

December 2019

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Recommended Citation

P. T. Lamos, Jr., *Defects in Assessment and Levy as Affecting Validity of Tax Title*, 4 Wyo. L.J. 262 (1950)
Available at: <https://scholarship.law.uwyo.edu/wlj/vol4/iss4/7>

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DEFECTS IN ASSESSMENT AND LEVY AS AFFECTING VALIDITY OF TAX TITLE

When taxes for any particular district have been lawfully voted, it becomes necessary, before a tax can become a charge, that a list of taxable property be made by the officer to whom by law that duty is intrusted. This list is commonly called an assessment.¹ When taxes are to be levied upon a valuation, an assessment is indispensable. It is the first step in the proceedings against individual subjects of taxation, without which the taxes have no support and are nullities.² It therefore follows that if there is no valid assessment, a tax sale of lands is a nullity.³

The assessment being so important, statutory provision in regard thereto ought to be observed with particularity, especially when mandatory. If the provision is mandatory, it must be followed or the assessment will be invalid, but if it is merely directory the assessment is not necessarily invalid because of failure to observe the statute.⁴ The test is whether the provision is for the benefit and protection of the individual taxpayer. If it is, the provision is mandatory.⁵ On the other hand, if the regulations are designed to secure order, system, and dispatch in proceedings, and the rights of interested taxpayers cannot be injuriously affected, the provisions are merely directory.⁶ Where an annual assessment is required, if the officer merely copies for one year the roll for the preceding year, the assessment will be invalid,⁷ since the provision for annual assessment is for the benefit and protection of the taxpayer and is mandatory. The Wyoming statute requires a yearly assessment.⁸

In an early Wyoming case, *Hecht v. Boughton*, where the assessment was made incorrectly in the name of the husband instead of his wife, the court said "... a tax title based on an assessment of real property not in the name of the true owner is void."⁹ In a situation in which there is a mistake in the name of the person to whom the property is assessed the present view is that it should not invalidate the assessment unless the owner was misled thereby.¹⁰ Property must be assessed in the name of the true owners if known,¹¹ but if the ownership of land is in doubt, statutes often permit the assessment to be made to unknown owners, but only where the land is unoccupied. An assessment to a named person and to all owners and claimants, known and unknown is void as an alternative assess-

1. Assessment, in its strict legal sense, means an official listing of persons and property with an estimate of value of the property of each for the purpose of taxation. *Wason v. Major*, 10 Colo. App. 181, 50 Pac. 741 (1897).

2. In re opinion of Justices, 55 Colo. 17, 123 Pac. 660 (1912).

3. *Mitsch v. Riverside TP.*, 86 N. J. L. 603, 92 A. 436 (1914).

4. *O'Neal v. Virginia & M. Bridge Co.* 18 Md. 1, 79 Am. Dec. 669 (1861).

5. *Clark v. Crane*, 5 Mich. 151, 71 Am. Dec. 776 (1858).

6. *Corbet v. Town of Rocksbury*, 94 Minn. 397, 103 N. W. 11 (1905).

7. *People v. Hastings*, 29 Colo. 449.

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

9. *McCarthy v. Union Pacific Ry. Co.*, 58 Wyo. 308, 131 P. (2d) 326 (1942); holds the case of *Hecht v. Boughton*, 2 Wyo. 385 (1881) is still in force. In the *McCarthy* case a tax assessment of land, of which a person named Madden was record owner, in the name of Madden Bros. was invalid and tax deed issued pursuant thereto was void.

10. *Kending v. Knight*, 60 Ia. 29, 14 N. W. 78 (1882).

11. *Ohio Oil Co. v. Wyo. Agency*, 63 Wyo. 187, 179 P. (2d) 773 (1947).

ment,¹² and will render the tax title based on such an assessment void.¹³ If the statute says the "owners" shall be assessed, the assessors cannot legally assess property in the name of occupants who are not owners.¹⁴ The requirement in a Wyoming statute that the assessment roll shall specify the name of the individual or corporation to whom property shall be taxable means the owner.¹⁵ An assessment to one of the joint owners of property by name is generally insufficient even though the words "et al." are added.¹⁶ An assessment of land in the name of a deceased owner is in general void unless authorized by statute,¹⁷ and Wyoming has no statute covering the situation. An assessment to a mortgagee is invalid.¹⁸ The entire omission of the name of the person to whom the property is taxed in the assessment roll renders the tax sale void.¹⁹ Also where property was assessed to one, not the real owner, a sale for taxes and a tax deed conveyed no title and were of no binding effect as against the real owner.²⁰

The general rule is that after an assessment has been made by an assessor, it cannot be increased by the assessor or the reviewing board without notice to the tax payer or opportunity to be heard.²¹ Absence of notice or opportunity to be heard violates the due process clause of the constitution, except where the increase is one covering all of a certain territory.²² Where the reviewing board didn't hear objections to the roll in accordance with notice given, it renders any tax sale conducted thereon totally void.²³

The making of the assessment roll or list as required by statute, is generally mandatory,²⁴ and the roll must be made up by the person specified in the governing statute.²⁵ The duty to make the roll cannot be delegated.²⁶ Where different rolls are required of different taxes, the placing of a tax on the wrong roll is fatal to such tax,²⁷ and would nullify a subsequent tax sale.

A Wyoming case holds that when the oath of the assessor is required to be attached to the assessment roll 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 sale and tax title.²⁸ In most jurisdictions the verification of an assess-

12. *Greenwood v. Adams*, 80 Cal. 74, 21 Pac. 1134 (1889).

13. *Stitt v. Stringham*, 105 Pac. 252 (1909).

14. *Mansfield v. Martin*, 3 Mass. 419 (1807).

15. Wyo. Comp. Stat. 1945 sec. 32-510; *Electrolytic Copper Co. v. Rambler Consol. Mines Corp.*, 34 Wyo. 304, 243 Pac. 126 (1926).

16. *Asper v. Moon*, 24 Utah 241, 67 Pac. 409 (1902).

17. *Stewart v. Board of Com'rs. Bernalillo Co.*, 11 N. M. 517, 70 Pac. 574 (1902).

18. *Flannagan v. Dunne*, 105 Fed. 828 (1901).

19. *Morrow v. Riebe*, 53 S. D. 330, 220 N. W. 870 (1928).

20. *Salt Lake Inv. Co. v. Oregon Short Line Ry. Co.*, 46 Utah 203, 148 Pac. 439 (1915).

21. *Lewis v. Bishop*, 19 Wash. 312, 53 Pac. 165 (1898).

22. *People ex rel. State Board of Equalization v. Pitcher*, 56 Colo. 343, 138 Pac. 509 (1914).

23. *Hunter v. Bennett*, 149 Miss. 368, 115 So. 204 (1928).

24. *Oregon & W. Mortg. Sav. Bank v. Jordan*, 16 Ore. 113, 17 Pac. 621 (1888); Wyo. Comp. Stat. sec. 32-510.

25. *Dusenbury v. Madere* 130 La. 948, 58 So. 825 (1912).

26. *Alameda County v. Dalton*, 9 Cal. App. 26, 98 Pac. 85 (1908). (Assessor much make assessment and where he fails to make it, county clerk and county comrs. who afterwards made it acted without authority and tax could not be collected.) *Union Pacific Ry. v. Donnellan*, 2 Wyo. 478 (1871).

27. *Folkerts v. Power*, 42 Mich. 283, 3 N. W. 857 (1879).

28. *Horton v. Driskell*, 13 Wyo. 66, 77 Pac. 354 (1904); *Brewer v. Kulien*, 42 Wyo. 314 294 Pac. 777 (1930).

ment roll by the oath of the assessor is a statutory requirement of a mandatory nature.²⁹ If the statute prescribes a form for the verification, the form should be observed in all essential particulars; the assessor cannot, at discretion, substitute something else.³⁰ The failure of the assessor to file his roll within the time prescribed by law makes it a void or dead roll within the meaning of the law, and any tax sale based on such roll is absolutely void.³¹ An assessment has been held void because the return shows that it was verified long before the assessment could be lawfully commenced.³²

A sufficient description is necessary before there can be a valid tax,³³ and a basis for future titles in case of a tax sale.³⁴ A description of land which fails to warn the owner of the charge on his land, renders the assessment invalid, and the Wyoming Supreme Court in *Electrolytic Copper Co. v. Rambler Consol. Mines Corp.* said that a tax sale is void if the property is not described on the assessment roll as required by statute.³⁵ The Utah rule is the same, the court of that state having held that where a description used in the assessment didn't show range, township or section, and where no metes or bounds description was given, the assessment was fatally defective and the subsequent sale was void.³⁶ A description in the assessment roll as one-half of a certain lot is void for uncertainty in that it cannot be ascertained from the description what half of the lot is attempted to be described.³⁷ A description not complying with the statute is insufficient although it readily identifies the land and would be sufficient in a deed.³⁸ The omission of the number of a town lot, or the name of the owner, is fatal where the law requires those to be given,³⁹ and also when revenue statutes direct each tract of real estate to be separately listed and valued, the requirements is held to be mandatory and compliance therewith is essential to the validity of the assessment.⁴⁰ When abbreviations which are not commonly used by conveyancers nor generally understood by the public at large are used in tax proceedings describing land, they are insufficient.⁴¹ It seems to be the rule that if the assessment fails to lead to identification of the taxed land, the assessment and subsequent tax sale are void.⁴² An assessment for taxes of two separate 40-acre subdivisions of a quarter section of land as a unit did not constitute a legal assessment, hence a sale of the two subdivisions for taxes had no legal effect.⁴³ There are some cases in which it has been held that the omission of the dollar-mark as a prefix to the figures which represent the value of the property in the assessment roll will render the

29. *Daly v. Fisk*, 104 Conn. 579, 134 A. 169 (1926).

30. *State ex. rel. Hayes v. Seehorn*, 139 Mo. 582, 39 S. W. 809 (1897).

31. *Hunter v. Bennett*, 148 Miss. 368, 115 So. 204 (1928).

32. *Lee v. Crawford*, 10 N. D. 482, 88 N. W. 97 (1901).

33. *Hodgkins v. Boswell*, 63 Ore. 589, 127 Pac. 985 (1912).

34. *Grand Forks County v. Frederick*, 16 N. D. 118, 112 N. W. 839, 125 Am. St. Rep. 621 (1907).

35. *Wyo. Comp. Stat. sec. 32-510. Electrolytic Copper Co. v. Rambler Consol. Mines Corp.*, 34 Wyo. 304, 243 Pac. 126 (1926).

36. *Tintic Undine Mining Co. v. Ercanbrack*, 93 Utah 561, 74 P. (2d) 1184 (1938).

37. *Stewart v. Atkinson*, 96 Cal. A. 50, 273 Pac. 606 (1928).

38. *Perkins' Lessee v. Dibble*, 10 Ohio 433, 36 Am. Dec. 97 (1841).

39. *Ex Parte Thacker*, 3 Sneed (Tenn.) 344 (1855).

40. *Brophy v. Commonwealth*, 134 Va. 250, 114 S. E. 782 (1922).

41. *Nind v. Myers*, 15 N. D. 400, 109 N. W. 335 (1906).

42. *Mammoth City v. Snow*, 69 Utah 204, 253 Pac. 680 (1926).

43. *Clark v. Prince*, 191 Okla. 551, 131 P. (2d) 761 (1942).

assessment nugatory, there being nothing in its absence by which to determine what the figures indicate.⁴⁴ Other cases hold the defect is not fatal unless misleading.⁴⁵

As there can be no valid sale unless there was a valid tax, it must be constitutional and authorized by the group empowered to do so. Where the officials failed to make a reduction in the original levy when a portion thereof was declared illegal, a tax title was invalid.⁴⁶ A tax sale is void if made for a tax legally levied and assessed but which in some lawful manner has been discharged.⁴⁷ A tax deed was void because of inequality where the tax was levied on four school districts but not on the fifth.⁴⁸ Also a levy of taxes on lands exempt from taxation is an irregularity that renders the tax sale void.⁴⁹ The inclusion of taxes that are not due in those for which the land is sold is sufficient to render the tax deed invalid. In *Shawler v. Carter* a poll tax claim of two dollars was included in the taxes for which the property was sold and the court held that the inclusion voided the tax deed.⁵⁰ Where the same property has been listed twice and the owner had paid the correct amount of taxes due thereon, the tax sale was void.⁵¹ Where taxes are assessed on a tract of land as a unit, an undivided one-half interest in said land being exempt and nontaxable, a tax deed based thereon is a nullity.⁵²

No proposition is better settled than this, that proceedings to sell property for taxes are to be strictly followed and any material irregularity in the assessment invalidates the sale.⁵³ Many irregularities are remedied by curative statutes, but in Wyoming we have a lack of these statutes, so a person cannot be too careful as regards tax titles, and the important condition precedent, the assessment. The assessment being the foundations for taxation, where that is wanting all else is a complete nullity. It appears that many of the defects that defeat a tax title are strict and harsh as against the purchaser of the tax titles, but they do serve the purpose of protecting the property owner, which is an important aspect of American law. The courts appear reluctant to take away a man's property where there is the slightest chance that person didn't receive the full benefit of the statutes even though it is only a technical defect or irregularity. Sometimes this strict adherence to the protection of property holders, works hardships and injustices on the buyers of tax titles, but in the face of present decisions and lack of curative statutes the buyers best remedy appears to be close and vigorous inspection of the tax proceedings leading up to the sale. Although curative statutes can remedy many of the defects, it remains for the Legislature to give the buyer this protec-

44. *Emeric v. Alvarado*, 90 Cal. 444, 27 Pac. 356 (1891); *Fox v. Wright*, 152 Cal. 59, 91 Pac. 1005 (1907).

45. *Spokane Falls v. Browne*, 3 Wash. 84, 27 Pac. 1077 (1891).

46. *Young v. Boswell*, 191 Okl. 680, 134 P. (2d) 592 (1942).

47. *Gould v. Day*, 94 U. S. 405, 24 L. Ed. 232 (1876).

48. *Redman v. Weisenheimer* 283 Pac. 363, 102 Cal. A. 691 (1929). In the case of *Weller v. St. Paul*, 5 Minn. 95, 78 A.L.R. 202 (1876) the court held void a tax sale for street improvements because the assessment was not apportioned to lot owners in conformity with the statute.

49. *Wilson v. Twin Falls County*, 47 Idaho 527, 277 Pac. 1114 (1928).

50. *Shawler v. Carter*, 286 V. 779.

51. *Landry v. Bedou*, 164 Miss. 765, 147 So. 298 (1933).

52. *Squires v. Swanson*, 169 Okl. 390, 37 P. (2d) 276 (1934).

53. *Holland v. Hotchkiss*, 162 Cal. 366, 123 Pac. 258 (1912).

tion. A prospective purchaser at a tax sale should remember that a lawful tax, a lawful levy, and a legal assessment are conditions precedent to a valid tax sale.⁵⁴

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DEFECTS IN THE TAX SALE AS AFFECTING VALIDITY OF TITLE

In Wyoming, prior to 1941, a tax deed, though regular on its face, was not prima facie evidence of title.¹ The 1941 Wyoming legislature shifted the burden of proof with a law² which became section 32-1627, Wyoming Compiled Statutes, 1945, and provided that a tax deed, or a Commissioners' Deed of property bid in for taxes shall be prima facie evidence of title to the property therein described.³

But even this shifting of the burden of proof (possibly in response to the suggestion of the Wyoming Supreme Court in *Davis v. Convention*⁴) does not relieve property held under tax deed or Commissioners' Deed of the cloud on title caused by any failure to follow every mandatory provision of the law under which the sale was effected.⁵ Apparently even today, a litigant seeking to invalidate a tax title need only show that one of the mandatory steps in the proceedings from assessment to sale is ineffective. Upon such a showing, a tax title will be invalidated.⁵

Obviously then county officials must be schooled and urged to follow the prescribed procedure with meticulous care if tax titles are to be saleable. It is the threat of sale of property for taxes unpaid that makes possible the collection of tax assessments. If the threat is removed because of the inability of a county to pass a defensible title, it is very possible that the whole tax structure of the state may break down.

After a valid and sufficient assessment of taxes, the County Treasurer (sometimes called the "collector"⁶) is charged with the duty of collecting taxes. Taxes

54. *Secombe v. Louis Phillips' Estate*, 162 Cal. 161, 121 Pac. 388 (1912); *Fuller v. Wilkinson* 128 S. W. (2d) 251 (1939) (Where a three mill road levy had not been voted by electors at the preceding general election, there was no authority for extending the tax against the lands, and a sale for the lands for taxes including such road tax was void.) *Hecht v. Boughton* 2 Wyo. 385 (1881); where the court said a levy of tax before the owner of property has had an opportunity to object to the assessment is invalid.

1. *Mathews v. Blake*, 16 Wyo. 116, 92 Pac. 242 (1907).

2. Laws 1941, Ch. 23, Sec. 1. Approved and effective February 1, 1941.

3. Sec. 32-1627, Wyo. Comp. Stat. 1945. Tax deed or deed from county for real estate purchased at tax sale—Prima facie evidence of title—Right to possession.—Any person, firm or corporation being the grantee in any tax deed issued by the County Treasurer of any County in this State on account of prior sales made for delinquent taxes on lands, or who shall be the grantee under any County Commissioners' deed issued by the Board of the County Commissioners of any County in the State of Wyoming, where the real property described therein shall have been sold to any County on account of delinquent taxes, and all successors in title interest of each such grantee shall be entitled to the possession of the lands described in such deed and such deed shall be prima facie evidence of title to the property described therein; and the burden of proof shall be upon any party seeking to set aside or invalidate such title in any action in the courts of this State.

4. 45 Wyo. 148, 154-155, 16 P.(2d) 48 (1932). Approved in *McCarthy v. Union Pacific*, 58 Wyo. 308, 131 P.(2d) 326.

5. *Davis v. Convention*, 45 Wyo. 148, 16 P.(2d) 48 (1932).

6. Sec. 32-1606, Wyo. Comp. Stat. 1945.