

**Reasons the Pima County Board of Supervisors Should Grant Relief and Approve Saint Germain Foundation's Refund of Property Taxes for the 2018 through 2022 Tax Years**

***Refund Statute***

A.R.S. § 42-11109(E) provides:

"If a nonprofit organization that holds title to property used primarily for religious worship fails to file the affidavit required by § 42-11152 in a timely manner, but otherwise qualifies for exemption, the county board of supervisors, on petition by the organization, shall direct the county treasurer to:

1. Refund any property taxes paid by the organization for a tax year if the organization submits a claim for the refund to the county treasurer within one year after the date the taxes were paid. The county treasurer shall pay the claim within thirty days after it is submitted to the treasurer. The county treasurer is entitled to credit for the refund in the next accounting period with each taxing jurisdiction to which the tax monies may have been transmitted.
2. Forgive and strike off from the tax roll any property taxes and accrued interest and penalties that are due but not paid."

***2018 to 2021 Property Tax Years***

- The Pima County Assessor has acknowledged that if Saint Germain Foundation had timely filed its exemption application, it would have been granted.
- Saint Germain Foundation redeemed the tax lien against the property for the 2018-2021 tax years by making payment of the delinquent property taxes on March 8, 2023.
  - The lienholder is not a taxpayer, it is an investor who has purchased the right to receive interest on a tax lien. See A.R.S. § 42-18114.
  - Once Saint Germain Foundation exercised its right to redeem, and the Pima County Treasurer refunded the lienholder's costs pursuant to A.R.S. § 42-18155, Saint Germain Foundation became the taxpayer because the County has received the full amount of the delinquent taxes, plus interest. See *Leveraged Land Co. v. Hodges*, 226 Ariz. 382, 384 (2011) (in certain circumstances, "a tax lien purchaser is entitled to a judgment for costs and reasonable attorney fees **if the delinquent taxpayer** redeems the lien after the purchaser commences a foreclosure action") (emphasis added).
  - Saint Germain Foundation timely submitted its refund claim within one year from the date it paid the delinquent taxes on March 8, 2023.
    - Even if the lien purchase date were relevant, the lien for the 2021 property tax year was purchased on August 26, 2022, which is less than one year prior to Saint Germain Foundation's April 7, 2023 refund request.

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***2022 Property Tax Year***

- The Pima County Assessor has acknowledged that if Saint Germain Foundation had timely filed its exemption application, it would have been granted.
- The County Treasurer incorrectly states that the 2022 property tax year was subject to a tax lien sale.
- Saint Germain Foundation made payment of the full amount of the 2022 property taxes, plus interest, directly to the County Treasurer on March 21, 2023.
- Saint Germain Foundation timely submitted its refund claim within one year from the date it paid the delinquent taxes on March 21, 2023.

***Relief is Appropriate Because the Liens were Invalid***

- A.R.S. § 42-18351 prescribes the circumstances for abating tax and removing a tax lien. These circumstances include “[a]n error or omission resulting in an improper imposition of a property tax.” A.R.S. § 42-18351(A).
  - Property taxes were erroneously imposed because the County Assessor has determined that the property should have been exempt during the 2018-2022 tax years.
- Under A.R.S. § 42-18352(D), “[i]f the county treasurer determines that any of the situations described in § 42-18351 exists in a prior year or years, the treasurer shall grant appropriate relief, subject to the approval of the board of supervisors. The relief may include removing all or part of the lien or abating all or part of the tax.”
  - Thus, the County Treasurer, with the approval of the Board of Supervisors, can abate the erroneously imposed tax.
  - The removal of the tax lien and/or the abatement of the tax should result in a refund to Saint Germain Foundation of the amounts paid for the 2018 through 2022 real property taxes.

***Principles of Equity Support Issuing a Refund to Saint Germain Foundation***

- The County Attorney’s position is form over substance. No matter how the funds are described, as “tax” or a lien “redemption,” the result is that Pima County is keeping funds, paid by the property owner deemed eligible for a property tax exemption by the County Assessor, as payment of delinquent real property taxes. “An honorable government would not keep taxes to which it is not entitled.” *Pittsburgh & Midway Coal Min. Co. v. Arizona Dep’t of Revenue*, 161 Ariz. 135, 139 (1989).
- The County Attorney’s position also sets up an unequal dichotomy where a property owner eligible for an exemption can obtain a refund under A.R.S. § 42-11109(E) if the lien on its delinquent taxes was not sold, but a similarly situated property owner eligible for the same exemption cannot if an investor purchased the tax lien on the property and the taxpayer, as is the case here, redeems the tax lien. The result to the exempt property owner cannot turn on whether or not a tax lien on the property was sold.