



CBJ Law Department **MEMORANDUM**

To: CBJ Board of Equalization
From: John W. Hartle, City Attorney *JK*
Subject: Board of Equalization: Standards and Procedures
Date: May 10, 2006

SUMMARY

- (1) The Board of Equalization functions as a quasi-judicial body.
- (2) The burden of proof is on the appellant property owner.
- (3) The Board should make specific findings on the record, and should base its decisions on the record.
- (4) To grant an appeal, Board members should move and vote in the affirmative; to uphold the assessor's decision, Board members should vote in the negative.
- (5) Alaska statutes governing procedure are attached to this memorandum.

INTRODUCTION

Municipal property taxation, including the assessment process and Board of Equalization standards and procedures, is governed by Alaska statute and the CBJ Code. AS 29.10.200(41); AS 29.45.800; CBJ 15.05.010 – .260. I have attached a copy of AS 29.45.190 - .210, which provide the time for filing appeals of assessment, procedures before the Board, the standards to be used by the Board in deciding appeals, and the required time frames for action by the Board and the Assessor on the final assessment roll.

TIME FOR FILING APPEALS

In order to appeal an assessment, a taxpayer must file an appeal within 30 days after the date of mailing of the assessment notice. AS 29.45.190(b); CBJ 15.05.160(a). After this time period, the right of appeal ceases, unless the Board finds that the taxpayer was “unable” to comply with the 30-day filing requirement. The word “unable” as used in this section does not include situations where the taxpayer forgot about or overlooked the assessment notice, was out of town during the period for filing an appeal, or similar situations. Rather, it covers situations which are beyond the control of the taxpayer and which, as a practical matter, prevent the taxpayer from recognizing what is at stake and dealing with it. Such situations would include a physical or mental disability serious enough to prevent the person from dealing rationally with his or her private affairs.

In short, there are few situations in which a taxpayer is “unable” to comply with the requirement that an appeal be filed within 30 days of the date of mailing of the notice of assessment. It is common knowledge that real property is subject to assessment and taxation and it is the duty of every property owner to take such steps as are necessary to protect his or her interests in the property. One of the steps which courts generally assume a prudent property owner takes is to have someone either watch or manage the property while the property owner is away from the property for an extended period of time. It is also the responsibility of the property owner to assure that the taxing authority has the correct address to which notices relating to assessments and taxes on the property may be sent in order that the property owner will receive timely notice of assessments and tax levies affecting the property. Therefore, that a person failed to receive an assessment notice because it was sent to an old address which the taxpayer had not corrected, or that the notice was sent to the property owner at the correct address but while the property owner was out of town, are not reasons which make the property owner “unable” to file a timely appeal.

With respect to any appeal filed after expiration of the 30-day appeal period, the Board should consider the oral and written evidence presented by the taxpayer on the issue of whether or not the taxpayer was “unable” to file the appeal within the required 30-day appeal period. If the taxpayer fails to prove that he or she was “unable” to file the appeal in a timely manner, there is no basis for hearing the appeal, even if the Board believes the assessment should be corrected.

ASSESSMENTS THE BOARD CAN CONSIDER

The Board of Equalization has authority to alter an assessment of a parcel of property only pursuant to a timely filed appeal regarding the particular parcel. AS 29.45.200(b). The Board has no authority to alter the assessment of a parcel which is not before the Board on an appeal. Under state law, an appeal may be filed only by a person whose name appears on the assessment roll or the agent of that person. AS 29.45.190(a).

If an appellant fails to appear at the hearing, the Board may proceed with the hearing in the absence of the appellant. AS 29.45.210(a); CBJ 15.05.190(b). The appellant may appear through an agent or representative, and may present written and/or oral testimony.

BASIS FOR ADJUSTMENT AND ASSESSMENT

AS 29.45.210(b) and CBJ 15.05.190 expressly place the burden of proof on the party appealing the assessment. See also, *CH Kelly Trust v. Municipality of Anchorage, Board of Equalization*, 909 P.2d 1381 (Alaska 1996) (“the burden is properly placed on the property owners in an assessment challenge”). Before the property owner is entitled to an adjustment, the property owner must prove, based on facts stated in the written appeal or presented at the hearing, that the property is the subject of unequal, excessive, improper, or under-valuation. AS 29.45.210(b); CBJ 15.05.180(c). In presenting his or her case, the appellant may present written evidence, oral testimony, and witnesses.

Alaska courts are very hesitant to disturb valuations set by the assessor if the differences between the appellant and the assessor are merely a matter of differences of opinion. In *Twentieth Century Investment Company v. City of Juneau*, 359 P.2d 783, 787 (Alaska 1961), the court, addressing assessment standards under former, similar law, (AS 29.53.140), stated:

The valuation and assessment of property for taxes does not contravene [constitutional principles] unless it is plainly demonstrated that there is involved, not the exercise of the taxing power, but the exertion of a different and forbidden power, such as the confiscation of property. *Such a demonstration is not made simply by showing overvaluation; there must be something which, in legal effect, is equivalent to an intention or fraudulent purpose to place an excessive valuation on property, and thus violate fundamental principles that safeguard the taxpayer’s property rights.*

(Emphasis added.) The court went on to state, at 788:

The City was not bound by any particular formula, rule or method, either by statute or otherwise. Its choice of one recognized method of valuation over another was simply the exercise of a discretion committed to it by law. Whether or not it exercised a wise judgment is not our concern. This court has nothing to do with complaints of that nature. It will not substitute its judgment for the judgment of those upon whom the law confers the authority and duty to assess and levy taxes. *This court is concerned with nothing less than fraud or the clear adoption of a fundamentally wrong principle of valuation.* Neither has been shown here. The actions of the assessor and the Board of Equalization are entirely compatible with a sincere effort to adopt valuations not relatively unjust or unequal; their determinations have not transgressed the bounds of honest judgment.

(Emphasis added.) This principle, that “taxing authorities are to be given broad discretion in selecting valuation methods,” was reaffirmed by the Alaska Supreme Court in *CH Kelly Trust, supra*, 909 P.2d at 1382.

Accordingly, the valuations placed on property by the assessor should be given substantial weight by the Board of Equalization, particularly where the appellant offers little more than unsupported opinion that the assessor’s value is too high. In order to be considered an unequal, excessive, improper, or under valuation, the valuation must be unequivocally excessive, or fundamentally wrong.

This assumes that the assessor has reviewed the critical facts. The Alaska Supreme Court’s case law requires the assessor to review all “directly relevant” evidence of the property value and “prevailing market conditions.” *Faulk v. Board of Equalization*, 934 P.2d 750, 752 (Alaska 1997). Thus, it is important that the assessor, and the Board of Equalization, ensure that all relevant evidence is considered.

FINDINGS – BASIS FOR DECISION

Board of Equalization decisions are subject to judicial review, if an appeal to superior court is filed within 30 days. Consequently, it is important for the Board to either make specific findings for its decisions, or to set forth sufficient information so as to enable a reviewing court to ascertain the reasons for the Board’s action. An appeal to superior court of a determination of the Board is heard on the record established at the Board hearing. AS 29.45.210(d). It is important that the record be as clear and complete as possible.

The Alaska Supreme Court has outlined the findings requirements in a tax appeal.

We have previously concluded that “[t]he threshold question in an administrative appeal is whether the record sufficiently reflects the basis for the [agency’s] decision so as to enable meaningful judicial review.” *Fields v. Kodiak City Council*, 628 P.2d 927, 932 (Alaska 1981). In answering that question, “[t]he test of sufficiency is ... a functional one: do the [agency’s] findings facilitate this court’s review, assist the parties and restrain the agency within proper bounds?” *South Anchorage Concerned Coalition, Inc. v. Coffey*, 862 P.2d 168, 175 (Alaska 1993).

Faulk, supra, at 751.

In the *Faulk* case, the Alaska Supreme Court remanded a property tax appeal to the Kenai Peninsula Borough Board of Equalization because the Board did not provide an adequate basis for the court to determine whether it had reasonably denied the property tax appeal. The Supreme Court held: “On remand, the superior court should instruct the Board to state its reasons for rejecting the [taxpayer’s] appeal.” *Id.* at 753. Accordingly, the Board should take care to explicitly state its reasons for accepting or rejecting each appeal.

ACTION BY THE BOARD OF EQUALIZATION

In taking action on appeals, a Board member should move and vote in the affirmative to grant the appeal by the taxpayer, and vote in the negative to deny the appeal, affirming the determination of the assessor.¹ For appeals which are not timely filed, the Board should first vote on whether or not to hear the appeal; if the Board decides to hear the appeal, the appeal should then be heard on its merits.

The Board is required to certify its actions to the assessor within seven days, and, except as to supplementary assessments, the assessor must enter the changes and certify the final roll by June 1. AS 29.45.210(c). The rate of levy must be determined by the Assembly by ordinance before June 15. AS 29.45.240. The City and Borough budget must be adopted by May 31. If for any reason the Board hearing is continued to a later date, the date for completing the hearing must be in the very near future in order for the final assessment roll to be certified and the rate of levy fixed in accordance with the required statutory time frames.

Attachments

¹ Sample motions: “I move that the Board grant the appeal for the reasons given by the appellant;” or “I move we grant the appeal, and I ask for a ‘no’ vote for the reasons provided by the Assessor.”

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ALASKA STATUTES

Title 29. Municipal Government.

Chapter 45. Municipal Taxation.

Article 1. Municipal Property Tax.

→ **Sec. 29.45.190 Appeal.**

(a) A person whose name appears on the assessment roll or the agent or assigns of that person may appeal to the board of equalization for relief from an alleged error in valuation not adjusted by the assessor to the taxpayer's satisfaction.

(b) The appellant shall, within 30 days after the date of mailing of notice of assessment, submit to the assessor a written appeal specifying grounds in the form that the board of equalization may require. Otherwise, the right of appeal ceases unless the board of equalization finds that the taxpayer was unable to comply.

(c) The assessor shall notify an appellant by mail of the time and place of hearing.

(d) The assessor shall prepare for use by the board of equalization a summary of assessment data relating to each assessment that is appealed.

(e) A city in a borough may appeal an assessment to the borough board of equalization in the same manner as a taxpayer. Within five days after receipt of the appeal, the assessor shall notify the person whose property assessment is being appealed by the city.

Current through all 2005 Legislation, Annotations current through Opinions
Decided as of June 24, 2005.

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ALASKA STATUTES

Title 29. Municipal Government.

Chapter 45. Municipal Taxation.

Article 1. Municipal Property Tax.

→**Sec. 29.45.200 Board of equalization.**

(a) The governing body sits as a board of equalization for the purpose of hearing an appeal from a determination of the assessor, or it may delegate this authority to one or more boards appointed by it. An appointed board may be composed of not less than three persons, who shall be members of the governing body, municipal residents, or a combination of members of the governing body and residents. The governing body shall by ordinance establish the qualifications for membership.

(b) The board of equalization is governed in its proceedings by rules adopted by ordinance that are consistent with general rules of administrative procedure. The board may alter an assessment of a lot only pursuant to an appeal filed as to the particular lot.

(c) Notwithstanding other provisions in this section, a determination of the assessor as to whether property is taxable under law may be appealed directly to the superior court.

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ALASKA STATUTES

Title 29. Municipal Government.

Chapter 45. Municipal Taxation.

Article 1. Municipal Property Tax.

→**Sec. 29.45.210 Hearing.**

(a) If an appellant fails to appear, the board of equalization may proceed with the hearing in the absence of the appellant.

(b) The appellant bears the burden of proof. The only grounds for adjustment of assessment are proof of unequal, excessive, improper, or under valuation based on facts that are stated in a valid written appeal or proven at the appeal hearing. If a valuation is found to be too low, the board of equalization may raise the assessment.

(c) The board of equalization shall certify its actions to the assessor within seven days. Except as to supplementary assessments, the assessor shall enter the changes and certify the final assessment roll by June 1.

(d) An appellant or the assessor may appeal a determination of the board of equalization to the superior court as provided by rules of court applicable to appeals from the decisions of administrative agencies. Appeals are heard on the record established at the hearing before the board of equalization.

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