax statutes. Tax years 2007 through 2009 are at issue in this appeal. *See* Ariz. Rev. Stat. ("A.R.S.") §§ 42-13352(C), 42-12001(10) (West 2013).[1]

¶3 The method for valuing class one property is set by A.R.S. § 42-13352(C), which directs county assessors to use "the result of acquisition costs less any appropriate depreciation as prescribed by the department [of revenue]. The taxable value shall not exceed market value."

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[1] We cite the current Westlaw version of the applicable statutes and rules because no revisions material to this decision have since occurred.

¶4 To determine the Property's taxable value, the Maricopa County Assessor used the Arizona Department of Revenue's Personal Property Manual. In the Department's manual, the acquisition cost of manufacturing personal property is trended-up to reflect current replacement cost, and that value is depreciated using the percentages listed in the corresponding valuation tables. The Assessor computed the Property's taxable values as $6,621,497 in 2007, $6,684,369 in 2008, and $5,435,308 in 2009.

¶5 After receiving the Department's assessment notice, Taxpayer filed a notice of claim asserting a valuation or classification error and requesting additional obsolescence pursuant to A.R.S. § 42-16254(A)(1). Taxpayer subsequently obtained partial relief from the State Board of Equalization (the "Board"). The Board reduced the valuations for the 2007 and 2008 tax years to $6,544,720 and $6,151,535, respectively, and declined to reduce the valuation for the 2009 tax year. Taxpayer did not appeal these determinations.

¶6 Taxpayer then filed a second notice of claim for all three tax years, which the Assessor contested. After the Board dismissed the claim, Taxpayer filed an error correction complaint in tax court. *See* A.R.S. § 42-16254(G).

¶7 Taxpayer's complaint alleges that the Department erred by including valuation factors in the manual's valuation tables that trended-up class one property and the Assessor erred by using those valuation tables. According to Taxpayer, the result was "an objectively verifiable error that does not require the exercise of discretion, opinion or judgment."

¶8 Taxpayer, the Assessor, and the Department filed cross-motions for summary judgment on the availability of relief under the error correction statute and the Assessor's valuation methodology. The tax court found the error correction argument dispositive and accordingly entered judgment in the defendants' favor. This appeal followed. We have jurisdiction under the Arizona Constitution, Article 6, Section 9 and A.R.S. § 12-2101(A)(1).

DISCUSSION

I. As A Matter Of Law, Taxpayer Cannot Obtain Relief Under The Error Correction Statute.

¶9 We review the grant of summary judgment *de novo*. *Wilderness World, Inc. v. Ariz. Dep't of Revenue*, 182 Ariz. 196, 198, 895 P.2d 108, 110 (1995). This standard also governs our review of the tax court's interpretation of statutes. *Ariz. Dep't of Revenue v. South Point Energy Ctr., L.L.C.*, 228 Ariz. 436, 439, ¶ 11, 268 P.3d 387, 390 (App. 2011). This court gives weight to the Department's interpretation of tax statutes because it implements them. *See M.D.C. Holdings, Inc. v. State ex rel. Ariz. Dep't of Revenue*, 222 Ariz. 462, 467, ¶ 13, 216 P.3d 1208, 1213 (App. 2009).

¶10 Taxpayer contends that the Assessor erroneously failed to depreciate the Property's original cost, resulting in excessive valuations. As previously noted, A.R.S. § 42-13352(C) defines taxable value as "the result of acquisition costs less any appropriate depreciation as prescribed by the department," provided that result does not exceed market value. According to Taxpayer, this language precludes any adjustment of original acquisition costs by a trending factor to determine a "replacement cost new." Like the tax court, we need not reach this issue because Taxpayer is not entitled to relief under the error correction statute.

¶11 In A.R.S. § 42-16251, the Arizona Legislature defines a valuation "error" as

> any mistake in assessing or collecting property taxes resulting from:
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> . . . .
>
> (e) . . . 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:
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> . . . .
>
> (v) Any . . . objectively verifiable error that does not require the exercise of discretion, opinion or judgment.

A.R.S. § 42-16251(3)(e)(v). Because the Assessor is the only entity that can assess or collect these property taxes, the dispositive issue is whether the Assessor made a mistake when it assessed or collected taxes from Taxpayer. *See South Point*, 228 Ariz. at 440, ¶ 15, 268 P.3d at 391 (holding that no error resulted from application of alternative statutory valuation method). We have construed "mistake" to mean "an error, misconception, or misunderstanding; an erroneous belief." *Id.* at 440, ¶ 15, 268 P.3d at 391.

¶12 According to Taxpayer, the Assessor's and Department's "error caused Plaintiff's property to be assessed improperly." Taxpayer claims that it is entitled to error correction relief under A.R.S. § 42-16251(3)(e), because asking the Department to substitute original cost for replacement cost new and then use the same depreciation factors does not require any exercise of discretion. We disagree.

¶13 At root, Taxpayer seeks to "correct" the Department's use of trended values in the Personal Property Manual utilized by Assessor to depreciate machinery.[2] The legislature delegated to the Department the task of determining "appropriate depreciation" as a component of the overall valuation scheme. *See* A.R.S. § 42-13352(C). Elsewhere, the legislature has directed the Department to "[p]repare and maintain manuals and other necessary guidelines" for the purposes of property valuation. A.R.S. § 42-11054(A)(2).

¶14 Although the Department does not disclose in its manual the exact trended-up factors used to value machinery, the manual fully addresses the Department's methodology and use of "replacement cost new." Taxpayer therefore had notice of the valuation method and could have challenged the Department's adoption of trending factors in its substantive appeal from the original assessment. *See, e.g.*, *Griffith Energy, L.L.C. v. Ariz. Dep't of Revenue*, 210 Ariz. 132, 108 P.3d 282 (App. 2005) (rejecting challenge on appeal to the Department's adoption of a 25-year depreciation table for depreciating electrical generation property). In the alternative, to the extent the Department's substantive policy or practice in this regard constitutes an agency rule, the Taxpayer could have petitioned

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[2] Taxpayer does not allege that the Assessor made any error apart from following the Department's manual; it is the manual's methodology that Taxpayer attacks. Therefore, on this record, the Assessor has made no objectively verifiable "error" in "assessing or collecting" the tax under A.R.S. § 42-16251(3)(e)(v).

the agency to formally review and/or amend its methodology or brought a declaratory judgment action in superior court. A.R.S. §§ 41-1033(A), 41-1034(B); *see also Griffith*, 210 Ariz. at 137, ¶ 25, 108 P.3d at 287. Taxpayer did neither.

¶15 Assuming *arguendo* that the alleged error could be remedied by Taxpayer's proposed fix, the error correction statute would not apply. As the defendants point out, and the tax court found, use of the non-trended figure for acquisition cost would require the Department to exercise its discretion under A.R.S. § 42-13352(C) to devise a new depreciation table for the Assessor's use. The mere fact that it is possible to remove trending from the values used by the Department does not make the remedy objective and non-discretionary, because without question the Department developed its tables based on the assumption that trended-up acquisition values would apply. If they do not, the Department will need to re-evaluate what depreciation is "appropriate." Even Taxpayer admitted below that if the remedy is to adjust the rate of depreciation, "[m]aking such an adjustment to depreciation would require the exercise of discretion, opinion or judgment." Therefore, A.R.S. § 42-16251(3) can provide no basis for relief.

¶16 Taxpayer nevertheless argues that *State ex rel. Pettis County R-XII School District v. Kahrs*, 258 S.W.3d 85 (Mo. Ct. App. 2008), supports its claim, but its reliance on that case is misplaced. In *Pettis County R-XII School District*, an employee of the county assessor mistakenly categorized property on a long-term depreciation schedule, instead of a mid-term book depreciation schedule. *Id*. at 87. The court held that an error of assessment, not valuation, had occurred, as the county assessor's error "had nothing to do with the appraisal of property" and "no judgment or discretion was required to determine that the assets were improperly categorized." *Id.* at 89. Unlike *Pettis County R-XII School District*, this case does not concern two competing classifications or categories of property that are distinct and objectively verifiable.

¶17 Taxpayer's other main authority, *Ariz. Dep't of Revenue v. Salt River Project Agricultural Improvement and Power District*, 212 Ariz. 35, 126 P.3d 1063 (App. 2006), is inapposite. First, *Salt River* was not an appeal pursuant to the error correction statute. Second, *Salt River* interpreted a statute that mandated a method for valuing utilities that incorporated the Federal Energy Regulatory Commission's Uniform System of Accounts. *Id*. at 39, ¶ 19, 126 P.3d at 1067 (citing A.R.S. § 42-14154(F)). That statute did not grant the Department discretion to determine appropriate

depreciation. *Compare* A.R.S. § 42-14154(F), (G)(2) *with* A.R.S. § 42-13352(C).

¶18 In sum, we agree with the tax court that remedying the assessment here would not constitute correction of an error under A.R.S. § 42-16251(3)(e)(v). Our holding obviates the need to address the parties' remaining arguments.

CONCLUSION

¶19 We affirm the tax court's grant of summary judgment. In addition, we deny Taxpayer's request for attorneys' fees on appeal pursuant to A.R.S. § 12-348(A). The Department and Assessor are entitled to their costs on appeal pursuant to A.R.S. § 12-341, contingent upon their submission of an application pursuant to Rule 21(a)[3] of the Arizona Rules of Civil Appellate Procedure.

[3] *See* Ariz. Supreme Ct. Order No. R-12-0039 (amending ARCAP 21 effective Jan. 1, 2014).