

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)	
B&G INDUSTRIES, LLC, FROM A)	Docket No. 2015-43
VALUATION DECISION OF THE BIG)	(Cty. Bd. Docket No. 2015-1)
HORN COUNTY ASSESSOR)	
(2015 PROPERTY VALUATION))	

DECISION AND ORDER

APPEARANCES

Randy L. Royal appeared on behalf of B&G Industries, LLC (B&G).

Kim Adams, County and Prosecuting Attorney for Big Horn County, appeared on behalf of Assessor, Gina Anderson (Assessor or County Assessor).

DIGEST

B&G claimed eight structures, located on county airport lands, were tax-exempt in 2015 because it used them primarily for a governmental purpose under Wyoming constitutional and statutory law. The County Assessor denied B&G's 2015 exemption claim and request for refund of past property taxes. The State Board of Equalization (State Board) agreed to certify B&G's appeal and held a contested case hearing on October 28th and 29th, 2015.

The State Board, comprised of Chairman E. Jayne Mockler, Vice Chairman Martin L. Hardsocg, and Board Member Robin Sessions Cooley, holds that two of the eight structures qualified for tax-exempt status in 2015 as property owned by the County, which B&G used primarily for a governmental purpose. The remaining structures were privately owned or were not used for a governmental purpose and, therefore, were not tax-exempt in 2015. The State Board further holds that B&G is not entitled to a refund of previous year's taxes for any of the structures.

ISSUES

B&G asks whether it is “entitled to an exemption from ad valorem tax pursuant to Article 15, Section 12 of the Constitution of the State of Wyoming or W.S. 39-11-105(a)(iii)?” B&G’s Opening Br. 1.

Assessor frames the question as “[w]hether B&G Industries, LLC, a lessee of county owned property, is entitled to an exemption from ad valorem taxes pursuant to Article 15, Section 12 of the Constitution of the State of Wyoming, W.S. §39-11-105(a)(iii), W.S. §39-11-105(a)(v), W.S. § 39-13-109(b)(i) and Wyoming Department of Revenue Chapter 14, Property Tax Exemption Standards[?]” Assessor’s Resp. Br. 4.

The State Board rephrases the issues as whether five privately owned structures and three structures leased from Big Horn County, located on county airport land, which B&G used to conduct an aviation business, were tax-exempt in 2015 under article 15, section 12 of the Wyoming Constitution or Wyoming Statutes section 39-11-105(a)(iii) (2015). If so, is B&G due a refund of *ad valorem* taxes for 2014 or previous tax years?

JURISDICTION

B&G timely contested taxation of various leased or owned buildings within Big Horn County’s South Airport (“South Airport”), claiming they were tax-exempt in 2015. B&G also sought return of *ad valorem* taxes paid in 2014 and earlier. (B&G Statement to Contest Property Tax Assessment 2015, Big Horn Cty./B&G Tax Appeal File).¹ B&G separately applied for tax-exempt status. (B&G Ad Valorem Tax Exemption Application, Big Horn Cty./B&G Tax Appeal File).

The Assessor denied B&G’s appeal and formal exemption application on June 4, 2015. (Big Horn County Assessor letter to B&G, dated June 4, 2015, Big Horn Cty./B&G Tax Appeal File).

Without objection, Assessor moved the County Board to certify B&G’s appeal to the State Board. (Assessor’s Mot. For Certification of Appeal, Big Horn Cty./B&G Tax Appeal File); *see* Rules, Wyo. State Bd. of Equalization, ch. 2 § 36 (2006). Citing the County Commissioners’ conflicts of interest, the County Board resolved that it should not preside over B&G’s appeal. (Resolution of Cty. Comm’rs of Big Horn Cty., dated August 4, 2015, Big Horn Cty./B&G Tax Appeal File).

¹ The State Board’s contested case record includes documents initially filed with the County Clerk’s Office, for an appeal before the Big Horn County Board of Equalization, which the parties did not submit as exhibits. We shall identify these documents by name and indicate their inclusion as part of the “Big Horn Cty./B&G Tax Appeal File.”

Agreeing that the County Board was conflicted, the State Board granted Assessor's motion to certify. The State Board has jurisdiction to hear this appeal. (Rules, Wyo. State Bd. of Equalization, ch. 2 § 36 (2006)).

FINDINGS OF FACT

Introduction

At first glance, the parties dispute whether structures within a Big Horn County airport are tax-exempt. The presentation of evidence, however, quickly revealed the argued position of an entity not party to this litigation, but actively represented throughout the introduction of evidence—Big Horn County as operator of the South Airport and lessor of several structures at issue. Thus, Assessor's counsel presented several positions, the Assessor's rather narrow decision rejecting B&G's exemption claim and several points of contention between lessor Big Horn County and lessee B&G.

South Airport's management and B&G's emergence in 2006 as an aircraft body repair station

1. Two county airports serve Big Horn County, the largest of which is the "South Airport," located in Greybull, Wyoming. This airport has multiple runways that are wider than those of the "North Airport," and the South Airport provides additional aviation services. (Hr'g Recording 1).
2. B&G initially opened in Thermopolis, Wyoming, in 1998 as a firearms manufacturer. It also performed fabrication services for customers including Hawkins and Powers Aviation, Inc. (Hawkins and Powers), which operated out of the South Airport. At the time of hearing, B&G operated out of Thermopolis, Powell, and Greybull, Wyoming. B&G uses CNC (computer numerical control) equipment to design and fabricate aircraft body and equipment parts. (Hr'g Recording 1).
3. B&G began operating at the South Airport in 2006, occupying facilities previously operated by Hawkins and Powers. (Hr'g Recording 1). B&G assumed hangar leases entered between Hawkins and Powers and the Big Horn County Airport Board (Airport Board). *Infra* ¶¶ 10-19. B&G's primary business is structural aircraft repair; B&G does not perform engine maintenance. (Hr'g Recording 2). B&G's President, Karl Bertagnole, explained "we're capable of some pretty major repairs." One large project, for example, consisted of addressing an "elevator problem" following an earlier Hawkins and Powers

project to install pallet handling rail systems within numerous military C-130 transport planes. (Hr’g Recordings 2-3).

4. Timothy Mikus, B&G’s Director of Maintenance, described B&G’s aviation business as a “repair station business,” consisting primarily of work on medium to heavy turbo propeller planes, including inspections, non-engine maintenance, and the fabrication of parts. He stated that most of B&G’s business involved civilian customers. (Hr’g Recording 7).

5. Mr. Mikus estimated that, on average, B&G also handled general service needs (fuel, minor maintenance, etc.) for transient aircraft six to eight times per month. He explained that B&G was nearly the exclusive service provider for corporate aircraft in the area because it was “the only jet fuel seller, the only one that has the kitchen and the lounge . . . , so they typically always call ahead and will arrange services with us when they come in.” B&G also arranges for transportation and catering services for customers upon request. (Hr’g Recording 7); *see infra* ¶¶ 20-31.

6. Prior to B&G’s arrival, the Airport Board planned to build a large hangar and expand its runway capacities to accommodate services for larger military aircraft. (Hr’g Recording 1). Big Horn County obtained state and federal funding to complete this expansion. *Id.* Cooperating with the Airport Board’s design engineer, new arrival B&G offered input on how these projects would best serve the South Airport’s needs. (Hr’g Recordings 1-3).

7. As Hawkins and Powers brought its business to an end in 2006, Mr. Bertagnole explained that the South Airport needed immediate attention to transition and address operational conditions. (Hr’g Recording 2). In June 2006, the Airport Board formally assigned B&G the responsibility to “act on behalf of the Big Horn County Airport Board, in implimenting [sic] appropriate policies approved by the Airport Board, in managing the Greybull Airport facilities and grounds in order to maintain a safe and tidy environment for both ground and air operations.” (Hr’g Recordings 2, 4; Assessor Ex. R). Whether the resolution remained effective through the present was unclear, but the record contains no evidence of its retraction. (Hr’g Recordings 1, 2, 4). Dave Flitner, a former Airport Board member and chairman, explained that B&G’s initial role was to assist and “maintain” the South Airport consistent with its ability and resources. (Hr’g Recording 4; Assessor Ex.

R). He testified that B&G performed some of the functions of a “fixed base operator.”² (Hr’g Recording 4); *see infra* ¶¶ 20-31, 75-86.

8. The Airport Board eventually resigned, and the Big Horn Board of County Commissioners (County Commissioners) assumed control of the South Airport. It hired Carl Meyer, former B&G General Manager, as the South Airport’s Manager in 2011. Mr. Meyer managed the airport’s day-to-day operations to ensure compliance with FAA and State regulations. (Hr’g Recordings 1, 3, 4).

9. Allen C. Beckoff, an airplane mechanic and part-time South Airport employee since 2009, operated a small aircraft body repair business called “Allen’s Airframe and Service.” He performed small aircraft maintenance, inspections, and repairs. (Hr’g Recording 1, 3-5, 7). As a part-time South Airport employee, he performed general airport maintenance as needed, such as snow removal, mowing, and changing lights. He performed no aviation work as a South Airport employee. *Id.* Mr. Beckoff opined that he did not compete with B&G because he worked on smaller planes. (Hr’g Recording 7).

B&G’s lease and use of Big Horn County South Airport property

10. The eight structures in question are located on two county-owned parcels at the South Airport:

- Parcel Number 41000000001614: B&G leases three buildings from Big Horn County, which the parties referred to as the Russell Hangar, Avery Hangar, and the “Bullpen”; and,
- Parcel Number 52930610000077: B&G owns five buildings, which the parties referred to as the “2-story Office Building,” “Red room,” “Blue room,” “White room,” and “Paint room.”

(Hr’g Recording 1; Assessor Exs. F-I, V; B&G Exs. 14-19).

11. B&G entered into a long term Hangar Lease and Operating Agreement for the Russell and Avery Hangars, agreeing to conduct “an aircraft repair business and offering that service to the general public.” (Hr’g Recording 1; B&G Exs. 1-2). However, because B&G’s aviation business was far different than its predecessor, B&G entered into a 2010

² Whether or not B&G was or is a “fixed base operator,” and the requirements of such, are addressed in greater detail in later paragraphs. The State Board addresses the legal significance of this designation in paragraphs 66-70.

Land Lease Agreement to further clarify its leasehold rights and obligations. (Hr'g Recording 1; B&G Exs. 7-8; Assessor Exs. D-E). Although liable for taxes on the leased properties, B&G could contest taxability and amount. (B&G Ex. 7; Assessor Ex. D at section 15). B&G also assumed responsibility for Lot 4A, an unimproved South Airport lot on which Hawkins and Powers stored vintage aircraft, many of which remain on the site. (Hr'g Recording 1).

12. Addressing the leased structures first, the recently constructed Russell Hangar is 35,840 square feet and was used entirely for aviation purposes. In this structure, B&G performed maintenance and repair work on large aircraft. At the time of the hearing, B&G was performing inspections of, or repairs to, three aircraft in the Russell Hangar. Mr. Bertagnole explained:

The Russell Hangar is 100% aircraft use for the public. We don't do really anything else in that building to speak of. Occasionally . . . one of our vehicles may be in there for maintenance or something that we use
Russell hangar is dedicated 100% to aircraft use.

(Hr'g Recording 1). The Russell Hangar includes approximately 7,000 square feet of office space, including a lobby, break area, conference room, and bathroom. It includes an adjacent structure containing fire suppression equipment. B&G maintains the equipment, for which it bills the South Airport. (Hr'g Recordings 1, 4).

13. The Russell Hangar also houses county radio equipment that provides direct radio access to pilots. Pilots use that radio access to request fueling services, "crew" or "courtesy" cars, and other accommodations. (Hr'g Recordings 1, 4).

14. The Avery Hangar is divided into four sections: 1) the main hangar, which is 15,000 square feet; 2) the South "lean-to," which is an added on structure consisting of about 6,000 square feet; 3) the North "lean-to," which is also an added on structure consisting of about 6,000 square feet; and 4) the "old parts room," consisting of 2,100 square feet. (Hr'g Recording 1).

15. B&G used the Avery Hangar to store smaller aircraft and to house CNC equipment used to fabricate airplane parts. (Hr'g Recording 1). The Avery Hangar also housed "support equipment" such as "tugs" to tow airplanes, "platforms" to service aircraft, and heaters to warm aircraft during repairs. *Id.* Mr. Bertagnole scheduled several aircraft from Alaska for service out of the Avery Hangar, explaining they would require the "layout" of disassembled aircraft parts. *Id.* He explained that B&G commonly disassembled and scattered airplane equipment during the inspection process. *Id.* The main hangar was used

ninety percent (90%) or more for aviation services, including services offered to the public. *Id.*

16. B&G used the “lean-to” areas to store and operate machining and welding equipment. (Hr’g Recording 1). Mr. Bertagnole explained that B&G also used these areas to perform small vehicle repair, to store lifts and cranes, to clean and strip airplane parts, and to perform general maintenance. B&G used the south “lean-to” one hundred percent (100%) for aircraft-related activities, and the north “lean-to” ninety percent (90%) for aviation-related activities. (Hr’g Recording 1).

17. The “old parts room,” attached to the main Avery Hangar, was heated, and stored machining tools and airplane equipment. Mr. Bertagnole estimated that sixty percent (60%) of the work done in the “old parts” room was aviation-related. (Hr’g Recording 1).

18. The “Bullpen,” a separate covered storage structure adjacent to the north of the Avery Hangar, is a county-owned structure leased to B&G. (Hr’g Recording 1). It was an unheated, dirt-floor structure used for storage. Mr. Bertagnole estimated that the storage was ninety-eight percent (98%) aviation-related. (Hr’g Recordings 3, 6).

19. B&G owns five stand-alone structures on South Airport land. (Hr’g Recording 1; Assessor Ex. B; B&G Ex. 7). Mr. Bertagnole identified these as B&G’s “2-story Office Building,” “Red room,” “Blue room,” “White room,” and “Paint room.” (Hr’g Recording 1; B&G Ex. 14); *supra* ¶ 10. However, these properties did not qualify for tax-exempt status because they were not owned by Big Horn County. *See* Conclusions of Law, *infra* ¶¶ 61-64. Therefore, we decline to describe their use.

Disagreement over whether B&G is a “Fixed Base Operator”³

20. The parties differed on whether B&G was the South Airport’s “Fixed Base Operator” (FBO). (Hr’g Recording 2). While Mr. Bertagnole agreed an airport need not designate an FBO (Hr’g Recording 3), he testified that B&G offered the same services as an FBO:

An FBO operator would be the person that you find at an airport that takes care of whatever your needs are as a pilot or as a person coming to that facility. If I’m flying in to an airport anywhere in the country, and I need

³ Designation as a fixed base operator was hotly contested, the reason for which is better understood upon reading the Wyoming Supreme Court’s decision in *City of Cheyenne v. Board of County Commissioners of County of Laramie*, 484 P.2d 706 (Wyo. 1971), *infra* ¶¶ 66-71.

fuel, the FBO is typically who's going to provide that for me. There may be a self-service fuel station in some airports, and that's fine- I can self-fuel my aircraft, but if I want full service, the FBO would be the one to provide full service and they would fuel the aircraft for me. If I want jet fuel at South Big Horn County Airport, I can't get that except for getting it from B&G because B&G has a ramp truck like most airports have (inaudible), and we go out to the aircraft with that fuel truck and we fuel those aircraft. If he wants AV gas, which is like high-octane gasoline for a piston-driven, propeller-driven aircraft like the single engine or even the Cessna 310, you can go self-fuel out at the County airport, they have a tank there, and so you have your choice, you can get full service from B&G or you can self-fuel over there on AV gas, but you can't do that with jet fuel. If a jet fuel aircraft comes in, B&G's got to take care of it. An FBO operator would take care of those responsibilities. What if, if he has a flat tire, if he's got a low tire, he would need air at the very least; he might need a tire repair, we would provide that. If he's got a need to use the bathroom, he's got to have a bathroom for a person to use at the airport or, other things happen. . . . So we would provide bathrooms, telephones, drinks, food, if the case so needed it. You would provide crew cars for them. . . . Let's just say they fly in and they want to go down to town and get some food. I have a way to get down there, besides walk, and so they would come to the FBO and say "can we use the crew car," and we would typically provide crew cars for free to customers who come into the airport, often times even if they don't buy anything from us, it's just a traditional practice to try to be polite and attract people to your airport.

(Hr'g Recording 2).

21. Mr. Bertagnole opined that a rural airport that sought to be more than a minimal landing strip would necessarily offer a range of basic services to attract public and governmental use. (Hr'g Recordings 2-3). He believed that the South Airport, without B&G's services, did not offer sufficient services to remain a viable, flourishing airport. *Id.* He stated that in B&G's absence, the South Airport would neither accommodate an average size aircraft's towing needs nor could it offer qualified/certified (referred to as "Part 145 repair station") repair services. *Id.*

22. Mr. Mikus, B&G's Director of Maintenance, estimated that separate from its scheduled customer services, B&G served six to eight traveling planes per month. (Hr'g Recording 7). B&G responded to "call outs" for aviation service, which occurred when pilots called in, often after business hours. B&G's service included aircraft towing,

sometimes requiring specialized equipment. B&G's service to the public included short-term and long-term aircraft storage. (Hr'g Recordings 2, 4).

23. As requested by the South Airport, B&G directly supported the airport in several aspects. This support included weekly monitoring and service of the water storage tank which supplied water for the South Airport's fire suppression system located within the Russell Hangar. (Hr'g Recordings 2, 5, 7; Assessor Ex. J); *supra* ¶ 12. B&G also served as the South Airport's after-hours point-of-contact for the Sheriff's Office, as well as for public access to Lot 4A.⁴ (Hr'g Recordings 2, 4). B&G assisted with snow plowing the tarmac when airport employee, Mr. Beckoff, could not perform this duty. B&G received mail and other common-carrier deliveries when necessary. (Hr'g Recordings 2, 4).

24. Airport Manager, Mr. Meyer, disagreed that B&G was the South Airport's FBO, explaining: "It's my understanding that they are not considered the FBO They do not offer enough services to be considered an FBO under the guidelines and the regulations from the FAA." (Hr'g Recordings 4, 5). Mr. Meyer referred to County standards setting the minimum services to qualify as an FBO. (Hr'g Recording 5; B&G Ex. 1). He stated an operator must request FBO status and satisfy established criteria. (Hr'g Recording 5).

25. Whether B&G satisfied the FBO criteria under Big Horn County's "Rules and Policies for the Big Horn County Airports, Structure Construction Standards and Policies, Commercial Operations Policies" (Hr'g Ex. 1), is unclear. In addition to selling fuel, an FBO must engage in at least four of many enumerated "commercial aeronautical activities[.]" (Hr'g Ex. 1 at 32). Yet, those Rules and Policies also provide: "No Operator or commercial business located on the airport will be allowed to conduct fuel sales unless they meet the requirements of an FBO." *Id.*

26. Independent of B&G, the County offered self-serve aviation fuel, restrooms, a pilots' lounge, aircraft tie downs, weather reporting, ground communication, unobstructed runways, hangar storage (which were fully occupied at the time of hearing), and a host of safety-related accommodations. (Hr'g Recording 4). Mr. Meyer disagreed with Mr. Bertagnole's critical characterization of the South Airport's restrooms, responding that although they were "minimal," they were functional. (Hr'g Recording 5). Mr. Meyer agreed, however, that B&G offered a portion of services required of an FBO, including large plane hangar space, major repairs, fuel sales, and crew cars. (Hr'g Recording 4).

⁴ Mr. Bertagnole explained that Hawkins and Powers had stored vintage aircraft on Lot 4A, which drew aviation enthusiasts from all over the country.

27. Mr. Meyer stated the South Airport could accommodate large aircraft without B&G. (Hr’g Recording 5). He agreed, however, that B&G offered a range of services that the South Airport would not, itself, offer. (Hr’g Recording 4).

28. The former interim Airport Manager and current County Engineer, William Bridges, similarly testified that only B&G offered certain services, including large aircraft body repair, and that he believed the South Airport would not itself offer those services. (Hr’g Recording 6).

29. On the broader question of B&G’s importance to the South Airport’s viability, Mr. Meyer was circumspect in opining that B&G was “essential” to the South Airport from a **business** standpoint, but not from a **technical, FAA, or operational** standpoint, as a “landing strip” for planes. (Hr’g Recordings 4, 5).

30. Mr. Beckoff similarly testified that B&G, while not essential to the basic operation of the airport as a place to land and launch aircraft, was necessary to draw business to the airport. (Hr’g Recording 7). Mr. Bridges added that the South Airport could operate without B&G, but that B&G’s services “enhanced” the South Airport. (Hr’g Recording 6).

31. The State Board agrees with Assessor that B&G did not formally operate as an FBO. B&G had not formally sought designation as an FBO, but performed several standard FBO activities (selling fuel, aircraft repair, towing). The fact that B&G sells aviation fuel, which only FBOs may do under the county’s own guidelines, *supra* ¶ 25, appears more a product of timing than anything. Big Horn County enacted Minimum Standards for its Airports in 2012, long after B&G commenced operations in 2006. *Supra* ¶¶ 3, 24-25. No witness spoke to this inconsistency.

Allegations that B&G used leased properties for non-aviation purposes

32. Several witnesses testified concerning the County’s allegations that B&G improperly used South Airport properties for non-aviation purposes. Assessor’s Resp. Br. 8, 19-20, 23.

33. Mr. Bertagnole and Mr. Meyer explained that B&G has not always been able to perform aviation work because there were periods when insufficient aviation-related work existed. During those times, B&G’s employees performed some non-aviation work. This allowed B&G to retain employees that might otherwise not be kept on staff. Still, Mr. Bertagnole stated that B&G’s facilities had been used primarily for aviation services offered to the public. (Hr’g Recordings 1-5; Assessor Ex. S).

34. Walt Hibbert, an Airport Board member for 27 years until 2011, who also owns a hangar at the South Airport, testified that B&G manufactured rifle parts in the Avery Hangar. (Hr’g Recording 4).

35. Mr. Mikus, B&G’s Director of Maintenance, confirmed that from its machine shop, B&G served “welding walk-ins” and mechanical repair jobs, some of which were non-aviation. He further explained that B&G had a contract to manufacture rifle parts. (Hr’g Recording 7).

36. The County suggested that B&G’s non-aviation work (i.e. work on personal vehicles or agricultural equipment) during slow periods could violate FAA guidelines. (Hr’g Recording 2). The County claimed, and Mr. Meyer confirmed, that B&G failed to supply information necessary for demonstrating compliance with FAA “Assurances” and grant funding requirements. The County (through Assessor’s counsel) argued, and Mr. Meyer agreed, that B&G potentially put the “County at risk” of violating FAA guidelines by performing non-aviation activities. (Hr’g Recordings 2, 5; Assessor Ex. X, “Sponsor Certification” Assurances 9, § 19, 14-15, § 29a.3).

County Assessor’s denial of B&G’s claim for tax-exempt status

37. B&G requested the Assessor designate all of its owned and leased properties as tax-exempt for 2015 and preceding tax years. B&G cited article 15, section 12 of the Wyoming Constitution and Wyoming Statutes section 39-11-105(a)(v)(D) (2015) as authority.⁵ *Infra* ¶¶ 45-46.

38. Citing *City of Cheyenne v. Board of County Commissioners of the County of Laramie*, 484 P.2d 706 (Wyo. 1971), the Assessor rejected B&G’s claim and concluded that B&G’s leased property was not used for governmental purposes in accordance with Wyoming Statutes section 39-11-105 (2015) or Chapter 14, Sections 5 and 19(c) (2015)⁶ of the Department of Revenue’s Rules. (Hr’g Recording 6; Big Horn County Assessor letter to B&G, dated June 4, 2015, Big Horn Cty./B&G Tax Appeal File; Assessor Ex. U at 14-18). Assessor testified that B&G’s services from the leased properties must benefit the county, and not the public, to qualify as tax-exempt. *Id.* She cited B&G’s profit motive. She further noted that B&G, in its leases with Big Horn County, agreed to be responsible for property taxes. (Hr’g Recording 6).

⁵ B&G later cited Wyoming Statutes section 39-11-105(a)(iii) (2015) in support of its claim. B&G’s Opening Br. 1; *infra* ¶ 46.

⁶ Although Assessor cited the 2015 Department Rules, the Department’s 2014 Chapter 14 Rules applied. *See infra* fn. 7. The applicable 2014 rule, *infra* ¶ 50, did not substantively change in the 2015 promulgation.

39. Although Assessor did not expressly reject B&G's claim for a tax refund of 2014 and previously assessed years, it was implicit in the Assessor's June 4, 2015, letter denying the tax exempt status. (Big Horn County Assessor letter to B&G, dated June 4, 2015, Big Horn Cty./B&G Tax Appeal File).

CONCLUSIONS OF LAW

A. State Board's review function, applicable presumptions, and burdens of proof

40. Upon certification of an initial appeal from a county board of equalization, the State Board proceeds as the trial court and "the case shall be docketed by the Board and considered pursuant to this chapter." Rules, Wyo. State Bd. of Equalization, ch. 2 § 36 (2006).

41. When claiming or challenging property tax exemptions, several presumptions apply:

(a) For county assessed property, county assessors are responsible for making the initial determination of exemption and are the custodian of any application requesting 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.

Rules, Wyo. Dep't of Revenue, ch. 14 § 3(a) (2014);⁷ see also *Lance Oil & Gas Co. v. Wyo. Dep't of Revenue*, 2004 WY 156, ¶ 29, 101 P.3d 899, 907 (Wyo. 2004) (If legislative intent is still in doubt concerning an exemption after application of all rules of interpretation, the rule of strict construction may resolve that ambiguity.).

⁷ The State Board will refer to the Department of Revenue's Chapter 14 Rules effective June of 2014, which were superseded in April of 2015. "All taxable property shall be annually listed, valued and assessed for taxation in the county in which located . . . on January 1[.]" Wyo. Stat. Ann. § 39-13-103(b)(i)(A) (2015). Therefore, the Assessor was required to apply the rules in effect on January 1 of 2015.

42. The Wyoming Supreme Court has further explained that “where the established policy of the State is to exempt publicly owned property the view that provisions of the constitution and statutes must be strictly construed does not apply nor does the view apply which was expressed in *Commissioners of Cambria Park v. Board of County Com’rs of Weston County*, 62 Wyo. 446, 174 P.2d 402, 405, that taxation is the rule and exemption will not be presumed. The opposite is true.” *City of Cheyenne v. Bd. of Cty. Comm’rs of Laramie County*, 484 P.2d 706, 708-709 (Wyo. 1971) (citing *Hanover Tp. v. Town of Morristown*, 66 A.2d 187, 188 (N.J. Super. Ct. App. Div. 1949); 51 Am.Jur., Taxation, § 557).

43. “Except for publicly-owned property, the burden is on the owner to prove the property meets exemption requirements[,]” while “[f]or publicly owned property, the burden is on the taxing authority to establish taxability.” Rules, Wyo. Dep’t of Revenue, ch. 14 § 4 (a), (b) (2014); *see also* Rules, Wyo. State Bd. of Equalization, ch. 7 § 15(d) (2015) (Assessor has ultimate burden of persuasion to establish taxability of publicly owned property). Otherwise, a petitioner has the ultimate burden of persuasion which shall be met by a preponderance of evidence. Rules, Wyo. State Bd. of Equalization, ch. 7 § 15 (b), (c) (2015).

44. As the adjudicating body, the State Board shall “[d]ecide all questions that may arise with reference to the construction of any statute affecting the assessment, levy and collection of taxes, in accordance with the rules, regulations, orders and instructions prescribed by the department[.]” Wyo. Stat. Ann. § 39-11-102.1(c)(iv) (2015).

B. Applicable constitutional, statutory, and regulatory provisions; rules of statutory construction

45. The Wyoming Constitution exempts from taxation government property when used primarily for governmental purposes:

§ 12. 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.

Wyo. Const. art. 15, § 12 (emphasis added). Pertinent to the State Board’s resolution of this appeal, the phrase “when used primarily for a governmental purpose” was added in 1956. *See infra* ¶¶ 61-64.

46. Of the statutory exemptions, the following is relevant to a county’s operation of an airport:

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

...

(iii) Property owned and used by counties primarily for a governmental purpose;

Wyo. Stat. Ann. § 39-11-105(a)(iii) (2015).⁸

47. Wyoming Statutes section 39-13-109(c)(i) and (ii) (2015), further provide in pertinent part:

(c) Refunds. The following shall apply:

(i) Within one (1) year following an illegal assessment, levy or collection of taxes an action may be filed in district court to enjoin the illegal assessment, levy or collection. The action shall be against the county

⁸ The legislature has not expressly exempted county airport properties, but has exempted city and town properties used to operate airports. Wyo. Stat. Ann. § 39-11-105(a)(iii), (v)(D) (2015); Wyo. Const. art. 15, § 12, *supra* ¶ 45. The State Board can conceive of no reason a city’s airport property is exempt, while a county’s is not, especially given that the legislature simultaneously authorized each, individually or jointly, to construct or otherwise pursue publicly operated airport facilities. *See* Wyo. Stat. Ann. §§ 10-5-101 through 10-5-302 (2015) (giving each broad authority to operate airports); Wyo. Stat. Ann. § 18-9-101 through 18-9-103 (2015) (authorizing counties to create an airport board of trustees). Moreover, Wyoming’s Constitution certainly offers a sufficient basis for treating county airport property as exempt, especially given the legislature’s implicit designation of such uses as serving a governmental purpose. *See* Art. 15, § 12, Wyo. Const., *supra* ¶ 45; *see also Deromedi v. Town of Thermopolis*, 2002 WY 69, ¶ 13, 45 P.3d 1150, 1154 (Wyo. 2002) (Although museums not identified in statute as an exempt governmental use of property, separate municipal authority to establish museums reflected legislative intent that they served a governmental purpose.). We conclude Big Horn County property used to operate an airport is likewise exempt where the property is used “primarily for a governmental purpose.” *See City of Cheyenne v. Bd. of Cty. Comm’rs of Laramie Cty.*, 484 P.2d 706, 708 (Wyo. 1971) (Court discounted likelihood that legislature’s creation of specific exemptions was an unconstitutional limiting of more broadly worded constitutional exemption for city property used “primarily for a governmental purpose.”).

assessor in the case of an illegal assessment, the governmental entity which levies an illegal levy, the county treasurer if the levy is entered on the tax list, or against the governmental entity if the taxes were collected and paid to the entity;

(ii) If any person pays any tax, or portion thereof, found to have been erroneous or illegal, the board of county commissioners shall direct the county treasurer to refund the erroneous or illegal payment to the taxpayer.

Wyo. Stat. Ann. § 39-13-109(c)(i), (ii) (2015).

48. The Wyoming Department of Revenue provides several considerations in its Rules to determine whether property is tax-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

(iii) Type of property.

Rules, Wyo. Dep't of Revenue, ch. 14 § 3(c) (2014).

49. In addition, the Department has cross-referenced its Rules governing specific exemptions with their statutory counterpart:

Section 5. Publicly owned property - W.S. 39-11-105(a)(i)-(vi).

(a) Publicly owned property is not, per se, exempt from taxation. The property is exempt only "when used primarily for a governmental purpose."

(b) The phrase "governmental purpose" cannot be precisely defined. The following considerations should be evaluated:

(i) If a service or function is obligatory (one the governmental entity must perform as a legal duty imposed by statute), the function is governmental and the associated property is exempt.

(ii) If a service is rendered gratuitously, supported by taxes, and for the public welfare or enjoyment generally, the property associated with providing such service is exempt.

(iii) Property owned by a governmental entity acting in its proprietary capacity is not exempt, (e.g. where a city enters the field of private competitive business for profit or into activities which may be and frequently are carried on through private enterprises).

Rules, Wyo. Dep't of Revenue, ch. 14 § 5 (2014).

50. Pertaining to the lease of government property, the Department advises that:

(c) The leasing of publicly owned property is not, of itself, a use for nongovernmental purposes if the primary use is reasonably necessary to the efficient provision of a governmental function or service. The fact a governmental entity accomplishes such function through a lessee will not affect the exemption. If, however, governmental property is used by a lessee for non-governmental purposes, the property is not exempt.

Rules, Wyo. Dep't of Revenue, ch. 14 § 18(c) (2014).

51. This dispute requires that we interpret constitutional and statutory law. “In construing our constitution, we follow essentially the same rules as those governing the construction of a statute. The fundamental purpose of those rules of construction is to ascertain the intent of the framers.” *Dir. of Office of State Lands & Invs. v. Merbanco, Inc.*, 2003 WY 73, ¶ 33, 70 P.3d 241, 252 (Wyo. 2003) (citing *Geringer v. Bebout*, 10 P.3d 514, 521 (Wyo. 2000); *Zancanelli v. Cent. Coal & Coke Co.*, 173 P. 981, 991 (Wyo. 1918)). Thus, the Wyoming Supreme Court has applied the following rules of construction to the Wyoming Constitution and statutes:

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 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. *Wyoming Board of Outfitters and Professional Guides v. Clark*, 2001 WY 78, ¶ 12, 30 P.3d 36, [41] (Wyo. 2001); *Murphy v. State Canvassing Board*, 12 P.3d 677, 679 (Wyo. 2000). Moreover, we must not give a statute a meaning that will nullify its operation if it is susceptible of another interpretation. *Billis v.*

State, 800 P.2d 401, 413 (Wyo. 1990) (citing *McGuire v. McGuire*, 608 P.2d 1278, 1283 (Wyo. 1980)).

Aland v. Mead, 2014 WY 83, ¶ 11, 327 P.3d 752, 758-59 (Wyo. 2014) (quoting *Powder River Basin Res. Council v. Wyo. Oil & Gas Conservation Comm'n*, 2014 WY 37, ¶ 19, 320 P.3d 222, 228 (Wyo. 2014)).

C. Assessor bore burden of proving taxability of government-owned properties, while B&G bore burden of proving its properties were exempt

52. Assessor contends she “does not bear the burden in this matter, rather pursuant to WS [sic] 39-13-109(b)(i) the burden of proof is upon the party asserting improper valuation.” Assessor’s Resp. Br. 10; *see also* Assessor’s Resp. Br. 13. That statute, however, does not address burden of proof. While a taxpayer must overcome a presumption that the assessor has correctly valued property, *Teton Valley Ranch v. State Board of Equalization*, 735 P.2d 107, 113 (Wyo. 1987), B&G does not contest the valuation of the properties *per se*. Rather, B&G claims the property is tax-exempt, a different question altogether. Where exemptions are concerned, the Department’s Rules specifically assign presumptions and corresponding burdens of proof, and we are bound by those legal requirements. *Supra* ¶¶ 43-44.

53. Accordingly, Assessor bore the burden of establishing taxability of the county-owned Russell Hangar, Avery Hangar, and “Bullpen.” *Supra* ¶¶ 10-18. B&G bore the burden of proving the tax-exempt status of its five privately owned properties located at the South Airport. Rules, Wyo. Dep’t of Revenue, ch. 14 § 4 (2014), *supra* ¶ 43.

D. B&G’s standing to claim tax-exempt status

54. Before considering the merits, we examine Assessor’s quasi-standing objection that B&G, because it is not Big Horn County, cannot claim the exemptions at issue. Assessor contends “B&G does not qualify and has no right to claim exemption status of a publicly owned property under W.S. §39-11-105(a)(iii), W.S. §39-11-105(a)(v) or [sic] W.S. §39-13-109(b)(i).” Assessor’s Resp. Br. 11. Assessor offers no persuasive authority or analysis in support of her contention.

55. Still, Assessor’s conclusory statement begs the question: is government property used for a governmental purpose if the governmental owner does not make, or resists, the claim? Assessor essentially argues a lessee of government property may not unilaterally assert the property is tax-exempt because it is used primarily for a governmental purpose. Neither the Wyoming Supreme Court nor the State Board have addressed the question. Indeed, in each reported Wyoming “governmental use” exemption case concerning a

nongovernmental user (i.e. lessee), the governmental owner was aligned with its lessee against the taxing authority. See *City of Cheyenne v. Bd. of Cty. Comm'rs of Cty. of Laramie*, 484 P.2d 706 (Wyo. 1971) (City of Cheyenne aligned with business lessees); *Oakley v. Fremont Cty. Cmty. Coll.*, 2010 WY 106, 236 P.3d 1004 (Wyo. 2010) (Community college aligned with business lessees); *Deromedi v. Town of Thermopolis*, 2002 WY 69, 45 P.3d 1150 (Wyo. 2002) (Town of Thermopolis aligned with private business lessee); *State Bd. of Equalization v. City of Lander*, 882 P.2d 844 (Wyo. 1994) (No disagreement between City of Lander and lessee Wyoming Department of Environmental Quality); *In re Appeal of Minick*, Docket No. 93-206, 1994 WL 284953 (Wyo. State Bd. of Equalization, June 23, 1994) (Joint powers board aligned with lessee hotel).

56. The statutory and constitutional exemption provisions at issue do not identify who may assert a property's exempt status and provide only that certain property is tax-exempt if two conditions are met—the property must be county-owned and used primarily for a governmental purpose. Wyo. Const. art. 15, § 12; Wyo. Stat. Ann. § 39-11-105(a)(iii) (2015), *supra* ¶¶ 45-46. The provisions do not prescribe who may raise an exemption claim.⁹

57. Beyond the exemption provisions, Wyoming's tax administration and *ad valorem* tax statutes (Wyo. Stat. Ann. §§ 39-11-101 thru 109 and 39-13-101 thru 112) offer limited guidance. These code provisions commonly refer to "taxpayers" and "persons," broadly defining "person" as "an individual, partnership, corporation, company or any other type of association and any agent or officer of any partnership, corporation, company or any other type of association[.]" Wyo. Stat. Ann. § 39-11-101(a)(xiii) (2015). "Taxpayer" is not defined.

58. With the broad definition of "person" in mind, the *ad valorem* "taxpayer remedies" statute, located at Wyoming Statutes section 39-13-109 (2015), does not narrowly establish remedies for "owners" or "taxpayers." Rather, the broader categories, "persons" or "persons owing the tax," may choose from several *ad valorem* tax remedies ranging from appeals to refunds. *Id.* The legislature's inclusive "person" definition and consistent reference to "any person(s) aggrieved" or "persons owing the tax" suggests an intent that

⁹ In other jurisdictions, the question of who may apply for an exemption has arisen where the legislature has expressly identified those who may apply for an exemption. The Ohio Supreme Court, for example, has frequently encountered this issue, recently recounting the evolution of state statutes which historically identified parties authorized to apply for property tax exemptions. *ShadoArt Productions, Inc. v. Testa*, No. 2014-1823, 2016 WL 671638 at 3-6 (Ohio Sup. Ct. Feb. 16, 2016).

remedies are not limited to a specific class of aggrieved person.¹⁰ The term “any person” arguably includes any party responsible for paying taxes, even if that responsibility arises out of a contractual obligation. Had the legislature intended that remedies benefit a narrower class of interests, it easily could have expressed such intent, and we will not imply substantive language omitted by the legislature. *In re Adoption of Voss*, 550 P.2d 481, 485 (Wyo. 1976).

59. Even though remedies are not limited to property owners, B&G must have standing to challenge the Assessor’s refusal to grant an exemption. “[S]tanding centers on whether a party ‘is properly situated to assert an issue for judicial determination.’ ” *N. Laramie Range Found. v. Converse Cty. Bd. of Cty. Comm’rs*, 2012 WY 158, ¶ 23, 290 P.3d 1063, 1073 (Wyo. 2012) (quoting *Cox v. City of Cheyenne*, 2003 WY 146, ¶ 9, 79 P.3d 500, 505 (Wyo. 2003)). “A party has standing when it has a personal stake in the outcome of a case.” *Id.* B&G has standing if it was “ ‘aggrieved or adversely affected in fact’ by an agency action . . . [concerning] a ‘legally recognizable interest in that which will be affected by the action.’ ” *Id.* at ¶ 24, 290 P.3d at 1073 (citing and quoting *Roe v. Bd. of Cty. Comm’rs, Campbell Cty.*, 997 P.2d 1021, 1023 (Wyo. 2000)). The alleged harm must be perceptible rather than speculative. *Id.*

60. B&G applied to secure the tax-exempt status of specified properties it owned and leased at the South Airport. *See supra* ¶¶ 10-19, 37. Upon the Assessor’s denial, an agency adversely affected B&G’s legally recognized interest—its obligation to pay taxes legally assessed. Wyo. Stat. Ann. §§ 39-11-101(a)(viii), 39-13-109(b),(c) (2015); *supra* ¶¶ 37-39. Accordingly, B&G has standing and may assert the properties are tax-exempt.

E. Assessor’s determination that privately-owned structures located on county-owned South Airport land are not tax-exempt

61. Assessor denied that B&G’s leased and owned properties were tax-exempt, reasoning that B&G used the properties to generate private profit, and that B&G served the public and not the County. *Supra* ¶ 38. The Assessor disagreed that B&G used the properties primarily for a governmental purpose as the exemption required. *Id.*

62. As the Wyoming Supreme Court has noted, exemption from taxation has not always depended upon whether property was used primarily for a governmental use:

¹⁰ Although Wyoming Statutes section 39-13-109(b)(i) (2015) begins “Any person wishing to contest an assessment of **his property** shall file not later than thirty (30) days . . . ,” the word “his” must be read *in pari materia* with the balance of the statute and *ad valorem* tax code which most commonly refer to “person.” *Supra* ¶ 51. Further, the term “his” may denote property possession rather than title ownership; this application is consistent with the phrases “any person” or “any person owing the tax,” used throughout the statute. *Id.*

In 1956, Article 15, § 12 of the Wyoming Constitution was amended to provide an exemption for governmental property only when used “primarily for a governmental purpose.” Prior to that time the Constitution provided that all property of the state, counties, cities, towns and school districts was exempt from taxation. Thus, the amendment to Article 15, § 12 shifted the exempt status from property ownership to property use. *See Town of Bluffs v. State Bd. of Equalization*, 79 Wyo. 262, 333 P.2d 700, 703-04 (Wyo. 1958).

Oakley, ¶ 13, 236 P.3d at 1007; *see also Deromedi*, ¶ 10, 45 P.3d at 1154 (citing *City of Cheyenne*, 484 P.2d at 709 (“[M]ere ownership of property by a town does not exempt the property; it must also be used for governmental purposes.”)); *City of Lander*, 882 P.2d at 847 (“The Constitution of the State of Wyoming states a general exemption to taxation when property is owned by a governmental entity and used ‘primarily’ for a ‘governmental purpose.’”).

63. Thus, exempt status now requires that the property in question be “of” or “owned by” the government, **and**, be used primarily for a governmental purpose. Wyo. Const. art. 15, § 12; Wyo. Stat. Ann. § 39-11-105(a)(iii) (2015), *supra* ¶¶ 45-46. The 1956 constitutional amendment effectively restricted the broadly stated government property exemption to those properties used primarily for governmental purposes. *Id.* The amendment, however, **did not extend the exemption to privately owned property, even if used for a governmental purpose.**

64. Accordingly, the State Board must reject B&G’s claim that its privately owned 2-story office building, Blue room, White room, Red room, and the Paint room, are tax-exempt under article 15, section 12 of the Wyoming Constitution, or Wyoming Statutes section 39-11-105(a)(iii) (2015). Because B&G owned those properties, we need not consider their use.

F. Assessor’s determination that county-owned structures, leased to B&G, are not tax-exempt

65. Turning next to B&G’s three leased structures: the Russell Hangar, the Avery Hangar, and the “Bullpen,” these county-owned properties may qualify as tax-exempt if “used primarily for a governmental purpose.” Wyo. Const. art. 15, § 12; Wyo. Stat. Ann. § 39-11-105(a)(iii) (2015), *supra* ¶¶ 45-46.

66. The Wyoming Supreme Court’s decision in *City of Cheyenne v. Board of County Commissioners of County of Laramie*, 484 P.2d 706 (Wyo. 1971) is a logical starting point.

In *City of Cheyenne*, the Court considered whether city-owned properties, leased to private businesses for a range of services within a municipal airport, were tax-exempt under article 15, section 12 of the Wyoming Constitution and were “used primarily for a governmental purpose.” *Id.* at 708.

67. The Court observed that in the absence of a legislative definition of “governmental purpose,” courts have relied upon several criteria to resolve whether property serves a governmental purpose. These include: 1) whether an activity is governmental or proprietary in nature; and 2) whether given properties were an “essential or necessary adjunct” to an identified governmental purpose. *City of Cheyenne* at 709. The Court summarized the test, asking “whether or not those buildings were primarily used and being so used as reasonably necessary or essential facilities to the efficient operation and maintenance of the airport.” *Id.* The Court stressed that neither a governmental entity’s generation of rent, nor a private entity’s generation of profit, were in and of themselves dispositive; rather, the circumstances are to be considered. *Id.*

68. Depending upon each building’s specific function and role, the Court found that several served a governmental purpose, while others did not. Without analysis, the Court accepted the parties’ stipulation that a fixed-base-operator was “a necessary adjunct to the operation of an airport” and held that facilities housing the fixed base operator were, in total, exempt as fulfilling a governmental purpose. *Id.* at 709.

69. The Court disagreed, however, that property used for narrow business purposes, but not for services to the general public or for the airport’s efficient operation, satisfied the test:

One of the other buildings—identified as No. 101—had been leased to a private corporation during the years involved and according to the stipulated facts it “was in the business of modification, repair, overhaul, conditioning and testing of aircraft, aircraft parts and incidentals for the United States of America and for others. Also these services were made available in an increasing degree over the years to others. To carry out some of these activities, airport facilities were required.” These services were rendered under contract principally with the United States Government-and although it was agreed that “airport facilities were required” for rendition of a certain “percentage” of the services, **nothing was said concerning the availability of such services to the general public or the relationship of the enterprise to the necessary and efficient operation of the airport itself.** It is the city’s contention, however, that the greater portion of the lessee’s business, except for years 1966 and 1969, was for “airport associated uses” and hence was not subject to taxation. The trial court rejected that contention and properly so. **To collate “airport associated uses,” which**

we take to mean nothing more here than the use of airport facilities for the landing and takeoff of aircraft, with a necessary and essential activity in the efficient operation of the airport, or in other words a “governmental purpose,” is unreasonable and unwarranted.

City of Cheyenne at 709-10 (emphasis added).

70. That is, governmental property use must generally benefit the public and/or enhance the necessary and efficient operation of the airport beyond the most basic landing and takeoff of aircraft. Thus, evidence must demonstrate more than a miscellaneous airport use—the activity must elevate the airport’s function and efficiency in a way that benefits the public. *Supra* ¶ 69.

71. Finally, airport property leased and used as a commercial county-wide ambulance service was not tax-exempt because there was “‘no connection between necessary facilities of an airport and such operation.’ ” *City of Cheyenne* at 710 (quoting trial court). Without discounting the service’s benefit to the public, the Court agreed that “there was little need for such services at the airport[.]” *Id.*

72. The State Board must also consider the Department’s regulatory guidance, which first directs that “[i]f a service or function is obligatory (one the governmental entity must perform as a legal duty imposed by statute), the function is governmental and the associated property is exempt.” *Supra* ¶ 49. Big Horn County is authorized, but not obligated, to operate an airport. *See* Wyo. Stat. Ann. §§ 10-5-101 through 10-5-302 (2015) (giving broad authorities to operate an airport); Wyo. Stat. Ann. § 18-9-101 through 18-9-103 (2015) (authorizing counties to create airport board of trustees). Second, Department Rules advise that “[i]f a service is rendered gratuitously, supported by taxes, and for the public welfare or enjoyment generally, the property associated with providing such service is exempt.” *Supra* ¶ 49. We have insufficient evidence addressing Big Horn County’s funding of the South Airport and are unable to resolve whether this guideline applies. To the extent these Rules have any bearing on the facts presented, they do not support B&G’s claim that the Russell Hangar, the Avery Hangar, or the Bullpen are tax-exempt.

i. South Airport’s governmental purpose and B&G’s support

73. To resolve whether B&G’s use of county-leased properties served a “governmental purpose” as that phrase is used in Wyoming’s Constitution and tax statutes, we must first clarify Big Horn County’s “governmental purpose.” *City of Cheyenne* at 710. More particularly, did Big Horn County seek to establish a minimal facility capable of landing and launching aircraft, or did Big Horn County envision something more? Answering this question guards against an overly-inclusive view of the South Airport’s intended “governmental purpose.” Wyo. Const., art. 15, § 12; Wyo. Stat. Ann. § 39-11-105(a)(iii) (2015), *supra* ¶¶ 45-46.

74. The evidence unequivocally supports the latter—Big Horn County desired a robust, versatile, and economically ambitious airport that would compete with other rural airports for diverse types of air traffic. The South Airport surpasses in size and capacity its sister North Airport. *Supra* ¶ 1. Further, Big Horn County constructed the larger Russell Hangar and extended runways to accommodate services for larger or military aircraft. *Supra* ¶¶ 1, 6-7. The Airport Board enlisted B&G’s assistance in this hangar and runway expansion project, as well as delegating it authority and responsibility to maintain operational integrity and safety. *Supra* ¶ 7. B&G services from the Russell Hangar were critical to accommodating larger or military aircraft. *Supra* ¶¶ 3-5, 20-23, 26-28.

75. Taking their cue from the Wyoming Supreme Court in *City of Cheyenne*, the parties focused on whether or not B&G was and/or is an FBO. *Supra* ¶¶ 20-31. While the parties in *City of Cheyenne* stipulated that property used to support an FBO’s services was reasonably necessary to the Cheyenne airport’s function, the Court did not go so far as saying that only FBO-occupied properties within an airport would qualify as a governmental purpose. *See supra* ¶¶ 66-71.

76. Still, the evidence concerning B&G’s claimed status as a South Airport FBO allowed the State Board to carefully gauge B&G’s importance to the South Airport, not only as a location from which planes take off and land, but also as a primary service destination where a wider variety of businesses and air passengers could enjoy a broader range of aviation services. *Supra* ¶¶ 2-5, 20-31.

77. Assessor states: “What is critical is the essential nature and character of the services to be offered to the airport.” Assessor’s Resp. Br. 18. We agree. From among several witness characterizations, we also agree with the consensus that while B&G is not absolutely essential to the South Airport’s basic function as a point from which some planes may merely take off and land, B&G’s operations in 2014 through 2015 were unquestionably necessary to sustain the enhanced, well-equipped quality of airport envisioned by Big Horn County. *Supra* ¶¶ 20-31, 73-74. More than one witness opined the South Airport could “technically” operate without B&G’s services, but added that B&G was essential to the South Airport’s economic viability. *Supra* ¶¶ 26-30.

78. Largely undisputed, B&G alone offered a multitude of critical or beneficial services to the South Airport and traveling public, including large aircraft towing and securing, full aircraft reception and handling services during and after business hours, jet fuel sales, large aircraft body fabrication and repair, maintenance of the South Airport’s fire protection system, and a consistently accessible, well-equipped pilots’ lounge. *Supra* ¶¶ 4-5, 20-31. Upon arrival, B&G accepted responsibility to help manage the South Airport and maintain its safety standards. *Supra* ¶ 7.

79. Given these established facts, a clear preponderance of the evidence indicates that B&G served essentially as a “backstop” service provider, ensuring that when special or

after-hour services were required, the South Airport could respond. *Supra* ¶¶ 20-31. Moreover, without B&G, larger aircraft would be without basic aircraft reception, handling, and routine repair services, regardless of the time of day. *Id.*

80. B&G's support of the South Airport is distinguishable from the lessee's use of building number 101 in *City of Cheyenne*, which the Court held did not qualify for the exemption. *Supra* ¶¶ 69-70. While the lessee in that case performed many of the same activities as B&G in the present case, the lessee of building 101 primarily served the military and not the public in general. *City of Cheyenne* at 710. The evidence in that case did not establish or describe lessee's contribution within the Cheyenne airport, relative to the contribution of other operators. In contrast, the evidence in the present case established that B&G's operation, while also conducted for profit, significantly benefitted the South Airport and the public in general. Moreover, B&G offered necessary services which otherwise would not be available, such as towing, large aircraft body repair, jet fuel sales, and complete aircraft reception services. *Supra* ¶¶ 20-31, 78-79. Finally, several witnesses characterized B&G's services as vital to the South Airport's economic viability, a distinction not attributed to the lessee in *City of Cheyenne*. *Supra* ¶¶ 26, 28-30, 77-79.

81. Of course, a business' importance to an airport's operation and economic viability is relative, evolving, and will, in each instance, depend upon a confluence of factors. Had B&G operated among numerous other competing operators, the strength of its claims would no doubt be diminished. Recognizing as much, the Assessor presented evidence that a small plane repair business offered competing aircraft repair and towing services. *Supra* ¶ 9. Yet, this evidence was more than offset by evidence indicating these businesses offered services to different customers with different aircraft requirements. *Supra* ¶ 9, 20-31.

ii. Russell Hangar, Avery Hangar, and "Bullpen"

82. We next resolve whether the county-owned B&G-leased properties were used primarily for the governmental purpose described in the previous section. B&G used the Russell Hangar in support of the South Airport and for aircraft repair and services offered to the public, including as a business office and pilots' lounge. *Supra* ¶¶ 12-13, 20-31. B&G maintained fire-suppression equipment located in the Russell Hangar. *Supra* ¶ 12. At the time of the hearing, B&G was performing inspections of, or repairs to, three aircraft in the Russell Hangar. *Supra* ¶ 12. It houses communication equipment from which B&G employees communicated with pilots. *Supra* ¶ 13. The Russell Hangar is used one hundred percent (100%) for aviation services. *Id.*

83. Although the Russell Hangar's uses do not all qualify as reasonably necessary or essential to the South Airport's operation as described (i.e. airplane storage is offered by the County and other private hangar owners), B&G demonstrated by a preponderance of evidence that the hangar primarily housed essential services in support of the South Airport

and traveling public. These services consisted of aircraft repair and mandatory inspection services that, according to the record, only B&G offered. *Supra* ¶¶ 20-30. It was the consensus view that these services were vital to the South Airport's economic viability and significantly elevated the South Airport's quality. *Supra* ¶¶ 26-30.

84. Especially compelling, B&G offered the traveling public a range of basic airport services and hospitalities, during and after business hours, some of which would not otherwise be available. *Supra* ¶¶ 20-31. The Assessor's responsive argument that the South Airport could still operate without such rings hollow. In particular, Assessor failed to reconcile the South Airport's desired level of airport quality with the South Airport's inability, without B&G's operation, to receive, tow, secure, and possibly fuel (where jet fuel is sought) large commercial aircraft. In this respect, B&G offered critical services similar to an FBO.

85. The State Board concludes B&G used the Russell Hangar primarily for a "governmental purpose," and that it was tax-exempt in 2015 pursuant to article 15, section 12 of the Wyoming Constitution and Wyoming Statutes section 39-11-105(a)(iii) (2015). *Supra* ¶¶ 45-46.

86. The Avery Hangar was used for activities similar to those performed in the Russell Hangar, but for smaller aircraft. *Supra* ¶¶ 14-17. While the Avery Hangar stored aircraft and equipment (not an activity supporting B&G's claim), B&G performed aircraft part machining, inspection, and repair services for the public out of the Avery Hangar. *Supra* ¶¶ 14-17. Much of B&G's core machining, fabrication, and repair work occurred in the adjunct "lean-to" areas built on to the Avery Hangar. *Supra* ¶¶ 14-17. B&G used the Avery Hangar itself for aircraft storage and to lay out aircraft parts during inspection and maintenance work. *Id.* Mr. Bertagnole also discussed maintenance of other vehicles and equipment, but testified that well over fifty percent (50%) of the activities concerned aviation. *Id.* Thus, B&G offered sufficient evidence that it used the Avery Hangar to elevate the South Airport's function beyond that of a minimal facility, consistent with Big Horn County's operational and business objectives. *Supra* ¶¶ 73-80.

87. The State Board concludes B&G carried its burden to demonstrate the Avery Hangar served primarily a governmental purpose and qualified for tax-exempt status in 2015 pursuant to article 15, section 12 of the Wyoming Constitution and Wyoming Statutes section 39-11-105(a)(iii) (2015). *Supra* ¶¶ 45-46.

88. B&G used the "Bullpen" to store airplane parts and equipment. *Supra* ¶ 18. B&G offered insufficient evidence to establish the Bullpen was, or is, a sufficient resource from which the South Airport or traveling public benefit. The State Board concludes B&G failed to meet its burden to establish the Bullpen serves a governmental purpose under article 15, section 12 of the Wyoming Constitution or Wyoming Statutes section 39-11-105(a)(iii) (2015). *Supra* ¶¶ 45-46.

iii. Miscellaneous arguments

89. Assessor asserts B&G used its properties for activities in contravention of FAA guidelines (Assessor's Resp. Br. 8, 19-20), including work performed on non-aviation equipment or for the manufacture of non-aviation materials. *Supra* ¶¶ 32-36. Mr. Bertagnole and other witnesses confirmed that B&G periodically conducted non-aviation work to generate revenue during times when aviation-related work was not available. *Supra* ¶¶ 33-35.

90. A government property, even if put to a non-qualifying use, may nonetheless be used **primarily** for a governmental purpose. *City of Lander*, 882 P.2d at 849 (government property was used primarily for governmental purpose even though property also used for other non-qualifying purposes); *City of Cheyenne*, 484 P.2d at 709-10 (improper to apportion building between exempt and non-exempt use). B&G demonstrated any non-aviation activities were at most, temporary, and that it undertook non-aviation work to sustain its primary aviation business. *Supra* ¶¶ 33-35. Substantial evidence supports B&G's position that the Russell and Avery Hangars were used primarily (large aircraft repair and reception/servicing of aircraft otherwise beyond capabilities of the South Airport) to enhance the South Airport's services to the public. *Supra* ¶¶ 20-31.

91. Assessor offered insufficient evidence to establish that B&G violated FAA guidelines, or that B&G jeopardized the South Airport's standing with the FAA. These allegations do not dissuade us from finding that B&G used the Russell and Avery Hangars primarily for a governmental purpose.

92. Assessor also directs our attention to B&G's agreement to pay property taxes. Assessor's Resp. Br. 5-6, 14, 21. However, B&G's contractual agreement to pay property taxes assumes taxes are owed. Tax obligations, as well as the conditions and exemptions that shape those obligations, must initially arise from statute. *See Amoco Prod. Co. v. Bd. of Cty. Comm'rs of Cty of Sweetwater*, 2002 WY 154, ¶ 41, 55 P.3d 1246, 1258 (Wyo. 2002) (tax obligations are statutory and taxpayer may not shift liability absent a specific statute). Further, the 2010 Land Lease Agreement, which updated lease provisions between Big Horn County and B&G, preserved B&G's ability to contest taxability or the amount of taxes owed. *Supra* ¶ 11. B&G's lease agreements do not—in fact cannot—speak to whether the properties at issue are tax-exempt under the law.

93. Considering the evidence and given Big Horn County's objective of maintaining a progressive and competitive airport, the State Board concludes that B&G's 2014 and 2015 operations, conducted within its two main hangars, the Russell and Avery hangars, were essential to sustaining the South Airport's intended level of operation. Should another operator take B&G's place, or should Big Horn County attract additional operators who also substantially contribute to the South Airport's operations, the Russell and Avery Hangars' tax-exempt status could very well change. As the Wyoming Supreme Court has

advised, the question of tax-exempt status will always depend upon the circumstances. *City of Cheyenne*, 484 P.2d at 709; *City of Lander*, 882 P.2d at 850; *In re Deromedi*, ¶¶ 10-11, 45 P.3d at 1153-54.

G. B&G's claim for refund of property taxes paid in 2014 and earlier

94. B&G requests “that the taxes paid for 2014 under protest, be returned along with all of the previously paid ad valorem taxes which should not have been billed previously.” (B&G Statement to Contest Property Tax Assessment 2015, Big Horn Cty./B&G Tax Appeal File). B&G argues its “claim for exemption” under Wyoming’s Constitution brings the matter within the purview of Wyoming Statutes section 39-13-109(c) (2015), and that it is due refunds of past “erroneous or illegal” taxes. B&G’s Opening Br. 17-18.

95. Assessor responds that B&G’s recovery is barred because B&G’s “exclusive remedy for contesting a tax assessment . . . , required B&G to file a statement to contest property tax assessment with the County Assessor no later than thirty (30) days after the date of assessment.” Assessor’s Resp. Br. 26. Assessor further contends that any B&G claim for refund of illegal or erroneous taxes under Wyoming Statutes section 39-13-109(c) required an appeal within thirty (30) days of the past assessments. Assessor’s Resp. Br. 26. B&G’s failure to timely appeal each assessment, Assessor insists, precludes any refund or recovery for 2014 and earlier. *Id.* See Wyo. Stat. Ann. §§ 39-13-109(b) and 39-13-102(f), (n) (2015).

96. “[T]ax refunds are a matter of legislative grace, and the right to such a refund does not exist in the absence of statutory authorization.” *In re Black*, 775 P.2d 484, 487 (Wyo. 1989) (citing *Atlantic Richfield Co. v. Bd. of Cty. Comm’rs. of Cty. of Sweetwater*, 569 P.2d 1267, 1271 (Wyo. 1977)).

97. Assessor’s fundamental argument that a refund opportunity depends entirely upon a timely appeal is incorrect. The Wyoming Supreme Court rejected such when applied to “illegal or erroneous” taxes in *Atlantic Richfield Co. v. Board of County Commissioners of County of Sweetwater*, 569 P.2d 1267 (Wyo. 1977). Discussing earlier versions of statutes now before us, the Court held that mineral producer Atlantic Richfield’s payment of *ad valorem* taxes, which an appellate court later ruled were paid on exempt federal property, were “erroneous or illegal” taxes. *Id.* at 1273-74 (citing § 39-113, W.S. 1957). The Wyoming Supreme Court concluded the statutory refund remedy for taxes illegally or erroneously assessed was separate from the appeal remedy. *Id.* at 1275. The taxpayer was, consequently, entitled to a refund of taxes it had no reason to initially appeal. *Id.*; see also *Amoco Prod. Co. v. Bd. of Comm’rs of Carbon Cty.*, 876 P.2d 989 (Wyo. 1994) (Mineral

producer Amoco entitled to refund or credit of *ad valorem* taxes erroneously paid, notwithstanding Amoco’s omissions and failure to appeal.).¹¹

98. Beginning with statutory tax refund language now in effect, “[w]ithin one (1) year following an illegal assessment, levy or collection of taxes an action may be filed in district court to enjoin the **illegal** assessment, levy or collection.” Wyo. Stat. Ann. § 39-13-109(c)(i) (2015), *supra* ¶ 47. The next subsection, by contrast, refers to a present determination of a past “erroneous or illegal” tax: “If any person pays any tax, or portion thereof, **found to have been erroneous or illegal**, the board of county commissioners shall direct the county treasurer to refund the erroneous or illegal payment to the taxpayer.” Wyo. Stat. Ann. § 39-13-109(c)(ii) (2015) (emphasis added), *supra* ¶ 47.¹² Thus, there are two refund remedies, each addressing a different circumstance.

99. Applying the plain language of each, (c)(i) requires a taxpayer to object and seek to enjoin or recover taxes illegally assessed or collected within one year of the assessment, levy, or collection. Wyo. Stat. Ann. § 39-13-109(c)(i) (2015), *supra* ¶ 47. That language presumes the taxpayer is in a position to reasonably know and timely challenge the illegal assessment, levy, or collection. By contrast, subsection (c)(ii) refers to an assessment “found to have been erroneous or illegal,” after the one year timeframe within which to sue to enjoin or recover the erroneous or illegal tax. *Id.*

100. Notably, while (c)(i) establishes a one year statute of limitation, no statute of limitation applies under (c)(ii) for refunds of late-discovered erroneous or illegal taxes, not to be confused with excess taxes—those tax liabilities arising from an **overvaluation or miss-valuation**. See *Amoco Prod. Co.*, 876 P.2d at 993 (An overvaluation or overassessment does not give rise to an “illegal” tax because there is no question as to the taxing authority’s jurisdiction.); see also *In re Appeal of Uinta Cty.*, Docket No. 1996-111, 1999 WL 1419191, ¶ 41 (Wyo. State Bd. of Equalization, Dec. 23, 1999) (Subsection (c)(i) entitled taxpayer to refund of erroneous or illegal *ad valorem* taxes without time limitation).

¹¹ Chief Justice Macy dissented in part, observing that cited authority in *Atlantic Richfield* characterized erroneous and illegal taxes as arising from a jurisdictional defect, as opposed to taxes merely overpaid. *Amoco Prod. Co.* at 996. Chief Justice Macy argued that the taxes at issue, based on Amoco’s submitted information, were not illegal or erroneous. Macy further opined that Amoco’s remedy, therefore, was to timely appeal and challenge. If Amoco had insufficient time to gather information for an appeal, Macy added, its recourse was to seek legislative redress. *Id.* at 997.

¹² It is interesting to note that prior to the Wyoming tax code’s comprehensive recodification in 1998, subsection (c)(i) and (c)(ii), *supra* ¶ 47, were found in unrelated statutes and arguably served different purposes. See Wyo. Stat. Ann. § 39-3-203 (1997) (entitled “Actions to enjoin collection of or to recover back taxes”), and Wyo. Stat. Ann. § 39-4-101(b) (1997) (addressing “Disposition of tax collections” within Chapter 4, entitled “Fiscal Provisions”). The 1998 Legislature explained its intent was to merely recodify, and it intended no substantive change. 1998 Wyo. Sess. Laws 312.

101. Our interpretation is also consistent with the Wyoming Supreme Court's reconciliation of the refund and appeal remedies in *Amoco Production Company*:

The procedure articulated in WYO.STAT. § 39-2-201(d) [appeal provision] is designed to permit the taxpayer to challenge an erroneous assessment prior to paying the tax and is useful only when the taxpayer has information at its disposal to demonstrate error. Conversely, WYO.STAT. § 39-4-101(b) [refund provision] is invoked, as *Atlantic Richfield Co.* demonstrates, when the tax has been paid and, subsequently, a determination is made that the tax paid was illegal or erroneous.

876 P.2d at 995. While the *Amoco Production Company* court did not substantively address the one-year statute of limitation for suing to enjoin illegal tax, that limitation period is triggered in much the same fashion as the thirty-day appeal requirement under Wyoming Statutes section 39-13-109(b)(i) (2015) in that the taxpayer must be in a position to reasonably object.

102. Although taxes assessed on exempt property may be illegal, *Atlantic Richfield Company*, 569 P.2d at 1275 (quoting 84 C.J.S. *Taxation*, § 632b(2)), B&G cannot reasonably assert it lacked an ability to timely challenge the tax assessments in question. The exemption at issue is unlike the exemption at issue in *Atlantic Richfield Company* in that the "governmental purpose" exemption is not black and white and requires a fact-intensive review of property use vis-à-vis an underlying governmental purpose. Nor was assessment of B&G's property the result of an "erroneous" assessment like that in *Amoco Production Company*. To the contrary, B&G was always in position to assert the properties were tax-exempt if used to support and enhance the South Airport's operational objectives.

103. The legislature has not authorized a refund under the circumstances presented. B&G was required to pursue in district court, cessation of the *ad valorem* assessments against its property within one year of assessment, levy, or collection, in accordance with Wyoming Statutes section 39-13-109(c)(i) (2015). As such, subsection (c)(ii) does not apply. *Supra* ¶ 47; see *Atlantic Richfield Co.*, 569 P.2d at 1275; *Amoco Prod. Co.*, 876 P.2d at 995. We therefore conclude that B&G is not entitled to a refund of any *ad valorem* taxes assessed through 2014.

CONCLUSION

104. For the 2015 tax year, B&G used the Russell and Avery Hangars primarily for a governmental purpose and they were, therefore, tax-exempt under article 15, section 12 of the Wyoming Constitution and Wyoming Statutes section 39-11-105(a)(iii) (2015).

105. The Assessor correctly denied tax-exempt status for the balance of the properties at issue.

106. B&G is not entitled to a refund of erroneous or illegal taxes paid through 2014 on the properties at issue because it failed to pursue refunds within one year “following an illegal assessment, levy or collection of taxes” as required under Wyoming Statutes section 39-13-109(c)(i) (2015).

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ORDER

IT IS, THEREFORE, ORDERED that the Big Horn County Assessor's denial of tax-exempt status and the assessment of *ad valorem* taxes in 2015 on the Russell and Avery Hangars is reversed;

IT IS FURTHER ORDERED that the Big Horn County Assessor's denial of tax-exempt status in 2015 for all remaining B&G Industries, LLC owned or leased properties within the Big Horn County South Airport is **affirmed**; and

IT IS FURTHER ORDERED that the Big Horn County Assessor's denial of refunds of *ad valorem* taxes through 2014 is **affirmed**.

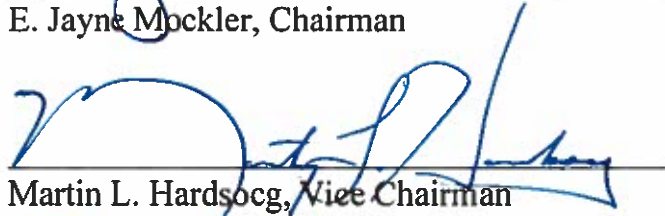
Pursuant to Wyo. Stat. Ann. §16-3-114 (2015) and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days of the date of this decision.

Dated this 21st day of July, 2016

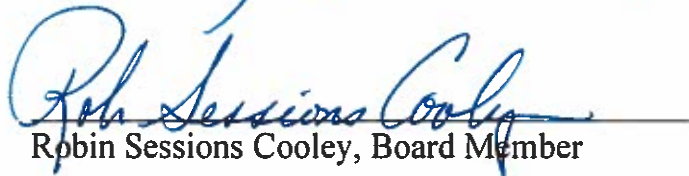
STATE BOARD OF EQUALIZATION



E. Jayne Mockler, Chairman

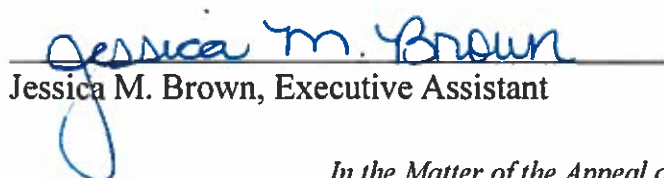


Martin L. Hardsocg, Vice Chairman



Robin Sessions Cooley, Board Member

ATTEST:




Jessica M. Brown, Executive Assistant

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of July, 2016, 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:

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