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April 9, 1962
Opinion No. 62-18

REQUESTED BY: 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 regardless 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?

CONCLUSIONS: 1. No.
2. Not applicable.

The question of the taxability of lands which are acquired during the fiscal year by a tax exempt body was first discussed in the case of Territory 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 Coconino 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-roll 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 the 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 Hallas v Evans, 69 Ariz. 14, 207 P.2d 985 (1949).

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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 or from anybody.

The time sequence noted in the Perrin case is changed somewhat. In our present procedure, A. R. S. §42-248, 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 Boards 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.

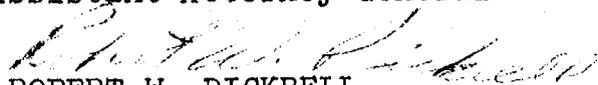
The only duty remaining on either the County Assessor or the County Treasurer following the notification of the change of status is to make an appropriate notation on the assessment roll, noting thereon the date of the acquisition by the tax exempt institution. This being so question No. 2 is not at 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

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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.

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PMH:eh

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