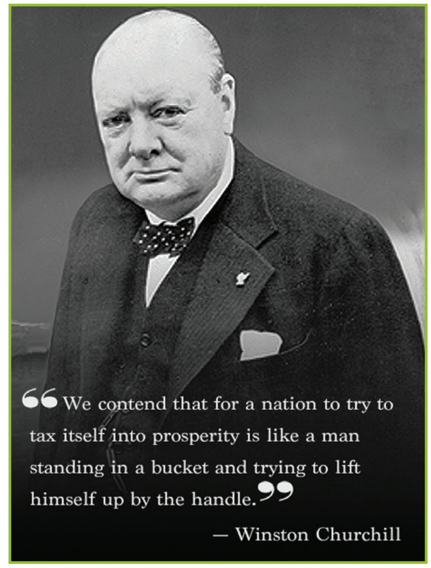
TREND report

Arizona Real and Personal Property Tax—Updates, Tips, and Considerations

Jodi Bain • published in the January 2017 issue

Like it or not, we pay taxes. Income tax, excise tax, real property tax and business personal property (BPP) tax are just a few types. Arizona real property and BPP tax appeal options are often winding paths. Understanding taxation intricacies requires more than a shrewd mind. It requires expertise, endurance, planning and often—a sense of humor.



For property owners, an increase in property tax often results in higher costs, lower returns and less investment growth capacity. Meanwhile, BPP tax is a costly overhead component if it exceeds annual exemptions or a penalty for failure to file is imposed. Below are the critical dates to be aware of for opportunity. That's right, the opportunity to work through the maze of exemptions, exceptions to exceptions, pitfalls between traps and significant statutory constraints to obtain tax savings and relief.

Most savvy real estate and business professionals ponder how to avoid the impacts of unnecessary taxation and increases.

I. Property Tax

With the Arizona property tax regime changes of tax year 2015, how has your tax exposure changed? What are your options? What is the critical date path and deadlines?

By March 1, 2017 the 2018 tax year's real property Notices of Value will be issued by Arizona County Assessor's. Each county is different. However, the taxable value is now calculated primarily based on the Limited Property Value (LPV). Beginning with the 2015 tax year, a property's noticed Full Cash Value (FCV) was no longer used in the calculation of property taxes.

Be savvy & be aware: be aware of how best to plan physical or legal changes to property and their impacts to property tax matters. Proposition 117 took effect January 1, 2014 for the 2015 property tax year. It changes how Arizona property taxes are calculated on a property's valuation.

Exceptions and Pitfalls.

The new tax regime that began in the 2015 tax year does not limit actual property taxes to a 5% increase. There are significant exceptions and pitfalls to the new regime. Each county Assessor may treat them differently. Exceptions and pitfalls exist and should be closely monitored. The exception categories that release the 5% increase cap on the taxable value are generally set out in Arizona Revised Statute §42-13302(A):

1. "Property that was erroneously totally or partially omitted from the property tax rolls in the preceding tax year.
2. Property for which a change in use has occurred since the preceding tax year.

3. Property that has been modified by construction, destruction or demolition since the preceding valuation year.
4. Property that has been split, subdivided or consolidated from January 1 through September 30 of the valuation year, except for cases that result from an action initiated by a governmental entity."

Exceptions include errors in the tax roll, changes in use, construction (including tenant improvements), demolition, parcel splits/subdivided, parcel combinations and a handful of other matters. The main consideration for owners, developer and managers in planning and for property tax appeal season is what are the criteria to trigger each of the exception types.

For these reasons, I am often called upon to identify and plan for unintended consequences of real estate development, investment and management. This means at the proforma and intermediate stages to allow consideration of potential property tax and BPP exposure. Why? Because higher taxes impact Loan-to-Value (LTV), reserves, NOI and potential returns.

For example, a larger retail strip center owner is negotiating with both Starbucks and an 'Emergency Room' Center for a currently dark, stand alone space. Both are quality tenants and would require significant tenant improvements. Each potential tenant's draft lease caps property tax exposure over a base year and limits recapture of TI allowance. Both have similar TI allowances and are ten year leases with equivalent rent and options to extend the term. Which tenant potentially results in more Landlord non-recoverables? The Emergency Room concept. For the 2017 tax year, free standing 'Emergency Rooms' were treated and valued by the Pima County Assessor as if they were essentially new mini hospitals. 'Emergency Room' taxable value was significantly more than other uses for a similar location.

Free standing 'Emergency Rooms' are a current expansion trend as a medical facility alternative. Like an 'urgent care' they are a cost effective alternative to full hospital builds in 'suburbs' and less populated areas. In reality, these 'Emergency Rooms' are simply free standing spaces built or modified to accommodate gurney sized medical beds and wheel chair traffic. Over 95% do not offer an operational theater nor other complex modality treatment. The 'Emergency Room' concept is based on the operational hours, staffing and equipment.

This translates into a 24 hour facility with a physician and/or nurse practitioner on site, some X-Ray capacity and drunk holding room. Equipment services vary by location. Staff stabilizes you and either sends you home to contact your doctor or sends you on to a hospital. These services do not add physical value to the free standing facility. Further, the Assessor's perspective on 'Emergency Room' value often dis-incentivizes private sector funding of these needed facilities.

The reverse may also be true. Had the above scenario occurred within a 'qualified shopping center', a positive impact may have resulted for the center and Landlord with proper planning. For a developer or landlord, the lesson here is two-fold:

- certain "uses" have a greater negative impact upon Landlord recoverables than others; and
- the type of use and its impact on value can vary from assessor to assessor.

Below are the critical dates to remember for property tax followed by a short discussion on the process.

Real Property Tax

- **Tax Year:** 1/01 to 12/31
- **Assessment Date:** 1/01 in year prior to tax due
- **Assessment Ratio:** Commercial 18%, Land 15%, Apartments 10%
- **Noticed Values Issued:** Jan–Feb; varies by county jurisdiction
- **Noticed Values Administrative Appeal:** To County Assessor, then to State Board and/or Tax Court , if not satisfied
- **Noticed Value Appeal Deadline:** Mar–May; 60 days from Noticed Value but no later than May 31
- **Supplemental Noticed Values Issued:** by September 30 (for changes from previous Oct 1 through Sept 30)
- **Supplemental Noticed Values Appeal Deadline:** 25 days from the mailing date to file an appeal
- **Exemptions:** Most require annual filings by March 1. Check with a knowledgeable tax adviser.

Real Property Tax Bills & Dates

- **Prop Tax Bills Issued:** September
- **Prop Tax Bill Due:** 1st half—October 1 (late November 1); 2nd half—March 1 (late May 2)

The Common Appeal Process

Round 1: To the Assessor The original Notice of Value appeal filing deadline is 60 days from the date the 2018 tax year Notices of Value for real property are mailed by the county assessor to property owners, who have the option to file an appeal or not. If no petition for review is filed within the 60 day window, the Noticed Value is used to establish the tax bill for that property parcel(s) for the following year. The Noticed Value occurs one year prior to the tax year in which property taxes are billed and due. If a petition for review is filed with the Assessor, it is generally to be based on the income, market or cost approach. A meeting with the Assessor may be requested by the appeal petitioner or their agent to present why the property is overvalued and provide the Assessor with evidence in support the owner's position.

The Assessor shall make its decision no later than August 15. Following the receipt of the Assessor's written decision, the owner may choose to either accept the Assessor's meeting decision or to begin Round 2 and appeal the matter to the State Board of Equalization ("SBOE") or county. In counties with a population under 500,000, appealing the Assessor's decision goes to the County Board of Supervisors or its designated hearing officer.

Round 2: SBOE or County Board If the property is appealed to the SBOE or the county board, a hearing is scheduled where the parties present evidence. At the hearing, the Assessor and the owner/agent offer testimony regarding the appropriateness of the tax valuation. Depending on the amount of the tax valuation, the SBOE consists of either a single hearing officer or a three member panel. Each party has approximately ten to twenty minutes to make their presentation and submit data evidence such as maps, photographs, sales data, income/expense data, etc. in support of its position. A petitioner may request more time for a hearing for larger and complex properties. In some cases, hearings may run a few hours. The SBOE then deliberates and makes a ruling at the hearing.

Round 3: To Arizona Tax Court If either party is dissatisfied with the SBOE's or a county's decision, they may elect to file a lawsuit with the Arizona Tax Court appealing the decision. The lawsuit must be filed within 60 days of the mailing date of the SBOE's or county's decision. Due to the intricacies tax litigation make sure to seek the advice of an attorney well versed in the Arizona Tax Court.

II. Business Personal Property (BPP) Tax

This is a brief discussion about BPP. An overview is below. BPP is generally self-regulating. However, the failure to timely file often triggers a ten percent (10%) penalty. In recent years the counties have more rigorously applied the penalty.

BPP Tax & Reporting

- **Tax Year:** 1/01 to 12/31
- **Assessment Date:** 1/01 in same year tax is due
- **Assessment Ratio:** Commercial 18%, Land 15, Apartments 10%

Reporting Key Matters:

- **Reporting:** Property Statement Form completed and returned to Assessor's Office on or before April 1 (or 30 days of the demand, whichever is later). Business and Agricultural Personal Property Statements are to be mailed by the Assessor annually for Taxpayer completion. HOWEVER, there is a penalty if a Property Statement is not timely and properly filed.
- **Deadline:** Original Property Statements to the Assessor's Office on or before April 1 (or within 30 days of the demand, whichever is later).
- **Compliance & Penalty:** Failure of the owner to timely prepare and return the Property Statement shall result in an addition of a ten percent (10%) penalty to the Full Cash Value. All Property Statements are subject to audit.
- **Exemptions:** Adjusts annually. Check with a knowledgeable tax adviser.

Overall, the key is to timely file reportings by April 1 and to pay attention to BPP exposure over the annual exemption. Note, BPP is often commonly referred to as fixtures, furniture and equipment (FF&E). While partially accurate, this is a fallacy. Federal filing definitions often differ from county to county inclusion items and tallies for tangible depreciation. It is important to check with a local tax professional.

Remember: Property tax and BPP tax regimes have key filing requirements and deadlines. The new property tax regime does not limit your actual property taxes to a 5% increase. It also has significant exceptions and pitfalls. Plan for capital expenditures, demolition, new construction and change in use. Know how to manage government initiated requests for dedications and rights of way use. For BPP, know the local definitions and timely file to avoid penalties.

Today a robust Arizona tax valuation appeal system is highly important. The system allows property owners or their agents to file property valuation appeals, working to reduce tax exposure. In many instances, successfully appealing a valuation for tax year 2018 tax year, may provide savings over a two year period.

Property tax advisers appeal work is often provided on a blended fee and contingency basis. As a result, there is usually little "down side" in having a property's tax valuation evaluated for appeal options.

The most comment appeal process was discussed above. There are other avenues and mechanisms to consider. A well-informed property tax professional may assist in the planning process and anticipate exception implications. A reduction in property valuation may noticeably reduce overall taxes and a key expense burden. This often reduces or maintains the bottom-line while increasing NOI.

Jodi Bain is managing partner at The Bain Law Firm PLLC. The Firm provides boutique business, regulatory, real estate and tax services. For tax matters, the Firm offers real estate, business personal property and agricultural tax advising, planning, appeal and litigation services. Tax appeal services are available for commercial and residential properties. Jodi can be reached via email at jbain@blfaz.com.