

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
MERIT ENERGY COMPANY FROM) Docket No. **2010-106**
A DECISION BY THE DEPARTMENT)
OF REVENUE)

ORDER OF DISMISSAL WITH PREJUDICE

THIS MATTER having come before the Board upon the Department of Revenue's [Department] Motion to Dismiss asserting the Board lacks jurisdiction to consider this appeal, and the Board having considered the Department's Motion, as well as the Response by Merit Energy Company [Merit], and the Reply to Merit's Response by the Department, having reviewed the file herein and being otherwise advised in the premises, finds:

1. The Department issued a letter notice to Merit dated March 17, 2008, which increased, by a total of \$15,671,697, the 2006 production year value for natural gas attributed to Merit from numerous wells in Lincoln, Sweetwater, and Uinta Counties. [Motion to Dismiss, Exhibit C].
2. The Department issued two additional letter notices to Merit dated November 24, 2008, which further increased, by a total of \$22,191, the 2006 production year natural gas value attributed to Merit in Lincoln County. [Motion to Dismiss, Exhibit D].
3. Each letter notice stated it was a final administrative decision by the Department, and set forth the requirements for taking exception to the decision by filing an appeal with the Board. [Motion To Dismiss, Exhibits C, D].
4. The Department, on June 29, 2010, issued to Lincoln, Sweetwater, and Uinta Counties a Notice of Valuation Change (NOVC) which notified each county of the increase in the value of the 2006 natural gas production for the wells and groups identified in the March 17, 2008, and November 24, 2008, letter notices. [Motion to Dismiss, Exhibit E].
5. Merit filed with the Board effective July 16, 2010, a Case Notice for Review/Notice of Appeal referencing the June 29, 2010, NOVC.
6. Merit does not dispute the sequence of events concerning its appeal. [Response to Motion to Dismiss, p. 2].

7. The Wyoming statutes define a specific time frame for a person assessed to challenge a fair market value determination by the Department for oil and gas.

Following determination of the fair market value of crude oil, lease condensate or natural gas production the department shall notify the taxpayer by mail of the assessed value. The person assessed may file written objections to the assessment with the state board of equalization within thirty (30) days of the date of postmark and appear before the board at a time specified by the board. The person assessed shall also file a copy of the written objections with the county treasurer of the county in which the production is located, who shall notify the county assessor and the board of county commissioners, with an estimate of the tax amount under appeal based upon the previous year's tax levy;

Wyo. Stat. Ann. § 39-14-209(b)(iv)

8. The Wyoming statutes also provide: “[m]ine product valuation amendments may be appealed by the taxpayer to the state board of equalization within thirty (30) days of the final administrative decision.” *Wyo. Stat. Ann. § 39-14-209(b)(v)*.

9. Each of these statutes sets a defined time frame for appeal, and, possibly as important, are located within the specific title, chapter, and article of the Wyoming statutes which define the process for valuation and taxation of oil and gas. *Wyo. Stat. Ann. Title 39 - Taxation and Revenue; Chapter 14 - Mine Products Taxes; Article 2 - Oil and Gas*.

10. The statutory provision upon which Merit relies in asserting its Case Notice for Review/Notice of Appeal was filed timely with the Board is set out in the more general ad valorem taxation chapter of the taxation and revenue statutes. *Wyo. Stat. Ann. Title 39 - Taxation and Revenue; Chapter 13 - Ad Valorem, Taxation*. The specific language of that statute does not address mineral valuation, and, in fact, does not even define a specific time frame for appeal. The section rather simply states: “[a]ppeals shall be made in a timely manner as provided by rules and regulations of the board...” *Wyo. Stat. Ann. § 39-13-109(b)(iii)*.

11. It is a well settled and long standing rule of statutory construction that a specific statutory provision addressing a subject prevails over a more general provision which addresses the same subject.

By well-settled rules of statutory construction, the specific statutory provision always prevails over a more general statutory provision. *See e.g. Schafer v. State*, 2008 WY 149, ¶¶ 13-15, 197 P.3d 1247, 1250-51 (Wyo. 2008).

Baker v. State, 2010WY 6, ¶ 37, 223 P.3d 542, 557 (Wyo. 2010).

It is a basic tenet of statutory construction that a specific statute will control over a general statute covering the same subject. *See, e.g., Coffinberry v. Board of County Commissioners of the County of Hot Springs*, 2008 WY 110, ¶ 7, 192 P.3d 978, 980 (Wyo. 2008).

Horse Creek Conservation District v. State, 2009 WY 143, ¶ 39, 221 P.3d 306, 318 (Wyo. 2009). *See also, Qwest Corporation v. Public Service Commission of Wyoming*, 2007 WY 97, ¶ 32, 161 P.3d 495, 503 (Wyo. 2007); *Board of County Com'rs for Sublette County v. Exxon Mobil Corp.*, 2002 WY 151, ¶ 30, 55 P.3d 714 (Wyo. 2002); *Haines v. Territory*, 13 P. 8 (Wyo. Terr. 1887).

12. The Wyoming Legislature has, through two statutory provisions, defined a very precise time frame, i.e. thirty days, within which an appeal must be filed from a final administrative action by the Department establishing the value of mineral production, in this case, oil and gas, for ad valorem tax purposes. Each of the noted statutory provisions are obviously more specific with regard to an appeal of the valuation of oil and gas production than the more general appeal provision found in Wyo. Stat. Ann. § 39-13-109(b)(iii) which does not define a time frame to file an appeal, or even mention any type of Department valuation.

13. The provisions of either or both Wyo. Stat. Ann. §§ 39-14-209(b)(iv) and 39-14-209(b)(v) define the time frame for filing any appeal by Merit, as the entity assessed, from the final administrative decisions by the Department in the form of letter notices in 2008 increasing the value of Merit's 2006 natural gas production.

14. Merit, in support of the assertion its appeal from the June 29, 2010, NOVC is both permissible, and timely, places substantial reliance on the Wyoming Supreme Court decision *Board of County Com'rs for Sublette County v. Exxon Mobil Corp.*, 2002 WY 151, ¶ 30, 55 P.3d 714 (Wyo. 2002) (Sublette County). The decision by the Supreme Court in that appeal does not, however, provide the support which Merit seeks.

15. The decision by the Supreme Court in *Sublette County* is clearly distinguishable from the situation in this matter. First, the Court in *Sublette County* noted there was no statute which expressly granted counties the authority to appeal ad valorem tax decisions. The Court

did note, however, there were several statutes which allow taxpayers to appeal at various points in the ad valorem tax process.

No statute expressly grants counties in Wyoming the authority to file contested cases appealing ad valorem tax decisions. Several statutes allow the taxpayer or the DOR to appeal at various points in the ad valorem tax process, but none of those statutes mention counties.

Board of County Com'rs for Sublette County v. Exxon Mobil Corp., 2002 WY 151, ¶ 22, 55 P.3d at 721.

16. Two of the “several statutes” referred to but not named by the Court are clearly Wyo. Stat. Ann. §§ 39-14-209(b)(iv) and 39-14-209(b)(v).

17. The Court again noted this possibility in a footnote when it concluded a valuation decision by the Department is a final decision which a county can appeal only after the time for an audit has expired, or an audit has been completed.

It is only after the time for an audit has expired, or an audit is complete, and the DOR has assessed on the basis of the audit (Wyo.Stat. Ann. § 39-14-208(b)(v)(E)) that there is nothing more to be accomplished. Only then has the DOR made a final decision that a county may appeal. Appeals by a county before that point are exercises in futility. FN1. **We note that by statute either the DOR or taxpayer may seek review at earlier stages in the taxation process.**

Board of County Com'rs for Sublette County v. Exxon Mobil Corp., 2002 WY 151, ¶ 36, 55 P.3d at 723-724 (emphasis added).

18. Merit, in support of its position its appeal was timely, emphasizes the language of the Court in *Sublette County*, as noted above, that a Department decision on valuation is final only after the time for audit has expired or an audit has been completed. This conclusion by the Court is, however, premised on its finding a Department decision is final only at the point in time when the Department can do “nothing more,” that is, after an audit has occurred or the time for audit has expired.

Here, Sublette County petitioned for review of a value certification. The decision of the DOR in making that value certification is anything but final. The taxpayer still can file an amended return. An audit can occur, and the value or tax can be adjusted over an eight-year period.

In *Amoco Production Co. v. State Bd. of Equalization*, 7 P.3d 900 (Wyo.2000), we held that a letter sent to a taxpayer after an audit constituted a final decision. At that point in time the DOR could do nothing more, and a final decision existed. That is the essential definition of a final administrative decision. It is “one ending the proceedings, leaving nothing further to be accomplished.” *MGTC, Inc. v. Public Serv. Comm'n*, 735 P.2d 103, 106 (Wyo.1987).

It is only after the time for an audit has expired, or an audit is complete, and the DOR has assessed on the basis of the audit (Wyo.Stat. Ann. § 39-14-208(b)(v)(E)) that there is nothing more to be accomplished. Only then has the DOR made a final decision that a county may appeal. Appeals by a county before that point are exercises in futility.

Board of County Com'rs for Sublette County v. Exxon Mobil Corp., 2002 WY 15, ¶¶34, 35, 36, 55 P.3d at 723-724.

19. The Court's conclusions in *Sublette County* address the finality of a Department decision from the perspective of a Wyoming county. A Department fair market valuation determination issued to a taxpayer such as Merit with regard to mineral production is, however, even as outlined by the *Sublette County* decision, a final decision from the standpoint of the taxpayer. There is, after the Department valuation decision is sent to the taxpayer, “nothing further to be accomplished” by the Department with regard to the valuation decision at issue with possibly two exceptions. One exception the taxpayers control. The second exception the Department controls.

20. The first exception would arise if the taxpayer chose to file, within the allowed three-year statutory time frame, Wyo. Stat. Ann. § 39-14-208(b)(iii), an amended ad valorem return. The filing of an amended return is, however, solely within the discretion of the taxpayer. Such possibility thus can not be considered to obviate the finality of the Department's valuation decision.

21. The second exception flows from the possibility of an audit being initiated by the Department during the allowed statutory time frame. *Wyo. Stat. Ann. § 39-14-208(b)(vii)*. Allowing such a possibility, however, to obviate the finality of a Department valuation decision would certainly place mineral taxpayers who disagree with a Department valuation decision in the obviously untenable position of having to guess, when the valuation determination is issued, as to whether or not the Department will subsequently audit the production at issue. If the Department does subsequently perform an audit, then arguably the prior valuation determination is not “final,” and any attempted appeal from the decision

would be a target for a motion to dismiss arguing the finality requirement had not be fulfilled. If, however, there subsequently is no audit during the allowed time frame, then the original determination by the Department was “final,” and any attempted appeal within thirty days of the end of the audit period could be challenged as untimely as not having been pursued within thirty days of the original value determination. A general rule of statutory construction, as well as common sense, prohibits interpreting the Wyoming statutes to reach such an absurd result. *In re Patel*, 2010 WY 147, ¶ 6, 2010 WL 4609323, ___ P.3d ___ (Wyo. 2010). Such an interpretation would also improperly render ineffective the two Wyoming statutes, Wyo. Stat. Ann. §§ 39-14-209(b)(iv) and 39-14-209(b)(v), which very specifically set a thirty-day time frame for an appeal of a Department valuation determination. *Id.*

22. The Department made final decisions as to valuation through its March 17, 2008, and November 24, 2008, letter notices to Merit. The 30-day time frame for appeal set out in either or both Wyo. Stat. Ann. §§ 39-14-209(b)(iv) and 39-14-209(b)(v) is thus applicable.

23. Merit also alleges the Board has previously considered appeals based on a challenge to an NOVC. The Board decisions in which an NOVC has been an issue have also been based on a timely appeal of the Department valuation assessment which generated the NOVC. The underlying assessment appeal provided the basis for the Board’s jurisdiction. Merit has failed to identify any Board appeal based solely on a challenge to an NOVC, and even if such an appeal could be identified, it would not be authority for the Board to overlook the jurisdictional aspects of this matter.

24. The Case Notice for Review/Notice of Appeal by Merit filed with the Board effective July 16, 2010, referencing the June 29, 2010, NOVC, is not a timely appeal of the March 17, 2008, and November 24, 2008, Department letter assessment notices sent to Merit. The Board is thus without jurisdiction to consider this appeal.

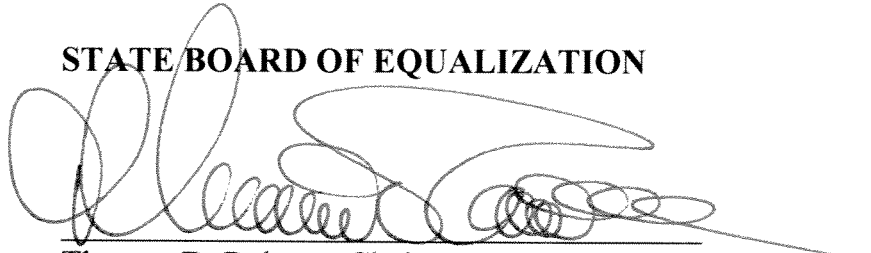
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IT IS THEREFORE HEREBY ORDERED this matter shall be, and the same is dismissed with prejudice.

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 16th day of December, 2010.

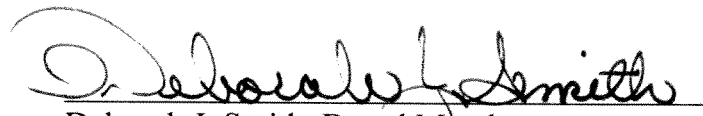
STATE BOARD OF EQUALIZATION



Thomas D. Roberts, Chairman

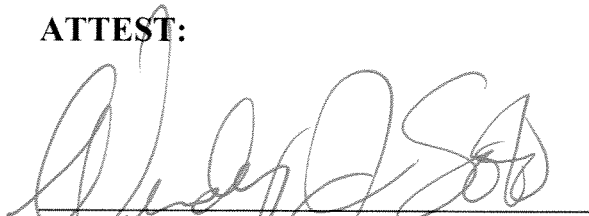


Steven D. Olmstead, Vice-Chairman



Deborah J. Smith, Board Member

ATTEST:



Wendy J. Soto, Executive Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of December, 2010, I served the foregoing **ORDER OF DISMISSAL WITH PREJUDICE** by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

Randall B. Reed, P.C.
Dray, Thomson & Dykeman, P.C.
204 E 22nd Street
Cheyenne WY 82001

Martin Hardscog
Senior Assistant Attorney General
2424 Pioneer Street, 3rd Floor
Cheyenne WY 82002



Wendy J. Soto
Executive Secretary
State Board of Equalization
P.O. Box 448
Cheyenne, WY 82003
Phone: (307) 777-6989
Fax: (307) 777-6363

cc: State Board of Equalization;
Craig Grenvik, Excise Tax Division, Department of Revenue;
Assessor/Commissioners/Treasurer/Attorney - Lincoln, Sweetwater & Uinta;
ABA State and Local Tax Reporter