



**State of Arizona  
Board of Equalization  
100 N. 15<sup>th</sup> Avenue Ste 130  
Phoenix, Arizona 85007  
(602) 364-1600**

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**SUBSTANTIVE POLICY STATEMENT  
NUMBER SBOE-04-007  
EFFECTIVE JULY 23, 2004**

**THIS SUBSTANTIVE POLICY STATEMENT IS ADVISORY ONLY. A SUBSTANTIVE POLICY STATEMENT DOES NOT INCLUDE INTERNAL PROCEDURAL DOCUMENTS THAT ONLY AFFECT THE INTERNAL PROCEDURES OF THE AGENCY AND DOES NOT IMPOSE ADDITIONAL REQUIREMENTS OR PENALTIES ON REGULATED PARTIES OR INCLUDE CONFIDENTIAL INFORMATION OR RULES MADE IN ACCORDANCE WITH THE ARIZONA ADMINISTRATIVE PROCEDURE ACT. IF YOU BELIEVE THAT THIS SUBSTANTIVE POLICY STATEMENT DOES IMPOSE ADDITIONAL REQUIREMENTS OR PENALTIES ON REGULATED PARTIES YOU MAY PETITION THE AGENCY UNDER ARIZONA REVISED STATUTES SECTION 41-1033 FOR A REVIEW OF THE STATEMENT.**

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This statement establishes Board policy regarding the scope of A.R.S. §§ 42-16251 et seq. (the "error correction statutes"). These statutes allow for the correction of property tax errors occurring during the current tax year and the previous three tax years, and they create a process for appealing these errors.

Consistent with relevant statutes and case law, it is the Board's policy that appeals based on the error correction statutes represent a remedial procedure distinct from the traditional appeals process and subject to different standards. In order for the Board to be able to hear an error correction appeal, the Board must first find that an "error" has occurred, as specifically defined in § 42-16251(3).

Specifically, for a valuation error to have occurred, the Board must find that the error can be determined without the use of "discretion, opinion or judgment" and this must be demonstrated by "clear and convincing evidence" (which case law has defined to mean that the "truth of the contention must be 'highly probable'"). However, once such a preliminary finding of an error has occurred, due process requires that any valuation issues arising from the error may be decided at hearing.



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### MEMORANDUM

To: All Board Members  
Cc: All Board Hearing Officers and Staff  
From: <sup>HS</sup> Harold Scott, Chairman  
Date: July 16, 2004  
Re: Scope of Error Correction Statutes (A.R.S. Sections 42-16251 through 42-16258)

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In the interests of promoting uniformity between hearing panels, this memorandum was prepared. It is intended to establish State Board of Equalization policies with regard to application of the error correction statutes. The Assistant Attorney General assigned to the Board has reviewed this memorandum and he concurs with it.

#### Background Information

The legislature has established an appeals process to protect the rights of property owners while at the same time providing for certainty and finality of valuation and classification. This finality protects taxpayers and the government.

The legislature has created, for locally assessed properties, three principal statutory systems for providing notice to taxpayers, protecting their due process right to be heard and considered and providing an appeals system for disagreements with assessment officials.

Mostly A.R.S. 42-16051 through A.R.S. 42-16056 covers real property appeals. These statutes establish the administrative appeals to the assessor and then to SBOE if the taxpayer is dissatisfied with the Assessor's decision.

For real property that has been changed through new construction, additions, deletions and changes in use "...after September 30 of the preceding year and before October 1 of the valuation year..." the legislature has established a supplemental notice system that authorizes county assessment personnel to "pick up" properties after the valuation date of January 1. The provisions of A.R.S. 42-15105 specify the notice to the taxpayer and appeals right to the State Board.

Personal property notices pursuant to A.R.S. 42-19051 and 42-19052 cover appeal rights.

The above three procedures are what was anticipated by our laws for "normal" appeals of locally assessed properties.

"Centrally Valued Properties" valued by the Arizona Department of Revenue are generally valued and classed pursuant to A.R.S. 42-14001 through 42-14503. Generally, the department on or before August 31 issues final values. This begins the traditional appeals process for these types of properties.

The legislature contemplated that appeals that were ultimately resolved by the SBOE would be final.

**Any decision of the state board of equalization pertaining to the valuation or classification of property is final when an appeal has not been taken within the time prescribed by section 42-16203. (A.R.S. 42-16169 partially quoted—emphasis added)**

#### **Error Correction**

It is important to focus on the distinction between the traditional appeals process and the remedial nature of the error correction process. The error correction process should not be used to raise issues properly raised during the traditional appeals process. In fact A.R.S. 42-16255 (B) reads in part:

**This article does not authorize an independent review of the overall valuation of property that could have been appealed pursuant to article 2, 3, 4 or 5 of this chapter or chapter 19, article 2 of this title. (Emphasis added).**

In other words if a property should have been appealed during the "normal" appeals cycle it cannot be appealed under the error statutes because the valuation is final.

The key to triggering the use of the error correction statutes for valuation changes by either the assessor or the department or by the taxpayer through a notice of claim is contained in A.R.S. 42-16251, which reads as follows:

In this article, unless the context otherwise requires:

1. "Board" means the county board of equalization or the state board of equalization, as appropriate.
2. "Court" means either the superior court or tax court.
3. "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. (Legal Class)
  - c. Applying the incorrect assessment ratio percentages prescribed by chapter 15, article 1 of this title.
  - d. Misreporting or failing to report property if a statutory duty exists to report the property.
  - e. Subject to the requirements of section 42-16255, subsection B, a valuation that is based on an error that is exclusively factual in nature or due to specific legal restriction that affects the subject property and that is objectively verifiable without the exercise of discretion, opinion 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 new parcels of real property into one new parcel existing on the valuation date.
    - iv. The existence or nonexistence of 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. (Emphases added.)

The key element in the above statute is that, for valuation changes, the "error" has to be verifiable without using any judgment or discretion. The law instructs us that all of the SBOE decisions are final unless appealed to court. The law also instructs us that the error correction process cannot be used for issues that should have been addressed during the traditional appeals process.

Moreover, the legislature instructs us to judge whether something is an objectively verifiable error by insisting that it be demonstrated by "clear and convincing evidence." The Arizona Supreme Court has defined these terms to require enough evidence to persuade that "the truth of the contention is 'highly probable.'" In other words panel members have to be convinced that they are being presented with an objectively verifiable error that is highly probable to be a true error.

### After an Error Has Been Identified

As stated above, Title 42, Chapter 16, Article 6 of the Arizona Revised Statutes (A.R.S.) deals with the correction of property tax errors. For valuation changes, an "error" must be "objectively verifiable" and cannot require the exercise of "discretion, opinion or judgment." A.R.S. 42-16521. But once a panel agrees that through "clear and convincing evidence" an error is identified, then it must hear evidence on how to correct the error. Correcting the error, as distinct from identifying the error, may require discretion and judgment. If discretionary valuation issues arise out of an objective error, they must be adjudicated in the hearing in order to provide due process to the parties involved.

The statutes require the Board to ensure due process to all parties involved in an appeal. A.R.S. 42-16164(A). "Due process" includes the right to be heard and "the right of controverting, by proof, every material fact which bears on the question of right in the matter involved." Black's Law Dictionary, 5th Ed.; see also *Application of Levine*, 97 Ariz. 88, 91, 397 P.2d 205, 207 (1964) ("due process means that there must be...the right...to have a full consideration and determination according to evidence before the body with whom the hearing is held").

If the correction of an objectively verifiable error brings up discretionary valuation issues, the only way to ensure due process to the parties involved is to hear and decide those issues. This is consistent with language in A.R.S. 42-16252(D): "The owner may appeal valuation issues that arise from the correction as provided in this section." Also, the Court of Appeals recently handed down an unpublished memorandum decision in *Arrowhead Exec. Prop., L.L.C. v. Maricopa County*, which states the following:

Because a clerical error is a correctable error, valuation issues arising out of the correction of that error can be appealed under this statute.

In the *Arrowhead* case, the County appraised the property in question prior to September 30 and discovered an escaped improvement that did not exist as of January 1. The County mailed a supplemental notice intending to include the improvement on the tax roll, but by clerical error the roll did not include the improvement. The County sought to remedy this by a notice of error.

The Court of Appeals held that, because the error was clerical, it could be remedied through the error statutes, and that any valuation issues arising from this correction could be appealed. A decision not to allow appeal on the valuation issues would have

allowed the County to correct the error without allowing Arrowhead to dispute the County's valuation of the improvement. This would have been a frank denial of due process to Arrowhead.

This unpublished memorandum decision by the Court of Appeals does not legally bind the Board. However, the Chairman considers its logic to be consistent with the wording of the error statutes and thus the Board's policy will be to follow this line of reasoning.

**Conclusion**

The critical decision for the Board is whether or not the valuation error appealed is an objectively verifiable error under the statutes or not. If it is proven to be an objectively verifiable error through clear and convincing evidence then any valuation issues arising out of correction of the error must be decided in order to provide due process to the parties on those issues.