UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 42

September Term, 2016

CARROLLTON ASSOCIATES LIMITED PARTNERSHIP

v.

SUPERVISOR OF ASSESSMENTS FOR FREDERICK COUNTY

Graeff,
Nazarian,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: February 9, 2017

Carrollton Associates Limited Partnership, LLC ("Carrollton") owns an apartment complex that provides housing subsidized by programs funded through the U.S. Department of Housing and Urban Development ("HUD"). In November 2014, Carrollton requested a tax refund from the Supervisor of Assessments of Frederick County ("Supervisor") for the 2011–2013 tax years after discovering that its assessment for those years did not reflect the complex's HUD subsidies, and thus was higher than it should have been. The Supervisor rejected Carrollton's refund request on the ground that the deadline for appealing the assessment had long since passed, and that the failure to reflect the subsidized status of the building's tenants in the assessment was not the sort of error that could be corrected after the fact. Carrollton appealed to the Maryland Tax Court, which agreed with the Supervisor, and the Circuit Court for Frederick County affirmed the Tax Court's decision on judicial review. Carrollton appeals again and we affirm.

I. BACKGROUND

The State Department of Assessments and Taxation ("SDAT") assesses the value of real property for tax purposes. *See* Md. Code (1985, 2012 Repl. Vol.), § 2-203 of the Tax-Property Article ("TP"). SDAT performs its valuations and assessments in connection with its county offices, which are run by supervisors.

Assessing property values can be a complex task. Assessors account for many factors in making valuations and assessments, including a property's type and use. SDAT translates a property's type and use into a Building of Public Roads Use Code ("BPRUC"), which matches a tax-adjusted capitalization rate that assessors use in their final calculation

of a property's valuation. Assessors divide the estimated net operating income for a property by the BPRUC-determined tax adjusted capitalization rate; a higher tax-adjusted capitalization rate results in a lower valuation and a lower tax-adjusted capitalization rate results in a higher valuation. Put even more simply, a property's BPRUC affects its property tax bill, and using an incorrect BPRUC that corresponds to a lower capitalization rate increases the assessment and the resulting tax bill.

Carrollton owns an apartment complex in Frederick County that provides HUD-subsidized housing. On December 28, 2010, the Supervisor issued an assessment notice to Carrollton stating the assessed value of its apartment complex for the 2011-2013 tax years (assessments occur on three-year cycles) as $14,636,800. In arriving at that figure, the assessor used a tax-adjusted capitalization rate based upon the BPRUC for ordinary apartment complexes, BPRUC 1500. The property is not an ordinary, apartment complex, however. It is HUD-subsidized housing. Subsidized apartments have a different, higher tax-adjusted capitalization rate, expressed as BPRUC 1800. Carrollton asserts that if the assessor had used the capitalization rate for BPRUC 1800, the resulting valuation for the property should have been $12,694,900, or $1,941,900 less than the figure actually assessed.

Carrollton did not contest the assessment. On July 26, 2011 and September 6, 2011, Carrollton paid its property taxes for the 2011, 2012, and 2013 years based on the assessed valuation. In the normal course, SDAT reassessed the property for the next three-year cycle, and, in the middle of the reassessment process, Carrollton realized that the previous

assessment had utilized the incorrect BPRUC. Carrollton emailed the Supervisor on July 23, 2014, advising her that the property is HUD-subsidized, and the Supervisor adjusted the assessment for the following tax cycle.

In a letter dated November 5, 2014, Carrollton sought a refund for tax years 2011, 2012, and 2013, on the ground that the assessment for those years failed to reflect that the property was used for subsidized housing. The Supervisor denied the request in a letter dated November 25, 2014. The Supervisor characterized the alleged error as an error in valuation, and responded that the assessment was based on the income of the property and that the failure to reflect the property's participation in HUD subsidy programs was not an error in property description that could be remedied at that time.

Carrollton appealed the Supervisor's decision to deny a refund to the Tax Court. On April 30, 2015, the Tax Court held a hearing and, ruling from the bench, granted summary judgment to the Supervisor. Carrollton then appealed that decision to the Circuit Court for Frederick County which, on February 20, 2016, affirmed the decision of the Tax Court. This appeal followed.

II. DISCUSSION

Carrollton contends on appeal[1] that the Tax Court erred in concluding that its claim is not eligible for a refund under TP §§ 14-904(b) and 14-905(c), and specifically that the

[1] Carrollton phrases its sole Question Presented as follows:

> (1) Did the Maryland Tax Court and Circuit Court for Frederick County err as a matter of law when they held that describing Appellant's subsidized apartment complex with a

use of the wrong BPRUC was not an error in the description of the property.[2] "The standard of review for Tax Court decisions is generally the same as that for other administrative agencies." *Supervisor of Assessments v. Hartge Yacht Yard, Inc.*, 379 Md. 452, 461 (2004). When reviewing the final decision of an administrative agency, we look through the circuit court's decision and evaluate the decision of the agency directly. *People's Counsel for Balt. Cty. v. Loyola Coll. in Md.*, 406 Md. 54, 66 (2008) (citations omitted). We review pure questions of law *de novo*, although an "agency's interpretation of a statute may be entitled to some deference." *Total Audio-Visual Sys., Inc. v. Dep't of Labor, Licensing & Regulation*, 360 Md. 387, 394 (2000) (citation omitted). But it is not our role to "substitute [our] judgment for the expertise of [the agency]." *Bd. of Educ. of Montgomery Cty. v. Paynter*, 303 Md. 22, 35 (1985) (emphasis omitted). "Deference to the interpretation of the agency, however, does not mean acquiescence or abdication of our construction responsibility. Despite the deference, 'it is always within our prerogative to determine whether an agency's conclusions of law are correct.'" *Adventist Health Care, Inc. v. Md. Health Care Comm'n*, 392 Md. 103, 121 (2006) (quoting *Kushell v. Dep't of Nat. Res.*, 385 Md. 563, 576 (2005)).

> BPRUC for a market rate apartment complex was not an "error in the property description" under TP §§ 14-904 & 905 even though the misdesignation resulted in an erroneous assessment?

[2] Because we conclude as a matter of law that Carrollton is otherwise ineligible for a refund, we need not address the timeliness of the refund request.

Carrollton argues that its refund claim met the requirements of TP §§ 14-904(b) and 14-905(c). These sections authorize refunds for taxes paid using final, unappealed assessments that were grounded in ministerial or mathematical exceptions:

> (b) *Limitation.* — If the assessment on which State property tax is payable has become final and has not been appealed as provided by Subtitle 5 of this title, a person is eligible for a refund of State property tax only if the person paid a tax bill that is erroneous because of a mathematical error, mechanical error, *error in the property description*, or other clerical error made by the taxing authority or assessing authority, and not because of an error of valuation.

TP § 14-904(b) (emphasis added).[3] On its face, TP § 14-904(b) can only be invoked when a payable tax "has become final and has not been appealed as provided by Subtitle 5 of this title." Subtitle 5 provides recourse to taxpayers to appeal a notice of assessment within 45 days of receipt of that notice, but does not provide an enumerated list of errors qualifying for refund eligibility and does not require that the error be made by the taxing authority. *See* TP § 14-502. So a taxpayer has 45 days to appeal an assessment, and can presumably succeed if his assessment has *any* sort of error for which *any* party is responsible. But a refund request after the window of appealability has closed can only be justified by "a mathematical error, mechanical error, error in the property description, or other clerical error *made by the taxing authority or assessing authority*." TP § 14-904(b) (emphasis added).

[3] TP § 14-904(b) is identical to TP § 14-905(c) except that TP § 14-904(b) refers to state taxes and TP § 14-905(c) refers to county and municipal corporation taxes. This distinction is not important to our analysis, which covers Carrollton's request under both sections.

Carrollton contends that the incorrect BPRUC code that fed the assessment qualifies as an "error in the property description," a term that Carrollton claims is ambiguous and an interpretation supported, in its view, by the legislative history of the statute. The "error in the property description" phrase was added to the statute during the 1991 Session of the General Assembly after a Delegate learned that a constituent paid increased taxes for a dozen years because SDAT mischaracterized his house as having a fireplace. FLOOR REPORT, H.B. 251, 405th Sess. (Md. 1991). Carrollton analogizes its apartment complex mistakenly characterized as an apartment without HUD subsidy status to this misdescribed dwelling. The Supervisor counters that Carrollton reads the legislative history too broadly and that a readily observable, physical characteristic of a building (a fireplace) is materially distinguishable from a financial characteristic of a building (HUD-subsidized status).

Carrollton does not contend that it wasn't sent its original assessment notice or was in some way unfairly precluded from appealing during its original TP § 14-502 45 day window. It's true that the 2010 assessment did not acknowledge an important financial characteristic of the apartment building, but Carrollton did not appeal the assessment within the statutory appeal period. But there is no evidence that the taxed valuation was inconsistent with the original notice, or thrown off by a multiplication error or typo, or plagued by some other obviously wrong or ministerial error made by Supervisor. And in the April 30, 2015 Tax Court hearing, the Tax Court agreed that failure to acknowledge the property's HUD status wasn't the Supervisor's error, because "financing of the property

from HUD isn't the same sort of thing that the County records would have. This is something that is between the property owner and the federal government."

The statute here is not ambiguous—a property description is, well, a description of the property itself, *see, e.g.*, *McGarvey v. S. Mun. Corp.*, 218 Md. 591, 593–96 (1959); *Town of New Market Frederick Cty. v. Milrey, Inc.-FDI P'ship*, 90 Md. App. 528, 539–41 (1992), and that term does not rationally encompass errors in the source of revenue for a property assessed according to its income.[4] The Tax Court's finding in that regard was reasonable and is entitled to deference. *Hartge Yacht Yard, Inc.*, 379 Md. at 461; *Accokeek, Mattawoman, Piscataway Creeks Communities Council, Inc. v. Md. Pub. Serv. Comm'n*, 227 Md. App. 265, 282 (2016) (We defer to agencies' interpretations of laws they administer unless the agency's actions were "(1) unconstitutional; (2) outside the statutory authority or jurisdiction of the [Tax Court]; (3) made on unlawful procedure; (4) arbitrary or capricious; (5) affected by other error of law; or (6) if the subject of review is an order entered in a contested proceeding after a hearing, unsupported by substantial evidence on the record considered as a whole." (citation omitted)) *aff'd*, __ Md. __, No. 26, Sept. Term 2016 (filed Dec. 16, 2016). And because the alleged error in the assessment, and thus the tax payable, was entirely a function of the BPRUC that fed the calculation, Carrolton

[4] Even so, we don't find the legislative history persuasive one way or the other. After explaining the constituent's fireplace situation, the Floor Report merely added that "[t]his bill allows the taxpayer to qualify for a refund for up to 3 years [the time contemplated by the deadline provision, TP § 14-915] *for such an assessment error*." FLOOR REPORT, H.B. 251, 405th Sess. (Md. 1991) (emphasis added). The legislative history does not indicate whether an intangible financial characteristic should fall within the "property description" bucket—it only makes clear that something like a fireplace does.

should have challenged the assessment when it was made, and was not eligible for a refund under TP § 14-904(b).

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED. APPELLANT TO PAY COSTS.