Practice and Procedure Before the Washington State Board of Tax Appeals

by Laura VanderVeer King*

Gonzaga Law Review 1997 / 1998

33 Gonz. L. Rev. 141

Laura VanderVeer King, L.L.M. in Taxation, University of Washington, 1996; J.D., Seattle University School of Law, 1993; M.S. in Systems Management, University of Southern California, 1989; B.A. in English, Central Washington University, 1982. Member of the Washington, Arizona, and District of Columbia Bar Associations. I would like to thank Board Members Lawrence C. Kenney, Matthew J. Coyle, and Lucille Carlson, and Tax Referees David Goff and Robert Barnes for their comments on early drafts.

I. Foreword

In December 1965, then-Governor Daniel J. Evans appointed a fifteen-member, bipartisan, unpaid Tax Advisory Council ("Council") pursuant to Chapter 291 of the Laws of 1957. Membership was drawn from each congressional district of the state and represented major segments of the state's economy. [1] The Council's specific assignment was to survey and analyze Washington's tax statutes and evaluate their administration, yield, and effect; and make recommendations relating to changes in existing laws and administrative practices. [2] The Council's report, entitled Proposals for Changes in Washington's Tax Structure, was issued in December 1966. One of the Council's unanimous recommendations was the creation of an independent appellate body to hear taxpayer appeals. [3]

Recognizing the need for an independent appellate body to hear taxpayer appeals, the Council found the following:

Equitable tax review is a basic civil right. Under the equal protection and due process provisions of the Federal and State Constitutions, the taxpayer is entitled to fair treatment in the apportionment of the tax burden and to a reasonable opportunity to be heard if he perceives error or inequity in his assessment.

The existing arrangement by which appeals are brought to the Tax Commission is deficient from the standpoints of both taxpayer protection and administrative merit. Equity is not served when an appellant body is also the body that has promulgated the regulations governing the actions that are being appealed. In other words, the Tax Commissioners are now in a position of adjudicating upon appeals from their own actions. A Board of Tax Appeals separate from any revenue administration agency or program would eliminate these functional confusions and serve the public interest. [4]

In 1967, acting upon the Council's recommendation, the legislature created the Board of Tax Appeals ("Board") and the Department of Revenue ("Department") out of the shell of the former Tax Commission. [5] The Tax Commission's "front line" administration of the excise and property tax systems was transferred to the Department and the duties and powers of the Tax Commission acting in its appellate capacity were transferred to the Board. [6] Thus, the Board became a separate state agency, independent from the Department.

The Board's primary function in the administration of Washington's tax system is as a specialized administrative tribunal, providing the highest level quasi-judicial administrative forum for the de novo trial and resolution of state tax disputes.

The purpose of this Article is to provide an overview of Board practice, including the Board's appellate procedures.

II. Introduction

The Governor is authorized to appoint the three members of the Board. [7] No more than two members may be of the same political party. [8] Members serve full-time [9] for six years or until their successors are appointed. [10] The terms of members are staggered [11] so that, in theory, one member is appointed every two years. Members function much like administrative law judges. The Board selects an executive director, staff, and tax referees to assist it in its day-to-day operations. [12]

The Board's authority to hear appeals is contained in RCW 82.03.130. On average, 1,900 to 2,000 appeals are filed with the Board every year. Of these, approximately 95 percent are property tax valuation appeals and the rest are property tax exemption and excise tax appeals. About four percent of the appeals filed with the Board in any given year are formal (i.e., conducted pursuant to the Administrative Procedure Act, RCW 34.05) and the rest are informal. About as many appeals are closed as are filed each year. On average, less than one percent of the Board's decisions are appealed to superior court each year. [13] The Board's goal is to process all appeals within twelve months of receipt. [14]

The Board issues a written decision for each case it decides. [15] Board decisions are available to the public at its Olympia offices, from Commerce Clearing House's Washington Tax Reports and other reporting services, and on the Internet. The Board is one of the first state tax courts to publish its decisions on the Internet. [16]

III. Property Tax Appeals

Essentially, there are two paths a taxpayer may take to appeal an assessed value for ad valorem tax [17] purposes: administrative and judicial. The administrative path involves the Board. The judicial path consists of either paying the tax under protest and suing for a refund in superior court, or seeking an injunction in superior court against collection of the tax, [18] although injunctions against tax collection are rare because they are not favored by the legislature. [19]

In general, the administrative path starts with a county assessor's written notice of value. A county assessor is required to give written notice each year to each personal property taxpayer stating the assessed value of all personal property. [20] For real property, a county assessor is required to give written notice to each real property taxpayer when there is a change in assessed value. [21] Thus, the first step in the appeal process is contacting the applicable county assessor's office. Taxpayers can often settle disagreements at this level without continuing the appeal process. However, in order to preserve their appeal rights, taxpayers must timely file a petition with their county Board of Equalization. [22] In contrast, most property tax exemption applications are made directly to the Department, [23] not the county assessor or county Board of Equalization. [24] The taxpayer or the county assessor may appeal the Department's final exemption determination to the Board. [25]

A. County Boards of Equalization

A county Board of Equalization consists of three to seven members appointed by the county legislative authority and, in some counties, may consist of the county legislative authority itself. [26] The Department exercises "general supervision and control over ... county boards of equalization." [27] To promote uniformity throughout the state, the Department has promulgated rules pertaining to county Boards of Equalization. [28]

After filing a petition, a hearing by the county Board of Equalization is a prerequisite to an appeal to the Board on the issue of value for property tax purposes, with two exceptions - reconvenings of the county Board of Equalization and direct appeals to the Board. Each of these exceptions will be discussed below.

The request for a county Board of Equalization hearing begins with a completed appeal petition [29] filed, in duplicate, with the county Board of Equalization. [30] There is no charge for filing an appeal petition with any county Board of Equalization; however, the appeal must be filed before the applicable deadline.

1. Filing Deadline

An appeal petition must be filed with the county Board of Equalization on or before July 1 of the assessment year, or on or before thirty days after the county assessor has mailed the taxpayer the personal property assessment or real property change of value notice, whichever is later. [31] The county Board of Equalization may waive the filing deadline for good cause. [32] However, neither the county Board of Equalization's decision to waive nor its decision not to waive is appealable. [33]

The 1997 legislature passed House Bill 1439 which allows a county legislative authority to extend the filing deadline up to sixty days after the county assessor has mailed the taxpayer either the personal property assessment or real property change of value notice. [34] Once a county legislative authority has changed the deadline from thirty to sixty days, it cannot be changed for three years. [35] As of this writing, only King County has substituted the sixty-day deadline, although Clark, Thurston, Pierce, and Spokane Counties are considering it.

Appeal petitions to the county Board of Equalization may sometimes be withdrawn. For example, when the assessor makes a correction to the assessment roll that the taxpayer agrees with, the taxpayer's petition shall be deemed withdrawn. [36] On the other hand, the King County Board of Equalization has established a rule that prohibits a taxpayer from voluntarily withdrawing a petition when the assessor has already recommended a value increase. [37] This rule supports its statutory responsibility to value property at market value. [38]

2. Value Adjustments

County Boards of Equalization are authorized to unilaterally equalize the assessed values of property. [39] This is commonly known as the county Board's equalization function. County Boards of Equalization have a second function: hearing individual property assessment value appeals. When performing either function, the county Board of Equalization may either reduce the value or, with proper notice, raise the value of the property. [40] If the value is reduced, the new value takes effect

immediately, subject to appeal. [41] If the value is raised, the new value takes effect thirty days after the date of service of the notice of adjustment, subject to appeal. [42]

The failure of a county Board of Equalization to provide notice and opportunity to contest an increase in value voids the order increasing the value. [43] This is true even though the county Board of Equalization's conclusion is fair and in accordance with substantial justice. [44] The county Board of Equalization's order is void because failure to give notice deprives it of statutory jurisdiction to increase the value. [45] For example, in Kedish v. Clallam County Assessor, [46] an informal appeal, the Board vacated property values set by a county Board of Equalization because of the county Board's failure to give the statutorily mandated notice.

If the county Board of Equalization reduces a value, a refund is paid [47] with interest. [48] Refunds are also possible for taxes paid as a result of a clerical error and under a few other, similar circumstances. [49]

3. Meeting Times and Reconvenings

All county Boards of Equalization meet on July 15 for at least three days. [50] The county Board's work is supposed to be completed in four weeks. [51] The period from July 15 through August 12 is commonly referred to as the regular session. To complete its equalization work outside the regular session, a county Board of Equalization must request an extension of time from the Department. [52] In practice, some county Boards of Equalization finish hearing appeals in December and some have become virtually year-round operations. [53] In general, county Boards of Equalization conduct brief hearings and issue either bench or mail decisions, both with appeal rights to the Board.

a. County Board of Equalization's Authority to Reconvene Itself

The county Board of Equalization may reconvene on its own authority when a taxpayer's request for a reconvening is filed by April 30 of the tax year immediately following the assessment year, and when one of several specific conditions exist. [54] The county Board of Equalization may consider up to three prior assessment years, depending on which conditions are met. [55]

b. Department's Authority to Reconvene County Boards of Equalization

In general, the Department has great power to order county Boards of Equalization to reconvene. [56] The Department may reconvene any county Board of Equalization to complete its equalization work. [57] Perhaps of more particular interest, the Department

shall reconvene a board upon request of a taxpayer when the taxpayer makes a prima facie showing of actual or constructive fraud on the part of taxing officials. The department shall reconvene a board upon request of an assessor when the assessor makes a prima facie showing of actual or constructive fraud on the part of a taxpayer. [58]

Constructive fraud is an error resulting in an assessed value that is at least double the market value of the property. [59]

Recently, the Board heard two formal appeals on the constructive fraud issue. In

Holm v. Department of Revenue, [60] the Board overturned the Department's decision not to reconvene the Thurston County Board of Equalization because the county Board of Equalization had lowered the value of the subject property for the following assessment year to less than 50 percent of the assessed value and the condition of the property was substantially the same. [61] In James River Paper Co., Inc. v. Department of Revenue, [62] the Board affirmed the Department's decision not to reconvene the Clark County Board of Equalization because the taxpayer's limited appraisal performed under the Uniform Standards of Professional Appraisal Practice did not, standing alone, qualify as the clear, cogent, and convincing evidence needed to conclude that the assessor had valued the property at double its fair market value. [63] As of this writing, a petition for judicial review of the Board's decision in James River has been filed.

c. Board's Authority to Reconvene County Boards of Equalization

The Board does not have the authority to reconvene county Boards of Equalization, nor does the Board have the statutory power of equalization. The Board does, however, have authority to hear appeals from decisions to reconvene and not to reconvene. [64] Also, when the underlying valuation issue in an appeal to the Board is equalization, the Board has the authority to provide relief. [65]

4. Direct Appeals

The 1992 legislature created a procedure by which taxpayers and assessors may appeal directly to the Board, bypassing a hearing before the county Board of Equalization. [66] The Board has approved direct appeals in cases with complex appraisal issues, [67] in cases where the property is under appeal to the Board for a prior year, [68] and in cases where a member of the assessor's staff, [69] a member of the county Board of Equalization, [70] or a member of the county legislative authority [71] was involved in the appeal.

B. Board Appeals

Approximately 10 to 15 percent of all county Board of Equalization decisions are appealed to the Board. There is no charge for filing an appeal with the Board. Either party may elect to have a formal hearing. [72] If no such election is made by either party, the hearing will be informal. [73] Both informal and formal hearings are de novo. [74] The single most important difference between formal and informal hearings before the Board concerns further appeals.

1. Informal Appeals

Most taxpayers file informal appeals. [75] The rules for informal appeals [76] are designed to provide an inexpensive appeal process by allowing, but not requiring, taxpayers to represent themselves. [77] In about 60 percent of all informal appeals, taxpayers represent themselves. [78] There is no appeal to superior court from the Board's decision in an informal appeal. [79] The Board's decisions in informal appeals are not subject to judicial review except by constitutional writ of certiorari. [80]

A property tax refund action is tried without a jury. [81] To preserve the right to a tax refund in the event of an unfavorable decision, the taxpayer electing an informal Board appeal must have paid the tax under protest [82] and timely instituted a refund suit in superior court. As stated previously, the taxpayer is entitled to a trial de novo

in a refund suit unless the appeal is from a formal Board hearing which was heard on the administrative record.

Assuming the taxpayer is able to pay the disputed tax, there are strategic reasons why a taxpayer might elect an informal appeal to the Board while simultaneously pursuing a refund suit in superior court. First, if the taxpayer is successful before the Board, [83] the opposing party, usually the applicable county assessor or the Department, cannot appeal and the taxpayer can simply drop the refund suit. [84] Second, if the taxpayer is not successful in an informal appeal before the Board, the taxpayer learns the case's weaknesses. Because a refund suit is a trial de novo, a taxpayer is then able to strengthen the case in superior court with better evidence or better arguments, or both. Thus, a taxpayer can obtain "two bites of the apple" by filing an informal appeal with the Board while simultaneously paying the tax under protest and filing a refund suit in superior court. [85]

Petitions for review are filed, at the taxpayer's option, in the superior court of Thurston County, the county of the taxpayer's residence or principal place of business, or in any county where the property owned by the taxpayer and affected by the contested decision is located. [86]

2. Formal Appeals

Formal hearings are conducted pursuant to the Administrative Procedure Act [87] and are usually requested by taxpayers contemplating further appeal to superior court based on the record developed at the Board's hearing. [88] Either party in a formal appeal may appeal an adverse decision to superior court without having first had to pay the disputed tax under protest. [89] The superior court reviews the record made before the Board. [90]

3. Filing Deadline

Appeals to the Board from decisions of county Boards of Equalization must be filed within thirty days of that decision. If mailed, the postmark is evidence of the date of filing. [91] Service is required within the same thirty-day time period. [92] The Board does not have statutory authority to waive its filing deadline like the county Boards of Equalization. [93]

4. Caption and Contents of Appeal

The same caption and contents are required for both informal and formal appeals. [94] The Board has developed and promulgates filing forms which will soon be available on the Internet. Unlike petitions to county Boards of Equalization, only one copy of a Board appeal need be filed. [95] Substantial compliance with these rules is sufficient. [96]

5. Standard of Review

Statutory language granting an exemption from taxation is to be construed strictly, though fairly, and in keeping with the ordinary meaning of the language employed. [97]

a. Property Tax Exemption

The policies underlying the rule of strict construction stem from the recognition that tax exemptions create an unequal distribution of the tax burden and reduce the

amount of revenue available to the jurisdiction imposing the tax. [98] The burden rests upon the one claiming exemption to show clearly that the property is within the exempting statute. [99]

b. Personal Property Value

The basis for determining value is "market value," the price the item would bring on the open market in a transaction between a willing buyer and seller, neither under duress and both fully knowledgeable. [100] Comparable sales, cost less depreciation, and income approaches may be used to determine market value of personal property. [101]

c. Real Property Value

The assessor is required to establish the true and fair value of property based upon sales of the subject property or sales of comparable properties made within the past five years. [102] In addition, consideration may be given to cost, cost less depreciation, and the capitalization of income that would be derived from prudent use of the property. [103] True and fair value is "market value," that is, the price to be paid by a willing buyer to a willing seller. [104]

The value placed on property by an assessor is presumed to be correct, and can only be overcome by presentation of "clear, cogent, and convincing" evidence that the value is erroneous. [105] Clear, cogent, and convincing evidence means a quantum of proof which is less than beyond a reasonable doubt, but more than a mere preponderance of the evidence. [106] It is the quantum of evidence necessary to convince the trier of fact that the ultimate fact in issue is "highly probable." [107] The presumption of correctness applies only to an assessor's original valuation. [108] It does not apply to the value placed on property by a county Board of Equalization. [109] When an assessor recommends a different value before the Board than the value originally assigned, the burden becomes a preponderance of the evidence. The taxpayer retains the burden of persuasion, [110] though the burden may shift as to some or all of the evidence. [111]

If an assessor offers entirely new appraisals at trial, the assessor has made a tacit admission of error, and the burden shifts on all issues. [112] Likewise, if an assessor fails to follow statutory valuation criteria, the presumption of correctness does not apply. [113]

In Weyerhaeuser Co. v. Easter, the court made it clear that the standard of proof includes clear, cogent, and convincing evidence of both the assessor's error and the correct value. [114] "Normally, clear, cogent and convincing proof of a correction includes evidence of both the assessor's error and the correct value." [115] In most cases, the taxpayer who is able to show that the assessor made an error in valuation will also be able to show the true property value. In those situations, the decision-maker substitutes the taxpayer's value for the assessor's value. [116]

In the recent Board case of Simpson Timber Co. v. Easter, [117] the taxpayer proved that the assessor's income approach was flawed. Pursuant to Weyerhaeuser, the Board weighed the income approaches by the preponderance of the evidence standard. [118] However, the Board was not convinced that the taxpayer's value, standing alone, was the correct market value. [119] The Board found a different market value than that determined by either the taxpayer or the assessor. [120]

While the Board's authority to lower the value of property may appear to be limitless, [121] the Board's authority to raise the value of property clearly is not. The Board "shall not raise the valuation of the property to an amount greater than the larger of either the valuation of the property by the county assessor or the valuation of the property assigned by the county board of equalization." [122]

The Board's authority to lower property values could potentially pose a problem for both the state and its senior and junior taxing districts. [123] Thus, the legislature adopted a procedure for avoiding large tax refunds in valuation disputes. [124] If a sufficiently large dispute, in excess of one-fourth of one percent of the total assessed value of property in the county, is on appeal to the Board or superior court by the time of the tax levy, [125] the taxing districts may levy on only the undisputed portion of the value. [126] To the extent that the value is ultimately determined to be higher than the taxpayer's appeal position, the taxpayer is subject to an additional assessment at that time, plus 9 percent interest from the original payment due date, for the year or years in question. If the additional assessment causes the affected taxing districts to exceed their 106 percent levy limits in the year of payment, the excessive portion of the taxpayer's payment is applied to reduce the levy rates of the next succeeding levy. Refunds carry interest at a modest rate that floats with short-term United States Treasury securities. [127] Refunds and interest may be funded by a priority levy commonly known as a refund fund levy. [128]

6. Exceptions and Petitions for Reconsideration

Every Board decision contains a statement describing available post-hearing remedies.

a. Informal Appeals

Any party may take exception to a proposed Board decision. [129] The written statement of exceptions must be filed with the Board, and a copy served on the other party, within twenty calendar days from the date of mailing of the proposed decision. [130] A reply to the statement of exceptions, or a written brief, must be filed with the Board, and served, within ten days of receipt of the statement of exception. [131] After the filing of exceptions and any responses, at least two members of the Board consider the record. [132] The Board will then either deny the exception, issue a proposed decision, or issue a final decision. [133] If the Board issues a final decision without first having issued a proposed decision, any party may file a petition for reconsideration. [134] The petition for reconsideration must be filed with the Board, and served, within ten business days from the mailing of the final decision. [135] If a final decision is issued following a proposed decision, there is no further reconsideration. Therefore, regardless of whether a proposed or final decision was first issued, there are only "two bites of the apple" available, not three.

b. Formal Appeals

Although the Board may issue either an initial or final decision in a formal appeal, [136] as a matter of practice the Board has issued an initial decision in only a few formal appeals. [137] After a final decision has been issued, any party may file a petition for reconsideration. [138] The petition for reconsideration must be filed with the Board, and served, within ten business days from the mailing of the final decision. [139]

7. Evidence of Value

For real property, the true and fair value is based on sales of the subject property or sales of comparable properties made within the past five years. [140] In addition, consideration may be given to cost, cost less depreciation, and the capitalization of income that would be derived from prudent use of the subject property. [141] "The sales comparison approach is most useful when a number of similar properties have recently been sold or are currently for sale in the subject property market." [142] For example, single-family residential properties can be easily compared. [143] Typically, in a case involving single-family residential property, both parties will provide the Board with details of three or more comparable sales. Each comparable sale will be adjusted for differences from the subject property. If, for example, the value characteristic at issue is the view from the property, each party will likely present pictures or a videotape showing the view from the subject property and from each of the parties' comparable sales in addition to testimony and documentary evidence. Thus, each party develops a range of proposed value for the subject property.

a. The Cost Approach

"In the cost approach, the value of a property is derived by adding the estimated value of the land to the current cost of constructing a reproduction or replacement for the improvements and then subtracting the amount of depreciation (i.e., deterioration and obsolescence) in the structures from all causes." [144] This approach is most often used for properties that are not frequently exchanged in the market. "Depreciated reproduction cost is generally the measure of the value of specialty property to its owner when the property would be rebuilt if lost, no substitute being available for purchase." [145]

For example, in Whyel Doll Art Museum v. King County Assessor, [146] the subject property was a state-of-the-art museum specifically designed and constructed to exhibit a collection of antique dolls. The dispute between the parties centered on the proper methodology to estimate the museum's market value. The assessor, correctly, first determined the highest and best use of the property. [147] Once the assessor determined the highest and best use, the assessor had considerable discretion in employing the most appropriate methodology. [148] The museum had been in operation less than two years as of the assessment date. The assessor chose a methodology dictated by the availability of reliable data - the cost approach - and the Board affirmed the value originally placed on the museum by the assessor. [149]

b. Income Capitalization Approach

"In the income capitalization approach, the present value of the future benefits of property ownership is measured. A property's income streams and its resale value upon reversion may be capitalized into a current, lump-sum value." [150] This approach is used to value property such as apartment complexes. In any appraisal employing the income approach to value, the Board looks to market conditions in analyzing the income stream, expense statement, and capitalization rate. [151] To do otherwise would distort the appraisal of property into an appraisal of management. Therefore, to prevail using other than market conditions, a taxpayer must show conditions that are atypical to the market; for example, excessive common area, higher expenses, etcetera.

Hearsay "is admissible if in the judgment of the presiding officer it is the kind of

evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs." [152] Fee appraisal reports are probably the most common example of hearsay evidence that is routinely offered and accepted by the Board.

Ultimately, regardless of the methodology used, determining true and fair market value is not an exact science. Quite simply, reasonable minds reviewing the same information can, and do, reach different conclusions. One judge's characterization of the role judgment plays in determining true and fair market value is as follows:

Absent a miracle of time, place and circumstance - willing buyer, willing seller, high noon, January1, 1984, for example - true market value for purposes of ad valorem taxation is always an estimate, always an expression of judgment, always a result built on a foundation of suppositions about knowledgeable and willing buyers and sellers endowed with money and desire, whose desires are said to converge in a dollar description of the asset. All of this is simply a sophisticated effort at "let's pretend" or "modeling," in modern jargon, and all of it involves judgment. Not natural law, not science - judgment. [153]

C. Stipulated Settlements

Perhaps one of the more interesting questions that arose in the context of property tax appeals was whether the Board had the authority to request additional information to explain the basis of a value stipulated by the parties. The Board considered this issue in Simpson Timber Co. v. Mason County Assessor [154] where it decided, unanimously, that it did. [155]

In Simpson Timber, the taxpayer appealed the Board's decision to request additional information to Thurston County Superior Court. The court remanded the case back to the Board to determine whether the value stipulated to by the parties was arrived at in an arbitrary or capricious manner. [156] At the Board hearing following the remand, the parties provided adequate information and rationale to explain the stipulated value, which the Board then accepted. [157]

The basic facts were not in dispute. In 1991, the total value of the taxpayer's facilities was set at $ 48,818,837. The facilities were revalued by the assessor as of January 1, 1992 as part of Mason County's four-year revaluation cycle. The assessor valued the taxpayer's facilities based on an advisory appraisal rendered by the Department. The value of the Shelton plywood/lumber mill was set at $ 19,963,800 and the total value of the taxpayer's facilities was set at $ 24,135,440, less than half the value of the immediately preceding assessment year. [158]

An organization known as People For Fair Taxes in Washington [159] wrote a letter to the Mason County Board of Equalization requesting that it seek approval from the Department to reconvene. The county Board of Equalization did so, and the Department gave its approval to reconvene. At its hearing, the county Board of Equalization raised the total value of the taxpayer's facilities from $ 24,135,440 to $ 37,443,221. After the taxpayer appealed the county Board of Equalization's value to the Board, the taxpayer and the assessor filed a stipulation valuing the mill at $ 19,963,800, the original value set by the assessor based on the Department's advisory appraisal. The Board then requested additional information concerning the basis of the value stipulated to by the parties. [160]

In making its request, the Board found the statutes governing its duties and

functions did not expressly confer upon it the power to question a value stipulated by the parties. [161] The Board examined its implied authority to do so by considering its enabling legislation, history, public policy, and decisions of other jurisdictions. [162] The Board found that, although it had no original assessment power, it did have the authority to establish the assessed value of property which was the subject of an appeal before it. [163] The Board reasoned that its authority to establish an assessed value for property under appeal implies the authority to request additional information from the parties reasonably necessary to satisfy itself and that its order establishing an assessed value is consistent with its statutory duties. [164]

While, in general, the Board encourages parties to resolve disputes by mutual agreement, the Board in Simpson Timber Co. found that it functions not only as a mediator between an assessor and a taxpayer, but also as the final authority for establishing assessed values for property committed to its jurisdiction. [165] The Board found that it was unreasonable to conclude it could escape its responsibility by delegating to the parties the final authority for establishing an assessed value for property under appeal. [166] "A requirement that the Board unquestioningly accept the parties' stipulated assessed value would do exactly that." [167]

The taxpayer in Simpson Timber Co. argued that the Board should be constrained by the same rule applicable to trial courts. [168] "Ordinarily, trial courts are bound by the factual stipulations of the parties, and can only review stipulations for fraud, mistake, misunderstanding, or lack of jurisdiction." [169] Citing Rusan's Inc. v. State of Washington, [170] the Board found that there are two well-recognized exceptions to the general rule:

Courts of law are not bound by parties' stipulations of law. [171] The propriety of disregarding stipulations as to questions of law is considered to be particularly clear where such stipulations are made in cases concerning a public issue. [172] Most particularly, interpretation and application of tax statutes, including those relative to excise taxes, is a judicial function. In a litigated case, neither a taxpayer nor a department of government may irrevocably stipulate as to the meaning, interpretation or legal effect of a tax statute. [173] Such a process would be an undesirable if not dangerous public policy, for it would usurp the basis and traditional judicial function of the courts in the interpretation of tax statutes enacted by the legislature.

The Board found that both the stipulation of law exception and the public issue(s) stipulation exception applied in Simpson. [174]

The Board noted that it was not the first state tax board to have come to this conclusion. [175] The Board discussed the case, In the Matter of the Appeals of Const. Developers, Inc./Dillard's, Kan. Bd. of Tax App., [176] where a Kansas Board refused to adopt a stipulated value, finding there was insufficient evidence to support the stipulated value. [177] The Board noted the Kansas Board rejected the argument that it was bound by the stipulation of the parties [178] and concluded that "the question of assessed value was a question of law - or at least an ultimate question of fact which should be treated as a question of law - and that the stipulation affected the public interest." [179]

As the concurring opinion in Simpson stated, the Board viewed its responsibilities to the public broadly - "to ask questions, to determine facts, to make decisions, and state the reasons for them in public." [180] The Board's view and its reasoning is

consistent with one of the Council's two chief purposes for recommending that an independent appellate body be created to hear taxpayer appeals - taxpayer protection. [181] If the Board does not have the authority to determine if a stipulated value is reasonable and not arbitrary and capricious, there is the appearance that the Board does not protect taxpayers. If there is the appearance that the Board does not protect taxpayers, taxpayers could lose confidence in the appeal process and in the state taxing system as a whole.

The facts in Simpson presented the Board with an opportunity to closely examine its authority. In a unanimous decision, the Board decided that it did have the authority to question a stipulated value. [182] In so doing, the Board effectively decided that it protected all taxpayers, consistent with the purposes of the Council, in recommending in 1966 that the Board be created.

IV. Excise Tax Appeals

Similar to a property tax appeal, there are essentially two paths a taxpayer may take to appeal an excise tax assessment. The administrative path involves the Board. The judicial path consists of paying the tax under protest and suing in superior court, [183] or seeking an injunction in superior court against collection of the tax. [184] In general, the excise tax appeal process starts with the Department's excise tax assessment.

A. Department's Administrative Appeal Process

The Department is required to provide an administrative appeal process. [185] Taxpayers may petition the Department in writing for a conference within thirty days after the issuance of the Department's assessment notice. [186] Taxpayer petitions to the Department are acted upon by attorneys employed in the Department's Interpretation and Appeals Division ("I&A") who conduct the Department's administrative hearings and issue final determinations. [187]

About 80 to 85 percent of all administrative appeals are processed by the Department within nine months. Requests for reconsideration [188] constitute about 10 percent of all administrative appeals received by the Department, and are typically processed within thirty days. Taxpayers may request that an I&A attorney, other than the one who made the final determination, be assigned to the request for reconsideration.

Any person having received notice of a denial of a petition or a notice of final determination from the Department may appeal to the Board, but must do so and serve the Department within thirty days of the mailing of the notice of such denial or determination. [189]

I&A attorneys represent the Department in informal appeals before the Board and Assistant Attorneys General represent the Department in formal appeals before the Board.

B. Board Appeals

The Board's rules are the same for both excise tax and property tax appeals. Because they have been discussed in detail above in the property tax section they will not be repeated here.

C. Mitsui & Co. (USA), Inc. v. Department of Revenue

Perhaps one of the more interesting questions that arose in the context of excise tax appeals was whether the Board had the authority to declare the Department's rules invalid. The Board considered this issue in Mitsui & Co. (USA), Inc. v. Department of Revenue [190] and, in a split decision, held it did.

The basic facts of Mitsui were not in dispute. The taxpayer transferred all merchantable timber located on real property in unincorporated King County to its wholly owned subsidiary. In exchange for the transfer of timber, the subsidiary transferred money to the taxpayer. The Department imposed a real estate excise tax on the transfer pursuant to RCW 82.45.010. The Department contended a sale occurred because the taxpayer received consideration for the transfer of the timber pursuant to WAC 458-61-320(3) (Rule 320(3)). The taxpayer paid the tax under protest and petitioned the Department for a refund, with accrued interest, pursuant to WAC 458-61-100.

The Department denied the refund request and the taxpayer appealed the Department's denial to the Board. The taxpayer argued that the issue of consideration was irrelevant because the taxpayer was a transferor and should be exempted from the real estate excise tax pursuant to RCW 82.45.010. The Department argued the taxpayer was not a transferor because only a natural person may be a transferor pursuant to WAC 458-61-310 (Rule 310).

The statute did not contain either Rule 320(3)'s consideration requirement or Rule 310's natural person requirement to achieve the exempted transferor status. [191] Further, after the transfer, the Department amended its rules replacing Rule 320(3) with Rule 375(2)(c). [192] Rule 375(c) specifically exempted the kind of transfer at issue in Mitsui. [193]

A majority of the Board found that, under the statute alone, the taxpayer would be eligible for the exemption. [194] Thus, to the extent that under Rules 320(3) and 310 the taxpayer would not be eligible for the exemption, a majority of the Board found the Department's rules were not reasonably consistent with the statute. [195] The Board majority reasoned that because the Department had changed its rules deleting the consideration and natural person requirements, Rules 310 and 320(3) must have been inconsistent with the statute or the Department would not have changed them. [196] Further, while the Department has the authority to promulgate real estate excise tax rules under RCW 82.45.150, the Department does not have the authority to modify or amend a statute by rule.

The Board majority reasoned that if the Board determines the rules the Department applied are inconsistent with the pertinent statute, the Board's duty is to apply the statute and give no effect to the inconsistent part(s) of the rules. [198] To do otherwise would require the Board to give greater deference to the Department's rules than to the statute enacted by the legislature. Such a result, the Board majority reasoned, would violate basic tenets of the law that a statute prevails over an inconsistent rule. [199]

The Board majority relied on D/O Center v. Department of Ecology, [200] where the Washington Supreme Court drew a distinction between a direct challenge to the validity of a rule and the application of that rule. [201] The Board majority reasoned that the latter authority, of necessity, must include authority to apply a statute, rather

than an inconsistent rule, when deciding a case.

Consistent with D/O Center, in Inland Foundry v. SCAPCA, [202] the Division Three Court of Appeals held the Pollution Control Hearings Board ("PCHB") has authority to review an air pollution control agency's rules for inconsistency with governing statutes in the context of an appeal of a fine. [203] In Inland Foundry, the PCHB had addressed the issue of whether the pollution control authority's regulation, as applied to Inland Foundry, was consistent with statutory requirements. The Court assumed the PCHB had such authority and remanded the case to the PCHB for further fact-finding on the issue of whether the air pollution control authority's regulation was consistent with governing statutes.

The decision in Inland Foundry is consistent with Snohomish County v. State [204] where the court held the Forest Practices Appeals Board does not have the authority to declare a rule invalid. [205] Snohomish County involved a challenge to rulemaking, and not to the application of a rule inconsistent with a governing statute.

Thus, the Board majority reasoned that because the Washington Supreme Court had distinguished between a direct challenge to the validity of a rule and the application of that rule, coupled with the decision in Inland Foundry, the Board had the authority to decline to apply Department Rules 310 and 320(3). [206]

Further, the Board's powers are expressly conferred by statute or necessarily implied therefrom. [207] The Board found that its duties on receipt of an appeal from a Department final determination are contained in RCW 82.03.190 and that the Board's primary function in the administration of the informal real estate excise tax appeal process is to resolve disputes. To that end, the Board functions as the final authority. Thus, the Board majority reasoned it could not abdicate its duty to decide cases in accordance with statutory law.

The Board dissent read Snohomish County to mean that the Board had neither express nor implied authority to declare a Department rule void as inconsistent with legislative intent. [208] Further, the dissent reasoned the Board's statutory duty to decide appeals did not give the Board the implied authority to invalidate Department rules. [209]

The Board majority's reasoning is consistent with the legislature's purpose in creating the Board and the Council's purposes in recommending the Board be created. The Council had two chief purposes for recommending an independent state agency be created to hear taxpayer appeals - taxpayer protection and administrative merit. [210] When the legislature created the Board, it had as one of its purposes the separation of administrative and quasi-judicial functions. [211] If the Board does not have the authority to declare the Department's rules invalid, the administrative and quasi-judicial functions intended to be separated by the legislature are not truly separate. If the functions are not truly separate, there is the appearance that the Board is not an impartial decisionmaker. If the Board does not appear to be an impartial decisionmaker, taxpayers could lose confidence in the appeal process and in the state taxing system as a whole.

The facts in Mitsui, where the Department changed its own rules after the transfer in question to more closely reflect the statute, presented the Board with an opportunity to plumb the depths of its authority. The Board decided, in a split precedential decision, that it did have the authority to apply a statute instead of an inconsistent

rule. [212] In so doing, the Board effectively decided it was an impartial decisionmaker, consistent with the purposes of the Council in recommending the Board be created in 1966 and the legislature in creating the Board in 1967.

V. Conclusion

"Under the equal protection and due process provisions of the Federal and State Constitutions, the taxpayer is entitled to fair treatment in the apportionment of the tax burden and to a reasonable opportunity to be heard if he perceives error or inequity in his assessment." [213]

This finding is no less true now than it was in 1967 when the legislature created the Board. The Board's primary function in the administration of Washington's tax system remains as a specialized administrative tribunal, providing the highest level quasi-judicial administrative forum for the de novo trial and resolution of state tax disputes. The Board's practice, including appellate procedures, discussed in this Article illustrates how the Board carries out its primary function.

FOOTNOTES:

n1. Tax Advisory Council of the State of Washington, Proposals for Changes in Washington's Tax Structure 3-4 (1966).

n2. Id. at 1.

n3. Id. at 20.

n4. Id. at 79.

n5. 1967 Wash. Laws, ch. 26, 1 states as follows:

The purpose of this 1967 amendatory act is to provide for a more efficient administration of the supervision and collection of state taxes and other allied functions, to separate certain of the administrative and quasi-judicial functions of the taxing authority, and to provide a convenient and economical form in which the appeals of individual taxpayers may be determined.

n6. 1967 Wash. Laws, ch. 26, 7 states as follows:

The tax commission of the state of Washington is hereby abolished and, except for those powers, duties and functions provided for in sections 30 through 48 of this 1967 amendatory act herewith vested in the board of tax appeals created therein, its powers, duties and functions are transferred to the director of revenue.

n7. Wash. Rev. Code Ann. 82.03.020 (West 1981 & Supp. 1997).

n8. Id.

n9. Although Wash. Rev. Code Ann. 82.03.050 (West 1981 & Supp. 1997) authorizes the Governor to determine whether the Board operates on either a part-time or full-time basis, the Board has always operated on a full-time basis.

n10. Wash. Rev. Code Ann. 82.03.030 (West 1981 & Supp. 1997).

n11. Id.

n12. Wash. Rev. Code Ann. 82.03.070 (West 1981 & Supp. 1997).

n13. Board of Tax Appeals Advanced Revelation, Report 1, "Recap of Hearings Held."

n14. Board of Tax Appeals Quality Plan, July 1, 1997, Performance Measures.

n15. Wash. Rev. Code Ann. 82.03.100 (West 1981 & Supp. 1997).

n16. The decisions are available from the Board's home page at http://.bta.state.wa.us. The Board plans to allow appeals to be filed via the Internet. As a result, forms for filing appeals will soon be downloadable from the Board's home page. In addition, the Board's rules, WAC 456-09 and 456-10, are available through the Board's home page. The Board's e-mail address is bta.bta.state.wa.us.

n17. Ad valorem means according to value. An ad valorem tax is a real estate tax based on the assessed value of the property, which is not necessarily equivalent to its market value. Dictionary of Real Estate Appraisal 7 (3d ed. 1993).

n18. Wash. Rev. Code Ann. 84.68.020 (West 1991 & Supp. 1998). See also Longview Fibre Co. v. Cowlitz County, 114 Wash. 2d 691, 790 P.2d 149 (1990).

n19. Wash. Rev. Code Ann. 84.68.010 (West 1991 & Supp. 1998). Because the judicial path does not involve the Board, it will not be discussed in detail.

n20. Wash. Rev. Code Ann. 84.40.200(2) (West 1991 & Supp. 1998).

n21. Wash. Rev. Code Ann. 84.40.045 (West 1991 & Supp. 1998).

n22. Timely means on or before July 1 of the assessment year or within thirty days after the date an assessment or value change notice or other determination is mailed to the taxpayer, whichever date is later. Wash. Rev. Code Ann. 84.40.038 (West 1991 & Supp. 1998); Wash. Admin. Code 458-14-056(2) (1997). Of course, there may be exceptions. See Wash. Admin. Code 458-14-056 (1997).

n23. Wash. Rev. Code Ann. 84.36.381 (West 1991 & Supp. 1998) (for senior citizens' residences) and Wash. Rev. Code Ann. 84.36.815 (West 1991 & Supp. 1998) (for foreign national governments, churches, cemeteries, nongovernmental nonprofit corporations, organizations, and associations, private schools or colleges, and soil and water conservation districts).

n24. Sometimes initial claims are filed with the county assessor on forms prescribed by the Department. For example, see Wash. Admin. Code 458-16-030 (1997), Senior Citizen and Disabled Persons Exemption-Claims.

n25. Wash. Rev. Code Ann. 84.36.850 (West 1991).

n26. Wash. Rev. Code Ann. 83.48.014 (West 1981).

n27. Wash. Rev. Code Ann. 84.08.010 (West 1991 & Supp. 1998).

n28. Wash. Rev. Code Ann. 84.08.060 (West 1991); Wash. Admin. Code 458-14-001 (1997).

n29. In Ottmar's Lazy V Ranch v. Douglas County Assessor, Docket No. 41109 (Wash. B.T.A. 1992), available in 1992 WL 192176, a precedential decision in an informal appeal, the Board considered what an appeal petition must consist of to be complete. In that case, the appeal petition was returned by the clerk of the county Board of Equalization to the taxpayer for signature. In addition, the petition did not contain either a list of comparable sales the taxpayer intended to present at the county Board of Equalization hearing, income and expense information, or lease agreements. However, the taxpayer gave some reasons for the appeal and indicated on the appeal form that additional information would be forthcoming. The Board found that taxpayers must be given some latitude in expressing their reasons for contesting the assessor's value, particularly in the early stages of an appeal, and that to require greater detail would impose an unnecessary burden on taxpayers without significantly increasing the efficiency of the appeal process. The Board concluded that the county Board of Equalization erred in declining to hear the taxpayer's appeal.

n30. Wash. Admin. Code 458-14-056(2) (1997).

n31. Wash. Rev. Code Ann. 84.40.038 (West 1991 & Supp. 1998). Note that the assessment year is not the same as the year in which the tax becomes payable. For example, assessments made in 1997 are for taxes payable in 1998. In the case of real property, the first half tax due date would be April 30 of the year following the assessment year.

n32. Wash. Rev. Code Ann. 84.40.038(2) (West 1991 & 1997).

n33. Id.

n34. H.R. 1439, 55th Leg. (Wash. 1997).

n35. Id.

n36. Wash. Admin. Code 458-14-026 (1997).

n37. King County Board of Appeals and Equalization - Rules of Practice and Procedures, Rule 26(f) (1997). "Where there is an Assessor's recommendation to increase the total value, the Board shall hear and decide the value rather than accept a withdrawal request."

n38. Mercer Island Beach Club v. King County Bd. of Equalization, Docket No. 49272 (Wash. B.T.A. 1997), available in 1996 WL 720690.

n39. Wash. Rev. Code Ann. 84.48.010 (West 1991 & Supp. 1998).

n40. Id. (providing five days notice). Wash. Admin. Code 458-14-116(4) (1997) provides for 30-days notice when value is increased without a petition being filed.

n41. Wash. Admin. Code 458-14-116(3)(a) (1997).

n42. Wash. Admin. Code 458-14-116(3)(b) (1997).

n43. Schneidmiller & Faires, Inc. v. Farr, 56 Wash. 2d 891, 894, 355 P.2d 824, 825 (1960).

n44. Lewis v. Bishop, 19 Wash. 312, 319, 53 P. 165, 167 (1898).

n45. See 16 Op. Att'y Gen. 5 (1973).

n46. Docket Nos. 46814-46816 (Wash. B.T.A. 1995), available in 1995 WL 379933. Note this case is not precedential and cannot be cited. However, this is the only case that would indicate the Board's reasoning.

n47. Wash. Rev. Code Ann. 84.69.020(14) (West 1991 & Supp. 1998).

n48. Wash. Rev. Code Ann. 84.69.100 (West 1991 & Supp. 1998).

n49. Wash. Rev. Code Ann. 84.69.020 (West 1991 & Supp. 1998). Similar circumstances include taxes paid more than once; tax reduced by the Board; levies or statutes adjudicated to be illegal or unconstitutional.

n50. Wash. Rev. Code Ann. 84.48.010 (West 1991 & Supp. 1998) states, in pertinent part, as follows:

The county board of equalization shall meet on the 15th day of July and may continue in session and adjourn from time to time during a period not to exceed four weeks, but shall remain in session not less than three days: PROVIDED, That the county board of equalization with the approval of the county legislative authority may convene at any time when petitions filed exceed twenty-five, or ten percent of the number of appeals filed in the preceding year, whichever is greater.

n51. Id.

n52. Wash. Admin. Code 458-14-127(3) (1997).

n53. Because the Department must give county Boards of Equalization permission to extend their work beyond the "regular session," the Department tracks what each of the 39 Boards of Equalization do. One person in the Property Tax Division is dedicated to coordinating, assisting, and training all Boards of Equalization.

n54. Wash. Admin. Code 458-14-127 (1997) states, in pertinent part, as follows:

1) Boards of equalization may reconvene on their own authority to hear requests concerning the current assessment year when the request is filed with the board by April 30 of the tax year immediately following the board's regularly convened session and at least one of the following conditions is met:

(a) A taxpayer requests the board reconvene and submits to the board a sworn affidavit stating that notice of change of value for the assessment year was not received by the taxpayer at least fifteen calendar days prior to the deadline for filing the petition, and can show proof that the value was actually changed.

(b) An assessor submits an affidavit to the board stating that the assessor was

unaware of facts which were discoverable at the time of appraisal and that such lack of facts caused the valuation of property to be materially affected. In the affidavit, the assessor shall state the facts which affected the value and also state both the incorrect value and the true and fair market value of the property and shall mail a copy of the affidavit to the taxpayer. If the board decides to reconvene to consider the valuation, it shall notify both the taxpayer and assessor of its decision in writing.

(c) In an arm's length transaction, a bona fide purchaser or contract buyer of record has acquired an interest in real property subsequent to the first day of July and on or before December 31 of the assessment year and the sale price was less than ninety percent of the assessed value.

2) Upon request of either the taxpayer or the assessor, boards may reconvene on their own authority to hear appeals with respect to property or value that was omitted from the assessment rolls. No request shall be accepted for any period more than three years preceding the year in which the omission is discovered.

n55. Wash. Admin. Code 458-14-127(2) (1997).

n56. Wash. Rev. Code Ann. 84.08.060 (West 1991).

n57. Id.

n58. Wash. Admin. Code 458-14-127(5) (1997).

n59. Boise Cascade Corp. v. Pierce County, 84 Wash. 2d 667, 672, 529 P.2d 9, 13 (1974); Dexter Horton Bldg. Co. v. King County, 10 Wash. 2d 186, 217, 116 P.2d 507, 520 (1941) (internal citation omitted).

n60. Docket No. 92-32 (Wash. B.T.A. 1993), available in 1993 WL 115839.

n61. Id.

n62. Docket No. 96-54 (Wash. B.T.A. 1997), not yet available in Westlaw.

n63. Id. at 16.

n64. Wash. Rev. Code Ann. 84.08.130(1) (West 1991 & Supp. 1998) and Wash. Rev. Code Ann. 82.03.130(2) (West 1981 & Supp. 1997).

n65. See generally Sator v. Department of Revenue, 89 Wash. 2d 338, 572 P.2d 1094 (1977). Although the Sator court stated that exact equality is neither possible nor required, it also stated that revaluation programs must be conducted on an orderly basis, pursuant to a regular plan, and in a manner which is not arbitrary, capricious, or intentionally discriminatory. Id. at 344. Uniformity of taxation is a fundamental requirement of Washington's property tax system.

However, absolute uniformity is not required. Id. This generalization does not permit assessments at 100 percent of value when other personal property was assessed at 22 percent to 36 percent below value. Inter Island Tel. Co. v. San Juan County, 125 Wash. 2d 332, 335, 883 P.2d 1330, 1382 (1994).

The Board, although it has no power to "equalize" assessments, nevertheless has the

authority and duty to assure that the Assessor's valuation conforms to the law - both statutory and constitutional. When deciding appeals from county Boards of Equalization, the Board "... shall make such order as in its judgment is just and proper." Wash. Rev. Code Ann. 84.08.130. (West 1991 & Supp. 1998).

n66. Wash. Rev. Code Ann. 82.03.130 (West 1981 & Supp. 1997), the Board's jurisdictional statute states in subparagraph 11 as follows: "Appeals pursuant to RCW 84.40.038(3)." Wash. Rev. Code Ann. 84.40.038(3) (West 1991 & Supp. 1998) states, in full, as follows:

The owner or person responsible for payment of taxes on any property may request that the appeal be heard by the state board of tax appeals without a hearing by the county board of equalization when the assessor, the owner or person responsible for payment of taxes on the property, and a majority of the county board of equalization agree that a direct appeal to the state board of tax appeals is appropriate. The state board of tax appeals may reject the appeal, in which case the county board of equalization shall consider the appeal under RCW 84.48.010. Notice of such a rejection, together with the reason therefore, shall be provided to the affected parties and the county board of equalization within thirty days of receipt of the direct appeal by the state board.

n67. IBP, Inc. v. Walla Walla County Assessor, Docket Nos. 45250-45253 (Wash. B.T.A. 1995), available in 1995 WL 379099 (appropriate treatment of working capital in an income approach in the meat products industry).

n68. Pabst Brewing Co. v. Thurston County Assessor, Docket Nos. 46798-46799 (Wash. B.T.A. 1994), available in 1990 WL 311141 (finding direct appeal appropriate because appeals from prior years were pending with the Board).

n69. Although not a precedential decision, Bruyn v. King County Assessor, Docket No. 42726 (Wash. B.T.A. 1993), available in 1993 WL 557216 (involving a co-owner who was an employee of the assessor's office), is one example.

n70. County Board of Equalization members are required to disqualify themselves from hearing appeals involving conflicts of interest. If a county Board of Equalization cannot achieve a quorum due to disqualification, it is required by rule to sustain the assessor's determination of value. Wash. Admin. Code 458-14-146 (1997).

n71. JKM Associates v. Island County Assessor, Docket No. 45334 (Wash. B.T.A. 1996), available in 1996 WL 720410 (involving wife of Island County Commissioner).

n72. Wash. Rev. Code Ann. 82.03.140 (West 1981 & Supp. 1997); Wash. Admin. Code 456-09-010 (1997) and 456-10-010 (1997).

n73. Both Wash. Admin. Code 456-09-010 (1997) and 456-10-010 (1997) state, in pertinent part, "Failure to elect a formal or informal hearing at the time of filing shall result in the proceeding being conducted as informal."

n74. Wash. Rev. Code Ann. 82.03.150 (West 1981 & Supp. 1997) and 82.03.160 (West 1981 & Supp. 1997).

n75. Wash. Admin. Code 456-10-010 (1997).

n76. Board rules for informal appeals are found in Wash. Admin. Code 456-10 (1997).

n77. Wash. Admin. Code 456-10-210 (1997).

n78. Board of Tax Appeals Advanced Revelation, Report 8 "Calendar."

n79. See Pettit v. Board of Tax Appeals, 85 Wash. 2d 646, 648, 538 P.2d 501, 502 (1975); King County v. Board of Tax Appeals, 28 Wash. App. 230, 233-34, 622 P.2d 898, 899-900 (1981).

n80. Id.

n81. Dexter Horton Bldg. Co. v. King County, 10 Wash. 2d 186, 116 P.2d 507 (1941).

n82. Wash. Rev. Code Ann. 84.68.020 (West 1991 & Supp. 1998).

n83. A taxpayer is worse off for having appealed to the Board in less than 10 percent of all property tax appeals. Value is set by the Board in about 67 percent of all property tax appeals. In 28 percent the Board decreases value and in about 32 percent the Board sustains value. In only 7 percent does the Board raise value.

n84. This is so because, in informal cases, there is generally no appeal absent a constitutional writ of certiorari. See Pettit v. State Bd. of Tax Appeals, 85 Wash. 2d 646, 538 P.2d 501 (1975).

n85. See Transamerica Title Ins. Co. v. Hoppe, 26 Wash. App. 149, 154, 611 P.2d 1361, 1364 (1980) (citing Pettit v. Board of Tax Appeals, 85 Wash. 2d 646, 538 P.2d 501 (1975)). This is because the exhaustion of administrative remedies principle does not apply to Washington tax litigation.

n86. Wash. Rev. Code Ann. 34.05.514 (West 1990 & Supp. 1997).

n87. Id.

n88. Board rules for formal appeals are found in Wash. Admin. Code 456-09 (1997).

n89. This is so because the appeal of a decision in a formal case is not a refund suit.

n90. Wash. Rev. Code Ann. 82.03.180 (West 1981 & Supp. 1997).

n91. Wash. Rev. Code Ann. 84.08.130 (West 1991 & Supp. 1998).

n92. Id. On March 18, 1998, Governor Gary Locke signed Senate Bill 6223, which changes RCW 82.03.130, 82.03.190 and 84.08.130; and provides that, effective June 11, 1998, the Board will accomplish service for those appealing to it.

n93. There is no statute analogous to Wash. Rev. Code Ann. 84.40.038(2) (West 1991 & Supp. 1998).

n94. The Board's rules for appeal caption and contents can be found in Wash. Admin. Code 456-09-310 (1997) for formal appeals and in Wash. Admin. Code 456-10-310

(1997) for informal appeals.

n95. Compare Wash. Admin. Code 458-14-056(2) (1997) with 456-09-320(1) (1997).

n96. Wash. Admin. Code 456-09-310(1) (1997) and 456-10-310(2) (1997).

n97. Group Health Coop. of Puget Sound, Inc. v. Washington State Tax Comm'n, 72 Wash.2d 422, 429, 433 P.2d 201, 205 (1967).

n98. Pacific Northwest Conference of the Free Methodist Church v. Barlow, 77 Wash. 2d 487, 493, 463 P.2d 626, 630 (1969).

n99. Corporation of the Catholic Archbishop of Seattle v. Johnston, 89 Wash. 2d 505, 507, 573 P.2d 793, 794 (1978); Wash. Admin. Code 458-16-100(2)(b) (1997).

n100. Boise Cascade Corp. v. Pierce County, 84 Wash. 2d 667, 676, 529 P.2d 9, 15 (1974).

n101. See Xerox Corp. v. King County, 94 Wash. 2d 284, 287, 617 P.2d 412, 413 (1980).

n102. Wash. Rev. Code Ann. 84.40.030 (West 1991 & Supp. 1998).

n103. Id.

n104. Carkonen v. Williams, 76 Wash. 2d 617, 636, 458 P.2d 280, 291 (1969).

n105. Wash. Rev. Code Ann. 84.40.0301 (1991 & Supp. 1998); Weyerhaeuser Co. v. Easter, 126 Wash. 2d 370, 380, 894 P.2d 1290, 1295 (1995).

n106. In re Sego, 82 Wash. 2d 736, 739, 513 P.2d 831, 833 (1973).

n107. Id.

n108. Id.

n109. See 3 Op. Att'y Gen. 6-7 (1986).

n110. Weyerhaeuser Co. v. Easter, 126 Wash. 2d 370, 380, 894 P.2d 1290, 1295 (1995).

n111. The Weyerhaeuser court's test, in full, is as follows.

We adopt the following test to determine the appropriate standard of proof: (1) if a taxpayer overcomes the presumption of correctness on a specific value, the standard of proof shifts to preponderance of the evidence for all contested issues related to that value; and (2) if a taxpayer overcomes the presumption on the assessor's overall approach or technique, i.e., invalidates the technique, the standard of proof shifts to a preponderance of the evidence for all issues. The taxpayer retains the burden of persuasion at all times.

Id. at 381, 894 P.2d at 1296.

n112. Id. at 382, 894 P.2d at 1296 (citing with approval the Board's decision in Britton v. Kaiser Aluminum & Chem. Corp., Docket Nos. 39222-39223 and 39317-39318 (Wash. B.T.A. 1992), available in 1992 WL 214905.

n113. Weyerhaeuser, 126 Wash. 2d at 382, 894 P.2d at 1296 (citing Folsom v. County of Spokane, 111 Wash. 2d 256, 272, 759 P.2d 1196, 1205 (1988)).

n114. See Weyerhaeuser, 126 Wash. 2d at 381, 894 P.2d at 1296.

n115. Id.

n116. Id. at 382, 894 P.2d at 1296.

n117. Docket Nos. 94-2 and 94-3 (Wash. B.T.A. 1997), not yet available in Westlaw.

n118. Id. at 36.

n119. Id. at 35.

n120. Id. at 36.

n121. Twin Lakes Golf & Country Club v. King County, 87 Wash. 2d 1, 548 P.2d 538 (1976) (the golf course had zero taxable fair market value and property taxes assessed against the golf course and collected under protest by the county were to be refunded to the taxpayer).

n122. Wash. Rev. Code Ann. 84.08.060 (West 1991).

n123. The Property Tax Division of the Department keeps track of taxing districts in order to map the different tax code areas. As of this writing, there were approximately 1850 different taxing districts which, because of overlapping, become some 3144 separate, distinct tax code areas. New taxing districts are created periodically. Effective July1, 1997, the statute controlling the timeline for establishment of taxing district boundaries changed. See Wash. Rev. Code Ann. 84.09.030 (West 1991 & Supp. 1998).

n124. See Wash. Rev. Code Ann. 84.52.018 (West 1991 & Supp. 1998).

n125. The time of the tax levy is generally December 1 of the assessment year.

n126. Wash. Rev. Code Ann. 84.52.018 (West 1991 & Supp. 1998).

n127. Wash. Rev. Code Ann. 84.68.030 (West 1991 & Supp. 1998), Wash. St. Reg. 97-21-098 (1997).

n128. Wash. Rev. Code Ann. 84.68.040 (West 1991).

n129. Wash. Admin. Code 456-10-730 (1997).

n130. Id.

n131. Wash. Admin. Code 456-10-735 (1997).

n132. Wash. Admin. Code 456-10-745 (1997).

n133. Wash. Admin. Code 456-10-750 (1997).

n134. Wash. Admin. Code 456-10-755 (1997).

n135. Id.

n136. Wash. Admin. Code 456-09-930 (1997).

n137. Board of Tax Appeals Advanced Revelation, Report 1 "Recap of Hearings Held."

n138. Wash. Admin. Code 456-09-955 (1997).

n139. Id.

n140. Wash. Rev. Code Ann. 84.40.030 (West 1991 & Supp. 1997).

n141. Wash. Rev. Code Ann. 84.40.030 (West 1991 & Supp. 1998); Wash. Admin. Code 458-12-301 (1997).

n142. The Appraisal of Real Estate 90 (11th ed. 1996) [hereinafter Appraisal of Real Estate].

n143. There may be exceptions, for example the "trophy houses" belonging to Paul Allen and Bill Gates in Seattle.

n144. Appraisal of Real Estate, supra note 142, at 90.

n145. Joan M. Youngman, Defining and Valuing the Base of the Property Tax, 58 Wash. L. Rev. 713, 749 (1983).

n146. Docket No. 48085 (Wash. B.T.A. 1996), available in 1996 WL 627469.

n147. Id.; Bitney v. Morgan, 84 Wash. 2d 9, 15, 523 P.2d 929, 933 (1974).

n148. See Sahalee Country Club v. Board of Tax Appeals, 108 Wash. 2d 26, 735 P.2d 1320 (1987).

n149. Docket No. 48085 (Wash. B.T.A. 1996), available in 1996 WL 627469.

n150. Appraisal of Real Estate, supra note 142, at 91.

n151. Cypress Inn (Everett) v. Snohomish County, Docket No. 47235 (Wash. B.T.A. 1995), available in 1995 WL 379109.

n152. Wash. Rev. Code Ann. 34.05.452 (West 1990).

n153. Union Pacific R.R. Co. v. State Tax Comm'n of Utah, 716 F. Supp. 543, 554 (D. Utah 1988).

n154. Docket Nos. 44558 and 96-74 (Wash. B.T.A. 1994 & 1996), available in 1994

WL 174292 and 1996 WL 884565. Note this was a precedential decision in an informal appeal that became a formal appeal.

n155. Simpson Timber Co. v. Mason County Assessor, Docket No. 96-74 n.1 (Wash. B.T.A. 1996), available in 1996 WL 884565.

n156. Id. at 3.

n157. Id. at 2.

n158. Simpson Timber Co. v. Mason County Assessor, Docket No. 44558 (Wash. B.T.A. - Order on Motion for Summary Judgment - 1994), available in 1994 WL 174292.

n159. This group was instrumental in starting this case, which received widespread coverage in the local media. The property tax system extracts revenue from individual taxpayers based on the proportion of the value of each individual parcel of property to the total value of property in the taxing district. Given that the total amount of revenue to be raised is fixed at a sum certain each year by the county legislative authority, a property which is undervalued casts an excessive tax burden on all other property in the taxing district. Simpson is the largest taxpayer in Mason County and its property tax liability was, accordingly, felt to be a matter of public concern. The reduction by the assessor of approximately 50 percent of the value assigned to the property in the previous assessment year undoubtedly resulted in a significant shift in the property tax burden to other Mason County taxpayers. The taxpayers claimed much of the information upon which the stipulated value was based was confidential business information. As a result, the assessor was unable to release the details of the valuation, and the public was left to wonder about the propriety of the Simpson valuation as they pondered their own increased property tax bills.

n160. Simpson, Docket No. 44558 at 3 (Wash. B.T.A. - Order on Motion for Summary Judgment - 1994), available in 1994 WL 174292.

n161. Id. at 5 (referencing Wash. Rev. Code Ann. 82.03 (West 1981 & Supp. 1997)).

n162. Id.

n163. Id. (citing State ex. rel. State Tax Comm'n v. Ingersoll, 2 Wash. 2d 655, 99 P.2d 403 (1940)). In Ingersoll, a case involving the former Tax Commission, the assessor argued that only he and the county Board of Equalization had powers of valuation for local property tax purposes. The court disagreed and found that, once the Tax Commission had issued a final order, the assessor was under a mandatory, ministerial duty to place that value on the rolls).

n164. Simpson, Docket No. 44558 at 5.

n165. Id.

n166. Id.

n167. Id. at 5-6.

n168. Id. at 6.

n169. Simpson, Docket No. 44558 at 8; Baird v. Baird, 6 Wash. App. 587, 494 P.2d 1387 (1972).

n170. 78 Wash. 2d 601, 606, 478 P.2d 724, 727 (1970).

n171. See 50 Am. Jur. Stipulations 5, at 607 (1944); 3 Am. Jur. Appeal and Error 712, at 300 (1936).

n172. North Platte Lodge v. Board of Equalization, 125 Neb. 841, 252 N.W. 313, 92 A.L.R. 658 (1934).

n173. See Estate of Sanford v. Commissioner, 308 U.S. 39 (1939).

n174. Simpson Timber Co. v. Mason County Assessor, Docket No. 44558 at 7 (Wash. B.T.A. - Order on Motion for Summary Judgment - 1994), available in 1994 WL 174292.

n175. Id. at 9.

n176. Docket Nos. 91-12101 and 92-13653 (Kan. B.T.A. 1993) (source on file with author).

n177. Simpson, Docket No. 44558 at 9.

n178. Id.

n179. Id.

n180. Id. at 15 (board member Lawrence Kenney, concurring).

n181. Tax Advisory Council, supra note 1, at 79.

n182. Simpson, Docket No. 44558 at 5.

n183. Wash. Rev. Code Ann. 82.32.180 (West 1981 & Supp. 1997) (regarding the superior court appeal procedure).

n184. Wash. Rev. Code Ann. 82.32.150 (West 1981 & Supp. 1997) (regarding the superior court injunction procedure).

n185. Wash. Rev. Code Ann. 82.01.060(4) (West 1981 & Supp. 1997).

n186. Wash. Rev. Code Ann. 82.32.160 (West 1981 & Supp. 1997). Wash. Admin. Code 458-20-100 (1997) contains detailed procedures for petitioning the Department.

n187. The Department has published its precedential determinations since 1986. The Department's precedential determinations are available on the Internet using Washington State's home page. Washington State's home page is located at http://www.state.wa.us.

n188. Wash. Admin. Code 458-20-100(5) (1997).

n189. Wash. Rev. Code Ann. 82.03.190. (West 1981 & Supp. 1997). Note that the taxpayer is not required to have first obtained a reconsideration or other post-final determination review from the Department before appealing to the Board.

n190. Docket No. 46892 (Wash. Bd. of Tax App. 1997), available in 1997 WL 235810.

n191. Id.

n192. Id.

n193. Id.

n194. Id.

n195. Mitsui & Co., Docket No. 46892.

n196. Id. Rules inconsistent with the statute they seek to implement are invalid. Van Dyk v. Department of Revenue, 41 Wash. App. 71, 702 P.2d 472 (1985).

n197. Hansen Baking Co. v. City of Seattle, 48 Wash. 2d 737, 296 P.2d 670 (1956). See also Kitsap-Mason Dairymen's Assoc. v. Washington State Tax Comm'n, 77 Wash. 2d 812, 467 P.2d 312 (1970) (administrative rules may not amend or change legislative enactments and must be written within the framework and policy of applicable statutes).

n198. Mitsui & Co., Docket No. 46892.

n199. State v. Munson, 23 Wash. App. 522, 525-26, 597 P.2d 440, 442-43 (1979) (in which the court of appeals reversed an unlawful fishing conviction because the regulation conflicted with the Department of Fisheries' enabling statute).

n200. 119 Wash. 2d 761, 837 P.2d 1007 (1992).

n201. Id. at 770-71, 837 P.2d at 1012-15.

n202. 82 Wash. App. 67, 915 P.2d 537 (1996).

n203. Id. at 74, 915 P.2d at 541.

n204. 69 Wash. App. 655, 850 P.2d 546 (1993).

n205. Id.

n206. Mitsui & Co. (USA), Inc. v. Department of Revenue, Docket No. 46892 (Wash. Bd. of Tax App. 1997), available in 1997 WL 235810.

n207. See Kaiser Aluminum & Chem. Corp. v. Department of Labor & Indus., 121 Wash. 2d 776, 854 P.2d 611 (1993), and cases cited therein.

n208. Mitsui & Co., Docket No. 46892.

n209. Id.

n210. Tax Advisory Council, supra note 1, at 79.

n211. 1967 Wash. Laws, ch. 26, 1.

n212. Mitsui & Co., Docket No. 46892.

n213. Tax Advisory Council, supra note 1, at 79.

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