

AGENDA ITEM SUMMARY

Agenda Item No: 7.f.

Date: November 24, 2009

To: Board of County Commissioners

From: Mark Lowderman - Assessor

Subject: Request to uphold the County Assessor's recommendation to deny the tax abatement petition by Property Tax Reduction Service, for Richard M. & Jeanne N. Libert, Schedule No. 63193-05-002, for 2007 and 2008 taxes in unknown amounts.

SUMMARY (including information on budgeted matters):

Please see Schedule No. 63193-05-002 for backup.

The memorandum from the Office of the County Attorney with respect to Abatement Petitions Scheduled for Board Action is as follows:

Numerous petitions have been filed seeking abatement of taxes as permitted by the Colorado Revised Statutes. Because of the large number of filings, the petitions were reviewed to determine the basis of the abatement request. Many petitions present legal questions and there is no dispute as to valuation. If the legal issue is resolved in taxpayer's favor, all petitions in a particular group would be entitled to abatement. The issues presented with analysis are as follows (please refer to the abatement hearing summary provided as backup for specific information):

1) Petitioner's calculation of the tax refund is incorrect.

While the Assessor has recommended approval of the petition, the Assessor verifies the amount of taxes on each property. When an error is discovered, the petitions are corrected before they are approved as amended. If the error is greater than \$25.00, the Petition is scheduled before the Board.

2) The Assessor recommends partial approval of petitions with adjusted values.

After review of petition, the Assessor has determined that the taxes should be partially abated or refunded. The taxpayer or agent has requested an adjustment, which has only been approved in part by the Assessor.

3) No evidence was submitted by the Petitioner.

The Petitioner has the burden of proof to establish that tax was illegal, twice valued, etc. The Petitioner has not presented any evidence to justify a change. Absent evidence, presented any evidence to justify a

change. Absent evidence, the presumption that the Assessor's value is correct controls.

4) The Petitioner did not supply evidence to justify a reduction of assessment.

While some evidence may have been provided, the Assessor believes such evidence does not justify a change in assessment. Burden is on taxpayer to present some credible evidence as to support a change in valuation.

5) Property valuation was protested for the year in which the abatement is sought.

Section 39-10-114(1)(A)(1)(D), C.R.S. prohibits an abatement when the value was protested to the Assessor.

6) Property upon which abatement sought was adjusted for the intervening tax year (even year) based upon unusual conditions of the property during the intervening years as required by §39-1-104, 11(b), C.R.S.

Reappraisal years are “odd-numbered” years. The Assessor is also authorized and required by statute to analyze and revalue properties as they stand on January 1 of the intervening year. In certain cases market data indicates an adjustment – or, new value for the intervening year. This value is separate and distinct from the valuation arrived at for the reappraisal year. Any unusual conditions are specifically listed in the statute. If not listed within one of the statutory conditions, the Assessor can’t change the value. It is improper to change the property value for a reappraisal year based on an intervening year adjustment, unless the unusual condition also existed on January 1 of the reappraisal year.

7) Present worth discount changes from year to year.

In valuing land, the General Assembly by statute, requires the Assessor to apply present worth discounting procedures. The procedures result in changes in values on a yearly basis and as a result an adjustment to value in one year of the valuation cycle will not result in the automatic abatement of taxes or adjustment in value based upon the previous adjustment.

8) The petition for abatement was not timely filed as required by law.

Section 39-10-114(1)(a)(1)(A), C.R.S. provides that "in no case shall an abatement or refund be granted unless a petition for abatement or refund is filed within two years after January 1 of the year following the year in which the taxes were levied."

9) Abatement petition for year in question was previously processed.

Taxpayers are not permitted to file multiple abatement petitions on the same property for the same year. The Assessor's records indicate that a petition was filed on this property for the same year.

Remember, in all cases the Petitioner is entitled to pursue appellate remedies if they so desire.

Taxpayers or their agents are entitled to appeal any abatement or refund denial to the Board of Assessment Appeals.

10) Abatement of personal property taxes, which were assessed on the basis of the Best Information Available, would be contrary to law.

Property owners are required by law on taxable personal property to submit schedules to the Assessor on an annual basis. Taxpayers who fail to comply with these provisions can be assessed on the best information available. The Colorado Supreme Court held in the case of U.S. Geophysics v. BAA, decided September 27, 1993, that taxpayers who fail to follow the statutes are not entitled to an abatement.

11) Petitioner lacks standing to apply for an abatement.

To be eligible to apply for an abatement of taxes, the Petitioner must have been the owner of record, the taxpayer or holder of a determined equitable interest. Tax lien certificate holders are not entitled to abatement of taxes.

BACKGROUND (including information on budgeted matters):

1. SCOPE: To provide taxpayers and county staff with rules and procedures for the handling of petitions for abatement pending before the Board of County Commissioners of El Paso County, Colorado, pursuant to §§39-1-113; 39-10-114, C.R.S.

2. ABATEMENT PROCEDURES:

A) PETITION: The taxpayer or his authorized agent (“Petitioner”) shall file a petition requesting abatement or refund of taxes on forms provided by the El Paso County Assessor.

The petition shall be completed by the Petitioner and include the following:

- 1) Name and mailing address of taxpayer.
- 2) Name and mailing address of agent (if applicable).
- 3) Schedule number and description of property as listed on the tax roll.
- 4) The year or years taxes sought to be abated or refunded.
- 5) A complete description of the circumstances surrounding the incorrect value or tax.
- 6) The taxes, whether or not paid, and the amount of requested abatement or refund.

B) FILING: The petition shall be filed with the El Paso County Assessor’s Office by mail to P.O. Box 2007, Colorado Springs, Colorado, 80901-2007, or in person at 27 E. Vermijo Avenue, 2nd Floor, Colorado Springs, Colorado 80903.

C) REVIEW AND DETERMINATION: Upon filing, the County Assessor shall review each petition filed for accuracy and sufficiency including the schedule number, legal description and amount of taxes, and make his initial determination or recommendation on granting or denying the request.

The Assessor shall forward the petitions after his review to the Clerk to the Board of County Commissioners for scheduling of petitions with the Board of County Commissioners.

D) HEARINGS:

1) Scheduling - The Clerk to the Board shall schedule all petitions recommended for approval by the Assessor for hearing on a consolidated basis. On any petition denied in whole or in part by the County Assessor, the Clerk to the Board shall schedule the petition for hearing before the Board. The Clerk will advise the parties in writing of the scheduled hearing date along with a copy of these rules and procedures.

2) Rescheduling - Hearings as a general rule will not be rescheduled. Parties may request rescheduling of a hearing in writing to the Clerk to the Board, P.O. Box 2007, Colorado Springs, Colorado 80901-2007. Rescheduling will only be considered by the Clerk in cases of extreme hardship, emergency or where justice so requires. Parties will be advised of any hearing which is rescheduled.

3) Discovery – The Petitioner and the Assessor shall exchange all documentation (supply exhibits and list of witnesses) at least ten (10) days prior to the hearing. In addition, two (2) copies of the documentation shall be filed with the Clerk to the Board, P.O. Box 2007, Colorado Springs, Colorado 80901-2007. Exhibits should be marked as follows:

RE: Abatement _____
Name Date Scheduled Schedule No.

The Board will not accept information submitted inside the ten (10) days prior to hearing except as determined by the Board.

4) Presentation/Length of Hearing – The Petitioner shall have the burden of proof. The Petitioner will present evidence and/or exhibits first. The Assessor will then offer evidence in response. The Chair/Vice Chair of the Board shall preside at the hearing. Hearings shall be informal and strict rules of evidence shall not apply except as deemed necessary by the Board in the interest of justice. Each party shall be allowed to make a brief statement in support of the written documentation. Requests for additional time will be considered and acted upon within the discretion of the Board.

5) Parties Attendance – The Petitioner and Assessor shall be entitled to attend personally or with counsel and participate in the proceedings. The Petitioner may submit written information in lieu of appearing before the Board.

E) DECISION OF THE BOARD: The Board shall render its decision on all pending abatement petitions pursuant to §39-1-113(2), C.R.S. When the requested abatement or refund is less than one thousand dollars (\$1,000.00) in any given year, the Board’s decision is not subject to review by the Property Tax Administrator pursuant to §39-1-113(3), C.R.S. When the abatement or refund request exceeds one thousand dollars (\$1,000.00) in any given year and said abatement is recommended by the

Board, the decision of the Board is subject to review by the Property Tax Administrator pursuant to §39-2-116, C.R.S.

Abatement petitions for \$1,000.00 or less per year will not be scheduled for hearing with the Board in cases where the Assessor approves the abatement.

Petitions which request abatement for state assessed property are placed on the Consent Calendar of the Board then forwarded by the Board of County Commissioners without a recommendation to the Division of Property Taxation, State of Colorado.

If any petition is denied in whole or in part, the Petitioner will be advised in writing of the Board's decision and said Petitioner will be advised of their right to appeal.

F) APPEAL: Any Petitioner whose request has been denied in whole or in part may appeal the Board's decision to the Board of Assessment Appeals pursuant to §39-2-125(1)(f), C.R.S.

G) AMENDMENTS: These rules and procedures shall remain in effect until revoked by action of the Board. These rules and procedures may be amended by the Board of County Commissioners when deemed necessary by the Board.

FINANCIAL IMPLICATIONS (completed only if not currently budgeted, and is an emergency, mandated or grant/unanticipated revenue funding request before the Board for consideration):

Revenue/Funding Sources:	<u>NA</u>
Revenue/Funding Amount:	<u>NA</u>
Subject to TABOR?	NA
Increase to Original Adopted Budget:	NA
Net Cost to El Paso County:	NA
Total Project Cost:	NA

