

SUBSTANTIVE POLICY STATEMENT  
NUMBER SBOE-24-002  
EFFECTIVE DATE AUGUST 8, 2024

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 SECTION 41-1033, ARIZONA REVISED STATUTES, FOR A REVIEW OF THE STATEMENT.

Short Title: Policy for public access to hearing records for statutory shopping centers.

The State Board of Equalization ("SBOE") is subject to Arizona's open meetings and public records laws. Quasi-judicial hearings conducted by the SBOE are open to the public and a recording is made of all hearings. SBOE deliberations and decisions are based upon testimony and evidence presented at its public hearings. Therefore, any evidence presented to the SBOE is available for public inspection under the guidelines set by statute and SBOE policy. A.R.S. §§ 38-431.01, 39-121 and 39-121.01.

The SBOE is not authorized by any statute to deny public access to recordings of its hearings or to documents admitted into evidence. There are no court decisions that exempt SBOE hearing records from the public's right to inspect.

It is the policy of the SBOE to permit access to recordings and evidence for hearings unless restricted by law or court order in accordance with Arizona Public Records and Open Meetings statutes. *See* Title 38, Chapter 3, Article 3.1 and Title 39, Chapter 1, Article 2 of the Arizona Revised Statutes. This policy includes records and evidence for hearings concerning statutory shopping centers. A summary of the reasoning and analysis used by the SBOE to create this policy is contained in the memorandum to board members dated July 30, 2024.

## MEMORANDUM

To: All Board Members  
CC: All Hearing Officers and Staff  
From: George R. Shook, Interim Chair  
Date: July 30, 2024  
RE: Confidentiality of Shopping Center Income Evidence

### BACKGROUND

In hearings concerning statutory shopping centers, some taxpayers, or their representatives, request that income evidence submitted to the State Board of Equalization ("SBOE") be held by the SBOE as a confidential record exempt from public inspection. The SBOE policy is that evidence used in a hearing is a public record and available for inspection by members of the public.

### DISCUSSION

#### Shopping Center Income Records

Taxpayers that choose to appeal an assessor's valuation based upon the income approach must include an Income and Expense Statement (ADOR Form 82300 and relevant supplements) with their petition for review. A.R.S. § 42-16052. Petitions that do not include the statutorily-required income information may be rejected by the assessor. A.R.S. § 42-16053. The Income and Expense Statement provides the assessor with actual income and expenses for the property during the previous three years. ADOR Forms 82300 and 82300-4, a supplement, are required for shopping centers. The supplement includes a list of tenants with tenant name, square-footage, lease duration, and contract rents. Petitioners may include additional information they believe may support the income approach at the hearing. A.R.S. § 42-16161(D).

Some petitioners have claimed that the income documents described previously ("Income Records") are not open to public inspection by statute and must be held confidential by the SBOE. A.R.S. § 42-13202(B). A review of Arizona's public record laws and the legislative intent for A.R.S. § 42-13202(B) is necessary to determine if Income Records used by the SBOE as evidence are to be held confidential by the SBOE.

#### Applicability of Arizona Public-Records Laws to the SBOE

The purpose of Arizona's public-records laws is to "open government activity to public scrutiny." *Griffis v. Pinal County*, 215 Ariz. 1, 4 ¶ 11, 156 P.3d 418, 421 (2007). As a board, the SBOE is a public body. A.R.S. 39-121.01(A)(2). The SBOE chair and board members are officers due to their appointment to or administrative position at the SBOE. A.R.S. § 39-121.01(A)(1). Thus, Arizona's public-records laws apply to the SBOE.

## Records Subject to Public Inspection

In general, government records in Arizona are open to public inspection. *Carlson v. Pima County*, 141 Ariz. 487, 490, 687 P.2d 1242, 1245 (1984) (finding a clear presumption for disclosure of records held by government). "Public records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours." A.R.S. § 39-121. While this statute does not define "public records and other matters," agencies are required to maintain any documents or other materials that are "reasonably necessary or appropriate to maintain an accurate knowledge of their official activities . . . ." A.R.S. §§ 39-121.01(B), 41-151(2), and *see Griffis v. Pinal County*, 215 Ariz. 1, 156 P.3d 418, 421-22 (2007).

One of the primary official activities of the SBOE is to conduct hearings regarding appeals of valuation and classification decisions made by local assessors that are within the SBOE's jurisdiction. Title 42, Chapter 16, Article 4 of the Arizona Revised Statutes. The SBOE is required to base its decisions on evidence supplied by parties at the hearing. A.R.S. § 42-16161(E). Therefore, evidence received by the SBOE for its hearings is a public record because such evidence is used by the SBOE to make decisions at its hearings. As evidence for SBOE hearings, Income Records are public records open to public inspection, unless there is an exception for these records set by statute or case law. *Scottsdale Unified Sch. Dist. No. 48 of Maricopa County v. KPNX Broadcasting Co.*, 191 Ariz. 297 ¶ 9, 955 P.2d 534, 538 (1998).

## Exceptions to Public Inspection

There are no exceptions to the public's right to inspect hearing records in the SBOE enabling statutes and the statutes for adjudicative proceedings applicable to the SBOE. Title 42, Chapter 16, Article 4 and Title 41, Chapter 6, Article 6 of the Arizona Revised Statutes. There are federal and state statutes of broad applicability that limit access to records such as personnel files, tax returns, social security numbers, etc. Attorney General Agency Manual § 6.4.1 (rev. 2018).

As stated earlier, petitioners who request that Income Records be held as confidential records by the SBOE often cite to a statute relating to the valuation of shopping centers.

All information that a taxpayer submits pursuant to this article is confidential pursuant to chapter 2, article 1 of this title. A.R.S. § 42-13202(B).

This statute is located in Title 42, Chapter 13 of the Arizona Revised Statutes. Chapter 13 contains statutory methods for the valuation of locally-assessed property by the assessor. When the taxpayer elects an income valuation for a shopping center, the information referred to in the statute is submitted by the taxpayer to the assessor so that the assessor may perform the statutory valuation. Because it is the assessor's responsibility to determine the full cash value of the property, the instruction to keep taxpayer-submitted information confidential is given to the assessor. *See* A.R.S. 42-13051 (establishing the duties of the assessor to include determining the full cash value of locally assessed properties).

## Applicability of Statute to SBOE

Whether A.R.S. § 42-13202(B) creates an exemption to the public-records law for the SBOE will require an interpretation of the legislative intent for this statute. The correct interpretation of this statute will give meaning to each word in context. *Stambaugh v. Killian*, 242 Ariz. 508, ¶ 7, 398 P.3d 574, 575 (2017) (framing statutory interpretation to include the context of the statute in question along with other related statutes); *State v. Womack*, 174 Ariz. 108, 112, 847 P.2d 609,613 (App. 1992) (testing possible statutory interpretations should be made with an application of common sense). Individual statutes should be consistent with related statutes. *State ex rel. Larson v. Farley*, 106 Ariz. 119, 122, 471 P.2d 731, 734 (1970).

The first part of the sentence comprising § 42-13202(B) directly states that confidentiality applies to Income Records in that these are a subset to "all information" submitted by the petitioner. The dependent clause of the sentence begins with "pursuant to" and means that the application of confidentiality must be made in conformance with "chapter2, article 1." Black's Law Dictionary 1237 (6th ed. 1990) (defining "pursuant to" as a "restrictive term" when used in statutes to mean acting in "conformance with"); *see also* A.R.S. § 1-213.

Title 42, Chapter 2, Article 1 of the Arizona Revised Statutes establishes the types of taxpayer information collected by the Department of Revenue that is confidential and the circumstances under which it may be disclosed by the Department. For purposes of shopping-center valuation by the assessor, A.R.S. § 42-13202(B) directs the assessor to hold the submitted records as confidential and limits the assessor's authority to disclose this information. A.R.S. § 42-2003. When the assessor wishes to use the information to defend its valuation at a hearing before the SBOE, disclosure is permitted. The conditions required for the assessor to disclose such information before the SBOE are satisfied because the SBOE hearing is an "administrative proceeding pertaining to tax administration" and the "taxpayer is a party to the proceeding." A.R.S. § 42-2003(C)(1). Reading A.R.S. §§ 42-2003 and 42-13202 together, it is reasonable to conclude that the confidentiality rule is intended to apply to the assessor. The next step would be to determine if § 42-13202(B) also applies to Income Records submitted to the SBOE by either the assessor or the taxpayer for use in its hearings.

Such a scenario would involve one of the parties to a hearing submitting Income Records as evidence to either defend the noticed value or support a lower valuation. If the confidentiality rule were to apply to the SBOE, such a reading would argue that the SBOE, in a hearing before itself, may disclose the information to itself providing that the taxpayer who appealed the valuation to the SBOE is a party to the hearing. For this reason, concluding that the rule for confidentiality set by A.R.S. § 42-13202(B) is intended to include the SBOE does not make sense. Precedent requires that an interpretation of a statute must be reasonable, avoid absurdities, and that the entire statute must be given significance. *Gortarez v. Smitty's Super Value, Inc.*, 140 Ariz. 97, 103, 680 P.2d 807, 813 (1984) (interpreting a statute giving full effect to all its relevant parts).

Section 42-13202(B) makes sense when read to require the assessor to hold Income Records as confidential that are submitted by the taxpayer when the taxpayer elects an income valuation. This provides the taxpayer with some comfort that, for instance, lease information provided for

the subject shopping center would not be used by the assessor as evidence in appeals brought by other taxpayers. However, once the taxpayer chooses to appeal the valuation or chooses to submit Income Records as evidence in an appeal heard by the SBOE, such records must be made available by the SBOE for public inspection. Thus, the statutory instruction to keep Income Records confidential is not an exception to the public's right to inspect hearing records in the custody of the SBOE.

### Wrongful Denial of Access

Any person that is denied access to public records by an agency may appeal the denial in superior court. A.R.S. § 39-121.02(A). If the court finds the denial to be incorrect, the court may award attorney fees and, possibly, damages against the agency and the officer responsible for the denial. A.R.S. § 39-121.02. Due to a change in the statute passed in 2006, the court may award attorney fees and costs if a person requesting inspection of a document is granted relief upon that request by the court. *Paradigm DKD Group v. Pima County Assessor*, 246 Ariz. 429 ¶¶ 24, 27, 439 P.3d 1210, 1217-18 (App. 2019) (finding that the phrase "substantially prevail" is satisfied if the person denied access to public records files in court and receives relief). This new standard "allows courts to more liberally award damages against state agencies if the plaintiff substantially prevails." *Final Amended Fact Sheet for Senate Bill 1225*, 47th Leg., 2nd Reg. Sess., Arizona State Senate (May 9, 2006). The cost is high to an agency that incorrectly denies inspection of public records.

### CONCLUSION

The SBOE is required by law to allow public inspection of evidence used in hearings for statutory shopping centers. It is the policy of the SBOE to refuse requests for this evidence to be held as confidential.