



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

**SUBSTANTIVE POLICY STATEMENT
NUMBER SBOE-05-002
EFFECTIVE December 19, 2005**

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.

The State Board of Equalization (SBOE) has limited jurisdiction to hear appeals of decisions made by the Pima and Maricopa County Assessors' Offices in the granting or denial of property tax exemptions. The SBOE has jurisdiction to hear exemption issues that are based on use or classification of property. Under the error correction statute (A.R.S. section 42-16251), errors in property use or classification do not need to be objectively verifiable. The SBOE may evaluate the discretionary decision making process that the assessor used in establishing property use and hence exemption.

When considering exemption claims, the SBOE policy will be that the laws exempting property from taxation must be strictly construed and the presumption is against the existence of an exemption. Any ambiguity in the law shall be strictly interpreted against the exemption.



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MEMORANDUM

To: All Board Members
CC: All Board Hearing Officers and Staff
From: Harold Scott, ^{HS}Chairman
Date: December 19, 2005
Re: Board Jurisdiction to Review Assessor Exemption Determinations

At training sessions last year in both Phoenix and Tucson, we discussed the status of litigation in which the Board was a named party. One of the cases that were discussed was what was referred to as the "Eastside Assembly of God" case. The formal name of the case was "Rick Lyons v. State Board of Equalization." The case involved the Board's acceptance of jurisdiction of an error correction petition from the Eastside Assembly of God in Tucson.

Pima County sued the Board contending that the Board did not have jurisdiction to hear exemption issues under the errors statutes. The Arizona Tax Court ruled for Pima County. The Board appealed the Tax Court decision to the Arizona Court of Appeals. The Court of Appeals overturned the Tax Court decision and agreed with the Board's position that the Board does have jurisdiction to independently review Assessor decisions involving exemptions because of an error in the designation of the use of the property.

This memorandum sets out the Board policy on review of exemption determinations on the part of the Assessor's Offices. The Assistant Attorney General assigned to the Board reviewed the memorandum.

Court Case and the Law

The Court Case

At issue in the Rick Lyons v. State Board of Equalization case was whether the Board had jurisdiction to hear a notice of claim petition from the Eastside Assembly of God filed pursuant to A.R.S. 42-16254. The Court of Appeals concluded:

We hold 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. section 42-16251 (3) (b). Consequently, the error-correction statutes authorize the Board to correct such error, A.R.S. section 42-16254 (A)...

Attached to this memorandum is a copy of the complete decision of the Court of Appeals in the Rick Lyons v. State Board of Equalization case.

The Error Correction Statutes

The error correction statutes are contained in Arizona Revised Statutes (A.R.S.) sections 42-16251 to 42-16258. The definition of a correctable error is contained in A.R.S. section 42-16251. A.R.S. 42-16251 follows with emphasis on key provisions:

42-16251. Definitions

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 or this title.**
 - (c) Applying the incorrect assessment ratio percentages prescribed by chapter 15, article 1 or 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 a specific legal restriction that affects the subject property **and 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 or one parcel of real property into two or more new parcels or consolidating of two or more new parcels 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. (Emphases added.)

The key to understanding the court's decision in the Lyons case is a careful reading of the definition section of the errors corrections statutes. As was stressed in the memorandum of July 16, 2004 concerning the scope of the error correction statutes, a valuation error must be objectively verifiable and proved by clear and convincing evidence to be correctable within the meaning of the error correction statutes. (See (e) and ((iv) above.) Note, however, the legislature did not use the same "objectively verifiable" standard for errors in property use and legal classification. (See (3) (b) above.)

In the Board's brief to the Court of Appeals, it was argued that the Board did have jurisdiction to hear Eastside Assembly of God's appeal because the petition was filed on the basis of erroneous property use and erroneous legal classification not erroneous valuation. The Appeals Court decision makes a distinction between valuation errors and errors in use or classification and states in part:

But the assessor incorrectly relies on the definition of "error" applicable to valuation decisions and ignores section 42-16251 (3) (b), which concerns use and classification decisions. The definition of "error" under section 42-16251 (3) (b), which the Board relies upon, does not require that an error be factual in nature or objectively verifiable. We therefore reject the Assessor's argument.

In other words, if a valuation error is alleged, it must be objectively verifiable without the exercise of discretion, opinion or judgment and that is demonstrated by clear and convincing evidence. However, if an error in property use or legal classification is claimed it does not have to be judged on objectively verifiable evidence. The Board may evaluate the discretionary decision making process that the assessor used in establishing property use or exemptions.

The net effect of the Court of Appeals decision in the Eastside Assembly of God case is the Board has the jurisdiction to hear appeals from petitioners who requested exemption

status and have been rejected by assessment personnel based on use or classification. However a much narrower legal standard applies to exemption claims.

The Legal Standard When Evaluating Exemption Claims

An exemption from property taxes is a powerful public policy tool. As such, the courts have established over time a legal standard that laws that "exempt" property from taxation must be strictly construed and the presumption is against the existence of an exemption. In other words the legal presumption is that a property is not exempt from taxation.

The Board must start with this presumption. Only if it can be established that a property strictly meets the statutory and constitutional definitions for exempt status, can the property be granted the exemption.

Conclusion

The State Board of Equalization has the jurisdiction to hear exemption disputes where there is an error of use or classification alleged. For a valuation error to be considered it must be objectively verifiable without the use of judgment or discretion. For an error in property use or legal classification to be considered it does not have to be objectively verifiable.

When considering exemption claims, the Board policy will be that laws that exempt property from taxation must be strictly construed and the presumption is against the existence of an exemption.