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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2007-000596 03/08/2010

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

AR SILVER BELL INC PAUL J MOONEY

v.

ARIZONA STATE DEPARTMENT OF REVENUE, et al. AMY SPARROW

MINUTE ENTRY

The Court took this matter under advisement following oral argument on March 1, 2010. The Court has considered Defendants' Motion for Partial Summary Judgment and Plaintiff's Cross-Motion for Partial Summary Judgment. The Court finds as follows.

The relevant facts are limited and undisputed. The Silver Bell Mine, near Tucson, is an open pit mine that owns and utilizes a solvent extraction/electrowinning (SXEW) facility to extract the mined copper from its ore in an environmentally friendly manner. The latter was constructed after the enactment of A.R.S. § 41-1514.02, which provides favorable tax treatment as detailed below. Despite some indication in the briefing that valuation was a factor in this motion practice, the parties agreed at oral argument that only the allocation of value between the SXEW plant and the open pit mine, and the question of whether certain improvements are subject to the statutory preference, are at issue.

The Court begins its analysis with the relevant statutes. A.R.S. § 42-12006(5) includes in Class Six, for twenty years after its placement in service, "[r]eal and personal property and improvements or a portion of such property comprising a qualified environmental technology manufacturing, producing or processing facility as described in § 41-1514.02." The latter statute, at subsection (D)(2)(b)(iii), defines the permissible property, *inter alia*, as being used predominantly to "[p]repare, fabricate, manufacture or otherwise process raw material or intermediate product exclusively through a hydrometallurgical process where at least eighty-five

per cent of the process solution used to produce the finished product is recycled on site for additional production." Finally, "hydrometallurgical process" is defined at subsection (I)(5) to include "facilities used exclusively for solvent extraction electrowinning, hydrometallurgical recovery, precipitation and refining, but does not include smelters, open pit and underground mines, and concentrator processes." From this language it is clear that the SXEW plant is entitled to class six taxation. It is equally clear that the mine itself is not, however dependent its profitability may be on the electrowinning service provided by the SXEW plant.

As Plaintiff acknowledges, the increase in valuation of the Silver Bell Mine in recent years has resulted from a dramatic increase in its production of copper. It naturally reflects both the value of the greater amount of copper extracted from the mine and the value added to it after electrowinning. Plaintiff's "but-for" argument – but for the construction of the SXEW plant, the copper now being extracted would remain in the ground untaxed, so the entire value of the copper should be attributed to the SXEW plant – ignores the essential role of the mine in producing the finished copper: whether or not it would be extracted from the mine without the SXEW plant, it would not be processed by the plant if it were not extracted from the mine. Section 42-15006 expressly recognizes that a property may qualify in part and not qualify in part, and extends class six status only to the qualifying portion.

Applying these observations to the competing motions for summary judgment, the SXEW plant must be taxed under class six, the open pit must be taxed under class one, and the classification of the Leaching Assets (and other property not clearly part of either the SXEW plant or the open pit, if any) is not resolved. The language of A.R.S. § 41-1514.02 does not support the State's argument that class six is reserved for capital investments made subsequent to its effective date. Rather, the taxpayer, to qualify for assistance (including class six status) for his property, must "locate or make an additional capital investment" that satisfies the statutory requirements. This indicates that, once the additional investment is made, the whole of the qualifying property, not merely the additional investment, qualifies for class six. Thus, the State's motion is granted only to the extent that it seeks to define the classification of the open pit and the SXEW plant, and is denied as to the remainder.

As for Silver Bell's cross-motion, the very fact that it offers alternative allocation ratios – either 100 percent to the SXEW plant and zero to the mine, or the 1999 ratio of 77 percent to the plant and 23 percent to the mine – suggests that no ratio can be found to be required as a matter of law, especially in light of the statutory presumption of correctness to which the State is entitled. *Transamerica Development Co. v. Maricopa County*, 107 Ariz. 396 (1971), to which Plaintiff referred in oral argument, does not compel a single classification for the entire Silver Bell property. In that opinion, the Supreme Court held that unit valuation was required because "the language of the Arizona statutes … indicates that the concern of the Tax Board and the Superior Court should be the reasonableness of the total (land and improvements) valuation

placed on the property, rather than the separate valuations." *Id*. at 399. The Supreme Court's general observation about the intent of tax statutes does not apply here in light of the language of A.R.S. § 42-12006(5) limiting class six status to qualifying property and explicitly recognizing that this may constitute only a portion of the taxable property.

Therefore, IT IS ORDERED denying Plaintiff's Cross-Motion for Partial Summary Judgment in its entirety.