



OFFICE OF THE
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Phoenix, Arizona 85007
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75-235

Mr. Robert Hathaway
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Arizona Department of Revenue
Division of Property and Special Taxes
Capitol Addition
Phoenix, Arizona 85007

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ARIZONA ATTORNEY GENERAL

Dear Mr. Hathaway:

This letter is in response to your letter of June 19, 1975, requesting advice concerning the interpretation of amendments to A.R.S. §§ 42-136 and 42-271 recently enacted into law by the Thirty-Second Legislature. See ch.24, 25 (1975) Ariz. Laws, 1st Reg. Sess.

First, we will examine the amendments to A.R.S. § 42-271, the statute which provides the exemptions from the property tax. In determining whether or not a particular property is exempt from property taxation, the Constitution, statutes, and judicial decisions construing them must be examined. The applicable constitutional provision provides:

Property of educational, charitable, and religious associations and institutions not used or held for profit, may be exempt from taxation by law. Ariz. Const. Art. IX, §2.

The words "associations" and "institutions" have been interpreted to mean the established organizations themselves and not the buildings owned or occupied by them. Conrad v. County of Maricopa, 40 Ariz. 390, 12 P.2d 613 (1932).

The two newly enacted subsections of A.R.S. § 42-271, subsections 10 and 11, provide the following:

10. Property used for operation of a health care institution which provides medical services, nursing services or health related services to handicapped persons or persons sixty-two years of age or older, and which is not used or held for profit.

11. Property used for the operation of a residential apartment housing facility which is not used or held for profit and is



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structured to the care or housing of handicapped persons or persons sixty-two years of age or older, and for which a subsidy or payment is given by federal, state or local government or by nonprofit organizations in a substantial amount in relation either to the amount given or to the total annual operating expenses to pay for principal, interest and operating expenses provided such nonprofit organizations are not created or operated for the primary purpose of providing such subsidy or payment.

The examination of subsection 10 and the previously quoted constitutional provision indicates that the following requirements must be met for property to be exempted from taxation under this subsection:

1. The property must be owned by a charitable, educational, or religious organization;
2. The property, its structures and appurtenant land, must be used for operating a health care facility;
3. This facility must provide medical services, nursing services, or health related services;
4. These services must be provided to the handicapped or to persons 62 years of age or older; and
5. The property, its structures and appurtenant land, must not be used or held for profit making purposes.

Additional guidance regarding the meaning of the terms health care institution, medical services, nursing services and health related services may be obtained by consulting A.R.S. § 36-401.

The examination of subsection 11 and the previously quoted constitutional provision indicates that the following requirements must be met for property to be exempted from taxation under this subsection:

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1. The property must be owned by a charitable, educational, or religious organization;
2. The property, its structures and appurtenant land, must be used for the operation of a residential housing facility;
3. The facility must be organized for the care or housing of handicapped persons or persons 62 years of age or older;
4. The facility must be subsidized by the federal, state, or local government or supported by payments from nonprofit organizations;
5. The nonprofit organizations referred to above must not be created or operated for the primary purpose of providing support payments to the facility.
6. The amount of the subsidy or payments received in any year must be a substantial portion of the facility's total annual costs for principal and interest payments on loans outstanding on the facility and for operating expenses.
7. The property, its structures and appurtenant land, must not be used or held for profit-making purposes.

One of the problems in interpreting this statute is determining the meaning of the word "substantial" as used in the phrase "in a substantial amount". "Substantial" is defined as meaning considerable, an important or material part. Webster's Third New International Dictionary 2280 (1961); Black's Law Dictionary 1597 (4th ed. 1961). The Department of Revenue will need to define the term "substantial" more specifically by regulation or directive if uniform interpretation of the term is to be achieved. Otherwise, the meaning of "substantial" will be subject to varying interpretations by the County Assessors.

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Additionally, it is our opinion that the words "to the amount given", which are used in the phrase "in a substantial amount in relation either to the amount given or to the total annual operating expenses", have no meaning because every nominal subsidy or payment is a substantial amount in relation to itself. The words are too ambiguous to permit a reasonable construction of them.

To exempt property from the property tax under the new exemptions, subsection 10 and 11, the owner must make application for the exemption pursuant to the procedure provided by A.R.S. §§ 42-272 to 42-275. The burden of proving that particular property qualifies for the exemption is upon the owner who must establish his right to the exemption. State v. Allred, 67 Ariz. 320, 195 P.2d 163 (1948); Fry v. May and City Council of Sierra Vista, 11 Ariz. App. 490, 466 P.2d 41 (1970); Chesney v. Byran, 15 Cal.2d 460, 101 P.2d 1106 (1940). It is the duty of the County Assessors to determine whether or not a property is in fact exempt under the statutory and constitutional provisions once the owner has presented his timely request for exemption and proof that the property qualifies for the exemption. A.R.S. §§ 42-274, 42-275; Baldwin v. Rohrer, 105 Ariz. 49, 459 P.2d 309 (1969); Calhoun v. Flynn, 37 Ariz. 62, 289 P.157 (1930). The County Assessors have no duty or authority to seek out properties in their jurisdiction which may qualify for exemption from property taxation under new subsections 10 and 11.

Additionally, the new exemptions provided by subsections 10 and 11 cannot have effect for tax year 1975. We recognize that the Legislature has expressly granted a refund of taxes for the 1974 tax year to those health care and residential facilities that qualify for the exemptions provided by subsections 10 and 11 and make timely application for them. See ch.25, § 2 (1975), Ariz. Laws, 1st Reg. Sess. The reason for this is that the procedure for making application for the exemptions, A.R.S. §§ 42-272 to 42-275, must be followed. A person entitled to have his property exempted must file the affidavit or other proof of the qualification of the property for exemption between the first Monday in January and March 1 of each year or the exemption is deemed waived. A.R.S. § 42-275. Since the new subsections became law on May 12, 1975, there is no opportunity for an owner to comply with these filing requirements. Therefore, the exemptions provided by subsections 10 and 11 are, by statute, not applicable to the 1975 tax year.

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Nelson Machinery Co. v. Yavapai County, 108 Ariz. 8, 491 P.2d 1132 (1972); Fry v. Mayor and City Council of Sierra Vista, 11 Ariz. App. 490, 466 P.2d 41 (1970).

Next, we will examine the amendment to A.R.S. § 42-136. This amendment provides:

All real property and improvements thereto and personal property used for the operation of residential housing facilities not used or held for profit and structured to the care or housing of handicapped persons or persons sixty-two years of age or older. A.R.S. § 42-136(5)(b).

The following requirements must be met for property to qualify for this classification:

1. The property must be used for the operation of a residential housing facility;
2. The buildings and appurtenant land composing the property must be organized for the care or housing of handicapped persons or persons 62 years of age or older; and
3. The facility must not be used or held for profit-making purposes.

If any property, regardless of its size, can satisfy these requirements, it can qualify for this classification. The important element here is whether or not a profit is derived from the use or ownership of the property. The general purpose of this new sub-classification is to permit certain nonprofit apartment facilities for the aged and handicapped to be classified as residential property rather than commercial property.

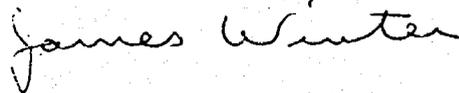
Since the amendment was made retroactive to December 31, 1974, those properties which qualify for this new sub-classification must be reclassified for the 1975 tax year. The duty to properly classify property is a mandatory duty of the County Assessors and the Department of Revenue. A.R.S. §§ 42-123, 42-221.

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If an apartment building and the land on which it is situated are part of a larger apartment facility but qualify to be exempted from taxation, the value of the building and the land on which it is situated should not be included in the taxable value of the facility's buildings, land, and other improvements. If part of an apartment facility qualifies to be classified as class five property A.R.S. § 42-136(5) and the remainder qualifies to be classified as class three property A.R.S. § 42-136(3), a weighted average assessment ratio, weighted by the value of land and improvements in each class, should be calculated for the entire facility. It may be more efficient to subdivide parcels of property into their exempt, class three, or class five components in those situations where the physical divisions between the components can be readily determined and made.

Very truly yours,

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