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## Flying blind on property taxes

### Equalization rules still not finished after three decades

John Dougherty

CARSON CITY — For nearly 30 years Nevada tax officials have failed to meet their constitutional requirement to develop and implement regulations ensuring that property-tax assessments are equalized statewide.

State records, interviews and court documents all reveal that the Nevada Tax Commission has never passed the regulations that would be required for the state Board of Equalization to ensure that property taxes are being assessed fairly and equitably across the state's 17 counties. The commission has yet to even define statewide equalization.

Although the commission has grappled with the task of developing statewide equalization regulations for the last six years, nothing has been implemented so far.

The glaring lack of uniform regulations raises the specter that, across the state, property assessments are not equalized, violating Article 10 of the Nevada Constitution. This very troubling possibility is not something state tax officials want discussed publicly.

"Everyone loves to be very cautious about [equalization] because you want to make sure you're not out of equalization within a county and between the counties," said former Tax Commission chairwoman Barbara Smith Campbell. "If you were to say the whole state is out of equalization, that's the worst-case scenario."

When asked if the failure of the commission to pass regulations for the state casts significant doubt over whether statewide equalization is in fact happening, another former Tax Commission chairman, Thom Sheets, said that is a possibility. Sheets left the commission last October.

"I think your analysis is right," Sheets said. "It's an interesting analysis."

Robert Barengo, the current state Tax Commission chairman, did not return repeated phone calls seeking an interview.

The absence of statewide equalization regulations is not something state Board of Equalization members are willing to publicly discuss. In one instance, a board member didn't know that the regulations were not in place.

"I'm not going into that," said state board member and Las Vegas accountant Dennis Meservey when asked about the absence of equalization regulations. "We are working on some to make it better. A lot of things are in place. So I don't know if you can say there is nothing there. That is silly."

Board Chairman Anthony Wren, a Reno appraiser, declined to comment on the lack of statewide equalization regulations.

Board member and casino operator Anthony Marnell, who was appointed to the panel last year, was unaware that the board lacked regulations to implement statewide equalization.

When asked about the draft regulations that have been under development by the state Department of Taxation for years, Marnell said in an interview last August: "What do you mean by that? I haven't seen any of that."

Marnell has been one of the more outspoken members of the state board and led the discussion last July when the board voted to roll back property-tax assessments for the wealthy Lake Tahoe communities of Incline Village and Crystal Bay.

The state board's decision to roll back 8,700 property-tax assessments for the 2006 tax year to 2003 levels in one of the wealthiest communities in the nation has raised the possibility that property values are out of equalization not only in Washoe County, but across the state.

Washoe County is appealing the board's decision and a court order directing the Washoe County treasurer to refund approximately \$20 million to the property owners.

Former Washoe County assessor Bob McGowan said the state board's decision to roll back taxes creates a disequilibrium in property assessments not only in Washoe County, but statewide. The rollback, McGowan said, means that North Shore residents are having their properties assessed at about 40 percent of market value while residents elsewhere in Washoe County are closer to 70 percent.

"I'm perplexed," McGowan said. "I think there is an issue in Washoe County, where you have created two different percentages of value. And what are you going to do in the rest of the state? Why should Pahrump or Ely be at a higher percentage of their value than what Incline Village is? I don't know."

Board member Marnell said he doesn't believe the board's decision to roll back assessments in Incline Village has statewide implications. Nevertheless, he said, he is determined to make sure properties are being fairly and equitably assessed across the state.

"We are here to equalize," Marnell said. "If it is not being done equally, then we need to address it."

While Marnell and his four colleagues on the state board might want to ensure statewide equalization, the board's ability to act is very limited. The board is hamstrung by the lack of regulations as well as resistance from county assessors who have rejected requests to meet with the board to discuss their assessment practices.

But perhaps an even greater obstacle in the way of ensuring statewide equalization is the inherent structure of Nevada's property-tax system.

The root of the problem, experts say, is Nevada's unusual, non-market-based property-tax system. Its hall-of-mirrors complexities have for decades defeated regulators' halting attempts to develop a comprehensive testing procedure that would accurately measure the fairness and equity of property-tax assessments across the state.

Lacking such a robust test, the state board has abandoned its statutory duty to equalize properties statewide. Instead, it has focused on hearing individual tax appeals from property owners unsatisfied with

property-tax assessments levied by elected county assessors and decisions by county boards of equalization.

Unlike the other 49 states where property-tax assessments are based on market value, Nevada's "taxable value" system is severed from the market because it is largely based on the replacement cost of improvements, less depreciation based on the age of the structure.

The Nevada Legislature's decision in 1981 to abandon a market-based property tax and adopt the taxable-value system has had profound implications when it comes to determining how equitably the state's assessors are determining the value of similarly situated properties.

Where other states compare the assessed values determined by local county assessors to market sales to determine whether statewide equalization is occurring, Nevada's taxable-value system cannot easily be compared to the market, making it difficult to determine whether property assessments are equalized across the state.

The lack of a tangible factor to measure the fairness of Nevada's taxable-value system has perplexed state regulators for years.

"The problem as I see it is how do you equalize taxable value?" Terry Rubald, chief of the Nevada Tax Department's Division of Assessment Standards, wrote in a 2008 memo to the Nevada Tax Commission. "Where market value is the standard in other states ... it is less clear in my mind at least, what we equalize to."

Even if Nevada had a fixed guidepost against which to measure equalization, Rubald warned the commission that implementing a policy to conduct statewide equalization runs the risk of serious political fallout. Prior to assuming her position in Nevada, Rubald was the former chairwoman of the Wyoming state Board of Equalization, where she touched the third-rail of statewide equalization.

"My colleagues and I equalized among the 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," she wrote.

Rubald's 2008 warning has come to fruition as the state board's recent attempts to meet with county assessors to ascertain how they determine property-tax assessments has been met with strong resistance. The Nevada Assessors Association — representing the state's county assessors — rejected the state board's request for assessors to appear before the board at its December meeting. The board's subsequent effort to have assessors appear during its January meeting, held this week, has also been stymied.

Despite Rubald's doubts about how to equalize taxable value, the state tax department publishes annually a "ratio study" report that county assessors, state board members and tax commissioners point to as proof that Nevada's property assessments are equalized. The ratio study, however, was developed for market-based systems and is not directly applicable to Nevada's taxable-value system.

Dino DiCianno, executive director of the state tax department, said the ratio study is a "very minimal" tool that shows that assessed values of a sample of properties selected across the state are falling within a generally acceptable range.

"That doesn't mean these properties have been equalized," he said. "That's the problem."

And, unlike contentions by several county assessors who repeatedly pointed to the ratio studies as proof that they are fairly and equitably assessing property, DiCianno said a passing grade on the ratio study "doesn't mean that everything was done properly within the individual county's valuations."

Instead of relying on the ratio studies, DiCianno said increased regulation, including adopting regulations included in a tax department 2007 white paper along with the development of "best management practices" to be used by county assessors, would be a more effective way to ensure statewide equalization. So far, the commission has not adopted any of the 26 recommended reforms in the white paper.

DiCianno said the state is not seeking "to go after" elected county assessors but wants to encourage assessors to be focused on consistently applying appraisal methodologies across the state. DiCianno's hands-off approach is consistent with that of the commission, which has adopted an advisory rather than a regulatory relationship with assessors.

The commission's stance appears at odds with recent state Supreme Court rulings. The state Supreme Court ruled in 2006 that county assessors must only use appraisal methodologies that have been formally approved by the state tax commission. The court also noted that the commission had been derelict in its duties to pass appraisal regulations.

The commission has been many years behind in passing regulations to ensure that assessors are using uniform methodologies to assess properties. The commission, for example, finally passed regulations in 2008 to allow assessors to use mass appraisal techniques to determine property assessments decades after assessors began using mass appraisal methods.

The state, DiCianno said, is now in "the early stages" of developing more stringent performance audits

of county assessors. But, he said, he didn't know when such oversight tools would be in place.

"It could be a year, it could be two," DiCianno said. "I don't know."

Records obtained from the tax department under the Nevada Public Records Law reveal the department as of last August had only developed a three-page summary toward developing the comprehensive oversight plan.

The lack of a tangible ratio study and slow movement toward implementing best management practices make it unlikely the state will soon implement policies that ensure statewide equalization. And, critics say, even if the state does create a best management practices framework, that doesn't mean the state will actually enforce the provisions.

Former state tax department official Joel Flammenbaum said the state in the past watered-down performance audits of county assessors to make it appear things were better than they actually were. Flammenbaum said rather than randomly auditing a county assessor's appraisals, the state would notify the assessor in advance which properties the state intended to audit, allowing the assessor an opportunity to "edit the list."

The tax department's intent, Flammenbaum said, was to shield tax commissioners from having to confront county assessors over assessment problems.

"The state tax commissioners don't like to interrogate the county assessors," he said.

Flammenbaum was fired from the tax department after he provided information to a Lake Tahoe property-tax protest group about flaws in a tax department study over the differences in assessed values of properties between Washoe and Douglas counties. The Lake Tahoe study determined that property assessments were not equalized within Washoe County and between Washoe and Douglas counties.

While current and former tax department officials raise questions over the value of ratio studies and performance audits in ensuring that statewide equalization is taking place, Clark County Assessor Mark Schofield insists that both are effective tools.

"I rely on them as report cards," he said.

Schofield is also skeptical that the commission can adopt a one-size-fits-all equalization regulation in a taxable-value system.

"You can't apply one standard formula across 17 counties," he said. "It just can't be done. Some counties have a lot of vacant land sales, some counties don't. Some counties have very old properties, other counties don't."

The increasingly heated debate over the absence of statewide equalization is having profound implications for citizens selected by the governor to serve four-year terms on the state board.

A group of North Shore taxpayers is suing four former state board members personally for allegedly failing to equalize properties between Washoe County on the north end of Lake Tahoe and Douglas County on the southern end of the lake. The taxpayers are seeking monetary damages from the individual board members under a federal civil rights law.

The case has reached the Nevada Supreme Court, where oral arguments were to be presented Jan. 5.

The taxpayers' attorney, Suellen Fulstone, states in court filings that the "members of the state Board of Equalization took no action whatsoever" to "perform their affirmative statutory duty of statewide equalization of property valuations, notwithstanding knowledge and information that substantial disparities existed between Washoe and Douglas Counties."

The state Attorney General's Office is representing the board members and is arguing the four have "absolute immunity" from legal claims arising from their state board duties, regardless of whether they failed to equalize properties.

"Exposing the State Board members to a suit involving potential personal liability would dissuade capable persons from agreeing to serve in what is for all practical purposes a voluntary endeavor," Assistant Attorney General Dennis Belcourt states.

Ironically, the state acknowledges there is no definition in place to guide the state board on statewide equalization matters.

The lack of regulations or even a definition of what constitutes statewide equalization — along with the roll back of property assessments in Incline Village — leaves the state in a very difficult position, says Carole Vilaro, executive director of the Nevada Taxpayers Association.

"If you really want to equalize, you will have to go parcel by parcel across the state," she said.

But, she said, this is an impossible task because of the expense.

"Who is going to pay to have every single property valued?" she asked.

*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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