

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
MERIT ENERGY COMPANY, LLC) Docket No. **2017-62**
FROM A DECISION BY THE PARK)
COUNTY BOARD OF EQUALIZATION)
(2017 Property Tax Assessment))

DECISION AND ORDER

APPEARANCES

Walter F. Eggers, III, Holland & Hart LLP, appeared on behalf of Merit Energy Company, LLC (Merit).

Branden S. Vilos, Park County and Prosecuting Attorney, appeared on behalf of Pat Meyer, Park County Assessor (Assessor).

DIGEST

Merit challenged Assessor's 2017 valuation of Merit's oil and gas field production equipment for tax purposes. In particular, Merit challenged Assessor's method of depreciating older equipment. Although Assessor had fully depreciated the equipment in previous years, he determined the equipment was well maintained and exhibited substantial remaining economic life. Based on that determination, Assessor allowed less depreciation for the 2017 tax year than he had permitted in previous years, which increased the older equipment's fair market value in 2017. Merit responded that Assessor should continue to fully depreciate the older equipment. The Park County Board of Equalization (County Board), following a contested case hearing, affirmed Assessor's valuation.

The Wyoming State Board of Equalization, Chairman Martin L. Hardsocg, Vice-Chairman David L. Delicath, and Board Member E. Jayne Mockler, reviewed the County Board record to determine whether the County Board's Findings of Fact, Conclusions of Law and Order (County Board Order) was arbitrary, capricious, supported by substantial evidence, and/or contrary to law. Rules, Wyo. State Bd. of Equalization, ch. 3 § 9 (2006). We affirm.

ISSUES

Merit presents a single issue in this appeal:

The County Board affirmed the Assessor's decision to apply a forty-five percent residual value limit to Merit's oil and gas equipment and facilities for property tax purposes. The Wyoming Department of Revenue's rule governing depreciation for county property tax purposes sets a residual value limit of twenty percent. Given these rules, did the County Board's order and the Assessor's assessments violate Wyoming property tax law?

(Merit's Opening Br. 5).

Assessor restates the issue as:

Whether the Park County Board of Equalization's conclusion that Merit Energy failed to meet its burden by a preponderance of the evidence standard that the Park County Assessor's actions were arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law is supported by substantial evidence and/or is itself arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law?

(Assessor's Response Br. 1).

JURISDICTION

The State Board is authorized to "hear appeals from county boards of equalization." Wyo. Stat. Ann. § 39-11-102.1(c) (2017). The County Board issued Findings of Fact, Conclusions of Law, and Order on September 29, 2017. (R. at 1164-87). Merit filed its appeal from the County Board's decision on October 17, 2017. (R. at 1194-1264). As Petitioner timely appealed from a final action of the County Board, the State Board has jurisdiction to hear the appeal. Rules, Wyo. State Bd. of Equalization, ch. 3 § 2 (2006); Wyo. Stat. Ann. § 39-13-109(b)(ii) (2017).

FACTS PRESENTED TO THE COUNTY BOARD

A. Merit's oil and gas production equipment

1. Merit, which produces oil and natural gas in Wyoming, purchased producer Marathon Oil Corporation's Park County oil and gas operations in 2016, much of which consisted of older field equipment. (R. at 00841). Merit's Operations Manager, Randy

Sanders, testified that Merit operated 1,170 wells, including production, injection, disposal, and “temporary abandoned wells.”¹ (R. at 00842).

2. Mr. Sanders described the production fields as “old mature fields,” believing that one was discovered in 1906 and the others during the 1930’s. He characterized the equipment in the field as “functional,” adding that it was “important to Merit Energy Company that it maintain the good working condition of its equipment[.]” (R. at 00842-43). Mr. Sanders added that while some of the equipment is 30 or 40 years old, it operates effectively because it has been well maintained. (R. at 00852).

3. During cross examination, Mr. Sanders reiterated that the equipment is in “good working condition[.]” (R. at 00846-47). He further agreed that various regulatory bodies, including the Department of Environmental Quality, Wyoming Occupational Safety and Health Administration, and the Wyoming Oil and Gas Conservation Commission, regulated operation of the equipment. *Id.* He believed the equipment had no obvious defects. (R. at 00847-48).

B. Merit’s resistance to Assessor’s revised depreciation² approach and resulting property tax increase

4. Assessor’s 2017 tax notices (and backup documentation) revealed that Assessor increased the taxable value of Merit’s oil and gas field equipment, including equipment recently acquired from Marathon Oil Corporation, from the prior year. (Ex. 1, R. at 00104-47; Ex. 11, R. at 00420-60).

5. The equipment’s value increased as a result of Assessor’s revised depreciation approach. Deviating from his historic depreciation allowance of 80%, Assessor attributed a 2008 acquisition date³ to field equipment older than 2008; in many instances, Merit’s predecessor, Marathon Oil Corporation, had acquired and installed the equipment decades earlier. For equipment installed after 2008, Assessor applied the equipment’s actual acquisition date and the standard depreciation rate tied to that equipment age. (Ex. 11, R. at 00420-60; R. at 00871-77, 00882-87, 00944-49).

¹ While this dispute concerns only the valuation and assessment of production equipment in the field, the Assessment included a broader range of property, including buildings and processing facilities. (R. at 00867-68, 00877-78, 00882-83).

² “Depreciation” is defined as “a loss of utility and hence value from any cause. Depreciation may take the form of physical depreciation, functional obsolescence, or economic obsolescence.” Rules, Wyoming Dep’t of Revenue, ch. 9 § 4(a)(xiii) (2016); (Ex. 6, R at 00364).

³ As will become evident, the acquisition date for property is significant because it impacts the depreciation percentage and taxable value, i.e. more recently acquired property is newer, is allowed less depreciation and therefore, has a higher value. *See infra* ¶¶ 6-7, 14-17, 35-37.

6. Therefore, notwithstanding Marathon's acquisition of the equipment 30 or 40 years before 2016, Assessor calculated the equipment's "effective age" to be eight years in 2016, with a remaining life of six years.⁴ (R. at 00864, 00986, 01037-38; Ex. 3, R. at 00353-54). By attributing a 2008 acquisition date, Assessor reduced the equipment's depreciation from 80% to 55%, thereby increasing the equipment's "percent good" ratio from 20% to 45% and increasing the equipment's taxable value.⁵ *Id.*

7. Merit argued to Assessor that its equipment should depreciate in accordance with the Department of Revenue's standard straight line depreciation schedule, which limits depreciation to 80%. Rules, Wyo. Dep't of Revenue, ch. 9 § 5(i)(c)(I-III) (2016) (Ex. 6, R. at 00369-70), *infra* ¶ 36; *see also* State of Wyo. Pers. Prop. Valuation Manual 2017 § 6.4 (Ex. 3, R. at 00242), *infra* ¶ 37. Merit offered as evidence a spreadsheet listing its equipment, each item's actual acquisition date, and for the equipment 14 years or older, full depreciation of 80% with a corresponding "20% good" residual value. (Ex. 10, R. at 00385-419; R. at 00874-76, 00920-22, 00944-49).

8. Designated an expert witness, consulting appraisal specialist Daniel Kistler testified in support of Merit's challenge to Assessor's assessment. Although an American Society of Appraisers-certified appraiser with twelve years of experience valuing energy-related assets, Mr. Kistler was not a Department of Revenue-certified appraiser. (R. at 00855-56, 00862-63, 00872, 00906). Mr. Kistler opined that the County Board should reject Assessor's depreciation method because:

- i) Merit had not actually replaced the old equipment with newer equipment;
- ii) Assessor incorrectly depreciated the property at 55% (45% good) even though most of the property was well beyond its expected 14 year life, explaining "that means that that – that asset is valued at 45 cents on the dollar of a brand-new piece of equipment[]";
- iii) Assessor's approach deviates from commonly applied depreciation methods which allow equipment to depreciate to a floor value, or "residual value";

⁴ The standard life expectancy of oil and gas production equipment is 14 years in accordance with Department of Revenue guidelines. (R. at 00919-920, 00972; Ex. 3, R. at 00270-337 (Personal Property Valuation Manual 2017 indicating for each type of oil and gas field equipment: "RealWare 14 Yr. Life")).

⁵ The "percent good" ratio more understandably conveys the depreciation's effect on value: "The simple way of thinking about it is if you're getting 55 percent of depreciation off of replacement cost new ... You take the dollar and you got 55 cents of depreciation ... rather than talking about depreciation by the amount depreciated, refer to it as the percent good." (R. at 00879).

iv) Assessor's approach, in which he established a depreciation "floor"⁶ at 55% (45% good), is inconsistent with Wyoming law and generally accepted appraisal practices, in particular Chapter 9, section 5(c)(1)(D)(II) of the Department of Revenue's Rules;

v) Per Assessor's revised depreciation analysis, the value of certain pieces of equipment increased between 2015 and 2017, even though the value of oil and gas production decreased.⁷

(R. at 00877, 00880-82, 00887-95, 00898-905; Ex. 8, R. at 00382).

9. Assessor's decision to reset depreciation for Merit's older equipment increased Merit's taxable value approximately \$10 million. Consequently, Merit's tax liability increased approximately \$100,000. (R. at 00910-911, 00943-44).

C. Assessor's revised depreciation approach

10. In his seventh year (second term) as Park County Assessor, Pat Meyer had worked in the Assessor's Office as a deputy assessor since 1990. He had 1,700 hours of IAAO (International Association of Appraisal Officials) appraisal training and is a Department of Revenue-certified appraiser. (R. at 00955-56).

i. Assessor's preferred cost valuation method option: Replacement Cost New

11. Assessor explained that Wyoming's mass-appraisal valuation system offers two cost-based valuation options to value Merit's equipment:

You can take their reported cost and then you trend it up, all the reported costs get trended, and then you can depreciate it down. That's one way. That means you're figuring what they're giving you is totally accurate of installed cost and so forth.

Or you can do a replacement cost new. That comes out of a manual that – and what you're looking at in the personal property valuation manual is how Park County does do it. We book every equipment that we can possibly find when they give us renditions. If we can't find that in the manual or it's a poor description but they gave us a reported cost, we – and that's

⁶ The witness' use of the term "floor" is, from Merit's standpoint, significant and denoted an illegal departure from the Department's established 20% "residual value," itself a depreciation floor; Assessor, however, did not agree that he created a residual value "floor." *Infra* ¶ 50.

⁷ Merit offered Exhibit 8 to illustrate the relationship between production rates, the Department's suggested standard straight line depreciation, and the Assessor's allowed depreciation over a period of years. (Ex. 8, R. at 00382).

best information we have, we will trend that up and depreciate it down too and give it depreciation. That's what we would do in those type of situations.

But in general with all companies, we book all oil and gas, which is a lot more tedious than just taking their word, trending it up and bring it down.

(R. at 00960-61; *see also* 00974-77, 00985-86); *see infra* ¶¶ 34-35.

12. For the equipment at issue, “[r]eplacement cost new is one that we use,” Assessor testified. He added “[t]hat’s when you’re looking at blue books, MAT cost manuals, Kelly books, farm equipment manuals to establish what that piece – well, for oil and gas, anyways, in this manual, you’re establishing what that – what that piece of equipment would cost you brand-new today. And then you’re depreciating it down.” (R. at 00976).⁸

ii. Adjusting depreciation, a function of properties’ “effective age” and “remaining economic life”

13. Merit contends that its equipment should depreciate at a standard rate in accordance with the Department’s rule: “Depreciation **shall** continue to be applied until the residual value is reached” and “**shall** be considered to be no less than 20 percent for all personal property.” (Merit Opening Br. 20, citing Rule, Wyo. Dep’t of Revenue, ch. 9 § 5(c)(i)(D)(II) (2016) (emphasis added)); *infra* ¶ 36. Assessor responds, “I put in effective ages on things, so I haven’t reached the 20 percent residual on Merit’s equipment. We never got that far.” (R. at 01033-34). He continued, “[i]t’s too well maintained to put an actual age of over 14 years or use their actual age of 30 years, when they keep getting refurbished, remaintained, new parts in them refurbished. They’re not that old. And they will never get that old because if they did, yeah, they wouldn’t be working if they reached their economic life.” *Id.*

14. Referring to Merit’s equipment listed in Exhibit H, Assessor noted that 69.47% of the equipment had long before exceeded its 14 year life span, but should not be valued as such:

That reflects all of them that have run out of their life category. They’re over 14 years old, and, according to Merit, would be getting the 80 percent depreciation or 20 percent good. And you can see there’s actually 1561 items that have – that are beyond their reach. But what nobody’s saying is, yeah, they keep getting refurbished, no matter if they’re controllers or pump units or wellheads. Yeah, they’re – a lot of it is brand-new stuff they have to put in there. You know, we don’t get those kind of reports. Which,

⁸ Assessor also applied the sales comparison approach to verify book values by examining advertised prices for like equipment. (R. at 00972-74).

again, is why we got to go more by condition and estimate what really is their remaining life.

(R. at 1010; Ex. H, R. at 00720-34).⁹ Assessor added that effective age calculations are applied to value numerous other types of personal property, including tractors, airplanes, and farm equipment.¹⁰ (R. at 001011-14; Ex. K, R. at 00789-893).

15. In effect, Assessor interpreted the Department's depreciation rule, upon which Merit primarily relied, as a default depreciation schedule applicable in the absence of other considerations. Correspondingly, he reasoned that the Computer Aided Mass Appraisal system's (CAMA's) straight line depreciation tables (incorporating Marshall and Swift depreciation tables) likewise applied in the absence of effective age adjustments. (R. at 01036-1037). In support of his view, Assessor referred to the Department's guidance on "effective age":

Effective age is the number of years of age of the subject property as indicated by its condition. It is the difference between the total economic life and the remaining economic life. If the property has experienced better than average maintenance, its remaining economic life can be extended, therefore, its effective age may be less than the actual age; if there has been inadequate maintenance, it may be greater. When possible, the appraiser should attempt to determine remaining economic life and can then estimate effective age.

(R. at 00965-66, quoting State of Wyo. Pers. Prop. Valuation Manual 2017 § 6.4, Ex. 3, R. at 00241, *infra* ¶ 37).

16. Procedurally, because Wyoming's CAMA system offered no direct "effective age" adjustment mechanism, Assessor improvised a "work around" pursuant to the Department's guidance. For properties acquired before 2008, Assessor changed the "acquisition date" to 2008, which artificially restated the equipment's age as eight years. Through that change, Assessor imputed a remaining economic life of six years, allowing depreciation of 55% and a current value of "45% good." (Ex. 3, R. at 00241, *infra* ¶ 37; R. at 1006-07, 01029-30, 01037-38).

17. Assessor also cited the Department of Revenue's guidance as to how the condition of oil and gas equipment, *infra* ¶ 45, may influence the valuation of the equipment: "Typically, aged operational oil and gas field equipment is maintained well enough that it should have some remaining economic life left. OSHA requires all oil and gas field

⁹ Assessor explained that taxpayers may claim their property's condition is overestimated, in which case Assessor would verify its condition upon request. (R. at 01014, 01038-39).

¹⁰ Assessor also referred to valuations performed by contract appraiser T.Y. Pickett on specialized oil and gas industry facilities, such as processing installations. He stated that T.Y. Pickett does not adhere to the Department's 20% residual value floor and that it applies other factors. (R. at 01046-48).

equipment to be in satisfactory, normal, safe operating condition or sound mechanical working condition.” (R. at 00967-68, 00970-73, quoting State of Wyo. Pers. Prop. Valuation Manual 2017, Ex. 3, R. at 00271, *infra* ¶ 45).

iii. Assessor’s audit of oil and gas field equipment conditions

18. Assessor’s revised depreciation approach occurred as part of an audit of oil and gas field equipment commenced in 2014. At the time of the hearing, the ongoing audit was in its third year. The Assessor’s Office reviewed the condition of equipment through on-site visits. The Assessor’s Office photographed equipment, documented equipment locations, and interviewed Marathon and Merit personnel with knowledge of the equipment’s condition. (R. at 00966, 00986, 00989-90, 01002-05, 01022-28, 01037-38). Assessor concluded that the condition of the equipment warranted valuations “higher than salvage or residual value” regardless of the actual age and depreciation allowed in previous years. (R. at 00990-91). He opined that equipment at a 20% residual value “should be on its last legs according to every description I read in the oil and gas personal property manual.” (R. at 00132).

19. In previous years, Assessor had allowed the equipment to depreciate to 20% good because his office “hadn’t really done a fair audit of it and viewed the equipment, so [they] couldn’t just say it’s in good equipment – it’s in good condition until [they] really went out there and looked at it.” (R. at 01004-05, 01020-21, 01030).

iv. Other appraisal guidance

20. Assessor drew support for his depreciation analysis from various sources. He referred to equipment condition classifications issued by the American Society of Appraisers, cited within a Frazier Capital Valuation publication. (Ex. J, R. at 00770; R. at 00996). Assessor referred to OSHA regulations that require equipment be satisfactorily maintained and removed from service if “showing material deteriorations.” (R. at 00997; Ex. E, R. at 00652-54). Assessor also directed the County Board to Council of Petroleum Accountants Society’s (CPAS) condition ratings, used as a depreciation guide (60-70% good for functioning equipment) when transferring equipment among industry participants. (R. at 00997; Ex. G, R. at 00718-19). Assessor cited guidance from the International Association of Assessing Officers (IAAO), which advises that appraisers adjust for effective age. (Ex. I, R. at 00743; Ex. 00997-98). Assessor also sought out internet sales of equipment to gauge advertised prices for equipment. (Ex. M, R. at 00798-816; R. at 00998-1001, 01039-43).

D. The County Board’s affirmation of Assessor’s valuation

21. The County Board rejected Merit’s challenge to Assessor’s revised depreciation allowance. (R. at 01164-87). Most noteworthy, the County Board agreed the Department’s

guidelines afforded Assessor discretion to consider the equipment's condition and "effective age," and disagreed that the Department required "the imposition of a 20% residual value simply due to the passage of time." (R. at 01184-85).

CONCLUSIONS OF LAW

A. Standard of Review

22. When the State Board hears appeals from a county board, it sits as an intermediate level of appellate review. *Town of Thermopolis v. Deromedi*, 2002 WY 70, ¶ 11, 45 P.3d 1155, 1159 (Wyo. 2002). In its appellate capacity, the State Board treats a county board as the finder of fact. *Id.*

23. The State Board's standard of review of a county board decision is, by rule, nearly identical to the Wyoming Administrative Procedure Act standard that a district court must apply in reviewing such decisions. Wyo. Stat. Ann. § 16-3-114(c)(ii) (2017). The State Board's review is limited to determining whether a county board's action is:

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

Rules, Wyo. State Bd. of Equalization, ch. 3 § 9(a)-(d) (2006).

24. Because the State Board Rules are patterned on the judicial review provisions of Wyoming Statutes section § 16-3-114 (2017), judicial rulings interpreting that section offer guidance:

When an appellant challenges an agency's findings of fact and both parties submitted evidence at the contested case hearing, we examine the entire record to determine if the agency's findings are supported by substantial evidence. If the agency's findings of fact are supported by substantial evidence, we will not substitute our judgment for that of the agency and will uphold the factual findings on appeal. "Substantial evidence is more than a scintilla of evidence; it is evidence that a reasonable mind might accept in support of the conclusions of the agency."

Chevron U.S.A., Inc. v. Dep't of Revenue, 2001 WY 79, ¶ 9, 158 P.3d 131, 134 (Wyo. 2001) (citations omitted).

25. The State Board reviews conclusions of law *de novo*:

Questions of law are reviewed *de novo*, and “ [c]onclusions of law made by an administrative agency are affirmed only if they are in accord with the law. We do not afford any deference to the agency’s determination, and we will correct any error made by the agency in either interpreting or applying the law.’ ”

Maverick Motorsports Grp., LLC v. Dep't of Revenue, 2011 WY 76, ¶ 12, 253 P.3d 125, 128 (Wyo. 2011) quoting *Bowen v. State, Dep't of Transp.*, 2011 WY 1, ¶ 7, 245 P.3d 827, 829 (Wyo. 2011).

26. Likewise, the State Board reviews a county board’s ultimate findings of fact *de novo*:

When an agency’s determinations contain elements of law and fact, we do not treat them with the deference we reserve for findings of basic fact. When reviewing an “ultimate fact,” we separate the factual and legal aspects of the finding to determine whether the correct rule of law has been properly applied to the facts. We do not defer to the agency’s ultimate factual finding if there is an error in either stating or applying the law.

Mtn. Vista Ret. Residence v. Fremont Cty. Assessor, 2015 WY 117, ¶ 4, 356 P.3d 269, 272 (Wyo. 2015) (citations omitted).

27. “The party challenging the sufficiency of the evidence has the burden of showing the lack of substantial evidence to support the agency’s findings.” *Faber v. Wyo. Dep't of Transp.*, 2009 WY 137, ¶ 5, 220 P.3d 236, 238 (Wyo. 2009) (citations omitted).

28. “A strong presumption favors the Assessor’s valuation. ‘In the absence of evidence to the contrary, we presume that the officials charged with establishing value exercised honest judgment in accordance with the applicable rules, regulations, and other directives that have passed public scrutiny, either through legislative enactment or agency rule-making, or both.’ ” *Britt v. Fremont Cty. Assessor*, 2006 WY 10, ¶ 22, 126 P.3d 117, 125 (Wyo. 2006) (quoting *Amoco Prod. Co. v. Dep't of Revenue*, 2004 WY 89, ¶ 7, 94 P.3d 430, 435 (Wyo. 2004)). A mere difference of opinion as to value is not sufficient to overcome the presumption. *J. Ray McDermott & Co. v. Hudson*, 370 P.2d 364, 370 (Wyo. 1962).

29. If Petitioners successfully overcame the presumption, “the county board was ‘required to equally weigh the evidence of all parties and measure it against the appropriate burden of proof.’ ” *Britt*, ¶ 23, 126 P.3d at 125 (quoting *CIG v. Wyo. Dep’t of Revenue*, 2001 WY 34, ¶ 10, 20 P.3d 528, 531 (Wyo. 2001)). The Court explained the shifting of burdens upon overcoming the presumption: “The burden of going forward would then have shifted to the Assessor to defend her valuation,” but the ultimate burden of persuasion remained with the taxpayer to prove by a preponderance of evidence that the valuation was not derived in accordance with constitutional or statutory requirements. *Id.*

B. Applicable Law

30. The Wyoming Constitution requires that all property be uniformly assessed for taxation, and that the Legislature prescribe regulations to secure a just valuation for the taxation of all property. Wyo. Const. art. 15, § 11.

31. Broken into its component parts, the Wyoming Constitution requires: (1) a rational method of valuation; (2) that is equally applied to all property; and (3) provides essential fairness. *Basin Elec. Power Coop., Inc. v. Dep’t of Revenue*, 970 P.2d 841, 852 (Wyo. 2001). It is the burden of the party challenging an assessment to prove by a preponderance of the evidence that at least one of these elements has not been fulfilled. *Id.*

32. County assessors are required to “[f]aithfully and diligently follow and apply the orders, procedures and formulae of the department of revenue or orders of the state board of equalization for the appraisal and assessment of all taxable property[.]” Wyo. Stat. Ann. § 18-3-204(a)(ix) (2015).

33. All property must be valued annually at fair market value. Wyo. Stat. Ann. § 39-13-103(b)(vii) (2015). Fair market value is defined as:

[T]he amount in cash, or terms reasonably equivalent to cash, a well informed buyer is justified in paying for a property and a well informed seller is justified in accepting, assuming neither party to the transaction is acting under undue compulsion, and assuming the property has been offered in the open market for a reasonable time[.]

Wyo. Stat. Ann. § 39-11-101(a)(vi) (2015); *see also* State of Wyo. Pers. Prop. Valuation Manual 2017, § 6.1; (Ex. 3, R. at 00236).

34. Assessors may apply several valuation methods to value personal property; Assessor applied the cost approach:

Section 5. Appraisal Methods.

...

(ii) The Cost Approach. The cost approach is a method of estimating value by summing the land value, where applicable, with the depreciated value of improvements. In the CAMA system, RCNLD¹¹ is calculated using Marshall and Swift cost tables. The cost approach is an accepted supplemental approach and could serve as the primary approach when sales data is unavailable or inadequate (such as special purpose properties). Market adjusted RCNLD plus land value is an accepted method of the cost approach. Sales prices shall be adjusted for time. Other factors influencing sale price should be considered. The cost approach relies on the principle of substitution in which an informed buyer will not pay more for a property than its comparable replacement. The approach requires:

(A) Accurate, current land values in the case of real property;

(B) Accurate, pertinent physical data regarding the property to which cost data may be applied;

(C) Current cost data which considers appreciation in the case of real and personal property;

(I) Costs may be estimated on the basis of typical replacement or reproduction costs.

(II) Typical replacement or reproduction costs may be estimated by the quantity survey method, the unit-in-place method, the comparative unit method, or the trended original cost method.

Rules, Wyo. Dep't of Revenue, ch. 9 § 5(b)(ii) (2016); (Ex. 6, R. at 00367-68).

35. The Department of Revenue identifies two cost method strategies: the "Trended Cost" approach and the "Replacement Cost New" approach. Assessor opted to apply the "Replacement Cost New" approach:

Replacement Cost New (R) - This variation begins with an estimated replacement cost new (RCN) of property derived from market data or book values of similar properties. Using an (R) approach to cost valuation, no trending or adjustment for inflation/deflation is applied. From the initial estimate of (RCN), an estimate of the total loss in value is made, which is the result of all forms of depreciation (physical, functional, and economic) on the subject property. The resulting value is determined to be the subject property's market value.

State of Wyo. Pers. Prop. Valuation Manual 2017, § 6.4; (Ex. 3, R. at 00240) (underline in original).

¹¹ RCNLD stands for Replacement Cost New Less Depreciation.

36. For “special purpose property,” the Department of Revenue further directs as follows:

(c) Appraisal Methods for Special Purpose Property

(i) Personal Property

(A) The cost, sales comparison, and income approaches should be considered as long as the market within the trade level is in equilibrium.

(B) The valuation methodology selected shall reflect the trade level at which personal property is found, and consider factors influencing the value in use including utility, usefulness to the owner or the actual income produced.

(C) References: Property appraisers may use any credible source to establish costs or sales or [sic] personal property, including, but not limited to “blue book” on boats, airplanes, farm and construction equipment, Marshall and Swift Valuation Service and information developed by the Division.

(I) The Division shall annually conduct a study of information on personal property, using such source material as may be available, including but not limited to trade journals and publication, auction information, sales from dealers and manufacturers, industry associations, as well as comment from interested parties.

(II) The Division shall interpret the data collected in the study and make recommendation. The completed work product shall be published annually on the Department of Revenue website and be entitled the Wyoming Personal Property Valuation Manual.

(III) The Wyoming Personal Property Valuation Manual shall also include updated cost trend factor tables, economic life tables, and depreciation tables. Said tables shall also be incorporated into the CAMA system.

(D) Depreciation in the valuation of Personal Property

(I) Depreciation shall be applied beginning at the first assessment date after the property is acquired.

(II) Depreciation shall continue to be applied until the residual value is reached. The residual value shall be considered to be no less than twenty percent (20%) for all personal property, unless the property tax appraiser has collected sufficient market information to indicate a different residual value.

(III) The Division shall provide tables of depreciation factors for use by property tax appraisers. Other rates of depreciation may be developed by the appraiser.

Rules, Wyo. Dep't of Revenue, ch. 9 § 5(c)(i) (2016); (Ex. 6, R. at 00369-70).

37. The Department instructs assessors to consider additional factors, including:

Effective Age defined by IAAO 2007: It is the number of years of age of the subject property as indicated by its condition. It is the difference between total economic life and the remaining economic life. If the property has experienced better than average maintenance, its remaining economic life can be extended, therefore, its effective age may be less than the actual age; if there has been inadequate maintenance, it may be greater. When possible, the appraiser should attempt to determine remaining economic life and can then estimate the effective age.

When the condition of the equipment is unknown, caution is advised to assume the effective age to be the same as actual age.

Applying effective age in RealWare – at this time the CAMA system does not have the capability to enter an effective age in the Personal Property or Oil & Gas modules. For the tax year 2018 this will be available in the Oil & Gas module. Therefore a simple “work around” may be utilized and consists of adjusting the Acquisition Year to adjust the depreciation appropriately.

Remaining Economic Life (REL) defined by IAAO 2007: It is the number of years from the date of the appraisal to the date when the property becomes economically valueless (end of its economic life). Estimation of REL is the most important step in the calculation of accrued depreciation, since it is the basis from which remaining utility is estimated.

...

Residual Value: Wyoming Department of Revenue Rules & Regulation Chapter 9(c)(i)(D)(II) states: “*Depreciation shall continue to be applied until the residual value is reached. The residual value shall be considered to be no less than twenty percent (20%) for all personal property, unless the*

property tax appraiser has collected sufficient market information to indicate a different residual value.”

When a property’s value depreciates to 20% good, that value then is described as “Residual Value” and typically it is no longer being used as intended to be. For example, once a tractor reaches the end of its economic life it’s more than likely sold for scrap iron.

State of Wyo. Pers. Prop. Valuation Manual 2017, § 6.4; (Ex. 3, R. at 00241-42) (bold & italics in original).

38. An Assessor shall “reconcile” different valuation methods and factors affecting value, but shall attribute the greatest weight to the “value indicator which, in his professional judgment, best approximates the value of the subject property.” Rules, Wyo. Dep’t of Revenue, ch. 9 § 5(b)(iv) (2016); (Ex. 6, R. at 00369). Assessors shall also “evaluate all alternative conclusions and correlate the value indicators to arrive at a final estimate of fair market value.” *Id.*

C. Review of County Board’s decision

39. Faulting Assessor’s valuation (and thereby the County Board’s decision rejecting Merit’s challenge), Merit argues: 1) Assessor imposed a 45% residual value limit (55% depreciation floor), contrary to the Department of Revenue’s rules and guidelines; 2) Assessor improperly assigned an acquisition date of 2008, and an effective age of eight years, for all equipment acquired before 2008; 3) Assessor improperly relied on the Department’s guidance regarding property condition to justify discarding the Department’s prescribed residual value of 20%; 4) Assessor offered no evidence of the equipment’s condition in support of the lower depreciation rate and effective age; and 5) Assessor’s deviation from the Department’s straight line depreciation renders his valuations non-uniform when compared to others. (Merit’s Opening Br. 17-35).

40. Because Merit primarily questions the circumstances under which Assessor could deviate from the Department of Revenue’s straight line depreciation directive, we first examine the Department’s regulatory guidance. Second, we resolve whether the County Board correctly concluded that Assessor acted within the scope of his discretion, and whether substantial evidence supported the County Board’s decision.

i. An assessor’s authority to deviate from Department of Revenue’s prescribed depreciation schedule applied to personal property

41. Merit focuses our attention on the words “shall” in the Department’s rule addressing depreciation applied to personal property:

(D) Depreciation in the valuation of Personal Property

I) Depreciation shall be applied beginning at the first assessment date after the property is acquired.

(II) Depreciation **shall** continue to be applied until the residual value is reached. The residual value **shall** be considered to be no less than twenty percent (20%) for all personal property, unless the property tax appraiser has collected sufficient market information to indicate a different residual value.

(III) The Division shall provide tables of depreciation factors for use by property tax appraisers. Other rates of depreciation may be developed by the appraiser.

Rules, Wyo. Dep't of Revenue, ch. 9 § 5(c)(i)(D)(I-III) (2016) (emphasis added), *supra* ¶ 36; Ex. 6, R. at 00368-69). (Merit's Opening Br. 20-21). Merit complains that Assessor and the County Board "erred as a matter of law when they applied and approved a residual value floor¹² of forty-five percent." *Id.*

42. "The rules of statutory interpretation also apply to the interpretation of administrative rules and regulations" and, as with statutes, "all portions of an act [or regulation] must be read in *pari materia*, and every word, clause and sentence of it must be considered so that no part will be inoperative or superfluous." *Powder River Basin Res. Council v. Wyo. Dep't of Envtl. Quality*, 2010 WY 25, ¶ 30, 226 P.3d 809, 819 (Wyo. 2010) (quoting *Powder River Coal Co. v. Wyo. State Bd. of Equalization*, 2002 WY 5, ¶ 6, 38 P.3d 423, 426 (Wyo. 2002); *KP v. State*, 2004 WY 165, ¶ 22, 102 P.3d 217, 224 (Wyo. 2004)).

43. The Department's rules and Personal Property Valuation Manual 2017 do not require strict adherence to the Department's prescribed straight-line depreciation schedule. Considering the Department's guidance *in pari materia*, as we must, the standard straight-line depreciation schedule operated as a default depreciation formula in the absence of "sufficient market information to indicate a different residual value." Rules, Wyo. Dep't of Revenue, ch. 9 § 5(c)(i) (2016); (Ex. 6, R. at 00369-70), *supra* ¶ 36. Indeed, the Department arguably specified as much when it directed that "the residual value shall be considered to be **no less than** twenty percent (20%)[".]” *Id.*

¹² Inasmuch as Merit complains that Assessor should not have deviated from the Department's straight-line depreciation schedule, it acknowledges that the "rule does not require that property must automatically and immediately be given depreciation of eighty percent (twenty percent residual value)[.]" (Merit Opening Br. 21). As discussed in the next section, Merit more specifically challenges the manner in which Assessor arrived at a different depreciation result, complaining that he established a residual value "floor" higher than the Department of Revenue's rule-based residual value of 20% good. (Merit's Opening Br. 21).

44. That assessors may deviate from the Department’s standard depreciation schedule to account for property condition and other factors, is confirmed in the Department’s annually issued Personal Property Valuation Manual. Referring to “effective age,” the Department first instructs “[i]f property has experienced better than average maintenance, its remaining economic life can be extended” and its “effective age may be less than the actual age[.]” *Supra* ¶ 37. The opposite is true as well: inadequate maintenance may justify an effective age lower than the actual age. *Id.* The Department then cautions that Assessors should assume a property’s effective age is the same as actual age if the “condition of the equipment is unknown.” *Id.* Determining a property’s “remaining economic life,” a determination that goes hand-in-hand with effective age, is the “most important step in the calculation of accrued depreciation[.]” *Id.*

45. Property condition influences an appraiser’s effective age evaluation. The Department advises that for oil and gas field equipment, “[t]ypically, aged operational oil and gas field equipment is maintained well enough that it should have some remaining economic life.” (Ex. 3, R. at 00271).

46. Nor did Merit’s expert witness challenge or otherwise question whether the Department’s Personal Property Valuation Manual 2017 guidance was correct. He conceded that the rules did not require the property to automatically reach the maximum 80% depreciation and 20% residual value, but testified that “where [Merit] had assets that had reached a level that was below life expectancy, it was given a 20 percent good floor.” (R. at 00933, 00941-43). Agreeing with Merit’s underlying claim that Assessor had established a new residual value “floor,” Mr. Kistler repeatedly opined that such was contrary to general appraisal standards and the Department’s rules. (R. at 00902-05, 00914, 00945-49).

- ii. Whether substantial evidence supported the County Board’s ruling that Assessor justifiably deviated from the Department’s standard depreciation schedule?

47. The question before this Board is whether Merit carried its burden of proof before the County Board and, if so, whether Assessor offered sufficient evidence to demonstrate his compliance with Wyoming’s valuation requirements.¹³ *Supra* ¶¶ 27-29. In light of Assessor’s historic depreciation calculation and abrupt revision of effective age applied to Merit’s property in 2016 (2017 assessment), we find the burden shifted to Assessor to defend his depreciation calculus and compliance with Wyoming property tax law. Merit, however, retained the ultimate burden of persuasion, and the County Board was required to determine which party prevailed under the preponderance of evidence standard. *Id.*

¹³ The parties disagree as to which had the burden of proof. Merit argued that because Assessor, by rule, could deviate from the standard depreciation only if relying on sufficient property specific information, that Assessor had the burden to demonstrate his depreciation result was proper. (Merit’s Opening Br. 31-32).

48. The evidentiary interplay before the County Board revealed two very different approaches to the factual question driving Merit's appeal—whether Assessor accurately estimated the equipment's condition and effective age/remaining economic life and, therefore, whether he appropriately reduced the depreciation allowed for such equipment?

49. Assessor's evidentiary case focused on the oil and gas field equipment's condition, *but very generally so*. Assessor's strongest evidence of the equipment's condition arose from three sources: 1) Assessor's testimony that he and his staff examined equipment at numerous sites and found the equipment to be well maintained; 2) Assessor's testimony that he and his staff interviewed field personnel regarding the condition of equipment and maintenance practices and, through those interviews, verified the equipment's fair to good condition; and 3) Merit's Operations Manager who acknowledged that the equipment was functional and satisfactorily maintained. *Supra* ¶¶ 1-3, 18.

50. In response to Merit's primary complaint that Assessor illegally instituted a different residual value "floor," Assessor explained "I'm not necessarily making a floor on any of this stuff. What I've given the equipment is an effective age." (R. at 00967). He further explained, "the effective age is how it got to 45 percent. I didn't pick 45 percent. I picked these [sic] are 8 years with 6 years remaining. And as we went to the depreciation chart and you go to the 14-year-old life, that's the percentage in the chart."¹⁴ (R. at 01062; Ex. 3, R. at 00353-54). Assessor repeatedly denied that he instituted a new residual value "floor." Referring to the Department's guidelines, along with other appraisal industry guidance, Assessor described in depth the industry-wide conceptual basis for adjusting the equipment's depreciation rate based on effective age and remaining economic life. *Supra* ¶¶ 11-17, 20.

51. As to the equipment's condition, Merit conceded that it satisfactorily maintained its equipment. *Supra* ¶¶ 2-3. Other than citing the equipment's acquisition date, Merit offered no evidence whatsoever to demonstrate that its equipment had degraded to a condition justifying its preferred residual value of 20%. *Supra* ¶¶ 7-8, 14; *see* "residual value" guidance, *supra* ¶ 37. Rather than speak to the equipment's actual condition or demonstrate through evidence that Assessor overestimated the property's condition, Mr. Kistler broadly opined that Assessor had improperly instituted a new, higher residual value "floor" of 45% contrary to the Department's rules. *Supra* ¶ 8.

52. The lynchpin to determining whether substantial evidence supported the County Board's decision was evidence concerning Assessor's oil and gas field equipment audit, i.e. his process of gathering actual data regarding the equipment's condition. Describing

¹⁴ The Assessor's "work around," by which he selected an artificial "acquisition date" of 2008, was also a point of contention. Merit disagreed that equipment, some of which was 30 or 40 years old, should be given an acquisition date of 2008 and effective age of eight years. *Supra* ¶ 16. Yet, Assessor relied on departmental guidance to justify this "work around" process, a process the Department recommended because the CAMA system had no "effective age" input function. *Supra* ¶¶ 16, 37.

his information gathering process, Assessor explained that his office initiated an audit more than two years before, which continued at the time of the hearing, and during which he and his staff had visited many of Merit's (and before, Marathon's) oil and gas field sites to evaluate the condition of equipment. His staff also interviewed Merit's and Marathon's field personnel to learn of the equipment's maintenance and condition. *Supra* ¶ 18.

53. As Merit correctly points out though, Assessor offered no specific data or findings from his audit, and he relied entirely upon conclusory observations about the equipment's collective condition.¹⁵ *Id.* Merit's objections are not without basis; the conclusory nature of Assessor's evidence concerning the field equipment's condition raises significant question as to whether Assessor gathered sufficient data in support of his revised effective age and depreciation schedule. And we are compelled to note that, but for Merit's general corroboration of Assessor's estimation of the equipment's condition, we would necessarily conclude that Assessor's evidence was insufficient to justify departure from the Department of Revenue's default depreciation schedule. The County Board, however, was convinced that Assessor "considered the condition of equipment, which allowed him to reasonably determine an effective age of the equipment[.]" (Cty. Bd. Decision, R. at 01184).

54. "[T]he possibility of drawing two inconsistent conclusions from a body of evidence does not prevent a finding that the conclusion drawn by the administrative agency was supported by substantial evidence." *Vandehei Developers v. Pub. Serv. Comm'n of Wyo.* 790 P.2d 1282, 1287 (Wyo. 1990). The County Board, as the trier of fact, was solely responsible for weighing the evidence and for determining the credibility of witnesses. *In re Worker's Comp. Claim of Johnson*, 2001 WY 48, ¶7, 23 P.3d 32, 35 (Wyo. 2001). "The deference normally accorded to the findings of fact by a trial court is extended to the administrative agency, and the agency's decision as to the facts will not be overturned unless it is clearly contrary to the overwhelming weight of the evidence." *In re Worker's Comp. Claim of Hamilton*, 2001 WY 20, ¶ 9, 18 P.3d 637, ¶ 9 (Wyo. 2001); *See also Russell v. State ex rel. Wyo. Workers' Safety & Comp. Div.*, 944 P.2d 1151, 1156 (Wyo. 1997) (Substantial evidence rule encompasses proposition that courts do not reweigh evidence).

55. "Even where this [State Board], after reviewing the record, arrives at a different conclusion, the [State Board] cannot substitute its judgment for that of the agency's as long as the agency's conclusion is supported by substantial evidence." *Dep't of Emp't, Labor Standards Div. v. Roberts Constr. Co.*, 841 P.2d 854, 857 (Wyo. 1992). "Substantial

¹⁵ Assessor also explained that his estimation of the equipment's fair to good condition and functional status was implicitly verified through both the Department's valuation guidance, which advised that operating oil and gas field equipment is "typically" required to be well maintained. *Supra* ¶ 17. Assessor also testified to his assumption, again based in departmental guidance, that the equipment's condition was satisfactory because Merit reportedly complied with regulatory requirements, such as OSHA's requirement that equipment be maintained as a matter of course. *Supra* ¶¶ 2-3, 17.

evidence is more than a scintilla of evidence; it is evidence that a reasonable mind might accept in support of the conclusions of the agency.” *Supra* ¶ 24.

56. Resolution of this dispute clearly depended upon the witnesses’ credibility, the quality of evidence addressing the property’s collective condition, and whether the County Board reasonably believed the audit occurred, in conjunction with Merit’s muted acknowledgement that its equipment was in satisfactory condition.

57. Also, Merit’s reticence as to the equipment’s precise condition and whether that condition truly justified its claimed 20% residual value, as the Department defined residual value, weighed against Merit. Merit never questioned Assessor’s position that Merit and previous owners had continuously repaired, refurbished, and maintained the equipment. We, thus, understand why the County Board rejected the rigid preference of Merit and its appraisal witness for the Department’s default 20% residual value and depreciation schedule. (Cty. Bd. Decision, R. at 01184). Mr. Kistler’s testimony made it clear that Merit claimed 80% depreciation for its older equipment based strictly on actual age, and that the properties’ maintained condition was nearly irrelevant from Merit’s standpoint. (See R. at 00912-15, 00918-42). In the end, Mr. Kistler was unable to persuasively reconcile his opinion with the Department’s guidance regarding the valuation of specialized personal property, especially given Mr. Sanders’ objective testimony that, notwithstanding its age, the equipment was well maintained and had no obvious defects. See *supra* ¶¶ 2-3, 7-8, 36-37.

58. Furthermore, “[i]n the absence of evidence to the contrary, we presume that the officials charged with establishing value exercised honest judgment in accordance with the applicable rules, regulations, and other directives[.]” *Britt*, ¶ 22, 126 P.3d at 125; *supra* ¶ 28. Merit simply offered insufficient evidence to support its contention that “[t]his action (determining the effective age to be eight years) by the Assessor was taken with no regard to the actual condition of any individual piece of property.”¹⁶ (Merit’s Opening Br. 24). Merit offered no direct evidence that Assessor overstated or misjudged the equipment’s condition. Merit offered no evidence to refute that the Assessor’s Office had engaged an audit of oil and gas field equipment conditions in Park County, nor evidence to refute that Assessor interviewed persons familiar with the equipment’s condition.

59. Relying on several independent sources of evidence, the County Board reasonably concluded “the property was in good working condition as required by regulatory agencies and by the Taxpayer’s own operating standards.” (Cty. Bd. Decision, R. at 01184). We

¹⁶ Merit did not substantiate its various other arguments, including: 1) that “the Assessor concluded in this case, that any property that is operational is therefore in ‘good’ condition must have a residual value of no less than forty-five percent, and cannot be depreciated more than fifty-five percent,” (Merit’s Opening Br. 27); or 2) that Assessor has effectively instituted a new residual value contrary to the Department’s rules. (Merit’s Opening Br. 18, 21-22, 31).

agree with the County Board that a preponderance of evidence indicated that Assessor valued Merit's equipment as required by Wyoming law and that he acted within the scope of his authority and discretion.

60. Finally, the evidence does not support Merit's concern that a fundamental tax uniformity problem arose when Assessor departed from the Department's standard depreciation schedule. As Merit acknowledged, the Department did not mandate that straight line depreciation apply. *Supra* ¶¶ 43-46. Also, Merit presumes that Assessor valued the equipment differently than other assessors valued similar property. The record contains no evidence of how other assessors applied depreciation, so we cannot evaluate that claim. Even if there were such evidence, it is difficult to understand how Assessor's proper exercise of appraisal discretion could create an unconstitutionally nonuniform taxation result. Constitutional uniformity does not require the same result in every case; rather, it demands a uniform tax assessment process. Uniform taxation violations arise from "systematic, arbitrary, or intentional undervaluation of some property, as compared to the valuation of other property in the same class[.]" *Weaver v. State Bd. of Equalization*, 511 P.2d 97, 98 (Wyo. 1973).

CONCLUSION

61. The County Board correctly interpreted the Department's rules and other guidance as permitting Assessor to deviate from the Department's standard straight-line depreciation allowance based on "effective age" and "remaining economic life" adjustments.

62. A preponderance of evidence demonstrated that Assessor complied with the Department of Revenue's rules and 2017 Personal Property Valuation Manual when he valued Merit's oil and gas field equipment. Substantial evidence supported the County Board's determination that Assessor justifiably revised his historic depreciation allowance with respect to Merit's oil and gas field equipment acquired before 2008. We shall, accordingly, affirm the County Board's decision.

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ORDER

IT IS HEREBY ORDERED that the decision of the Park County Board of Equalization is **affirmed**.

Pursuant to Wyoming Statutes section 16-3-114 (2017) 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 25th day of September, 2018.

STATE BOARD OF EQUALIZATION



Martin L. Hardsocg, Chairman



David L. Delicath, Vice-Chairman



E. Jayne Mockler, Board Member

ATTEST:




Nadia Broome, Executive Assistant

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of September, 2018, 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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