

Determination of Primary Residence Interim Guidelines



Interim Guidelines for Determination of Primary Residence

In 2011, the Arizona Legislature enacted House Bill 2001 (Act) and shortly thereafter the Governor signed it into law. The Act is effective from and after June 30, 2011. The Act was passed in the Second Special Session and made changes to Class Three and Class Four property by defining Class Three residential property as property used as a primary residence by the owner or by a qualified relative of the owner. These changes affect which properties are eligible for the “Homeowner’s Rebate” as outlined in A.R.S. [15-972](#). Applicable changes to Class Four include the creation of sub-class 4.1 which contains owner occupied non-primary residences and sub-class 4.2, which contains residential property used solely as leased or rented property for residential purposes. These Interim Guidelines are meant to be a supplement to the existing Department of Revenue property tax manuals. Where the current manuals are inconsistent with these Interim Guidelines these guidelines will control.

Definitions

Residential Property includes owner occupied real property and improvements to the property and owner occupied mobile homes that are used as the owner’s primary residence and classified as class three property pursuant to A.R.S. [42-12003](#). (See also A.R.S. [15-972\(K\)\(2\)](#)).

A Primary Residence is defined as residential property that is used by the owner or owners as their principal or usual place of residence, or leased or rented to a qualified relative of the owner, as provided in A.R.S. [42-12053](#), and used as the relative’s usual and principal residence. Qualified Relatives, as defined in A.R.S. [42-12053](#), are limited to a: (1) natural or adopted child or a descendant of the owner’s child; (2) parent or an ancestor of the owner’s parent; (3) stepchild or stepparent; (4) son or daughter-in-law or father or mother-in-law; or (5) natural or adopted sibling.

As of July 1, 2011, Class Three properties will include only the primary residence of the owner or the owner’s qualified relative. A new class 4.1 has been added for real and

personal property and improvements “that are used for residential purposes, including residential property owned in foreclosure by a financial institution, that is not otherwise included in another classification and that is valued at full cash value.” (A.R.S. [42-12004\(A\)\(1\)](#)). This new sub classification is intended to include all former Class Three properties that are not the primary residence of the owner or the owner’s qualified relatives. Residential property used solely as leased or rented property for residential purposes and not leased or rented to a qualifying relative should be classified in class 4.2. (A.R.S. [42-12004\(A\)\(2\)](#)).

Qualification

A homeowner can have only one primary residence no matter how many homes he or she may own within or outside the State of Arizona. A homeowner is disqualified from requesting Class three treatment of their property during the same tax year they have filed for, or maintain, a homestead exemption, or similar treatment, for a residence in another state. Similarly, they can have a primary residence in only one county in Arizona. While there is no single factor that determines primary residence, the most important factor is the length of time that the person resides on the property. However, a person who sells a home and buys and/or moves into another home is eligible to immediately declare that the new home is their primary residence as long as they intend that to be their primary residence and perform no act or acts that are inconsistent.

The county assessor shall determine whether an owner’s property qualifies as a primary residence on a case by case basis by balancing all factors including those listed in Factors to Consider, below. If an owner, and/or their spouse, owns more than one residential property, the assessor may classify the home identified as the primary residence, as Class Three property. The other residential properties should be classified based on their use, e.g., owner-occupied non-primary residence, rental residential property, or other identifiable use. While a husband and wife are presumed to have the same primary residence, this presumption may be overcome by competent evidence that the spouses intend to have separate primary residences. The assessor would use

the same analysis of factors to make this determination. If an assessor has reason to believe that property is not being used as the owner's, or the owner's qualified relative's primary residence, the assessor should investigate further.

Factors to Consider

Factors for use in determining whether a property is considered to be an owner's or relative's (as described in A.R.S. [42-12053\(A\)\(2\)](#)) primary residence include, but are not limited to, the following:

- The period of occupancy each year.
- The voting precinct where the owner(s) is/are registered to vote.
- The address of the owner(s) as stated on his or her driver's license.
- The location where the owners' motor vehicles are registered and the address on the registration.
- The location of business connections such as place of employment.
- The address of residence as listed on the owner's state and federal income tax returns.
- Whether the owner(s) have claimed a homestead exemption in another state.
- The location where the owner's spouse and minor children reside.
- The state and county where the owner's children attend K-12 schooling.

Procedures for Use in Changing Classification of Residential Property

First and Final Notice of Intent to Reclassify. (A.R.S. [42-12052\(C\)](#))

The Act modifies and adds to the ways the Assessor may discover and reclassify property from Class Three to Class Four. While the changes to the roll brought about by the new Act will not go into effect until the 2012 Tax Year, some of the procedures will be available upon the effective date. If the assessor has reason to believe that a parcel of property that is currently classified as Class Three is not used as the owner's primary residence or is being rented, the assessor should notify the owner by mailing DOR Form 82902, First Notice of Intent to Reclassify, and request that the owner fill out the

Form and provide information as to whether the property is the owner's or their qualified relative's primary residence, a secondary residence or used as a rental property. If the owner responds that the property is not the owner's primary residence or their qualified relative's primary residence, the assessor should reclassify the property as Class Four and mail the owner a Notice of Classification. If the owner fails to respond to the assessor within thirty days after the Notice is mailed, the assessor should mail the owner a Final Notice of Intent to Reclassify within thirty days. If the owner fails to respond to the assessor within fifteen days after the Final Notice is mailed, or if the assessor determines the property is not a primary residence, the assessor should reclassify the property as Class Four and mail the owner a Notice of Classification.

The owner of the property that is reclassified as Class Four under this procedure may appeal the reclassification to the county board of supervisors within thirty days after the Notice of Classification is mailed. If the owner proves to the board's satisfaction that the property is occupied as the owner's primary residence, the board will order the property to be reclassified as Class Three property pursuant to A.R.S. [42-12003](#).

Additionally, if an owner of property fails to respond to a Final Notice within the time allowed, the assessor should notify the county treasurer who shall assess a civil penalty against the property equal to twice the amount of additional state aid paid pursuant to A.R.S. [15-972](#) with respect to the property in the preceding tax year.

Other Procedures

The assessor may have other statutory remedies available to make changes to the roll depending on the reason for or timing of the change of classification. However, the assessor must inform the owner of the change in a manner that also provides notice and the right to appeal. Changes in classification should not be made unless sufficient research has been completed to determine that a change is proper. If the assessor needs additional information from a property owner to make an informed decision on whether the property qualifies for Class Three and the Homeowner's Rebate, they

should use a procedure designed to obtain additional information from the taxpayer, rather than unilaterally changing the classification and forcing the property owner to appeal in order to provide evidence of primary residence. For example, if an assessor finds properties owned by someone with an out of state or out of county address, they should use a procedure such as the First Notice of Intent to Reclassify that allows the owner to respond and clarify which property constitutes their primary residence.

Form of Ownership

Nothing in the new law is intended to reclassify property from Class Three to Class Four if the property is used as a primary residence by the owner(s). If the residential property is owned by an LLC (limited liability company), or is an asset in a revocable living trust for which the owner is the grantor, the property may still qualify as a primary residence if the property is the primary residence of one or more of the members of the LLC, their qualified relatives, or the grantor of the revocable trust.

If the owner of the property is temporarily residing in a nursing home, or other health facility, the property may still qualify as a primary residence, as long as all other requirements are met.

Supplementation of Guidelines

These Interim Guidelines will be supplemented as necessary to assist in the classification of residential property.