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## Abatement and Refund of North Dakota Property Taxes and the Statutory Procedure in Connection Therewith

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# ABATEMENT AND REFUND OF NORTH DAKOTA PROPERTY TAXES AND THE STATUTORY PROCEDURE IN CONNECTION THEREWITH

The most important source of revenue for local government is the property tax, which accounts for seven-eighths of the locally-collected tax revenues. The property tax now amounts to more than thirty-three billion dollars each year in tax revenues in the United States.<sup>1</sup> Only the federal income tax and the social security levy place a heavier burden on the American taxpayer.<sup>2</sup>

The local property tax could be one of the "fairest and wisest" of all taxes.<sup>3</sup> Such "fairness and wisdom" are, however, impossible with the administration of property tax so susceptible to local politics, and the state government so reluctant to perform their obvious, but neglected, responsibility for changing the present assessing practices.<sup>4</sup> One area of the property tax administration that is in desperate need of study and revision by the legislators of North Dakota is the proceedings for abatement and refund of property taxes.

The purpose of this note is threefold: (1) A brief review of the boards of equalization, to establish their connection with the proceedings of abatement and refund, (2) a general discussion of the statutory law on the abatement and refund process, with comments on the relevant case law, (3) to show the need for legislation by pointing out the inadequacies in the present system of assessment appeal and review.

## I. Boards of Equalization

First, it should be made clear that the North Dakota boards of equalization are not part of the process for abatement and refund of property tax. However, it is important that a taxpayer have a basic understanding of the organization, purpose, and duties of the boards of equalization since they are the theoretical beginning for people interested in contesting the assessment of a particular piece of property. Any taxpayer who believes that an error has been made in the assessment of his property may apply to the local board of equalization for a correction in the assessment of his property.

The members of the board of township supervisors serve as

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1. NATION'S CITIES, May, 1970, at 20.

2. *Id.*

3. *Id.*

4. *Id.*

the local board of equalization for the township.<sup>5</sup> This board meets once a year on the second Monday in June.<sup>6</sup> At this time the board is responsible for checking the assessment lists prepared by the assessor to ascertain whether or not any taxable property in the township has been omitted from the assessment list.<sup>7</sup> The board also proceeds to equalize and correct the assessment roll of the township insuring that all assessments reflect a fair and equitable valuation of the assessed property in the township.<sup>8</sup>

If the assessment of a person's property is to be increased, the board is required to notify the property owner.<sup>9</sup> However, in *Vetter v. Benson County*,<sup>10</sup> the court decided that the language of the statute requiring notice to the property owner is a procedural matter, not a jurisdictional matter, and therefore an increased assessment made without such notice is not fatally defective.

Any resident of the township may appear before this board and contest the assessed valuation that has been placed on his property.<sup>11</sup> If the board agrees with the property's owners contentions, then it has the power to make corrections as shall appear to be just.<sup>12</sup> Nonresidents of the township and those persons wishing to contest an assessment made after the meeting of the township board of equalization may appear before the county board of equalization.<sup>13</sup>

The city board of equalization performs a function similar to the function performed by the township board of equalization. The city board of equalization consists of the "members of the governing body of the city."<sup>14</sup> Each year it meets on the second Tuesday in June.<sup>15</sup> At this meeting it equalizes and corrects the assessment roll of the city.<sup>16</sup> The city board of equalization also may increase or diminish the valuation and assessment of any property by a reasonable amount to accomplish the goal of uniform taxation for all members.<sup>17</sup>

Should the board increase the assessors valuation of any property by more than twenty-five percent, the board must notify the owner or his agent of their intention to increase the assessment and the time at which the board will act upon such increase.<sup>18</sup> This notice

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5. N.D. CENT. CODE § 57-09-01 (1960).

6. *Id.*

7. *Id.* at § 57-02-02.

8. *Id.*

9. *Id.*

10. *Vetter v. Benson County*, 81 N.W.2d 758 (N.D. 1957).

11. N.D. CENT. CODE § 57-09-02 (1960).

12. *Id.*

13. *Id.*

14. N.D. CENT. CODE § 57-11-01 (1960).

15. *Id.*

16. *Id.* at § 57-11-03.

17. *Id.*

18. *Id.*

is required by statute<sup>19</sup> to be given by either personal notice served upon the owner or his agent or by leaving a copy of the notice at the property owner's last place of residence. In *Martin v. Burleigh County*,<sup>20</sup> the court held that where a city board of equalization increased the originally assessed value by more than twenty-five per cent without proper notice, the failure to give notice was fatal to the legality of the assessment.

Any person, his attorney or agent, may bring complaints concerning the valuation of any property on the assessment roll to the city board of equalization and the board has the authority to make any change in the valuation which it feels is justified by the facts and evidence produced at the hearing.<sup>21</sup> Once the city board of equalization has adjourned, no assessment shall be changed or altered by the board or governing body of the city.<sup>22</sup> Also, the board of equalization or the governing body does not have the power to reduce or abate, or authorize the reduction, abatement, or return, of any taxes based upon such assessments except where the assessed property was not taxable when the assessment was made.<sup>23</sup>

The board of county commissioners meets as a board of equalization at its regular meeting in July.<sup>24</sup> This board of equalization serves a dual function: First, to review and adjust assessments in unorganized territory having no local board of equalization and, second, to equalize the assessments between the various assessment districts in the county.<sup>25</sup> While serving on a local board of equalization for the unorganized territories, the board may raise or lower valuations on classes of property or on individual pieces of property; but as a county board of equalization its main purpose is to raise or lower the valuation of classes of property to equalize the assessments between assessment districts under its jurisdiction.<sup>26</sup>

Recently the county board of equalization has been given the power to reduce the assessment on any separate piece of real estate or personal property even though the property was assessed in a city or township having a local board of equalization.<sup>27</sup> The county board must give notice to the local board of equalization before reducing the assessment.<sup>28</sup> The county board cannot reduce any assessment unless the property owner or the person to whom the property was assessed has first appealed to the county board for

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19. *Id.*

20. *Martin v. Burleigh County*, 38 N.D. 373, 165 N.W. 520 (1917).

21. N.D. CENT. CODE § 57-11-04 (1960).

22. *Id.* at § 57-11-06.

23. *Id.*

24. N.D. CENT. CODE § 57-12-01 (Supp. 1969).

25. *First Nat. Bank v. Lewis*, 18 N.D. 390, 121 N.W. 836, 838 (1909).

26. *See, City of Minot v. Amundson*, 22 N.D. 236, 133 N.W. 551 (1911).

27. N.D. CENT. CODE § 57-12-06 (Supp. 1969).

28. *Id.*

such reduction.<sup>29</sup> This appeal would be from the board of equalization's rejection of the person's application for correction of assessment.<sup>30</sup> The appeal may be made by a personal appearance before the board, by sending a representative to the board meeting, or by some form of communication, such as a letter stating the reasons upon which the request for reduction is based.<sup>31</sup> The manner in which the appeal was brought before the board and the reasons for granting any reduction in assessment are recorded in the proceedings of the board.<sup>32</sup>

After notice to the local board of equalization, the county board of equalization can increase the assessment on any personal property item or tract of real property even though such property was assessed in a city or township having a local board of equalization.<sup>33</sup> The county board of equalization cannot increase the assessment until it has notified, by mail, the property owner or the person whose name appears on the assessment list of his right to appear before the board.<sup>34</sup> The notice contains the date of the board's meeting<sup>35</sup> which must be not less than five days after the mailing of the notice.<sup>36</sup>

A person who has followed the procedure of appealing his assessment first to the local board of equalization and then, if his appeal is rejected, to the county board of equalization, is also entitled to make an appeal to the state board of equalization.<sup>37</sup>

The state board of equalization consists of the governor, state auditor, state treasurer, state tax commissioner, and the commissioner of agriculture.<sup>38</sup> Each year this board meets in the state tax commissioner's office on the fourth Tuesday in August.<sup>39</sup> The general function of this board is to study and equalize the valuation and assessment of all property throughout the state so that all assessments of similar property in cities and villages of the same county or between different counties in the state shall be uniform.<sup>40</sup>

The board also has the power to equalize individual assessments in limited circumstances. As noted before, a taxpayer who has appeared in an assessment appeal before both his local and county boards of equalization also has the right to appeal this assessment

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29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. N.D. CENT. CODE § 57-13-01 (Supp. 1969).

39. *Id.* at § 57-13-02.

40. *Id.* at § 57-13-03.

to the state board of equalization.<sup>41</sup> After reviewing the assessment appeal, the board may reduce any assessment that they believe to be too high.<sup>42</sup>

If the state board of equalization rejects the taxpayer's application for assessment reduction, the taxpayer may start proceedings for the abatement and refund of property taxes. However, this is not meant to say that a taxpayer may not initiate the abatement and refund process until he has properly appeared before the state board of equalization and has had his application for assessment reduction rejected. A taxpayer is not required to appear before any board of equalization, local, county, or state, before filing an application for abatement and refund of his property taxes.

## II. Statutory Procedure for Abatement and Refund of Property Tax

A taxpayer is no longer required to pay his property tax under oral or written protest in order to qualify for abatement or refund of taxes.<sup>43</sup> Instead, the first step in the abatement and refund process is now the filing with the county auditor of a written application, in duplicate, for abatement and settlement of taxes.<sup>44</sup> Upon receipt of the application the county auditor records the date on the application and then files the application.<sup>45</sup> This application must contain the grounds upon which the claim for abatement and refund is based, the applicant's post office address, and verification by a notary public.<sup>46</sup>

An applicant for abatement or refund must have an estate, right, title, or interest in, or lien upon, any real or personal property.<sup>47</sup> The applicant must claim that the assessment made, or the tax levied against the particular piece of property, is excessive or illegal in whole or in part.<sup>48</sup>

The applicant must remember that the abatement and refund process is not a forum for complaining about the high cost of government or taxes. Tax rates and city budgets are outside the scope of this process. Therefore, the application should not be based on the amount of tax, but on the assessment process itself, *i.e.* the method that was used by the assessor to obtain the assessed valuation of the property. It is very important that the applicant have well-

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41. N.D. CENT. CODE § 57-12-06 (Supp. 1969). (The taxpayer may make a personal appearance, send a representative to the board meeting, or use the mail or some other form of communications to make known his reasons for asking for this assessment reduction).

42. N.D. CENT. CODE § 57-13-04 (Supp. 1969).

43. *Id.* at § 57-23-03.

44. *Id.* at § 57-23-05.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

prepared and complete evidence that the method used by the assessor in appraising the property was incorrect and therefore failed to represent the true and full value in money of the property. Market value is used as a definition of true and full value, but the North Dakota Century Code provides a more exact definition when it defines 'true and full value' as meaning:

. . . the usual selling price at the place where the property to which the term is applied shall be at the time of the assessment, that being the price at which it could be obtained at private sale, and not at a forced public auction sale.<sup>49</sup>

The application for abatement or refund of taxes based on the claim that the assessment of the property was invalid, inequitable, or unjust, is subject to a statute of limitations.<sup>50</sup> Such applications must be filed before the "first day of November in the year in which such taxes become delinquent."<sup>51</sup> All taxes which are assessed in the year of 1970 become delinquent in March of 1971. Therefore, if a person wants to file an application for abatement or refund of 1970 property taxes on the basis that the assessment of the property was inequitable, invalid, or unjust, he must file the application in the office of the county auditor before November 1, 1971. Any application which is filed after this date will fail.

An application for abatement also may be based on other grounds. Because of the nature of these grounds, the legislature has increased the time period for filing by a year. In these special cases applications must be filed on or before November first of the year following the year in which the tax becomes delinquent.<sup>52</sup> Therefore, a taxpayer with an application based on these grounds as to taxes assessed in 1970 and delinquent on March 1, 1971, must submit such application by November 1, 1972. This one year extension applies to the following cases: (1) where to the detriment of the applicant, an error was made in the identification or description of the property, in entering the valuation of the property, or in the extension of the tax; (2) where improvements, not in existence at the time fixed by law for making the assessment, were considered or included in the valuation of the property; (3) where either the applicant or the property is exempt from the tax; (4) where the person, at the time fixed by law for the assessment, held no taxable interest in the property which was assessed against him; (5) where the applicant has erroneously paid the taxes or there has been an error in noting payment

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49. *Id.* at § 57-02-01 (4).

50. *Id.* at § 57-23-03.

51. *Id.*

52. *Id.* at § 57-23-04.

or in issuing receipts for the taxes; (6) where the person has been assessed more than once in the same year for a particular piece of property and he has already paid the tax for the property for that year; (7) where fire, flood, or tornado has destroyed or injured any building, structure, or other improvement or tangible personal property, and the assessor has not made the proper adjustment pursuant to North Dakota Century Code § 57-02-11 (4).<sup>53</sup> This category does not include damages covered by insurance or damages which total less than one hundred dollars.<sup>54</sup> The application for abatement or refund should be only for that part of the year remaining after the fire, flood, or tornado.<sup>55</sup>

Abatement applications based on these seven categories may be also signed and submitted by either the county auditor or the assessor who was responsible for the assessment, provided that the outcome of this application for abatement will not be a refund or compromise of a tax.<sup>56</sup>

Before the board of county commissioners reviews the application for abatement and refund, the county auditor sends it to the governing body of the municipality in which such assessed property is located. The governing body reviews the application and then endorses upon or attaches to every application a recommendation to the board of county commissioners to either accept or reject the application.<sup>57</sup> If the governing body recommends acceptance of the application, then it usually includes in its recommendation the type of relief that should be granted. The application is then returned to the county auditor to await the next regular meeting of the board of county commissioners.

The county auditor is required to give the applicant notice by mail of the time and place at which the board of county commissioners will review his application.<sup>58</sup> This notice must be given not less than ten days prior to such meeting.<sup>59</sup> At this meeting of the board of county commissioners the applicant has a right to appear in person or through his attorney or agent and present any evidence that may help his application.<sup>60</sup> Any additional evidence or information which is requested by the board must be furnished by the applicant. The board then must give consideration to the recommendations of the governing body of the municipality in which such assessed property is located.<sup>61</sup>

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53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.* at § 57-23-05.

57. *Id.* at § 57-23-06.

58. *Id.* at § 57-23-05.

59. *Id.*

60. *Id.* at § 57-23-06.

61. *Id.*



A majority vote is required for the board of county commissioners to approve or reject an application, in whole or in part.<sup>62</sup> If the board should reject the application, a statement of reasons shall be prepared, signed by the chairman of the board and attached to the application.<sup>63</sup> A copy of the statement of reasons shall be mailed to the applicant's post office address by the county auditor.<sup>64</sup>

The board of county commissioners also has the power to compromise, subject to the approval of the state tax commissioner, any real estate taxes remaining unpaid, if such property has not been sold to any purchaser other than the county, or whenever taxes or any personal property remains unpaid.<sup>65</sup> The board's compromise in abating a portion of the delinquent taxes must be based on some valid cause, such as depreciation in the value of the property and the payment of the remainder of the taxes.<sup>66</sup>

If the board of county commissioners has denied the application for abatement or refund, the applicant has the right to appeal this decision to the district court.<sup>67</sup> To appeal, he must, within thirty days of the decision, serve written notice of appeal upon one member of the board of county commissioners and also serve by registered or certified mail a notice of appeal upon the state tax commissioner.<sup>68</sup> Upon the filing of the appeal, the county auditor prepares a complete transcript of the board's proceedings on the application for abatement and delivers this transcript to the clerk of the district court.<sup>69</sup>

Section 11-11-42 of the North Dakota Century Code requires that an appeal of a decision of the board of county commissioners be filed on or before the first day of the term of the district court following the taking of the appeal. However, the court in the *Appeal of Johnson*<sup>70</sup> held that an appeal from the decision of the board of county commissioners denying an application for abatement or refund was not defective if it was served and filed within thirty days of the board's decision, even if the taxpayer did not file notice of appeal on or before the first day of the term of the district court following the taking of the appeal.

In the *Appeal of Johnson*,<sup>71</sup> the Supreme Court of North Dakota established limits on the district court's power to review decisions of the board of county commissioners denying applications for the abatement and settlement of taxes. The Supreme Court of North

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62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.* at § 57-23-07.

66. *Id.*

67. *Id.* at § 57-23-08.

68. *Id.*

69. N.D. CENT. CODE § 11-11-41.

70. *Appeal of Johnson*, 173 N.W.2d 475 (N.D. 1970).

71. *Id.*

Dakota held that the district court should not substitute its judgment as to the valuation of property for that of the designated taxing authorities, unless it was shown that such authorities acted arbitrarily, oppressively, or unreasonably.<sup>72</sup>

Any abatement or refund which results in a reduction of less than one hundred dollars of assessed valuation or which concerns a special assessment are effective immediately upon approval by the board of county commissioners.<sup>73</sup> All other applications for abatement or refund must receive the approval of the state tax commissioner before they become effective.<sup>74</sup>

Should the tax commissioner disapprove any application for abatement or refund, in whole or in part, the applicant has the right to appeal this rejection within thirty days from the mailing date of the rejection notice.<sup>75</sup> But it should be remembered that the Supreme Court of North Dakota has held that a district court may substitute its judgment for that of the taxing authority only if those authorities acted arbitrarily, oppressively, or unreasonably.<sup>76</sup>

However, instead of the appeal to the district court the applicant may demand a hearing before the state tax commissioner on the application for abatement or refund.<sup>77</sup> Within thirty days of the mailing date of the rejection notice the applicant must demand a hearing before the tax commissioner.<sup>78</sup> North Dakota has adopted the Administrative Agencies Practice Act,<sup>79</sup> and therefore the provisions of this Act govern the hearing. An appeal from the decision of the administrative agency may be taken to the district court within thirty days after the notice of rejection has been given.<sup>80</sup>

### III. Need For Legislation

Broad assessment reform is badly needed in North Dakota, especially in the appeal and abatement process. The problems that will be discussed in this section are based on a study, conducted by the author, of the appeal and abatement proceedings in one county in North Dakota. However, after interviewing several people associated with assessment review and the appeal and abatement process in other parts of North Dakota, it was felt that these problems exist in the appeal and abatement process throughout North Dakota.

The administration of the property tax starts with the local as-

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72. *Id.*

73. N.D. CENT. CODE § 57-23-08 (Supp. 1969).

74. *Id.*

75. *Id.*

76. *Appeal of Johnson*, 173 N.W.2d 475 (N.D. 1970).

77. N.D. CENT. CODE § 57-23-08 (Supp. 1969).

78. *Id.*

79. N.D. CENT. CODE ch. 28-32 (1960).

80. *Id.* at § 28-32-15.

essor, and his accuracy in assessing the taxable property in his district is the main issue in the appeal and abatement process. Accuracy in appraising requires specialized appraisal knowledge, experience, and the ability to exercise sound judgment.<sup>81</sup> Therefore, it is important that assessors have a certain amount of expertise in the assessment field. In North Dakota, a township assessor is required only to be an elector and to own land in the township,<sup>82</sup> and a city assessor who is appointed by the governing body of the city, must meet only the requirements set by the particular municipality.<sup>83</sup> These statutory requirements do not insure that an assessor will have the necessary expertise that is required to perform his complex duties. Therefore, legislation should be introduced establishing minimum professional standards for the office of assessor. However, such legislation will not be effective until the state consolidates the assessment districts.

North Dakota has 1,772 assessment districts,<sup>84</sup> and each one of these districts has an assessor. Most of the assessors serve on a part-time basis, although full-time assessors are found in larger towns and cities. Assessment districts should be consolidated so that there would not be an assessment district smaller than a county, and some assessment districts might include two or three counties. California has a very good assessment system with only 58 primary assessment districts.<sup>85</sup> Uniformity in assessment would be much easier to achieve with fewer assessment districts. With consolidation even the smallest assessment district would be large enough to adequately pay a full-time assessor.<sup>86</sup> Also, by consolidating the assessment districts, the local board could be eliminated, and this function could be assigned to the assessor's office. An added advantage in this arrangement is that people would probably not appeal their assessment if they were aware of the various factors the assessor takes into consideration in assessing their property.

Theoretically, the function of the local and county boards of equalization is to review all the assessments in their jurisdiction to insure that the assessor has uniformly and equitably assessed all taxable property. Also, the boards are to function as review boards in hearing applications for correction of assessments, which have been properly presented by taxpayers in their jurisdictions. However, these boards are generally ill-suited to perform these functions.

Local and county boards of equalization do not have the time

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81. C. BARTLETT, *ASSESSING AND THE APPRAISAL PROCESS* 1 (1965).

82. N.D. CENT. CODE § 57-02-33 (1960).

83. N.D. CENT. CODE at § 40-14-04 (1960).

84. *NATION'S CITIES*, May 1970, at 36.

85. *Id.*

86. *Id.*

to examine each assessment in their jurisdiction to ascertain whether the assessor has assessed the taxable property in an equitable and uniform manner. It must be remembered that members of local boards are either township supervisors or members of the governing body of the city, while the county commissioners serve as the county's board of equalization. As township supervisors, members of the governing body of the city, and county commissioners, these people have many other duties to perform and therefore are unable to spend the proper amount of time on equalization.

Determining whether property has been assessed properly is not a "policy-laden" issue.<sup>87</sup> With increased industrialization and improvements in assessment practices, it has developed into a highly technical question<sup>88</sup>—a question which the members of the boards of equalization often lack the expertise to consider properly.<sup>89</sup>

An examination of the administrative and judicial review in the appeal and abatement process that the clerk, upon receiving the application for abatement and refund of taxes, forwards it to the governing body of the city or township in which the assessed property is located.<sup>90</sup> Although not required by law, the governing body, upon receiving the application, may sometimes ask the local assessor to prepare a report on his appraisal of the particular piece of property. At their next meeting the governing body will review the application and study the assessor's report, if one is submitted. With this information, the governing body will recommend whether the application should be approved in whole or in part; or whether it should be rejected. The recommendation is then written upon or attached to the application.<sup>91</sup> The recommendation does not include any of the reasons upon which the governing body based its decision. The application is then returned to the auditor to await the next regular meeting of the board of county commissioners.

The taxpayer may appear at this meeting of the board of county commissioners to present evidence in support of his application. However, his search for evidence which would show that his property is assessed at a higher ratio than the average of similar property located in his assessment district, is difficult and often costly. Also, the board discloses no reasons for its decisions, and therefore, the

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87. Carr, *Property Assessments: Protest, Appeal and Judicial Review*, 17 ADMIN. L. REV. 187, 193. Mr. Carr is a member of the Committee on Taxation of the State Bar of California.

88. *Id.*

89. *Id.*

90. N.D. CENT. CODE § 57-23-06 (Supp. 1969).

91. *Id.*

search is complicated since the taxpayer has no standards to follow in determining what constitutes unequal assessments.<sup>92</sup>

Should the taxpayer succeed in his search for evidence in favor of his application, he is faced with the problem of presenting this evidence to a board that is not adequately suited to consider it. The question of whether property has been assessed properly is, as previously mentioned, a highly technical question. The board of county commissioners lacks the expertise necessary to properly handle assessment appeals.

The state of California, recognizing that such a problem existed, enacted legislation requiring that a person be either a certified public accountant, an attorney, a qualified property appraiser, a licensed realtor, or a person certified by a nominating board as being competent in the field of property appraisal and appeals board.<sup>93</sup> While this idea of an assessment appeal board with the qualities of independence and experience would help improve the quality of review available to the taxpayer in the abatement and refund process, it would probably be impractical to establish these appeal boards in counties or should consolidation occur in assessment districts with a small population. Maybe in the smaller counties or assessment districts the scope of judicial review could be increased where the administrative appeal is handled by an appeals board.<sup>94</sup> This could be accomplished by permitting a trial de novo on the issue of whether property has been assessed properly in those counties which could not support a separate appeal board.<sup>95</sup> This would allow a taxpayer to have at least one complete and adequate hearing on the merits of his case, while avoiding the necessity of having an additional hearing where there is a competent appeals board.<sup>96</sup> However, this increase in judicial review by itself would not take into consideration the advantages of a determination by a competent and well-qualified administrative board, which would be of particular benefit to the individual taxpayer who has a small claim.<sup>97</sup>

Another point to be considered in the appeal and abatement process is the taxpayer's right of appeal if his application is rejected in whole or in part by the board of county commissioners. In connection with this, the burden of proof that he must sustain in this appeal will also be considered. The North Dakota Supreme Court,

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92. The board of county commissioners in rejecting an application usually states that this application is rejected on the basis of the recommendation given by the governing body of the municipality in which such property is located.

93. CAL. REV. & TAX. CODE § 1624 (West 1970).

94. Carr, *supra* n. 87.

95. *Id.*

96. *Id.*

97. *Id.*

in the *Appeal of Johnson*,<sup>98</sup> held that the court should not substitute its judgment as to valuation of property for that of the assessing authorities when there was substantial evidence to support the assessing authorities' appraisal, and no evidence of any discrimination. This holding makes it almost impossible for the taxpayer to obtain a correction in his assessment except in the most flagrant case. This holding, it seems, places too heavy a burden of proof on the taxpayer.

Appraising is not an exact science.<sup>99</sup> The experience and sound judgment of the appraiser plays an important part in the assessment process. In appraising there is room for reasonable differences of opinion in determining the true value of a particular piece of property. In view of this, the state of Alabama grants a presumption in favor of the assessor's method of appraisal and the correctness of his assessment and places the burden of proof on the taxpayer.<sup>100</sup> However, should the taxpayer introduce competent evidence rebutting this presumption, the court will grant the taxpayer the relief requested.<sup>101</sup>

Oregon has tried a unique approach to the review of property tax assessments by establishing a Tax Court with jurisdiction over all state tax disputes, including appeals from property tax assessments.<sup>102</sup> This court conducts a trial de novo in all cases.<sup>103</sup> The court serves as a substitute for regional tax appeal boards and appeals to district courts and is appealable directly to the Oregon Supreme Court.<sup>104</sup> In addition, Oregon has established a small claims division for the taxpayer who voluntarily elects this more informal procedure.<sup>105</sup> The creation of an independent judicial tax court and a small claims division is a very progressive reform in the assessment appeal process.

The above discussion creates an unfavorable picture of the process of assessment appeal and review. A taxpayer who wishes to appeal the assessment of his property has to deal with insurmountable problems created by an out-dated and defective system.

The North Dakota Legislature must take an active part in assessment reform. The taxpayer should be provided with clear and prac-

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98. *Appeal of Johnson*, 173 N.W.2d 475 (N.D. 1970).

99. *Supra* n. 81.

100. ALA. CODE tit. 51, § 140 (1940).

101. *Id.*

102. ORE. REV. STAT. OF REV. AND TAX. § 305.410 (1969).

103. *Id.* at § 305.425.

104. *Id.* at § 305.440.

105. *Id.* at § 305.515.

tical ways with which he can prove the inequality of his assessment, and also, satisfactory institutional and procedural machinery for administrative appeal and judicial review.

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