



MEMORANDUM

Finance and Risk Management Department

**Report of Review Officer
Board of Supervisors Policy D22.10
Appeal by Pima County Assessor of Review Officer Recommendation
Kilt One, LLC, Owner of Tax Parcel 114-06-007G
May 14, 2013**

MAY 10 10:13 AM 1051 PC CLK/CF ED

Kilt One, LLC, an Arizona Limited Liability Company, filed an appeal under Arizona Revised Statutes §42-12054 and the provisions of Board of Supervisors Policy D22.10 to change the classification of tax parcel number 114-06-007G to Legal Class 3 for Tax Year 2012. The Pima County Assessor had changed the classification on the Parcel from Class 3, residential property owned as a primary residence (formerly "owner occupied"), to Class 4, residential property that is not owned as a primary residence. The impact of the classification change by the Assessor from Class 3 to Class 4 is to make the property owner ineligible for the State Aid To Education subsidy on the property tax levied.

Under the provisions of Board Policy D22.10, I reviewed the appeal of the property owner and approved the appellant's request to have the property classification changed to Class 3, primary residence. The Pima County Assessor appealed that recommendation. The matter has therefore been set as a hearing for the Board of Supervisors to determine the classification of the property.

Kilt One, the legal owner of the property, is a limited liability company wholly owned by Alfred Marco and Catherine Marco, husband and wife, as the sole members of the company. Mr. and Mrs. Marco reside in the house located on the tax parcel. Although the tax parcel is owned by a limited liability corporation, I recommended Class 3, primary residence classification, for the tax parcel.

- The parcel has been occupied by Mr. and Mrs. Marco for many years as their only residence.
- Mr. and Mrs. Marco are the sole owners of the LLC that has legal title.
- The parcel was classified as Class 3 property for four years: tax years 2008, 2009, 2010 and 2011.
- In 2012, the parcel initially has Class 3 designation, but was changed to Class 4 by the Assessor.
- The owner appealed the Assessor's change in classification to the State Board of Equalization which ordered the property to be classified as Class 3 property for tax years 2013 and 2014.
- The only year at issue from 2008 through 2014 is tax year 2012.

In my review, I recommended that the parcel be treated as Class 3, primary residence, because the house located on the parcel was physically occupied as a residence by the husband and wife sole owners of the LLC. There is no clear guidance in the Arizona statutes. At least one

county, Cochise County, considers a tax parcel owned by an LLC with the members or their family residing in the residence as qualifying for Class 3, primary residence. (See Cochise County form Affidavit – Owner Occupied Primary Residence) Other States, such as Idaho and South Carolina treat the members of an LLC as the owners for property tax purposes. Under the federal Internal Revenue Code, an LLC that is owned by a husband and wife as community property is treated as an entity disregarded as separate from the owner for income tax purposes. That is, the IRS disregards the existence of the LLC. (Rev. Proc. 2002-69)

The question for the Board to consider is whether a residence occupied by the husband and wife who are the sole members of a wholly owned limited liability company should have a Class 3 designation. After my review of the facts and circumstances, I recommended Class 3 designation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tom Burke", written in a cursive style.

Thomas E. Burke
Finance and Risk Management Director
Review Officer under Board of Supervisors Policy D22.10

Attachments:

Taxpayer Notice Of Claim – Real Property dated December 28, 2012
State Board of Equalization Notice of Decision dated October 11, 2012
Affidavit – Owner Occupied Primary Residence – Cochise County Assessor Form

TAXPAYER NOTICE OF CLAIM - REAL PROPERTY

Filed with the following tax officer:

Pursuant to A.R.S. § 42-16254

FOR OFFICIAL USE ONLY

- ☒ COUNTY ASSESSOR based on valuation or classification.
☐ DEPARTMENT OF REVENUE based on valuation or classification.
☐ COUNTY BOARD OF SUPERVISORS based on error of tax rate.

DATE RECEIVED _____

NUMBER _____

DATE FILED: 12/28/12 NOTE: IF MAILED, SEND CERTIFIED

1. COUNTY Pima ☒ BOOK / MAP / PARCEL 114 - 06 - 007G
 2. IF THIS IS A MULTIPLE PARCEL CLAIM, CHECK HERE ☐ AND ATTACH A TAXPAYER NOTICE OF CLAIM MULTIPLE PARCEL FORM (82179BB).
 3. PROPERTY ADDRESS OR LEGAL DESCRIPTION: 5435 Avenida de la Colina

4A. OWNER'S NAME AND ADDRESS AS SHOWN ON TAX ROLL:

Kilt One, LLC ; Alfred Marco5435 Avenida de la ColinaTucson, AZ 85749

4B. MAIL DECISION TO:

Bancroft Law P.C.3955 E Ft. Lowell Rd. Suite 115Tucson, AZ 85749

5. BASIS FOR CLAIM AND REQUESTED CORRECTION:

The property meets the qualifications of Class 3 property.
 Kilt One LLC is a single-asset LLC owned by Alfred and Catherine Marco, who reside on the property.

2012 TAX YEAR	LEGAL CLASS <u>3</u>	LAND FCV:	
		IMPS. FCV:	
	ASSMT. RATIO <u>10.0</u>	TOTAL FCV:	925,000
		TOTAL LPV:	925,000
	LEGAL CLASS _____	LAND FCV:	
		IMPS. FCV:	
	ASSMT. RATIO _____	TOTAL FCV:	
		TOTAL LPV:	
	LEGAL CLASS _____	LAND FCV:	
		IMPS. FCV:	
	ASSMT. RATIO _____	TOTAL FCV:	
		TOTAL LPV:	

6. COMPLETED BY: (Owner, Agent, or Attorney)

Christopher Losi, Bancroft Law P.C.

NAME

3955 E Ft. Lowell Rd. Suite 115

ADDRESS

Tucson, AZ 85749

CITY

STATE

ZIP CODE

(520) 721-2250

TELEPHONE NUMBER

AGENTS ONLY: STATE BOARD OF APPRAISAL NUMBER _____
 Include a current Agency Authorization Form (82130AA) with this notice.

SBOE NUMBER 828

(PIMA AND MARICOPA COUNTIES ONLY)

7. Notice is hereby given to the Tax Officer that an error has occurred in the assessment of the property identified by parcel number in this claim. A description of the claim and evidence to support the claim is provided above, or is attached.

Christopher Losi
 SIGNATURE OF OWNER OR REPRESENTATIVE

12/28/12
 DATE

(520) 721-2250
 TELEPHONE

DO NOT WRITE BELOW THIS LINE - FOR TAX OFFICER'S USE ONLY

☐ TAX OFFICER CONSENTS TO CLAIM OF ERROR.

☐ TAX OFFICER DISPUTES CLAIM OF ERROR BASED ON THE FOLLOWING:

☐ NOTICE OF MEETING: A meeting to discuss your claim has been scheduled as follows. If you do not plan to attend the meeting, please notify the Tax Officer. (See instructions)

Date _____ Time _____ Location _____

Signature of Tax Officer's Representative _____

Name and title of Tax Officer's Representative (Please Print or Type) _____

Date _____

Telephone _____

ARIZONA STATE BOARD OF EQUALIZATION

100 NORTH 15TH AVENUE, SUITE 130 PHOENIX AZ 85007 (602)364-1600

NOTICE OF DECISION IS HEREBY GIVEN TO:**KILT ONE LLC**

The State Board of Equalization Convened at 3:45 PM on 09/28/12 and reached a decision on the property identified below.

LOCATION: PIMA**TAX YEAR:13****PARCEL: 114-06-007G .****DOCKET: 03952-10-12****DATE: 10/11/12**

	LAND	IMPROVEMENTS	FULL CASH VALUE (FCV)	LIMITED PROPERTY VALUE RULE	CLASS	RATIO
APPEALED TO SBOE	0	0	1,002,471	A	4	10.00
DECISION OF SBOE:	0	0	850,000	B	3	10.00

FINDINGS OF FACT1. The Petitioner appealed to the State Board of Equalization, the Decision of the County Assessor's Office in the County of **PIMA**2. The appeal was timely filed. **X** yes no3. **THE PETITIONER APPEALED THE LEGAL CLASSIFICATION BASED ON THE CURRENT USE OF THE SUBJECT PROPERTY.**
1304. **THE RESPONDENT RECOMMENDED A REDUCTION OF THE FULL CASH VALUE AND ALSO A CHANGE IN THE LEGAL CLASSIFICATION BASED ON THE CURRENT USE OF THE SUBJECT PROPERTY.** 4955. **THE BOARD ACCEPTS THE RESPONDENT'S RECOMMENDED FULL CASH VALUE BASED ON THE SALES COMPARISON (MARKET) APPROACH TO VALUE. THE FULL CASH VALUE FOR NEXT YEAR SHALL BE DETERMINED PURSUANT TO A.R.S. 42-16002.** 7156. **THE LIMITED PROPERTY VALUE SHALL BE DETERMINED PURSUANT TO A.R.S. 42-13302.** 895**CONCLUSION OF LAW**

1. The Board of jurisdiction to hear this case.
2. Full Cash Value is the total value of the land and any improvements thereto and is synonymous with market value, unless a statutory method is prescribed.
3. The assessor shall prepare the valuation of all real property in accordance with standard appraisal methods and techniques pursuant to Department of Revenue manuals and procedures (A.R.S. 42-11054).
4. Any person owning, claiming or having possession or control of property may, after March 1, inquire as to the valuation of such property found by the assessor for placement on the roll (A.R.S. 42-15101).

NOTICE OF DECISION IS HEREBY GIVEN TO:**PAUL D BANCROFT, ESQ
BANCROFT LAW PC
3955 E. FORT LOWELL RD
SUITE 115
TUCSON AZ 85712**86
10/23/12

AFFIDAVIT - OWNER OCCUPIED PRIMARY RESIDENCE

Pursuant to A.R.S. § 42-12052

To avoid a possible penalty, read the following, **COMPLETE** and **SIGN** page 2, and return this form to the County Assessor's Office.

Date: _____

(Owner):

NAME: _____

ADDRESS: _____

CITY _____

STATE, ZIP: _____

COCHISE COUNTY ASSESSOR
PO BOX 168
BISBEE AZ 85603
(520)432-8650

Assessor's Parcel Number: _____ - _____ - _____ - _____
Book Map Parcel Split

NOTE: If the subject property consists of multiple parcels the primary (or lead) parcel number is listed above.

Property's Street Address: _____

City: _____ State: _____ Zip: _____ - _____

For Unaffixed Manufactured Homes: VIN# _____ Account # _____

You are listed as the owner of the above-referenced residential property in the County Assessor's records. The Assessor's Office has reason to believe that the above-referenced property is NOT your primary residence, or is rented to someone other than a "qualified family member" (see below) as defined pursuant to A.R.S. § 42-12053(2), and that it therefore should be reclassified from Class Three to Class Four (i.e., classified as a non-primary residence use property).

The County Assessor requires that you answer the questions on page 2 of this Notice in order to ensure the correct legal classification of the above-referenced property, as required by law.

Warning: A failure to respond truthfully to this Notice may result in the reclassification of the above-referenced property for Tax Year _____. The County Treasurer may then impose a civil penalty against the property that is equal to twice the amount of the State rebated portion of property taxes for your property that you have received as a result of the incorrect classification.

Definitions:

Primary Residence is your one and only main residence where you intend to reside more than nine months of the year. You can have only one primary residence no matter how many homes you own. If the above listed home is used as a vacation home, leased to a non-qualified family member or if you have a homestead exemption for a home in another state, the listed home cannot qualify as a primary residence. It is normally the home where you reside with your spouse and/or children (if any), where you are registered to vote, that is listed on your driver's license and near where you work.

Qualified Family Members include only: 1) a natural or adopted child or grandchild; 2) a stepson or stepdaughter of the owner; 3) the father or mother of the owner, grandparent or great grandparent of the owner; 4) a stepfather or stepmother of the owner; 5) a son-in-law, daughter-in-law, father-in-law or mother-in-law or; 6) natural or adopted brother or sister of the owner.

Scroll Down to 2nd Page

After reading the definition on the previous page, please check the answers to the following questions and provide any other required information.

1. Is the parcel identified on page 1 your primary residence as defined in the instructions?
☐ Yes ☐ No
2. Do you lease or rent the parcel listed on page 1 to someone else?
☐ Yes ☐ No
3. If the answer to question 2 is yes, then do you rent to a qualified family member as defined in the instructions, and do they occupy the property as their primary residence?
☐ Yes ☐ No
4. If you answered yes to question 3, provide the name and relationship of the relative below.

Name: _____

Relationship: _____

5. Have you resided at the parcel listed on page 1 for 9 months or more during the previous 12 months?
☐ Yes ☐ No
6. If you answered no to question 5, how many months have you occupied the property during the previous 12 months as your primary residence?
☐ 3 or Less ☐ 4 to 6 ☐ 7 to 9
7. Have you filed an affidavit of primary residence on any other property this year or are you eligible for a homestead exemption on any other property?
☐ Yes ☐ No
8. If you answered yes to question 7, what is the address of the property that you previously claimed as your primary residence?
Address: _____
City: _____
State: _____ Zip: _____
9. Is the parcel identified on page 1 the only residential property owned by you and/or your spouse?
☐ Yes ☐ No

Mailing Address (If different than property address listed on page 1):

City: _____ State: _____ Zip: _____ - _____

Daytime Telephone Number: (_____) _____

Type or Print Your Name: _____

Signature: _____ Date: _____

Once completed, please sign and return this Notice to the County Assessor's Office.

RETAIN COPY FOR YOUR RECORDS

10. Does your spouse claim a different primary residence?
☐ Yes ☐ No
11. Do you have a current driver's license or government I.D. issued by the State of Arizona?
☐ Yes ☐ No
12. Does the home address on your driver's license, or state issued I.D., match the address of the parcel identified on page 1?
☐ Yes ☐ No
13. Do you own vehicle(s) registered in Arizona at the address of the parcel identified on page 1?
☐ Yes ☐ No
14. Did you file an Arizona Full Time Resident Income Tax Return during the current year?
☐ Yes ☐ No
15. Did you file an Arizona Full Time Resident Income Tax Return for the previous year?
☐ Yes ☐ No
16. Did you file a full or part year resident income tax return in any other state during the past 18 months?
☐ Yes ☐ No
17. If you answered yes to question 16, in which state did you file your resident return?

18. Do you have children residing with you that attend K-12 schools in the same Arizona county as the property identified on page 1?
☐ Yes ☐ No
19. If the property is owned by an LLC, list the names of the member(s) or the name and relationship of the member's qualified relative that lives in the property as his/her primary residence.
Name: _____
Relationship: _____