IN THE

# ARIZONA COURT OF APPEALS

**DIVISION ONE**

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ARIZONA ELECTRIC POWER COOPERATIVE, INC.,
*Plaintiff/Appellant*,

*v.*

STATE OF ARIZONA, ex rel., DEPARTMENT OF REVENUE, et al.,
*Defendants/Appellees*.

No. 1 CA-TX 16-0013
FILED 10-31-17
AMENDED PER ORDER FILED 1-28-19

Appeal from the Superior Court in Maricopa County
No. TX 2016-000932
The Honorable Christopher T. Whitten, Judge

**AFFIRMED**

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COUNSEL

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By Paul J. Mooney, Bart S. Wilhoit
*Counsel for Plaintiff/Appellant*

Arizona Attorney General's Office, Phoenix
By Kenneth J. Love, Macaen F. Mahoney
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## OPINION

Judge Maria Elena Cruz delivered the opinion of the Court, in which Presiding Judge Lawrence F. Winthrop and Judge Diane M. Johnsen joined.

**C R U Z**, Judge:

**¶1** In this centrally-valued property tax case, the Arizona Tax Court ruled that the complaint Arizona Electric Power Cooperative, Inc. ("AEPCO") filed to challenge the value assigned by the Arizona Department of Revenue ("Department") and the Arizona State Board of Equalization ("State Board") was untimely, and dismissed the action. For the following reasons, we affirm.

## FACTUAL AND PROCEDURAL HISTORY

**¶2** The electric generation property at issue is located within Cochise County ("County"), which collects taxes imposed based on the Department's determination of value. Pursuant to Arizona Revised Statutes ("A.R.S.") section 42-14156, the Department determined the value of AEPCO's property for tax year 2016 to be $148,915,000. Before the State Board, AEPCO requested a full cash value of $106,030,000, claiming the Department's proposed value failed to take into account proper obsolescence factors under A.R.S. § 42-14156(A)(4).

**¶3** At the conclusion of a hearing on November 13, 2015, the State Board announced it was upholding the Department's valuation and set the full cash value of AEPCO's property at $148,915,000. The State Board then issued a written decision captioned "Findings of Fact, Decision and Conclusions of Law," dated and mailed on November 13 (the "November 13 Findings"), which incorrectly listed the cash value of AEPCO's property as $188,646,735. Upon review of the November 13 Findings, counsel for the Department emailed George Shook, the State Board's acting chairman, noting the error, and AEPCO's property tax agent agreed there was a mistake. Shook advised both parties the State Board would issue an amended decision correcting the error.

**¶4** Accordingly, on November 16, the State Board issued an "Amended Findings of Fact, Decision and Conclusions of Law" stating the correct value (the "November 16 Findings"). The same day, the State Board

posted on its website a notice (the "November 16 Web Notice") that reflected the correct valuation number but incorrectly identified Maricopa County as the entity that valued the property, instead of the Department. The November 16 Web Notice also incorrectly listed a date of November 14, 2015, instead of November 16, 2015.

**¶5** Although the November 16 Findings recited the correct valuation number, it contained a typographical error ("petition" was spelled "petiton"). Upon discovery of the misspelling in the November 16 Findings and the clerical error in the November 16 Web Notice, the State Board issued a second "Amended Findings of Fact, Decision and Conclusions of Law" on December 8, 2015 (the "December 8 Findings"), and posted a "Corrected" Web Notice to its website (the "December 7 Web Notice").

**¶6** On February 3, 2016, AEPCO filed its complaint in tax court challenging the State Board decision. The Department and the County (collectively the "Defendants") moved to dismiss the complaint as untimely, arguing the sixty-day appeal window started running, at the latest, upon the mailing of the November 16 Findings. The tax court ruled the complaint was untimely and granted Defendants' motion to dismiss. AEPCO timely appealed.

**¶7** This court has jurisdiction of the appeal pursuant to A.R.S. § 12-2101.

## DISCUSSION

**¶8** This court applies a *de novo* standard of review to issues of statutory interpretation and application. *Obregon v. Indus. Comm'n*, 217 Ariz. 612, 614, ¶ 9 (App. 2008). We first look to the language of the statute, and give the words of the statute their ordinary meaning unless it appears that a different meaning is intended. *Id.* "Words in statutes should be read in context in determining their meaning[,]" and in construing a specific provision, the court will look to the statute as a whole, and may also consider statutes that are of similar subject or general purpose for guidance and to give effect to all provisions involved. *Stambaugh v. Killian*, 242 Ariz. 508, 509, ¶ 7 (2017). "If the statute is subject to only one reasonable interpretation, we apply it without further analysis." *Id.* (citation omitted).

**¶9** The State Board is an independent agency, not subject to the supervision or control of the Department, A.R.S. § 42-16152, and is tasked with hearing and resolving appeals of tax valuations and classifications. A.R.S. § 42-16162. The chairman "is responsible for the administration and

operation" of the State Board. A.R.S. § 42-16154(A). While "[m]embers of the state board . . . act under the direction of the chairman in carrying out their duties and responsibilities as provided by law and the rules of the board[,]" A.R.S. § 42-16154(B), it is the State Board that resolves valuation and classification appeals and issues the corresponding written decisions, A.R.S. § 42-16164(A).[1]

**¶10** The State Board is required by statute to "issue its decision at the conclusion of the hearing," A.R.S. § 42-16164(A), and, as here, in cases involving centrally assessed property, the State Board's decisions "shall be issued on or before November 15." A.R.S. § 42-16165(1). This taxing scheme anticipates that issues addressing valuation and recommended classification be resolved by November 15 and any valuation or classification changes be transmitted to the Department on or before the fourth Friday in November. A.R.S. § 42-16164(A); A.R.S. § 42-16165(1); A.R.S. § 42-16166(2). The State Board "issue[s] the decision in writing to each party and, in all cases, to the department by mail." A.R.S. § 42-16164(B).[2]

**¶11** Any party dissatisfied with a property tax valuation or classification may appeal to the tax court as provided by A.R.S. § 42-16203. A.R.S. § 42-16168(A). "An appeal to court shall be taken within sixty days after the date of mailing of the State Board's final decision." A.R.S. § 42-16203(C). The tax court lacks jurisdiction over an untimely appeal from a decision of the State Board. *Pesqueira v. Pima Cty. Assessor*, 133 Ariz. 255, 257 (App. 1982).

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[1] AEPCO argues on appeal that the "Legislature has granted the chairman of the State Board the ability and right to review and amend decisions." Although A.R.S. § 42-16164(A) allows the chairman to "review any decision to ensure due process to all parties[,]" the statute does not grant the chairman authority to unilaterally issue decisions or to amend Board decisions in a manner that contradicts or materially alters the Board's previously announced decisions.

[2] "[V]aluation or classification of [the] property reviewed by the state board . . ." are the proper subjects of any subsequent appeal to the tax court. A.R.S. § 42-16168(A); *see also* A.R.S. § 42-16207 (stating the notice of appeal "shall contain a statement of the reasons why the valuation or classification is excessive or erroneous.").

**¶12** AEPCO filed its appeal of the State Board's valuation on February 3, 2016, within sixty days of the December 8 Findings but beyond sixty days from the November 13 Findings and the November 16 Findings.

**¶13** The sixty-day period within which to appeal runs from the mailing of the State Board's "final decision." A.R.S. § 42-16203(C). The statutes do not define "final decision," except to say, somewhat circuitously, that a decision of the State Board "is final when an appeal has not been taken within" sixty days. A.R.S. § 42-16169. AEPCO argues the State Board's "final" decision in a case is the last decision it issues in the case. AEPCO cites Webster's New Collegiate Dictionary, 463 (9th ed. 1988), for the proposition that "final" means that decision which occurs "last in a series." Defendants argue the State Board's "final" decision was its first decision, issued on November 13. They contend the two decisions that followed were not "final" decisions, but "clerical corrections" of the original "final" decision.

**¶14** In the tax court, in support of its opposition to the motion to dismiss its appeal, AEPCO filed a declaration by Shook stating the December 7 Web Notice was the State Board's "final amended Notice of Decision[,]" from which AEPCO had sixty days to file an appeal. The chairman's characterization of the December 7 Web Notice, however, is not controlling and does not resolve the question, which is an issue of law. Nor do we accept AEPCO's contention that the statutory time to appeal begins to run anew whenever the State Board issues a new, corrected, or amended decision, regardless of the significance of the correction or amendment. Indeed, by AEPCO's reasoning, the appeal time would start anew if the State Board were to simply re-issue a prior decision, unchanged in any way. Such a construction of the statute's reference to "final decision" is illogical, and is inconsistent with the overall taxing scheme, which relies on timely completion of valuation and classification appeals.

**¶15** Defendants rely on Arizona Rule of Civil Procedure 60(a) and (b) and cases applying that rule in arguing that a "clerical correction" to a decision does not extend the time within which to appeal a decision. In response, AEPCO argues that an appeal of a decision by the State Board to the tax court is a matter governed entirely by statute and is not controlled by, or otherwise subject to, the Arizona Rules of Civil Procedure. *See Pima Cty. v. Cyprus-Pima Mining Co.*, 119 Ariz. 111, 113 (1978). While AEPCO's statement is generally correct, the *Cyprus-Pima* court explained that "[t]he plain purpose of the statute . . . is to insure the continued fiscal soundness of the government[,]" and that "[a] statute should be given a sensible construction." *Id.* at 114. Construing A.R.S. § 42-16203(C) to mean that the

correction of an immaterial typographical error by the chairman of the State Board requires the restart of the sixty-day appeal period is inconsistent with the overall purpose of the taxing statutes. Moreover, strict construction of the taxing statutes requires that any subsequent substantive amendment to the State Board's decision as to the valuation and classification of property be made by the State Board itself, not unilaterally effected by its chairman.

**¶16** While we recognize AEPCO is correct that appeals from decisions of the State Board in general are governed by statute, the logic underpinning cases interpreting "finality" for purposes of the appealability of a judgment is not only instructive, but in these circumstances, compelling. *See Fields v. Oates*, 230 Ariz. 411, 416-17, ¶ 22 (App. 2012) (stating that where successive judgments are entered, unless the subsequent judgment alters substantive rights or obligations, the time for appeal runs from the earlier "final" judgment); *Ace Auto. Prods., Inc. v. Van Duyne*, 156 Ariz. 140, 142-43 (App. 1987) ("The power to correct [a] clerical error does not extend to the changing of a judgment, order, or decree which was entered as the court intended.").

**¶17** As noted, the State Board is charged with resolving challenges to the valuation and classification of property. The November 13 Findings contained a material error that overstated the value the State Board had adopted for the AEPCO property by some $40 million. Although the State Board had announced its decision to accept the Department's valuation and to issue a "no change" decision, the erroneous valuation stated in the November 13 Findings materially misstated the State Board's resolution of the AEPCO challenge. The State Board's November 16 Findings, which corrected the error, was therefore materially different from the November 13 Findings. By contrast, the changes the State Board made in the December 8 Findings and corresponding Web Notice were not material to the State Board's determination after the hearing to adopt a "no change" valuation.

**¶18** We decline to adopt AEPCO's argument that, under these circumstances, each subsequent written decision the State Board issues (or posts on its website) constitutes a "final decision" that may be appealed within sixty days pursuant to A.R.S. § 42-16203(C). Instead, we hold that a subsequent decision constitutes a new "final decision" of the State Board for purposes of calculating the appeal period only when it materially changes the substance of a previous decision. In this case, the December 8 Findings and corresponding Web Notice corrected only a single typographical error that did not go to any material element of the State Board's November 16 Findings. Since the November 16 Findings accurately reflected the final decision of the State Board in all material respects, the

sixty-day appeal period began to run from November 16 and expired before AEPCO filed its February 3 appeal.

## CONCLUSION

**¶19** The State Board mailed its final decision on November 16. Because AEPCO failed to file its appeal of the State Board's decision within sixty days of that date, we affirm the tax court's order dismissing AEPCO's appeal as untimely.


AMY M. WOOD • Clerk of the Court
FILED: JT