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September 11, 1975

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Mr. Robert R. Hathaway
Assistant Director
Arizona Department of Revenue
Division of Property and Special Taxes
Capitol - West Wing
Phoenix, Arizona 85007

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Dear Mr. Hathaway:

This letter is in response to your letter of June 26, 1975 in which you requested that the following question be answered:

In addition to the special rebate, does ch.150, §2 [1975] Ariz. Laws, 1st Reg. Sess. require the county treasurers to refund 1974 property taxes to those eligible properties based upon the difference between the 18% assessment ratio applied to these properties in 1974 and the 15% assessment ratio applied to all class five (A.R.S. § 42-136(5)) property in 1974?

The answer to this question is "No". It is our conclusion that ch.150, §2 [1975] Ariz. Laws, 1st Reg. Sess. requires and permits the county treasurers to pay only the "special property tax rebate" to eligible properties.

Subsection 2 of ch.150 [1975] Ariz. Laws, 1st Reg. Sess. provides:

Special property tax rebate; eligible property procedure

A. Each taxpayer who owned eligible property on January 1, 1974 or acquired eligible property prior to July 1, 1975 and who owns eligible property on the date of making application for a special property tax rebate shall upon making application therefor to the county treasurer of the county in which the eligible property lies, receive a special rebate equal



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to the amount of property tax reduction to which the resident would otherwise have been entitled for the tax year 1974 pursuant to title 42, chapter 2, article 5.1, Arizona Revised Statutes, if the property had been classified as a class five property pursuant to the provisions of section 42-136, Arizona Revised Statutes, for the tax year 1974.

B. Eligible property as used in this section means secured property classified as class four property pursuant to section 42-136, Arizona Revised Statutes, for the tax year 1974 and classified as class five property pursuant to section 42-136, Arizona Revised Statutes, for the tax year 1975.

C. The county treasurer shall prescribe the forms and procedures, not inconsistent with the provisions of this section, to be utilized by persons applying for the special property tax rebate and shall be responsible for checking each application to determine the eligibility of the applicant. Upon determination of the eligibility of an applicant, the county treasurer shall within thirty days pay to the applicant from the county general fund, the amount of special property tax rebate to which the taxpayer is entitled. Upon application to the state treasurer, the county treasurer shall be reimbursed from the special rebate fund an amount equal to the amounts paid by the county treasurer for special property tax rebates during the period covered by the application.

There are a few rules of statutory construction which are applicable to this legislation. The main principle of statutory interpretation is to ascertain and follow the intent of the Legislature. A.R.S. § 1-211; Arnold Const. Co., Inc. v. Arizona Board of Regents, 109 Ariz. 495, 512 P.2d 1229 (1973); Bushnell v. Superior Court of Maricopa County, 102 Ariz. 309, 428 P.2d 987 (1967). Where the language of an act is plain and unambiguous and conveys a clear and definite meaning, it must be construed and enforced according to its clear language. City of Mesa v. Killingsworth, 96 Ariz. 290, 394 P.2d 410 (1965); Employment Sec. Comm'n of Ariz. v. Fish, 92 Ariz. 140, 375 P.2d 20 (1962). All portions of an act should be given effect. Arizona Corporation Comm'n v. Gem State Mut. Life Ass'n, 72 Ariz. 403, 236 P.2d 730 (1951);

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Kelly v. Bastedo, 70 Ariz. 371, 220 P.2d 1069 (1950).

The examination of the title to section two and the context of subsection A clearly indicate that the Legislature intended only to provide a special property tax rebate and nothing more. The context of subsection A states that the special rebate is equivalent to the Educational Secured Property Tax Reduction that all property included in class five, A.R.S. § 42-136(5), in 1974 received. This rebate is calculated under the provisions for the Educational Secured Property Tax Reduction. See A.R.S. §§ 42-371 to 42-373 (A.R.S. Title 42, ch.2, art.5.1). Since section two is limited to providing a special rebate and since it expressly provides for the determination of the rebate, no argument can be made that the Legislature intended to provide for anything more than the special rebate under this section.

In addition, there is no language in this legislation that even implies that the Legislature also intended to provide a refund of 1974 property taxes based upon the reduction of the assessment ratio applied to the eligible properties from 18% to 15%. Had the Legislature intended to do this, it could have expressly provided for such a refund. This conclusion is reinforced by the fact that the same session of the Legislature amended A.R.S. § 11-505 to provide for the refund of the overpayment of property taxes resulting from errors in billing such taxes. This amendment passed as an emergency measure and provides an adequate remedy for the refund of overpayments of 1974 property taxes resulting from the erroneous classification of property. See ch.76 [1975] Ariz. Laws, 1st Reg. Sess.

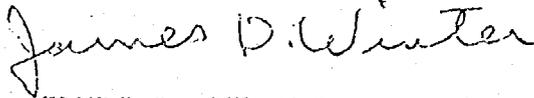
Whether or not the eligible property should have been classified as class five, A.R.S. § 42-136[5], property for the tax year 1974 is a question which is the subject of a case presently before the Arizona Court of Appeals. County of Maricopa v. North Central Dev. Co., 1 CA-C1V 3095 (filed Feb. 7, 1975). Although this case only concerns commercial property, the general principles applicable to it are probably applicable to all property. It is the State's position in this case that property should be classified according to the use to which it is devoted on its assessment date.

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Therefore, it is our conclusion that the Legislature did not intend to provide for any other refund of taxes other than the special property tax rebate by enacting section 2 of ch.150, Ariz. Laws, 1st Reg. Sess.

Very truly yours,

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