

September 22, 2012

Cochise County Board of Equalization
1415 Melody Lane, Building G
Bisbee AZ 85635

RE: Recommended Decision of Hearing Officer in Appeal on Parcel Nos.
104-55-022 D and 105-20-009 U

After conducting a Hearing on the appeal of the Notice of Value for the above parcels, it is my recommended decision that the following values be established:

104-55-022 D	105-20-009 U
FCV: \$30,075.00	FCV: \$297,809.00
LPV: \$30,075.00	LPV: \$297,809.00

The basis for my decision is as follows: The hearings for these two parcels have been consolidated on the basis that the same arguments and evidence will apply to both. The Appellants do not object to the Assessor's recommendations as to value, but have appealed the Assessor's denial of agricultural status for both properties.

Horse'n Around Rescue Ranch and Foundation, Inc. is an Arizona nonprofit corporation which conducts equine rescue operations in Cochise County. The corporation itself does not own any real property, but instead leases approximately 700 acres at nine separate locations. The Lusignan Revocable Trust and Wade Temple are two of the property owners who lease property to the nonprofit corporation.

At the hearing the Assessor advised that the Legislature had recently enacted legislation which approved granting ag status to properties used for equine rescue operations. The Assessor explained that the Appellants' requests for ag status for their parcels were denied on the basis that neither had met the legal requirements for ag status. In order to qualify for ag status, A.R.S. §42-12151(4) defines agricultural real property as:

4. Land and improvements devoted to commercial breeding, raising, boarding or training equine, as defined in section 3-1201, or equine rescue facilities registered with the department of agriculture pursuant to section 3-1350.

A.R.S. §3-1350 sets forth the requirements which must be satisfied in order to be registered as an "equine rescue facility." §3-1350 (B) (1) states, "To be registered under this section an equine rescue facility must "1. Be incorporated as a nonprofit corporation in this state." The Assessor also contended that the Appellants had not satisfied A.R.S. §42-12152(A)(1) and (2). §(A)(1) requires that the subject property must have been used for an agricultural purpose for three of the past five years. §(A)(2) requires that

the Appellant must demonstrate a “reasonable expectation of operating profit, exclusive of land cost, from the agricultural use of the property.”

In response to the Assessor’s arguments, the Appellants presented evidence that Horse’N Around Rescue Ranch, Inc. had properly applied for registration as an equine rescue facility pursuant to A.R.S. §3-1350 and that the application had been granted. Presented in evidence was the Dept. of Agriculture’s Registered Equine Rescue Facility Certificate No. 35, issued 2/9/12 and which expires 2/9/13. By issuing this certificate the Dept. of Agriculture has established that the applicant is a qualified nonprofit corporation in Arizona and as such, has been properly registered with the Dept. of Agriculture.

In addition, the Appellants presented the Arizona Dept. of Revenue’s Interim Guideline On The Assessment Of Equine Property. In the Introduction to this Interim Guideline, the DOR stated:

‘In 2011 the Legislature amended A.R.S. §42-12151 to expand the uses which may qualify for agricultural classification to include land and improvements devoted to commercial breeding, raising, boarding or training equine. It also amended the statute to allow land and improvements used for equine rescue facilities registered with the Department of Agriculture to qualify.’

The Introduction to the Interim Guideline also specifically states “The Department of Revenue’s Agricultural Manual will be amended in the near future to conform to A.R.S. §42-12151(4) and the provisions of this Guideline. Where there is a conflict between the current Agricultural Manual and the amendments to A.R.S. §42-12151, the amended statute and this Interim Guideline will control.”

The Interim Guideline also clarified eligibility for agricultural classification, beginning at p.2. Section I (b) states, “Land and improvements of Equine Rescue Facilities registered with the Department of Agriculture pursuant to A.R.S. §3-1350 are also eligible for agricultural classification. A.R.S. §42-12151.” Neither the statute nor the Interim Guideline preclude leased property from eligibility. Section I (b) (ii) concludes the Eligibility discussion by stating, “Equine Rescue Facilities must be nonprofit organizations and therefore do not require an expectation of profit to qualify.”

The Assessor has unfortunately been the victim of the Legislature’s and the DOR’s unfortunate use of the term “facility” rather than distinguishing between an entity and a facility. During the hearing the Assessor correctly stated that “a facility is something that is tangible.” The Assessor then incorrectly concluded that the real property leased to Horse’N Around Ranch Rescue was a facility which was required to be registered with the Dept. of Agriculture. Horse’N Ranch Rescue is an entity, not a facility. A facility is something physical like buildings and equipment. An entity has a legal identity like a corporation. A corporation, whether for profit or nonprofit, may own a facility but not be a facility. The real property leased by the Appellants to Horse’N Around Ranch Rescue is a facility not an entity. The clear legislative intent for the

statutes cited by the Assessor was to provide a tax incentive to entities who chose to use property, owned or leased, for the charitable purpose of equine rescue. In order to give effect to these statutes, rather than to invalidate them, the statutory references to “facility” must be read as “entity” where appropriate. If the term “facility” is determined to include “entity” then the Appellants have satisfied all statutory requirements for agricultural status for the subject properties and the appeals should be granted.

Thank you,

James Riley, Hearing Officer