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July 20, 1982

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ARIZONA ATTORNEY GENERAL

INTERAGENCY

Honorable Juanita Harelson
State Representative, District 27
Arizona House of Representatives
Phoenix, Arizona 85007

Re: 182-075 (R82-035)

Dear Representative Harelson:

By letter dated March 15, 1982, you asked our opinion regarding the interpretation of A.R.S. § 42-384.B, as amended by Ch. 146, § 7, 1981 Ariz. Sess. Laws (1st Reg. Sess). That subsection increased the interest rate on delinquent real and personal property taxes from ten percent to twelve percent. From the attachments to your letter, it appears that Maricopa County and Pinal County have taken different positions as to the time at which the increase takes effect.

A.R.S. § 42-384.B states, in pertinent part, as follows:

The increase in the rate of interest [from 10 per cent to 12 percent] upon delinquent taxes and redemption of property subject to sale for taxes as provided in §§ 1 through 5 of this act applies to those property taxes which are delinquent on and after October 1, 1981

Maricopa County has taken the position that any delinquent taxes that are paid after October 1, 1981, accrue interest at the rate of twelve percent per year from the initial time of delinquency. In other words, Maricopa County would give a retroactive application to the amendment by computing interest at the rate of twelve percent for periods prior to October 1, 1981 if the delinquency was not paid until after that date. Pinal County, on the other hand, has taken the position that the twelve percent rate would only be applicable to taxes that became delinquent after July 25, 1981, the effective date of

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the legislation. Taxes that became delinquent prior to July 25, 1981, however, would continue to accrue interest at the rate of ten per cent even after July 25, 1981. We think both of these interpretations are incorrect.

With respect to the Maricopa County approach, A.R.S. § 1-244 states, "No statute is retroactive unless expressly declared therein." Inasmuch as A.R.S. § 42-384.B merely states that the increase "applies to those property taxes which are delinquent on and after October 1, 1981," we do not find any express declaration therein indicating a legislative intent that the law was to have retroactive effect.^{1/}

With respect to the Pinal County position, we think that it is inconsistent with the express terms of the statute. First of all, the statute makes October 1, 1981 as the operative date for change in the interest rate. Secondly, and more importantly, the statute requires the additional interest to be applicable to taxes that are delinquent on and after the operative date, and not solely to taxes that become delinquent on and after the operative date.

We think the statute, by its terms, requires that interest on delinquent property taxes be computed at the rate of ten percent until October 1, 1981. On and after that date, any pre-existing delinquent tax began accruing interest at the rate of twelve percent until paid. Additionally, the twelve percent interest rate is applicable to any property tax that became delinquent on or after October 1, 1981.

Sincerely,



BOB CORBIN
Attorney General

BC:FLM:LPS:kb

1. An exception to this general rule has been made for procedural statutes, not conveying substantive rights. Boulder v. Turak, 125 Ariz. 77, 607 P.2d 954 (1979). However, because the imposition of additional interest is substantive in nature, that exception is not applicable to this provision. See Ariz. Eastern R.R. Co. v. Head, 26 Ariz. 259, 224 P. 1057 (1924); Allen v. Fisher, 118 Ariz. 95, 574 P.2d 1314 (Ct. App. 1978).