SB

77

Introduced by: Manager
Drafted by: GL/GLS

MATANUSKA-SUSITNA BOROUGH

Resolution Serial No. 87-038

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH OPPOSING THE SHIFT OF BURDEN OF PROOF IN BOARD OF EQUALIZATION PROCEEDINGS.

WHEREAS, in judicial proceedings, the burden of proof is on the person who petitions for relief or files the complaint, and

WHEREAS, the same system is used in most, if not all, jurisdictions that levy property taxes, and

WHEREAS, this system has proved to be a fair and adequate means of dealing with challenges to assessments of real property, and

WHEREAS, the judicial system has dealt with appeals to court of assessments and assessment procedures and has approved the burden of proof being placed on the property owner to show inequity and has recognized the appropriateness of such public policy, and

WHEREAS, shifting the burden of proof to the municipality will induce many property owners to file appeals where there is no basis for an appeal as the property owner has no burden to show anything and nothing to lose, and

WHEREAS, the increase in frivolous appeals will unnecessarily increase the cost of assessing procedures and could overwhelm boards of equalization, and

WHEREAS, if the burden of proof in local property tax assessment appeals is shifted to the assessor, a persuasive argument can be made that a similar shift should be made for the state assessment of oil and gas properties and for numerous other appeals of state administrative decisions, and

WHEREAS, Senate Bill 77 and House Bill 37, now pending before the Fifteenth Legislature would shift the burden of proof from the appellant to the assessor, and

WHEREAS, written and oral testimony presented at the House Community and Regional Affairs Committee hearing on House Bill 37 given by elected officials and members of

boards of equalization was firmly in opposition to the shift of the burden of proof, and

WHEREAS, the changes to Title 29 under House Bill 37 and Senate Bill 77 would conflict with those sections of the law that set out the bases for an adjustment of an assessment, and

WHEREAS, it appears that the perceived need for shift of the burden of proof arises out of problems that are occurring in only one municipality and those problems are not caused by the requirement that the appellant bear the burden of proof;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE MATANUSKA-SUSITNA BOROUGH:

That the legislature is urged to leave undisturbed the present, conventional procedure which places the burden of proof in property assessment appeals on the appellant.

PASSED AND APPROVED by the Assembly of the Matanuska-Susitna Borough this 17th day of March, 1987.

Dorothy A. Jones, Mayor

ATTEST:

Chris Seagraves, Borough Clerk

(SEAL)

CITY of WRANGELL, ALASKA

INCORPORATED JUNE 15, 1903

BOX 531, 99929 (907) 874-2381

ADOPTED AUGUST 1972

MAR 4 1987

March 2, 1987

Senator Lloyd Jones
Alaska State Legislature
Pouch "V"
Juneau, Alaska 99811

RE: Senate Bill No. 77

Dear Senator Jones:

The Wrangell City Council reviewed House Bill No. 37 and companion Senate Bill No. 77, relating to certain municipal property tax procedures, at their meetings held February 10 and 24, 1987. The Council is opposed to the amendment to AS 29.45.210(b) which would shift the burden of proof from the appellant to the assessor.

The present system of dealing with appeals to assessments does not place an undue hardship on property owners. It is consistent with other judicial proceedings that the burden of proof is on the appellant. Indeed, this amendment could invite frivolous appeals if appeals can be filed without proof that the assessment was unequal, excessive, improper or under evaluation.

Although you sponsored this bill, we respectfully request that you withdraw your support.

Sincerely,

Joyce Rasler
City Manager

cc: Representative J. Sund
Representative R. Taylor
Senate Community & Regional Affairs Committee

BILL SHEFFIELD, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

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January 26, 1987

POSITION PAPER

RE: House Bill 37

SPONSOR: Representative Taylor

Program Effects of Bill

Section 1 of the bill simply underscores the rights of access to public information pursuant to the Freedom of Information Act. Its adoption would have no effect on municipal government.

Section 2 of the bill attempts to shift the "burden of proof" from the appellant to the assessor in appeals of municipal assessments to the Board of Equalization. This amendment presumably would require the assessor to prove the appellant's estimate of assessed value wrong. If the assessor were unable to do so, the Board would be obligated by law, to find in favor of the appellant.

Comments

The Department strongly opposes the passage of House Bill 37. If the language in Section 2 of the bill were adopted into law, we believe the municipal board of equalization appeal process would be unnecessarily disrupted, the State would be adopting a double-standard within statutes which would disadvantage municipalities, and the State would be providing a catalyst for the deterioration of property tax bases in municipalities throughout Alaska. In support of our position, we offer the following comments:

1. The language in Section 2 is unnecessary, would disrupt the appeal process, and be counterproductive.

It is our understanding this language has been introduced to resolve certain problems perceived to exist within the appeal process in the Municipality of Anchorage. We do not believe the language would be effective in accomplishing its objective if it were adopted. The correct way to resolve those problems is for the State Assessor to investigate the City's municipal appeal process under the authority given that office by AS 29.45.105 (attached) and work with the Municipality to adopt policies or ordinances necessary to correct any problems which might exist there. In fact, the Office of the State Assessor is in the process of doing so at this time.

The language in Section 2 of the bill would confuse and disrupt the appeal process by introducing language in statutes which would be contradictory and misleading. Shifting the burden of proof from the appellant to the assessor in the first sentence under AS 29.45.210(b) appears to create contradictions with the second sentence under that same subsection. We do not think it likely the assessor will provide "proof of unequal, excessive, improper, or undervaluation." Therefore, that burden would continue to fall on the appellant. The second sentence goes on to say the proof must be "stated in a valid written appeal or proven at the appeal hearing." Clearly, that statement refers to the appellant and not the assessor. In addition, the proposed amendment is inconsistent with AS 29.45.190 (attached). The entire appeal process described under that section requires the appellant to provide grounds which will trigger the formal appeal and, presumably, facts which will prove the assessment incorrect.

We believe the adoption of the language in Section 2 of the bill would actually mislead property owners into believing they could appeal their assessments without providing proof or evidence to support their case. Clearly, that is not consistent with the statutes cited above.

2. <u>The language in Section 2 would create a double-standard in law and would disadvantage municipalities</u>.

Currently, AS 43.56.130(e) (attached), which describes the appeal process for the oil and gas industry, places the burden of proof on the appellant. If the language under Section 2 were adopted, the oil and gas community could correctly argue that State law provided an advantage in the appeal process for commercial and industrial property assessed by municipalities, and a disadvantage to oil and gas property assessed by the State. We think it would be likely the oil and gas industry would press for legislation which would similarly amend AS 43.56 to impose the burden of proof on the State in questions of oil and gas property valuation.

3. <u>The adoption of Section 2 would provide a catalyst for the deterioration of the municipal tax base</u>.

The shift of the burden of proof offered in Section 2 attempts to benefit the average taxpayer by requiring the municipal assessor to prove his case before the Board of Equalization. The fact is, boards of equalization across the State <u>already</u> require the assessor to do so. In our exposure to assessment appeals, we have seen only rare, isolated cases where a board of equalization did not give the benefit of the doubt to the appellant. Those cases almost exclusively involved appeals by large corporations or owners of large, valuable commercial or industrial properties.

Since the average property owner is already given the benefit of the doubt by boards of equalization, the proposed amendment in Section 2 would do nothing to benefit that party. The property owners who would receive the real benefit of such a change would be the owners of income producing properties.

Many small municipalities in Alaska rely heavily on the property tax revenues collected from one or two large commercial facilities (canneries, pulp mills, etc.) on their assessment rolls. The owners of those larger and more valuable properties have the most to gain from a property tax reduction. They also have ready access to professionals such as appraisers, attorneys, etc., who could successfully argue questions of assessment before boards of equalization in smaller communities. The courts, of course, would be required under the suggested burden of proof change to find in favor of the appellant if he could present a case establishing substantial doubt as to the validity of the municipality's assessed value. Larger companies would be in a much stronger position to obtain reductions in assessed values than the average taxpayer. We believe it is likely that smaller municipalities would see their property tax bases deteriorate if the language in Section 2 were adopted. This deterioration would come at a time when communities are already concerned about diminishing state-shared revenues and are attempting to broaden municipal tax bases wherever possible to generate more revenues locally.

In summary, we believe the amendment suggested in Section 2 of HB 37 would be counterproductive and could provide an economically dangerous avenue for deterioration of the municipal property tax base. We encourage the Legislature not to adopt this bill.

David G. Hoffman By Doug Griff

David G. Hoffman, Commissioner

Sec. 29.45.100. No limitations on taxes to pay bonds. The limitations provided for in AS 29.45.080 — 29.45.090 do not apply to taxes levied or pledged to pay or secure the payment of the principal and interest on bonds. Taxes to pay or secure the payment of principal and interest on bonds may be levied without limitation as to rate or amount, regardless of whether the bonds are in default or in danger of default. (§ 12 ch 74 SLA 1985)

Sec. 29.45.103. Taxation records. (a) Municipal records dealing with assessment, valuation or taxation may be inspected by the State Assessor or a designee.

(b) If a municipality's assessment and valuation has been done by a private contractor, records concerning the municipality's valuation and assessment shall be made available to the State Assessor or a designee on request. (§ 12 ch 74 SLA 1985)

Sec. 29.45.105. Errors in taxation procedures. (a) If a municipality receives a notice from the State Assessor that major errors have been found in its assessment, valuation or taxation procedures, the municipality shall correct its procedures before the beginning of the next fiscal year or file an appeal under (b) of this section.

(b) A municipality may appeal a notice from the State Assessor that it has made a major error in assessment, valuation or taxation procedures by filing an appeal with the commissioner within 30 days after receipt of notice of error.

(c) The commissioner, after consulting with the Alaska Association of Assessing Officers, shall render a decision within 60 days after the receipt of a request under (b) of this section. If the commissioner determines that a major error has been made in assessment, valuation or taxation procedures the commissioner shall notify the municipality of changes that must be made and the municipality shall correct its procedures before the beginning of the next fiscal year.

(d) If errors in its assessment, valuation or taxation procedures have resulted in a loss of revenue to the state, the municipality shall reimburse the state for the amount of revenues lost. (§ 12 ch 74 SLA 1985)

Sec. 29.45.110. Full and true value. (a) The assessor shall assess property at its full and true value as of January 1 of the assessment year, except as provided in this section, AS 29.45.060, and 29.45.230. The full and true value is the estimated price that the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

30 days before the equalization hearings. If the address is not known to the assessor, the notice may be addressed to the person at the post office nearest the property. Notice is effective on the date of mailing. (§ 12 ch 74 SLA 1985)

Sec. 29.45.180. Corrections. (a) A person receiving an assessment notice shall advise the assessor of errors or omissions in the assessment of the person's property. The assessor may correct errors or omissions in the roll before the board of equalization hearing.

(b) If errors found in the preparation of the assessment roll are adjusted, the assessor shall mail a corrected notice allowing 30 days for appeal to the board of equalization. (§ 12 ch 74 SLA 1985)

Sec. 29.45.190. Appeal. (a) A person whose name appears on the assessment roll or the agent or assigns of that person may appeal to the board of equalization for relief from an alleged error in valuation not adjusted by the assessor to the taxpayer's satisfaction.

(b) The appellant shall, within 30 days after the date of mailing of notice of assessment, submit to the assessor a written appeal specifying grounds in the form that the board of equalization may require. Otherwise, the right of appeal ceases unless the board of equalization finds that the taxpayer was unable to comply.

(c) The assessor shall notify an appellant by mail of the time and place of hearing.

(d) The assessor shall prepare for use by the board of equalization a summary of assessment data relating to each assessment that is appealed.

(e) A city in a borough may appeal an assessment to the borough board of equalization in the same manner as a taxpayer. Within five days after receipt of the appeal, the assessor shall notify the person whose property assessment is being appealed by the city. (§ 12 ch 74 SLA 1985)

Sec. 29.45.200. Board of equalization. (a) The governing body sits as a board of equalization for the purpose of hearing an appeal from a determination of the assessor, or it may delegate this authority to one or more boards appointed by it. An appointed board may be composed of not less than three persons, who may be members of the governing body, municipal residents, or a combination of members of the governing body and residents. The governing body shall by ordinance establish the qualifications for membership.

(b) The board of equalization is governed in its proceedings by rules adopted by ordinance that are consistent with general rules of administrative procedure. The board may alter an assessment of a lot only pursuant to an appeal filed as to the particular lot.

(c) The board shall provide by regulation for notices of hearings to interested persons and municipalities.

(d) If an appellant fails to appear at the hearing, the board may proceed with the hearing in the absence of the appellant.

(e) The appellant bears the burden of proof at the hearing.

(f) The only grounds for adjustment of assessed value is proof of unequal, excessive or improper valuation or valuation not determined in accordance with the standards set out in this chapter, based on facts stated in a written appeal timely filed or proved at the hearing.

(g) The board shall certify its determinations to the department within seven days of the hearing.

(h) *[Repealed, § 5 ch 107 SLA 1976.]*

(i) An owner or municipality may appeal to the superior court for, and is entitled to, trial de novo of the board's action. (§ 1 ch 1 FSSLA 1973; am § 5 ch 107 SLA 1976)

Sec. 43.56.135. Certification. No later than June 1 of each year, the department shall certify the final assessment roll and mail to the owner of the taxable property or an authorized agent a statement of the amount of tax due. (§ 4 ch 107 SLA 1976)

Sec. 43.56.140. Supplementary assessment rolls. The department shall include property omitted from the assessment roll on a supplementary roll, using the procedures set out in this chapter for the original roll. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.150. Collection and deposit. (a) The tax levied by AS 43.56.010(a) is payable to the department on or before June 30 of the taxable year.

(b) The department may provide for voluntary prepayment and for payment by installments.

(c) The tax levied under AS 43.56.010(a), interest and penalties collected with respect to this levy shall be deposited in the general fund. (§ 1 ch 1 FSSLA 1973; am § 3 ch 107 SLA 1976)

Sec. 43.56.160. Interest and penalty. When the tax levied by AS 43.56.010(a) becomes delinquent, a penalty of 10 per cent shall be added. Interest on the delinquent taxes, exclusive of penalty, shall be assessed at a rate of eight per cent a year. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.170. Lien for tax. [Repealed, § 4 ch 94 SLA 1976. For current law, see AS 43.10.035.]

Sec. 43.56.180. Remedy. The remedy of distraint of property set out in AS 43.20.270 applies to the tax levied by AS 43.56.010(a). However, only property subject to the tax may be distrained. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.190. Penalties. [Repealed, § 46 ch 113 SLA 1980. For current law, see AS 43.05.290.]