ARIZONA TAX COURT

TX 2003-000743 (Consolidated) 01/17/2006
TX2004-000010

HONORABLE MARK W. ARMSTRONG

CLERK OF THE COURT
L. Slaughter
Deputy

FILED:_____

ARIZONA DEPARTMENT OF REVENUE FRANK BOUCEK, III

v.

QUESTAR SOUTHERN TRAILS PIPELINE CO. PAUL J. MOONEY

**UNDER ADVISEMENT RULING**

This matter was taken under advisement after oral argument held November 21, 2005. The Court has considered the Plaintiff's Motion for Summary Judgment, Defendant's Cross-Motion for Partial Summary Judgment and arguments of counsel.

## I. THE ISSUE

The issue is whether the Department correctly interpreted and applied A.R.S. § 42-14201 *et seq.* in valuing the property of Questar Southern Trails Pipeline Company ("Questar") for tax years 2004 and 2005.

The Department centrally values all pipelines that operate in Arizona, including Questar's, using a statutory valuation formula set forth in A.R.S. § 42-14204. Pursuant to this statutory formula, the Department determined Questar's value for tax year 2004 and set it at $70,580,000. For tax year 2005, the Department determined a value of $69,688,000 using the formula.

Questar alleges that after the Department values its property using the statutory formula, the Department must then apply standard appraisal methods to determine the full cash value. Specifically, Questar contends that the Department must grant an additional adjustment for economic obsolescence.

## II. FACTUAL BACKGROUND

The Department annually determines the value of pipelines pursuant to the statutory formula in A.R.S. § 42-14204. For tax years 2004 and 2005, the Department determined and

noticed the full cash value of the Subject Property to be $70,580,000 and $69,688,000 respectively.

Questar appealed the 2004 tax year valuation on October 4, 2003 by filing a Petition for Review with the Arizona State Board of Equalization ("State Board"). Questar appealed on the basis that the application of the statutory formula resulted in a value far in excess of the fair market value of the Subject Property. Specifically Questar argued, the Department failed to exercise discretion in properly accounting for adverse economic, competitive and regulatory developments that have occurred since Questar purchased the Subject Property and converted it to a natural gas pipeline.

On November 12, 2003, the State Board convened and heard Questar's appeal. On November 25, 2003, the State Board issued a decision in favor of Questar reducing the full cash value of the Subject Property for the 2004 tax year to $55,200,000. The Department subsequently appealed the State Board's decision by filing this action on December 23, 2003, in the Arizona Tax Court. Believing that the State Board did not make a sufficient adjustment to account for the economic obsolescence affecting the Subject Property, Questar also appealed the State Board's decision by filing a separate action under Cause No. TX 2004-000010 on January 5, 2004. Questar later amended its complaint to also include a valuation claim for the 2005 tax year. Both parties subsequently agreed to consolidate the two appeals and this Court entered an Order consolidating both cases under Cause No. TX 2004-000743 on March 14, 2005.

## III. ARGUMENTS OF THE PARTIES

***- Arizona Department of Revenue's Arguments -***

### A. THE DEPARTMENT IS REQUIRED TO FOLLOW THE VALUATION FORMULA THE LEGISLATURE ENACTED.

Arizona courts have rejected the use of standard appraisal methods when there is a statutory formula in place for valuing property for property tax purposes. The Arizona Supreme Court held that when the Legislature enacts a statutory valuation formula, it is improper to deviate from that formula by using standard appraisal methods to calculate obsolescence. *Arizona Department of Revenue v. Trico Elec. Co-op, Inc.*, 151 Ariz. 544, 729 P.2d 898 (1986). *Trico* involved the valuation of electric utility property. The Department valued the property based on the statutory formula the Legislature enacted. Trico appealed its property tax value to the State Board of Tax Appeals ("Tax Board"). The Tax Board held that the Department erred by not using standard appraisal methods and techniques to calculate value and that the Department's value produced by the statutory formula was excessive based upon functional and economic obsolescence. 151 Ariz. at 546, 729 P.2d at 900. The Superior Court reversed the Tax Board's decision and reinstated the Department's value as calculated pursuant to the formula. *Id.*

On appeal, the Supreme Court upheld the valuation under the formula. The court held that it was error for the Tax Board to revert to standard appraisal methods to calculate obsolescence where the Legislature had intended the Department to use a statutory valuation formula to calculate value. The court stated, "the legislature intended the statutory formula . . . to be the exclusive method used to calculate full cash value of electric and gas utilities." *Id.* at 547, 729 P.2d at 901. The decision also noted that the statutes stated that utility property "shall be valued" as provided therein. The court held that the "unambiguous use of the word "shall" indicates that the legislature intended the statutory method of calculating full cash value prescribed therein to be mandatory and that the historical practice of using standard appraisal methods to calculate full cash value was not to be followed." *Id.* The court concluded that the Department's calculation of value using the formula reflected the proper full cash value of the property rather than the Board's value calculated under standard appraisal methods. *Id.* The court later commented that if the Department values property using the Legislature's formula, "the Board cannot alter the DOR's valuation, ignore state law, and create its own valuation standards contrary to clearly articulated and unambiguous legislative mandates." *Id.* at 550, 729 P.2d at 904.

This case presents the same issue as the one presented in *Trico.* Here the Department valued the property using the statutory formula. The statutes governing the valuation of pipelines contain the same mandatory language that the court relied upon in *Trico.* A.R.S. § 42-14201 provides that "[t]he department shall annually determine, in the manner prescribed by this article, the valuation of pipelines that operate in this state." At the State Board, Questar argued that the board could use standard appraisal methods because the value produced by the formula is excessive based on economic obsolescence. The State Board reduced the value on that basis. That is the same relief Questar seeks in this consolidated action. Under *Trico,* the State Board did not have the authority to ignore state law and create its own valuation standard.

Questar asserts that the full cash value produced by the formula does not reflect market value. However, "full cash value" is defined for property tax purposes as "the value determined as prescribed by statute. If no statutory method is prescribed, full cash value is synonymous with market value which means the estimate of value that is derived annually by using standard appraisal methods and techniques." A.R.S. § 42-11001(5). The Supreme Court relied upon this definition in *Trico* in concluding that the formula is the exclusive method of valuing the property and determining the proper full cash value. *Trico,* 151 Ariz. At 547, 729 P.2d at 901.

Questar relies on A.R.S. § 42-14003(A) as the "overarching" rule of law for centrally assessed property. *Id.* However, under *Trico* and rules of statutory construction, it would be improper to interpret this general statute as overruling the more specific valuation formula. *Ruth Fisher Elementary School Dist. v. Buckeye Union High School Dist.*, 202 Ariz. 107, 41 P.3d 645 (2002) (Specific statutes create exceptions to general statutes, and if in conflict, the specific statute controls.) Questar also misinterprets A.R.S. § 42-14003 by suggesting that it can be used to change a statutory formula the Legislature enacted. Instead, that statute merely requires the Department to *consider* additional information presented by taxpayers, or information that is

otherwise available. A.R.S. § 42-14003(A). Thus, for example, if the taxpayer provides new or additional financial information that is used to calculate a value under the formula, the Department can consider it. However, Questar reads A.R.S. § 42-14003(A) as requiring the Department to use any information the taxpayer provides, even if it is not applicable under the statutory formula that the Department must use to value the property. In this case, Questar claims that because it presented information related to obsolescence, the Department must consider it and make an adjustment if necessary. Under *Trico* and rules of statutory construction, this is incorrect.

Moreover, the Legislature has clearly indicated when it intends the Department to consider obsolescence as part of the valuation under a statutory formula. In some formulas for centrally valued properties, the Legislature has inserted a provision that requires the Department to consider additional information, if presented by the taxpayer, concerning obsolescence. *See, e.g.,* A.R.S. § 42-14156(A)(4) (providing that "the taxpayer [owner of electric generation facilities] may submit documentation showing the need for, and the Department shall consider, an additional adjustment to recognize obsolescence using standard appraisal methods and techniques.") *See also,* A.R.S. § 42-14254(B)(4) (The department shall "allow additional obsolescence if supported by market evidence" in valuing flight property.) The valuation formula in A.R.S. § 42-14204 does not contain an obsolescence provision. Under rules of statutory construction, the fact that the Legislature did not include an obsolescence provision in A.R.S. § 42-14204, while doing so in other property tax statutes, indicates that it did not intend to include it in A.R.S. § 42-14204. *See, State v. Heinze*, 196 Ariz. 126, 131, 993 P.3d 1090, 1095 (App. 1999).

When interpreting a statute, the ultimate goal of this Court is to ascertain and give effect to the Legislative intent. *Devenir Assocs. v. City of Phoenix*, 169 Ariz. 500, 503, 821 P.2d 161, 164 (1991). If the language of the statute is clear and unambiguous, this Court should apply it without resorting to other rules of construction. *State v. Reynolds*, 170 Ariz. 233, 234, 823 P.2d 681, 681 (1992). Here, the language of A.R.S. § 42-14204 is plain and unambiguous. The Department has calculated a value using the formula based on information that Questar provided and Questar has not challenged that calculation. Thus, the Department correctly valued Questar's property using the formula. The Department has not adjusted the value of any pipeline that is valued under the formula using standard appraisal methods to calculate obsolescence. This longstanding interpretation is entitled to great weight. *Police Pension Board v. Warren*, 97 Ariz. 180, 398 P.2d 892 (1965) (construction of a statute by an agency charged with its administration is entitled to great weight in determining proper interpretation.) The plain language of the statue supports the conclusion that the Legislature intended the Department to value pipelines using a set statutory formula.

## B. MARKET VALUE IS NOT THE APPLICABLE STANDARD WHEN VALUATION IS DETERMINED AS PRESCRIBED BY STATUTE.

Questar's primary argument is that the Legislature intended pipelines to be valued under

a market value standard and that obsolescence must therefore be considered. Nothing in the language of the statutes or the legislative history of the pipeline valuation formula supports this contention. The legislative history Questar attempts to rely on establishes that the Legislature and the industry did not intend to utilize a market approach to value and instead agreed on a formula. Before the Legislature enacted the formula in A.R.S. § 42-14204, the Department valued pipelines using standard appraisal methods with particular emphasis on the stock and debt approach. As referred to in the legislative history, the "stock market approach" encompassed a degree of appraiser subjectivity which the Legislature sought to remove from the valuation process. *Id.* The goal was to develop a formula that would produce values that were more predictable and objective. As argued by the Department, the statutory formula the Legislature enacted is desirable because it results in a mathematical calculation of values. This provides predictability for both the taxing jurisdictions as well as taxpayers and removes the subjectivity.

Questar's interpretation requiring the Department to utilize standard appraisal methods after applying the formula would defeat these goals. Once an appraiser reverts back to standard appraisal methods and techniques, the subjectivity that the Legislature attempted to eliminate from the valuation process for pipelines would be reinserted into the process. Moreover, the goal of predictable values would also be lost. This would undoubtedly lead to additional litigation over pipeline valuations. However, eliminating litigation was another goal that the Legislature sought to address by adopting a formula. A statement in the legislative history also indicates that the "entire pipeline industry had given its stamp of approval in what DOR has done in this bill." Thus, Questar's assertion that the industry would not have supported a formula without obsolescence is simply not accurate. Changing the valuation approach for Questar alone, while leaving all other pipelines valued exclusively under the formula, is not what the industry intended as evidenced by the statute's history. It makes more sense to conclude that industry wanted all competitors treated the same for property tax purposes.

Questar claims that the premise of the property tax scheme is to value property at market value, citing *Recreational Centers of Sun City, Inc. v. Maricopa County, Inc.*, 162 Ariz. 281, 782 P.2d 1174 (1989). However, Arizona courts have repeatedly recognized that once the Legislature began enacting statutory valuation formulas, it moved away from the market value standard and redefined full cash value. Those events were, in fact, part of the basis for the supreme court's holding in *Trico* that market value is not the standard when the Legislature enacts a formula. 151 Ariz. At 546, 729 P.2d at 900.

Questar also cites a recent court of appeals decision involving a pipeline and claims that in that case the Department argued it had discretion to deviate from the formula. *SFPP, L.P. v. Ariz. Dep't of Revenue*, 210 Ariz. 151, 108 P.3d 1930 (App. 2005). Questar is wrong in summarizing the Department's position in that case. *SFPP* involved an issue of statutory interpretation concerning the term "original cost" and had nothing to do with whether or not the Department could deviate from the statute and apply standard appraisal methods. In fact, *SFPP* supports the Department's position here because the Court of Appeals held that the formula for pipelines is the exclusive method by which pipelines are valued. *SFPP*, 210 Ariz. at 155, 108

P.3d at 935. The Department did argue in *SFPP* that its definition of "original cost" as the cost to the current owner of the property would result in a value that is closer to market value, than if the term "original cost" is interpreted as the value of the property when it is first placed in service. The Department made this argument in the context of interpreting the statutory language, not in suggesting that it must be allowed to deviate from the formula to engage in a market value analysis by applying standard appraisal methods. However, the Court of Appeals concluded that it is improper to inject market value concepts into a statutory method of valuation when the language of the Legislature is to the contrary. *Id.*

Questar also refers to cases involving one other taxpayer, All American Pipeline, with whom the Department settled litigation pending in the Tax Court. Those cases involved different issues. However, even if they had involved the same issue as Questar presents here, Arizona courts have held that the government can settle an issue with one taxpayer and litigate the same issue with other taxpayers. *See, Aida Renta Trust et al. v. Department of Revenue,* 197 Ariz. 222, 234, 3 P.3d 1142, 1154 (App. 2000). The All American Pipeline litigation has no bearing on the issues before this Court.

Finally, Questar attempts to rely on an unpublished memorandum decision by the Court of Appeals in a case involving a telecommunications company. *Ariz. Dep't of Revenue v. Qwest Corporation,* 1 CA-TX03-100 (August 26, 2004) (Memorandum Decision). The unpublished *Qwest* decision cannot be cited in this Court as precedent and it should be disregarded. Ariz. R. Civ. App. P. Rule 28(c).

Furthermore, the *Qwest* decision does not stand for the proposition that the Department can deviate from statutory valuation formulas and consider obsolescence in cases where the Legislature has not instructed it to do so. In *Qwest*, the valuation statute at issue instructed the Department to adopt a depreciation table from its 1993 Personal Property Manual. The table the Department adopted contained a provision to allow county assessors to reduce values below the table floor under certain circumstances, thereby allowing for additional obsolescence. The court of appeals concluded that in this fashion, the Department's table allowed for additional obsolescence reductions for telecommunications companies. The court based its conclusion on a footnote to the table that allowed for a reduction of the floor. However, there is no basis in the pipeline statute for granting obsolescence without going outside of the formula and using standard appraisal methods. The *Qwest* decision does not mention *Trico* and, because it is unpublished, it has no impact on the *Trico* decision.

## C. QUESTAR HAS NOT CHALLENGED THE DEPARTMENT'S APPLICATION OF THE VALUATION FORMULA THAT USED INFORMATION PROVIDED BY QUESTAR.

Each year, the Department sends out an annual property tax reporting form for pipelines to all pipelines that operate in this state. Every company is required to submit the report, under oath, to the Department on or before April 1. A.R.S. § 42-14202. Among other things, the

pipelines are required to report the cost of the property owned in Arizona and certain income information. A.R.S. § 42-14204. *Id.* The financial information the pipelines report corresponds to the financial information they publicly report to the Federal Energy Regulatory Commission ("FERC"). Thus, the Department is able to verify the amounts reported within Arizona based on the reporting to the FERC.

For tax years 2004 and 2005, Questar provided the financial information that the Department used to determine its value. The Department did not alter the financial information provided by Questar for either tax year. The formula uses a "base value" which is the prior year's value and then applies a "value change factor" to calculate the change in value from one year to the next resulting in the current year's value. The "value change factor" is determined by first calculating an "income change factor" and an "asset change factor." The "value change factor" is calculated by averaging the income change factor and the asset change factor. If there is not a sufficient income history, the income factor does not apply and the asset change factor is used as the value change factor. Questar has not challenged the Department's calculation of any of these factors. The "base value" is then multiplied by the "value change factor" to determine the base system value for the current tax year. To complete the valuation, the cost of materials and supplies, leased property, gas stored underground, and 85% of the construction work in progress are added to the base system value. A.R.S. § 42-14204(F)(4). Questar has not challenged any of these calculations under the formula.

The Department computed an allocation factor to allocate a system value to Arizona. Questar has not challenged the Department's calculation of the allocation factor used in the valuation. Thus, Questar has not challenged any of the Department's calculations under the statutory formula or the Department's determination of value using the formula. The Department has applied this statutory formula for all pipelines that operate in Arizona in the same fashion since the Legislature first enacted the statute.

***- Questar Southern Trails Pipeline Co.'s Arguments -***

## A. IN ENACTING A STATUTORY FORMULA FOR PROPERTY TAX PURPOSES, THE LEGISLATURE NEVER INTENDED PIPELINES TO BE VALUED IN EXCESS OF FAIR MARKET VALUE.

To adopt the Department's position—that it cannot consider or adjust for significant economic obsolescence affecting the Subject Property as of the relevant valuation dates—would mean that the Legislature intended that pipelines should be valued in excess of their market value. The legislative history of A.R.S. § 42-14204 and other similar statutes make clear that the Legislature never intended any such result.

The legislative history demonstrates both that (1) industry representatives were involved in their enactment, and (2) they were never intended to result in values in excess of market value. With respect to each statutory valuation formula, the Legislature called for a fiscal impact study

by the Department. In every case, the Department estimated that the fiscal impact that would result from passage of the legislation would be either a reduction in tax revenue or there would be no impact at all. Yet, in this case, the Department would have the Court believe that the Legislature intended the Department to set a value for the Subject Property in excess of its market value.

For the tax years at issue, the Department continues to value the Subject Property as if it were operated at 100% capacity when the reality is that due to external influences the pipeline is only being operated at 40% of its capacity. The Department is obligated as a matter of law to consider the obsolescence evidence presented by Questar in setting a value using the statutory formula.

**B. THE DEPARTMENT IGNORES THE REQUIREMENT OF A.R.S. § 42-14003 WHICH MANDATES THAT THE DEPARTMENT CONSIDER ECONOMIC OBSOLESCENCE AFFECTING THE SUBJECT PROPERTY.**

A.R.S. § 42-14003 provides that: "In determining valuation under this chapter the department shall consider all additional information including information that is presented in an appeal and information that is otherwise available." The Department's interpretation of the pipeline valuation statute effectively renders this statute meaningless. It insists that because the statutory formula codified in A.R.S. § 42-14204 fails to expressly allow for an adjustment for obsolescence it must strictly apply the formula as written and exclude consideration of any additional information that may have a detrimental affect on value. The Department also asserts that the statutory formula codified in A.R.S. § 42-14204 "trumps" A.R.S. § 42-14003.

In addressing the application of A.R.S. § 42-14003, the Department asserts that when a taxpayer requests an informal conference with the Department after the Department issues its initial notice of value, the taxpayer can submit additional information that the Department must consider. In such circumstances, the Department apparently believes it is bound by the requirements of A.R.S. § 42-14003. Yet, when applying the statutory formula, the Department believes otherwise. Interestingly, however, no language contained in the statutory formula limits the application of A.R.S. § 42-14003, and similarly no language contained in A.R.S. § 42-14003 limits the statutes to which it applies. *See also,* A.R.S. § 42-16212. The Department's selective application of A.R.S. § 42-14003 is therefore illegal and improper.

Moreover, under the Department's theory, unless the statutory formula expressly allows for consideration of obsolescence, the Department is permitted to completely ignore any such evidence presented by the taxpayer. This interpretation effectively renders A.R.S. § 42-14003 meaningless. To reiterate, A.R.S. § 42-14003 is located in Article 1, the general provision and procedures section of Title 42, Chapter 14, that governs the valuation of all centrally assessed property, including pipelines. The Department therefore cannot simply ignore A.R.S. § 42-14003, but rather must comply with it in applying the statutory valuation formula for pipelines and all other centrally-assessed properties.

The Department's position continues to illustrate a fundamental misunderstanding of Questar's position in this case. Again, Questar is not asking the Department to deviate from or change the formula. All Questar has asked is for the Department to grant a reduction in the value of the Subject Property to account for economic obsolescence that is undisputedly present as a result of the adverse economic, competitive and regulatory developments that have occurred since Questar purchased the Subject Property.

Contrary to the Department's argument, A.R.S. § 42-14204 does not preclude the exercise of discretion in setting the values for pipelines. The State Board recognized the Department's unreasonable position for what it was and, when presented with evidence justifying an adjustment, made that adjustment. As a matter of the law, the Department is obligated to do the same.

**C. WHEN INTERPRETING A PROPERTY TAX STATUTE THAT NEITHER EXPRESSLY FORBIDS NOR MANDATES THE DEPARTMENT TO CONSIDER OBSOLESCENCE IN CONJUNCTION WITH A STATUTE THAT REQUIRES CONSIDERATION OF ALL ADDITIONAL INFORMATION, THE LAW REQUIRES AN INTERPRETATION THAT WILL HARMONIZE BOTH STATUTES.**

The Department argues that under the rules of statutory construction, the fact that the Legislature did not include an obsolescence provision in A.R.S. § 42-14204, while doing so in other property tax statutes, indicates that it did not intend to include it in A.R.S. § 42-14204. The Department is completely wrong and its interpretation misconstrues the rules of statutory construction. Moreover, the case law cited by the Department fails to stand for the proposition for which it is cited and the Department continues to ignore A.R.S. § 42-14003.

In a case directly on point, the Court of Appeals in *Ariz. Dep't of Revenue v. Qwest Corporation*, 1 CA-TX 03-100 (August 26, 2004), addressed the interplay between one of the statutory formulas for valuing centrally assessed property and the considerations required by A.R.S. § 42-14003. After having referenced A.R.S. § 42-14003 and other applicable statutes, the Court pointed out that the inclusion of more general statutes in the Court's analysis did not mean that they displaced the language of the specific statute or the statutory formula. (Memorandum Decision at ¶ 16) More importantly, however, the Court noted that when interpreting a statute that neither expressly forbids nor mandates the Department to consider additional obsolescence with other more general related statutes, the Court chooses the interpretation that will harmonize the statutory formula with the other related statutes. *Id.*

As a matter of law, the Department must therefore apply the statutory formula codified in A.R.S. § 42-14204, consider and, if warranted, adjust for obsolescence in accordance with A.R.S. § 42-14003, thereby harmonizing both statutes to reach a valuation that does not exceed the fair market value of the Subject Property. For the tax years at issue, the Department has only blindly

applied the statutory formula, arguing that it has no choice but to do so, even in the face of compelling evidence that economic obsolescence exists. *Qwest* held that this interpretation is incorrect as it relates to the telecommunications valuation statute and, by extension, the same result applies here. Respectfully, the State Board correctly rejected the Department's mechanistic reading of the statute.

## D. RELIANCE ON THE *QWEST* DECISION IS PROPER FOR THE PURPOSES FOR WHICH IT IS CITED HEREIN.

As a threshold matter, the Department challenges Questar's reliance on and use of the unpublished memorandum decision by the Court of Appeals in *Ariz. Dep't of Revenue v. Qwest Corporation*, 1 CA-TX03-100 (August 26, 2004).[1] Specifically, the Department references Rule 28(c), ARCAP, and claims that the unpublished decision in *Qwest* cannot be cited in this Court as precedent.

Rule 28(c), ARCAP, states in relevant part that "[m]emorandum decisions shall not be regarded as precedent nor cited in any court except for (1) the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case." First, Questar is not citing *Qwest* as binding legal precedent. Rather, that decision is being cited for the general legal proposition that when interpreting a statute that prescribes a valuation formula that neither expressly forbids nor requires consideration of obsolescence with another equally applicable statute (A.R.S. § 42-14003), the law requires an interpretation that will harmonize both statutes together. Hence, Questar's reliance on and use of the *Qwest* decision is legally proper for the purpose for which it is cited here.

Second, and more importantly, Rule 28(c) expressly allows citation to unpublished decisions to establish the defense of collateral estoppel. In this case, the Department has challenged the State Board's decision in favor of Questar with respect to the obsolescence issue. In defense of that claim, Questar has relied on the Court of Appeals' ruling in a case that decided the identical issues against the very same Department of Revenue (and attorneys). Hence, it is proper to cite *Qwest* in support of a collateral estoppel defense arising under the doctrine of virtual representation. *See e.g.*, *El Paso Natural Gas Co. v. Arizona*, 123 Ariz. 219, 599 P.2d 175 (1979).

## E. *TRICO* IS NOT DISPOSITIVE ON THE ISSUE PRESENTLY BEFORE THE COURT.

The Department repeatedly cites *Arizona Dep't of Revenue v. Trico Elec. Co-op, Inc.*, 151 Ariz. 544, 729 P.2d 898 (1986) as controlling precedent in this case. The Department's reliance on *Trico*, however, is misplaced.

[1] Review was denied by the Supreme Court on September 27, 2005, so this decision is now final.

In *Trico*, the Supreme Court never addressed the issue currently pending here; namely, whether in reconciling a statutory formula that neither expressly prohibits nor requires consideration of obsolescence with a statute that requires consideration of "all additional information" presented in an appeal, the value determined using the statutory formula may be reduced to account for evidence of obsolescence. In addition, in *Trico* the court also never had before it a property that was valued under an applicable statutory formula as if operating at 100% capacity when in reality due to external influences the property was only being operated at 40% of capacity. Despite the Department's best efforts to point out certain similarities between this case and *Trico*, the relevant facts and ultimate issue currently before this Court are sufficiently different as to render the *Trico* decision inapplicable.

## IV. THE COURT'S FINDINGS AND CONCLUSIONS

The Court agrees with the Department's argument that *Arizona Dep't of Revenue v. Trico Elec. Co-op, Inc.*, 151 Ariz. 544, 729 P.2d 898 (1986) is the guiding authority in this case. The Court further concurs with the Department's interpretation of A.R.S. § 42-14003. That statute merely requires the Department to *consider* additional information presented by taxpayers, or information that is otherwise available. A.R.S. § 42-14003(A). Thus, for example, if the taxpayer provides new or additional financial information that is used to calculate a value under the formula, the Department may consider it. However, Questar reads A.R.S. § 42-14003(A) as requiring the Department to use any information the taxpayer provides, even if it is not applicable under the statutory formula that the Department must use to value the property. In this case, Questar claims that because it presented information related to obsolescence, the Department must consider it and make an adjustment if necessary. Under *Trico* and rules of statutory construction cited by the Department, this is incorrect.

Assuming the Department followed this interpretation of A.R.S. § 42-14003(A) in this case, the Court finds that there are no genuine issues of material fact, and that the Department is entitled to judgment as a matter of law. The Department correctly valued Questar's property for tax years 2004 and 2005 using the statutory formula in A.R.S. § 42-14204. The Court thus reinstates the Department's value for tax year 2004 in the amount of $70,580,000 and for tax year 2005 in the amount of $69,688,000.

While the Court is reluctant to consider the unpublished Court of Appeals decision cited by Defendant, *Ariz. Dep't of Revenue v. Qwest Corporation*, 1 CA-TX 03-100 (August 26, 2004), the Court would note that it is distinguishable in two significant respects. First, it does not mention *Trico*. Second, the Court in *Qwest* specifically stated: "However, in interpreting a statute that (1) neither expressly forbids nor mandates ADOR to consider additional obsolescence and (2) requires action 'based on tables' that reference an exercise of discretion to go below stated valuations on the tables, we choose the interpretation that will harmonize the section with other related statutes." (Emphasis added.). In the instant case, we have a statutory formula like the one in *Trico* but no language requiring reference to a table that provides for the exercise of discretion.

**IT IS THEREFORE ORDERED** granting Plaintiff's Motion for Summary Judgment and denying Defendant's Cross-Motion for Partial Summary Judgment.

The Court having also received and considered Plaintiff's Motion to Strike Defendant's Exhibit,

**IT IS FURTHER ORDERED** denying Plaintiff's Motion to Strike recognizing that the appraisal is not necessary to the Court's decision.

**IT IS FURTHER ORDERED** that each party shall bear their own costs and attorneys' fees.