



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>MARK BRNOVICH ATTORNEY GENERAL</p> <p>July 31, 2015</p>	<p>No. I15-007 (R15-008)</p> <p>Re: Calculation of Bond Indebtedness</p>
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To: Bill Montgomery
Maricopa County Attorney

Questions Presented

Which value, the full cash value or limited property value, is the value upon which school districts must base their bond indebtedness?

Summary Answer

The full cash value is the value upon which school districts should base their bond indebtedness. Recent changes to article IX, section 18, of the Arizona Constitution, and to Arizona Revised Statutes ("A.R.S.") section 15-1021, did not amend the language of article IX, sections 8 and 8.1, of the Arizona Constitution regarding the calculation of the bond debt.

Background

The Arizona Constitution addressed limits on school district bond indebtedness at the time of its adoption in 1912:

No . . . school district . . . shall for any purpose become indebted in any manner to an amount exceeding 4 per centum of the taxable property in such . . . school district . . . without the assent of a majority of the property taxpayers, who must in all respects be qualified electors, therein voting at an election provided by law to be held for that purpose, *the value of the taxable property* therein to be ascertained by the last assessment for state and county purposes, previous to incurring such indebtedness . . . provided that under no circumstances shall any county or school district become indebted to an amount exceeding 10 per centum of such taxable property, as shown by the last assessment roll.

Ariz. Const. art. IX, § 8(1) (emphasis added). The Arizona Legislature gave the relevant language its first construction the following year with the adoption of the 1913 Arizona Code, section 4849 of which read:

All taxable property must be assessed at its full cash value. The term 'full cash value' whenever used in this act shall mean the price at which property would sell if voluntarily offered for sale by the owner thereof, upon such terms as such property is usually sold, and not the price which might be realized if such property was sold at a forced sale.

Thus the original understanding of article IX, section 8, was that it limited bond indebtedness based on the full cash value of taxable property. Subsequent iterations of relevant statutes continued this understanding. *See* Revised Code of Arizona 1928, § 3068; Arizona Code Annotated 1939, § 73-203; A.R.S. § 42-15001. Today, our county assessors must take an oath to assess all property at its full cash value. *See* A.R.S. § 11-542.

Article IX, section 8, has been amended a number of times, yet the operative language regarding the basis for the limitation—“the value of the taxable property”—has not changed since its adoption in 1912. Arizonans added section 8.1 of article IX in a 1974 election, which limits bond indebtedness for unified school districts. The language of the new section mirrored that found in section 8 in all relevant respects.

In 1980, Arizona voters approved a series of constitutional amendments through the referendum process. Among the 10 individual propositions considered, Proposition 106 added section 18 to article IX, creating and setting limits for an ad valorem residential property tax, and Proposition 104 amended sections 8 and 8.1 to increase debt limits and clarify that certain provisions of the new section 18 do not apply to these sections. *See* S. Con. Res. 1001, 34th Leg., 2d Spec. Sess. (Ariz. 1980) (referring measures to the ballot). Notably, the addition of section 18 introduced the concept of limited property value in Arizona, and the amendments to sections 8 and 8.1 explicitly excluded that concept from the debt limit sections.

In 1996, the Legislature for the first time adopted language providing specific statutory instruction regarding the calculation of debt limits under article IX, sections 8 and 8.1. Section 35-503 provided that the value of taxable property pursuant to article IX, sections 8 or 8.1, “shall be the aggregate net assessed value of property within the jurisdiction used for the levy of secondary property taxes, as determined pursuant to title 42.” 1996 Ariz. Sess. Laws, 42d Leg., 2nd Reg. Sess., ch. 332, § 7. At that time, county assessors used separate values to assess and levy primary and secondary taxes pursuant to section 42-11001. Primary taxes were assessed and levied against the limited property value; secondary taxes were assessed and levied against the full cash value. Thus, the 1996 statute clearly based the constitutional debt limit provisions on the full cash value.

In 2012, Arizona voters amended article IX, section 18, through Proposition 117 to add the following:

For the purposes of taxes levied beginning in tax year 2015, the value of real property and improvements, including mobile homes, used for all ad valorem taxes shall be the lesser of the full cash value of the property or an amount five per cent greater than the value of the property determined pursuant to this subsection for the prior year.”

Ariz. Const. art. IX, § 18(3)(b). This represented a significant change to the calculation of the limited property value. However, the amendment made no changes to the debt limit provisions in article IX, sections 8 and 8.1. In 2013, the State enacted Senate Bill 1169 for the purpose of conforming various statutory provisions to the constitutional changes in Proposition 117. S.B. 1169, 2013 Ariz. Sess. Laws, 51st Leg., 1st Reg. Sess., ch. 66. Among the changes in the bill, the Legislature clarified that both primary and secondary property taxes would be based upon the “limited property value” for all property except property described in section 42-13304. *Id.* § 7.¹ The legislation did not make explicit statutory changes related to debt limit calculation, but the change as to the calculation of secondary property taxes altered the previous clarity in section 35-503(B). In other words, that 1996 statute that had clearly tied debt limit calculations under sections 8 and 8.1 to full cash value now could be read to apply both full cash value and limited property value.

¹ The property described in A.R.S. § 42-13304 includes all personal property, other than mobile homes, and property included in class one property under section 42-12001, paragraphs 1 through 7 and 11. A.R.S. § 42-13304. The statute specifies that the full cash value is to be used for all purposes for this property. *Id.* This distinction is immaterial to the discussion here.

In 2015, the State enacted House Bill 2479, which amended statutory language to provide a new method for computing statutory debt limits. H.B. 2479, 2015 Ariz. Sess. Laws, 52d Leg., 1st Reg. Sess., ch. 310. In particular, the bill amended section 15-1021(B) as follows:

From and after December 31, 1998, a school district may issue class B bonds for the purposes specified in this section and chapter 4, article 5 of this title to an amount in the aggregate, including the existing class B indebtedness, not exceeding ten ~~per cent~~ PERCENT of the VALUE OF THE taxable property ~~used for secondary property tax purposes, as determined pursuant to title 42, chapter 15, article 1, within a school district as ascertained by the last assessment of state and county taxes previous to issuing the bonds~~ IN THAT SCHOOL DISTRICT, or one thousand five hundred dollars per student count pursuant to section 15-901, subsection A, paragraph 13, whichever amount is greater. THE VALUE OF THE TAXABLE PROPERTY SHALL BE ASCERTAINED AS PROVIDED BY ARTICLE IX, SECTION 8, CONSTITUTION OF ARIZONA.

Id. § 4.² The member who proposed adding this particular language intended to “require[] school districts [to] use the same valuation of taxable property . . . as all other political subdivisions.” Ward Floor Amendment #2, Floor Amendment Explanation, *available at* <http://www.azleg.gov/legtext/52leg/1r/adopted/2479ward1045.pdf>; *See* A.R.S. § 35-451(B) (providing that the debt limits for counties, cities, towns, or similar municipal corporations “shall be ascertained as provided by article IX, § 8, Constitution of Arizona”). The removal of the reference to secondary property taxes in section 15-1021 resolved the issue of that calculation relying on both full cash value and limited property value. However, none of the statutory changes made in the wake of Proposition 117 amended the language in section 35-503(B), which continued to reference secondary property tax calculations, and by extension tied the debt limit calculation to both full cash value and limited property value.

² The bill comparably amended similar language in A.R.S. § 15-1021(D). *Id.*

The County Assessors throughout Arizona now believe an ambiguity exists regarding how school districts are to calculate the value of the taxable property in the district for purposes of bond indebtedness limitations. The 2013 changes to section 42-11001 tied secondary taxes to both the full cash value and limited cash value depending on property type. The 2015 amendments removed the reference to secondary property taxes and referred back to the constitutional language. However, that amendment did not alter the statutory provisions that interpreted and applied that constitutional language. Thus, the 2015 amendments left in place section 35-503's reference to the "secondary property tax purposes," creating contradicting statutory direction regarding the proper value upon which to base the debt limit calculation.

Analysis

Despite the somewhat complex legal history set forth above, and the resulting potential for concerns in three areas, basic statutory interpretation principles can resolve these concerns in a relatively straightforward manner. The primary rule of statutory construction is to find and give effect to legislative intent. *Mail Boxes Etc., U.S.A. v. Indus. Comm'n*, 181 Ariz. 119, 121 (1995). The best and most reliable indicator of legislative intent is a statute's own words. *Zamora v. Reinstein*, 185 Ariz. 272, 275 (1996). Where the language of the statute or constitutional provision is plain and unambiguous, the text must generally be followed as written. When the statute's language is not clear, legislative intent is determined by "reading the statute as a whole, giving meaningful operation to all of its provisions, and by considering factors such as the statute's context, subject matter, historical background, effects and consequences, and spirit and purpose." *Id.*

In the wake of the most recent amendments, all relevant statutes now specify that the value of the taxable property for all political subdivisions shall be ascertained as provided by article IX, section 8, Constitution of Arizona. H.B. 2479, 2015 Ariz. Sess. Laws, 52d Leg., 1st Reg. Sess., ch. 310, § 4 (amending A.R.S. § 15-1021); A.R.S. § 35-451. While article IX, section 8 does not specify the basis for ascertaining the value of taxable property, the clear historical understanding of this provision has been that the values are based on the full cash value.³ Further, as previously noted, both limitation provisions at issue (sections 8 and 8.1 of article IX) explicitly exclude provisions of section 18 in that same article from application to the debt limitations. Ariz. Const. art. IX, § 8(2) & 8.1(2). The excluded provisions in section 18, among other things, establish the limited property value. Ariz. Const. art. IX, § 18(3). In other words, Proposition 117's constitutional changes, and the resulting statutory conformations, made changes to the application of limited property value but they did so only in the context of property tax levies, and not debt limits.

The ambiguity remains, however, because section 35-503 still provides that the basis for ascertaining the value of taxable property "shall be the aggregate net assessed value of property within the jurisdiction used for the levy of secondary property taxes, as determined pursuant to title 42." A.R.S. § 35-503(B). And title 42 now requires that secondary property taxes be determined based on both the full cash value and the limited property value (depending on whether the property at issue is described in section 42-13304). A.R.S. §§ 42-11001(1), (6), & (7).

³ As discussed earlier, before the Proposition 117 amendments, section 35-503(B) required that bond debt limits be calculated using the full cash value. This further supports our view that full cash value is, and always has been, the proper value for calculating constitutional bond debt limits.

This would create a problematic interpretive situation, except that the 2015 amendments to section 15-1021 repeal by implication section 35-503(B). *See Hounshell v. White*, 219 Ariz. 381, 386, ¶ 13 (App. 2008) (holding that there are two recognized bases to implicitly repeal a statute: (1) “when a statute is unavoidably inconsistent with another more recent or more specific statute” and (2) “when two statutes cover the same subject matter and the earlier statute is not explicitly retained by the later statute.”); A.R.S. § 1-245 (stating that an earlier statute, “unless expressly continued in force by [the later statute], shall be deemed repealed and abrogated.”). The revisions to section 15-1021 specifically address the calculation of constitutional debt limits for school districts, and establish that they should be calculated on the full cash value, rather than tying that calculation to “secondary property taxes” and thereby to both full cash value and limited property value. Thus, because section 35-503(B) is unavoidably inconsistent with section 15-1021, and was not explicitly retained by H.B. 2479, it should be deemed repealed and abrogated. The consequence of that abrogation is that there is no ambiguity due to the title 42 requirements for determining secondary property taxes.

In summary, despite the apparent complex and overlapping nature of the constitutional and statutory amendments adopted in recent years, the long-standing constitutional construction remains in effect: the full cash value should be used for the purposes of calculating the bond indebtedness of school districts pursuant to article IX, sections 8 and 8.1.⁴

⁴ The County Assessors have raised a related concern regarding a financial conundrum that may exist if district bond limits were set using the full cash value. This concern is not implicated for school district general obligation bonds. When issued, the Board of Supervisors must levy sufficient taxes each year to pay the bonds. A.R.S. § 15-1022. These taxes are unlimited as to rate or amount. Thus, if the value of the property subject to annual tax levies falls, the tax rate must increase to achieve the needed money to pay the bonds. Conversely, the same is true; if values increase the tax rate falls proportionally. Tax rates will rise if the limited property value

Conclusion

For the foregoing reasons, the full cash value should be used for the calculation of bonded indebtedness by school districts.

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is applied and aggregate valuation falls below the last year's value of property for secondary tax purposes with respect to the school district bonds now outstanding.