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ARIZONA TAX RESEARCH ASSOCIATION

NEWSLETTER VOLUME 69 NUMBER 5 AUGUST 2009

# Prop 101 Responsible for Reductions in Primary Property Tax Rates

In 2006, Arizona voters approved Proposition (Prop) 101 which required a recalculation of the constitutional levy limits of counties, cities, and community colleges that were initially approved by the voters in 1980. The levy limits allow the primary levy, which funds the maintenance and operation budgets of these entities, to grow by 2% over the previous year, plus the growth associated with new construction. Despite the fact that the counties opposed Prop 101, they now seem to have come full circle and have actually embraced the concept, but unfortunately, some have failed to give credit to Prop 101.

During the 2006 legislative session, lawmakers referred HCR2056 (Prop 101) to the ballot in response to the dramatic increases in property values, as well as the threat of various Prop 13-style initiatives at the ballot.

Over the 25 years since the levy limits were initially approved by voters, $186 million in excess levying capacity had accrued in the system. As a result of the excess

See **Prop 101,** page 2

# Community College Primary Levies Increase $26.1 million (4.6%)

Property owners in Arizona community college districts will collectively pay an additional $26.1 million in primary property taxes this year to Arizona's 11 community college districts (CCDs). This represents a 4.6% increase over the districts' taxes in 2008. All but two districts levied the maximum amount allowable under the Prop-101-adjusted constitutional levy limits.

Almost half of the statewide increase will be paid by the property taxpayers in the Maricopa CCD. The property tax levy for the Maricopa CCD increased by $12.4 million (3.6%). Had the district's governing board approved the proposed property tax increase beyond the truth-in-taxation limit, the levy would have increased by an additional $7.65 million, and the district would have levied the maximum amount allowed under the district's constitutional levy limit. With board members Colleen

See **Community College Levies,** page 4

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ATRA's Annual

## GOLF TOURNAMENT

at McCormick Ranch Golf Resort, Friday, November 6, 2009, 12:00 pm

&

## WATCHDOG LUNCHEON/ANNUAL MEETING

at Fiesta Inn Conference Center, Friday, November 20, 2009, 12:00 pm

More Information: www.arizonatax.org or (602) 253-9121

# Failure of GPLET Reform Creates Uncertainty

Enacted in 1996 as a successor to the possessory interest tax, the Government Property Lease Excise Tax (GPLET) law has become an extraordinarily controversial area in Arizona public finance. However, following several years of study, and two years of intense negotiation and compromise, the efforts on the part of several groups to reform Arizona's Government Property Lease Excise Tax (GPLET) fell apart late in the 2009 legislative session. For some, including ATRA, a legislative compromise provided the flexibility to craft a resolution that both protected existing investments as well as prospectively reforming the GPLET law. The failure of the Legislature to address this issue now raises the prospect that the courts will be left to address some of the legal complications surrounding GPLET.

Lacking a mechanism to tax possessory interests, some Arizona cities began to aggressively use their tax exempt status for "economic development" purposes in the early 1980's. The cities shielded various business properties from property taxation by taking title to the property and leasing it back to the company at a nominal cost. Concerned about this growing trend, in 1985, the Legislature passed a possessory interest tax. The new tax required a property tax on any privately held improvement on city-owned property. When the Legislature created the possessory interest tax in 1985, they also provided exemptions to that tax for properties that had already entered lease-back deals with cities. The possessory interest tax proved to be an

See **GPLET,** page 6

# PROP 101, *Continued from page 1*

## Change in County Primary Net Assessed Values

| County | 2000 PNAV | 2005 PNAV | 2009 PNAV | Difference (00-05) | Difference (05-09) |
|---|---|---|---|---|---|
| Apache | $324,460,252 | $306,041,335 | $480,466,523 | -5.7% | 57.0% |
| Cochise | $492,396,096 | $664,734,679 | $986,677,834 | 35.0% | 48.4% |
| Coconino | $971,779,413 | $1,263,779,835 | $1,840,775,046 | 30.0% | 45.7% |
| Gila | $289,616,426 | $387,715,727 | $590,487,639 | 33.9% | 52.3% |
| Graham | $87,843,540 | $106,584,939 | $221,874,583 | 21.3% | 108.2% |
| Greenlee | $168,404,267 | $190,973,743 | $485,624,596 | 13.4% | 154.3% |
| La Paz | $110,490,204 | $142,746,979 | $209,757,376 | 29.2% | 46.9% |
| Maricopa | $19,362,298,255 | $31,010,284,705 | $49,675,117,156 | 60.2% | 60.2% |
| Mohave | $935,484,196 | $1,371,598,499 | $2,533,640,810 | 46.6% | 84.7% |
| Navajo | $534,952,560 | $683,934,130 | $998,764,550 | 27.8% | 46.0% |
| Pima | $4,111,664,071 | $5,849,548,818 | $8,985,711,830 | 42.3% | 53.6% |
| Pinal | $639,663,229 | $1,212,971,458 | $2,880,540,107 | 89.6% | 137.5% |
| Santa Cruz | $197,130,189 | $261,090,689 | $389,942,565 | 32.4% | 49.4% |
| Yavapai | $1,181,301,079 | $1,877,847,425 | $3,274,078,347 | 59.0% | 74.4% |
| Yuma | $536,651,463 | $710,255,636 | $1,223,205,142 | 32.3% | 72.2% |
| **Total** | **$29,944,135,240** | **$46,040,108,597** | **$74,776,664,104** | **53.8%** | **62.4%** |

## Change in County Primary Levies

| County | TY 2000 | TY 2005 | TY 2009 | Difference (00-05) | Difference (05-09) |
|---|---|---|---|---|---|
| Apache | $1,123,930 | $ 1,407,178 | $2,145,763 | 25.2% | 52.5% |
| Cochise | 14,463,151 | $ 19,525,252 | $26,072,962 | 35.0% | 33.5% |
| Coconino | 3,336,119 | $ 6,006,746 | $7,313,399 | 80.1% | 21.8% |
| Gila | 11,497,772 | $ 17,098,264 | $22,143,286 | 48.7% | 29.5% |
| Graham | 1,545,958 | $ 1,909,149 | $3,450,150 | 23.5% | 80.7% |
| Greenlee | 666,042 | $ 1,252,020 | $1,450,175 | 88.0% | 15.8% |
| La Paz | 2,486,029 | $ 3,211,807 | $3,958,961 | 29.2% | 23.3% |
| Maricopa | 225,396,514 | $ 371,224,118 | $492,230,736 | 64.7% | 32.6% |
| Mohave | 16,370,973 | $ 24,002,974 | $32,010,336 | 46.6% | 33.4% |
| Navajo | 3,413,032 | $ 4,334,090 | $5,587,089 | 27.0% | 28.9% |
| Pima | 167,426,961 | $ 238,193,628 | $297,723,590 | 42.3% | 25.0% |
| Pinal | 28,485,483 | $ 54,358,189 | $93,087,534 | 90.8% | 71.2% |
| Santa Cruz | 6,404,168 | $ 8,743,144 | $11,291,178 | 36.5% | 29.1% |
| Yavapai | 19,090,000 | $ 31,939,000 | $42,045,714 | 67.3% | 31.6% |
| Yuma | 12,439,581 | $ 15,795,375 | $21,464,803 | 27.0% | 35.9% |
| **Total** | **$514,145,713** | **$ 799,000,934** | **$1,061,975,676** | **55.4%** | **32.9%** |

capacity, counties, in particular, were keeping their primary tax rates the same while ignoring the growth in property values, amounting to equally dramatic increases in property taxes.

For instance, prior to Prop 101, the net change in county primary rates increased $1.0850 between tax years 2000 and 2005 (see table on page 3) and only three counties dropped their tax rates over that five-year period (aggregate drop of -$0.1096). During that same time period, total county primary levies grew 55.4% ($285 million), just slightly greater than the 53.8% growth in primary net assessed values. In order to render the levy limits effective again, the excess capacity had to be eliminated from the system to prevent local governments from continuing to arbitrarily increase primary property taxes.

See **Prop 101,** page 3



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# PROP 101, *Continued from page 2*

## Change in County Levy Limits Since Prop 101

| County | TY 2006 levy limit | TY 2007 levy limit | chg. | TY 2008 levy limit | chg. | TY 2009 levy limit | chg. |
|---|---|---|---|---|---|---|---|
| Apache | $1,482,325 | $1,603,545 | 8.2% | $2,056,560 | 28.3% | $2,145,763 | 4.3% |
| Cochise | $21,849,493 | $23,286,932 | 6.6% | $24,660,511 | 5.9% | $26,072,961 | 5.7% |
| Coconino | $6,322,727 | $6,636,993 | 5.0% | $7,021,772 | 5.8% | $7,313,399 | 4.2% |
| Gila | $17,928,132 | $19,024,296 | 6.1% | $20,144,679 | 5.9% | $22,181,076 | 10.1% |
| Graham | $2,039,361 | $2,342,399 | 14.9% | $2,852,139 | 21.8% | $3,450,150 | 21.0% |
| Greenlee | $1,261,412 | $1,340,524 | 6.3% | $1,563,790 | 16.7% | $1,731,252 | 10.7% |
| La Paz | $3,409,669 | $3,591,726 | 5.3% | $3,751,987 | 4.5% | $3,958,961 | 5.5% |
| Maricopa | $398,725,246 | $430,023,736 | 7.8% | $463,525,178 | 7.8% | $492,230,736 | 6.2% |
| Mohave | $26,916,878 | $28,923,756 | 7.5% | $30,434,276 | 5.2% | $32,017,619 | 5.2% |
| Navajo | $4,577,298 | $4,907,191 | 7.2% | $5,246,080 | 6.9% | $5,587,089 | 6.5% |
| Pima | $256,916,184 | $279,169,215 | 8.7% | $300,422,046 | 7.6% | $313,205,971 | 4.3% |
| Pinal | $63,354,388 | $76,701,379 | 21.1% | $84,977,441 | 10.8% | $93,087,534 | 9.5% |
| Santa Cruz | $9,259,136 | $9,947,132 | 7.4% | $10,630,673 | 6.9% | $11,291,178 | 6.2% |
| Yavapai | $35,412,206 | $37,775,306 | 6.7% | $40,209,889 | 6.4% | $42,045,714 | 4.6% |
| Yuma | $17,588,577 | $18,936,858 | 7.7% | $20,328,338 | 7.3% | $21,464,803 | 5.6% |
| **Total** | **$867,043,032** | **$944,210,988** | **8.9%** | **$1,017,825,359** | **7.8%** | **$1,077,784,206** | **5.9%** |

### Change in County Primary Property Tax Rates

| County | 2000 | 2005 | Rate Chg. (00-05) Pre-Prop 101 | Rate Chg. (00-05) As a % | 2005 | 2006 | 2007 | 2008 | 2009 | Rate Chg. (05-09) Post-Prop 101 | Rate Chg. (05-09) As a % |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Apache | 0.3464 | 0.4598 | 0.1134 | 32.7% | 0.4598 | 0.4683 | 0.4764 | 0.4631 | 0.4466 | -0.0132 | -2.9% |
| Cochise | 2.9373 | 2.9373 | 0.0000 | 0.0% | 2.9373 | 2.9160 | 2.8653 | 2.6759 | 2.6425 | -0.2948 | -10.0% |
| Coconino | 0.3433 | 0.4753 | 0.1320 | 38.5% | 0.4753 | 0.4622 | 0.4383 | 0.4338 | 0.3973 | -0.0780 | -16.4% |
| Gila | 3.9700 | 4.4100 | 0.4400 | 11.1% | 4.4100 | 4.3488 | 4.1100 | 3.9200 | 3.7500 | -0.6600 | -15.0% |
| Graham | 1.7599 | 1.7912 | 0.0313 | 1.8% | 1.7912 | 1.7601 | 1.7336 | 1.6293 | 1.5550 | -0.2362 | -13.2% |
| Greenlee | 0.3955 | 0.6556 | 0.2601 | 65.8% | 0.6556 | 0.5564 | 0.4635 | 0.3514 | 0.2986 | -0.3570 | -54.5% |
| La Paz | 2.2500 | 2.2500 | 0.0000 | 0.0% | 2.2500 | 2.2068 | 2.1059 | 1.9608 | 1.8874 | -0.3626 | -16.1% |
| Maricopa | 1.1641 | 1.1971 | 0.0330 | 2.8% | 1.1971 | 1.1794 | 1.1046 | 1.0327 | 0.9909 | -0.2062 | -17.2% |
| Mohave | 1.7500 | 1.7500 | 0.0000 | 0.0% | 1.7500 | 1.6777 | 1.5298 | 1.3309 | 1.2637 | -0.4863 | -27.8% |
| Navajo | 0.6381 | 0.6337 | -0.0044 | -0.7% | 0.6337 | 0.6229 | 0.6041 | 0.5775 | 0.5594 | -0.0743 | -11.7% |
| Pima | 4.0720 | 4.0720 | 0.0000 | 0.0% | 4.0720 | 3.8420 | 3.6020 | 3.3913 | 3.3133 | -0.7587 | -18.6% |
| Pinal | 4.5974 | 4.5863 | -0.0111 | -0.2% | 4.5863 | 4.4366 | 4.1442 | 3.5614 | 3.3575 | -1.2288 | -26.8% |
| Santa Cruz | 3.2487 | 3.3487 | 0.1000 | 3.1% | 3.3487 | 3.3050 | 3.1809 | 3.0142 | 2.8956 | -0.4531 | -13.5% |
| Yavapai | 1.6160 | 1.7008 | 0.0848 | 5.2% | 1.7008 | 1.6552 | 1.5292 | 1.3683 | 1.2842 | -0.4166 | -24.5% |
| Yuma | 2.3180 | 2.2239 | -0.0941 | -4.1% | 2.2239 | 2.1429 | 2.0192 | 1.8825 | 1.7548 | -0.4691 | -21.1% |
| **Totals** | **31.4067** | **32.4917** | **1.0850** | **3.5%** | **32.4917** | **31.5803** | **29.9070** | **27.5931** | **26.3968** | **-6.0949** | **-18.8%** |

With the passage of Prop 101, the counties risked losing $131 million of the $186 million in excess capacity. At the time, the counties complained of the unfairness of Prop 101, claiming that the excess capacity was simply the result of the counties budgeting "conservatively" over the years. ATRA responded that the excess capacity had more to do with explosive growth in new construction throughout the state, the Legislature's action in 1990 giving counties access to a half-cent sales tax for their general fund *without voter approval* (all counties except Maricopa), as well as the county's increased reliance on non voter-approved secondary special taxing districts that are *not* subject to levy limits.

As HCR2056 (Prop 101) was making its way through the Legislature, the counties lobbied heavily against its passage. While county lobbyists publicly stated that there was a need for property tax reform in Arizona, they insisted that Prop 101 was an arbitrary restriction that would have detrimental effects on county government. Further, county officials argued that the 2% plus growth limit would be too restrictive. However, ATRA's analysis showed that historically the levy limits provided reasonable growth rates of 7% to 8% on average.

See **Prop 101,** page 4

# PROP 101, *Continued from page 3*

Since the passage of Prop 101, county primary rates have dropped a collective -$6.0949 between tax years 2005 and 2009. To no surprise, the counties that levied the highest primary rates prior to Prop 101 saw the largest decreases in their rates: Pinal (-$1.2288), Pima (-$0.7587), and Gila (-$0.6600).

As ATRA predicted, during tax years 2007 and 2008, the levy limits for counties grew by an average 8.9% and 7.8%, respectively. In tax year 2009, in the midst of the state's housing market crisis, county levy limits still increased 5.9% on average, with increases ranging from a low of 4.2% in Coconino County to a high of 21% in Graham County. Although the counties usually only quote the "2%" growth factor, the additional property taxes associated with new construction is typically the largest component that drives the growth in levy limits.

The affect that Prop 101 has had on primary levies compared to the growth in values is even more telling. Between tax years 2005 and 2009, although primary net assessed values grew 62.4%, primary levies grew only 32.9% (see tables on page 2). Therefore, by eliminating the $131 million in the excess levying capacity from the counties, Prop 101 limited the growth in property tax levies to half the rate of the growth in values.

Considering their strong opposition to Prop 101 three years ago, the counties widespread support for the affect it has had on taxpayers is a welcome change. Although regrettably the counties rarely give credit to Prop 101 for these rate reductions. For example, a Pinal County official in speaking at a public meeting with the Board of Supervisors stated that "the property tax levy will be reduced by 20 cents per $100 of assessed value and that essential services for county residents would not be affected." Posted on one Pima County Supervisor's website is a memo stating that one of his greatest priorities "is to make decisions that are fiscally responsible" and as a result of those decisions, has "saved taxpayers about $55 million over the past 4 years." In addition, he states that Pima County has "lowered the primary property tax rate to its LOWEST in 30 years." The fact is, although the county is currently 17 cents below its maximum tax rate, Prop 101 is mainly responsible for the 76-cent overall drop in the county primary tax rate over the last four years.

However, not every county is happy with the tax rate reductions. Mohave County continues to publicly complain how voters have impeded their ability to increase property taxes to whatever levels they want. A Mohave County official compared the property tax limitations approved by voters as "assaults on the property tax" and that "Those reductions have resulted in $27.2 million in lost tax revenue."

The $27.2 million in savings to taxpayers which is considered "lost tax revenue" to Mohave County assumes that the county, in the absence of Prop 101, would have kept its primary property tax rate at the $1.75 rate that the county levied since 1997. Much credit should be given to voters for the passage of Prop 101, because without it, the primary tax rate for Mohave County would have remained on autopilot and would not be 49 cents lower today at its current rate of $1.2637. Even with the annual tax rate reductions beginning in 2006, Mohave County's primary levy has still grown 33.4% or $8 million (above the average for all counties), equating to an annual increase of 8.4%.

***Jennifer Schuldt***

# COMMUNITY COLLEGE LEVIES, *Continued from page 1*

Clark, Debra Pearson, and Jerry Walker each voting no, the board rejected this property tax increase by a vote of 2 to 3. As the increase did not pass, the remaining $12.4 million increase in the property tax levy results from applying the TNT rate to the new assessed value resulting from construction. The adopted levy is 2% less than the district's constitutional levy limit.

The Pinal CCD was responsible for the next largest portion of the statewide increase in community college property taxes. The Pinal CCD increased its levy by $4.9 million. This increase was not only the second largest increase in dollars levied, it was also the second largest percentage increase (14.6%). Like Maricopa, the Pinal CCD levied less than its constitutional levy limit. The district's levy was 90% of the maximum allowed. But as the district levied only 87% of the levy limit in 2008, the 2009 levy required the district to approve a TNT increase of nearly $2.3 million.

Aside from these two districts, every other community college district levied the maximum allowable levy—as they have each year since 2006 when the passage of Prop 101 reset their levy limits.

With an increase of $3 million (3.8%), the Pima CCD levied the third largest portion of the statewide increase in community college property taxes.

In the Graham CCD, new construction accounted for a 21% increase in assessed values. The resulting increase in the district's levy limit led to the largest percentage increases in property taxes (20.8%). As previously mentioned, the Pinal CCD had the second largest percentage increase, and this was followed by the 10.6% increase levied by the Gila Provisional CCD.

See **Community College Levies,** page 5

# COMMUNITY COLLEGE LEVIES, *Continued from page 4*

## Community College District Tax Rates and Levies (2009)

| CCD | Primary Levy | Change | % Change | % of Limit Levied | Primary Tax Rate | Change | % Change |
|---|---|---|---|---|---|---|---|
| Cochise | $15,860,846 | $858,771 | 5.7% | 100.0% | 1.6075 | -$0.0529 | -3.2% |
| Coconino | $6,201,571 | $41,707 | 0.7% | 100.0% | 0.3369 | -$0.0283 | -7.7% |
| Gila | $3,177,103 | $304,745 | 10.6% | 100.5% | 0.5321 | -$0.0274 | -4.9% |
| Graham | $3,987,087 | $687,589 | 20.8% | 100.0% | 1.7970 | -$0.0858 | -4.6% |
| Maricopa | $360,268,991 | $12,363,821 | 3.6% | 98.0% | 0.7253 | -$0.0499 | -6.4% |
| Mohave | $17,206,296 | $851,151 | 5.2% | 100.0% | 0.6791 | -$0.0361 | -5.0% |
| Navajo | $11,344,683 | $699,937 | 6.6% | 100.1% | 1.1352 | -$0.0367 | -3.1% |
| Pima | $84,070,320 | $3,046,965 | 3.8% | 100.0% | 0.9356 | -$0.0488 | -5.0% |
| Pinal | $39,751,619 | $4,901,500 | 14.1% | 90.6% | 1.3800 | -$0.0300 | -2.1% |
| Yavapai | $36,833,381 | $1,409,121 | 4.0% | 100.0% | 1.1250 | -$0.0739 | -6.2% |
| Yuma/La Paz | $21,697,918 | $1,010,330 | 4.9% | 100.0% | 1.5142 | -$0.1132 | -7.0% |
| **Total** | **$600,399,815** | **$26,175,637** | **4.6%** | **98.1%** | | | |

| CCD | Secondary Levy | Change | % Change | Secondary Tax Rate | Change | % Change |
|---|---|---|---|---|---|---|
| Cochise | - | - | - | - | - | - |
| Coconino | $1,935,150 | -$85,143 | -4.2% | 0.0898 | -$0.0093 | -9.4% |
| Gila | - | - | - | - | - | - |
| Graham | - | - | - | - | - | - |
| Maricopa | $92,685,846 | -$2,608,110 | -2.7% | 0.1598 | -$0.0036 | -2.2% |
| Mohave | - | - | - | - | - | - |
| Navajo | $0 | -$1,661,175 | -100.0% | - | -$0.1663 | -100.0% |
| Pima | $13,950,000 | -$552,170 | -3.8% | 0.1418 | -$0.0093 | -6.2% |
| Pinal | $2,841,364 | $2,841,364 | New Levy | 0.0836 | 0.0836 | New Tax Rate |
| Yavapai | $5,228,333 | -$35,912 | -0.7% | 0.1367 | -$0.0038 | -2.7% |
| Yuma/La Paz | $5,464,406 | -$394,248 | -6.7% | 0.3225 | -$0.0427 | -11.7% |
| **Total** | **$122,105,099** | **-$2,495,394** | **-2.0%** | | | |

As the primary assessed values of each CCD increased for 2009, the primary property tax rates of each college district dropped notwithstanding the increased levy amounts. The largest rate decrease (-$0.1132) occurred in the Yuma/La Paz CCD. The Graham CCD had the second largest decrease (-$0.0858). The Coconino CCD saw the largest percentage decline in the rate (-7.7%) followed by the 7.0% decline that occurred in the Yuma/La Paz district.

Of the college districts that have secondary property tax rates for voter-approved bonds, all districts but the Pinal CCD decreased their secondary levies. Prior to this year, the Pinal CCD had not levied a secondary property tax since its taxpayers paid off the $180,000 bond approved in 1972. In 2008, the district's voters approved a new $98.9 million bond. This bond approval resulted in a new secondary property tax levy of $2.8 million.

Among the six college districts that levied secondary rates last year, the secondary levies decreased by a total of $5.3 million. The $2.6 million decrease in the secondary levy of the Maricopa CCD accounted for nearly half of the total decrease. The taxpayers of the Navajo CCD saw the next largest decrease (-$1.6 million) because the district's entire outstanding balance was paid off with the 2008 secondary levy.

Except in the case of the Pinal CCD, the secondary tax rates of each of these districts decreased along with the levies. With the elimination of the district's $0.1663 tax rate of the previous year, the taxpayers of the Navajo CCD saw the greatest decrease in the community college secondary tax rate. The secondary tax rate of the Yuma/La Paz CCD decreased by the next largest amount (-$0.0427). The taxpayers of the Pinal CCD paid a new secondary tax rate of $0.0836.

***Justin Olson***

# GPLET, *Continued from page 1*

effective deterrent for cities abusing their tax exempt status for economic development purposes until a court decision in 1993 found the exemptions unconstitutional.

In the chaos surrounding the 1993 court decision and the loss of the exemptions for the deals that pre-dated the 1985 law, the Legislature responded by creating GPLET in 1996. At that time, policymakers thought GPLET accomplished three goals: First, by shifting to an "excise" tax (as opposed to a property tax where the Constitution requires all property to be subject to tax unless exempted in the Constitution), the state would be able to maintain the exemptions in the 1985 law that were struck down by the court; Second, the Legislature thought it would continue to act as a check on the cities use of their tax exempt status for private development; Third, the new tax would also allow the cities to continue to use the eight-year tax abatement in a downtown single business district.

While there was limited use of GPLET initially, by the late 1990's the number of lease-back arrangements in the City of Phoenix began to draw renewed interest in the issue with state policymakers. In 2004, GPLET became the subject of considerable scrutiny with Governor Napolitano's Citizens Finance Review Commission (CFRC). The CFRC directed the creation of an ad hoc committee, led by the Director of the Department of Revenue, to "review Arizona's possessory interest tax scheme and to determine if it is functioning the way it was intended." The 17-member committee quickly determined that, despite the Legislature's intent to have the GPLET rates closely reflect the amounts that would have been owed under the possessory interest tax, the GPLET formula fell well short of that. As a result, one of the key recommendations of the commission was as follows: "Amend GPLET so that it more closely accomplishes the legislature's stated purpose of making whole the taxing jurisdictions that depended on revenues under the prior possessory interest tax."

Attention to GPLET was ramped up further by Governor Napolitano's Chief Fiscal Policy Advisor George Cunningham, who used the keynote speech at the 2004 Arizona Tax Conference that year to criticize the flawed GPLET policy. Following considerable media attention surrounding several high profile GPLET deals in Maricopa County, several lawmakers called for reforms of the GPLET law. By the 2008 legislative session, Senator Ken Cheuvront had become not only the most knowledgeable legislator on the issue but also the leading GPLET critic.

In the 2008 session, with ATRA's support, Senator Cheuvront attempted to pass a GPLET reform bill the was met with strong opposition by the cities and some members of the development community. The GPLET supporter's success in killing Sen. Cheuvront's reform bill convinced him that any changes to the state's policy on allowing government to use its tax exempt status to shield private property from tax would probably have to be accomplished in the courts. (Senator Cheuvront was one of six business owners named as litigants in the Goldwater Institute's legal challenge to the City of Phoenix's tax subsidy in the City North Project. The Arizona Court of Appeals ruled in Goldwater's favor and the case is set for hearing before the Arizona Supreme Court on September 30, 2009).

Following the failed effort in 2008, ATRA, along with the National Association of Industrial and Office Property (NAIOP), convinced Senator Cheuvront that a legislative resolution to GPLET issue, if possible, would be in the state's best interest. Recognizing that a legislative reform would never pass over major opposition from either the pro-GPLET camp or the GPLET reform camp, Senator Cheuvront agreed to one more attempt at negotiating a compromise with GPLET advocates.

ATRA and the Joint Legislative Budget Committee conducted considerable research on GPLET and numerous meetings were held over the interim to work through the complicated issues associated with reforming GPLET. Senator John Nelson, a GPLET proponent, engaged in the reform effort along with Senator Cheuvront in the Senate. The Senate Finance Committee dedicated an entire meeting to GPLET to brief the committee on the issue. House Ways and Means Committee Chairman Rick Murphy sponsored a narrow GPLET reform bill, HB2363, which passed the House 49-2.

Final negotiations on a compromise agreement revolved around three major issues: First, any reforms to the GPLET statutes would be prospective and not effect investments that had been made under the current statute. Notwithstanding the fact that this change grandfathered in the existing tax inequities inherent in GPLET, this was accepted by Senator Cheuvront and reform supporters; Second, it was critical to GPLET supporters to maintain the cities ability to fully abate property from a GPLET tax for eight years in a single central business district. Again, GPLET reform advocates conceded with only a concession that the single business districts have a defined boundary; Third, new GPLET rates that more closely reflect the original legislative intent of GPLET would apply only on a prospective basis.

Reaching a compromise on the new GPLET rates proved to be the most difficult area of consensus. The cities initially argued for minor increases in the rates in order to maintain the significant tax advantage for GPLET projects. The reform group pushed for rates that more closely reflected the property tax liability that would be normally owed. The higher rates, as also concluded by the CFRC study group, would more closely reflect the original legislative intent of GPLET. [Very early in the negotiations on new GPLET rates, ATRA raised the possibility of GPLET rates that varied by county to more closely reflect the varying property tax rates across the state. Fearing this approach would undermine the "excise tax" concept and expose GPLET in any future litigation, the pro-GPLET camp rejected the idea.]

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Late in the session and after making considerable progress on all of the major issues, Senator Nelson and Senator Cheuvront compromised on new GPLET rates for a final Senate floor amendment to be placed on Representative Murphy's HB 2363. However, hours of study, analysis and compromise fell through the floor when Senator Thayer Verschoor mounted a major effort to kill the bill in the Senate Republican Caucus. On behalf of the City of Mesa, Senator Verschoor argued that the bill was complicated and made substantial policy changes that few lawmakers fully understood. Oddly, Senator Nelson, who had participated in hours of meetings leading up to the compromise failed to defend the package in caucus.

Interestingly, the City of Mesa's major complaint was that the new GPLET rates would favor cites that have higher overall property tax rates. Since the one set of statewide GPLET rates has always been a feature of the system since 1996, it is doubtful that Senator Verschoor knew the argument was a transparent argument to create confusion and kill the bill. Morever, having not been a part of the hours of negotiation, Senator Verschoor also didn't know that a regional GPLET rate structure that might have addressed Mesa's concerns was rejected by the cities months earlier.

As noted earlier, both the pro-GPLET and GPLET reform camps recognized at the outset that any opposition would doom such a complicated legislative effort. Regrettably, that opposition surfaced at the 11th hour resulting in countless hours of wasted negotiations. For his part, Senator Cheuvront consistently stated it would be his last attempt to reform GPLET through the Legislature. As has been the case in the past, public policy development regarding the taxation of possessory interests might again be left to the judicial branch.

## *Attention ATRA Members*

ATRA's *2009 Property Tax Rates and Assessed Values* book will soon be available. If you would like to reserve your copy, please provide your name and mailing address by mail, fax or email by November 9, 2009, to receive your copy as part of our mailing. The cost for non-members is $25.00. Members receive the book free of charge. Requests for mailings after that date will require an additional shipping and handling payment of $5.00.

Name: ____________________ Affiliation: ____________________

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