

**BEFORE THE STATE BOARD OF EQUALIZATION**

**FOR THE STATE OF WYOMING**

IN THE MATTER OF THE APPEAL OF	)	
<b>THE FOUNDATION FOR THE EPISCOPAL</b>	)	
<b>DIOCESE OF WYOMING, AS TRUSTEE</b>	)	Docket No. <b>2009-115</b>
FROM A DECISION OF THE PARK COUNTY	)	
BOARD OF EQUALIZATION - 2009	)	
PROPERTY VALUATION	)	

---

**DECISION AND ORDER**

---

**APPEARANCES**

John E. Masters, Executive Director, and attorney, appeared on behalf of The Foundation for the Episcopal Diocese of Wyoming, Trustee, under the “Episcopal Diocese Charitable Trust Declaration No. 1” dated December 11, 2008 (Taxpayer Foundation).

James F. Davis, Deputy Park County Attorney, for Doug Brandt, Park County Assessor (Assessor).

**DIGEST**

This is an appeal from a decision of the Park County Board of Equalization (County Board) affirming the Assessor’s valuation of the Taxpayer Foundation property for 2009 tax purposes. The Notice of Appeal by Taxpayer Foundation was filed with the State Board of Equalization (State Board) effective August 24, 2009. The Assessor and Taxpayer Foundation filed briefs as allowed by the October 27, 2009, State Board Briefing Order. Neither party requested oral argument.

The State Board, comprised of Thomas D. Roberts, Chairman, Steven D. Olmstead, Vice-Chairman, and Deborah J. Smith, Board Member, considered the Notice of Appeal, Petitioner’s Brief, the Brief of Respondent Park County Assessor, Petitioner’s Reply Brief, the County Board Record, as well as the decision of the County Board.

We evaluate the appeal of the County Board decision by Taxpayer Foundation against our standard of review, which is whether the decision was arbitrary, capricious, an abuse of

discretion, unsupported by substantial evidence, and/or contrary to law. *Rules, Wyoming State Board of Equalization, Chapter 3 § 9.*

Taxpayer Foundation, in order to prevail, must establish the County Board decision is not supported by substantial evidence, and/or the County Board acted unlawfully, arbitrarily, and capriciously, or abused its discretion in affirming the Assessor's value for 2009 tax purposes.

We reverse the decision of the County Board.

### ISSUES

Taxpayer Foundation argues the County Board determination is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law, or unsupported by substantial evidence for the following reasons:

I. The term "charitable trust" as used in Wyo. Stat. § 39-11-105(a)(xix) is a defined term.

\* \* \*

A. The legislative history provides a definition for charitable trusts.

\* \* \*

B. The Wyoming Legislature has created an overarching theme as to the definition of a charitable trust within the Wyoming Statutes.

\* \* \*

II. Wyoming Statutes § 39-11-105(a)(xxvi) has been misinterpreted to have the same definition as Wyoming Statute § 39-11-105(a)(xix).

III. The [County] Board's counter arguments have little to no merit in this case.

[*Petitioner's Brief*, pp. 11, 15, 16, 20].

The Assessor identifies the issue as: "Whether the Park County Board of Equalization properly determined that the Park County Assessor could examine the use to which the subject property was put in denying Petitioner's request for exemption."

[*Brief of Respondent Park County Assessor*, p. 1].

## **PROCEEDINGS BEFORE THE COUNTY BOARD**

The County Board conducted a hearing on July 24, 2009. The County Board entered its Final Decision on July 28, 2009, affirming the Assessor's 2009 fair market value for the Taxpayer Foundation property. The decision was mailed to Taxpayer Foundation on July 28, 2009. [County Board Record, pp. 143-158].

## **JURISDICTION**

The State Board is required to "hear appeals from county boards of equalization." *Wyo. Stat. Ann. § 39-11-102.1(c)*. Taxpayer filed a timely appeal of the County Board decision with the State Board effective August 24, 2009. *Rules, Wyoming State Board of Equalization, Chapter 3 § 2*.

## **STANDARD OF REVIEW**

When the State Board hears appeals from a County Board, it acts as an intermediate level of appellate review. *Laramie County Board of Equalization v. Wyoming State Board of Equalization*, 915 P.2d 1184, 1188 (Wyo. 1996); *Union Pacific Railroad Company v. Wyoming State Board of Equalization*, 802 P.2d 856, 859 (Wyo. 1990). In its appellate capacity, the State Board treats the County Board as the finder of fact. *Id.* In contrast, the State Board acts as the finder of fact when it hears contested cases on appeal from final decisions of the Department of Revenue (Department). *Wyo. Stat. Ann. § 39-11-102.1(c)*. This sharp distinction in roles is reflected in the State Board Rules governing the two different types of proceedings. *Compare Rules, Wyoming State Board of Equalization, Chapter 2 with Rules, Wyoming State Board of Equalization, Chapter 3*. Statutory language first adopted in 1995, when the State Board and the Department were reorganized into separate entities, does not express the distinction between the State Board's appellate and *de novo* capacities with the same clarity as our long-standing Rules. *1995 Wyo. Sess. Laws, Chapter 209 § 1; Wyo. Stat. Ann. § 39-1-304(a)*, (currently *Wyo. Stat. Ann. § 39-11-102.1(c)*).

The State Board standards for review of a County Board decision are, by Rule, nearly identical to the Wyoming Administrative Procedure Act standards which a district court must apply to hold unlawful and set aside agency action, findings of fact, and conclusions of law. *Wyo. Stat. Ann. § 16-3-114(c)(ii)*. However, unlike a district court, the State Board will not rule on claims a County Board has acted "[c]ontrary to constitutional right, power, privilege

or immunity.” *Wyo. Stat. Ann. § 16-3-114(c)(ii)(B)*. The State Board’s review is limited to a determination of whether the County Board action is:

- (a) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;
- (b) In excess of statutory jurisdiction, authority or limitations or lacking statutory right;
- (c) Without observance of procedure required by law; or
- (d) Unsupported by substantial evidence.

*Rules, Wyoming State Board of Equalization, Chapter 3 § 9.*

Since the State Board Rules are patterned on the judicial review provision of the Wyoming Administrative Procedure Act, we look to precedent under *Wyo. Stat. Ann. § 16-3-114(c)* for guidance. For example, we must apply this substantial evidence standard:

When [a person] challenges a [county board]'s findings of fact and both parties submitted evidence at the contested case hearing, we examine the entire record to determine if the [county board]'s findings are supported by substantial evidence. *Colorado Interstate Gas Co. v. Wyoming Department of Revenue*, 2001 WY 34, ¶ 8, 20 P.3d 528, 530 (Wyo.2001); *RT Commc'ns, Inc. v. State Bd. of Equalization*, 11 P.3d 915, 920 (Wyo.2000). If the [county board]'s findings of fact are supported by substantial evidence, we will not substitute our judgment for that of the [county board] and will uphold the factual findings on appeal. “Substantial evidence is more than a scintilla of evidence; it is evidence that a reasonable mind might accept in support of the conclusions of the agency.” *Id.*

*Chevron U.S.A., Inc. v. Department of Revenue*, 2007 WY 79, ¶ 9, 158 P.3d 131, 134 (Wyo. 2007).

We review the findings of ultimate fact of a county board of equalization *de novo*:

“When an agency’s determinations contain elements of law and fact, we do not treat them with the deference we reserve for findings of basic fact. When reviewing an ‘ultimate fact,’ we separate the factual and legal aspects of the

finding to determine whether the correct rule of law has been properly applied to the facts. We do not defer to the agency's ultimate factual finding if there is an error in either stating or applying the law." *Basin Elec. Power Co-op., Inc. v. Dep't of Revenue, State of Wyo.*, 970 P.2d 841, 850-51 (Wyo. 1998)(citations omitted).

*Britt v. Fremont County Assessor*, 2006 WY 10, ¶ 17, 126 P.3d 117, 123 (Wyo. 2006).

We must also apply this "arbitrary and capricious" standard:

Even if sufficient evidence is found to support the agency's decision under the substantial evidence test, this [Board] is also required to apply the arbitrary-and-capricious standard as a "safety net" to catch other agency action which might have violated the Wyoming Administrative Procedures Act. *Decker v. Wyoming Medical Comm'n*, 2005 WY 160, ¶ 24, 124 P.3d 686, 694 (Wyo. 2005). "Under the umbrella of arbitrary and capricious actions would fall potential mistakes such as inconsistent or incomplete findings of fact or any violation of due process." *Id.* (quoting *Padilla v. State ex rel. Wyoming Workers' Safety and Comp. Div.*, 2004 WY 10, ¶ 6, 84 P.3d 960, 962 (Wyo. 2004)).

*State ex rel. Wyoming Workers' Safety and Comp. Div. v. Madeley*, 2006 WY 63, ¶ 8, 134 P.3d 281, 284 (Wyo. 2006).

## **FACTS PRESENTED TO THE COUNTY BOARD**

1. The Right Reverend Bruce Caldwell, Bishop of the Episcopal Diocese of Wyoming, testified on behalf of Taxpayer Foundation. Bishop Caldwell was president of Taxpayer Foundation, and was on the Board of Directors of Thomas the Apostle Center (Center). [County Board Record, Transcript, pp. 9, 10]
2. Taxpayer Foundation is a Wyoming non-profit corporation. It is exempt from federal income taxation pursuant to I. R. C. § 501(c)(3). It is also exempt from payment of Wyoming sales and use tax. [County Board Record, Vol. I, pp. 28-34 (Exhibit A); pp. 35-51 (Exhibit B); pp. 52-54 (Exhibit C); p. 55 (Exhibit D); p. 76 (Exhibit N); Transcript, pp. 11-14, 22].

3. Taxpayer Foundation transferred the property at issue, which it had received as a gift from Rev. Daphne Grimes, to itself as Trustee under the Episcopal Diocese Charitable Trust Declaration No. 1 dated December 11, 2008 (Episcopal Trust). [County Board Record, Vol. I, p. 60 (Exhibit K); pp. 61-64 (Exhibit M); pp. 69-74 (Exhibit I); Transcript, pp. 15-17, 20-21, 27-29, 32].
4. Taxpayer Foundation, as trustee of the Episcopal Trust, thus owned three separate parcels consisting of agricultural land as well as residential land and improvements at 34, 36, 38 Thomas The Apostle Road, Park County, Wyoming. [County Board Record, Vol. I, pp. 61, 69-74, 116, 117, 118].
5. The Assessor set the 2009 fair market value for the Taxpayer Foundation property at \$882,215. [County Board Record, Vol. I, pp. 116, 117, 118 (Exhibit 6); Transcript, p. 85].
6. Taxpayer Foundation properly filed a Statement to Contest Property Tax Assessment (2009) on April 30, 2009, asserting its property was exempt from assessment and taxation either as property used for religious worship and church school pursuant to Wyo. Stat. Ann. § 39-11-105(a)(vii), or as property of a charitable trust pursuant to Wyo. Stat. Ann. § 39-11-105(a)(xix). [County Board Record, Vol. I, pp. 1-3, 122-124 (Exhibit 9)].
7. Taxpayer Foundation leases the property at issue to the Center. [County Board Record, Vol. I, pp. 56-59 (Exhibit G); Transcript, pp. 14, 15, 17].
8. The operations of the Center are the subject of a Revised Memorandum of Understanding between Taxpayer Foundation, the Center, and Rev. Daphne B. Grimes, dated February 4, 2008. The Memorandum provided the Center will act primarily as an ecumenical Christian spiritual center for personal, private or directed retreats for small groups. The financial management of the Center, which included setting the room rates and hiring the co-directors, was handled by its Board of Directors. [County Board Record, Vol. I, pp. 65-68 (Exhibit H); Transcript, pp. 17-20, 33-34].
9. The only assets owned by Taxpayer Foundation were the land and improvements at the Center. [County Board Record, Vol. I, p. 75 (Exhibit L); Transcript, pp. 21-22, 34-35].
10. Bishop Caldwell testified there were no opportunities for individuals to receive a financial benefit from either Taxpayer Foundation, the Episcopal Trust, or the Center. The only payments made by the Center to individuals were to the co-directors of the Center, and small honorariums to Center guest speakers. Bishop Caldwell expressed his opinion the work of the Center had been dedicated to charitable and religious purposes since it was

formed in 1988. The Episcopal Diocese has used the Center for staff retreats. [County Board Record, Transcript, pp. 22-26, 31-32].

11. Bishop Caldwell indicated the Center had never made a profit. It had, in fact, been subsidized by the Episcopal Diocese and Taxpayer Foundation, and also relied on donations from individuals. [County Board Record, Transcript, pp. 26-27].

12. Tom Keegan testified on behalf of Taxpayer Foundation. He was a licensed attorney in Cody, and acted as *pro bono* legal counsel for the Center. [County Board Record, Transcript, p. 36].

13. Mr. Keegan testified the Center is a Wyoming non-profit corporation, and is exempt from federal income tax pursuant to I. R. C. § 501(c)(3). [County Board Record, Vol. I, pp. 77-81 (Exhibit T); pp. 82-84 (Exhibit U); pp. 85-88 (Exhibit V); p. 89 (Exhibit W); Transcript, pp. 36-40].

14. Mr. Keegan stated he had been associated with the Center since 2006, first as a Board member, then as legal counsel. He was not aware of any private individuals receiving monetary benefits from the Center other than salaries to the staff, and an occasional honorarium. Rev. Grimes and the Taxpayer Foundation both contributed money to the Center. [County Board Record, Transcript, pp. 40, 41, 42, 45].

15. Mr. Keegan noted Taxpayer Foundation made an annual contribution to the Center because the Center was not self-supporting. He offered his opinion that if Taxpayer Foundation did not support the Center, it would not continue to exist. [County Board Record, Transcript, pp. 43, 44, 45, 46].

16. Mr. Keegan indicated that should the Center cease to operate, Article No. 7 of its Articles of Incorporation required the assets of the Center be transferred to another entity exempt under I. R. C. § 501(c)(3). [County Board Record, Vol. I, pp. 78-79 (Exhibit T); Transcript, pp. 41-42].

17. Jay Moody testified on behalf of Taxpayer Foundation. Mr. Moody, and his wife, Connie, were co-directors of the Center. [County Board Record, Transcript, pp. 48-49].

18. Mr. Moody indicated 50 percent of the income for the Center was in the form of grants from the Episcopal Diocese as well as Christ Episcopal Church. The Center also received 20 percent of its income from individual donations; 8 percent from programming revenues; 24 percent from private retreat revenues; and 1 percent from grazing fees and

interest earned on investment accounts. [County Board Record, Transcript, pp. 49-52, 76-77, 80-81].

19. Mr. Moody stated the rates and rentals for the retreat space at the Center were set at a minimum to cover actual costs of presenting a room, thus keeping the rates at a reasonable level which non-profit organizations and churches could afford. The rooms and guest houses, with one exception, had shared bathrooms, and two to three twin beds in each room. There were no telephones, no televisions, and no amenities such as a pool or hot tub. There was a chapel for everyone's use as well as a library with 1500 volumes of religious literature. [County Board Record, p. 108 (Exhibit 2); Transcript, pp. 52-55, 59-60].

20. Mr. Moody stated he had been associated with the Center since its formation, and its operations had not ever made a profit. [County Board Record, Transcript, p. 55].

21. The Center maintained a website which included a calendar of events. The calendar identified retreats and programs. Not all of the retreats and family reunions necessarily must have had a religious purpose in order to use the Center facilities. [County Board Record, Vol. I, p. 56 (Exhibit G); Transcript, pp. 56-59, 64, 75-76].

22. The Center was a member of the Cody Chamber of Commerce. Mr. Moody stated it was the belief of the Center Board, of which he was a member, that they wanted the Center to be a part of the Cody community, and being a member of the Chamber of Commerce was an important part of that effort. The Center was listed as a non-business organization. [County Board Record, Vol. I, pp. 112-113 (Exhibit 4); Transcript, pp. 65-66, 70, 73-74].

23. All land and buildings utilized by the Center were leased from Taxpayer Foundation. The Center, as allowed by the lease, subleased, for grazing, a portion of the property to a neighboring ranch. It received a lease payment of \$800 per year. [County Board Record, Vol. I, pp. 114-115 (Exhibit 5); Transcript, pp. 67-70, 81-82].

24. Doug Brandt has been the Park County Assessor since 1990. He was first deputy from 1979 until his election as assessor in 1990. He was certified as a Wyoming tax appraiser and had been a member of the International Association of Assessing Officers since 1981. [County Board Record, Transcript, pp. 83-84].

25. Mr. Brandt stated he was familiar with the Department Rules, Chapter 14, regarding exemptions. He viewed those Rules as guidance since, as noted therein, not all exemptions could be addressed by a rule. [County Board Record, Vol. I, pp. 131-136 (Exhibit 10); Transcript, pp. 84, 102].



26. Mr. Brandt stated that of the 170 acres under appeal, 167 were classified as agricultural land. The remaining three acres and improvements thereon were assessed at fair market value. [County Board Record, Vol. I, pp. 116-118 (Exhibit 6); Transcript, pp. 87-89].
27. Mr. Brandt, by letter dated January 28, 2009, denied the request by Taxpayer Foundation for exemption of all Center property either as church property or property of a charitable trust. Taxpayer Foundation, during County Board hearing, chose to rely solely on their request for exemption as property of a charitable trust pursuant to Wyo. Stat. Ann § 39-11-105(a)(xix). [County Board Record, Vol. I, pp. 120-121 (Exhibit 8); Transcript, pp. 89-95, 98-100].
28. Mr. Brandt physically reviewed the Center property with Mr. Moody the week prior to the County Board hearing. [County Board Record, Transcript, pp. 97, 100].
29. Mr. Brandt expressed his opinion the property at issue was not owned by the charitable trust, but rather still owned by Taxpayer Foundation itself rather than as a trustee, although he had not received a legal opinion on the question. He also questioned whether Taxpayer Foundation was a charitable foundation, arguing it did not confer any benefit on the public or relieve the tax burden on the citizenry. He further asserted the Center property was being used for commercial purposes to gain a monetary profit. Mr. Brandt basically asserted the request for exemption required consideration of both ownership and use, and based on his research and analysis, the property was being used for pecuniary gain, and therefore did not qualify for exemption. [County Board Record, Transcript, pp. 104-119, 135-136].
30. Mr. Brandt acknowledged not all exemptions which appear in Wyo. Stat. Ann. § 39-11-105 include the requirement of “use” to be exempt, including Wyo. Stat. Ann § 39-11-105(a)(xix) which simply states : “Property of charitable trusts.” Mr. Brandt asserted he was required to consider use of the property for all exemption requests based on his reading of the Department Rules, and his opinion the Department was required to instruct assessors on the “intended use of the statutes.” [County Board Record, Vol. I, pp. 90-94 (Exhibit Q); pp. 131-136 (Exhibit 10); Transcript, pp. 119-121,123].
31. Mr. Brandt, in his consideration of the exemption request for the Center property, also relied on the definition of “charitable” in Chapter 14 § 12 of the Department Rules which addressed exemptions for property used by a secret, benevolent, and charitable society or association. *Wyo. Stat. Ann. § 39-11-105(a)(xxvi)*. [County Board Record, Vol. I, pp. 90-94 (Exhibit Q); pp. 131-136 (Exhibit 10); Transcript, pp. 122-124].

32. Mr. Brandt stated the request for exemption by Taxpayer Foundation was the first he had for a charitable trust, thus the request was somewhat unique. He also acknowledged there was no Department Rule which specifically addressed the charitable trust property exemption. Mr. Brandt stated his opinion the definition of a charitable trust under the Uniform Trust Code, as adopted in the Wyoming statutes, did not affect questions with regard to property taxation. [County Board Record, Vol. I, pp. 95-100 (Exhibit P); Transcript, pp.124-127, 130-131].

33. Mr. Brandt agreed an exemption under the Internal Revenue Code or an exemption from sales and use tax, as noted by the Department Rules, created a rebuttable presumption an institution's operations were not for profit. [County Board Record, Vol. I, p. 136 (Exhibit 10); Transcript, pp. 127-128].

34. Mr. Brandt stated his opinion the Wyoming Legislature created an exemption for the property of charitable trusts based on his belief such trusts were intended to fund "other charitable institutions" set up by the state such as poor farms, universities, and agricultural schools. [County Board Record, Transcript, pp. 139-140].

35. Mr. Brandt was further of the opinion that simply because property was owned by a charitable trust did not require such property be exempt from taxation. He asserted if such an exemption was allowed, it would be an incentive for the creation of a charitable trust to evade property tax. [County Board Record, Transcript, pp. 118-119, 141-142].

36. The County Board issued its decision on July 28, 2009, denying the request by Taxpayer Foundation for exemption, and affirming the Assessor's 2009 fair market value for the Center property. The County Board, in its decision, concluded the Center property owned by Taxpayer Foundation was being used for commercial purposes, and thus did not qualify for exemption. [County Board Record, Vol. I, pp. 143-158].

## **DISCUSSION OF ISSUES AND APPLICABLE LAW**

37. The State Board is authorized to "hear appeals from county boards of equalization." *Wyo. Stat. Ann. § 39-11-102.1(c)*. Taxpayer Foundation filed a timely appeal of the County Board decision with the State Board effective August 24, 2009. *Rules, Wyoming State Board of Equalization, Chapter 3 § 2*.

### **General Principles**

38. An assessor's duty to exempt property from ad valorem taxation rests on the state constitution, state statute, and rules promulgated by the Department. The Wyoming Constitution, article 15 § 12 provides:

Exemptions from taxation.

The property of the United States, the state, counties, cities, towns, school districts and municipal corporations, when used primarily for a governmental purpose, and public libraries, lots with the buildings thereon used exclusively for religious worship, church parsonages, church schools and public cemeteries, shall be exempt from taxation, and such other property as the legislature may by general law provide.

39. The Wyoming Legislature, by 2009, had exempted thirty-seven types of tangible property from property taxation:

(a) The following property is exempt from property taxation:

(I) Property owned by the United States the majority of which is used primarily for a governmental purpose. The following property is not owned and used primarily for a governmental purpose:

(A) Improvements placed on federal lands by persons for private or commercial use;

(B) Improvements furnished by the federal government to employees other than enlisted and officer personnel of the armed forces as a place of residence;

(C) Improvements and equipment rented, leased, loaned or furnished by the federal government to employees or groups of employees for the purpose of operating enterprises for which there is a service or admission charge;

(D) The equity or interest of the purchaser, his heirs, executors or assigns, in any real property being purchased from the United States government under a contract of sale, the value thereof to be determined by taking the market value of the real property and deducting the amount of principal and accrued interest owing to the United States on January 1 of the year for which the property is assessed;

- (E) Lands entered under any act of congress when final proof of ownership has been issued before February 1 whether or not patent for the lands has been issued.
- (ii) Property of the state of Wyoming owned and used primarily for a governmental purpose. The following property is not owned and used primarily for a governmental purpose:
  - (A) Improvements placed on state lands by lessees for private or commercial use;
  - (B) Improvements furnished by the state to employees as a place of residence;
  - (C) Improvements and equipment rented, leased, loaned or furnished by the state to employees or groups of employees for the purpose of operating enterprises for which there is a service or admission charge;
  - (D) The equity or interest of the purchaser, his heirs, executors or assigns, in any land being purchased from the state of Wyoming under a contract of sale, the value thereof to be determined by taking the market value of the lands and deducting the amount of principal and accrued interest owing to the state of Wyoming on January 1 of the year for which the property is assessed.
- (iii) Property owned and used by counties primarily for a governmental purpose;
- (iv) Property of a Wyoming school district owned and used primarily for a governmental purpose excluding teacherages;
- (v) Property of Wyoming cities and towns owned and used primarily for a governmental purpose including:
  - (A) Streets and alleys and property used for the construction, reconstruction, maintenance and repair of streets and alleys;
  - (B) Property used to furnish sewer and water services;
  - (C) City or town halls, police stations and equipment, traffic control equipment, garbage collection and disposal equipment and lands and buildings used to service and repair the halls, stations or equipment;
  - (D) Parks, airports, auditoriums, cemeteries, golf courses, playgrounds and recreational facilities. Any charges for the use of the facilities shall not exceed the cost of operation and maintenance to qualify for the exemption;

- (E) Personal property used exclusively for the care, preservation and administration of city or town property;
- (F) Parking lots operated on a nonprofit basis.
- (vi) Property of a public library used for library purposes;
- (vii) Real property used exclusively for religious worship, church schools and church parsonages;
- (viii) Property of a cemetery used for cemetery purposes;
- (ix) Property of:
  - (A) A nonprofit organization, corporation, cooperative or association which is exclusively a water utility engaged in the production, gathering, transmission, distribution or sale of water for domestic use in Wyoming; and
  - (B) Any other organization, corporation, cooperative or association which is a water utility, if the property is used in the production, gathering, transmission, distribution or sale of water for domestic use in Wyoming.
- (x) Fire engines, stations, including land upon which located, and equipment used to extinguish fires;
- (xi) Personal property held for personal or family use excluding mobile homes required to be titled under W.S. 31-2-501 through 31-2-508;
- (xii) Inventories;
- (xiii) Vehicles subject to registration as defined by W.S. 31-4-101(a)(I) and 31-18-201(a) and registered as provided by law;
- (xiv) Vehicles owned by the United States, state of Wyoming, counties, cities, towns, school districts and municipal corporations when used primarily for a governmental purpose;
- (xv) Snowmobiles;
- (xvi) Property of a museum or hospital district;
- (xvii) In transit property;
- (xviii) Property owned by the Wyoming community development authority excluding assessments for local improvements;
- (xix) Property of charitable trusts;
- (xx) Property used for pollution control to the extent provided by W.S. 35-11-1103;
- (xxi) Property owned by the Black Hills Joint Power Commission;
- (xxii) Property owned by a water and sewer district;
- (xxiii) Property of a water conservancy district;
- (xxiv) The property of veterans to the extent provided by W.S. 39-13-105;

- (xxv) Property used for schools, orphan asylums or hospitals to the extent they are not used for private profit;
- (xxvi) Property used by a secret, benevolent and charitable society or association, including any fraternal organization officially recognized by the University of Wyoming or any community college, and senior citizens centers to the extent it is not used for private profit nor primarily for commercial purposes by the society, association or center, or lessee thereof;
- (xxvii) Property owned by a nonprofit society, foundation or association and used primarily as a community area center in which presentations in music, the arts and related fields are made in order to foster public interest and education therein, to the extent and in the proportion that receipts and revenues attributable to the above specified presentations bear to total receipts and revenues from the use and operation of the center including rentals and revenues received for the commercial use of the center not attributable to the above specified presentations;
- (xxviii) Lands for mines or mining claims as prescribed by section 3, article 15, Wyoming constitution and defined by W.S. 39-11-102(c)(viii);
- (xxix) Intangible personal property as provided by subsection (b) of this section, and except as specified in W.S. 39-13-103(b)(xi);
- (xxx) Other property as provided by law;
- (xxxi) All livestock including livestock in feed lots being fed for slaughter. This exemption applies only to ad valorem taxation. Any other special tax which is levied on livestock for a particular purpose based on the assessment value established by the department of revenue is not affected by this exemption;
- (xxxii) Any improvement to residential property making entrance to or common facilities within the property accessible to a handicapped person;
- (xxxiii) Real and personal property owned by an irrigation district created under W.S. 41-7-201 through 41-7-210 or a weed and pest control district created under W.S. 11-5-101 et seq. which is essential to the operation and maintenance of the district and which is used for no business or commercial activity unrelated to the operation and maintenance of the district;
- (xxxiv) Mobile machinery registered under W.S. 31-18-203 through 31-18-208;
- (xxxv) Property owned and used by a nonprofit corporation serving persons with disabilities, mental illnesses or substance abuse problems, or operating a family violence project to the extent it is not used for private profit nor primarily for commercial purposes;

(xxxvi) Real property owned by the Wyoming game and fish commission. Nothing in this exemption affects the special tax levied under W.S. 39-13-103(b)(xii);

(xxxvii) Property owned by a conservation district formed pursuant to the Wyoming Conservation Districts Law, W.S. 11-16-101 through 11-16-134.

*Wyo. Stat. Ann. § 39-11-105(a)*<sup>1</sup>.

40. The following exemption is at the center of this controversy:

(a) The following property is exempt from property taxation:

\* \* \*

(xix) Property of charitable trusts;

*Wyo. Stat. Ann. § 39-11-105(a)(xix)*.

41. The Wyoming Legislature has also defined “charitable trust”:

“Charitable trust” means a trust, or portion of a trust, created for a charitable purpose described in W.S. 4-10-406(a);

*Wyo. Stat. Ann. § 4-10-103(a)(iii)*.

A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.

*Wyo. Stat. Ann. § 4-10-406(a)*.

42. The Wyoming Legislature further specified the manner in which trust property shall be titled:

(a) Property transferred to a trust shall be titled:

---

<sup>1</sup> The 2010 Wyoming Legislature added Wyo. Stat. Ann. § 39-11-105(a)(xxxviii) exempting certain improvements to property owned by a community economic development corporation. The exemption is effective January 1, 2011.

(I) If it is real property, in accordance with W.S. 34-2-122;

*Wyo. Stat. Ann. § 4-10-402(a)(I).*

**In all instruments conveying real estate, or interests therein, in which the grantee is described as trustee, agent, or as in any other representative capacity, the instruments of conveyance shall also define the trust or other agreement under which the grantee is acting.** In all instruments conveying real estate, or interests therein, in which the grantee is described as a trust, the instrument of conveyance shall also define the trust or other instrument and shall be deemed to have vested title in the trustee or trustees of the trust. **For purposes of this section, it shall be sufficient to define a trust by providing in the text of the instrument the name of the trustee or trustees and the name of the trust, the date of the trust or other agreement,** or by referring by proper description of the affecting record book, page, document number or file, to the instrument, order, decree or other writing, which is of public record in the county in which the land so conveyed is located and in which the required information appears; otherwise the description of a grantee in any representative capacity in each instrument of conveyance shall be considered and held to be a description of the grantee, only, and shall not be notice of any trust, agency or other representative capacity of the grantee who shall be held as vested with the power to convey, transfer, encumber or release the affected title. Whenever the grantee shall execute and deliver a conveyance, transfer, encumbrance or release of the property in a representative capacity, it shall not thereafter be questioned by anyone claiming as a beneficiary under the trust or agency or by anyone claiming by, through or under any undisclosed beneficiary. Trust property in the name of the trustee, agent or representative and owned only in that capacity shall not be subject to execution for the grantee's individual obligations.

*Wyo. Stat. Ann. § 34-2-122 (Emphasis added).*

43. The Wyoming Supreme Court has previously summarized a number of useful precepts concerning statutory interpretation:

In interpreting statutes, our primary consideration is to determine the legislature's intent. All statutes must be construed in *pari materia* and, in ascertaining the meaning of a given law, all statutes relating to the same subject or having



the same general purpose must be considered and construed in harmony. Statutory construction is a question of law, so our standard of review is *de novo*. We endeavor to interpret statutes in accordance with the legislature's intent. We begin by making an inquiry respecting the ordinary and obvious meaning of the words employed according to their arrangement and connection. We construe the statute as a whole, giving effect to every word, clause, and sentence, and we construe all parts of the statute in *pari materia*. When a statute is sufficiently clear and unambiguous, we give effect to the plain and ordinary meaning of the words and do not resort to the rules of statutory construction. Moreover, we must not give a statute a meaning that will nullify its operation if it is susceptible of another interpretation.

Moreover, we will not enlarge, stretch, expand, or extend a statute to matters that do not fall within its express provisions.

Only if we determine the language of a statute is ambiguous will we proceed to the next step, which involves applying general principles of statutory construction to the language of the statute in order to construe any ambiguous language to accurately reflect the intent of the legislature. If this Court determines that the language of the statute is not ambiguous, there is no room for further construction. We will apply the language of the statute using its ordinary and obvious meaning.

*BP Am. Prod. Co. v. Dep't of Revenue*, 2005 WY 60, ¶ 15, 112 P.3d 596, 604 (Wyo.2005) (internal citations and quotations omitted). We must accept statutes as they are written; neither omitting words that are included, nor including words that are omitted. *Id.*; *Hede v. Gilstrap*, 2005 WY 24, ¶ 6, 107 P.3d 158, 163 (Wyo.2005); *Fontaine v. Bd. of County Comm'rs of Park County*, 4 P.3d 890, 895 (Wyo.2000); *In re Adoption of Voss*, 550 P.2d 481, 485 (Wyo.1976).

*Cheyenne Newspapers, Inc. v. Building Code Board of Appeals of the City of Cheyenne*, 2010 WY 2, ¶ 9, 222 P.3d 158, 162 (Wyo. 2010).

44. “The omission of words from a statute must be considered intentional on the part of the legislature.... Words may not be supplied in a statute where the statute is intelligible without the addition of the alleged omission.... Words may not be inserted in a statutory provision under the guise of interpretation.... The Supreme Court will not read into laws what is not there....” *Matter of Adoption of Voss*, 550 P.2d 481, 485 (Wyo. 1976) (citations omitted).

45. The Department is required to confer with, advise and give necessary instructions and directions to the county assessors as to their duties, and to promulgate rules and regulations necessary for the enforcement of all tax measures. *Wyo. Stat. Ann. § 39-11-102(c)(xvi) and (xix)*. A county assessor has a corresponding duty to “[f]aithfully and diligently follow and apply the... formulae of the department of revenue... for the appraisal and assessment of all taxable property.” *Wyo. Stat. Ann. § 18-3-204(a)(ix)*. The Department has enacted a chapter of rules entitled, “Property Tax Exemption Standards.” *Rules, Wyoming Department of Revenue, Chapter 14*. Administrative rules have the force and effect of law. *Wyo. Dep’t of Revenue v. Union Pacific Railroad Co.*, 2003 WY 54, ¶ 18, 67 P.3d 1176, 1184 (Wyo. 2003). However, “[a]n administrative rule or regulation which is not expressly or impliedly authorized by statute is without force and effect if it adds to, changes, modifies, or conflicts with an existing statute. Conversely, a rule or regulation which is expressly or impliedly authorized by the enabling statute will be given force and effect.” [citations omitted]. *Diamond B Services, Inc. v. Rhode*, 2005 WY 130, ¶ 60, 120 P.3d 1031, 1048 (Wyo. 2005).

46. The Department tax exemption rules “. . . provide a reference to accepted definitions, procedures and criteria for the exemption from assessment and taxation of real and personal property.” *Rules, Wyoming Department of Revenue, Chapter 14 § 1(a)*.

47. The Department Rules establish a presumption which applies to an assessor in evaluating an exemption claim:

#### Section 2. Considerations.

(a.) For county assessed property, county assessors are responsible for making the initial determination of exemption.

(I) For publicly owned property the assessor begins with the legal presumption the property is exempt.

(ii) For all other property, both real and personal, the exemption process begins with the legal presumption the property is assessable utilizing the established

principle that taxation is the rule, and exemptions are not presumed. Specific exemptions are provided by statute and constitution. In applying specific exemptions, the statutes and constitution shall be strictly construed. This does not mean, however, any possible doubt must be resolved to approve the exemption. Only if the doubt is well founded should the exemption be denied.

*Rules, Wyoming Department of Revenue, Chapter 14 § 2(a).* A presumption imposes upon the party against whom it is directed the burden of proving the nonexistence of the presumed fact is more probable than its existence. *Wyoming Rules of Evidence, Rule 303(a).*

48. The Department Rules further provide the considerations an assessor should use in evaluating an exemption claim:

(c.) Three considerations are typically involved in determining whether a property should be exempt:

- (I) Ownership of the property;
- (ii) Use of the property; and/or
- (iii) Type of property.

*Rules, Wyoming Department of Revenue, Chapter 14 § 2(c).*

49. The Department Rules also provide “[e]xcept for publicly-owned property, the burden is on the owner to prove the property meets exemption requirements. An affidavit or similar form is recommended to establish basic facts on ownership, use and type of property.” *Rules, Wyoming Department of Revenue, Chapter 14 § 3(a).*

50. The State Board has previously recognized:

The [Department] Rules describe considerations typically involved in determining whether a property should be exempt:

(c) Three considerations are typically involved in determining whether a property should be exempt:

- (I) Ownership of the property;
- (ii) Use of the property; and/or
- (iii) Type of property.

Rules, Wyoming Department of Revenue, Chapter 14, § 2 (c). We take this to be a summary of the character of the many exemptions, rather than a directive to an assessor. Exemptions are typically framed in terms of ownership, e.g., Wyo. Stat. Ann. § 39-11-105(a)(xviii), (xxi), (xxii), (xxxvi), (xxxvii); use of property, e.g., Wyo. Stat. Ann. § 39-11-105(a)(vii), (xx); type of property, e.g., Wyo. Stat. Ann. § 39-11-105(a)(x), (xii), (xv); or some combination of ownership, use, and type, e.g., Wyo. Stat. Ann. § 39-11-105(a)(iii), (iv), (v), (xiv), (xxvii), (xxxv).

*Cheyenne LEADS, Inc.*, Docket No. 2007-52, March 14, 2008, 2008 WL 755826, ¶ 74 (Wyo. St. Bd. Eq.).

51. The Department Rules also provide guidance, when discussing exemption of secret, benevolent and charitable societies and associations under Wyo. Stat. Ann. § 39-11-105(a)(xxvi), concerning commercial use and private profit:

(b.) To be exempt under this section, the institution shall fulfill the above definitions, and operate primarily for non-commercial purposes without any element of private profit.

(c.) In making a determination of use for private profit, one distinctive feature is whether the entity has capital stock and a provision for dividends or profits, or whether it derives funds mainly from public and private charity, holding them in trust to be expended only for charitable and benevolent purposes.

(I.) An institution may charge fees or engage in business, but no gain or value may be distributed to members or stockholders. The officers and members may have no pecuniary interest in the property from which they gain. Payments made to officers, employees, contractors and suppliers shall be reasonable and not an indirect means of conferring gain or profit to private persons.

(ii.) Revenue from fees paid by recipients of the charity or services shall be devoted only to the maintenance of the institution or its purposes.

(iii.) A grant of sales/use tax exempt status by the State as a qualified charitable organization, or the grant of income tax exempt status by the Internal Revenue Service as a “501(c)(3)” or similar organization, is not binding in making the determination of whether the property of the entity is

exempt from ad valorem taxation. Assessors may consider compliance with and operation under the tax exempt provisions of the Internal Revenue Service Code or an exemption from sale and use tax as a rebuttable presumption the institution's operations are reasonable and not for profit.

(iv.) The matter of private profit concerns the way property is used, not solely the ownership thereof. The entire use of the property by all concerned shall be considered.

*Rules, Wyoming Department of Revenue, Chapter 14 §§ 12 (b.); 12(c).*

### **The Presumption in Favor of an Assessor's Value**

52. The determination of fair market value inevitably involves a degree of discretion:

Early on, Justice Blume recognized a truth inherent in the area of property valuation: "There is no such thing as absolute value. A stone cannot be other than a stone, but one man may give a different valuation to a piece of land than another." *Bunten v. Rock Springs Grazing Ass'n*, 29 Wyo. 461, 475, 215 P. 244, 248 (1923). Accordingly, this court has consistently interpreted Wyo. Const. art. 15, § 11 to require "only a rational method [of appraisal], equally applied to all property which results in essential fairness."

*Basin Electric Power Coop. v. Dept. of Revenue*, 970 P.2d 841, 857 (Wyo.1998) quoting *Holly Sugar Corp. v. State Board of Equalization*, 839 P.2d 959, 964 (Wyo.1992). The Wyoming Supreme Court has recently reiterated the "rational method" standard. *Britt v. Fremont County Assessor*, 2006 WY 10, ¶ 18, 126 P.3d 117, 123 (Wyo. 2006).

53. An assessor's valuation is presumed valid, accurate, and correct. This presumption survives until overturned by credible evidence. *Britt v. Fremont County Assessor*, 2006 WY 10, ¶ 23, 126 P.3d 117, 125 (Wyo. 2006); *Thunder Basin Coal Company v. Campbell County, Wyoming Assessor*, 2006 WY 44, ¶ 13, 132 P.3d 801, 806 (Wyo. 2006); *Teton Valley Ranch v. State Board of Equalization*, 735 P.2d 107, 113 (Wyo. 1987). A mere difference of opinion as to value is not sufficient to overcome the presumption. *J Ray McDermott & Co. v. Hudson*, 370 P.2d 364, 370 (Wyo. 1962); *Thunder Basin Coal Company v. Campbell County, Wyoming Assessor*, 2006 WY 44, ¶¶ 13, 48, 132 P.3d 801, 806, 816 (Wyo. 2006). "The burden is on the taxpayer to establish any overevaluation." *Hillard v. Big Horn Coal Co.*, 549 P.2d 293, 294 (Wyo. 1976).

54. The Wyoming Supreme Court has described the burden of proof for a taxpayer challenging a county assessor's valuation:

A strong presumption favors the Assessor's valuation. "In the absence of evidence to the contrary, we presume that the officials charged with establishing value exercised honest judgment in accordance with the applicable rules, regulations, and other directives that have passed public scrutiny, either through legislative enactment or agency rule-making, or both." *Amoco Production Co. v. Dept. of Revenue*, 2004 WY 89, ¶ 7, 94 P.3d 430, 435 (Wyo. 2004). The Britts [i.e., the protesting taxpayers] had the initial burden of presenting evidence sufficient to overcome the presumption. *Id.*, ¶ 8. If the Britts successfully overcame the presumption, then the county board was "required to equally weigh the evidence of all parties and measure it against the appropriate burden of proof." *CIG v. Wyoming Dept. of Revenue*, 2001 WY 34, ¶ 10, 20 P.3d 528, 531 (Wyo. 2001). The burden of going forward would then have shifted to the Assessor to defend her valuation. *Id.* Above all, the Britts bore "the ultimate burden of persuasion to prove by a preponderance of the evidence that the valuation was not derived in accordance with the required constitutional and statutory requirements for valuing . . . property." *Id.*

*Britt, supra*, 2006 WY 10, ¶ 23, 126 P.3d at 125.

55. Our evaluation of this appeal turns, at least in part, on the question of whether there is substantial evidence in the record which reasonably supports the County Board decision. In determining whether the required substantial evidence is present, the State Board will not substitute its judgement for findings reasonably supported by evidence in the County Board record. *Laramie County Board of Equalization v. State Board of Equalization*, 915 P.2d 1184, 1188-1189 (Wyo. 1996); *Holly Sugar Corp. v. Wyoming State Board of Equalization*, 839 P.2d 959 (Wyo. 1992); *Sage Club, Inc. v. Employment Sec. Comm'n*, 601 P.2d 1306, 1310 (Wyo. 1979). While substantial evidence may be less than the weight of the evidence, it cannot be clearly contrary to the overwhelming weight of the evidence. The Wyoming Supreme Court has stated "[s]ubstantial evidence is a term of art best described as relevant evidence that a reasonable mind can accept as adequate support for an agency's conclusion." *Sidwell v. State Workers' Compensation Div.*, 977 P.2d 60, 63 (Wyo. 1999).

## Discussion

56. The Assessor, during his testimony at the County Board hearing, questioned whether Taxpayer Foundation was in fact charitable, arguing it did not confer any benefit on the public, nor did it relieve the tax burden on the citizenry. *Supra*, ¶ 29. It is not clear, however, in what manner, if at all, the status of Taxpayer Foundation as a charitable foundation affected the taxability of property held by it as trustee for the Episcopal Trust. If the intent of the testimony was to bring into question the validity of the Episcopal Trust, no evidence to support such an assertion was offered by the Assessor at the County Board hearing. The Assessor's brief filed with the State Board seemed to indicate that while he may have questioned the validity of the Episcopal Trust, he conceded a charitable trust was created, and may have a charitable purpose. [*Brief of Respondent, Park County Assessor*, p. 7].

57. The County Board Record also quite clearly rebuts any indirect assertion the Episcopal Trust was not validly created or did not have a statutorily-defined charitable purpose. The express purpose of the Episcopal Trust was "the furtherance of the mission ministry of the Episcopal Diocese of Wyoming." [County Board Record, pp. 69-74, (Exhibit I)]. Such a purpose clearly falls within the "advancement of education or religion" language of Wyo. Stat. Ann. § 4-10-406(a) which defines the purpose for which a charitable trust may be created. *Supra*, ¶ 41.

58. The uncontradicted evidence presented by Taxpayer Foundation at the County Board hearing clearly established Taxpayer Foundation as well as the Center were organized as non-profit entities, and both had received a tax exempt designation by the Internal Revenue Service (IRS) pursuant to I. R. C. § 501(c)(3). Taxpayer Foundation, in addition, was also exempt from payment of Wyoming sales and use tax. *Supra*, ¶¶ 2, 13 [County Board Record, Vol. I, pp. 28-34 (Exhibit A); pp. 35-51 (Exhibit B); pp. 52-54 (Exhibit C); p. 55 (Exhibit D); pp. 69-74 (Exhibit I); p. 76 (Exhibit N)].

59. The Episcopal Trust, without question, was a charitable trust as defined by Wyoming statute.

60. The Assessor, during his testimony at the County Board hearing, also expressed his opinion the Center property was not owned by the Episcopal Trust, but rather by Taxpayer Foundation itself, not as trustee of the Episcopal Trust. He acknowledged, however, he had not received a legal opinion on the question of ownership. *Supra*, ¶ 29.

61. The Wyoming statutes specifically address ownership of trust property by a trustee. The statutes require any instrument which purports to convey real estate, or any interest therein, to a trustee, shall define the trust under which the grantee is acting. The conveying instrument, by its own terms, can “define the trust” by identifying the trustee as well as the name and date of the trust. *Supra*, ¶ 42.

62. The deed for the Center property from Taxpayer Foundation as settlor of the Episcopal Trust to Taxpayer Foundation as trustee of that trust without question fulfilled the noted statutory requirements. The deed identifies Taxpayer Foundation as the trustee, and further identifies the name and date of the trust in question, i.e. the Episcopal Diocese Episcopal Trust Declaration #1 dated December 11, 2008. Taxpayer Foundation thus owned the Center property as trustee of the Episcopal Diocese Charitable Trust Declaration #1 dated December 11, 2008. *Supra*, ¶ 3. [County Board Record pp. 69-74 (Exhibit I); pp. 61-64 (Exhibit M)].

63. The Episcopal Trust property, being owned by a properly created charitable trust through its trustee, is, therefore, the property of a charitable trust as recited in Wyo. Stat. Ann. § 39-11-105(a)(xix). The Assessor asserts, however, ownership alone of the property by a charitable trust is not sufficient to qualify the property for exemption. *Supra*, ¶¶ 29, 30, 35.

64. The Assessor, as grounds for denying exemption of the Episcopal Trust property, argues both ownership and use must be considered in making an exemption determination even for property held by a charitable trust. He holds to this argument even though he acknowledged not all exemptions set forth in Wyo. Stat. Ann. § 39-11-105 include any “use” language, including the exemption for the property of charitable trusts. *Wyo. Stat. Ann. § 39-11-105(a)(xix)*. He further asserted consideration of “use” was required based on his reading of the Department Rules which address exemptions. It was thus his conclusion, based on his opinion the Episcopal Trust property was being used for a commercial purpose to obtain a monetary profit and pecuniary gain, it did not qualify for property taxation exemption. *Supra*, ¶¶ 29, 30, 35.

65. The State Board has previously concluded the reference in the Department Rules to the considerations typically involved in determining whether a property should be exempt, *i. e.* ownership, use, and/or type, are a summary of the character of the many exemptions, not a directive to the assessors of what they must consider. We perceive no reason, and the Assessor has offered no justification, for the State Board to deviate in this matter from that stated position. *Supra*, ¶ 50.



66. We further perceive no reason, and the Assessor has again offered no justification, for a deviation from the previous analysis by the State Board as to how exemptions are typically framed, i.e., in terms of ownership of property; use of property; type of property; or some combination of ownership, use and type. *Supra*, ¶ 50.

67. The exemption at issue in this case, similar to those identified in Wyo. Stat. Ann. §§ 39-11-105(a)(xviii), (xxi), (xxii), (xxiii), (xxiv), (xxxvi), (xxxvii), is framed only in terms of ownership. Wyoming Statute Annotated § 39-11-105(a)(xix) provides an exemption for “[p]roperty of charitable trusts.” There is no mention in the charitable trust statutory subsection of “use” as a qualifier, nor in any of the other noted statutory subsections which base exemption on ownership. *Supra*, ¶ 39

68. A conclusion “use” is not a qualifier or consideration when determining whether the property of a charitable trust should be exempt finds further support in the actions of the Wyoming Legislature. In identifying what factors should be considered when deciding whether property should be exempt, the Legislature required consideration of “use” both alone and in conjunction with other factors for other exemptions. *Supra*, ¶¶ 39, 50.

69. The Department, in its rules addressing exemptions, apparently recognized these statutory distinctions. The language the Department adopted is phrased in the disjunctive with regard to what should be considered. The Department Rules address consideration of use, ownership, and/or type, not simply use, ownership and type. *Supra*, ¶ 48. An assessor, under the guidance of the Department Rules, must thus consider use, ownership, and type, and in the alternative, use, ownership or type, depending on the applicable statutory exemption language. The position urged by the Assessor, that all three factors, ownership, use, and type, or at least ownership and use, must always be considered would require an interpretation of the Department Rules in violation of the accepted standard that rules which attempt to change or modify a statute would be without force or effect. Such an interpretation would also conflict with well established rules of statutory construction that statutes are to be considered as written, without including words which have been omitted. *Supra*, ¶¶ 43, 44, 45.

70. There is clearly no mandate by Wyoming Statute or Department Rule that the use of property must in every case be an element in determining whether the property should be exempt. Ownership alone, in some cases, as in property of a charitable trust, is sufficient to justify an exemption.

71. The legislative history of Wyo. Stat. Ann. § 39-11-105(a)(xix) also supports a conclusion property may be exempt from taxation based simply on the owner thereof, i.e., in this matter, a charitable trust.

72. The Wyoming Legislature, in 1977, enacted the predecessor of Wyo. Stat. Ann. § 39-11-105(a)(xix):

39-1-201. Exemptions enumerated.

(a) the following property is exempt from property taxation:

\* \* \*

(xx) Property of trusts as provided by W.S. 17-135;

*Sessions Laws of Wyoming, 1977, Chapter 45, Section 2, page 60.*<sup>2</sup>

73. The statute referenced in W.S. 39-1-201(a)(xix) was published in the 1977 Wyoming Statutes as W.S. 17-7-113:

All property devised, bequeathed or given for nonsectarian, public educational **purposes** in this state, or for the **purpose** of nonsectarian, public education of the youths of this state or for the establishment and maintenance of nonsectarian associations for the **dissemination** of knowledge concerning the causes and methods of prevention of tuberculosis and other communicable diseases **shall be considered as charitable trusts. So long as the property is not diverted from the purposes herein expressed, it shall be exempt from taxation including estate taxation.** Where by the provisions of such devise, bequest or gift, the income therefrom, after deducting proper expenses in administering the same, **is directed to be expended for the purposes aforesaid, to commence only from a certain period after such devise, bequest or gift is made, then the property so devised, bequeathed or given for the purposes aforesaid shall be subject to annual taxation as other property until such period so specified arrives,** and if the period is extended under the provisions of such devise, bequest or gift, then until such extension period expires. In other cases where, instead of the income, the corpus of the

---

<sup>2</sup> This subsection was published in the 1977 Wyoming Statutes as 39-1-201(a)(xix) based on the interrelationship of Chapter 6, Section 2; Chapter 45, Sections 3, 4, 5, 6; and Chapter 185, Section 2, 3, 5, *Sessions Laws of Wyoming, 1977.*

property is to be put to actual use for the purposes aforesaid only from a certain period specified in the devise, bequest or gift, then the same shall, in like manner, hereafter be subject to taxation as other property until such period, including such extension period, arrives.

(Laws 1915, ch. 34, § 1; C.S. 1920, § 5408; Laws 1925, ch. 135, § 1; R.S. 1931, § 28-814; C.S. 1945, § 44-1014; Laws 1947, ch. 44, § 1; **W.S. 1957, § 17- 135**; Laws 1982, ch. 74, § 2.)

*Wyo. Stat. Ann. § 17-7-113(1977)*. (Emphasis added).

74. A careful examination of the interrelationship between the language of Wyo. Stat. Ann. § 39-1-201(a)(xix), and Wyo. Stat. Ann. § 17-7-113, leads to the obvious conclusion that “purpose” was an important element when considering whether the property of a “charitable trust” was to be exempt from taxation. As long as the property of the trust was not “diverted” from one of the statutorily defined charitable purposes, it was exempt from taxation. This conclusion is even more evident when Wyo. Stat. Ann. § 17-7-113 permits exemption for only “a certain period of time” when the property was expended for the charitable purposes set out in the statute. The question of exemption for “trust” property under the 1977 statutory provisions clearly anticipated consideration of its purpose and thus its use.

75. The current version of the exemption with which we are concerned is the result of actions by the Wyoming Legislature in 1992. The Legislature, in that year, repealed a significant portion of Wyoming Statutes Title 17, including Wyo. Stat. Ann. § 17-7-113 with its “purpose” language, as part of the adoption of the Revised Model Non-Profit Act. The Legislature, in addition, amended Wyo. Stat. Ann. § 39-1-201(a)(xix) by deleting “as provided by W.S. 17-7-113,” and adding “charitable trusts.” These actions by the Legislature effectively eliminated consideration of the “use” of property held by a charitable trust in determining whether such property should be exempt from taxation. And this is an appropriate conclusion even though the current definition of a charitable trust under the Uniform Trust Code, in determining whether a trust is in fact “charitable,” uses the terms “or other purposes.” Such language is clearly intended to determine whether a specific trust can be considered a “charitable trust,” and not whether the property it holds is exempt from taxation, a point with which the Assessor agreed. *Supra*, ¶ 32; *Session Laws of Wyoming, 1992, Introduction, §§ 2, 3, 4; Wyo. Stat. Ann. § 4-10-406*.

76. Wyoming Statute Annotated § 39-1-201(a)(xix) was repealed and reenacted without change in 1998 as Wyo. Stat. Ann. § 39-11-105(a)(xix). *Session Laws of Wyoming, 1998; Rules, Wyoming Department of Revenue, Chapter 5 §§ 1, 4.*

77. The Assessor expressed a concern both at the County Board hearing and in his brief to the State Board that “failure to examine the circumstances of a charitable trust could open the floodgates to tax evasion wherein chartable [*sic*] trusts are created for the ‘purpose’ of evading ad valorem taxes.” [*Brief of Respondent, Park County Assessor, pp. 5-6*]; *Supra*, ¶ 35.

78. The Wyoming statutes clearly define the purpose for which a charitable trust may be created. *Wyo. Stat. Ann. § 4-10-406; Supra*, ¶ 41. It is difficult at best to perceive a situation in which a charitable trust could be created solely for the purpose of “tax evasion.” In light of the limited parameters under which a trust can be considered “charitable,” we perceive no legitimate opportunity to use such a trust to evade ad valorem taxes. The Wyoming Legislature has made the clear decision that if property is owned by a charitable trust, that fact alone is sufficient to qualify such property for tax exemption. We are confident the Legislature would not adopt an ad valorem tax exemption without giving thought to the question of whether such exemption might give rise to tax evasion possibilities.

79. The Assessor, based on his assertion the use by the Center of the Episcopal Trust property was an appropriate consideration in determining whether it qualified for an exemption, argued at both the County Board hearing and in his brief to the State Board the Episcopal Trust property was used by the Center for commercial purposes, for pecuniary gain, to gain a monetary profit, and therefore the property did not qualify for exemption. The Assessor, in making this determination, stated he relied on the definition of “charitable” set forth in the Department Rules, Chapter 14 § 12 which addressed exemptions for property used by a secret, benevolent, and charitable society or association as set forth in Wyo. Stat. Ann. § 39-11-105(a)(xxvi). *Supra*, ¶¶ 29, 31; [*Brief of Respondent, Park County Assessor, pp. 10-11*].

80. The Department Rules, Chapter 14 § 12, set out the criteria to be used by an assessor when determining whether an entity operates primarily for non-commercial purposes. The evidence and testimony presented at the County Board hearing clearly indicated that even within the purview of those criteria, the requirement of non-commercial use without any element of private profit were fulfilled. *Supra*, ¶¶ 8, 10, 11, 15, 16, 19, 20, 51.

81. The fees charged by the Center for use of the Episcopal Trust property were kept to a minimum, and set only to cover the actual costs of providing facilities for various church

and other non-profits organizations. *Supra*, ¶¶ 19, 51; *Rules, Wyoming Department of Revenue, Chapter 14 § 12(c)(I)*.

82. There is also no indication whatsoever in the County Board Record that any of the officers of the Center received any pecuniary gain or profit from the charges for use of the Episcopal Trust property other than reasonable employment compensation. *Supra*, ¶¶ 14, 19, 51; *Rules, Wyoming Department of Revenue, Chapter 14 § 12(c)(I), (c)(ii)*.

83. Perhaps most importantly, over 70 percent of the income to the Center was in the form of grants and donations. This fact, along with the fact both the Center and Taxpayer Foundation were exempt from federal income taxation pursuant to I. R. C. § 501(c)(3), and Taxpayer Foundation was exempt from Wyoming sales and use tax, clearly support a presumption, which the Assessor recognized, that the operation of the Center and the use of the Episcopal Trust property were reasonable and not for profit. *Supra*, ¶¶ 2, 13, 18, 33, 51; *Rules, Wyoming Department of Revenue, Chapter 14 § 12(c)(iii)*.

84. It would thus appear, even presuming for purposes of argument use of the Episcopal Trust property by the Center was a valid consideration in determining its exempt status, such use was not commercial. The property was not used in any manner for private profit as defined by the Department Rules.

85. The Episcopal Trust property, being owned by a properly created charitable trust through its trustee, is, therefore, the property of a charitable trust as recited in Wyo. Stat. Ann. § 39-11-105(a)(xix), and thus exempt from ad valorem taxation.

**THIS SPACE INTENTIONALLY LEFT BLANK**

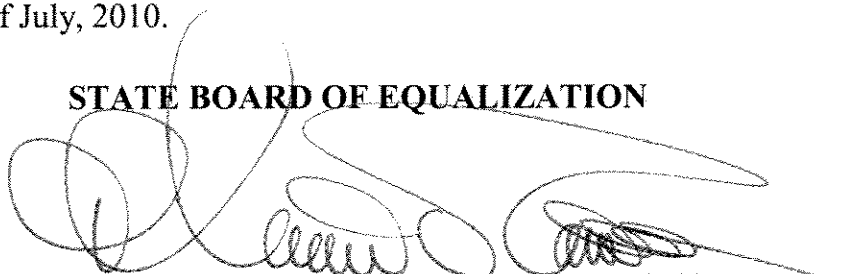
**ORDER**

**IT IS THEREFORE HEREBY ORDERED** the Park County Board of Equalization Order affirming the Assessor's 2009 valuation of the Episcopal Trust property **is reversed**. The property, based on the evidence presented at the County Board hearing, should be considered exempt as property of a charitable trust pursuant to Wyo. Stat. Ann. § 39-11-105(a)(xix).

**Pursuant to Wyo. Stat. Ann. § 16-3-114 and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days of the date of this decision.**

DATED this 23<sup>rd</sup> day of July, 2010.


**STATE BOARD OF EQUALIZATION**



Thomas D. Roberts, Chairman

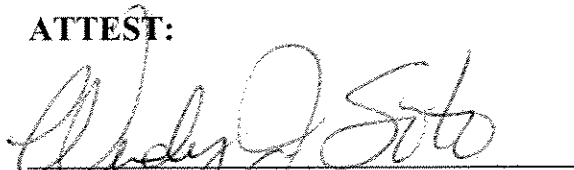


Steven D. Olmstead, Vice-Chairman



Deborah J. Smith, Board Member

**ATTEST:**



Wendy J. Soto, Executive Secretary

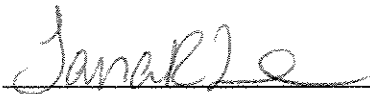
**CERTIFICATE OF SERVICE**

I hereby certify that on the 23<sup>rd</sup> day of July, 2010, I served the foregoing **DECISION AND ORDER** by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

John E. Masters, Executive Director  
The Foundation for the Episcopal Diocese  
of Wyoming, Trustee  
123 South Durbin Street  
Casper WY 82601

Doug Brandt  
Park County Assessor  
1002 Sheridan Avenue  
Cody WY 82414

James F. Davis, Deputy County Attorney  
Park County  
1002 Sheridan Ave  
Cody WY 82414



---

Jana R. Fitzgerald  
Executive Assistant  
State Board of Equalization  
P.O. Box 448  
Cheyenne, WY 82003  
Phone: (307) 777-6989  
Fax: (307) 777-6363

cc: SBOE  
Edmund J. Schmidt, Director, Department of Revenue  
Marvin Applequist, Property Tax Division, Department of Revenue  
Commission/Treasurer/Clerk - Park County  
CCH  
ABA State and Local Tax Reporter  
State Library  
File