

BEFORE THE IOWA DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF	*	
	*	
POLK COUNTY ASSESSOR,	*	DIRECTOR'S RULING ON
PETITIONER,	*	PETITION FOR RULE-MAKING
vs.	*	
	*	
IOWA DEPARTMENT OF REVENUE	*	
RESPONDENT,	*	
	*	DOCKET NO. 07-60-9-0066

On February 28, 2007, the Director received from Petitioner, the Polk County Assessor, a Petition for rule-making regarding rule 701 IAC 71.1. Rule 71.1 is an Iowa Department of Revenue (hereinafter Department) rule promulgated pursuant to Iowa Code Ch. 17A (2005).

ISSUES

The Petitioner presents the following issues for the Director's determination:

1. Should a portion of the text in Department subrule 701 IAC 71.1(1) be rescinded as being contrary to Iowa statute and Iowa case law in the area of property valuation?
2. Should the Department promulgate the Petitioner's proposed subrule 701 IAC 71.1(1)?

FACTS

Iowa imposes a property tax through local jurisdictions. Several chapters of the Iowa Code set forth the parameters of taxation of property in Iowa. County and city assessors are created in Iowa Code Ch. 441 (2007). Their duties and responsibilities are also set forth in that chapter.

The implementation of property tax in Iowa is controlled by statute. Not all property is subject to tax. Other property is subject to tax but exempted. Certain classes are subject to rollbacks or taxed on productivity instead of value. The value of the property to be assessed and the portion subject to tax is controlled by statute.

County and city assessors are to “Cause to be assessed, in accordance with §441.21, all property in the assessor’s county or city, except property exempt from taxation, or the assessment of which is otherwise provided by law.” Iowa Code §441.17(2) (2007). Examples of property the assessment of which is otherwise provided by law would be utilities whose assessment by statute is given to the Department. Iowa Code Chs. 433,434,437,437A and 438 (2007).

In accordance with §441.21, the assessor’s duty is to ensure “All property subject to taxation shall be valued at its actual value which shall be entered opposite each item, and except as otherwise provided in this section, shall be assessed at one hundred percent of its actual value, and the value so assessed shall be taken and considered as the assessed value and taxable value of the property upon which the levy shall be made.” Iowa Code §441.21(1)(a) (2007). The legislature has determined for property tax purposes the value to be used is its actual value.

Actual value is defined by statute. “The actual value of all property subject to assessment and taxation shall be the fair and reasonable market value of such property except as otherwise provided in this section. ‘Market value’ is defined as the fair and reasonable exchange in the year in which the property is listed and valued between a willing buyer and a willing seller, neither being under the compulsion to buy or sell and each being familiar with all the facts relating to the particular property.” Iowa Code §441.21(1)(b) (2007).

Only the real estate, buildings and improvements are subject to tax. Iowa Code §428.4 (2007). The assessor does not assess the intangible value of the business. The assessor is to exclude “Special value or use value of the property to its present owner, and the goodwill or value of a business which uses the property as distinguished from the value of the property as property.” Iowa Code §441.21(2) (2007). These are enumerated intangibles specifically excluded from the valuation of property assessed by the local assessor. Post-Newsweek Cable, Inc. v. Board of Review, 497 N.W.2d 810, 814 (Iowa 1993). The “use value” cited in section 441.21(2) is not a prohibition on valuing property at its actual use. The assessment should reflect only the real estate, buildings and improvements.

Iowa statutes provide property is to be valued according to its use. Agricultural land and buildings are valued based on productivity and net earning capacity and not actual value. Iowa Code §441.21(1)(e) (2007). For example, farmland zoned commercial and located near a mega mall would still be valued based on productivity and net earning capacity. Residential, commercial and industrial properties are valued based on use. Iowa Code §441.21(4) and (5) (2007). Similarly, a residential property zoned commercial and located near a mega mall or a potential mega mall site would still be valued as residential property for tax purposes. It would not be assessed based upon a speculative value a potential mall developer may be willing to pay for that property. The statutes have been written to tax Iowans on the use of their property, not the potential use of their property.

The assessor is to determine the value of property in accordance with rules adopted by the Department and in accordance with forms and guidelines contained in the Department’s Real Property Appraisal Manual. Iowa Code §441.21(1)(h) (2007). The rules, forms, and guidelines are to be consistent with the statutes in Ch. 441. Iowa Code §441.21(1)(h) (2007).

Rule 701 IAC 71.1 was promulgated by the Department. Prior to November 2006 the longstanding rule read as follows:

71.1(1) Responsibility of assessors. All real estate subject to assessment by city and county assessors shall be classified as provided in this rule. It shall be the responsibility of city and county assessors to determine the proper classification of real estate. The determination shall be based upon the best judgment of the assessor following the guidelines set forth in this rule and the status of the real estate as of January 1 of the year in which the assessment is made. See subrule 71.1(8) for an exception to the general rule that property is to be classified according to its use. The classification shall be utilized on the abstract of assessment submitted to the department of revenue pursuant to Iowa Code section 441.45. See rule 71.8(428,441).

The Rule was amended in November 2006 to address two issues. First, the amended rule requires an assessor to use one classification per property. The land and the buildings located on land are to be classified the same. The statutes do not provide for an assessment of one property to contain multiple property classifications. An exception is made for buildings located on leased land, in which case different classifications are permissible. Second, the rule requires an assessor to classify and value property according to its present use rather than its potential or speculative use. In both instances, these are clarifying amendments and not changes to established Department policy. *See* Notice of Adopted and Filed Rules, ARC 5685B, IAB 1/3/07. The amended rule reads as follows:

71.1(1) Responsibility of assessors. All real estate subject to assessment by city and county assessors shall be classified as provided in this rule. It shall be the responsibility of city and county assessors to determine the proper classification of real estate. *There can be only one classification per property. An assessor shall not assign one classification to the land and a different classification to the building or separate classifications to the land or separate classifications to the building (dual classification). A building or structure on leased land is considered a separate property and may be classified differently*

than the land upon which it is located. The determination shall be based upon the best judgment of the assessor following the guidelines set forth in this rule and the status of the real estate as of January 1 of the year in which the assessment is made. *The assessor shall classify and value property according to its present use and not according to its highest and best use. For example, property currently used as a golf course shall be assessed and valued by the assessor as a golf course even though it's highest and best potential use may be an industrial park or commercial development.* See subrule 71.1(8) for an exception to the general rule that property is to be classified according to its use. The classification shall be utilized on the abstract of assessment submitted to the department of revenue pursuant to Iowa Code section 441.45. See rule 71.8(428,441).

The Legislature's Administrative Rules Review Committee reviewed the amended rule on two occasions. The meetings were held on December 12 and 13, 2006, and on February 2, 2007. The Petitioner appeared at both meetings and objected to the rule. The Iowa Assessor's Association supported the rule amendment. The Administrative Rules Review Committee in its final decision made no objections to the amended rule.

The Petitioner is requesting the amended rule be withdrawn and the following rule be promulgated in its place:

71.1(1) Responsibility of assessors. All real estate subject to assessment by city and county assessors shall be classified as provided in this rule. It shall be the responsibility of city and county assessors to determine the property classification of real estate. There can be only one classification per property. An assessor shall not assign one classification to the land and a different classification to the building or separate classifications to the land or separate classifications to the building (dual classification). A building or structure on leased land is considered a separate property and may be classified differently than the land upon which it is located. The determination shall be based upon the best judgment of the assessor following the guidelines set forth in this rule and the status of the real estate as of January 1 of the year in which the assessment is made. The classification shall be utilized on the abstract of assessment submitted to the department of revenue pursuant to Iowa Code Section 441.45. See rule 71.8(428,441).

The Petitioner is requesting the following language be deleted from the rule “The assessor shall classify and value property according to its present use and not according to its highest and best use. For example, property currently used as a golf course shall be assessed and valued by the assessor as a golf course even though it’s highest and best potential use may be an industrial park or commercial development. See subrule 71.1(8) for an exception to the general rule that property is to be classified according to its use.”

RULING

The Department promulgates rules pursuant to its authority under Iowa Code §17A. 4 (2007). The rules must be reasonable and consistent with legislative enactments. Michigan-Wisconsin Pipe Line Co. v. Johnson, 73 N.W.2d 820, 827 (Iowa 1955). Through its rules, the Department seeks to implement statutes passed by the legislature. Michigan-Wisconsin Pipe Line Co. v. Johnson, 73 N.W.2d 820, 827 (Iowa 1955). Department rules have the force and effect of the law and are presumed valid. Hope Evangelical Lutheran Church v. Iowa Department of Revenue and Finance, 463 N.W.2d 76 (Iowa 1990); Richards v. Iowa Department of Revenue, 360 N.W.2d 830 (Iowa 1985); First Iowa State Bank v. Iowa Dep't of Natural Resources, 502 N.W.2d 164, 168 (Iowa 1993).

The Petitioner requests a portion of the text of the amended rule be rescinded and a revised rule be promulgated in its place. The requested revision and the proposed rule propose the same result. The Director will respond to both requests as if they were one.

An agency rule must be read and interpreted in conjunction with the statutes. It is important to review the statutes to which the rule applies. “All property subject to taxation shall be valued at its actual value which shall be entered opposite each item, and except as otherwise

provided in this section, shall be assessed at one hundred percent of its actual value, and the value so assessed shall be taken and considered as the assessed value and taxable value of the property upon which the levy shall be made.” Iowa Code §441.21(1)(a) (2007). The legislature has determined for property tax purposes the value to be used is its actual value.

Actual value is defined by statute. “The actual value of all property subject to assessment and taxation shall be the fair and reasonable market value of such property except as otherwise provided in this section. ‘Market value’ is defined as the fair and reasonable exchange in the year in which the property is listed and valued between a willing buyer and a willing seller, neither being under the compulsion to buy or sell and each being familiar with all the facts relating to the particular property.” Iowa Code §441.21(1)(b) (2007).

Iowa statutes provide property is to be valued according to its use. For example residential property is valued as residential property if that is its use notwithstanding its location or zoning classification. The assessor is to determine the value of property in accordance with rules adopted by the Department and in accordance with forms and guidelines contained in the Department’s Real Property Appraisal Manual. Iowa Code §441.21(1)(h) (2007). The rules, forms, and guidelines are to be consistent with the statutes in Ch. 441. Iowa Code §441.21(1)(h) (2007). The rules, forms and guidelines ensure uniformity and consistency in assessments statewide. The amended rule is reasonable and consistent with legislative enactments and promotes uniformity in assessments. The amendment was a clarifying amendment and not a change to established Department policy.

The Petitioner objects to the language of the amended rule which states “The assessor shall classify and value property according to its present use and not according to its highest and best use. For example, property currently used as a golf course shall be assessed and valued by

the assessor as a golf course even though it's highest and best potential use may be an industrial park or commercial development." Petitioner wants the standard "highest and best use" applied to assessments under Iowa law. The Petitioner's position is not supportable.

First, nowhere in Ch. 441 is there a requirement for an assessment to be based on highest and best use. The Legislature mandated actual value and could have required highest and best use if it so chose. The Legislature's Administrative Rules Review Committee reviewed the amended rule on two occasions. The meetings were held on December 12 and 13, 2006, and on February 2, 2007. The Petitioner appeared at both meetings and made its argument on highest and best use. The Iowa Assessor's Association supported the rule amendment. The Committee in its final decision made no objections to the amended rule.

Second, property assessment and taxation is based on Iowa statutes. The basis for Iowa's assessing and taxation statutes are use of a property. Iowa statutes provide property is to be valued according to its use. Iowa statutes require agricultural land and buildings to be valued based on productivity and net earning capacity and not highest and best use. Iowa Code §441.21(1)(e) (2007). For example, farmland zoned commercial and located near a mega mall would still be valued based on productivity and net earning capacity. Iowa statutes require residential, commercial and industrial properties to be valued based on use as residential, commercial and industrial properties and not according to highest and best use. Iowa Code §441.21(4) and (5) (2007). Similarly, a residential property zoned commercial and located near a mega mall would still be valued as residential property. The statutes have been written to tax Iowans on the use of their property. The Petitioner already assesses numerous properties in its assessing jurisdiction based on their value in use as agricultural, residential, commercial and industrial property and not on their highest and best use.

Third, highest and best use varies with actual use in only a small percentage of properties. In those instances, an assessor using highest and best use would ignore the actual use of the property and speculate on potential uses requiring owners to pay higher taxes on a use not in existence or even contemplated by the owner. No statutes in Ch. 441 require an assessment or a property tax be paid on speculative uses through assessment of property. The Legislature has never indicated its intent to assess and tax property owners on potential as opposed to actual use of the property. Iowa law requires an assessment based on actual value. Iowa Code §441.21(1)(a) (2007).

The Director finds the rule is reasonable and consistent with legislative enactments. Michigan-Wisconsin Pipe Line Co. v. Johnson, 73 N.W.2d 820, 827 (Iowa 1955). The rule ensures that Iowa assessment statutes are applied consistently and uniformly across the State. The rule does not result in an assessment at less than actual value, the assessment level required by statute. Iowa Code §441.21(1)(a) (2007). The rule does not need to be rescinded or replaced with the proposed rule suggested by Petitioner.

CONCLUSION

Amended rule 701 IAC 71.1 is reasonable and consistent with legislative enactments. The rule does not need to be rescinded or replaced with the proposed rule suggested by Petitioner and the Petition is therefore denied.

Dated at Des Moines, Iowa, this 20th day of April, 2007.

IOWA DEPARTMENT OF REVENUE

BY \s\ Mark R. Schuling
Mark R. Schuling, Director

CERTIFICATE OF SERVICE

I certify that on this 20th day of April, 2007, I caused a true and correct copy of the Director's Ruling on Petition for Rule-making to be forwarded by U.S. Mail, to the following person(s):

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\s\ Bonnie B. Mackin
Bonnie B. Mackin, Executive Secretary