

CORRECTING PROPERTY TAX ERRORS:

**NOTICE OF ERROR
AND
NOTICE OF CLAIM PROCEDURES**

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A. *INTRODUCTION*

Effective November 1, 1994, new procedures went into effect to provide for the correction of property tax errors by either a taxpayer or the taxing authority. *See* A.R.S. §§ 42-16251 to 16258.

B. *WHAT IS AN "ERROR."*

A property tax error is narrowly defined by the statute and for the most part does not include ordinary valuation disputes. "Error" is defined as follows:

"Error" means any mistake in assessing or collecting property taxes resulting from:

- (a) An imposition of an incorrect, erroneous or illegal tax rate that resulted in assessing or collecting excessive taxes.
- (b) An incorrect designation or description of the use of property or its classification pursuant to chapter 12, article 1 of this title.¹

¹Section 42-12001 *et seq.*

(c) Applying the incorrect assessment ratio percentages prescribed by chapter 15, article 1 of this title.²

(d) Misreporting or failing to report property if a statutory duty exists to report the property.

(e) Subject to the requirements of § 42-16255, subsection B, a valuation that is based on an error that is exclusively factual in nature or due to a specific legal restriction that affects the subject property and that is objectively verifiable without the exercise of discretion, option or judgment and that is demonstrated by clear and convincing evidence, such as:

(i) A mistake in the description of the size, use or ownership of land, improvements or personal property.

(ii) Clerical or typographical errors in reporting or entering data that was used directly to establish valuation.

(iii) A failure to timely capture on the tax roll a change in value caused by new construction, the destruction or demolition of improvements, the splitting of one parcel of real property into two or more new parcels or the consolidating of two or more parcels of real property into one new parcel existing on the valuation date.

(iv) The existence or nonexistence of the property on the valuation date.

(v) Any other objectively verifiable error that does not require the exercise of discretion, opinion or judgment.

"Error" does not include a correction that results from a change in the law as a result of a final nonappealable ruling by a court of competent jurisdiction in a case that does not involve the property for which a correction is claimed.

C. *NOTICE OF ERROR -- INCREASE OF TAXES BY TAXING AUTHORITY.*

If a taxing authority finds that real or personal property has been assessed improperly, the taxing authority may send a Notice of Error to the taxpayer explaining the nature of the error and the correction proposed. The taxpayer may either agree with the correction or file a written response within 30 days disputing the proposed correction. If an owner of real property consents to the proposed correction, the tax roll will be corrected to allow property taxes to be levied and collected but no tax, interest or penalty may be imposed for any tax year the date of the notice of error. This is not the case for personal property and the notice of error for personal property may cover the past three years.

For personal property, if a person reports the error to the taxing authority before receiving a notice of error, no penalty will be applied and the tax roll can be corrected to allow property

² Section 42-15001 *et seq.*

taxes for the period covered by the error to be levied and collected. In short, if an owner of real property consents to the correction of error, then the tax roll can be corrected only for the current year. For personal property, if a taxpayer reports the error before a notice of error is issued, then all penalties will be abated but taxes for the three past years can be assessed.

At the request of the taxpayer, the taxing authority must meet with the taxpayer. If the parties fail to agree, the taxing authority will serve notice on the taxpayer that the error will be corrected unless the taxpayer files a petition with the State Board of Equalization, within 30 days. The Board must hold a hearing and, if the taxpayer disagrees with the result, the taxpayer may appeal to the Tax Court within 60 days after the date the Board's decision is mailed. *See* A.R.S. §42-16252.

D. NOTICE OF CLAIM -- REFUND OF TAXES TO TAXPAYER

If the taxpayer believes his or her property has been incorrectly assessed, by being overvalued, incorrectly classified, etc., he or she may file a Notice of Claim with the appropriate taxing authority (County Assessor or Department of Revenue). Within 60 days after receiving a Notice of Claim, the taxing authority may file a written response to either consent to or dispute the claim. If the taxing authority fails to respond in the 60-day time period, such failure constitutes consent to the claim. If the taxing authority disputes the claim, it will schedule a meeting with the taxpayer. If there is still disagreement after the meeting, the taxpayer may appeal to the State Board for property located in Maricopa and Pima counties and to the local county board for all other counties within 150 days after the Notice of Claim is filed. The Board will hold a hearing within 30 days and issue its decision. If the taxpayer still disagrees with the result, the taxpayer may appeal to the Tax Court. *See* A.R.S. § 42-16254.

E. LIMITATIONS.

Corrections Limited to Time Current Owner Held Property. Any error corrections relating to real or personal property can be made by the appropriate governmental entity (e.g., a County or Department of Revenue) only for the period during which the current owner of record held title to the property if that owner is a purchaser in good faith and without notice of any error that could have caused proceedings to be initiated to correct the tax roll when the owner purchased the property. *See* A.R.S. § 42-16256.A.

Limitations Period. 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 is filed and the three immediately preceding years. As an example, if a Notice of Error were filed in 2005, it would be good for the 2005 year and the three prior years 2004, 2003 and 2002. *See* A.R.S. § 42-16256.B.

Exception. If an owner of real property (not personal property) consents to the proposed correction, the tax roll can be corrected to allow property taxes to be levied and collected but no tax, interest or penalty may be imposed for any tax preceding the date of the Notice of Error. *See* A.R.S. § 42-16252.B.

NOTE: Prior to August 2004, the limitations period had been a bit more complicated and if the Notice of Error or Notice of Claim for real property were mailed or filed after the third Monday in August, the three year period was the current year and the two immediately preceding years. If the Notice were mailed or filed on or before the third Monday in August, the three year period was the three immediately preceding years. If property were on the unsecured roll (personal property), the three year period was the thirty-six months immediately preceding the month in which the Notice was mailed or filed. Under the new limitations period, effective August 2004, the period dealing with real property or personal property is the current year and the three immediately preceding tax years.

Court Appeal. If an error involving a particular property is established by a final nonappealable ruling by a court of competent jurisdiction in favor of the party who brought the action, the error may be corrected as of the date the action was initially filed or as the date a Notice of Claim or Notice of Error was filed, whichever is earlier, but no additional assessment or refund for any period before that date is permitted. *See* A.R.S. § 42-16256.C.

F. CASES.

Lyons v. State Board of Equalization, 2005 WL 170 687 (Ariz. App. Jan. 27, 2005). In *Lyons*, the court of appeals reversed the tax court and held that a taxpayer could bring a claim under A.R.S. §16254(A) to correct errors that resulted in an improper assessment of tax. 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."

Park Central Mall, LLC v. Maricopa County, Court of Appeals, 197 Ariz. 532, 4 P.3d 1075 (2000). When a county attempts to correct an assessment error for the current tax year by the Notice of Error procedures of A.R.S. § 42-16252, the county must wait until after the third Monday in August of that year to send out the Notice of Error. In this case, Maricopa County issued the Notice of Error for the current year prior to the third Monday in August. The court invalidated that notice as premature.

Pima County Assessor v. Arizona State Board of Equalization, 195 Ariz. 329, 987 P.2d 815 (App. 1999). Arizona has a property tax error correction mechanism in which a taxpayer may file a refund claim for overpaid property taxes going back up to three years if the taxing jurisdiction made a "error" in valuing or assessing the property. The issue was whether a property owner that had appealed the valuation of his property for the year in question is then precluded from subsequently filing a notice of error raising a different issue than valuation. The Court concluded that if the taxpayer knew of or reasonably should have discovered an "error" in sufficient time to assert its tax appeal, then the error correction statutes cannot later provide a remedy. If the "error" has escaped the taxpayer's attention despite the exercise of reasonable care to discover it in time, the error correction mechanism can provide a remedy regardless of whether the taxpayer prosecuted a tax appeal for the tax year in question.

G. APPENDIX

1. Charts of Notice of Error and Claim Procedures.
2. Notice of Claim and Notice of Error Statutes, A.R.S. §§ 42-16251 through 16258.
3. Personal Property Manual, Chapter 9, Correction of Errors.
4. Assessment Procedures Manual, Part 3, Chapter 9, Correcting Property Tax Errors.
5. Form of Notice of Claim.

6. Petition for Review of Taxpayer Notice of Claim
7. Petition for the View of Proposed Correction
8. *Lyons v. State Board of Equalization*, 2005 WL 170 687 (Ariz.App. Jan. 27, 2005)