

**BOARD OF ASSESSMENT APPEALS
STATE OF COLORADO
Docket Number 34837**

ORDER

SECURITYLINK FROM AMERITECH,

Petitioner,

vs.

DENVER COUNTY BOARD OF EQUALIZATION,

Respondent.

THIS MATTER was heard by the Board of Assessment Appeals on March 31, 1999, Don Clifton and Cherice Kjosness presiding. Petitioner was represented by Wayne Tenenbaum, Esq. Respondent was represented by Maria Kaiser, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**PERSONAL PROPERTY
(Denver County Schedule No. 045-648-003)**

Petitioner is protesting the 1998 actual value of the subject property, personal property located at many different locations in Denver County.

ISSUES:

Petitioner:

Petitioner contends that the majority of the subject property is exempt from taxation under 39-3-119.5 C.R.S. because the value of the property at each location does not equal or exceed \$2,500.00.

Respondent:

Respondent contends that the property is not exempt because each location is not a business address.

FINDINGS OF FACT:

1. Petitioner presented no witnesses because the issue before the Board is entirely a legal argument.

2. Petitioner is requesting a 1998 exemption of the subject properties where the total is less than \$2,500.00 and accepts the valuation for those that exceed that amount.

3. Respondent's witness, Mr. John Ragan, a Registered Appraiser and Deputy Assessor for the Denver County Assessor's Office, presented an indicated value of \$320,630.00 for the subject property.

4. Mr. Ragan testified that he was formerly the manager of the personal property section of the assessor's office and still oversees that section as Deputy Assessor. He testified that a declaration schedule is sent to each business doing business or owning leased property within the City and County of Denver. The declaration schedule asks that the situs location of leased property be listed so that a proper mill levy can be determined. The assessor does not "break out" the individual locations except as required by taxing areas.

5. Mr. Ragan testified that the exemption required by 39-3-119.5 (House Bill 96-1267) has been applied as stated in the plain language of the statute and according to a 1996 memorandum from the Property Tax Administrator (PTA). Subsequently, the Property Tax Administrator changed the interpretation. The Denver County Assessor does not agree with this interpretation and has not implemented these procedures.

6. Mr. Ragan testified that when the Legislature was contemplating this bill, the county assessors were asked to provide impact statements under the scenario of exempting the personal property of "small businesses" and the resulting higher efficiency of the assessment and collection processes. Based on this scenario, the impact in Denver would be approximately \$200,000.00 in taxes.

7. The subsequent PTA memorandum states that when a company owns leased property in many different locations, that the assessor "should consider" listing each location on a separate schedule. He stated that the assessor and management staff did closely consider it; however, they determined that such a procedure would significantly increase the cost of administration in the personal property section. The number of hours to process a personal property schedule is approximately 10 to 12 hours. Under the new procedure it would require approximately 32 hours for all of those companies with multiple leasing locations. This is a continuing cost as this property would have to be tracked.

8. Under cross-examination, Mr. Ragan testified that he was not an attorney and has not received any training in statutory interpretation. He admitted that there are many guidelines issued by the PTA, and that it is generally the practice of the Denver County Assessor's Office to adhere to those guidelines.

9. Respondent's witness, Bruce Moore, Manager of the Tax Investigation Unit for the Denver Treasurer's Office, testified that the primary duty of his section is to collect delinquent taxes. He testified that he is familiar with HB-96, and provided assistance to the Denver County Treasurer and testimony to the Legislature regarding the high cost of sending and collecting tax bills with a very small amount of tax due. His investigations revealed that properly applied, this bill would eliminate more than 50% of the number of schedules of personal property, but the revenue impact was less than .3%. In many instances the cost of the tax bills and postage exceeded the tax due. He testified that it had always been his impression that the intent of this bill was to reduce non-efficient procedures, and not to exempt large amounts of personal property owned by larger businesses.

10. In cross-examination, Mr. Moore testified that if the PTA's most current guideline was followed, the cost to collect the taxes for many of the individually listed properties would not be higher if it all became exempt, but it would be much higher if many exceeded the \$2,500.00.

11. Mr. Jerry Ogden, Denver County Assessor, testified that he had been closely involved in the testimony and discussion of the benefits of HB and that it was his understanding that the bill would apply only to small businesses that operated in a single location and that had a very small amount of personal property. This understanding was consistent with the 1996 memorandum from the PTA. He believes that the only time a separate schedule should be created is if leased property falls in a different taxing area and the separate listing is necessary to insure the proper application of the mill levy.

12. Mr. Ogden testified that he and his staff gave a great deal of consideration to implementing the 1997 memorandum from the PTA; however, they discovered that separate schedules by location for many of the mid-sized and larger companies would significantly increase the cost of government, which is inconsistent with the stated intent of the statute. He presented transcriptions of the tapes from the Legislative Committee hearings in support of his position.

13. Mr. Ogden further testified that the Legislative Council did a survey of the county assessors to try to determine the different fiscal impact under the most current interpretation by the PTA. He presented Denver County's response to that survey, which is significantly higher than under the 1996 recommended procedures, and also the state and local fiscal note which resulted.

14. Under cross-examination, Mr. Ogden testified that the tracking requirement would continue because he is required to report the dollar amount of exempt property each year.

15. Respondent assigned an actual value of \$320,630.00 to the subject property for tax year 1998.

CONCLUSIONS:

1. The Board agrees with both parties that this case is essentially based on legal argument which arises from different interpretations of a statute. When determining the meaning of a statute, we begin with the plain language. Section 39-3-119.5 provides as follows:

For property tax years commencing on and after January 1, 1997, personal property not otherwise exempt from property tax shall be exempt from the levy and collection of property tax if the personal property would otherwise be listed on a single personal property schedule and the actual value of such personal property is two thousand five hundred dollars or less. [Emphasis added.]

The focus of the dispute is the meaning of the above, emphasized language, a question of first impression. In other words, the question is what personal property must be listed on a single personal property schedule? To determine the correct interpretation, we must widen the scope of the analysis.

2. The term "personal property schedule" is not defined in the property tax statutes and the Board was unable to find any decisional law defining the term. Also, the property tax statutes do not state when single property tax schedules are appropriate.

3. The statutes leave open whether it is permissible to file multiple personal property schedules within a single county. To be sure, the Board will survey the statutes referring to such schedules.

4. Under subsection 39-5-107(1), C.R.S. (1998), all taxable personal property is to be listed on a form of schedule approved by the PTA and prepared and furnished by the assessor. The schedule must show the owner's name, address, and the location of the taxable personal property. Id.

5. Under § 39-5-108, C.R.S. (1998), the assessor "shall mail or deliver two copies of the personal property schedule" to the person that owns the taxable personal property. Emphasis added. The Board has not found any statute or case law that explains why two copies must be sent nor were any authorities discovered describing the circumstances under which two schedules per taxpayer per county are necessary.

6. The Legislature may have meant for two copies of the personal property schedule to be sent as a matter of convenience to the taxpayer. Maybe both copies of the schedule were to be completed by the taxpayer but only one was to be submitted to the assessor. The other was to be retained by the taxpayer for the taxpayer's records.

7. On the other hand, maybe the Legislature intended taxpayers to be able to file up to two personal property tax schedules, no more.

8. In any event, upon receipt of the personal property schedule form, the taxpayer must list "all personal property owned by him, or in his possession, or under his control located in said county on the assessment date." § 39-5-108.

9. In summary, based upon a review of the statutory scheme, the PTA authors the personal property schedule form, the assessor sends it to the taxpayer and the taxpayer fills it out and returns it to the assessor. Finally, the assessor calculates the personal property tax bill. This description of this process is supported by the PTA's manual.

10. The county assessor is responsible for the discovery, listing, classification, and valuation of all taxable property within each county, except public utility property. Volume 5 Assessors Reference Library: Personal Property Valuation Manual 1.2 (1998). The Assessors Reference Library does not expressly provide that the assessors may alter the personal property tax schedules submitted by taxpayers. To the contrary, schedules and notice forms may be created and customized by the county assessors but only with the prior approval of the PTA. Volume 5 Assessors Reference Library: Personal Property Valuation 2.4 (1989).

11. The taxpayer is responsible for submitting a completed, truthful personal property schedule and for making the final payment of the personal property taxes levied against the property. Volume 5 Assessors Reference Library, Personal Property Valuation Manual 1.9 (1998); Petitioner's Exhibit A, tab 18. The schedule must be completed in sufficient detail as to allow the assessor to make a valuation. Id. The Assessors Reference Library does not expressly provide that the taxpayers may file a single personal property schedule for each physical location of the personal property.

12. The Volume 5 Assessors Reference Library: Personal Property Valuation Manual 2.2 (1998) provides in relevant part:

The taxpayer who owns more than \$2,500.00 in actual value of personal property per business location must report all personal property owned by, in the possession of, or under the control of the taxpayer on January 1 to the assessor.

In accord Volume 5 Assessors Reference Library: Personal Property Valuation Manual 1.9 (1998).

- a. The Assessor's Reference Library contains several examples of how this language is to be interpreted. One example provides as follows:

An equipment leasing company that leases equipment to several lessees within the county. The county provides an itemized listing of the leased personal property by lessee.

Based on this set of facts, the assessor should consider determining the total actual value of the personal property by lessee and then comparing the total actual value amount by lessee to the \$2,500.00 exemption amount. If the total actual value is \$2,500.00 or less, the personal property under lease to that lessee is exempt from taxation.

Volume 5 Assessors Reference Library, memorandum dated August 6, 1997, from PTA to all county assessors, Section I (1998).

- b. Applying the above language and example to this case leads to the conclusion that the Assessor should have determined the total actual value of the subject property by customer and then comparing the total actual value amount by customer to the \$2,500.00 exemption amount. If she had done so, she would have determined that none of the customers had property valued in excess of \$2,500. Petitioner's Exhibit B, para. No. 5.
- c. Although Respondent makes a convincing argument regarding the legislative intent of HB1267, this Board is unable to consider this evidence. For us, the search for the meaning of the statute ends with the Property Tax Administrator's procedures. Pursuant to case law, Colorado's assessors, including the Denver County Assessor, do not have any discretion in the matter. Unlike the courts, the Assessors Reference Library is binding on the assessors. Manor Vail Condominium Ass'n v. Board of Equalization, 956 P.2d 654, 658 (Colo.App. 1998).
- d. Moreover, where, as here, the statutory language in issue is susceptible to more than one reasonable interpretation, the administrative interpretation is entitled to deference, especially where the subject involved calls for the exercise of technical expertise. El Paso County Board of Equalization v. Craddock, 850 P.2d 702, 705 (Colo. 1993). This is further supported by the fact that the procedure has been approved by the State Board of Equalization and has survived a review by Legislative Council.
- e. With two exceptions, the above analysis and conclusion makes it unnecessary for the Board to evaluate any other issue raised by the parties.

f. Regarding the constitutionality of § 39-3-119.5, the Board concludes that it is without the authority to make that determination. Arapahoe Roofing and Sheet Metal, Inc. v. City and County of Denver, 831 P.2d 451, 454 (Colo. 1992). Rather, the statute is to be presumed constitutional until it is otherwise established to a court's satisfaction beyond a reasonable doubt. People v. Fuller, 791 P.2d 702 (Colo. 1990).

13. Regarding whether the PTA's procedures produce non-uniform and unequalized values, the Board is also without authority to make a determination. The courts have consistently ruled that equalization is not our function.

14. An order should be entered in favor of the Petitioner. The subject property is exempt from taxation under § 39-3-119.5.

ORDER:

Respondent is ordered to reduce the 1998 actual value of the subject property to \$119,393.00.

The Denver County Assessor is directed to change his records accordingly.

APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

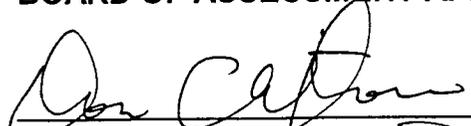
If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 15th day of April, 1999.

This decision was put on the record

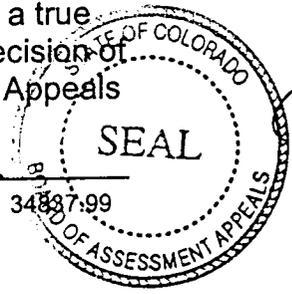
APR 15 1999

BOARD OF ASSESSMENT APPEALS


Don Clifton

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals


Diane Von Dollen




Cherice Kjosness

**BOARD OF ASSESSMENT APPEALS
STATE OF COLORADO
Docket Number 34837**

ORDER (ERRATA)

SECURITYLINK FROM AMERITECH,

Petitioner,

vs.

DENVER COUNTY BOARD OF EQUALIZATION,

Respondent.

This Order is on Errata because the April 15, 1999 Order in the above-captioned appeal was issued with an incorrect amount. The Board hereby amends its April 15, 1999 Order to reflect the following:

Paragraph 14 under **CONCLUSIONS** is hereby amended to read:

An order should be entered in favor of the Petitioner. The subject property which is less than \$2,500.00 per location is exempt from taxation under §39-3-119.5.

The first paragraph under **ORDER** is hereby amended to read:

Respondent is ordered to reduce the 1998 actual value of the subject property to \$6,458.00.

In all other respects, the April 15, 1999 Order shall remain in full force and effect.

DATED this 22^d day of April, 1999.

BOARD OF ASSESSMENT APPEALS

Don Clifton

Don Clifton

Cherice Kjosness

Cherice Kjosness

This decision was put on the record

APR 22 1999

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Diane Von Dollen

Diane Von Dollen



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<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>SECURITYLINK FROM AMERITECH,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Wayne A. Tenenbaum, Esq. Hoffert & Associates, P.C.</p> <p>Address: 918 Burning Tree Drive Kansas City, Missouri 64145-1150</p> <p>Phone Number: (816) 941-8797</p> <p>Attorney Reg. No.:</p>	<p>Docket Number: 34837</p>
<p align="center">ORDER ON REMAND FROM COURT OF APPEALS 99CA0951</p>	

THIS MATTER is on remand to the Board of Assessment Appeals after entry of the Court of Appeals’ decision in Case No. 99CA0951 to deny Taxpayer’s exemption claims, and to reinstate the total valuation of the subject property as set by the Denver County Board of Equalization for tax year 1998.

ORDER:

The Respondent is ordered to reinstate the value of the subject personal property at \$320,630.00 for tax year 1998.

The Denver County Assessor is directed to change his records accordingly.

DATED and MAILED this 24th day of October, 2001.

BOARD OF ASSESSMENT APPEALS

Karen E. Hart
Karen E. Hart

Mark R. Linné
Mark R. Linné

This decision was put on the record

OCT 23 2001

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Diane Von Dollen
Diane Von Dollen



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