



OFFICE OF STATE TAX COMMISSIONER
STATE OF NORTH DAKOTA

Cory Fong
TAX COMMISSIONER

September 4, 2007

The Honorable Tom Fischer, Chairman
Administrative Rules Committee
1524 Sundance Square South
Fargo, ND 58104-7606

Re: Response to Questions from Administrative Rules Committee – Administrative
Agencies Practices Act, NDCC Chapter 28-32

Dear Senator Fischer:

This is in response to John Walstad's letter to the North Dakota State Board of Equalization (SBOE), in the above-referenced matter. I have been authorized, in my capacity as Secretary of the SBOE, to respond on its behalf to the questions in that letter.

The SBOE consists of the Governor, Tax Commissioner, Auditor, Treasurer, and Agriculture Commissioner. Under state law, the SBOE is responsible for equalization of valuation and assessment of property throughout the state. It has the power to equalize the assessment of property between assessment districts of the same county and between the different counties in this state. Additionally, the SBOE is responsible for reviewing and taking action on applications for income tax exemptions for new and expanding businesses.

The SBOE is of the opinion that it is not necessary to require inclusion of the Board under the provisions of the Administrative Agencies Practices Act, N.D.C.C. ch. 28-32. As will be further explained below, the Board does not promulgate rules and is already subject to statutory procedural requirements that insure all affected parties receive notice and a hearing. In addition, these procedures have been in place for many years and are familiar to the city and county assessment officials.

The following are the SBOE's responses to the questions enumerated in your request for information about the board's practices.

Question No. 1: Does the State Board of Equalization require exemption from the rulemaking provisions of NDCC Chapter 28-32, the adjudicative proceedings provisions of Chapter 28-32, or both? Please explain.

SBOE Response to Question No. 1:

The SBOE does not promulgate administrative rules which would affect the rights or duties of persons outside of the Board. As such, inclusion of the SBOE under the rulemaking requirements of NDCC Chapter 28-32 is not necessary.

The SBOE may conduct public hearings related to appeals of property tax assessments initially made at the local level. These hearings are strictly limited to matters of equalization of property valuations within a given county, township, or city. The proceedings must conform to the statutory framework in NDCC Chapter 57-13. Additionally, these unique proceedings do not involve hearings on complaints against specifically named respondents, thus exempting them from the requirements of NDCC Section 28-32-21. The limited role the SBOE plays in adjudicating appeals brought by dissatisfied property owners is properly governed by NDCC Chapter 57-13. The SBOE should remain exempt from the provisions of NDCC Chapter 28-32.

***Question No. 2:** Does the State Board of Equalization make any rules, for purposes other than internal management, which are of general statewide application and might affect rights or duties of persons outside your agency? Please explain.*

SBOE Response to Question No. 2:

As indicated in response to Question No. 1, the SBOE does not make any rules, for purposes other than internal management, which are of general statewide application and might affect rights or duties of persons outside the SBOE. Accordingly, inclusion of the SBOE under the rulemaking requirements of NDCC Chapter 28-32 is not necessary.

***Question No. 3:** Does the State Board of Equalization hold hearings to act on complaints, applications, or appeals? If so, what rules govern the conduct of the hearing and the rights of the parties?*

SBOE Response to Question No. 3:

As indicated in response to Question No. 1, the SBOE has a limited role in entertaining appeals related to property assessment equalization. The procedures followed for those hearings are contained in NDCC Chapter 57-13, which provides an opportunity for identified persons or entities to appear before the SBOE for the limited purpose of property assessment equalization. Again, these limited hearings also do not involve specifically named respondents, thus exempting them from the requirements of NDCC Section 28-32-21.

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Additionally, the SBOE receives and acts upon applications for income tax exemptions for new and expanding businesses. The actions of the SBOE in this regard are specifically controlled by NDCC Chapter 40-57.1. In particular, NDCC Section 40-57.1-04, provides the applicants and the SBOE with a clearly defined process by which applications may be made and acted upon..

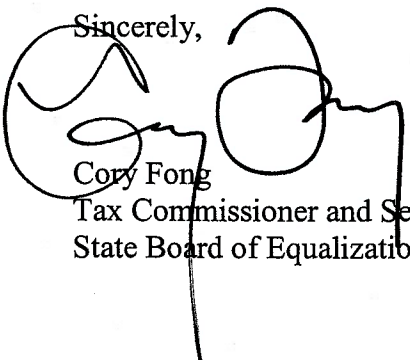
Question No. 4: *Do you believe the exemption for your agency under subsection 2 of NDCC Section 28-32-01 should be continued unchanged, modified, or eliminated?*

SBOE Response to Question No. 4:

The SBOE maintains that the provisions of NDCC Chapter 57-13 properly and effectively safeguard the rights of the limited number of persons or entities which may bring property assessment equalization matters before it and guide the limited role of the SBOE during these hearings. Further, the responsibilities of the SBOE with regard to income tax exemptions for new and expanding businesses are clearly set out in NDCC Section 40-57.1-04, again effectively protecting the rights of those seeking the exemptions provided. Application of the provisions of NDCC Chapter 28-32 to SBOE hearings will inevitably result in greater expense and administrative burden for property owners and applicants for income tax exemptions. Accordingly, the exemption for the SBOE from the requirements of NDCC Chapter 28-32 should be continued unchanged.

Thank you for the opportunity to respond to these questions on behalf of the SBOE. I look forward to the opportunity to address this matter at the September 13, 2007 meeting of the Administrative Rules Committee.

Sincerely,



Cory Fong
Tax Commissioner and Secretary
State Board of Equalization