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CHALLENGING THE COUNTY TAX ASSESSOR IN ARIZONA*
(as to Valuation or Classification; Tax Errors or Illegal taxes)

I. Overview of the Tax Appeals Process in Arizona

January 1 is the property valuation date for the **following tax year**. Pursuant to *A.R.S. § 42-15101* The **County Assessor** must mail the **Notice of Value** card to taxpayers no later than March 1. The notice under this section shall be in writing and shall be mailed, delivered by common carrier, or upon request of the taxpayer transmitted electronically to the person's last known mailing, delivery or electronic address.

Under *A.R.S. § 42-15101* any property transferred by a **beneficiary deed** pursuant to section 33-405, until the county assessor is notified by the beneficiary in writing, accompanied by a certified copy of the last surviving owner's death certificate and the change of address, **mailing of the notice to the last known address of the deceased owner is deemed a mailing to the beneficiary's last known mailing**, delivery or electronic address as required by this section.

Taxpayer is entitled to “actual notice” of the tax assessment (full cash value and limited property value) under *A.R.S. § 42-15101* and the *Read v. Arizona Dept. of Revenue* case at 166 Ariz. 533, 535, 803 P.2d 944 (Tax Court 1991). If the Assessor fails to send notice or sends it to the wrong address we would argue that the Assessors lack of notice tolls the period for filing an administrative or judicial tax appeal. This assumes, of course, that the tax to be challenged was actually paid by the taxpayer.

In order to challenge payment of taxes timely payment is required. The taxes must be paid before they become delinquent under *A.R.S. § 42-610(a)* although *A.R.S. § 42-610(b)* sets forth two exceptions to this rule.

A. Requirements of Notice under *A.R.S. § 42-15102*:

A. The assessor shall include in the assessment notice:

1. The **full cash value** (“FCV”) found by the assessor for the property for the preceding valuation year.
2. The **classification** of the property pursuant to chapter 12 of this title.

3. The mailing date of the notice.

4. The last date on which the owner may file an appeal from the valuation or classification assigned to the property.

B. Except for property that is listed as class three property under section 42-12003 and single family rented residential property that is listed as class four property under section 42-12004, subsection A, paragraph 1, the **notice shall separately list the full cash value of the land and the full cash value of the improvement** or improvements associated with the land.

B. Taxpayer/landowner's Right to Inquire:

After the mailing date of the notice any person who owns, claims, possesses or controls property that is valued by the assessor may inquire of and be advised by the assessor as to the valuation of the property determined by the assessor, but the assessor shall not change the roll except as provided by chapter 16, article 2 of this title or as otherwise provided by law.

C. Taxpayer/landowner's Right to *Administrative or Judicial Appeal* under *A.R.S. § 42-15104*:

Under *A.R.S. § 42-15104*. A person who is not satisfied with the valuation or classification of the person's property determined by the assessor may:

1. Petition the **assessor** for review pursuant to chapter 16, article 2 of this title.

2. Appeal to **tax court** pursuant to section 42-16201.

(i) **Administrative Appeal to County Assessor**

Pursuant to *A.R.S. § 42-16051* the taxpayer/landowner has **60 days from the date the County assessor mailed, delivered by common carrier or transmitted electronically the notice of valuation under section 42-15101** to file for an administrative hearing with the County assessor issuing the statement. You must use a petition form acceptable to the County where you are appealing.

The taxpayer/landowner may designate an agent, (such as an attorney) pursuant to *A.R.S. § 42-16001* to act on their behalf using the taxpayer agency authorization form which can be found at: <http://www.revenue.state.az.us/Forms/Property/82130aa.pdf>.

If the taxpayer/landowner files a timely administrative hearing under number (2) above, the County will set a hearing to address the valuation issue and property classification. A challenge made only to valuation concedes classification, while a challenge to classification necessarily includes valuation. *Berge Ford, Inc. v. Maricopa County*, 172 Ariz. 483, 838 P.2d 822 (Tax Ct. 1992).

In making the challenge and filing the petition, the taxpayer/landowner must, under *A.R.S. § 42-16051* adhere to the following requirements:

(B). The petition shall state the owner's opinion of the full cash value of the property and substantial information that justifies that opinion of value for the assessor to consider for purposes of basing a change in classification or correction of the valuation (for example, **an appraisal should be included**). For purposes of this subsection, the owner provides substantial information to justify the opinion of value by stating the method or methods of valuation on which the opinion is based and:

1. Under the income approach, including the information required in section 42-16052.

2. Under the market approach, including the full cash value of at least one comparable property in the same geographic area or the sale of the subject property.

3. Under the cost approach, including the cost to build or rebuild the property plus the land value.

(C). The petition may include more than one parcel of property if they are part of the same economic unit according to department guidelines or if they are owned by the same owner, have the same use, are appealed on the same basis and are located in the same geographic area, as determined pursuant to department guidelines, and are on a form prescribed by the department.

In regard to asserting the income approach: *A.R.S. § 42-16052* further requires:

(A). A petition that is filed with the assessor, based on the income approach to value, shall include income and expense data relating to the property for the three most recent consecutive fiscal years of the petitioner ending on or before September 30 of the previous year. If the income and expense data are not available to the petitioner, the petitioner shall file with the petition such income and expense data as are available. The department, by rule, may establish additional information to be filed if the required income and expense data are not available.

(B). If a petitioner under this article uses the income approach to determine valuation, the petitioner, an officer of a corporate petitioner, a general partner or a designated agent shall file a sworn affidavit under penalty of perjury that the information contained in the petition is true and correct to the best of the petitioner's knowledge.

Under *A.R.S. § 42-16053*, if the county assessor rejects a petition because it fails to include substantial information required by sections 42-16051 and 42-16052, and if the notice of rejection is mailed:

1. **On or before June 15**, the petitioner may file an **amended petition** with the assessor within fifteen days after the notice of rejection is mailed.

2. **After June 15, the petitioner may appeal within fifteen days to:**

(a) The County board of equalization as provided by article 3 of this chapter, if a county board is established in the county. A.R.S. § 42-16101-1111 sets forth requirements of these administrative reviews.

(b) The State board of equalization, if a county board is not established in the county. A.R.S. § 42-16151-16168 sets forth requirements of these administrative reviews.

In regard to the Assessor's hearing: Under A.R.S. § 42-16055, the assessor must consider, decide, and answer all requests on or before August 15 and in considering a petition filed under this article the assessor shall consider the valuation fixed by the assessor on other similar property that is similarly situated.

If the taxpayer/landowner loses an administrative appeal with the Assessor (or failed to file for an administrative hearing) they may then file directly with County Board of Equalization (or State Board of Equalization if the taxpayer lives in Maricopa or Pima county), or, file directly with the Tax Court under A.R.S. § 42-16201. This Section states:

(A). A property owner who is dissatisfied with the valuation or classification of the property as determined by the county assessor may appeal directly to the Court as provided by this article **on or before December 15 regardless of whether the person has exhausted the administrative remedies under this chapter**, except as provided in subsection B of this section. *This means the taxpayer/landowner always has a right to file directly with the Arizona Tax Court as long as it is filed before December 15th of the tax year.* There is no requirement to "exhaust administrative remedies" before filing suit with the Tax Court.

(B). A person who files a petition with the county assessor pursuant to section 42-16051 **may file an appeal with the court within sixty (60) days after the date of mailing the most recent administrative decision** relating to the petition or subsequent administrative appeal. This section suggests that if you filed for an administrative review and received an adverse decision, then there is a 60 day filing window in which to file with the appropriate Arizona Tax Court.

(C). **Filing an appeal with the Court suspends and renders subject to dismissal** any pending administrative proceeding filed by the taxpayer relating to any issue that is or may be determined by the court under a pending appeal.

As a second option, (as alluded to above), if the landowner/taxpayer loses with the County Assessor, he may file a petition with the Board of Equalization for the County where the property is located.

Note: Under A.R.S. § 42-16111 (County Board of Equalization) and A.R.S. § 42-16168 (State Board of Equalization) a taxpayer/landowner who loses in either of these two administrative appeals may then file a complaint with the Tax Court as provided under A.R.S. § 42-16202 (for cases coming from the **County Board of Equalization**) and A.R.S. § 42-16203 (**State Board of Equalization**). These later two sections are set forth below. Filing with the Tax Court suspends the ruling made by the administrative tribunal.

Appealing directly from the **Assessor** to the Tax Court is addressed in A.R.S. § 42-16201 and is discussed immediately below.

(ii) **Judicial Appeal to Tax Court**

If the taxpayer landowner fails to make a timely *administrative appeal* (following the 60 day rule noted above), they may still challenge the valuation and assessment by filing a lawsuit with the **Arizona Superior Court - State Tax Court**. **Such a lawsuit must be filed by December 15 of the same year the notice of assessment was received. Failure to file by December 15th bars the claim and the tax and classification assessed for that year will stand. If a timely challenge is not filed, the taxpayer/landowner will have to wait until the following year to challenge the classification.**

1. Appealing Assessor Decisions to Tax Court (A.R.S. § 42-16201)

(A). A property owner who is dissatisfied with the **valuation or classification** of the property as determined by the **county assessor** may **appeal directly to the court** as provided by this article on or before December 15 regardless of whether the person has exhausted the administrative remedies under this chapter, except as provided in subsection B of this section.

(B). A person **who files a petition with the county assessor** pursuant to section 42-16051 may file an appeal with the **court within sixty (60) days** after the date of mailing the most recent administrative decision relating to the petition or subsequent administrative appeal.

(C). Filing an appeal with the court suspends and renders subject to dismissal any pending administrative proceeding filed by the taxpayer relating to any issue that is or may be determined by the court under a pending appeal.

2. Appealing County Board of Equalization Decisions to Tax Court (A.R.S. § 42-16111 and 16202)

(A). A property owner who is dissatisfied with the valuation or classification of the property as determined by a **county board of equalization** or a petitioner

whose petition is denied by the county board of equalization, in whole or in part, **may appeal directly to court within sixty days** after the date of mailing of the decision, **or by December 15, whichever is later.**

(B). If the county board orders the valuation of any property to be reduced, the assessor or the department may appeal the decision to court in the same manner as provided by subsection A.

3. Appealing State Board of Equalization Decisions to Tax Court
(A.R.S. § 42-16203 and 42-16168).

Note: State Board of Equalization appeal is required if the property is located in Maricopa or Pima County. All other counties may appeal to either the County Board of Equalization or the State Board.

(A). Any party, or the department, that is dissatisfied with the valuation or classification of property reviewed by the state board of equalization may appeal to court as provided by this article.

(B). The department or a county assessor who is dissatisfied with the determination by the state board of an equalization order under section 42-16159 may appeal to the court as provided by this article.

(C). An appeal to court shall be taken within sixty days after the date of mailing of the state board's final decision.

(D). Appeals resulting from a change in value due to correcting a property tax error pursuant to article 6 of this chapter shall be filed within sixty days after the date of mailing of the state board's decision.

A. No Parcel Limits: An appeal to the tax court is not limited to one parcel, on appeal. A taxpayer may join all tax related claims he has against the Department of Revenue in a single appeal to the tax Court. *Ellman Land Corp. v. State*, 169 Ariz. 13, 816 P.2d 272 (Tax Ct. 1991).

B. Appealing from an Adverse Decision of the Department of Revenue. Under A.R.S. § 42-16204, A property owner who is not satisfied with the valuation of the property as determined by the department may appeal directly to superior court as provided by this article on or **before December 15.**

C. Taxes must be up to date in order to appeal: The landowner/taxpayer must not be delinquent on tax bill. A.R.S. § 42-16210. If the landowner is delinquent, the Court shall dismiss the appeal unless:

1. The full year tax for the year is paid on or before December 31 of the tax year pursuant to section 42-18053.

2. The remaining one-half tax that is unpaid is delinquent after the immediately following May 1 at 5:00 p.m. is paid by July 1, including all interest due.

D. Timely Appeal Required: Jurisdiction to entertain property tax appeals depend upon a strict compliance with the statutory time limit in the authorizing statute. *Read v. Arizona Dep't of Revenue*, 166 Ariz. 533, 803 P.2d 944 (Tax Ct. 1991). In *Read* a landowner failed to file for an appeal to challenge the assessment of the property by the statutory deadline, he claimed he had never properly received notice of the assessment or the classification. The Court dismissed his appeal for failure to comply with the November 1 deadline set forth by the statute in 1991. The Court cited *Pesqueira v. Pima County Assessor*, 133 Ariz. 255, 257, 650 P.2d 1237, 1239 (App.1982) for the proposition that it is well settled in Arizona that taxpayers who wish to appeal the valuation of their property must follow the statutory procedures for appeal and a claimed lack of notice was not sufficient grounds for failing to file on time.

However, the *Read* Court did hold that the landowner who owns, control, or is possession of the affected real property was entitled to actual notice of the assessment and classification under the then-existing assessment appeals statute A.R.S. § 42-221(D). *Id* at 536. However, the Court held that as a mere beneficiary under the deed, the Plaintiff was not entitled to actual notice and therefore his appeal was dismissed.

A.R.S. § 42-221(D) was repealed in 1994, and replaced by A.R.S. § 42-15101 which is essentially the same language and the cases are applicable via derivation tables.

Under the old A.R.S. § 42-221(D) : "Every person who is the owner of record or who is the purchaser under a deed of trust or an agreement of sale of property which by law is valued by the assessor for placement on the roll shall, on or ANY DATE before November 15 MARCH 1 EACH YEAR, be notified at the last known mailing address in writing by the assessor as to the full cash value of the property and the limited property value, if applicable, to be used for assessment purposes of such property found by the assessor for placement on the rolls. *The director may, upon application of the county assessor, extend the final date for mailing the notice from November 15 to on or before December 15.* If the director extends the mailing date, the extension applies to all property valued by the assessor. The assessor shall include in the notice the full cash value found by the assessor for such property for the prior tax year, the classification given the parcel of property pursuant to section 42-162, the mailing date of the notice and the last date upon which the owner may file his appeal from the valuation or classification assigned to his property. Except for property that is listed as class five property pursuant to section 42-162, subsection A, paragraph 5, the notice shall separately list the full cash value of the land and the

full cash value of the improvement or improvements associated with the land. Any person owning, claiming or having possession or control of property which by law is to be valued by the assessor for placement on the roll may, after *November 15* MARCH 1, inquire of and be advised by the assessor as to the valuation of such property found by the assessor for placement on the rolls, but the assessor shall not change the roll except as provided by subsection F of this section or as otherwise provided by law.”

Consequently, the holding in *Read*, which states that actual notice is required, should still be good law in the State of Arizona.

In *Seafirst Corp. v. Arizona Dep. of Revenue*, 172 Ariz. 54, 833 P.2d 725 (1992), the Court held that failure to pay the tax bill when it is due forecloses the ability to challenge the tax assessment. In *Seafirst*, the Plaintiff claimed he never received notice of the assessment and therefore he did not pay the second-half taxes. The Court, in dismissing the taxpayer’s challenge stated:

“Direct notice to taxpayer of valuation is not a prerequisite to requirement that current taxes be timely paid and that the ability to inquire with the County assessor as to the valuation satisfied constitutional due process requirements.” Consequently, by failing to pay the tax, the right to appeal it was lost.

E. Parties to the Appeal re: Property Classification:

ARS § 42-16208(A) provides that:

“Except as provided in subsection B, the appellant shall name as defendants:

1. In an appeal by the taxpayer involving property that is valued by the department, both the department and either this state or the county in which the property is located, whichever collects the tax.
2. In an appeal by the taxpayer involving property that is valued and assessed by a county, the county. The county is responsible for defending all defendants name in the appeal unless, in the department’s opinion, the appeal involves an issue of statewide importance, in which case the department and the attorney general’s office are responsible for defending on the issue of statewide importance. The department may periodically advise the county of issues that the department considers to be of statewide importance. The county shall inform the department if any of these issues arise at any time during an appeal.”

As such, with regard to the county’s classification of property, the county is the only properly named defendant under *ARS § 42-16208(A)(2)*.

F. Service:

Service pursuant to *ARS § 42-16209* requires that, in an action against only the County Assessor, pursuant to *ARS § 42-16208(A)(2)*, service shall be made on the County and on the Arizona Department of Revenue. A copy of the Notice of Appeal shall be served within 10 days after the filing as required for service of process in the rules of civil procedure **or** by certified mail. See *ARS § 42-16209(A)*.

An Affidavit showing service shall be filed with the clerk of the court. See *ARS § 42-16209(C)*.

As such, in a property classification action taken against the County Assessor, the properly named defendant is only the County Assessor. However, service is required on both the County and the Arizona Department of Revenue. Presumably, service of the Department is made so as to allow the Department to consider whether matters of statewide importance are present.

Service on the Department of Revenue can be made on either: the Director; or the Arizona Attorney General. *Spiegel v. Board of Suprvs.*, 175 Ariz. 479, 857 P.2d 1333 (Tax Ct. 1993). Service on the County is made by delivering a copy of the summons, Notice of Appeal and Complaint to the chief executive officer, the secretary, clerk, or the recording officer thereof. See *Rule 4.1(i), Arizona Rules of Civil Procedure*.

V. Appealing a Tax Court Decision to the Appellate Court:

The appellate court determines de novo whether any genuine issues of material fact preclude summary judgment and whether the tax court erred in applying the law. Appellate court is not bound by the tax court's interpretation of any statute or constitutional provision. *Circle K Stores, Inc. v. Apache County*, 199 Ariz. 402, 18 P.3d 713, (Ariz.App. Div. 1,2001).

VI. The Winning Applicant Can Seek Refund of Excess Payments:

Under *A.R.S. § 42-1621*:

(A). If judgment is awarded to a taxpayer **who paid the taxes** to the county treasurer:

1. The county treasurer of the county in which the property is located shall pay the judgment out of monies collected from property taxes during the next fiscal year, unless there are sufficient amounts available in funds budgeted for that purpose by the county to allow an immediate refund, or, if both parties agree, the amount of the judgment may be credited toward any taxes that may be remaining due on the property that is the subject of the appeal, subject in either case to the approval of the board of supervisors.

2. The amount of the judgment shall be subtracted from the amounts due to taxing jurisdictions in the next fiscal year in proportion to the amount each received from the appellant's overpayment of taxes. The affected taxing jurisdictions shall include in their budgets for the next fiscal year the proportional amount of the judgment for which each is liable. Any increase in the budget because of the portion of the judgment being included is not subject to any budget limitation that may be prescribed by law.

3. Interest at the legal rate on the overpayment or underpayment is payable from the date of overpayment or underpayment. For the purpose of computing interest under the judgment, if the tax was paid in installments, a pro rata share of the total overpayment or underpayment is considered to be attributable to each installment.

(B). A judgment in favor of an appellant who paid the taxes to the department shall be paid from the state general fund.

42-11001. Definitions

In chapters 11 through 19 of this title, unless the context otherwise requires:

1. "Assessed valuation" means the value derived by applying the applicable percentage prescribed by chapter 15, article 1 of this title to the full cash value or limited property value of the property, as applicable.

2. "Board" or "state board" means the state board of equalization.

3. "County board" means the county board of supervisors sitting as the county board of equalization.

4. "Current usage" means the use to which property is put at the time of valuation by the assessor or the department.

5. "Due date" means the next business day if a due date of any report, claim, return, statement, payment, deposit, petition, notice or other document or filing falls on Saturday, Sunday or a legal holiday.

6. "Full cash value" for property tax purposes means 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. Full cash value is the basis for assessing, fixing, determining and levying secondary property taxes. Full cash value shall not be greater than market value regardless of the method prescribed to determine value for property tax purposes.

7. "Limited property value" means the value determined pursuant to section 42-13301. Limited property value is the basis for:

(a) Computing levy limitations for counties, cities, towns and community college districts.

(b) Assessing, fixing, determining and levying primary property taxes.

8. "Net assessed value" means the assessed value minus any exempt property.

9. "Person" means a natural person, individual, proprietor, proprietorship, company, corporation, organization, association, joint venture, partner, partnership, trust, estate or limited liability company, the federal or state government, a political subdivision of a state or any other legal entity or combination of entities that owns, controls or has possession of real or personal property.

10. "Personal property" includes property of every kind, both tangible and intangible, not included in the term real estate.

11. "Primary property taxes" means all ad valorem taxes except for secondary property taxes.

12. "Producing mine" or "mining claim" means a mine or mining claim from which coal or any other mineral or mineral substance, except for clay, sand, gravel, building stone or a mineral or mineral substance that is normally processed into artificial stone, has been extracted for commercial purposes at any time during a period of one year before the first Monday in January of the valuation year.

13. "Real estate" includes the ownership of, claim to, possession of or right of possession to lands or patented mines.

14. "Roll" means the assessment and tax roll.

15. "Secondary property taxes" means:

(a) Ad valorem taxes or special property assessments that are used to pay the principal of and the interest and redemption charges on bonded indebtedness or other lawful long-term obligations that are issued or incurred for a specific capital purpose by a municipality, county or taxing district.

(b) Ad valorem taxes or assessments levied by or for special taxing districts and assessment districts other than school districts and community college districts.

(c) Amounts levied pursuant to an election to exceed a budget, expenditure or tax limitation.

16. "Tax year" for all property means the calendar year in which the taxes are levied.

17. "Valuation" means the full cash value or limited property value that is determined for real or personal property, as applicable.

18. "Valuation date", for the purposes of real property and property valued by the department, means January 1 of the year preceding the year in which taxes are levied.

19. "Valuation year" means:

(a) For real property and property valued by the department, the calendar year preceding the year in which the taxes are levied.

(b) For personal property, the calendar year in which the taxes are levied.

Resources

(1) Good article on the Property Tax System in Arizona:
<http://www.azcounties.org/publications/propertytax.cfm>

(2) www.ArizonaTax.com

FOR MORE INFORMATION ABOUT OUR ARIZONA PROPERTY TAX APPEAL SERVICES CONTACT US AT THE PHONE NUMBER LISTED BELOW. **NOTE THAT YOU ONLY HAVE UNTIL DECEMBER 15 OF THE CURRENT TAX YEAR TO CHALLENGE YOUR COUNTY TAX ASSESSMENT!**



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