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Jason M. Tangeman

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MINERAL TAXATION—When is a Refund of Ad Valorem Mineral Taxes Appropriate? The Wyoming Supreme Court Answers the Question, But Invites a Storm of Controversy. *Amoco Production Company v. Board of Commissioners of Carbon County and Amoco Production Company v. Board of Commissioners of Sweetwater County*, 876 P.2d 989 (Wyo. 1994).

Amoco Production Company is a lessee of several producing gas and oil leases located in Carbon and Sweetwater counties.¹ Pursuant to the Wyoming Constitution² and Title 39³ of the Wyoming statutes, Amoco is required to pay a production, or ad valorem, tax on the value of the oil and gas it severs from the land.

Following an internal audit in 1985, Amoco filed an amended ad valorem tax report with the state⁴ for production years 1980 through 1985.⁵ As a result of the amended filing, the State redetermined Amoco's tax liability and issued Special Directive 105.⁶ Special Directive 105 increased the assessed value of Amoco's production which resulted in additional ad valorem tax.⁷ Amoco paid the increased tax in a timely fashion.⁸

1. Brief for Appellant at 11, *Amoco Production Company v. Board of County Commissioners of Carbon County and Amoco Production Company v. Board of County Commissioners of Sweetwater County*, 876 P.2d 989 (Wyo. 1993) (No. 93-63) [hereinafter Brief for Appellant].

2. WYO. CONST. art. XV, § 3 provides:

All mines and mining claims from which gold, silver and other precious metals, soda, saline, coal, mineral oil or other valuable deposit, is or may be produced shall be taxed in addition to the surface improvements, and in lieu of taxes on the lands, on the gross product thereof, as may be prescribed by law; provided, that the product of all mines shall be taxed in proportion to the value thereof.

3. WYO. STAT. § 39-2-201(a)(i) (Supp. 1994) provides that "The department shall annually value and assess the following property at its fair market value for taxation: (i) The gross product of all mines and mining claims; . . ."

4. Brief for Appellees at 11, *Amoco Production Company v. Board of County Commissioners of Carbon County and Amoco Production Company v. Board of County Commissioners of Sweetwater County*, 876 P.2d 989 (Wyo. 1993) (No. 93-63) [hereinafter Brief for Appellees]. The legislature statutorily altered the functions of the State Board of Equalization and the State Department of Revenue during the relevant time period. However, these changes do not affect the result in *Amoco Prod. Co.* Thus, reference to the "State" includes action by either the Board of Equalization or the Department of Revenue. *Id.* at 11.

5. Brief for Appellant, *supra* note 1, at 11-12.

6. *Id.*

7. *Id.*

8. *Id.* Following its timely payment, Amoco notified Darrell Stubbs, Carbon County Assessor, that future prior year adjustments might be forthcoming. Amoco stated it might be asking for a credit or refund sometime in 1986. Letter from Bruce D. Cartwright, Amoco Production Company, to Darrell Stubbs, Carbon County Assessor, *Amoco Production Company—Prior Year Adjustments* (Jan. 17, 1986) (on file with the Sweetwater County Assessor's Office in Green River, WY).

Beginning in 1986 and ending in 1988, Amoco filed a second set of amended reports relating to production years 1980 through 1985 and Special Directive 105.⁹ During this same time period, the State commenced an audit of Amoco's oil and gas production.¹⁰ As a result of the audit, the Department of Revenue temporarily suspended the processing of Amoco's amended returns.¹¹

Although not finished with its audit, the Department resumed processing Amoco's second set of amended returns in December of 1990.¹² As a result of its review, the Board issued a second set of Special Directives in 1991 which had the net effect of reducing the assessed value of Amoco's production for years 1980 through 1990.¹³

In 1992, Amoco requested by letter that the counties refund the tax stipulated in the State's special directive.¹⁴ The counties refused to refund the tax relying upon the expiration of the statute of limitations under Wyoming Statute section 39-2-201(d).¹⁵ The counties also contended that the tax Amoco paid was not "illegal" under Wyoming Statute section 39-4-101(b).¹⁶ Finally, the counties asserted that Wyo-

9. Brief for Appellees, *supra* note 4, at 5.

10. Brief for Appellant, *supra* note 1, at 13.

11. *Id.*

12. *Id.*

13. Amoco Production Company v. Board of County Commissioners of Carbon County and Amoco Production Company v. Board of County Commissioners of Sweetwater County, 876 P.2d 989, 991 (Wyo. 1993). In addition to the amended reports for production years 1980 through 1985, in 1989 Amoco filed amended reports for production in 1986 and after. In light of the total number of amended reports filed by Amoco, the State issued 23 special directives concerning Amoco's production between 1980 and 1990. Brief for Appellees, *supra* note 4, at 5.

14. Brief for Appellant, *supra* note 1, at 3.

15. WYO. STAT. § 39-2-201(d) (Supp. 1992) provides:

Following determination of the fair market value of property the department shall notify the taxpayer by mail of the assessed value. The person assessed may file written objections to the assessment with the board within thirty (30) days of the date of postmark and appear before the board at a time specified by the board. The person assessed shall also file a copy of the written objections with the county treasurer of the county in which the property is located, who shall notify the county assessor and the board of county commissioners, with an estimate of the tax amount under appeal based upon the previous year's tax levy.

16. WYO. STAT. § 39-4-101(b) (Supp. 1992) provides:

If any person pays any tax, or portion thereof, found to have been erroneous or illegal, the board of county commissioners shall direct the county treasurer to refund the erroneous or illegal payment to the taxpayer. When an increase in the value of any product is subject to the approval of any agency of the United States of America or the state of Wyoming, or of any court, the increased value shall be subject to property taxation. In the event the increase in value is disapproved, either in whole or in part, then the amount of tax which has been paid on the disapproved part of the value shall be considered excess tax. Within one (1) year following the final determination of value, any person who has paid any such excess tax may apply for a refund, and the board of county commissioners shall refund the amount of excess tax paid. Any refund may, at the discretion of the board of county commissioners, be made in the form of credit

ming statutory law does not lend a special directive the authority to "order" the counties to refund taxpayer money.¹⁷

Amoco challenged the administrative actions of the counties by filing similar petitions for review in the district courts in Carbon and Sweetwater Counties.¹⁸ The motions were consolidated in Wyoming's Second Judicial District Court.¹⁹ The district court held that Amoco's alleged overpayment was not "erroneous or illegal" pursuant to Wyoming Statute section 39-4-101(b) and Wyoming case law.²⁰ Moreover, the court concluded that special directives do not have the authority to "order" the counties to refund ad valorem tax overpayments.²¹ Amoco appealed the district court's decision to the Wyoming Supreme Court raising the same issues raised at the district level.²²

The Wyoming Supreme Court reversed the district court's decision and remanded the case, instructing the district court to order the counties to either refund the "erroneous" tax or credit Amoco for future tax liability.²³ The majority held that the state's adjustment of Amoco's amended returns indicated that the original valuation was "erroneous" pursuant to Wyoming Statute section 39-4-101(b).²⁴ This "erroneous" valuation was established by the State's issuance of the special directive or notice of valuation change.²⁵

The main issue discussed in this casenote is whether the supreme court properly granted Amoco's request for a refund pursuant to Wyoming Statute section 39-4-101(b). The casenote examines the constitutional, statutory, and administrative basis for Wyoming's ad valorem mineral tax scheme. Wyoming precedent and precedent from other jurisdictions is also examined in order to gain perspective on the present state of Wyoming's mineral tax refund structure. The casenote then criticizes the court's decision to grant Amoco's tax refund in the absence of proper statutory authority. The casenote attempts to justify the court's holding by exploring alternative argu-

against future tax payments shall be made in no less than equal annual amounts. The board of county commissioners shall not provide a credit for interest on the excess tax paid unless the taxes are paid under protest due to an appeal pending before the state board of equalization and the taxpayer prevails in the appeal. . . .

The counties contended that the phrase "erroneous or illegal" is a term of art meaning simply illegal. *Amoco Prod. Co.*, 876 P.2d at 993.

17. *Amoco Prod. Co.*, 876 P.2d at 992.

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Amoco Prod. Co.*, 876 P.2d at 990.

23. *Id.* at 995.

24. *Id.*

25. *Id.*

ments. Unfortunately, legislative action may be the only solution to a decision that has such an inequitable impact upon county governments.

BACKGROUND

The Wyoming Constitution provides the Wyoming Legislature with the power to administer Wyoming's tax structure. Pursuant to this broad grant of power the legislature enacted Title 39: Taxation and Revenue. Specifically, Title 39 provides the procedures a taxpayer must use in order to secure an ad valorem tax refund. The Wyoming Constitution also created the State Board of Equalization. The Board of Equalization assists state and local government in administering Wyoming's tax structure. The rules and regulations promulgated by the State Board of Equalization do not address refunds of ad valorem mineral taxes. Similarly, Wyoming case law does not directly address the issue of ad valorem tax refunds. In other jurisdictions, resolution of the issue depends on the court's definition of an "erroneous" tax. Some courts hold that an "erroneous" tax is a legal defect in the tax itself. Other courts find a mere mistake in tax reporting as "erroneous" and thus refundable.

The Wyoming Constitution

The source for the legislative and administrative authority to tax mineral products in Wyoming stems from the Wyoming Constitution.²⁶ The constitution provides that the legislature may tax the value of the gross product of all mines and mining claims in lieu of property taxes upon the land which the mine is located.²⁷ In addition to this gross products, or ad valorem, tax, any surface improvements on the land are also taxable.²⁸

The Wyoming Constitution also provides for the creation of a State Board of Equalization²⁹ to administer the taxation of property in Wyoming.³⁰ In conjunction with the State Board's authority, Article 15, Section 11 grants to the legislature the power to "prescribe such regulations as shall secure a just valuation for taxation on all property, real and personal."³¹

26. See *supra* note 2 and accompanying text. See also Harry L. Harris, *Remedies for Defects in General Property Tax Assessments in Wyoming*, 4 WYO. L.J. 240, 250 (1949).

27. See *supra* note 2 and accompanying text. See also Harry L. Harris, *Remedies for Defects in General Property Tax Assessments in Wyoming*, 4 WYO. L.J. 240, 250 (1949).

28. *Id.*

29. WYO. CONST. art. XV, § 9 states: "The legislature to provide for state board of equalization."

30. WYO. CONST. art. XV, § 10 states: "The duties of the state board shall be to equalize the valuation on all property in the several counties and such other duties as may be prescribed by law."

31. Joint Brief for Amici Curiae at 12-13, *Amoco Production Company v. Board of County Commissioners of Carbon County and Amoco Production Company v. Board of County Commission-*

Title 39: Taxation and Revenue

The State Department of Revenue is charged with the duty of annually assessing and valuing the gross product of all mines and mining claims at their fair market value.³² The information necessary to make this assessment is furnished to the Department by the taxpayer under oath.³³ Once the Department determines the fair market value of the property, it notifies the taxpayer of the assessed value.³⁴ If the taxpayer objects to the assessment, he or she may appeal to the Board of Equalization within 30 days of the Department's postmark.³⁵ Following the Department's fair market value³⁶ determination of the taxpayer's property, the Department certifies the value to the taxpayer's county assessor to be entered upon that county's assessment rolls.³⁷

Once the 30 day statute of limitations, found in section 39-2-201(d), has expired, the taxpayer still has a remedy in Wyoming Statute section 39-2-214. This section provides that prior to March 1, 1994 the Department was authorized to issue mine product valuation amendments³⁸ pursuant to audit findings under Wyoming Statute section 9-2-2003, taxpayer amended returns, or department review.³⁹ After March 1, 1994, the Department audit, Department review, or taxpayer amended return must be commenced within five years after the date the production was or should have been reported.⁴⁰ Sections 39-2-214(a), (b), and (c) may only apply to situations where the taxpayer has underpaid or failed to pay his or her mineral tax debt.⁴¹ Moreover, the mineral taxpayer may only be entitled to a tax refund from the county if the

ers of Sweetwater County, 876 P.2d 989 (Wyo. 1993) (No. 93-63) [hereinafter *Amici Curiae*]. *Amici Curiae* note that Art. 15, § 11 was amended in 1988 creating a tier system of taxation. *Id.* at 13. The effect of this amendment is to ensure that taxation within each tier is uniform and equal. *Rocky Mountain Oil v. Bd. of Equalization*, 749 P.2d 221, 236 (Wyo. 1987).

32. WYO. STAT. § 39-2-201(a)(i) (1994). *See also* WYO. STAT. § 9-2-2007 (1991) which created the State Department of Revenue.

33. WYO. STAT. § 39-2-201(b) (1994).

34. *See supra* note 15 and accompanying text.

35. *Id.*

36. WYO. STAT. § 39-1-101(a)(ii) (1994) refers to WYO. STAT. § 39-1-101(a)(vi) (1994) to determine the "fair market value" of mine products. However, WYO. STAT. § 39-2-208 provides the exact criteria for valuation of oil and gas.

37. WYO. STAT. § 39-2-201(e) (1994). *See also* WYO. STAT. § 39-1-101(a)(ii) (1994) which defines "Assessment roll" as the official list of taxable property for the ensuing tax year and may include taxes due thereon.

38. WYO. STAT. § 39-2-214(j)(ii) (1994) defines mine product valuation amendment as "a valuation adjustment determination made by the board or department including special directive."

39. WYO. STAT. § 39-2-214(a) (1994).

40. *Id.*

41. WYO. STAT. § 39-2-214(a) and 39-2-214(b) (1994) provides that the error is to be "entered upon the assessment rolls of the county and taxes computed and collected thereon . . ." This language suggests that sections (a), (b), and (c) only apply to errors in the counties' favor.

Department initiated the audit.⁴² Wyoming Statute section 39-2-214 also has a savings clause which preserves the integrity of any audit or mine product valuation amendment issued prior to the enactment of this section.⁴³

In addition to Wyoming Statute section 39-2-214, a taxpayer may also look to Wyoming Statute section 39-4-101(b)⁴⁴ for refund relief. As discussed earlier, section 39-4-101(b) affords the taxpayer a refund if the tax paid is found to be "erroneous or illegal".⁴⁵ An in depth discussion of this issue is left to the *Wyoming Precedent* section of this note.⁴⁶

In conjunction with the State Department of Revenue, and the various counties, the State Board of Equalization shares responsibility for administering taxation in Wyoming.⁴⁷ As discussed earlier, the primary purpose of the Board is to equalize and adjust the various taxes in Wyoming.⁴⁸

Specifically, the Board acts as a forum for appeals of decisions of the Department of Revenue and the various counties.⁴⁹ In this capacity, the Board has the authority to interpret statutes regarding assessment, levy, and collection of taxes.⁵⁰ Moreover, the Board may promulgate such rules as necessary to administer and enforce Wyoming's tax structure.⁵¹ Any decision made by the Board may be appealed to the district court of the county in which the property is located.⁵²

42. See *infra* note 125 and accompanying text. The Wyoming Supreme Court has held that § 39-2-214(e) applies prospectively only. *Texaco, Inc. v. State Board of Equalization*, 845 P.2d 398, 401 (Wyo. 1993). Accordingly, § 214(e) may not be applicable in *Amoco Prod. Co.* However, the court hinted that the outcome of the *Texaco* case may have been different if *Texaco* had characterized their claim as a "refund" rather than a "credit." *Id.* In *Amoco Prod. Co.* the taxpayer sought a refund and not a credit.

43. Savings Clause. Laws 1991, ch. 257, § 2 provides:

W.S. § 39-2-214(a)-(d) as created by this act does not limit or affect audits that have been commenced, audit findings that have issued, or mine product valuation amendments which have been filed with or approved by the state board of equalization or the department prior to the effective date of this act.

44. See *supra* note 16 and accompanying text.

45. *Id.*

46. See *infra* notes 59-70 and accompanying text.

47. WYO. STAT. § 39-1-304(a) (1994).

48. See *supra* notes 29-31 and accompanying text.

49. See WYO. STAT. § 39-1-304(a), 39-1-304(a)(ii) (1994).

50. See WYO. STAT. § 39-1-304(a)(iv) (1994). This decision must be in accord with the rules, regulations, orders and instructions prescribed by the board. *Id.*

51. *Id.*

52. WYO. STAT. § 39-1-306 (1994). The Department of Revenue has standing, serving as the primary agent of the state in tax matters, to appeal decisions of the Board of Equalization. *Amax Coal Co. v. Wyoming State Bd. of Equalization*, 819 P.2d 825, 831-32 (Wyo. 1991).

Wyoming Administrative Rules

Chapters XXI and XXII of the Wyoming State Board of Equalization Rules and Regulations deal specifically with the administration, valuation, and assessment of mineral production in Wyoming.⁵³ The purpose of Chapter XXI is to provide mineral taxpayers in Wyoming with valuation guidelines, and to inform them of their "rights and obligations for ad valorem and severance tax purposes".⁵⁴

Only two sections of Chapter XXI deal expressly with mineral tax refunds. Section 12, *Objection to Annual Notice of Mineral Valuation for Ad Valorem Tax*, provides a thirty day period in which a mineral taxpayer may protest the Department of Revenue's taxable value determination.⁵⁵ Furthermore, Section 15, *Severance Tax Refunds*, provides a severance mineral taxpayer a five year statute of limitations to apply for a refund for production during and after 1989.⁵⁶ Prior to 1989, a two year limitation period applied.⁵⁷

Chapter XXII is different in purpose from Chapter XXI in that it is intended to provide county assessors with valuation methodology for ad valorem tax assessment.⁵⁸ This chapter goes into detail regarding the duties and appraisal methods the county assessor should be utilizing. This chapter provides no express language regarding mineral tax refunds.

Wyoming Precedent

Because the issue in *Amoco Prod. Co.* was one of first impression, the usefulness of Wyoming precedent is limited. However, the *Atlantic Richfield* case in 1977 sheds significant light on the general nature of refunds in Wyoming's gross products tax structure.⁵⁹

53. Wyoming State Board of Equalization Rules and Regulations, Chpt. XXI *Ad Valorem and Severance Taxes on Mineral Production*, (1994) and Chpt. XXII *Ad Valorem Valuation Methodology and Assessment (Local Assessment)* (1994).

54. Wyoming State Board of Equalization Rules and Regulations, Chpt. XXI *Ad Valorem and Severance Taxes on Mineral Production*, § 2(a), 2(b) (1994). These rules are not inclusive of the Wyoming statutes or the taxpayer bill or rights found in WYO. STAT. § 39-1-103 (1994).

55. Wyoming State Board of Equalization Rules and Regulations, Chpt. XXI *Ad Valorem and Severance Taxes on Mineral Production*, § 12(a) (1994). This rule is nearly identical to WYO. STAT. § 39-2-201(d) (1994). Because the 30 day statute of limitations expired in *Amoco Prod. Co.*, both the statute and the rule are unavailable as remedies. See *supra* note 15 and accompanying text.

56. Wyoming State Board of Equalization Rules and Regulations, Chpt. XXI *Ad Valorem and Severance Taxes on Mineral Production*, § 15(a) (1994).

57. *Id.* § 15(b).

58. Wyoming State Board of Equalization Rules and Regulations, Chpt. XXII *Ad Valorem Valuation Methodology And Assessment (Local Assessment)*, § 2 (1994).

59. *Atlantic Richfield Company v. Board of County Commissioners of County of Sweetwater*, 569 P.2d 1267, 1269 (Wyo. 1977).

In *Atlantic Richfield*, the Wyoming Supreme Court held that tax refunds are a matter of “governmental or legislative grace.”⁶⁰ Accordingly, a refund may only be granted pursuant to statutory authority.⁶¹ The court also stated that ad valorem taxes collected on oil production later found to be the property of the Federal Government should be refunded to the taxpayer.⁶² Relying upon Wyoming Statute section 39-113,⁶³ the court found this type of taxation “illegal” because the state lacked jurisdiction over federal property.⁶⁴

Although the issue in *Atlantic Richfield* hinged upon an “illegal” rather than an “erroneous” tax, the court explored the meaning of Wyoming Statute section 39-4-101(b) in its entirety. First, the court held that “the erroneous character of the tax” may be determined not only by a district court or administrative body, but also by any “authorized proceeding.”⁶⁵ Second, the court defined an “erroneous” tax as one neither “justly nor equitably due” from the taxpayer.⁶⁶ The court utilized traditional notions of equity by stating that the purpose of this analysis was to avoid an “unjust enrichment of the particular taxing entity.”⁶⁷

In *Atlantic Richfield*, the court held that section 39-4-101(b) does not impose a statute of limitations upon the taxpayer.⁶⁸ The use of the word

60. *Id.* at 1271. See also *Matter of Black*, 775 P.2d 484, 487 (Wyo. 1989). In *Matter of Black* the appellant argued that it is inequitable to allow the county to collect interest on his delinquent taxes and at the same time deny him interest on taxes wrongfully collected. In response, the Wyoming Supreme Court held that tax refunds are “solely a matter of legislative grace” and a right to such a refund does not exist without statutory authority. Supporting its analysis, the court noted that the common law does not allow the collection of interest on judgments. The court reasoned that statutes that oppose the common law must be strictly construed. *Id.*

61. *Atlantic Richfield*, 569 P.2d at 1271.

62. *Id.*

63. WYO. STAT. § 39-113 (1957) provides:

In all cases where any person shall pay any tax, or any portion thereof, that shall thereafter be found to be erroneous or illegal, whether the same be owing to clerical or other errors, the board of county commissioners shall direct the treasurer to refund the same to the taxpayer, or, in case any real property subject to taxation shall be sold for the payment of such erroneous tax, the error in tax may at any time be corrected as above provided, and shall not affect the validity of the sale, but such property shall be redeemed by the county as hereinafter set forth.

Section 39-113 is the predecessor of § 39-4-101(b). Although the language between the two versions of the statute has changed, the court in *Amoco Prod. Co.* relied upon the *Atlantic Richfield* court’s interpretation surrounding the intent of this statute. *Amoco Prod. Co.*, 876 P.2d at 994.

64. See *infra* note 92 and accompanying text.

65. *Atlantic Richfield*, 569 P.2d at 1272. The court found that the decision of the 10th Circuit Court of Appeals relating to this case is an “authorized proceeding.” *Id.* The court did not discuss whether a taxpayer initiated amended return is an “authorized proceeding.”

66. *Atlantic Richfield*, 569 P.2d at 1272-73.

67. *Id.* at 1273.

68. *Id.* at 1275.

“thereafter” in section 39-4-101(b) indicated that the legislature intended for the taxpayer to have a remedy after the timely payment of tax due.⁶⁹ The court noted that the legislature believed that it would be “unreasonable” to expect a taxpayer to protest an error prior to being aware of that error.⁷⁰

Precedent From Other States

A number of jurisdictions take the position that the phrase “erroneous or illegal,” as it relates to tax refunds, is a term of art meaning simply illegal. The Supreme Court of South Carolina held that the phrase “erroneous or illegal” related to a “jurisdictional defect” as opposed to a “mere error of judgment.”⁷¹

The Supreme Court of Arkansas defined erroneous assessment as being one that “deviates from the law” thus being a defect that is “jurisdictional in nature.”⁷² This jurisdictional defect could arise because the property was exempt from taxation, the property was not located within the taxing authority’s jurisdiction, or the taxing authority exceeded its statutory authority.⁷³ Mere overassessment or overvaluation is not sufficient to render a tax erroneous.⁷⁴

In Colorado, the Supreme Court held that a taxpayer was not entitled to a refund for taxes later found to be erroneous because the source of the mistake was solely attributable to the taxpayer.⁷⁵ The taxpayer’s overpayment of taxes in this case resulted in mere overassessment.⁷⁶ One of the major policy considerations supporting this decision is the need for stability within the tax structure.⁷⁷ Allowing a taxpayer to amend his or her own error creates a situation where a county cannot accurately establish a budget for a given fiscal year.⁷⁸ This uncertainty results because a county is constantly being forced to revise its budget in light of arbitrary taxpayer initiated refunds.⁷⁹

69. *Id.* at 1273. *See also* note 97 and accompanying text. The present form of § 39-4-101(b) does not contain the word “thereafter,” however, the court in *Amoco Prod. Co.* stated that the statute does not contain a limitation period. *Amoco Prod. Co.*, 876 P.2d at 994.

70. *Atlantic Richfield*, 569 P.2d at 1273.

71. *Meredith v. Elliott*, 147 S.E.2d 244, 248 (S.C. 1966).

72. *Clay County v. Brown Lumber Co.*, 119 S.W. 251, 252-53 (Ark. 1909).

73. *Id.*

74. *Id.*

75. *Coquina Oil Corporation v. Larimer County Board of Equalization*, 770 P.2d 1196, 1201 (Colo. 1989).

76. *Id.* The court declined to infer that this overassessment was property that did not exist, and thus was not taxable. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

In contrast, the Supreme Court of Maryland held that the term "erroneous," in relationship to tax refunds, should be broadly defined to include all errors "that may invalidate an assessment or render it void."⁸⁰ Similarly, the Supreme Court of California entertained an alternative construction of "erroneous" in tax refund statutes.⁸¹ The court held that the taxpayer paid tax on oil it did not produce.⁸² Accordingly, Associated Oil's overpayment was characterized as "erroneous" due to the absence of actual taxable property.⁸³

PRINCIPAL CASE

In a case of first impression, the Wyoming Supreme Court decided whether a mineral ad valorem taxpayer was entitled to a refund pursuant to a taxpayer initiated amended return. The court held that a lessee of producing oil and gas leases was entitled to a refund when the assessed value of its ad valorem tax has been reduced by the Wyoming State Board of Equalization.⁸⁴ Because the Board of Equalization adjusted the taxpayer's valuations and issued special directives to the counties, the fact that the counties relied upon incorrect valuations established that the taxes were "erroneous" as a matter of law.⁸⁵

The Wyoming Supreme Court's Analysis

In a 4-1 decision, Chief Justice Macy concurring in part and dissenting in part,⁸⁶ Justice Thomas began the court's analysis by attacking the

80. *Wasena Housing Corp. v. Levay*, 52 A.2d 903, 908 (Md. 1947). See also Brief for Appellant, *supra* note 1, at 28.

81. *Associated Oil Co. v. Orange County*, 40 P.2d 887, 889-90 (Cal. App. 1935). See also Decision Letter of the District Court, State of Wyoming, Second Judicial District, for *Amoco Production Company, Petitioner, vs. Board of Commissioners of Carbon County, et al., Respondents*, Civil Action No. 92C-176 (Consolidated with C92-448, Sweetwater County) at 8-9 (January 8, 1993) (On file with the *Land & Water Law Review*).

82. *Associated Oil Co.*, 40 P.2d at 888.

83. *Id.*

84. *Amoco Prod. Co.*, 876 P.2d at 995.

85. *Id.* at 995. The court relied on common usage, as found in Webster's Third New International Dictionary 772 (1993), to define "erroneous": "deviating from what is true, correct, right, or wise: a: being or containing an error: fallacious, mistaken, inaccurate . . . b: characterized by error . . ." *Id.*

86. *Id.* at 996-97. Chief Justice Macy agreed with the district court and the counties that the phrase "erroneous or illegal" is a term of art meaning simply illegal. *Id.* Furthermore, Justice Macy characterized this case as being a "classic incident of overassessment." *Amoco Prod. Co.*, 876 P.2d at 996. The counties relied upon incorrect information provided by the taxpayer, thus the tax was not illegal but a mere overassessment. The taxpayer remedy for overassessment is to appeal the assessment within 30 days of notice of the assessed value to the State Department of Revenue pursuant to Wyoming Statute 39-2-201(d). *AT&T Communications of the Mountain States, Inc. v. State Board of*

county's position that the phrase "erroneous or illegal"⁸⁷ is a term of art applicable only to "illegal" taxes.⁸⁸ First, the court noted that interpreting the word "or" in the conjunctive rather than the disjunctive is contrary to the rule of statutory construction this court has generally followed.⁸⁹ The court stated that the disjunctive interpretation comports with legislative intent to create an incentive for a taxpayer to correct returns later discovered to be erroneous.⁹⁰

Next the court explored the definition of an "illegal" tax within the confines of Wyoming's statutory scheme.⁹¹ Relying upon early Wyoming decisions, the court concluded that mere overassessment or overvaluation by the state does not make a tax "illegal."⁹² If this was a case of mere overassessment or overvaluation, the taxpayer must appeal the assessment within 30 days to the State Board of Equalization.⁹³

Because the 30 day statute of limitations had run before Amoco discovered its error, Wyoming Statute section 39-2-201(d) no longer protected Amoco.⁹⁴ However, the court stated that this section of the Wyoming statutes was only applicable prior to the payment of the tax itself.⁹⁵ Relying upon *Atlantic Richfield*, the court explained that the legislature

Equalization, 768 P.2d 580, 584-85 (Wyo. 1989). Outside of this remedy, Justice Macy noted that Wyoming's statutory scheme does not provide relief to a taxpayer who discovers an error after the 30 day statute of limitations has run. *Amoco Prod. Co.* 876 P.2d at 997.

Taxpayer refunds are solely a creature of legislative grace. *Black v. Teton County Board of County Commissioners*, 775 P.2d 484, 487 (Wyo. 1989). Accordingly, special directives lack statutory authority to order counties to provide taxpayers with refunds.

87. WYO. STAT. § 39-4-101(b) (1991). See *supra* note 16 and accompanying text.

88. *Amoco Prod. Co.*, 876 P.2d at 992-93. Also see *supra* note 86 and accompanying text for analysis and authority supporting the county's contentions on this issue. The counties argued that "erroneous or illegal" taxes refer to taxes which are illegal because there is no property for the taxing authority to reach. *Id.*

89. *Id.* at 993. The word "or" is generally interchanged with "and" only to "harmonize the provisions of a statute. *Basin Elec. Power Co-op v. State Bd. of Control*, 578 P.2d 557, 561-62 (Wyo. 1978); *Matter of Voss' Adoption*, 550 P.2d 481, 485 (Wyo. 1976); *Smith v. City of Casper*, 419 P.2d 704, 706 (Wyo. 1966)." *Id.*

90. *Amoco Prod. Co.*, 876 P.2d at 993.

91. *Id.*

92. *Id.* The two cases the court relied on are *Atlantic Richfield Company v. Board of County Commissioners of County of Sweetwater*, 569 P.2d 1267 (Wyo. 1977) and *Board of County Commissioners v. Searight Cattle Company*, 31 P. 268 (1892). In *Atlantic Richfield*, the property in question was federal property. *Atlantic Richfield*, 569 P.2d at 1272-73. Thus, taxation upon it was deemed "illegal" because the county did not have jurisdiction over federal property. *Id.* In *Searight*, the taxable property was later discovered to be in another county. *Searight*, 31 P. at 270-71. This placed the property in question outside of the county's jurisdiction thus making the tax "illegal." *Id.*

93. See *supra* note 15 and accompanying text.

94. *Amoco Prod. Co.*, 876 P.2d at 994.

95. *Id.* at 994-95. The court stated this section applies only when the taxpayer has knowledge at his or her disposal that indicates an error. In this analysis, it would be unreasonable to require a taxpayer to protest an error within 30 days that he or she has no knowledge of. *Id.* at 994.

intended to provide the taxpayer with an additional remedy once the 30 day limitation period has run.⁹⁶ This remedy is Wyoming Statute section 39-4-101(b), which applies when a tax has been paid and “thereafter” it is found that the tax is “erroneous or illegal”.⁹⁷ The court supported this analysis by stating that the concepts of equity and justice demand that the taxpayer be entitled to a refund of an “erroneous” tax.⁹⁸

ANALYSIS

In *Amoco Prod. Co.*, The Wyoming Supreme Court properly clarified the meaning of “erroneous or illegal” in section 39-4-101(b). However, the court failed to tie this clarification to the question of whether special directives from the State Board of Equalization “order” counties to provide tax refunds. By ruling in Amoco’s favor, the court created an unfair situation for the 23 Wyoming counties in that it allows taxpayers listed under section 39-2-201(a) unrestricted access to tax refunds. In addition, the court’s opinion failed to fully address the nullifying effect its decision will have on section 39-2-201(d). Lastly, the court does not verify the authority of special directives in Wyoming. However, estoppel, equity, or the Wyoming statutes may lend this administrative procedure legitimacy.

Section 39-4-101(b)

Contention between the Appellant and the Appellees regarding the definition of “erroneous” in section 39-4-101(b) is understandable. The court in *Atlantic Richfield* stated that “it must appear that the tax itself was erroneous or illegal; that is, that it was not justly or equitably due from [the taxpayer].”⁹⁹ In this single statement the *Atlantic Richfield* court borrowed concepts from both sides of the “erroneous or illegal” argument.

The first part of the sentence alludes to Appellees’ argument that in order for section 39-4-101(b) to be applicable, the tax itself has to be of an erroneous character.¹⁰⁰ Examples of the tax itself being erroneous are when

96. *Id.* at 994. In *Atlantic Richfield*, the court held that WYO. STAT. § 39-113 (1957) applied after a tax has been paid, and it is later found that the tax paid was erroneous or illegal. *Atlantic Richfield*, 569 P.2d at 1275. Wyoming statute § 39-113 is the predecessor of WYO. STAT. § 39-4-101(b). The court in *Atlantic Richfield* goes on state that WYO. STAT. § 39-113 (1957) was not “burdened” by a statute of limitations. *Atlantic Richfield*, 569 P.2d at 1275.

97. *Amoco Prod. Co.* 876 P.2d at 993.

98. *Id.* at 993. See also *Carton v. Bd. of County Commissioners of Uinta County*, 69 P. 1013, 1017 (Wyo. 1902); *Board of Com’rs of Johnson Co. v. Searight Cattle Co.*, 31 P. 268, 270-71 (Wyo. 1892).

99. *Atlantic Richfield*, 569 P.2d at 1272-73. See also *Bunten v. Rock Springs Grazing Association*, 215 P. 244, 247 (Wyo. 1923).

100. Brief for Appellees, *supra* note 4, at 18. See also *supra* notes 71-79 and accompanying text for discussion regarding states supporting this analysis.

there is no property for the taxing authority to reach¹⁰¹ or when there is a jurisdictional defect surrounding the taxing authority.¹⁰² Mere overassessment or overvaluation is not sufficient to create an erroneous tax.¹⁰³

The second part of this excerpt from *Atlantic Richfield* suggests that defining "erroneous," as it relates to tax refunds, requires a court to consider principles of equity and fairness, not strict legality. The equitable analysis is a legitimate stance on this issue as supporting case law from other jurisdictions indicates.¹⁰⁴ Unfortunately, the use of both standards in *Atlantic Richfield* leaves taxpayers and taxing authorities guessing at the meaning of "erroneous" in Wyoming Statute section 39-4-101(b).

In his dissent, Chief Justice Macy correctly noted that the majority's conclusions in *Amoco Prod. Co.* are not supported by the *Atlantic Richfield* analysis.¹⁰⁵ The *Atlantic Richfield* court relied upon an Arkansas opinion¹⁰⁶ which characterized an "erroneous" tax as a deviation from the law containing a jurisdictional defect.¹⁰⁷ The language from the Arkansas opinion stressed the illegal nature of an erroneous tax, not the inequitable effect it may have on the taxpayer.¹⁰⁸

Regardless of the analytical shortcomings of the *Amoco Prod. Co.* opinion, the intent of the court is clear. Wyoming Statute section 39-4-101(b) provides the taxpayer with either a remedy for a tax that is truly illegal, or a remedy based in equity and fairness. Although the cases upon which the court rests its logic are disputed, when ambiguities surround the definition of a statute it is within the court's discretion to resolve the tension.¹⁰⁹

Special Directives

While the court in *Amoco Prod. Co.* resolved the "erroneous or illegal" issue in section 39-4-101(b), it failed to address whether the State Board of Equalization has statutory authority to "order" the

101. *Associated Oil Co.*, 40 P.2d at 888.

102. *See supra* note 71.

103. *Bd. of Comm'rs of Johnson County*, 31 P. at 268 (Wyo. 1892). *See also Coquina Oil Corp.*, 770 P.2d at 1201.

104. *See supra* notes 80-83 and accompanying text.

105. *Amoco Prod. Co.*, 876 P.2d at 995-96. *See also* note 86 and accompanying text.

106. *Clay County*, 119 S.W. at 251 (Ark. 1909).

107. *Atlantic Richfield*, 569 P.2d at 1272-73.

108. *Id.*

109. *Allied Signal, Inc. v. Wyoming State Board of Equalization*, 813 P.2d 214, 219-20 (Wyo. 1991). "A statute is ambiguous only if it is found to be vague or uncertain and subject to varying interpretations." The task of determining whether a statute is clear or whether it is ambiguous is assigned to the court as a matter of law. *Id.*

counties to provide tax refunds.¹¹⁰ The quick answer may be that the court is relying upon the earlier version of section 39-4-101(b) which expressly ordered counties to provide taxpayer refunds.¹¹¹ Other than this speculation, little in the Wyoming statutes, and nothing in the Rules and Regulations of the State Board of Equalization, addresses the special directive issue.¹¹²

Section 39-2-201(d)

Another shortcoming of the *Amoco Prod. Co.* opinion is the effect the holding has on section 39-2-201(d). As discussed earlier, section 39-2-201(d) provides a taxpayer 30 days to protest a tax assessment.¹¹³ In *Amoco Prod. Co.*, the court held that section 39-2-201(d) was only applicable prior to the time the taxpayer actually pays his or her tax.¹¹⁴ The court further held that it was the intent of the Wyoming legislature to also provide a taxpayer with a remedy after the payment of his or her tax.¹¹⁵ This remedy is section 39-4-101(b).

It is against Wyoming's rule of statutory interpretation to allow one statute to completely override the effect of another statute in the same section.¹¹⁶ In form, both statutes have a place within Wyoming's tax structure. In practical terms, section 39-2-201(d) is obsolete because the taxpayer may now exclusively rely upon section 39-4-101(b) to secure tax refunds. The taxpayer is no longer constrained by the 30 day limitation period found in section 39-2-201(d).

Policy Considerations

A final shortcoming of the *Amoco Prod. Co.* opinion was the failure of the court to consider the effect this decision will have on the counties. The need for certainty and continuity in the realm of taxation is a major concern for county governments.¹¹⁷ If county budgets are exposed to the

110. The State Board of Equalization utilizes special directives to notify the county of their "order." *Amoco Prod. Co.*, 876 P.2d at 991.

111. See *supra* note 63 and accompanying text.

112. See *supra* notes 32-52 and accompanying text.

113. See *supra* note 15 and accompanying text.

114. *Amoco Prod. Co.*, 876 P.2d at 995.

115. *Id.* at 994.

116. See *infra* note 128 and accompanying text.

117. *Coquina Oil Corporation*, 770 P.2d at 1201; *Citibank N.A., v. Board of Assessment Appeals*, 826 P.2d 871, 872 (1992). In both cases the Colorado Supreme Court's underlying policy concern was to avoid an "adverse impact upon the tax structure of the state by the error of the taxpayer." *Id.*

on-going threat of taxpayer initiated amended returns, certainty and continuity become a lost commodity.¹¹⁸

The situation currently confronting the Carbon County School District best exemplifies this unfair result. Approximately \$1.2 million of the \$1.8 million sought by Amoco is from Carbon County.¹¹⁹ This \$1.2 million has already been allocated to and spent by the Carbon County School District.¹²⁰ Thus, Amoco's refund request forces the school district to recoup money already spent thus severely restricting future budgets.¹²¹ The refund's rippling effect hardly perpetuates notions of equity and fairness. The Appellee's brief best summarized the problem by noting that Amoco sought a refund for a tax it paid seven years ago on production which occurred as many as twelve years ago.¹²²

Regardless, the *Amoco Prod. Co.* decision is important precedent because of its potential application to other taxation situations. All taxpayers seeking refunds listed under section 39-2-201(a) can look to the *Amoco Prod. Co.* decision for authority to legitimize their tax refund claims without regard to a time constraint.¹²³ This expansion of the *Amoco Prod. Co.* holding severely aggravates county's already reduced ability to establish definite budgets for future fiscal years. In contrast, Wyoming taxpayers, owning state assessed property, now posses a powerful weapon in the realm of tax refunds.

118. Brief for Appellees, *supra* note 4, at 24-25.

119. Seventy-one percent of the revenue from county mill levies on property subject to ad valorem tax is allocated to that county's school district. This mill levy varies from year to year depending on the perceived need of the county. Interview with Cindy Baldwin, Head Deputy, Carbon County Treasurers Office, Rawlins, WY (Oct. 18, 1993).

120. *Id.*

121. *Id.*

122. Brief for Appellees, *supra* note 4, at 24-25.

123. WYO. STAT. § 39-2-201(a) (1994) provides:

The department shall annually value and assess the following property at its fair market value for taxation:

- (i) The gross product of all mines and mining claims;
- (ii) Property of pipeline companies;
- (iii) Property of electric utilities;
- (iv) Property of railroad companies;
- (v) Property of car companies
- (vi) Property of telephone and telegraph companies which have more that two thousand (\$2,000.00) in assessed value;
- (vii) Property of other public utilities;
- (viii) Leased property consisting of warehouses, storage facilities and office structures and any other property that is in support of or which is used or held for use for the activities listed in this subsection.

Alternative Solutions

Two possible arguments supporting the legitimacy of special directives¹²⁴ in *Amoco Prod. Co.* can be found in sections 39-2-214(a), (b) and (e).¹²⁵ First, sections 39-2-214(a) and (b) only intimate that counties should be the singular beneficiary of an audit, amended return, or Department review.¹²⁶ There is no language that expressly states that the taxpayer cannot initiate the procedure and rely on this section to secure a tax refund. Second, section 39-2-214(e) does not state if the "overpayment" must be discovered by a state audit or by a taxpayer audit.¹²⁷ This potential ambiguity may lend a taxpayer initiated amended return the proper statutory authority to force a county to provide a tax refund.

Countering this analysis is the rule of interpretation that statutes must be read *pari materia*.¹²⁸ Sections 39-2-214(a) and (b) provide the counties statutory authority to recoup taxes that were not collected for various reasons. In contrast, section 39-2-214(e) can be considered the taxpayer's analogue to section 39-2-214(a) and (b). The discrepancy in

124. WYO. STAT. § 39-2-214(j) (1994) refers to special directives as "mine product valuation amendments," meaning "a valuation adjustment determination made by the board or department." *Id.*

125. WYO. STAT. § 39-2-214(a) (1994) provides:

Effective until March 1, 1994, the department is authorized to rely on final audit findings under W.S. 9-2-2003, taxpayer amended returns or department review, and to certify mine product valuation amendments for production in calendar year 1985 and thereafter, to the county assessor of the county in which the property is located, to be entered upon the assessment rolls of the county and taxes computed and collected thereon subject to appeal under subsection (g) of this section.

WYO. STAT. § 39-2-214(b) (1994) provides:

Commencing March 1, 1994, the department is authorized to rely on final audit findings, taxpayer amended returns or department review, and to certify mine product valuation amendments to the county assessor of the county in which the property is located, to be entered upon the assessment rolls of the county and taxes computed and collected thereon subject to appeal under subsection (g) of this section, provided that the audit or review commences or return is filed within five (5) years from the date the production should have been or was reported pursuant to W.S. 39-2-201(b)(i), whichever is later.

WYO. STAT. § 39-2-214(e) (1994) provides:

The taxpayer is entitled to receive an offsetting credit for any overpaid gross product or severance tax identified by an audit that is within the scope of the audit period, without regard to the limitation period for requesting refunds. . . .

126. See *supra* note 125 and accompanying text.

127. See *supra* note 125 and accompanying text.

128. *Parker Land and Cattle Company v. Wyoming Game and Fish Commission*, 845 P.2d 1040, 1042 (Wyo. 1993).

"*Pari materia*" is defined as: "Of the same matter; on the same subject; as, laws *pari materia* must be construed with reference to each other." BLACK'S LAW DICTIONARY 1115 (6th ed. 1990).

power between the two statutes can be reconciled by a legislative intent to provide the state and counties with a strong hand in the area of taxation.¹²⁹

A stronger argument supporting the legitimacy of the special directives in *Amoco Prod. Co.* may be found in the savings clause of section 39-2-214.¹³⁰ The clause states that mine product valuation amendments [special directives] initiated prior to 1991 will not be disturbed by section 39-2-214.¹³¹ This statement suggests the legislatively recognized legitimacy of special directives prior to 1991. The Appellee's and Appellant's search, in *Amoco Prod. Co.*, for statutory authority supporting special directives may be satisfied by section 39-2-214's savings clause.¹³²

A second approach to the legitimacy of special directives may be found in Wyoming case law and deference to administrative agency decisions. It may be argued that the State Board of Equalization, as an administrative agency, should be given sufficient latitude to implement its constitutional and statutory charge.¹³³ This latitude should include the discretion to order counties, via special directives, to provide taxpayer refunds.¹³⁴

The standard of review for an agency decision is that the agency's findings must be supported by "substantial evidence,"¹³⁵ and the

129. *Chicago & North Western Ry. Co. v. City of Riverton, Fremont County*, 246 P.2d 789, 795 (Wyo. 1952). Exemptions, ". . . are not favored and generally taxation is held to be the rule and exemption the exception, which means there is a presumption against a grant of exemption and in favor of the taxing power." *State Board of Equalization v. Wyoming Automobile Dealers Assoc.*, 395 P.2d 741, 742 (Wyo. 1964).

130. See *supra* note 43 and accompanying text.

131. *Id.*

132. *Id.*

133. See *supra* notes 29 and 30 for the State Board of Equalization's Constitutional duties. WYO. STAT. § 39-3-104(a)-(d) (1994) provides for the State Board of Equalization's statutory powers and purpose.

134. *Pathfinder Mines Corporation v. State Board of Equalization*, 766 P.2d 531, 536-37 (Wyo. 1988). When reviewing the decision of an administrative agency, the district court should provide the agency with sufficient latitude to implement their statutory and constitutional responsibilities. *Id.* See also *Cody Gas Co. v. Public Service Commission of Wyoming*, 748 P.2d 1144, 1147 (Wyo. 1988).

135. *Amoco Production Company v. Wyoming State Board of Equalization*, 797 P.2d 552, 554 (Wyo. 1990). "Substantial evidence is relevant evidence which a reasonable mind might accept in support of the conclusions of the agency." *Devous v. Wyoming State Board of Medical Examiners*, 845 P.2d 408, 414 (1993).

"If there is substantial evidence to support a finding . . . the ultimate weight to be given that evidence is to be determined by the agency in light of its expertise and the experience of its members in such matters." *Big Piney Oil & Gas Company v. Wyoming Oil and Gas Conservation Commission*, 715 P.2d 557, 562 (Wyo. 1986). See also *Barcon, Inc. v. Wyoming State Board of Equalization*, 845 P.2d 373, 376 (Wyo. 1992) for a complete analysis of the standard of review of administrative agency decisions.

agency's conclusions must be in accordance with the law.¹³⁶ If an agency decision passes this two part test, then the district court must abide by the agency's decision.¹³⁷

The "substantial evidence" in *Amoco Prod. Co.* is the refund data which Amoco provided to the State Board of Equalization. Neither party disputed that Amoco had overpaid its ad valorem tax.¹³⁸ The problem stems from the second prong of the test and whether the Board's decision comports with Wyoming law. Not only are tax refunds solely a creature of legislative grace,¹³⁹ but the statutes and case law may not legally sanction a refund in this situation.¹⁴⁰ In essence, the agency deference analysis may simply return the taxpayer in *Amoco Prod. Co.* to the original issue of this casenote of whether counties must provide ad valorem mineral tax refunds pursuant to an order by the state.

Other arguments that may lend the special directive authority are based on estoppel and equity. The Wyoming Supreme Court has held that an "agency is not estopped from enforcing a clear and unambiguous statute."¹⁴¹ Because section 39-4-101(b) is unclear and ambiguous the estoppel argument may spring to life. One could argue that the counties are estopped from denying Amoco their tax refund based upon the county's historical practice of acknowledging past special directives.¹⁴²

The equity argument is that the counties have unfairly retained tax money which they were not equitably due. Although never addressing the issue, the Wyoming Supreme Court in *Texaco v. State Board of Equalization* hints that if a taxpayer's administrative remedies have been exhausted,¹⁴³ an argument in equity may exist.¹⁴⁴

CONCLUSION

The Wyoming Supreme Court properly clarified the meaning of "erroneous or illegal", as it relates to Wyoming's tax structure. The court defined "erroneous or illegal" as providing a taxpayer with

136. *Amoco Production Company*, 797 P.2d at 554.

137. *Id.*

138. Brief for Appellant, *supra* note 1, at 12. See also Brief for Appellees, *supra* note 4 at 3-5.

139. *Matter of Black*, 775 P.2d at 487. See also *supra* note 60 and accompanying text.

140. See *supra* notes 26-83 and accompanying text.

141. *Amoco Production Company*, 797 P.2d at 555-56.

142. Brief for Appellant, *supra* note 1, at 16-20.

143. *Amax Coal Co. v. State Board of Equalization*, 819 P.2d 825, 829 (Wyo. 1991).

144. *Texaco v. State Board of Equalization*, 845 P.2d 398, 402 (Wyo. 1993). See *supra* note 43 and accompanying text.

either a legal or equitable remedy in the realm of tax refunds. However, the court's decision does not fully address the more important issue of whether the state has statutory authority to "order" the counties to provide tax refunds.

By impliedly answering this question affirmatively, the *Amoco Prod. Co.* opinion allows a taxpayer to seek a refund merely for an error created by the taxpayer. In this context, the taxpayer's pursuit of a refund is not constrained by a statute of limitations. Thus, county governments are perpetually faced with the possibility that a high profile taxpayer may desire a refund of substantial size. This looming possibility of an arbitrary taxpayer demand for a tax refund makes the difficult budget planning process of counties all the more amorphous.

This shortcoming of the *Amoco Prod. Co.* opinion is even more glaring when considered in a public policy context. When a county government pays out a sizable tax refund, money previously allocated to county projects may have to be utilized. To compensate for this loss, county governments may be forced to downscale or eliminate future county projects.¹⁴⁵ The burden of this loss quickly shifts from the county treasury to all taxpayers in the county in the form of reduced public services. Until the Wyoming legislature addresses this issue, owners of state assessed property hold a powerful tool in the area of tax refunds at the expense of all taxpayers in that county.

JASON M. TANGEMAN

145. These projects include, but are not limited to, funding for county hospitals, libraries, and museums. Interview with Cindy Baldwin, Head Deputy, Carbon County Treasurers Office, Rawlins, WY (Oct. 18, 1993).