

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

ARIZONA DEPARTMENT OF REVENUE, an ) 1 CA-TX 03-0010  
agency of the State of Arizona, )  
 ) DEPARTMENT T  
Plaintiff-Appellee, )  
 ) **MEMORANDUM DECISION**  
v. ) (Not for Publication -  
 ) Rule 28, Arizona Rules  
QWEST CORPORATION, a Colorado ) of Civil Appellate  
corporation, ) Procedure)  
 )  
Defendant-Appellant. )  
\_\_\_\_\_ )

Appeal from the Arizona Tax Court

Cause No. TX 01-000662/TX 02-000061

The Honorable Paul A. Katz, Judge

**REVERSED AND REMANDED**

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**B A R K E R**, Judge

¶1 Qwest Corporation ("Qwest") appeals from a grant of summary judgment on the valuation of its telecommunications property for the 2002 tax year. It also contests the denial of its

motion under Arizona Rule of Civil Procedure 56(f) ("Rule 56(f)"). For the reasons that follow, we reverse the trial court's grant of summary judgment and remand this case for further proceedings.

***Facts and Procedural Background***

¶2 Qwest owns metallic cable, analog switches, and other equipment that were purchased more than seventy years ago at a cost exceeding \$10,000,000. These items are now considered obsolete in light of technological advances in the telecommunications industry. Nevertheless, the items remain on Qwest's books at their original cost.

¶3 The Arizona Department of Revenue ("ADOR") valued Qwest's telecommunications property for the tax year 2002 according to its interpretation of the statutory formula in Arizona Revised Statutes ("A.R.S") section 42-14403 (1999). Qwest appealed the value to the State Board of Equalization (the "Board"), arguing that the lower limit for the table that ADOR used should be lowered from 20 percent to 10 percent to allow for additional obsolescence. The Board agreed with Qwest and issued a decision reducing Qwest's property valuation to 10 percent of historical cost as contrasted with ADOR's valuation of 20 percent of historical cost.

¶4 ADOR appealed the decision to the tax court. Nine months later, ADOR moved for summary judgment on the statutory interpretation of A.R.S. § 42-14403. Qwest responded and filed a cross-motion for summary judgment on the issue of whether the Board

had discretion to consider additional obsolescence in valuing Qwest's property. In conjunction with this motion, Qwest filed a motion for additional discovery time under Rule 56(f). For the first time, Qwest also argued that an issue of fact existed as to whether its property had been erroneously assessed.

¶15 In granting ADOR's motion for summary judgment, the tax court ruled that, regardless whether ADOR had discretion to value the property at lower than 20 percent of its historical cost, there was nothing to require it to exercise its discretion in Qwest's favor. In addition, the court stated that it was unsure as to what evidence, if any, was presented to the Board to enable it to make a value determination. The effect of these rulings was to reject the Rule 56(f) motion and the allegations of factual issues. Qwest then filed an unsuccessful motion for new trial and alternative motion to alter or amend the judgment. This appeal followed. We have jurisdiction pursuant to A.R.S. § 12-2101 (2003).

#### *Discussion*

##### *I. Whether the Tax Court Erred in Granting Summary Judgment to ADOR.*

¶16 This court reviews the tax court's 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). The tax court granted ADOR's motion for summary judgment on an issue of statutory interpretation. Questions of statutory interpretation

are issues of law subject to de novo review. *Walls v. Ariz. Dep't of Pub. Safety*, 170 Ariz. 591, 594, 826 P.2d 1217, 1220 (App. 1991).

¶7 Qwest argues that the tax court erred in overruling the decision of the Board. It argues that the tax court correctly found that ADOR had discretion in valuing the property, but that the tax court erred when it concluded that ADOR could not be compelled to exercise that discretion. ADOR argues that the statute gives no discretion to deviate from the percentages indicated in the valuation tables. Even if there is such discretion, ADOR argues, we cannot compel ADOR to exercise it in Qwest's favor.

**A. The Statute Permits an Exercise of Discretion.**

¶8 The tax court did not formally find, but assumed *arguendo*, that ADOR has discretion to value property at a figure less than one of the figures expressly stated on a valuation table. We determine that this assumption was in fact accurate.

¶9 We begin, as always, with "the language of the statute itself." *Scottsdale Healthcare, Inc. v. Ariz. Healthcare Cost Containment Sys. Admin.*, 206 Ariz. 1, 5, ¶ 10, 75 P.3d 91, 95 (2003). Section 42-14403 states that ADOR "shall determine the valuation as of January 1 of the property of all telecommunications companies operating in this state at its full cash value. Real estate shall be valued at market value, and personal property shall

be valued on a unitary basis at its historical cost less depreciation." For purposes of this section, "historical cost" is defined as "the original cost as reported on the company's books and records." A.R.S. § 42-14403(2). The section then provides:

Depreciation is computed based on the tables adopted by the department in its personal property manual in effect on January 1, 1993 for the following categories:

(a) Buildings with a twenty-five year life.

(b) Cable with a fifteen year life.

(c) Telecommunications equipment with a five year life.

(d) Any other telecommunications property that is not included in subdivisions (a), (b) and (c) with a seven year life.

A.R.S. § 42-14403(1) (emphasis added). The key phrase at issue here deals with the mandate that "full cash value" be determined "based on the tables." A.R.S. § 42-4403.

¶10 The tables referenced are those adopted by ADOR in its personal property manual in effect on January 1, 1993 (the "Manual"). The Manual contains a total of thirteen numbered tables used for depreciating property. The Index of the Manual tells us which table is to be used for what kind of property. The Index does not assign any particular table to telecommunications property such as the property in question in this case.<sup>1</sup> ADOR has used

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<sup>1</sup> The closest reference is to "Telephone equipment, telex & facsimile," which has a five-year life and is assigned Table 10.

Table 7 to depreciate telecommunications property since the cost formula was first enacted. Only two tables in the Manual, Tables 1 and 7, contain the four life categories mentioned in A.R.S. § 42-14403. Those two tables are virtually identical, except that Table 7 is slightly more favorable to taxpayers than Table 1 because it depreciates property more rapidly. Both tables contain a "percent good factor floor" of 20 percent. The notes that are included on Table 7, however, expressly provide that "[t]his Table is programmed into the DOR computer system with a 20% residual. Property with a percent good of less than 20% requires that the percent good be calculated manually and entered into the system."

¶11 The clear direction of the note on Table 7, providing for valuations of less than 20 percent to be entered manually, is that the table permits valuations below the stated floor. ADOR contends, however, that the note is not part of the table. This argument is somewhat problematic for ADOR because the physical document which ADOR submitted and refers to as the table contains the note in question. ADOR argues from the dictionary that a "table" is "a tabular arrangement of data; . . . a systematic arrangement (as of numerical values) usu[ally] in parallel rows or columns for ready reference." *Webster's Third New International Dictionary* 2324 (1966). Under this definition, we would also not be able to consider the title to each table. Neither would be able

to consider the Index to the Manual, which is necessary to determine which table is to be used for which kind of property.

¶12 More importantly, the plain language of the statute provides that ADOR is to make a determination "based on the tables." While ADOR argues that "the notes explain the table" but "are not part of the table," we believe the statutory mandate to make a decision "based on the tables" certainly includes using the tables in the manner in which they were intended to be used.<sup>2</sup>

¶13 ADOR argues that the legislature did not intend to require it to consider additional obsolescence because it did not expressly mention it in the statute. The legislature has mentioned additional obsolescence in other statutes. See A.R.S. § 42-14254(B)(4) (Supp. 2003) (providing that ADOR shall "[a]llow additional obsolescence if supported by market evidence" in valuing an airline's flight property). We do not find this dispositive when the tables themselves, upon which the valuation is to be based, refer to techniques (manually calculating a valuation below the 20 percent figure that was "programmed into the DOR computer system") that allow ADOR to value a property below the valuation stated on the table.

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<sup>2</sup> ADOR also contends that the notes on the table were intended for assessors and not for ADOR. The legislative mandate to prepare guidelines were for those "that shall be used by the department and county assessors." A.R.S. § 42-11054(A)(1) (emphasis added). We assume that the legislature was aware of the dual usage noted in the statute.

¶14 Further, in construing statutes, we "seek to harmonize related statutes" and achieve consistency "within the context of the overall statutory scheme." See *State v. Fell*, 203 Ariz. 186, 188, ¶ 6, 52 P.3d 218, 220 (App. 2002) (quoting *Bills v. Ariz. Prop. & Cas. Ins. Guar. Fund*, 194 Ariz. 488, 494, ¶ 18, 984 P.2d 574, 580 (App. 1999)). For taxation purposes, the rule in Arizona is that property must be taxed at its full cash value. "Full cash value" is defined as "the value determined as prescribed by statute. If no statutory method is prescribed, full cash value is synonymous with market value which means the estimate of value that is derived annually by using standard appraisal methods and techniques." A.R.S. § 42-11001(5) (Supp. 2003). Until the legislature tempered the definition of "full cash value" in 1989, it generally meant "fair market value." *Bus. Realty of Ariz., Inc. v. Maricopa County*, 181 Ariz. 551, 553, 892 P.2d 1340, 1342 (1995). But the current definition still "specifically identifie[s] and reaffirm[s] the general traditional approach using market value as the standard goal for tax valuation." *Id.*

¶15 In addition, A.R.S. § 42-14003(A) (Supp. 2003) provides that "[i]n determining valuation under this chapter the department shall consider all *additional information* including information that is presented in an appeal and information that is otherwise available." (Emphasis added.) Meanwhile, A.R.S. § 42-16162(A) (1999) provides that "the state board may increase or decrease a

valuation or change a classification in any proceeding in order to properly reflect the full cash value or the proper classification," based on "evidence presented at a hearing on an appeal." In addition, "[i]n considering any petition filed by any person, the state board shall consider all competent evidence relating to full cash value that may include the valuation of similar property that is similarly situated." A.R.S. § 42-16162(C). Thus, the default rule is to value property at its fair market value and to use standard appraisal methods (which include considering obsolescence) if there is no statutory valuation method prescribed.<sup>3</sup>

¶16 By referencing these more general statutes, we do not suggest that they displace the language of the specific statute, § 42-14403, that we must construe. We note that because A.R.S. § 42-14403 provides the statutory valuation method, standard appraisal methods and the associated obsolescence factor do not apply. However, in interpreting a statute that (1) neither expressly forbids nor mandates ADOR to consider additional obsolescence and (2) requires action "based on tables" that reference an exercise of discretion to go below stated valuations

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<sup>3</sup> We acknowledge ADOR's citation to cases placing great weight upon the interpretation of a statute by the agency implementing it. *E.g.*, *Police Pension Bd. v. Warren*, 97 Ariz. 180, 186, 398 P.2d 892, 895 (1965). However, this is a rule of statutory construction that does not supplant the language of the statute itself. For the reasons given herein, we do not find that it compels a different result here.

on the tables, we choose the interpretation that will harmonize the section with other related statutes.

¶17 For these reasons, we hold that ADOR has discretion to value the property below a percentage expressly referenced on one of the tables if such a valuation is necessary in order to more accurately value property at its full cash value due to obsolescence.

***B. Exercising Discretion.***

¶18 Even though it assumed ADOR could exercise discretion, the tax court granted ADOR's motion for summary judgment because it determined that there was no authority *requiring* ADOR to exercise that discretion. This was error. While there can be no requirement that ADOR exercise its discretion *in a particular manner* or to effect *a particular outcome*, a state department abuses its discretion "by reason of its failure *to fairly consider whether or not* to exercise its discretion." *Sun Valley Express Moving & Storage, Inc. v. Ariz. Dep't of Econ. Sec.*, 140 Ariz. 131, 134, 680 P.2d 841, 844 (App. 1984) (emphasis added). That is the case here.

ADOR's representative testified as follows:

[Q.] When you determine the value of a telecommunications company pursuant to a statutory formula, do you exercise any discretion in arriving at that value?

[A.] No.

Thus, it was error to grant summary judgment in ADOR's favor on the basis that it had chosen not to exercise its discretion in Qwest's favor. ADOR did not believe it had any discretion. ADOR had a duty to "fairly consider whether or not to exercise its discretion." *Id.* Thus, reversing the summary judgment in favor of ADOR is required.<sup>4</sup>

## **II. Error Correction Statute.**

¶19 Qwest also contends that a factual issue exists as to whether ADOR erroneously assessed its property and that the error is subject to correction under A.R.S. § 42-16251(3) (Supp. 2003). We reject this argument.

¶20 The "error correction statutes" deal with "any mistake in assessing or collecting property taxes" when property is misreported, incorrectly designated, improperly described, or when ADOR uses an incorrect tax rate or the wrong assessment ratio percentage. *Id.* In its motion for partial summary judgment, Qwest stated that it was "seriously considering filing amended tax returns" but then did nothing to change its returns or books. A claim about a possible amendment of books and records fails to support the conclusion that the future amendment would qualify as

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<sup>4</sup> Qwest does not assert that it is entitled on appeal to entry of judgment in its favor, upholding the Board's valuation. Rather, it asserts that it is entitled to a hearing pursuant to A.R.S. §§ 42-16212 and -16213(A) to determine whether the Board's valuation was insufficient or excessive.

a correctable error under the error correction provisions. It also provides no dispute of material fact to withstand entry of summary judgment. The tax court properly refused to apply the error correction provisions based upon speculation and rightly rejected Qwest's claim that the assessment was erroneous.

**III. Qwest's Rule-Making Arguments.**

¶21 On appeal, Qwest for the first time argues that the Manual and Table 7 are invalid because they were not adopted pursuant to the rule-making requirements. It also raises the new issue of whether the reference in the statute to the Manual is an unconstitutional delegation of legislative power.

¶22 Qwest contends that these issues are before us because the tax court mentioned rule-making in its denial of Qwest's motion for new trial. Specifically, the tax court stated: "The Court, in stating that the Arizona Department of Revenue ("ADOR") has discretion, finds ADOR, pursuant to its rulemaking authority, has discretion to determine the valuation table that will apply to telecommunications property, what the depreciation floor will be and whether additional obsolescence will be allowed."

¶23 The minute entry reflects that the tax court was interpreting the statute, not analyzing compliance with the rule-making or constitutional requirements. The parties never briefed or argued whether those requirements were met. Accordingly, we decline to consider these arguments because they were raised for

the first time on appeal. See *Contemp. Constr. Co. v. Mountain States Tel. & Tel. Co.*, 153 Ariz. 279, 282, 736 P.2d 13, 16 (App. 1987) ("On appeal from a summary judgment, parties are not allowed to . . . raise new issues to secure a reversal.").

**IV. Qwest's Rule 56(f) Motion.**

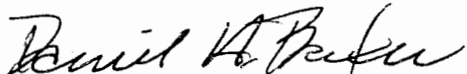
¶24 After not completing any discovery during the first nine months, Qwest moved under Rule 56(f) for more time to conduct discovery on a previously undisclosed issue: whether ADOR had "exercised any discretion in determining the value of other centrally-valued property owners." The trial court rejected this motion. Because the trial court has broad discretion in ruling on discovery and disclosure issues, we review such matters under the abuse of discretion standard. *Link v. Pima County*, 193 Ariz. 336, 338, ¶ 3, 972 P.2d 669, 671 (App. 1998).

¶25 In this case, the tax court was entitled to consider the amount of time Qwest had already had for conducting discovery. In *Magellan South Mountain Ltd. Partnership v. Maricopa County*, 192 Ariz. 499, 501, ¶ 7, 968 P.2d 103, 105 (App. 1998), we held that it was not an abuse of discretion to refuse discovery when the taxpayer had not conducted discovery during the three-and-one-half months prior to seeking relief. Nine months had elapsed in this case without discovery being conducted. Qwest makes no attempt to address or explain this delay, and we find no abuse of discretion

in the denial of the Rule 56(f) motion. See *id.* at 501-02, ¶¶ 7-10, 968 P.2d at 105-06.

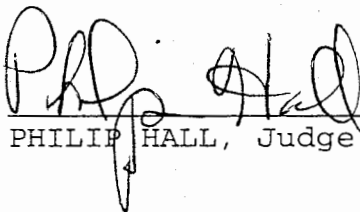
**Conclusion**

¶26 Because ADOR did have discretion to consider the obsolescence of the property and failed to consider whether to exercise it, we reverse the tax court's grant of summary judgment to ADOR. We remand for proceedings consistent with this decision. In the exercise of our discretion, we reject Qwest's request for an award of attorneys' fees in connection with this appeal under A.R.S. § 12-348(B) (2003) and Arizona Rules of Civil Appellate Procedure 21(c) but grant its request for costs upon the filing of the appropriate affidavit.

  
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DANIEL A. BARKER, Judge

CONCURRING:

  
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DONN KESSLER, Presiding Judge

  
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PHILIP HALL, Judge