

SUBSTANTIVE POLICY STATEMENT
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Short Title: Policy regarding the "rollover" provision in A.R.S. § 42-16002(B).

This statement is to clarify the interpretation by the State Board of Equalization ("SBOE") of the "rollover" provision in A.R.S. § 42-16002(B). This statute requires that the valuation or classification of property in the year after a reduction in value or change in classification occurring on appeal be the value determined on appeal. In other words, it requires that the valuation and classification "roll" to the next year. The legislative intent behind this statute was to eliminate assessor discretion in the year following appeal, thus relieving the taxpayer from having to appeal each year.

Based on the language of the statute, the legislative intent behind the statute, and an interpretation of the statute in conjunction with related statutes, the SBOE's policy on the "rollover" provision is as follows:

1. SBOE decisions that do not change valuation or classification do not roll.
2. All reductions in value and changed classifications will roll and thus are two-year decisions.
3. A correction of an inadvertent violation of A.R.S. § 42-16002(B) will not roll to the following year (it is only good for the tax year and the year after).
4. Rollover values may not be used to determine the valuation of other property.
5. The rollover provision does not apply to limited property value.
6. The rollover provision does not apply to splits, subdivisions or combinations of property.
7. The rollover provision does not apply to errors pursuant to Title 42, Chapter 16, Article 6 of the Arizona Revised Statutes (the "Error Correction Statutes").

A summary of the reasoning and analysis used by the SBOE to create this policy is contained in the memorandum to board members dated June 18, 2004.



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MEMORANDUM

To: All Board Members
CC: All Board Hearing Officers and Staff
From: Harold Scott, Chairman
Date: June 18, 2004
Re: Issues with application of the "Rollover" required by A.R.S. 42-16002

A number of issues have come up involving possible interpretations of the "rollover" of valuations pursuant to A.R.S. 42-16002. This memorandum will address some of these issues.

The reasoning in this memorandum is based partially on research Board staff did recently on the legislative history underlying A.R.S. 42-16002. The history is not extensive for either the 1991 or the 2002 version of the statute. However, some of the information is useful for analyzing some of the rollover issues.

The Law

The "rollover" statute is contained in A.R.S. 42-16002. Subsection B of the statute reads as follows:

- B. In the year subsequent to an appeal, the valuation or classification of property is the valuation or classification that was determined in the preceding year at the highest level of appeal unless there is new construction, a structural change or a change of use on the property.

(A copy of the entire statute is attached to this memorandum.)

The legislative history of the statute is clear as to the basic intent of the legislature. The legislature intended to restrict the ability of the assessors to change the valuation or classification of property the year after an appeal in order to prevent taxpayers from having to appeal the valuation or classification year after year. Because of somewhat broad language giving discretion to assessors, the 1991 version of the predecessor statute to A.R.S. 42-16002 (B) did not apparently accomplish this goal.

The 2002 amendment that was passed replaced the broad language allowing the assessor to change a valuation or classification based on "...review (of) the current facts..." with a far more restrictive requirement that the valuation or classification not be changed unless there has been "...new construction, a structural change or a change of use on the property."

It is clear from several committee fact sheets that the legislature intended the "rollover" to apply for one year beyond the successful appeal year. Thus valuation and classification are rolled over for one more year if both were changed on a successful appeal. (This will be discussed in more detail in the issues section that follows.)

Issue One: No Change Decisions

The Attorney General has opined that no change decisions of the Board do not have to be rolled over to the subsequent year (No.103-010). In the past session of the legislature, House Bill 2258 was passed by legislature and signed by the Governor. The rollover statute was clarified to explicitly apply to "...a reduction of valuation or a change in the classification of property..." Thus no change decisions were explicitly excluded from the rollover statute.

However, the Attorney General's opinion can be logically extended to cover decisions that involve both a no change element and a changed element. For example, if a full cash value is not changed but a legal classification is changed, then the full cash value would not be subject to the rollover but the legal classification would be rolled over. Likewise if a full cash value is changed but a legal classification is a no change, then the full cash value would be rolled over but the legal classification would not be required to automatically roll over. This interpretation is also supported by the language in the statute, which specifies "...valuation or classification of property is the valuation or classification that was determined in the preceding year at the highest level of appeal..."(emphases added).

Issue two: All Reductions in Value and Changed Legal Classification of the Board will be Two Year Decisions

At the recent training programs, several Board members asked why the "one year decision" option had been removed from the State Board of Equalization Decision/ Minutes Sheet. It was removed because virtually all cases where a reduction in full cash value or change in legal classification is granted will result in that valuation or classification rolling over to the subsequent year. Members should be especially cognizant of this impact of the rollover statute. If a property faces some limited time condition, which impacts its valuation, be aware that any granting of relief will last two years. This is especially important for income generating properties facing a temporary condition. If the condition is likely to only last a year, panel members may want to weigh this against the impact of decisions automatically rolling over for two years.

Issue three: Rollover Violations—One Year Decisions

Again, at our recent training sessions, we added an item to the decision sheet called "Rollover Violation." This was intended for correcting inadvertent violations of A.R.S 42-16002. This should be a one-year decision only. Nothing in our research indicated that legislature wanted anything but a two-year decision. The first year is the current year and the rollover is the

subsequent year. Nowhere in the legislative record is there an indication that a rollover was intended to be for three years. If correcting the inadvertent violation the decision was rolled, it would be a three-year decision. The decision sheet will be corrected to indicate "Rollover Violation—One Year Decision."

Issue four: Prohibition of Use of Rollover Values as "Equity Comparables"

At the outset, I would like to remind all Board members that while the Board is called the State Board of Equalization, the Board does not have equalization power. Since the Board does not possess broad equalization powers, it follows that that the Board should not give great reliance on what have come to be called "equity comparables." The only statutory authority for the Board to look at "equity comparables" is contained in A.R.S. 42-16162 (C) that reads:

In considering any petition filed by any person, the state board shall consider all competent evidence relating to full cash value that may include the valuation of similar property that is similarly situated.

Comparing a subject property valued at current full cash value to "equity comparables" that include rolled over properties from the prior year violates on its face the requirement that the properties are "similarly situated."

The central mission of the Board is to establish fair market value or full cash value. "Equity comparables" should never be used to reduce a property below fair market value. If there is an equalization issue in a county, market area or sub-market area, that is left by law to the Arizona Department of Revenue to solve through issuance of equalization orders, not to this Board.

The legislature has limited the Board's authority on equalization to "...recommend to the department properties that in the state board's opinion should be included in the department's next review of property..." to be considered for equalization orders. (A.R.S. 42-16160)

Issue five: the Rollover Does Not Apply to the Limited Property Value

Applying the rollover statute to the limited property value in the year following an appeal would be contrary to the requirements of A.R.S.42-13301 (A) (calculation of limited value). Neither the 1991 or 2002 versions of the rollover legislative bills amended the limited value statute.

Statutes closely related to one another should be construed "harmoniously 'as though they constituted one law.'" *Goddard v. Superior Court*, 191 Ariz. 402, 404, 956 P.2d 529, 531 (App. 1998). Since both the rollover statute and A.R.S. 42-13301 (A) deal with valuation over successive years, they can probably be considered "closely related."

The only way to construe these statutes harmoniously is to read the rollover statute only to apply to full cash value. A taxpayer may appeal limited value, Op. Atty Gen. No. I81-076, but to subject the valuation of the subsequent year to the rollover statute would eviscerate the requirements of A.R.S. 42-13301 (A) in the year following such an appeal.

A reading of the statute to exclude limited property value is consistent with the legislative intent of the rollover statute. The 1991 version was intended to eliminate assessor discretion in valuation or classification the year following an appeal, and the 2002 amendment furthered this

goal. However, in calculating limited property value under A.R.S. 42-13301 (A), there should not be assessor discretion in calculating the limited value from year to year.

As mentioned previously, the legislature clarified the rollover statute further this past session in HB 2258. The legislature added another category of exceptions to the rollover statute. The category of exceptions was modified to exclude:

2. Chapters 11 through 19 of this title require a specific annual formula for valuation.

In context, this refers to Title 42. The limited value calculation formulae are including in chapter 13 of Title 42.

Thus, the limited property value is not covered by A.R.S. 42-16002 and is not subject to the rollover.

Issue six: the Rollover Does Not Apply to Splits or Combinations of Property

While there is no statutory language or legislative history directly on this point, a split or combine of property could be considered a "change in use" under the statute. Additionally, when considered in light of a similar list of factors in A.R.S. 42-13302 (the so-called "Rule B" for calculating limited property value) and the seeming impossibility of rolling a valuation of a parcel that has been split, subdivided or consolidated, there is a strong argument that the statute would not apply to such a situation.

In the Rule B statute for calculating limited property value (A.R.S. 42-13302), the legislature prescribed a set of standards for determining limited value in "cases of omissions and changes." The statute lists four situations in which the statute applies, including "change in use" of the property, "property that has been modified by construction" and "property that has been split, subdivided or consolidated." This statute suggests that the legislature has previously considered split or combined property as being in the same or similar category as property, which has experienced change in use or has been modified by construction. Because of the seeming impossibility of rolling the value of a parcel of property that has been split or combined with another parcel, it is unlikely that the legislature purposely excluded this from the exceptions to the rollover statute.

Thus, split or combined properties are not subject to the rollover.

Issue seven: The Rollover Does Not Apply to Errors Corrected Pursuant to Chapter 16, Article 6 of Title 42 (the "error statutes")

The notice of error and notice of claim statutes are contained in Article 6 of Chapter 16 of AR.S Title 42. The traditional appeals process and error-correction processes are two different avenues with different purposes. A manifest objective in valuation error is by definition not caused by discretion, and thus applying the rollover statute to such appeals is inconsistent with the legislative intent to restrict discretion in the year following an appeal. Moreover, H.B. 2258 specifically covers only administrative appeals pursuant to Article 2, 3 or 4 of Chapter 16 of Title 42. These articles refer to appeals to the Assessor, the County Board of Equalization or the State Board of Equalization. Error correction appeals are covered in Article 6 of chapter 16 of Title 42.

June 21, 2004

Thus, the rollover does not apply to error correction appeals.

Conclusion

The rollover statute only applies to reductions in value or changes in legal classification. It does not apply to a no change decision to either valuation or classification.

All reductions in value and changed legal classifications will be two-year decisions of the Board.

Prior rollover violations will be changed for one year only.

Valuations that were rolled over from the prior year should not be used as "equity comparables" for subject properties that were revalued for the current year.

The rollover statute does not apply to limited property value.

The rollover statute does not apply to splits or combinations of property.

The rollover statute does not apply to error correction pursuant to Article 6, Chapter 16 of Title 42 of the Arizona Revised Statutes.

As the appeal season approaches other issues involving the rollover statute and its application before the Board may arise. As they do we will do our best to address the issues. If you would like to discuss any of the items in this memorandum, please give me a call. If you have additional issues with the rollover statute, please send me a note on the additional issues.