

Law Report

Special Real Estate Tax Issue

Spring / Summer, 2000

NOW, MORE THAN EVER, IT IS IMPORTANT TO HIRE AN ATTORNEY TO CONTEST YOUR TAXES

By Joanne Elliott



Aside from mortgage payments, real estate taxes are generally the single-largest expense of owning commercial property. Experienced property owners know this. And, they realize the importance of contesting taxes to the fullest extent possible.

In the Chicago Metropolitan area, there is an abundant supply of competent lawyers who represent taxpayers in this area. In recent years, we have also seen a surge in non-lawyer "tax consultants". Given the dollars involved and the inherent limitations in using non-lawyer tax consultants, we strongly believe that taxpayers are well advised to hire an attorney—whether it is an attorney from this firm or one of many competent others.

Relief before the tax bill is issued

The law allows taxpayers two opportunities to contest the assessment before the tax bill is issued. The first is before the County Assessor and the second is before the County Board of Review. Non-lawyers are allowed to represent taxpayers before the Assessor but they are prohibited from representing taxpayers before the Board.

Our firm routinely obtains substantial assessment reductions for our clients from Assessors and

Boards of Review. And, it is common practice in the Chicago area to routinely appeal assessments to both the Assessor and the Board.

But what happens when the taxpayer hires a non-lawyer tax consultant? Will the tax consultant recommend that an appeal be filed to the Board if he is prohibited from filing that appeal? And, if an appeal is recommended, who will actually file it if the consultant cannot?

It appears that many consultants associate with lawyers in order to file Board appeals. Sometimes these lawyers operate as "fronts" for the consultant. The complaint is filed under the lawyer's name but the lawyer does little if any substantive work on the case. Sometimes, the consultant files the complaint in the taxpayer's name thereby skirting the Board's rules (but in this case, the opportunity to argue in person before the Board is lost unless the taxpayer intends to appear and argue the case himself). It should be noted that if the Board learns that its rules regarding non-lawyer representation have been violated, they may dismiss the case.

In other cases, the consultant will hire a lawyer to legitimately represent the client before the Board for a fee. In that case,

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it will be the lawyer who gets the job done for the client.

But does this make sense? Why hire a tax consultant to represent you if the consultant will need to hire a lawyer to complete the job? Why not hire a competent lawyer in the first place? And if a lawyer is going to be hired to represent you, do you want to leave the hiring decision to someone else?

Relief After The Tax Bill Is Issued

The case for hiring a lawyer is even more compelling when you consider the opportunities for obtaining tax refunds after the tax bill has been paid.

The law allows taxpayers to appeal Board decisions to either the State Property Tax Appeal Board (PTAB) or the Circuit Court of Cook County. Many of these cases are settled. Others go to trial. But most are settled in favor of the taxpayer and result in substantial tax refunds.

As is the case with the Board, non-lawyers are prohibited from representing taxpayers before PTAB or in Court. Moreover, the timing for filing complaints before PTAB is very limited (PTAB complaints must be filed within 30 days following the Board's decision). Therefore, a lawyer must get involved immediately after the Board renders its decision.

So, what happens when a taxpayer hires a non-lawyer tax consultant? First, it is possible that the assessment may never be contested with the Board in the first place. And, if that happens, the taxpayer will be precluded from filing to PTAB or Court. Second, if the tax consultant files a complaint in the taxpayer's name or if a lawyer "front" is used, will a legitimate lawyer be hired fast enough so that

a PTAB complaint can be filed within the 30 day filing period? And third, if an appeal to Circuit Court is the preferred route, will the consultant ensure that all filing requirements are met and that an attorney is hired to file the Court appeal on a timely basis? Or, will the right to appeal in Court be lost as well?

Whatever the case, I reach the same conclusion. The job can be started by a tax consultant. But, if you want to pursue all available appeal routes, you will eventually need to hire a lawyer.

Other Considerations

When you hire a lawyer, you can be sure that he or she has a college degree, a law degree, has passed a bar examination, has (in most cases) insurance to cover malpractice, is personally responsible (in all cases) for his or her malpractice and is governed by strict ethical rules and regulation developed and enforced by the Illinois Supreme Court.

But what about a non-lawyer tax consultant. These individuals are neither licensed nor regulated Will he have a college degree? Perhaps. A law degree? Probably not. Malpractice Insurance? Not likely. Personal liability for malpractice? Not likely. Regulated by the State of Illinois? No.

In today's world, consumers demand value and convenience. There is an abundant supply of trained, experienced, competent lawyers who practice in the tax assessment area. Fees are negotiable and competitive. And, one lawyer can represent you throughout the entire appeal process. To my way of thinking, a competent lawyer provides both value and convenience. Hiring a non-lawyer could be a costly mistake.

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PTAB OR COURT, THAT IS THE QUESTION

Prior to 1998, Cook County taxpayers were permitted to appeal decisions of the Board of

Review to the Circuit Court of Cook County. Effective January 1998, Illinois taxpayers were

given the right to appeal decisions of the Board of Review to either the State Property Tax Appeal Board (PTAB) or the Circuit Court of Cook County. We now have two years experience with PTAB cases in Cook County and can provide some insight regarding the pros and cons of each forum.

Why Choose PTAB over Court?

* **Speed.** PTAB cases must be filed within 30 days following the Board's decision and are currently being disposed of in under one year. Court cases, on the other hand, are generally filed in December of each year (this may be 6 to 10 months following the Board decision). And, given the case backlog, Court cases are currently being resolved in 2 to 2-1/2 years following filing.

So, at the present time, PTAB cases are being resolved much faster than Court cases. However, as the volume of PTAB cases grows, we expect PTAB cases will take longer to resolve.

* **Lower Burden Of Proof.** The burden of proof on the taxpayer in PTAB cases is lower than the burden of proof in Court cases. To the extent that a case proceeds to trial and verdict, the difference in burdens of proof may be significant. To the extent, however, that the case is settled (as most are), the difference in burden of proof will be irrelevant.

* **Favorable Rules and Decisions.** PTAB is governed by published rules and decisions which have the effect of creating case precedent. Court cases are likewise governed by published rules and Court decisions which create case precedent. In some instances, PTAB case precedent may favor a given case more than case precedent from the Court system. But, in other cases the reverse may be true.

* **Payment Of Taxes Not A Pre-requisite.** Before a case can be appealed to the Circuit Court, real estate taxes for the year in dispute must be paid in full. If taxes have not been paid, a Court appeal can not be filed. PTAB does not have such a requirement. This may be a benefit for those who are unable to pay a high tax bill but wish to dispute it.

Why Avoid PTAB?

* **Intervenors.** Taxing districts have the right to intervene in PTAB cases but not in Court cases. And, as a practical matter, School districts are intervening where the amount in dispute is significant. Intervenors become an additional party opponent. They may present evidence including their own appraiser. They may cross-examine the taxpayer's appraiser and other witnesses. Additionally, settlements cannot be made without the intervenor's consent.

As a practical matter, we generally advise that cases be appealed to Court if it is likely that a party will intervene.

* **Inconvenience.** Because of the backlog of Court cases and the resulting delay in resolving them, it is possible to consolidate all pending cases for a given property in a given triennial assessment period and resolve them at one time. This is an efficient means of resolving cases that simplifies matters greatly. It also results in the taxpayer receiving one, significant tax refund together with interest.

Because PTAB cases are being resolved quickly, it is usually the case that the Assessor is unaware of the PTAB decision at the time he releases the assessment for the following tax year (often, the PTAB decision is issued after the assessment for the following year is released). As a result, after resolution of a PTAB case, the taxpayer will need to file another case to the Assessor, Board or PTAB to reinstate the PTAB reduction for the remainder of the triennial period.

* **Assessment Increase.** PTAB has the power to direct an increase in assessment but the Circuit Court does not. In highly contested cases, the County and the intervenor will often request a tax increase. As a practical matter, however, PTAB rarely directs assessment increases.

What Should You Do?

Taxpayers should aggressively contest their assessments to the fullest extent practically possible. This means that an appeal should be taken to either PTAB or the Circuit Court unless it is clearly not feasible to do so.

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Each case must be reviewed on its own merits, but in general: owner's of valuable property (market value in excess of \$1.0 Million) should avoid PTAB and file to the Circuit Court instead if intervention is a concern (filing to Court will eliminate the possible delay, cost and risk of intervention); owner's

of less valuable property should file to PTAB if case precedent suggests they would achieve a better result at PTAB than in Court; and in other cases, the convenience of consolidating and settling multiple Court cases may suggest that Court is the preferred route.

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ARE YOU GETTING ALL RELIEF POSSIBLE?

Cook County taxpayers may contest their assessments to the Assessor and the Board of Review. These appeals are filed before the tax bill is issued. If an assessment reduction is granted, it will cause the second installment tax bill (due in September) to be reduced.

If the taxpayer has filed a complaint with the Board of Review and is not satisfied with the Board's decision, she may appeal that decision to either the Property Tax Appeal Board (PTAB) or the Circuit Court of Cook County. If the taxpayer prevails before PTAB or Court, she will obtain a tax refund (with interest) because the decision will come after the tax bill for the year in question has been paid.

Our experience indicates that substantial relief can be obtained from each of these agencies if the facts of a given case allow. Accordingly, we carefully review each case in order to decide whether an appeal should be taken. Our philosophy is that cases should be pursued to the fullest extent practically possible.

If you are not exhausting all your appeal rights, you may be paying more than your fair share of taxes. Not all cases should be appealed. However, all cases should be reviewed and thought given to whether an appeal is feasible.



A LITTLE BIT ABOUT US ...

We employ a staff of four attorneys who work almost exclusively in the real estate tax area. Our attorneys are support by a staff of six paralegals and secretaries. In this issue, we would like to highlight the recent accomplishments of one of our partners, Joanne P. Elliott.

Joanne P. Elliott, JD, is the current Chairman of the Illinois State Bar Association State and Local Taxation Section Council. Her term expires in June, 2000. The Council is comprised of attorneys and government officials who work and practice in the State and Local Taxation areas, including Circuit Court Judges and representatives from the Office of the Assessor, Treasurer, Board of Review and the Property Tax Appeal Board.

During her term as Chairman, Ms. Elliott worked on several noteworthy projects, including:

* Serving on a committee of lawyers who met with the Cook County Assessor to provide input with regard to proposed changes to the Cook County tax incentive program;

* Serving on a committee of lawyers who met with the Cook County Treasurer to provide input with regard to streamlining procedures involving real estate tax payments and refunds;

* Serving on a committee of lawyers who met with the Presiding Judge of the County Division of the Circuit Court of Cook County to provide input with regard to the rules of practice involving tax appeals before the Circuit Court and then present the revised rules and forms to the practicing Bar.

* Moderating a 2-day seminar presented to lawyers who practice in the State and Local taxation areas which featured the Cook County Assessor, the Chairman and the Chief Deputy Commissioner of the Cook County Board of Review, the Cook County Treasurer, the Executive Director and Chief Legal Counsel of the Property Tax Appeal Board and top lawyer practitioners in this area.

* Defeating Senate Bill 1276 which proposed allowing non-lawyers to represent taxpayers before the Board of Review.

* Drafting legislation with regard to obtaining refunds of taxes paid in error and providing limits on the government's power to back tax.