ARIZONA SUPREME COURT

MESQUITE POWER, LLC, a limited liability company, Plaintiff-Appellee, v. ARIZONA DEPARTMENT OF REVENUE, an agency of the State of Arizona; COUNTY OF MARICOPA, a political subdivision of the State of Arizona, Defendants-Appellants.	No.: CV-23-0016-PR Court of Appeals No. 1 CA-TX 22-0002 Maricopa County Superior Court No. TX2018-000928

BRIEF OF AMICUS CURIAE GRIFFITH ENERGY, LLC IN SUPPORT OF PETITION FOR REVIEW

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Pursuant to Rule 16, Ariz. R. Civ. App. P., Griffith Energy, LLC ("Griffith Energy") files this *amicus curiae* brief in support of the Petition for Review dated January 20, 2023 (the "Petition") filed by Mesquite Power, LLC ("Mesquite"). This brief is filed in compliance with Rules 13(i) and 13.1. Ariz. R. Civ. App. P.

ARGUMENT

I. If the Court of Appeals' Opinion in *Mesquite Power* stands, it will directly and adversely affect pending litigation involving Griffith Energy and the valuation of electric generation facilities throughout Arizona.

On December 20, 2022, the Court of Appeals' Opinion in *Mesquite Power, LLC v. Arizona Dep't of Revenue*, 523 P.3d 960 (App. 2022) sent shockwaves through the owners of electric generation facilities. For decades Arizona electric generation facilities have relied on the fact that intangible assets, such as power purchase agreements ("PPA"), were non-taxable. By its ruling that where intangible assets enhance the real and tangible property's value, a court must consider the effect such intangible assets have on the property's value, the Court of Appeals has upended a decades old taxation regime. As a result, Griffith Energy and similar companies across Arizona now face multi-million dollar increases in their property tax liability that are plainly prohibited by the governing statutes.

In particular, the Court of Appeals' decision directly and adversely affects pending litigation involving Griffith Energy. On May 1, 2020, AL Griffith Energy Holdings, LLC (a wholly owned subsidiary of ArcLight Energy Partners Fund VI,

L.P. ("ArcLight") entered into a purchase and sale agreement with Star West Generation to buy Griffith Energy's entire business, including the real and personal property associated with a 570-megawatt ("MW") gas-fired combined-cycle generation facility located in Mohave County, Arizona. The purchase also included the transfer of a power purchase agreement ("PPA") for power generation (the "Griffith PPA").

When it purchased Griffith Energy in 2020, ArcLight was already intimately familiar with how Arizona valued electric generation facilities for property tax purposes. In 2015, ArcLight had purchased the Mesquite facility. (IR-35, Ex. A.) Before ArcLight sold Mesquite in 2018[1], Mesquite initiated property tax appeals for tax years 2016 and 2017, which challenged the Department's valuation. (IR-86, 2-3.) Those cases resulted in a six-day bench trial in tax court. (IR - 35, 2.) Judge Whitten found in favor of Mesquite, ruling that the Mesquite PPA was an intangible asset, separate and severable from the power plant, and that Arizona law prohibited the inclusion of its value in the valuation of the power plant for property taxation purposes. (IR - 35, 7.)[2] Tellingly, the Arizona Department of Revenue

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[1] On July 11, 2018, ArcLight sold 100% of its interest in Mesquite Power, LLC to a subsidiary of what was then Southwest Generation Operating Company (now Onward Energy) who then took over the later tax appeals and litigated the 2019 case at issue now.

[2] Judge Viola ruled in the instant case that the PPA "is a 'non-taxable, intangible asset' that is separate and severable from the tangible property and that the valuation

("Department") did not appeal the final judgment. (IR-36, 3.) Moreover, the Department also agreed to settle the 2018 tax year case in Mesquite's favor, consistent with Judge Whitten's determination. (*Id.*; IR-35, Ex. C.)

Armed with its knowledge of how electric generation facilities are valued in Arizona, on December 14, 2020, Griffith Energy filed a property tax appeal (TX2020-00123) for the 2021 tax year.[3] Pursuant to the scheduling order in that case, the parties (Griffith Energy and the Department/Mohave County) exchanged appraisals on June 15, 2022. Griffith Energy retained Dan Beaulne with Houlian Lokey - the same appraiser and firm ArcLight used in the 2016 and 2017 Mesquite litigation. Naturally, Griffith Energy's appraisal follows the law and valuation methodology Judge Whitten upheld in the Mesquite cases. Mr. Beaulne's discounted cash flow analysis estimated a value for the Griffith Energy power plant that disregarded any intangible benefits derived from the Griffith PPA. This is because the Griffith PPA is an intangible asset, a separate and severable contract, and the

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of Mesquite's tangible property for property tax purposes cannot include the value of the PPA." (IR – 51, 2.). The Department did not appeal Judge Viola's ruling on that issue.

[3] It only stands to reason that ArcLight would rely on the prior year's tax litigation in Mesquite, since the Department did not appeal Judge Whitten's 2016 and 2017 decision and, in fact, in the Consent Judgment for tax year 2018, agreed to carry the 2017 value over the 2018.

pertinent statute expressly limits valuation of the plant to the land, real property improvements, and its *tangible* personal property.

The 2021 tax year case (TX2020-001123) has now been consolidated with a subsequent 2022 tax year case (TX2021-000517). The parties have not yet exchanged appraisals in the 2022 tax year case but are currently scheduled to do so in June of 2023. The Court of Appeals' Opinion was issued *after* ArcLight purchased Griffith Energy. Thus, ArcLight initiated a tax appeal based on its understanding of the law as set forth in the 2016 and 2017 Mesquite cases that *ArcLight* litigated, the 2018 settlement that *ArcLight* negotiated, and the tax court's subsequent decision in the 2019 Mesquite case that is the subject of the pending Petition for Review.

As adopted, the Opinion will herald a sea change in Arizona law through its unqualified pronouncement that: "where intangible assets enhance the real and tangible property's value, a competent appraisal must consider the effect such intangible assets have on the taxable property's value." *Mesquite Power*, 523 P.3d at 962. In effect, the Opinion introduces valuation of intangible assets into a statutory valuation scheme that has always excluded intangibles from the analysis. The determination of whether to tax intangibles – and thus upend vested rights and settled expectations - should be made by the Legislature, not the courts. This Court cautioned in 1938 when confronted with the question of whether intangibles should be taxed: "we think, because it has been recognized for so many years as settled law

[that intangibles are not taxable], it is better that the legislature change it than that we disturb vested rights…." *Maricopa Cnty. v. Trustees of Arizona Lodge No. 2, F. & A. M.*, 52 Ariz. 329, 342–43, 80 P.2d 955, 960 (1938). If the Court of Appeals' opinion stands, it will fundamentally alter Arizona property tax law without any legislative involvement. The opinion portends years of property tax litigation inviting courts, rather than lawmakers, to identify what is an intangible asset, how to allocate intangible value, and how best to value such intangibles. Such litigation will not only affect electric generation facilities and other centrally assessed properties but will just as significantly impact the valuation of locally assessed properties with significant intangible value, such as casinos, hotels, restaurants, health care facilities, and similar properties.

If this Court fails to correct the Court of Appeals' conclusion that the Department has the legal authority to tax intangible property under A.R.S. § 42-14156, then the baseline assumptions on which Griffith Energy relied when initiating its litigation will have been undermined. More importantly, the uncertainty of not knowing what assets are taxable and how the Department values those assets would forever alter the cost assumptions upon which companies, like ArcLight, entered the market. This Court should not validate the Court of Appeals' expansive reimagining of Arizona property tax law.

II. The Opinion's enhancement theory is contrary to the limitations of what is subject to tax under A.R.S. § 42-14156.

The parties have presented this Court with highly technical and complicated tax issues for review. However, boiled down to its essence, the central question at issue is: what assets are taxed under Arizona law? This is a question holds vital importance not only for those taxpayers whose assets are valued under the electric generation facilities statute, but for taxpayers generally.

On its face, the Court of Appeals' decision is flatly at odds with the plain language of A.R.S. § 42-14156(A), which specifically identifies what is to be valued and, in turn, taxed: (1) the value of the land used in the operating facility; (2) the value of the real property improvements used in the operating facility; and (3) the value of the personal property used in the operating facility. That's all. Nevertheless, the Legislature further clarified its intent by specifically defining personal property as "all tangible personal property except for land and real property improvements." A.R.S. § 42-14156(B)(2). Presumably, the Legislature adopted this clarifying definition because the property tax statutes elsewhere define personal property as "property of every kind, both tangible *and intangible*, that is not included as real estate." (emphasis added) A.R.S. § 42-11001(10). The Legislature's decision to specifically exclude intangible personal property from the valuation formula for electric generation facilities necessarily implies its intent to value and tax only

tangible personal property, and not intangible personal property, for facilities like those owned and operated by Griffith Energy.

The Department implicitly recognizes the weakness of its contentions regarding what may be valued under A.R.S. § 42-14156(A) on the first page of its argument for denying review. (Response to the Petition for Review ("Response"), 5.) It speculates that when determining the value of the tangible personal property, the Legislature recognized the need to consider intangible property by including the cost of transporting and installing the personal property when calculating the invoice cost of the personal property. See A.R.S. § 42-14156(A)(6)(b). This argument, however, cannot be reconciled with the Legislature's explicit clarification in A.R.S. § 42-14156(B)(2) that "personal property" only includes "all tangible property." A more likely and straightforward interpretation is that the Legislature was merely trying to capture, as A.R.S. § 42-14156(A)(6)(b) states, "the invoice cost of the personal property" by listing expense items such as "cost of transporting the property," "the cost of labor to install the personal property," and "any transaction privilege or use tax."[4] *Id*.

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[4] The Department tries to support its tortured interpretation of A.R.S. § 42-14156(A)(6)(b) by invoking Kansas law through its citation to *In re Appeal of ANR Pipeline Co.*, 276 Kan. 702, 725, 79 P.3d 751, 766 (2003), which found the taxpayer's costs of installation for a pipeline and overhead expenses to be intangibles and included in taxpayer's unit value. But Kansas law is inapposite here. First, Kansas' statute for valuing public utilities is explicit that the "director of property valuation shall annually determine the fair market value of public utility property,

Equally strained is the Department's central argument that A.R.S. § 42-14156 does not expressly prohibit including revenues from the PPA when using the income approach. (Response, 5 – 6.) Thus, the Department argues it can include the PPA's revenue stream in the income approach to account for the "enhanced" value of the tangible personal property derived from the PPA. The Department asserts it is thus not taxing an intangible asset, only taxing the value of the tangible personal property *as enhanced* by the PPA. This is just another way of taxing an intangible asset while ignoring the express limitations on what can be valued and taxed under A.R.S. § 42-14156. Tellingly, however, the Department cannot articulate any meaningful difference between the effects of taxing the intangible property directly versus taxing it indirectly through the enhanced value of the tangible personal property.

What the plain meaning of the statute certainly does not permit is the inclusion of the revenue attributable to a separate and severable intangible asset, like a PPA, in the income approach.[5] By including such revenue, the value derived will

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both real and personal, tangible *and intangible*." Kan. Stat. Ann. § 79-5a04 (emphasis added). Second, as the Kansas Supreme Court noted, ANR was valued using the unit method, which is authorized and preferred in K.S.A. 79–5a04. The "unit system taxes only the total value of a business as a going concern…. Thus, the unit value may include the fair market value of the tangible, real, and intangible property which makes up the assets of the business." *Id.,* 276 Kan. at 729, 79 P.3d at 769.

[5] Because the PPA is a separate and servable intangible asset, it can be valued separately. The PPA, and not the tangible personal property, is what accounts for the large purchase price. As the record demonstrates, when ArcLight sold Mesquite in

necessarily include the statutorily excluded intangible value associated with the PPA. This is exactly what the Department's appraiser did. He included revenue from the PPA in his income analysis, yet simultaneously admitted that the PPA had no value. (IR-164, 128: 1-15.) Of course, by including income the PPA generates, the Department's appraiser captured the intangible value associated with the PPA and, consequently, derived an inflated opinion of value; a *going concern value*. It should be obvious that in the absence of the PPA, there would not have been income to include in his income analysis and he would have derived a completely different and necessarily lower value.

The value associated with the PPA is best illustrated by the 2017 sale of Unit 4 of the Gila River Power Plant ("Gila River"), which Judge Viola highlighted in her ruling in tax court. Gila River is virtually identical to Mesquite (same type and similar size of turbines, a single HRSG, and was constructed in a similar time frame). (IR – 89: 59, 61.) Because Gila River lacks a PPA, it sold as a merchant plant for $100 million. In this case, Mesquite's appraiser valued the power plant based on its earnings potential as a merchant plant and without a PPA, arriving at a value of $105 million. Given the similarities between Gila River and Mesquite, the Gila River sale supports Judge Viola's finding that Mesquite's market value was $105 million. The

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2018 for $556 million, a value of $454,565,000 was allocated for the PPA. (See Answering Brief, 15 -16)

Opinion's acceptance of the Department's "enhancement" theory results in nearly identical power plants being valued and taxed dramatically different dependent only on the existence of an intangible asset (the PPA).

The Opinion's acceptance of the Department's "enhancement" approach circumvents the clear language and intent of the governing statute. It also opens the door to the enhancement approach being applied in a wide variety contexts when valuing property for property tax purposes. At bottom, this case asks a basic question: what is subject to tax? The Legislature answered that question clearly in A.R.S. § 42-14156: the land, real property improvements, and the tangible personal property; not related intangible assets like a PPA.

III. Contrary to Arizona law, the Court of Appeals' Opinion undermines long-standing precedent regarding the taxation of intangibles by tacitly advancing a unit approach to valuation for utility property.

Even though Article 9, § 2 of the Arizona Constitution and Arizona statutes have authorized the taxation of intangibles, for more than eighty (80) years, Arizona courts have consistently held that intangibles may not be subject to *ad valorem* tax because the Legislature has failed to provide a means of equalization for or collection of a tax against intangibles. See *State Tax Commission v. Shattuck*, 44 Ariz. 379, 38 P.2d 631 (1934); *Maricopa County v. Trustees of Arizona Lodge No. 2*, 52 Ariz. 329, 80 P.2d 955 (1938); *Brophy v. Powell*, 58 Ariz. 543, 121 P.2d 647 (1942); *Honeywell Info. Sys., Inc. v. Maricopa Cnty.*, 118 Ariz. 171, 575 P.2d

801 (App. 1977); *Cottonwood Affordable Hous. v. Yavapai Cnty.*, 205 Ariz. 427, 72 P.3d 357 (Ariz. Tax Ct. 2003).[6] The law in Arizona has remained unchanged on this point the *Cottonwood* decision two decades ago.

The Court of Appeals' Opinion undermines this long-standing precedent by tacitly advancing a unitary approach to valuation for utility property, which necessarily includes valuing the intangible property associated with a business. The unitary valuation approach is typically applied to properties that operate across county and state boundaries and whose value depends on the interrelation and operation of all the properties as a unit. Consequently, "unit taxation is properly characterized not as the taxation of real property or personal property or even a combination of both, but rather as the taxation of property *as a going concern.*" *ITT World Commc'ns, Inc. v. City & Cnty. of San Francisco*, 37 Cal. 3d 859, 864, 693 P.2d 811, 816 (1985).

The unitary valuation approach is completely at odds with the plain meaning of A.R.S. § 42-14156 which expressly identifies the assets to be valued. Nevertheless, the Opinion tacitly endorses the Department's effort to re-write A.R.S. § 42-14156. In ¶49 of its Opinion, the Court of Appeals notes that the Department

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[6] The Cottonwood court recognized that the tax credits constitute intangible property and should not be added to the value of Cottonwood's property or considered as *part of Cottonwood's income stream*." (emphasis added) *Cottonwood Affordable Hous.*, 205 Ariz. at 429, 72 P.3d at 359.

suggested Mesquite must be valued using a unit approach. In fact, the Department argues the Opinion "is consistent with decades of case law from other jurisdictions holding that the appraiser needs to consider intangible property when determining the tangible property's true value." (Response, 7.) However, the Department admits no Arizona law supports this position: "Arizona courts have not directly addressed the issue of whether and how to consider intangible contracts when valuing tangible property." (Opening Br., 20.) In fact, *no* Arizona decisions have addressed whether and how to consider intangible contracts when valuing tangible property. Nevertheless, the Department relies exclusively on case law from other jurisdictions where - unlike in Arizona – state law expressly requires utilities to be valued using the unitary approach.

The Court of Appeals proceeds to point out that the unit approach would value the total plant value as an operating unit but remove any nontaxable assets - without explaining what those assets would be - to arrive at a full cash value. Even though the Opinion states it is not deciding whether the use of the unit valuation is appropriate under Arizona law, it nevertheless observed:

> The advantage of the unit principle is that it captures the value generated by the cooperation of mutually beneficial assets. In so doing, it considers the "[c]urrent usage" of the property…We hold that any valuation approach must appraise the operating unit by its current usage to be competent.

Mesquite Power, LLC v. Arizona Dep't of Revenue, 523 P.3d 960, 969 (App. 2022). In other words, while not giving the unit valuation its full imprimatur, the Court nevertheless blesses the Department's unit valuation approach. By rationalizing the need to include the PPA with current usage, the Opinion taxes an intangible asset, despite the Legislature's unmistakable effort to exclude intangible assets from the valuation formula. Arizona law is clear that property taxes imposed on electric generation facilities should be based on the value of the company's property as opposed to the value of the business itself. Had the Legislature intended to impose property tax more broadly on the far more speculative and intangible-laden value associated with the "enhanced" value of tangible personal property, it could have done so, but it did not.

A.R.S. § 42-14156 specifically identifies what property can be valued and excludes intangibles. If the Opinion is left to stand, it amounts to a judicially activist overhaul of Arizona's property tax law. Anchored by this precedent, Arizona's public policy would shift towards taxing the value of a business enterprise rather than the *property* owned by a particular business.

IV. The Opinion's problematic analysis of "current usage" has implications beyond the valuation of electric generation facilities.

The Opinion's current usage analysis further muddies Arizona law by confusing Mesquite's use of the power plant (which is taxable) with Mesquite's business assets (which include the PPA). The existence of the PPA does not change

the current use of the power plant. It remains a power plant subject to valuation under A.R.S. § 42-14156.

The potential widespread impact of the Court of Appeals' Opinion is illustrated by that fact that it has already been cited in a tax court case (TX2017-000027) involving, not a utility, but a big box retail store leased by Kohl's. The Opinion was issued on December 20, 2022. While a ruling on a cross-motion for summary judgment was pending with the tax court, Maricopa County filed a Notice of Supplemental Authority on December 27, 2022, citing to *Mesquite Power*.[7] On December 29, 2022, the tax court denied Maricopa County's motion for summary judgment. On January 10, 2023, however, Maricopa County filed a Motion for Reconsideration using the same line of reasoning adopted in *Mesquite Power* regarding current usage.[8] Specifically, because Kohl's appraiser did not appraise the property subject to an existing long-term lease and with Kohl's occupying the property, the County argued: "Plaintiff's appraisal therefore failed to value the property as it is and is thus incompetent to rebut the statutory presumption." However, Kohl's appraised the fee simple interest of the property consistent with controlling legal precedent, which holds that "property burdened by long term leases or mortgages is not appraised at its potentially restricted selling *price but is*

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7 Attached as Appendix 1.

8 Attached as Appendix 2.

compared to similar property without such burdens…. Even if such encumbrances make a particular property more or less desirable to a prospective buyer, the assessed value for tax purposes is not affected" (emphasis added). *Recreation Centers of Sun City, Inc. v. Maricopa County*, 162 Ariz. 281, 285, 782 P.2d 1174, 1178 (1989).

Inspired by the Court of Appeals' Opinion in *Mesquite Power*, Maricopa County now advances a position that "current usage" requires property in Arizona to be valued with a long-term lease in place or, in other words, based on a leased fee interest. Put differently, *Mesquite* is already being cited by parties seeking to "enhance" the value of real property with intangible assets, such as a long-term lease, rather than real property itself. This contradicts Arizona law, which requires appraisals for property tax purposes to formulate an opinion of the market value of the fee simple interests. *Cutter Aviation, Inc. v. Arizona Dep't of Revenue*, 191 Ariz. 485, 491, 958 P.2d 1, 7 (Ct. App. 1997) (for taxation purposes, "ownership" has traditionally meant ownership in fee, which includes the rights of control and disposal.)

This example neatly illustrates how the Court of Appeals' Opinion has implications that extend far beyond how electric generation facilities are valued, implications that this Court should be clarify and address lest they result in a host of conflicted decisions contrary to Arizona's statutory scheme and decades of case law interpreting it.

CONCLUSION

The Court of Appeals' decision in *Mesquite Power* will fundamentally alter property tax law in Arizona. It raises important and serious questions of first impression and of statewide importance regarding the valuation and taxation of intangible assets under Arizona property tax law. Therefore, Griffith Energy urges this Court to grant Mesquite's Petition for Review.

RESPECTFULLY SUBMITTED: March 8, 2023.

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APPENDIX TABLE OF CONTENTS

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN THE ARIZONA TAX COURT

CASTLE PHOENIX LLC, a foreign limited liability company authorized to do business in Arizona, Plaintiff, vs. MARICOPA COUNTY, a political subdivision of the State of Arizona, Defendant.	Case No. TX2017-000027 **DEFENDANT'S NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT** (Assigned to the Hon. Sara Agne)

Defendant respectfully calls the Court's attention to the Court of Appeals Division One's December 20, 2022 Opinion in *Mesquite Power, LLC v Arizona Department of Revenue*, 1CA-TX 22-0002, ___ P3d___, 2022 WL 17814186 (App 2022), copy attached. Specifically, at paragraph 51, the Court holds:

> We hold that any valuation approach must appraise the operating unit by its current usage to be competent. Property appraisal evidence is only competent "when it is derived by standard appraisal methods and techniques which are shown to be appropriate under the particular circumstances involved." *Inspiration Consol. Copper Co.*, 147 Ariz. at 223, 709 P.2d at 580. Though derived by nominally standard methods, Mesquite's appraisal is inappropriate under the circumstances because, by assuming the Purchase Agreement does not exist, it does not reflect the property as it is. Thus, Mesquite's expert testimony is incompetent to rebut the statutory presumption.

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Defendant requests the Court consider the Mesquite Power Court's decision in connection with the argument at pages 9-10 of its Reply in Support of Defendant's Motion for Summary Judgment captioned: " **Mr. Allen Improperly Valued the Subject Property Based on Sales of Long Vacant Distressed Properties."**

DATED this 27th day of December 2022.

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Court of Appeals of Arizona, Division 1.

MESQUITE POWER, LLC, Plaintiff/Appellee,
v.
ARIZONA DEPARTMENT OF REVENUE, Defendant/Appellant.

No. 1 CA-TX 22-0002
|
Filed December 20, 2022

Appeal from the Arizona Tax Court, No. TX2018-000928, The Honorable Danielle J. Viola, Judge. **VACATED AND REMANDED WITH INSTRUCTIONS**

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Judge Paul J. McMurdie delivered the Court's opinion, in which Presiding Judge Brian Y. Furuya and Judge Jennifer B. Campbell joined.

OPINION

McMURDIE, Judge:

*1 ¶1 The Arizona Department of Revenue ("Department") appeals from the tax court's judgment reducing the full cash value of property held by Mesquite Power, LLC ("Mesquite") for the 2019 tax year. The Department argues the tax court erred by (1) discounting the impact of an established power purchase agreement on the property's value and (2) considering incompetent expert testimony.

¶2 We hold that where intangible assets enhance the real and tangible property's value, a competent appraisal must consider the effect such intangible assets have on the taxable property's value. Thus, we vacate the judgment, vacate the award of attorney's fees, costs, and expenses, and remand for the court to affirm the statutory value found by the Department.

FACTS AND PROCEDURAL BACKGROUND

¶3 The heart of this dispute is Mesquite's power plant's full cash value assessment for the 2019 tax year. At issue is whether the existence of an intangible agreement enhances the value of the real and tangible personal property subject to the tax assessment.

1. Mesquite's Power Plant.

¶4 Mesquite's power plant is one-half of a two-block, combined-cycle, natural gas-fired electric generation facility in western Maricopa County. It operates as a "base load plant," meaning it runs continuously. The plant sells the electricity it generates on the open market as a "merchant plant."

¶5 A power plant's capacity is measured in megawatts. The plant has a nameplate capacity of 691.6 megawatts and a net operating capacity of 625 megawatts. Another metric, called "heat rate," confirms how efficiently a plant converts fuel into energy. The plant's historical heat rates are superior to the average for comparable facilities in the region and across the United States.

2. Transaction History.

¶6 Sempra U.S. Gas & Power ("Sempra") built the plant in 2003. Sempra structured the plant and its accompanying business as Mesquite. In 2015, Sempra sold Mesquite to ArcLight Capital Partners, LLC ("ArcLight") for nearly $357 million.

¶7 ArcLight spent over $27 million in capital improvements for the plant. In December 2017, less than a month before the January 1 valuation date[1] for the 2019 tax year, ArcLight solicited offers for the sale of Mesquite. Southwest Generation Operating Company ("Southwest") first offered $518 million, and the deal closed in July 2018 for around $556 million. Southwest currently owns Mesquite.

1 A.R.S. § 42-14153(C) provides that a property's value is the value "determined as of" the valuation date. *Siete Solar, LLC v. Ariz. Dep't of Revenue*, 246 Ariz. 146, 150, ¶ 17, 435 P.3d 1052, 1056 (App. 2019).

3. The Purchase Agreement.

¶8 Southwest's purchase of Mesquite from ArcLight included transferring a contract for power generation ("Purchase Agreement"). Under the Purchase Agreement, Mesquite guaranteed the Southwest Public Power Resources Group ("SPPR") access to 271 megawatts of electrical capacity until May 2021, when the capacity increased to 475 megawatts. In return, SPPR promised to pay Mesquite $34 million per year, rising to $48 million per year in 2022, as well as certain operation and maintenance costs for the plant. SPPR's payments are fixed whether SPPR draws upon any guaranteed electrical capacity. The terms of the Purchase Agreement run through 2046. Both before and after the purchase by Southwest, Mesquite remains bound by the Purchase Agreement.

*2 ¶9 The Purchase Agreement does not require that Mesquite provide electricity to SPPR from the Mesquite plant. If it chooses, Mesquite may purchase power on the open market to cover the capacity guarantee to SPPR. Although technically the Purchase Agreement and the plant are severable, any such severance would require approval by SPPR. According to Southwest's vice president, the presence of the Purchase Agreement was a deciding factor in purchasing the property.

4. Litigation History.

¶10 This is not the first time Mesquite has appeared before the tax court. While still under the ownership of ArcLight, Mesquite challenged the Department's valuation of the property for the 2016 and 2017 tax years. The tax court issued a consolidated judgment in Mesquite's favor, establishing reduced property values for those years and finding that the Purchase Agreement was a "non-taxable, intangible asset." The Department did not appeal that judgment.

¶11 In this case, the Department valued the property for the 2019 tax year at $196 million ("statutory value"). Mesquite appealed that assessment to the tax court, claiming that the statutory value exceeded the property's market value in violation of A.R.S. § 42-11001(6). Mesquite argued that the property's full cash value should be reduced to $105 million.

¶12 Before the tax court, Mesquite moved for partial summary judgment on whether the Purchase Agreement could be considered in the property's valuation. Mesquite asserted that the 2016–17 rulings estopped the Department from considering the Purchase Agreement. The Department, in turn, argued that while the Purchase Agreement was not taxable, its existence enhanced the value of the taxable property and should be considered in determining value. The tax court entered partial summary judgment for Mesquite, ruling that the Purchase Agreement is a "non-taxable, intangible asset that is separate and severable from the tangible property." The court partially denied the motion about "whether cash flows attributable to the Purchase Agreement can be considered as part of the valuation of Mesquite's property." The court did not address the cash flow issue in its final judgment.

¶13 At trial, Mesquite offered expert testimony supporting its $105 million evaluation claim. The Department offered expert testimony valuing the property at $432 million. Each expert considered the three standard appraisal methods (market,[2] income, and cost), although Mesquite's expert gave no weight to the cost or market approaches. Only the Department's evaluation included the "cash flows attributable" to the Purchase Agreement. Mesquite's expert, instead, constructed a hypothetical income model that excluded the Purchase Agreement income.

2 In the tax court, the parties called the market approach the "sales comparison" approach, we apply the terminology found in A.R.S. § 42-16051(B)(1)–(3). *See Maricopa County v. Sperry Rand Corp.*, 112 Ariz. 579, 581, 544 P.2d 1094, 1096 (1976).

¶14 After a five-day bench trial, the tax court ruled for Mesquite, valuing the property at $105 million for the 2019 tax year. The Department appealed, and we have jurisdiction under A.R.S. §§ 12-2101(A)(1) and 42-1254(D)(4).

DISCUSSION

¶15 "We view the facts in the light most favorable to sustaining the trial court's judgment." *Cimarron Foothills Cmty. Ass'n v. Kippen*, 206 Ariz. 455, 457, ¶ 2, 79 P.3d 1214, 1216 (App. 2003) (quoting *Sw. Soil Remediation, Inc. v. City of Tucson*, 201 Ariz. 438, 440, ¶ 2, 36 P.3d 1208, 1230 (App. 2001)). We will "defer to the trial court's factual findings as long as the record supports them." *In re the Gen. Adjudication of All Rts. to Use Water in the Gila River Sys. & Source*, 198 Ariz. 330, 337, ¶ 15, 9 P.3d 1069, 1076 (2000). We review pure questions of law and mixed questions of law and fact *de novo*. *See Robson Ranch Mountains, LLC v. Pinal County*, 203 Ariz. 120, 125, ¶ 13, 51 P.3d 342, 347 (App. 2002).

*3 ¶16 When challenging the statutory value, the taxpayer must rebut the statutory presumption and show that a lower valuation is correct. *See Graham County v. Graham County Elec. Coop., Inc.*, 109 Ariz. 468, 469–70, 512 P.2d 11, 12-13 (1973).

¶17 Arizona values property at its "full cash value" for tax purposes. *Bus. Realty of Ariz., Inc. v. Maricopa County*, 181 Ariz. 551, 553, 892 P.2d 1340, 1342 (1995). "Full cash value" generally means "fair market value," defined as "that amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts." *Id.* Fair market value can be derived by using "standard appraisal methods and techniques." A.R.S. § 42-11001(6).

¶18 "Current usage shall be included in the formula for reaching a determination of full cash value." A.R.S. § 42-11054(C)(1). "The valuation of electric generation facilities," like the property here, is determined by looking at, among other things, "[t]he value of land, ... [t]he valuation of real property improvements used in operating the facility, ... [and the] valuation of personal property used in operating the facility." A.R.S. § 42-14156(A)(1)–(3). " 'Personal property' means all tangible property except for land and real property improvements." A.R.S. § 42-14156(B)(2).

A. Mesquite Misattributes Value to the Purchase Agreement.

¶19 The parties agree that Southwest bought Mesquite —including real and personal property and the Purchase Agreement—for about $556 million. Mesquite's expert appraised the tangible property at $105 million. Though there was no appraisal for Mesquite's intangible property, it follows from the sale price that, as of the time of Southwest's purchase, Southwest valued Mesquite's intangible property (which includes the Purchase Agreement) at more than $400 million.

¶20 Although Mesquite did not separately appraise the value of the Purchase Agreement, the Department argues that the Purchase Agreement has little to no independent value. The Department also contends, however, that the Purchase Agreement's presence enhances the value of the real and tangible property of the plant.

¶21 The Purchase Agreement is a contract to provide electricity to SPPR in exchange for SPPR paying Mesquite a fixed annual rate and operational costs. But the Purchase Agreement itself does not represent or evidence the value of these transactions. If the Purchase Agreement no longer existed, it would change nothing about the plant or its ability to produce the same electrical capacity. So long as the plant can produce electricity, a new sale agreement could be negotiated with SPPR or any other willing purchaser. The plant's electricity production generates value no matter how the sale of that electricity is made or who is purchasing the electricity.

¶22 Still, Mesquite argues that the Purchase Agreement has independent value because, under the agreement, Mesquite will be paid no matter if SPPR chooses to take any electrical power. This argument is not persuasive. SPPR's choice to obtain power under the Purchase Agreement is irrelevant because Mesquite's obligation to guarantee power under that agreement persists. Any income Mesquite receives under the Purchase Agreement is *earned* by ensuring SPPR has *access* to the specified capacity. That Mesquite may or may not need to use the plant to satisfy its obligations under the Purchase Agreement does not alter the reality that electricity can be produced and sold by the plant, much less the circumstances of actual use relevant during the valuation period. And if the income must yet be achieved through performance under the contract, the value of the income is not inherent to the contract.

*4 ¶23 This is not to say that a contract can never hold value. For instance, a contract may have inherent value if its terms are favorable such that the bargained-for return is worth more than the consideration would secure on the open market. But the tax court did not make such a finding. If anything, the Purchase Agreement provides the best evidence for the fair market value of Mesquite's obligation, as the agreement was entered at arm's length.

¶24 Finally, even if the Purchase Agreement holds some value, Mesquite has failed to show that the inherent value of the Purchase Agreement explains the $400 million gap between the purchase price and the claimed property value. We thus conclude that Mesquite misattributes the value of the taxable property to the Purchase Agreement.

B. The Purchase Agreement Enhances the Value of the Taxable Property.

¶25 Mesquite maintains that because the Purchase Agreement is a "non-taxable, intangible asset that is separate and severable from the tangible property," it cannot be considered

in determining the property's tax valuation. In its appraisal, Mesquite's expert excluded the income generated under the Purchase Agreement and declined to factor the Purchase Agreement into Mesquite's risk assessment. As a result, Mesquite's appraisal for $105 million hinged on hypothetical cash flows and risk as if the Purchase Agreement did not exist.

¶26 Among other criticisms, the Department argues that Mesquite's appraisal is flawed because the Purchase Agreement contributes to the cash flow of the taxable tangible property. It also claims that the Purchase Agreement's income guarantee reduces the risk of operating the plant. The Department asserts that the Purchase Agreement's inherent value may be non-taxable, but to appraise the property as if the Purchase Agreement did not exist would artificially reduce the value of the taxable property and be error.

¶27 As a matter of mixed fact and law, we review *de novo* whether an appraisal technique is proper under standard appraisal methods. *See Eurofresh, Inc. v. Graham County*, 218 Ariz. 382, 387, ¶ 23, 187 P.3d 530, 535 (App. 2007). As applied here, we address whether a tax valuation of real and personal property should consider intangible assets.

¶28 *Maricopa County v. Viola*, a case involving apartments participating in the low-income housing tax credits ("LIHTC") program, is instructive. 251 Ariz. 276, 490 P.3d 385 (App. 2021). Under the LIHTC program, property owners received federal tax credits for agreeing to thirty-year restrictions on the rent they can charge tenants. *Id.* at 278, ¶ 2, 490 P.3d at 387. The tax court found this agreement intangible and untaxable. *Cottonwood Affordable Hous. v. Yavapai County*, 205 Ariz. 427, 429, 72 P.3d 357, 359 (Ariz. Tax Ct. 2003).

¶29 We affirmed the tax court's ruling through special action and held that the LIHTC program must be considered when valuing property subject to the restrictions. *Viola*, 251 Ariz. at 281, ¶ 19, 490 P.3d at 391. We explained that "[a]n LIHTC property cannot be valued as if it were a conventional apartment complex because it is not and cannot be used as such." *Id.* at 280, ¶ 15, 490 P.3d at 389. This holding reflects the statutory requirement that "[c]urrent usage" be considered in reaching the formula for full cash value. A.R.S. § 42-11054(C)(1). We agreed with the tax court's conclusion:

> A willing buyer, knowing that there is a restriction as to the amount of rent that can be charged, would pay less for a low income housing project than for a regular commercial apartment complex. This property should not be valued as though a buyer would not consider the restrictions. A valuation for an LIHTC project, determined under any of the standard appraisal methods, that does not take the deed restrictions into account will not result in a determination of fair market value for that property.

***5** *Id.* at 279–80, ¶ 13, 490 P.3d at 388-89 (quoting *Cottonwood Affordable Hous.*, 205 Ariz. at 430, 72 P.3d at 360). Thus, while the LIHTC restrictions were not taxable property, it would be error to evaluate the apartments without considering their effect on the property.

¶30 Parallel reasoning applies here to the Purchase Agreement and the Mesquite plant. True, the Purchase Agreement raises rather than lowers the value of the business. That said, a willing buyer would still consider the Purchase Agreement's impact on the plant. Southwest's vice president affirmed this by testifying that Southwest would have never bought Mesquite's business without the Purchase Agreement. Because the Purchase Agreement influences the purchase price a willing buyer would pay for the property (and, more basically, whether to buy the property), the proper valuation of the property should reflect the effect of the Purchase Agreement. *See Viola*, 251 Ariz. at 279–80, ¶ 13, 490 P.3d at 388-89.

¶31 Mesquite argues that it would be improper to consider the Purchase Agreement's enhancement of the value of the taxable property because the Purchase Agreement is "separate and severable from the tangible property." Mesquite maintains that because the tax court granted partial summary judgment on the issue and it was not appealed, the Department cannot contest the Purchase Agreement's separate and severable status.

¶32 But the Purchase Agreement's severability does not resolve whether it enhances the value of real and tangible property. The Purchase Agreement is severable, but it has not been severed. An asset that may be removed from the property does not exempt it from taxation. A contrary view would defeat the purpose of including "personal property"

in the valuation statute. *See* A.R.S. § 42-14156(A)(3). And more importantly, A.R.S. § 42-11054(C)(1) directs that tax evaluations be based on the property's "[c]urrent usage," not hypothetical usage.

¶33 Severable as it may be, the Purchase Agreement is not easily disentangled from the plant. The two were transferred together in the sale from ArcLight to Southwest. The terms of the Purchase Agreement require a supermajority buyer's approval to sell or transfer the Purchase Agreement independently, and Mesquite presented no examples of contracts like the Purchase Agreement being sold on the market separately from power plants. The Purchase Agreement provides operation and maintenance payments for Mesquite. We reject any suggestion that an agreement that offers, among other things, payment of operation and maintenance costs is not directed toward the operation or maintenance of the facility and can be ignored in an income-approach valuation.

¶34 Finally, the Purchase Agreement is not a unique or exclusive method for selling electrical power. Both parties presented evidence that most power plants not owned by a utility company operate and receive income through long-term contracts. Yet Mesquite's expert eliminated the revenue generated under the Purchase Agreement in his appraisal because the contract produced it. Taken to its extreme, such an approach would conclude that fully-subscribed power plants hold *no* value. Such a view defies reason and economic reality. Mesquite may not avoid taxes by sequestering its value into an untaxable contract just because such a contract is hypothetically severable and independent of the property on which it depends for its relevance. To hold otherwise also would run contrary to A.R.S. § 42-14156.

*6 ¶35 We conclude that the Purchase Agreement enhances the value of Mesquite's taxable property because it contributes to the plant's cash flows and current usage. Thus, it must be considered in determining the property's value.

C. Because Mesquite's Appraisal Failed to Evaluate the Property as It Exists, It Is Incompetent to Rebut the Statutory Presumption.

¶36 Generally, the tax valuation "as approved by the appropriate state or county authority is presumed to be correct and lawful." A.R.S. § 42-16212(B). The taxpayer may overcome this presumption by presenting competent evidence that the taxing authority's valuation is excessive. *Inspiration Consol. Copper Co. v. Ariz. Dep't of Revenue*, 147 Ariz. 216, 219, 709 P.2d 573, 576 (App. 1985). "Evidence is competent for the purposes of rebutting the statutory presumption and of showing that the Department's valuation was excessive when it is derived by standard appraisal methods and techniques which are shown to be appropriate under the particular circumstances involved." *Id.* at 223, 709 P.2d at 580.

¶37 If the taxpayer uses a different valuation method than the taxing authority, it must establish that its approach was appropriate under the circumstances. *Inspiration Consol. Copper Co.*, 147 Ariz. at 219, 709 P.2d at 576. Yet if the taxpayer and taxing authority use the same appraisal method "but differ as to the correct treatment of factors utilized in such method, the taxpayer's evidence is nevertheless competent and sufficient to overcome the statutory presumption." *Id.*

¶38 The experts for the Department and Mesquite considered the three standard appraisal approaches, though they "differ[ed] as to the correct treatment of factors" and the relative weights given each method. *See Inspiration Consol. Copper Co.*, 147 Ariz. at 219, 709 P.2d at 576. The Department's expert gave some weight to each of the three approaches. By contrast, Mesquite's appraisal relied on the income-based approach, claiming it is the most relied on by buyers and sellers in the industry. This approach uses the projected future cash flows of the property to determine its present value.

¶39 But Mesquite did not calculate cash flows for the plant in its current usage. Instead, Mesquite only included income from what it considers the taxable property, constructing a hypothetical income model for the property as if the Purchase Agreement did not exist. Mesquite's model is improper because it envisions the plant operating in a way that is not its "[c]urrent usage." *See* A.R.S. § 42-11054(C)(1). Mesquite cannot, consistent with reality, be valued as a plant without an in-place agreement providing a fixed income. *See Viola*, 251 Ariz. at 280, ¶ 15, 490 P.3d at 389. This error alone would render Mesquite's appraisal "[in]appropriate under the particular circumstances involved." *Inspiration Consol. Copper Co.*, 147 Ariz. at 223, 709 P.2d at 580.

¶40 But we have more concerns with Mesquite's appraisal. For example, in calculating the weighted average cost of capital ("WACC") for its model, Mesquite's expert included a "small company size premium" and a "company-specific" risk factor. Mesquite added these two values together under the label "additional risk factor" ("R_u"). [3] The Department did not use either of these risk factors. The Department

challenges the application of R_u, arguing that it is unjustified and that its two components are duplicative.

3 Mesquite applies the label "additional risk factor" to both the sum, R_u, and to the 5% company-specific risk factor which is a subcomponent of R_u. For clarity, we call the subcomponent the "company-specific risk" and the total 10.37% amount R_u.

*7 ¶41 We agree with the Department. The record offers no indication that the small company premium and the company-specific risk are not improperly duplicative. Mesquite's expert explained the small company premium at trial, testifying that small companies are "inherently more risky because of ... size, lack of diversification, and the liquidity in general." But Mesquite's expert report justifies the company-specific risk in a single sentence, claiming that it "account[s] for the electrical generation industry, lack of diversification and illiquidity." When asked on direct examination whether applying the company-specific risk beyond the small company premium would be double counting, Mesquite's expert replied:

> It's not double counting because, again, we've got the risk associated with there being a company and diversification, right? We still have the unsystematic risk that's associated with—again, the fact that we don't have that diversification. We have a single asset, and more specifically, just the real and personal property of that asset.

¶42 Despite the expert's nominal denial, the testimony fails to disprove the Department's accusation of double counting. The whole of Mesquite's evidence encompasses both the small company premium and the company-specific risk based on diversification and liquidity grounds. The use of two factors to account for the same risk is duplicative. Without contrary justification, the R_u factor appears to be little more than an attempt to pad the numbers such that they arrive at Mesquite's preferred value. *See Del. Open MRI Radiology Assocs., P.A. v. Kessler*, 898 A.2d 290, 339 (Del. Ch. 2006) ("[T]he company specific risk premium often seems like the device experts employ to bring their final results into line with their clients' objectives, when other valuation inputs fail to do the trick.").

¶43 Moreover, the effect of R_u on the overall valuation is immense. For instance, R_u adds 10.37% to the rate of return on equity capital, more than doubling the number it would otherwise be (and, incidentally, roughly doubling the number Southwest projected as a rate of return on equity when purchasing Mesquite). Removing R_u and relying only on Mesquite's expert's numbers for every other step in the analysis would lead to a total valuation of over $230 million—a number greater than the statutory value. The wild disparity in these values is especially alarming given Mesquite's sparse justifications for incorporating both risk factors.

¶44 The Department also argues that the small company premium and company-specific risk factors cannot be competently applied without evidence to justify their use. The Department supports this position by citing an unpublished decision, *Transwestern Pipeline Company v. Arizona Department of Revenue*, No. 1 CA-TX 19-0006, 2020 WL 4529622 (Aug. 6, 2020) (mem. decision). In *Transwestern*, the Department appealed a tax court's judgment that adopted a taxpayer's WACC calculation for the 2016 and 2017 tax years. *Id.* at *2, ¶ 6. The taxpayer's expert appraisal included small company premiums and company-specific risk factors that, in total, did not exceed five percent. *Id.* at *3, ¶ 14.

¶45 The Department challenged the validity of the risk factors, arguing that "company-specific risks duplicate the risks already accounted for in the small-company risk premium and the industry beta." *Transwestern Pipeline Co.*, No. 1 CA-TX 19-0006, at *3, ¶ 15. The Department also argued that the risk factors were unjustified because

> there is no evidence in the record that Transwestern uniquely suffered from the identified company-specific risks ... while other companies in the pipeline industry do not.... [Transwestern] failed to provide sufficient factual basis for the premium; either specific financial analysis to determine whether a company-specific risk premium is

> appropriate or the amount of such a premium.

***8** *Id.* While the taxpayer argued that applying company-specific risks followed "standard appraisal method[s]," the Department countered that "the evidence must still show risks specific to the company, above general risks to the entire industry." *Id.* at *4, ¶ 16.

¶46 We agreed with the Department that there was insufficient evidence identifying risks specific to Transwestern above the general risk to the industry or risks common to all business ventures. *Transwestern Pipeline Co.*, No. 1 CA-TX 19-0006, at *5, ¶ 19. We vacated the part of the judgment adopting the taxpayer's WACC calculation, holding that "we need not defer to the tax court's conclusion based on [Transwestern's] testimony when we cannot find competent record evidence that Transwestern specifically suffered from the specific risk factors accepted by the court." *Id.* at *4, ¶ 16; *see also Pima County v. Cyprus-Pima Mining Co.*, 119 Ariz. 111, 119, 579 P.2d 1081, 1089 (1978) (The expert's capitalization method was not competent evidence when he departed from projected copper prices and failed to adjust for inflation.).

¶47 *Transwestern* follows holdings from other jurisdictions. *See Gesoff v. IIC Indus., Inc.*, 902 A.2d 1130, 1158 (Del. Ch. 2006) (Company-specific premiums should not be applied without justifying evidence.); *see also Minn. Energy Res. Corp. v. Comm'r of Revenue*, 886 N.W.2d 786, 793–94 (Minn. 2016) (Lack of evidentiary support for company-specific risk justifies a tax court's decision to exclude this factor.); *cf. Horn v. McQueen*, 353 F. Supp. 2d 785, 839 (W.D. Ky. 2004) (Appraisals must be "careful not to 'double-count' " by applying a company-specific risk, "especially as modified ... for smaller companies."). While a company-specific risk may apply in some cases, the choice to use and the value of such a factor must be supported by the evidence.

¶48 Here, the R_u factor is more than double what it was in *Transwestern*. But there is no evidence in the record suggesting that Mesquite is inferior to similar plants. On the contrary, its heat rates are superior to nationwide and regional averages. There is also no evidence that Mesquite is riskier than similar plants. Over half of Mesquite's capacity is contracted through 2046, and Mesquite's expert testified that plants under a contract are less risky than those without an agreement. We conclude that Mesquite has failed to provide evidence to justify its use of the 10.37% R_u factor. As a result, its inclusion was unreasonable and "[in]appropriate under the particular circumstances involved." *Inspiration Consol. Copper Co.*, 147 Ariz. at 223, 709 P.2d at 580.

¶49 Lastly, we respond to the Department's suggestion that Mesquite must apply the unit principle. An appraisal using the unit valuation method would calculate the plant's total value as an operating unit and remove any untaxable assets' fair market value from the full value. The Department cites several cases from other jurisdictions that apply the unit principle. *See Elk Hills Power, LLC v. Bd. of Equalization*, 57 Cal.4th 593, 160 Cal.Rptr.3d 387, 304 P.3d 1052 (2013) (power plant); *RT Commc'ns, Inc. v. State Bd. of Equalization*, 11 P.3d 915 (Wyo. 2000) (telephone company); *In re Appeal of ANR Pipeline Co.*, 276 Kan. 702, 79 P.3d 751 (2003) (natural gas pipeline).

¶50 The advantage of the unit principle is that it captures the value generated by the cooperation of mutually beneficial assets. In so doing, it considers the "[c]urrent usage" of the property. *See* A.R.S. § 42-11054(C)(1). Given the shortcomings in Mesquite's appraisal, we need not decide whether the unit valuation principle is appropriate here.

***9** ¶51 We hold that any valuation approach must appraise the operating unit by its current usage to be competent. Property appraisal evidence is only competent "when it is derived by standard appraisal methods and techniques which are shown to be appropriate under the particular circumstances involved." *Inspiration Consol. Copper Co.*, 147 Ariz. at 223, 709 P.2d at 580. Though derived by nominally standard methods, Mesquite's appraisal is inappropriate under the circumstances because, by assuming the Purchase Agreement does not exist, it does not reflect the property as it is. Thus, Mesquite's expert testimony is incompetent to rebut the statutory presumption.

CONCLUSION

¶52 We vacate the tax court's judgment and remand for the tax court to impose the statutory value. We vacate the tax court's award of attorney's fees, expert witness fees, and costs. We deny Mesquite's request for appellate attorney's fees, costs, and other expenses under A.R.S. § 12-348(B) because Mesquite did not prevail on the merits.

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN THE ARIZONA TAX COURT

CASTLE PHOENIX LLC, a foreign limited liability company authorized to do business in Arizona, Plaintiff, vs. MARICOPA COUNTY, a political subdivision of the State of Arizona, Defendant.	Case No. TX2017-000027 **DEFENDANT MARICOPA COUNTY'S MOTION FOR RECONSIDERATION OF THE COURT'S DECEMBER 29, 2022 MINUTE ENTRY** (Assigned to the Hon. Sara Agne)

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Defendant, Maricopa County, hereby moves the Court for Reconsideration of its December 29, 2022 Minute Entry denying Defendant's Motion for Summary Judgment in light of the Court of Appeals' recent decision in *Mesquite Power, LLC v Arizona Department of Revenue*, 1CA-TX 22-0002, ___ P3d___, 2022 WL 17814186 (App 2022).

Defendant argued that the Allen appraisal report Plaintiff relies on was incompetent to rebut the statutory presumption that the Assessor's valuation of the subject property was correct. A.R.S. §42-16212 (B). It is undisputed that the subject property was and is leased to Kohl's Department Stores, Inc. *See* Minute Entry at 2. It is also undisputed that Allen's appraisal valued the property as though it was vacant and available to be leased. *See* Plaintiff's Controverting Statement of Facts at ¶¶ 7 – 8. That is Mr. Allen assumed that as "of the retrospective date of value the subject property was not leased and was not at stabilized occupancy." *Id* at ¶7 (quoting Allen Appraisal) That assumption impacted both Allen's income approach, which included estimates of "lease-up costs and loss in income

over the lease-up period" and his sales approach which relied exclusively on sales of properties with no leases in place. *Id* at ¶7 (income approach) and ¶13 (sales approach).

Plaintiff defended Mr. Allen's approach as consistent with its view of standard appraisal practice and argued that he complied with A.R.S.§42-11054 (c)(1)'s mandate that the determination of the property's "full cash value" be determined based on its "[c]urrent usage" because he valued the property as a retail store. But in *Mesquite Power* the Court of Appeals rejected Mr. Allen's approach, holding that an appraisal that ignored the property's actual in-place agreement providing a fixed income, and instead valued it based on a hypothetical income model as if the actual agreement did not exist, violated the "[c]urrent usage" requirement of A.R.S. §42-1105 (c)(1). *Mesquite Power* at ¶39. The Court expressly held: "This error alone would render Mesquite's appraisal "[in]appropriate under the particular circumstances involved." *Id* (quoting *Inspiration Consol. Copper Co.* vs. Ariz. Dept. of Rev, 147 Ariz. 216, 223, 709 P.2d 573, 580 (App 1985)).

The *Mesquite Power* Court concluded: "**Mesquite's appraisal is inappropriate under the circumstances because, by assuming the Purchase Agreement does not exist, it does not reflect the property as it is. Thus, Mesquite's expert testimony is incompetent to rebut the statutory presumption.**" *Id* at ¶51(emphasis added). That holding is equally applicable here. Plaintiff's appraisal assumed the existing lease does not exist and Kohl's occupancy of the property would end at the valuation date which was not the case. Plaintiff's appraisal therefore failed to value the property as it is and is thus incompetent to rebut the statutory presumption. *See Orme School v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990); *Sulphur Springs Valley Elec. COOP v. ADOR*, 2015 WL773335 (App 2015)(copy attached)(Summary judgment affirmed because plaintiff's appraisal was incompetent as a matter of law to rebut statutory presumption).

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Defendant therefore requests the Court reconsider its ruling denying Defendant's Motion for Summary Judgment.

RESPECTFULLY SUBMITTED this 10th day of January, 2023.

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NOTICE: NOT FOR OFFICIAL PUBLICATION. UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.
Court of Appeals of Arizona,
Division 1.

SULPHUR SPRINGS VALLEY ELECTRIC COOPERATIVE, INC., an Arizona corporation, Plaintiff/Appellant,
v.
ARIZONA DEPARTMENT OF REVENUE, an executive administrative agency of the State of Arizona; Pima County; Cochise County; Graham County; and Santa Cruz County, all political subdivisions of the State of Arizona, Defendants/Appellees.

No. 1 CA–TX 14–0002.
|
Feb. 24, 2015.

Appeal from the Superior Court in Maricopa County; Nos. TX2010–000398; TX2011–000002, TX2011–000592, TX2012–000446 (Consolidated); The Honorable Dean M. Fink, Judge.

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Judge LAWRENCE F. WINTHROP delivered the decision of the Court, in which Presiding Judge KENT E. CATTANI and Judge PETER B. SWANN joined.

MEMORANDUM DECISION

WINTHROP, Judge.

*1 ¶ 1 Plaintiff/Appellant, Sulphur Springs Valley Electric Cooperative, Inc. ("Sulphur Springs"), appeals the tax court's grant of summary judgment in favor of Defendants/Appellees, Arizona Department of Revenue ("the Department"), Pima County, Cochise County, Graham County, and Santa Cruz County (collectively, "the Counties"). [1] For the following reasons, we affirm.

1 We refer to the Department and the Counties collectively as "Defendants."

FACTUAL AND PROCEDURAL BACKGROUND

¶ 2 Sulphur Springs is a nonprofit electric utility cooperative that distributes electric power to approximately 51,000 customers in rural areas of southern Arizona. It has taxable property consisting of overhead lines, transmission lines, power poles, substations, and miscellaneous tools and equipment (collectively, "the Property"). For tax years 2010 through 2013, Sulphur Springs challenged the Department's valuation of the Property for property tax purposes.

¶ 3 After the State Board of Equalization affirmed the Department's valuation of the Property for tax years 2010 through 2012, Sulphur Springs appealed to the tax court, and for tax year 2013, Sulphur Springs appealed directly to the tax court. Thereafter, the court consolidated the four cases.

¶ 4 Sulphur Springs filed a motion for summary judgment, asking the tax court to declare the Department's method of valuing the Property invalid. The court denied Sulphur Springs' motion as well as Defendants' cross-motion. Thereafter, Defendants moved for summary judgment on the basis that Sulphur Springs' expert appraiser, Michael E. Green, [2] had improperly relied on an income approach to valuation in formulating his opinion of value, that such evidence was incompetent as a matter of law, and therefore, Sulphur Springs was unable to rebut the statutory presumption of correctness established by Arizona Revised Statutes ("A.R.S.") section 42–16212(B) (West 2015). [3] The tax court granted Defendants' motion and dismissed Sulphur Springs' appeals for all four years, reasoning that our supreme court's holding in *Graham County v. Graham County Electric Cooperative, Inc.*, 109 Ariz. 468, 512 P.2d 11

(1973), prohibits the use of an income approach in valuing the property of a nonprofit electric distribution cooperative.

2 As designated by the American Society of Appraisers, Mr. Green is an Accredited Senior Appraiser (ASA), who specializes in public utilities.

3 Absent material revisions after the relevant dates, we cite the current version of a statute unless otherwise indicated.

¶ 5 Sulphur Springs timely appealed the tax court's judgment in favor of Defendants, and we have jurisdiction pursuant to A.R.S. § 12–2101(A)(1).

ANALYSIS

¶ 6 Arizona law requires the Department to value electric transmission and distribution property owned by for-profit corporations according to a statutory formula, which is based on original plant in service cost, less depreciation, with some exceptions. *See* A.R.S. § 42–14154(A)–(B). The Arizona Legislature, however, has excluded property owned by member-owned nonprofit electric distribution cooperatives from that statutory valuation formula, *see* A.R.S. § 42–14154(A)(1), and, for the tax years at issue in this appeal, no statutory formula existed. [4] In the absence of a statutory formula, the Department is required to value the property of a nonprofit electric distribution cooperative by applying "standard appraisal methods and techniques." A.R.S. § 42–11001(6) ("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.*" (emphasis added)).

4 For valuation years beginning from and after December 31, 2013, the legislature has mandated that the valuation of distribution cooperatives be computed using a statutory formula, which includes a standard market value factor. *See* A.R.S. § 42–14159; 2013 Ariz. Sess. Laws, ch. 226, §§ 3–4 (1st Reg.Sess.). As affirmed by the parties at oral argument, the 2013 legislation does not affect our analysis for the tax years at issue.

***2** ¶ 7 This appeal involves the question of what constitutes "standard appraisal methods and techniques" as applied to the valuation of a nonprofit electric distribution cooperative. [5] Sulphur Springs raises two issues on appeal: (1) Did Sulphur Springs' expert use standard appraisal methods and techniques in forming his opinion of value? (2) Did the Department utilize standard appraisal methods and techniques in valuing the Property and/or was the methodology the Department applied invalid under Arizona's Administrative Procedure Act ("the APA")? *See* A.R.S. §§ 41–1001 to –1092.12.

5 Our supreme court has acknowledged the complexity involved in valuing electric transmission and distribution property, especially when such property is owned by a nonprofit cooperative. *See Graham Cnty.*, 109 Ariz. at 470–71, 512 P.2d at 13–14.

¶ 8 We will affirm a grant of summary judgment if there are no genuine issues as to any material fact and the moving party is entitled to judgment as a matter of law. Ariz. R. Civ. P. 56(a); *Orme Sch. v. Reeves,* 166 Ariz. 301, 305, 802 P.2d 1000, 1004 (1990). We review *de novo* a grant of summary judgment, *see Wilderness World, Inc. v. Dep't of Revenue,* 182 Ariz. 196, 198, 895 P.2d 108, 110 (1995), and view all facts in the light most favorable to the party against whom judgment was entered. *Nat'l Bank of Ariz. v. Thruston,* 218 Ariz. 112, 116, ¶ 17, 180 P.3d 977, 981 (App.2008).

I. Sulphur Springs' Valuation of the Property

¶ 9 We begin by acknowledging that Arizona law establishes a presumption that the state or county's valuation of property is lawful and correct. A.R.S. § 42–16212(B) ("The valuation or classification as approved by the appropriate state or county authority is presumed to be correct and lawful."). A taxpayer challenging the valuation of his or her property has the burden of proving, by competent evidence, that the state or county's valuation is excessive. *See Pima Cnty. v. Trico Elec. Coop.* ("*Trico I* "), 15 Ariz.App. 517, 519, 489 P.2d 1219, 1221 (1971). In the absence of competent evidence rebutting the statutory presumption, the taxing authority's valuation will stand as lawful and correct. *See id.* Accordingly, Sulphur Springs has the burden of proving the Department's valuation of the Property is excessive.

A. Mr. Green's Appraisal Reports

¶ 10 As we have noted, Sulphur Springs retained an expert appraiser, Mr. Green, to formulate an opinion of the market value of the Property for each tax year at issue. Sulphur Springs argues Mr. Green's appraisal report utilized

standard appraisal methods and techniques, and therefore is competent evidence which rebuts the statutory presumption of correctness under A.R.S. § 42–16212(B). Defendants argue the report does not constitute competent evidence sufficient to overcome the statutory presumption because Mr. Green relied on an income approach in valuing the Property, which Arizona law prohibits.

¶ 11 There are three generally accepted approaches to valuing real property in Arizona: the market data approach, the cost approach, and the income approach. *Dep't of Revenue v. Transamerica Title Ins. Co.*, 117 Ariz. 26, 29, 570 P.2d 797, 800 (App.1977). Mr. Green arrived at his opinion of value by using both the income approach and the cost approach.

*3 ¶ 12 In his report, Mr. Green generally described the income approach as follows:

> The income approach to value is predicated upon the assumption that the market value of an income producing property is the present worth of future benefits (income) to be derived from owning the property.... Typically, this approach involves projecting potential income (e.g. earning capacity) and deducting all operating expenses and capital expenditures to arrive at an estimate of free cash flow.

He further explained his application of the income approach to this specific Property by stating: "The income approach has been utilized in this appraisal due to the fact that the subject is income producing and its earning capacity is the primary basis for value."

¶ 13 Mr. Green also applied an alternative cost approach in valuing the Property; however, this approach also utilized income data because he estimated external obsolescence [6] by applying an "income shortfall method," which he described as follows:

> External obsolescence is estimated by the income shortfall method where projected net utility operating income is compared to target net utility operating income (rate base times the cooperative market rate of return). The income shortfall is capitalized at the market rate of return as a measure of external obsolescence.

Thus, Mr. Green's alternative cost approach relied in part upon "projected net utility operating income."

¶ 14 Mr. Green reconciled the income and cost opinions of value to arrive at an estimated market value of the Property for each tax year. In calculating his final opinions of value, Mr. Green gave greater weight to the income approach.

B. Arizona Supreme Court Precedent

¶ 15 Our supreme court has issued three opinions addressing the valuation of nonprofit electric cooperatives: *Graham County; Department of Property Valuation v. Trico Electric Cooperative, Inc. ("Trico II")*, 113 Ariz. 68, 546 P.2d 804 (1976); and *Arizona Department of Revenue v. Trico Electric Cooperative, Inc. ("Trico III")*, 151 Ariz. 544, 729 P.2d 898 (1986). [7] In the first of these three opinions, *Graham County*, the court concluded it is "fundamentally wrong" to rely upon the capitalization-of-income method in valuing the property of a nonprofit corporation:

> The utility's expert used the capitalization-of-income method which is an approved appraisal method. He reasoned that the balance of income over operating costs for the taxpayer utility was in fact a profit, and he proceeded to capitalize the figure for the years in question to arrive at his valuation. *The method used is fundamentally wrong in that the taxpayer is a non-profit corporation, and it sets its rates with the deliberate intention of not making a profit.* 109 Ariz. at 471, 512 P.2d at 14 (emphasis added). After determining reliance on the capitalization-of-income method was "fundamentally wrong," the court concluded the taxpayer had failed to meet its burden of presenting

6 Mr. Green's report defines "external obsolescence" as "the loss in value due to factors outside the property such as excess supply, competition or regulation."

7 We are bound by the decisions of our supreme court. *See McKay v. Indus. Comm'n*, 103 Ariz. 191, 193, 438 P.2d 757, 759 (1968) ("Whether prior decisions of the highest court in a state are to be disaffirmed is a question for the court which makes the decisions. Any other rule would lead to chaos in our judicial system." (citation omitted)).

competent evidence to rebut the statutory presumption of correctness. *See id.; see also Recreation Ctrs. of Sun City, Inc. v. Maricopa Cnty.*, 162 Ariz. 281, 288, 782 P.2d 1174, 1181 (1989) (reiterating *Graham County's* holding that "the appraiser's use of the income approach was improper because the taxpayer was a nonprofit corporation that set its rate with the deliberate intention of not making a profit").

*4 ¶ 16 Three years after *Graham County,* the supreme court again addressed the valuation of a nonprofit electric cooperative. In *Trico II,* the taxpayer's expert utilized both the cost and income approaches to value, and he testified at trial regarding those methods. 113 Ariz. at 70–71, 546 P.2d at 806–07. In addition, the trial court admitted into evidence an exhibit containing a summary of the expert's computations. *See id.* On appeal, the Department argued the expert's "income approach was essentially based on the capitalization of income method which is not a proper valuation technique in the context of the valuation of a nonprofit corporation." *Id.* (citing *Graham County*). Relying on its earlier decision in *Graham County,* the court reversed and remanded for a new trial, concluding the trial court had erred in admitting the expert's testimony and corresponding exhibit. *Id.* at 71, 546 P.2d at 807.

¶ 17 Ten years later, the supreme court again addressed the valuation of Trico's property in *Trico III.* By that time, the legislature had enacted legislation providing for the statutory valuation of electric transmission and distribution property, including property owned by nonprofit electric cooperatives.[8] *See Trico III,* 151 Ariz. at 546–47, 729 P.2d at 900–01 (explaining the enactment of A.R.S. § 42–124.01). In *Trico III,* the taxpayer challenged the legislature's decision to utilize cost, less depreciation, in the statutory formula for valuing electric transmission and distribution property. *See id.* at 549, 729 P.2d at 903. The supreme court upheld the legislature's selection of the cost approach to value and, in so doing, reiterated its holding from *Graham County* as follows:

> Arizona has recognized three generally-accepted approaches to estimating real property valuations: the income approach, the market data approach, and the cost-less-depreciation approach. *Department of Revenue v. Transamerica Title Insurance Co.*, 117 Ariz. 26, 570 P.2d 797 (App.1977).
>
> *We have held that using the income approach to calculate full cash value of property owned by a cooperative utility is "fundamentally wrong" because such an entity "is a non-profit corporation, and it sets its rates with the deliberate intention of not making a profit." Graham County v. Graham County Electric Cooperative, Inc.*, 109 Ariz. 468, 471, 512 P.2d 11, 14 (1973). Left with selecting either the market data approach or the costless-depreciation approach, we decline to find the legislature's selection of the latter approach arbitrary or capricious.... We conclude that the legislature's 1980 decision to require full cash value of certain utility property to be calculated by the generally-recognized cost-less-depreciation method was rational.

Trico III, 151 Ariz. at 549, 729 P.2d at 903 (emphasis added).[9]

8 This statutory formula was originally applied to the property of nonprofit electric distribution cooperatives; however, in 1986, the legislature exempted such property from the statutory formula. *See* 1986 Ariz. Sess. Laws, ch. 133, § 1 (2nd Reg.Sess.).

9 In its briefs and at argument, Sulphur Springs relied upon an older decision from this court also involving Trico. *See Trico I,* 15 Ariz.App. at 519–20, 489 P.2d at 1221–22. In that case, this court stated: "Assuming *arguendo* that an income approach was appropriate in the case at bench, it is the *capacity* for earning income rather than the income actually derived which reflects full cash value for taxation purposes." *Id.* It is clear from our supreme court's subsequent decision in *Graham County,* however, that an income approach is *not* appropriate in valuing the property of a nonprofit electric distribution cooperative under Arizona law. *See* 109 Ariz. at 471, 512 P.2d at 14.

¶ 18 In this case, Mr. Green utilized both the capitalization-of-income approach and the cost approach to value. His cost approach, however, was predicated on income because he utilized an "income shortfall method" to calculate external obsolescence. Accordingly, both of his approaches relied upon income to establish market value. Under *Graham County,* Mr. Green's approach to valuing the Property is "fundamentally wrong" because the Property is owned by a nonprofit electric distribution cooperative.

*5 ¶ 19 In arguing that Mr. Green utilized standard appraisal methods and techniques, Sulphur Springs claims the discounted cash flow ("DCF") form of income capitalization approach is the primary valuation method currently used by market participants and lenders to value nonprofit electric

distribution cooperatives. [10] For the purpose of our review, we accept Sulphur Springs' statement as true. *See Thruston*, 218 Ariz. at 116, ¶ 17, 180 P.3d at 981. Nevertheless, under *Graham County*, the DCF form of income capitalization approach is *not* a permissible method of valuing the property of a nonprofit electric distribution cooperative for Arizona property tax purposes. *See* 109 Ariz. at 471, 512 P.2d at 14.

10 "Discounted cash flow (DCF) analysis is a procedure in which a yield rate is applied to a set of income streams and a reversion to determine whether the investment property will produce a required yield given a known acquisition price." Appraisal Institute, *The Appraisal of Real Estate* ch. 24, at 540 (13th ed.2008). We acknowledge that a DCF analysis is a standard appraisal method and technique for valuing other types of property. *See id.* at 539 ("In many markets and for many property types, DCF analysis is the technique investors prefer.").

¶ 20 Sulphur Springs also argues the DCF approach employed by Mr. Green is different than the direct income capitalization approach applied by the utility's expert in *Graham County*. This may be true; nevertheless, the DCF approach is still a type of income capitalization, and the supreme court found such an approach "fundamentally wrong" as applied to the property of a nonprofit electric distribution cooperative. [11] Applying the holding from *Graham County*, as we must, *see McKay*, 103 Ariz. at 193, 438 P.2d at 759, we affirm the tax court's grant of summary judgment determining that Sulphur Springs failed to overcome the statutory presumption of correctness because its expert's opinion of value was based on the income capitalization approach.

11 As explained in *The Appraisal of Real Estate* 's thirteenth edition at chapter 20, page 465:

> The two methods of income capitalization are direct capitalization, in which a single year's income is divided by an income rate or multiplied by an income factor to reach an indication of value, and yield capitalization, in which future benefits are converted into a value indication by discounting them at an appropriate yield rate (DCF analysis) or applying an overall rate that reflects the investment's income pattern, value change, and yield rate.

II. The Department's Valuation of the Property

¶ 21 Sulphur Springs alternatively argues the methodology utilized by the Department in valuing the Property is, in effect, a *de facto* and invalid rule under the APA, and that, accordingly, the statutory presumption established in § 42–16212(B) does not apply. In response, Defendants argue that no formal rule is required, and that the Department's method is based upon standard appraisal methods and techniques.

¶ 22 The legislature has granted the Department express statutory authority to value all electric distribution property in the state. *See* A.R.S. §§ 42–14001(A), –14151(A)(5). As previously noted, if such property is owned by a nonprofit electric distribution cooperative, the statutory formula does not apply and the Department is required to use standard appraisal methods and techniques. *See* A.R.S. §§ 42–14154(A)(1), –11001(6). Generally, in applying standard appraisal methods and techniques, the Department may choose among commonly accepted valuation methods. *See generally London Bridge Resort, Inc. v. Mohave Cnty.*, 200 Ariz. 462, 467, ¶ 24, 27 P.3d 819, 824 (App.2001). In addition, the Department may apply a combination of these approaches. *See Recreation Ctrs. of Sun City*, 162 Ariz. at 291, 782 P.2d at 1184 (concluding that a taxing authority may value property by utilizing a "hybrid method of appraisal").

¶ 23 From the late 1980s through the tax years in question, the Department valued the property of nonprofit electric distribution cooperatives by applying a combination of the cost and market approaches to value. Specifically, the Department utilized both a "trended calculation of original cost" approach and a "surrogate market approach," and then reconciled the two approaches. Although the parties dispute whether Sulphur Springs agreed to this methodology, the record reflects taxpayer acquiescence for a considerable period of time. [12] Moreover, there is evidence in the record that the Department's approach yielded valuations that were at times advantageous to the electric distribution cooperatives.

12 It appears that, for a period of years, the Department and the taxpayer, along with other industry representatives, attempted to craft a rule or guidelines for the valuation of nonprofit electrical cooperatives. Those efforts stalled, but the parties agree the methodology applied to the valuations at issue in this appeal is essentially the same methodology proposed during the stalled rule-making process.

*6 ¶ 24 Notably, Sulphur Springs has admitted the Department applied "some type of" standard appraisal method and technique in valuing the Property. In responding to the Department's cross-motion for summary judgment, Sulphur Springs stated:

> *There is no dispute in this case that the Department is using some type of SAMT [standard appraisal methods and techniques]* which, as the Department admits, is a "surrogate" valuation of Co-op property of which income cannot be used by way of the *Trico* decision and a market approach is used even though there are no sales of Co-op properties.

(Emphasis added; underscore in original.) Likewise, during the administrative appeal, Sulphur Springs' representative explained to the State Board of Equalization that "we don't have a problem with the methodologies that are used, the correlation of a cost and a market approach."

¶ 25 "The legislature is capable of requiring the Department to adopt rules when it so desires." *Duke Energy Arlington Valley, LLC v. Ariz. Dep't of Revenue*, 219 Ariz. 76, 78–79, ¶ 11, 193 P.3d 330, 332–33 (App.2008) (citing statutes); *see also* A.R.S. § 42–3304(B) ("The department shall adopt rules prescribing the procedures for claiming and verifying sales that are exempt under this section."); A.R.S. § 42–5009(F) ("Under rules the department may prescribe, the department may also require additional information for the seller to be entitled to the deduction."); A.R.S. § 42–5106(A) ("The department shall adopt rules defining food consistent with § 42–5101 and this section."). For the tax years in question, the legislature did *not* require the Department to promulgate rules and regulations for valuing the property of nonprofit electric distribution cooperatives. Rather, the legislature mandated that the Department apply "standard appraisal methods and techniques." A.R.S. § 42–11001(6). The approach the Department has taken to valuing this Property is within the scope of the authority granted it by the legislature. *See Facilitec, Inc. v. Hibbs*, 206 Ariz. 486, 488, ¶ 10, 80 P.3d 765, 767 (2003) (holding that the degree to which an agency can exercise power "depends upon the legislature's grant of authority to the agency").

¶ 26 Our role is not to determine the preferred method for valuing this Property. *See Navajo Cnty. v. Four Corners Pipe Line Co.*, 106 Ariz. 511, 522, 479 P.2d 174, 185 (1970) ("[I]t is not the function of the judiciary to promulgate tax assessment regulations in the form of judicial opinions."). If a taxpayer is unhappy with the appraisal methods and techniques utilized in valuing its property, the taxpayer must present competent evidence to the court to rebut the statutory presumption of correctness. *See Trico I*, 15 Ariz.App. at 519, 489 P.2d at 1221. Because Sulphur Springs presented evidence predicated on the capitalization-of-income method, which is not permitted under Arizona law, it failed to rebut the statutory presumption of correctness. Thus, the tax court's ruling was proper.

CONCLUSION

*7 ¶ 27 For the foregoing reasons, we affirm the tax court's grant of summary judgment in favor of Defendants.

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