

State of Colorado
Office of the State Auditor

Performance Audit of the
Board of Assessment Appeals

December 2011



455 Capitol Mall•Suite 700•Sacramento, California•95814•Tel 916.443.1300•Fax 916.443.1350

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Sjoberg Evashenk Consulting, Inc.
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December 2, 2011

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the Board of Assessment Appeals within the Department of Local Affairs. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. The State Auditor contracted with Sjoberg Evashenk Consulting, Inc., to conduct this audit. The report presents our findings, conclusions, and recommendations, and the responses of the Board of Assessment Appeals.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Marianne P. Evashenk".

Marianne P. Evashenk
President

THE EQUATION FOR EXCELLENCE

455 CAPITOL MALL, SUITE 700 · SACRAMENTO, CALIFORNIA 95814 · (916) 443-1300 · FAX (916) 443-1350 · WWW.SECTEAM.COM

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Glossary of Terms and Abbreviations

Board – Colorado Board of Assessment Appeals and its members

Department – Colorado Department of Local Affairs

Division –Colorado Board of Assessment Appeals, including the Board itself, assigned staff, and all of the responsibilities of the Board and its staff



PERFORMANCE AUDIT OF THE BOARD OF ASSESSMENT APPEALS

December 2011 Report Highlights



Dianne E. Ray, CPA
State Auditor

Board of Assessment Appeals
Department of Local Affairs

PURPOSE

Review the performance of the Board of Assessment Appeals in processing petitions, scheduling and presiding over hearings, and deciding cases.

BACKGROUND

- The Board of Assessment Appeals (the Division) is a quasi-judicial tribunal that provides an independent administrative forum through which taxpayers may appeal county property tax assessments.
- In Fiscal Year 2011, there were nine Board members, all of whom were licensed appraisers experienced in property valuation and taxation.
- From Fiscal Years 2007 to 2011, the number of petitions received by the Division increased 56 percent, and the number of petitions resolved increased 173 percent.

OUR RECOMMENDATIONS

The Division should:

- Clarify timeliness requirements and ensure appeals are resolved in accordance with these requirements.
- Take into account case complexity when assigning Board members to hear cases.
- Ensure parties appropriately exchange information prior to hearings.
- Establish a formal training program for Board members.
- Improve information available to taxpayer petitioners.
- Reevaluate its fee structure.

The agency agreed with all of these recommendations.

EVALUATION CONCERN

While the Board of Assessment Appeals recently reduced the time it takes to resolve appeals and employed many process improvements, further steps are needed to improve timeliness, increase operational efficiencies, and enhance customer service.

KEY FACTS AND FINDINGS

- The Division is not always timely in processing appeals and issuing decisions.
 - Of the 278 decisions involving county boards of equalization issued by the Division in Fiscal Year 2011, the Division issued 169 (61 percent) within 30 days of the hearing as required by statute, but issued the remaining 109 decisions between 31 and 167 days after their respective hearings.
 - In Fiscal Year 2011, on average, it took the Division 395 days, or about 13 months, to resolve appeals involving county boards of equalization.
- Regardless of the type or complexity of a petition, the Division allocates the same amount of resources and assigns two Board members to most hearings. As a result, a simple residential petition costs the Division the same to hear as a complex commercial or agricultural case.
- Some taxpayer petitioners do not comply with the Board's exchange of information rule. In cases in which the taxpayer petitioners submitted documentation, petitioners in 22 (26 percent) of the 84 cases reviewed submitted the documentation to county respondents either at the hearing or fewer than 10 days prior to the hearing, contrary to the Board's rule.
- The Board has not established a formal training program for Board members in areas such as presiding over hearings, writing decisions, or otherwise serving as hearing officers.
- Unrepresented taxpayer petitioners do not believe the information and assistance provided by the Division is sufficient to adequately prepare them for hearing.

For further information about this report, contact the Office of the State Auditor
303.869.2800 – www.state.co.us/auditor

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RECOMMENDATION LOCATOR
Agency Addressed: Board of Assessment Appeals

Rec. No.	Page No.	Recommendation Summary	Agency Response	Implementation Date
1	19	Ensure that property tax appeals are resolved timely by (a) requesting an Attorney General opinion on the applicability of the 30-day and end-of-the-same-calendar-year time requirements for issuing decisions, and ensuring decisions are issued within the appropriate time frame; (b) evaluating the costs and benefits of using contract hearing officers to help manage increased workloads; (c) developing internal timeliness goals for all types of appeals and for each phase of the appeals process; and (d) continuing efforts to develop an online petition filing system.	Agree	a. June 2013 b. June 2013 c. June 2012 d. June 2013
2	24	Ensure that resources are used efficiently when assigning Board members to preside over hearings and issue decisions by (a) establishing a process for taking into account case complexity when determining how many Board members should be assigned to hear a case, (b) seeking an Attorney General opinion as to whether the Board has the authority to issue summary orders or whether statutory changes are needed, (c) developing and implementing a process for holding prehearing conferences, and (d) increasing the facilitator services offered to parties.	Agree	a. June 2013 b. June 2013 c. December 2012 d. December 2012

RECOMMENDATION LOCATOR
Agency Addressed: Board of Assessment Appeals

Rec. No.	Page No.	Recommendation Summary	Agency Response	Implementation Date
3	30	Ensure that parties to a property tax appeal appropriately exchange information prior to the hearing by (a) continuing to develop and distribute “helpful hints” and clear informational materials regarding requirements for exchanging information prior to the hearing; (b) developing a standard process for handling cases in which one of the parties did not comply with the information exchange rule; and (c) evaluating the need to extend the time frames so that parties are required to exchange information earlier than 10 days prior to the hearing and to provide rebuttal information earlier than 3 days prior to the hearing, amending rules as necessary.	Agree	a. August 2012 b. December 2012 c. December 2012
4	33	Develop a prescribed professional training program that is designed to expose Board members to professional practices that are outside their own specific backgrounds or expertise, and that are pertinent to their role as hearing officers.	Agree	December 2012
5	38	Provide sufficient information to parties in appeals cases by (a) continuing to improve the informational materials available to parties, including information on the website and in hard copy brochures and pamphlets; (b) providing online information as to case status, as resources permit; and (c) developing and reporting performance statistics on its website.	Agree	a. August 2012 b. June 2013 c. June 2013
6	41	Reevaluate the Board’s fee structure in terms of whether fees should be based on the characteristics of the assessed property or on the characteristics of the petitions, and in terms of the fee amounts charged to petitioners as a cost-recovery mechanism. Amend the fee structure as warranted.	Agree	June 2013

Overview of the Board of Assessment Appeals

Chapter 1

Property taxes in Colorado support public schools and services at the county, municipal, and special district levels. Property taxes are not used to fund services at the state level. When owners of real or personal property in Colorado are dissatisfied with the valuation that county tax assessors place on their property, the owners can pursue various avenues of appeal at the local and state levels. The Colorado Board of Assessment Appeals (the Division) and its staff operate as a separate division within the Department of Local Affairs (the Department). The Division provides an independent administrative forum within which Colorado property owners may appeal county property tax assessments at the state level. The Division was conceived as a cost-effective and less burdensome alternative to Colorado district court and county-administered mediation. The Division's mission is "to strengthen Colorado communities by providing a fair and impartial forum for taxpayers to appeal decisions concerning real and personal property valuations and exemptions."

Throughout this report, we will use the term "the Division" to refer to the Board of Assessment Appeals, including the Board itself, assigned staff, and all of the responsibilities of the Board and its staff. The term "Board" will be used to refer specifically to the Board and its members.

Property Taxation in Colorado

All real property in Colorado that is not otherwise exempt is subject to an annual property tax that is assessed by the county in which the property is located. Real property, which includes land, buildings, and anything that is affixed to the land, can be classified as different types of properties, such as residential, commercial, or agricultural properties. Personal property is also subject to property taxation if it is used for income or gain, and is valued at more than \$5,500. Personal property includes any property that is owned by an individual or business that is not affixed to or associated with the land, such as equipment.

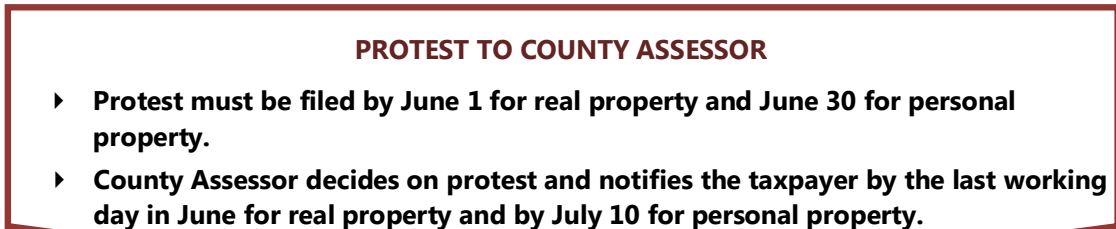
The Colorado Division of Property Taxation, under the direction of the State Property Tax Administrator, coordinates and administers the implementation of property tax law throughout the 64 counties in the state. Although the Division of Property Taxation is within the Department, it is separate from the Board of Assessment Appeals. The Division of Property Taxation promotes equalization of property valuation for property tax purposes and provides assistance to county

assessors throughout the state. The State Property Tax Administrator also has the authority to assess the value of certain large properties, such as those held by airlines and utilities, as well as to determine whether properties, such as private schools and charitable or religious organizations, are tax-exempt.

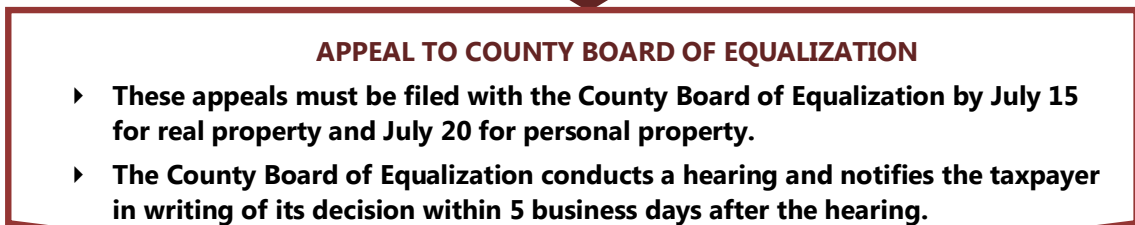
County assessors are responsible for assessing the value of all property in their counties for tax purposes in accordance with state laws. Counties assess real property on a 2-year cycle. In the first year, the county conducts what is referred to as a “mass appraisal” of properties within various areas of the county. Mass appraisal techniques assess property values based on automated statistical analyses of property sales and property characteristics within a geographic area, a process that is likely to result in a new valuation for properties within the counties. In the second year, the county does not conduct a full-scale appraisal of properties within the county, but instead generally reaffirms the value established in the first year unless new information indicates there has been a change in the property’s value. Counties assess personal property every year. When assessing the value of property, county assessors consider a variety of information depending on the type of property, including an analysis of comparable sales during a specified time period, the cost to replace the property, and the capitalization of annual net income derived from the property. Within each county, a County Board of Equalization reviews property tax assessments to ensure that the County Assessor is valuing all property throughout the county in a consistent or “equal” manner.

Counties send Real Property Notices of Valuation to taxpayers by May 1 of each year and Personal Property Notices of Valuation by June 15. If a taxpayer disagrees with the county’s valuation of his or her property, the taxpayer has several options, as outlined in the following diagram.

Taxpayer Options for Contesting County Property Valuations



If the taxpayer is not satisfied with the County Assessor's decision, he or she can file an appeal with the County Board of Equalization.



If the taxpayer is dissatisfied with the County Board of Equalization's decision, within 30 days of the County Board's ruling, three options are available.

File an appeal of the County Board of Equalization's decision with the Board of Assessment Appeals

File a lawsuit against the County Board of Equalization in district court

Agree to binding arbitration with the County Board of Equalization

Board of Assessment Appeals and District Court decisions can be appealed to the Colorado Court of Appeals.

Source: Sjoberg Evashenk analysis of property tax process in Colorado.

Taxpayers who have not protested the valuation placed on their property but who are dissatisfied with the amount of tax assessed by the county may file a petition for refund or “abatement” of property taxes paid with the Board of County Commissioners. If a taxpayer is dissatisfied with the decision of the Board of County Commissioners, the taxpayer may file a petition with the Division.

Board of Assessment Appeals

The Division was created in statute as a division within the Department (Sections 39-2-123 through 39-2-128, C.R.S.). The Division is a “type 1” entity under the Administrative Organization Act of 1968 [Sections 39-2-123(4) and 24-1-105(1), C.R.S.], which means that the Division functions independently of the Department. However, some of the Division’s administrative functions, such as budgeting and purchasing, are performed under the direction of the Department.

As discussed, the Division was established by statute as a quasi-judicial tribunal responsible for hearing appeals of valuation decisions of county boards of equalization, boards of county commissioners, and the State Property Tax Administrator (Section 39-2-125, C.R.S.). County boards of equalization cases composed about 82 percent of the petitions filed with the Division in Fiscal Year 2011. The remaining 18 percent of petitions consisted of appeals of decisions issued by boards of county commissioners as well as the State Property Tax Administrator.

According to statute, the Board comprises three members who are appointed to 4-year terms [Section 39-2-123(2), C.R.S.]. In times of extraordinary workload, statute allows the General Assembly to authorize, by appropriation, the appointment of up to six additional Board members, each for one state fiscal year term [Section 39-2-125(1)(c)(I), C.R.S.]. All Board members are subject to appointment by the Governor and confirmation by the Colorado Senate. There are currently nine members on the Board, all of whom must be experienced in property valuation and taxation and be registered, licensed, or certified appraisers. At least one Board member must have been actively engaged in agriculture during the 5 years prior to appointment [Section 39-2-123(2), C.R.S.].

Board members are not subject to the state personnel system but are considered public employees, as defined in statute. According to statute [Section 39-2-123(3), C.R.S.], Board members are paid a \$150 per diem when the Board is in session or members are conducting hearings, and those who reside outside the Denver metropolitan area are to be reimbursed for travel expenses. The full Board typically meets monthly, and Board members preside over hearings daily, as needed.

In Fiscal Year 2011, the Division was appropriated an operating budget of \$543,400 and 13.2 full-time-equivalent (FTE) staff from the State’s General Fund and reappropriated funds from indirect cost recoveries. Of the 13.2 FTE, 7.2 FTE

were allocated for Board members and 6 FTE were allocated for staff. Division staff include an administrator, three employees who assist Board members with hearings and decisions, and two employees who are responsible for docketing and scheduling cases and processing petitions. Division staff are also responsible for providing technical assistance to taxpayers, taxpayers' representatives, counties, and the general public. As shown in the following table, the Division's operating budget and FTE appropriations have decreased since Fiscal Year 2007. According to the Division Administrator, this decrease is primarily due to the transfer of Division information technology support staff to the Governor's Office of Information Technology.

Board of Assessment Appeals Budget and FTE Appropriations Fiscal Years 2007 Through 2011						
	2007	2008	2009	2010	2011	Percentage Change 2007 to 2011
Operating Budget	630,500	638,300	659,200	683,100	543,400	-14%
FTE	15	15	15	15	13.2	-12%
Source: Board of Assessment Appeals Fiscal Years 2007 through 2011 Long Bill appropriations.						

Caseload

The Division receives petitions appealing the decisions of county boards of equalization, boards of county commissioners, and the State Property Tax Administrator. The table on the following page shows the number of petitions received and resolved by the Division since Fiscal Year 2007. A petition is considered "resolved" once the hearing has been held and decision has been issued, or if the taxpayer withdraws the petition or the parties reach a settlement. As the table shows, from Fiscal Years 2007 to 2011, the number of petitions received by the Division increased 56 percent, and the number of petitions resolved by the Division increased 173 percent. The fluctuation in the number of petitions received each year is due, in part, to the 2-year assessment cycle at the county level. As discussed previously, counties conduct a mass appraisal of properties every other year and confirm those assessed values in the second year. As shown in the following table, Fiscal Years 2008 and 2010 were the mass appraisal years. Therefore, the Division received many more petitions in these years than in the respective succeeding years, when most taxpayers' valuations remain the same. According to the Division, the recent economic downturn has contributed to a significant increase in the number of petitions received each 2-year cycle. Approximately 90 percent of petitions are resolved through either settlement or withdrawal prior to the hearing. The Division holds hearings for only about 10 percent of the petitions received each year.

Board of Assessment Appeals Petitions Received and Resolved Fiscal Years 2007 Through 2011						
Petitions	2007	2008	2009	2010	2011	Percentage Change 2007 to 2011
Total Received	1,357	2,386	1,308	3,959	2,111	56%
Total Resolved	1,223	1,748	1,999	2,685	3,340	173%
Petitions Resolved Through Hearing	123	150	210	195	314	155%
Petitions Resolved Through Withdrawal or Settlement	1,100	1,598	1,789	2,490	3,026	175%
Petitions Carried Forward Into Next Year	1,664 ¹	2,302	1,611	2,885	1,656	-0.5%
Source: Sjoberg Evashenk generated based on data extracted from the Board of Assessment Appeals' case management system.						
Note (1): Based on our calculations, the Division carried more than 1,798 petitions from the prior Fiscal Year 2006 period, in addition to the 1,357 petitions received during Fiscal Year 2007.						

Audit Scope and Methodology

The Colorado Office of the State Auditor contracted with Sjoberg Evashenk Consulting, Inc., to conduct this performance audit pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. Audit work was performed from April through November 2011. We acknowledge and appreciate the cooperation and assistance provided by the Board and Department and Division management and staff during the course of this audit.

The objective of this audit was to review the performance of the Division in processing petitions, scheduling and presiding over hearings, and deciding cases. Specifically, the audit evaluated:

- Whether the Division complies with statutory and regulatory deadlines for managing cases.
- Whether the Division has implemented controls that promote the disposition of cases in an efficient and cost-effective manner.
- The public's perception of the quality of the Division's performance.

To accomplish the audit objectives, we conducted the following audit work:

- Reviewed relevant statutes, rules, policies, procedures, and other documentation related to the Division's responsibilities.

- Interviewed Division staff and Board members; walked through the Division's procedures for receiving and processing petitions, scheduling hearings, and issuing decisions; and reviewed the Division's case management system used to record and track case information.
- Analyzed data extracted from the Division's case management system for *all* petitions received and resolved between July 1, 2006, and June 30, 2011, to assess the Division's workload statistics (including the number of petitions received, hearings held, and appeals resolved) and the Division's timeliness in resolving appeals.
- Selected a random, nonstatistical sample of 100 cases resolved by the Division between January 1, 2010, and June 30, 2011, and obtained event tracking reports from the Division's case management system to evaluate the timeliness with which taxpayer petitioners and county respondents complied with time frames established in Board rules.
- Obtained the perspective of key stakeholders, which included the completion of an online survey of 161 taxpayer petitioners, taxpayer representatives (i.e., agents and attorneys), and county respondents who filed a petition with and/or appeared before the Board during Calendar Year 2010. We also interviewed the Colorado State Property Tax Administrator and a sample of 16 county assessors, including a mix of assessors from counties with a large, medium, and small volume of petitions filed by taxpayers within the county.
- Collected benchmark data to compare the Division's processes with those of 35 other state tax appeals bodies.

The results of our testing cannot be projected to the entire population. Rather, cases were selected to provide sufficient coverage of those areas—such as assessing compliance with statute and Board rules and the Division's controls over the appeals process—that were significant to the objectives of this audit. Additional details about audit samples and testing results are discussed in each of the individual audit findings and recommendations.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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Board of Assessment Appeals Administration

Chapter 2

The Board of Assessment Appeals (the Division) was intended to be a relatively simple and cost-effective means for property owners to have a property tax valuation appeal heard and resolved at the state level. In 2009, the Division adopted a vision to be “recognized for providing an accessible forum for resolving taxpayer appeals in a fair, impartial, and timely manner.” The Division’s appeals process consists of three distinct phases. In the first phase, the Division receives the petition, manually processes the accompanying payment, enters petition information into its case management system, reviews the petition for completeness, and follows up with petitioners if information is missing. At this point, the petition is accepted and assigned a docket number. The second phase consists of scheduling the petition for hearing and conducting the hearing. The third and final phase requires Board members to issue a decision based on evidence presented during the hearing.

In order to fulfill its vision, the Division should keep the following objectives in mind throughout each phase of the appeals process:

- Petitions should be resolved in a timely manner.
- Parties, particularly *pro se* taxpayers who represent themselves, should receive adequate information and assistance related to the hearing process.
- Parties should appropriately exchange information with each other prior to the hearing.
- Decisions should be issued in a fair and objective manner.

In this audit, we reviewed the processes employed by the Division in each of these areas.

We found that the Division has been innovative in identifying and implementing several process improvements to better manage its workload. Such improvements have included enhancing the customer service information made available to the public, as well as improving the hearing process itself. These improvements have included implementing recording equipment, freeing up staff time previously dedicated to court reporting activities, and revising the Division’s docketing process to allow cases to be scheduled for hearing more timely.

This audit identified areas in which additional improvements can be made to the Division’s appeals process. Specifically, we found that the Division could (1) improve the timeliness of some of its decisions; (2) better account for case complexity when assigning resources to conduct hearings and issue decisions; (3)

strengthen its requirements related to the exchange of information by parties prior to the hearing; (4) improve the training provided to Board members; (5) improve the informational materials made available to taxpayer petitioners; and (6) reevaluate its fee structure, which has not changed in nearly a decade. We discuss each of these issues further in this chapter.

Timeliness

The Division receives three different types of appeals. The vast majority of appeals, or petitions, stem from decisions issued by county boards of equalization related to the valuation of property for tax purposes. These appeals accounted for about 82 percent (1,725 of 2,111) of the petitions received by the Division in Fiscal Year 2011. The remaining 18 percent of petitions received are appeals of decisions of boards of county commissioners (17 percent) and decisions of the State Property Tax Administrator (1 percent). As discussed in Chapter 1, boards of county commissioners decide cases in which a taxpayer claims a refund or “abatement” of property taxes paid. Decisions of the State Property Tax Administrator involve the valuation of certain “state-assessed properties” (e.g., large properties such as those held by airlines and utilities) and determinations of tax exemptions. As discussed below, statute imposes time requirements for the Division to issue decisions in appeals involving county boards of equalization. There are no statutory timeliness requirements for resolving appeals from decisions of boards of county commissioners or the State Property Tax Administrator.

What audit work was performed and what was the purpose?

We analyzed timeliness data from the Division’s case management system for *all* petitions received and resolved between July 1, 2006, and June 30, 2011. The data analyzed covered key milestone dates including the dates petitions were received and accepted, the dates hearings began and concluded, and the dates decisions were issued. In addition, we reviewed key operating procedures employed by the Division when processing cases, including case management and monitoring activities.

The purpose of the audit work was to assess the Division’s timeliness with respect to processing appeals and issuing decisions.

How were the results of the audit work measured?

We identified the following criteria by which to measure the results of our audit work:

- According to statute [Section 39-2-125(1)(c), C.R.S.], the Division shall:
“[H]ear appeals from decisions of county boards of equalization filed not later than thirty days after the entry of any such decision. Appeal decisions shall be

rendered within thirty days after the date of hearing or by the last day of the same calendar year, whichever is the earlier date. However, if, as a result of an extraordinary work load, all hearings cannot be completed before the last day of the same calendar year, the [G]eneral [A]ssembly may, by appropriation, provide for the following:

- (I) The appointment of up to six additional members to the [B]oard. . . . Such members shall be appointed for terms of one state fiscal year each.
- (II) The authorization for the [B]oard to schedule hearings for a period of time not to exceed the time for which such appropriation is made; and
- (III) The hiring of additional personnel on a contract basis for the members of the [B]oard appointed pursuant to subparagraph (I) of this paragraph (c) and to assist in handling such caseload.”

- The vision of the Board is to be “recognized for providing an accessible forum for resolving taxpayer appeals in a fair, impartial, and timely manner.” To achieve this, the Division has a stated goal of “reducing the time it takes for a taxpayer’s appeal to be resolved”; this goal does not indicate specific time frames to be achieved.

What did the audit work find?

We found that while recent process improvements have better positioned the Division to handle a significantly increasing workload over the past few years, the Division is not always timely in processing appeals and issuing decisions. Specifically, we found that the Division has not consistently issued decisions for petitions involving county boards of equalization within 30 days after the date of the hearing or by the last day of the same calendar year. Based on our interpretation of statute, the Division is required to issue all decisions for petitions involving county boards of equalization within 30 days of the hearing or by the end of the same calendar year, whichever is earlier.

In Fiscal Year 2011, the Division issued a total of 278 decisions involving appeals of county boards of equalization. Of these, we found that the Division issued a decision within 30 days of the hearing for 169 (61 percent) cases. However, we found that it took the Division more than 30 days to issue the remaining 109 (39 percent) decisions. These 109 decisions were issued between 31 and 167 days after their respective hearings. Specifically, of the 109 decisions issued in more than 30 days:

- 63 (58 percent) decisions were issued between 31 and 60 days after the hearing.

- 30 (27 percent) decisions were issued between 61 and 90 days after the hearing.
- 16 (15 percent) decisions were issued more than 90 days after the hearing, with the latest decision issued 167 days after the hearing.

In addition, only two of the 278 decisions were issued within the same calendar year in which the petitions were received. As discussed later, the Division interprets statutory deadlines differently than we do, and some statutory provisions may not be feasible.

As the table below shows, the average number of days for the Division to issue decisions on appeals involving county boards of equalization has exceeded the 30-day time frame since at least Fiscal Year 2007. Although the 30-day, or end-of-the-same-calendar-year, requirements for issuing decisions are the only statutorily prescribed time requirements, we also reviewed the average number of days the Division has taken to complete each of the three phases of the appeals process since Fiscal Year 2007. As the table shows, between Fiscal Years 2007 and 2011, the Division reduced the number of days it took to complete the entire appeals process—from receiving a petition to issuing a decision after the hearing, even though the number of petitions resolved during this time increased significantly. Despite the Division’s improved timeliness, the average number of days to complete the entire appeals process remains at more than 1 year.

Board of Assessment Appeals Average Number of Days to Resolve Appeals Involving County Boards of Equalization Fiscal Years 2007 Through 2011					
Phase	2007	2008	2009	2010	2011
Average Number of Days to Receive and “Accept” Petition	4	7	6	12	21
Average Number of Days from Accepting Petition to the Hearing	363	372	368	358	342
Average Number of Days from the Hearing to Issuing the Decision	31	39	41	72	32
Average Number of Days to Resolve Petitions	398	418	415	442	395
Total Number of Petitions Resolved Through the Hearing	111	117	182	154	282
Source: Sjoberg Evashenk generated based on data extracted from the Board of Assessment Appeals’ case management system.					

Although we recognize that statute does not specify time requirements for the Division to process appeals of decisions issued by boards of county commissioners and the State Property Tax Administrator, we looked at how long the Division is taking to resolve these types of petitions as a point of comparison. We found that, on average, the Division takes longer to resolve these types of

petitions than it does to resolve petitions related to county boards of equalization. As the following table shows, in Fiscal Year 2011, the Division took an average of 57 days to issue decisions after the hearing and a total of 424 days to resolve petitions involving boards of county commissioners and the State Property Tax Administrator.

Board of Assessment Appeals					
Average Number of Days to Resolve Appeals Involving					
Boards of County Commissioners and the State Property Tax Administrator					
Fiscal Years 2007 Through 2011					
Phase	2007	2008	2009	2010	2011
Average Number of Days to Receive and “Accept” Petition	3	8	5	4	10
Average Number of Days from Accepting Petition to the Hearing	282	360	347	375	357
Average Number of Days from the Hearing to Issuing the Decision	37	105	42	85	57
Average Number of Days to Resolve Petitions	322	473	394	464	424
Total Number of Petitions Resolved Through the Hearing	12	33	28	41	32
Source: Sjoberg Evashenk generated based on data extracted from the Board of Assessment Appeals’ case management system.					

What caused the finding to occur?

There are several factors that impact the timeliness with which the Division resolves appeals, some of which are external factors that the Division has limited or no control over. One such factor relates to the significant increase in the number of appeals during the most recent 2-year assessment cycle and the impact of limited resources at the county level to handle this workload. Some of the State’s more populous counties have experienced a significant increase in the number of their property tax assessment decisions appealed to the Division. With this increase, the counties have expressed concerns over their resource limitations and ability to prepare for all of the appeals filed with the Division. As a result, some counties have requested that the Division limit the number of hearings that it schedules for the counties in any given month. The Division accommodates the counties’ workload demands by limiting the number of hearings scheduled for the counties each month. Doing so, however, has an impact on the timeliness with which the Division is able to resolve some petitions involving these counties.

As noted in Chapter 1, the Division’s budget and FTE decreased between Fiscal Years 2007 and 2011. Thus, with the increase in workload over this period, the Division is doing more with less. As such, it is important for the Division to continue efforts to improve processes to issue decisions in a timely manner. Although the Division cannot control the amount of resources available at the

counties, there are other factors affecting timeliness that the Division can take steps to remedy. These include the following:

- **Some statutory provisions are ambiguous and require clarification.** For cases involving county boards of equalization, statute states that “appeal decisions shall be rendered within thirty days after the date of hearing or by the last day of the same calendar year, whichever is the earlier date” (Section 39-2-125, C.R.S.). However, as discussed previously, the statute also contemplates that there may be times of “extraordinary workload” when the Division may not be able to hold all hearings by the end of the same calendar year. In such times, statute provides that “if, as a result of an extraordinary work load, all hearings cannot be completed before the last day of the same calendar year, the [G]eneral [A]ssembly may, by appropriation, provide for the following:
 - (I) The appointment of up to six additional members to the [B]oard. . . . Such additional members shall be appointed for terms of one state fiscal year each.
 - (II) The authorization for the [B]oard to schedule hearings for a period of time not to exceed the time for which such appropriation is made; and
 - (III) The hiring of additional personnel on a contract basis for the members of the [B]oard appointed pursuant to subparagraph (I) of this paragraph (c) and to assist in handling such caseload.”

We identified the following concerns with these provisions:

- **There are different interpretations of statute.** The Division’s interpretation of statute is that, in times of extraordinary workload and when the General Assembly appropriates additional resources to the Division, statute does not intend for the 30-day time requirement for issuing decisions to apply. Instead, the Division believes that during these times, statute allows the Division to hear and decide cases any time during the year of the appropriation. Therefore, while the Division has taken steps to better manage its workload and to improve timeliness, the Division has issued decisions after the 30-day time frame. However, since statute does not specifically state that the 30-day requirement is nullified in times of extraordinary workload, we interpret statute to allow hearings to be held beyond the calendar year in which petitions are filed, but decisions should still be issued within 30 days of the hearing. Instead of negating the 30-day requirement, statute provides options for the General Assembly to appropriate additional resources to the Division to help it manage the increased workload.

- **Some statutory provisions are not always feasible.** The statutory requirement that decisions be issued by the last day of the same calendar year does not seem feasible given the timing of the appeals process at the county level. Many county boards of equalization will extend their county hearing dates through November 1 of each year. This means that many of the petitions to the Division are filed as late as December 1 each year. Because the Administrative Procedures Act and Board rules require the Division to give parties a minimum of 30 days' notice before the hearing, it would be impossible for the Board to hold hearings and issue decisions before the end of the calendar year in these cases.

The Division should seek to clarify the concerns we identified with statute. Specifically, the Division should request a written opinion from the Attorney General on the applicability of the 30-day and end-of-the-same-calendar-year time requirements for issuing decisions, both when the Division has a normal caseload and when the Division is experiencing an extraordinary workload and the General Assembly appropriates additional resources to help manage the workload. Once receiving the Attorney General's opinion, the Division should work with the Department of Local Affairs (the Department) to pursue any necessary statutory changes. For example, the Division may want to pursue legislation to modify the provision that decisions be issued within the same calendar year. One option would be to require that all petitions be resolved within a specific time period, such as within 6 months or 1 year of the taxpayer's filing of the petition. Another option would be to require that all petitions collected within the primary filing period—which, for the Division, is August through December—be resolved prior to the beginning of the following year's filing period; in Colorado, this could be August 1. Either of these options would provide a clear and measurable goal against which the Division could assess its timeliness, and adherence to such goals would better ensure timely resolution of appeals.

- **Statute limits the number of Board members who can hear and decide cases.** Statute [Section 39-2-127(3), C.R.S.] authorizes Board members to conduct hearings and issue orders, and limits the number of Board members the Division can employ to a maximum of nine in any given year [Section 39-2-125(c), C.R.S.]. While statute allows the Division to hire additional personnel on a contract basis to assist in handling increased workload, the Division does not believe such personnel are authorized to preside over hearings themselves. Thus, the Division has not employed additional personnel on a contract basis to serve as hearing officers. As a result, the Division is limited to a maximum of nine hearing officers, regardless of its hearing workload.

Many of the benchmark jurisdictions surveyed manage increased workloads and timeliness issues by hiring, on a contract basis, individuals who can serve as hearing officers. This might include administrative law judges, hearing officers, or referees, all of whom would serve under the purview of the Board

and assist in resolving cases in a timely manner. Given the significant increase in the Division's workload over the past 5 years, the Division should evaluate the costs and benefits of using contract hearing officers to help manage its workload. Although there would be a cost associated with hiring additional hearing officers, this cost might be offset by the benefits that taxpayer petitioners would receive by the Division being able to increase the number of petitions it resolves each year. If, on the basis of this evaluation, the Division determines that using contract hearing officers would be beneficial, the Division should work with the Department to pursue the statutory authority needed to contract with these individuals.

The use of hearing officers could also increase the capacity and flexibility of the Division to hear cases without violating the State's Open Meetings Law. The Open Meetings Law mandates that any discussions between two or more Board members are considered a public meeting, and all public notice provisions apply. This means that the two Board members hearing an appeal cannot discuss the case and their decision without providing public notice of the discussion and making the discussion open to the public. This limits the ability of the two Board members hearing a case to communicate and collaborate with each other in writing their decisions, which can cause delays in issuing decisions. The restrictions imposed by the Open Meetings Law would not apply if the Division was to use hearing officers alone, or paired with one of the three "core" Board members to hear and decide cases. Written decisions involving hearing officers would require the approval of the Board.

- **The Division has not established specific timeliness goals for all types of cases and for each phase of the appeals process, and it does not routinely measure the time it takes to resolve appeals.** The Division has taken steps to improve its timeliness, such as revising its docketing and scheduling system and improving Board member deliberation processes to expedite drafting and issuing decisions. The steps taken by the Division have enabled it to reduce the amount of time it takes to resolve appeals and to increase the number of appeals resolved. However, the Division has not set goals for processing all types of appeals, including those involving county boards of equalization, boards of county commissioners, and the State Property Tax Administrator, or for completing the different phases of the appeals process not explicitly addressed by statute. As mentioned previously, the only statutory time requirement for any type of appeal is the 30-day requirement for issuing decisions for appeals involving county boards of equalization. Specifically, the Division has not set goals for the number of days from receiving a petition to accepting the petition or for the number of days from accepting the petition to the hearing. The Division also does not have an overall goal for resolving cases from the date the petition is filed to the date a decision is issued. Setting goals for the entire appeals process would better help the Division meet the statutory requirements related to issuing decisions for petitions involving county boards of equalization. Further, while the Division regularly tracks workload statistics (including the number of petitions received, hearings held,

and appeals resolved) on a year-to-date basis and reports to the Board and the Department, it has not established a method for monitoring and reporting the total length of time it takes to resolve appeals—from the time petitions are received until decisions are issued.

Most benchmark jurisdictions surveyed established some sort of time-related goals, indicating they recognized the need to resolve cases in a timely manner. In addition, some jurisdictions prescribed interim time frame goals for the different phases of their appeals process. For example, these jurisdictions had set goals for the time period between petition filing and the hearing date, which was generally targeted around 6 months, and for the time period between the end of the hearing and issuing a decision, which for most was generally between 30 and 90 days. However, we found that those who regularly assessed their timeliness reported that they have been unable to meet these timeliness goals as a result of significant increases in the volume of assessment appeals over the past few years.

- The Division’s petition processing is cumbersome and manual.** Currently, the Division receives all petitions as hard copies through the mail or at its Denver office. In order to “accept” petitions, staff manually process payments, enter petition information into the case management system, review the petitions for completeness, and follow up with taxpayer petitioners if information is missing. The manual nature of the process becomes more problematic during those times of the year when the Division receives an influx of new petitions from taxpayers throughout the state. During certain months of the year, it can take significantly longer to process petitions than during other parts of the year, as illustrated in the table below.

Board of Assessment Appeals Average Number of Days to Process Petitions Filed in Each Quarter of Fiscal Year 2011		
Quarter	Number of Petitions Processed	Average Number of Days to Process
1 st (July–September)	1,640	54 days
2 nd (October–December)	335	17 days
3 rd (January–March)	67	21 days
4 th (April–June) ¹	69	10 days
Source: Sjoberg Evashenk generated based on data extracted from the Board of Assessment Appeals’ case management system. Note (1): Because the data set extracted from the Board of Assessment Appeals’ case management system was dated July 2011, many of the petitions filed in the latter part of the 4 th quarter were not fully processed and captured in this analysis.		

The Division has begun discussions with the Governor’s Office of Information Technology on how to automate the petition filing process. The Division believes automating the petition filing process is not only feasible, but will significantly reduce staff time dedicated to manual data entry and

petitioner follow up. As additional information technology resources become available and automating this process becomes a reality, the Division will be able to streamline petition filing and free up some of the Division's limited staff resources for other functions.

Why does this finding matter?

When appeals are not resolved in a timely manner, both the taxpayer petitioners and the county respondents are negatively affected, as described below.

- **Taxpayer Petitioners.** For taxpayer petitioners who ultimately win their appeal, waiting more than a year for a decision from the Board means that they must also wait for the county to refund their overpaid taxes. This delay could create a financial hardship for the taxpayer petitioners during that period. When the Division does not issue decisions in a timely manner, it can also reflect negatively on the Division, particularly from the perspective of the taxpayer petitioner. In our survey, we found that taxpayer petitioners as a whole were moderately dissatisfied with the time it takes to actually hold hearings and issue decisions.
- **County Respondents.** In those cases in which the Board or court (i.e., district court, Colorado Court of Appeals, or Colorado Supreme Court) rules against a county respondent, the county respondent must refund to the taxpayer petitioner any amounts overpaid in taxes, as well as interest on this amount. Interest is calculated at a rate of 1 percent per month from the time the taxpayer made the overpayment of taxes until the appeal is resolved [Sections 39-8-109(1), 39-10-114(1)(b), and 39-10-104.5, C.R.S.]. Therefore, delays in the appeals process at any level can potentially increase the amount of interest that county respondents must pay to taxpayer petitioners if the county loses an appeal. This includes delays by the Division in scheduling hearings and issuing decisions.

We recognize, however, that there are numerous other factors that also impact the amount of interest paid by counties in taxpayer appeals. For example, according to the Division, it can take more than 2 years for a petition appealing the decision of a board of county commissioners to be filed with the Division. In these cases, interest would have been accruing for the 2-year period prior to the appeal being filed with the Division. If the county respondent loses the appeal at the Division, it would have to pay interest for the 2-year period as well as for the time it took the Division to issue its decision. As discussed previously, we found that, on average, it took the Division more than 400 days to resolve these types of cases. In addition, Colorado employs a multi-level appeals process that provides options outside of the Division to resolve cases. When decisions are appealed to the district court, the Colorado Court of Appeals, or Colorado Supreme Court, this extends the amount of time it takes to resolve the cases, and if the counties lose the appeals, they will have to pay a higher amount of interest. In

researching the implications of delays in the property tax assessment and appeals process on counties throughout the state, the Division found anecdotal evidence that paying interest cost one large respondent county \$500,000 in a given property taxation cycle—a 2-year period. According to counties, some of these costs can be recouped during the following property tax assessment period by incorporating refunded interest in the following year’s mill levy (within the parameters of Colorado’s Taxpayer’s Bill of Rights, or TABOR). Although we are not able to calculate the magnitude of the impact, delays in the Division’s processes may be a contributing factor to these interest costs to counties.

Recommendation No. 1:

The Board of Assessment Appeals (the Division) should ensure that property tax appeals are resolved in a timely manner by:

- a. Requesting a written opinion from the Attorney General on the applicability of the 30-day and end-of-the-same-calendar-year time requirements for issuing decisions, both when the Division has a normal workload and when the Division is experiencing an extraordinary workload. If the Attorney General determines that the 30-day or end-of-the-same-calendar-year time requirements apply during times of extraordinary workload, the Division should ensure that decisions are issued within the appropriate time frame. On the basis of the Attorney General’s opinion, the Division should work with the Department of Local Affairs to pursue any necessary statutory changes.
- b. Evaluating the costs and benefits of using contract hearing officers to help manage increased workloads. If necessary, on the basis of this evaluation, the Division should work with the Department of Local Affairs to pursue legislation to clarify provisions related to the Division’s statutory authority to contract with hearing officers to hear cases and issue decisions.
- c. Developing internal timeliness goals for all types of appeals (county boards of equalization, boards of county commissioners, and State Property Tax Administrator) and for each phase of the appeals process, including accepting petitions, scheduling and completing hearings, and issuing decisions.
- d. Continuing initial efforts to develop an online petition filing system.

Board of Assessment Appeals Response:

- a. Agree. Implementation date: June 2013.

The Division will request an informal written opinion from the First Assistant Attorney General representing the Board on the applicability of the 30-day and end-of-the-same-calendar-year time requirements for issuing decisions, both when the Division has a normal workload and

when the Division is experiencing an extraordinary workload. On the basis of the written opinion, the Division will issue decisions within an appropriate time frame or will work with the Department of Local Affairs to review the benefits of and opportunities for any necessary statutory changes. The Division will request the opinion by February 29, 2012. If statutory changes are necessary, the Division will work with the Department of Local Affairs to review the benefits of and opportunities for statutory changes during the 2013 Legislative Session.

- b. Agree. Implementation date: June 2013.

The Division will evaluate the costs and benefits of using contract hearing officers to help manage increased workloads. If necessary, on the basis of this evaluation, the Division will work with the Department of Local Affairs to review the benefits of and the opportunities for any necessary statutory changes. The Division will complete the evaluation by July 31, 2012. If statutory changes are necessary, the Division will work with the Department of Local Affairs to review the benefits of and opportunities for statutory changes during the 2013 Legislative Session.

- c. Agree. Implementation date: June 30, 2012.

The Division will develop internal timeliness goals for all types of appeals (county boards of equalization, boards of county commissioners, and State Property Tax Administrator) and for the following phases of the appeals process: accepting petitions, scheduling and completing hearings, and issuing decisions. The Division will complete the development of the internal timeliness goals by June 30, 2012.

- d. Agree. Implementation date: June 30, 2013.

The Division will continue initial efforts to develop an online petition filing system. The Division will work with the Office of Information Technology to (1) define the scope of the project including key objectives, constraints, and risks; (2) identify key deliverables and staffing needs; (3) develop a preliminary schedule for the project based on staff availability, business requirements, and constraints; and (4) periodically review progress and adjust the project plan as needed until the project is completed. Subject to available funding and availability of Governor's Office of Information Technology staff and resources, the Division's goal is to fully implement an online petition filing system by June 30, 2013.

Case Complexity

The Division handles a wide variety of petitions; some are routine, while others are more complex in nature. Some raise questions that will set new precedent, while others concern legal matters firmly established in law. In Fiscal Year 2011, approximately 26 percent of the Division's caseload involved residential properties, which are generally considered to be less complex and more routine types of cases, while the remaining 74 percent was made up of cases generally considered to be more complex, including commercial (personal and real property), agricultural, state-assessed, vacant, oil and gas, industrial, mining, and mixed-use properties. Addressing these complexities when processing cases and assigning limited resources to hearings is an important element in ensuring a cost-efficient operation.

What audit work was performed and what was the purpose?

We performed the following audit work:

- We reviewed the Division's procedures for processing petitions, assigning Board members to preside over hearings, and issuing decisions.
- We reviewed the practices of 35 other state tax appeals bodies, which allowed us to compare how similarly situated organizations process appeals cases and determine if their practices vary depending upon the complexity of a case.

The purpose of the audit work was to determine if the Division makes the most efficient use of its resources when processing petitions, assigning Board members to preside over hearings, and issuing decisions.

How were the results of the audit work measured?

Many of the other state tax appeals bodies in our benchmark survey deploy a two-pronged approach to hearing cases of varying complexity that allows for resources to be assigned commensurate with the needs of the cases. This approach allows less complex cases, which may require less time to prepare for and hear, to be heard through either less formal or expedited hearings. For example, some other states assign contract hearing officers to preside over less complex cases. It also allows an organization to allocate more resources to prepare for, preside over, and resolve more complex cases. In addition, other states use tools such as prehearing conferences, facilitator services, and summary decisions to help move cases through the appeals process based on the needs and complexity of the cases.

What did the audit work find?

Overall, we found that there are opportunities for the Division to use its resources more efficiently when assigning Board members to preside over hearings and issuing decisions. Although the complexity of the case should drive the amount of

time and effort the Division devotes to hear petitions and issue decisions, the Division currently handles most petitions the same way. Regardless of the type or complexity of the petition, the Division assigns two Board members to most hearings, with one designated as the chair presiding over the hearing and the other assigned to draft the initial decision. This means that the Division allocates the same amount of resources to most cases, regardless of how simple or complex the cases are. As a result, a simple residential petition costs the Division the same to hear as a complex commercial or agricultural case. According to the Division, it has assigned more than two Board members to hear a limited number of very complex cases and, at times, allocates additional resources for writing the decisions in those cases.

What caused the finding to occur?

The issues identified occurred because of the following:

- **The Division does not sufficiently consider case complexity when assigning resources to hearings.** The Board’s administrator currently assigns specific Board members to hear cases based on a review of the type of case (e.g., residential, commercial, industrial, agricultural, mixed-use, natural resource, oil and gas, state-assessed, exempt, or vacant property), the type of appeal (e.g., exemption, valuation, or abatement), and the qualifications of the available Board members. However, the Division does not generally consider case complexity when determining how many Board members should be assigned to hear a case. For example, for those more complex cases, the Division could continue to assign two Board members to preside over the hearing, if appropriate. For more routine, less complex cases, though, the Division could assign only one Board member to hear the case or use a contract hearing officer, as discussed in Recommendation No. 1. This approach could also help the Division free up resources to enable it to schedule more hearings and help address the timeliness issues raised in Recommendation No. 1.
- **The Division does not make sufficient use of other processes for expediting the appeals process, including the following:**
 - **Summary Orders.** The Board does not issue summary orders. When the Board issues a decision, it is called an order. Currently, the Board’s practice is to issue full orders for all types of cases, regardless of their complexity. Full orders include a detailed account of the hearing, the evidence submitted, and the reasoning behind the decision. The Division estimates that each full order requires 1 day to draft, review, and issue. This means that for every 1-day hearing, a Board member spends a second day writing the order. Not only does the Division have to pay the member a per diem for that second day, which is paid out of the Division’s budget, but this also reduces the time the member has available to hear additional cases.

An option the Division may want to consider is to write summary orders on less complex cases instead of full orders. Summary orders, which are brief, to-the-point decisions, are recognized in administrative law proceedings as a more cost-effective and timely method of issuing decisions because they take less time to prepare. The Board could retain the flexibility to write summary orders on simpler cases that are not likely to be appealed, and to write full orders for more complex cases—particularly cases with implications on precedent and those at greater risk of being appealed. Writing summary orders could also help the Division with the timeliness issues discussed in Recommendation No. 1 because summary orders can be produced more quickly than full orders. The Colorado Office of Administrative Courts found that writing summary orders enabled it to issue more timely decisions. As statute is silent on the Board’s ability to issue summary orders, we believe it is prudent for the Division to seek an opinion from the Attorney General as to whether it currently has the authority to issue summary orders or whether statutory changes are needed. If statutory changes are needed, the Division should work with the Department to pursue statutory changes to explicitly authorize the issuance of summary orders and to provide guidelines regarding how summary and full orders should be employed, including the ability of parties to request full orders should they wish to appeal a decision.

- **Prehearing Conferences.** The Division does not provide for prehearing conferences. A prehearing conference is generally a compulsory meeting of both parties, and may be conducted by subordinate hearing officers, administrative law judges, or Board members. The intent of a prehearing conference is to assist—in an informal and confidential manner—the parties in attempting to reach procedural or factual agreements whenever possible. Prehearing conferences can be particularly useful in more complex cases by narrowing the issues to be resolved during a formal hearing. Nearly half of the benchmark jurisdictions surveyed use prehearing conferences to both assist parties appearing before the jurisdictions and to help move the cases forward in a manner that makes settlements more likely.
- **Facilitator Services.** The Division provides limited services to facilitate hearings. For example, Division staff call petitioners shortly before the hearing to verify that the petitioners intend to follow through with the appeal, remind the petitioners of requirements to exchange information, and refer the petitioners to pertinent informational materials available on the Division’s website. However, these services are not designed to facilitate communication and clarify issues, help parties assess their options, or assist parties in analyzing the strengths and weaknesses of their cases. Some of the benchmark jurisdictions surveyed provide facilitator services, in addition to prehearing conferences, to assist the parties and help move the cases through the process. Facilitator services can be

particularly helpful for cases involving *pro se* taxpayer petitioners who may not understand the hearing process and the options available to them.

Why does this finding matter?

The Division's current practice of handling most types of cases the same, regardless of their complexity, impacts both its own resources and those of the counties that must respond to taxpayer petitioner appeals and prepare for scheduled hearings. For example, the Division may be able to hold more hearings each year if it accounts for case complexity when assigning resources. Under the Division's current process, it spends \$450 per hearing in per diem costs for the two Board members hearing the case—\$150 to each Board member for the hearing and an additional \$150 to the Board member who writes the decision. If the Division was to assign only one Board member or hearing officer to the more routine residential hearings, it would reduce the cost per hearing by a third—\$150 to the Board member for the hearing and \$150 to the Board member for writing the decision, for a total cost of \$300. This would allow the Division to hear more cases, which could also help with the timeliness issues identified in Recommendation No. 1.

Establishing a cost-effective approach to service delivery is critical to ensuring that limited government and taxpayer petitioner resources are put to the best use possible, that taxpayer petitioners receive optimum service delivery in return for fees and taxes, and that budgetary resources are stretched to achieve the most without increasing demands on the State, counties, or public.

Recommendation No. 2:

The Board of Assessment Appeals (the Division) should ensure that it more efficiently uses its resources when assigning Board members to preside over hearings and issuing decisions by:

- a. Establishing a process for taking into account case complexity when determining how many Board members should be assigned to hear a case. This may include assigning only one Board member or using contract hearing officers to hear more routine, less complex cases.
- b. Seeking an opinion from the Attorney General as to whether the Division currently has the authority to issue summary orders or whether statutory changes are needed. If statutory changes are needed, the Division should work with the Department of Local Affairs to pursue the statutory authority for the Board to issue summary orders as well as full orders.

- c. Developing and implementing a process for holding prehearing conferences, either on a regular basis or as an option available to taxpayer petitioners and county respondents.
- d. Increasing the facilitator services offered to parties, especially those less likely to be familiar with hearing processes.

Board of Assessment Appeals Response:

- a. Agree. Implementation date: June 2013.

The Division will establish a process for taking into account case complexity when determining how many Board members should be assigned to hear a case. Subject to available funding and the adoption of any necessary changes to statutes or rules, the process may include assigning only one Board member or using contract hearing officers to hear more routine, less complex cases. The Division will establish a process for taking into account case complexity by June 30, 2012. If statutory changes are necessary to fully implement the process, the Division will work with the Department of Local Affairs to review the benefits of and opportunities for statutory changes during the 2013 Legislative Session.

- b. Agree. Implementation date: June 2013.

The Division will request an informal written opinion from the First Assistant Attorney General representing the Board as to whether it currently has the authority to issue summary orders or whether statutory changes are needed for the Board to issue summary orders. For purposes of this response, the term “summary order” is defined as an order of the Board after a hearing that (1) does not contain specific findings of fact or conclusions of law but simply informs the parties of the Board’s decision of either denying the petition or granting the petition and ordering the value of the subject property to be reduced to an amount specified by the Board, and (2) requires a party who is dissatisfied with a summary order to request and obtain a full order (containing specific findings of fact and conclusions of law) from the Board as a prerequisite to filing an appeal with the Colorado Court of Appeals. If the Division currently has the authority to issue summary orders, the Division will develop a process for issuing summary orders in cases deemed appropriate by the Board. If statutory changes are necessary for the Board to issue summary orders, the Division will work with the Department of Local Affairs to review the benefits of and opportunities for any necessary statutory changes to obtain the authority to issue summary orders in cases deemed appropriate by the Board.

The Division will request the opinion by February 29, 2012. If statutory changes are necessary to issue such summary orders, the Division will work with the Department of Local Affairs to review the benefits of and opportunities for statutory changes during the 2013 Legislative Session.

- c. Agree. Implementation date: December 31, 2012.

The Division will develop and implement a process for holding prehearing conferences, either on a regular basis or as an option available to taxpayer petitioners and county respondents. Subject to available funding and any necessary rule changes, the Division will implement part c of Recommendation No. 2 by December 31, 2012.

- d. Agree. Implementation date: December 31, 2012.

The Division will perform research in order to determine what additional facilitator services can be offered to parties, especially those less likely to be familiar with hearing processes. The Division will increase the facilitator services offered to parties to the extent possible with existing resources and will request additional resources, as necessary. The Division will implement part d of Recommendation No. 2 by December 31, 2012.

Exchange of Information Between Parties

Typically, in administrative proceedings the parties are required, prior to the hearing, to exchange information that they wish to introduce into evidence at the hearing. This exchange of information requirement is intended to provide each party time to prepare its case, and fosters an even, fair playing field for each party.

What audit work was performed and what was the purpose?

We performed the following audit work:

- We reviewed a sample of 100 petitions with hearings held between January 1, 2010, and June 30, 2011, and reviewed the Division's case management system records reflecting the dates hearings were held for these petitions and the dates the parties exchanged information pursuant to the Board's Rule 11, discussed below.
- We interviewed 16 county assessor representatives and conducted an online survey of 161 parties with appeals resolved during Calendar Year 2010 (e.g., taxpayer petitioners, petitioner representatives, and county respondent representatives) to obtain their input on the Board's rule related to the exchange of information between parties.

- We obtained benchmark information from 35 state tax appeals bodies related to their requirements that parties exchange information in advance of the hearing date.

The purpose of the audit work was to determine the effectiveness of the Board rule related to the exchange of information between parties and the extent to which the Board enforces its rule.

How were the results of the audit work measured?

We identified the following criteria by which to measure the results of our audit work:

- The Board's Rule 11 (8 C.C.R., 1301.1) requires taxpayer petitioners and county respondents to exchange any documents that they plan to submit as evidence during the hearing at least 10 business days prior to the scheduled hearing; neither party is *required* to submit any documents as evidence. The rule also provides both parties the opportunity to exchange supplemental rebuttal information with the opposing party no later than 3 days before the hearing.
- The benchmark jurisdictions require parties to exchange information prior to hearings, much in the same way the Division does. Typically, agencies require parties to exchange information between 10 and 30 days prior to the hearing.

What did the audit work find?

We found that some taxpayer petitioners do not comply with the Board's exchange of information rule. Of the 100 cases reviewed, taxpayer petitioners submitted documentation in 84 cases. As shown in the following table, we found that the taxpayer petitioners in these cases submitted documentation to county respondents on or before the 10-day deadline for exchanging information in 62 (74 percent) of the 84 cases, with one case having an approved extension. The taxpayer petitioners in the remaining 22 (26 percent) cases submitted documentation to county respondents either at the hearing or fewer than 10 days prior to the hearing, contrary to the Board's rule. Conversely, the county respondents provided information in 95 of the 100 cases reviewed and complied with the Board's rule and submitted documentation to the taxpayer petitioners on or before the 10-day requirement in 98 percent of the cases.

Board of Assessment Appeals Taxpayer Petitioners' Compliance with Rule on Exchange of Information	
When Information was Exchanged	Number of Petitioners
Submitted Documentation in a Timely Manner	62
Submitted Documentation Fewer Than 10 Days Prior to the Hearing	7
Submitted Documentation Only at the Hearing	15
TOTAL	84
Source: Sjoberg Evashenk generated based on a review of the Board of Assessment Appeals' case records.	

In addition, although most taxpayer petitioners and county respondents did not submit rebuttal documentation in response to evidence submitted by the other party, in cases in which they did, neither side always submitted documentation at least 3 days prior to the hearing, as prescribed by the Board's rule. Of the 100 cases reviewed, 26 had at least one party submit rebuttal documentation. Of these 26 cases, the rebuttal documentation in six (23 percent) was submitted fewer than 3 days prior to the hearing date.

What caused the finding to occur?

The issues identified occurred because of the following:

- Taxpayer petitioners do not appear to understand the rule.** Although the Division provides information to taxpayers regarding the requirement to exchange information, taxpayer petitioners routinely stated in our survey that they did not understand or were unaware of this rule. The Division notifies parties of the rule at several points during the appeals process, but we identified limitations in these notifications. For example, the Division notifies taxpayer petitioners of the rule in the information package it makes available online and sends out when taxpayers express interest in filing a petition. However, the Division usually mails this package to the taxpayer petitioner more than a year before the hearing occurs. As a result, some taxpayer petitioners may not remember the requirement. The Division also informs taxpayer petitioners of the rule in the Notice of Hearing, which is mailed to taxpayer petitioners at least 30 days prior to the hearing. However, some taxpayer petitioners, especially those who are *pro se* and representing themselves, demonstrated that despite this notice they did not fully understand the hearing process, including the rule and its requirements. Finally, while Division staff call taxpayer petitioners to remind them of the information exchange requirement, the calls do not usually occur until about a week before the deadline. At this point, some taxpayer petitioners may not have sufficient time to pull the documents together and submit them to the county respondents in time to comply with the rule. In late 2010, the Division produced some new informational materials for parties, including "What to Expect" online videos that explain the information exchange rule. These

materials are likely to help taxpayer petitioners better understand the information exchange rule, though the extent to which these efforts alleviate this problem will have to be monitored further. Both Board members and stakeholders noted that taxpayer petitioners have continued to struggle with the rule even after the new informational materials have been available.

- **The Board maintains discretion to accept evidence that has not been exchanged in advance of the hearing.** The rule on exchange of information allows the Board to accept any evidence deemed necessary to make an informed decision. Therefore, even if a particular document was not exchanged prior to the hearing, the Board may accept it into evidence if it deems such acceptance necessary in order to make its decision. In our sampled cases, 15 taxpayer petitioners submitted information only at the hearing. However, the Division has not established a formal process for handling those instances in which one of the parties does not comply with the information exchange rule, but does submit documentation into evidence at the hearing. If a party (typically the county respondent) objects, Board members stated that they will note the objection but may still accept the evidence and state on the record that they will give it due weight and consideration, as deemed prudent. While we recognize the importance of maintaining discretion to accept evidence even when submitted late, the Board has not established criteria for members to use when deciding whether to accept documentation at the hearing that has not been previously exchanged. Nor has the Board established criteria or rules related to whether a continuance is warranted or to provide other remedies if the Board believes either party's case will be disadvantaged by the acceptance of evidence submitted untimely. The only formal guidance currently provided regarding continuances is found in a Board rule that allows for a continuance when "due to illness or emergency, or for other good reason, the Board considers that it would be in the best interest of justice and fairness to order a recess or continuance ..." (Board Rule 15; 8 C.C.R., 1301.1).
- **The Board may not allow sufficient time to prepare and submit documentation.** In our survey, both taxpayer petitioners and county respondents alike believed the other party waited until the last minute—10 days prior to hearing—to exchange documentation. This delay limits the time available for parties to review the documentation or to prepare a strong settlement agreement that compels parties to the negotiation table. Also, according to both taxpayer petitioners and county respondents, the information exchange rule does not leave enough time to adequately respond to the documentation submitted and to prepare a rebuttal.

The passage of Senate Bill 11-119 by the General Assembly may ameliorate some of the concerns raised by county respondents with respect to exchange of information, but the legislation may not fully resolve those concerns. Senate Bill 11-119 requires the taxpayer petitioners in some commercial cases to provide certain documentation to the county respondents within 90 days of

filing petitions with the Division. If the taxpayer petitioners do not comply with this requirement, their petitions may be subject to dismissal by the Board. However, the Board will retain the discretion to accept evidence even in cases in which taxpayer petitioners fail to comply with Senate Bill 11-119, just as it does under the exchange of information rule. Additionally, Senate Bill 11-119 applies only to cases involving the valuation of rent-producing commercial properties; these cases composed about 56 percent of all those filed with the Division during Fiscal Year 2011. About a third of the benchmark jurisdictions we contacted that require parties to share information have provisions stipulating that this exchange occur at least 20 days prior to the hearing. The Division may want to consider extending its 10-day requirement as well.

Why does the finding matter?

The requirement for exchanging information prior to a hearing is intended to ensure that each party has a fair opportunity to review all pertinent evidence before the opposing party submits the evidence in a hearing. Failure to provide both sides with this opportunity can place one side at an undue disadvantage, resulting in an unfair proceeding. Taxpayer petitioners who are unaware of the Board's rule on exchange of information, and whose evidence is deemed inadmissible as a result, are at a distinct disadvantage during a hearing. Likewise, both parties are at a disadvantage in cases in which they do not have time to review and rebut the other party's evidence submitted as late as the hearing itself.

Recommendation No. 3:

The Board of Assessment Appeals (the Division) should ensure that parties to a property tax appeal appropriately exchange information prior to the hearing by:

- a. Continuing to develop and distribute "helpful hints" and clear informational materials regarding requirements to exchange information prior to a hearing.
- b. Developing a standard process for handling cases in which one of the parties did not comply with the rule, including establishing criteria under which the Board can decide to accept evidence not exchanged in compliance with its rule and allowing a party to request a continuance in cases in which a party may be placed at a disadvantage due to the opposing party's failure to comply with the rule. This process should also address how the Board will handle information sharing under the requirements of Senate Bill 11-119.
- c. Evaluating the need to extend the time frames so that parties are required to exchange information earlier than 10 days prior to the hearing and to provide rebuttal information earlier than 3 days prior to the hearing, and based on this evaluation, amending the Board rule as necessary. In doing so, this may require communicating with taxpayer petitioners earlier in the process to further facilitate adherence to the exchange of information rule.

Board of Assessment Appeals Response:

- a. Agree. Implementation date: August 31, 2012.

The Division will update its “helpful hints” and informational materials regarding requirements to exchange information prior to a hearing. The Division will implement part a of Recommendation No. 3 by August 31, 2012.

- b. Agree. Implementation date: December 31, 2012.

The Division will develop a standard process for handling cases in which one of the parties did not comply with Rule 11(b) (documentation exchange), including establishing criteria under which the Board can decide to accept evidence not exchanged in compliance with the rule and allowing a party to request a continuance in cases in which he or she may be placed at a disadvantage due to the opposing party’s failure to comply with the rule. This process will also address how the Board will handle information sharing under the requirements of Senate Bill 11-119. The Division will implement part b of Recommendation No. 3 by December 31, 2012.

- c. Agree. Implementation date: December 31, 2012.

The Division will evaluate the need to extend the time frames so that parties are required to exchange information earlier than 10 days prior to the hearing and to provide rebuttal information earlier than 3 days prior to the hearing. Based on this evaluation, the Division will suggest amending Board Rule 11(b), as necessary. The Division will establish a process for communicating with taxpayer petitioners earlier in the process to further facilitate adherence to the exchange of information rule. The Division will implement part c of Recommendation No. 3 by December 31, 2012.

Board Training

Statute [Section 39-2-123(1)(2), C.R.S.] establishes the Board as a quasi-judicial tribunal, with three members appointed to 4-year terms and up to six additional members appointed for 1-year terms. One or more Board members may conduct hearings and issue decisions with the concurrence of at least two Board members [Section 39-2-127(b), C.R.S.]. Board members are the sole hearing officers utilized by the Division. The appropriate training of Board members has an impact on the Board’s ability to resolve appeals in a fair, impartial, and timely manner.

What audit work was performed and what was the purpose?

We performed the following audit work:

- We reviewed the Division’s requirements, policies, and practices with respect to the training provided to Board members.
- We conducted an online survey of 161 parties (e.g., taxpayer petitioners, petitioner representatives, and county respondent representatives) who filed petitions with and/or appeared before the Board during Calendar Year 2010 to obtain their perspectives regarding the performance of the Board in presiding over hearings and rendering decisions.
- We reviewed the training requirements for members of boards and commissions in 35 state tax appeals bodies to compare the type of training provided in other states with that provided by the Division.

The purpose of the audit work was to determine whether the Division’s training requirements for Board members are sufficient to ensure that Board decisions are fair, impartial, and timely.

How were the results of the audit work measured?

We identified the following criteria by which to measure the results of our audit work:

- The Division’s vision is to be “recognized for providing an accessible forum for resolving taxpayer appeals in a fair, impartial, and timely manner.”
- Benchmark jurisdictions have implemented training requirements for newly appointed board members and hearing officers, as well as requirements for ongoing training during the term of the members’ appointments. Training included courses on real property appraisals emphasizing cost and sales approaches to valuation of land designated for agricultural use, state property tax laws, pertinent court decisions, new legislation, and procedural issues.

What did the audit work find?

We found that improvements can be made in the Division’s requirements related to Board training to strengthen Board members’ ability to issue decisions that are fair, impartial, and timely. Specifically, we found that the Division lacks formalized training for Board members in areas such as presiding over hearings, writing decisions, or otherwise serving as hearing officers. All Board members are statutorily required to be licensed appraisers, but there is no requirement that they receive broader training on taxation, legal or procedural matters, preparing

for hearings, writing decisions, or mediation or prehearing services—even though they are serving in a quasi-judicial capacity. In addition, the Division has not established requirements for continuing professional education for its Board members. While the Division recently registered one Board member for mediation training, according to the Division, other Board members have not undergone training specifically tailored to their roles as hearing officers.

What caused the finding to occur?

The Division has not implemented a formal training program for Board members, and does not require ongoing professional education that extends beyond Board members' appraisal licensure requirements. Instead, training for new Board members comprises on-the-job training in which an inexperienced Board member is initially partnered with two more experienced Board members during hearings. In addition to on-the-job training, Board members meet as a full body on a monthly basis to discuss common legal issues arising during hearings, stakeholder concerns, and evolving case law. According to the Division, it has recently completed a newly updated reference and training manual for Board members.

Why does this finding matter?

An adequately trained Board is essential to creating a fair and impartial Board, and to better ensuring an effective and timely hearing process. Board members themselves described the challenges they faced as newly hired Board members, particularly when it came to matters of law, precedent, and rules of procedure. Many described the training process as “trial by fire.” The lack of training and diversity of expertise on the Board also appears to have negatively impacted stakeholders' perceptions of the quality of services provided by the Division. While taxpayer petitioners and county respondent representatives were moderately satisfied with the hearing process itself, taxpayer petitioners did not believe Board members demonstrated fairness and impartiality toward taxpayer petitioners and respondents, or that the Board members demonstrated appropriate knowledge regarding the practice of property assessments and valuation. Taxpayer petitioners and county respondent representatives alike somewhat agreed that Board members demonstrated appropriate knowledge of the legal aspects of the hearing process (including procedural rules, rules of evidence, pertinent aspects of the law, etc.). While the learning curve for Board members may always be steep, an increasingly trained Board is more likely to provide quality services to the public, and will afford greater flexibility when assigning Board members to a case.

Recommendation No. 4:

The Board of Assessment Appeals (the Division) should develop a prescribed professional training program that is designed to expose Board members to

professional practices that are outside their own specific backgrounds or expertise, and that are pertinent to their roles as hearing officers in a quasi-judicial body. The program should include monitoring and tracking the training received and professional development needs of Board members on an ongoing basis.

Board of Assessment Appeals Response:

Agree. Implementation date: December 31, 2012.

Subject to available funding, the Division will develop a prescribed professional training program that is designed to expose Board members to professional practices that are outside their own specific backgrounds or expertise, and that are specifically pertinent to their roles as hearing officers in a quasi-judicial body. The program will include monitoring and tracking the training received and professional development needs of Board members on an ongoing basis. The Division will implement Recommendation No. 4 by December 31, 2012.

Customer Service

The Division's appeals process was designed to allow taxpayer petitioners and county respondents to resolve disputes related to property tax assessments in a timely manner and without the need for legal representation. Approximately 20 percent (683 of 3,340) of the petitions resolved by the Division in Fiscal Year 2011 involved *pro se* taxpayers who did not have legal representation and who likely were not familiar with the hearing process. The Division provides information through its website, correspondence, and in response to telephone calls to assist taxpayer petitioners and county respondents in navigating the appeals process.

What audit work was performed and what was the purpose?

We performed the following audit work:

- We reviewed the informational materials and customer service provided by the Division to taxpayer petitioners and county respondents, including through the Division's website, correspondence, and telephone calls.
- We reviewed the informational materials and assistance provided to parties by the 35 state tax appeals bodies in our benchmark survey.
- We conducted an online survey of 161 parties who filed petitions with and/or appeared before the Board during Calendar Year 2010 (e.g., taxpayer petitioners, petitioner representatives, and county respondent representatives) to obtain their perspectives on the quality of customer service and

informational materials provided by the Division related to the appeals process.

The purpose of the audit work was to evaluate the sufficiency of the information provided by the Division to taxpayer petitioners and county respondents related to the appeals process.

How were the results of the audit work measured?

In our professional judgment, organizations such as the Division need to provide sufficient information and assistance for the parties to successfully navigate their cases through the appeals process. Our benchmark analysis of 35 state tax appeals bodies confirmed that organizations comparable to the Division understand this need and aspire to meet the need by:

- Providing informational materials geared specifically to *pro se* taxpayer petitioners, including brochures and “Frequently Asked Questions” (FAQ) documents.
- Providing on their websites case processing timeliness goals, workload and performance statistics, and information related to the ongoing status of cases.

What did the audit work find?

We found that some taxpayer petitioners do not believe the information and assistance provided by the Division are sufficient to adequately prepare them for hearing. When posed with various survey questions about the adequacy of the information and assistance provided by the Division, between 15 percent and 46 percent of the 122 taxpayer petitioners responding to our survey, described the information and assistance provided by the Division as “poor” or “fair” and felt either “very dissatisfied” or “dissatisfied,” depending on the specific question asked. For example:

- 45 percent of *pro se* taxpayer petitioners who appeared before the Board stated “no” when asked, “In your cases, did you find information or assistance available that was sufficient for you to be adequately prepared for the hearing?”
- 35 percent of *pro se* taxpayer petitioners stated they were “very dissatisfied” or “dissatisfied” when asked, “Please indicate your overall satisfaction with the Division.”

Taxpayer petitioners responding to the survey provided the following comments regarding the information available from the Division:

- Confusion over rules regarding the exchange of information, the type of evidence that is admissible, questioning and cross-examining witnesses, and objections.

- Confusion over the types of evidence expected (such as fee appraisals) and the different types of evidence that are admissible.
- Surprise at the formality of the hearing process, and particularly by the fact that counties would be represented by attorneys, causing them to realize at the last minute the adversarial nature of the proceeding.

It should be recognized that the Division enhanced the level of information available on its website and in informational packages mailed to petitioners subsequent to the time period during which many of our survey respondents submitted petitions with the Division.

What caused the finding to occur?

The issues identified occurred because of the following:

- **Insufficient Written Materials.** Although the Division recently improved some of the written informational materials that it makes available to the public, further improvements can be made. The Division's existing materials include "What to Expect" instructional videos available online, illustrative color-coded instructional pamphlets, a "dear petitioner" letter, and Board rules. However, some of the materials provided on the Division's website and in the Division's standard correspondence are technically written, often at a high level, and were found by many surveyed taxpayer petitioners to be difficult to understand for those unfamiliar with the appeals process.

For example, Board rules state that "the petitioner shall have the burden of proof," but the rules do not specify what that burden means or inform petitioners how they can meet that standard. In addition, a letter that the Division sends to taxpayer petitioners regarding evidence does not explain that some evidence is generally given greater weight or credibility than other evidence or provide examples of the strongest evidence. For instance, the Board appears to generally give greater weight to appraisals that are compliant with the Uniform Standards of Professional Appraisal Practice rather than to mass appraisals prepared by counties or documentation gathered and prepared by a party to the case. Input obtained from taxpayer petitioners and county respondents alike illustrate confusion regarding what is expected of them in terms of evidence, and the reasons why some evidence is preferable over others.

Many taxpayer petitioners responding to our survey expressed overall dissatisfaction with the level of informational materials available at the Division, and suggested having more information readily available describing the steps in the appeals process and what to expect at the hearing. The Division has indicated that it is in the process of developing a more robust set of "helpful hints" that it may be able to provide to taxpayer petitioners during this fiscal year. The Division should continue these efforts.

- **Online Case Information.** Although the Division’s website provides some case-related information, such as the names of the parties, hearing date, tax year, property type, type of appeal, disposition amounts, and decision issued, there are opportunities in which the Division can enhance the information available on its website. Other jurisdictions in our benchmarking survey have websites that include searchable databases in which parties may look up their individual case to find out case details, such as whether their petition was received, whether the filing was deemed complete, the date exhibits were received, and whether rebuttal evidence was submitted. We also found that other jurisdictions provide information on their websites regarding case status information, such as due dates, effective dates, orders issued, prehearing schedules, status conferences, and dates notices were sent. All of this information is available in the Division’s case management system, making it possible to add a “case status” component to the Division’s already existing website that allows parties to determine where they are at in the process. According to the Division, information technology resource limitations have impacted its ability to implement improvements such as this. However, the Division indicated it plans to move forward with such improvements as resources become available.
- **Performance Statistics.** The Division does not publish workload and performance statistics. If the Division was to include on its website performance statistics regarding its timeliness, this would serve to provide additional insight regarding what can be expected during the hearing process and could also serve to increase public accountability. Several benchmark jurisdictions provide workload and performance statistics on their websites, such as the percentage of cases resolved within specified timeliness goals. This is information taxpayer petitioners could find useful in researching what to expect during the process.

Why does this finding matter?

An effective hearing process requires that each party understand how the process works and what to expect—a goal that presents a challenge to any agency conducting hearing processes that are intended to encourage participation of *pro se* parties. The Division’s ability to resolve tax disputes in a fair, impartial, and timely manner is dependent on the parties having a sufficient understanding of how the process works and what their responsibilities are in terms of providing information before and during the hearing. If parties are not sufficiently informed, delays can result, decisions may not be based on all the relevant facts, and parties may feel that they are at a disadvantage during the hearing process.

Recommendation No. 5:

The Board of Assessment Appeals (the Division) should ensure that it provides sufficient information to the parties involved in appeals cases by:

- a. Continuing to improve the informational materials available to parties, including the information provided on the website as well as hard copy brochures and pamphlets. For example, the informational materials should provide “helpful hints” and information regarding what to expect during the hearing process; provide information describing the difference between mass and fee appraisals; provide information on common procedural rules, such as requirements to exchange information; describe the types of evidence expected and the weight and credibility generally given to evidence of different types; and clearly articulate the formality and adversarial nature of the hearing process.
- b. Providing online information related to case status, as information technology resources permit.
- c. Developing and reporting performance statistics on its website.

Board of Assessment Appeals Response:

- a. Agree. Implementation date: August 31, 2012.

The Division will continue to improve the informational materials available to parties, including the information provided on the website as well as hard copy brochures and pamphlets. The updated informational materials will provide updated “helpful hints” and information regarding what to expect during the hearing process; provide information describing the difference between mass and fee appraisals; provide information on common procedural rules, such as requirements to exchange information; information describing the types of evidence expected and the weight and credibility generally given to evidence of different types; and clearly articulate the formality and adversarial nature of the hearing process. The Division will implement part a of Recommendation No. 5 by August 31, 2012.

- b. Agree. Implementation date: June 30, 2013.

The Division will update its online case information to include case status, as information technology resources permit, by June 30, 2013.

- c. Agree. Implementation date: June 30, 2013.

The Division will develop and report performance statistics on its website, as information technology resources permit, by June 30, 2013.

Filing Fees

The Division is required by statute to collect a filing fee in certain circumstances. According to statute, the Division must collect a filing fee of \$101.25 for each parcel of land covered by each petition filed, except in the case of *pro se* taxpayer petitioners [Section 39-2-125(h), C.R.S.]. For *pro se* taxpayer petitioners, there is no fee for the first two petitions filed in a given fiscal year. These *pro se* petitioners must pay a fee of \$33.75 for the third and each additional petition filed in the same fiscal year. One purpose of the filing fee is to promote reasonable access to the appeals process, while discouraging the filing of frivolous petitions. Filing fees are deposited into the State's General Fund, and the Division's operating budget is appropriated partially out of the General Fund. In Fiscal Year 2011, the Division's total budget appropriation was \$543,416, and the Division collected approximately \$185,000 in filing fees.

What audit work was performed and what was the purpose?

We performed the following audit work:

- We reviewed the Division's filing fee structure set forth in statute.
- We reviewed the fees charged by 29 state tax appeals bodies in our benchmark survey, as well as the fees charged for filing a case in the Colorado district courts.

The purpose of the audit work was to determine whether the Division's filing fees appropriately balance the need to ensure that taxpayer petitioners have reasonable access to the Division's appeals process, while discouraging taxpayer petitioners from filing frivolous appeals, and the State's ability to offset the cost to the State of operating the Division.

How were the results of the audit work measured?

We identified the following criteria by which to measure the results of our audit work:

- Fourteen of the 29 benchmark state tax appeals bodies required filing fees; of these, 10 did not employ a flat fee applied across the board for all case types, and none considered a taxpayer petitioner's status as a *pro se* as a factor when determining filing fees. Instead, these 10 other jurisdictions established a tiered fee structure based on case characteristics or complexity. For the eight jurisdictions that employed a two-pronged case processing approach, as discussed in Recommendation No. 2 (allowing for less complex cases to follow a lower-cost and/or expedited hearing process while requiring more complex cases to follow a more rigorous hearing process), filing fees for less

complex cases ranged from \$10 to \$150, while filing fees for more complex cases ranged from \$25 to \$600. In four states, filing fee amounts were based on property value and/or type. In these states, assessment appeals of residential property or lower-valued property could be as low as \$10, while higher-valued properties or special property appeals could be as much as \$600.

- Filing fees for civil cases filed with the Colorado district court, which would include tax assessment cases, are currently \$224 per filing. As discussed previously, taxpayer petitioners have the option of appealing county property tax assessments to the Division or Colorado district court.

What did the audit work find?

Overall, we found that modifications to the Division's filing fees warrant consideration in order to offset the cost to the State of operating the Division, allow reasonable access to the Division, and discourage taxpayer petitioners from filing frivolous appeals. In addition, we found that the Division's filing fees are not consistent with those found in the benchmark jurisdictions that charge fees. Specifically, we found:

- Filing fees covered only about 35 percent of the Division's total budget in Fiscal Year 2011. The most that a taxpayer petitioner pays in filing fees is \$101.25, which covers just more than 20 percent of the direct minimum cost of hearings (\$450).
- The Division's filing fees are less than half of the filing fee required by the Colorado district courts—\$101.25 for represented cases filed with the Division and \$0 for the first two *pro se* cases filed, compared with \$224 for civil filing fees with the district courts. In itself, this is not a problem. However, it does suggest that room exists for the State to consider modifications to filing fees.
- The statutory requirement that *pro se* taxpayer petitioners not pay filing fees for the first two petitions filed each fiscal year and only pay a reduced fee for the third and subsequent petitions filed is not consistent with benchmark jurisdictions, which do not determine filing fee amounts based on the characteristics of the petitioner. Even a first time *pro se* filing in a small claims court in Colorado carries a fee of \$31.

What caused the finding to occur?

The issues identified occurred because of the following:

- **Filing fees have not changed for 8 years.** The Division's current filing fees have not been revised since 2003. According to the Division, during the 2011 Legislative Session, it discussed the possibility of modifying filing fees with

one member of the General Assembly, but the decision was made to not increase fees at that time. According to the Division, filing fees have remained low—both in comparison to fees at the district court and in terms of what would be needed to cover the cost of the hearing itself—to ensure access to justice for Colorado taxpayers.

- **Filing fees are not based on the nature of the case.** The Division’s filing fees distinguish the characteristics of the taxpayer petitioner (i.e., *pro se* versus represented), but are not based on the characteristics of the case (e.g., complex or routine case), even though such distinctions are made in some other jurisdictions. Case type and complexity are more likely to impact the resources required of the Division to resolve cases than whether an individual represents himself or herself.

Why does this finding matter?

Given the budgetary constraints on the State’s General Fund, it is important that filing fees be set at an amount determined by the General Assembly to be appropriate to recover a portion of the Division’s costs. In addition, while low filing fees are often intended to ensure open access to justice, fees are also intended to provide a disincentive to parties filing frivolous complaints. In fact, given that it costs a relatively low amount or even nothing for taxpayers to file petitions, the Division is at greater risk of receiving and processing petitions that ultimately lack merit or sufficient evidence to support. This may be evidenced by the fact that 91 percent of the petitions filed with the Division never go to hearing. While many of these cases are resolved because the two parties settle prior to the hearing, many are withdrawn by the taxpayer petitioner. In Fiscal Year 2011, of the approximately 3,340 petitions resolved, about 875 (26 percent) were withdrawn by the taxpayer petitioner prior to the hearing. Processing petitions that are withdrawn requires a substantial amount of work on the part of the Division. In setting fees, the Division should consider a fee structure that does not limit access to justice, but does limit frivolous complaints that waste state and county resources.

Recommendation No. 6:

The Board of Assessment Appeals (the Division) should reevaluate its fee structure in terms of whether fees should be based on the characteristics of the assessed property or on the characteristics of the petitions, and in terms of the fee amounts charged to petitioners as a cost-recovery mechanism. If warranted, the Division should work with the Department of Local Affairs to pursue legislation to amend the fee structure.

Board of Assessment Appeals Response:

Agree. Implementation date: June 2013.

The Division will evaluate its fee structure in terms of whether fees should be based on the characteristics of the assessed property or on the characteristics of the petitions, and in terms of the fee amounts charged to petitioners as a cost-recovery mechanism. If warranted, the Division will work with the Department of Local Affairs to review the benefits of and opportunities for statutory changes to amend the fee structure. The Division will complete the evaluation by July 31, 2012. If statutory changes are necessary, the Division will work with the Department of Local Affairs to review the benefits of and opportunities for statutory changes during the 2013 Legislative Session.

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