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the time of its making.⁶⁷ In a case in which the Constitution forbade the taxing of a municipal corporation for corporation purposes and this prohibition was subsequently changed to allow a tax, the court held that the power of the legislature to validate by a curative law any proceeding which it might have authorized in advance is limited to the case of the irregular exercise of power; it cannot cure the want of authority to act at all.⁶⁸

In every case, the courts are prone to say that a tax levied in substantial compliance with the law should be sustained, for otherwise no taxes could be held valid for most proceedings have at least some small defects that could be objected to.⁶⁹

An important practical consideration from the taxpayer's point of view in the problem of defeating tax levies is whether the end result is worth the expense of litigation even if he is successful in defeating the levy. The general rule is that where the illegal part of the tax is inseparably connected with the legal tax, the entire tax is void. But if the lawful part can be clearly and definitely ascertained and separated from the unlawful part, the lawful part will be sustained and the unlawful part will fail.⁷⁰ The holding of the United States District Court for Wyoming,⁷¹ to the effect that where an action is brought to enjoin a tax because it exceeds the statutory or constitutional limitations, only so much of the tax will be enjoined as exceeds the limit, puts Wyoming in line with the majority on this point. The consideration of how much money can be recovered is important in determining whether to go to court or not and would probably restrict these suits to the large property owners. The answers to this problem may lie in many taxpayers joining together in the same suit to reduce the cost to each one.

THOMAS L. WHITLEY.

REMEDIES FOR DEFECTS IN GENERAL PROPERTY TAX ASSESSMENTS IN WYOMING

Under state laws general levies are ordinarily made directly against property according to value based on some form of assessment. The term assessment, as commonly employed,¹ and as used in the Wyoming Constitution² and statutes relating to general property taxation, refers to the two processes of listing property to be taxed, and of estimating the sums which are to be the guide in an apportionment of the tax between the individual subjects of taxation within the particular taxing unit. The assessment is the first step in the proceedings against individual subjects of taxation, under such an ad valorem taxation system, and

67. See note 21 *supra*.

68. *People v. Illinois Central Ry. Co.*, 310 Ill. 212, 141 N.E. 822, 823 (1923).

69. *Protest of Missouri-Kansas-Texas Ry. Co.*, 149 Okl. 166, 300 Pac. 713 (1931).

70. *Strong v. Mack*, 64 C. A. (2d) 739 (Calif.), 149 P. (2d) 401 (1944); *Dallas County Levee Improvement Dist. No. 6 v. Hengy*, 146 Tex. 95, 202 S.W. (2d) 918 (1947).

71. *Cottle v. Union Pacific Ry. Co.*, 201 Fed. 39, 119 C. C. A. 371 (1912), 96 A.L.R. 934.

1. 3 Cooley, *Taxation* sec. 1044 (4th ed. 1924).

2. "All lands and improvements thereon shall be listed for assessment, valued for taxation and assessed separately . . ." Wyo. Const. Art. 15, Sec. 1.

is the foundation of all which will follow it. Whether or not an assessment is legal and valid is a consideration, therefore, of prime importance.

The testing of the validity of assessments in the courts of Wyoming appears to have been almost exclusively by way of collateral attack, despite the fact that for the past three decades there has been statutory authorization for direct attack by way of appeal to the courts from the determinations of assessing officials and tribunals. Though it is possible that such appeals have been heard at the district court level, there are no reported cases involving an appeal direct to a court from the State Board of Equalization. Modes of collateral attack on the assessment which have been employed in Wyoming³ include actions to enjoin the collection of the tax, actions to enjoin the sale of the taxpayer's property to satisfy taxes, actions to recover the amount of taxes paid and actions to quiet title.

The general rule is that a taxpayer complaining of his assessment cannot resort to the courts in the first instance, but must avail himself of the statutory remedy of appeal to tribunals empowered to entertain direct attack, unless there is a showing that such remedy is inadequate, or that the defect in the assessment is jurisdictional.⁴ Where the defect is jurisdictional, as in a case in which an assessment has been made when the taxpayer has no property in the county subject to taxation, the taxpayer, in order to be entitled to relief in the courts, need not allege or prove that he has first made application to the board of equalization to correct the assessment;⁵ the assessment is clearly illegal and collateral attack as well as direct attack is authorized.

The Supreme Court of Wyoming has taken the position that the remedy provided by statute is exclusive, and thus adequate, precluding a collateral attack, absent a showing of fraudulent conduct invoking the principles of equity.⁶ The acts of officers and tribunals upon whom the law imposes the duty of assessment of property are judicial in nature;⁷ a court of equity is not a court of errors to review such acts and it will not revise the decisions of such officers and tribunals upon matters within their discretion if they have acted honestly.⁸ Where there is a difference of opinion as to value, the judgment of a board of equalization, honestly exercised, must prevail.⁹

Fraud sufficient to invoke the aid of the court is not shown by allegations that the assessment complained of is excessive,¹⁰ or allegations that the board of equal-

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3. "District courts shall have jurisdiction to enjoin the illegal levy of taxes and assessments, or the collection of either, and of actions to recover back such taxes or assessments as have been collected; but no recovery shall be had unless the action be brought within one year after the taxes or assessments are collected." Wyo. Comp. Stat. 1945 sec. 3-7801.
 4. 3 Cooley, Taxation sec. 1201 (4th ed. 1924); 4 *id.* sec. 1650; Stason, *Judicial Review of Tax Errors—Effect of Failure to Resort to Administrative Remedies*, 28 Mich. L. Rev. 637 (1930).
 5. *Horton v. Driskell*, 13 Wyo. 66, 77 Pac. 354, 3 Ann. Cas. 561, (1904); *Ricketts v. Crewdson*, 13 Wyo. 284, 79 Pac. 1042, rehearing 81 Pac. 1 (1905).
 6. *Buntan v. Rock Springs Grazing Ass'n.*, 29 Wyo. 461, 215 Pac. 244 (1923); *Ricketts v. Crewdson*, see note 5 *supra*; *Com'rs. v. Searight Cattle Co.*, 3 Wyo. 777, 31 Pac. 268 (1892) (overruled on a point not material to the subject matter of this article).
 7. Cases cited note 6 *supra*.
 8. *Crewdson v. Nefsy Co.*, 14 Wyo. 61, 82 Pac. 1 (1905); *Ricketts v. Crewdson*, see note 5 *supra*; *Com'rs v. Searight Cattle Co.*, see note 6 *supra*.
 9. *Bunten v. Rock Springs Grazing Ass'n.*, see note 6 *supra*.
 10. *Bunten v. Rock Springs Grazing Ass'n.*, see note 6 *supra*; *Ricketts v. Crewdson*, see note 5 *supra*.

ization acted "arbitrarily and without any evidence as to the value of lands of the plaintiff,"¹¹ or that the property has been overvalued due to an error in judgment.¹² Though the Wyoming statutes contemplate that valuation should be at true value in money at private sale,¹³ and therefore, strictly and logically speaking, property which is assessed at more than its actual value might be said to be assessed illegally as to the excess, the Supreme Court has said that value is a matter of opinion; there is no point at which it can be said an excessive valuation begins. Fraud must be shown.¹⁴

The most obvious case alleged to involve fraud such as will support a collateral attack on an assessment is one in which there has been a failure to assess the complainant's property uniformly, i.e., a failure to assess his property as other comparable property, similarly situated, has been assessed.¹⁵ One of the declared rights in the Wyoming Constitution is that "all taxation shall be equal and uniform."¹⁶ The specific, fundamental substantive requirement of the Constitution relative to the assessment of property for taxation is that all taxable property shall be uniformly assessed.¹⁷ The collateral attack based on this substantive ground of discrimination must be predicated on a showing of "an intention, or the equivalent of fraudulent purpose, to disregard the fundamental principle of uniformity,"¹⁸ or a showing that the assessment is somehow constructively fraudulent as against the taxpayer.¹⁹ A grossly inequitable and palpably excessive valuation may be held constructively fraudulent, as showing in itself an intentional injustice or discrimination.²⁰

Not every discrimination will render an assessment invalid. It is true that an omission to assess property subject to taxation is a discrimination against those taxpayers who have been assessed, increasing the tax burden which they must carry. However, as the Wyoming Supreme Court has pointed out, it has been frequently held that an omission to assess property, arising from either a mistake of law or fact, or accidentally, gives no ground to other taxpayers upon which to attack the assessment made against them.²¹ A mere mistake, an accidental discrimination, does not authorize an injunction.²² In fact, there is good authority for the proposition that the rule is that an omission to assess, even though intentional, will not affect the validity of the assessment made against other taxpayers

11. *Ibid.* The facts constituting the fraud must be stated.

12. *Rowley v. Chicago & N. W. R. Co.*, 293 U. S. 102, 55 Sup. Ct. 55, 79, L. Ed. 222 (1934).

13. *Wyo. Comp. Stat.* 1945 sec. 32-506.

14. *Bunten v. Rock Springs Grazing Ass'n.*, see note 6 *supra*.

15. "The uniformity and equality enjoined by the constitution require only that the same means and methods be applied impartially to all the constituents of each class, so that it operates equally and uniformly upon all persons and corporations in similar circumstances." *City and County of Denver v. Lewin*, 106 Colo. 331, 105 P. (2d) 854, 863 (1940).

16. *Wyo. Const.* Art. 1, Sec. 23.

17. *Wyo. Const.* Art. 15, Sec. 11.

18. *Rowley v. Chicago & N. W. R. Co.*, see note 12 *supra*.

19. *Bunten v. Rock Springs Grazing Ass'n.*, see note 6 *supra*.

20. *Ibid.*

21. *Bunten v. Rock Springs Grazing Ass'n.*, see note 6 *supra*; 3 *Cooley, Taxation* sec. 1162 (4th ed. 1924).

22. *Bunten v. Rock Springs Grazing Ass'n.*, see note 6 *supra*.

23. 3 *Cooley, Taxation* sec. 1162 (4th ed. 1924); *Matthews, The Function of Constitutional Provisions Requiring Uniformity in Taxation*, 38 *Ky. L. J.* 188 (1950).

who have been properly assessed.²³ Nor does a mere showing that the property of others has been undervalued entitle the taxpayer to injunctive relief.²⁴

Before leaving the discussion of the requirement of uniformity in property tax assessment it might be well to indicate the relationship, as declared by the Wyoming Supreme Court, between that requirement and the requirements of law relative to valuation of property, inasmuch as valuation is the most important element in the assessment. The Constitution of Wyoming directs that "the legislature shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal."²⁵ In consequence thereof, legislation has been passed providing that ". . . all real property is to be assessed at its true value in money at private sale, having regard to its quality, locality, natural advantages, the general improvements in the vicinity, and all other elements of its value."²⁶ In the course of its opinion in *Bunten v. Rock Springs Grazing Association*,²⁷ the Supreme Court said that though the statute limits valuation to the actual value of the property, "the percent of value at which property is assessed is, after all, secondary to the Constitutional provision that all taxable property shall be assessed uniformly, so as to bear a just proportion of the burdens of taxes. The latter is the end, the former the means to that end, and we shall not exalt the less important over the more important."

Direct attack on an assessment in the courts has been authorized from the time of the creation of the State Board of Equalization in 1919. At that time, the legislature provided that the taxpayer should have the right to appeal from a decision of that board increasing his assessment to the district court of the county wherein the property was situated.²⁸ Then, in 1931, legislation was passed to the effect that any taxpayer feeling aggrieved by an assessment by the board might appeal from the decision of the board to the district court of the county where the property was located, a trial de novo to the court to be had there.²⁹ The latter statute also directed that all the proceedings on appeal to the court were to be under the provisions of the code of civil procedure, as in other civil cases. The Supreme Court of Wyoming has not been called upon to determine what the function of the district court is when appeal is made from the State Board of Equalization to that court;³⁰ as was earlier indicated, this method of testing the validity of an

24. *Rowley v. Chicago & N. W. R. Co.*, see note 12 supra.

25. Wyo. Const. Art. 15, Sec. 11.

26. Wyo. Comp. Stat. 1945 sec. 32-506.

27. 29 Wyo. 461, 215 Pac. 244, 253 (1923).

28. Wyo. Comp. Stat. 1945 sec. 32-711 (a).

29. Wyo. Comp. Stat. 1945 sec. 32-716.

30. In a 1923 case, the Supreme Court said that in the absence of legislative provision to the contrary, the courts could not substitute their judgment for that of the persons and boards specifically provided for the job of assessment. *Bunten v. Rock Springs Grazing Ass'n.* see note 6 supra. And, in an early case decided before either of the statutes under consideration was passed, the court said that absent a provision regulating the procedure and granting a review by the courts, the court would have "no revisionary power" over the administrative assessing tribunal, unless fraud or lack of jurisdiction was shown. *Com'rs v. Searight Cattle Co.*, see note 6 supra.

assessment has not been involved in any reported Wyoming case.³¹ What weight should be given to the determination of the administrative officials as to the proper assessment?³² Should the district court become the assessing tribunal, and determine anew the proper valuation to be assigned to the taxable property? Should the court determine for itself whether a particular assessment is "excessive," despite the fact that the assessment was made in compliance with the principle of uniformity? Should the court only hear evidence in order to determine whether the valuation placed on the property was the result of fraud on the taxpayer, or was erroneous to the extent that it was constructively fraudulent?

Of course, only the Supreme Court of Wyoming can authoritatively answer the questions propounded and determine the proper function of the district court upon such an appeal.³³ But, with the hope that some light would be shed on the possible interpretations which might be placed on the statutes, particularly the more detailed 1931 statute,³⁴ a search was made for cases from other jurisdictions involving statutory appeals to the courts from assessing tribunals. Few cases having validity for the point in interest were discovered; most of the cases found involved statutes the wording of which was significantly different from that found in the Wyoming statutes. However, some aid may be gained from the following decisions.

In Ohio, under a statute empowering the court, to which the appeal was taken, to proceed *de novo*, it was held that the court should exercise an independent judgment upon issues of fact and of law, and in case of reversal, it was not necessary to remand the proceedings to the tax commission for reconsideration and redetermination. The court might hear the evidence presented to the tax commission and additional evidence, and could modify the assessed value of the property as determined by the tax commission and find the true value in money of the property.³⁵ The Supreme Court of Pennsylvania has held that where the proceedings are *de novo* in the court to which an appeal from the decision of a tax assessment board is made, the valuation of the board makes a *prima facie* case only, and where the evidence as to market value was in conflict with the board's

31. Possible explanations for the apparent failure of taxpayers to take advantage of the right of appeal to the district court given them by statute include: (1) the cost of appealing to the court to get an assessment allegedly erroneous corrected would be more than the possible benefit to be gained even if the taxpayer were successful, the saving in taxes being relatively small inasmuch as the error in assessment, if any, is seldom large in comparison to the actual value of the property; (2) in a great many cases, the aggrieved taxpayer and the state Board of Equalization are able to satisfactorily compose their differences before matters reach a point compelling the taxpayer to seek the aid of the court.

32. In interpreting the statute, will the court be decisively influenced by the prevailing spirit of past decisions of the court—i.e., that to make assessments and to fix valuation is primarily a function for administrative officers, and not one for the courts?

33. Indeed, the Supreme Court of the United States declined to decide the question raised by the contention of a defendant Wyoming county treasurer, in a suit by a taxpayer to enjoin the collection of taxes, that the taxpayer had failed to exhaust the statutory administrative remedy open to it by appeal from the determination of the State Board of Equalization to the district court, saying that it was reluctant, in advance of a decision on the serious question of Wyoming law presented by the court of last resort, to construe such a statute of doubtful meaning or to decide questions of state law as to which there might be substantial controversy. *Rowley v. Chicago & N. W. R. Co.*, see note 11 *supra*.

34. *Wyo. Comp. Stat.* 1945 sec. 32-716.

35. *Tax Commission v. Surface Combustion Corp.*, 52 Ohio App. 120, 3 N. E. (2d) 546 (1936).

valuation, the prima facie case was overcome.³⁶ It has been held by the Supreme Court of Washington that, where no practice was fixed in the act which provided for an appeal to the superior court from an order of the tax commission, the legislature intended that the well established equity practice should be followed. "Trial de novo" in the court appealed to was limited to mean the trying of the case anew so far as the introduction of testimony was concerned and the determination of facts was concerned, for the purpose of enabling the trial court to determine whether the valuation placed on the property by the tax commission was erroneous to the extent that it was actually or constructively fraudulent.³⁷ Under an Iowa statute authorizing appeals from action taken by the board of review, the district court is to hear the appeal in equity and determine anew all questions arising before the board which relate to the liability of the property to assessment or the amount thereof. In construing the statute, the Supreme Court of Iowa said that there was a presumption in favor of the valuation fixed by the assessor; the court would not grant relief from an assessment because of a mere difference in opinion as to values. If the action of the assessor "is not arbitrary or capricious or so wholly out of line with actual values as to give rise to the inference that he has not properly discharged his duty, the assessment made by him and confirmed by the board of review should not be disturbed by the courts."³⁸

Thus far we have considered the possibilities for relief in the courts open to the taxpayer complaining of his assessment. It has been noted that the courts will not come to the aid of the taxpayer in a collateral attack on the assessment unless it can be shown that the administrative remedy afforded him, the right of appeal to the statutory boards of equalization, is inadequate. A direct attack, of course, presupposes an adverse determination by the board of equalization.

Rather detailed legislation has been enacted providing for the making of the original assessment and for the administrative review of assessments. The assessor is required to gather such data as will better enable him to assess property at its full cash market value; he is required to "devote himself to a diligent study of proper valuations, real, personal and mixed in his county. . . ."³⁹ In short, the statutes contemplate that he will become something of an expert in the field of appraisal and valuation. After the assessor has returned the assessment, following his examination of the property and his estimation of its value, a taxpayer feeling aggrieved by the assessment may appeal to the county board of equalization, which must hear anyone desiring to make a complaint who files a verified statement under oath, specifying the respect in which the assessment complained of is incorrect.⁴⁰ Unsatisfied with the determination of the county board, the taxpayer may

36. *In re Kemble's Estate*, 280 Pa. 441, 124 A. 694 (1924).

37. *In re Assessment of Metropolitan Building Co.*, 144 Wash. 469, 258 Pac. 473 (1927).

38. *Appeal of Dubuque-Wisconsin Bridge Co.*, 237 Ia. 1314, 25 N. W. (2d) 327, 328 (1946).

39. Wyo. Comp. Stat. 1945 sec. 27-505.

40. Wyo. Comp. Stat. 1945 sec. 32-805.

appeal to the State Board of Equalization.⁴¹ That board is charged by the legislature with the duty of examining into all cases in which it is alleged that property subject to taxation has been fraudulently or improperly or unequally assessed.⁴²

The legislature has further directed the State Board of Equalization to prescribe the system or systems of valuation to be utilized by the various counties throughout the state to the end that all property will be uniformly valued for assessment and taxation purposes.⁴³ Before considering what the Board has done in compliance with this direction, perhaps brief notice should be taken of a few general propositions relative to the problem of valuation. It is ordinarily said that there are three classes of evidence utilized by appraisers in estimating value: (1) market data, comparison of similar properties; (2) income, capitalization of rentals; (3) analysis of reproduction cost.⁴⁴ Where inexpensive valuations are necessary, as is the case in mass appraisals for ad valorem tax purposes, all three classes of evidence cannot be employed. Complete accuracy in the valuation must be sacrificed for simplicity.⁴⁵ The important generalization is that the exercise of judgment as to value must be based on facts.⁴⁶

The State Board has established in the various counties a system of valuing real estate improvements based on what is popularly called the "Boeckh" (pronounced "Beck") system, which utilizes reproduction cost analysis as evidence upon which the estimate of value is made.⁴⁷ The policy of the board in administering the formula,⁴⁸ developed under the system thus installed, in its capacity as the administrative tribunal of final appeal, is to inquire whether the formula was uniformly applied, i.e. applied to the property of the appellant in the same way as it was applied to all other property similarly situated. Finding as a fact that there has been this uniformity of application, the board will not grant relief to the taxpayer complaining that his improvements have been "improperly" valued under the formula, that the valuation is too high or that it exceeds the actual cost of the property,⁴⁹ or that the valuation is inaccurate as not having been based

41. "While the law does not specifically provide that a taxpayer may appear before it (the State Board of Equalization), enter his complaint and be heard, there is nothing denying that right; and such right, since the board is a public board with its sessions open, should . . . be held to be implied." *Baker v. Paxton*, 29 Wyo. 500, 215 Pac. 257 (1923).

Rules of Practice of the State Board of Equalization, Rule 9 (1), provide specifically for appeal by any taxpayer who may feel aggrieved by any assessment, after decision by the county board of equalization.

42. Wyo. Comp. Stat. 1945 sec. 32-711 (b).

43. Wyo. Comp. Stat. 1945 sec. 32-711 (1).

44. Martin and Estill, *Valuation of Property; Economic and Legal Standards*, 38 Ky. L. J. 7 (1949); Boeckh, *Manual of Appraisals* 19 (4th ed. 1945).

45. *Ibid.*

46. Martin and Estill, *supra* note 44, at 27.

47. "Appraisers generally agree that the most reliable method of determining the structural value of a building is to compute the cost of replacing the building and then depreciate this cost for past use. This brings values up to the present time. . . . This is applicable to both farms and city residences and to most classes of city business property." Martin and Estill, *supra* note 44, at 20.

48. Roughly, the formula is: 60% of replacement cost of 1938, with allowance for depreciation and for obsolescence.

The general practice in taxing districts is to assess property at less than its full value. Uniformity requires a similar debasement of all property. Matthews, *supra* note 22, at 196.

49. See Muehlenkamp, *Remedies for Disproportionate Tax Assessment in Kentucky*, 36 Ky. L. J. 401 (1948).

on a formula which takes into account a factor of value such as the income producing quality of the property.

The Wyoming Supreme Court has not been called on to decide directly the question whether it is sufficient to support a valid assessment merely that some reasonable class of evidence has been utilized to give a comparatively sound factual basis for the estimate of the value of the property assessed and that the system as thus constituted be uniformly applied. However, judging from the general tone of the decisions of the court which exalt the requirement of uniformity in assessment to the position of paramount importance, and in view of the generally accepted principles relative to the appraisal of property for taxation discussed earlier, it would not be unreasonable to suppose that the court would uphold the policy adopted by the State Board of Equalization in its administration of the real estate improvement valuation system.

Having dealt with principles applicable to cases involving substantive defects in an assessment, we now turn to a consideration of defects in the procedure followed in making the assessment.

The person assessed must at some stage in the proceedings have notice and opportunity to be heard as to the validity and amount of the tax against him before the tax becomes final in order that the requirements of due process of law be met.⁵⁰ Opportunity for a hearing in respect to excessive valuation caused by a mistake of judgment must be provided.⁵¹ If sufficient notice and hearing is not afforded, the tax is void and the taxpayer may proceed with a collateral attack without regard for administrative appeals.⁵² Where an assessment was made under a statute⁵³ which provided that the county treasurer could assess property which had escaped the assessor and the board of equalization, and the statute failed to make provision for the taxpayer to be heard in any manner, the board of equalization having adjourned for the year, the assessment was held invalid.⁵⁴

However, due process does not require personal notice be given of the meeting of the board of equalization for the purpose of hearing complaints; it is sufficient that the taxpayer is informed of the hearing by some general law which fixes the time and place of the meeting, and of which he must take notice.⁵⁵ Apart from this, it should be noted that the Wyoming statutes⁵⁶ set out in detail notice and hearing requirements where an individual assessment is *altered* by any one of the assessing authorities.

When the State Board of Equalization undertakes to perform its duty to equalize values, no notice need be given where the board increases the valuation by percentage of a class, or of classes, of property, such horizontal increase affect-

50. *Baker v. Paxton*, 29 Wyo. 500, 215 Pac. 257 (1923); 3 Cooley, Taxation sec. 1113 (4th ed. 1924).

51. *Orcutt v. Crawford*, 85 F. (2d) 146 (C. C. A. 10th 1936), cert. denied 299 U. S. 594.

52. *Stason*, supra note 4, at 650.

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

54. *Orcutt v. Crawford*, see note 51 supra.

55. 3 Cooley, Taxation sec. 1113 (4th ed. 1924). See Wyo. Comp. Stat. 1945 secs. 32-801, 32-802.

56. Wyo. Comp. Stat. secs. 27-505, 27-511 (assessor); Wyo. Comp. Stat. secs. 32-803, 32-804 (county board of equalization); Wyo. Comp. Stat. sec. 32-711 (a) (State Board of Equalization).

ing a comparatively large number of people.⁵⁷ The presumption arises that, after two meetings of the county board of equalization, and at the time the assessment roll is laid before the State Board, the various owners of classes of property in the county stand on an equal footing and that as between themselves, the valuations of their respective properties have been fully equalized.⁵⁸ Where the statute fixes the date and place of meeting of the State Board, as is the case in Wyoming, all persons interested must take notice that the power of the board to equalize must be exercised at that time and place, and that his property may be affected thereby.⁵⁹

Also, the rule is well recognized, that absent a statutory requirement to act on evidence, and there is no such requirement in Wyoming, boards of equalization when equalizing values act upon their own knowledge.⁶⁰ It is reasonable to presume that members of the board obtain a fair idea of taxable values in the state in the performance of statutory duties, and hence the legislature deemed it unnecessary that they should act upon evidence produced before them in equalizing values.⁶¹

The statute⁶² authorizing the county board of equalization to add property to the assessment roll, and assess its value, does not require the board to hear evidence as a condition precedent to thus correcting the assessment roll. Members of the board can act on personal knowledge, or they may gain information upon which to act from any source at their command.⁶³

Some particular defect in the procedure followed in making the assessment is frequently seized upon in an attempt to have the assessment declared invalid, and thus the tax or the tax title, for which a legal assessment is an indispensable prior step. Requirements relative to the assessment procedure, set forth in the statutes, are ordinarily classified as either mandatory or directory. "When the requirements are intended for the protection of the citizen and to prevent a sacrifice of his property and a disregard thereof might and generally would affect him injuriously, they are considered mandatory. But where the statutory requisitions are intended as a guide for officers . . . and are designated to secure order, system and dispatch in proceedings, a disregard of them cannot injuriously affect the rights of parties interested, and hence they are generally considered as directory, and a non-compliance therewith does not render the tax illegal or void."⁶⁴ A

57. *Baker v. Paxton*, see note 50 supra; *Bi-metallic Investment Co. v. State Board of Equalization*, 239 U. S. 441, 35 Sup. Ct. 141, 60 L. Ed. 372 (1915).

58. *Bunten v. Rock Springs Grazing Ass'n.*, see note 6 supra; *Baker v. Paxton*, see note 50 supra.

59. *Baker v. Paxton*, see note 50 supra.

60. *Bunten v. Rock Springs Grazing Ass'n.*, see note 6 supra; *Ricketts v. Crewdson*, see note 5 supra; 3 Cooley, *Taxation* sec. 1224 (4th ed. 1924).

61. *Bunten v. Rock Springs Grazing Ass'n.*, see note 6 supra.

62. *Wyo. Comp. Stat.* 1945 sec. 32-802.

63. *Ricketts v. Crewdson*, see note 5 supra.

64. *Bunten v. Rock Springs Grazing Ass'n.*, see note 6 supra. See, generally, 2 Cooley, *Taxation* sec. 510 (4th ed. 1924).

failure to comply with a mandatory requirement will render the assessment void, as where the assessment was not made in the name of the owner.⁶⁵

However, in determining the question as to whether a particular requirement is mandatory or only directory, the courts appear to be considerably influenced by the nature of the proceeding in which the question is raised. If the proceeding is one in which it is sought to sustain tax titles or sales for taxes, it is generally held that the requirements of the statutes must be substantially complied with, and the assessment must be made in the manner required.⁶⁶ "But when equitable relief is sought the maxim is applied that he who seeks equity must do equity, and an injunction will not be allowed on account of the mere failure of the taxing officers to fulfill the requirements of the statute in levy and assessment, but it must appear that the tax itself is inequitable for the reason that the property was not taxable, or that it was not the property of the complainant, or the like."⁶⁷ The writ of injunction is properly invoked only in extraordinary cases.

Thus, where the oath of the assessor is required to be attached to the assessment roll,⁶⁸ and the assessor fails in this duty, the omission renders the assessment roll void as a basis for the proceedings of sale and invalidates the tax sale.⁶⁹ The court said that an oath of this kind was for the purpose of safeguarding the interests of taxpayers. But where the case was one in which injunctive relief was sought, the omission to attach the oath to the assessment roll was regarded only as an irregularity which did not invalidate the assessment, there having been no finding that the tax was for any reason unequal, unjust or inequitable.⁷⁰ In a case in which the statutory oath was fixed to the assessment roll and signed by the assessor, but the oath was not taken before any officer authorized to administer oaths, the omission was held to render the assessment roll void as a basis for the proceedings of tax sale and invalidated the sale.⁷¹

Likewise, where the description of the real property assessed is not "sufficient to identify it," as required by statute,⁷² or there is a misdescription, the assessment will be said to be void when the validity of a tax sale is called into question as not having complied with the statute.⁷³ But where it is sought to enjoin the collection of the tax, a "mere misdescription" of the lands in the assessment thereof will not render the assessment void, entitling the taxpayer to the relief sought, without a showing that the valuation of the land is excessive for that actually owned by

65. *McCarthy v. Union Pac. R. R.*, 58 Wyo. 308, 131 P. (2d) 326 (1942); *Ohio Oil Co. v. Wyo. Agency*, 63 Wyo. 187, 179 P. (2d) 773 (1947); *Heckt v. Boughton*, 2 Wyo. 385 (1881) (assessment made in name of the husband instead of the grantee, his wife). The term "owner", so far as real estate is concerned, means owner of record. Wyo. Comp. Stat. sec. 27-505 requires the county assessor to examine records as to transfers of realty and personal property and make such a record of transfers as will better enable him to assess all property to the rightful owner.
66. *Brewer v. Kulien*, 42 Wyo. 314, 294 Pac. 777 (1930); 3 *Cooley*, Taxation sec. 1172 (4th ed. 1924).
67. *Horton v. Driskell*, 13 Wyo. 66, 77 Pac. 354, 3 Ann. Cas. 561 (1904). Also, see *Carton v. Com'rs*, 10 Wyo. 416, 69 Pac. 1013 (1902).
68. Wyo. Comp. Stat. 1945 sec. 27-505.
69. *Brewer v. Kulien*, see note 66 supra.
70. *Horton v. Driskell*, see note 67 supra.
71. *U. S. v. Klink*, 3 F. Supp. 208 (D. Wyo. 1933).
72. Wyo. Comp. Stat. 1945 sec. 32-510.
73. *Electrolytic Copper Co. v. Rambler Consolidated Mines Corp.*, 34 Wyo. 304, 243 Pac. 126 (1926).

the complainant.⁷⁴ In a case of the latter type, the owner must be prejudiced in some way or misled by the mistake in the description before he can complain of the assessment.

ROBERT A. MCKAY.

GROSS PRODUCTS TAX

According to the weight of authority, a tax imposed on persons for severing natural resources from the soil, based upon either the quantity or the value of the product severed, is valid. Such a tax, according to the majority view, is a privilege or occupation tax and not subject to the constitutional requirements relating to the imposition of property taxes.¹

In Wyoming, a tax upon mineral products has been specifically provided for by the State Constitution.² This provision expressly gives the legislature power to impose a tax upon all mines and mining claims, based upon the gross products thereof. It further provides that this tax is to be in lieu of all taxes on the lands upon which the mine is located. The tax is to be levied only while the mines are being worked or operated and should be in addition to any tax which may be assessed upon the surface improvements of the claim.³

The question arises in Wyoming, under the Constitutional and statutory provisions referred to,⁴ as to what the nature of the tax upon mine products may be. The question first arose in *Miller v. Buck Creek Oil Co.*,⁵ where it was stated that the tax is evidently a property tax rather than a license, privilege or occupation tax. However, the discussion by the court on this point was merely by way of dictum and by no means conclusive, which fact was recognized when the issue arose for the second time in the Federal Court.⁶ In referring to the *Buck Creek* case, the court was of the opinion that the Wyoming Supreme Court leans toward the doctrine announced by so many other courts, that minerals when severed from the land become personal property and are taxable as such.⁷ Perhaps this is a logical conclusion in view of the holding in the *Buck Creek* case that a portion of the products tax should be paid by the lessee of the property, which indicates that the tax is upon the property after it becomes severed from the land.

The latest and most conclusive argument holding the gross products tax to be a personal property tax was set forth in *Board of Com'rs of Sweetwater County, Wyo., et al. v. Bernardin et al.*⁸ In this case, it was urged that the gross products tax was a tax on the realty measured by the gross mineral product thereof. It was here pointed out⁹ that if this were true, the amended section of the gross products

74. *Ricketts v. Crewdson*, see note 5 *supra*.

1. 32 A.L.R. 827.

2. Wyo. State Const. Art. 15, sec. 3.

3. Wyo. Comp. Stat. 1945 sec. 32-1001.

4. *Ibid.* 2 and 3.

5. 38 Wyo. 505, 269 Pac. 43 (1928).

6. *First Nat. Bank of Chicago v. Central Coal & Coke Co. et al.*, 3 F. Supp. 433 (D. Wyo. 1933).

7. *Ibid.* at 436.

8. 74 F. (2d) 809 (D. Wyo. 1934).

9. *Ibid.* at 813.