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

SUBSTANTIVE POLICY STATEMENT DIRECTORY

SBOE-04-001 - Board policy on what criteria must be met for a parcel to qualify as class four (rental residential) property under A.R.S. § 42-12002(A)(1).
Effective June 1, 2004

SBOE-04-002 - Board policy on what criteria must be met for a parcel to qualify as a shopping center" under A.R.S. § 42-13201.
Effective June 10, 2004

SBOE-04-003 - Board policy that landlord's use of commercially leased property should determine the property's classification.
Effective June 11, 2004

SBOE-04-004 - Board policy on the valuation of property qualifying for Low Income Housing Tax Credits and thus encumbered by rent restrictions.
Effective June 18, 2004

SBOE-04-005 - Board policy on the ramifications of A.R.S. § 42-16002(B) in the year following an appeal.
Effective June 18, 2004

SBOE-04-006 - Board policy on representation before the Board for no fee in disputes of a tax amount of $5,000 or less.
Effective June 28, 2004

SBOE-04-007 - Board policy on the scope of A.R.S. §§ 42-16251 through 42-16258 (the "error correction statutes").
Effective July 23, 2004

SBOE-04-008 - Board policy on the evidence considered in determining whether a petitioner has complied with "substantial information" requirements of A.R.S. §§ 42-16051(B) & 42-16052.
Effective August 25, 2004

#SBOE-05-001- Board policy on presentation of evidence at hearings before the State Board of Equalization.
Effective May 6, 2005

#SBOE-05-002- Board policy on jurisdiction to hear disputed claims involving use and hence exemption status.
Effective December 19, 2005

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SUBSTANTIVE POLICY STATEMENT
NUMBER SBOE-04-001
EFFECTIVE JUNE 1, 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.

This statement clarifies the Board's interpretation of the criteria for classification of rental residential property pursuant to A.R.S. § 42-12004(A)(1).

First, the definition of rental residential property in both § 42-12004(A)(1) and § 33-1901(2) requires that the property be leased *solely* for residential purposes. Second, § 33-1902(C) requires that an owner of rental residential property file a report with the county identifying parties responsible for the property. Third, a property properly classified as rental residential may not collect sales transaction privilege tax on the units.

Thus, the Board's policy is that, in order for a property to be classified as rental residential property, each of the following criteria must be met:

(1) The property must be used *solely* for residential purposes;
(2) The owner must have filed the report required by § 33-1902(C); and
(3) The owner must not collect sales transaction privilege tax on the units.

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SUBSTANTIVE POLICY STATEMENT
NUMBER SBOE-04-002
EFFECTIVE JUNE 10, 2004

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This statement establishes the Board's policy on the criteria for a parcel's valuation as a "shopping center" pursuant to A.R.S. § 42-13201.

The recent Court of Appeals case *Nordstrom v. Maricopa County*, 88 P.3d 1165 (Ariz. App. 2004) interpreted the statute strictly on its plain language. Consistent with this decision, the Board's policy is that a parcel is a shopping center under § 42-13201 only if each of the following three criteria is met:

(1) The parcel must contain three or more commercial establishments, the primary purpose of which is retail sales;
(2) The combined gross leasable area of the parcel must be at least 27,000 square feet; and
(3) At least one establishment on the parcel must have a gross leasable area of at least 10,000 square feet, and it must be owner occupied or subject to a lease that has a term of at least 15 years.

If one or more of these criteria is not met, the parcel does not qualify as a "shopping center" under the statute.

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SUBSTANTIVE POLICY STATEMENT
NUMBER SBOE-04-003
EFFECTIVE JUNE 11, 2004

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This statement establishes the Board's policy on whether a landlord's use or a tenant's use of commercially leased property should govern its classification or status as exempt.

A.R.S. § 42-12001 provides specific types of class one (commercial) property and states that any other property devoted to commercial use and not belonging in another class is also class one property. This policy statement addresses the classification of commercially leased property that a tenant is using in a way consistent with another classification or an exemption.

Based on its interpretation of recent case law, including *Kraus v. Maricopa County*, 200 Ariz. 479, 28 P.3d 335 (App. 2001), and *U-Stor Bell v. Maricopa County*, 204 Ariz. 79, 59 P.3d 843 (App. 2002), the Board's policy is that the focus in all cases of commercially leased property should be on the landlord's use of the property. Thus, regardless of whether the tenant's use of the property is consistent with an exemption or another classification, the landlord's use of the property as a commercial lessor requires the property to be classified as class one commercial property.

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SUBSTANTIVE POLICY STATEMENT
NUMBER SBOE-04-004
EFFECTIVE JUNE 18, 2004

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This statement establishes the Board's policy on property devoted to low-income housing and thus encumbered by rent restrictions.

Arizona courts have traditionally held that property encumbered by restrictions such as mortgages, leases and deed restrictions should be assessed at full market value as if such encumbrances did not exist. See e.g. *Recreation Centers of Sun City, Inc. v. Maricopa County*, 162 Ariz. 281, 782 P.2d 1174 (1989). The Department of Revenue established a guideline for assessment personnel that this principle should apply also in cases where the property is low-income housing encumbered by rent restrictions.

Recently, however, in *Cottonwood Affordable Housing v. Yavapai County*, 205 Ariz. 427, 72 P.3d 357 (2003), the Tax Court decided that assessors valuing such property should consider the restricted income earned due to rent restrictions and should disregard the benefit the owner receives from Low Income Housing Tax Credits (LIHTCs).

The Board's policy is that the *Cottonwood* opinion is persuasive authority in appeals involving an *identical fact situation*. Thus, the opinion is given weight but is not binding in cases involving low-income housing property that is:

(1) Eligible to receive LIHTCs; and consequently
(2) Reserves a portion of its units for low-income households, with rent on those units restricted to a percentage of qualifying income.

In such cases, the Board member(s) or hearing officer(s) hearing the appeal should look to the *Cottonwood* opinion and may decide:

(1) Not to include the LIHTCs into the income stream; and
(2) To consider reduced income due to rent restrictions.

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SUBSTANTIVE POLICY STATEMENT
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EFFECTIVE JUNE 18, 2004

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This statement is to clarify the Board's interpretation 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 or 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 Board's policy on the "rollover" provision is as follows:

(1) Board decisions that do not change valuation or classification ("no change" decisions) 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 § 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 as "equity comparables" to determine 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 corrected pursuant to Title 42, Chapter 16, Article 6 of the Arizona Revised Statutes (the "error statutes").

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SUBSTANTIVE POLICY STATEMENT
NUMBER SBOE-04-006
EFFECTIVE JUNE 28, 2004

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Appearance before the Board is deemed the practice of law and is thus regulated by Arizona Supreme Court Rule 31. In addition to allowing taxpayers, attorneys, property tax agents and appropriate corporation/partnership representatives to appear before the Board, Rule 31(c)(13) specifically authorizes the following parties to appear:

> (1) a certified public accountant, (2) a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1), or (3) **in matters in which the dispute, including tax, interest and penalties, is less than $5,000.00 (five thousand dollars), any duly appointed representative**. [Emphasis added]

The Board has taken the position that the "amount in dispute" in an appeal is the amount of tax in dispute, not the valuation of the property. In addition, the Board has taken the position that the representative in such a case must not accept a fee for representation. While not explicitly stated in the Rule, this is implied by the fact that those who accept fees for their services (i.e. agents, attorneys, CPAs) are regulated by the state.

Thus, in a hearing in which the amount of tax in dispute is less than $5,000, the taxpayer may appoint a party not accepting a fee to represent him or her in the hearing. The rule only requires that the representative be "duly appointed," which could occur either by notarized writing or orally on the record.

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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.

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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SUBSTANTIVE POLICY STATEMENT
NUMBER SBOE-04-008
EFFECTIVE AUGUST 25, 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.

The first level of appeal for a taxpayer who believes his or her property has been improperly valued is petition for review with the assessor's office. The statutes require that the petitioner include "substantial information" to justify his or her opinion of value or classification. A.R.S. §§ 42-16051(B) & 42-16052. The assessor may reject a petition that fails to include substantial information. A.R.S. § 42-16053.

If an assessor mails a notice of rejection on or before June 15, A.R.S. § 42-16053(1) authorizes the petitioner to file an amended petition with the assessor. If the assessor mails a notice of rejection after June 15, A.R.S. § 42-16053(2) authorizes appeal to the State Board of Equalization ("SBOE" or "Board").

This substantive policy statement addresses how the Board will approach the issue of whether the petitioner has provided substantial information in two different appeal situations: (1) where the assessor has mailed a first notice of rejection after June 15 or (2) where the assessor mailed a first notice of rejection on or before June 15 and rejected a later amended petition.

1. Single Rejection After June 15

If the assessor mails a notice of rejection after June 15 and it is a first rejection, on appeal the Board must first review the petition and supporting documentation submitted to the Board and determine if the petitioner has provided substantial information

pursuant to A.R.S. §§ 42-16051(B), 42-16052, or other applicable statutes. If the Board determines that the petitioner has not provided substantial information, then the Board will not hear petitioner's appeal and the assessor's valuation and classification will stand.

If the Board determines that the petition and supporting documentation comply with the statutory substantial information requirements, the Board will then proceed with the appeal. During the appeal, the Board will consider the information and testimony of all parties before it and determine whether the petitioner has presented sufficient evidence to overcome the presumption of correctness of the Assessor's classification and/or valuation.

2. Two or More Assessor Rejection Notices; Last Rejection Notice Mailed After June 15

If the assessor mails a first notice of rejection on or before June 15, petitioner may submit an amended petition to the assessor pursuant to A.R.S. § 42-16053(1). If the assessor rejects this or any subsequent amended petition after June 15, then on appeal the Board may only consider the last amended petition and supporting documentation filed with the assessor in making an initial determination as to whether the petitioner has complied with the substantial information requirements. If the Board determines that the petitioner has not submitted substantial information, then the Board will not hear petitioner's appeal and the assessor's valuation and classification will stand.

If the Board determines that the last amended petition and supporting documentation submitted to the assessor do contain substantial information pursuant to statutory requirements, then the Board will proceed with the appeal. During the appeal, the Board will consider the information and testimony of all parties before it and determine whether the petitioner has presented sufficient evidence to overcome the presumption of correctness of the Assessor's classification and/or valuation.

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SUBSTANTIVE POLICY STATEMENT
NUMBER SBOE-05-001
EFFECTIVE, May 6, 2005

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In a hearing before the State Board of Equalization, a petitioner may not raise any issue not included in the initial petition filed with the assessor. A petitioner is required to submit to the assessor substantial information supporting the petitioner's opinion of the value of the property. Checking the box on an appeals form corresponding to a particular valuation approach is not sufficient.

If a petitioner has failed to provide substantial information on a valuation approach, then he or she has failed to properly raise that issue and may not present evidence relevant to that issue at a hearing before the Board of Equalization. If a petitioner does properly raise an issue, then he or she may present any evidence on that issue at a hearing before the Board, regardless of whether the evidence was presented to the assessor with the initial appeal.

A respondent county may present any information to support the current valuation. A petitioner may present any new evidence to rebut an issue raised by the respondent assessor's office, during the Board hearing, even if the petitioner did not raise the issue on the initial appeal.

Evidence allowed for rebuttal will be limited to evidence on a point raised by the respondent county. In other words, the petitioner may not use rebuttal testimony as an opportunity to present any new evidence he or she wishes. It must be on a rebuttal point only.

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

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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.