

2004 ARIZONA PROPERTY TAX UPDATE

By
Patrick Derdenger
Partner, Steptoe & Johnson LLP
201 E. Washington Street, 16th Floor
Phoenix, Arizona 85004-2382
(602) 257-5209
e-mail: pderdenger@steptoe.com

Prepared for
Arizona Property Tax Seminar
Thursday, February 10, 2005
Phoenix, Arizona
Lorman Education Services

STEPTOE & JOHNSON LLP

Washington, D.C.

Phoenix

Los Angeles

London

Brussels

New York

2004 ARIZONA PROPERTY TAX UPDATE

By

Patrick Derdenger

Partner, Steptoe & Johnson LLP

201 East Washington Street, 16th Floor

Phoenix, Arizona 85004-2382

(602) 257-5209

e-mail: pderdenger@steptoe.com

STEPTOE & JOHNSON LLP

Washington, D.C.

Phoenix

Los Angeles

London

Brussels

New York

Copyright © 2005 by PATRICK DERDENGHER

LEGISLATION

1. **Senate Bill 1091 (Ariz. Sess Laws 2004, Chapter 15). *Correction of Error Procedures Changed.***

This Bill changes the limitations provisions for the issuance of Notices of Error by County Assessors and the filing of Notices of Claim by taxpayers. The prior provision provided that a Notice of Error or Notice of Claim may be filed to correct an error that occurred more than three years before the Notice of Error or Notice of Claim is mailed or filed and in determining the three year period, if the Notice is mailed or filed after the third Monday in August, the three year period is the current year and the two immediately preceding years, and if the Notice is filed or mailed on or before the third Monday in August, the three year period is the three immediately preceding years. These provisions have been changed and simplified to provide that a Notice of Error or Notice of Claim is limited to the current tax year in which the Notice of Error or Notice of Claim was filed and the three immediately preceding tax years.

The Bill also defines the term “tax year” to mean to the calendar year in which the taxes are levied (as opposed to the valuation year, which is the year prior to the year in which the taxes are levied).

2. **House Bill 2040 (Ariz. Sess. Laws 2004, Chapter 61). *2004 Tax Corrections Act; Pipeline Valuation Date; Airline and Private Car Company Values are Matters of Public Record; DOR Reporting Procedures for Telecommunication Companies’ Values Changed.***

This Bill makes technical, conforming and clarifying changes to the Arizona tax statutes and makes the following changes to the property tax statutes:

- a. The Department of Revenue is required to determine the location of pipeline property by November 30th instead of August 31st.

- b. Clarifies that the full cash values of airline and private car companies' properties are a matter of public record.
 - c. The Department of Revenue under current law is required to report the apportionment of telecommunication companies' valuation to all local jurisdictions. This Bill eliminates that requirement and instead requires the Department to report the necessary information only to the county Assessors.
3. **Senate Bill 1004 (Ariz. Sess. Laws 2004, Chapter 239). *Home Value Limitation for Widows and Widowers Exemption Increased.***

This Bill increases the value of a residence eligible for the \$3,000 property tax exemption for widows, widowers and disabled persons. The Bill increases the value of a residence that may qualify for the exemption from \$100,000 or less to \$200,000 for widows, widowers or disabled persons. The Department of Revenue is required by December 31st of each year to increase the residence valuation limit of \$200,000 based on annual inflation as determined by the GDP price deflator.

4. **House Bill 2258 (Ariz. Sess. Laws 2004, Chapter 295). *Property Tax Agents' Authority Expanded; County Assessors Required to Change Tax Rolls to Reflect Changes from Judicial and Administrative Appeals; Requirement that Property Tax Cases Must Go to Trial Within 270 Days Repealed; Expands Property Tax Exemption for Institutions for Relief of Indigent or Afflicted; New Property Exemption for Non-Profit Organizations that Provide Financial Support for Public Libraries.***

This Bill makes a number of changes in the property tax laws. The major changes are:

- a. Expands the authority of property tax agents to act on behalf of the taxpayer to discuss tax matters with the County Assessors, the Department of Revenue or the County or State Board of Equalization.
- b. County Assessors are required to make changes in the tax roll to reflect any changes from judicial and administrative appeals, as well as from corrections of errors and omissions.
- c. The current requirement that a property tax case must go to trial within 270 days of filing the complaint is repealed.
- d. The property tax exemption for institutions for the relief of the indigent or afflicted is expanded to include administrative buildings or property.
- e. A new property tax exemption is established for non-profit organizations that provide financial support for public libraries.

CASES

5. ***Lyons v. State Board of Equalization, 2005 WL 170 687 (Ariz. App. Jan. 27, 2005). The Court Of Appeals Reversed The Tax Court And Held That A Taxpayer Could Bring A Claim Under A.R.S. § 16254(A) To Contest An Exemption Denial.***

The taxpayer claimed that the assessor had improperly denied it a tax exemption for property to be used as a parsonage. The court held “that an assessor's incorrect denial of a religious property exemption request constitutes a ‘mistake in assessing ... property taxes resulting from: ... [a]n incorrect designation or description of the use of property or its classification.’ [A.R.S. § 42-16251\(3\)\(b\)](#). Consequently, the error-correction statutes authorize the Board to correct such error, [A.R.S. § 42-16254\(A\)](#), even though a taxpayer may also file a lawsuit in the tax court to challenge an exemption denial as an illegally collected tax after payment of the first installment of that tax. [A .R.S. § 42-11005\(A\)](#).”

Further excerpts of the opinion follows:

“Assessor next argues that the error-correction statutes apply only to factual errors defined as ‘objectively verifiable without the exercise of discretion, opinion or judgment.’ [A.R.S. § 42-16251\(3\)\(e\)](#). It then contends that exemption decisions are discretionary and therefore are not subject to correction under the error-correction statutes. But Assessor incorrectly relies on the definition of ‘error’ applicable to valuation decisions and ignores [§ 42-16251\(3\)\(b\)](#), which concerns use and classification decisions. *See supra* ¶ 10. The definition of ‘error’ under [§ 42-16251\(3\)\(b\)](#), which the Board relies upon, does not require that an error be factual in nature or objectively verifiable.

“We agree that taxpayers can challenge exemption denials in actions to recover taxes illegally collected. In *Maricopa County v. N. Phoenix Baptist Church*, 2 Ariz.App. 418, 419, 409 P.2d 577, 578 (1966), the taxpayer-church filed a lawsuit under a former version of [§ 42-11005](#) seeking a refund of taxes assessed against church property used exclusively for religious purposes during the relevant tax year. In deciding whether the Maricopa County Board of Supervisors correctly denied the church's exemption request, this court held that collection of taxes against exempt property would be considered ‘illegally collected,’ and therefore properly challenged under [§ 42-11005](#). *N. Phoenix Baptist Church*, 2 Ariz.App. at 420, 409 P.2d at 579; *see also Bank of Am. Nat'l Trust and Sav. Ass'n v. Maricopa County*, 196 Ariz. 173, 178, 993 P.2d 1137, 1142 (App.1999) (holding that if no statute allows tax on a possessory interest then tax on that interest is “illegally collected” and properly challenged under [§ 42-11005](#)).”

“We are not persuaded that [§ 42-11005](#) provides the exclusive procedure for challenging an assessor's denial of an exemption request. . . . [C]onstruing [§ 42-11005](#) as a non-exclusive procedural device for challenging an exemption decision furthers the remedial purpose of the error-correction statutes. *See A.R.S. § 1-211(B) (2002)* (“Statutes shall be liberally construed to effect their objects and to promote justice.”)....Construing [§ 42-11005](#) as permitting correction of exemption-decision errors through an expedient administrative process furthers this purpose.”

6. ***Aileen H. Char Life Interest v. Maricopa County, 208 Ariz. 286, 93 P.3d 486 (2004). Uniformity Clause Requires that Taxpayers’ “Multi-Family Residential” Properties be Valued the Same as Other Similarly Situated Properties.***

For 1996 and 1997, as in prior years, the Maricopa County Assessor implemented a computer valuation program to determine the values of commercial properties, including multi-family residential properties. The value program calculated each property’s value using a computerized cost model. The County Assessor programmed the valuation program to “roll-over” or “freeze” the value of those parcels where the property owner had previously appealed the valuation and received a reduced value. The valuation of these roll-over properties did not change from 1996 to 1997. If the valuation program did not roll-over the value of a multi-family residential parcel or if the parcel’s value was not manually entered into the computer system, the value assigned by the valuation program was the property’s value for that year. Evidence was produced at the Tax Court which showed that properties tax under the roll-over method were valued at sixty-six percent (66%) of their full cash value in the aggregate, while the taxpayers’ properties were valued at one hundred percent (100%) of their full cash value under the County’s standard computer valuation method. The Tax Court found this violated the Uniformity Clause of the State Constitution and ordered a refund of the excess taxes paid. The Court of Appeals reversed and the Arizona Supreme Court took review.

The Supreme Court held that multi-family residential property was the appropriate class for evaluating the taxpayers’ claim of discriminatory valuation. The Supreme Court also held that evidence showing that the properties taxed under the roll-over method were valued at sixty-six percent (66%) of their full cash value, while the taxpayers’ properties were valued at one hundred percent (100%) of their full cash value under the standard method, established the elements of their claim of disproportionate valuation and provided a sufficient basis to support the Tax Court’s finding that the taxpayers were subject to disproportionate valuation in violation of Arizona’s Uniformity Clause. The Supreme Court ordered a refund of the excess taxes paid.

7. ***Pinal Vista Properties, LLC v. Turnbull, 208 Ariz. 188, 91 P.3d 1031 (Ct. App. 2004). Transfer of real property to the state by issuance of a Treasurer’s tax deed extinguishes all privately-held tax liens.***

Pinal Vista purchased tax liens on property in Pinal County (“Certificate of Purchase”). The Certificate of Purchase evidenced payment of delinquent taxes for the years 1987 through 1992 and represented a \$70,000 investment by Pinal Vista. Subsequent years’ taxes also went unpaid, but no one purchased any of those subsequent accruing tax liens, and thus they were assigned to the State pursuant to A.R.S. Section 42-18113. In June 2001, the Pinal County Board of Supervisors, after giving notice to lien holders, foreclosed on the property and issued a Treasurer’s deed to the property to the State in accordance with A.R.S. Section 42-18261. The issue presented by the issuance of a Treasurer’s deed to the State is whether that transfer of real property by Pinal County to the State extinguishes privately-held tax liens. The Court of Appeals concluded that it did, with the State taking the property free and clear of Pinal Vista’s tax liens evidenced by its Certificates of Purchase. The lesson to be learned by this case is that if a prior holder of a Certificate of Purchase wishes to protect itself, it should pay the subsequent years property taxes on the property so that it will not have its prior years tax liens extinguished because of a transfer of the property to the State.

8. *Nordstrom, Inc. v. Maricopa County*, 207 Ariz. 553, 88 P.3d 1165 (Ct. App. 2004). *Nordstrom's Scottsdale Fashion Square Store did not Constitute a "Shopping Center" for Property Tax Valuation Purposes.*

The Arizona property tax statutes, specifically A.R.S. Section 42-13201 and following, provide an income method for the valuation of shopping centers (straight-line building residual method). The Court of Appeals held that Nordstrom did not qualify as a "shopping center" so that the income approach could be used. A shopping center must be comprised of three or more commercial establishments, and the Court of Appeals held that, although Nordstrom was attached to the Scottsdale Fashion Center Mall (by the way of a pedestrian overpass over Camelback Road) and was part of an area that was owned or managed as a unit, Nordstrom's store was nevertheless separate from the Mall and thus did not meet the requirement that a shopping center be comprised of three or more commercial establishments. The Court also noted that the lease between Nordstrom and the Mall owner provided that Nordstrom would use its diligent efforts to have the store separately assessed.