

REFERENCE TITLE: homeowner's rebate; owner's primary residence

State of Arizona  
Senate  
Fiftieth Legislature  
First Regular Session  
2011

# **SB 1311**

Introduced by  
Senator McComish

AN ACT

AMENDING SECTIONS 42-12003, 42-12004, 42-12052, 42-12053, 42-12054, 42-15102, 42-15103 AND 42-16251, ARIZONA REVISED STATUTES; RELATING TO PROPERTY TAX CLASSIFICATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-12003, Arizona Revised Statutes, is amended to  
3 read:

4 42-12003. Class three property; definition

5 A. For THE purposes of taxation, class three is established consisting  
6 of real and personal property and improvements to the property that are used  
7 ~~for residential purposes~~ AS THE OWNER'S PRIMARY RESIDENCE, that are not  
8 otherwise included in class one, two, four, six, seven or eight and that are  
9 valued at full cash value. ONLY AN OWNER'S PRIMARY RESIDENCE MAY BE  
10 CLASSIFIED AS CLASS THREE, EXCEPT THAT the homesite that is included in class  
11 three may include:

12 1. Up to ten acres on a single parcel of real property on which the  
13 residential improvement is located.

14 2. More than ten, but not more than forty, acres on a single parcel of  
15 real property on which the residential improvement is located if it is zoned  
16 exclusively for residential purposes or contains legal restrictions or  
17 physical conditions that prevent the division of the parcel.

18 B. For THE purposes of this section, "physical conditions" means  
19 topography, mountains, washes, rivers, roads or any other configuration that  
20 limits the residential usable land area.

21 Sec. 2. Section 42-12004, Arizona Revised Statutes, is amended to  
22 read:

23 42-12004. Class four property

24 A. For THE purposes of taxation, class four is established consisting  
25 of:

26 1. REAL AND PERSONAL PROPERTY AND IMPROVEMENTS TO THE PROPERTY THAT  
27 ARE USED FOR OWNER-OCCUPIED RESIDENTIAL PURPOSES, THAT ARE NOT OTHERWISE  
28 INCLUDED IN CLASS THREE AND THAT ARE VALUED AT FULL CASH VALUE. THE HOMESITE  
29 THAT IS INCLUDED IN CLASS FOUR MAY INCLUDE:

30 (a) UP TO TEN ACRES ON A SINGLE PARCEL OF REAL PROPERTY ON WHICH THE  
31 RESIDENTIAL IMPROVEMENT IS LOCATED.

32 (b) MORE THAN TEN, BUT NOT MORE THAN FORTY, ACRES ON A SINGLE PARCEL  
33 OF REAL PROPERTY ON WHICH THE RESIDENTIAL IMPROVEMENT IS LOCATED IF IT IS  
34 ZONED EXCLUSIVELY FOR RESIDENTIAL PURPOSES OR CONTAINS LEGAL RESTRICTIONS OR  
35 PHYSICAL CONDITIONS THAT PREVENT THE DIVISION OF THE PARCEL. FOR THE  
36 PURPOSES OF THIS SUBDIVISION, "PHYSICAL CONDITIONS" MEANS TOPOGRAPHY,  
37 MOUNTAINS, WASHES, RIVERS, ROADS OR ANY OTHER CONFIGURATION THAT LIMITS THE  
38 RESIDENTIAL USABLE LAND AREA.

39 ~~1-~~ 2. Real and personal property and improvements to the property  
40 that are used solely as leased or rented property for residential purposes,  
41 that are not included in class one, two, three, six, seven or eight and that  
42 are valued at full cash value.

43 ~~2-~~ 3. Child care facilities that are licensed under title 36, chapter  
44 7.1 and that are valued at full cash value.

1           ~~3-~~ 4. Real and personal property and improvements to property that  
2 are used to operate nonprofit residential housing facilities that are  
3 structured to house or care for persons who are handicapped or sixty-two  
4 years of age or older and that are valued at full cash value.

5           ~~4-~~ 5. Real and personal property and improvements that are used to  
6 operate licensed residential care institutions or licensed nursing care  
7 institutions that provide medical services, nursing services or health  
8 related services and that are structured to house or care for persons who are  
9 handicapped or sixty-two years of age or older and that are valued at full  
10 cash value.

11           ~~5-~~ 6. Real and personal property consisting of no more than six rooms  
12 of owner-occupied residential property that are leased or rented to transient  
13 lodgers at no more than a fifty per cent average annual occupancy rate,  
14 together with furnishing no more than a breakfast meal, by the owner of the  
15 property and that is valued at full cash value.

16           ~~6-~~ 7. Real and personal property consisting of residential dwellings  
17 that are maintained for occupancy by agricultural employees as a condition of  
18 employment or as a convenience to the employer, that is not included in class  
19 three and that is valued at full cash value. The land associated with these  
20 dwellings shall be valued as agricultural land pursuant to chapter 13,  
21 article 3 of this title.

22           ~~7-~~ 8. Real property and improvements to property constituting common  
23 areas that are valued pursuant to chapter 13, article 9 of this title.

24           ~~8-~~ 9. Real and personal property that is defined as timeshare  
25 property by section 32-2197 and valued pursuant to chapter 13, article 10 of  
26 this title, except for any property used for commercial, industrial or  
27 transient occupancy purposes and included in class one to the extent of that  
28 use.

29           B. Subsection A, paragraphs ~~3-and~~ 4 AND 5 of this section shall not be  
30 construed to limit eligibility for exemption from taxation under chapter 11,  
31 article 3 of this title.

32           Sec. 3. Section 42-12052, Arizona Revised Statutes, is amended to  
33 read:

34           42-12052. Review and verification of class three property;  
35   owner's affidavit and notice; civil penalty;  
36   appeals

37           A. Each county assessor shall review assessment information, on a  
38 continuing basis, to ensure proper classification of residential  
39 dwellings. The assessor may enter into intergovernmental agreements with the  
40 department for an exchange of information to ensure a coordinated and  
41 comprehensive review and identification of property that may be rented while  
42 classified as class three pursuant to section 42-12003.

43           B. EACH YEAR THE COUNTY ASSESSOR SHALL INCLUDE WITH THE NOTICE OF FULL  
44 CASH VALUE SENT TO OWNERS OF CLASS THREE PROPERTY PURSUANT TO SECTION  
45 42-15101 AN AFFIDAVIT, IN A FORM PRESCRIBED BY THE DEPARTMENT, ON WHICH THE

1 OWNER MUST DECLARE, UNDER PENALTY OF PERJURY, WHETHER THE PROPERTY IS THE  
2 OWNER'S PRIMARY RESIDENCE IN THE CURRENT VALUATION YEAR. THE OWNER MUST  
3 RETURN THE COMPLETED AFFIDAVIT FORM TO THE COUNTY ASSESSOR BY APRIL 15, OR  
4 SIX WEEKS AFTER THE FINAL DATE FOR MAILING NOTICES OF FULL CASH VALUE IF  
5 EXTENDED BY THE DIRECTOR. IF THE OWNER INDICATES ON THE AFFIDAVIT THAT THE  
6 PROPERTY IS NOT THE OWNER'S PRIMARY RESIDENCE, IF THE OWNER INDICATES ON MORE  
7 THAN ONE AFFIDAVIT THAT MORE THAN ONE PARCEL IS THE OWNER'S PRIMARY RESIDENCE  
8 OR IF THE OWNER FAILS TO RETURN THE AFFIDAVIT TIMELY TO THE ASSESSOR, THE  
9 ASSESSOR SHALL RECLASSIFY THE PROPERTY AS CLASS FOUR PURSUANT TO SECTION  
10 42-12004 OR ANOTHER CLASSIFICATION ACCORDING TO THE PROPERTY'S USE. IF FOR  
11 ANY REASON AN OWNER BELIEVES THAT RECLASSIFICATION PURSUANT TO THIS  
12 SUBSECTION IS ERRONEOUS, THE OWNER MAY FILE A NOTICE OF CLAIM WITH THE  
13 ASSESSOR PURSUANT TO SECTION 42-16254 TO RESOLVE THE CORRECT CLASSIFICATION.

14 ~~B.~~ C. If the assessor has reason to believe that a parcel of property  
15 that is classified as class three pursuant to section 42-12003 IS NOT USED AS  
16 THE OWNER'S PRIMARY RESIDENCE OR is being rented, the assessor shall notify  
17 the owner, in a form prescribed by the department as provided by subsection  
18 ~~H.~~ D of this section, and request that the owner respond as to whether the  
19 property is occupied ~~by the owner~~ AS THE OWNER'S PRIMARY RESIDENCE, AS A  
20 SECONDARY RESIDENCE or is used as a rental property. If the owner fails to  
21 respond to the assessor within thirty days after the notice is mailed, the  
22 assessor shall mail the owner a final notice WITHIN THIRTY DAYS requesting  
23 that the owner provide information as to whether or not the property is  
24 ~~occupied by the owner~~ THE OWNER'S PRIMARY RESIDENCE, A SECONDARY RESIDENCE or  
25 used as a rental property.

26 ~~C.~~ If the owner fails to respond to the assessor within fifteen days  
27 after the final notice is mailed, the assessor shall:

28 1. Reclassify the property as class four. IN ADDITION TO OTHER APPEAL  
29 PROCEDURES PROVIDED BY LAW, THE OWNER OF THE PROPERTY THAT IS RECLASSIFIED AS  
30 CLASS FOUR UNDER THIS PARAGRAPH MAY APPEAL THE RECLASSIFICATION TO THE COUNTY  
31 BOARD OF SUPERVISORS WITHIN THIRTY DAYS AFTER THE NOTICE OF CLASSIFICATION IS  
32 MAILED. IF THE OWNER PROVES TO THE BOARD'S SATISFACTION THAT THE PROPERTY IS  
33 OCCUPIED AS THE OWNER'S PRIMARY RESIDENCE, THE BOARD SHALL ORDER THE PROPERTY  
34 TO BE RECLASSIFIED AS CLASS THREE PROPERTY PURSUANT TO SECTION 42-12003.

35 2. Notify the county treasurer who shall assess a civil penalty  
36 against the property equal to twice the amount of ~~the property taxes that~~  
37 ~~would have been levied against the property if the property had been~~  
38 ~~classified as class four pursuant to section 42-12004~~ ADDITIONAL STATE AID  
39 PAID PURSUANT TO SECTION 15-972 WITH RESPECT TO THE PROPERTY in the preceding  
40 tax year.

41 ~~D.~~ The owner of the property shall pay a penalty under ~~subsection C,~~  
42 THIS paragraph ~~2 of this section~~ to the county treasurer within thirty days  
43 after the notice of the penalty is mailed.

44 ~~E.~~ The owner may appeal the penalty to the county board of supervisors  
45 within the time required for payment. If the owner proves to the board's

1 satisfaction that the property is occupied by the owner, the board shall  
2 waive the penalty, and the property shall be listed as class three pursuant  
3 to section 42-12003. Until paid or waived, the penalty constitutes a lien  
4 against the property.

5 ~~F. In addition to other appeal procedures provided by law, the owner~~  
6 ~~of property that is reclassified as class four under subsection C, paragraph~~  
7 ~~1 of this section may appeal the reclassification to the county board of~~  
8 ~~supervisors within thirty days after the notice of classification is mailed.~~  
9 ~~If the owner proves to the board's satisfaction that the owner occupies the~~  
10 ~~property, the board shall order the property to be reclassified as class~~  
11 ~~three property pursuant to section 42-12003.~~

12 ~~G.~~ The county treasurer shall deposit all revenue received from  
13 penalties assessed under this section in the county general fund.

14 ~~H.~~ D. The department shall:

15 1. Prescribe all forms used to notify property owners under this  
16 section. The forms shall contain information as to criteria for the  
17 reclassification of property and the civil penalties that may result if the  
18 owner fails to respond to the notice.

19 2. Monitor and review the procedures and practices used by assessors  
20 and treasurers to accomplish the ~~review and~~ verification of class three  
21 property and the assessment and collection of penalties prescribed by this  
22 section and propose suggested improvements to establish uniform processes and  
23 performance among the counties.

24 E. THE DEPARTMENT MAY CONDUCT AUDITS OF THE RECORDS OF COUNTY  
25 ASSESSORS AND COUNTY TREASURERS TO DETERMINE COMPLIANCE WITH THE REQUIREMENTS  
26 OF THIS SECTION AND THE ACCURACY OF THE CLASSIFICATION OF OWNER-OCCUPIED  
27 RESIDENTIAL PROPERTY AND RENTAL PROPERTY.

28 Sec. 4. Section 42-12053, Arizona Revised Statutes, is amended to  
29 read:

30 42-12053. Criteria for distinguishing residential property from  
31 rental property and the owner's primary residence

32 A. For the purpose of classifying residential property under sections  
33 42-12003, 42-12004 and 42-12052, a parcel is not considered rental property  
34 and shall be classified as class three property, if either:

35 1. The property was not rented by the owner for more than three months  
36 in the preceding twelve consecutive months and the owner does not intend to  
37 rent it for more than three months during the next twelve consecutive months.

38 2. The owner rents the property to a member of the owner's family, who  
39 must be:

40 (a) The owner's natural or adopted child or a descendant of the  
41 owner's child.

42 (b) The owner's parent or an ancestor of the owner's parent.

43 (c) The owner's stepchild or stepparent.

44 (d) The owner's child-in-law or parent-in-law.

45 (e) The owner's natural or adopted sibling.

1 B. FOR THE PURPOSE OF CLASSIFYING OWNER-OCCUPIED RESIDENTIAL PROPERTY  
2 UNDER SECTIONS 42-12003, 42-12004 AND 42-12052, THE DEPARTMENT SHALL ADOPT  
3 STANDARD CRITERIA FOR USE IN DETERMINING WHETHER THE PROPERTY IS CONSIDERED  
4 TO BE THE OWNER'S PRIMARY RESIDENCE, INCLUDING:

- 5 1. THE PERIOD OF OCCUPANCY EACH YEAR.
- 6 2. THE OWNER'S REGISTERED VOTING PRECINCT.
- 7 3. THE OWNER'S DRIVER LICENSE ADDRESS.
- 8 4. THE REGISTRATION ADDRESS OF THE OWNER'S MOTOR VEHICLES.
- 9 5. OTHER APPROPRIATE INDICATORS OF PRIMARY RESIDENCY.

10 Sec. 5. Section 42-12054, Arizona Revised Statutes, is amended to  
11 read:

12 ~~42-12054.~~ Change in classification of owner-occupied residence

13 A. If a person purchases or converts property that is listed as class  
14 one, paragraph 12, ~~OR class two or class four~~ pursuant to article 1 of this  
15 chapter and occupies the property as a residence, the person may have the  
16 classification reviewed for change to class three from the date of conversion  
17 AND OCCUPANCY AS A PRIMARY RESIDENCE and may appeal from the decision  
18 resulting from the review in the same manner as provided by law for review of  
19 a valuation for ad valorem property taxes and appeal from that review.

20 B. IF A PERSON PURCHASES OR CONVERTS PROPERTY THAT IS LISTED AS CLASS  
21 FOUR PURSUANT TO SECTION 42-12004 AND OCCUPIES THE PROPERTY AS THE PERSON'S  
22 PRIMARY RESIDENCE, THE PERSON MAY HAVE THE CLASSIFICATION REVIEWED FOR CHANGE  
23 TO CLASS THREE FROM THE DATE OF OCCUPANCY AND MAY APPEAL THE DECISION  
24 RESULTING FROM THE REVIEW IN THE SAME MANNER AS PROVIDED BY LAW FOR REVIEW OF  
25 A VALUATION FOR AD VALOREM PROPERTY TAXES AND APPEAL FROM THAT REVIEW.

26 ~~B.~~ C. If a person makes such a conversion OR OCCUPANCY or appeals the  
27 classification after the county assessor has closed the rolls, the person may  
28 petition the county board of supervisors to change the classification and  
29 reduce the assessed valuation from the date of conversion OR OCCUPANCY.

30 ~~C.~~ D. The board of supervisors shall entertain the petition in the  
31 same manner as a board of equalization hears a request for reduction in  
32 valuation.

33 ~~D.~~ E. The petitioner may appeal the board of supervisors' decision in  
34 the same manner as provided in section 42-16111, except that the petitioner  
35 shall file the notice of appeal within fifteen days after the board's  
36 finding.

37 ~~E.~~ F. If the board of supervisors finds that the property is in fact  
38 being used for ~~residential purposes~~ THE OWNER'S PRIMARY RESIDENCE and should  
39 be listed as class three property, it shall change the classification on the  
40 roll and fix the assessed valuation from the date of ~~conversion~~  
41 OCCUPANCY. The amount of taxes that is assessed against the property shall  
42 be computed by applying the current tax rate to the original assessed  
43 valuation prorated for the portion of the tax year before the property was  
44 ~~converted~~ OCCUPIED plus the current tax rate applied to the reassessed value  
45 of the property prorated for the balance of the year.

1 ~~F.~~ G. The board of supervisors shall notify the department, assessor  
2 and county treasurer of the change in classification, the change in assessed  
3 valuation and the amount of tax assessed. The department and the assessor  
4 may appeal any such decision in the same manner as provided in section  
5 42-16111. The assessor and treasurer shall note the change on their records,  
6 and the treasurer may issue a future tax credit, endorsed by the board, to  
7 the person whose property is liable for the tax. The tax credit shall be  
8 used on the next or several succeeding property tax assessments that the  
9 person may owe thereafter.

10 Sec. 6. Section 42-15102, Arizona Revised Statutes, is amended to  
11 read:

12 42-15102. Notice information entered by assessor

13 A. The assessor shall include in the assessment notice:

- 14 1. The full cash value found by the assessor for the property for the  
15 preceding valuation year.
- 16 2. The classification of the property pursuant to chapter 12 of this  
17 title.
- 18 3. The mailing date of the notice.
- 19 4. The last date on which the owner may file an appeal from the  
20 valuation or classification assigned to the property.

21 B. Except for property that is listed as class three property under  
22 section 42-12003, OWNER-OCCUPIED RESIDENTIAL PROPERTY THAT IS LISTED AS CLASS  
23 FOUR PROPERTY UNDER SECTION 42-12004, SUBSECTION A, PARAGRAPH 1 and single  
24 family rented residential property that is listed as class four property  
25 under section 42-12004, subsection A, paragraph ~~1~~ 2, the notice shall  
26 separately list the full cash value of the land and the full cash value of  
27 the improvement or improvements associated with the land.

28 Sec. 7. Section 42-15103, Arizona Revised Statutes, is amended to  
29 read:

30 42-15103. Contents of notice form

31 The notice form shall:

32 1. Prominently display a statement informing property owners that if a  
33 parcel of property is:

34 (a) LISTED ON THE NOTICE AS CLASS THREE PURSUANT TO SECTION 42-12003,  
35 THE OWNER MUST COMPLETE AND RETURN THE ENCLOSED AFFIDAVIT TO THE COUNTY  
36 ASSESSOR DECLARING WHETHER THE PROPERTY IS THE OWNER'S RESIDENCE FOR THE  
37 CURRENT YEAR.

38 (b) Used as a rental unit and the property is listed on the notice as  
39 class three pursuant to section 42-12003, the owner must notify the county  
40 assessor of the rental use of the property or be subject to a civil penalty  
41 prescribed by section 42-12052.

42 2. INCLUDE WITH EACH NOTICE FOR PROPERTY CLASSIFIED AS CLASS THREE AN  
43 AFFIDAVIT FORM DESCRIBED BY SECTION 42-12052, SUBSECTION B, WITH SIMPLIFIED  
44 INSTRUCTIONS, FOR THE OWNER TO DECLARE WHETHER THE PROPERTY IS THE OWNER'S  
45 PRIMARY RESIDENCE.

1           ~~2-~~ 3. Include a form with instructions on the procedure and deadlines  
2 for appealing the assessed valuation shown on the notice. The appeal form  
3 for property that is listed as class three pursuant to section 42-12003 shall  
4 contain simplified instructions and shall be separate from the appeal form  
5 for other classes of property.

6           ~~3-~~ 4. Provide in a separate addendum a statement informing ~~property~~  
7 owners of ~~all of the following~~ PROPERTY THAT IS USED FOR RESIDENTIAL RENTAL  
8 PURPOSES THAT:

9           (a) ~~If a parcel of property is used for residential rental purposes,~~  
10 The parcel must be listed on the notice as class four, and the owner must  
11 register the residential rental property with the county assessor pursuant to  
12 section 33-1902 or the owner may be subject to a penalty.

13           (b) If the owner is required to register the rental property with the  
14 county assessor and fails to do so after receipt of this notice, the city or  
15 town may impose a civil penalty payable to the city or town in the amount of  
16 one hundred fifty dollars per day for each day of violation, and the city or  
17 town may impose enhanced inspection and enforcement measures on the property.

18           (c) If the city or town in which the property is located requires the  
19 lessor to pay transaction privilege tax on residential rent, a notice of  
20 applicable requirements imposed by the city or town and that failure to pay  
21 the applicable ~~sales~~ tax could result in a penalty or fine by the city or  
22 town.

23           (d) ~~A notice that~~ Residential rental properties are required to comply  
24 with the landlord tenant law pursuant to title 33, chapters 10 and 11.

25           Sec. 8. Section 42-16251, Arizona Revised Statutes, is amended to  
26 read:

27           42-16251. Definitions

28           In this article, unless the context otherwise requires:

29           1. "Board" means the county board of equalization or the state board  
30 of equalization, as appropriate.

31           2. "Court" means either the superior court or tax court.

32           3. "Error" means any mistake in assessing or collecting property taxes  
33 resulting from:

34           (a) An imposition of an incorrect, erroneous or illegal tax rate that  
35 resulted in assessing or collecting excessive taxes.

36           (b) An incorrect designation or description of the use **OR OCCUPANCY** of  
37 property or its classification pursuant to chapter 12, article 1 of this  
38 title.

39           (c) Applying the incorrect assessment ratio percentages prescribed by  
40 chapter 15, article 1 of this title.

41           (d) Misreporting or failing to report property if a statutory duty  
42 exists to report the property.

43           (e) Subject to the requirements of section 42-16255, subsection B, a  
44 valuation or legal classification that is based on an error that is  
45 exclusively factual in nature or due to a specific legal restriction that

1 affects the subject property and that is objectively verifiable without the  
2 exercise of discretion, opinion or judgment and that is demonstrated by clear  
3 and convincing evidence, such as:

4 (i) A mistake in the description of the size, use or ownership of  
5 land, improvements or personal property.

6 (ii) Clerical or typographical errors in reporting or entering data  
7 that was used directly to establish valuation.

8 (iii) A failure to timely capture on the tax roll a change in value or  
9 legal classification caused by new construction, the destruction or  
10 demolition of improvements, the splitting of one parcel of real property into  
11 two or more new parcels or the consolidating of two or more parcels of real  
12 property into one new parcel existing on the valuation date.

13 (iv) The existence or nonexistence of the property on the valuation  
14 date.

15 (v) Any other objectively verifiable error that does not require the  
16 exercise of discretion, opinion or judgment.

17 Error does not include a correction that results from a change in the law as  
18 a result of a final nonappealable ruling by a court of competent jurisdiction  
19 in a case that does not involve the property for which a correction is  
20 claimed.

21 4. "Taxpayer" means the owner of real or personal property that is  
22 liable for tax.