Status Report
Assessor's Association Meeting
9-11-08

- **NTC Action on 9-8-08**

1. Adoption of common-area community interest information forms; I've already had 2 questions from people representing condo associations about whether

- the Assessors would do all the research necessary to identify the common area
- the adopted form would only be sent to associations as a last resort if more information was necessary to identify common area,
- the adopted form, with accompanying instructions, would not be sent as a standard operating procedure.
- the adopted form may be modified by the individual county Assessor's Office only with their particular county's contact information.

2. Congratulations to Lyon County on being the 16th county to reappraise land annually.

3. Adoption of golf course tables: a copy is in your packet; we'll also be publishing it on the website, and I'll send you an email when it's up there.

4. A few weeks ago, I sent out an email with the CPI adjustment for exemptions, but we had provided it for the wrong year. In your packet is the CPI adjustment for fiscal 2009-2010. I'll be sending out an email to that effect as well.

5. Also a few weeks ago, we sent out a letter discussing the taxability of drilling rigs. That's in your packet too, and I just wanted to stop a minute and ask if you had any questions on that topic?

OTHER ISSUES THE DEPARTMENT IS FACING:

6. New attack on the net proceeds front: What is the gross yield of limestone? Is limestone the only product or is lime also a mineral product? Similar issues are coming up for diatomaceous earth in an audit, where we have found that the taxpayer has not been reporting the gross yield, but something far less.

The specific questions we're addressing are whether the process used to produce lime from limestone is a "manufacturing" process or is it rather a reduction and beneficiation treatment process to obtain a marketable mineral product. There is also a policy question of whether gross proceeds should be determined from the sales value of the first natural, generally salable product of the mine.

19th on actual and authorized use, which will be the 7th meeting on this topic since last fall.

In addition to this list, the Blue Ribbon Committee reported to the Tax Commission last June that they recommend we commence workshops for regulations on further defining what NRS 361.228(3) means with regard to how attributes of real property must be considered in valuing property. They also recommended regulations on defining taxable value, what falls into the definition of land and what falls into the definition of improvements. Finally, the Blue Ribbon Committee recommended that we have regulations on conducting performance audits, modeled after the LCB performance audits.

I brought along a few copies of the white paper which the Blue Ribbon Committee referred to in its discussion on these recommendations. The white paper, among other things, stated:

- The first approach, and the one more easily implemented, is to enhance the work practices portion of the ratio study. The idea of the performance audits would focus on how tasks are carried out – on procedures, not specifically on results.
- The second approach is to enhance the ratio study by generating additional observations in more narrowly defined geographic areas. The option would require direction as to how those geographic areas should be defined, the appropriate sample size, and other criteria for the study design.

I have also included in your packet a copy of the finalized regulations for common-interest communities, LCB File No. R183-07 which were approved by the Legislative Commission on August 26th, and were effective that same date.

Equalization

The process of equalization – most especially what equalization is, what the purpose is, and how it should be implemented, has been the subject of considerable discussion for the last 5 years.

The state's policy makers, as you know, are moving in the direction of setting regulations regarding this topic. Last June, Barbara Smith Campbell, the chair of the Blue Ribbon Committee appointed by the Nevada Tax Commission, noted that "the statutes call for the [State] Board to equalize, but the mechanics for this process in these extreme circumstances is silent." At the last meeting of the State Board, the members indicated an interest in initiating workshops on regulations for the process of equalization, so you can expect workshops in that arena as well.

I have included a couple of letters from the Village League discussing their concern with how the State Board will equalize this year. They want the ability to have meaningful participation in any equalization action.

7. Status of abatement appeals: we have received several more appeals having to do with the effects on tax bills when property has been annexed into a new entity's jurisdiction.

- Clark County annexation; apparently 2-300% increase in some cases. Washoe County change of fire district from a 473 to a 474
- 5 new appeals on annexed property

It has to do with the exception to the abatement provided in NRS 361.4732, which provides a method for calculating the abatement when annexation occurs. Basically, the tax rate increase caused by annexation does not generate an abatement. The tax rate increase provides new revenue to the annexing entity, but the annexing entity is required to share in any abatement caused by increases in property value in the proportion of the ratio of the entity tax rate to the overlapping tax rate. You should also be aware of the regulations adopted by CLGF with regard to annexation, and those may be found at NAC 361.613.

I included in your packet a discussion of annexation in the context of the Washoe County fire district.

Altogether, since 2006, there have been about 285 appeals of abatements to the Tax Commission, with only a handful resolved so far.

Other abatement appeals:

- 1 appeal on how the CED abatement is applied after application of the 8% abatement
- 1 appeal on the incorrect filing of abatement application
- 1 appeal or request for investigation – if governor can pay $39.71 for a parcel he paid $575,000 on, why does this taxpayer have to pay 8% on his second home.
- There is also a request for an advisory opinion from the attorney general's office with regard to whether a particular county has been correctly determining the abatement – apparently the county has been calculating the abatement by first removing any obsolescence. I have not seen the request, so I don't have any more details for you.

Regulations

- Included in your packet is a status report on the various regulations the Division has been working on from 2007 to the current time. As you can see, there are regs on 20 different topics since last year. The next workshop will be September

One of the recent Incline Village lawsuits was recently determined by the District Court, and that decision is also in your packet. The suit had to do with the alleged failure of the Washoe County Board of Equalization to equalize assessed values. The plaintiffs alleged that their substantive rights under the uniform and equal taxation clause of the Nevada Constitution and the U.S. Constitution had been violated; and that they had not received equal protection under the law. As part of the lawsuit, the Village League sued 4 members of the State Board personally, asking for damages in the amount of $10,000 from each member for each of the 9,000 taxpayers in Incline Village, or about $9 million from each member.

The Court concluded that the claim of violation of civil rights was not appropriate as against individual members of the State Board, because State Board members are not "persons" as contemplated by federal civil rights actions; and the court found that it does not have subject matter jurisdiction because the plaintiffs failed to file their lawsuit in compliance with NRS 361.420. They also didn't exhaust their administrative remedies before seeking relief from the court, by not appealing their property tax values first to the County Board and then to the State Board. They also didn't show that they had paid each and every installment of taxes required before a lawsuit is initiated.

With regard to the State Board's duty to equalize, the court referred to the ratio study required by NRS 361.333, in which the Tax Commission will conduct an appraisal if the study finds there is over or under assessment, but in addition to the ratio study, the State Board has a duty to equalize throughout the state.

The court dismissed the claim against the individual board members, but remanded the matter back to the State Board to make a record as to whether or not there has been compliance by the Tax Commission with NRS 361.333 that equalization has been done.

Now the Village League has gotten the same court to issue an order to show cause in which two State Board members must show why a writ of mandamus should not be issued requiring those two members to recuse themselves from hearing Incline Village cases. The attorney general will appear tomorrow, I believe, to respond to this request by Incline Village to have the court order the State board members to recuse themselves.

Shortly after the Barta (Bakst II) decision came out in July, Chairman Wes Smith recused himself from hearing any Incline Village cases because Mr. Smith was one of the recipients of the tax refund ordered in that case; and according to the State Ethics Commission, the fact that he was a plaintiff on the Incline Village side caused a conflict of interest.

And, as you may know, the Governor has not yet appointed a fifth member to the Board. At this point, even if we had a fifth member, the State Board would still not have a quorum to hear the Incline Village cases, unless and until it is clear whether the court will prevent Michael Cheshire from serving. Member Mason has already recused himself in

those Incline Village cases represented by Suellen Fulstone. The only Board member that has not yet been made a part of this melee is Anthony Wren.

What I am describing here seems like the systematic destruction of a state institution. Hopefully, the lawyers will sort out this mess, and we will find that these actions are not about intimidation of a volunteer board.

Back to the idea of equalization. I'd like you to turn to the flow chart handout. This was actually produced last year as part of a report to the State Board. It seems to me that before we engage in regulations about how to conduct equalization, we first have to decide what equalization is. I get the feeling that some taxpayers think it will be some sort of order to reduce value to the lowest common denominator, or that it is simply a review of procedures. When you read the IAAO Standard on Ratio Studies, you know that direct equalization means an adjustment to value. The problem as I see it is how do you equalize taxable value? Where market value is the standard in other states, we have a goal to aim towards. But in this state, it is less clear in my mind at least, what we equalize to.

There have been similar lawsuits in other states about equalization. For instance, in Idaho, the question came up about

Idaho State Tax Commission v. 6 county auditors (1982)

1. Whether the State Tax Commission is empowered and authorized to equalize the assessments of property in all the counties of the state of Idaho, and has the State Tax Commission in this case exercised that power and authority in accordance with the statutes of the State of Idaho and the constitution of the United States and the State of Idaho.
2. Whether the acts requested by the State Tax Commission of the county auditors are ministerial acts subject to enforcement by writ of mandamus.
3. May the respondents contest the tax commission's actions in a judicial proceeding, and if so, what is the standard of review of the tax commission's action?

The court found that in Idaho, there was a clear constitutional and statutory duty to equalize assessments; and that the procedures to equalize did not violate due process provisions in the U.S. or state constitutions. If the county auditors did not follow the equalization order, then the Tax Commission in that state had the ability to compel performance through a writ of mandamus. The county assessors argued that the Tax Commission did not have the right to override their assessments, but the court disagreed.

In Colorado, the court found that an equalization order, although individuals paid the taxes, did not have to go through a process of individual appeals; that that right was afforded when people appealed their taxes to the courts. An equalization order was also not an infringement of their civil rights.

My personal experience with equalization, as you know, is why I ended up here in Nevada. As the former chairman of the Wyoming State Board of Equalization, my colleagues and I equalized among counties for the first time in Wyoming, and stirred up a veritable hornets' nest of politics which led ultimately to my demise in that state. There were many lessons to be learned, chief among them, that clear lines of

communication must be maintained and that equalization orders, particularly when it is not a routine event; and the effects of such an order would be far-reaching.

So, hang on for the ride; here we go!!

we think it is clear, and counsel for some of the respondents acknowledge in the hearing before this court, that the tax commission is constitutionally and statutorily empowered and authorized to equalize the assessments of property among the various counties of the State of Idaho. Idaho Const. Art. 7 § 12. I.C. § 63-513. *Ada County v. Bottolfsen*, 61 Idaho 363, 102 P.2d 287 (1940); *Northwest Light Co. v. Alexander*, 29 Idaho 557, 160 P. 1106 (1916). From the record, we also conclude that the tax commission procedurally followed the statutes of the State of Idaho in directing the respondent auditors to make the equalization adjustments which are the subject of this litigation, and that those procedures do not violate the due process provisions of either the fifth amendment of the United States Constitution or the due process clause of the state constitution.
that the mandate of I.C. § 63-614 which requires that:

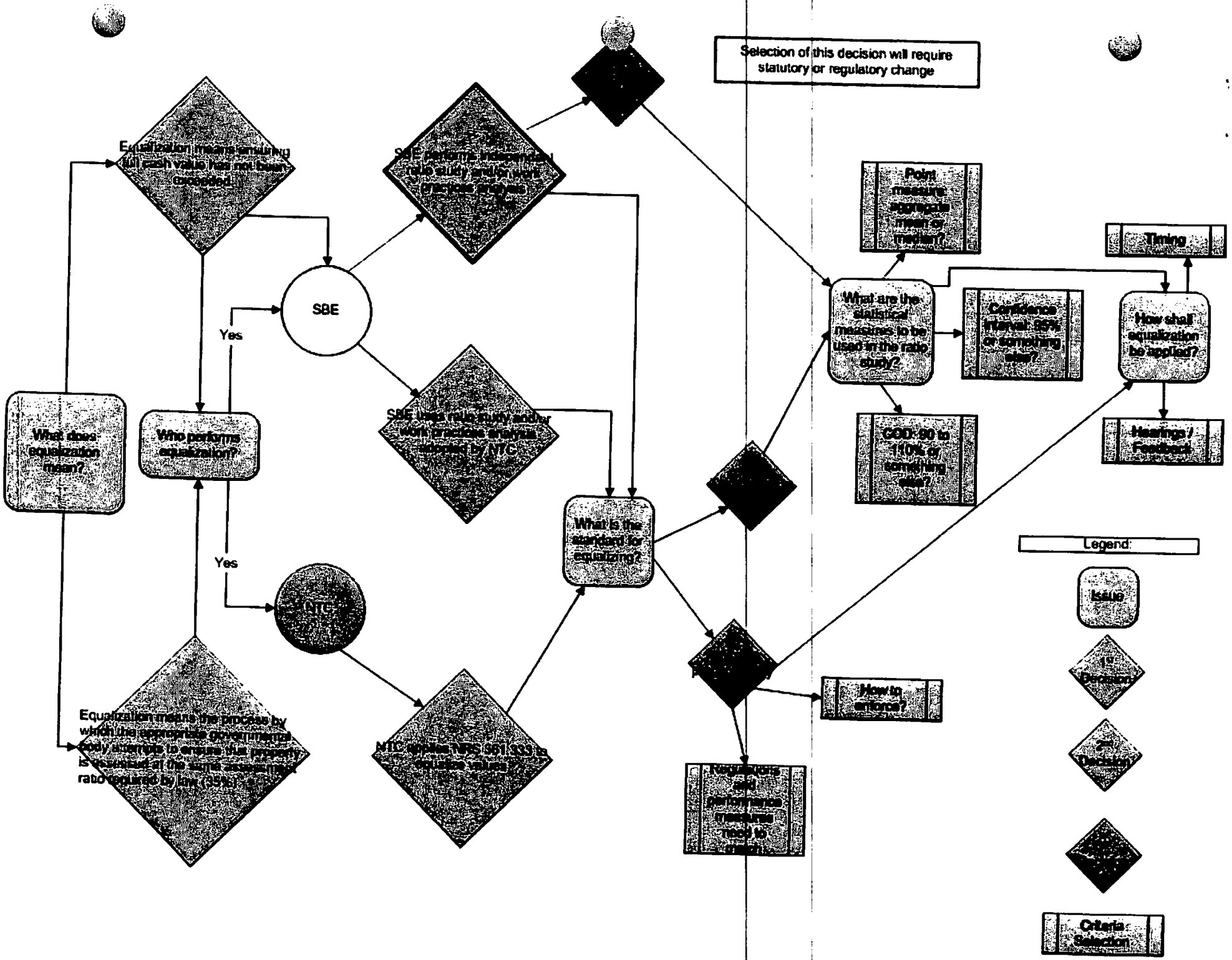
"As soon as the county auditor receives the certified statements [the certified statement from the State Tax Commission showing changes in the assessments] ... he shall enter in the columns in which the items to be corrected appear **272*736 upon the real property assessment roll, in red ink, all changes and corrections made by the state tax commission in the assessment ...,"

imposes a "purely ministerial" duty upon the county auditor and that if he refuses to carry out that duty a writ of mandamus will lie to compel his performance of that ministerial duty.
In the present action the respondents have made no allegation that the action of the tax commission was fraudulent, or so arbitrary as to amount to constructive fraud. Respondents simply assert that the tax commission had no constitutional authority to override their valuations, and further they question the validity of the "ratio study" utilized by the tax commission in part in calculating the scope of required equalization. We have concluded that the tax commission does have the constitutional authority to override the counties' valuation, and none of the other allegations presented by the respondents in this case come within the ambit of judicial review
Respondents assert that equalization by the tax commission without opportunity for hearing violates the federal due process requirements.
concludes that a peremptory writ of mandate should lie.

People V. Hively, Colorado, 1959
57 1. *Whether the Commission and the Board are authorized under the Constitution, the statutes and the decisions of this Court to determine that there should be lump sum or percentage increase in the total valuation of property within a County**726 even though this has the effect of increasing the aggregate valuation of property in that County and in the State as a whole.*

2. Were the Commission and the Board exercising their jurisdiction in accordance with the requirements of statutes, the Constitution of the United States and the Constitution of Colorado?

We hold that both questions are to be answered in the affirmative.
In the instant case, the Commission in making the increase was performing its equalization function, and we are constrained to hold that it was not required to reappraise the property, give notice, and hold hearings in order that its action be valid.
This decision continues to stand for the proposition that the equalization system (and Section 137-6-31) is not in conflict with Article II, Sec. 25 of the *Constitution**66 *of Colorado*. It was also held in a companion case that an *individual taxpayer* could not, under circumstances such as those at bar, establish enfringement of his constitutional rights.
It is not contemplated that the entire levy and collection machinery shall be halted while they have a hearing. A remedy allows them to recover the amount paid under protest if it shall be determined to be illegal. See Session Laws 1957, Chapter 267, Section 16(1) and (2), page 807. Exhaustion of this administrative remedy has been held to be a pre-requisite to relief in equity against an assessment


Selection of this decision will require statutory or regulatory change
Equalization means ensuring full cash value has not been exceeded
SBE performs independent ratio study and/or work practices analysis
What does equalization mean?
Who performs equalization?
SBE
Yes
SBE uses ratio study and/or work practices analysis adopted by NTC
What is the standard for equalizing?
Yes
NTC
Equalization means the process by which the appropriate governmental body attempts to ensure that property is assessed at the same assessment ratio required by law (35%).
NTC applies PRS 961.333 to equalize values
Regulations and performance measure need to
How to enforce?
What are the statistical measures to be used in the ratio study?
Point measure: aggregate mean or median?
Confidence interval: 95% or something else?
COD: 90 to 110% or something else?
Timing
How shall equalization be applied?
Hearings / Feedback
Legend:
Issue
1st Decision
2nd Decision
Criteria Selection