# Board of Supervisors Memorandum

**August 19, 2013**

**Waiver of Assessed Penalties Pursuant to Arizona Revised Statute §42-12052 Relating to Failure of Property Owners to Affirmatively Respond to Requests by the Assessor Related to Property Classification for Tax Purposes**

Background

The Arizona Legislature recently changed the statutes relating to the classification of residential property between Legislative Class 3 property, which is residential property used for the "primary residence" of the owner, and Legislative Class 4 property, which is residential property owned by the taxpayer but not used as the taxpayer's primary residence.

The newly enacted language in Arizona Revised Statute (A.R.S.) §42-12052 requires county assessors to contact homeowners to confirm their properties comply with the "primary residence" requirements for classification as Class 3 property. Property classified as Class 3 property is eligible for the State Aid to Education reduction in property taxes. Residential property classified as Class 4 is not eligible for that reduction in property taxes.

During the past few months, the Pima County Assessor contacted homeowners whose properties met criteria set forth by the Arizona Department of Revenue (such as owners with more than one residence) asking these owners to confirm their properties meet the definition of Legislative Class 3 "primary residence." Whenever an owner returns the notice and confirms the property is a primary residence, the property retains its Legislative Class 3 classification. When the owner indicates the property is not a primary residence because it is a vacation home or rental property, the Assessor will change the classification of the property to Legislative Class 4" other residential" property.

Under the revisions to the statute, a property owner is subject to penalties for failure to respond to the Assessor's notice even if the property owner agrees with the classification shown on the notice. That is, if the Assessor reclassifies a property and the property owner agrees with the reclassification, the owner can still be assessed a penalty for not mailing the notice back to the Assessor. Many property owners may not respond to the Assessor's initial request to confirm the property's Legislative Class 3 classification. When this occurs, the Assessor is required by statute to make another inquiry to the property owner. Should the owner fail to respond to this second inquiry, the Assessor is then directed by statute to reclassify the property in the assessment roll from Legislative Class 3 to Legislative Class 4 and to notify the County Treasurer that a penalty be assessed against the property in an amount equal to the State Aid to Education credit received by the property owner during the previous tax year. This amount would usually be about $200 per parcel. We believe property owners are confused about this requirement to affirmatively reply to the notice by the Assessor.

The Treasurer has received approximately 3,400 reclassifications of Class 3 property to Class 4 by the Assessor as a result of property owners failing to respond. Because these owners did not respond to the Assessor's inquiries within the time allotted, approximately $600,000 in penalties may potentially be assessed against their properties.

The non-response penalty constitutes a lien on the property, but the penalty will not appear on the property tax statements. Tax payments from property owners will first be applied to extinguish the penalty and then to pay the property tax liability for the tax year. Thus, it is likely many property owners will incur additional delinquent property tax penalties and interest charges without knowing their payments were insufficient.

A property owner does have the right to appeal the reclassification, as well as appeal the penalty; initially to the Assessor, and then to the Board of Supervisors. The Clerk of the Board of Supervisors has already received more than 500 appeals to the Board for reclassifications or waivers of penalties from property owners pursuant to A.R.S. §42-12052. Those appeals have been processed through our Finance Department under Board Policy D22.10. Once notices of the penalties are sent, we would expect significantly more appeals. Property owners who agree with the Assessor's determination may not understand they still must actually formally respond to prevent the penalty from being assessed.

In March, the Legislature enacted Laws 2013, Chapter 9, which states "a county treasurer in consultation with the board of supervisors may waive a penalty required for a failure to respond to a request for information pursuant to section 42-12052, Arizona Revised Statutes, for good cause." This act is effective retroactively to, from, and after June 30, 2012. This act is repealed from and after June 30, 2014.

Recommendation

Due to property owner confusion and lack of response to Pima County Assessor notices, I recommend the Board of Supervisors approve waiver of penalties assessed under Arizona Revised Statutes §42-12052 on property owners who do not respond to requests for information from the Assessor as provided for in Laws 2013, Chapter 9.

Respectfully submitted,

C.H. Huckelberry
County Administrator

CHH/dph– August 6, 2013

c: The Honorable Beth Ford, Pima County Treasurer
The Honorable Bill Staples, Pima County Assessor
Robin Brigode, Clerk of the Board of Supervisors
Tom Burke, Director, Finance and Risk Management