



*The taxpayer's watchdog for 80 years*

# ARIZONA TAX RESEARCH ASSOCIATION

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## NEWSLETTER

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## Taxpayers Win Gift Clause Challenge

Taxpayers were handed a big victory last month when Superior Court Judge Christopher Coury ruled that a tax subsidy awarded by the City of Phoenix to a developer violated the Gift Clause. Article 9 § 7 of the Arizona Constitution states that a government entity may not “give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation.” The Goldwater Institute filed a lawsuit under *Engleborn v. Stanton*, and after weighing the benefits each party would receive over the term of the agreement, the Court ruled that the benefits to Amstar/McKinley LLC (Amstar) were “grossly disproportionate.”

In 2012, the City of Phoenix issued a broad Request for Proposal (RFP) for the construction of projects in its Downtown Redevelopment Area (RDA). In 2015, Amstar responded to the RFP with a proposal to build the Derby, a 19-story residential tower consisting of 211

See TAXPAYERS WIN, Page 2

## Counties Increase Property Taxes Despite Healthy Reserves

Arizona counties are in the midst of adopting their FY 2021 budgets and all but four are choosing to increase property taxes this year. The eleven counties that are on course to increase property taxes will do so by a collective \$36 million, with the largest increases occurring in Maricopa (\$23 million) and Pima Counties (\$6 million). The reality that counties are increasing property taxes during the pandemic is disappointing, especially when they are resting on \$2.6 billion in total fund reserves.

### *Primary and Secondary Property Taxes*

Counties levy primary property taxes to support their general fund operating budgets and are subject to constitutional levy limits of 2% plus new construction. If a county does not levy to its

See COUNTY TAX INCREASES, Page 4

## Inside:

- **Eastern College Raises Taxes 6% During a Pandemic**
- **Cities & Towns to Increase Primary Property Taxes Over \$10 Million**

## Mark Your Calendars!

**ATRA Golf Tournament:**  
Nov 6 @ Stonecreek GC

**ATRA Outlook Conference:**  
Nov 19 @ Hilton Scottsdale Resort & Villas

**TAXPAYERS WIN**, *Continued from Page 1*

furnished “micro-unit” apartments located on the corner of 2<sup>nd</sup> street and McKinley at a cost of \$36 million. In return, Amstar claimed it needed a 25-year deal under the Government Property Lease Excise Tax (GPLET) to offset its risk and meet its investment goals for the Derby project to be financially feasible.

In 2016, the City entered into a GPLET agreement with Amstar. Under the agreement, the City would take title to the property once construction was completed, thereby removing the property from the tax rolls, and the City would then lease the property back to Amstar for 25 years. Over the term of the lease, Amstar would pay zero taxes during the first 8 years and pay approximately \$2.3 million in GPLET payments through the remaining 17 years of the agreement. Other payments Amstar would be obligated to pay included \$3.19 million in lease payments to the City, a donation to the Phoenix Elementary School District (PESD) in the amount of \$372,000, and \$30,000 for a parking study to the City. The Goldwater Institute filed its lawsuit against the City of Phoenix in 2017, arguing that the agreement with Amstar violated the Gift Clause.

In defense of its subsidy to Amstar, the City asked the Court to consider certain taxes and other benefits that were not included in the agreement. The list of taxes consisted of \$5.6 million in sales taxes on tenant leases and utilities, \$25 million in sales and property taxes Amstar would be required to pay upon expiration of the lease, and \$370,000 in construction sales taxes. The City also urged the Court to include \$74.5 million in estimated economic benefits that the City’s expert claimed would be generated as a result of the proposed Derby project.

Arguing against the subsidy, Goldwater urged the Court to follow *Turken v. Gordon* when weighing the benefits Amstar would receive compared to the City. In 2008, the Supreme Court ruled under *Turken* that a \$97 million subsidy from the City of Phoenix to the developer of City North for the use of garage parking spaces was in violation of the Gift Clause. In its decision, the Court considered only the negotiated payments under the agreement and rejected any indirect or other speculative benefits that might materialize.

In its decision under *Englehorn*, the Court agreed with Goldwater and rejected the City’s request to recognize any benefits that weren’t included in the agreement or considered by the City Council. In its analysis, the Court determined that the total net benefits to the City amounted to \$5.86 million. In stark contrast, the Court determined the property tax subsidy to Amstar over the 25-year term was between \$20.5 million and \$27 million. Netting the benefits to the City, the Court concluded that the net benefit to Amstar was “grossly disproportionate,” ranging between \$14.2 million and \$21.2 million.

In anticipation of an appeal by the City, the Court questioned the usefulness of GPLET as a redevelopment tool that may be important for the higher courts to consider. Specifically, the Court questioned “whether the death knell for the GPLET’s usefulness has rung” if it must be comparable to the property tax to avoid a future Gift Clause violation. The City has until mid to late August to appeal the Court’s decision.

- Jennifer Stielow

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## Eastern College Raises Taxes 6% During a Pandemic

Community college districts recently adopted their FY 2021 budgets with an eye towards preparing for life during a pandemic. Colleges are cautiously hoping their student enrollment is mostly unchanged and preparing for the new COVID normal on campus. With the devastating impact felt on local economies, most districts have adopted their Truth-in-Taxation (TNT) rate to avoid a property tax increase in the fall. Except Graham County's Eastern Arizona College (EAC), who raised property taxes 6% above their TNT level.

ATRA publicly opposed EACs large tax increase, explaining that taxpayers should not be asked to sacrifice more during a time of such uncertainty. ATRA argued a TNT rate would bring the college's primary rate below \$3.00 per hundred for the first time since FY 2016. Historically, their rate was typically \$2.00 per hundred. Instead of adopting the TNT rate of \$2.95 (which holds taxpayers harmless from a tax increase), they adopted a rate of \$3.12 per hundred.

Curiously, the district increased taxes despite a significant increase in ongoing aid from the State. Equalization funding from the State for EAC increased by nearly \$1 million, which is roughly double the amount of the tax increase. Worse yet, EAC has roughly \$25 million in cash reserves, which represents 63% of their General Fund. Large cash reserves are often justified as savings for rainy days. The Board voted 3-2 for the increase.

EAC will receive \$20.4 million in total state aid in FY 2021, expects \$7.5 million in tuition revenues, and \$7 million in property taxes. Their general fund budget increases 1.6% to \$40.4 million.

### Colleges Brace for Impact

Given the levels of uncertainty, most colleges kept their budgets, tuition levels, and expectations flat for FY 2021, weathering the relatively small impact of transaction privilege tax losses (Prop 301) with increases in property tax revenues from new construction.

For FY 2021, Cochise, Mohave, Navajo, Pima, Pinal, Santa Cruz, Yavapai, and Yuma/La Paz Community College districts all chose to not raise property taxes, levying the TNT rate. Taxpayers in these counties certainly appreciate the break. Just Coconino, Graham, and Gila Provisional are raising property taxes. Coconino and Gila's 2% rate increase are nearly forgone conclusions, as their Board's reflexively raise taxes by these amounts every year to maximize their levy at the constitutional limit. Maricopa County raised taxes by a fractional amount of 0.3%, dialing down their plan to live without general obligation bonds.

Colleges overall expect small declines in enrollment during FY 2021, fearing that some students will be deterred during the pandemic. Though colleges are well suited to fill educational needs during recessions, certainly the COVID-19 pandemic creates unique challenges for all education providers. Distance learning doesn't work for all programs and doesn't work for all students. Colleges however may benefit from students who may wish to avoid or delay the high cost of a university if they're going to be in a virtual environment either way.

Overall community college enrollment continues to slide, with audited FY 2019 data showing 109,537 full time student equivalents (FTSE) statewide, which was roughly the total in 2003. With K-12 high school enrollments showing significant declines on the horizon, this trend likely will continue, barring an extended economic depression induced by the pandemic.

- Sean McCarthy

**COUNTY TAX INCREASES**, *Continued from Page 1*

limit, the excess capacity accrues. Currently, only Apache and Coconino levy to their constitutional limits.

Counties also levy secondary taxes to support their special taxing districts, such as flood control, library, and jail operations, and to pay General Obligation (G.O.) debt. Some special taxing districts have statutory tax rate caps but have no levy limits. Three counties levy secondary taxes for voter-approved G.O. debt- Apache, Pima, and Yuma, and the tax rates for those levies fluctuate as debt is accumulated or paid off.

***Truth in Taxation (TNT)***

Both primary levies and the secondary levies of several special taxing districts (flood, library, jail, and public health services districts) are subject to TNT. The TNT limit is calculated by taking the amount of taxes levied in the prior year and dividing that amount by the current value of existing property. Put simply, the TNT rate is the tax rate that would need to be levied to produce the same levy as last year, exclusive of new construction, to avoid a tax increase in the current year. So when local taxing officials boast that they are keeping tax rates the same, it typically means they're increasing taxes. Taxing entities that exceed their TNT rates are required to publicly disclose their intent to increase taxes in a public hearing and publish notice in their local newspaper. Regrettably, some jurisdictions intentionally choose very obscure publications that carry a minimal number of subscribers and the notices are not seen by most taxpayers.

***Counties voting to increase property taxes***

In FY 2021, ten counties are exceeding their TNT limits on all the taxes they levy, both primary and secondary. Apache County is exceeding the TNT rate on its primary tax, but not on its secondary levies for jail, juvenile jail, and public health services districts because they are at their statutory rate caps. However, Apache County is proposing to increase taxes by 33% for out-of-county tuition (Junior College Tuition), which is not subject to TNT but will result in an increase of \$573,000 over last year.

The Maricopa County Board of Supervisors voted unanimously to increase property taxes this year by keeping their rates the same, despite strong opposition from the taxpaying community (*See ATRA letter to Maricopa County Board of Supervisors on pg. 7*). Other counties that are implementing substantial tax increases by leaving their primary and secondary tax rates unchanged are Pinal (\$2.4M) and Mohave (\$1.5M). In addition to levying to its constitutional levy limit under the primary property tax, Coconino County is also keeping its secondary tax rates the same, which will result in a total tax increase of approximately \$791k.

Of Arizona's 15 counties, only Greenlee, La Paz, Navajo, and Yavapai are refraining from raising taxes on their constituents this year. Counties have until the first Monday in August to adopt their final budgets and the third Monday in August to adopt the tax rates and levies for all taxing entities.

- Jennifer Stielow

County	Tax Year 2019	Tax Year 2020		Exceed TNT?	% Over/Under TNT	Max Tax Rate	TNT levy	Proposed Levy	Estimated Tax Increase
	Tax Rate	Proposed Rate	TNT Rate						
<b>Apache Primary</b>	0.6176	<b>0.6310</b>	0.6186	YES	<b>2.0%</b>	<b>0.6310</b>	\$2,898,448	\$2,956,574	<b>\$58,126</b>
Flood Control	0.0893	0.0892	0.0892	NO	0.0%		\$166,452	\$163,887	-\$2,565
Library Ops.	0.3136	0.3141	0.3141	NO	0.0%		\$1,471,751	\$1,471,727	-\$24
Library bonds	0.1113	0.1113	N/A	N/A	-		N/A	\$521,500	-
Jail	0.2000	<b>0.2000</b>	0.2003	NO	-0.1%	<b>0.2000</b>	\$938,616	\$937,108	-\$1,508
Juvenile Jail	0.1000	<b>0.1000</b>	0.1002	NO	-0.2%	<b>0.1000</b>	\$469,309	\$468,554	-\$755
Public Health Svcs.	0.2500	<b>0.2500</b>	0.2504	NO	-0.2%	<b>0.2500</b>	\$1,173,271	\$1,171,384	-\$1,887
Junior College Tuition	0.3750	0.4918	N/A	N/A	-	-	N/A	\$2,304,347	-
Post Sec. Ed.	0.1400	0.1500	N/A	N/A	-	-	N/A	\$702,831	-
<b>Cochise Primary</b>	2.6747	<b>2.6747</b>	2.6206	YES	<b>2.1%</b>	4.0276	\$25,500,870	\$26,027,090	<b>\$526,220</b>
Flood Control	0.2597	<b>0.2597</b>	0.2539	YES	<b>2.3%</b>		\$2,097,411	\$2,141,457	<b>\$44,046</b>
Library	0.1451	<b>0.1451</b>	0.1422	YES	<b>2.0%</b>		\$1,383,399	\$1,411,945	<b>\$28,546</b>
<b>Coconino Primary</b>	0.5413	<b>0.5293</b>	0.5189	YES	<b>2.0%</b>	<b>0.5293</b>	\$10,012,820	\$10,214,030	<b>\$201,210</b>
Flood Control	0.2280	<b>0.2280</b>	0.2168	YES	<b>5.2%</b>		\$3,671,031	\$3,856,879	<b>\$185,848</b>
Library	0.2556	<b>0.2556</b>	0.2450	YES	<b>4.3%</b>		\$4,728,019	\$4,932,375	<b>\$204,356</b>
Public Health Svcs.	0.2500	<b>0.2500</b>	0.2396	YES	<b>4.3%</b>	<b>0.2500</b>	\$4,624,432	\$4,824,310	<b>\$199,878</b>
<b>Gila Primary</b>	4.1900	<b>4.1900</b>	4.1120	YES	<b>1.9%</b>	6.7231	\$22,590,630	\$23,019,123	<b>\$428,493</b>
Library	0.2378	<b>0.2425</b>	0.2334	YES	<b>3.9%</b>		\$1,282,113	\$1,332,252	<b>\$50,139</b>
<b>Graham Primary</b>	2.9644	<b>2.7500</b>	2.6101	YES	<b>5.4%</b>	2.7727	\$5,842,942	\$6,156,000	<b>\$313,058</b>
Flood Control	0.1299	0.1214	0.1214	NO	0.0%		\$209,253	\$210,017	<b>\$764</b>
<b>Greenlee Primary</b>	0.7333	0.6410	0.6410	NO	0.0%	1.0202	\$3,307,322	\$3,307,191	-\$131
Flood Control	0.2500	0.2149	0.2149	NO	0.0%		\$117,777	\$114,139	-\$3,638
Public Health Svcs.	0.2500	0.2185	0.2185	NO	0.0%	0.2500	\$1,127,548	\$1,127,334	-\$214
<b>La Paz Primary</b>	2.5890	2.5622	2.5623	NO	0.0%	2.6135	\$5,637,106	\$5,636,970	-\$136
<b>Maricopa Primary</b>	1.4009	<b>1.4009</b>	1.3592	YES	<b>3.1%</b>	1.7083	\$621,200,427	\$640,280,922	<b>\$19,080,495</b>
Flood Control	0.1792	<b>0.1792</b>	0.1715	YES	<b>4.5%</b>		\$72,175,147	\$75,415,664	<b>\$3,240,517</b>
Library	0.0556	<b>0.0556</b>	0.0539	YES	<b>3.2%</b>		\$24,654,681	\$25,411,963	<b>\$757,282</b>
<b>Mohave Primary</b>	1.9496	<b>1.9496</b>	1.8949	YES	<b>2.9%</b>	2.4453	\$38,100,582	\$39,200,478	<b>\$1,099,896</b>
Flood Control	0.5000	<b>0.5000</b>	0.4834	YES	<b>3.4%</b>		\$8,681,576	\$8,939,551	<b>\$257,975</b>
Library	0.2716	<b>0.2716</b>	0.2640	YES	<b>2.9%</b>		\$5,307,816	\$5,461,043	<b>\$153,227</b>
TV	0.0400	0.0400	N/A	N/A	-		N/A	\$804,277	-
<b>Navajo Primary</b>	0.8820	0.8657	0.8657	NO	0.0%	0.9187	\$7,636,514	\$7,636,843	\$329
Flood Control	0.2724	0.2640	0.2640	NO	0.0%		\$1,809,951	\$1,810,384	\$433
Library	0.0980	0.0962	0.0962	NO	0.0%		\$848,501	\$848,636	\$135
Public Health Svcs.	0.2453	0.2408	0.2408	NO	0.0%	0.2500	\$2,123,852	\$2,124,237	\$385
<b>Pima Primary</b>	3.9996	<b>3.9220</b>	3.8835	YES	<b>1.0%</b>	5.0770	\$354,966,635	\$358,487,504	<b>\$3,520,869</b>
Debt	0.6900	0.5200	N/A	N/A	-		N/A	\$47,530,215	-
Flood Control	0.3335	<b>0.3335</b>	0.3198	YES	<b>4.3%</b>		\$26,935,997	\$27,976,190	<b>\$1,040,193</b>
Library	0.5353	<b>0.5353</b>	0.5198	YES	<b>3.0%</b>		\$47,508,161	\$48,928,700	<b>\$1,420,539</b>
<b>Pinal Primary</b>	3.7900	<b>3.7500</b>	3.6736	YES	<b>2.1%</b>	5.8874	\$98,798,148	\$100,853,331	<b>\$2,055,183</b>
Flood Control	0.1693	<b>0.1693</b>	0.1627	YES	<b>4.1%</b>		\$3,686,224	\$3,959,010	<b>\$272,786</b>
Library	0.0965	<b>0.0965</b>	0.0935	YES	<b>3.2%</b>		\$2,515,573	\$2,595,292	<b>\$79,719</b>
<b>Santa Cruz Primary</b>	3.9815	<b>3.9815</b>	3.8643	YES	<b>3.0%</b>	4.9493	\$13,999,103	\$14,423,657	<b>\$424,554</b>
Flood Control	0.7963	<b>0.7963</b>	0.7726	YES	<b>3.1%</b>		\$2,525,264	\$2,630,662	<b>\$105,398</b>
<b>Yavapai Primary</b>	2.0152	1.9255	1.9255	NO	0.0%	2.1212	\$56,950,524	\$56,950,989	\$465
Flood Control	0.2103	0.2006	0.2006	NO	0.0%		\$5,281,942	\$5,268,847	-\$13,095
Library	0.1651	0.1577	0.1577	NO	0.0%		\$4,665,716	\$4,664,332	-\$1,384
<b>Yuma Primary</b>	2.5288	<b>2.5082</b>	2.4842	YES	<b>1.0%</b>	2.6984	\$31,960,680	\$32,269,307	<b>\$308,627</b>
Flood Control	0.2419	<b>0.2419</b>	0.2331	YES	<b>3.8%</b>		\$2,509,933	\$2,603,869	<b>\$93,936</b>
Library Debt	0.2429	0.2392	N/A	N/A	-		N/A	\$3,017,006	-
Library Ops	0.6708	<b>0.6745</b>	0.6590	YES	<b>2.4%</b>		\$8,478,023	\$8,677,883	<b>\$199,860</b>

## Cities & Towns to Increase Primary Property Taxes Over \$10 Million

Fifty-one cities and towns levy a primary property tax to support their general operations, and so far, 17 of those are proposing to increase taxes. Carrying more than \$800 million in their General Fund cash reserves, these cities are on pace to increase property taxes by a collective \$10.5 million.

The primary property taxes levied by cities and towns are subject to the same constitutional levy limits and TNT requirements as the counties and community colleges. Of the 17 cities and towns that are implementing tax increases this year, nearly half of them levy to their constitutional limit.

Tucson and Scottsdale have consistently exceeded their constitutional levy limits by utilizing a provision in state statute that allows local jurisdictions the authority to exceed their levy limits for tort judgments. In fact, Tucson is proposing the largest percentage increase this year of all the cities at 10.2%, which will result in a tax increase of approximately \$1.7 million. Scottsdale is planning to increase property taxes this year by nearly \$1.6 million. Many other cities are increasing taxes simply by adopting the same tax rates as last year. By keeping its tax rate the same, the City of Phoenix will require its taxpayers to pay \$5.3 million more in taxes this year.

Like the counties and community colleges, the cities and towns have until the first week in August to adopt their final budgets.

- Jennifer Stielow

City	FY 2020 Primary Rate	FY 2021 Proposed Rate	TNT Rate	MAX TAX RATE	% Increase	Tax Increase
Tucson	0.4555	0.4883	0.4433	0.4448	10.2%	\$1,678,790
Scottsdale	0.5198	0.5273	0.5034	0.5096	4.7%	\$1,583,376
Lake Havasu City	0.6718	0.6718	0.6442	0.9015	4.3%	\$217,060
Somerton	1.6596	1.6936	1.6278	1.6936	4.0%	\$27,657
Peoria	0.2900	0.2900	0.2788	0.3737	4.0%	\$186,394
Surprise	0.7591	0.7591	0.7298	0.9130	4.0%	\$352,391
Safford	0.5135	0.5135	0.4963	0.6839	3.5%	\$8,902
Phoenix	1.3055	1.3055	1.2676	1.3318	3.0%	\$5,275,809
Buckeye	1.8000	1.7890	1.7459	1.7890	2.5%	\$240,397
Avondale	0.7003	0.6808	0.6674	0.6808	2.0%	\$61,781
Tempe	0.9010	0.8917	0.8742	0.8917	2.0%	\$371,454
Benson	0.8704	0.8867	0.8693	0.8867	2.0%	\$6,958
Goodyear	1.0619	1.0330	1.0128	1.0330	2.0%	\$207,679
El Mirage	1.9835	1.9835	1.9476	1.9866	1.8%	\$42,827
Yuma	2.3185	2.3185	2.2770	2.3225	1.8%	\$254,402
Wickenburg	0.5000	0.5000	0.4936	0.7428	1.3%	\$6,149
Sierra Vista	0.1124	0.1106	0.1094	0.1815	1.1%	\$3,882



*The taxpayer's watchdog for over 80*  
**ARIZONA TAX RESEARCH ASSOCIATION**

June 2, 2020

Dear Chairman Hickman and the Maricopa County Board:

The Arizona Tax Research Association (ATRA) annually reviews the budgets of every county along with those of other local governments in Arizona. This letter is in response to the proposed \$23 million increase in county primary and secondary property taxes in the Fiscal Year 2021 tentative budget. At a time of record job losses with more than half a million unemployment claims statewide, ATRA respectfully requests that you reconsider your plan to impose a tax increase on Maricopa County property taxpayers.

As you know, when property values rise and tax rates stay the same, taxes increase at the same rate as the growth in value. The 5.8% growth in the county's taxable values are the result of a 3.1% increase in the value of existing property and 2.7% in new construction. By keeping tax rates constant, the county's primary and secondary property taxes will generate an additional \$41 million in taxes, the majority of which will come from increased values on existing property.

During the tentative budget hearing, county staff accurately stated that the county has not changed its tax rates over the last five years. While that is true, doing so resulted in a tax increase in each of those five years due to rising property values. In fact by keeping tax rates the same, the County will levy \$201 million more in property taxes this year than it did in FY 2016. Of that total, \$129 million was the result of the increase in value on existing property.

It would be one thing if this levy increase was paramount to maintaining operations. Your budget suggests this is not the case. The General Fund proposed budget maintains a fund balance of \$166 million and \$1.5 billion in Total Funds.

We are all painfully aware of the economic devastation resulting from the government shut down of the economy. Many Arizona businesses and individuals are desperately trying to maintain a bridge to a full economic recovery. State and local governments should be doing everything possible at this time to help taxpayers survive this crisis and remain contributing taxpayers in the future. Of the \$741 million in primary and secondary property taxes the County is on course to levy this year, allowing taxpayers to keep \$23 million of their own money could go a long way during this pandemic.

If you have any questions, we would be happy to discuss further at (602) 253-9121.

Sincerely,

Kevin J. McCarthy  
President