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HEFFNER

CONCERNS REGARDING AB 533

Limitation on exemption of intangible property

In 1999, the Legislature passed SB 411. This bill created a specific statutory exemption for intangible personal property. The exemption was codified in NRS 361.228.

AB 533 would, among other things, limit the applicability of the exemption to those properties that are valued by the Department of Taxation pursuant to NRS 361.320 (i.e., intercounty or interstate railroad, air carrier, natural gas transmission and distribution, electric power, telecommunication). If passed, the intangible personal property of companies that are valued by County Assessors (i.e., hotels, motels, casinos, golf courses, office buildings, fast-food franchises) would not be exempt from taxation. There are several problems with this proposal.

1. The exemption of intangible property is based, in part, on Article 10, Section 1, subsection 2 of the Nevada Constitution. This subsection specifically exempts from taxation certain intangible property (i.e., shares of stock, mortgages, notes, bank deposits, etc.). These items are listed in NRS 361.228. To the extent that AB 533 prevents companies that are valued by county assessors from receiving the benefit of the exemption, the legislation would violate the constitutional mandate that this type of property be exempt from tax.

2. Article 10, Section 1, subsection 1 of the Nevada Constitution requires that all property be treated in a uniform and equal manner, such that a just valuation of all property may be determined. There are only two exemptions to this requirement: (i) mines and mining claims and (ii) agricultural and open space. All other property must be treated as a single class with a uniform plan for its valuation and appraisal. Consequently, property should be valued the same regardless of whether the value is determined by the Department of Taxation or a County Assessor. Yet, AB 533 would create two standards: a County Assessor could tax the value of intangible property while the Department of Taxation would treat intangible property as exempt. This creation of two classes of property would violate the constitutional mandate that property be treated in a uniform and equal manner.

3. As mentioned above, AB 533 would create two standards: a County Assessor could include the value of intangible property in its assessment of a company's property, while the Department of

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Taxation would treat intangible property as exempt. Besides the obvious constitutional problem (see #2 above), this would create an inequity within industries. For example, telecommunication companies which are valued by the Department of Taxation would have their intangible property excluded from their valuation, but telecommunication companies that are valued by a County Assessor could have the value of intangible property included in their valuation. This could create a competitive advantage for those companies that are valued by the Department of Taxation. The only way to maintain a level playing field for business is to ensure that the exemption of intangible property applies to property valued by both the County Assessor and the Department of Taxation.

4. Finally, if AB 533 is adopted, the valuation of the land and improvements of some businesses valued by a County Assessor would include the value of intangible property while the intangible property of other similar businesses within the county would not be included in the taxable value of their land and improvements. This will result in unfair and inequitable treatment among property owners.

Recommendation: Delete proposed subsection 4 to NRS 361.228, in Section 16 of AB 533. It has been proposed that language limiting the applicability of the exemption of intangible property be moved to a new subsection (d) of NRS 361.227 5. This would not solve the problems identified above. Consequently, such an amendment should not be made.

Inclusion of the term "fee simple"

AB 533 proposes a new standard for determining whether a property's taxable value exceeds its full cash value. Historically, a property's taxable value has been tested by comparing it to "the most probable price which [the] property would bring in a competitive and open market under all conditions requisite to a fair sale." NRS 361.025. This has required a consideration of the restrictions of the particular property's use and alienability. In *Sun City Summerlin v. Nevada,* 113 Nev. 835 (1997), the Supreme Court affirmed the importance of considering the restrictions on use and alienability when determining a property's full cash value. Now, AB 533 would change this standard: by using the term "fee simple," it assumes a property has no restrictions on use or alienability.

The term "fee simple" is defined as "an estate limited absolutely to a man and his heirs and assigns forever without limitation or condition." Black's Law Dictionary, p. 554 (5th ed. 1979). Such estate "is unlimited as to duration, disposition, and descendibity." *Id.* Consequently, by using this term, the legislation proposes a hypothetical estate, free of restrictions on use or alienability. This would alter the historical practices of the county assessors and boards of equalization and would reverse the holding in *Sun City v. Nevada.* Presumably, the sponsor of the bill did not intend this result, but a court interpreting the proposed language would give the term "fee simple" its technical meaning. This will have ramifications, beyond the problem sought to be cured by the legislation.

Recommendation: Delete the term "fee simple" from sections 15, 16 and 25 of AB 533.

Inclusion of a new evidentiary standard

AB 533 proposes a new evidentiary standard for the county boards of equalization. Historically, the County Boards of Equalization have had the authority to increase or decrease the value of property if it found "just cause" for the complaint, or that "an inequity exists," or that "the full cash value of property is less than the taxable value of the property." NRS §§ 361.355, 361.356 and 361.357. In each instance, the county board's finding has been based on a preponderance of evidence: the standard of proof generally used in civil proceedings.

AB 533 proposes that a county board's finding be based on a higher standard of proof. It would require that the county board's decision be based on "clear and satisfactory evidence." This would convert a forum designed for the impartial administrative resolution of valuation issues into a forum biased against taxpayers and in favor of the assessor.

The proposed amendment would also require the evidence to be shown by the appellant. However, the majority of appeals are brought by property owners who are not experienced in handling property tax appeals or addressing the nuances of appraisals, yet are legitimately concerned about their property's valuation. The County Boards of Equalization are uniquely qualified to address these concerns because the members are familiar with property values in their area. The County Boards of Equalization should have the discretion to adjust a property's value where they find an inequity, even if the evidence came from a source other than the appellant.

Recommendation: Delete the proposed addition to section 1 of NRS 361.345, in Section 22 of AB 533 and section 4(e) of NRS 361.360, in Section 26 of AB 533.