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PRACTITIONER'S GUIDE TO VALUATION AND ASSESSMENT APPEALS OF STATE AND LOCAL ASSESSED PROPERTY

Thomas D. Roberts¹

The vast majority of tax revenues generated in Wyoming, funding everything from local improvement district projects to the Wyoming education system, is based on the valuation and assessment of real and personal property.² The object of this article is to offer an overview of the valuation and assessment process performed by the State of Wyoming and individual county assessors, and suggest practical considerations when challenging the results of this process. The article is divided into three parts: a background on valuation and assessment in Wyoming; appeals to county boards of equalization for local-assessed property; and appeals to the Wyoming State Board of Equalization (State Board) for state-assessed property.

1. Thomas D. Roberts currently serves as the Laramie County Attorney and is a former Executive Secretary and Legal Counsel for the Wyoming Board of Equalization. He received a J.D. from the University of Wyoming College of Law in 1976 and a B.S. in Economics from Colorado State University in 1971.

2. Taxes collected in Wyoming for fiscal year ending June 30, 1995, totaled \$995,569,545, of which \$618,396,396 (62.11%) was based on valuation and assessment of real and personal property, including mineral production. See 1995 ANNUAL REPORT, WYOMING DEPARTMENT OF REVENUE.

BACKGROUND

Article 15 of the Wyoming Constitution contains the constitutional underpinnings for valuation and assessment in Wyoming.³ The key statutory guidelines are found in Wyoming Statutes, Title 39. All taxable real and personal property must be valued at fair market value.⁴ The assessment level for each class of property established by section 11, article 1 (gross production of minerals, property used for industrial purposes, and all other property real and personal) is specified by section 39-1-101. All property in Wyoming is, by section 39-1-102, declared taxable except as prohibited by the United States or Wyoming Constitutions, or expressly exempted by the Wyoming Legislature. Exemptions are generally defined by section 39-1-201, although other specific exemptions can be found elsewhere.⁵ In addition, property acquired or held by a municipal or county "housing authority" is exempt from all taxes and special assessments of any public body to the extent the property is not used for a profit making enterprise.⁶

Assessments

All assessable (taxable) real and personal property is annually listed, valued and assessed for taxation in the Wyoming county where it is located, and in the name of the property owner as of February 1 of each year.⁷ Personal property acquired or brought into Wyoming after February 1 and prior to December 31 of the same year is assessed by the county wherein it is located. The property must remain in the state for at least thirty days and not be assessed in any other Wyoming county. The assessment is for the full calendar year unless the property is brought in or acquired after April 1, in which case taxes are prorated to the closest full month.⁸

3. Pursuant to section 1, all lands and improvements thereon shall be separately listed for assessment and taxation. Uniformity of assessment is required by section 11 which establishes three classes of property and the criteria for appropriate levels of assessment. Property specifically exempt from taxation is defined by section 12 which also delegates to the Wyoming Legislature the authority to expand exemptions. WYO. CONST. art. 15, §§ 11-12.

4. WYO. STAT. ANN. § 39-2-102 (Michie 1977 & Supp. 1996). Section 39-1-101(a)(vi) defines fair market value as the amount in cash, or terms reasonably equivalent to cash, a well informed buyer is justified in paying for a property and a well informed seller is justified in accepting, assuming neither party to the transaction is acting under undue compulsion, and assuming the property has been offered in the open market for a reasonable time. Fair market value of agricultural land is determined under section 39-2-103, while fair market value of mine products is determined under section 39-2-202.

5. For example, mortgages, real estate and other property owned by the Wyoming Farm Loan Board are exempt. WYO. STAT. ANN. § 11-34-126 (Michie 1977).

6. WYO. STAT. ANN. § 15-10-107 (Michie 1977).

7. WYO. STAT. ANN. § 39-2-101(a)(i) (Michie 1977 & Supp. 1996).

8. *Id.* § (a)(ii).

The Wyoming Department of Revenue (Department) is charged with the responsibility to annually value and assess "state-assessed" properties, sometimes referred to as "centrally assessed" properties, including mineral production, pipeline companies, electric utilities, railroads, private railcar companies, telephone and telegraph companies, and other public utilities.⁹ The Department certifies state-assessed property valuations to the assessor of the county where the property is located. These valuations are then entered upon the county assessment roll.¹⁰ The Department is further required to notify the owner/taxpayer of the value of the property.¹¹

For taxable property not assessed by the Department, each county assessor is charged with listing the property at its fair market value on assessment schedules provided to the owners/taxpayers on or before the fourth Monday in May, or as soon thereafter as practicable.¹² Each schedule must contain the estimated fair market value of the property for the current and previous year (or the productive value for agricultural property); the assessment ratio established by section 39-1-101(a)(xvii); the amount of tax assessed on the property for the previous year; as well as an estimate of the tax for the current year based upon the previous year's mill levy.¹³

CHALLENGING LOCAL-ASSESSED PROPERTY

Challenges to valuation and assessment of local-assessed property are considered by county commissioners sitting as a county board of equalization,¹⁴ a function distinct from the responsibility of the same individuals as county commissioners.¹⁵ A county board of equalization is authorized to meet at the office of the county commissioners at such times as may be necessary to perform its statutory functions, however it may not meet earlier than the fourth Tuesday in May to consider current year assessments. The county clerk acts as clerk of the county board of equalization. In addition, the county assessor or designee must attend all county board of equalization sessions.¹⁶

9. WYO. STAT. ANN. § 39-2-201(a) (Michie 1977).

10. *Id.* § (e).

11. *Id.* § (d).

12. WYO. STAT. ANN. § 39-2-301(e) (Michie 1977 & Supp. 1996).

13. § 39-2-301(f).

14. WYO. STAT. ANN. § 39-2-302(a) (Michie 1977 & Supp. 1996).

15. Compare WYO. STAT. ANN. § 39-2-302(b) (Michie 1977 & Supp. 1996) with WYO. STAT. ANN. § 18-3-504 (Michie 1977). See also Glenn Kessler, Docket No. 87-46, (Wyoming State Board of Equalization August 23, 1988). In *Kessler*, a request for tax refund was presented to the Sheridan County board of equalization which denied the request. The State Board dismissed the appeal, noting the county commissioners, as commissioners not as a county board of equalization, have sole jurisdiction to consider requests for tax refunds. *Id.*

16. § 39-2-302(a).

Appeal Deadlines

To contest the valuation and assessment of property, a taxpayer must file a statement under oath specifying the reasons why the assessment is incorrect with the county clerk (as clerk of the county board of equalization), *and* the county assessor. The filing must occur within thirty days from the date or postmark of the assessment schedule, whichever is later.¹⁷ County assessors *are not* authorized in Wyoming to administer oaths.¹⁸ In many counties, the board of equalization, through either the county clerk or the county assessor, provides protesting taxpayers a standard appeal form. Taxpayers must complete and return the form, including the necessary oath subscription. The form supplies the county assessor and county board of equalization the same pertinent information from each protesting taxpayer. Failure to use a standard form, if provided, is not jurisdictionally defective. Any statement by a protestant in writing, under oath, specifying the reasons why an assessment is incorrect should be sufficient.

The statutory requirement that a protestant file a statement with both the county clerk and the county assessor is mandatory and jurisdictional. In a recent appeal to the State Board,¹⁹ three statements to contest property valuation were filed within the statutory thirty-day time frame with the Teton County Assessor.²⁰ The protest statements however were not filed with *both* the Teton County Assessor *and* the Teton County Clerk acting as clerk of the county board of equalization. Based upon this failure to fully comply with the requirements of section 39-2-302(c), the Teton County Board of Equalization dismissed each appeal, concluding it lacked jurisdiction. When petitioners subsequently objected to the dismissals, the county board entered an order "rescinding" the prior dismissals.

DeAnn Sutton, Teton County Assessor, filed an appeal with the State Board challenging and urging reversal of the "recession" order. To this end, Sutton asserted the "four requirements" of section 39-2-302(c)²¹ are mandatory, a county board of equalization thus lacks the discretion to "waive or ignore" a failure to comply with any of the requirements.²² The

17. *Id.* § (c).

18. WYO. STAT. ANN. § 1-2-102 (Michie 1977 & Supp. 1996).

19. *In re* DeAnn Sutton, Teton County Assessor, Docket No. 95-72 (Wyoming State Board of Equalization January 9, 1996).

20. § 39-2-302(c).

21. (1) file a statement under oath; (2) within thirty (30) days of the date or postmark of the assessment schedule whichever is later; (3) with the county assessor; and (4) with the county clerk as clerk of the county board of equalization, specifying the reasons why the assessment is incorrect.

22. For example, filing a protest statement with *both* the county clerk as clerk of the county board of equalization, and the county assessor.

State Board agreed.²³ A petition for judicial review filed with the district court by taxpayers challenging the State Board decision was subsequently dismissed at their request.²⁴ Clearly, the most prudent course for counsel presenting a valuation appeal to a county board of equalization is to file an original statement fulfilling the statutory requirements with *both* the county assessor, *and* the county clerk as clerk of the county board of equalization.

Occasionally, a prior county board decision with regard to specific property has yet to reach final resolution when a subsequent protest for the same property is presented for county board of equalization consideration. If the protesting taxpayer as petitioner and county assessor as respondent before the county board agree, and the factual circumstances are appropriate, the parties may stipulate that any decision on the prior year's appeal shall also be binding on the subsequent appeal. Such an agreement thus avoids another complete hearing involving most probably the same evidence as the prior appeal. Any such stipulation should be reduced to writing, executed by both parties or their representatives, and filed with the county board of equalization.²⁵

Procedures

Because a county board of equalization hearing is a "contested case"²⁶ before an "agency,"²⁷ parties should follow the contested case procedures established by the Wyoming Administrative Procedure Act (APA).²⁸ The APA outlines the requirements for hearing notification, depositions and discovery, issuance of subpoenas, as well as the right of every party to appear in person or by counsel or other duly qualified representative.²⁹ The APA further defines the record in a contested case,

23. The Board found section 39-2-302 of the Wyoming Statutes clear and unambiguous. *In re DeAnn Sutton, Teton County Assessor*, Docket No. 95-72 (Wyoming Board of Equalization January 9, 1996). The terms thereof are neither unusual nor terms of art and thus not subject to reasonably varying interpretations. *Id.* The "shall" language clearly identifies a mandatory requirement, particularly when used to set forth a jurisdictional time frame. *Id.* Any other interpretation of the statutory language would render superfluous the 1990 Wyoming Legislative amendment establishing the county clerk as clerk of the county board, and inserting the present language requiring an appeal statement be filed "with the county assessor and the county clerk." *Id.*

24. *Seidler, O'Neill & Giovanni Properties v. Wyoming State Bd. of Equalization*, Civil Action No. 10188, (Wyo. 9th Judicial District 1996).

25. A taxpayer who contemplates using this procedure should make sure the factual basis for an appeal, i.e., condition of the property, additions or deletions etc., has not changed from the prior year.

26. WYO. STAT. ANN. § 16-3-101(b)(ii) (Michie 1977 & Supp. 1996).

27. *Id.* § (b)(i).

28. WYO. STAT. ANN. §§ 16-3-101 to 115 (Michie 1977 & Supp. 1996).

29. WYO. STAT. ANN. § 16-3-107 (Michie 1977 & Supp. 1996).

and the manner in which it should be maintained. The APA requirements essentially codify some common sense basic rights to which any participant in a county board of equalization hearing should be entitled.³⁰ Many Wyoming counties have adopted rules for county board of equalization proceedings, including procedures and evidentiary standards, which comply with the APA.

One procedural requirement is particularly important. A protestant failing to appear after notice at a county board of equalization hearing does so at her peril. A county board is statutorily prohibited from making any adjustment in a protested assessment if the protestant willfully neglects or refuses to appear at the county board hearing.³¹

Any county commissioner, as a county board of equalization member, may be designated to act as presiding officer (hearing officer)³² for a county board of equalization hearing, although the chairman generally performs this function.³³ Many county boards appoint a retired district court judge or local attorney to act as independent hearing officer, especially for appeals of particularly complex properties such as refineries and large industrial plants. The independent hearing officer enjoys all appropriate statutory authorities,³⁴ and provides one particularly important advantage. By conducting the actual hearing, including admission of evidence, rulings on motions and other procedural matters, the hearing officer allows the county board members to concentrate on the evidence and argument presented without distraction. A hearing officer may also assist the county board members by preparing proposed findings of fact and conclusions of law for their consideration.

30. See WYO. STAT. ANN. §§ 16-3-101 to 115 (Michie 1977 & Supp. 1996).

- (a) The right to notice of assessed value;
- (b) The right to appear before an unbiased tribunal (county board of equalization);
- (c) The opportunity to present objections;
- (d) The rights to cross-examination and confrontations of opposing witnesses;
- (e) The right to appear with or without counsel;
- (f) The right to receive a written decision;
- (g) The right of access to public records and meetings.

31. WYO. STAT. ANN. § 39-2-302(c) (Michie 1977 & Supp. 1996). This statute provides that "No adjustment in an assessment shall be granted to or on behalf of any person who willfully neglects or refuses to attend a meeting of a county board of equalization and be examined or answer any material question upon the board's request . . ." *Id.*

32. WYO. STAT. ANN. § 16-3-112(a) (Michie 1977).

33. *Id.* § (b).

34. *Id.*

County Board of Equalization Record

The official record of evidence and argument presented at a county board of equalization hearing is extremely important. Although the Wyoming APA does not require that testimony be reported verbatim stenographically,³⁵ a court reporter may be of invaluable assistance, particularly for hearings on complex properties. If the county board decides not to provide a reporter, the participants, particularly a petitioner/protestant, should seriously consider providing one at his/her own expense. A written transcript of testimony is much easier for a reviewing agency or court to consider than a tape recording. While many counties have excellent tape recording systems which provide official recordings of good quality, tape transcription is often difficult. In addition, a court reporter lends a more "official" atmosphere to the proceeding, and often will assist the presiding officer with tracking exhibits and other procedural aspects.

The county board of equalization record, as the official record of evidence and argument presented at the county board hearing, should contain, in addition to a transcript or tape recording, all pleadings, exhibits and other documentary material presented in conjunction with the county board appeal.

Recusal

Wyoming does not have a specific conflict of interest statute within the context of administrative proceedings. Each member of a county board of equalization should nevertheless be encouraged to consider any potential conflict with regard to matters coming before the county board. In general, a potential conflict of interest is possible when an action, decision or recommendation made by an individual as a board member would be either of financial benefit or detriment to the individual, to a member of his family, or any business with which he is associated. A conflict does not arise if the benefit or detriment results from: (a) an interest or membership in a particular business, industry, occupation or other group which is a prerequisite for holding the office of county commissioner; or (b) any action taken as a board member which would affect a group statewide, or would affect a smaller group of business, industries, occupations, or other group with which the individual, any member of his family, or any business may be associated.

35. WYO. STAT. ANN. § 16-3-107(p) (Michie 1977 & Supp. 1996).

Parties who perceive a potential conflict should formally raise it with the affected board member in writing as early in the appeal process as possible. Notice should be given to all parties, keeping in mind that the final decision on recusal is up to the member. When a conflict is apparent, the board member should declare of record he or she has a conflict of interest, and withdraw from participation in the particular appeal. It is not necessary for the board member to specify the conflict in deference to privacy and other confidential business concerns. Even if a conflict or the perception of one is not so significant as to require recusal, mention of the potential conflict on the record prior to hearing may avoid subsequent expressions of concern about the conflict during the hearing, and possibly avoid an issue on appeal.

A potential problem with recusal is a resulting lack of quorum for a county board of equalization hearing. In Wyoming, a board of county commissioners, and as such a county board of equalization, may be comprised of either three or five members.³⁶ Lack of a quorum based upon recusal is potentially a more serious problem when there are only three commissioners rather than five. In neither situation is there any statutory guidance for resolving the problem created when two or more members of a county board of equalization are recused. One possible solution is certification of the appeal to the State Board for consideration.³⁷

Certification to State Board of Equalization

In a procedure analogous to certification of a petition for judicial review to the Wyoming Supreme Court by a district court,³⁸ a county board of equalization may, in writing, request the State Board grant an evidentiary hearing and render a decision on a county board appeal. The request must state the reasons why the county board believes certification to the State Board is appropriate. If the State Board approves certification, the appeal is docketed by the Board and considered under its rules and procedures for evidentiary hearings.³⁹

Evidence

The guidelines for presentation of evidence, exhibits and testimony at a county board of equalization hearing are basically defined by statute. When a valuation protest is presented to a county board, the county asses-

36. WYO. STAT. ANN. § 18-3-501(a) (Michie 1977).

37. Rules, Ch. 2, § 35, Wyoming State Board of Equalization.

38. WYO. R. APP. P. 12.09.

39. Rules, Ch. 2, § 35, Wyoming State Board of Equalization.

sor, and the person contesting an assessment, or their authorized agent, must exchange relevant evidence and disclose witnesses not later than fifteen days prior to the scheduled county board hearing. In addition, the assessor must specifically identify all sales information utilized to determine the market value of the property at issue.⁴⁰

Admissibility of evidence at a county board of equalization hearing is governed by the Wyoming APA.⁴¹ In a contested case, irrelevant, immaterial and unduly repetitious evidence is to be excluded. In one noteworthy diversion from generally accepted rules of admissibility, the Wyoming Supreme Court has interpreted the APA to permit admission of hearsay evidence if the evidence is otherwise admissible under the APA, and found to be probative, trustworthy and credible. In *Story v. Wyoming State Board of Medical Examiners*,⁴² the Court concluded hearsay testimony describing a certain conversation between Dr. Story and another physician clearly satisfied the requirements of Section 16-3-108(a) and thus was properly received by the Board of Medical Examiners.⁴³ In *State ex rel. Wyoming Worker's Compensation Division v. Rivera*,⁴⁴ the Wyoming Worker's Compensation Division objected to testimony by a deputy district court clerk about her conversation with a Division employee regarding dependent benefits for Rivera's grandchildren. Although the Court concluded the testimony was an admission by a party opponent under Wyoming Rules of Evidence 802(d), it nevertheless reinforced its prior statement in *Story* that hearsay evidence is admissible if probative, trustworthy and credible.⁴⁵

In general, evidence presented by parties to support a requested county board of equalization decision must be of the nature commonly relied upon by reasonably prudent persons in the conduct of their serious affairs.⁴⁶ In effect, from a common sense perspective, would a prudent person rely on the testimony or evidentiary presentation in making a decision with regard to their own business or life? Although opinion evidence is admissible, this is only preferred when a witness is qualified as an expert. In all other cases the preference is to receive testimony based on facts perceived by a witness rather than what the witness thinks, believes, or infers from such facts. Witnesses may qualify as an expert by reason

40. WYO. STAT. ANN. § 39-2-302(c) (Michie 1977 & Supp. 1996).

41. WYO. STAT. ANN. § 16-3-108 (Michie 1977).

42. 721 P.2d 1013 (Wyo. 1986).

43. *Id.* § 1019.

44. 796 P.2d 447 (Wyo. 1990).

45. *Id.* § 451.

46. § 16-3-108(a).

of education, experience or both.⁴⁷ If a party wishes to offer opinion testimony, an attempt should be made to qualify the witness as an expert through a request to designate the witness as such for the hearing.

As an administrative proceeding governed by the APA, a county board of equalization hearing gives effect to the rules of privilege, including attorney-client, work product, accountant-client, self-incrimination, and executive and governmental privileges. The failure to claim a privilege may however be deemed a waiver making the communication or evidence admissible.⁴⁸ Evidence protected by rules of privilege should, however, not be confused with confidential information which may be shielded from disclosure by the Wyoming Public Records Act, even if otherwise admissible.⁴⁹ In general, all public records are available for inspection subject to reasonable restrictions,⁵⁰ and are thus potentially admissible at a county board hearing. Certain information gathered by public officials in the performance of their duties is however deemed confidential, particularly with reference to valuation appeals.⁵¹ Consequently, the information is not subject to disclosure in a public hearing such as before a county board of equalization.

Admission of one specific type of documentary evidence relevant in a valuation appeal is controlled by statute. Any document transferring real or equitable title to real property, when presented to a county clerk for recording, must be accompanied by an instrument commonly referred to as a "statement of consideration."⁵² If such statement is not provided, the county clerk is prohibited from accepting the document for recording.⁵³ The statement, which contains such information as grantor, grantee, legal description, date of transfer, date of sale, sale price, and terms of sale, may be disclosed in confidence to the petitioner or his agent, and the county board of equalization in the context of an appeal. The Wyoming Legislature, however, has otherwise deemed the statements not to be public records which should be held confidential and not subject to discovery in any other county or state proceeding.⁵⁴ Transgression of this statutory prohibition is punishable as a misdemeanor.⁵⁵

47. WYO. R. EVID. 702.

48. § 16-3-108.

49. WYO. STAT. ANN. § 16-4-201 to 205 (Michie 1977 & Supp. 1996).

50. § 16-4-202.

51. § 16-4-203(d)(v).

52. WYO. STAT. ANN. § 34-1-142(a) (Michie 1977 & Supp. 1996).

53. *Id.* § (b).

54. *Id.* § (e).

55. WYO. STAT. ANN. § 34-1-144 (Michie 1977 & Supp. 1996).

A county board of equalization may also take notice of judicially cognizable facts such as court records or almanac-type information, as well as specific technical or scientific facts within the county board's specialized knowledge, information, or data and materials included in its files. If judicial notice is taken, the board must notify all parties of the facts or information so noticed either before, during, or after the hearing. The board must afford the parties an opportunity to contest such notice before the board renders its decision.⁵⁶

Standards and Presumptions

In a valuation appeal before a county board of equalization, the burden of proof is upon the party challenging the assessor's valuation. This valuation is presumed valid, accurate and correct until overturned by credible evidence.⁵⁷ The presumption is particularly significant when the assessor values property in conformity with the appropriate Department of Revenue rules for use of the computer assisted mass appraisal (CAMA) system in the assessment of property.⁵⁸ Overcoming the presumption requires more than a simple difference of opinion as to value.⁵⁹ At a minimum the necessary evidence should be of the nature a reasonable person would rely upon in the conduct of his own serious personal affairs.⁶⁰ Although expert testimony may provide such credible evidence, a fee appraisal of the specific property at issue may not be sufficient in light of *Gray v. Wyoming State Board of Equalization*.⁶¹ In *Gray*, the court concluded that the use of the actual sale price to determine fair market value, and thus assessed value, results in assessments which are not equal and uniform, and thus violates the Wyoming Constitution's requirement of uniform valuation.⁶² If and when the assessor's presumption is negated, the burden of going forward shifts to the assessor to present sufficient evidence to support the assessed value at issue.

56. WYO. STAT. ANN. § 16-3-108(d) (Michie 1977).

57. *Teton Valley Ranch v. Wyoming State Bd. of Equalization*, 735 P.2d 107 (Wyo. 1987). See also *Weaver v. Wyoming State Bd. of Equalization*, 511 P.2d 97 (Wyo. 1973); *Scott Realty Co. v. Wyoming State Bd. of Equalization*, 395 P.2d 289 (Wyo. 1964); *Bunten v. Rock Springs Grazing Ass'n*, 215 P. 244 (Wyo. 1923).

58. *Gray v. Wyoming State Bd. of Equalization*, 896 P.2d 1347 (Wyo. 1995).

59. *J. Ray McDermott & Co. v. Hudson*, 370 P.2d 364, 370 (Wyo. 1962).

60. § 16-3-108(a).

61. 896 P.2d 1347 (Wyo. 1995).

62. *Id.* at 1352, WYO. CONST. art. 15, § 11. See also *Union Pac. R.R. v. Wyoming State Bd. of Equalization*, 802 P.2d 856, 862 (Wyo. 1990), wherein the court stated "fair value is not established by the sale, and the assessor may disregard the sales price in favor of other proper criteria used to determine fair value." And lest anyone think this area of the law is totally without humor, please read *id.* at page 863 n.2.

One particular area of standards and presumptions warrants separate discussion. Exemptions from valuation and assessments are, by general view, the exception. The party claiming an exemption has the burden to convince the county board of equalization, by a preponderance of evidence, which exemption, if any, applies.⁶³ In meeting this burden, it is not necessary to show that all other similarly situated organizations or property in Wyoming qualify for an exemption, and are allowed one. The particular person or entity in question need only show that its particular property and organization qualify under the required preponderance standard.⁶⁴

The exemption presumption is reversed, if, within certain statutory guidelines, property is owned and used by the United States, the State of Wyoming, Wyoming counties, Wyoming school districts, or Wyoming cities and towns.⁶⁵ When, as in Wyoming, a state, by statute, has established a policy to exempt certain publicly owned property, the rule of strict construction of constitutional and statutory provisions against exemption does not apply. The presumption, in fact, favors exemption and the taxing authority has the burden to establish that public property is properly subject to valuation and assessment.⁶⁶

County Board of Equalization Decisions

"I never gave anybody hell. I just told the truth and they thought it was hell." Harry S. Truman (1884-1972)

When presentation of all evidence and testimony to a county board of equalization is complete, the board must issue a final decision in writing, or dictate the decision into the county board record. The decision must separately state findings of fact and conclusions of law.⁶⁷ As noted by the Wyoming Supreme Court in one of the first opinions to discuss the Wyoming APA, the decision of an agency (such as a county board of equalization) must include findings of basic fact upon all material issues in the proceeding, and upon which its ultimate findings of fact or conclu-

63. *Commissioners of Cambria Park v. Weston County*, 174 P.2d 402 (Wyo. 1946).

64. *Crisis Intervention Services*, Docket No. 91-169 (Wyoming State Board of Equalization January 28, 1992).

65. WYO. STAT. ANN. § 39-1-201 (Michie 1977 & Supp. 1996).

66. *City of Cheyenne v. Board of County Comm'rs*, 484 P.2d 706, 708-09 (Wyo. 1971).

67. WYO. STAT. ANN. § 16-3-110 (Michie 1977).

sions are based.⁶⁸ In *FMC v. Lane*,⁶⁹ the court reiterated its previous conclusions, holding that each ultimate fact or conclusion must be thoroughly explained to allow, upon review, a proper determination of the basis upon which the ultimate fact or conclusion was reached.

Recently, notwithstanding *Pan American* and its significant progeny, the Wyoming Supreme Court⁷⁰ gave at least the appearance of moving away from the strict requirement of defining basic facts, ultimate facts, and relating those facts to a supportable conclusion. In *City of Casper v. Utech*,⁷¹ a majority of the Court⁷² concluded "no purpose is to be served by demanding the agency explain how it evaluated the evidence in arriving at a conclusion that a party failed to meet its burden of proof."⁷³ Such a conclusion appears to wipe out almost thirty years of court precedent. Rather than detailed findings, an agency now may only state whether the evidence presented was either sufficient or insufficient, without a detailed discussion as to what makes up the sufficiency or insufficiency.

Since this opinion was issued on May 11, 1995, one member of the majority, Justice Cardine, has retired. Prudence would dictate parties to a county board of equalization hearing still request the board make detailed factual findings to support its conclusions, and provide such findings to the board when offering proposed findings of fact and conclusions of law. This advice is reinforced by *Union Pacific Railroad Company v. State Board of Equalization*,⁷⁴ where the court concluded it would defer only to county board findings in any county board of equalization appeal presented to it through the State Board.⁷⁵

By statute, a county board of equalization shall hear, consider, decide and provide a written decision in all protests of local-assessed property no later than the first Monday in August.⁷⁶ Although the statute utilizes the mandatory "shall" language, it does not describe what penalty, if any, will accrue if written decisions are not entered by the August date.

68. *Pan Am. Petroleum Corp. v. Wyoming Oil & Gas Conservation Comm'n*, 446 P.2d 550 (Wyo. 1968). See also *Campbell County v. Wyoming Community College Comm'n*, 731 P.2d 1174 (Wyo. 1987); *Foremost Life Ins. Co. v. Langdon*, 633 P.2d 938 (Wyo. 1981); *Larsen v. Wyoming Oil & Gas Conservation Comm'n*, 569 P.2d 87 (Wyo. 1977); *Powell v. Board of Trustees*, 550 P.2d 1112 (Wyo. 1976).

69. 773 P.2d 163 (Wyo. 1989).

70. *City of Casper v. Utech*, 895 P.2d 449 (Wyo. 1995) (Golden Ch. J., Macy J. dissenting).

71. *Id.*

72. Justice Thomas, joined by Justices Cardine and Taylor.

73. *City of Casper*, 895 P.2d at 452.

74. 802 P.2d 856 (Wyo. 1990).

75. *Id.* at 859.

76. WYO. STAT. ANN. § 39-2-302(b)(v) (Michie 1977 & Supp. 1996).

As a matter of practice, since this statutory language was added by the Wyoming Legislature in 1990,⁷⁷ the general consensus has been that the deadline is not jurisdictional. As a result, failure of a county board to enter a written decision by the specified date does not deprive it of jurisdiction to determine the appeal. Every effort should, however, be made to meet this deadline as tax levies are set by the county commissioners on the first Monday in August.⁷⁸ The value set by a county board decision, if different from the original assessor value, is the value the county commissioners must use to certify tax levies, even when there is an appeal to the State Board. Completion of all county board of equalization appeals by the statutory deadline will avoid subsequent valuation changes which may ultimately adversely affect county tax collections.

State Board of Equalization Review

A county board of equalization decision is subject to State Board review⁷⁹ on request of either protestant/taxpayer or the county assessor. A notice of appeal must be filed with the Board not later than thirty days after the date of the county board decision or service thereof, whichever is later. The notice must be in writing, accompanied by a copy of the county board decision, and at a minimum briefly state in ordinary and concise language the grounds upon which the appeal is based and the relief desired. The notice is considered filed with the Board when postmarked, if legible, or upon receipt by facsimile transmission.⁸⁰ It should be noted that the parties to State Board review of a county board of equalization decision are the taxpayer/protestant, and the assessor, either as petitioner or respondent. The county board of equalization is not the respondent in either case, although it may move to intervene.⁸¹

When the State Board reviews a county board decision, it does not take additional evidence. Its consideration is limited to the county board of equalization record, written briefs filed by the parties, and oral argument if requested and allowed.⁸² The county board decision is entitled to a presumption of validity and correctness.⁸³ The State Board review is limited to a determination of whether the county board decision is: "(a)

77. 1990 Wyo. Sess. Laws 29.

78. WYO. STAT. ANN. § 39-2-403 (Michie 1977).

79. WYO. STAT. ANN. § 39-1-304(a) (Michie 1977 & Supp. 1996). "The State Board of Equalization shall . . . hear appeals from county boards of equalization . . ." *Id.*

80. Rules, Ch. 3, § 2, Wyoming State Board of Equalization.

81. Rules, Ch. 3, §§ 4-5, Wyoming State Board of Equalization.

82. Rules, Ch. 3, § 9, Wyoming State Board of Equalization.

83. *Union Pac. R.R. Co. v. Wyoming State Bd. of Equalization*, 802 P.2d 856, 859 (Wyo. 1990).

arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law; (b) in excess of statutory jurisdiction, authority, or limitations, or lacking statutory right; (c) without observance of procedure required by law; or (d) unsupported by substantial evidence."⁸⁴

When its consideration is complete, the State Board issues a written decision and order with findings of fact and conclusions of law.⁸⁵ A State Board decision, under Wyoming Rules of Appellate Procedure,⁸⁶ may be appealed to the appropriate Wyoming district court by the taxpayer/protestant, or the county board of equalization even though the county board was not a party to the State Board proceeding.⁸⁷ The county assessor, although a party to the State Board proceeding, may not appeal.⁸⁸

CHALLENGING STATE-ASSESSED PROPERTY

The State Board of Equalization, as established by the Wyoming Constitution,⁸⁹ is composed of three full-time members, only two of which may be members of the same political party. The members are appointed by the governor with Senate confirmation.⁹⁰

The State Board is authorized by statute to consider the appeal of any person aggrieved by a final administrative decision of the Department of Revenue.⁹¹ The term "person" is statutorily defined to include a board of county commissioners.⁹² Although State Board jurisdiction over Department decisions includes severance tax,⁹³ sales tax,⁹⁴ use tax,⁹⁵ and inheritance/estate tax,⁹⁶ this article concentrates on Board jurisdiction to

84. Rules, Ch. 3, § 9, Wyoming State Board of Equalization.

85. Rules, Ch. 3, § 18, Wyoming State Board of Equalization.

86. WYO. R. APP. P. 12.09.

87. WYO. STAT. ANN. § 39-1-306 (Michie 1977).

88. *Brandt v. TCI Cablevision of Wyo.*, 873 P.2d 595 (Wyo. 1994). In *Brandt*, the Park County assessor appealed a county board decision to the State Board. The State Board affirmed the county board, and the assessor filed a petition for review with the district court which certified the appeal to the Wyoming Supreme Court. The Supreme Court held the assessor lacked standing to appeal a State Board decision, concluding county officers are not persons within the definition of section 39-1-101(a)(xiii), and are not specifically given the right of appeal under section 39-1-306. *Id.*

89. WYO. CONST., art. 15, § 9. "The legislature shall provide by law for a state board of equalization." *Id.*

90. WYO. STAT. ANN. § 39-1-302(a) (Michie 1977 & Supp. 1996).

91. *Id.* § (c); WYO. STAT. ANN. § 39-1-304(a) (Michie 1977 & Supp. 1996).

92. § 39-1-304(a).

93. WYO. STAT. ANN. § 39-6-301 to 309 (Michie 1977 & Supp. 1996).

94. WYO. STAT. ANN. § 39-6-401 to 418 (Michie 1977 & Supp. 1996).

95. WYO. STAT. ANN. § 39-6-501 to 518 (Michie 1977 & Supp. 1996).

96. WYO. STAT. ANN. § 39-6-808 to 813 (Michie 1977).

consider Department decisions on the valuation and assessment of state-assessed property.⁹⁷

Appeal Deadlines

The Department of Revenue is required to notify all persons whose property is subject to state assessment,⁹⁸ of the assessed value thereof.⁹⁹ The person assessed has thirty days from postmark of the notification to file written objections (notice of appeal) with the State Board.¹⁰⁰ The protestant is further required to file a copy of its written objections with the county treasurer for the county or counties in which the property at issue is located. The treasurer then provides the county assessor and county commissioners an estimated potential tax impact to the county based upon the prior year tax levy.¹⁰¹ If a protestant fails to notify the counties, the payment of interest on tax paid under protest may be adversely affected if the tax is subsequently refunded.¹⁰²

Prior to 1995, while counties and the separate taxing jurisdictions therein were clearly affected by valuation of state-assessed property,¹⁰³ the ability of a county to challenge a state-assessed property valuation was uncertain. In *Platte County School District No. 1 v. Basin Electric Power Cooperative*,¹⁰⁴ the court left open the possibility that county commissioners might have standing to attempt such a challenge, while also concluding that a county school district as a tax beneficiary had no standing to challenge valuation of state-assessed property.¹⁰⁵ The uncertainty was resolved when the 1995 Wyoming Legislature included boards of county commissioners within the scope of any "interested person adversely affected" by a Department of Revenue final decision.¹⁰⁶

A notice of appeal to the State Board requires no particular format. It must, however, contain a statement of the facts and issues upon which the appeal is based, the contentions of the protestant, the relief desired, and must be accompanied by a copy of the decision at issue. The notice should also contain the phone number, fax number, mailing address of

97. WYO. STAT. ANN. § 39-2-201(d) (Michie 1977).

98. *Id.* § (a).

99. *Id.* § (d).

100. *Id.* See also Rules, Ch. 2, § 5, Wyoming State Board of Equalization.

101. § 39-2-201(d).

102. WYO. STAT. ANN. § 39-4-101(d) (Michie 1977).

103. § 39-2-201(e).

104. 638 P.2d 1276 (Wyo. 1982).

105. At the time of this appeal the Wyoming State Board of Equalization was statutorily responsible for valuing state-assessed property.

106. 1995 Wyo. Sess. Laws 209.

petitioner and her representative or attorney. Notices are deemed filed with the Board upon mailing as evidenced by a legible postmark or upon receipt by facsimile transmission.¹⁰⁷ Each appeal filed with the Board is assigned an individual docket number (for example 96-101) and placed on the board docket.

Procedures/Evidence

The State Board, as a quasi-judicial administrative agency, is subject to the parameters of the Wyoming APA.¹⁰⁸ In addition, the Board conducts hearings pursuant to "its own rules and regulations of practice and procedure."¹⁰⁹ These specific procedures are outlined in the Board Rules,¹¹⁰ and parallel the Wyoming Rules of Civil Procedure.¹¹¹ Although a quasi-judicial administrative agency such as the State Board lacks summary and declaratory judgment authority,¹¹² the board has by rule adopted an analogous process, to expedite an appeal if: (a) the matter involves no disputed issues of material fact; or (b) the parties agree to an expedited proceeding with the board retaining authority to convert the matter to an evidentiary hearing process if it deems necessary.¹¹³

As the State Board serves an appeal function similar to a county board of equalization, the previous discussion concerning procedure and evidence at a county board of equalization hearing is equally applicable to contested case hearings before the State Board. Similar to county boards, State Board hearings are tape recorded. They are stenographically reported only if a court reporter is provided by one or both parties. With regard to evidentiary presentation and testimony, the same rules concerning hearsay, privilege and so forth are equally applicable at the State Board level. In addition, the State Board is authorized to contract with an attorney licensed in Wyoming to act as presiding officer. The attorney must be knowledgeable and qualified in the areas of taxation which are the subject of the particular appeal.¹¹⁴

107. Rules, Ch. 2, § 5, Wyoming State Board of Equalization.

108. WYO. STAT. ANN. § 16-3-101(b) (Michie 1977 & Supp. 1996).

109. WYO. STAT. ANN. § 39-1-304(a)(ix) (Michie 1977 & Supp. 1996).

110. Rules, Ch. 2, Wyoming State Board of Equalization.

111. *Id.*

112. *Union Pac. Resources Co v. Wyoming State Bd. of Equalization*, 895 P.2d 464 (Wyo. 1995); *Jackson v. State ex rel. Wyoming Workers' Compensation Div.*, 786 P.2d 874, 878 (Wyo. 1990).

113. Rules, Ch. 2, § 14, Wyoming State Board of Equalization

114. § 39-1-304(a)(ix).

Standards and Presumptions

As with an initial valuation by an assessor, a Department of Revenue state-assessed property valuation is presumed valid, accurate, and correct, a presumption which survives until overturned by credible evidence.¹¹⁵ A state-assessed property valuation determined by the Department under properly promulgated rules having the force and effect of law¹¹⁶ requires more than a mere difference of opinion as to value to be displaced.¹¹⁷ As with local-assessed property, the burden of proof is upon the party challenging the Department valuation. If and when the Department valuation presumption is negated, the burden shifts to the Department to support the valuation at issue.

State Board of Equalization Decisions

Any appeal decision by the State Board must be in writing, and separately state findings of fact and conclusions of law.¹¹⁸ The discussion on preparing findings and conclusions in the context of a county board of equalization decision is equally applicable for State Board decisions. The State Board does however have one additional statutory requirement with regard to its decisions. The Board must make publicly available, by publication or subscription, a report summarizing each of its decisions. The report must be issued quarterly, and contain a concise statement of relevant facts and circumstances along with the essence of the decision. Although the Wyoming Legislature inserted this requirement in a rather unusual position in the statutes,¹¹⁹ the State Board publishes all decisions, not just those dealing with mineral valuation and taxation.

Appeal of State Board of Equalization Decisions

Any person aggrieved by a State Board decision regarding valuation of state-assessed property may file an appeal with the appropriate district court.¹²⁰ Arguably, the term "any person" now includes a board of county

115. Rules, Ch. 2, § 19, Wyoming State Board of Equalization. *See also In re Wisconsin Elec. Power Co.*, Docket No. 92-176 (Wyoming State Board of Equalization June 17, 1993), and *Chicago, Burlington & Quincy R.R. Co. v. Bruch*, 400 P.2d 949, 500 (Wyo. 1965).

116. *Yeik v. Dept. of Revenue & Taxation*, 595 P.2d 965 (Wyo. 1979); *Doidge v. Board of Charities & Reform*, 789 P.2d 880 (Wyo. 1990).

117. *J. Ray McDermott & Co. v. Hudson*, 370 P.2d 364, 370 (Wyo. 1962).

118. WYO. STAT. ANN. § 16-3-110 (Michie 1977).

119. It was placed near the end of the requirement for reports of gross product value and payment of severance tax. WYO. STAT. ANN. § 39-6-304(r) (Michie 1977 & Supp. 1996).

120. WYO. STAT. ANN. § 39-1-306 (Michie 1977).

commissioners. It would be incongruous to legislatively define such boards as an "interested person" for purposes of appealing decisions of Department of Revenue,¹²¹ yet deny the same board the ability to appeal an adverse State Board decision. For purposes of appealing a State Board decision, a board of county commissioners should fall within the definition of "person" under the Wyoming APA,¹²² as such definition is incorporated by reference in the Wyoming Rules of Appellate Procedure for judicial review of administrative actions.¹²³ In effect, the board of county commissioners represent the county, a "governmental subdivision" which under the Wyoming APA falls within the definition of "person."¹²⁴ This is true notwithstanding the Wyoming Supreme Court decision in *Brandt v. TCI Cablevision of Wyoming*,¹²⁵ which is distinguishable. In *Brandt*, the Supreme Court concluded, based upon the Wyoming APA language defining a county officer as an agency, an individual assessor is not a "person" entitled to appeal a State Board decision.¹²⁶ The question of Department standing to appeal a State Board decision was resolved in *Amax Coal Company v. Wyoming State Board of Equalization*.¹²⁷ In *Amax Coal*, the Wyoming Supreme Court concluded the Department, as the administrative agency charged with collection of tax revenues for the State, was the primary agent of the State in tax matters.¹²⁸

CONCLUSION

The parameters of a challenge to the valuation and assessment of both state and local assessed property are well defined by Wyoming rules, statutes and case law. While many may consider that valuation and assessment of real and personal property lacks glamour, it should be remembered the process generates tax revenue for purposes ranging from education funding for the University of Wyoming through local kindergartens, to maintaining county roads and bridges. A working knowledge of the process for challenging valuation of state and local assessed property is important for all attorneys, no matter how large or small their clients' property valuation problems may be.

121. § 39-1-304(a).

122. WYO. STAT. ANN. § 16-3-101(b)(vii) (Michie 1977 & Supp. 1996).

123. WYO. R. APP. P. 12.02

124. § 16-3-101(b)(vii).

125. 873 P.2d 595 (Wyo. 1994)

126. *Id.* at 597. The court based its decision on sections 16-3-101(b)(vii) and 16-3-101(b)(I) of the Wyoming Administrative Procedure Act. *Id.*

127. 819 P.2d 825 (Wyo. 1991).

128. *Id.* at 833.