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State Board of Equalization adopts controversial property-tax regulation

Critics call new rule unconstitutional and expensive

John Dougherty

LAS VEGAS — The state Board of Equalization voted 4-to-1 Monday to adopt a controversial regulation, saying it would ensure property taxes are assessed fairly and equitably across the state.

Appearing to be in a rush to fill a gaping hole in state property-tax law, the board ignored warnings from Incline Village taxpayers and their attorney that the regulations are illegal and fall far short of their intended purpose.

"We are taking steps as fast as we can to do our job," said Tony Wren, a Reno appraiser who serves as chairman of the five-member board.

Wren brushed aside criticism from Reno attorney Suellen Fulstone, who called the proposal a "bad regulation, unconstitutional regulation and expensive regulation."

The centerpiece of the rule is a statistical tool called "ratio studies," which the board is offering as a way to determine whether the state's 17 county assessors are valuing similar property equally across the state.

State law has long required that regulations ensuring statewide equalization be written, but neither the state Board nor the Nevada Tax Commission ever actually produced such rules until Monday.

Critics say ratio studies were developed for market-based property-tax systems, used in every state but Nevada. The Silver State abandoned a market-based assessment system in 1981.

Under Nevada's unique taxable-value system, land is valued at market price while improvements are valued at

the replacement cost of the structure as specified by a commercial construction-costing service manual, less depreciation based on the age of the structure.

Property tax expert Richard Almy, the former executive director of the International Association of Assessing Officers, last week criticized Nevada's planned adoption of ratio studies, saying they would be ineffective and expensive for taxpayers.

The new regulation calls for ratio studies to compare the tax department's determination of taxable value of a sample of properties with a county assessor's determination of assessed values of the same properties.

In market-based property-tax systems, however, ratio studies are used to compare the assessed values determined by tax authorities to market sales. A consistent ratio would indicate that property taxes are being assessed equally across political jurisdictions.

In Nevada, the proposed state Board regulation would merely have ratio studies used to compare the tax department's determination of taxable value of a sample of properties with a county assessor's determination of assessed values of the same properties.

By law, county assessors first determine the taxable value of a property, and multiply it by 35 percent to determine assessed value. In ratio studies conducted in the past for the Nevada Tax Commission, the tax department routinely used county assessors' appraisals rather than doing its own.

Under such a scenario, said Almy, the tax department's application of the ratio studies

accomplishes little more than checking the math of the county assessors.

Wren acknowledged the regulation is "less than perfect" and said it likely will be amended.

He noted that the state's 17 elected county assessors were in support of the regulation. There was no comment from any of the county assessors about the proposed regulation during Monday's two-hour meeting.

"I think we need to move forward with the best system as we see it," Wren said.

Incline Village resident Todd Lowe urged the Board to delay adopting the regulation and to instead ask Almy to meet with the Board to develop a statistical analysis and other methods that would be appropriate for Nevada's taxable-value system.

The board rejected his request, but member Anthony Marnell suggested that Lowe and Fulstone submit their version of a regulation that the board could review at a later date.

"There were some things that were brought up today that I would like to learn more about," he said, referring to the comments to the board by Lowe and Fulstone.

Lowe said the ratio studies would be useful for determining whether assessors were valuing similar land equally across the state. That's because land is valued at full cash value in Nevada.

But, said Lowe, the ratio studies would be useless in determining whether Nevada's assessors are valuing improvements fairly and equitably, since structures are assessed at their replacement cost less depreciation.

He said adopting ratio studies as the centerpiece of the board's equalization regulation will leave the board exposed to legal challenges from taxpayers. Lowe has been intimately involved in the eight-year legal battle between Incline Village residents and the Washoe County assessor, the Board and the Nevada Tax Commission.

"This will just be the beginning of a new wave of lawsuits," he said.

Fulstone said the board is continuing to ignore Supreme Court rulings in 2006 and 2008 that require assessors to only use appraisal methodologies expressly approved by the Nevada Tax Commission.

Until the state Board and the Tax Commission take action to ensure that assessors are indeed using the same appraisal methodology on similar properties, she said, taxpayers cannot be assured that property is being fairly and equitably assessed as required by the Nevada Constitution.

"Making statistical analysis the driving force in the determination of equalization takes the taxpayer out of

the determination and insulates the department and the assessor from any meaningful accountability," Fulstone said.

Taxation Department Executive Director Dino DiCianno dismissed Fulstone's criticism that assessors were manipulating the state Board and Department of Taxation to pass regulations that fall short of the requirement in Supreme Court rulings that assessors only use appraisal methodologies approved by the commission.

He said the new regulation is part of a series of reforms that the state Board and Tax Commission are implementing to meet the Supreme Court rulings in the cases Bakst vs. the State Board of Equalization and the State Board of Equalization vs. Barta.

"We do not want to see further litigation," DiCianno said.

The Board's adoption of ratio studies as the basis for determining equalization makes it unlikely DiCianno's wish will come to pass.

John Dougherty is the principal of InvestigativeMedia.com and has long been one of America's leading investigative reporters. He has been retained by the Nevada Policy Research Institute to report on critical issues of Nevada governance.

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