

December 2019

Administration of the General Property Tax in Wyoming

Walter J. Urbigit

Follow this and additional works at: <https://scholarship.law.uwyo.edu/wlj>

Recommended Citation

Walter J. Urbigit, *Administration of the General Property Tax in Wyoming*, 4 Wyo. L.J. 227 (1950)
Available at: <https://scholarship.law.uwyo.edu/wlj/vol4/iss4/2>

This Special Section is brought to you for free and open access by Law Archive of Wyoming Scholarship. It has been accepted for inclusion in Wyoming Law Journal by an authorized editor of Law Archive of Wyoming Scholarship.

ADMINISTRATION OF THE GENERAL PROPERTY TAX IN WYOMING

This paper is an outline of the general property tax administration and organization in Wyoming. The scope is limited to taxes assessed and levied against real and personal property according to the value of the property, the taxes being applied equally to property of equal value within the taxing unit. The definition is intended to exclude in lieu taxes¹ and the particular problems of special assessments.²

The primary taxing unit in the Wyoming system is the county.³ The county basis is utilized for the determination of the levy,⁴ assessment,⁵ and taxpayer's indebtedness.⁶ There are nine geographical taxing units authorized by statute to levy a mill rate tax on all or certain kinds of property within the particular taxing unit.⁷ In addition to the county, taxing units to be found are: the state,⁸ municipalities,⁹ school districts,¹⁰ high school districts,¹¹ special hospital and/or cemetery districts,¹² rodent and magpie control districts,¹³ fire control districts,¹⁴ and predatory animal control districts.¹⁵

The overlapping nature of the taxing units is an important element of the Wyoming tax. With the exception of the state all of the other districts are contained within a single county, but may overlap each other and have boundaries that do not coincide.¹⁶ A given taxpayer is within the taxing unit of the state, the county, and a school district, he may however be within a municipality, a high school district, a hospital district, or a predatory animal control district;¹⁷ any

-
1. In lieu taxes include those taxes that are not treated as other property under the general property tax procedure of assessment and collection. Some of these taxes are ad valorem and others are based upon some other standard for determination of amount. Time of collection and method of determination differs from property taxed under the general property tax. A partial list of such taxes would include the automobile license tax, the mineral gross products tax, tax on commercial trucks, private railroad cars, pipe lines, pullman cars, and express companies.
 2. Special assessments are assessments levied against realty to pay for improvements, the amount of the assessment is determined not by the value of the realty but rather by the value of the improvement to the realty. Many of the problems of special assessments are the same as those of the ad valorem tax, but there are many general differences.
 3. Wyo. Comp. Stat. 1945 sec. 32-1629.
 4. Wyo. Comp. Stat. 1945 secs. 32-101, 32-303, 32-403.
 5. Wyo. Comp. Stat. 1945 secs. 32-501, 32-506, etc.
 6. Wyo. Comp. Stat. 1945 secs. 32-514, 32-515.
 7. Possibly one other district should be added, the dog control district, (Wyo. Comp. Stat. 1945 sec. 56-2203) which does not fit the conventional pattern since it is not an ad valorem tax. There does not appear to be any such districts in Wyoming. (Annual Report of the State Board of Equalization for 1949).
 8. Wyo. Comp. Stat. 1945 secs. 32-101, 32-711.
 9. Wyo. Comp. Stat. 1945 sec. 32-301.
 10. Wyo. Comp. Stat. 1945 sec. 32-207.
 11. Wyo. Comp. Stat. 1945 sec. 67-901.
 12. Wyo. Comp. Stat. 1945 sec. 26-901.
 13. Wyo. Comp. Stat. 1945 sec. 34-1301.
 14. Wyo. Comp. Stat. 1945 sec. 45-101.
 15. Wyo. Comp. Stat. 1945 sec. 56-2501.
 16. See supra notes 8-14.
 17. The size of the predatory animal control is apparently coextensive with the size of the county within which it falls. (Wyo. Comp. Stat. 1945 sec. 56-2502). It is the only type of district with such a specification as to size.

of the latter four districts may have boundaries which do not coincide with the boundaries of the county or of any other district.¹⁸

With the exception of the state tax levy determinations for all districts are made by county officials. In the various empowering statutes for the taxing units the governing body¹⁹ of each unit is empowered only to determine how much money will be needed during the next year²⁰ and to certify that amount to the county clerk.²¹ The county board of equalization determines the levy necessary to raise the required amount from the assessed valuation of the taxing unit.²²

All general property taxes are collected by the county tax collector.²³ This includes property assessed by the State board of equalization as well as property assessed by the county assessor and the county board of equalization.²⁴ It should be recognized that this statement is not true for all kinds in lieu of taxes.²⁵

The county is likewise the usual unit for assessment. All original assessments are made by the county assessor's office²⁶ with the exception of certain designated industries²⁷ which are assessed by the state board of equalization.²⁸ The value of a particular person's property when determined by the assessor is used by each taxing district within which the property falls.²⁹

The levy for state purposes, being an exception to the general rule of the dominancy of county administrative machinery, is determined by the state board of equalization³⁰ from figures certified to it by the state auditor concerning appropriations made by the state legislature and interest and principal payments on the state indebtedness.³¹ Using the total assessed valuation of all property within

-
18. The more insignificant the type of district the more easily the size of district may be changed.
 19. In the case of the municipality it is the town council, Wyo. Comp. Stat. 1945 secs. 20-810, 32-301; in the school district it is the qualified electors and the school board, Wyo. Comp. Stat. 1945 sec. 3-207; the trustees of the high school district, Wyo. Comp. Stat. 1945 secs. 67-915 and 916; the trustees of the hospital or cemetery district, Wyo. Comp. Stat. 1945 sec. 26-902; the predatory animal district board, Wyo. Comp. Stat. 1945 sec. 56-2501; the county commissioners of the rodent and magpie control board, Wyo. Comp. Stat. 1945 sec. 34-1305; and the board of directors of the fire control district, Wyo. Comp. Stat. 1945 sec. 45-109.
 20. Compare: Wyo. Comp. Stat. 1945 secs. 32-207 (Qualified voters of the school district vote the levy); 32-401 (The county commissioners shall, at the time for levying taxes for county purposes cause to be levied a tax for the support of schools within the county); 32-403 (It shall be the duty of the board of county commissioners when making the annual levy for taxes, to levy upon the taxable property of each school district a tax sufficient to raise the amount of money voted in the district for the year).
 21. Wyo. Comp. Stat. 1945 secs. 32-302, 402, 711.
 22. Wyo. Comp. Stat. 1945 secs. 32-101, 303, 403.
 23. Wyo. Comp. Stat. 1945 secs. 32-304, 515, 27-1302.
 24. See infra as to the respective assessing duties of the three agencies.
 25. For example: the gasoline tax, Wyo. Comp. Stat. 1945 sec. 32-2408; railroad car companies, Wyo. Comp. Stat. 1945 sec. 32-2103; Insurance premiums, Wyo. Comp. Stat. 1945 sec. 32-2302; express companies, Wyo. Comp. Stat. 1945 sec. 32-2205.
 26. Wyo. Comp. Stat. 1945 secs. 27-502, 32-510, 511.
 27. Mines, Wyo. Comp. Stat. 1945 sec. 32-1003; pipe line companies, Wyo. Comp. Stat. 1945 sec. 32-1101; public utilities, Wyo. Comp. Stat. 1945 sec. 32-1204; railroads, Wyo. Comp. Stat. 1945 sec. 32-1301; telegraph and telephone companies, Wyo. Comp. Stat. 1945 sec. 32-1402.
 28. Ibid.
 29. Wyo. Comp. Stat. 1945 secs. 32-302, 402, 520, 521.
 30. Wyo. Comp. Stat. 1945 sec. 32-711.
 31. But see Wyo. Comp. Stat. 1945 sec. 56-708 (The Wyoming Stockgrowers Assn. report a deficit for the prior year's activities to the State Board of Equalization for which a levy is made on all livestock; it is taxation to pay a deficit already incurred.

the state, the state board of equalization determines the levy necessary for state purposes.

The chief administrative officer for the assessment of property is the county assessor, being charged with the assessment or valuation of all taxable property found within the county with the exceptions noted above.³² The duties and administrative procedure of the county assessors are strictly outlined by statute, but as to the valuation itself it is largely discretionary.³³ Likewise the collection of taxes under the ad valorem general property tax is administered by the county tax collector³⁴ who is the county treasurer ex officio. The type of duties of the collector differ from those of the assessor as his duties are ministerial rather than discretionary.

The collector in addition, however, is obligated to report any property, which had not been assessed, to the assessor for assessment.³⁵ The collector is given extensive powers to aid in collection of overdue taxes. He may distrain and sell personalty,³⁶ or allow the tax to attach as a lien against realty.³⁷ Here is the basis of tax titles and an adequate job by the collector would insure that there would be fewer invalid tax titles.³⁸ It is the duty of the collector to sell property against which a tax lien has attached³⁹ or he may buy the tax title for the county.⁴⁰

The county treasurer must settle with all taxing units for whom parts of the general property tax have been collected.⁴¹ The state is in an enviable position since the county must pay the state all taxes levied for state purposes whether the taxes have been collected or not.⁴² Other taxing units must be paid only what has been collected for them.⁴³

A large part of the taxation system is administered by the county commissioners acting either as the legislative body of the county or in their roll as the county board of equalization. The county commissioners are ex officio the county board of equalization,⁴⁴ with the county clerk as clerk of the board.⁴⁵ It is the obligation of the county board of equalization to add unassessed property to the assessment rolls.⁴⁶

The board may increase or decrease the assessment of a single taxpayer⁴⁷ the assessment of a particular type of property within the county,⁴⁸ or all the property throughout the county.⁴⁹ It is important to note that the notice requirements rela-

32. Note 27 supra.

33. See Wyo. Comp. Stat. 1945 ch. 32, art. five and ch. 27, art. five. See *infra*: McKay, Remedies for Defects in General Property Tax Assessment in Wyoming.

34. Wyo. Comp. Stat. 1945 secs. 32-515, 530, 27-1302, 4, 5.

35. Wyo. Comp. Stat. 1945 sec. 32-522.

36. Wyo. Comp. Stat. 1945 secs. 32-517, 601, 604, 1608, 1606.

37. Wyo. Comp. Stat. 1945 sec. 32-1603; cf. 32-1613.

38. See *infra*.

39. Wyo. Comp. Stat. 1945 sec. 32-1610.

40. Wyo. Comp. Stat. 1945 sec. 32-1701.

41. Wyo. Comp. Stat. 1945 sec. 32-510.

42. Wyo. Comp. Stat. 1945 sec. 32-1629.

43. Note 41 supra.

44. Wyo. Comp. Stat. 1945 sec. 32-801.

45. Wyo. Comp. Stat. 1945 sec. 32-803.

46. Wyo. Comp. Stat. 1945 sec. 32-802.

47. Wyo. Comp. Stat. 1945 secs. 32-802, 04.

48. *Ibid*.

49. Wyo. Comp. Stat. 1945 sec. 32-511.

tive to increasing the assessment of a single taxpayer⁵⁰ do not apply when the increase is made for the property of a substantial number of taxpayers.⁵¹

As the governing organ of the county the county commissioners determine the levy for county purposes.⁵² At the same time they will take the budgets submitted to them by school districts,⁵³ municipalities, other taxing units, and county functions allowed by statute to have separate levies and determine the levy necessary for each unit to raise the money required.⁵⁴ The county commissioners in conjunction with the county assessor must then check each levy to determine whether it is within the statutory maximums.⁵⁵

State participation in the general property tax system is almost entirely vested in the state board of equalization. It must determine the levy for state purposes, including the several specialized funds that are authorized by statute to have separate levies.⁵⁶ All of the state levies are certified as the general state levy to the county commissioners for collection by the county collector.⁵⁷ The board has extensive administrative powers of supervision over the operation of the general property tax machinery in the counties and other taxing units.⁵⁸ In addition to being an appeal board from the county board of equalization on individual assessments the state board can on its own motion raise or lower the entire assessment or any part thereof for any county.⁵⁹ Several industries are assessed by the state board of equalization; these are: pipeline companies, railroads, utilities, and telephone and telegraph companies.⁶⁰ The assessed valuation of these industries are divided among the counties according to the value determined to be within each county, and the assessed valuation for each county is certified to that county.⁶¹

Although the procedure for taxation might have been followed completely as to levying, assessment, and collection, the tax will be subject to attack if the levy exceeded either the statutory or constitutional limits. This general subject is treated elsewhere⁶² but here we are concerned with the actual limits as found in the constitution and statutes of the state of Wyoming.

The Wyoming Constitution limits the state levy to four mills per dollar assessed valuation except for the support of state charitable and educational institutions and the payment of the state debt and interest hereon.⁶³ The county is limited to a tax of twelve mills per dollar assessed valuation for all purposes including the county school tax, except for the payment of its public debt and the interest thereon.⁶⁴ The city is limited to a levy of eight mills except for a like provision as to its lawful debt.⁶⁵

50. Wyo. Comp. Stat. 1945 sec. 32-803.

51. *Bunteen v. Rock Springs Grazing Assn.* 29 Wyo. 461, 215 Pac. 244 (1923).

52. Wyo. Comp. Stat. 1945 secs. 32-101, 204.

53. Wyo. Comp. Stat. 1945 sec. 32-401.

54. Wyo. Comp. Stat. 1945 secs. 32-101, 303, 401, 403, and see *supra* notes 11-15.

55. Wyo. Comp. Stat. 1945 sec. 32-209.

56. Wyo. Comp. Stat. 1945 sec. 32-711.

57. Wyo. Comp. Stat. 1945 sec. 32-713.

58. Note 56 *supra*.

59. *Ibid.*

60. Note 27 *supra*.

61. *Ibid.*

62. See Whitley, *Defeating Tax Levies to Recover Excess Taxes*, *infra*.

63. Wyoming Constitution Article 15, sec. 4.

64. Wyoming Constitution Article 15, sec. 5.

65. Wyoming Constitution Article 15, sec. 6.

In the absence of a limit as to levies to pay the debt of the taxing unit it becomes important as to whether there is a legal debt limit.⁶⁶ The Wyoming Constitution provides that neither state, county, city, nor school district shall incur a debt in excess of current taxes unless approved by a vote of the constituents of the unit, in which case the state may incur an indebtedness of one percent of the assessed valuation on the state,⁶⁷ except to suppress insurrection or provide for the public defense. By vote of the counties' inhabitants the county may incur an indebtedness of two percent of the assessed valuation.⁶⁸ By a like vote the city may incur a debt of two percent, four additional percent for sewage disposal, and no limit for water supply.⁶⁹ A school district may incur a two percent indebtedness for ordinary purposes by vote or an additional four percent for the purposes of erection or enlargement of school buildings.⁷⁰

It is significant that there is no constitutional limit as to the time that must be taken to pay off the debts that may be legally incurred. It is obvious that were short run obligations to be incurred there could be a much higher levy, yet the levy would be within the constitutional limits.⁷¹ Actually a recitation of the constitutional levy and debt limitations tells only part of the complex ad valorem tax story. By statute not only do the nine taxing units have maximum levies but separate functions within the units have separate maximum levies with separate levies. It is not always easy to tell whether the constitutional limitations fit into the complex statutory pattern.

No function would be served in this descriptive paper by copying the statutory figures which are subject to frequent change, so instead all activities for which a separate and distinct levy may be made will be outlined without compiling amounts.

In addition to a levy for general purposes⁷² and to retire indebtedness,⁷³ the state board of equalization may levy a tax for maintenance of charitable institutions,⁷⁴ stock inspection,⁷⁵ and the statutory levy for school purposes.⁷⁶

The maximum levy for counties varies with the valuation of the county.⁷⁷ In addition to a levy for general purposes and debt retirement the county may have a levy for welfare,⁷⁸ welfare and health,⁷⁹ county library,⁸⁰ county hospital,⁸¹

66. Notes 63, 64, and 65 *supra*.

67. Wyoming Constitution Article 16 sec. 1 and 2.

68. Wyoming Constitution Article 16, secs. 3 and 4.

69. Wyoming Constitution Article 16, sec. 5.

70. *Ibid*.

71. With the exception of county refunding bonds there does not appear to be a statutory minimum time for the retirement of bonds, Wyo. Comp. Stat. 1945 secs. 20-1101, 28-205, 67-503, 67-401.

72. Wyo. Comp. Stat. 1945 sec. 32-711.

73. Wyo. Comp. Stat. 1945 sec. 32-713.

74. Wyo. Comp. Stat. 1945 sec. 20-302.

75. Wyo. Comp. Stat. 1945 sec. 56-709.

76. Wyo. Comp. Stat. 1945 sec. 32-2801.

77. Wyo. Comp. Stat. 1945 sec. 32-203.

78. Wyo. Comp. Stat. 1945 sec. 25-112.

79. *Ibid*.

80. Wyo. Comp. Stat. 1945 secs. 26-601, 32-206.

81. Wyo. Comp. Stat. 1945 sec. 26-701.

county parks,⁸² county fair,⁸³ schools,⁸⁴ pest control,⁸⁵ and a sinking fund.⁸⁶ The municipalities are in a less enviable position, levying only for general purposes,⁸⁷ band concerts,⁸⁸ policemen's pensions,⁸⁹ fire department,⁹⁰ and payment of legal indebtedness.⁹¹

School districts, although receiving money from the state and the county may levy a tax for general purposes,⁹² building fund,⁹³ and payment of indebtedness.⁹⁴ If the school district has an accredited high school it may levy an additional tax for vocational and adult education.⁹⁵ If the school district has no high school it may levy a special tax to pay tuitoin to a high school.⁹⁶

Any statement concerning the high school districts must be subject to reservation as questions concerning the status of such districts are not clearly settled yet. The apparently well settled law was given a shifting by the case of *Erickson v. School District No. 2 of Natrona County*⁹⁷ in which the majority of the Wyoming Supreme Court held that a high school district did not have a bonding capacity separate from bonding capacity of the ordinary school districts covering the same area as the high school district. The decision was based upon statutory interpretation but there was dictum indicating the opinion of the majority that such an interpretation was necessary to sustain the constitutionality of the statutes.⁹⁸ The statutes, however, providing for the tax levy of high school districts do not appear to have been affected by the *Erickson* case. Certainly the statutes, in terms definite and unmistakable, provide that the high school district is a separate taxing unit and shall levy a tax separate and distinct from those of the ordinary school districts.⁹⁹ The constitutional problem encountered in the bonding statute is not in existence in the case of levying for high schools since there is no constitutional limit on the levies for school districts.¹⁰⁰ It seems logical therefore to assume that

82. Wyo. Comp. Stat. 1945 sec. 26-802.

83. *Ibid.* See Wyo. Comp. Stat. 1945 sec. 32-207.

84. Wyo. Comp. Stat. 1945 sec. 32-205.

85. Wyo. Comp. Stat. 1945 sec. 34-212.

86. Wyo. Comp. Stat. 1945 secs. 28-305, 32-204.

87. Wyo. Comp. Stat. 1945 sec. 29-106.

88. Wyo. Comp. Stat. 1945 sec. 29-3102.

89. Wyo. Comp. Stat. 1945 sec. 29-1604

90. Wyo. Comp. Stat. 1945 sec. 45-102.

91. Wyo. Comp. Stat. 1945 sec. 32-301.

92. Wyo. Comp. Stat. 1945 sec. 32-401.

93. Wyo. Comp. Stat. 1945 sec. 67-302.

94. Wyo. Comp. Stat. 1945 sec. 67-406.

95. Wyo. Comp. Stat. 1945 sec. 67-1209.

96. Wyo. Comp. Stat. 1945 sec. 67-931. It should be noted that an ordinary school district maintaining a high school district has additional taxing powers similar to those of a high school district.

97. 217 P.(2d) 877 (Wyo. 1949).

98. Note 97 *supra* at 889.

99. Wyo. Comp. Stat. 1945 secs. 67-916, 7. The *Erickson* case will have one effect on the tax levies of high school districts, namely, in levying an amount to retire outstanding bonds. It is clear that at least one county has an excess of bonded indebtedness under this decision.

100. This is an anomaly in the Wyoming tax law. The constitutional limit on county taxes has been construed to not include taxes levied for the common schools. *Powder River Cattle Co. v. Bd. of Comrs. of Johnson County*, 3 Wyo. 597, 29 Pac. 361 (1892); *McCague Inv. Co. v. Mallin*, 25 Wyo. 373, 170 Pac. 763 (1918); *State v. Snyder*, 30 Wyo. 468, 222 Pac. 40 (1924). This leaves no constitutional provision as to school district taxes.

the independent status of the high school tax levies will withstand court attack. Present statutes provide for levies by such districts for general purposes,¹⁰¹ building fund,¹⁰² vocational rehabilitation and adult education,¹⁰³ and payment of lawful indebtedness.¹⁰⁴

Levies for general purposes are permitted the hospital and/or cemetery district,¹⁰⁵ the magpie and rodent control district,¹⁰⁶ the predatory animal control district,¹⁰⁷ and the fire district.¹⁰⁸ Only the fire district and the hospital or cemetery district are permitted by statute to bond or incur indebtedness for more than the present year's income,¹⁰⁹ so only in these two cases of the above four taxing units would there be an allowable levy for payment of indebtedness.

WALTER "C." URBICKIT, JR.

DEFEATING TAX LEVIES TO RECOVER EXCESS TAXES

In Wyoming, the levying of taxes is the second step in the taxing process which consists of assessment, levy, and collection. The tax levy is the bill, exactment or measure of the legislative body by which an annual or general tax is imposed.¹ It is a legislative act, whether state or local, which determines the amount of tax to be laid.² The obligation of any citizen to pay taxes is purely a statutory creation, and taxes can be levied, assessed, and collected only by the method pointed out by the express statute.³ And it is this process of levying taxes in compliance with the statutes involved that gives rise to numerous grounds on which a tax levy can be either partially or totally defeated and thus recover for a taxpayer a sum in the form of a tax refund.

One of the clearest cases of an invalid tax levy is a case in which the levy exceeds the constitutional or statutory limitations. The Wyoming Constitution⁴ expressly sets the mill limit for the state, counties, and for cities, which by statute are re-affirmed, and also limits for school districts and other taxing districts specified.⁵ By express statutory provision in Wyoming,⁶ any levy which may be certified to the clerk in excess of the limitation fixed by the statutes is declared to be unlawful and it is made the duty of the county assessor to reduce the levy to

101. Wyo. Comp. Stat. 1945 sec. 67-916.

102. Wyo. Comp. Stat. 1945 secs. 67-917, 8.

103. Wyo. Comp. Stat. 1945 sec. 67-1209.

104. Note 102 supra.

105. Wyo. Comp. Stat. 1945 sec. 26-902.

106. Wyo. Comp. Stat. 1945 sec. 34-1303.

107. Wyo. Comp. Stat. 1945 sec. 56-2507.

108. Wyo. Comp. Stat. 1945 sec. 45-102.

109. Notes 105, 6, 7, & 8 supra.

1. Bouvier, Law Dictionary.

2. 1 Cooley, Taxation 547 (3rd. Edition).

3. *People ex rel. Eitel v. Linheimer*, 371 Ill. 367, 21 N. E. (2d) 318, 124 A.L.R. 1472 (1939); appeal denied for want of substantial federal question, 308 U. S. 505, rehearing denied, 308 U. S. 636; *People ex. rel. Pickerill v. New York Central R. Co.* 391 Ill. 377, 63 N. E. (2d) 405 (1945).

4. Wyo. Const. Art. 15, secs. 4, 5, 6.

5. Wyo. Comp. Stat. 1945 secs. 32-101, 32-205, 32-206, 32-201.

6. Wyo. Comp. Stat. 1945 sec. 32-209.