To: 2019 Joint Revenue Committee, Lander, Wyoming, May 3, 2019

From: State Board of Equalization—Martin Hardsocg, Member MLH

Re: Addressing problems arising from application of W.S. 34-1-142—Statements of Consideration

Overview

Wyoming's statute, requiring the submission of "Statements of consideration" to county clerks, should ensure that county assessors have comprehensive property sales information under all but the narrowest of exceptions. W.S. 34-1-142(c) permits broad exceptions notwithstanding the assessors' need for the information and confidential status given the information. More problematic, even when an exemption does not apply, some property owners appear to claim an exemption without justification because there is no consequence for doing so. Driven by local practitioners (real estate agencies, title agencies, attorneys), this tendency is becoming more common and presents a growing problem for county assessors.

The Board of Equalization and state's assessors seek substantial revision of the process to ensure assessors have comprehensive information with which to perform their constitutional function—uniform valuation of property at fair market value. Key objectives of these revision options are: 1) to close unneeded exemptions in favor of a fully informed valuation process; 2) to assist enforcement through mandatory submission of information with few (and preferably no) exceptions; and 3) to make access to information user-friendly from a taxpayer's standpoint.

W.S. 34-1-142 (administered by county clerks)

- Persons seeking to record a deed with a county clerk must execute a "statement of consideration" (SOC) under oath.
- In the SOC, transferees identify parties to the transaction, the transaction date, the legal description of property, the amount paid, terms of sale and an "estimate of value of nonreal property included in the sale."
- With this information, assessors may contact the transferee or transferor and request additional information as needed. Wyoming's mass appraisal process ***literally begins*** with the basic SOC information, which assessors compile to value properties under Wyoming's mass appraisal system.
- However, subsection (c) exempts certain types of transactions, including documents which modify or supplement an earlier submission, documents related to mergers, consolidations or reorganizations, parent-subsidiary transactions, spousal or family transactions, gifts, tax sales or foreclosures, or "any others that the State Board and Department of Revenue exempt."
- Note: Subsection (g) appears misplaced: this provision requires ***assessors*** to disclose specified information to contestants regarding their selection of comparables under W.S. 39-13-109(b)(i). Yet, taxpayers engaged in a tax dispute have no reason to consult this provision in Title 34—this language is misplaced and should be relocated to W.S. 39-13-109(b), where other tax appeal processes and guidelines are codified.

Application and substantive problems

- Transferees claim exemptions but are not required to verify—at least the obligation to verify is not expressed in statute. Practitioners (attorneys/realtors/title agencies) have learned that they may simply claim an exemption and avoid the burden of providing transactional information in statements of consideration. The exceptions are broad, poorly defined and invite exploitation by persons seeking to avoid the SOC submission requirement.

- Purpose for exemptions unclear-- SOCs are strictly confidential (not discoverable in litigation), so uncontrolled distribution of the information is not a concern.

- The statute affords county clerks no mechanism to verify whether claimed exemption is warranted—county clerks may implicitly refuse to record if exemption not clear, but clerks typically accept and record. To the extent exceptions remain, the county clerks' ability and discretion to refuse to accept deeds and other documents for recording, until the claimed exception is justified, should be absolute.

- Even under circumstances that justify an exemption, the information is valuable to assessors, and it aids the valuation process—example: non-arm's length transaction or subsidiary transaction may offer other indication that price paid is FMV. Other aspects of transaction may assist assessors, especially in rural areas where few sales occur.

- Specific types of transfers, such as privately owned cabins or structures on leased public lands, are very difficult to value; transferees do not execute an SOC for those (not sure why). The Statute should address these situations and require submission of an SOC to assist the valuation of these.

- Unclear/nonsensical language in subsection (e)—see proposed fix below.

- Subsection (g) requires assessors to provide certain information to "contestants" regarding tax assessments pursuant to W.S. 39-13-109(b)(i) (ad valorem tax appeal provision). Title 39 (which taxpayers would normally consult) does not reference subsection (g), and taxpayers would have little reason to consult Title 34 when fighting a tax assessment. Most contestants likely have no knowledge that this provision exists. Subsection (g) appears misplaced in Title 34; its inclusion with other appeal provisions in Title 39 would make more sense.

Solutions and requested revisions

➢ **Policy and administration**: Few exemptions, if any, should remain—deed transaction information is vitally important to valuation process, even if non-arm's length. In any event, SOC information is strictly confidential and not subject to discovery in litigation—so the privacy is maintained. Yet, assessors may use information in mass appraisal process, even if not suitable as a comparable sale. Unless there is a distinct, clear and overriding interest in withholding disclosure of information from assessors, the law ***should favor submission of information for valuation purposes***—the valuation process is rooted in Wyoming's constitution. Further, assessors, not county clerks or property owners, should be final arbiter of whether information is relevant to the valuation process.

- Exemptions under W.S. 34-1-142(c) are as follows:

(c)(i) Instrument confirming, correcting, modifying or supplementing previously recorded instrument without added consideration —

- Easily misapplied and claimed to wrongly shield information-no way to verify
- Policy reason for non-disclosure?
- Recommend eliminating this exception.

(c)(ii) Transfer pursuant to merger, consol., or reorg. of business:

- Easily misapplied and used to wrongly shield information.
- Policy reason for non-disclosure? May include transactions with unrelated corporate entities partnered with a subsidiary or as part of a reorg.—thus, these may arguably be arm's length
- Verify through disclosure of parts of contract showing exempt status.
- Recommend eliminating this exception.

(c)(iii) Transfer by a subsidiary corp. to parent corp. without actual consideration or in sole consideration of the cancellation or surrender of a subsidiary stock.

- Easily claimed, but what does "actual consideration mean"? Not defined.
- May be improperly claimed to evade disclosure obligation.
- Cancellation or surrender of subsidiary stock may be valued and constitute FMV
- Recommend eliminating this exception.

(c)(iv) Transfer which constitutes a gift of more than one-half of the actual value.

- Easily claimed and difficult to verify.
- Also, what does "actual value" mean?.
- May be able to verify through disclosure of excerpts of document indicating a gift.
- Recommend eliminating this exception.

(c)(v) Transfer between husband and wife or parent and child with only nominal consideration.

- Easily claimed and exploited, and easily verified.
- This may occur through any number of variations: trusts or other estate planning; may include child or family member on deed along with non-family members.
- May be used to avoid disclosure for valuation process.
- Recommend eliminating this exception.

(c)(vi) An instrument, the effect of which is to transfer property to the same party.

- Easily claimed and exploited.
- Easily verified through disclosure of portion of instrument.
- Policy reasons for non-disclosure?
- Recommend eliminating this exception.

(c)(vii) A sale for delinquent taxes or assessments or a sale or a transfer pursuant to foreclosure:

- May still reflect a FMV, depending on circumstances.
- Easy to verify through other documents, orders, etc.
- Recommend eliminating this exception.

(c)(viii) Other transfers which the Department or Board of Equalization exempt upon finding the information is not useful or relevant in determining sales-price ratios.

- **Enforcement**: The present system's difficulty is that county clerks are put in position of demanding explanations for exemption, but lack statutory device to compel or verify. Most clerks will simply accept person's assurance that exemption applies without verifying. We recommend changing the process to a mandatory execution of SOC with very few, ***if any***, exemptions, coupled with an objective verification process. The process should remove as much county clerk discretion as possible so that they are not required to debate with persons submitting deeds for recordation. To the extent they have discretion, the county clerk's authority to refuse acceptance of deeds for recording should be absolute, putting the burden back on the submitting party to provide a clear justification for an exception.
    - Verification: Can require parties to supply documentation sufficient to verify exemption, i.e. first page(s), signature page(s), redacted excerpts.
    - Burden of demonstrating exemption, and risk of non-acceptance, should be placed on person requesting.

- **Relocate subsection (g) to W.S. 39-13-109(b):** Subsection (g) should be moved to, or near, W.S. 39-13-109(b)(i), to which it relates. Currently, there is no reference to subsection (g) in Title 39.

Proposed statutory revisions:

(Version with exceptions retained)

§ 34-1-142. Instrument transferring title to real property; procedure; ~~exceptions;~~ confidentiality.

(a) When a deed, contract for deed, contract or any other document transferring legal or equitable title to real property, including instruments conveying ownership to structures on public or non-owned lands, is presented to a county clerk for recording, the instrument shall be accompanied by a statement under oath by the grantee or his agent disclosing the name of the grantor and grantee, the grantor's and grantee's mailing address, the date of transfer, date of sale, a legal description of the property transferred, the actual full amount paid or to be paid for the property, including earnest money paid or other consideration paid to hold the property, terms of sale and an estimate of the value of any nonreal property included in the sale.

(b) No instrument evidencing a transfer of real property may be accepted for recording until the sworn statement, completed in its entirety, ~~is received by the county clerk~~ or documentation permitting verification that an exception applies under subsection (c) of this section, is received by the county clerk. The validity or effectiveness of an instrument as between the parties is not affected by the failure to comply with subsection (a) of this section.

(c) ~~This section does~~ The requirement of filing a statement shall not apply to property transfers in which the grantee demonstrates through sufficient documentation, as determined solely by the county clerk, that the transaction satisfies one of the descriptions enumerated in Paragraphs (i) through (viii) of this subsection. The sufficient documentation may consist of partial transactional materials identifying the parties to the transaction or the nature of transaction, or otherwise clearly justifying the exception in the clerk's sole judgment, but without revealing other transactional information required in the sworn statement:

(i) An instrument which confirms, corrects, modifies or supplements a previously recorded instrument without added consideration;

(ii) A transfer pursuant to mergers, consolidations or reorganizations of business entities;

(iii) A transfer by a subsidiary corporation to its parent corporation without actual consideration or in sole consideration of the cancellation or surrender of a subsidiary stock;

(iv) A transfer which constitutes a gift of more than one-half (1/2) of the actual value;

(v) A transfer between husband and wife or parent and child with only nominal consideration therefor;

(vi) An instrument the effect of which is to transfer the property to the same party;

(vii) A sale for delinquent taxes or assessments or a sale or a transfer pursuant to a foreclosure;

(viii) Any other transfers which the state board of equalization and department of revenue exempts upon a finding that the information is not useful or relevant in determining sales-price ratios.

(d) The sworn statements shall be used by the county assessors and the state board of equalization and the department of revenue along with other statements filed only as data in a collection of statistics which shall be used collectively in determining sales-price ratios by county. An individual statement shall not, by itself, be used by the county assessor to adjust the assessed value of any individual property.

(e) The statement is not a public record and shall be held confidential by the county clerk, county assessor, county board of equalization, the state board of equalization, the department of revenue, and when disclosed pursuant to W.S. 39-13-109(b)(ii)~~under subsection (g) of this section~~, any person wishing to review or contest his property tax assessment or valuation ~~and the county board of equalization~~. These statements shall not be subject to discovery in any other county or state proceeding.

(f) Repealed by Laws 1991, ch. 174, § 3.

(g) ~~Any person or his agent who wishes to review his property tax assessment or who contests his property tax assessment or valuation in a timely manner pursuant to W.S. 39-13-109(b)(i) is entitled to review statements of consideration for properties of like use and geographic area available to the county assessor in determining the value of the property at issue as provided under W.S. 39-13-109(b)(i). During a review, the county assessor shall disclose information sufficient to permit identification of the real estate parcels used by the county assessor in determining the value of the property at issue and provide the person or his agent papers of all information, including statements of consideration, the assessor relied upon in determining the~~

~~property value and including statements of consideration for properties of like use and geographic area which were available to the assessor and are requested by the person or his agent. The county assessor shall, upon request, provide the person or his agent a statement indicating why a certain property was not used in determining the value of the property at issue. The county assessor and the contestant shall disclose those statements of consideration to the county board of equalization in conjunction with any hearing before the board with respect to the value or assessment of that property. As used in W.S. 34-1-142 through 34-1-144:~~

~~(i) A "review" is considered the initial meetings between the taxpayer and the county assessor's office pursuant to W.S. 39-13-109(b)(i);~~

~~(ii) "Contest" means the filing of a formal appeal pursuant to W.S. 39-13-109(b)(i);~~

~~(iii) "Geographic area" may include any area requested by the property owner or his agent within the boundaries of the county in which the subject property is located.~~ Repealed by Laws 2020, ch. ***, § **

(h) The state board of equalization shall adopt rules and regulations to implement W.S. 34-1-142 and 34-1-143 which shall include forms to be used and which shall be used by county assessors and county clerks.

§ 39-13-109. Taxpayer remedies.

(b) Appeals. The following shall apply:

* * *

(ii) Any person or his agent who wishes to review his property tax assessment or who contests his property tax assessment or valuation in a timely manner pursuant to subsection (b)(i) is entitled to review statements of consideration for properties of like use and geographic area available to the county assessor in determining the value of the property at issue. During a review, the county assessor shall disclose information sufficient to permit identification of the real estate parcels used by the county assessor in determining the value of the property at issue and provide the person or his agent papers of all information, including statements of consideration, the assessor relied upon in determining the property value, and including statements of consideration for properties of like use and geographic area which were available to the assessor and are requested by the person or his agent. The county assessor shall, upon request, provide the person or his agent a statement indicating why a certain property was not used in determining the value of the property at issue. The county assessor and the contestant shall disclose those statements of consideration to the county board of equalization in conjunction with any hearing before the board with respect to the value or assessment of that property. As used in W.S. 34-1-142 through 34-1-144 or this statutory section:

(A) A "review" is considered the initial meetings between the taxpayer and the county assessor's office pursuant to subsection (b)(i);

(B) "Contest" means the filing of a formal appeal pursuant to subsection (b)(i);

(C) "Geographic area" may include any area requested by the property owner or his agent within the boundaries of the county in which the subject property is located.

Renumber balance of subsection.

(Version without exceptions to SOC filing process)

§ 34-1-142. Instrument transferring title to real property; procedure; exceptions; confidentiality.

(a) When a deed, contract for deed, contract or any other document transferring legal or equitable title to real property, including instruments conveying ownership to structures on public or non-owned lands, is presented to a county clerk for recording, the instrument shall be accompanied by a statement under oath by the grantee or his agent disclosing the name of the grantor and grantee, the grantor's and grantee's mailing address, the date of transfer, date of sale, a legal description of the property transferred, the actual full amount paid or to be paid for the property, including earnest money paid or other consideration paid to hold the property, terms of sale and an estimate of the value of any nonreal property included in the sale.

(b) No instrument evidencing a transfer of real property may be accepted for recording until the sworn statement, completed in its entirety, is received by the county clerk. The validity or effectiveness of an instrument as between the parties is not affected by the failure to comply with subsection (a) of this section.

(c) ~~This section does not apply to:~~ Repealed by Laws 2020, ch. ***, § **.

~~(i) An instrument which confirms, corrects, modifies or supplements a previously recorded instrument without added consideration;~~

~~(ii) A transfer pursuant to mergers, consolidations or reorganizations of business entities;~~

~~(iii) A transfer by a subsidiary corporation to its parent corporation without actual consideration or in sole consideration of the cancellation or surrender of a subsidiary stock;~~

~~(iv) A transfer which constitutes a gift of more than one-half (1/2) of the actual value;~~

~~(v) A transfer between husband and wife or parent and child with only nominal consideration therefor;~~

~~(vi) An instrument the effect of which is to transfer the property to the same party;~~

~~(vii) A sale for delinquent taxes or assessments or a sale or a transfer pursuant to a foreclosure;~~

~~(viii) Any other transfers which the state board of equalization and department of revenue exempts upon a finding that the information is not useful or relevant in determining sales-price ratios.~~

(d) The sworn statements shall be used by the county assessors and the state board of equalization and the department of revenue along with other statements filed only as data in a collection of statistics which shall be used collectively in determining sales-price ratios by county. An individual statement shall not, by itself, be used by the county assessor to adjust the assessed value of any individual property.

(e) The statement is not a public record and shall be held confidential by the county clerk, county assessor, county board of equalization, the state board of equalization, the department of revenue, and when disclosed pursuant to W.S. 39-13-109(b)(ii)~~under subsection (g) of this section~~, any person wishing to review or contest his property tax assessment or valuation ~~and the county board of equalization~~. These statements shall not be subject to discovery in any other county or state proceeding.

(f) Repealed by Laws 1991, ch. 174, § 3.

(g) ~~Any person or his agent who wishes to review his property tax assessment or who contests his property tax assessment or valuation in a timely manner pursuant to W.S. 39-13-109(b)(i) is entitled to review statements of consideration for properties of like use and geographic area available to the county assessor in determining the value of the property at issue as provided under W.S. 39-13-109(b)(i). During a review, the county assessor shall disclose information sufficient to permit identification of the real estate parcels used by the county assessor in determining the value of the property at issue and provide the person or his agent papers of all information, including statements of consideration, the assessor relied upon in determining the property value and including statements of consideration for properties of like use and geographic area which were available to the assessor and are requested by the person or his agent. The county assessor shall, upon request, provide the person or his agent a statement indicating why a certain property was not used in determining the value of the property at issue. The county assessor and the contestant shall disclose those statements of consideration to the county board of equalization in conjunction with any hearing before the board with respect to the value or assessment of that property. As used in W.S. 34-1-142 through 34-1-144:~~

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(h) The state board of equalization shall adopt rules and regulations to implement W.S. 34-1-142 and 34-1-143 which shall include forms to be used and which shall be used by county assessors and county clerks.

§ 39-13-109. Taxpayer remedies.

(b) Appeals. The following shall apply:

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(ii) Any person or his agent who wishes to review his property tax assessment or who contests his property tax assessment or valuation in a timely manner pursuant to subsection (b)(i) is entitled to review statements of consideration for properties of like use and geographic area available to the county assessor in determining the value of the property at issue. During a review, the county assessor shall disclose information sufficient to permit identification of the real estate parcels used by the county assessor in determining the value of the property at issue and provide the person or his agent papers of all information, including statements of consideration, the assessor relied upon in determining the property value, and including statements of consideration for properties of like use and geographic area which were available to the assessor and are requested by the person or his agent. The county assessor shall, upon request, provide the person or his agent a statement indicating why a certain property was not used in determining the value of the property at issue. The county assessor and the contestant shall disclose those statements of consideration to the county board of equalization in conjunction with any hearing before the board with respect to the value or assessment of that property. As used in W.S. 34-1-142 through 34-1-144 or this statutory section:

(A) A "review" is considered the initial meetings between the taxpayer and the county assessor's office pursuant to subsection (b)(i);

(B) "Contest" means the filing of a formal appeal pursuant to subsection (b)(i);

(C) "Geographic area" may include any area requested by the property owner or his agent within the boundaries of the county in which the subject property is located.

Renumber balance of subsection.