



MEMORANDUM

Date: January 9, 2017

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator

A handwritten signature in black ink, appearing to read "CHH", is written over the printed name "C.H. Huckelberry".

Re: **Proration of Taxes on Exempt Properties**

Attached is a December 29, 2016 memorandum from Deputy County Administrator Tom Burke to Pima County Assessor Bill Staples regarding the proration of exempt status as it relates to levying property taxes. The Assessor recently contacted title companies and the Pima Association of Governments informing them of a revision to his procedure for providing exemptions for properties that transfer between private owners and governmental owners. As indicated in Mr. Burke's memorandum, the Assessor's interpretation differs from the method by which Pima County has always taxed such properties.

Each year, privately owned real property that has been subject to real property taxes transfers into governmental ownership and becomes exempt from property taxes, such as when a local government acquires land for a park or road. Historically, counties in Arizona have fully exempted such properties on the levy date. By statute, all government-owned property is exempt from taxation. Conversely, when real property transfers from governmental ownership to private ownership, the property loses its exempt status and becomes subject to real property taxes. Historically, counties in Arizona have fully taxed such properties on the levy date.

I met with the Pima County Attorney's Office to discuss this matter; and based on that meeting, I will not be asking the County Attorney to seek an Attorney General's opinion. I concur with Mr. Burke's interpretation of the method Pima County has historically used to levy taxes.

I recommend Pima County continue to levy taxes on property based on the exemption status on the date of the annual tax levy and to attempt to levy based on prorated exemptions by the County Assessor. This would mean, as it has historically, that property that is exempt on the date of the levy is not taxed and that property that is not exempt on the date of the levy is taxed for its full taxable value, not prorated based on dates of ownership.

CHH/anc
Attachment

c: The Honorable Bill Staples, Pima County Assessor
The Honorable Beth Ford, Pima County Treasurer
Thomas Weaver, Chief Civil Deputy County Attorney
Tom Burke, Deputy County Administrator for Administration
Keith Dommer, Director, Finance and Risk Management



MEMORANDUM

Administration Services

Date: December 29, 2016

To: The Honorable Bill Staples
Pima County Assessor

From: Tom Burke
Deputy County Administrator

Re: **Pima County Assessor's Office Internal Policy and Procedures re Government
Ownership Sales**

Attached is an email from you indicating that your office has informed the title companies and the Pima Association of Governments about your interpretation of the *Hub Properties Trust vs Maricopa County* case. As we discussed last summer, I disagree with your interpretation of the case and believe that the law still requires either that properties be exempted in full for the entire year or that taxes be levied in full upon the owner of the property on the date of the levy adoption, the third Monday of August. I also believe no other County is applying your interpretation, but even if they are, I still read the statutes and the case law to require the levy to occur without proration. I am asking the County Administrator to request that the County Attorney seek a formal Attorney General Opinion on this topic. I am attaching several former Attorney General opinions which support the interpretation that taxes are to be levied in full, and not prorated. If Ms. LaWall agrees to seek the Attorney General opinion, I will be asking that you send a follow up email to the title companies and the Pima Association of Governments explaining that the County is seeking a formal interpretation from the Attorney General.

Given that people are mostly out of the office this week, I will likely not know until next week whether the County Attorney will request an opinion or issue one from her own office.

TB/sp

Attachments

c: C. H. Huckelberry, County Administrator
Thomas Weaver, Chief Civil Deputy County Attorney

Tom Burke

Subject: FW: Government Sale Transactions (Taxable Days)
Attachments: Government Document Procedure.pdf

From: Bill Staples
Sent: Wednesday, December 28, 2016 2:06 PM
To: Keith Dommer; Craig Horn
Cc: Beth Ford
Subject: FW: Government Sale Transactions (Taxable Days)

FYI
This went out to the title companies and PAG.

From: Joyce Hays
Sent: Wednesday, December 28, 2016 12:41 PM
To: 'shannon.lopez@catalinatitle.com' <shannon.lopez@catalinatitle.com>; 'recordings@catalinatitle.com' <recordings@catalinatitle.com>; 'recorder@titlegroup.fntg.com' <recorder@titlegroup.fntg.com>; 'cindy.reiche@titlesecurity.com' <cindy.reiche@titlesecurity.com>; 'marsha.carter@titlesecurity.com' <marsha.carter@titlesecurity.com>; 'recordingdesk@longtitle.com' <recordingdesk@longtitle.com>; 'sandra@metrotitleaz.com' <sandra@metrotitleaz.com>; 'marianne@metrotitleaz.com' <marianne@metrotitleaz.com>; 'delayne.pringle@sigtitleaz.com' <delayne.pringle@sigtitleaz.com>; 'amallet@stewartaz.com' <amallet@stewartaz.com>; 'amy.horton@titlemail.com' <amy.horton@titlemail.com>; 'tsarecordings@titlesecurity.com' <tsarecordings@titlesecurity.com>; 'recordingdesk@longtitle.com' <recordingdesk@longtitle.com>; 'Info@PAGregion.com' <Info@PAGregion.com>
Cc: Lon Berg <Lon.Berg@pima.gov>; Bill Staples <Bill.Staples@pima.gov>
Subject: Government Sale Transactions (Taxable Days)

As you may be aware, the Arizona Court of Appeals rendered a decision in Hub Properties Trust vs Maricopa County requiring the Pima County Assessor's Office to modify our process in how an exemption is applied when a parcel is sold or purchased by a government entity. The tax court stated that *"[t]he period of exemption . . . begins on the date the property enters government ownership and ends on the date it leaves government ownership."* What was formerly known as the third Monday in August rule, to determine the exempt status of property sold or purchased by a government entity, is no more.

Attached you will find the Assessor policy of how we will handle sales to or from a government entity. We will pro-rate the exemption period for the days that the government entity owns the property. We wanted you to be aware of this change as it will impact your closing with respect to the proration of taxes.

If you have any questions about this change please give me a call.

Joyce L. Hays
Assessor DSMA Division Manager
(Deeds, Splits, Mapping, Appeals)
240 N. Stone Ave., Tucson AZ 85701
520.724.8257
520.770.4251 fax

<i>Pima County Assessor's Office Internal Policy and Procedures</i>	
Procedure Name: Government Ownership Sales	Procedure Number: 2015-00006
Category: Judicial	Original Effective Date: 12/15/2015
Section: Title - Techs	Revised Effective Date: 07/29/2016

I. PURPOSE

This procedure establishes guidelines for identifying transfer documents into or out of any government entity and the period of time that the parcel will be exempt. Any questions regarding this procedure should be directed to your Department Supervisor.

II. RESPONSIBILITY

This procedure applies to all employees responsible for document transfers or re-parceling processes. These employees should have knowledge and understanding of what a government entity is and basic math skills to calculate exempt time periods.

III. STATUTORY or COURT REFERENCES

AZ Constitution Article 9 § 2(1) Property Subject to Taxation; exemptions
 ARS § 42-11102(A) Exemption for Government Property
 ARS § 42-16205.01(A) New Owner of Property; Review and Appeal
 AZ Op Atty. Gen. No. 178-235 Oct 3, 1978 (Now Void 3rd Monday Rule)
 CA-TX 14-0005 Arizona Court of Appeals Aug 20, 2015
 To AZ Supreme Court Sep 15, 2015 request for hearing
 ARS § 42-16258 Correcting tax roll by County Treasurer (Omission of Tax)

IV. OVERVIEW

The tax court concluded "*[t]he period of exemption . . . begins on the date the property enters government ownership and ends on the date it leaves government ownership.*"

The court also concluded that "*ARS 42-16205 permits a new property owner to appeal a property's valuation to a court if the former owner of the property did not have a pending appeal.*"

As such, a change in exemption status is not considered an error and will not require a NoPC form or any formal notice for the change in taxable days.

VI. MISCELLANEOUS, SCREEN PRINTS OR FAQ's

Ordinal Calendar CLIP from SharePoint SHARED Documents
Also see Leap Year Ordinal Calendar for 2016

Ordinal Date Calendar (Perpetual)

FEB	MAR	OCT	NOV	DEC	DAY
45	73	287	318	348	14
46	74	288	319	349	15
47	75	289	320	350	16
48	76	290	321	351	17

TRC system needs FCV and LTD Assessed Values for Exempt amount data entry

EXEMPTIONS	
Full Cash Sec Exemption:	\$0
Limited Pri Exemption:	\$0

Use RULE B Calculator for limited value before the exemption

Rule B Calculator

Parcel: Tax Year:

CountyWide

Land

Leg. Class	Ratio		FCV	=	Assessed	Rule B Ratio	Limited
1	18.5	X	<input type="text"/>	=	00	0.935	00
2	16.0	X	60,009	=	9,601	0.953	57,189

LIMITED VALUE CORRECTION FORM

LIMITED VALUATION CORRECTION FORM
Limited Value Adjusted per ARS 42-13301 thru ARS 42-13304

Details		Use the Rule B Calculator to determine the Rule B limited value that will match the Assessed Value. http://arcweb1.aspr.caib.rutland.gov/	
DATE	ix	Appraiser Review	Date
PARCEL	ix	Selector Review	Date
TAX AREA	ix	Director Review	Date
		Auditor Review	Date

TAX YEAR 2013						
2013 LVP	RULE A 30%	RULE A 25%	RULE B	FULL CASH VALUE	CURRENT LIMITED	2013 ADJUSTED LVP
0				0	0	0

TAX YEAR 2014						
2014 LVP	RULE A 30%	RULE A 25%	RULE B	FULL CASH VALUE	CURRENT LIMITED	2014 ADJUSTED LVP
0				0	0	0

TAX YEAR 2015						
2015 LVP	RULE A 3%	RULE B		FULL CASH VALUE	CURRENT LIMITED	2015 ADJUSTED LVP
0	0			0	0	0

Use the TaxableDaysTRCform.xls to calculate exempt dollars for the ARC/TRC using ALL taxable days in the calendar year of the deed recording.

WHEN ALL BOXES ARE COMPLETED...CLICK 'PRINT'
 Fill in SHADED boxes below - All other boxes will calculate
 **If 100% Exempt then use ZERO taxable days and 9xxx Taxable Use

PART 1:
TAXABLE WORKSHEET:

FILL IN:

TODAYS DATE:	6/22/2016	TAXABLE USE: **	9590
TAX YEAR:	2016	LAND VALUE	141,048
CALENDAR DAYS	366	IMP VALUE	83,695
		ADJ LTD VALUE	210,584
PARCEL	11616219A	LAND CLASS MAJ/MIN	1
TAX AREA	0150	LAND % OF CLASS	18.0
TAXABLE DAYS	133	IMP CLASS MAJ/MIN	1
DATE RECORDED	5/13/2016	IMP % OF CLASS	18.0
SEQUENCE NO:	20152730780	OVERALL % OF CLASS	18.0

PART 2: (When applicable)
 Use for properties that also have a 'Personal Exemption' or 'Secured Personal Property' on their tax statement. If none, then value should be ZERO

SEC PERS PROP	0
EXEMPT FULL CASH	0
EXEMPT LIMITED	0

ARC/TRC VALUATION WORKSHEET:

A change in exempt status is NOT an error, this form is used for data entry only!!

TAXABLE DAYS ARC/TRC DATA SHEET

TAX YEAR: 2016 DATE: 6/22/2016
 PARCEL: 11616219A
 TAX AREA: 0150 RESOLUTION NO: _____
 USE CODE: 9590

Potential changes noted in Grayed Boxes:

	TAXABLE DAYS VALUE		CLASS: Major/M in or B. %	
	FULL CASH	LIMITED VALUE		
LAND VALUE	141,048		1	18.0
IMP VALUE	83,695		1	18.0
SEC PERS PROP	0			
EXEMPT AMOUNT	25,769	24,146		
Total FCV VALUE	224,743	210,584		
Assessed VALUE	40,454	37,905		

TRC NARRATIVE: TAXABLE DAYS 133 SEQUENCE NO: 20152730780 DATE RECORDED 5/13/2016

PROCESSING APPROVAL:

TECHNICAL _____	DATE: <u>6/22/2016</u>
SUPERVISOR _____	DATE: _____
MANAGER _____	DATE: _____
AUDIT _____	DATE: _____

ARC ENTRY:

CREATED BY _____	DATE: _____
RELEASED BY _____	DATE: _____
SCANNED BY _____	DATE: _____

proposed correction, the tax officer and the taxpayer shall each sign an agreement and the tax roll must be promptly corrected to the extent agreed on.

G. If after the meeting the parties fail to agree on all or part of the proposed correction, the tax officer shall serve a notice on the taxpayer by certified mail within thirty days after the meeting date advising the taxpayer that the tax roll will be corrected to the extent agreed on. The taxpayer may file a petition on a form prescribed by the department with the board of equalization within thirty days after the date of the notice or it is barred. On receiving the petition, the board shall hold a hearing on the disputed issues in the proposed correction within thirty days and shall issue a written decision pursuant to the board's rules.

H. A party that is dissatisfied with the decision of the board may appeal the decision to court within sixty days after the date the board's decision is mailed, but any additional taxes that are determined to be due must be timely paid before delinquency for the court to retain jurisdiction of the matter.

HUB PROPERTIES TRUST, a Maryland real estate investment trust, Plaintiff/Appellant, v. MARICOPA COUNTY, a political subdivision of the State of Arizona; THE ARIZONA DEPARTMENT OF REVENUE, an agency of the State of Arizona, Defendants/Appellees.

COUNSEL Mooney, Wright & Moore, PLLC, Mesa By Paul J. Mooney, Jim L. Wright Counsel for Plaintiff/Appellant Maricopa County Attorney's Office, Phoenix By Kathleen A. Patterson Counsel for Defendant/Appellee Maricopa County Arizona Attorney General's Office, Phoenix By Kenneth J. Love, Jerry A. Fries Counsel for Defendant/Appellee Arizona Department of Revenue

OROZCO, Judge

Appeal from the Superior Court in Maricopa County TX2011-000654 The Honorable Dean M. Fink, Judge

AFFIRMED

COUNSEL Mooney, Wright & Moore, PLLC, Mesa By Paul J. Mooney, Jim L. Wright *Counsel for Plaintiff/Appellant* *22 Maricopa County Attorney's Office, Phoenix By Kathleen A. Patterson *Counsel for Defendant/Appellee* Maricopa County Arizona Attorney General's Office, Phoenix By Kenneth J. Love, Jerry A. Fries *Counsel for Defendant/Appellee* Arizona Department of Revenue

OPINION

Presiding Judge Patricia A. Orozco delivered the opinion of the Court, in which Judge Randall M. Howe and Judge Maurice Portley joined. **OROZCO**, Judge: ¶1 Hub Properties Trust (Hub) appeals the grant of summary judgment in favor of Maricopa County and the Arizona Department of Revenue (collectively the State). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 This appeal concerns a property tax assessment for real property in Maricopa County (the Property) for tax year 2011. Hub purchased the Property from the City of Phoenix (the City) on March 4, 2011. When the City owned the Property, it was exempt from property taxes pursuant to Article 9, Section 2(1) of the Arizona Constitution and Arizona Revised Statutes (A.R.S.) section 42-11102.A. (West 2015).¹ ¶3 After Hub purchased the Property, the County Assessor's Office determined the Property was no longer exempt municipal commercial property. As a result, the Property was included in the Assessor's roll as taxable property and was included in the County's tax roll for tax year 2011. The Maricopa County Board of Supervisors then fixed, levied and assessed property taxes for the Property for the County's assessment and tax roll for the 2011 tax year. ¶4 Hub subsequently brought suit claiming the taxes assessed on the Property were illegally collected because the Property "was not subject *33 to *ad valorem* taxation" and appealed the Property's valuation. The parties filed cross-motions for summary judgment on the former claim and the tax court granted the State's motion, finding the Property was no longer tax exempt after the City sold it to Hub. The parties subsequently settled Hub's valuation claim and the tax court entered a stipulated judgment on that issue. Hub timely appealed the tax court's grant of summary judgment in favor of the State. We have jurisdiction pursuant to Article 6, section 9 of the Arizona Constitution and A.R.S. §§ 12-120.21.A.1 and -2101.A.1 (West 2015).

1. We cite the current version of applicable statutes when no revisions material to this decision have since occurred.-----

DISCUSSION

¶5 We review the grant of summary judgment and questions of law, including the interpretation of statutes, *de novo*. *Maycock v. Asilomar Dev., Inc.*, 207 Ariz. 495, 498, 500, ¶¶ 14 (App. 2004). In reviewing issues of

statutory construction, we look to the statute's plain language to determine its meaning. *Koss Corp. v. American Express Co.*, 233 Ariz. 74, 79, ¶ 12, 309 P.3d 898, 903 (App. 2013). I. Property Tax Exemption ¶6 All property in Arizona is subject to taxation unless expressly exempt. See A.R.S. § 42-11002. Such an exemption applies to federal, state, county, and municipal property. Ariz. Cons. art. 9 § 2.1; A.R.S. § 42-11102.A. There is a general presumption against tax exemptions and laws creating property tax exemptions are to be strictly construed. See *Verde Valley Sch. v. Yavapai Cnty.*, 90 Ariz. 180, 182, 367 P.2d 223, 225 (1961). ¶7 A tax exemption must be specifically granted by statute. *New Cornelia Coop. Mercantile Co. v. Ariz. State Tax Comm'n*, 23 Ariz. App. 324, 327 (App. 1975). Moreover, "[t]he taxpayers have the burden of establishing the right to an exemption from taxation." *McElhaney Cattle Co. v. Smith*, 132 Ariz. 286, 291 (1982). ¶8 On appeal, Hub argues that because the City owned the Property "during the entire assessment period for the tax year 2011, on the tax lien date, and for more than two full months of the tax year at issue herein," the Property was exempt during tax year 2011. Thus, Hub contends the Property was illegally taxed that year. Hub's argument presumes that once property is exempt, it is exempt for the entire tax year even if there is a change of use or ownership. Hub argues:

[A]lthough the [] Property was arguably non-exempt for ten [] months out of tax year 2011-despite being tax exempt during *44the entire assessment period for tax year 2011, and on the statutory lien date-the Legislature has not provided for the prorated taxation of real property that transitions from government ownership to private ownership during the tax year. Simply put, there is no provision in the law for the prorated taxation of such property. Absent such a provision, there is no legal authority for the [State's] actions in this case.

¶9 Although the City owned the property during the pertinent property valuation period, that is not dispositive in determining whether the Property was tax exempt after Hub bought it in tax year 2011. The statute provides that the County Assessor shall determine the Property's "full cash value" on or before January 1, 2010 for the State's 2011 tax roll. See A.R.S. §§ 42-13051.B.2, -11001.19(a) (West 2015). After the sale to Hub, however, the Property was no longer exempt municipal commercial property. On or before the third Monday in August 2011, the Maricopa County Board of Supervisors "fix[ed], lev[ied], and assess[ed]" property taxes for the Property in accordance with A.R.S. § 42-17151.A.1. (West 2015). There is no dispute that Hub owned the Property during the 2011 assessment period. ¶10 The tax court correctly noted the logical extension of Hub's position that "taxable status is fixed on the valuation date" is that if the State had purchased the Property from a private party in March 2011, the State could be required to pay property taxes until the next valuation period. This would clearly contravene the plain meaning of both Article 9, Section 2 of the Arizona Constitution and A.R.S. § 42-11102.A. "There shall be exempt from taxation all federal, state, county and municipal property." Ariz. Cons. art. 9, § 2 (emphasis added). "Federal, state, county and municipal property is exempt from taxation[.]" A.R.S. § 42-11102.A (emphasis added). ¶11 Moreover, we find Hub has failed to meet its burden of showing it was entitled to a property tax exemption for tax year 2011 and cannot point to a statutory provision that explicitly grants such an exemption. The tax court concluded, "[t]he period of exemption . . . begins on the date the property enters government ownership and ends on the date it leaves government ownership." We agree. Although the Property was tax exempt while the City owned it in 2011, the exemption was lifted when Hub purchased the Property in March. See *City of Phoenix v. Elias*, 64 Ariz. 95, 97-101 (1946) (holding property was exempt until January 6 while the State owned it, but could be taxed upon its subsequent transfer to a private party). Thus, we affirm the tax court's ruling that the Property was not tax exempt after the City sold it to Hub in 2011. *55II. Double Taxation ¶12 Hub contends that it was subject to double taxation because the City could have been required to pay government property lease excise taxes (GPLET) while it owned the Property in 2011 pursuant to A.R.S. § 42-6203.G (West 2015). "Double taxation occurs when the same property or person is taxed twice for the same purpose or for the same taxing period by the same taxing authority[.]" *Lake Havasu City v. Mohave Cnty.*, 138 Ariz. 552, 562 (App. 1983) (internal citations and quotations omitted). ¶13 Under A.R.S. § 42-6203.G:

Prime lessees of government property improvements who become taxable or whose taxable status terminates during the calendar year in which the taxes are due, including prime lessees subject to exemption or abatement under §§ 42-6208 and 42-6209, shall pay tax for that calendar year on a pro rata basis.

Hub admits that no GPLET were imposed during the 2011 tax year. Instead, Hub's double taxation argument stems from the possibility that the State could have assessed GPLET for the 2011 tax year. ¶14 We find three reasons why such a tax

would not constitute double taxation when imposed with property taxes. First, GPLET would not be imposed on the same party. Hub is not a "prime lessee" because it did not enter into a lease directly with a government lessor; it purchased the Property from the City. See A.R.S. § 42-6201.4 (West 2015). Second, the taxes are not assessed for the same purpose. GPLET are assessed on prime lessees "for the use or occupancy of each government lessor's government property improvement" while *ad valorem* taxes are assessed on the property itself based on its full cash value. A.R.S. § 42-6202.A; see *supra* ¶ 9. Third, the taxes are levied by different taxing authorities. "Government lessors" levy GPLET. A.R.S. § 42-6202.A. By contrast, the property taxes Hub paid were levied by the County Assessor. See A.R.S. § 42-17151.A. Thus, we affirm the tax court's ruling that "[t]here is plainly no double taxation here." III. Due Process ¶ 15 Unlike Hub's illegal taxation claim, the parties voluntarily settled Hub's property valuation claim and the tax court entered a stipulated judgment. However, Hub argues its due process rights were violated because:

*66 The County's actions in assessing property taxes against the . . . Property for tax year 2011 gave no . . . notice to [Hub] . . . and provided it no opportunity to appeal the proposed valuation to either the Assessor or to the State Board of Equalization prior to having to remit the tax.

Hub mischaracterizes the requirements of due process. "If it is property that is being taxed, due process requires that the property owner be advised of the tax, and that it have the opportunity to be heard with respect to its assessment." *Seafirst Corp. v. Ariz. Dep't. of Revenue*, 172 Ariz. 54, 59 (Tax Ct. 1992). ¶ 16 Hub undoubtedly had notice of the Property's valuation and had a right to appeal the valuation pursuant to A.R.S. § 42-16205.01.A.1 (West 2015), which permits a new property owner to appeal a property's valuation to a court if the former owner of the property did not have a pending appeal or had not received a final judgment or dismissal regarding the property valuation. Moreover, Hub exercised its due process rights by filing its complaint in the tax court; Hub's second claim for relief was a "Valuation Appeal." ¶ 17 Hub exercised its right to be heard in the tax court, and we find no authority supporting Hub's argument that due process requires the Assessor or the State Board of Equalization to hear valuation appeals, and Hub has not cited to any such authority. Thus, we find no due process violation and affirm the tax court's ruling on this issue.

CONCLUSION

We affirm the tax court's grant of the State's motion for summary judgment.

AG OPINION No. 62-18

Opinion No. 62 - 18
R-80 and R-100
April 9, 1962

REQUESTED BY: THE HONORABLE HARRY ACKERMAN
Pima County Attorney

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTIONS: 1. Does the County Treasurer or County Assessor have authority to pro-rate or waive the taxes levied upon real property which is acquired by a tax exempt division of local, state or the federal government re-

ardless of the date upon which such acquisition legally occurs?

2. If so, what procedure does the County Assessor or County Treasurer follow in adjusting the tax roll to reflect the credit for the portion of the year for which exemption is granted?

ANSWERS:

1. No.
2. Not applicable.

The question of the taxibility of lands which are acquired during the fiscal year by a tax exempt body was first discussed in the case of *Territory of Arizona v. Perrin*, 9 Ariz .316, 83 P. 361 (1905). The facts indicate that a taxpayer owned certain land which he thereafter deeded to the United States Government. The deeds were approved by the Secretary of the Interior of the United States in April of 1903. The County Treasurer of Cococino County brought an action against the land owner for all of the 1903 taxes and the question was whether or not all of the taxes, or any of them could be imposed on either the United States or upon the taxpayer previously owning the land. The court held:

"Under the provisions of the laws of Arizona, the tax-rate is not fixed until the third Monday in August of each year, and the levy and assessment is not completed until the duplicate assessment-roll is prepared and certified as provided by chapter 5 of title 62 of the Revised Statutes of Arizona of 1901 . . . Lands acquired for public purposes during the period between the first and final steps of taxation are exempt from taxes levied during the year in which they are acquired. (Citations omitted) And this is true even where, as in this territory, the legislature has declared that a lien for taxes shall attach at a date prior to the time when the first steps are taken to subject the real estate to taxation. There can be no real or effective lien until the amount of taxes is ascertained and assessed. 'In the nature of things, no tax or assessment can exist, so as to become an encumbrance on real estate, until the amount thereof is ascertained or determined.' (Citations omitted) . . . In the case at bar, the lands having become the property of the United States at the time the taxes were levied or assessed, and no longer subject to taxation, the acts of the taxing officers were void and of no effect."

The leading treatise on this subject reiterates and enforces the Perrin decision, 4 Nichols on Eminent Domain, § 14.248, Taxes, p. 283. In addition, the decision in the Perrin case was noted and approved by our Supreme Court in *Halls v. Evans*, 69 Ariz. 207 P.2d 985 (1949).

It is felt that it is reasonably obvious that Art. 9, Sec. 2 of the Arizona Constitution exempts from taxation all federal, state, county and municipal property. Therefore, it is clear that if the state, the federal government or any county or municipality acquires property to the "final step of taxation," that no taxes can be imposed upon that property for that calendar year. Neither the state nor other public bodies are required to file a claim for exemption as there are no provisions for filing such in the statutes relating to exemption. A.R.S. § 42-271 et seq. Therefore, there is no question of "waiver" as far as land acquired by the state is concerned. The acquisition by an exempt public body before the fixing of the tax rate operates to deprive taxing officials from any jurisdiction to impose or collect any taxes upon that land from anybody.

The time sequence noted in the Perrin case is changed somewhat. In our present procedure, A.R.S. § 42-284, the clerk of the Board of Supervisors sitting as clerk of the County Board of Equalization shall upon the adjustment in July of the County Board of Equalization forward the tax roll to the State Board of Equalization. Thereafter the State Board in A.R.S. § 42-

145 shall, on or before the second Monday in August of each year, submit any changes to the Board of Equalization of each of the counties. The several Boards of Supervisors shall then fix, levy and assess the taxes on or before the third Monday in August of each year. A.R.S. §42-304. It would, therefore,, appear that this date establishes the taxability of lands acquired by a tax exempt public body.

The only duty remaining on either the County Assessor or the County Treasurer following the notification of the change of status is to make an appropriate notation on the assessment roll, noting thereon the date of the acquisition by the tax exempt institution. This being so question No. 2 is not at issue as there is no authority for granting exemptions for portions of the year where the property has been acquired by a tax exempt body. The only provision for reducing the evaluation is where the property has been destroyed. A.R.S. § 42-251. The fact that private individuals may by their mutual contracts, agree to separate the tax year and pro-rate the liability among themselves, has no bearing where a public body becomes the owner of property. Neither the state, county, nor municipality can legally expend money to pay for something for which they are not liable such as taxes, and the payment of taxes would be merely gratuitous and public bodies are not allowed to make gratuitous payments. In the converse position neither the County Treasurer nor the County Assessor has any authority to waive any taxes or grant exemptions until the waiver or exemption is clearly set forth in the statute and there are no provisions allowing the County Treasurer or County Assessor to waive or exempt the payment of taxes on property by individuals merely because they did not own the land in the full taxable year.

AG OPINION No. 64-15

Opinion No. 64-15 R-123

June 12, 1964

REQUESTED BY: HONORABLE NORMAN E. GREEN
Pima County Attorney

- QUESTIONS:
1. Where a public body acquires real property by virtue of eminent domain proceedings at which point does the property become exempt for ad valorem taxation?
 2. Is the question the same where the public body taxes a taxpayer's land without proceedings and the taxpayer files an action in inverse eminent domain?
 3. Where the public body acquires only a portion of a taxpayer's property in an eminent domain proceeding, what is the validity of the assessment which was originally made on the entire property?

- ANSWERS:
1. See body of opinion.
 2. See body of opinion.
 3. See body of opinion.

There are certain primary conditions which we must review before answering any of the questions. Under A.R.S. §12-1126 the property vests in the plaintiff, i.e., the public body condemning the land, upon the filing of a copy of final order of condemnation in the office of the county recorder. Under the case of *Territory v. Perrin*, 9 Ariz. 316, 83 Pac. 361 (1905) if a public body acquires land prior to the completion of the taxing process the land is exempt from taxes for that year. Inasmuch as we have no statutes in Arizona relative to the proration of taxes, it follows that if the land is acquired after the completion of the taxing process there is no exemption. The court also stated that the taxing process is complete when the rate of taxes is fixed and the amount determined and levied. This occurs on the third Monday of August of each year. Even though the assessment is finished by the first of May, the tax rate to be determined by the State Tax Commission for state purposes is not complete until the second Monday in August. A.R.S. §42-145. Only when this is completed may the county (which for the first time has had the final decision on the total valuation) fix and assess its own taxes. This is done subsequent to the state determination and prior to the third Monday in August in each year. A.R.S. §42-304. The actual date can be prior to the third Monday, but it will never be more than a week prior to that date and is a matter of record in any given year.

To return to the question, we have no specific cases in Arizona and the assistance which we may gain from the decisions in other states is conditioned somewhat upon their statutes and the similarity of their law to our law. However, the leading authority on eminent domain can be paraphrased as follows. Taxes which become a lien upon the real property prior to the date of the title vested

in the condemnor is a lien upon the property to be paid to the taxing authority from the award. 4 *Nichols, Eminent Domain*, Section 14-248, page 683. This is also the rule in federal cases. See the annotation of 45 A.L.R. 2d 522, Section 22, page 562. Inasmuch as up to 90% of the costs of interstate highway construction, the most active area in condemnation, are paid from federal funds and up to 75% of the costs on city or county cases are also paid from federal funds, we feel assured that the following of the federal rule is the best insofar as Arizona is concerned.

It is true that some jurisdictions have followed a different rule, notably New York, but the A.L.R. annotation notes them to be in the minority. We also realize that occasionally a proration of the taxes would appear to be the more equitable solution, but this is a legislative matter. For example, the State of Illinois in 1961 by specific statute enacted a proration provision. See, *Public Building Commission v. Continental Illinois National Bank*, 195 N.E. 2d 192 (Ill. 1963).*

In answer to your second question, we feel there should be no difference in the answer. The public body even though it occupies the land is not the vested owner until the provisions of A.R.S. §12-1126 are complied with. Real property taxes run with the land and are not personal and they cannot be abated or derogated against the interests of county, city, school districts or other taxing bodies without clear statutory authority.

In answer to your third question, there is a possibility that a taxpayer might avail himself of the provisions of A.R.S. §§ 42-241 to 42-243. I am assuming the following factual situation. That the condemning authority has condemned a portion of a taxpayer's land, and that the order of condemnation has been filed with the recorder sometime prior to the fixing of the tax rate. It is obvious that a portion of the land is tax exempt and a portion properly taxable. But inasmuch as the assessor was required to go by the record ownership during his assessment process, he assessed the total property to the taxpayer. I would see no legal reason why the taxpayer could not use the appeal provisions in A.R.S. §§42-241 through 42-243 to call to the attention of the supervisors a substantial factual change and to ask for an adjustment accordingly. If the board failed to so act, I believe an appeal to the courts under A.R.S. §42-245 might well be justified. But it is our belief that the assessor has no authority to change the assessment rolls once he has certified them to the board of supervisors, in accordance with the provisions of A.R.S. §42-239.

AG OPINION No. I78-235



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

JOHN A. LASOTA, JR.
ATTORNEY GENERAL

October 3, 1978

Mr. Jack King
Assistant Director
Division of Property and Special Taxes
Department of Revenue
Capitol Wing
Phoenix, Arizona 85007

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Re: 78-235 (R78-143)

Dear Mr. King:

In your letter of May 11, 1978, you inquired whether certain property presently occupied by the City of Globe, pursuant to an agreement with a private party, is owned by the City of Globe and, therefore, exempt from property taxation.

We have carefully examined the agreement you enclosed in your letter. We conclude that the property ownership remains in private ownership, and hence the property is subject to taxation. The removal of this property from the tax rolls and the cancellation of any taxes due thereon would be improper.

Municipal property is exempt from property taxation by virtue of Article IX, Section 2 of the Arizona Constitution. This exemption is self-executing and does not depend upon a public utilization of the property, but merely public ownership of the property. Clark v. City of Tucson, 1 Ariz.App. 431, 403 P.2d 936 (1965); Maricopa County v. Fox Riverside Theatre Corp., 60 Ariz. 260, 135 P.2d 513 (1943). Public ownership of real property is equated with fee title to the land. Arizona Land & Stock Co. v. Markus, 37 Ariz. 530, 296 P. 251 (1931). Since the exemption is self-executing as a publicly owned property, it is not necessary for the owner to make application for an exemption, as is required for private exemptions from taxation. A.R.S. §§ 42-274, 42-275; Maricopa County v. Phoenix Baptist Church, 2 Ariz.App. 418, 409 P.2d 577 (1966).

If an "exempt" public body acquires ownership of land during the tax year, such property may still be exempt from taxation, depending upon the date of acquisition. If title is acquired prior to the completion of the assessment process,

Office of the
Attorney General
Phoenix, Arizona

Mr. Jack King
October 3, 1978
Page Two

the property becomes automatically exempt, even though the property may have been acquired after the January lien date. Territory of Arizona v. Perrin, 9 Ariz. 316, 83 P. 361 (1905). Under our present statutory framework, the state tax rate must be set on or before the first Monday in August, A.R.S. § 42-108, and the remaining tax rates must be set on or before the third Monday in August, A.R.S. § 42-304. Thus, if in this particular case, the City of Globe had acquired ownership of the property prior to those dates, the property would be exempt from taxation for the entire tax year, and not just for a portion of the tax year.

However, it is clear from the terms of the agreement that the City of Globe does not own the property in question. The agreement does not transfer title to the property. Instead, title is to be transferred at the end of ten years, provided certain payments are made by the City. The City of Globe merely receives a right of possession as long as the payments continue and a right to purchase the property upon payment of all the amounts set forth in the agreement.

The City of Globe is under no obligation to complete the acquisition of the property. Paragraph six of the agreement specifically provides "while the seller has agreed to sell the said assets to buyer for the sum of \$400,000, the buyer shall be under no obligation to purchase the said assets. If at any time prior to the payment of the full purchase price, the buyer shall so elect, buyer may terminate this agreement." (Emphasis added.) Paragraph seven of the agreement provides that in the event of termination of the agreement by the City, all sums paid to the owners are considered as "rental for the use of the property by buyer and as payment for the right to purchase herein provided for" with no right to a refund from the owners. Furthermore, under paragraph eighteen of the agreement, if the City elects not to complete the acquisition of the property, the owners are relieved of any duty to convey the property.

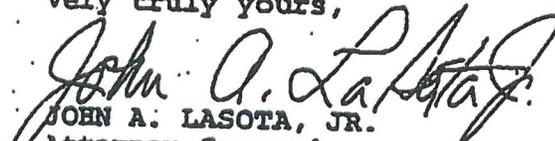
Although the parties may have hoped that this agreement would effectively render the property exempt from taxation, the parties were aware of the possibility the property would remain subject to taxation. In paragraph thirteen of the agreement, the private party agreed to pay the 1977 property taxes. The City has agreed to indemnify the owners for any future property taxes assessed against the property while the agreement is in effect. The fact that the City has agreed to reimburse the owners for the taxes surely does not render the property tax-exempt.

Office of the
Attorney General
Phoenix, Arizona

Mr. Jack King
October 3, 1978
Page Three

The terms of this agreement as outlined above do not transfer title to the City, nor do they even constitute a binding agreement of sale and purchase. Instead, it is merely an option to purchase, and the City of Globe has discretion whether to proceed to complete the purchase. Under these circumstances, title to the land remains in the owners and their land remains subject to taxation. See City of Phoenix v. State of Arizona ex rel. Harlis, 60 Ariz. 369, 137 P.2d 783 (1943). The agreement is very similar to the agreement construed by the court in Holdren v. Peterson, 52 Ariz. 429, 82 P.2d 1095. (1938). In that case, the seller and the County of Maricopa entered into an agreement concerning certain property. Under that agreement, the County was under no obligation to complete the sale. In the event of termination, which was discretionary with the County, all payments were to be considered as rental and as payment for the right to purchase. The Court, citing and relying upon the Automatic Voting Machine decision, supra, ruled that this agreement did not pass title to the property and that the property remained subject to taxation. That ruling in our opinion appropriately applies to the facts here.

Very truly yours,


JOHN A. LASOTA, JR.
Attorney General

JAL:pb