



# **ASSESSOR'S GUIDE**

**Third Edition**

**2009**

**Effective July 1, 2009**

## **EXEMPTIONS AMENDMENT 79 BENEFITS REFUNDS EQ BOARD JURISDICTION**

**ASSESSMENT COORDINATION DEPARTMENT**

**STATE OF ARKANSAS**



# TABLE OF CONTENTS

INTRODUCTION .....	1
PROPERTY TAX EXEMPTIONS .....	3
SUGGESTED PROCEDURE .....	3
EXEMPTIONS ALLOWED .....	4
FEDERAL PROPERTY .....	7
PUBLIC PROPERTY .....	8
CHURCH PROPERTY .....	9
CEMETERIES .....	10
SCHOOL PROPERTY .....	10
LIBRARIES .....	11
CHARITY .....	12
CONSTITUTIONALITY OF EXEMPTION STATUES .....	14
EFFECT OF LEIN DATE ON EXEMPTIONS .....	18
QUESTIONS AND ANSWERS .....	20
PROPERTY EXEMPTION APPLICATION .....	24
AMENDMENT 79 BENEFITS .....	26
\$350.00 HOMESTEAD CREDIT .....	27
5% CAP ON HOMESTEAD VALUES AND 10% CAP ON NON-HOMSTEAD VALUES .....	30
FREEZES FOR 65 AND OLDER AND DISABLED .....	31
SYNOPSIS OF ATTORNEY GENERAL OPINIONS .....	33
EXAMPLE FACT SITUATIONS .....	34
QUESTIONS AND ANSWERS .....	36
HOMESTEAD CREDIT APPLICATION AND SALES VERIFICATION FORM .....	40
REFUNDS .....	42
EQ BOARD JURISDICTION .....	45



# **INTRODUCTION**

With all of the various duties and responsibilities placed on the Assessor by law, he is constantly being called upon to make difficult decisions concerning people's property. These decisions have serious consequences on property owners and their families. The ultimate decision of whether the Assessor was right or wrong in a particular case rests with the court. Therefore, the Assessor must make every attempt to arrive at the most legally correct decision possible.

One problem is that there has never been a comprehensive rewrite of the property tax law in Arkansas. Instead, the legislature has made many changes and additions to the law over the years in attempts to solve various problems and keep up with the changing times. The result is a patchwork quilt of provisions that are sometimes very difficult to work with.

This guide is advisory only and is written to assist the Assessor in locating the applicable law and applying it to the particular fact situation he is faced with. The guide is in no way intended to be all-inclusive. There may be many situations that simply are not covered in this guide. As the ACD is made aware of these situations the guide will be revised accordingly.

At all times the Assessor must work closely with the County Attorney, as he is the person who will be defending the Assessor if a taxpayer challenges his decision by court action. The Assessment Coordination Department does not have the authority to serve in that capacity.

## **NOTE: THESE GUIDELINES ARE ADVISORY ONLY**

**UNLESS OTHERWISE AUTHORIZED BY LAW, ONLY THE ATTORNEY GENERAL OF THE STATE OF ARKANSAS HAS THE AUTHORITY TO GIVE LEGAL OPINIONS FOR AN AGENCY OF THE STATE. THE ASSESSMENT COORDINATION DEPARTMENT HAS NOT BEEN SO AUTHORIZED.**

## **HOW TO USE THIS GUIDE:**

1. Immediately make several copies of the Guide and keep at least one copy in reserve.
2. Everyone in the office should read the guide from start to finish as soon as possible.
3. Keep a permanent copy of the guide in a location easily accessible to all the office staff.
4. In reading this guide, keep in mind that we have taken some short cuts. For example, when used in this guide, the word:
  - (a) “property”, when used alone, means real property;
  - (b) “owner” means the owner of a parcel or parcels of real property;
  - (c) “credit” means the \$350.00 homestead tax credit,
  - (d) “ACD” means the Assessment Coordination Department,
  - (e) “He”, when referring to the Assessor, includes both genders,
  - (f) “EQ Board” means the Board of Equalization.

## **IN GENERAL:**

1. Remember, the burden is on the taxpayer to satisfactorily show that his position is the correct one and that the Assessor is in error.
2. Attorney General opinions are helpful but are not law. A government official may have protection from an accusation of misfeasance or a charge of malfeasance if he can show he acted in reliance on an opinion of the Attorney General.

# **PROPERTY TAX EXEMPTION**

## **PREFACE:**

The Assessor is responsible for making the decision as to which properties qualify for exemptions. Admittedly, this is an imprecise exercise involving a good deal of judgment on the Assessor's part. Supreme Court and Court of Appeals cases are often very old and both case law and legislation in this area are subject to change from time to time. In addition, facts vary in significance with each case and there is always the human element to factor in. As a result, no one can predict with absolute accuracy how a court will rule in a particular matter.

When in doubt, the Assessor should consult the County Attorney as to those issues.

## **SUGGESTED PROCEDURE:**

1. Any property owner requesting that their property be listed as exempt should be given an application form stating what exemption they feel their property qualifies for and what evidence they have to support their claim. Ask them to produce copies of any such evidence. There is a suggested application form at the end of this section.
2. Periodically send a copy of the application to property owners who have property already shown on the exempt list and ask them to fill out the form and return it to you. Even though the property may have been exempt at one time, the use may have changed or it may no longer qualify for other reasons.
3. Each exemption provided in Article 16 Section 5 of the constitution is set out below followed by a series of short paragraphs concerning the exemption.
4. Following the short paragraphs is a series of questions for you to resolve in order to determine whether or not the property in question is exempt. If all the answers are yes, the property should be exempted.

5. A particular question may be so basic that a no answer may automatically disqualify the property. As to other questions, the no answer may only cause doubt in your mind and you may wish to broaden your investigation. You may wish to make a personal visit to the site. You may require additional documentation. You may wish to confer with the county attorney, the ACD, or others.
6. Remember, the burden is on the taxpayer to satisfactorily show that his property should be exempt.

### **EXEMPTIONS ALLOWED:**

Although property owned by the federal government is immune from property tax rather than exempt, the effect is essentially the same except that "use for a public purpose" is not a factor.

All exemptions allowed under the law are those set out in the Arkansas Constitution. Six are found in **Article 16 Section 5** and one additional is found in **Amendment 12**. From time to time the legislature has adopted statutes declaring a property or a property use to be exempt, and there is a general rule of construction to the effect that all statutes are presumed to be constitutional until they are declared unconstitutional by a court of competent jurisdiction. However, Article 16 Section 6 provides that "All laws exempting property from taxation, other than as provided in this Constitution shall be void". It is important to note that this section does not provide that such laws are voidable, they are in fact void. The Court stated in the case of Tedford V. Vault, 183 Ark 240, that "property may not become exempt by operation of law unless it is exempted by the Constitution" If an exemption request is based on a statute establishing an exemption that is not set out in the Constitution you are not required to follow the statute .

The question arises about the exemption of property used pursuant to an Act 9 bond issues: As to such property the court has held that it qualifies under the public purpose exemption and is therefore constitutional.



Amendment 12 provides: “All capital invested in a textile mill in this state for the manufacture of cotton and fiber goods in any manner shall be and is hereby declared to be exempt from taxation for a period of seven years from the date of the location of said textile mill”.

Article 16 Section 5 and Amendment 12 exemptions are as follows:

- Public property used exclusively for public purposes,
- Churches used as such,
- Cemeteries used exclusively as such,
- School buildings and apparatus,
- Libraries and grounds used exclusively for school purposes,
- Buildings and grounds and materials used exclusively for public charity,
- Property bought or built using money generated by the issuance of Act 9 bonds.

**IN GENERAL:**

1. In addition to the constitution one must look to court decisions and statutes when contemplating whether a property is eligible for an exemption.
2. Applicants for exemptions have the burden of proving entitlement to the exemption based on one or more of the six categories listed previously.
3. Exemptions are matters of grace and are to be strictly construed against allowance.
4. When property is assessed, the lien for the taxes attaches to the property as of the first Monday in January of the assessment year. At any time the property is transferred, the lien of the tax continues to be attached and transfers with the property to the new owner. The new owner is responsible for those taxes, even if the new owner uses the property for an exempt purpose. There is no provision in the law for a waiver of the taxes for the acquisition year.
5. You may split the property when part is exempt and the other is not.

6. Exemption depends upon the actual primary use to which the property is being put. In the case of a public property exemption, the property must also be owned by a governmental body.
7. The legislature may classify property, i.e. real or personal, tangible or intangible. The legislature may not declare which properties are exempt or declare the use of a property. The Supreme Court has stated on more than one occasion that, notwithstanding the applicable statute, the right of exemption must be found in the constitution. If an exemption request is based on a statute establishing an exemption that is not set out in the Constitution you are not required to follow the statute. However, when confronted with a statute you believe is void you should consult your County Attorney and follow his/her written advice
8. It may be helpful to know that an entity holds a "501(c) (3)", or other tax exemption designation, from the Internal Revenue Service. However, it is absolutely not determinative of whether the property of that entity is exempt from property tax.
9. Likewise, it is helpful to know that an entity holds a charter from the Secretary of State as a "Nonprofit" corporation, but such fact alone is not determinative of the question as to whether or not the entity is exempt from property tax. An entity can, for example, be a church or a charity without being incorporated.
10. Attorney General opinions are helpful in determining whether a property is entitled to an exemption, but these opinions are not law.
11. The Supreme Court has been consistent in its opinions that exemption issues are to be decided by the Assessor. There does not appear to be any law granting to the Equalization Board or the County Judge jurisdiction to hear appeals from such decisions. Appeal from the decision of the Assessor would therefore go directly to the Circuit Court.

## **FEDERAL PROPERTY:**

1. Property that is owned by an instrumentality of the Federal Government is immune from state and local taxation and there is no requirement that the property be used for a public purpose. The Federal Government may waive such immunity, and in fact it has done so, with Federal Land Bank real property. Therefore, the Assessor should assess the real property of the Land Bank but not the personal property.
2. Immunity ceases when title passes from the United States.
3. The federal government sometimes agrees to make payments in lieu of property tax.
4. ACA 26-26-1211 provides that where the construction of an eight or more unit residential housing project is financed by the United States Government and is owned by a nonprofit corporation or association for persons 62 years of age and above or the handicapped, they are to be valued on the basis of the equity owned in the project. This, of course, does not mean that the property may not otherwise qualify for an outright exemption if it meets the criteria of a charity.
5. The National Housing Act provides that HUD (Federal Housing and Urban Development) makes loans and grants for the construction of certain types of multi family housing projects. The Government does not own these projects so they are not immune from property tax. You will find that those constructed under Sections 202 and 811 of the Act prior to 1992 are taxable on the value of the equity as set out above. The law changed in 1992 and those properties constructed thereafter are set up so that they have no equity or taxable value, therefore no tax will be owed. You may obtain from HUD a list of all such projects existing in your county. The HUD Agency also finances projects that do have regular amortizing loans and therefore do build equity, have taxable value, and should be put on the tax books as any other property. You may also obtain a list of these properties from HUD.

**If the application is for federal immunity, determine:**

- Is the property owned by an instrumentality of the Federal Government?
- Is there in existence a Federal statute in which the Federal Government waived immunity as to any of the property owned by the instrumentally.

**PUBLIC PROPERTY:**

1. Ownership by a governmental entity is not alone sufficient to make a property exempt; it must also be used exclusively for a public purpose.
2. The courts have determined that Act 9 bond financed property is exempt because it is owned by a government entity and the purpose, being for creating jobs, is sufficient to meet the requirement of a public purpose.
3. Even though the provision calls for the use to be "exclusively for a public purpose", some incidental nongovernmental use may be permitted.
4. If the incidental nongovernmental use portion is being operated with an eye toward profit, that portion should be taxed.
5. If the primary use of the property is nongovernmental such as, private sector office, residential rental space, or manufacturing or a commercial use space, the fact that the property is owned by a state or local governmental entity is irrelevant. This is true even if the proceeds are used for a legitimate public purpose.

**If the application is for a public purpose exemption, determine:**

- Is the property owned by some type of governmental body?
- Is the public purpose also the primary and predominant purpose?
- Is commercial enterprise prohibited or is no part of the property used with an eye toward profit?

- Are all funds that are received used for operation and maintenance or expansion of the public service or for charity?

### **CHURCH PROPERTY:**

1. In a 1997 case, the Arkansas Court of Appeals said that ownership of the property by a church is not necessary to entitle it to an exemption; use is determinative of entitlement. The property must be used for church purposes. The purposes must relate, in some way, to religious worship.
2. If the property is being used by the owner with a view toward profit it will not be exempt.
3. Church property held separately and distinctly from that being used as a place of actual public worship and utilized for the production of profits will be taxable, even if the gain derived therefrom is in turn used for religious purposes.
4. A primarily secular use of property used incidentally for actual public worship would probably prevent exemption.
5. If a church property is being used primarily for religious purposes, a mere incidental secular use, such as social functions to raise money for church purposes should not affect exemption.
6. Although a statute provides that parsonages used solely as residences for pastors are exempt, the Supreme Court has held that the legislature does not have the power to declare that a particular kind of property use is exempt. However, the test for exemption still remains whether the property is used for church purposes or not. Is its use reasonably related to religious worship or is it simply a rent free house for a particular employee of a church?

### **If the application is for a church exemption, determine:**

- Is the church operated by a religious group or organization?

- If the church does not own the property, is the owner letting the church use the property for free, or leasing or selling it on contract to the church for only a nominal amount?
- Is the property used exclusively for church purposes?
- Is the use of the property for church purposes the primary and predominant use of the property?
- Is commercial enterprise prohibited or is no part of the property used or operated with an eye toward profit?
- Are any funds received used for operation and maintenance or expansion of the church or other church or charitable purposes?
- If the property in question is a parsonage, are religious activities conducted on the property?

**CEMETERIES:**

The court has adopted the legislative definition of a cemetery. It is a public burying ground held with no view to making a profit. Such cemeteries continue to be exempt even though no bodies have been buried there for several years. Exclusively private cemeteries or cemeteries operated with an eye toward profit do not qualify.

**If the application is for a cemetery exemption, determine:**

- Is the property used for a public burying ground?
- Is commercial enterprise prohibited or is no part of the property used with an eye toward profit?
- Are all funds received used for operation and maintenance or for expansion of cemetery services or for charity?

**SCHOOL PROPERTY:**

This exemption applies to all schools buildings and apparatus whether the school is publicly or privately administered. The school should be available to the public in general although tuition may be required. If the school is operated with an eye toward profit it

should be denied the exemption. The school should have trained teachers, students, and an organized curriculum or courses of study.

**If the application is for a school exemption, determine:**

- Is there an organized curriculum or course of studies provided to the students?
- Are there teachers provided which are certified by the State or some other certifying agency?
- Is the school available to the public even though tuition may be required?
- Is commercial enterprise prohibited or is no part of the property used with an eye toward profit?
- Are all funds that are received used for operation and maintenance or expansion of the school or for charity?

**LIBRARIES:**

1. The framers of the constitution saw fit to provide an exemption for libraries and grounds used exclusively for school purposes. There certainly are private schools and colleges that have libraries that fall under this exemption.
2. In addition, many libraries are owned by the city, county, state, or federal instrumentalities and they serve a public purpose. There is no question that such libraries would qualify for the public property exemption or immunity as in the case of federal instrumentality.
3. Other libraries may qualify for an exemption if they are owned by a charitable organization and operated as a charity.

**If the application is for a library exemption, determine:**

- Is the library covered under the public property or charitable property exemption provisions of the constitution?
- If not, is the library used for school purposes?

- Are the school purposes the primary and predominant use of the property?
- Is commercial enterprise prohibited or is no part of the library property used with an eye toward profit?
- Are all funds received used for operation and maintenance or for expansion of the library, library services, or for charity?

### **CHARITY:**

1. This exemption is based on the proposition that charitable institutions, to some extent, relieve the state of its obligation to care for its indigent citizens. There is no definition of the word charity in applicable law, however you are allowed to use your common knowledge that charity exists when goods or services are freely given to someone who is not able to pay for them. If you are reimbursed for the gift then it is not charity.
2. This exemption is limited to the buildings and grounds and materials used exclusively for public charity. There is no definition provided for the word "materials", and one might wonder if an automobile is to be considered a "material." However, if the entity is indeed a charity and the automobile is used primarily in the operation of the charity, best practices would probably dictate the allowance of the exemption.
3. Property used for a commercial purpose is not exempt, even though the proceeds, rents, and profits derived from it are devoted entirely to the operation of the charity.
4. The actual function of the organization, not just its aims and purposes, must be charitable in nature. The fact that it is charitable is not sufficient alone to entitle the organization to exemption from taxation. The paramount consideration is whether or not the property itself is used exclusively for charitable purposes.
5. Although the courts have not defined the phrase "charitable organization," it should be safe to say that it is one which has charity as its primary, if not sole, purpose. Whether the applicant is a charitable organization is a fact question that must be determined on a case-by-case basis. From existing court decisions, it appears that an entity's proof of



its use of property for charitable purposes weighs in favor of a finding that it is a charitable organization.

6. A building used as the headquarters of a lodge or fraternal order is normally taxable, the use of the building being primarily for the social enjoyment of its members, meetings and office administration. The entity would have the burden of proving that the primary and predominant use of the premises was charitable.
7. To be exempt, the services, facilities, or products of the charity must be open to the public. However, the charity is not required to furnish such services, facilities or products gratuitously to all who seek them. Fees or charges may be required to be paid by those members of the public who can afford to pay them.
8. In the case of hospitals, the court held in Burgess V. Four States Hospital, 250 Ark 485, that a charitable organization's property used as a hospital may be exempt: if it is open to the general public; if no one may be refused services on account of inability to pay; and, if all profits from paying patients go toward maintaining the hospital and extending and enlarging its charity. Notice that the property owner must be a charitable organization to qualify.

**If the application is for a charitable exemption determine?**

- Is the owner organization charitable in nature?
- If the charity does not own the property, is the owner letting the charity use the property for free, or leasing or selling it on contract to the charity for only a nominal amount?
- Is commercial enterprise prohibited or is no part of the property used with an eye toward profit?
- Are all funds received used for operation and maintenance or expansion of the charity?
- Are the services or goods available to everyone regardless of their ability to pay?
- Is a charitable use made of the property?
- Is the charitable use also the primary and predominant use of the property?

## **CONSTITUTIONALITY OF EXEMPTION STATUTES**

### **IN GENERAL:**

1. All portions of any statute that creates an exemption not found in the constitution, or enlarges an exemption that is found in the constitution are void.
2. The Court has held that the legislature may classify property but does not have the power to designate which properties are exempt or to say categorically that a particular property is used for exempt purpose.

### **RELATED STATUTES**

#### **ACA SEC. 26-3-301:**

1. Subsection (4) of this section provides that all property belonging exclusively to this state, including property of state agencies, institutions, boards, or commissions, or the United States is exempt. This provision appears to attempt to eliminate the requirement in the constitution that any such state property be used for a public purpose. This subsection may therefore be void and at least is constitutionally suspect. NOTE: Property of the United States is not mentioned in the state constitution as being exempt. However, the federal constitution has a supremacy clause and therefore the U.S. government, and all of its instrumentalities, being sovereign, enjoys immunity from all state and local taxation, regardless of how the property is used.
2. Subsection (5) of this section has been amended by Act 1281 of 2005 to provide that all property owned by the county is exempt. The provision appears to eliminate the requirement that the property be used for a public purpose as set out in the constitution and, therefore may be void and at least is constitutionally suspect. Of course, if all of the property was used for a public purpose it would be exempt and constitutionality would not be an issue.

3. Subsection (7) appears to grant exemption to the property of purely public charities without regard to the use of the property and thus may be void and at least is constitutionally suspect. Of course, if all of the property was used for a public charity it would be exempt and constitutionality would not be an issue.
4. Subsection (11) of this section purports to exempt all property owned by the Girls' 4-H house, Boys' 4-H house, and the Future Farmers of America houses when the houses are used for the sole purpose of occupancy and use and enjoyment by students thereon, and not leased or otherwise used with a view to profit. This subsection declares particular property exempt which appears to have no relation to any exemption contained in the constitution, and therefore may be void and at least is unconstitutionally suspect.
5. Subsection (11) (A) of this section provides that all dedicated church property, including buildings used for administrative or mission purposes, the land upon which the church buildings are located, all church parsonages, any church educational building operated in connection with the church, including a family life or activity center, a recreation center, a youth center, a church association building, a day care center, a kindergarten, or a private church school shall be exempt. The statute may be void and at least is constitutionally suspect as it purports to designate property as exempt without regard to its use for a constitutional purpose.
6. Subsection (11)(B) of this section is constitutionally suspect in that it would appear to allow more than an incidental use of church property for investment, commercial or business purposes and thus an enlargement upon the constitutional provision as construed by the Court. Of course if such use was merely incidental then constitutionality would not be an issue.

**ACA 26-3-302:**

This statute provides that intangible personal property is exempt and is constitutional because of wording contained in Amendment 57 to the Constitution.

**ACA 26-3-303:**

This statute exempts "parsonages owned by churches and used as homes for pastors." The Supreme Court has ruled that this statute is constitutional as long as the property is used "exclusively for church purposes." This does not appear to be a holding that the pastor living there is necessarily a church purpose.

**ACA 26-3-304:**

This statute exempts textile mills and is probably constitutional under Amendment 12 to the Constitution.

**ACA 26-3-305:**

This statute exempts from property taxation the property of waterworks associations owned by nonprofit property owner associations. This statute appears to have no constitutional basis and is therefore probably void and is at least constitutionally suspect.

**ACA 26-3-306:**

This statute exempts the property of certain veterans, their surviving spouses, and their minor dependent children from property tax. This provision appears to have no constitutional basis and therefore may be void and at least is constitutionally suspect.

**ACA 26-3-308:**

This statute is constitutionally suspect in that it provides that all property owned by the State Highway Commission or the State Highway and Transportation Department is public property used exclusively for public purposes and thus not subject to property taxes. This statute appears to conflict with decisions of the Supreme Court that provide that each exemption stands on its own and "use for public purposes" is a fact question to be decided by the court, not the legislature.

**ACA 26-26-1208:**

This statute provides that where the construction of an eight or more unit residential housing project is financed by the United States Government and is owned by a nonprofit corporation or association for persons 62 years of age and above or the handicapped, it is to be valued on the basis of the equity owned in the project. This statute is constitutionally suspect in that the subject property is not owned by the federal government. Also, the statute calls for the property to be taxed on a basis other than 20 percent of market value.

## **THE EFFECT OF THE LIEN DATE ON EXEMPTIONS**

### **THE PROBLEM:**

Some state agencies, and in particular the Arkansas Highway Department, take the position that any property they purchase or take by eminent domain is exempt from the time of the purchase or taking and no taxes are owed for any time after that date. This is a problem for the Assessors, the Collectors, and ultimately the County and the School Districts.

Assessors are required to follow ACA 26-34-101 which provides that the lien for property taxes attaches to real property as of the first Monday in January of the year the assessment is made. This is commonly called the "lien date". The tax status of the property is, therefore, fixed for the year. The property is what it is as of the lien date; neither the constitution nor the state statutes give anyone the power to change that status or waive the taxes based thereon in the absence of a court order or an error as described in ACA 26-28-111. The Attorney General for the State of Arkansas agrees and in Opinion 2008-023 opined that "The property, if acquired after the lien date, is not exempt from property taxes for that year. Some person or entity will be responsible for the taxes".

ACA 18-15-101 (a), provides that a state agency (the AHD) shall withhold, from the purchase price, funds to cover the taxes that are due or will become due during the calendar year and remit same to the collector. The statute does not address the taxes for the year of the purchase or taking which will not become due until January of the next year and delinquent on or after October 10<sup>th</sup> of that year. In addition, the statute provides that if the agency (AHD) does not comply with the statute then the county may file a claim with the State Claims Commission.

### **THE COMMISSION:**

The State Claims Commission has five members all appointed by the Governor. The Commission is an arm of the General Assembly as a quasi-judicial agency. The

Commission was established to hear claims against the state and make recompense where appropriate.

Appeal of a decision of the Commission is to the General Assembly.

Approved claims of \$10,000.00 or less may be paid without the necessity of an appropriation by the General Assembly.

The Claims Commission may be contacted by calling 501-682-1619. Rules of procedure and other valuable information is available on the Commission's website at [www.claimscommission.ar.gov](http://www.claimscommission.ar.gov).

**CLAIM STATUTE:**

ACA 18-15-101 (b) provides that the county in which the property is located may file a claim for unpaid taxes with the State Claims Commission. Until this issue is resolved by legislation or court action, it is recommended that any county with such unpaid taxes file such a claim. This is a problem that directly affects the Assessor and the collector and indirectly effects the entire county government and the school districts. Therefore, a joint effort is needed to take advantage of the temporary relief provided by this statute. The Quorum Court should probably be the primary mover in the decision to file a claim; however, the Assessor, collector, treasurer, county judge, and the school boards should all be involved in the claim process.

A claim form and instructions are attached hereto. You must use a claim form provided by the Commission, or a copy thereof on legal size paper. The copy attached hereto has been reduced to letter size paper for consistency with this guide document. The form must be filled out in blue ink or it will not be accepted. The county should attach a copy of the above mentioned statute and all documentary evidence to support its claim.

## QUESTIONS and ANSWERS

**Q. A Housing Authority, formed by the city, owns and operates a low income housing complex as a slum clearing project. Is the property exempt?**

A. Yes. There is case law to the effect that the Housing Authority is an arm of the city and uses the property for public purpose.

**Q. Is the building owned and occupied by the local Chamber of Commerce exempt?**

A. Probably not. There is nothing in the question that indicates that the owner, property, or use, fits any of the six constitutional exemptions or is federally owned.

**Q. Is an apartment complex for the elderly, which is owned and operated by a private nonprofit corporation exempt? The tenants are charged rent which is paid by the tenants or a governmental agency. The owner says that their bylaws state that they may not turn anyone away because they cannot pay. However, there is no evidence that they have ever allowed any tenants to live there without their rent being paid by someone. There is no evidence that they have conducted any charitable activities except that the owner has given some free diapers to tenants who were in need. The complex has never shown a profit.**

A. Probably not. The organization must be charitable in nature and the giving away of some services probably does not meet the exclusivity test for a charitable exemption. The fact that it is a nonprofit corporation is irrelevant if it conducts no charity. It is not owned by a governmental agency, and even if it was determined that the owner was using the property for a public purpose, it would not qualify, because to receive a public use exemption the property would have to be owned by a public (governmental) entity.



**Q. The local college owns a large farm that was willed to them by a wealthy alumnus. The college leases the farm out and uses the proceeds to fund scholarships for needy students. Is the property exempt?**

A. Probably not. The primary use is renting out property with an eye toward profit, which means the college is in competition with other farm land owners. True, the secondary use is charitable, but the courts have been clear that the Assessor must look to the primary use.

**Q. Are the local Masonic Lodges, American Legion buildings, or other fraternal order meeting places, which are owned and operated by the organizations, exempt?**

A. Probably not, unless the owners can prove that the properties are used exclusively for charity. More than likely they are used predominantly for meetings and social functions for the members and the only charitable uses are incidental.

**Q. If the county becomes the owner of a parcel of land that they intend to use as an industrial park, but have done nothing with it at the present time, is it exempt?**

A. Probably not. The Supreme Court has said that contemplated use is not sufficient. The Legislature has recently adopted Act. 1281 of 2005 which provides that all property owned by the county is exempt. However, this Act is constitutionally suspect because it may be found to have eliminated the requirement of use for a public purpose.

**Q. Where a building and land is owned by an industrial development agency of the City and leases it to a private corporation, which uses it to manufacture products for sale, is the property exempt?**

A. No. The courts have held that the property is not being used for a public purpose even though the city claimed that helping provide jobs is a public purpose.

**Q. Assume the same facts as above except that the project was financed by an ACT 9 bond issue?**

A. Yes, Act 9 provides that such properties are exempt. The courts have held that Act 9 is constitutional and under these facts the property is used for a public purpose and the property is exempt.

**Q. When the Act 9 bonds are paid off, does the property loose its exemption and become taxable again?**

A. Yes, unless the local governing body under which the bonds were issued declares, by ordinance, that the property is still being used for a public purpose.

**Q. Does a day care center qualify for an exemption as a school?**

A. No. As long as any school type activities conducted are only incidental.

**Q. A local Catholic Diocese owns and operates a residential facility free of charge for retired priests. Is it exempt?**

A. Probably not. To be exempt as a charity, the facilities would have to be open to the public. According to case law, to be exempt as a church, the facilities would have to be used in some way as a church. Even if the priests were not retired the property would have to be used in some way as a church.

**Q. A local industry was financed by Act 9 bonds that have recently been paid off. Does the property continue to be exempt?**

A. Maybe. The courts have held that the pay off of the bonds does not automatically trigger an end of the public use and thus the exemption. In some cases the city has passed an ordinance saying that the continued operation of the plant provides jobs and that this is important to the health and welfare of the community. The court found that the exemption should continue.

**Q. A man and his wife own a building located on a city block and lease it to a church group at the prevailing market rate. The church group conducts religious services on the property. Is the property exempt?**

A. Probably not. Even though ownership is not required, it still can be said that the property is being primarily used with a "view toward profit", which is prohibited by the statute. The result would probably be the same if the property were sold to the church group on a contract for sale, for the same reason.

# PROPERTY EXEMPTION APPLICATION

FOR OFFICE USE ONLY  
 APPROVED     DENIED

According to the Constitution of the State of Arkansas Article 16 Section 5B, the following property shall be exempt from taxation:

Public property used *exclusively* for public purposes

Churches, used as such

Cemeteries, used *exclusively* as such

School buildings and apparatus

Libraries and grounds used *exclusively* for School purposes

Buildings, grounds and materials used *exclusively* for public charity

Please check one of the following:

- Real Estate  
 Business Personal Property

*Please PRINT legibly and fill out ENTIRE FORM completely. Incomplete applications will be rejected* A separate application is required for each exemption request.

Request Organization:

Full Name

Address

City

State

Zip

Contact Person

Phone

Email Address

Fax

Full physical address of the ACTUAL PROPERTY being applied for Exemption Status:

Address

City

State

Zip

Note: Exemption depends upon the *USE* of the property, not the non-profit status or 501(c) (3) status of the organization.  
**Your property must be used for one of the following categories.**

**Please check one of the following:**

- Church                       Cemetery                       School Building and Apparatus  
 Library and Grounds       Building, Grounds and Materials used EXCLUSIVELY for PUBLIC CHARITY  
 Public Property used as such

Please state your reason for requesting an exemption (use back if more space is needed):

Under penalties prescribed by law, I hereby affirm that to the best of my knowledge and belief, the statements and information in this application are true and correct, and are made for the purpose of exempting the property here described from taxation. APPLICATION WILL BE REJECTED IF AFFIRMATION IS NOT SIGNED.

Signature of Owner, Responsible Officer or Agent

Title

Phone

Additional space for reason for exemption: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Describe in detail the present uses of the property \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Describe in detail any uses of the described property which produce income, such as rent or fees for use, admission charges, sale or lease of space, items, or services, etc.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Attach to this application any brochures describing activities which occur on the described property, and any other pertinent information which may assist in determining whether the property qualifies for exemption from Ad valorem taxation.**

For Official Use Only

The above described property is classified as:

\_\_\_\_\_ Exempt from ad valorem taxation.

\_\_\_\_\_ Subject to ad valorem taxation.

Date \_\_\_\_\_

\_\_\_\_\_  
County Assessor

# **AMENDMENT 79 BENEFITS**

## **HISTORY:**

Amendment 79 to the Constitution of the state of Arkansas was proposed by the Eighty-second Arkansas General Assembly of the State of Arkansas and adopted by the voters in the general election in November 2000 and took effect January 1, 2001.

## **PURPOSE OF THE GUIDE:**

In some cases, making a decision as to Amendment 79 benefits can be a very difficult task. To assist you in your endeavor, this guide attempts to break Amendment 79 down into its component parts and pull together in one location the pertinent statutes and rules that apply to each of those component parts. Also to assist you, this guide provides a list of Frequently Asked Questions and our best effort to apply the appropriate law or rule and the rationale for doing so.

## **FORM A-18:**

On the last page of this guide is a copy of **Form A-18** of the ACD Rules. The first part of this form is entitled "Homestead Credit Application/Sales Verification", and the second part is entitled "Tax Credit/Amendment 79 Benefit Registration". Use of this form is mandatory for record keeping purposes and should provide some help to you in your decision making on Amendment 79 issues. However, in close cases, the information provided by the taxpayer in the form will not be sufficient and you will find it necessary to question the taxpayer in depth and perhaps require additional documentation.

## **BENEFITS AS PROVIDED IN AMENDMENT 79:**

1. A tax credit of up to \$350.00 on real property that qualifies as the owners homestead used as his principal place of residence.

2. A 5% per year limit on the amount of increase in taxable assessed value in a homestead resulting from a reappraisal.
3. A 10% per year limit on the amount of increase in taxable assessed value in non-homestead real property.
4. Value freezes for taxpayers 65 and older and disabled. A prevention of the increase in assessed value of a homestead used as the principal place of residence of an owner 65 years of age or older or an owner who is 100% disabled.

NOTE: ACD policy is that where part of a property would otherwise qualify for an Amendment 79 benefit, you may split the property between the parts and assess them separately.

#### 1. **\$350.00 PROPERTY TAX CREDIT**

The amount of the credit shall not exceed the amount of tax owed as a result of a reappraisal.

The property must be the homestead and principal place of residence of the owner-applicant.

The homestead area may be referred to as the curtilage. It may consist of, but is not limited to, a yard of any size that is mowed or otherwise maintained for family use, a family size residence, a family flower or vegetable garden, a few fruit trees, a few decorative trees, a few shade trees. Also included in the homestead curtilage is storage or other out-buildings, an automobile garage, pet enclosures or other shelters all suitable for family use. Size may be an important indicator for this process, but size alone is not determinative. There are many instances of an owner/resident manicuring an area of many acres as his yard for family purposes. However, as a general rule, anything larger than what normally would be utilized by one family for day to day living should be looked at carefully as it may fail to qualify as a homestead.

### **ACA 26-26-1118**

If the property qualifies for the \$350.00 credit at any time during the assessment year, it is deemed to be qualified for the entire year, regardless of a change in use; Prior to issuing tax bills, the Assessor shall identify those parcels used as homesteads in the county and the bill shall reflect the reduction; The property owner shall register proof of eligibility with the county Assessor or attach it to the deed before filing. The property must qualify for the credit before January 1 of the year following the assessment but the taxpayer shall have until October 10 of the year following the assessment to make his or her claim for the credit. If the property qualifies for the credit it is immaterial who or what entity pays the tax. If the property is transferred, the purchaser of the property shall notify the Assessor of the new use of the property;

### **ACA 26-26-1119**

No property owner shall claim more than one (1) homestead credit for any given year with the penalty for violation being repayment of the credit amount and the preparer of the tax books shall extend on the tax books a penalty of 100% of the amount of the unlawfully claimed credit.

If the property owner has unlawfully claimed a credit in a county other than the county where he or she has lawfully claimed a credit, he or she shall pay back the unlawfully claimed credit and the penalty at the time of payment of his or her property taxes. If the property owner has unlawfully claimed a homestead credit in the same county that he or she lawfully claimed a credit, then he or she shall elect to either: (a) Pay the entire amount of the unlawfully claimed credit and the penalty at the time of payment of his or her property taxes; or, (b) Not claim a credit on any property in the county or state for two years. After repayment of an unlawfully claimed credit and the penalty the property owner must re-register with the Assessor in order to resume receipt of the lawfully claimed credit;

Every property owner shall report to the Assessor a change in eligibility, or a change in use of the property, prior to January 1 of the year following the change. Upon failure to do so, in addition to requiring repayment of the unlawfully claimed credit, the designated preparer of the



tax books shall extend, the correct property tax due along with penalty of one 100% of the amount of the unlawfully claimed credit.

Penalties and debt, as set out above, shall bind the property and shall be entitled to preference over all judgments, executions, encumbrances, or liens, whenever created, until the debt and/or penalties are repaid. Penalties collected shall be remitted to the county treasurer to be credited to the general fund and tax credit repaid shall be remitted to the Treasurer of State for deposit in the Property Tax Trust Fund.

The property owner may appeal to the county court the determination that he or she has violated the above provisions and must pay the penalty and repay the credit.

No repayment requirements or penalties may be imposed against the property owner after the expiration of (3) years from the date the credit was claimed.

#### **ACA 26-26-1122**

“Homestead” means the dwelling of a person that is used as his or her principal place of residence with the contiguous land, excluding all land valued as agricultural land, pasture land, or timber land.

“Homestead” shall also include a dwelling owned by a revocable trust and used as a principal place of residence of a person who formed the trust.

“Property owner” means: a person who is the owner of record of real property or the mortgagee of the real property; a buyer under a recorded contract to purchase; a person holding a recorded life estate in real property.

“Property owner” shall include the previous record owner of tax-delinquent real property that has vested in the State under ACA 26-37-101(c) if the previous owner continues to occupy the residence subject to his or her right of redemption.

**ACA 26-26-1123**

When a person sells his or her property, the county Assessor shall assess the real property at twenty percent (20%) of the appraised value at the next assessment date after the date of transfer. The owner to whom title is transferred is not entitled to claim any limitation on the assessed value of the real property until the second assessment date after the date of transfer.

**2. 5% CAP ON HOMESTEAD VALUES AND**

**3. 10% CAP ON NON-HOMESTEAD VALUES**

These benefits are not available for newly discovered real property or new construction or substantial improvements to real property;

**ACA 26-26-1122**

“Newly discovered real property” means real property that has never been on the assessment roll or that has changed use.

“New construction” means changes to real property that have occurred to real property already on the assessment roll.

“Substantial improvements” may be (*and it has been*) defined by ACD rule.

**ACD Rule 4.08.1**

“Substantial improvements” means renovation, reconstruction, and refurbishment occurring to further a change in the use and/or class of an improvement or that will add 25% or more to the contributory value of an improvement to the property. This term does not include normal maintenance on an improvement intended to only maintain its existing utility.

**ACA 26-26-1123**

When a person sells his or her property, the county Assessor shall assess the real property at twenty percent (20%) of the appraised value at the next assessment date after the date of transfer. The owner to whom title is transferred is not entitled to claim any limitation on the assessed value of the real property until the second assessment date after the date of transfer.

**4. FREEZES FOR TAXPAYERS 65 AND OLDER OR DISABLED**

**ACA 26-26-1120**

“Disabled person” means a person who is disabled for purposes of Subchapter XIX of the Social Security Act as in effect on January 1, 2003 for any period during the calendar year; or, is a permanently and totally disabled veteran as defined by 38 C.F.R., Part IV, as in effect on January 1, 2003; or, has received permanent and total disability insurance benefits for any period of time during the calendar year.

When a disabled owner or an owner that is sixty-five (65) years of age or older sells his or her real property, the purchaser shall not be entitled to claim any reduction to the property’s assessed value.

On or after January 1 of the year following the date of the sale, the county Assessor shall assess the real property at its full market value, unadjusted for assessment limitations required by Amendment 79.

This benefit is not available if there have been substantial Improvements to the property.

**ACD DEFINITION:**

“Substantial improvements” as used in Amendment 79, Sections 1(b) (2), (1) (c) (2) and 1 (d) (4) means:

a. Renovation, reconstruction, and refurbishment occurring to further a change in the use and/or class of an improvement. Upon completion the improvement will be valued at current market value.

b. Renovation, reconstruction or refurbishment that will add 25% or more to the contributory value of an improvement to the property. Upon completion it will be reappraised at current market value in the following assessment year. This term does not include normal maintenance on an improvement intended to only maintain.

c. Newly constructed and newly discovered property shall be assessed at full value.

### **ACA 26-26-1123**

When a person sells his or her property, the county Assessor shall assess the real property at twenty percent (20%) of the appraised value at the next assessment date after the date of transfer. The owner to whom title is transferred is not entitled to claim any limitation on the assessed value of the real property until the second assessment date after the date of transfer.

NOTE: However, under Amendent 79, when property has a zero growth cap (freeze), or a 5%, or 10% growth cap and the property is purchased by a person who uses it as his homestead and is 65 year of age or older or disabled, under Amendment 79 (1) (d) (1) (A) the taxable assessed value will remain the same as it was immediately before the purchase. Conversely, a purchaser who is not entitled to a freeze (zero growth cap) on his own qualifications is not allowed to keep the limitation on the assessed value of the property based on the qualifications of the previous owner. The property will go to full value. You may follow the “rule of thumb”:

- 1. Remove all caps and freezes in** situations where property is purchased by a buyer who is not 65 years of age or older, or disabled. In addition, all caps and freezes should be removed if the buyer does not use the property as his homestead, regardless of his age or disability.
- 2. Do NOT remove caps and freezes** in situations where property is purchased and used as a homestead by a person 65 years of age or older or disabled.

A short synopsis of each of the last three Attorney General opinions regarding Act **2284** of 2005 in relation to Amendment 79 is as follows:

August 10, 2005 –Opinion 2005-144:

Only a "sale" of property will trigger the application of Act 2284, which mandates lifting the caps on annual property tax increases imposed by Amendment 79;

- If a parent conveys a fee interest to a child without payment, Act 2284 will not apply;
- If a parent receives payment but retains a life estate, the caps will continue to apply to the life tenant;

December 12, 2007 – Opinion 2007-244:

Because of the primacy of constitutional law over statutory law, Act 2284 does not eliminate the zero growth limitation (freeze) provided by Amendment 79 for homestead owners who are 65 years of age or older or disabled;

- The zero growth limitation (freeze) on the value of the homestead of a person 65 years of age or older or disabled runs from the date of purchase;

June 27, 2008 –Opinion numbered 2008-068:

- Amendment 79 is ambiguous in part and it cannot be definitively answered by as to whether or not the mandate of Act 2284 requiring an assessment at full market value following a purchase by a new owner, rather than continuing any existing 5 or 10 percent caps is in conflict with Amendment 79.
- Legislation is presumed to be constitutional until determined to be unconstitutional by the courts. General Assembly enactments will be given great deference by the courts, if challenged.
- In a situation where there is a freeze on the property and it is sold to a purchaser who is not 65 years of age or older or disabled or does not use the property as his homestead, the purchaser is not entitled to claim any reduction to the real property's assessed value. The property will be assessed based upon the full appraised value of the property. Such property should be assessed based upon the previous owner's qualifications rather than his own.

**EXAMPLE FACT SITUATIONS**  
**Amendment 79 vs. Full Assessed Value Statutes**

The following fact situations and answers are provided for guidance as a result of the issuance of Attorney General Opinions 2007-244 and 2008-068 identifying situations where Act 2284 of 2005 (codified as ACA 26-26-1120 and ACA 26-26-1123) were, or were not, in conflict with certain provisions of Amendment 79. Please notice that we have used the phrase "zero growth cap" to describe the Amendment 79 limitation benefit enjoyed by a taxpayer who uses the property as his homestead and is 65 years of age or older or disabled. "Five percent (5%) growth cap" is used when the owner is under 65 and not disabled but does use the property as his homestead. "Ten percent (10%) growth cap" is used when the property is not used as a homestead.

NOTE: The assessed value of all real property may increase any time the owner makes substantial improvements to it. See Amendment 79 (1) (b) (2), (1) (c) (2), (1) (d) (4), and ACD Rule 4.08.1 under definitions applicable to Amendment 79 (2). In addition, the amount of taxes to be paid will increase if the voters approve a millage increase.

**EXAMPLE 1**

**Q: I bought a property in January 2008 which had a 5% growth cap on it because the property was the seller's homestead. Because he was not 65 or older or disabled it did not have a zero growth cap on it prior to my purchase. The property is my homestead and I am 65 years of age and therefore qualify for the zero growth cap under Amendment 79 (1) (d) (1) (A). Will the property be assessed at full assessed value as of January 1, next year and then zero growth capped at that value as provided by Act 2284 (ACA 26-26-1123)?**

A: No. In accordance with the Opinion of the Attorney General, the statute is in direct conflict with Amendment 79 (1) (d) (1) (A) and is not applicable. Under the amendment, because you qualify, the assessed value is established at the assessed value as capped immediately prior to your purchase. "As capped" means that the 5% for the year of the purchase has been added. Your value, for tax purposes, will not increase unless you make substantial improvements. **DO NOT APPLY ACT 2284.**

**EXAMPLE 2**

**Q: I bought a property in February of 2008. It was owned by a person who was disabled and it was used as his principal place of residence and therefore had a zero growth cap on its assessed value. I am 65 years of age and use the property as my principal place of residence and therefore qualify for the zero growth cap. My question is: Will my taxable assessed value stay the same as it was under the**

**prior owner?**

A: Yes. The provisions of Act 2284 (ACA 26-26-1120 (b)) directly conflict with the amendment and therefore the statute does not apply. The taxable assessed value will not change, except for substantial improvements, from the previous taxable assessed value as long as you continue to qualify as provided in Amendment 79 (1)(d)(1)(A). **DO NOT APPLY**

### **EXAMPLE 3**

**Q: I bought a property in July 2008. The seller was not 65 or older or disabled and did not use the property as his homestead. The property had a 10% growth cap on it. I am over 65 but do not use the property as my homestead. What will be the effect of Amendment 79 and Act 2284 on my assessed value?**

A: Because you do not use the property as your homestead, Act 2284 will apply and your assessed value will go to full assessed value as of January 1, 2009, and then Amendment 79 will apply and your assessed value on the property will be limited to the 10% growth cap as of the next reappraisal date and will continue to be so capped until full assessed value is reached or until you sell the property or become deceased. APPLY ACT 2284.

### **EXAMPLE 4**

**Q: I bought a property in May of 2008 and use it as my homestead. The assessed value of the property under the seller was 5% growth capped because the property was his homestead. I was only 60 years old and in good health at the time of purchase. Am I entitled to have my property valued at the same amount as it was under the seller, with the 5% growth cap continued?**

A: No, because you were neither 65 nor older, or disabled at the time of the purchase. Your property will be assessed at full assessed value as of January 1, 2009, and will be 5% growth capped as of the next reappraisal date. APPLY ACT 2284.

### **EXAMPLE 5**

**Q: I bought a property in June 2008 and use it as my homestead. The property had a zero growth cap because the seller was 65 or older and used the property as his homestead. I was not 65 or older or disabled. Will my property continue to have the zero growth cap?**

A: No. Act 2284 applies and your property will be assessed at full assessed value as of January 1, 2009, because you were not 65 or older or disabled when you bought the property. Your assessed value will be 5% growth capped at the next reappraisal date. APPLY ACT 2284.

## **FREQUENTLY ASKED QUESTIONS IN REGARD TO AMENDMENT 79 IN GENERAL.**

**Q. “I’m not getting the full \$350.00 credit. Why didn’t you put more of my land on as a homestead”?**

A. Amendment 79 provides that the amount of the credit allowed cannot exceed the amount of the tax owed.

In addition, while it is true that there is no limit on the geographical size of a homestead, there are other limits. Only the land that is contiguous and is used for residential purposes, called the curtilage, can be considered. Blacks Law Dictionary defines the word “contiguous” as meaning “touching at a point or along a boundary”.

**Q. “My sister and I own the home that our parents lived in before they died. The home is now my sister’s principal place of residence. Does the fact that I get a homestead credit on my separate homestead prevent my sister from receiving the credit on the home she lives in”?**

A. No, ACA 26-26-1119 provides that no property owner shall claim more than one homestead under penalty of repaying the credit amount and a 100% fine. As long as the sister is the one that “claims” the homestead, the credit should be allowed. For this purpose the sister is the one that should sign the application for the credit.

**Q. “My wife and I have been separated for years but we have never gotten a divorce. She lives in the family home and my name is still on the deed and mortgage, but I have a separate home in my name. Does the fact that there is a homestead credit on the home she lives in prevent me from receiving a credit on my separate homestead”?**

A. No, not necessarily. The problem is that there is probably a greater danger of fraud in the current situation than there is in the brother and sister situation. You must satisfy yourself that the parties actually live separate and apart. A court ordered separation document, although not absolutely determinative of the question, would be helpful.



Proving entitlement is the duty of the applicant, however we are aware of a case where one imaginative Assessor sent a staff person to the home the husband was claiming and recorded the electric meter reading for a couple of months and found that no electricity was being used.

**Q. “My uncle left my aunt and moved in with another woman. He owns, in his name only, the house where my aunt remains. Is my uncle entitled to continue to receive the credit on the house where my aunt lives”?**

A. Yes, but only for the year in which he left. ACA 26-26-1118 provides that if the property qualifies at any time during the year it shall remain qualified for the remainder of the year regardless of a change in use. When he moved out the property ceased to be his principal place of residence. The property will no longer qualify as of January 1 of the year following the year in which he moved out.

**Q. “My aunt is now living with my wife and me and paying us \$500.00 dollars a month. Am I still entitled to receive the credit”?**

A. Yes, for this year only. The amount of the rent indicates a change in use to commercial. If the amount was \$100.00 it would present a more difficult problem. Such a small amount would seem to indicate that there was no intent or effort to make a profit and therefore would not be commercial operation.

**Q. “I just bought a house this year. What is my assessment going to be?”**

A. ACA 26-26-1123 provides that when property sells, it goes to full value as of the next assessment date. Therefore, your assessment will not change this year, but will go to full value on January 1 next year. If your county is finishing a reappraisal in the current year, your property will be assessed at the new value. If your county is not finishing a reappraisal in the current year, your property will be assessed at the current full market value as established in the last county-wide reappraisal.

**Q. I am considering buying a home on a contract to purchase. Will the property go to full appraised market value when my contract is filed at the Circuit Clerk's office?**

A. Yes, as of January 1 the following year. ACA 26-26-1122 contains definitions applicable to Amendment 79 and all of the statutes in Subchapter 11 ACA 26-26. This statute now provides that the definition of "a property owner" includes a person who is a buyer under a recorded contract to purchase real property. The word "buyer" indicates a "sale" under ACA 26-26-1123 and therefore the property goes to full appraised market value.

**Q. In regard to the fact situation set out above: is it the date of the signing of the contract, or the date of the recording of the contract, that triggers the "going to full appraised market value"?**

A. It is the date of the recording, whether it is a sale involving a deed transfer, or, as in this case, a contract to purchase. The date of signing is said to be binding as between the parties but only recording gives legal notice to the Assessor, along with everyone else.

**Q. Assume a person is buying a parcel of real property on a recorded contract to purchase and he has qualified for, and received, one or more of the benefits under Amendment 79. Then assume that sometime later the title holder sells his interest in the property to a third person. Does the contract to purchase buyer lose his Amendment 79 benefits and does the property go to full appraised market value at that time?**

A. No. As the contract to purchase buyer is defined as a property owner in ACA 26-26-1122 the benefits are based upon the contract to purchase buyer's qualification and not the qualifications of the seller or title holder. The property does not go to full appraised market value because it has already done so when the contract to purchase was filed. The fact that title changed hands in the middle of the contract has no effect on either of those situations.

**Q. “I am buying my home on a lease purchase arrangement. Am I entitled to receive the homestead credit on that home”?**

A. No. ACA 26-26-1120 provides that a person buying their home on a recorded contract to purchase is entitled to the credit but it does not mention a lease purchase and they are not the same thing.

**Q. “I am totally disabled and receive a disability check from the German Government. Am I eligible to have my assessment capped at its current level”?**

A. Yes, assuming you can produce proof that the check amount is for total and permanent disability. ACA 26-26-1120 provides that one of the meanings of the term “disabled person” is that the person received permanent and total disability insurance for any period of time during the calendar year.

## Homestead Credit Application/Sales Verification

Owner's name: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Parcel number: \_\_\_\_\_ Sec. \_\_\_\_ Twp. \_\_\_\_ Rng. \_\_\_\_

Subdivision/addition: \_\_\_\_\_

Legal description: \_\_\_\_\_

Acreage: \_\_\_\_\_ Physical Address: \_\_\_\_\_

Agent: \_\_\_\_\_ Closing date: \_\_\_\_\_

Tax credit registration for assessment year: \_\_\_\_\_ Phone number: \_\_\_\_\_

In accordance with Amendment 79 of the Arkansas Constitution, homeowners may be eligible for up to a \$350 real estate tax credit on their homestead properties. Additional benefits may apply to those who are 100% disabled or age 65 or older (the assessment on your house and associated land may not increase unless you make substantial improvements). A homestead is a residential property of which you are the owner of record and which is used as your principal place of residence.

By you answering the following questions and returning the form to the \_\_\_\_\_ County Assessor's Office, we will be able to determine if you are eligible for the credit and/or additional benefits. You will also contribute to fair and equitable assessment of real property in our county. It is necessary to verify sales to have accurate information, though **answering questions 8 through 13 is optional**. Please place an **X** for each correct answer.

### Tax Credit/Amendment 79 Benefit Registration

1. \_\_\_ I am the owner of record by recorded \_\_\_\_\_ (deed/contract) of the property listed above, which \_\_\_\_\_ (is/is not) my principle place of residence.
2. \_\_\_ Either I or a joint owner is 100% disabled. (Provide proof of receipt of permanent and total disability benefits)
3. \_\_\_ Either I or a joint owner is 65 years of age or older. Date of birth: \_\_\_/\_\_\_/\_\_\_ (Provide proof of age to receive benefits).
4. \_\_\_ I have transferred ownership of this residence, but retained a life estate and reside at this property.
5. \_\_\_ I am the owner of record of the property listed above, but I reside in a nursing/retirement center.
6. Use of the property at the time of sale was: Single family residence \_\_\_ Multi-family \_\_\_ Commercial \_\_\_ Vacant Land \_\_\_ Other \_\_\_ (Describe on back of this sheet)

7. Recent changes to the property. \_\_\_\_\_ Date of change \_\_\_\_\_

**Sale Price Verification**

8. Total sale price \$ \_\_\_\_\_

9. Is sale fulfillment of a sales contract? Yes \_\_\_ No \_\_\_ If yes, the year of the original contract \_\_\_\_\_

10. Was there a trade of property or personal property included in the sale? Yes \_\_\_ No \_\_\_ If yes, describe \_\_\_\_\_ Estimate of value \_\_\_\_\_

11. Was sale between relatives? Yes \_\_\_ No \_\_\_ if yes, state relationship \_\_\_\_\_

12. Was the sale forced by court order, divorce, estate settlement or foreclosure? Yes \_\_\_ No \_\_\_

13. Was there an appraisal of the property when sold? Yes \_\_\_ No \_\_\_

If you have any questions regarding this form, please call the \_\_\_\_\_ County Assessor's Office at \_\_\_\_\_.

I hereby acknowledge that the above statements are true and correct to the best of my knowledge, information and belief.

Signed \_\_\_\_\_ Date \_\_\_\_\_

Witness \_\_\_\_\_ Date \_\_\_\_\_

**A-18** 11/13/2005

# REFUNDS

## FACTORS TO TAKE INTO CONSIDERATION

### **1. Did the Assessor over value the property?**

The remedy provided by law for the over valuing of property by the Assessor is appeal to the Board of Equalization, then the County Judge, and then the Circuit Court. The appeal is for the current year only and not the previous year. See Arkansas Code Annotated (ACA) 26-27-318. There is no authority for the Assessor to give a refund in such situations. If the taxpayer pays the tax and then later requests a refund, he will be denied. He can, of-course, appeal to the EQ Board at the proper time the next year to prevent the alleged error from being repeated.

### **2. Is the error obvious on the tax books and related records? Is it the result of an extension error, erroneous property description, a classification error, or a listing error?**

This is the situation that is specifically addressed in ACA 26-28-111 entitled Correction of Errors. An “extension error” may occur when data is transferred from one document, or record, of the Assessor, to another, resulting in an incorrect tax appearing on the books or being billed to the tax payer. The term “erroneous property description” should need no explanation. One example of a “classification error” could be a property classified as residential when it should have been agricultural. An example of a “listing error” could be where an improvement continued to be shown on the assessment records when, in fact, it no longer existed. The statute sets out the procedure for correcting such errors. If the fact situation in question meets the provisions of this statute, a refund of any overpayment of taxes would be in order. NOTE: This statute may be used to correct the specific errors listed and no others.

### **3. Was the tax paid on the wrong property?**

If the error was caused by an erroneous description, correction can be made pursuant to ACA 26-28-111, as discussed above. If not, there is no provision for a refund. The only recourse for the taxpayer may be to assert a cause of action against the true owner for re-imbusement.

### **4. Did the taxpayer report personal property that should not have been reported?**

The only statute providing for a refund is ACA 26-35-901 entitled Taxes Erroneously Assessed and Paid. This statute specifically limits refunds to the situations set out in ACA 26-28-111 as discussed above. This statute appears, on its face, to apply only to mechanical type errors committed by the Assessor and not to errors committed by the taxpayer. Therefore, no refund would appear to be in order.

### **5. Was the tax illegal?**

This issue may come up, for example, when the county should have instituted a “rollback” under Amendment 59 to the State Constitution but did not, or did not institute it correctly. These situations may be referred to as “illegal exactions”, and if proven, warrant a refund. The same would be true in any situation where the County did not have legal authority (jurisdiction) to take the complained of action. Illegal exaction cases typically involve several county officers in addition to the Assessor.

## **APPLICABLE STATUTE OF LIMITATIONS**

Assuming the taxpayer has proven to your satisfaction that he or she is entitled to a refund, you must then address the issue of the number of years for which the taxpayer is entitled to a refund. ACA 26-35-901 provides that “all erroneous assessment claims for property tax refunds shall be made within 3 years from the date the taxes were **paid**” (not the date of assessment).

## **PAYMENT UNDER PROTEST:**

There is no longer a requirement that the aggrieved taxpayer must pay the tax, “under protest” in order to maintain an appeal after the last day to pay the tax without penalty.

### **ACA 26-35-802**

- (a) No tract or lot of real property shall be returned as delinquent for nonpayment of taxes nor shall any penalty be added to taxes due while there is pending in the circuit court or the Arkansas Supreme Court an appeal from an order of the county court fixing the assessed value of property.
  
- (b) In the event there has been no final disposition of an appeal prior to the last day fixed by law for the payment of the taxes without penalty, the owner shall have thirty (30) days after final disposition of the appeal within which to pay taxes without penalty.



# **JURISDICTION OF THE BOARD OF** **EQUALIZATION**

## **PREFACE:**

Neither the Assessor nor the Board of Equalization, (Board), has any authority over the work of the other. Each has a separate and distinct roll to play in the administration of the ad valorem tax system in Arkansas. Both the Assessor and the Board of Equalization are subject to general and specific oversight of the Assessment Coordination Department and both must adhere to the provisions of the Arkansas Constitution, the Acts of the state General Assembly as codified in the Arkansas Code, and the Rules and Regulations of the Arkansas Assessment Coordination Department. The following discussion is intended to help clarify what the Board of Equalization can and can-not do.

## **STATUTORY JURISDICTION:**

The Board of Equalization has jurisdiction, as provided in ACA 26-27-309, 310, 311, 312, 314, 315, and Act 1189 of 2009, to:

1. Organize by electing one of its members as chairman who shall have powers as provided in subchapter 3 of ACA 26-27 and shall have the power to administer oaths to witnesses appearing before the Board.
2. Equalize the assessed value of all acreage land, city and town lots, other real property, and personal property subject to local assessment, regardless of the year in which the property was last assessed. The Board of Equalization may raise or lower the valuation of the real and personal properties in the county in the following circumstances:
  - a. The assessment is unfair compared with other properties of the same kind similarly situated, evidenced by the fact that the property is assessed higher than neighborhood properties of the same use, size, materials, and condition, or;

- b. The assessment is clearly erroneous, as evidenced by the fact that the appraisal relies on substantially inaccurate or insufficient information concerning the property, or;
- c. The assessment is manifestly excessive or greatly exceeds what willing and knowledgeable buyers will pay similarly motivated sellers for the property, evidenced by selling prices of similarly situated properties.

**Note:** The board shall not raise or lower the values of any property without reviewing values of similarly situated properties. The values of those similarly situated properties shall be raised or lowered if the same reasons exist for raising or lowering as with the subject properties and the Board shall document such changes. The Board shall immediately notify the owner or his or her agent by first class mail of the increase, unless the owner or his or her agent is present when the order of increase is given. In addition, the Board shall not materially change the records of the county assessor's office, but may only direct that the assessed value of property be raised or lowered in keeping with its documented findings.

- 3. Go Into special session to plan or complete their work of equalization of assessments or to review or extend their work. This may be done on petition of the county judge or the quorum court, or on the Boards own motion, at any time after adjournment of the regular monthly meeting, or after the equalization meeting from August 1 through October 1 and before the third Monday in November of each year. In addition, the Board, based upon current economic conditions, may go into special session to analyze the current real estate market in the county to determine if there has been a decrease in property value since the last reappraisal and make appropriate adjustments. The Board shall follow the procedure set out in the statute and the rules and regulations of the ACD throughout the course of their work.
- 4. They may classify personal property and classify and zone real property to determine the average value of such property or units of such property, and use the average value as a guide in equalization of assessments.

5. The Board may employ qualified appraisers, abstractors, or other persons needed to appraise properties which the Board may need to discharge its duties.

**INDIRECT JURISDICTION:**

The Assessor has the general responsibility and authority to list and value all taxable property in the county. However, by implication, the board has the authority and the duty to list and value taxable property that they are aware of, which has not otherwise been listed and valued. ACA 26-2-106 provides that any Assessor or member of the board of equalization who knowingly and willfully fails or refuses to list and value property that he/she knows is taxable and not listed and valued shall be fined \$500.00 for each offense. It is true that the Assessor has a duty of discovery; however, there is no suggestion that the board has any such authority or duty.

**CONSTITUTIONAL ISSUES:**

No authority is given to the Board or the County Judge to review the decision of the Assessor concerning Constitutional issues such as exemptions and Amendment 79 benefits.

**IMMUNITY:**

Board members have governmental immunity, but if they act outside the scope of their jurisdiction they may lose such immunity.

**NOTE: THESE GUIDELINES ARE ADVISORY ONLY**

**UNLESS OTHERWISE AUTHORIZED BY LAW, ONLY THE ATTORNEY GENERAL OF THE STATE OF ARKANSAS HAS THE AUTHORITY TO GIVE LEGAL OPINIONS FOR AN AGENCY OF THE STATE. THE ASSESSMENT COORDINATION DEPARTMENT HAS NOT BEEN SO AUTHORIZED.**